

**Engagement of India Tourism Marketing  
Representatives (ITMR) for the Ministry of  
Tourism, Government of India**

**Request for Proposal (RFP)**

F.No.: 15-OM(27)/2014

Dated : 11<sup>th</sup> August 2015

Due Date for Submission : 24<sup>th</sup> September 2015

**Ministry of Tourism  
Government of India  
Transport Bhawan  
1, Parliament Street  
New Delhi 110 001**

## SECTION 1 : INSTRUCTIONS TO AGENCIES

### 1.1. Introduction

- 1.1.1. The Ministry of Tourism (MoT), Government of India, (the “Client”) has established Overseas Offices in select source markets overseas. The roles of such Overseas Offices are to generate awareness about the tourism products and destinations of India, to promote India as a preferred tourist destination in the source markets overseas and to increase India’s share of the global tourism market. Such offices are already present in traditional markets (such as USA, UK, Canada, France, Germany, Italy, The Netherlands, South Africa, UAE, Australia, Japan, China, Singapore) from where, the country receives a large number of tourists.
- 1.1.2. The endeavor of the Ministry of Tourism is to increase foreign tourist arrivals to the country. Towards this, it is proposed to target emerging markets with untapped potential such as Russia, Brazil, Spain, South Korea, Thailand and Argentina.
- 1.1.3. The Ministry of Tourism now proposes to engage one India Tourism Marketing Representative (ITMR) for each of the following countries:
- i. Russia (covering Russia, Kazakhstan and Ukraine)
  - ii. Brazil
  - iii. Argentina (covering Peru, Chile and other neighbouring Spanish speaking countries).
  - iv. Spain (covering Spain and Portugal)
  - v. Thailand
  - vi. South Korea
- 1.1.4. The Tourism Marketing Representative for each country would be engaged for a period of **three years, subject to a yearly review** and with the provision that services of the agency may be dispensed with at any time, giving three months’ notice, in the event of non-performance, under-performance or any other reason which would be specified. **The engagement would be extendable for a further period of two years, on mutually acceptable terms and conditions.**
- 1.1.5. Interested and Eligible Agencies are invited to submit their Proposals for the assignment, which must include the following, as detailed subsequently in this document:

- (i) Technical Proposal; and
- (ii) Financial Proposal

1.1.6. It may be noted that the costs of preparing the Proposal are not reimbursable and the Client is not bound to accept any of the proposals submitted.

1.1.7. The Agencies engaged as India Tourism Marketing Representatives (ITMRs) are required to provide professional, objective, and impartial service and at all times hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

1.1.8. Agencies have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Client, or that may be reasonably perceived as having this effect. Failure to disclose such situations by the Agency may lead to disqualification of the Agency or termination of the contract.

1.1.9. Agencies must observe the highest standards of ethics during the selection and execution of the contract. The Client may reject a Proposal at any stage if it is found that the firm recommended for award has indulged in corrupt or fraudulent activities in competing for the contract in question and may also declare a firm ineligible or blacklist the firm, either indefinitely or for a stated period of time, if at any time it is found that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing the contract.

## **1.2. Minimum Eligibility Criteria**

Interested Agencies should fulfill the following minimum eligibility criteria to be eligible for submitting a Proposal.

### **(a) Experience**

- (i) Minimum experience of **5 years** (as on 01.01.2015) in establishing and operating Tourism Representative Offices, engaged in selling and marketing tourist destinations. Such experience should have been acquired during the past **8** calendar years ended **31.12.2014**

- (ii) Current Engagement as Tourism Representative Office (TROs) for at least two clients. The client should necessarily be a city government / provincial government / federal government.
- (iii) Should be registered as a legal entity, permitted to carry out business in the country for which Proposal is being submitted.
- (iv) Should have in any major town/city of the applied country, an office space of at least 250 sq.ft in a commercial area (not necessarily in the downtown area).
- (v) The applicant should be ready to dedicate a minimum of 2 staff members who are conversant in sales and marketing, with the country language and also conversant with India.

**(b) Financial Turnover**

Minimum cumulative turnover of USD 1 million during the last three accounting years, with a net profit in each of the years.

**Note:** Tour operators and travel agents are **not** eligible to submit proposals. Applicants will give written confirmation that they do not have any affiliation either direct or indirect with any tour operator, travel agent, hotel in India.

The applicant should **not** be representing any of the SAARC countries presently and should not enter into any contract for representing any of the SAARC countries during their period of contract with India, to avoid conflict of interest.

The applicant should **not** be promoting any other Indian tourism product.

**1.3. Scope of Work**

The Agency, engaged as India Tourism Marketing Representative (ITMR) for a particular country would, inter alia, perform the following roles and functions:

- i. Proactively seek, establish and maintain contacts with travel trade companies on behalf of Ministry of Tourism (MoT), Government of India (GoI) and network with local trade associations, tour operators, consumers in their area.

- ii. Monitor trends in the tour and travel industry and prepare a trend report of the country where they are operating.
- iii. Develop and implement MoT approved training programmes for agents and travel planners.
- iv. Assist MoT in preparation and execution of select trade and consumer shows.
- v. Assist MoT for release of TV, Print, Online media campaigns.
- vi. Assist MoT in any other branding and promotional activities.
- vii. Assist personnel and representatives of MoT and / or cooperating Indian agencies when visiting the particular country.
- viii. Help arrange familiarization trips for tour operators and travel agents to India.
- ix. Respond to queries on India.
- x. Maintain a supply of information brochures and maps for mailing and handing over to tour companies and travel agents in their area.
- xi. Link 'Incredible India' website to appropriate available websites.
- xii. Organise press familiarization tours, including story placement and story ideas and ensure adequate coverage in trade and consumer publications in their area.
- xiii. Preparation of both annual and quarterly PR plans, periodic performance reports and status reports.
- xiv. Issue regular press releases as directed by MoT.
- xv. Provide press clipping services.
- xvi. Visit India once a year, to update the tourism industry about local travel industry trends / developments.
- xvii. Invite the Indian Mission representative(s) to various events organized by the ITMR for promotion of India Tourism.
- xviii. Maintain a data base in their areas and share the same with the Ministry of Tourism.

#### **1.4. Pre Bid Meeting**

- 1.4.1. A pre-bid meeting will be held in the Conference Room, Ministry of Tourism, Government of India, Transport Bhavan, 1 Parliament Street, New Delhi -110001 at **1100 hrs (IST) on 25<sup>th</sup> August 2015**, for clarifications required on any aspect pertaining to the RFP Document. Agencies based overseas, wishing to seek clarifications on the RFP Document may submit their queries with their complete contact details on e-mail : [mot.itmr2015@gmail.com](mailto:mot.itmr2015@gmail.com), latest by **1600 hrs (IST) on 24<sup>th</sup> August 2015**.

1.4.2. Based on discussions held during the pre-bid meeting and clarifications sought via e-mail, amendments / clarifications, if any, to the RFP Document will be hosted on the websites of the Client - [www.incredibleindia.org](http://www.incredibleindia.org) and [www.tourism.gov.in](http://www.tourism.gov.in) by **1700 hrs (IST)** on **28<sup>th</sup> August 2015**.

## **1.5. Preparation of Proposals**

1.5.1. An Agency may submit Proposals for one or more countries. **However, separate Proposals have to be submitted for each country.**

1.5.2. Each Proposal shall include (i) Technical Proposal, and (ii) Financial Proposal as detailed below.

1.5.3. The Proposals shall be valid for a period of not less than **180 days**, reckoned from the last date for submission of Proposals.

### **(a) Technical Proposal**

1.5.4. The Agencies are expected to provide the Technical Proposal as specified in this Clause. Material deficiencies in providing the information requested for, may result in summary rejection of a Proposal.

1.5.5. The Technical Proposal shall contain the following documents, to be submitted in the standard formats specified in this RFP Document:

- (a) Letter of Transmittal (**Form 1**)
- (b) Bid Security for an amount of USD 2000/- (US Dollars Two thousand only).
- (c) Qualification Statement (**Form 2**)
- (d) Business Plan (**Form 3**)
- (e) Work Plan (**Form 4**)
- (f) Integrity Pact (**Form 5**)

1.5.6. The Bid Security shall be in the form of a Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Tourism, Govt. of India" and payable at New Delhi, India. No interest shall be payable by the Ministry of Tourism on the sum deposited as Bid Security.

1.5.7. **The Technical Proposal should not contain any financial offers.** Any Technical proposal found to be containing a financial offer shall be summarily rejected and will not be considered for evaluation.

**(b) Financial Proposal**

1.5.8. In preparing the Financial Proposal, Agencies are expected to take into account the requirements and scope of work outlined in the RFP document.

1.5.9. The Financial Proposal shall be submitted as per the format prescribed in **Form 6**. The Financial Proposal shall only contain an all-inclusive Fixed Quarterly Fee, which shall be fixed for the entire duration of the contract and shall not be subject to any escalation, whatsoever.

1.5.10. Taxes / VAT as applicable in India will be paid as per actuals and the same are not required to be indicated in the Financial Proposal.

1.5.11. The Financial Proposal shall be unconditional. Conditional Proposals are liable to be summarily rejected.

**1.6. Submission of Proposals**

1.6.1. Separate Proposals are to be submitted for each country.

1.6.2. The Proposals (Technical Proposal and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be authenticated by the person(s) who sign(s) the proposals.

1.6.3. An authorized signatory of the firm should authenticate all pages of the Technical and Financial Proposals.

1.6.4. The Technical Proposal should be placed in a separate sealed envelope and superscribed "Technical Proposal for Engagement of India Tourism Marketing Representative for ..... (*name of applied country*)"

1.6.5. The Financial Proposal shall be placed in a separate sealed envelope and super scribed "Financial Proposal for Engagement of India Tourism Marketing Representative for ..... (*name of applied country*)"

- 1.6.6. If the Financial Bid is not submitted in a separate sealed envelope duly superscribed as indicated above, this will constitute grounds for declaring the Bid as non-responsive.
- 1.6.7. The Bids should be spirally / hard bound, duly page numbered and indexed. All the bid proposals should be in English and should contain English translation of all supporting documents, duly signed by the authorized Signatory, failing which the proposal would be summarily rejected.
- 1.6.8. All the **two sealed envelopes** should be put into an outer envelope and sealed. The outer envelope shall be superscribed "Proposal for Engagement of India Tourism Marketing Representative for ..... (name of applied country)" with the due date for submission. The Bottom Left corner of the outer cover should carry the full name, address, telephone nos., e-mail ID etc. of the Agency submitting the Proposal.
- 1.6.9. The sealed outer envelope containing the Proposals should be addressed to :  
The Asst. Director General (Overseas Marketing),  
Ministry of Tourism, Government of India,  
Transport Bhavan,  
1, Parliament Street  
New Delhi - 110 001
- 1.6.10. The Proposal should be submitted on or before **1630 hrs (IST) on 24<sup>th</sup> September 2015**. Late proposals shall not be entertained.
- 1.6.11. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained and shall be summarily rejected.

## **1.7. Opening of Proposals**

- 1.7.1. The Proposals will, in the first instance, be opened and examined by the Client to ascertain fulfillment of eligibility criteria and submission of required documents. Technical Proposals received will be opened in the the Ministry of Tourism at **1100 hrs. (IST) on 25<sup>th</sup> September 2015**, in the presence of authorized representatives of the agencies who choose to be present.



1.7.2. The Client shall determine whether each Proposal is responsive to the requirements set out in this RFP. A Technical Proposal shall be considered responsive only if:

- (i) it is received as per the formats prescribed in Clause 1.5.5
- (ii) it is accompanied by Bid Security as prescribed in Clause 1.5.5
- (iii) it is accompanied by the Integrity Pact as prescribed in Clause 1.5.5
- (iv) it fulfills the Minimum Eligibility Criteria as prescribed in Clause 1.2

1.7.3. Only those Technical Proposals which are found responsive would be taken up for further evaluation.

1.7.4. Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by Authority in respect of such Proposals.

**1.8. Evaluation of Technical Proposals**

1.8.1. During this stage, the Technical Proposals which are declared responsive, will be evaluated by the Client to ascertain the credentials of the Applicant and quality of Technical Proposal. Agencies will be invited to make a technical presentation on their Technical Proposal at a date/time to be specified and conveyed by the Ministry of Tourism. The Agencies shall have the option to make the technical presentation through Video-conferencing/ skype mode. The presentation would be made by team members identified to work with the Ministry of Tourism.

1.8.2. The Technical Proposals will be evaluated by an Evaluation Committee, on the basis of the following evaluation criteria :

**i. Experience of the firm 35 marks (maximum)**

Sub-Criteria		Max marks				
(a)	Current engagement as Tourism Representative Offices (TROs) of City/Province/Country	15				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">Criteria</th> <th>Marks</th> </tr> </thead> <tbody> <tr> <td>TROs for 2 cities/provinces/countries</td> <td style="text-align: center;">5 marks</td> </tr> </tbody> </table>		Criteria	Marks	TROs for 2 cities/provinces/countries	5 marks
	Criteria		Marks			
TROs for 2 cities/provinces/countries	5 marks					

	TROs for more than 2 cities/provinces/countries	2 marks for each additional city/province/country (upto max. 10 marks)	
(b)	Experience in operating Tourism Representative Offices (as on 01 Jan 2014)		10
	<b>Criteria for number of completed years</b>	<b>Marks</b>	
	5 completed years	5 marks	
	Each additional completed year (above 5 years)	1 mark for each addl completed year (upto max. 5 marks)	
(c)	The Agency should have made net profits in each of the last 3 years with a cumulative financial turnover of USD 1 million during the last three years		10
	<b>Criteria for cumulative financial turnover during last 3 years</b>	<b>Marks</b>	
	USD 1million	2 marks	
	USD 1 - 5 million	3 marks	
	USD 5 - 10 million	5 marks	
	USD 10 million and above	10 marks	

**ii. Methodology, Business Plan and Understanding of ToR 50 marks (maximum)**

	<b>Sub-criteria</b>	<b>Max marks</b>
(a)	Understanding of ToR	10
(b)	Cities proposed to set up Representative Office in the applied country	4 marks for each city proposed for establishing TRO (upto a maximum of 15 marks)
(c)	Details of proposed methodology, Business Plan and Work Plan	25

**iii. Qualifications and competencies of the Key Management Personnel 15 marks (max)**

	<b>Sub - criteria</b>	<b>Max marks</b>
(a)	Core professionals with minimum 5 years of experience in marketing and selling of Tourist destinations: 3 marks for each expert (Each expert should have an educational qualification equivalent to Senior Secondary education of Indian educational system)	15

**Total maximum marks for (i) + (ii) + (iii) = 100 marks**

- 1.8.3. The Technical Proposal would be evaluated on the basis of the above evaluation criteria to determine the Score (**S<sub>t</sub>**) of each Technical Proposal. Those Agencies scoring a minimum of 60 marks in the technical evaluation will be short-listed (the “**Shortlisted Agencies**”) and will qualify for consideration of Financial Proposals.
- 1.8.4. The Client reserves the right to seek clarifications or additional information / documents from any Applicant regarding its Technical Proposal. Such clarification(s) or additional information / document(s) shall be provided within the time specified for the purpose. Any request and response thereto shall be in writing. If the Bidder does not furnish the clarification(s) or additional information / document(s) within the prescribed time, the Proposal shall be liable to be rejected. In the case Proposal is not rejected, the Client may proceed to evaluate the Technical Proposal by construing the particulars requiring the clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Client.

