



भारतीय साधारण बीमा निगम  
General Insurance Corporation Of India

## TENDER DOCUMENT

FOR

**Renewal of 700 Licenses of McAfee Endpoint Protection - Advanced Suite & 3  
Years GOLD Support for GIC Re**



**भारतीय साधारण बीमा निगम  
General Insurance Corporation of India**

Suraksha, 170, J. Tata Road,  
Churchgate, Mumbai – 400 020.  
☎ → +91 22 22867116, 22867156  
E-mail → itmg@gicofindia.com

Ref. No. : ITMG/ 30 /2016-17

Date of issue of Tender Document & download from GIC Re web site: 23.05.2016 to 20.06.2016

Submit before: 20.06.2016 - 03:00 PM

Web Site download copy →  (please ✓ in the box)

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TENDER DOCUMENT

**REQUEST FOR PROPOSAL FOR PURCHASE OF ENDPOINT PROTECTION - ADVANCED SUITE**

**SECTION – I**

**1.1 INTRODUCTION:**

General Insurance Corporation of India (GIC Re) is a wholly owned Government of India undertaking and has been catering to the needs of Indian General Insurance Industry for the past four decades. GIC of India is currently the designated "Indian Reinsurer". As a professional Reinsurer, GIC of India effectively provides comprehensive reinsurance services to all the direct property and casualty insurers in Indian Market.

GIC also assumes reinsurance from foreign insurance companies. GIC of India has started leading the reinsurance programmes of several insurance companies in neighbouring SAARC Countries, South East Asia, Middle East and African continent. To offer its International clientele an easy accessibility and efficient service, GIC of India has enhanced its global presence by opening offices in London, Dubai and Malaysia.

**1.2 BROAD REQUIREMENT:**

The Sealed tenders are invited for **Renewal of 700 Licenses of McAfee Endpoint Protection - Advanced Suite (EPACGE - DA) & 3 Years GOLD Support for GIC Re** for computers, laptops and servers installed in GIC Re head office at Suraksha and residences of executives. This procurement will be for renewal of 3-year site license software for all computers, laptops and servers etc. including regular updates and upgrades of the console management.

The support renewal proposed to be procured through the present tender are as follows:

S. No.	Support Renewal Proposed to be purchased	Licenses
1	<b>Renewal of Licenses of McAfee Endpoint Protection - Advanced Suite (EPACGE - DA) &amp; 3 Years GOLD Support for GIC Re</b>	700

**1.3 TENDER DOCUMENT:**

Detailed Tender Document (non-transferable) covering eligibility requirements, technical specifications and terms & conditions may be obtained by interested and eligible bidders by downloading from the GIC Re website i.e. [www.gicofindia.com](http://www.gicofindia.com), from **23.05.2016 to 20.06.2016**.

#### **1.4 IMPORTANT DATES:**

<b>Event / Activity</b>	<b>Date / Time</b>
Release of Tender	<b>23.05.2016</b>
Last Date for receipt of Queries from bidders	<b>10.06.2016</b>
Last Date for Submission of Sealed Tender Bids	<b>20.06.2016 till 03:00 PM</b>
Opening of Pre-qualification Bids	<b>20.06.2016 at 3:30 pm</b>
Opening of Commercial Bids	<b>Date/Time will be intimated later.</b>

- Clarifications on queries will be uploaded on the GIC Re website <http://www.gicofindia.com> after last date of receipt of queries.

#### **1.5 PRE-QUALIFICATION CRITERIA:**

The bidders should fulfill following criteria:

- PQ1 Vendor should be a company incorporated under Indian Companies Act, 1956.
- PQ2 Bidders should have had an annual turnover of ₹20 lakh during latest accounting year for the sale of software. Provide a copy of the firm's most recent audited financial statements.
- PQ3 The vendor should be an authorized reseller/ channel partner of the McAfee. They should provide authorization letter for providing the service from the Principle vendor.
- PQ4 State the firm's references, including the name and telephone number of a contact person which the corporation may call. The firm's experience in providing anti-virus Services will be considered, and Documentary proof of supply of similar product to any Government organization will also be considered.
- PQ5 The vendor should be having a registered office at Mumbai.
- PQ6. The bidder should not have been blacklisted by any department or undertaking of the Government of India and the Government of Maharashtra. Undertaking on the official letter-head of the company that the bidder has not been blacklisted by any department or undertaking of the Government of India or the Government of Maharashtra or an Indian PSU (attach self-declaration on letter head) as per **Annexure – VI**.

Supporting document for fulfilling the pre-qualification criteria (**Annexure I**) will have to be submitted in envelope 'A' containing pre-qualification cum technical bid. Bids from the vendors who do not qualify based on the above criteria will be rejected.

The firm's experience in providing anti-virus services will be considered, and documentary proof of supply of similar product to any government organization will also be considered.

**SECTION – II:**  
**INSTRUCTIONS / GUIDELINES TO TENDER BIDDER**

**2.1 BINDING TO ALL TERMS & CONDITIONS:**

The Bidders are advised to submit the tender strictly based on the terms and conditions and specifications contained in the tender document including amendments, if any, issued by GIC Re prior to submission of tender. The formats prescribed in the tender documents should be scrupulously followed by the vendors. Tender bids that do not comply with the terms and conditions are liable for rejection.

**2.2 SUBMISSION OF TENDER:**

The tender offer should be submitted in one sealed envelope super scribed as:

**“Renewal of Licenses of McAfee Endpoint Protection - Advanced Suite (EPACGE - DA) & 3 Years GOLD Support for GIC Re”**

which should in turn contain two sealed envelopes superscribed as;

Earnest Money Deposit and Prequalification bid	Envelope ‘A’
Commercial bid	Envelope ‘B’

Each page of the commercial bid has to be initialed by authorised official along with the Company seal.

**I. Envelope ‘A’**

The Envelope ‘A’ should contain the documents listed below:

- Earnest Money Deposit (EMD) of **₹1,00,000/- (Rupees One Lakh only)** which should be deposited in the form of Demand Draft/Pay Order (PO) /Bank Guarantee from any commercial bank / Bank Transfer by **NEFT or RTGS** into the account of "**General Insurance Corporation of India**" as per details given below:-

Sr. No.	Details of Bank Account	
1	Type of Account	Current
2	Account Number	001020100010245
3	Name of the Bank	Bank of India
4	Name of the Branch	Churchgate, Mumbai
5	Address of Branch	Eros Building, Churchgate, Mumbai – 400 020
6	MICR Code No.	400013014
7	IFSC Code No.	BKID0000010

Demand Draft/Pay Order (PO) should be accompanied by the bid in original. In case of bank transfer by NEFT or RTGS, the transaction slip should be accompanied with the bid.

The declaration form as per the **Annexure – I**, shall be made on the letter head of the bidder's company, duly signed by authorized official along with the company seal.

The pre-qualification bid submitted in the first sealed Envelope 'A' should contain below listed documents:-

- PQ1 Vendor should be a company incorporated under Indian Companies Act, 1956.
- PQ2 Bidders should have had an annual turnover of ₹20 lakh during latest accounting year for the sale of software. Provide a copy of the firm's most recent audited financial statements.
- PQ3 The vendor should be an authorized reseller/ channel partner of the McAfee. They should provide authorization letter for providing the service from the Principle vendor.
- PQ4 State the firm's references, including the name and telephone number of a contact person which the corporation may call. The firm's experience in providing anti-virus Services will be considered, and Documentary proof of supply of similar product to any Government organization will also be considered.
- PQ5 The vendor should be having a registered office at Mumbai.
- PQ6. The bidder should not have been blacklisted by any department or undertaking of the Government of India and the Government of Maharashtra. Undertaking on the official letter-head of the company that the bidder has not been blacklisted by any department or undertaking of the Government of India or the Government of Maharashtra or an Indian PSU (attach self-declaration on letter head) as per **Annexure – VI**.

## II. Envelope 'B'

This envelope should contain dully filled Commercial bid as per **Annexure II** which shall be on the letter head of the bidder's company, duly signed by authorized official along with the company seal.

### **2.3 PLACE OF SUBMISSION:**

The tender offer as indicated above should be addressed to Information Technology Management Group(ITMG) and should be deposited in the tender box kept at the following address:-

**General Insurance Corporation of India,  
Information Technology Management Group,  
1st Floor, Suraksha, 170, J. Tata Road,  
Churchgate, Mumbai - 400020  
Contact No: +91-22-22867116 / 22867156  
E-mail: [itmg@gicofindia.com](mailto:itmg@gicofindia.com)**

Tender should be submitted on or before **03.00 PM** on **20.06.2016**. GIC Re will not be responsible for delay of submission of the tender document under any circumstances. GIC Re shall not be responsible for delayed delivery or non-delivery of tender that are send by post. If the last date for submission of tender is declared a holiday by the authorities then the tender can be submitted on the next working day before 03.00 PM.

<b>Last Date of submission of Tender Bids</b>	<b>20.06.2016 till 3.00 PM</b>
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#### **2.4 OPENING OF PRE-QUALIFICATION BID**

- I. The Sealed Envelope “A” containing the Pre-qualification Bid would be opened at the above address in the presence of those bidders who have submitted the tender bids and wish to remain present. Such authorized representatives should bring a letter on company’s letterhead authorizing him/her to attend the opening of the bids. Envelope ‘B’ containing commercial bid would be put back in the tender box and sealed.

**The date and time of opening of the Commercial bid would be intimated to the short listed bidders at a later date.**

- II. **The Sealed Envelope “B” containing Commercial Bid** of only those vendors would be opened who have been short listed on the basis of Pre-qualification criteria. The authorized representative should bring a letter on company’s letterhead authorizing him/her to attend the Commercial bid opening. The signature of the representative of the tenderer shall be obtained in the tender opening register.

#### **2.5 DETAILS OF WORK INVOLVED**

Scope of Work as per **Annexure-III**.

#### **2.6 CONTRACT PERIOD**

The contract period will be from 26<sup>th</sup> July, 2016 to 25<sup>th</sup> April 2019.

#### **2.7 EARNEST MONEY DEPOSIT (E.M.D.)**

- Every bidders has to submit EMD of Rs. 1,00,000/-
- The EMD will not carry any interest.

#### **2.8 FORFEITURE OF E.M.D.**

The EMD made by the tender bidder will be forfeited if the bidder –

1. Withdraws the tender bid after acceptance by GIC Re; or

2. Withdraws the tender bid before the expiry of the validity period of the tender; or
3. Violates any of the provisions of the terms and conditions of the tender.
4. Or in case of a successful bidder, if the bidder fails to furnish the SLA and/or PBG in accordance with terms and conditions of the tender document.

### **2.9 REFUND OF E.M.D.**

1. EMD is refundable to unsuccessful bidders after completion of tender process i.e. after declaration of successful bidder of the tender process.
2. EMD of the successful bidder shall be refunded after furnishing SLA and/or execution of PBG which would be 10% of the total commercial bid value of the successful bidder.

### **2.10 REJECTION OF TENDERS**

The tender is liable to be rejected due to any of the following reasons:-

1. If it is received after the expiry of the due date and time.
2. If it is not received in sealed condition.
3. If the bid is conditional.
4. If it is not in conformity with the instructions mentioned herein.
5. If it is not properly signed by the tender bidder as required.
6. If it is incomplete including non-furnishing of the requisite documents.
7. Any billing linked to GIC Re's assets and / or revenue will disqualify the bidder.

GIC Re reserves the right to reject the tender without assigning any reasons whatsoever and the decision of GIC Re would be final and binding and no communication would be entertained in this regard.

