

VOLUME 2: DRAFT CONTRACT/AGREEMENT

Project Name: Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing and Branding of Madhya Pradesh

RFP No.: [MPTRIFAC/2018-19/01]

Contract No. _____

Between

Madhya Pradesh Trade & Investment Facilitation Corporation Limited

And

[Name of the Consultant]

Dated: _____

MPTRIFAC Request for Proposals for Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh

This CONTRACT (hereinafter called the "Contract") is made on the [number] day of the month of [month], [year], between, MP Trade and Investment Facilitation Corporation Ltd. (hereinafter called the "MPTRIFAC") and [name of Consultant] (hereinafter called the "Consultant").

WHEREAS

- (a) MPTRIFAC vide its Request for Proposal (RFP) for providing services as defined in this Contract for 'Appointment of Knowledge Partner (Consultant) for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh' (hereinafter referred to as the Project)
- (b) MPTRIFAC has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (c) The Consultant, having represented to MPTRIFAC that it has the required professional skills, expertise and technical resources, has agreed to provide the services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - a. The General Provisions of Contract
 - b. Commencement, Completion, Modification and Termination of Contract
 - c. Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Personnel
 - Appendix C: Breakdown of Contract Price

1. General Provisions

1.1 Definitions

1.1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a. "Applicable Guidelines" means the policies of the State and Government of India governing the selection and Contract award process as set forth in this RFP.
- b. "Applicable Law" means the laws and any other instruments having the force of law in India, as they may be issued and in force from time to time.
- c. "MPTRIFAC" means MPTRIFAC the implementing Consultant that signs the Contract for the Services with the Selected Consultant.
- d. "Consultant" means a legally-established professional consulting firm or entity selected by MPTRIFAC to provide the Services under the signed Contract.
- e. "Contract" means the legally binding written agreement signed between MPTRIFAC and the Consultant and which includes all the attached documents listed in the Form of Contract (General Provision), Commencement, Completion, Modification and Termination of Contract (CONTRACT), and the Appendices).
- f. "Day" means a working day unless indicated otherwise.
- g. "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause 2.1.
- h. "Personnel" means, collectively, Key Personnel, Non-Key Personnel, or any other personnel of the Consultant, Sub-Agency or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- i. "Government" means the government of MPTRIFAC's country.
- j. "Party" means MPTRIFAC or the Consultant, as the case may be, and "Parties" means both of them.
- k. "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A
- l. "Third Party" means any person or entity other than the Government, MPTRIFAC, the Consultant or a Sub-Agency
- m. All terms and words not defined herein shall, unless the context otherwise requires have the meaning assigned to them in the RFP

1.2 Relationship between the Parties

- 1.2.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between MPTRIFAC and the consultant. The consultant, subject to this Contract, has complete charge of the Personnel, performing the services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 1.2.2 Rights and Obligations of MPTRIFAC and the Consultant shall be as set forth in the Contract, in particular:
 - 1.2.2.1 The Consultant shall carry out the services in accordance with the provisions of the Contract; and
 - 1.2.2.2 MPTRIFAC shall pay agreed fee to the Consultant in accordance with the agreement.

1.3 Governing Law and Jurisdiction

This Contract shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Bhopal shall have exclusive jurisdiction over matters arising out of or relating to this Contract.

1.4 Language

All notices required to be given by one Party to the other Party and all other communications; documentation and proceedings, which are in any way relevant to this Contract, shall be in writing and in English or Hindi language.

1.5 Table of Contents and Headings

The table of contents, headings and sub-headings in this Contract is for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this agreement.

1.6 Communications

- 1.6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause 1.4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the Contract.

MPTRIFAC Request for Proposals for Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh

1.6.2 A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the Contract.

1.7 Authorised Representatives

1.7.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by MPTRIFAC or the Consultant may be taken or executed by the officials specified in the Contract.

1.7.2 MPTRIFAC may from time to time designate one of its officials as MPTRIFAC Representative unless otherwise notified MPTRIFAC Representative shall be:

Managing Director
Madhya Pradesh Trade & Investment Facilitation Corporation Ltd.
(Government of Madhya Pradesh Undertaking)
16-A, Arera Hill, Jail Road
CEDMAP Building, Bhopal-462011
Madhya Pradesh (India)
Tel (91) 755-2575618
Fax (91) 755- 2559973
E-mail: facilitation@mptrifac.org
E-mail: md@mptrifac.org

1.7.3 The Consultant may designate one of its employees as Consultant Representative unless otherwise notified. The Consultant Representative shall be:

1.8 Taxes and Duties

Unless otherwise specified in the Contract the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and MPTRIFAC shall perform such duties in regard to the education of such taxes as may be lawfully imposed on it.