## **1.9. Evaluation of Financial Proposals**

- 1.9.1. After evaluation of Technical Proposals, the Client shall proceed to open the Financial Proposals of the short-listed Agencies. Those Agencies whose Proposals were considered non-responsive or failing to score a minimum of 60 marks in the technical evaluation shall be notified separately and their Financial Proposals will be returned unopened after completing the selection process.
- 1.9.2. The Client will determine whether the Financial Proposals are complete, and unconditional. Incomplete and conditional Financial Proposals shall be summarily rejected.
- 1.9.3. The Financial Proposals will be ranked according to the Fixed Quarterly Fee, quoted by the Applicant. The Proposal quoting the lowest Fixed Quarterly Fee would be ranked highest and other Proposals would be ranked accordingly.
- 1.9.4. The Agency quoting the lowest Fixed Quarterly Fee, and hence ranked highest, will be declared the Preferred Agency.

## **1.10. Award of Work**

- 1.10.1. The Client shall issue a Letter of Intent to Award (LoI) to the Preferred Agency.
- 1.10.2. Within 30 days of the issue of LoI, the Preferred Agency shall fulfill the conditions stipulated in such LoI, including the following:
  - (i) Furnish a Performance Guarantee, amounting to four times the Fixed Quarterly Fee, accepted by the Client, in the form and manner prescribed therein, which shall remain valid for 90 days after completion of contract period.
  - (ii) Execute the Representation Services Agreement, substantially in the format set out in Appendix 1.
- 1.10.3. Without prejudice to and in addition to the rights and remedies of the Client, the Bid Security is liable to be forfeited and appropriated by the Client in the case of the failure of Preferred Agency to fulfill any of the conditions stipulated in this RFP and/or LoI.
- 1.10.4. Upon forfeiture of the Bid Security, the Client shall have the right to cancel/ revoke the Letter of Intent to Award and immediately upon issuance of notice intimating such cancellation/ revocation, to select such other Agency(s) as may be deemed fit by the Client in its sole and absolute discretion.

## **SECTION 2 REPRESENTATION SERVICES**

### **2.1 Scope of Services**

- 2.1.1 Upon commencement of the term of the Representation Services Agreement, the India Tourism Marketing Representative (ITMR) for the designated country shall offer such services as are specified in Clause 1.3 and more specifically set out in the Agreement.

### **2.2 Minimum Performance Criteria for ITMR**

- 2.2.1 The ITMR engaged for a source country would be proffered a gestation period of **6 months**. The performance evaluation of the ITMR would commence only after the gestation period of **6 months**. However, ITMR must ensure that the Foreign Tourist Arrivals (FTAs) from the source country does not drop below the correspondingly preceding one year.

- 2.2.2 The performance evaluation would be done on a quarterly basis, during each year.
- 2.2.3 The Client would give an incentive/ bonus to the ITMR on the basis of their performance. The incentive / bonus would be payable annually, based on the performance of the immediate preceding year. Such incentive/bonus **would be given in slabs as a percentage of the Fixed Quarterly Fee**. The incentive/bonus shall become payable only if the percentage annual growth rate in Foreign Tourist Arrivals (FTAs) from the source country exceeds the Minimum Guaranteed Annual Growth Rate (MGAGR) for that country. The MGAGR is as specified in Table 1.

**Table 1:** Minimum Guaranteed Annual Growth Rates in Foreign Tourist Arrivals

S.No.	Bonus to be given	Target to be achieved in growth rate to India
1.	10%	Equal to growth in outbound travel from the country for the particular year or in inbound travel to India from that country whichever is higher.
2.	15%	Growth in outbound travel from the country for the particular year or in inbound travel to India from that country whichever is higher + 2%
3.	20%	Growth in outbound travel from the country for the particular year or in inbound travel to India from that country whichever is higher + 4%
4.	25%	Growth in outbound travel from the country for the particular year or in inbound travel to India from that country whichever is higher + 6%

- 2.2.4 **Estimated tourist arrivals, as per information received in the Ministry from the Bureau of Immigration would form the basis for calculation of tourist growth figures.**

2.2.5 The performance evaluation of ITMR would be conducted as per the following process.

- (a) After completion of three calendar months, counted from the expiry of gestation period, the growth rate in FTAs will be compared with corresponding period of the previous year. In the event of failure to achieve the minimum guaranteed growth rate, the ITMR would be required to submit an approach plan to increase the FTAs. ITMR would be paid the Fixed Quarterly Fee for this period.
- (b) After expiry of the subsequent three calendar months, the growth rate in FTAs during the preceding 6 months will be compared with the corresponding period of the previous year. In the event of failure to achieve the minimum guaranteed growth rate during this 6 month period, the ITMR would be required to submit a detailed statement of reasons for failure to achieve the targeted growth. ITMR would be paid the Fixed Quarterly Fee for this period.
- (c) After expiry of the subsequent three calendar months, the growth rate in FTAs during the preceding 9 months will be compared with the corresponding period of the previous year. In the event of failure to achieve the minimum guaranteed growth rate during this 9 month period, the ITMR would be required to submit a detailed statement of reasons for failure to achieve the targeted growth and a fresh approach plan. ITMR would be paid the Fixed Quarterly Fee for this period.
- (d) After expiry of the subsequent three calendar months, the growth rate in FTAs during the preceding 12 months will be compared with the corresponding period of the previous year. In the event of achieving the minimum guaranteed annual growth rate during the 12 month period, the ITMR would be eligible for a performance incentive/bonus, which shall be capped at the 10% of the Fixed Fee. This shall be in addition to the Fixed Quarterly Fee for the period. In the event of failure to achieve the minimum guaranteed growth rate during this 12-month period, the ITMR would only be entitled to the Fixed Quarterly Fee.
- (e) The above evaluation process shall continue for the subsequent years.
- (f) Any failure of the ITMR to achieve the minimum guaranteed growth rate during **4 consecutive calendar quarters** shall be construed as a non-performance on the part of ITMR and the Client reserves the right to initiate any actions as it may deem fit, including forfeiture of the Performance Guarantee and the right to terminate the Representation Services Agreement.

### **2.3 Terms of Payment to ITMR**

- 2.3.1 No advance payment will be considered. The Fixed Quarterly Fee and the performance bonus/incentive shall be paid only in arrears.
- 2.3.2. The payment shall be released only on submission of a statement of work having been executed as per the requirements detailed in the RFP Document, or communicated subsequently by the Client. The Agency will submit pre-receipted invoices in triplicate, complete in all respects, within 7 working days after the expiry of every quarter, for necessary settlement. The invoices should be submitted along with complete details of the work undertaken during the quarter, supporting documents and bills, for which the invoices are submitted.
- 2.3.3. Payment will be made by electronic transfer of funds to the bank account of the ITMR. The currency of payment shall be US Dollars. No adjustments for currency exchange rate fluctuations shall be admissible.
- 2.3.4. Service Tax, as applicable shall be paid as per actuals, on production of proof of payment. However, Income Tax / withholding tax will have to be borne by ITMR.

### **SECTION 3 MISCELLANEOUS**

- 3.1. The ownership of all print / outdoor / online creatives, TV commercials, radio jingles / spots and publicity material produced / designed through the India Tourism Marketing Representative (ITMR) will, at all times, rest with the Client and the agency / copy writer / photographer / producer, etc. will have no proprietary or other rights in respect of the same. This would include full copyright for perpetual use of the images / photographs used in the creatives and publicity material.
- 3.2 ITMR will be responsible for copy right issues concerning usage of images, footage, text material, etc. obtained through various sources. The Client will not be a party to any disputes arising out of copyright violation by the agency.

- 3.3 ITMR will be responsible for obtaining any permission that may be required for undertaking work as detailed in this RFP Document. The Client will assist the Agency in this regard, on a best-effort basis.
- 3.4. The Client is not bound to accept any Proposal or to assign any reason for non-acceptance and reserves its right to accept any Proposal, either in full or in part.
- 3.5 The Client reserves its right to summarily reject any Proposals on grounds of national security, sovereignty and integrity of India/ source country, without any intimation to the bidder.
- 3.6 The Client reserves its right not to accept Proposals from agencies resorting to unethical practices or on whom investigation/enquiry proceedings has been initiated by Government Investigating Agencies / Vigilance Cell.
- 3.7 **Jurisdiction:** The selection process shall be governed by the laws of India and all statutory rules on procurement matters issued from time to time and in force for the time being are applicable to this selection process.



**TRANSMITTAL LETTER**

[Location, Date]

From:

[Name of the Firm]

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To:

Asst Director General  
Overseas Marketing Division,  
Ministry of Tourism, Govt. of India  
Transport Bhavan, 1 Parliament Street  
New Delhi-110011

**Subject : Engagement of India Tourism Marketing Representative (ITMR) on behalf of Ministry of Tourism, Govt of India for ..... (name of country)**

Sir / Madam,

We, the undersigned, offer to undertake the assignment of India Tourism Marketing Representative on behalf the Ministry of Tourism, Govt. of India for the country of ....., in accordance with your RFP Document dated [-----]. We hereby submit our Proposal for the same.

We understand that you are not bound to accept any Proposal you receive.

Yours Sincerely,

Signature:  
Name & Designation of the authorized  
Signatory:  
Name of Firm:  
Address:

**QUALIFICATION STATEMENT**

**A. General Information**

1. Name of Agency

2. Full Address

3. Contact Details

(Tel. No./ Fax/E-mail)

4. Name of Contact Person

5. Country for which Proposal is being submitted

6. Details of Incorporation as Business Entity  
in the applied country

7. Address particulars of the offices in the applied country

**B. Eligibility Criteria**

8. Experience in establishing and operating Tourism Representative Offices (TROs)

Sl No	Name of Client	Address particulars of Client	Geography of operation	Duration of assignment as TRO		
				Start Date	End Date	
1						
2						
3						

Note: For each assignment, the work order/award letter from the Client should be enclosed. For completed assignments, certificate of satisfactory completion from the client to be attached.

9. Financial Turnover and Net Profits during the last three years (in US Dollars, million)

Year	Turnover (in USD millions)	Net Profit (in USD millions)
Total		

Note: The information on Financial Turnover and Net Profits should be substantiated through certificate from a statutory Chartered Accountant / Public Accountant.

10. Particulars of Key Management Personnel

No	Name of Personnel	Date of Birth	Passport No or National Identity No	Educational Qualifications
1				
2				
3				
4				

Note: For each of the personnel, please attach a brief resume (curriculum vitae) not exceeding 3 pages.

**Important Instruction:** All supporting documents will have to be legalised by the Indian Embassy and notarised in the jurisdiction where the documents are being issued. However, the documents provided by Applicants from countries that have signed the Hague Legalisation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

**BUSINESS PLAN**

The Business Plan should broadly cover the following information

1. Understanding the Terms of Reference / Scope of Work of ITMR
2. Approach to the Assignment
3. Identify current marketplace trends
4. Business Development Strategy for growing FTAs from source country
5. Annual Work Plan based on strategies and tourists' insights
6. Annual Marketing Plan (including Media Plan and plan for social networks)
7. Organisation Structure of the proposed ITMR establishment, including proposed location of representative offices

## **WORK PLAN**

The Work Plan should broadly cover the following information for the market:

- Key Statistics Of The Market
- Overall Market Outlook
- Connectivity - Regular Airline & Charter Options
- Visitor Profile/Behaviour
- Visitor Tourism Product Preference
- Key Competing Destinations And What They Offer
- India's Target Audience & Product Segments To Be Offered
- Marketing Strategy For Trade, Media, Consumer For The Geography
- PR Strategy For Trade, Media, Consumer For The Geography

**INTEGRITY PACT**

To be signed by the bidder and same signatory competent / authorised to sign the relevant contract on behalf of Ministry of Tourism.

**INTEGRITY AGREEMENT**

This Integrity Agreement is made at ..... on this ..... day of ..... 20.....

**BETWEEN**

The Ministry of Tourism, Government of India, acting on behalf of President of India (hereinafter referred as the 'Client', which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns)

AND

..... through .....  
(hereinafter referred to as the "Bidder" and which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns)

**Preamble**

WHEREAS the Client has floated the Request for Proposal (RFP No. 15-OM(27)/2014) (hereinafter referred to as "RFP") and intends to award, under laid down organizational procedure, contract for 'Engagement of India Tourism marketing Representatives for the Ministry of Tourism, Government of India' (name of the work) hereinafter referred to as the "Contract".

AND WHEREAS the Client values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relation with its Bidder(s).

AND WHEREAS to meet the purpose aforesaid both the parties have agreed to enter into this Integrity Agreement (hereinafter referred to as "Integrity Pact" or "Pact"), the terms and conditions of which shall also be read as integral part and parcel of the RFP/Bid documents and Contract between the parties.

NOW, THEREFORE, in consideration of mutual covenants contained in this Pact, the Parties hereby

agree as follows and this Pact witnesses as under:

#### **Article 1: Commitment of the Client**

- 1) The Client commits itself to take all measures necessary to prevent corruption and to observe the following principles:
  - (a) No employee of the Client, personally or through any of his/her family members, will in connection with the Bid, or the execution of the Contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - (b) The Client will, during the Bid process, treat all Bidder(s) with equity and reason. The Client will, in particular, before and during the Bid process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the Bid process or the Contract execution.
  - (c) The Client shall endeavour to exclude from the Bid process any person, whose conduct in the past has been of biased nature.
- 2) If the Client obtains information on the conduct of any of its employees which is a criminal offence under the Indian Penal code (IPC)/ / Prevention of Corruption Act, 1988 (PC Act) or Anti-Corruption Laws of India or is in violation of the principles herein mentioned or if there be a substantive suspicion in this regard, the Client will inform the Chief Vigilance Officer and in addition can also initiate disciplinary actions as per its internal laid down policies and procedures.

