

DRAFT EMPANELMENT AGREEMENT
BETWEEN
NATIONAL SKILL DEVELOPMENT CORPORATION
AND
[]

This Agreement (“**Agreement**”) is made on [], between:

1. **National Skill Development Corporation**, a company incorporated under the Companies Act, 1956, and having its registered office at 301, West Wing, World Mark – I, Aerocity, New Delhi - 110037 (hereinafter referred to as “**NSDC**” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and assigns);and
2. [], a [] incorporated under the [], and having its registered office at [] (hereinafter referred to as “**Service Provider**” whose expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and successors-in-interest and assigns).

NSDC and Service Provider shall hereinafter be individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS

- (A) NSDC is a non-profit company incorporated under the Companies Act, 1956 (“**Act**”) and has the license under section 25 of the said Act (corresponding to section 8 of the Companies Act 2013) and established as a public private partnership with the object of developing unskilled and semi-skilled labour force into productive and skilled labour and to establish, manage, run and support institutes and polytechnics for achieving this objective (“**Business**”).
- (B) NSDC has through an request for proposal dated [], (“**RFP**”) to be read along with corrigendum issued with the RFP, is any, has called for proposals/bids to provide Services (defined in Schedule I to this Agreement)
- (C) The Services Provider submitted a bid response dated [] (“**Bid Response**”) pursuant to the RFP where the Services Provider has represented to NSDC that it is an experienced, and fully qualified and capable of providing the Services.

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS

1. **Definition and Interpretation**

- 1.1. In this Agreement, including in the Recitals hereof, the following words, expressions and abbreviations shall have the following meanings, unless the context otherwise requires.

- (a) **“Applicable Law”** shall mean any statute, law, regulation, ordinance, rule, judgment, notification, rule of common law, Order, decree, bye-law, government approval, directive, guideline, requirement or other governmental restriction, or any similar form of decision of, or determination by, or any interpretation, policy or administration, having the force of law of any of the foregoing, by any Authority having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.
- (b) **“Authority”** shall mean any national, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency, any statutory body or commission or any non-governmental regulatory or administrative authority, body or other organization to the extent that the rules, regulations and standards, requirements, procedures or Orders of such authority, body or other organization that have the force of Applicable Law or any court, tribunal, arbitral or judicial body, or any stock exchange of the India or any other country.
- (c) **“Confidential Information”** includes the contents of this Agreement and all content created pursuant to this Agreement. It also includes, with respect to NSDC and the Service Provider any information or trade secrets, schedules, business plans including, without limitation, commercial information, financial projections, client information, technical data, developments, intellectual property, ideas, know-how, marketing materials, business information, accounting and financial information, credit information, various types of lists and databases, administrative and/or organizational matters of a confidential/secret nature in whatever form which is acquired by, or disclosed to, either Party pursuant to this Agreement, but excluding information which at the time it is so acquired or disclosed, is already in the public domain or becomes so other than by reason of any breach or non-performance by the receiving Party of any of the provisions of this Agreement and includes any tangible or intangible non-public information that is marked or otherwise designated as ‘confidential’, ‘proprietary’, ‘restricted’, or with a similar designation by the disclosing Party at the time of its disclosure to the receiving Party, or is otherwise reasonably understood to be confidential by the circumstances surrounding its disclosure.
- (d) **“Force Majeure”** means an act of God, war, civil disturbance, strike, lockout, act of terrorism, flood, fire, explosion or legislation or restriction by any government or other authority, or any other similar circumstance beyond the control of any Party, which has the effect of wholly or partially suspending the obligations hereunder, of the Party concerned during the continuance and to the extent of such prevention, interruption or hindrance.
- (e) **“Intellectual Property”** or **“Intellectual Property Rights”** shall mean any and all trademarks and services marks (whether or not registered), copyrights, design rights (whether or not registered), moral rights, patents, performance rights, database rights,

Internet, WAP and other new media rights, names, logos and codes, publicity rights, and any and all other intellectual property and proprietary rights of any nature whatsoever that subsist, or may subsist, or be capable of registration, in each case in relation to the Services or any part thereof and which exist, or may exist, in any jurisdiction anywhere in the World.

- (f) **“Order”** shall mean any order, injunction, judgment, decree, ruling, writ, assessment or award of a court, arbitration body or panel or other Authority.