### **2.11 VALIDITY OF TENDERS**

Tender prices should be valid for acceptance for a minimum period of 60 (sixty) days from the date of bid opening prescribed by GIC Re. Offers with lesser validity period are liable for rejection.

### **2.12 SERVICE LEVEL AGREEMENT (SLA)**

The successful bidder will sign a Service Level Agreement (SLA) with GIC Re and submit a Deed of Indemnity within 15 days after accepting the Purchase Order. SLA and Deed of indemnity should be submitted in the format given in **Annexure-IV & Annexure-VII** respectively. GIC Re reserves the right to amend/ modify / delete all or any of the terms set out in the said draft Agreement.



### **2.13 PERFORMANCE BANK GUARANTEE (PBG):**

The successful bidder will provide Bank Guarantee to GIC Re at the rate of 10% of the total order value for performance warranty within 15 days after accepting the Purchase Order. Performance bank guarantee should be submitted in the format given in **Annexure-V**. GIC Re reserves the right to amend/ modify/ delete all or any of the terms set out in the said draft agreement.

### **2.14 GENERAL TERMS**

- i. This tender document is not transferable.
- ii. GIC Re reserves the right to:
  - a. Accept/Reject any or all of the tenders submitted by vendors, without assigning any reasons thereof.
  - b. Not purchase any or all the equipments without assigning any reasons thereof.
  - c. Increase or decrease the quantities at the time of placing the order without changes in the rates quoted by the vendor.
  - d. Add, modify, relax or waive any of the conditions stipulated in the tender wherever and whenever deemed necessary.

### **2.15 AUTHENTICATION OF BID:**

The original and all copies of the bid document shall be signed by a person / persons duly authorized to bind the bidder to the contract. The person/persons signing the bid document shall initial all pages of the bid document, including pages where entries or amendments have been made.

### **2.16 PRICE:**

1. Price quoted shall be in Indian Rupees.
2. The contract shall be awarded on Lump Sum (Firm, Fixed Price) basis.
3. The vendors should quote only the base price. All applicable taxes/Octroi will be paid as actuals. Octroi charges would be paid, wherever applicable and would be reimbursed on production of actual documents.
4. There shall be no escalation in the prices once the prices are fixed and agreed by the company and the vendors. But, any benefit arising out of any subsequent reduction in the prices due to reduction in duty & taxes after the prices are fixed and before the agreement should be passed on to GIC Re.

### **2.17 DELIVERY SCHEDULE & PAYMENT TERMS:**

The stipulated delivery schedule is as follows:

- a) The successful Tender bidder should deliver the licenses within a period of 3 weeks from the date of issuance of purchase order.

Payment terms are as follows:

100% against delivery and installation (if required) of the 700 licenses.

### **2.18 PENALTY:**

The Service Provider shall adhere to all requirements laid out in the RFP and this contract. In the event delayed delivery, installation i.e. after the expiry of the delivery period as agreed by both

the parties, the Service Provider shall be liable for a penalty deduction at a percentage of the value of the Purchase Order subject to a maximum of 10% (ten percent) as detailed below:

- @ 1% up to one week;
- @ 2.5% up to two weeks;
- @ 5% up to three weeks;
- @ 10% for four weeks and above;

For the purpose of this clause, part of the week is considered as a full week.

The Service Provider shall attend to calls reporting error / faults on the same day of lodging of a complaint and get any error or fault corrected within two working days. For this purpose, calls received after 5.00 P.M. shall be considered as received during next working day.

If the Service Provider does not attend to each call and rectify the same and get the system in proper working condition within two working days, GIC will deduct ₹ 1000/- (₹ One thousand) per working day from PBG.

### **2.19 TERMINATION OF CONTRACT**

GIC Re shall have the unilateral right to terminate any contract(s) formed between GIC Re and the successful vendor(s) by giving thirty (30) days written notice. Termination may result from non-performance, product quality, failure to meet warranty/service commitments, inadequate technical expertise, business failure, etc.

### **2.20 SUB-CONTRACTING**

The successful vendor will not, without the written consent of GIC of India (GIC Re), make any assignment or sub-contract for the provision of any services hereby bid on.

**Annexure-I**

SR.NO	ITEM	INFORMATION TO BE FURNISHED BY THE TENDERER			
1	Name of Organization:				
2	Type of organization: (Pvt. Ltd. / Public Ltd) – Reference: Pre-qualification [PQ-1]				
3	Year of establishment				
4	Address (including telephone numbers and email-id)				
5	Name of the official in charge of this bid with phone / mob. Nos./Email Id				
6	Nature of business	(I)			
		(II)			
		(III)			
10	Location of service centre.				
11	Sales Tax Registration No.				
12	CST Registration No.				
13	PAN No.				
14	Turnover in the last financial year for sale of software products. (Please attach copy of audited financial statements) [PQ- 2]				
15	Authorized reseller and channel partner letter (PQ3)				
16	Details of previous job, if any, done for GIC Re.				
17	Details of Purchase Order for Antivirus (with date for reference) [PQ- 4]	Name and address of organization	Name of Software	Nos. of Licenses provided	Contract value (₹)



SR.NO	ITEM	INFORMATION TO BE FURNISHED BY THE TENDERER			
18	Details of fully equipped & manned Registered Office/ service centers/ networks in Mumbai (Attach proof of address) [PQ-5]				
19	The bidder should not have been blacklisted by any department or undertaking of the Government of India and the Government of Maharashtra[PQ-6]				
20	Bidder may provide following Bank details				
	• Type of Account				
	• Account Number				
	• Name of the Bank				
	• Name of the Branch				
	• Address of Branch				
	• MICR Code No.				
• IFSC Code No.					

**Notes:**

1. The documents as listed above should be of the same company and not of corporate / group / affiliated / associate company.
2. On request original documents should be produced failing which the tender would be liable for rejection.
3. GIC Re reserves the right to independently verify the claims of the bidder.

I /We declare that I/We have examined the terms and conditions mentioned in the Bid document and accordingly agree and accept the same for tender/bid filing.

Seal of the firm/company  
Authorized

Signature of the  
Representative of Bidder

Tenderer :

Date:

**Note:** The above tender cum bid format should be typed on the official letter head of the bidder. Separate sheet is to be enclosed if the space provided is not sufficient for the data to be provided. List of enclosures should be attached with the bid form.



**COMMERCIAL BID**

Details of Software	Quantity (Licenses)	Cost per License (INR) (including 3 years GOLD support)	Total Cost (i.e. 700 X Cost per license)(INR)
<b>Renewal of 700 Licenses of McAfee Endpoint Protection - Advanced Suite (EPACGE - DA) &amp; 3 Years GOLD Support for GIC Re (24X7)</b>	700		
(*)Please quote only the base price. All applicable taxes/Octroi will be paid as actuals. Octroi charges would be paid, wherever applicable and would be reimbursed on production of actual documents.			

Place: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Name : \_\_\_\_\_

Designation: \_\_\_\_\_

Company Name & Stamp: \_\_\_\_\_



[Note: This letter should be on the letter head of Bidder and should be signed by a an Authorized Signatory with Name and Seal of the Company]

To

The Dy. General Manager,  
ITMG,  
GIC of India,  
Suraksha, 170, J.Tata Road,  
Churchgate, Mumbai – 400 020.

Dear Sir,

**Sub: Tender Ref: ITMG/ /2016-17 dated , 2016**

We thank you for providing us an opportunity to participate in the subject RFP. Please find our commercial offer as per Annexure-II of commercial bid format.

We also confirm that we are agreeable to the terms & conditions mentioned in the RFP.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

Signature \_\_\_\_\_

Name \_\_\_\_\_

Signature of the Authorized Signatory with seal of Company

**Annexure - III**

**SCOPE OF WORK AND OTHER CONDITIONS FOR PROCUREMENT OF ANTIVIRUS**

**McAfee Endpoint Protection - Advanced Suite (EPACGE - DA)** are installed in computers at the Corporation's Head office, Branch offices & Residence of Executives both for its PC users and Laptop users. As part of this renewal of licenses, latest version of the software have to be installed in all the 700 systems.

The Selected Firm will be responsible for supplying the corporation with at least one copy of master media for all products included in the Agreement

The Goods and Services will include anti-virus software product(s) for all versions of Windows, such as Windows Vista and Windows server 7, Windows 8, Windows 10, Windows 2012, Windows 2003, 2008 servers etc. The current version of ePO console is 5.3.

The support services will include:

- a) Time to Time upgradation of existing ePO console management to the latest version.
- b) Migration of McAfee ePO console application from one server to another server.
- c) Troubleshoot Antivirus issues such as virus outbreaks, virus definition issues etc. which may include Configuration & Management of McAfee ePO console application.
- d) Resolution of Incident/problem/request logs and co-ordinate with Helpdesk of McAfee.
- e) Vendor should visit GIC Re if problem does not get solved remotely.
- f) Vendor will update the pattern file, upgrade the product and apply all patches related to contract without any additional cost during the contract period.
- g) Reports to be submitted each time a call is logged on and sign off has to be taken from us with RCA/synopsis of the steps taken to resolve the incident.
- h) Activation and installation of product features on Server and Client systems like installation of software, installation of Antispam features on email solution, configuration of Device Control etc.
- i) Cleanup of the existing network from malware, virus or any such other attacks.
- j) Delivery and installation of anti-virus software on all PC's, servers and Laptops, after isolating and cleaning the network of all the viruses.
- k) Locations for entire scope work to be done are as mentioned below :
  - i. G.I.C of India, Churchgate Head Office.
  - ii. G.I.C of India, Oriental House, 7, Jamshedji Tata Road, Churchgate,
  - iii. G.I.C of India, ADOR House, 6, K Dubash Marg, Kala Ghoda, Fort, Mumbai, Maharashtra 400001
  - iv. Residences of Executive and officers within Mumbai Limits. (approx.30 Nos.)
- l) Installation would be deemed to have been successfully completed after a comprehensive demonstration of the working of the setup.



**SERVICE LEVEL AGREEMENT FOR RENEWAL OF LICENSES OF MCAFEE ENDPOINT PROTECTION -  
ADVANCED SUITE (EPACGE - DA) & 3 YEARS GOLD SUPPORT FOR GIC RE**

(To be typed on stamp paper worth Rs. 100/-)

This Service Agreement ("Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_ 2016  
BY AND BETWEEN

General Insurance Corporation of India, a wholly owned Company of Government of India, having its registered office at Suraksha, 170, J. Tata Road, Churchgate, Mumbai- 400020 (hereinafter referred to as "GIC Re"), which expression shall, unless it be repugnant to the meaning and context thereof, include its successors, authorized agents, representatives and permitted assigns of the one part.

AND

\_\_\_\_\_, having its registered office at \_\_\_\_\_, (hereinafter referred to as "Service Provider"), which expression shall, unless it be repugnant to the meaning and context thereof, include its successors, authorized agents, representatives and permitted assigns of the other part.

RECITALS

WHEREAS GIC Re is desirous of appointing a Service Provider for **RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE – DA) & 3 YEARS GOLD SUPPORT FOR GIC RE** conforming to all the specifications as per the Request for proposal (hereinafter referred to as "RFP" which expression shall include all attachments and annexures thereto as well as all amendments, modifications and alteration thereto.

AND WHEREAS GIC Re has called for bids from eligible bidders

AND WHEREAS the Service Provider has submitted its bid which has been considered as appropriate by GIC Re based on the documents and the commercial bid submitted by the Service Provider during the tendering process.

AND WHEREAS the Service Provider represents that he has the necessary experience for providing **LICENSES FOR MCAFEE ENDPOINT PROTECTION- ADVANCED SUITE (EPACGE-DA)** as referred to herein and has submitted the bid for providing the required services against Tender No. .... all in accordance with the terms and conditions set forth herein and in the RFP and any other reasonable requirements of GIC Re from time to time.



