Responses to TSDC O&M RFP Pre-Bid quries dated 23 Mar 2016

SN	Page No	Section No	Clause No	Reference/ Subject	Clarification Sought	TSCA Remarks
1	69	VIII	8.18	DCO shall at his own expense adopt suitable Risk Management methodology to mitigate all risks assumed by the DCO under this Contract. DCO shall underwrite all the risk related to its Personnel deputed under this Contract as well as equipment and components of the SDC, procured for the SDC, equipment, tools and any other belongings of the DCO or their personnel during the entire period of their engagement in Connection with this Contract and take all essential steps to reduce and mitigate the risk. State Government will have no liability on this account.	complete deletion of this clause	No change.
2	69	VIII	8.19	• The DCO shall execute and furnish to the State a Deed of Indemnity in favour of the State in a form and manner acceptable to the State, indemnifying the State 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: • Any negligence or wrongful act or omission by the DCO or the Implementation Agency's Team / or any third party in connection with or incidental to this Contract; or • A breach of any of the terms of the Implementation Agency's Bid as agreed, the Tender and this Contract by the Implementation Agency, the Implementation Agency's Team or any third party The indemnity shall be to the extent of 100% in favour of the State	complete deletion of this clause	No change.

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3	74	VIII	8.29, 8.30	Termination • Retain such amounts from the payment due and payable by the State to the DCO as may be required to offset any losses caused to the State as a result of such event of default and the DCO shall compensate the State for any such loss, damages or other costs, incurred by the State in this regard. Nothing herein shall effect the continued obligation of other members of its Team to perform all their obligations and responsibilities under this Contract in an identical manner as were being performed before the occurrence of the default • Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce the Deed of Indemnity, recover such other costs/losses and other amounts from the DCO may have resulted from such default and pursue such other rights and/or remedies that may be available to the State under law. The State may terminate this Contract in whole or in part by giving the DCO prior written notice indicating its intention to terminate the Contract under the following circumstances: • Where the Client is of the opinion that there has been such Event of Default on the part of the DCO which would make it proper and necessary to terminate this Contract and may include failure on the part of the DCO to respect any of its commitments with regard to any part of its obligations under its Bid, the Tender or under this Contract. • Where it comes to the Client's attention that the DCO (or the Implementation Agency's Team) is in a position of actual conflict of interest with the interests of the Client in relation to any of	The Customer may withdraw a Machine from this Statement of Work upon three month's written notice to DCO: a) after the Machine has been under this Statement of Work for at least six months in the case of Machines with monthly, quarterly or semi-annual charges and for at least twelve months in the case of Machines with annual charges; b) after the Machine has been under thisStatement of Work for at least one month, provided it has been removed from the Customer's location identified in the Supplements 1 & 2, or c) on the effective date of an increase in the Charges notified by DCO. (The effective date of the withdrawal is the last day of the quarter if the expiry date of the notice is the end of that quarter, otherwise, it is the last day of the following calendar month if the expiry date of the notice is before the end of that month.) DCO may withdraw a Machine from this SOW upon three months' written notice to the Customer one year or more after the date of commencement of Services for each such Machine, but not prior to the end of the period for which DCO has submitted an invoice to the Customer for Services under this SOW for such Machine(s). DCO may withdraw a Machine from this SOW upon one month's written notice to the Customer following any repetition of the need for additional repair of such Machine caused by non-DCO maintenance activity, as described in the section entitled "Services for Additional Charge". Notwithstanding anything herein contained, either party may terminate this at any time by	No change.