1.2. **Interpretation**

- (a) Heading and bold typeface are only for convenience and shall be ignored for the purpose of interpretation.
- (b) Terms may be defined in clause 1 above, or elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.
- (c) Reference to this Agreement shall be deemed to include any amendments or modifications to this Agreement, as the case may be.
- (d) References to the singular will include the plural
- (e) References to the word “include” shall be construed without limitation.

2. **Appointment of Service Provider**

- 2.1. NSDC has entered into this Agreement to allow NSDC to award an order (**“Order”** or **“Purchase Order”** or **“Assignment”**) under this Agreement.
- 2.2. The Service Provider will provide services as requested in the Order/Purchase Order/Assignment which shall be along the lines of services described in Schedule I of this Agreement, and in doing so shall adhere to timelines specified in Schedule II of this Agreement
- 2.3. All services, functions or responsibilities which are reasonably necessary and required for the performance or provision of the Services shall be deemed to be included within the scope of work of the Service Provider.
- 2.4. Except as specifically excluded, all tools, and materials required by the Service Provider to perform its obligations under this Agreement shall be used by the Service Provider, at no extra cost to NSDC
- 2.5. If the Service Provider rejects/ does not provide quotation when such a request is sought to award an order, over three times, NSDC shall be entitled to uni-laterally terminate this Agreement, or no longer issues Orders/ Purchase Orders/Assignment under this Agreement

3. **Consideration and Payment Terms**

- 3.1. In consideration of the Service Provider providing the Services (as specified in Schedule I) to NSDC, NSDC agrees to pay sufficient and valid consideration (**“Consideration”**) in

accordance with the Payment Terms outlined in Schedule II.

[OR]

NSDC will ask for the quotation from Empanelled service providers to obtain their financial costs for the requirement. The Order/ Purchase Order/ Assignment will be assigned to the servicer Provider, basis a substantive evaluation as well as quotation provided. Thus, each Order will be payable as per price agreed to between NSDC and the Service Provider at the time of issuing the Purchase Order/ Order/ Assignment.

- 3.2. The amounts shall be due upon receipt of an invoice by NSDC, and all undisputed invoices and charges shall be paid by NSDC within 30 (thirty) days of receiving such invoice from the Service Provider.
- 3.3. The Service Provider recognizes that payments are linked to, and dependent on the successful completion of Services, within timelines mentioned in this Agreement, and submission of all relevant deliverables sought under this Agreement.
- 3.4. All payments shall be made in INR.
- 3.5. All charges are exclusive of all applicable taxes that may be levied, imposed, charged or incurred. NSDC shall pay the consideration due under this Agreement (including taxes) after deducting any tax deductible at source, at the applicable rate. NSDC shall furnish a tax certificate evidencing payment of the tax deductible at source to the appropriate government entity or Authority on a timely basis.
- 3.6. All payments are inclusive of all out of pocket expenses. Except as provided under the Agreement, the Service Provider shall not be entitled to claim any out of the pocket expenses incurred pursuant to its performance of obligations under the Agreement.

4. Term

Notwithstanding the date hereof, this Agreement shall commence on the [] (“**Effective Date**”) and shall be valid for a period of [2] years and shall come to an end on []

5. Termination

- 5.1. Either Party may terminate this Agreement by giving written notice of 15 (fifteen) days to the other in the event that:
 - (a) the other Party has committed a material breach of any of its obligations hereunder which cannot be remedied;
 - (b) the other Party has committed a material or repeated breach of any of its obligations hereunder and has failed to remedy such breach (if the same is capable of remedy) within thirty (30) days of being required by written notice so to do;
 - (c) the other Party goes into liquidation or bankruptcy (whether compulsory or voluntary) or an administrator or receiver is appointed over the whole or any part of that other

- Party's assets or if that other Party enters into any arrangement for the benefit of or compounds with its creditors generally or threatens to do any of these things or any judgment is made against that other Party or any similar occurrence under any jurisdiction affects that other Party; or
- (d) the other Party ceases or threatens to cease to carry on business or is removed from the relevant register of companies, where applicable.
- 5.2. NSDC may terminate this Agreement, without assigning any reason by giving written notice of 30 (thirty) days
- 5.3. NSDC may terminate this Agreement immediately if NSDC determines that the Service Provider and/or its employees, sub-contractors, sub-consultant, sub-vendors, agents have engaged in Corrupt or Fraudulent practices in executing this Agreement. The terms "corrupt" and "fraudulent" are defined in Schedule III to this Agreement
- 5.4. Either Party's right to terminate this Agreement shall be without prejudice to the other rights and remedies it may have under Applicable Law.