#### **Article 2: Commitment of the Bidder(s)**

- 1) It is required that each Bidder (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the Client all suspected acts of fraud or corruption or coercion or collusion of which it has knowledge or becomes aware, during the Biding process and throughout the negotiation or award of a contract.
- 2) The Bidder(s) commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the Bid process and during the Contract execution:
  - a) The Bidder(s) will not, directly or through any other person or firm, offer, promise or give to any of the Client's employees involved in the Bid process or execution of the Contract or to any third person any material or other benefit which he/she is not

legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the Bid process or during the execution of the Contract.

- b) The Bidder(s) will not enter with other Bidder(s) into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to cartelize in the bidding process.
  - c) The Bidder(s) will not commit any offence under the relevant IPC/PC Act and Anti-Corruption Laws of India. Further the Bidder(s) will not use improperly, (for the purpose of competition or personal gain), or pass on to others, any information or documents provided by the Client as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d) The Bidder(s) of foreign origin shall disclose the names and addresses of agents/representatives in India, if any. Similarly Bidder(s) of Indian Nationality shall disclose names and addresses of foreign agents/representatives, if any. Either the Indian agent on behalf of the foreign principal or the foreign principal directly could bid in a Bid but not both. Further, in cases where an agent participate in a Bid on behalf of one manufacturer, he shall not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent/parallel Bid for the same item.
  - e) The Bidder(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
- 3) The Bidder(s) will not instigate third persons and allure parties to commit offences outlined above or be an accessory to such offences.
  - 4) The Bidder(s) will not, directly or through any other person or firm indulge in fraudulent practice means a willful misrepresentation or omission of facts or submission of fake/forged documents in order to induce public official to act in reliance thereof, with the purpose of obtaining unjust advantage by or causing damage to justified interest of others and/or to influence the procurement process to the detriment of the Government interests.
  - 5) The Bidder(s) will not, directly or through any other person or firm use Coercive Practices (means the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force directly or indirectly, where



potential or actual injury may befall upon a person, his/ her reputation or property to influence their participation in the Biding process).

### **Article 3: Consequences of Breach**

Without prejudice to any rights that may be available to the Client under law or the Contract or its established policies and laid down procedures, the Client shall have the following rights in case of breach of this Integrity Pact by the Bidder(s) and the Bidder accepts and undertakes to respect and uphold the Client's absolute right:

- 1) If the Bidder(s), either before award or during execution of Contract has committed a transgression through a violation of Article 2 above or in any other form, such as to put his reliability or credibility in question, the Client after giving 14 days notice to the contractor shall have powers to disqualify the Bidder(s) from the Bid process or terminate/determine the Contract, if already executed or exclude the Bidder from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the Client. Such exclusion may be forever or for a limited period as decided by the Client.
- 2) Forfeiture of EMD/Performance Guarantee/Security Deposit: If the Client has disqualified the Bidder(s) from the Bid process prior to the award of the Contract or terminated/determined the Contract or has accrued the right to terminate/determine the Contract according to Article 3(1), the Client apart from exercising any legal rights that may have accrued to the Client, may in its considered opinion forfeit the entire amount of Earnest Money Deposit, Performance Guarantee and Security Deposit of the Bidder.
- 3) Criminal Liability: If the Client obtains knowledge of conduct of a Bidder, or of an employee or a representative or an associate of a Bidder which constitutes corruption within the meaning of IPC / PC Act or Anti Corrupt Laws of India, or if the Client has substantive suspicion in this regard, the Client will inform the same to law enforcing agencies for further investigation.

### **Article 4: Previous Transgression**

- 1) The Bidder declares that no previous transgressions have occurred in the last 5 years with any other Company in any country confirming to the anti-corruption approach or with Central Government or State Government or any other Central/State Public Sector Enterprises in India that could justify his exclusion from the Bid process.
- 2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the Bid process or action can be taken for banning of business dealings/ holiday listing of the

Bidder as deemed fit by the Client.

- 3) If the Bidder can prove that he has resorted / recouped the damage caused by him and has installed a suitable corruption prevention system, the Client may, at its own discretion, revoke the exclusion prematurely.

#### **Article 5: Equal Treatment of all Bidders**

- 1) The Bidder(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact. The Bidder shall be responsible for any violation(s) of the principles laid down in this agreement/Pact by any of its Sub-contractors/sub-vendors.
- 2) The Client will enter into Pacts on identical terms as this one with all Bidders and Contractors.
- 3) The Client will disqualify Bidders, who do not submit, the duly signed Pact between the Client and the bidder, along with the Bid or violate its provisions at any stage of the Bid process, from the Bid process.

#### **Article 6- Duration of the Pact**

The provisions of this Pact shall come into effect from the date of signing of this Pact by both parties. It expires for the Selected Bidder 12 months after the completion of work under the contract or till the continuation of defect liability period, whichever is more and for all other bidders, till the Contract has been awarded.

If any claim is made/lodged during the time, the same shall be binding and continue to be valid despite the lapse of this Pacts as specified above, unless it is discharged/determined by the Client.

#### **Article 7- Other Provisions**

- 1) This Pact is subject to Indian Law. Place of performance and jurisdiction is the Head quarters of the Division of the Principal/Owner, who has floated the Bid.
- 2) Changes and supplements, as well as termination notices, if any, need to be made in writing. Side agreements have not been made.
- 3) If the Bidder is a partnership or a consortium, this Pact must be signed by all the partners or by one or more partner holding power of attorney signed by all partners and consortium members. In case of a Company, the Pact must be signed by a representative duly authorized

by board resolution.

- 4) Should one or several provisions of this Pact turn out to be void; the remainder of this Pact shall remain valid. In this case, the parties shall strive to come to an agreement to their original intentions.
- 5) It is agreed term and condition that any dispute or difference arising between the parties with regard to the terms of this Integrity Agreement / Pact, any action taken by the Client in accordance with this Integrity Agreement/ Pact or interpretation thereof shall not be subject to arbitration.

**Article 8- LEGAL AND PRIOR RIGHTS**

All rights and remedies of the parties hereto shall be in addition to all the other legal rights and remedies belonging to such parties under the Contract and/or law and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid. For the sake of brevity, both the Parties agree that this Integrity Pact will have precedence over the Bid/Contact documents with regard any of the provisions covered under this Integrity Pact.

IN WITNESS WHEREOF the parties have signed and executed this Integrity Pact at the place and date first above mentioned in the presence of following witnesses:

.....  
(For and on behalf of Client)

.....  
(For and on behalf of Bidder)

WITNESSES:

1. ....  
(signature, name and address)

2. ....  
(signature, name and address)

Place:

Dated :

**FINANCIAL PROPOSAL**  
(in a separate sealed envelope)

From:  
[Name of the Firm]

[Location, Date]

To:  
Asst Director General (OM)  
Ministry of Tourism, Govt. of India  
Transport Bhavan, 1 Parliament Street  
New Delhi-110011

**Subject:** Engagement of India Tourism Marketing Representative (ITMR) on behalf of Ministry of Tourism, Govt of India for ..... (name of country)

Sir / Madam,

We, the undersigned, offer to undertake the assignment of India Tourism Marketing Representative for the Ministry of Tourism, Govt. of India, in accordance with your RFP Document dated [-----] and our Technical Proposal. Our attached Financial Bid is for a Fixed Quarterly Fee as per details below:

Fixed Quarterly Fee (in US Dollars only)	
<i>In figures</i>	<i>In words</i>
USD .....	USD .....

We understand that the Fixed Quarterly Fee quoted above would be payable quarterly, in arrears, and that no escalation/enhancement would be payable during the duration of the assignment. This amount is exclusive of taxes, which will be claimed as applicable and as per actual.

Our Financial Bid shall be binding upon us, up to completion of the period of the contract, as per the terms and conditions specified in the RFP Document. We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Signature:  
Name & Title of the Authorised Signatory:  
Name of Firm & Address:

**Appendix 1**

## INDIA TOURISM MARKETING REPRESENTATION SERVICES AGREEMENT

Contract No. 15-OM(27)/2014

This India Tourism Marketing Representation Services Agreement is executed and effective as of the Effective Date(as defined below), by and between the PRESIDENT OF THE REPUBLIC OF INDIA, acting through, Assistant Director General (Overseas Marketing), Ministry of Tourism, Government of India, New Delhi (hereinafter referred to as "MoT"), and the Representative (as defined below).

The Parties hereby agree to the following terms and conditions:

### 1. ENGAGEMENT

MoT hereby engages Representative, and Representative accepts the engagement, as an independent agency, to manage external destination marketing services under the Statement of Work ("SOW") detailed in the RFP Document, for the MoT within the major marketing area identified below and subject to the terms and conditions contained in this Agreement.

Representative's Name:	
Representative's Address:	
Effective Date :	
Major Marketing Area ("MMA"):	Name of country
Term of Agreement :	The term shall commence on the Effective Date hereof, and shall end on ----- unless sooner terminated as provided in this Agreement.
Additional Term of Agreement	MoT shall have the sole option to extend the Term for up to two additional one-year periods commencing on ----- and ending on -----, unless sooner terminated as provided in this Agreement.
Request for Proposal ("RFP")	MoT's Request for Proposals for India Tourism Marketing Representation Services (RFP No. MoT-RFP-.....), along with all attachments thereto, is attached hereto as Exhibit B and is incorporated herein by this reference.
Representative's Proposal ("Services Proposal") for the MMA:	The Services Proposal for India Tourism Marketing Representation Services for the ....(name of country) MMA, dated _____, and as clarified and supplemented by the Best and Final Offer dated _____ is attached hereto as Exhibit A, the Statement of Work ("SOW").
Quarterly Contract	For goods and services provided by the Representative in

Price (s):	<p>the MMA, an amount for the Contract Period beginning the Effective Date to ----- as below;</p> <p>Retainer Fee : INR.....</p> <p>Performance Fee : INR.....</p> <p>For each subsequent Contract Year commencing on ----- - and ending on -----, the ATMP and Contract Price shall be prepared and approved in accordance with Section 4 of this Agreement.</p>
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**2. DEFINITIONS**

The following terms shall have the meanings set forth below:

- 2.1 "ATMP" has the meaning set forth in Section 3.2 with respect to each Contract Year under this Agreement, including any mutually agreed amendments thereto and any modifications thereto approved by the MoT in accordance with Section 3.10. Unless the context otherwise provides, references to "the ATMP" in this Agreement shall mean the then-current ATMP in effect under this Agreement.
- 2.2 "Activity" means an activity the Representative performs within a campaign in order to achieve the results. Activities can be a single event, plan, agreement, sponsorship, or a workflow or series of activities. Activities should focus on "how" the work will be done.
- 2.3 "Additional Term" has the meaning given in Section 1.
- 2.4 "Agreement" means this India Tourism Marketing Representation Services Agreement and all attachments hereto.
- 2.5 "Contract Price" means the amount to be paid Representative for the Services rendered with respect to the Initial Contract Period and to each ATMP for the respective Contract Year under this Agreement and as set forth in Section 1.
- 2.6 "Campaign" means a partition of work within the Representative's project that includes a series of activities of extended duration to achieve a lasting result. Campaigns focus on "what" is to be accomplished; however they are not prescriptive in describing "how" the outcome is to be achieved. Each Campaign will have several Activities to further break out the work necessary to meet the Campaign requirements.
- 2.7 "Claim" has the meaning given in Section 9.1.

- 2.8 "**Contract Year**" means the period commencing on January 1<sup>st</sup> of each year during the Term and ending on the earlier of (a) the following December 31<sup>st</sup> of that year; or (b) the date of termination or expiration of this Agreement and the SOW.
- 2.9 "**Representative Intellectual Property**" means all Intellectual Property developed, prepared or utilized, in whole or in part, by Representative and/or its employees, representatives, consultants or agents in the course of providing Services pursuant to this Agreement or otherwise in connection with this Agreement and paid for without the use of Public Funds paid pursuant to this Agreement.
- 2.10 "**Encumbrance**" has the meaning given in Section 3.11.
- 2.11 "**Force Majeure Event**" means any occurrence beyond the reasonable control of a Party, including without limitation, acts of God; act of terrorism, war, embargo, national emergency, insurrection or riot, acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; or unusually severe weather or other natural disasters.
- 2.12 "**GAAP**" means United States generally accepted accounting principles, or other similar generally accepted standard framework of guidelines for financial accounting used in any given jurisdiction.
- 2.13 "**MoT Intellectual Property**" means all Intellectual Property that is (a) funded in whole or in part with Public Funds pursuant to this Agreement, or (b) otherwise provided to Representative by the MoT in the course of providing Services pursuant to this Agreement and the SOW. MoT Intellectual Property shall not include any Representative Intellectual Property.
- 2.14 "**MoT Policies**" means policies adopted by the MoT from time to time during the Term and made known to Representative directly or indirectly through the MoT website.
- 2.15 "**Initial Contract Period**" means the period from the Effective Date to December 31, .....
- 2.16 "**Intellectual Property**" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, including patent applications, and patent disclosures, together with all re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof, (b) all marks, whether protected under any law, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) writings and other

works subject to copyright protection under the Indian Copyright Act, 1957 and/or international treaties, including all copyrighted works, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all trade secrets and proprietary business information (including ideas, research and development, know-how, formulas, compositions, manufacturing, distribution, and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential client information and lists, current and potential travel industry businesses information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts), (e) all computer software (including data, disks, licenses and related documentation), (f) all web sites and domain names, including but not limited to domain names registered, assigned, or licensed to Representative by the MoT, and the contents of all such web sites; (g) all other proprietary and intangible rights and assets, whether actual or potential related to the Services, and (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

- 2.17 "**Marks**" has the meaning given in Section 8.5(b).
- 2.18 "**MMA**" has the meaning set forth in Section 1.
- 2.19 "**Party(s)**" means the MoT and Representative, and their successors and permitted assigns.
- 2.20 "**Program**" means an MoT effort to accomplish broad sections of its mission. Programs are aligned to MoT strategies and directives and may include branding, brand experience and brand management. A program usually includes a set of multiple ongoing inter-dependent projects. MoT programs are led by an MoT Program Manager.
- 2.21 "**Project**" means the Representative's total effort under a contract or agreement to accomplish part or all of an MoT program. MoT subdivides its programs into projects that form the basis for a contract. The project is the main focus for needing a Representative's support. Projects are led by the Representative's Project Manager in coordination with the MoT Program Manager and staff.
- 2.22 "**Public Funds**" means the funds paid by the MoT to Representative pursuant to this Agreement and the SOW.
- 2.23 "**RFP**" has the meaning set forth in Section 1.
- 2.24 "**Services**" has the meaning given in Section 3.2.
- 2.25 "**SOW**" has the meaning given in Section 3.2.