1.9 Corrupt and Fraudulent Practices

MPTRIFAC Request for Proposals for Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh

The Consultant is required to comply with policy in regard to corrupt and fraudulent practices.

2. Commencement, Completion, Modification and Termination of the Contract

2.1 Effectiveness of Contract

2.1.1 This Contract shall come into force and effect on the date (the "Effective Date") of MPTRIFAC's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the Contract have been met.

2.1.2 **Time Frame:** The total time period of the project/ assignment shall be 24 months from the date of signing of the Contract with a provision for further extension of 24 months with 10% Contract Value escalation.

2.2 Commencement of Services

2.2.1 The Consultant shall place at MPTRIFAC Bhopal all the personnel (except Project Director) as per the requirement annexed to this Contract to perform/discharge Roles and Responsibilities described in the RFP and shall commence the services within 15 days from the Effective date.

2.2.2 MPTRIFAC, if required, reserves the right to increase the number of 'Personnel' based on price discovery in this tender.

2.3 Termination of Contract for Failure to Commence Services

If the Consultant does not commence the services within the period specified in Contract above, MPTRIFAC may, be not less than 22 days' notice to the consultant, terminate this Contract and in the event of such Termination, the Bid security as well as the Performance Security of the Consultant shall stand forfeited.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.1 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the Contract.

2.5 Entire Contract

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or Contract not set forth herein.

2.6 Modifications or Variations

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written Contract between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2.7 Force Majeure

2.7.1 Definition

2.7.1.1 For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the party invoking Force Majeure to prevent) confiscation or any other action by Government agencies.

2.7.1.2 Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents employees thereof, nor (ii) any event which a diligent Party could reasonably prevent, avoid or remove (have been expected to both a) take into account at the time of the conclusion of this Contract, and b) avoid or overcome in the carrying out of its obligations hereunder)

2.7.1.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.1.4 MP TRIFAC will decide the eventuality of Force Majeure, which will be binding, on both the parties.

2.7.2 No Breach of Contract

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

2.7.3.1 A Party affected by an event of Force Majeure shall take all reasonable measures to remove such party's inability to fulfil its obligation hereunder with a minimum of delay

2.7.3.2 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

2.7.3.3 The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure

2.7.4 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period. Such expenses will be approved by MPTRIFAC. The Consultant will have to provide proper justification and certificate from their auditors for such expenses on the format as may be decided by MPTRIFAC.

2.7.5 Consultation

Not later than thirty(30) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the parties shall consult each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.7.6 Suspension of Contract

MPTRIFAC may, by written notice of suspension to the consultant, if the Consultant shall be in breach of this Contract or shall fail to perform any of its obligations under the Contract, including the carrying out of the Services , provided that such notice of suspension (i) shall specify the nature of the breach or failure and (ii) shall provide an opportunity to the Consultant to remedy such breach of failure within a period not exceeding (30) days after receipt by the Consultant of such notice of suspension. The consultant shall not be entitled to receive payment for the suspension period.

2.7.7 Termination of Contract

2.7.7.1 By MP TRIFAC

MPTRIFAC may, by not less than thirty (30) days written notice of termination, to the Consultant such notice to be given after the occurrence of any of the events specified below:

- 2.7.7.1.1 The Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to clause 2.7.6 herein above, within thirty (30) days of receipt of such notice of suspension or within such further period as MPTRIFAC may have successfully granted in writing.
- 2.7.7.1.2 The consultant becomes insolvent or bankrupt or enters into any Contract with its creditors.
- 2.7.7.1.3 for relief of debt or take advantage of any law for the benefit of debtors or goes into Liquidation or
- 2.7.7.1.4 receivership whether compulsory or voluntary
- 2.7.7.1.5 The Consultant submits to MPTRIFAC a statement which has a material effect on the rights, obligations or interests of MPTRIFAC and which the consultant knows to be false.

2.7.7.2 By the Consultant

The Consultant may, by not less than thirty (30) days written notice to MPTRIFAC, such notice to be given after the occurrence of any of the events specified in this Clause 2.7.7.2.1 and 2.7.7.2.2 terminate the Contract if:

- 2.7.7.2.1 MPTRIFAC is in material breach of its obligations pursuant to this Contract and has not remedied the same within thirty (30) days of receipt of letter specifying such breach (or such longer period as the Consultant may have subsequently agreed in writing).
- 2.7.7.2.2 MPTRIFAC fails to comply with any final decision reached as a result of arbitration pursuant to Clause 3.7.6 hereof, if the same is not challenged under the provisions of the Arbitration and Conciliation Act, 1996.