AND WHEREAS GIC Re has accepted the bid of the Service Provider based on the assumed veracity of the documents submitted by it under the tendering process and has issued Purchase order No. \_\_\_\_\_ Dated \_\_\_\_\_.

Now it is hereby agreed to, by and between the parties as under: AGREEMENT

#### 1. Definitions:

In this Contract, the following terms shall be interpreted as follows:

1.1 “Confidential Information” will carry the same definition as given in the Reciprocal Non-Disclosure Agreement (NDA);

1.2 “Contract” means the Agreement entered into between GIC Re and the “Service Provider” as recorded in this Contract form signed by GIC Re and the “Service Provider” including all Attachments and Annexes thereto, the RFP and all Annexes thereto, the agreed terms as set out in the Bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time;

1.3 “Document” means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes and databases or microfilm or computer generated microfilm.

1.4 “Effective Date” means the date on which this Contract is signed and executed by the parties hereto. If this Contract is executed in parts, then the date on which the last of such parts is executed shall be construed to be the Effective Date;

1.5 “Intellectual Property Rights” means any patent or patent applications, copyright, trademark, trade name, business name, internet domain names, email address names, design, trade secret, permit, service marks, brands, propriety information, moral rights, knowledge, technology, licenses, databases, computer programs, software, know how, rights in confidential information, rights in invention or other form of intellectual property right, title, benefits or interest, whether registered or unregistered and including any form of application for any of the foregoing which may exist anywhere in the world, whether arising before or after the execution of this Contract and the right to ownership and registration of these rights;

1.6 “Kick Off Meeting” means a meeting convened by GIC Re to discuss and finalize the work execution plan and procedures with the Service Provider.

1.7 The “Service Provider” means the company/firm/entity with whom the order has been placed for **RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA)& 3 YEARS GOLD SUPPORT FOR GIC RE** as specified in this contract.

1.8 “Service Provider’s team” means the Service Provider as per 1.7 above, and its successors, authorised agents, representatives and permitted assigns and includes the employees of Service Provider, their authorized agents and representatives or other personnel employed or engaged either directly or indirectly by the Service Provider for the purposes of this Contract.

1.9 “Negligence” means: any act or failure to act (whether sole, joint or concurrent) by a person or entity which was intended to cause, or which was in reckless disregard of or wanton indifference to, avoidable and harmful consequences which such person or entity knew, or should have known or with reasonable diligence could have known to result from such act or failure to act.

Notwithstanding the foregoing, negligence shall not include any action taken in good faith for the safeguard of life or property,

1.10 “Willful Misconduct” means: “intentional disregard of good and prudent standards of performance or proper conduct under this CONTRACT with knowledge that it is likely to result in any injury to any person or persons or loss or damage of property.

1.11 “Parties” means GIC Re and the Service Provider and “Party” means either of the Parties;

1.12 “Service” means facilities/services to be provided as per the requirements specified in the RFP and any other incidental services, such as Supply, installation, implementation, maintenance, provision of technical assistance and other such obligations of the Service Provider covered under this Contract;

1.13 “Service Specification” means and includes detailed descriptions, statements to technical data, performance characteristics, and standards as applicable and as specified in this Contract or the RFP as well as those specifications relating to Industry standards and codes applicable to the performance of the work, work performance quality and the specifications affecting the works or any additional specification required to be produced by the Service Provider to meet the design criteria or completion of the project.

1.14 “The Contract Price” means the price payable to the Service Provider under the Contract for the full and proper performance of its contractual obligations on its part.

## **2. Interpretation**

In this Contract unless a contrary intention is evident:

- 2.1 the Clause headings are for convenient reference only and may not be used for interpretation;
- 2.2 unless otherwise specified a reference to a clause number is a reference to all its sub-clauses;

- 2.3 unless otherwise specified a reference to a clause or sub-clause is a reference to the clause or sub-clause of this Contract including any amendments or modifications to the same from time to time;
- 2.4 a word in the singular includes the plural and a word in the plural includes the singular;
- 2.5 a word importing a gender includes any other gender;
- 2.6 a reference to a person includes a partnership and a body corporate;
- 2.7 a reference to legislation includes legislation repealing, replacing or amending that legislation;
- 2.8 where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings.
- 2.9 in the event of an inconsistency between the terms of this Contract, the RFP and the Bid, the terms hereof contained in this contract shall prevail.

### **3. Conditions Precedent**

This Contract is subject to the fulfillment of the following conditions precedent by the Service Provider.

- 3.1 The Service Provider shall at his own expense deposit with GIC Re within 15 days from the receipt of notification of award of the contract from GIC Re, an unconditional, irrevocable and continuing Performance Bank Guarantee (PBG) from a nationalized bank acceptable to the GIC Re, payable on demand, for the due performance and fulfillment of this Contract.

The Performance Bank Guarantee shall be denominated in the currency of India, INR and shall be in the form of a Bank Guarantee Bond.

The Performance Bank Guarantee shall be valid for a period of 3 years beyond the date of completion of all contractual obligations including warranty obligations, renewable as may be stipulated by GIC Re. The Performance Bank Guarantee amount shall be INR \_\_\_\_\_/- (10% of the total contract value).

All charges whatsoever such as premium, commission etc. with respect to the Performance Bank Guarantee shall be borne by the Service Provider.

No interest shall be payable on the Performance Bank Guarantee.

In the event of the Service Provider being unable to service this Agreement for whatever reason, GIC Re would invoke the Performance Bank Guarantee. Notwithstanding and without prejudice to any rights whatsoever of GIC Re under this agreement, the proceeds of the Performance Bank Guarantee shall be payable to it as compensation for any loss resulting from the Service Provider's failure to complete its obligations under the agreement.

- 3.2 The Service Provider shall obtain all statutory and other approvals required for the performance of the Services under this Contract
- 3.3 GIC Re reserves the right to waive any or all of the conditions specified above in writing and no such waiver shall affect or impair any right, power or remedy that GIC Re may otherwise have.

#### **4. Representations & Warranties**

In order to induce GIC Re to enter into this Contract, the Service Provider hereby represents and warrants as of the date hereof, which representations and warranties shall survive the term and termination hereof, the following:

- 4.1. That the Service Provider has the requisite experience of RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA)& 3 YEARS GOLD SUPPORT FOR GIC RE, the technical know-how, the financial wherewithal and the power and the authority that would be required to successfully provide the Services sought by GIC Re for the purposes of this Contract.
- 4.2. That the Service Provider is not involved in any litigation or legal proceedings, pending, existing, and potential or threatened, that may have an impact of affecting or compromising the performance or delivery of Services under this Contract.
- 4.3. That the representations and warranties made by the Service Provider in the bid or in this contract are and shall continue to remain true and the Service Provider will fulfill all the requirements as are necessary for executing the obligations and responsibilities as laid down in this Contract and the Bid and unless GIC Re specifies to the contrary, the Service Provider shall be bound by all the terms of the Bid and this contract through the term of this contract.
- 4.4. That the Service Provider has the professional skills, personnel, resources and authorizations that are necessary for providing all such services as are necessary to fulfill the services stipulated in the RFP, the bid and this Contract.
- 4.5. That there shall not be any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, movable or immovable as mentioned in any Intellectual Property Rights, licenses and permits.
- 4.6. That the Service Provider shall use only such assets of GIC Re as GIC Re may permit for the sole purpose of execution of its obligations under the terms of the Bid, RFP or this Contract. The same shall be used in a reasonable manner. The Service Provider shall however, have no claim to any right, title, lien or other interest in any such property, and any possession of property for any duration whatsoever shall not create any right in equity or otherwise, merely by fact of such use or possession during or after the term hereof.

- 4.7. That the Service Provider shall procure all the necessary permissions, approvals and licenses for use of various software and any copyrighted process/product free from all claims, titles, interests and liens thereon and shall keep GIC Re indemnified in relation thereto.
- 4.8. That the execution of the Services under this contract is and shall be in accordance and in compliance with all applicable laws.
- 4.9. That all conditions precedent under this Contract have been satisfied.
- 4.10. That neither the execution and delivery by the Service Provider of this Contract nor the Service Provider's compliance with or performance of the terms and provisions of this Contract
- i) will contravene any provision of any Applicable Law or any order, writ, injunction or decree of any court or Governmental Authority binding on it; or
  - ii) will conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any Contract, or instrument to which the Service Provider is a party or by which it or any of its property or assets is bound or to which it may be subject; or
  - iii) will violate any provision of the Memorandum and Articles of Association of the Service Provider.
- 4.11. That the Service Provider certifies that all registrations, recordings, filings and notarizations of this Contract and all payments of any tax or duty, including stamp duty, registration charges or similar amounts which are required to be effected or made by the Service Provider which are necessary to ensure the legality, validity, enforceability or admissibility in evidence of this Contract have been made.
- 4.12. That the Service Provider owns, has license to use or otherwise has the right to use, free of any pending or threatened liens or other security or other interests all its Intellectual Property Rights, which are required or desirable for performance of its services under this contract and regarding the same the Service Provider does not, so far as the Service Provider is aware, in carrying on its business and operations, infringe any Intellectual Property Rights of any person. So far as the Service Provider is aware, none of the Intellectual Property Rights, owned or enjoyed by the Service Provider or which the Service Provider is licensed to use, which are material in the context of Service Provider's business and operations for the performance of this contract are being infringed nor, so far as the Service Provider is aware, is there any infringement or threatened infringement of those Intellectual Property Rights licensed or provided to the Service Provider by any person. All Intellectual Property Rights (owned by the Service Provider or which the Service Provider is licensed to use) required by the Service Provider for the performance of this contract are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken thereon and shall keep GIC Re indemnified in relation thereto.

- 4.13 That time is the essence of this Contract and hence the Service Provider shall at all times maintain sufficient manpower, resources, and facilities, to provide the Services in a business like manner on a timely basis.
- 4.14 That the Service Provider's security measures, policies and procedures are up to date and fully equipped to protect and maintain the confidentiality of the Confidential Information.

That in providing the Services or deliverables or materials, neither the Service Provider nor the Service Provider's Team, shall utilize information which may be considered confidential information of, or proprietary to, any prior employer or any other person or entity;

#### **5. SCOPE OF WORK/CONTRACT:**

Scope of this CONTRACT shall be as defined in the RFP, the Corrigendum's / Addendums issued with respect to such RFP, the bid and this contract.

#### **6. DURATION OF THE CONTRACT:**

This CONTRACT shall remain valid for a period of three (3) years from the effective date. The Service Level Agreement will be for three years.

#### **7. Reporting Progress**

- 7.1 Service Provider shall monitor progress of all the activities specified in this contract and submit free of cost monthly progress report about various aspect of the work to GIC Re. Extracts of the progress report to be termed, as "Executive Summary" shall be submitted, along with monthly progress report. The same shall be submitted in soft copy as well. The periodicity of the monthly progress report/executive summary is subject to change by mutual agreement of both the parties.
- 7.2 The services, and/or labour to be provided by the Service Provider under this Contract and the manner and speed of execution and maintenance of the work are to be conducted to the satisfaction of the representative of GIC Re in accordance with this Contract. Should the rate of progress of the work, compliance to the requirements of the standards of service, or any part of the service at any time fall behind the stipulated time for completion or is found to be too slow to ensure completion of the works on time or insufficient for satisfactory operation of the GIC Re McAfee Server & Client systems, GIC Re's representative shall so notify the Service Provider in writing.
- 7.3 The Service Provider shall reply to the written notice giving details of the measures it proposes to take to expedite the progress so as to complete the work by the prescribed time or to meet the standards of service required, as the case may be. The Service Provider shall not be entitled to any additional payment for taking such steps. If at any time it

should appear to GIC Re or the representative of GIC Re that the actual progress of work does not conform to the approved programme the Service Provider shall produce at the request of GIC Re representative a revised programme showing the modification to the approved programme necessary to ensure completion of the work within the time for completion or steps initiated to ensure compliance to the stipulated requirements.