2.26 "Term" has the meaning set forth in Section 7.1.

2.27 "**Work Product**" means all materials, deliverables, inventions, works of authorship, studies, data, charts, diagrams, methodologies, processes, descriptions, reports, layouts, videotapes, computer programs, work papers, projections, ideas, inventions and MoT Intellectual Property of any kind prepared by or for Representative that are (a) funded in whole or in part with Public Funds pursuant to this Agreement and the SOW, and/or (b) developed, prepared or utilized, in whole or in part, by or for Representative and/or its employees, representatives, consultants or agents in the course of providing Services pursuant to this Agreement or otherwise in connection with this Agreement and the SOW; provided that it shall not include any Representative Intellectual Property or other intellectual property, as it may be revised or updated, that a third party has patented, copyrighted, licensed, reserved, or claimed an ownership interest in prior to providing any services related to Representative's performance of this Agreement, including software that has been packaged for public sale ("off the shelf" or "shrink wrapped") and any modifications, amendments, and updates thereto.

### 3. SCOPE OF WORK

3.1 This Agreement and the SOW set forth the provisions governing the engagement of Representative by the MoT for all of the Services.

3.2 Statement(s) of Work.

(a) Services Proposal; Annual Tourism Marketing Plan and Budget. The Services Proposal for the MMA awarded to the Representative through the RFP selection process shall be attached to, and shall become a part of, this Agreement automatically upon notification of the MMA award. During the Term and any Additional Term of this Agreement, Representative shall provide to the MoT the professional external destination marketing services and work for the MMA provided in Section 1 ("Services"), which services and work are described in (i) the Proposal, previously submitted to the MoT as part of the RFP process for the MMA awarded to the Representative; (ii) an annual tourism marketing plan (ATMP), describing in detail the project and all campaigns and campaign activities that will be conducted within a Contract Year to achieve the MoT's objectives and targets, and work in form and substance substantially provided in the RFP, that shall be subject to the MoT's prior approval at its absolute and sole discretion (individually and cumulatively referred to and defined herein as "ATMP"); and, (iii) all modifications made to said ATMP from time to time within a Contract Year and during the Term or any modifications and/or amendment to this Agreement. (The Services Proposal, ATMP, and any such modifications are cumulatively referred to and defined herein as the "Statement of Work" or "SOW").

- (b) Prior Approval of ATMP: The Services Proposal for the MMA awarded to Representative shall be deemed the ATMP describing the Services and work provided by Representative for a fixed price for the Contract Year from January 1, ..... to December 31, ..... Representative shall provide a proposed ATMP covering each subsequent Contract Year during the Term and any Additional Term for the MoT's prior approval in its absolute and sole discretion on or before the due dates stated below that describes the Services to be provided at the fixed price specified in the applicable ATMP.

Contract Year	Due Date of Proposed ATMP
2016	30, September 2015
2017	30, September 2016
2018	30, September 2017

- (c) Initial Contract Period: Representative shall provide all goods and Services for the fixed price described in the Proposal for the MMA awarded to the Representative through the RFP selection process during the Initial Contract Period described in Section 1 of this Agreement.
- (d) Achievement of MoT Goals: In addition to the SOW described herein, Representative acknowledges and agrees to perform the Services to achieve and/or exceed the targets, strategies, and directives as provided in the RFP, including without limitation exceeding for the MMA the MoT's targets, objectives, strategies and directives.

### 3.3 Non-Exclusivity.

The MoT may engage, or retain others to engage, in the same types of activities and services contemplated to be performed by Representative under this Agreement and the SOW, whether competitive with Representative or not, and nothing in this Agreement shall be construed to limit or restrict the MoT's activities with respect thereto; provided that the MoT shall inform Representative of such engagement.

### 3.4 Representative Personnel.

- (a) Project Director. Representative shall deploy a qualified Project Director (the "Representative Project Director") for the MMA.
- (b) Representative Staff. Representative shall provide and maintain a staff to perform the Services for the MMA consistent with the requirements set forth in the SOW and as designated as the ATMPB Team in the Proposal in accordance with the RFP (the "Representative Staff").

### 3.5 Program Management.

- (a) MoT Program Manager: The MoT shall deploy a designated officer or employee(s) to serve as the MoT MoT Program Manager, and MoT Program Research Contact. Unless otherwise noted herein, any consent and/or approval required by the MoT under this Agreement shall be obtained from the MoT Program Manager.
- (b) Meetings: Representative shall consult and meet with the MoT Program Manager or their designee to conduct a performance review every quarter at a minimum in order to review the status of Representative activities. Additional meetings either in person or via teleconference will be required as deemed necessary by the MoT to discuss the Services, as provided in the SOW.
- (c) Employment Actions: It is understood and agreed that the Representative is solely and exclusively responsible for personnel decisions regarding Representative's employees, and agents (including without limitation, hiring, promotions, training, compensation, evaluation, discipline, and discharge). The MoT shall be solely and exclusively responsible for personnel decisions affecting the MoT's employees, independent Representatives (other than the Representative), and agents (including without limitation, hiring, promotion, training, compensation, evaluation, discipline and discharge).

### 3.6 Subcontracts.

Representative warrants that it will not use any persons / agencies to perform Services under this Agreement or the SOW other than its employees. Representative may not delegate or subcontract any of its obligations within the scope of the Services under this Agreement and/or the SOW. Representative shall remain primarily liable and obligated to the MoT for the timely and proper performance of all of its obligations hereunder and the proper and timely performance and actions of any person or entity to which it delegates any such obligation. Representative acknowledges and agrees that Representative shall be responsible and liable for any damages, losses or expenses incurred by the MoT based on such breach of the terms and conditions of this Agreement and the SOW in the performance of Services.

### 3.7 Policy Decisions.

Subject to the terms of this Agreement and in all matters related to the ATMP, the Parties acknowledge and agree that the MoT shall make all policy decisions and Representative shall implement the ATMP consistent with such policy decisions.

### 3.8 Standards of Conduct.

- (a) Services. Representative acknowledges and agrees that it shall be responsible for the performance and supervision of all Services provided under this Agreement and the SOW:
- (i) in an efficient, timely, professional, and competent manner;
  - (ii) in a cost-sensitive and economical manner;
  - (iii) at all times and in all situations in the best interests of the MoT and the Republic of India, commensurate with the highest standards of its profession and industry and in a manner that promotes and supports the public image, policies, programs and goals of the MoT and the Republic of India, and their working relationships with all other persons, and with a long term view toward fulfilling the mission and objectives of the MoT; and
  - (iv) within the fixed price budget constraints and the requirements of this Agreement and the SOW and with utmost care and concern with a long term view toward fulfilling the mission and objectives of the MoT. Performing Services under this Agreement shall be given the highest priority within Representative's organization.
- (b) Fiduciary Duties. Representative shall maintain the highest standard of fiduciary duty with respect to its performance of the Services and its business relationship with the MoT, including without limitation, the following:
- (i) to comply with all applicable provisions of the Government of India Public Procurement Rules;
  - (ii) to expend Public Funds provided by the MoT, if any, in a manner that will not result in waste, self-dealing, or provide an appearance of conflict between its representation of the MoT and any of Representative's other clients, directors, employees, or associates;
  - (iii) to comply with all of Representative's fiscal and travel policies;
  - (iv) to limit Public Funds expenditures to contract-related purposes; and
  - (v) to prohibit the use of Public Funds in competition or opposition to MoT or any program, initiative, project or other matter that the MoT supports.
- (c) Personnel. During the Term of this Agreement and the SOW, Representative and any of Representative's officers, employees and directors shall act:
- (i) in a manner consistent with achieving the legitimate government interest of the Republic of India as determined by MoT through the approved ATMP, MoT Strategic Plan, and the Representative's responsibilities set forth in this Agreement and the SOW; and
  - (ii) in a manner which shall not be intended to nor cause disruption, harassment or otherwise prevent the achievement of MoT duties, responsibilities, goals and objectives in carrying out its stated statutory duties.

- (d) MoT Policies and Decisions. All Parties to this Agreement acknowledge and agree that Representative's role is not to advocate against or criticize to others any policy decision made by the MoT. However, no portion of this Agreement shall be read to prohibit any individual or entity from reporting to any person or entity what such individual or entity believes in good faith to be misconduct, illegality, or a violation of a law, rule, or regulation of the Republic of India. Representative acknowledges and agrees that the MoT has a legitimate right and need to prohibit Representative, as its Representative, from advocating against and criticizing to others any policy decision made by the MoT. Without limiting the generality of the foregoing, Representative further agrees to, and to cause its officers, employees and/or directors:
- (i) to support the MoT and advocate its policies, programs, and goals furthering the marketing and promotion of Republic of India as a visitor destination for business, pilgrimage and leisure tourism;
  - (ii) to refrain from taking any actions to, and from using or expending any Public Funds provided by the MoT or other monies available to Representative (a) to lobby, advocate against, engender support, or take any official action in opposition to the policies, programs, decisions, and actions of the MoT; (b) to compete by itself or affiliate with the MoT or India as a visitor destination, unless otherwise provided herein; and (c) to interfere with the MoT's business relationships with third parties; and
  - (iii) to take appropriate steps to discipline any of its directors, officers and employees who participate in any action that violates this Section 3.8 or any of Representative's own internal policies and procedures.
- (e) Consequences of Noncompliance.
- (i) Any violation of this Section 3.8, including the failure to maintain such standard of care and fiduciary duty, shall be a material breach of this Agreement and may be grounds for immediate termination for cause in accordance with Section 7.3. If Representative knowingly or negligently violates this Section 3.8 or does not take appropriate action to remedy the violation within thirty (30) days after the date of the MoT's written notice to Representative of such violation, the Parties acknowledge and agree that it would be difficult to measure damages arising from any such breach, and therefore Representative hereby acknowledges, accepts, and agrees that in addition to any other rights and remedies that may be available to the MoT, including termination, Representative shall pay liquidated damages to the MoT of an amount up to US \$25,000.00 for each violation of this Section.
  - (ii) If this Section 3.8 is violated by any of Representative's officers, employees, or directors, Representative shall take immediate and appropriate steps to discipline such officer, employee, or director, and the MoT may pursue any other available

remedies against Representative. Representative further understands and agrees that any violation of this Section 3.8 may, in the MoT's absolute and sole discretion and without limiting or restricting the MoT's right to consider other factors, be a factor in any decision whether or not to enter into further agreements with Representative for marketing or other services.

3.9 Acceptance Criteria.

Each deliverable provided as part of the Services' project shall be subject to acceptance by the MoT to verify that the deliverable satisfies the requirements and acceptance criteria as set forth in this Agreement and the SOW. If no requirements or acceptance criteria are set forth with respect to a particular deliverable, the acceptance criteria for any such deliverable shall be based on the MoT's reasonable satisfaction therewith consistent with Representative's obligations under the SOW and this Agreement.

3.10 Changes.

A change order process will be utilized to manage all material changes to the Services provided under the SOW ("Change Order Process"). The procedure is designed to capture all requests for change and all changes made to the scope of the Services while at the same time ensuring that the decisions are traceable and made at the correct level.

3.11 Encumbrances.

Representative agrees that it shall not file any creditors' claims, attachment liens or other encumbrances ("Encumbrance(s)"), against the MoT or Republic of India, connected with the performance of the Services under this Agreement and the SOW and shall not permit its affiliate(s) or other suppliers to file such Encumbrances. If either Party becomes aware of any Encumbrances being filed against Representative connected with performance of the Services under this Agreement or the SOW, Representative shall promptly remove such Encumbrance after becoming aware of same or upon receipt of written notice of same from the MoT. If an Encumbrance is filed, Representative shall cooperate fully with the MoT, at Representative's expense, to cause the Encumbrance to be removed.

3.12 Planning, Analytical, Promotional, and Marketing Material.

Representative shall provide MoT with a copy of planning, analytical, and promotional literature, including brochures and posters funded by the MoT, on a quarterly basis, and to be submitted with Representative's quarterly reports. MoT shall own all rights and licenses to any and all planning, analytical or promotional material developed by Representative pursuant to or in furtherance of this Agreement to the fullest extent owned or licensed by Representative. Representative shall immediately transfer to MoT for no additional consideration all such rights and licenses.

3.13 Market Research.

Representative will utilize MoT central tourism market research to avoid duplicating market research expenses. Representative shall not use MoT funds to develop or purchase any market research or undertake any research activities other than analysis of existing MoT or publically available research without the express written approval of the MoT. Representative shall notify MoT on the commencement of any pre-approved tourism market research studies or reports funded, in whole or in part, with public funds provided by MoT. Representative agrees to provide MoT with at least two (2) copies of such studies or reports within ten (10) business days after Representative's receipt of a final study or report; provided that Representative shall provide prompt notice to MoT of any partial, preliminary or draft of said tourism market research study or report. In addition, Representative shall provide, from time to time, research data pertaining to market trends, competitive destinations, and other such data as may be included in the SOW or requested by MoT.

#### **4. COMPENSATION AND PAYMENTS**

Neither Representative nor its affiliate(s) will receive any fees or other compensation under this Agreement or the SOW other than as set forth in this Section 4.

##### **4.1 Compensation.**

(a) Compensation for the Contract Period for the SOW is set forth in Section 1.

(b) Monthly Invoices and Reports.

(i) During the Initial Contract Period, on a quarterly basis Representative will invoice the MoT in arrears for the prorata portion of the fixed contract price for the Initial Contract Period no later than forty-five (45) days after the quarter covered under the invoice. The Quarterly Payments shall be paid in accordance with Section 4.3.

(ii) Commencing in the first Contract Year, on a quarterly basis Representative will invoice the MoT in arrears for Quarterly Retainer Fee each calendar quarter during the applicable Contract Year, (the "Quarterly Payment(s)") no earlier than the first day of the month after the quarter covered under the invoice and no later than forty-five (45) days after the quarter covered under the invoice. The Quarterly Payments shall be paid in accordance with Sections 4.3.

(iii) In addition to each invoice for the Quarterly Payment, Representative shall provide MoT with a complete and detailed statement of its performance to date, including (1) the financial reports described in Section 6.4; (2) the monthly performance reports; (3) a full and complete narrative describing each month the Services actually performed during the month covered by the invoice in accordance with the ATMP; (4) an assessment of each campaign engaged in

during such month; (5) an explanation of any variances from Services performed compared to Services described in the implementation plan and/or the monthly expenditure plan for such month as set forth in the ATMP and the various measures of success described in the RFP; (6) a narrative describing current market conditions to include but not be limited to economic overview, exchange rates, and travel market trends; and, (7) a summary forecast of Services to be performed in the following quarters.