2.7.7.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 2.7.7.1 and 2.7.7.2 hereof, or upon expiration of this Contract, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.1.5 hereof (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records

2.7.7.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.7.7.1 and 2.7.7.2 the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by MPTRIFAC, the Consultant shall proceed as provided by Clauses 3.1.7

2.7.7.5 Payment upon Termination

Upon termination of this Contract, MPTRIFAC shall make the payment to the Consultant after offsetting against these payments any amount that may be due from the Consultant to MPTRIFAC for the services rendered till the last date of working.

2.7.7.6 Disputes Resolution

2.7.7.6.1 Amicable Settlement

The parties shall use their best efforts to settle amicably all disputes arising out of or connection with this Contract or the interpretation thereof. In the event a dispute difference or claim arises in connection with the interpretation or implementation of this Contract, the aggrieved party shall issue a written notice setting out the dispute/differences or claim to the other party, parties shall first attempt to resolve such dispute through mutual consultation. If the dispute is not resolved as aforesaid within 15 days from the date of the receipt of written notice, the matter will be referred for Arbitration.

2.7.7.6.2 Arbitration

In case the dispute is not resolved any party may issue a notice of reference, invoking resolution of disputes through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitral proceedings shall be conducted by a sole arbitrator that may be appointed with the consent of Parties. If there is no Contract among the parties on the name of the arbitrator, sole arbitrator within 30 days of issue of reference then the arbitral of processing will be conducted by a panel of three arbitrators, one arbitrator to be appointed by MPTRIFAC and other appointed by Consultant and the third arbitrator to be mutually appointed by the other two arbitrators in accordance with provisions of Arbitration and Conciliation Act, 1996. Arbitration proceedings shall be conducted in and the award shall be made in English or Hindi Language. Arbitration proceedings shall be conducted at Bhopal and following are agreed.

The arbitration award shall be final and binding on the Parties.

The arbitrators may award to the Party that substantially prevails on merit its costs and reasonable expenses including reasonable fees for counsel.

When any dispute is under arbitration except for matters under dispute the Parties shall continue to exercise their remaining respective rights and fulfil their respective obligations under this Contract.

3. Obligations of the Consultant

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to MPTRIFAC, and shall at all times support and safeguard MPTRIFAC's legitimate interests in any dealings with third parties.

3.1.2 Terms of Reference

Scope of works to be performed by the consultant are specified in the terms of reference (the "TOR") at annexure A of this Contract. The Consultant shall provide the deliverables specified there in conformity with the time schedule stated therein. MPTRIFAC may extend the scope of work stated in the Contract by giving written notice to the Consultant. The additional scope of work will be awarded at the rates specified in this Contract, subject to fair and reasonable adjustment to be mutually agreed between MPTRIFAC and the Consultant.

3.1.3 Applicable Law

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that all personnel and agents of the consultant comply with the applicable laws.

3.1.4 Conflict of Interest

The Consultant shall not receive any remuneration in connection with the assignment except as provided in this Contract. It should be the requirement of the assigned works that the consultant should provide professional, objective and impartial advice and at all times hold MPTRIFAC interests' paramount without any consideration for future work, and that in providing advice they will avoid conflicts with other assignments and their own corporate interests.

3.1.5 Confidentiality

The Consultant and its personnel shall not during the term of the Contract or thereafter disclose any proprietary information, including information relating to reports, data, drawings, design software or any other material, whether written or oral, in electronic or magnetic format, and the contents thereof, and any reports, digests or summaries created or derived from any of the foregoing that is provided by MPTRIFAC to the consultant, and a personnel of Consultant any information provided by or relating to MPTRIFAC , its technology, technical processes , business affairs or finances or any information relating to MPTRIFAC's employees, officers or other officials or other professionals or suppliers , customers , or contractors of MPTRIFAC , and any other information which the consultant is under an obligation to keep confidential in relation to the project, the services or this Contract(" confidential information") without the prior written consent of MPTRIFAC.

3.1.6 Liability of the Consultant

3.1.6.1 The Consultant's liability under this Contract shall be determined by the Applicable Laws and the provisions hereof

3.1.6.2 The Consultant's liability towards MPTRIFAC: The Consultant shall, subject to the limitation to the extent of contract value, be liable to MPTRIFAC for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it or any other reason whatsoever

3.1.6.3 The Parties hereto agree that in case of negligence or misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect, to damage caused to MPTRIFAC's property or resulting losses or damages suffered by MPTRIFAC, shall be liable to compensate MPTRIFAC for the loss/damages caused to it.