- 7.4 In case during the **RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA)& 3 YEARS GOLD SUPPORT FOR GIC RE**, the progress falls behind schedule or does not meet the desired requirements, the Service Provider shall deploy extra manpower, resources, infrastructure to make up the progress or to meet the requirements. Programme for deployment of extra man power/ resources/ infrastructure will be submitted to GIC Re for its review and approval. All time and cost effect in this respect shall be borne, by the Service Provider unless otherwise expressly provided in this Contract.

## **8. STATUTORY REQUIREMENTS**

- 8.1 During the tenure of this Contract nothing shall be done by the Service Provider in contravention of any law, Acts or rules and regulations there under or any amendments thereof and it shall keep GIC Re, indemnified in this regard.
- 8.2 The Service Provider and the Service Provider's Team shall not alter / change / replace any hardware component proprietary to GIC Re and / or under warranty or AMC of third party without prior consent of GIC Re.
- 8.3 The Service Provider and the Service Provider's Team shall not without the prior written consent of GIC Re install any hardware or software not purchased / owned by GIC Re.

## **9. CONTRACT ADMINISTRATION**

Both parties shall appoint any individual / organization as their authorized representative through a written notice to the other party as the primary contact of each party with respect to this Contract, which person may be re- designated by a party by notice to the other. Each Representative shall have the authority to:

- 9.1 Exercise all of the powers and functions of his/her Party under this Contract and ensure the proper administration and performance of the terms hereof, other than the power to amend this Contract; and
- 9.2 Bind his or her Party in relation to any matter arising out of or in connection with this Contract.
- 9.3 For the purpose of execution or performance of the obligations under this Contract, GIC Re's representative would act as an interface with the nominated

representative of the Service Provider. The Service Provider shall comply with any instructions that are given by GIC Re's representative during the course of this Contract in relation to the performance of its obligations under the terms of this Contract, the RFP and the Bid.

- 9.4 A Committee comprising of representatives from GIC Re and the Service Provider shall meet on a regular basis to discuss any issues / bottlenecks being encountered. The Service Provider shall draw the minutes of these meetings and circulate to GIC Re.

## **10. RIGHT OF MONITORING, INSPECTION AND PERIODIC AUDIT**

- 10.1 GIC Re reserves the right to inspect, monitor and assess the progress /performance /maintenance of the McAfee license and server at any time during the course of this Contract. GIC Re may demand and upon such demand being made, it shall be provided with any document, data, material or any other information which it may require, to enable it to do the same.
- 10.2 GIC Re shall also have the right to conduct, either itself or through another person as it may deem fit, an audit to monitor the performance by the Service Provider of its obligations/functions in accordance with the standards committed to or required by GIC Re and the Service Provider undertakes to cooperate with and provide to GIC Re / another person appointed by GIC Re all documents and other details as may be required by them for this purpose. Any deviations or contravention identified as a result of such audit/assessment would need to be rectified by the Service Provider failing which GIC Re may, without prejudice to any other rights that it may have issue a notice of default.

## **11. GIC RE'S OBLIGATIONS**

- 11.1 GIC Re's representative shall interface with the Service Provider, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of this Contract. GIC Re shall provide adequate co-operation in providing details, assisting with coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of GIC Re is proper and necessary.
- 11.2 GIC Re shall ensure that timely approval is provided to the Service Provider, where deemed necessary.

## **12. INFORMATION SECURITY**

- 12.1 The Service Provider shall not carry and/or transmit any material, information, layouts, diagrams, storage media or any other goods/material in physical or electronic form, which are proprietary to or owned by GIC Re out of GIC Re's premises without prior written permission from GIC Re.



- 12.2 The Service Provider shall adhere to the Information Security Policy of GIC Re as amended from time to time.
- 12.3 The Service Provider acknowledges that GIC Re's business data and other proprietary information or materials, whether developed by GIC Re or being used by it pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to GIC Re ; and the Service Provider agrees to use utmost care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by Service Provider to protect its own proprietary information. Service Provider recognizes that the goodwill of GIC Re depends, among other things, upon Service Provider keeping such proprietary information confidential and that unauthorized disclosure of the same by Service Provider could damage reputation of GIC Re. Service Provider also recognizes that by reason of Service Provider's duties here under, it may come into possession of such proprietary information, even though it does not take any direct part in or furnish the services performed for the creation of said proprietary information and undertakes to limit access thereto to employees with a need to such access to perform the services required by this contract. Service Provider shall use such information only for the purpose of performing the said services.
- 12.4 The Service Provider shall, upon termination of this contract for any reason, or upon demand by GIC Re whichever is earlier, return any and all information provided to Service Provider including any copies or reproductions, both hard copy and electronic copy.

### **13. INSURANCE**

- 13.1 The Service Provider shall, at his own expense, arrange appropriate comprehensive insurance to cover all risks assumed by the Service Provider under this Contract in respect of its personnel deputed under this Contract. GIC Re will have no liability on this account.
- 13.2 The Service Provider shall take out at his own expense comprehensive insurance policies against all risks of loss or damage caused to the equipment owned by GIC Re or acquired for GIC Re.

### **14. INDEMNITY**

The Service Provider shall execute and furnish to GIC Re a Deed of Indemnity (Annexure VII) indemnifying GIC Re and holding it harmless from and against all costs, loss, damages, expense, claims, on account of bodily injury, death or damage to property (including any intellectual property claims) arising in favour of any person, corporation or other entity (including GIC Re and any third party) or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after this Contract period arising out of:

- 14.1 any negligence or wrongful act or omission by the Service Provider, the Service Provider's Team or any third party in connection with or incidental to this Contract; or
- 14.2 any breach of any of the terms of the Bid as agreed, the RFP and this Contract by the Service Provider, the Service Provider's Team or any third party.
- 14.3 performance or non-performance under this contract.

The indemnity shall be to the extent of 100% in favour of GIC Re.

## **15. CONFIDENTIALITY**

- 15.1 Either Party shall not use Confidential Information, the name or the logo of the other Party except for the purposes of this Contract;
- 15.2 The Parties may disclose Confidential Information in the following circumstances only:
  - i with the prior written consent of the other Party; and
  - ii to a member of their Team ("Authorized Person" for this purpose); and
  - iii if the Authorized Person needs the Confidential Information for the performance of obligations under this Contract; and
  - iv if the Authorized Person is aware of the confidentiality of the Confidential Information and is obliged to use it only for the performance of obligations under this Contract and does not disclose the same to any person not connected with the performance of this Contract or does not use the same to the detriment of the other Party.
- 15.3 Any Confidential Information being used by any Authorized Person will be labelled as confidential.
- 15.4 The Parties shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with the members of their team to the satisfaction of the Party owning Confidential Information.
- 15.5 Either Party shall protect any such Confidential Information of the other Party from unauthorized disclosure to third parties with the same degree of care as it would use for its own similar information. The foregoing restriction shall not apply to any information which is –
  - i. already known by a Party prior to disclosure
  - ii. independently developed by a Party prior to or independent of the disclosure
  - iii. publicly available other than by breach of this Contract
  - iv. rightfully received from a third party without a duty of confidentiality
  - v. disclosed under operation of law
  - vi. disclosed by a Party with the prior written consent of the other Party.

- 15.6 The Parties shall sign a Reciprocal Non-Disclosure Agreement (NDA). Either Party, its antecedents, delegates or other Agencies appointed shall be bound by the NDA and will be held responsible for any breach of the NDA.
- 15.7 Either Party shall notify the other Party promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Contract or with the authority of the Party owning Confidential Information.
- 15.8 Either Party shall be liable to fully recompense the other Party for any loss of revenue arising from breach of confidentiality. The Parties reserve the right to adopt legal proceedings, civil or criminal, against each other in relation to a dispute arising out of breach of obligation under this clause.
- 15.9 The obligations of confidentiality imposed by the clause shall survive any variation, termination or expiration of this contract.

## **16. TERM AND EXTENSION**

16.1 The term of this Contract is as prescribed in clause 6.

16.2 GIC Re reserves the right to grant any extension to the term above mentioned and shall notify in writing to the Service Provider, at least 30 days before the expiration of the term hereof, whether it will grant the Service Provider an extension of the term. The decision to

grant or refuse the extension shall be at the discretion of GIC Re. In case no written communication as aforesaid is received by Service Provider from GIC Re it shall mean GIC Re does not intend to give extension to this contract.

16.3 The Service Provider shall continue to perform all its obligations hereunder, until such reasonable time beyond the Term of this Contract within which, GIC Re shall either appoint an alternative person or create its own infrastructure to operate such Services as are provided under this Contract.

## **17 . PRICES**

17.1 Prices quoted shall be firm and shall not be subject to any upward revision on any account whatsoever throughout the period of this contract.

17.2 The Service Provider shall provide the “Most Preferred Customer” status to GIC Re Accordingly, the prices payable for services shall in no event exceed the lowest price at which the Service Provider offers similar services to any other customer during the currency of this contract.

17.4 If at any time during the period of contract, the Service Provider offers services similar in nature to any other customer, at prices lower than those chargeable under this contract, then the service provider shall extend such reduced prices to GIC Re with immediate effect.

## 18 . CHANGE ORDERS

- 18.1 The Service Provider agrees that the requirements given in specifications of the RFP are broad requirements and are in no way exhaustive and guaranteed by GIC Re.
- 18.2 It shall be the responsibility of the Service Provider to meet all the requirements of any upward revisions and / or additions of quantities / specifications / sizes given in Specifications etc. of the Bid required to be made shall not constitute a change order and shall be carried out without a change order and shall be carried out without any time and cost effect to GIC Re.
- 18.3 Any upward revision and/or additions consequent to errors, omissions, ambiguities, discrepancies in the specification etc. of the Bid which the Service Provider had not brought to GIC Re's notice at the time of the Bid shall not constitute a change order and such upward revisions and/or addition shall be carried out by Service Provider without any time and cost effect to GIC Re.
- 18.4 The change order will be initiated only in case;
- GIC Re directs the Service Provider in writing to include any addition to the scope of work covered under this Contract or delete any part of the scope of the work under this Contract; or
  - The Service Provider requests to delete any part of the work which will not adversely affect the implementation and if the deletions proposed are agreed to by GIC Re and for which cost and time benefits shall be passed on to GIC Re; or
- 18.5 Any change order comprising an alteration which involves change in the cost of the works (which sort of alteration is hereinafter called a "Variation") shall be the Subject of an amendment to this contract by way of an increase or decrease in the Contract Price and adjustment of the implementation schedule if any.
- 18.6 If there is a difference of opinion between the Service Provider and GIC Re representative whether a particular work or part of the work constitutes a change order or not, the matter shall be handled in accordance with the procedures set forth in Clause Procedures for Change Order.
- 18.8 Within 14 working days of receiving the comments from GIC Re on the specification, purchase requisitions and other documents submitted by the Service Provider for approval, the Service Provider shall respond in writing, which item(s) of the Comments is/are potential changes(s) in the Scope of work covered in this Contract and shall advise a date by which change order (if applicable) will be submitted to GIC Re.