- (c) Quarterly Performance Fee.
  - (i) Subject to the approved ATMP, the terms of this Agreement and the SOW and any adjustment authorized herein or therein, the Parties acknowledge and agree that the MoT will pay Representative the amount set forth in the Section 1, (hereinafter referred to as "Quarterly Performance Fee"), as performance based compensation for all goods and Services provided by Representative during the applicable calendar quarter.
  - (ii) Representative acknowledges and agrees that the Quarterly Performance Fee shall be subject to achievement of Key Performance Indicators (the KPI(s)) as detailed in the RFP Document.
- (d) Taxes. The compensation, fees and other charges set forth in the Agreement and the SOW shall be inclusive of all Indian federal, state or local (or foreign equivalent) withholding, sales, use, property, excise taxes, taxes with respect to the Services, deliverables and any other transactional or similar taxes, duties or assessments resulting from or arising in connection with the performance and delivery of the Services, whether such tax, duty or assessment is currently existing or later levied or enacted ("Tax(es)"). Invoiced Taxes will be shown as a separate line item on Representative's invoices. To the extent authorized by any law, Representative shall seek reimbursement of any consumption or value added tax assessed by a foreign jurisdiction for the purchase of any goods and services made by Representative on behalf of the MoT or the Republic of India.
- (e) No Other Compensation. Representative's personnel will not be entitled to participate in any benefit plan (however described) now maintained or hereafter established for any employee or employees of the MoT. MoT will not be liable for the Representative's debts, accounts, obligations or other liabilities, including without limitation, the Representative's obligation to withhold social security and income taxes.

#### 4.2 Invoicing.



- (a) Address for Invoices. Representative shall post all invoices submitted hereunder to:  
Assistant Director General (Overseas Marketing)  
Ministry of Tourism, government of India  
Transport Bhawan, Parliament Street  
New Delhi, India 110 001
  
- (b) Invoice Format. Representative will submit an original invoice on a quarterly basis to the MoT for payment of Services rendered and/or delivered in accordance with the ATMP, and in any format that may be provided by MoT. Representative understands that its failure to follow this requirement may result in delayed payments by the MoT. The invoice shall also contain any additional information reasonably required by MoT as part of the SOW hereunder.

#### 4.3 Payments.

Compensation payments shall be made by the MoT to Representative in accordance with the payment process set forth below. The payment process may be revised by the MoT, from time to time, to take account of (i) any factor or event causing the MoT to not timely receive its appropriated and allotted Public Funds to pay Representative under this Agreement; or (ii) any change to state required procedures.

- (a) Invoices and Reports. The MoT shall pay all amounts set forth on the quarterly invoices, not disputed in good faith in accordance with Section 4.8, within thirty (30) days after receipt of the invoice. Payments are contingent upon and subject to the timely and prior receipt (see Section 6.4) of all required reports described in this Agreement or the SOW, including without limitation, the various monthly, quarterly and annual financial and performance reports described in the RFP and any request for information regarding amounts to be paid submitted by the MoT. If Representative fails to timely and satisfactorily submit any report or response to information requests from the MoT that are reasonably satisfactory to the MoT, the MoT may withhold any payment due Representative, in its sole discretion, until Representative has cured such failure to the MoT's reasonable satisfaction.
  
- (b) Third Party Payments. The MoT may require that Representative submit evidence reasonably satisfactory to the MoT that all claims of all persons, firms or corporations that have provided Services included in any invoice have been paid or satisfactorily secured prior to making any partial payment.
  
- (c) Payment is Not Acceptance. Payment for the Services or deliverables delivered hereunder or under the SOW shall not constitute acceptance thereof. Representative acknowledges and agrees that the MoT shall have the right to inspect such Services or deliverables and to reject and/or adjust its payment to Representative for any or all of said Services or deliverables that are in the MoT's judgment inadequate or defective

in accordance with any acceptance criteria or performance measurements set forth in the RFP, the SOW and or the ATMP for each project, campaign or activity and as evaluated under any monthly or quarterly performance review under the RFP Appendix entitled "Key Performance Indicators."

#### 4.4 Payment Contingent on Reports.

Notwithstanding any provision of this Agreement to the contrary, all monthly or other payments contemplated hereunder or in the SOW(s) are contingent upon and subject to the timely and prior receipt of all required reports described in the RFP, this Agreement or any SOW, including without limitation monthly, quarterly and annual financial reports and any request for information regarding amounts to be paid submitted by the MoT. If Representative fails to timely and satisfactorily submit any report or response to information requests from the MoT that are reasonably satisfactory to the MoT, the MoT may withhold any payment due Representative, in its sole discretion, until Representative has cured such failure to the MoT's reasonable satisfaction.

#### 4.5 Right to Stop Work and Withhold Payment.

- (a) Right to Stop Work. Representative acknowledges and agrees that the MoT shall have the right to stop or suspend any work being conducted by Representative and to withhold any payment due Representative whenever the MoT has concerns or questions related to the conduct of the project under the SOW, or reasonably concludes that the work is not consistent with the achievement of the various targets, strategies, and directives, and the key performance indicators as provided in the RFP or in furtherance of, the ATMP, the MoT Strategic Plan, MoT policies, or this Agreement, or with any work being carried out by the MoT or its other Representative(s) outside the MMA covered by the SOW to this Agreement.
- (b) Order to Stop Work. The MoT Program Manager, may, by written order to Representative, at any time, and without notice to any surety(if any), require Representative to stop all or any part of the Services called for by the SOW (a "Stop Work Order"). This Stop Work Order shall be for a specified period not exceeding ninety (90) days after the Stop Work Order is delivered to Representative, unless the Parties agree to any further period. Upon receipt of a Stop Work Order, Representative shall promptly comply with its terms and take all reasonable steps to minimize the occurrence of expenditures allocable to the Services covered by the Stop Work Order during the period of work stoppage.
- (c) Cancellation or Expiration of the Stop Work Order. If a Stop Work Order is cancelled at any time during the period specified in the Stop Work Order or any extension thereof, or if the period of the Stop Work Order or any extension thereof expires, Representative shall have the right to resume work. An appropriate adjustment shall

be made in the delivery schedule for the Services or SOW Annual Contract Price, or both in accordance with the Change Order Process, and the Agreement or the SOW shall be modified in writing accordingly, if: (i) the Stop Work Order results in an increase in the time required for, or Representative's expenditure properly allocable to, the performance of any part of the SOW; and (ii) Representative asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage. However, if the MoT Program Manager decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to expiration or termination of this Agreement.

- (d) the expiration of any further period to which the Parties shall have agreed in writing, the MoT Program Manager shall either: (1) cancel the Stop Work Order; or (2) terminate the Services covered by such Stop Work Order as provided in Section 7.3 (Termination for Default) or Section 7.4 (Termination for Convenience Clause) of this Agreement.

#### 4.6 Amounts Withheld.

- (a) Disputed Amounts. If the MoT disputes the accuracy or applicability of any amounts due under this Agreement or if Representative has been notified in writing by the MoT that it is in material default of any provision of this Agreement or the SOW, the MoT shall pay the undisputed dollar amount of the applicable invoice when due and may, at its option, withhold the disputed portion pending resolution of the dispute. If the MoT withholds any payment pursuant to this Section, the MoT shall provide written notice to Representative of the basis for such withholding. The Parties will investigate and resolve the dispute in good faith. Any undisputed amounts in an invoice containing a disputed charge, will be paid by the MoT and any undisputed credit amounts will be promptly credited by Representative. Non-payment of any amount owing by the MoT pursuant to this Section shall not be considered a breach by the MoT entitling Representative to terminate this Agreement and the SOW.
- (b) Resolution of Dispute. Upon resolution of the payment dispute, the MoT shall pay Representative such portion, if any, of the resolved amount determined to be owing to Representative. As a condition to any payment for Services rendered by Representative, the MoT shall have the right at any time to request further detailed information from Representative as to how the funds are expended for each project, campaign or activity. Representative shall respond in writing to any such request for information from the MoT within twenty (20) days. Upon receipt of information satisfactory to the MoT and subject to any terms and conditions expressed by the MoT, Representative may continue to conduct the project and payments to Representative may be resumed. If the information is not satisfactory and the MoT

elects to stop work in connection with such project, the MoT shall issue a Stop Work Order in accordance with Section 4.7.

4.7 Set Off.

The MoT may set off in good faith any amount due from Representative to the MoT, against any amount payable at any time by the MoT in connection with this Agreement and the SOW. MoT shall provide written notice to Representative of the set off and the basis for calculating the amount set off.

4.8 Expenditure Restrictions.

Notwithstanding any other provisions in this Agreement to the contrary, Representative shall comply with the expenditure restrictions set forth in this Agreement and the SOW, including the following:

- (a) ATMP. Representative shall not make any expenditures or commitments that are not described in an approved ATMP or otherwise authorized in writing by the MoT. In addition, Representative shall not make any expenditure for any Contract Year unless and until the applicable ATMP has been authorized in writing by the MoT, or the expenditure or commitment is otherwise expressly agreed to in writing by the MoT. Without limiting the generality of the foregoing, Representative's annual expenditures shall not exceed the SOW Annual Contract Price and the fixed price budget as a whole.
- (b) Additional Representative Covenants Regarding Expenditures. Representative will use its best efforts to prudently and efficiently monitor all costs attributable to the Services and to expend the greatest percentage possible of the Annual Contract Price(s) on achieving the Services and deliverables contemplated by the various campaigns and activities set forth in the ATMPB, including to achieve and/or exceed the targets, strategies, and directives, and the key performance indicators as provided in the RFP.

4.9 No Self Promotion.

No Public Funds or MoT Marks, shall be used by Representative to develop, draft, or issue press releases or to otherwise communicate its activities in a manner to promote the Representative's own business. Representative shall not use MoT Marks in any manner that will imply directly or indirectly an endorsement or support of Representative's business or is otherwise associated with Representative's business

**5. REPRESENTATIONS, WARRANTIES AND CONDITIONS**

As a material inducement to the MoT's entering into this Agreement and the SOW, Representative represents, warrants, and makes the following conditions to the MoT on the date hereof and at the time of each invoice or other request for payment by Representative under this Agreement and the SOW, as follows:

5.1 Organization and Authority.

Representative (a) is a duly and validly organized and existing corporation or other type of business entity in good standing under the laws of its jurisdiction of organization, formation or charter; (b) is in good standing and duly licensed or qualified to transact business in the MMA and each other jurisdiction where it conducts business; (c) has the right to grant the licenses and/or sublicenses granted by it under the Agreement and the SOW; (d) has duly and properly authorized the execution, delivery and performance of this Agreement and the SOW by all requisite corporate actions of the Representative; and (e) does not and will not violate any provision of law or of its charter, bylaws or other organization documents, or result in the breach of, or constitute a default under, or require any consent under, any indenture or other agreement or instrument to which the Representative is a party or by which the Representative or its property is bound or affected. Representative's execution, delivery and performance of the Agreement and the SOW and the consummation of the transactions contemplated hereby have been duly and properly authorized by all requisite corporate actions of the Representative. All consents or approvals of any state or federal or any foreign agency or authority, if any, required to permit the Representative to enter into and perform this Agreement and the SOW have been obtained and remain in full force and effect. Without limiting the foregoing, Representative shall comply with all applicable provisions of Government of India's Procurement Policy, as amended from time to time.

5.2 Financial Condition.

Representative has provided the MoT with true and correct copies of its financial statements and information applicable to the Initial Contract Period and the 2013 Contract Year on or before the Effective Date of this Agreement and will provide the same for each subsequent Contract Year no later than thirty (30) days prior to the commencement of such Contract Year. Such financial statements and information do and will present fairly the financial position of Representative as of the respective dates thereof, including without limitation, balance sheets and results of operations and cash flows (or changes in financial position) for the respective periods covered, in accordance with generally accepted accounting principles. There have been, and will be, no material adverse changes in the financial position or business of Representative since the respective dates of such financial statements and/or of other information regarding which the Representative has not timely notified the MoT.

5.3 Enforceability.

This Agreement, the Priced Proposal and SOW, and all attachments hereto and thereto, constitute a legal, valid and binding obligation of the Representative, enforceable in accordance with their terms.

5.4 Expertise.

Representative is, and will remain at all times during the Term, experienced and qualified in the scope of Services provided and to be provided pursuant to this Agreement and the SOW. Representative has, and will have at all times during the Term, the proper skill, training, resources and background to perform the Services in a competent and professional manner and to maintain production and quality control standards commensurate with the highest standards of its profession and industry. Representative understands that the MoT has relied, and will continue to rely, on Representative's representations contained in this Agreement as a material inducement to entering into the Agreement and SOW and continuing to perform under this Agreement and the SOW.

5.5 Services.

Representative shall perform all Services under this Agreement and the SOW on a professional best efforts basis in a diligent and expeditious manner. All Work Product produced under this Agreement and the SOW shall be of original development and all Representative Intellectual Property shall be of original development or licensable by Representative, as the case may be, and all Work Product and Representative Intellectual Property shall not infringe or violate any patent, copyright, trade secret, trademark, or other third party intellectual property right. In the event that specifications provided by the MoT will cause Work Product developed pursuant to the specifications to infringe or violate the intellectual property rights of any third party, Representative will consult with MoT and pursue rights or licenses, or propose change orders, to avoid such infringement or violation.

5.6 Litigation.

There are no suits or proceedings pending, or to the knowledge of Representative threatened, against or affecting Representative or any of its affiliates or subsidiaries or affiliates which, if determined in favor of the adverse party or parties, could have a material adverse effect on the financial condition or the business of Representative.

5.7 Compliance with Law and Agreements.

Representative is in compliance in all material respects with all indentures and agreements to which it is a party or to which it is subject and agrees during the Term to remain in compliance therewith. Representative shall comply with federal, state, and local statutes, regulations, orders and public ordinances of any nature governing the Services to be provided to the MoT under this Agreement and the SOW, its business operations or its property, or of the equivalent governmental authority in other foreign jurisdictions,

including without limitation, those statutes specifically referred to in this Section. In addition, Representative, at its expense, shall obtain any and all required licenses and permits. If changes in applicable laws materially delay or interfere with the performance of the Services, Representative will immediately notify MoT and propose remedial action for the MoT's approval.

5.8 Taxes.

Representative has and will timely file or cause to be filed all Tax returns and reports required to have been filed, and has and will pay or caused to be paid all Taxes required to be paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which Representative has set aside on its books adequate reserves. Without limiting the foregoing, Representative shall also comply with the requirements under laws of India.