6. Consequences of Termination

- 6.1. Upon termination of this Agreement, any rights or authority granted by NSDC to the Service Provider under this Agreement shall terminate with immediate effect.
- 6.2. Within 7 (seven) business days after termination, upon the request of NSDC, Service Provider will return or destroy, at the option of NSDC, all Confidential Information of NSDC and all materials relating to work in progress of the Services.
- 6.3. Except where the Agreement is terminated pursuant to clause 5.3 (*Termination for Corrupt and Fraudulent Actions*), all charges or amounts payable for the completion of milestones already achieved, or services already availed, whether invoiced or not, subject to the Service Provider providing suitable invoices, outstanding upon the date of termination, shall be settled within 30 (thirty) days of such termination;
- 6.4. The accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced in any manner.

7. Representation and Warranties

- 7.1. Each Party represents and warrants to the other Party that:
- (a) It has full power and authority to execute, deliver and perform this Agreement.
- (b) It has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and
- (c) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- 7.2. The Service Provider represents and warrants that

- (a) It possesses the necessary experience, expertise and ability to undertake and fulfil its obligations under all phases involved in the performance of its obligations under the Agreement
- (b) All representations made by the Service Provider in the Bis Response is true and accurate
- (c) The Service Provider has read and understood NSDC Procurement Policy and specifically the policy on Fraud and Corrupt Practices (extracted portion in Schedule - III) and shall abide by the same.

8. **Performance Guarantee**

Within [] ([]) days from date of signing of the Framework Agreement award, the Firm shall furnish to the Purchaser the performance security of Rupees [5 lakhs] only (INR []). The performance security shall be denominated in Indian Rupees and shall be in the form of an unconditional bank guarantee issued by a nationalized/scheduled bank located in India acceptable to the Purchaser, in the format provided by the Purchaser. The performance security will be returned to the Firm not later than []

9. **Personnel [OPTIONAL]**

- 9.1. The Service Provider shall deploy personnel for providing the Service only after they have been screened, to ensure that they meet the minimum quality standards. The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each Consultants key employees shall be described in Schedule IV. (“Key Employees”)
- 9.2. The Service Provider shall immediately terminate and replace a Key Employee who has
 - a. breached any terms and conditions of this Agreement
 - b. has committed a data breach
 - c. is in anyway not in compliance with Applicable Law
- 9.3. NSDC shall have the right to interview any of the Key Employees engaged by the Consultant to ensure they are duly qualified to provision the Services.
- 9.4. In the event that any of the Key Employees resign, or cease to provide their services due to reasons beyond the control of the Consultant, the Consultant shall immediately replace such Key Employees, with equally competent resources, and ensure that a complete knowledge transfer, and all other processes required to maintain business continuity.
- 9.5. In the event that any Key Employee fails to meet the reasonable expectations of NSDC, NSDC may request a replacement and the Service Provider shall promptly replace, with a suitable and equivalent replacement.

10. **Compliance with Laws**

Each Party shall at all times and at its own expense (a) strictly comply with all Applicable Laws, now or hereafter in effect, relating to its performance of this Agreement; (b) pay all fees and other charges required by such Applicable Laws; and (c) maintain in full force and effect all licenses, permits, authorizations, registrations and qualification from any Authority to the extent necessary to perform its obligations hereunder.

11. **Intellectual Property Rights**

- 11.1. The Service Provider acknowledges that any Intellectual Property Rights already owned by NSDC shall remain the sole property of NSDC. However, so as to enable the Service Provider to provide the Services and to comply with its obligations under this Agreement, NSDC acknowledges that the Intellectual Property Rights or part thereof owned by NSDC will need to be made available to Service Provider and such property is made available only to enable the Service Provider to provide Services under this Agreement.
- 11.2. The Service Provider also acknowledges and assigns to NSDC in perpetuity and exclusively, Intellectual Property Rights in any deliverables created under this Agreement, in the course of provision of the Services. This includes reports, tables, presentations, handbook developed specifically for NSDC in furtherance of providing Services under this Agreement.
- 11.3. NSDC acknowledges that the Intellectual Property Rights owned by Service Provider, independently as separate from providing Services under this agreement, including tools for provision of Services of this Agreement, including discussion notes, learning tools, format and similar materials developed by the Service Provider in the course of its business, shall belong to the Service Provider only.

12. **Indemnification**

The Service Provider shall indemnify and hold the other Party harmless from third party claims arising from or related to:

- i. A breach of the terms of this Agreement; or
- ii. A violation of any Applicable Law.