## 19 . PROCEDURES FOR CHANGE ORDER

- 19.1 During the installation and configuration of the McAfee antivirus licenses, if the Service Provider observes that any new requirement which is not specific or intended by this Contract has been stipulated by GIC Re while approving the specifications, purchase

- requisitions, other documents etc. it shall verbally discuss the matter with the representatives of GIC Re.
- 19.2 In case such requirement arises from the side of the Service Provider, he would also verbally discuss the matter with the representative giving reasons therefore.
- 19.3 In either of the two cases, the representatives of both the parties shall discuss on the new requirement for better understanding and shall mutually decide whether such requirement constitutes a change order or not.
- 19.4 If it is mutually agreed that such requirement constitutes a “Change Order” then a joint memorandum will be prepared and signed by the Service Provider and GIC Re to confirm a “Change Order” and basic ideas of necessary agreed arrangement.
- 19.5 Upon completion of the study referred to above under Clause 19.4, the results of this study along with all relevant details including the estimated time and cost effect thereof with supporting documents would be submitted to GIC Re to enable GIC Re to give a final decision whether the Service Provider should proceed with the change order or not in the best interest of the works. The estimated cost and time impact indicated by Service Provider shall be considered as a ceiling limit and shall be provisionally considered for taking a decision to implement change order. The time impact applicable to this Contract shall be mutually agreed, subsequently, on the basis of the detailed calculations supported by all relevant back up documents. In case the Service Provider fails to submit all necessary substantiation/calculations and back up documents, the decision of GIC Re regarding time and cost impact shall be final and binding on the Service Provider.
- 19.6 If GIC Re accepts the implementation of the change order under Clause 19.5 above in writing, which would be considered as change order, the Service Provider shall commence to proceed with the relevant work stipulated in the change order pending final agreement between the parties with regard to adjustment of the Contract Price.
- 19.7 In case, mutual agreement as to whether new requirement constitutes the change order or not, is not reached, then Service Provider in the interest of the works, shall take up the implementation of the work, if advised in writing to do so by GIC Re representative pending settlement between the two parties to the effect whether such requirement constitutes a change order or not as per the terms and conditions of this Contract. The time and cost effects in such a case shall be mutually verified and recorded. Should it establish that the said work constitutes a change order; the same shall be compensated as per the clause 19.8 given below.
- 19.8 The Service Provider shall submit necessary back up documents for the change order showing the break-up of the various elements constituting the change order for GIC Re’s review. If no agreement is reached between GIC Re and Service Provider within 60 days after GIC Re's instructions in writing to carry out the change concerning the increase or

decrease in this Contract price and all other matters described above, either party may refer the dispute to arbitration.

## 20 . SUSPENSION OF WORK

The Service Provider shall, if ordered in writing by GIC Re for non-performance, temporarily suspend the works or any part thereof for such a period and such time as ordered. The Service Provider shall not be entitled to claim compensation for any loss or damage sustained by him by reason of temporary suspension of the Works as aforesaid. An extension of time for completion, corresponding with the delay caused by any such suspension of the works as aforesaid shall be granted to the Service Provider, if request for same is made provided that the suspension was not consequent to any default or failure on the part of the Service Provider. In case the suspension of works, is not consequent to any default or failure on the part of the Service Provider, and lasts for a period of more than 3 months, the Service Provider shall have the option to request GIC Re to terminate this Contract with mutual consent.

## 21. TENURE OF CONTRACT

Unless terminated earlier, this Contract shall terminate on the completion of term as specified in this Contract and only after the obligations mentioned in Clause consequence of termination are fulfilled to the satisfaction of GIC Re.

## 22. PENALTY

The Service Provider shall adhere to all requirements laid out in the RFP and this contract. In the event delayed delivery, installation i.e. after the expiry of the delivery period as agreed by both the parties, the Service Provider shall be liable for a penalty deduction at a percentage of the value of the Purchase Order subject to a maximum of 10% (ten percent) as detailed below:

- @ 1% up to one week;
- @ 2.5% up to two weeks;
- @ 5% up to three weeks;
- @ 10% for four weeks and above;
- 

For the purpose of this clause, part of the week is considered as a full week.

The Service Provider shall attend to calls reporting error / faults on the same day of lodging of a complaint and get any error or fault corrected within two working days. For this purpose, calls received after 5.00 P.M. shall be considered as received during next working day.

If the Service Provider does not attend to each call and rectify the same and get the system in proper working condition within two working days, GIC will deduct ₹ 1000/- (₹ **One thousand**) per working day from PBG.

The Service Provider shall replenish the PBG with the amount equal to the penalty levied in not later than 10 working days from the date of levy of penalty.

Each penalty shall be exclusive of the other.

The maximum penalty at any point of time and for any period should not exceed 25% of PBG submitted by the successful bidder. If the penalty exceeds this amount, GIC Re reserves the right to terminate the contract.

### **23 . PAYMENT SCHEDULE**

23.1 The stipulated delivery schedule is as follows:

- a) The successful Tender bidder should deliver the licenses within a period of 3 weeks from the date of issuance of purchase order.

Payment terms are as follows:

100% against delivery and installation (if required) of the 700 licenses.

23.2 All Payments shall be made in Indian Rupees Only and will be subject to provisions of Clause Liquidated Damages.

23.3 GIC Re shall be entitled to make recoveries from the Service Provider's bill, the Performance Bank Guarantee, or from any other amount due to the Service Provider, of the equivalent value of any payment made to it due to inadvertence, error, collusion, misconstruction, misstatement or mistake.

23.4 Bidders should consider all the costs required for successful delivery and implementation of antivirus licenses. GIC Re will not be liable to pay any extra cost, charges or out of pocket expenses.

23.5 Payment for the support renewal will be released upon the successful delivery of the licenses.

### **24 . EVENTS OF DEFAULT BY THE SERVICE PROVIDER**

24.1 The failure on the part of the Service Provider to perform any of his obligations or comply with any of the terms of this Contract shall constitute an Event of Default on the part of the Service Provider. The events of default as mentioned above may include inter-alia the following:

- 24.2 The Service Provider fails to perform any thing as per any instruction or directive issued by GIC Re which GIC Re deems proper and necessary to execute the scope of work under this Contract, or
- 24.3 The Service Provider fails to adhere to any of the terms of this Contract, or if the Service Provider falls short of matching such standards/targets as GIC Re may have designated with respect to any task necessary for the execution of the scope of work under this Contract. The above mentioned failure on the part of the Service Provider may be in terms of failure to adhere to timelines, specifications, requirements or any other criteria as defined by GIC Re;
- 24.4 The Service Provider fails to remedy a failure to perform its obligations in accordance with the specifications issued by GIC Re despite being served with a default notice which lays down the specific deviance on the part of the Service Provider to comply with any stipulations or standards as laid down by GIC Re ; or
- 24.5 The Service Provider /Service Provider's Team fails to conform with any of the Service/Facility Specifications/standards as set out in the scope of work of this Contract or has failed to adhere to any amended direction, modification or clarification as issued by GIC Re during the term of this Contract and which GIC Re deems proper and necessary for the execution of the scope of work under this Contract
- 24.6 The Service Provider fails to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Bid, the RFP and this Contract
- 24.7 There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the Service Provider.
- 24.8 The Service Provider / Service Provider's Team fails to comply with or is in breach or contravention of any applicable laws.
- 24.9 Where there has been an occurrence of such defaults inter alia as stated above, GIC Re shall issue a notice of default to the Service Provider, setting out specific defaults / deviances / omissions and providing a notice of Sixty (60) days to enable the Service Provider to remedy the default committed.
- 24.10 Where despite the issuance of a default notice to the Service Provider by GIC Re the Service Provider fails to remedy the default to the satisfaction of GIC Re, GIC Re may, where it deems fit, issue to the Service Provider another default notice or proceed to adopt such remedies as may be available to GIC Re.



## **25 . CONSEQUENCES IN EVENT OF DEFAULT**

- 25.1 where an Event of Default subsists or remains uncured GIC Re /shall be entitled to:
- 25.2 impose any such obligations and conditions and issue any clarifications as may be necessary to inter alia ensure smooth continuation of Services and the Service Provider shall be obliged to comply with which may include unilateral re-determination by GIC Re of the consideration payable to the Service Provider hereunder. The Service Provider shall in addition take all available steps to minimize loss resulting from such event of default.
- 25.3 GIC Re may, by a written notice of suspension to the Service Provider, suspend all payments to the Service Provider under this Contract, provided that such notice of suspension:
- (i) shall specify the nature of the failure; and
  - (ii) shall request the Service Provider to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Service Provider
- 25.4 Where GIC Re deems necessary, it shall have the right to require replacement of any of the Service Provider's sub-contractors / vendors with another suitable member. The Service Provider shall in such case terminate forthwith all their agreements/contracts other arrangements with such member and find suitable replacement for such outgoing member with another member to the satisfaction of GIC Re. Failure on the part of the Service Provider to find a suitable replacement and/or terminate all agreements/contracts with such member, shall amount to a breach of the terms hereof and GIC Re in addition to all other rights, have the right to claim damages and recover from the Service Provider all losses/ or other damages that may have resulted from such failure.

## **26. TERMINATION**

GIC Re may, terminate this Contract in whole or in part by giving the Service Provider 30 days prior and written notice indicating its intention to terminate this Contract under the following circumstances:

- 26.1 Where GIC Re is of the opinion that there has been such Event of Default on the part of the Service Provider which would make it proper and necessary to terminate this Contract. This shall include failure on the part of the Service Provider to respect any of its commitments with regard to any part of its obligations under its Bid, the RFP or under this Contract.
- 26.2 Where it comes to GIC Re's attention that the Service Provider (or the Service Provider's Team) is in a position of actual conflict of interest with the interests of GIC Re in relation to any of terms of the Service Provider's Bid, the RFP or this Contract.

- 26.3 Where the Service Provider's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against the Service Provider, any failure by the Service Provider to pay any of its dues to its creditors, the institution of any winding up proceedings against the Service Provider or the happening of any such events that are adverse to the commercial viability of the Service Provider. GIC Re reserves the right to take any steps as are necessary to ensure the effective transition of the project to new vendor and to ensure business continuity and the Service Provider shall co-operate for the same.
- 26.4 Termination for Insolvency: GIC Re may at any time terminate this Contract by giving written notice to the Service Provider, without compensation to the Service Provider, if the Service Provider becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to GIC Re.
- 26.5 Termination for Convenience: GIC Re may, by giving prior written notice sent to the Service Provider at least 30 days in advance, terminate this Contract, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for GIC Re convenience, the extent to which performance of work under this Contract is terminated, and the date upon which such termination becomes effective.
- 26.6 GIC Re may terminate this Contract, by giving a written notice of termination of minimum Thirty (30) days, to the Service Provider, if the Service Provider fails to comply with any decision reached consequent upon arbitration proceedings pursuant to dispute resolution clause hereunder.
- 26.7 GIC Re may terminate this Contract, by giving a written notice of termination of Thirty (30) days, to the Service Provider, if at any point of time and for any period the penalty exceeds 25% of PBG submitted by the Service provider.

The Service Provider may, subject to approval by GIC Re terminate this Contract before the expiry of its term by giving GIC Re a prior and written notice at least 30 days in advance indicating its intention to terminate the Contract.

## **27. CONSEQUENCES OF TERMINATION**

- 27.1 In the event of termination of this contract due to any cause whatsoever, the Service Provider shall be blacklisted and its empanelment will stand cancelled effective from the date of termination of this contract.
- 27.2 In the event of termination of this Agreement, GIC Re reserves its rights to call for new bids or issue a Letter of Intent/ Notification of Award to the next best value bidder of this tendering process.