3.1.7 Documents/information prepared by the Consultant to the property of MPTRIFAC:

All reports / documents/ information and any other documents prepared by the Consultant in performing the Services shall become and remain the property of MPTRIFAC and the Consultant, shall, not later than termination or expiration of this Contract, deliver all such documents to MPTRIFAC , together with a detailed inventory thereof.

The Consultant shall not later than termination or expiry of this Contract, hand over soft copies of all the deliverables of the assignment. Such soft copies, reports and outputs will be the sole property of the TRIFAC and the Consultant Staff shall treat all these information confidential and shall not share with any third party except on specific written instructions by TRIFAC.

3.1.8 Core Team

No resource mentioned under core team would be allowed to be replaced before 1 Year, unless the person has resigned from the firm or met with circumstances outside the reasonable control of the firm including but not limited to death or medical incapacity. In such case, suitable replacement has to be provided within 15 days of his/ her resignation or any other reason. In case of any negligence, bidder would be levied penalty of INR 2,50,000 per core/ key resources per month in proportionate to the absence of the resource. Resignation from the deployed team member should be immediately reported to the client (copy of resignation letter should be submitted to the client within 10 days of resignation of the resource).

4. Payment to the Consultant

In consideration of the Services performed by the Consultant under this Contract the Consultant will be entitled for total fees consideration as per Financial Proposal annexed at Annexure –B. The Consultant undertakes to fulfil the commitment as indicated in the Financial Proposal.

In consideration of the Services performed by the Consultant, the Consultant will be entitled for payment of fees consideration as per the following payment schedule with the approval of MPTRIFAC.

S.No.	Particulars	% of Total Contract Value
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MPTRIFAC Request for Proposals for Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh

STAGES OF PAYMENT		
1	Team Mobilization fee	10%
2	Monthly progress report	30%
3	Quarterly progress report	50%
4	After submission of Completion Report of Project and submission of GIS 2019 Performance Report	10%
	GRAND TOTAL	100%

[Payment 30% & 50% linked to monthly progress report and Quarterly progress report respectively to be released on pro-rata basis upon submission of each monthly progress report and quarterly progress report]

Note:

- The payment as per above schedule shall be made on the basis of Performance Report within 21 days upon submission of deliverables and invoice by the Consultant.
- In the event of any Resource / person being absent for more than ten (10) working days in a month without replacement, deduction from monthly payment shall be made @ 0.2% of the total contract value per person per month subject to a maximum of 2% of the total contract value.
- In case if GIS 2019 isn't organized then milestone payment linked to organizing GIS 2019 (10%) will be paid along with submission of QPR in the second year of the contract
- It is hereby clarified that the entire contract value shall be paid to the consultant till the expiry of the second anniversary of the contract
- MPTRIFAC may provide necessary information, as required for this assignment, to the selected consultant. However, the primary responsibility of collecting such information shall be of consultant only.
- Completion of the project would be assessed on completion of all agreed milestones related to Scope of work

5. Currency of Payment

Any payment under this Contract shall be made in Indian Rupees.

6. Penalty

MPTRIFAC Request for Proposals for Appointment of Knowledge Partner for Investment Promotion & Facilitation and Marketing & Branding of Madhya Pradesh

In case of incomplete or unsatisfactory delivery of services or delay in delivery of services Managing Director, Madhya Pradesh Trade & Investment Facilitation Corporation Ltd. may impose a penalty not exceeding 5% of payment of particular quarter, but limited to 5% of the total fee payable under this Contract. This provision shall apply to any additional cost arising out of increase in scope of work/deliverables or manpower.

7. Severability

7.1 If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any Jurisdiction that shall not affect or impair.

7.1.1 The legality, validity or enforceability in that jurisdiction of any other provision of this Contract, or

7.1.2 The legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Memorandum.

7.2 The Contract may be altered or modified by mutual consent of the Parties for purposes of safeguarding the proper implementation of the scope of work.

7.3 The parties agree to furnish/execute such further or any other documents/papers for giving fullest effect to the Scope of Work as may be required by MPTRIFAC.

8. Jurisdiction of Courts

All disputes arising out of this Contract shall be subject to the jurisdiction of the Courts at Bhopal only.

9. Performance Security

The Consultant shall furnish the Performance Security of an amount equal to 10% of cost of services/financial proposal by way of Bank Guarantee for the due performance of the Contract in the format of Performance Security

IN WITNESS WHEREOF the Parties hereto have caused this Contract to be signed and executed in their respective names of the day, month and year first above written.

Signed, Sealed and Delivered
For and on behalf of Consultant
(Signature of Authorised
Representative)

Signed, Sealed and Delivered
For and on behalf of Consultant
(Signature of Authorised
Representative)