The foregoing is, however, conditional upon NSDC notifying the Service Provider in writing and in detail without undue delay

13. **Limitation of Liability**

- 13.1. Neither Party shall be liable for any consequential, incidental, special, indirect, exemplary or punitive damages, or damages for any loss of profits, revenue or business, regardless of the nature of the claim, even if the other Party has been notified of the possibility of such damages.
- 13.2. The Service Provider or any of their employees or vendors shall not be liable to NSDC or any other person or entity for an amount of damages under this Agreement in excess of the amount of Consideration paid or payable for the applicable Services

13.3. The above limitations of liability and exclusions from liability set forth in this Clause 13 shall not apply (i) in cases of gross negligence or wilful misconduct; or (ii) to any liability arising out of fraudulent conduct

14. Use of Confidential Information

14.1. The Service Provider may be given access to Confidential Information from NSDC in order to perform its obligations under this agreement.

14.2. The Service Provider shall:

- (a) use the Confidential Information of NSDC only for purposes of complying with its obligations under this Agreement and, without limiting the generality of the foregoing, shall not, directly or indirectly, deal with, use, exploit or disclose such Confidential Information or any part thereof to any person or entity or for any purpose whatsoever (or in any manner which would benefit any competitor of NSDC) except as expressly permitted hereunder or unless and until expressly authorized in writing to do so by NSDC;
- (b) use reasonable efforts to treat, and to cause all its officers, agents, servants, employees, professional advisors and contractors and prospective contractors to treat, as strictly confidential all Confidential Information. In no event shall such efforts be less than the degree of care and discretion as the Service Provider exercises in protecting its own valuable confidential information. Any contractors engaged by or prospective contractors to be engaged by the Service Provider in connection with the performance of the Services shall be required to assume obligations of secrecy equal to or greater than the obligations that the Service Provider has assumed in this Agreement with respect to the Confidential Information;
- (c) not, without the prior written consent of NSDC, disclose or otherwise make available NSDC's Confidential Information or any part thereof to any party other than those who need to know the Confidential Information for the purposes set forth herein;
- (d) not copy or reproduce in any manner whatsoever the Confidential Information of NSDC or any part thereof without the prior written consent of NSDC, except where required for her own internal use in accordance with this Agreement; and
- (e) promptly upon the request of NSDC, return and confirm in writing the return of all originals, copies, reproductions and summaries of Confidential Information or, at the option of NSDC, destroy and confirm in writing the destruction of the Confidential Information;

14.3. The obligations of confidentiality contained in this Agreement are intended to survive the termination of this Agreement.

15. Force Majeure

15.1. Neither Party shall be liable for any failure or delay in performance of any obligation, under this Agreement to the extent such failure or delay is due to a Force Majeure event. The

Party having any such cause shall promptly notify the other Party in writing of the nature of such cause and the expected delay.

- 15.2. If, however, it is not feasible for a Party to prevent the occurrence of the Force Majeure event as a result of which that Party is prevented from performing its obligation for more than thirty (30) days due to such Force Majeure Event (“**Aggrieved Party**”), the other Party may decide to release the Aggrieved Party from performing its obligation hereunder or may modify the relevant provisions of this Agreement affected by the Force Majeure event so long as the Force Majeure event continues, in order to enable the Aggrieved Party to perform its other obligations hereunder as so modified.

16. **Governing Law and Dispute Resolution**

- 16.1. This Agreement shall be governed by the laws of India.

- (a) In the event of any dispute, controversy or claim arising in any way out of or in connection with this Agreement (a “**Dispute**”), the Parties shall attempt in the first instance to resolve such Dispute through amicable discussion. If the Dispute is not resolved through such amicable discussion within 30 (thirty) days of a notice of Dispute being given or such longer period as the Parties agree to in writing, then any Party may refer the dispute for final resolution by arbitration.
- (b) Any Dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the Parties. The arbitration proceedings shall be held at New Delhi, India.
- (c) The Parties to an arbitration shall keep the arbitration confidential and shall not disclose to any person, other than those necessary to the proceedings, the existence of the arbitration, any information submitted during arbitration, any documents submitted in connection with it, any oral submissions or testimony, transcripts or any award unless disclosure is required by law or is necessary for permissible court proceedings such as proceedings to recognise or enforce an award.

- 14.1 **Jurisdiction:** The Parties hereby agree that courts in New Delhi shall have the exclusive jurisdiction to determine any disputes arising out of, or in relation to, the terms and conditions of this Agreement.