27.3 In the event of termination of this Contract due to any cause whatsoever, [whether consequent to the stipulated Term of this Contract or otherwise] GIC Re shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the project which the Service Provider shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow and provide all such assistance to GIC Re and/or the new vendor, as may be required, to take over the obligations of the Service Provider in relation to the execution/continued execution of the scope of this Contract.

27.4 Where the termination of this Contract is prior to its stipulated term on account of Default on the part of the Service Provider or due to the fact that the survival of the Service Provider as an independent corporate entity is threatened/has ceased, or for any other reason, whatsoever, GIC Re through unilateral re-determination of the consideration payable to the Service Provider shall pay the Service Provider for that part of the Services which have been authorized by GIC Re and satisfactorily performed by the Service Provider up to the date of termination.

Without prejudice to any other rights, GIC Re may retain such amounts from the payment due and payable by GIC Re to the Service Provider as may be required to offset any losses caused to GIC Re as a result of any act/omissions of the Service Provider. In case of any loss or damage due to default on the part of the Service Provider in performing any of its obligations with regard to executing the scope of work under this Contract, the Service Provider shall compensate GIC Re for any such loss, damages or other costs, incurred by GIC Re.

Additionally, the Service Provider and the Service Provider's Team shall perform all their obligations and responsibilities under this Contract in an identical manner as were being performed before the termination contract with the Service Provider as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by GIC Re and as may be proper and necessary to execute the scope of work under this Contract in terms of the Service Provider's Bid, the RFP and this Contract.

27.5 Nothing herein shall restrict the right of GIC Re to invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce the Deed of Indemnity and pursue such other rights and/or remedies that may be available to GIC Re under law.

27.6 The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Contract that are expressly or by implication intended to come into or continue in force on or after such termination.

## **28. LIQUIDATED DAMAGES**

- 28.1 Subject to clause about Force Majeure if the Service Provider fails to complete the implementation of the project and provisioning of services before the scheduled completion date or the extended date or if Service Provider repudiates this Contract before completion of the Work, GIC Re at its discretion, may without prejudice to any other right or remedy available to GIC Re under this Contract recover a maximum of 10 percent of the total contract price from the Service Provider, as Liquidated Damages (LD).
- 28.2 In the case it leads to termination, GIC Re shall give 30 days' notice to the Service Provider of its intention to terminate this Contract and shall so terminate this Contract unless during the 30 days' notice period, the Service Provider initiates remedial action acceptable to GIC Re.
- 28.3 GIC Re shall without prejudice to its right to affect recovery by any other method, deduct the amount of liquidated damages from any money belonging to the Service Provider in its hands (which includes GIC Re's right to claim such amount against Service Provider's Performance Bank Guarantee) or which may become due to the Service Provider. Any such recovery or liquidated damages shall not in any way relieve the Service Provider from any of its obligations to complete the Works or from any other obligations and liabilities under this Contract.

## **29. DISPUTE RESOLUTION.**

Where any dispute or difference between the parties arising out of, in connection with or resulting from this Contract including formation, validity, interpretation, performance, breach and rights of the parties hereunder and whether arising during or after the period of this Contract has not been resolved in the normal course of business, it shall be resolved as provided in this Section.

The parties shall endeavor to resolve all such disputes or differences in accordance with 29.1 below prior to resorting to arbitration in the manner set out under 29.2.

### **29.1 Negotiations between Executives/ Mediation.**

The parties shall attempt in good faith to resolve all such disputes or differences in an amicable manner promptly by negotiations between executives who have authority to settle the controversy.

Any party may give the other party written notice of any such dispute or difference not resolved in the normal course of business. Within 15 days after delivery of said notice, executives of such parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute or difference. If the matter has not been resolved

within 60 days after the disputing party's notice, or if the parties fail to meet within 15 days, either party may initiate arbitration under 29.2 hereof.

If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least 7 days' prior notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this paragraph shall be confidential.

## 29.2 ARBITRATION

Subject to the prior application of the procedure laid down under 29.1, and as a condition precedent to any right of action under this Contract all such disputes or differences shall be referred to binding arbitration under this paragraph.

- (a) Written Demand. In the event that any dispute or difference is not resolved under 29.1 hereof, either party may institute arbitration under 29.2 by making written demand on the other party.
- (b) Composition of arbitral tribunal. The parties shall agree upon and appoint a single Arbitrator within thirty days of one receiving a written demand from the other for Arbitration. Upon such appointment the arbitral tribunal shall be constituted and shall consist of a sole arbitrator.

In the event that the parties fail to appoint a single Arbitrator within thirty days of the written demand, the Claimant (the party requesting Arbitration) shall appoint his Arbitrator within fifteen days thereafter and give written notice thereof to the Respondent (the other party). Within fifteen days of receiving such notice the Respondent shall appoint his Arbitrator and give written notice thereof to the Claimant. Within fifteen days of the appointment of the Arbitrator by the Respondent, the two appointed arbitrators shall then appoint a third arbitrator to act as a Presiding Officer. The Tribunal shall be constituted upon the appointment of the third arbitrator and upon such appointment the three together shall constitute the arbitral tribunal.

In the event that the Respondent fails to appoint his Arbitrator or the two appointed arbitrators fails to appoint a third arbitrator to act as a Presiding Officer, in the manner aforesaid, the Claimant or the Respondent as the case may be, may apply to the High Court of Bombay, India and the appointment shall thereupon be made by the Chief Justice of that court.

At any time, prior to such appointment by the Chief Justice of the High Court of Bombay, the

Respondent or the arbitrators in default as the case may be, may make such appointment.

(c) Qualifications of the arbitrators. The arbitrators shall not have any personal, financial or other interest in the result of the arbitration and shall be and remain independent and impartial of each party.

(d) Procedure to be followed by the Tribunal. The parties shall submit their respective cases to the Tribunal within 30 days of the constitution of the Tribunal or within such longer period as the Tribunal may grant.

The Tribunal shall give its award in writing within six months from the submission of the cases to it. The Tribunal shall decide by majority. The decision rendered by a majority of the arbitrators shall be final and binding on the parties who consent to carry out the same. Such decision shall be a condition precedent to any right of legal action arising out of the arbitrated dispute that any parties may have against the other.

(e) **Powers of the Tribunal.** The Tribunal is not to be bound by any strict rules of procedure or evidence. It shall have the power to fix all procedural rules for the holding of the Arbitration including discretionary power to make orders as to any matters which it may consider proper in the circumstances of the case with regard to pleadings, discovery, inspection of documents, examination of witnesses and any other matter whatsoever relating to the conduct of the Arbitration and may receive and act upon such evidence whether oral or written strictly admissible or not as it shall in its discretion think fit.

The Tribunal may in its sole discretion make such orders and directions as it considers necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.

(f) **Arbitration Expenses.** All costs of the arbitration shall be determined by the Arbitral Tribunal which may, taking into account the law and practice of the place of arbitration, direct to and by whom and in what manner they shall be paid.

(g) **Place of Arbitration.** The seat of arbitration shall be Mumbai, India.

(h) Except as provided above, arbitration shall be as per the Indian Arbitration and Conciliation Act, 1996 and rules made thereunder and any statutory modifications, amendments or re-enactments thereof from time to time shall be applicable.

(i) The Arbitral Tribunal shall apply the laws as specified under **Governing Law and the Jurisdiction of Courts** clauses in this Agreement.

(j) GIC Re may terminate this contract, by giving a written notice of termination of minimum 30 days, to the Service Provider, if the Service Provider fails to comply with any decision reached consequent upon arbitration proceedings as detailed above.

**29.3 Continuance of this Contract:** Notwithstanding the fact that settlement of dispute(s) (if any) under arbitration may be pending, the parties hereto shall continue to be governed by and perform the work in accordance with the provisions of this contract to ensure continuity of operations.

### **30. LIMITATION OF THE SERVICE PROVIDER'S LIABILITY TOWARDS GIC RE**

Except in case of gross negligence or willful misconduct on the part of the Service Provider or on the part of any person or company acting on behalf of the Service Provider in carrying out the Services, the Service Provider, with respect to damage caused by the Service Provider to GIC Re's property, shall not be liable to GIC Re for any indirect or consequential loss or damage; and shall not be liable to GIC Re for any direct loss or damage that exceeds (A) the total payments payable under this contract to the Service Provider hereunder, or (B) the proceeds the Service Provider may be entitled to receive from any insurance maintained by the Service Provider to cover such a liability, whichever of (A) or (B) is higher.

This limitation of liability shall not affect the Service Provider's liability, if any, for damage to Third Parties caused by the Service Provider or any person or firm/company acting on behalf of the Service Provider in carrying out the Services.

Such limitations and exclusions set out herein shall however, not apply to any claim or liability resulting from breach of confidentiality obligations.

### **31. CONFLICT OF INTEREST**

The Service Provider shall disclose to GIC Re in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Service Provider or the Service Provider's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

### **32. SEVERANCE**

In the event any provision of this Contract is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Contract will nevertheless remain in full force and effect. The parties agree to negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this contract.

### **33. GOVERNING LANGUAGE**

The Agreement shall be written in English language. All correspondence and other documents pertaining to this Contract that are exchanged by parties shall be written in English language only.

### **34. PUBLICITY**

The Service Provider agrees not to advertise, publish or disclose the existence or terms of this contract or that it has contracted to furnish the services described in this contract, without the

prior written consent of GIC Re. In particular, the Service Provider shall not make or permit to be made a public announcement or media release about any aspect of this Contract unless GIC Re first gives the Service Provider its written consent.

### 35. Force Majeure

35.1 Force Majeure shall not include any events caused due to acts/omissions of such Party or result from a breach/contravention of any of the terms of this Contract, Bid and/or the Tender. It shall also not include any default on the part of a Party due to its negligence or failure to implement the stipulated/proposed precautions, as were required to be taken under this Contract.

35.2 The failure or occurrence of a delay in performance of any of the obligations of either party shall constitute a Force Majeure event only where such failure or delay could not have reasonably been foreseen, or where despite the presence of adequate and stipulated safeguards the failure to perform obligations has occurred. This would include natural and unavoidable catastrophes that interrupt the expected course of events which events may include, but are not restricted to, instances of wars or revolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes and any event or circumstance of a nature analogous to any of the foregoing which would have an impact on GIC Re. In such an event, the affected party shall inform the other party in writing within five days of the occurrence of such event. GIC Re will make the payments due for Services rendered till the occurrence of Force Majeure. However, any failure or lapse on the part of the Service Provider in performing any obligation as is necessary and proper, to negate the damage due to projected force majeure events or to mitigate the damage that may be caused due to the abovementioned events or the failure to provide adequate disaster management/recovery or any failure in setting up a contingency mechanism would not constitute force majeure, as set out above.

35.3 In case of a Force Majeure, all Parties will endeavor to agree on an alternate mode of performance in order to ensure the continuity of service and implementation of the obligations of a party under this Contract and to minimize any adverse consequences of Force Majeure.

### 36. RELATIONSHIP BETWEEN THE GIC RE AND THE SERVICE PROVIDER

36.1 Nothing in this Contract constitutes any fiduciary relationship between GIC Re and Service Provider / Service Provider's Team or any relationship of employer employee, principal and agent, or partnership or joint ventures, between GIC Re and Service Provider.

36.2 No Party has any authority to bind the other Party in any manner whatsoever except as agreed under the terms of this Contract.

36.3 GIC Re has no obligations to the Service Provider or the Service Provider's Team except as agreed under the terms of this Contract.



### **37. NO ASSIGNMENT**

The Service Provider shall not transfer any interest, right, benefit or obligation under this Contract without the prior written consent of GIC Re and any purported attempt to do so shall be deemed void.