5.9 Full Disclosure.

The financial statements and information referred to in Section 5.2 do not, nor does this Agreement, the SOW, the ATMP, nor any other written statement furnished by Representative to the MoT in connection with the RFP, this Agreement and/or the SOW, nor any other disclosures by Representative to the MoT, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading in light of the circumstances under which it was made. There is no fact which Representative has not disclosed to the MoT in writing on or before the Effective Date of this Agreement and the SOW which materially and adversely affects or could reasonably be expected to affect its condition (financial or otherwise) or its ability to perform this Agreement and the SOW.

**6. REPORTING AND ACCOUNTABILITY**

6.1 The Services

Representative shall submit periodic reports described in the RFP regarding the Services provided under the SOW and the financial reporting requirements set forth in the RFP Appendix entitled " Work Breakdown Structure" or in any other format directed by MoT or mutually agreed upon by the Parties.

6.2 Organizational Reporting Responsibilities.

Representative has attached as Attachment 3 (Representative, Officers, Directors, and Managers), a complete and correct listing of all of its officers and directors as of the Effective Date and a separate list of the managers and key personnel who are providing Services under the SOW. During the Term, Representative shall advise the MoT, in writing, of any change to its organizational structure or in the persons serving as officers, directors, or managers or key personnel within the ATMP team providing the Services to the MoT within five (5) business days after such a change.

### 6.3 Requests For Information.

Representative shall promptly and fully respond to any request by the MoT for information or records related to the Services provided under this Agreement and the SOW. Representative shall provide all requested information and records within ten (10) days after the MoT's request, unless otherwise mutually agreed in writing by the Parties or provided in the Agreement.

### 6.4 Fiscal Reporting Responsibilities.

(i) Representative Fiscal Policies. Upon request, Representative shall provide a complete and correct copy of all fiscal policies related to the expenditures made in connection with the Services. Representative shall advise the MoT, in writing, of any material change to such policies within five (5) calendar days after the effective date of such a change. Representative warrants that it shall, at all times, operate within the guidelines provided by its fiscal policies.

(ii) Quarterly Reports. Representative shall submit quarterly reports to the MoT in form and substance acceptable to the MoT within forty-five (45) days after the end of each calendar quarter. Each quarterly report shall, at a minimum, include the following information: (i) a report of all executed campaigns and activities, and final results not previously provided in any quarterly report, including any recommendation on how a campaign or activity could be improved and whether it should be continued; (ii) a comparison of the quarterly results with the stated goals, targets, objectives, and strategies provided in the RFP, or as contained in the ATMP; (iii) a summary table reporting financial data prepared on an accrual basis of all expenditures, agreements, contracts or any arrangement that commit funds in excess of \$75,000; and, (iv) a written disclosure of the value and source of gifts, any in-kind contributions, and third party payments received by Representative in connection with the Services.

(iii) Quarterly Meetings. The Parties shall meet once per calendar quarter after submittal of all monthly and quarterly reports to discuss variances from the Key Performance Indicators, the ATMP and SOW Annual Contract Price set forth in the SOW. If a price or Services adjustment is deemed to be necessary or appropriate by the MoT, then such adjustment shall be made in accordance with the Change Order Process.

(iv) Final Report. Within sixty (60) days after the end of each Contract Year during the Term of this Agreement, Representative must submit to the MoT a report evaluating the effectiveness of its performance of the Services under this Agreement and the SOW during such Contract Year, including an evaluation of its ability to exceed the targets, objectives, strategies, and directives provided in the RFP and to implement



and execute the ATMP, the MoT Strategic Plan, and MoT's Policies. The MoT shall review such report and may request additional information.

- (v) **Third Party Audits.** On or before the ninety (90) day period following the end of any Contract Year, Representative shall submit to the MoT an audited annual financial statement, together with any management controls letter issued by a certified public accountant covering the entire previous Contract Year. The annual financial statement will be of the same type, form and specificity as the quarterly financial reports required in this Agreement, or as stipulated by the MoT.
- (vi) **Fiscal Reports.** Upon the MoT's request, Representative shall provide an itemization of any expense or a detailed fiscal report of any expenditure described in Representative's annual and/or monthly expenditure plan described in the RFP and utilizing the budget categories and definitions provided in the RFP Appendix entitled "Expenditure Plan and Work Breakdown Structure."
- (vii) **Accrual Basis.** All reports required under this Agreement, together with such other financial information and reports mandated or made pursuant to the approved ATMPB, shall be prepared on an accrual accounting basis in accordance with GAAP to the extent applicable.
- (viii) **Auditors Reports.** Representative shall also provide the MoT with a copy of a letter from its auditors (if any) and/or independent financial accountants describing the scope of services, and any amendments thereto that will be performed by any auditor regarding the preparation of any and all financial reports required by this Agreement and the SOW.

#### 6.5 Performance Evaluation.

- (a) **Campaigns and Activities.** The MoT shall utilize the targets, strategies, and directives, and the key performance indicators to evaluate and measure the impact or results of Representative's marketing campaigns under the SOW. The MoT may contract with a professional research company to assist the MoT. If any finding or conclusion of this evaluation is available during the Term of this Agreement, the MoT shall review the results with Representative upon Representative's request. Representative acknowledges and agrees that Representative's ability to achieve and/or exceed said key performance indicators or any other performance measures for any project or campaign shall be an essential and integral element of its performance under this Agreement

- (b) Financial Reports. Representative shall present and/or describe its expenditures under the SOW Annual Plan by using the budget categories and definitions provided in the RFP Appendix entitled "Expenditure Plan and Work Breakdown Structure." The MoT shall also utilize Representative's financial reports based upon the budget categories and definitions provided in the RFP Appendix entitled "Expenditure Plan and Work Breakdown Structure" to determine whether its allocation of funds will achieve and/or exceed the targets, strategies, and directives, and the key performance indicators.

6.6 Audit Rights.

- (a) Audits By MoT: To assure appropriate levels of financial and management controls are in place in accordance with GAAP or other accounting standards acceptable to the MoT, upon the MoT's written request. Representative shall make Representative's auditors (if any) and/or financial managers available for interview and questioning. Promptly following the receipt of the MoT's written request to conduct an audit of Representative, it shall:
  - (i) make available any and all records of operations and financials requested by the MoT and related to the performance of the Services pursuant to this Agreement and the SOW by Representative;
  - (ii) provide a copy of all contracts entered into in connection with the marketing of India on behalf of the State, the MoT and third parties.
- (b) Audit by Third Parties. The MoT shall also have the right, at its expense, from time to time to conduct an independent third-party audit of Representative operations and/or any of the financial reports prepared by Representative under this Agreement. However, unless subject to a good faith dispute, Representative shall bear all expenses of any audit that shows a material breach of this Agreement or the SOW. If such examination should disclose any overpayment to Representative, the overpaid amount shall be returned to the MoT within ten (10) business days, together with interest thereon at the rate of one and one-half percent (1.5%) per month, or the highest interest rate allowed by law, whichever is lower, from the date on which such amount was paid to Representative through the refund date.

**7. TERM; TERMINATION**

7.1 Term.

The term of this Agreement shall commence on the Effective Date and continue until ....., unless extended as set forth in Section 7.2. This initial period and any extension thereof shall be referred to as (the "Term").

7.2 Option to Extend Term.

MoT shall have the sole option to extend the Term for two additional one-year periods commencing on ..... and ending on ....., unless sooner terminated as provided in this Agreement. The MoT may extend the Term as provided above by giving written notice to Representative no later than ninety (90) days prior to the expiration of the then current Term.

7.3 Termination by the MoT for Default.

(a) Default.

- (i) If the Representative (1) fails to achieve and/or exceed the targets, strategies, and directives, and the key performance indicators as provided in the RFP (2) refuses or fails to perform any of the provisions of this Agreement or the SOW, in whole or in part, with such diligence as will ensure its completion within the time specified in this Agreement or the SOW, or any extension thereof; (3) otherwise fails to timely satisfy the Agreement or the SOW provisions; or, (4) commits any other material breach of this Agreement or the SOW, the MoT Program Manager may notify the Representative in writing of the delay or non-performance and if the delay or non-performance is not cured within ten (10) days after the date of the notice or any longer time specified in writing by the MoT Contracting Officer, the MoT Program Manager may terminate the Representative's right to proceed with the Services provided under the SOW and this Agreement or such part thereof as to which there has been delay or a failure to properly perform. In the event of termination of this Agreement and the SOW, in whole or in part, the MoT Program Manager may procure similar supplies or services in a manner and upon terms deemed appropriate by the MoT Program Manager.
- (ii) Notwithstanding the foregoing, the MoT specifically reserves the right to immediately terminate this Agreement and the SOW based upon any cause or reason arising from any findings or recommendations made by any government authority, including the Government of Russia, and relating to any Services performed by the Representative and using Public Funds. The Representative shall continue performance of the Agreement and the SOW to the extent it is not terminated and shall be liable for excess costs incurred in procuring replacement goods or services to those terminated as set forth above.
- (iii) If this Agreement and the SOW terminate for Representative's breach or default before the end of the then-current Term, the MoT shall not be responsible for expenses relating to or resulting from the breach or default.

(b) Representative's Duties. Notwithstanding termination of the Agreement and the SOW, in whole or in part, and subject to any directions from the MoT Program

Manager, Representative shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Representative in which the MoT has an interest.

(c) Compensation.

After termination for default, the MoT's sole obligation shall be to pay Representative for Services actually rendered and accepted under this Agreement and the SOW prior to the effective date of termination at the fixed price budgeted amount included in the Quarterly Contract Price. CONTRACTOR SHALL NOT BE ENTITLED TO ANY CLAIM FOR DAMAGES, INCLUDING INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, ARISING FROM TERMINATION FOR DEFAULT.

(d) Excuse for Non-performance or Delayed Performance.

(i) Representative shall not be in default by reason of any failure in performance of this Agreement and the SOW in accordance with its terms (including any failure by Representative to make progress in the prosecution of the Services thereunder which endangers such performance) if Representative has notified the MoT Program Manager within fifteen (15) days after the cause of the delay and the failure arises out of a Force Majeure Event. If the failure to perform is caused by the failure to perform or to make progress due to a Force Majeure Event, Representative shall not be deemed to be in default, unless the Services to be furnished by the Representative were reasonably obtainable from other sources in sufficient time to permit Representative to meet the Agreement's and the SOW's requirements.

(ii) Upon Representative's request, the MoT Program Manager shall ascertain the facts and extent of such failure, and, if the MoT Program Manager determines that any failure to perform was occasioned by a Force Majeure Event, and that, but for the Force Majeure Event, Representative's progress and performance would have met the terms of the Agreement and the SOW, the delivery schedule may be revised accordingly in accordance with the Change Order Process, subject to the rights of the MoT under Section 7.4 (Termination for Convenience).

(e) Erroneous Termination for Default. After notice of termination of Representative's right to proceed under this Section 7.3, if it is determined for any reason that Representative was not in default under the provisions of this Section 7.3, or that the delay was excusable under the provisions of Section 7.3(d) (Excuse for Non-performance or Delayed Performance), the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Section 7.4.

- (f) Additional Rights and Remedies. The rights and remedies provided in this Section 7.3 are in addition to any other rights and remedies provided by law or under this Agreement.

#### 7.4 Termination by the MoT for Convenience.

- (a) Termination. The Representative acknowledges and agrees that the MoT, in its sole discretion and without any liability for any claim, may terminate this agreement and the SOW, in whole or in part, for the convenience of the MoT when the interests of the MoT so require. The MoT Program Manager shall give written notice of the termination to Representative specifying the part of the Agreement or SOW terminated and when termination becomes effective.
- (b) Representative's Obligations. Upon receipt of the termination notice, Representative shall incur no further obligations in connection with the terminated work and on the termination date set in the notice of termination Representative will stop work to the extent specified. Representative shall also terminate outstanding orders and subcontracts as they relate to the terminated Services. Representative shall settle the liabilities and claims arising out of the termination of such subcontracts and orders connected with the terminated Services on reasonable terms and conditions. The MoT Program Manager may direct Representative to assign Representative's right, title, and interest under terminated orders or subcontracts to the MoT. Representative must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (c) Right to Services Material and Supplies.
  - (i) The MoT Program Manager may require Representative to transfer title and deliver to the MoT in the manner and to the extent directed by the MoT Program Manager: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, fixtures, plans, drawings, information, and contract rights (hereinafter collectively called "Services Material") as Representative has specifically produced or specially acquired for the performance of the terminated part of this Agreement or SOW.
  - (ii) Upon direction of the MoT Program Manager, Representative shall protect and preserve the Services Material in its possession in which the MoT has an interest.
- (d) Compensation.

- (i) Representative shall submit a termination claim specifying the amounts due because of the termination for convenience pursuant to Section 7.4 together with cost or pricing data to the extent required. If Representative fails to file a termination claim within one year after the effective date of termination, MoT shall be fully discharged from any obligations thereunder.
- (ii) The MoT Program Manager and Representative may agree to a settlement provided Representative has filed a termination claim supported by cost or pricing data to the extent required and that the settlement does not exceed four times the Quarterly Retainer Fee reduced by payments previously made by the MoT during the Contract Year and the proceeds of any sales of Services Materials under this Section;

7.5 Termination by Representative.

Representative may not terminate this Agreement and the SOW except as provided in this Section 7.5. Representative may terminate this Agreement and the SOW only in the event of a material breach by the MoT of any of the terms and conditions of this Agreement or the SOW, which breach has not been cured within sixty (60) days after receiving written notice of the breach from Representative. However, this Agreement and the SOW may not be so terminated if such breach may not be reasonably cured within such sixty (60) days, but the MoT commences the cure within a reasonable time following its receipt of Representative's notice of such breach and diligently pursues the cure to completion.

7.6 Effect of Termination.

- (a) Automatic Termination of the SOW. Except as expressly provided herein to the contrary, all rights and obligations of the Parties under this Agreement and the SOW shall immediately cease upon termination or expiration of this Agreement.
- (b) Survival of Claims. Termination or expiration of this Agreement and the SOW shall not impair any outstanding obligations that have accrued prior to the effective date of such termination or expiration and shall survive the termination or expiration of this Agreement and the SOW and shall also continue so long as such obligations remain outstanding, effective, and applicable.
- (c) Bankruptcy. In the event of the bankruptcy of Representative pursuant to the ..... Act and an attendant rejection of this Agreement or any license or assignment granted hereunder pursuant thereof (or equivalent in other jurisdictions), the Parties intend that the provisions of the ..... Act shall apply and the MoT shall be entitled to retain possession of all Work Product delivered to it by Representative, under the SOW and to the extent permitted by law, retain the license rights granted thereunder, subject to any obligations to pay royalties and fees hereunder in full.