17. **Miscellaneous**

- 17.1. **Entire Agreement:** This Agreement, the Annexures and recitals hereto (which are hereby expressly incorporated herein by reference) constitutes the entire understanding between the Parties and supersedes all other discussions and understanding between the Parties.
- 17.2. **Assignment:** This Agreement and the rights and obligations herein may not be assigned by either Party without the written consent of the other Party.
- 17.3. **Amendments and Waivers:** This Agreement may be amended only with the written consent of both Parties. Any amendment or waiver effected in accordance with this Clause shall be binding upon both Parties.

- 17.4. **Delays or Omissions:** No delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach or default of any Party hereto under this Agreement, shall impair any such right, power or remedy of any Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring; nor shall any waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this in the Agreement, or by law or otherwise afforded to any Party shall be cumulative and not alternative.
- 17.5. **No Partnership:** Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership or a joint venture between the Parties. Neither Party shall have any authority to bind the other Party in any manner whatsoever. This Agreement shall be construed to have been entered on a principal-to-principal basis.
- 17.6. **Notices:** Except as may be otherwise provided herein, all notices, requests, waivers and other communications (“Notices”) shall be deemed to be delivered as provided herein: (a) if delivered to the addressee (“Receiving Party”) by hand: upon the Notice being acknowledged by written receipt by the Receiving Party; (b) if sent by facsimile: upon the receipt of transmission report confirming transmission; (c) if sent via an overnight courier: upon receipt (evidenced by proof of delivery). The Notices shall be addressed to the Parties at the contact details provided below. Each Party shall promptly inform the other Parties of any change to its contact details.

To NSDC:

Address: 301, West Wing, World Mark – I, Aerocity, New Delhi - 110037
Phone: 01147451600

To Service Provider:

□

- 17.7. **Severability:** The invalidity or unenforceability of any provision in this Agreement shall in no way affect the validity or enforceability of any other provision herein. In the event of the invalidity or unenforceability of any provision of this Agreement, the Parties will immediately negotiate in good faith to replace such a provision with another, which is not prohibited or unenforceable and has, as far as possible, the same legal and commercial effect as that which it replaces.
- 17.8. **Survival:** The provisions of Clauses and such other provisions of this Agreement, which are by their nature, intended to survive the termination of this Agreement, shall survive the termination of this Agreement.
- 17.9. **Counterparts:** This Agreement may be executed in two (2) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the date and year hereinabove first written.

NSDC By _____ Name: Title:	<input type="checkbox"/> By _____ Name: Title:
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SCHEDULE I

SERVICE DESCRIPTION

[SCOPE OF WORK TO BE INSERTED HERE ALONG WITH ANY SPECIFIC DELIVERABLES]

[OPTIONAL]

SCHEDULE -II

Sr. No	Activity	Timeline	Amount Payable

[Other relevant terms, including permissible deductions]

1.

Schedule -III Fraudulent or Corrupt Practices

18. Section 6. NSDC Policy – Corrupt and Fraudulent Practices

1.1 It should be kept in mind that all actions towards award of Contract and its implementation on the ground have to be fair, consistent, transparent and based on highest standard of ethics. Similarly, bidders/suppliers/contractors/consultants associated in the procurement of Goods, Works & Consultancy, are expected to observe the highest standard of ethics during procurement and execution of contracts. In pursuance to above:

- a. Proposal for award may be rejected, if it determines that the bidder, recommended for award, and/or its employees, sub-contractors, sub-consultant, sub-vendors, agents have engaged in corrupt or fraudulent practices in competing for the Contract in question;
- b. Portion of the funds allocated to a contract may be cancelled, in full or in part, if it is determined that corrupt or fraudulent practices were engaged by contractor/consultant and/or its employees, subcontractors/sub-consultants, sub-vendors, agents for getting the Contract or during the execution of a Contract;
- c. A firm may be declared as ineligible, either indefinitely or for a stated period of time, to be awarded a Contract, if it, at any time, determines that the firm has been engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of above provision, the terms, "Corrupt Practice" and "Fraudulent Practice", mean following:

"corrupt practice" means offering, giving, receiving, or soliciting anything of value to influence the action of NSDC's official(s) in the procurement process or in the contract execution; and

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid/proposal prices

at artificial, non- competitive levels.

[OPTIONAL]

Schedule IV- KEY PERSONNEL

[PROVIDE TITLE, DESIGNATION, CV OF KEY PERSONNEL]