### **38. SUB-CONTRACTING**

In case sub-contracting is required, the Service Provider shall seek prior permission and submit the list of sub – contractors to GIC Re for its approval in sufficient time so as not to impede the progress of work. Such approval by GIC Re of a sub – contractor(s) shall not relieve the Service Provider from any of its obligations, duties, or responsibilities under this Agreement.

### **39. ENTIRE CONTRACT**

The terms and conditions laid down in the RFP and all annexures thereto as also the Bid and any attachments/annexes thereto shall be read in consonance with and form an integral part of this Contract. This Contract supersedes any prior Contract, understanding or representation of the Parties on the subject matter.

### **40. GOVERNING LAW**

This Contract shall be governed in accordance with the laws of India.

### **41. JURISDICTION OF COURTS**

The courts of India at Mumbai have exclusive jurisdiction to determine any proceeding in relation to this Contract.

### **42. COMPLIANCE WITH LAWS**

The Service Provider shall comply with the laws in force in India in the course of performing this Contract.

### **43. NOTICES**

A “notice” means;

- i. a notice; or
- ii. a consent, approval or other communication required to be in writing under this Contract.



All notices, requests or consents, permissions, approvals or other communications provided for or permitted to be given under this Contract shall be in writing and shall be deemed effectively given when personally delivered or mailed by pre-paid certified / registered mail, return receipt requested, addressed as follows and shall be deemed received two days after mailing or on the date of delivery if personally delivered to:

To GIC Re, at:  
General Insurance Corporation of India,  
Suraksha, 170, J Tata Road, Churchgate,  
Mumbai – 400020.  
Phone: 022-22867166

To Service Provider at :  
<Address>  
<Phone:>  
<Fax:>

Any Party may change the address to which notices are to be directed to it by notice to the other parties in the manner specified above. A notice served on a Representative is taken to be notice to that Representative's Party

#### **44. WAIVER**

- 44.1 Any waiver of any provision of this Contract is ineffective unless it is in writing and signed by the Party waiving its rights.
- 44.2 A waiver by either Party in respect of a breach of a provision of this Contract by the other Party is not a waiver in respect of any other breach of that or any other provision.
- 44.3 The failure of either Party to enforce at any time any of the provisions of this Contract shall not be interpreted as a waiver of such provision.

#### **45. Modification**

Any modification of this Contract shall be in writing and signed by an authorized representative of each Party.

#### **46. CO-OPERATION –**

Each party to this contract agrees to execute and deliver all documents and to perform all further acts and to make any and all further steps that may be reasonably necessary to carry out the provisions of this contract and transactions contemplated thereby.



**47. SURVIVAL:**

Notwithstanding any termination of this contract, the provisions of this contract that are either by express language or impliedly meant to survive termination, shall survive.

**48. NON – RESTRICTIVE RELATIONSHIP :**

Nothing in this contract shall be construed to preclude GIC Re from independently developing or acquiring expertise which may perform the same or similar functions as those provided by the Service Provider for RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA) & 3 YEARS GOLD SUPPORT FOR GIC RE.

**49. IMPROVEMENTS AND FUNCTIONALITY ENHANCEMENTS:**

During the term of this contract, both parties will identify all enhancements and modifications (improvements) to the GIC Re McAfee Server & Client systems which improve the competitive advantage of the GIC Re systems against any intrusion, malwares, Trojans etc. Any such identifications shall be the sole property of GIC Re.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first written above.

General Insurance Corporation of India

By:

Name:

Title:

\_\_\_\_\_

By:

Name:

Title:



**DRAFT OF PERFORMANCE BANK GUARANTEE (PBG) TO BE EXECUTED BY THE VENDOR FOR RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA) & 3 YEARS GOLD SUPPORT FOR GIC RE**

(To be executed on a non-judicial stamp paper of Rs.100/-)

To,  
General Insurance Corporation of India,  
170, "Suraksha",  
J. Tata Road,  
Churchgate,  
Mumbai - 400 020.

In consideration of the General Insurance Corporation of India, a Company registered under the Companies Act 1956, and having its registered office at 170, "Suraksha", 170, J. Tata Road, Mumbai 400020 (hereinafter called 'Corporation'), having agreed to exempt \_\_\_\_\_ (Supplier's name and address) (hereinafter called "the said Suppliers") from the demand, under the terms and conditions of Corporation's tender Document for **RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA) & 3 YEARS GOLD SUPPORT FOR GIC RE** and Agreement dated \_\_\_\_\_ made between the General Insurance Corporation of India and \_\_\_\_\_ (Supplier's Name) for **RENEWAL OF 700 LICENSES OF MCAFEE ENDPOINT PROTECTION - ADVANCED SUITE (EPACGE - DA) & 3 YEARS GOLD SUPPORT FOR GIC RE** (hereinafter called "the said Agreement") **security deposit** for the due fulfillment by the said suppliers of the terms and conditions contained in the said Agreement, on the production of a bank guarantee for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

1. We, \_\_\_\_\_ (Name of the bank and full address) (hereinafter called the "Bank") at the request of \_\_\_\_\_ (Name of supplier/s) do hereby undertake to pay to the Corporation an amount not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) caused to or suffered by the Corporation by reason of any breach by the said suppliers of any of the terms and conditions contained in the said Agreement.
2. We, \_\_\_\_\_ (Name of the bank and full address) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Corporation stating that the amounts claimed is due by way of loss or damage caused to or would be caused to or suffered by the Corporation by reason of breach by the said suppliers of any of the terms and conditions contained in the said Agreement or by reason of the service provider's failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only).
3. We \_\_\_\_\_ (Name of the bank and full address) undertake to pay to the Corporation any money so demanded notwithstanding any dispute or dispute raised by the

supplier(s) in any suit or proceeding pending before any court or Tribunal relating hereto our liability under this present being) absolute and unequivocal.

The Payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the supplier(s) shall have no claim against us for making such payment.

4. We, \_\_\_\_\_ (Name of the bank and full address) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it should continue to be enforceable till all the dues of the Corporation be under or by virtue of the said Agreement have been fully paid and its claim authorities satisfied or discharged by the said suppliers.

Unless a claim or demand under this guarantee is made or presented to the Bank within six months from the expiry date of this Bank Guarantee, all the rights of the Corporation under this guarantee shall cease and the Bank shall be released and discharged from all liability hereunder.

5. We, \_\_\_\_\_ (Name of the bank and full address) further agree with the Corporation that the Corporation shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance of the said suppliers from time to time to postpone for any time or from time to time of the powers exercised by the Corporation against the said suppliers and to forbear or enforce any of the terms and conditions relating to said Agreement and we shall not be relieved from our liability by reason of any variation, or extension being granted by the said Corporation to the said supplier or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.
6. Any claim which we, \_\_\_\_\_ (Name of the bank and full address) have against the Vendor shall be subject and subordinate to the prior payment and performance in full of all the obligations of it hereunder. The Bank will not, without prior written consent of the Purchaser, exercise any legal right or remedy of any kind in respect of any such payment or performance so long as the obligations of it hereunder remain owing and outstanding.
7. This guarantee will not be discharged due to the change in the continuation of the Bank or the Vendor.
8. We, \_\_\_\_\_ (Name of the bank and full address) undertake not to revoke this guarantee during its currency except with the previous consent of the Corporation in writing.
9. Notwithstanding anything contained herein :-
1. Our liability under this Bank Guarantee shall not exceed Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only).
  2. This Bank Guarantee shall be valid upto \_\_\_\_\_ and
  3. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if Corporation serve upon us a written claim or demand within six months from the expiry date of this Bank Guarantee.
10. Our obligation to pay hereunder is as principal debtor and not as surety and it shall not be necessary for Purchaser "to proceed against" the said Vendor "before proceeding against" the Bank



and the guarantee herein contained shall be enforceable against the Bank notwithstanding any other security which the Purchaser may have obtained or obtain from the Vendor at the time when proceedings are taken against the said Bank in any manner whatsoever.

11. This guarantee shall come into force immediately and shall be valid for at least 3 years.
12. We have the power to issue this guarantee in your favour and the undersigned who are executing this guarantee have the necessary power to do so on behalf of the Bank.

Date: .....day of ..... 2016 for \_\_\_\_\_ (Name of the bank)

(Signature of the authorized officer of the Bank)



**Annexure-VI**

(TO BE SUBMITTED ON THE COMPANY LETTER HEAD)

This is to certify that M/s \_\_\_\_\_ has not been blacklisted by any Central /State Government (incl. its department/agency) or was declared ineligible by the Government of India/State/UT Government for corrupt and fraudulent practices as on date \_\_\_\_\_.

(Authorized Signatory)

Name of Signatory:

Bidder Name:

Date

Place

**Annexure VII**

**DEED OF INDEMNITY**

This Deed of Indemnity is made and executed at Mumbai on this \_\_\_\_\_ day of \_\_\_\_\_ **2016** by M/S \_\_\_\_\_, a Company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_, (hereinafter referred to as "Service Provider"), which expression shall, unless it be repugnant to the meaning and context thereof, include its successors, authorized agents, representatives and permitted assigns of the First part

In favor of

**General Insurance Corporation of India**, a wholly owned Government of India undertaking, having its registered office at Suraksha, 170, J. Tata Road, Churchgate, Mumbai- 400020 (hereinafter referred to as "GIC Re"), which expression shall, unless it be repugnant to the meaning and context thereof, include its successors, authorized agents, representatives and permitted assigns of the Other part.

**WHEREAS** the Service Provider has agreed with GIC Re to successfully implement \_\_\_\_\_ conforming to all the specifications as per the scope of work mentioned in the Request for Proposal dated \_\_\_\_\_ (hereinafter referred to as "RFP" No. \_\_\_\_\_) which expression shall include all attachments and annexures thereto as well as all amendments, modifications and alteration and the Terms and Conditions agreed as per Agreement dated \_\_\_\_\_ (hereinafter referred to as "Agreement").

AND WHEREAS pursuant to the Agreement, the Service Provider is required to execute a Deed of Indemnity in favour of GIC Re to indemnify it against any acts, omissions, losses, charges, claims etc. and which the Service Provider has agreed to do.

NOW THIS DEED WITNESSETH AS UNDER:

1. The Service Provider hereby executes and furnishes to GIC Re this Deed of Indemnity, which is an unlimited, irrevocable and continuing indemnity, indemnifying GIC Re to the extent of 100% in favour of GIC Re and shall remain in full force and effect.

2. The Service Provider hereby undertakes to indemnify GIC Re as per the Terms and Conditions of the Agreement which are as follows:

- (i) (a) The Service Provider shall execute and furnish to GIC Re a Deed of Indemnity, indemnifying GIC Re from and against any costs, loss, damages, expense, claims whether on account of patents, trademarks, copyrights issues or otherwise including those from third parties or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after the Agreement period arising out of:
- any negligence or wrongful act or omission by the Service Provider, the Service Provider's team or any third party in connection with or incidental to this Agreement; or
  - Any breach of any of the terms of the Bid as agreed, the RFP and the Agreement by the Service Provider, the Service Provider's Team or any third party.

(b) The indemnity shall be to the extent of 100% in favour of GIC Re.