## 7.7 Conduct of the Parties Following Termination or Expiration.

### (a) Termination for Convenience.

- (i) If this Agreement and the SOW terminates for MoT's convenience in accordance with Section 7.4 before the end of the then-current Term thereof, Representative shall take all reasonable steps to minimize expenses applicable to termination and shall submit a termination budget to the MoT, detailing Representative's remaining obligations and the corresponding expenditures required to bring the Agreement and SOW to a closure. Upon the MoT's express written approval of the termination budget, Representative will make every effort not to expend or otherwise commit funds in excess of the expenditures specified in the termination budget.
- (ii) If this Agreement and the SOW terminates for Representative's default in accordance with Section 7.3, the Parties agree that payments for Representative's work and commitments performed or made in accordance with this Agreement and the SOW up to the date of termination or expiration shall be made by the MoT as provided in, and subject to the terms and conditions of, Section 4.

(b) Termination for Representative's Default: Upon termination or expiration of this Agreement, each Party will use its best efforts to reconcile on a timely basis and pay sums due and owing to the other Party, accrued up to but not beyond the effective date of termination or expiration. Representative shall prepare a termination budget describing any money due to Representative and the work performed in accordance with this Agreement and the SOW. MoT will make every effort to timely review the termination budget and to pay any money properly due and owing to Representative in accordance with this Agreement and the SOW. In the event of a termination for cause due to a material breach by Representative, the MoT shall have the right to immediately suspend all payments while it reconciles the account and reviews the termination budget, and the MoT shall not be responsible for any interest payments that may be incurred by Representative against any form of credit it may have obtained. The MoT shall not have any obligation to make any payment arising from or relating to the termination of any agreement, contract, commitment, or obligation executed by Representative with any third party, including but not limited to the payment of any early termination fee or cost.

(c) Return of Confidential Information: Upon termination or expiration of this Agreement, Representative will promptly (i) return all confidential or proprietary information of the MoT in Representative's possession or control, including all copies and reproductions thereof; (ii) remove and return all electronically stored confidential or proprietary information of the MoT in Representative's possession or control; (iii)

return all Work Product in Representative's possession or control; and (iv) make available to the MoT all work in progress. The MoT will promptly return all confidential or proprietary information of Representative in the MoT's possession or control, including all copies or reproductions thereof.

- (d) Transition Assistance: Representative agrees that upon expiration or termination of this Agreement and the SOW for any reason, Representative shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of the Services provided hereunder or thereunder to the MoT and/or a third party. Representative shall provide full disclosure to the MoT of the equipment, licenses, and software that are utilized to perform Services under this Agreement and the SOW. Representative shall exercise reasonable efforts to promptly affect a transfer of license or assignment of any agreement for any software, trade name, service mark, or domain name utilized exclusively to perform the services described in this Agreement.
- (e) Survival: Rights and obligations under this Agreement and the SOW which by their nature should survive, including, but not limited to, any and all payment obligations invoiced prior to the termination or expiration hereof, indemnification and confidentiality obligations will remain in effect after termination or expiration hereof.

## **8. CERTAIN COVENANTS**

### **8.1 Compliance with Laws.**

Representative agrees at all times to comply with all applicable laws, rules and regulations in connection with its performance of the Services under this Agreement.

### **8.2 Maintenance of Books and Records.**

Representative shall maintain or cause to be maintained, at all times during the Term of this Agreement and for at least three (3) years thereafter, detailed and accurate books, records, receipts and vouchers, or documents relating to Representative's performance of this Agreement and the SOW. To the extent authorized by law, the MoT and its representatives and consultants shall have access to all documents maintained by Representative and related to its performance of this Agreement and the SOW.

### **8.3 Limitation on Authority.**

Representative's authority shall be limited to taking such actions as are expressly provided for in this Agreement, the SOW or otherwise authorized by the MoT in writing. Unless authorized by the MoT, Representative shall not have the specific authority to engage in the following activities: (a) determine any tourism marketing strategic policies of the MoT or to unilaterally deviate from the ATMP and/or MoT Policies; (b) borrow any money on account of the MoT; (c) execute any obligation, commitment, or guarantee in the MoT's



name; and, (d) initiate, defend, settle or dispose of any litigation or claims on behalf of the MoT or as to which the MoT may have any claim, responsibility or exposure.

#### 8.4 Confidential Information.

- (i) Integrity Pact: The Parties have or will enter into an Integrity Pact in the format set out in **Form 5** no later than the Effective Date of this Agreement.
- (ii) Right to Information Act: Representative acknowledges and agrees that the MoT, as a public agency of the Republic of India, must comply with the provisions of the Right to Information Act 2005 ("RTIA"), and that all documents maintained by the MoT are presumed to be subject to public disclosure unless otherwise exempt from public disclosure pursuant to specific exceptions provided by law, including the exception that public disclosure shall not be required for government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function. Representative further acknowledges and agrees that as an MoT Representative receiving Public Funds, Representative may also be required to comply with the UIPA by making documents maintained by Representative in its offices and related to the performance of this Agreement available for public inspection unless otherwise deemed proprietary and confidential.

#### 8.5 Intellectual Property.

- (i) Work Product and MoT Intellectual Property.
  - (a) Title to all materials and documentation furnished by the MoT to Representative, shall remain in the MoT. Representative shall deliver to the MoT any and all such Work Product and property, including all copies thereof on whatever media rendered, upon (i) the MoT's request, (ii) completion of the SOW, and (iii) the termination of this Agreement and the SOW for any reason.
  - (b) Representative shall not incorporate any third party materials, information, data, or code in any Work Product without prior notice to the MoT.
  - (c) Representative will disclose to the MoT all Work Product and MoT Intellectual Property developed by or for Representative promptly when made or developed. Representative acknowledges and agrees that (1) all Work Product and MoT Intellectual Property are the property of the Republic of India and the MoT, and all ownership, right, title and interest therein have vested and shall vest solely with the Republic of India and the MoT. To the extent that title to any such Work Product may not, by operation of law, vest in the Republic of India and/or the MoT, or such works may not be considered to be work made

for hire, Representative hereby irrevocably assigns to the Republic of India and the MoT all ownership, right, title and interest that Representative may have in such Work Product, without additional compensation and free of all liens and encumbrances of any type.

- (d) The Republic of India shall have the right to obtain and to hold in its own name or in the name of any of its agencies, including the MoT, copyrights, trademarks, trade names, service marks, registrations or other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Representative agrees to give the State, the MoT or any person designated by the MoT, all reasonable assistance required to perfect and enforce the rights in such Work Product and MoT Intellectual Property made or developed by or for Representative. Representative agrees to execute and assist in the preparation of any document that the MoT may consider necessary or helpful in obtaining or maintaining any patents, copyrights, registration, or other proprietary rights in the Work Product and such MoT Intellectual Property. In the event that any such right, title or interest should be obtained by Representative in contravention hereof, Representative shall hold the same on behalf of the MoT and shall transfer the same to the MoT upon request at the sole expense of Representative.
- (ii) Trade Names, Marks and Domain Names.
    - (a) The MoT represents that Attachment 4 describes the names, Marks and/or logos that are owned by the MoT on the Effective Date of this Agreement. "Marks" means trademarks, service marks, trade name, logos, corporate names, trade device, or simulation thereof owned by, or licensed to the MoT. As to the MoT, the list of the MoT names, logos and Marks set forth in Attachment 4 contains the only names, logos and Marks that the Representative is authorized to use in performing the Services under this Agreement and the MMA. The Parties agree to update Attachment 4 upon the earlier of the acquisition and/or registration of the additional names, logos and Marks.
    - (b) Without limiting the generality of the foregoing, Representative agrees that all names, logos, slogans and Marks used in carrying out the marketing of the MMA pursuant to the terms of this Agreement and the SOW, and all goodwill associated with or symbolized thereby, shall be the sole and exclusive property of the Republic of India and the MoT and shall constitute Work Products in accordance with Section 8.5(a).
    - (c) Representative shall not use the MoT's name nor any logo or Mark owned by the MoT (including but not limited to the State Seal of the Republic of India, which

only MoT is authorized to use for tourism activities, or the "bamboo" or "rainbow" logos of the MoT and any subsequently created logos of the MoT, which is only authorized for use directly in connection with the Services provided to the MoT by Representative) in any promotional or marketing materials or presentations without the MoT's prior knowledge and consent. Representative shall only use the MoT's Marks in accordance with a separate written license agreement signed by both Parties. Representative shall do nothing inconsistent with the Republic of India and the MoT's ownership of the Marks and related goodwill and agrees that all use of the Marks by Representative shall inure to the benefit of the MoT. Representative shall not use any of the Marks or any other logo, trademark, service marks or trade names used by the MoT in any manner as a part of its business, corporate or trade name or otherwise for itself, its members (if any) or its affiliates, except and unless expressly permitted hereunder. All MoT Marks shall be used in strict compliance with any and all license agreements and policy guidelines for use thereof adopted by the MoT from time to time during the Term.

- (d) The Parties understand and agree that the terms "MoT Intellectual Property" and "Work Product" shall exclude any Marks, names and logos that are owned by third parties and identify such party.
  - (e) Representative hereby agrees on its own behalf, and on behalf of the MoT, to comply with and adhere to the provisions of any applicable domain name registration agreement related to the MMA for which Representative is responsible and timely pay all amounts due thereunder for renewals, or otherwise, to maintain the registration and validity of the domain names.
  - (f) The use of the name, logo and/or official emblem of the participants on any publication, document and/or paper will require prior permission of both the participants. It may however be ensured that the official emblem and logo is not misused.
- (iii) Assignment and Licenses. Except any such work, title to which has been prohibited / restricted by operation of law and the work product which may not be considered to be work for hire, in consideration of the MoT's payment to Representative of amounts specified in the SOW entered into under this Agreement, Representative shall hereby:
- (a) irrevocably transfers and assigns to the MoT in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights (including, without limitation, applications for registration

thereof, and all priority rights therein under applicable international conventions for the protection of such rights) in, and ownership of, the Work Product that Representative may have, as and when such rights arise, and

- (b) grants to the MoT an unrestricted, irrevocable, nonexclusive, fully paid up, perpetual license, with the right to sublicense (subject to confidentiality obligations no less stringent than those set forth in Section 8.4), in and to Representative's proprietary rights to such Work Product and the Representative Intellectual Property used in connection therewith.
- (iv) Cooperation. Representative shall cooperate fully in (i) vesting in the MoT the ownership of the proprietary rights to the Work Product, and (ii) assisting the MoT in obtaining patent, copyright or any other intellectual property rights in the Work Product and in maintaining and protecting the MoT's proprietary rights, including, without limitation, executing any documents which the MoT reasonably deems necessary for such purpose.
- (v) Attorneys-in Fact. Representative hereby agrees, and irrevocably appoints and designates the MoT and its duly authorized officers, employees and/or agents as Representative's agents and attorneys-in-fact, to execute and file any necessary document and to do all other lawfully permitted acts to effectuate the provisions of this Section and to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Representative.
- (vi) License by the MoT. The MoT hereby grants, assigns, or authorizes Representative a limited license during the Term to use all MoT Intellectual Property provided to Representative, Work Product developed by Representative for the MoT, Marks and domain names reserved or developed by Representative pursuant to or in connection with this Agreement or the SOW or otherwise belonging to the MoT, only for the specific purpose of performing the Representative's Services described in this Agreement and the SOW.
- (vii) Data. All MoT information (including, without limitation, data and related reports regarding the MoT, its businesses and the Services) is the exclusive property of the MoT and the furnishing of such information to, or access to such information by, the Representative and/or its agents will not grant any express or implied license to the Representative and/or its agents relating to such information, except as required to perform the Services pursuant to this Agreement and the SOW. Upon request by the MoT at any time and without regard to the default status of either Party, and in no event later than thirty (30) days following the expiration or early termination of this

Agreement and the SOW, Representative and its agents shall promptly deliver to the MoT such MoT information, including, without limitation, data and related reports regarding the business of the MoT and the Services in the possession or control of the Representative and/or its agents in electronic tape or other format designated by the MoT and in such hardcopy as existing on the date of the request by the MoT.

#### 8.6 Remedies.

By virtue of the duties and responsibilities of Representative under this Agreement and the SOW and the special knowledge of the affairs and/or operations of the MoT that Representative will have as a result of the Parties' relationship under this Agreement and the SOW and the special knowledge that Representative will have of the MoT intellectual Property and Confidential Information and the Work Products or other information which, at law or in good conscience or equity, ought to remain confidential, great loss and irreparable damage would be suffered by the MoT if Representative should breach or violate any of the covenants and agreements set forth in Sections 8.4 (Confidentiality), 8.5 (Intellectual Property), 8.6 (Remedies), and 8.9 (Noncompetition), hereof, which may not be wholly compensable in monetary damages. The Parties agree that each such covenant and agreement is reasonably necessary to protect and preserve the interests of the MoT. Therefore, in addition to all of the other remedies provided at law or in equity, the MoT will be entitled to a preliminary injunction, temporary restraining order and a permanent injunction to prevent a breach of any of such covenants or agreements. The existence of any claim, demand, or cause of action in the MoT against the Representative, whether predicated upon this Agreement, the SOW, or otherwise, will not constitute a defense to the enforcement by the MoT to any of the covenants or agreements described above. This provision shall survive the termination, expiration or cancellation of this Agreement.

#### 8.7 Insurance.

(a) Coverages. Unless otherwise waived or amended by MoT in writing, within seven (7) days after the Effective Date of this Agreement and to the extent authorized or provided by law within any jurisdiction, Representative shall provide the MoT with certificates of insurance certifying that each of the following insurance coverages is in full force and effect with one or more insurers or surety companies licensed to do business by a government authority and rated at least "A-" by A.M. Best & Co. or international equivalent, and further providing that the MoT will be given thirty (30) days' prior written notice of any material change in, cancellation of, or intent not to renew any of the policies. Receipt of any certificate showing less coverage than requested is not a waiver of Representative's obligation to fulfill the requirements. Representative shall at its own cost and expense procure and maintain in full force and effect at all times during the Term the following insurance coverages:

(i) Workers' Compensation, Temporary Disability, and other similar insurance required by the state or federal laws and by the laws of the jurisdictions in

which Representative performs work as part of the Services. In the event that Representative fails to maintain such insurance as required by law, Representative acknowledges and agrees that it will not seek or be entitled to any coverage under the MoT's insurance. Permissible self-insurance will be acceptable subject to submission of a copy of appropriate governmental authorization and qualification by Representative.