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4	72	VIII	8.26	Payment Schedule • The fee amount will be equal to the amount specified in Format for Tender Response – Commercial Bid Payments will be released only on satisfactory acceptance of the deliverables for each Task as per the following schedule: Payment Schedule • The Total amount of the payment shall be paid in equivalent quarterly to the DCO, and will be calculated based on the period of the project • The amount of the Quarterly Guaranteed Revenue (QGR) will be in-line with the SLA parameters as defined in the RFP, and the applicable penalties shall be deducted from the QGR • No payment will be released before deployment of full onsite DCO O&M team and before submission of backlining contact for IT and Non-IT components as indicated at section 4.1 (except items indicated at deviation report submitted as part of Bid response).	proposes the addition of below clause The Charges will be paid as per the Payment Schedule set forth herein. Payment will be made by the Customer on due date as mentioned in supplement 1 herein, failing which, DCO will have the right to charge penal fee thereon, at the rate of 2 % per month or part thereof, and to withhold Service under this SOW , without prejudice to any other rights or remedies that it may have. The Customer will not be entitled to a refund of or credit for any Charges, except in the event of withdrawal of Machine(s) or termination of this SOW, as specified in the section titled Withdrawal /Termination / Renewal	No change.
5	69	VIII	8.17	Ownership of Equipment: The State shall own all the equipment, Licenses and any solution supplied by the DCO arising out of or in connection with this Contract	proposes the addition of below point All spares those will be kept as stand by at customer site, will be DCO owned goods.	Refer change made through corrigendum document.

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6	77	VIII	8.35	Dispute Resolution and Jurisdiction of Courts : The venue of arbitration shall be Agartala(Tripura) and Agartala High Court, will have exclusive jurisdiction to determine any proceeding in relation to this Contract. Please note that DCO will not be able to agree to Agartala as the venue of arbitration or for court's jurisdiction	proposes this clause to be amended as below During the course of the project, disputes arising out of or in connection with the Agreement shall be finally settled by arbitration which shall be held in Kolkata, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law. The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred. If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed. All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of the Agreement prevails over any other language version.	No Change.
7				TSDC Order Clause	DCO would like to clarify that the LOA will be issued based on the terms and conditions as mutually agreed by both the parties and any additional or conflicting terms in such LOA will not apply.	Ok.

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8				Pre-qualification criteria. The bidder (prime) should submit valid letter from the OEMs confirming following: Authorization for bidder Confirm that the products quoted are not end of life products Undertake that the support including spares, patches for the quoted products shall be available for next 1 years from date of acceptance.	DCO Response: DCO cannot be held responsible, nor can DCO persuade any OEM to write that the products are under support even if it is end of support.	Refer change made through corrigendum document.
9	18	IV	4.1.C	C. The selected bidder has to arrange backlining contract for all the items indicated at section "5.2 List of Non-IT Components under scope of work" from respective OEMs to protect the SLA commitment. Bidder has to indicate specific parts of item/consumables for which AMC is not possible in deviation report submitted as part of Bid response. Incase backlining contract not possible for any item, the same should be clearly indicated in deviation report submitted as part of Bid response.	No OEM would give such a blanket MAF without any order confirmation toall the bidders. MAF will be only to support in case a bidder wins the bid. 2. Our OEM competitors are participating in the bid. They will never give MAF to us for bidding. DCO is solely capable of managing HP.	Kindly note that the clause is applicable for selected bidder. Hence, no change.
10	18	IV	4.1.E	E. TSDC under TSCA is ISO 20000-1:2011 and ISO 27001: 2013 certified. Selected bidder has to arrange review and updation of existing process and procedures of TSDC, training of onsite resources, external audits, etc for maintaining the said ISO standards.	DCO Response: With etc. being an open word, DCO does not understand what all are DCO deliverables. Firstly, DCO cannot be held responsible for TSDC ISO certification. However, DCO will work in unison with TSDC for ISO related function.	No Change.
11				The State proposed uptime calculation and subsequent penalty is very complex.	DCO proposes a quarterly average uptime of 99% for each group of equipment. Penalty may be imposed as 1% for every 1% fall in uptime with a cap of 10% of the quarterly value per quarter.	No change.
12					Requested to relax the profitability clause under Eligibility Criteria or Pre-Bid Criteria.	No change