(c) Notwithstanding the above, Service Provider shall have no obligations with respect to any indemnity claims to the extent that the indemnity claim arises or results from:

- a. Service Provider's compliance with GIC Re's specific technical designs or instructions;
- b. Inclusion in a Service of any content or other materials provided by GIC Re;
- c. Modification of a Service after delivery by Service Provider to GIC Re if such modification was not made by or on behalf of the Service Provider, provided the modification is not in accordance with any applicable specifications or documentation provided by or on behalf of the Service Provider;
- d. Operation or use of some or all of the Service in combination with products, information, specification, instructions, data, materials not provided by or on behalf of the Service Provider, provided the modification is not in accordance with any applicable specifications or documentation provided by or on behalf of the Service Provider; or
- e. Use of the Services for any purposes for which the same has not been designed or developed or other than in accordance with any applicable specifications or documentation provided by or on behalf of the Service Provider; or
- f. GIC Re's failure to use any modification of the Service furnished under this Agreement and communicated in writing in accordance with the requirements of clause 'Notices' including, but not limited to, corrections, fixes, or enhancements made available by the Service Provider.

(d) GIC Re will defend, indemnify and hold harmless the Service Provider, and the Service Provider's Team from and against any third party suit, proceedings damages, judgments, cost and expenses (including reasonable attorney fees) relating to any infringement claim by a third party to the extent based on any GIC Re materials provided to Service Provider by or on behalf of GIC Re or the access and use by Service Provider of any GIC Re provided software or material.

Provided that the provision by GIC Re and the access and use by the Service Provider is in connection with Service Provider's performance of services hereunder and without breaching the terms of this Agreement.

(ii) The Service Provider shall procure all the necessary permissions, approvals and licenses for use of various software and any copyrighted process/product free from all claims, titles, interests and liens thereon and shall keep GIC Re indemnified in relation thereto.

(iii) The Service Provider owns, has license to use or otherwise has the right to use, free of any pending or threatened liens or other security or other interests all its Intellectual Property Rights, which are required or desirable for performance of its services under this Agreement and regarding the same the Service Provider does not, so far as the Service Provider is aware, in carrying on its business and operations, infringe any Intellectual Property Rights of any person. So far as the Service Provider is aware, none of the Intellectual Property Rights, owned or enjoyed by the Service Provider or which the Service Provider is licensed to use, which are material in the context of Service Provider's business and operations for the performance of this Agreement are being infringed nor, so far as the Service Provider is aware, is there any infringement or threatened infringement of those Intellectual Property Rights licensed or provided to the Service Provider by any person. All Intellectual Property Rights (owned by the Service Provider or which the Service Provider is licensed to use) required by the Service Provider for the performance of this Agreement are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken thereon and shall keep GIC Re indemnified in relation thereto.



(iv) During the tenure of the Agreement, nothing shall be done by the Service Provider in contravention of any law, Acts, or rules and regulations there under, or any amendments thereof and shall keep GIC Re, indemnified in this regard.

3. The Service Provider hereby undertakes that it shall forthwith on demand and without demur pay to GIC Re such sum or sums that is 100% in favor of GIC re as may be claimed by GIC Re as losses, damages, costs, charges or expenses by reason of such above mentioned default/ defaults on the Service Provider's part.

4. Notwithstanding anything to the contrary in these presents or in the Agreement, GIC Re's decision as to whether the Service Provider has made any default/ defaults or the amounts to which GIC Re is entitled by reason thereof will be binding on the Service Provider for the purpose of this Indemnity and the Service Provider shall not be entitled to ask GIC Re to establish its claims under this Indemnity but will pay the same, on demand, without any objection, provided always, the mutual rights under the Agreement shall not in any way be prejudiced by reason of such demand by GIC Re and payment by the Service Provider under this Indemnity and the claims under the Agreement which shall be settled in accordance with the Agreement without prejudice to GIC Re's rights to demand immediately under this Indemnity and the Service Provider's liability to pay the same.

5. This Deed of Indemnity shall be valid for the Agreement Period and renewable thereof whenever a claim as per this Deed of Indemnity arises.

6. GIC Re will have the fullest liberty from time to time to enforce or forbear to enforce any of the terms & conditions of the Agreement and the Service Provider shall not be released from its liability under this Deed of Indemnity by the exercise of GIC Re's liberty with reference to the matters aforesaid or by reason of any time being given to the Service Provider or any forbearance, act or omission on GIC Re's part or any indulgence by GIC Re to the Service Provider or by any variations or modifications of the Agreement or any other act, matter or thing whatsoever on GIC Re's part.

7. This Indemnity and the powers and provisions herein contained are in addition to and not by way of limitation or substitution for any other guarantee ,indemnities hereto before, given to GIC Re by the Service Provider and this Indemnity does not revoke or limit such indemnities or guarantee.

IN WITNESS WHEREOF, the Service Provider has caused this Deed of Indemnity to be duly executed as of the day, month and year first written above.

Signed and delivered by within named: M/S \_\_\_\_\_ (SERVICE PROVIDER)

By:

Name:

Title:

Date:

In the presence of:

1.

2.

**Annexure VIII**

**RECIPROCAL NON-DISCLOSURE AGREEMENT**

This Agreement ("Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_ 2016 between:

\_\_\_\_\_, having its corporate office at \_\_\_\_\_ ("") and General Insurance Corporation of India, a company duly incorporated and existing under the laws of India, whose registered office is at "Suraksha", 170, J. Tata Road, Churchgate, Mumbai – 400020, India ("GIC Re").

Hereafter referred to individually as a "Party" and collectively as the "Parties". For purposes of this Agreement, the party receiving Confidential Information (as defined herein below), shall be referred to as the "Receiving Party" and the party providing the Confidential Information shall be referred to as the "Disclosing Party".

**WHEREAS,** \_\_\_\_\_ is *inter alia* engaged in the business of provision of various information technology services, consultancy and outsourcing services worldwide.

**AND WHEREAS,** GIC Re is engaged in the business *inter alia*, of Reinsurance and Risk Management related activities.

**AND WHEREAS** \_\_\_\_\_ and GIC Re are in the process of consultations and discussions for exploring business opportunities as identified in Scope of work mentioned in Section – III of this tender document to this Agreement ("Purpose").

To facilitate such consultations and discussions certain Confidential Information (as defined below) will be required to be shared between the Parties.

**AND WHEREAS,** The parties wish to protect any such Confidential Information in accordance with the terms and conditions of this agreement (the "Agreement").

**NOW, THEREFORE,** in consideration of receipt of Confidential Information it is agreed as follows:

**A. Definition of "Confidential Information"**

"Confidential Information" means any information disclosed to, received by, otherwise accessed by or coming to the knowledge of any Party to this Agreement that:

- i. by its character or nature or by the circumstances in which it is disclosed/received/ assessed/or it came to knowledge, such that a reasonable person under like circumstances would treat it as confidential; or
- ii. Is designated by the disclosing party as confidential or identified in terms connoting its confidentiality; or
- iii. The disclosing party considers confidential.

and includes but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): discoveries; concepts; software in various stages of development; designs; drawings; specifications; techniques; models; data; source code; object code; documentation; processes; procedures; know-how; marketing techniques and materials; marketing and

development plans; customer names and other information related to customers, price lists, pricing policies and financial information;

Confidential Information also includes information disclosed to the Receiving Party by third parties on behalf of the Disclosing Party.

#### **B. Information not categorized as “Confidential Information”**

The obligation imposed, under this Agreement, on Receiving Party shall not apply to information which:

(a) Receiving Party can demonstrate by prior existing records, was within Receiving Party's legitimate possession prior to the time of disclosure;

(b) was within the public domain prior to disclosure, or comes into the public domain through no wrongful act, fault, negligence or breach of this Agreement on the part of the Receiving Party;

(c) is independently developed by the Receiving Party without reference to or reliance upon Confidential Information of the Disclosing Party;

(d) Is or becomes lawfully available to Receiving Party on a non-confidential basis from an independent source who is free to divulge such information.

#### **C. Restriction on Disclosure**

Except as otherwise expressly permitted under this Agreement, Receiving party shall not:

(a) disclose, duplicate, copy, transmit or otherwise disseminate in any manner whatsoever any Confidential Information of the Disclosing Party;

(b) use the Confidential Information of the Disclosing Party (i) for Receiving Party's own benefit or that of any third party, (ii) to the Disclosing Party's detriment, or (iii) for any purpose other than for achieving the Purpose;

(c) commercially exploit any Confidential Information of the Disclosing Party;

(d) acquire any right in, or assert any lien against, the Confidential Information of the Disclosing Party; or

(e) Refuse for any reason to promptly return all Confidential Information of the Disclosing Party if requested to do so.

#### **D. Permitted Disclosures**

Receiving party is permitted to:

(a) disclose relevant aspects of the Disclosing Party's Confidential Information to the Receiving Party's directors, officers, employees, consultants, attorneys and auditors solely to the extent necessary for achieving the Purpose; provided, that

(1) before disclosing any Confidential Information of the Disclosing Party, all persons or entities receiving Confidential Information shall be bound by obligations of confidentiality towards the Receiving Party consistent with the terms of this Agreement

(2) The Receiving Party shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with the persons or entities receiving Confidential Information to the satisfaction of the Disclosing Party.

(3) All such Confidential Information shall be labeled as confidential.

- (b) Disclose relevant aspects of the Disclosing Party's Confidential Information if legally compelled or required to disclose any Confidential Information of the Disclosing Party in connection with any legal or regulatory proceedings. In such case, the Receiving Party will immediately notify the Disclosing Party so as to allow the Disclosing Party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure or waive compliance with the terms of this Agreement.
- (c) Disclose relevant aspects of the Disclosing Party's Confidential Information with the prior written consent of the Disclosing Party.

#### **E. Effects of Unauthorized Disclosure**

- (a) The Receiving Party will be liable for the acts and omissions of, and any unauthorized disclosure or use of Confidential Information by, any person or entity that received Confidential Information from or through the Receiving Party.
- (b) Each Party acknowledges and agrees that the misappropriation or misuse of Confidential Information of the other Party will result in irreparable and continuing damage to the other Party for which there may be no adequate remedy at law, and in the event of such a breach, the other Party shall be entitled to legal as well as equitable relief, as appropriate, including but not limited to an injunction, in addition to any monetary relief.
- (c) The Receiving Party will promptly report to the Disclosing Party any disclosures of Confidential Information otherwise than as permitted by this Agreement and any breaches in security that may affect the Disclosing Party or its Confidential Information of which it is aware and will specify the corrective action to be taken.

#### **F. Return of documents**

Upon written demand by the Disclosing Party, the Receiving Party shall:

- (a) return to the Disclosing Party all Confidential Information supplied which the Receiving Party has in his possession or under his control;
- (b) destroy or have destroyed all copies received or made of the Confidential Information; and
- (c) Promptly thereafter provide a certificate signed by an officer of the Receiving Party certifying compliance with the obligations point (a) and (b) above.



### **G. Term**

This Agreement shall commence from the date set forth above and expire with the termination or expiration of the Service Agreement, unless earlier terminated in writing by both Parties. The obligations under this Agreement shall survive and continue for a period of 3 years beyond any termination or expiration of this Agreement.

### **H. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of India. Any and all disputes arising out of or in connection with this Agreement shall be settled by the courts in Mumbai, India. Each Party hereby irrevocably waives all rights to trial by jury in any legal proceeding arising out of or relating to the Agreement.

### **I. Miscellaneous**

- (a) No failure or delay by the Disclosing party in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.
- (b) This Agreement shall not be assignable or transferable by either Party without the written consent of the other Party.
- (c) This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof, and constitutes the entire agreement between the Parties with respect to the subject hereof. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of each Party and no failure or delay in enforcing any right will be deemed a waiver.
- (d) In the event that any of the provisions of this Agreement shall be held by a Court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.

**IN WITNESS WHEREOF** this Agreement has been executed by the duly authorized representative of each Party on the day and year first above written.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GENERAL INSURANCE CORPORATION OF INDIA**

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

Title: \_\_\_\_\_

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