- (ii) Employers Liability insurance with minimum limits for bodily injury from accident of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each accident; for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each employee; and for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each policy limit.
  - (iii) Commercial General Liability insurance with a bodily injury and property damage combined single limit of liability of at least TWO MILLION DOLLARS (\$2,000,000) for any occurrence. Such insurance will include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. 'Claims made' policies are not acceptable.
  - (iv) Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS (\$1,000,000) per accident.
  - (v) Representative shall at its own expense procure and maintain in full effect at all times during the Term of this Agreement and the SOW and for THREE (3) years thereafter, Professional Errors and Omissions Insurance covering liabilities of at least THREE MILLION DOLLARS (\$3,000,000).
  - (vi) The minimum limits of coverage required by this Agreement may be satisfied by a combination of primary and excess or umbrella insurance policies
- (b) Policy Changes. Each policy required hereunder shall provide that the MoT shall receive thirty (30) days advance written notice in the event of a cancellation or material change in such policy. In the event that any Services under this Agreement or the SOW is to be rendered by persons other than Representative's employees, Representative shall arrange to furnish the MoT with evidence of insurance for such persons subject to the same terms and conditions as set forth above prior to commencement of Services by such person(s).

## 8.8 Noncompliance.

If Representative fails to comply with any of the insurance requirements herein, upon written notice to Representative by the MoT and a thirty (30) day cure period, the MoT may, without any obligation to do so, procure such insurance and Representative shall pay the MoT the cost thereof plus a reasonable administrative fee as designated by the MoT. The maintenance of the insurance coverages required under this Agreement shall in no way operate to limit the liability of Representative to the MoT under the provisions of this Agreement.

- (a) Waiver of Subrogation Rights. To the extent permitted by law and Representative's underwriters after Representative's best efforts to obtain such consent, Representative and anyone acting under its direction will cause its insurers (except for Workers' Compensation insurers) to waive all rights of subrogation which Representative or its insurers may have against the MoT and its employees, officers, or agents for any loss or damage to any tangible and intangible, real and personal property of it and its agents resulting from operations in connection with this Agreement and the SOW. Each policy shall contain a waiver of subrogation endorsement to the extent obtainable, which specifically states:

"The insurer waives any right of recovery it may have against the Republic of India and the Ministry of Tourism, and any of its officers, employees, agents or representatives because of payments made under this policy."

- (b) Additional Insured. Insurance policies (except Workers' Compensation policies) providing the insurance coverage required in Section 8.7 will name the MoT and its respective agents and employees as additional insured. Coverage must be primary in respect to the additional insured. Any other insurance carried by the MoT will be excess only and not contribute with this insurance. The MoT shall be named as loss payee as its interest may appear on the property insurance policies of Representative. Representative shall be responsible for payment of any and all deductibles from insured claims under all policies of insurance required hereunder.

## 8.9 Noncompetition.

- (a) Nonexclusive Business Relationships. Although a Representative, as a legal entity, may represent a competing market within the MMA, MoT prefers that a Representative's project director and/or staff may be dedicated to providing services only for India and the MoT.
- (b) Procedures. If at any time during the Term of the SOW, Representative provides destination marketing services and activities to any MoT Competitor that are similar to the Services provided under the SOW for the MoT, Representative shall:
- (i) set up separate teams to provide the Services to the MoT (the "MoT Team" or ATMP TEAM as described in the RFP) and to the MoT Competitor;

- (ii) set up an information barrier, such as a “white room” or other form of a firewall, within Representative's company to prohibit the disclosure of competitive sensitive information acquired and/or provided through the performance of Services on behalf of MoT to any client or affiliate representing or associated with a competing market described in the RFP Appendix entitled "Competitors"; and
  - (iii) establish specific directives and procedures for its employees and other personnel assigned to the MoT Team and to a team for any MoT Competitor describing the requirements of the MoT information barrier, such as a “white room” or other form of a firewall and preventing them from exchanging information in either formal or informal settings. The firewall also shall act to avoid Representative conflicts of interest and shall serve as an information barrier to separate persons making Services decisions and implementing Services for the MoT and who are privy to undisclosed material information which may influence how the Services are provided to the MoT from those of Representative's employees and other personnel providing tourism and marketing services to MoT Competitors.
- (c) In addition to the firewall, the Representative, and all associated affiliates (if any), shall treat both business relationships as strictly confidential and shall comply with the confidentiality obligations set forth in this Agreement and the SOW. No one outside the MoT Team shall have access to any information on the Services provided to the MoT without the prior written approval of the MoT, which approval shall state in detail the information that may be accessed and the use to which it may be put.

8.10 Non-solicitation.

Representative shall not, at any time during the Term and for a period of one (1) year thereafter, directly or indirectly solicit any of the MoT's employees for hire as an employee, consultant or independent Representative.

8.11 Security and Safety.

Representative covenants that it will, and it will cause to, comply with the published security and safety policies and codes of conduct of the MoT while present at the MoT facilities as provided to Representative in writing from time to time.

## 9. INDEMNIFICATION

### 9.1 Indemnified Claims.

Representative shall defend, save, indemnify, and hold the MoT and its officers, employees, and agents, harmless from and against any and all civil, administrative or investigative actions or proceedings commenced or threatened, ("Claim(s)"), any and all losses, liabilities, damages, penalties and claims (including Taxes) and all related costs,



expenses and other charges, including all attorneys' fees and reasonable costs of investigation, litigation, settlement, judgment, interest and penalties, which the MoT may suffer or incur arising out of or in connection with:

- (a) any real, tangible or intangible property or bodily injury (including death occasioned by negligence, unlawful act, or wilful misconduct of Representative, or of Representative's personnel, or agents in the performance of the Services under this Agreement or the SOW, as well as any Indemnification Claim for payment of compensation or salary asserted by any employee, agent or affiliate of Representative;
- (b) subject to Section 9.2 below, any Claim that the MoT's use of the Work Product, Representative Intellectual Property or any portion thereof infringes or violates any patent, copyright, trade secret, trademark, or other third party intellectual property right;
- (c) subject to Section 9.2 below, any Claim that the Work Product infringes or unlawfully misappropriates the patents, copyrights, trade secrets or other intellectual property rights of any other party;
- (d) any Claims for amounts, including but not limited to Taxes, interest and penalties, assessed against the MoT which are the obligation of the Representative; and
- (e) all Claims or demands of whatever nature in connection with all Encumbrances arising out of the Services, labor, and materials furnished by Representative or any of its agents in performing the Services under this Agreement and the SOW or its other suppliers.

## 9.2 Intellectual Property Infringement Remedies.

In the event that the MoT is in any way enjoined from using the Work Product or any portion thereof, Representative shall promptly, at its own expense (including, but not limited to the payment of any royalties occasioned by the following) either (i) provide to the MoT non-infringing means of using the Work Product that are at least equivalent to the enjoined Work Product, or (ii) negotiate and procure for the MoT the right to use the Work Product without restriction. The MoT shall be required to give prompt notice of any such claims, litigation, or inquiries (and in the case of legal claims and litigation, the MoT shall give Representative notice thereof within no more than ninety (90) days after having actual knowledge thereof), and to grant to Representative sole control of the defense of any such claim. Representative shall have no liability, however, for any infringement claim based upon the combination of Work Product or Representative Intellectual Property with third party software or hardware not approved by Representative, or based upon any modification or alteration of Work Product or Representative Intellectual Property by the MoT or any third party, that is not approved by Representative. THE FOREGOING

STATES THE ENTIRE INDEMNIFICATION OBLIGATION OF CONTRACTOR WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER PROPRIETARY RIGHTS REGARDING THE WORK PRODUCT OR CONTRACTOR INTELLECTUAL PROPERTY.

**10. LIMITATION OF LIABILITIES**

IN NO EVENT SHALL THE MoT OR THE REPUBLIC OF INDIA , ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, BE LIABLE TO REPRESENTATIVE OR ANY THIRD PARTY FOR LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOW, REGARDLESS OF THE BASIS OF THE CLAIM, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. Without limiting the generality of the foregoing, the MoT and the Republic of India shall not be liable to Representative or any other party by reason of the termination (or non-renewal or non-extension) of this Agreement and the SOW pursuant to Sections 7.2, 7.3 or 7.4 for compensation, reimbursement or damages on account of any loss of business suffered, including, but not limited to, severance payments to employees.

**11. CONTINUED PERFORMANCE**

The Parties agree to continue performing their respective obligations under this Agreement and the SOW while a dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement and the SOW. Neither Party will be compensated for any time or expense related to the dispute resolution process. Each Party will treat the existence and results of the dispute resolution process as Confidential Information of the other Party. Neither Party may disclose the existence of the dispute, evidence taken, resulting opinions or settlements of the dispute hereunder without the prior written consent signed by the other Party. This prohibition shall not apply to disclosures to counsel, made in documents filed with a court or required by law.

**12. MISCELLANEOUS PROVISIONS**

**12.1 Amendment and Waiver.**

No supplement, modification, amendment or waiver of this Agreement or the SOW, or any part hereof or thereof, shall be effective unless executed in writing by the Party against whom enforcement of such supplement, modification, amendment or waiver is sought. The waiver or failure of either Party to exercise any right provided for in this Agreement or the SOW shall not be deemed a waiver of any further right hereunder.

**12.2 Assignment.**

Representative shall not transfer or assign its rights, duties or obligations under this Agreement or the SOW, in whole or in part, to any third party. Any change of control of

Representative shall be deemed an assignment, requiring the MoT's written consent, for purposes of this Section 12.2. Any unauthorized assignment shall have no force or effect.

12.3 Change of Control.

Representative shall promptly notify the MoT in writing prior to the sale of all or substantially all of its assets or a transfer of control of Representative from the person or persons who hold such control as of the Effective Date of this Agreement to another person or persons.

12.4 Authorized Persons.

Whenever any consent, approval or determination of a Party is required pursuant to this Agreement and the SOW, the consent, approval or determination shall be rendered on behalf of the Party by the person or persons duly authorized to do so, which, in Representative's case, means the President and Chief Executive Officer or a designated representative of Representative and, in MoT's case, means the Program Manager or a designated representative.

12.5 Choice of Law.

Representative acknowledges and agrees that this Agreement and the SOW is made and shall be construed and enforced in accordance with the laws of the Republic of India, without regard to its conflict of law principles.

12.6 Jurisdiction.

The Parties hereby submit and consent to the exclusive jurisdiction of Courts at New Delhi and irrevocably agree that all actions or proceedings relating to this Agreement and the SOW shall be litigated in such courts, and each of the Parties waives any objection which it may have to the conduct of any such action or proceeding in such court based on improper venue or forum non convenience.

12.7 Counterparts.

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

12.8 Force Majeure.

Neither Party shall be responsible or liable, or deemed in breach hereof, for a delay in the performance of their respective obligations and responsibilities under this Agreement due solely to a Force Majeure Event beyond its reasonable control; provided that the Party experiencing the Force Majeure Event shall exercise due diligence in endeavoring to overcome any Force Majeure Event that impedes its performance. Upon the occurrence of a Force Majeure Event, the non-performing Party shall be excused from any further

performance or observance of the affected obligation(s) only for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the other by telephone/email/facsimile or by the most timely means otherwise available (to be confirmed in writing within two (2) days after the inception of such delay) and describe in reasonable detail the circumstances causing such delay.

12.9 Further Assurances.

Each Party shall, at the reasonable request of the other Party, execute and deliver to the other Party all further instruments, assignments, assurances and other documents, and take any actions as the other Party reasonably requests in connection with the carrying out of this Agreement.

12.10 Headings.

The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

12.11 Notices and Service of Legal Process.

Any notice required or permitted to be given by a Party pursuant to this Agreement must be given in writing, and personally delivered, delivered by an internationally recognized express delivery service, or sent by certified or registered mail, return receipt requested, or by facsimile to the other Party at the following address or facsimile number (or at such other address or facsimile number as such party will designate by written notice given in accordance with this Section):

Any written notice from Representative to the MoT or personal service of legal process upon the MoT shall be delivered or sent to:

Assistant Director General (OM)  
Ministry of Tourism  
Government of India  
Transport Bhawan  
Parliament Street, New Delhi  
India PIN 110 001

Any written notice from the MoT to Representative or personal service of legal process upon the MoT shall be delivered or sent to:

.....  
.....  
.....

A notice to either Party shall be effective (a) upon receipt if delivered by hand or express delivery service, or (ii) email, or (iii) facsimile.

12.12 Parties in Interest.

Nothing in this Agreement or the SOW, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement or the SOW on any persons other than the Parties to it and their respective permitted successors and assigns, nor is anything in this Agreement or the SOW intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any Party to this Agreement, except as set forth in Section 8.7 (Insurance).

12.13 Entire Agreement; Precedence.

(a) Entire Agreement. Unless otherwise provided in this Agreement and/or the SOW, the RFP, Representative's Service Proposal, and the attachments hereto and thereto represent the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and the SOW, and supersede any prior oral or written agreements, representations, understandings or discussions between the Parties. The Proposal and the attachments thereto are hereby incorporated in to this Agreement by this reference. No other understanding between the Parties shall be binding on them unless set forth in writing and signed by the both Parties.

(b) Precedence. In the event of any conflict among the various provisions of the documents referred to below, which are incorporated herein and made a part of this Agreement by this reference, the conflict shall be resolved by reference to the provisions of the documents in the following order of precedence:

- (i) This Agreement; then
- (ii) The RFP as amended; then
- (iii) MoT regulations, policies or procedures; then
- (iv) The Representative's final proposal; then
- (v) General principles of government contracting; then
- (vi) Tourism industry practices.

(c) Expenses.

Each Party shall bear its own legal expenses in connection with the preparation, review, negotiation and execution of this Agreement and the SOW.

12.14 Severability.

If any of the provisions, or any portion thereof, of this Agreement or the SOW shall be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render

unenforceable the entire Agreement or the SOW, but rather this Agreement or the SOW will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights and obligations of the Parties hereto will be construed and enforced accordingly. Any provision in this Agreement or the SOW, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

12.15 Independent Representatives.

Representative shall perform its obligations under this Agreement and the SOW as an independent Representative of the MoT. Nothing herein shall be deemed to constitute Representative and the MoT as partners, joint venturers, or principal and agent. Representative has no authority to represent the MoT as an agent in any matters, unless such authority is expressly set forth in writing. The MoT shall have no liability for the acts or omissions of Representative, its employees or affiliates.

12.16 Cumulative Rights.

No remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies at law or in equity.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first above written.

MINISTRY OF TOURISM, REPUBLIC OF INDIA

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

\_\_\_\_\_

REPRESENTATIVE

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_