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13	15	III	Tab 1.3	The bidder (prime) should have positive net worth and turnover of more than Rs. 10 crores for each of the last three Financial Years ending on 31.03.2015. The bidder should have been profitable for all these three financial years.	Request you to please change this clause to The bidder (prime) should have positive net worth and turnover of more than Rs. 10 crores for each of the last three Financial Years ending on 31.03.2015. The bidder should have been profitable at least for two financial years.	No change
14	16	III	Tab 1.5	At least five resources should be ITIL certified and five resources should ISO 27001 Lead Auditor/ Implementer certified	Request you to please change this clause to The bidder should have the following vaid certifications: a. ISO 9001:2008 b. ISO / IEC 20000 :2011 c. ISO / IEC 27001 : 2013	No change
15	46	VI	6.9	Penalty • The total quarterly deduction should not exceed 10% of the total applicable fee in a quarter. • The sum of two consecutive quarterly deductions of more than 18% of the applicable fee (i.e. Actual Quarterly fees for two Quarters) in two quarters on account of any reasons will be deemed to be an event of default and termination.	Request you to please change this clause to • The total quarterly deduction should not exceed 5% of the total applicable fee in a quarter. • The sum of two consecutive quarterly deductions of more than 10% of the applicable fee (i.e. Actual Quarterly fees for two Quarters) in two quarters on account of any reasons will be deemed to be an event of default and termination.	No change.
16	63	VIII	8.6	The CONTRACT shall remain valid for a period of 1 (one) year from the date of signing of contract for the Operational and Maintenance period.	Request you to please change this clause to The CONTRACT shall remain valid for a period of 3 (Three) year from the date of signing of contract for the Operational and Maintenance period.	No change.
17	63	VIII	8.7	Within 14 (fourteen) days after the receipt of notification of award of the Contract from the Client the successful Bidder shall furnish Contract Performance Guarantee to the Client which shall be equal to 10% of the value of the Contract and shall be in the form of a Bank Guarantee Bond from a Nationalized Bank in the Performa given at Annexure 4.	Request you to please change this clause to Within 14 (fourteen) days after the receipt of notification of award of the Contract from the Client the successful Bidder shall furnish Contract Performance Guarantee to the Client which shall be equal to 5% of the yearly value of the Contract without tax and shall be in the form of a Bank Guarantee Bond from a Nationalized/scheduled Bank in the Performa given at Annexure 4.	No change.

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18	72	VIII	8.26	• The fee amount will be equal to the amount specified in Format for Tender Response – Commercial Bid Payments will be released only on satisfactory acceptance of the deliverables for each Task as per the following schedule: Payment Schedule • The Total amount of the payment shall be paid in equivalent quarterly to the DCO, and will be calculated based on the period of the project • The amount of the Quarterly Guaranteed Revenue (QGR) will be in-line with the SLA parameters as defined in the RFP, and the applicable penalties shall be deducted from the QGR • No payment will be released before deployment of full onsite DCO O&M team and before submission of backlining contact for IT and Non-IT components as indicated at section 4.1 (except items indicated at deviation report submitted as part of Bid response).	Request you to please change this clause to • The fee amount will be equal to the amount specified in Format for Tender Response – Commercial Bid • 25% of the yearly contract value will be paid as advance against BG of equivalent amount. Balance Payments will be released only on satisfactory acceptance of the deliverables for each Task as per the following schedule: Payment Schedule • The payment shall be paid in equivalent quarterly to the DCO, and will be calculated based on the period of the project • The amount of the Quarterly Guaranteed Revenue (QGR) will be in-line with the SLA parameters as defined in the RFP, and the applicable penalties shall be deducted from the QGR • No payment will be released before deployment of full onsite DCO O&M team and before submission of blacklining contact for IT and Non-IT components as indicated at section 4.1 (except items indicated at deviation report submitted as part of Bid response). • Advance will be adjusted against the last quarter payment.	No change.