



**एम एस टी सी**  
लिमिटेड  
(भारत सरकार का उपक्रम)



**MSTC**  
LIMITED  
(A Govt. of India Enterprise)

(A Govt. of India Undertaking)  
NOTICE INVITING e-TENDER (NIT)

**SCHEDULE OF TENDER (SOT)**

<b>E-Tender NO.</b>	MSTC/19-20/ET/64
<b>SUBJECT</b>	Engagement of Transaction Advisor for Strategic Disinvestment in Ferro Scrap Nigam Limited (FSNL), a subsidiary of MSTC Limited
<b>MODE OF TENDER</b>	e-Procurement System (Online Part I - Techno-Commercial Bid and Part II - Price Bid through <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a> )
<b>Date of NIT available to vendors to download</b>	24.10.2019 Time : 16:00 HRS
<b>Non-Refundable Fee</b>	The bidder shall have to deposit Rs.100000.00 /- (Rupees One lakh only) by NEFT/RTGS in favour of MSTC LIMITED as non-refundable fee
<b>Date of Start of e-Tender for submission of on line Technical Bid and Price Bid at <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a></b>	05.11.2019 Time: 11:30 HRS
<b>Date of closing of online e-tender for submission of Technical Bid &amp; Price Bid.</b>	03.12.2019 Time: 11:30 HRS
<b>Last date of Submission of physical Documents (excluding Price Bid) at MSTC Limited, 225-C, AJC Bose Road, Kolkata-700020.</b>	03.12.2019 Time: 16:00 HRS
<b>Date &amp; time of opening of Part-I (Technical Bid): Part-II: Price Bid:</b>	Date of opening of price bid shall be intimated separately through e-mail to bidders who have qualified in the Technical Bid.



## IMPORTANT INSTRUCTIONS FOR E-PROCUREMENT

This is an e-procurement event of MSTC LTD. You are requested to read the terms & conditions of this tender before submitting your online tender. Bidders who do not comply with the conditions with documentary proof (wherever required) will not qualify in the Tender for opening of price bid.

1.	<p>Process of E-tender :</p> <p><b>A) Registration:</b> The process involves vendor's registration with MSTC e-procurement portal which is free of cost. Only after registration, the vendor(s) can submit his/their bids electronically. Electronic Bidding for submission of Techno-Commercial Bid as well as Price Bid over the internet will be done. The Vendor should possess Class III signing type digital certificate. Vendors are to make their own arrangement for bidding from a P.C. connected with Internet. MSTC is not responsible for making such arrangement. (Bids will not be recorded without Digital Signature).</p> <p><b>SPECIAL NOTE: THE PRICE BID AND THE COMMERCIAL BID HAS TO BE SUBMITTED ONLINE AT <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a></b></p> <p>1). Vendors are required to register themselves online with <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a> → e-Procurement → Psu/Govt depts → Click On MSTC → Register as Vendor Filling up details and creating own user id and password → Submit.</p> <p>2). Vendors will receive a system generated mail confirming their registration in their email which has been provided during filling the registration form.</p> <p>In case of any clarification, please contact MSTC, (before the scheduled time of the e- tender).</p> <p><b><u>Contact person (MSTC):</u></b></p> <p>a. For Technical Support: Helpdesk No. 033-2290 1004 b. For information related to Tender:</p> <p>Smt R Winifred, Deputy General Manager (CP) MSTC Limited 225C, A. J. C. Bose Road, 5<sup>th</sup> Floor, Kolkata: 700 020, Mob: 7044002279 ..... e-mail : <a href="mailto:rwinfred@mstcindia.co.in">rwinfred@mstcindia.co.in</a></p> <p>Shri. Malay Mandal Additional General Manager (CP) MSTC Limited 225C, A. J. C. Bose Road, 5<sup>th</sup> Floor, Kolkata: 700 020, Fax: 033 -2290 0964 Mob : 7004268791, e-mail: <a href="mailto:malay@mstcindia.co.in">malay@mstcindia.co.in</a></p> <p><b>B) System Requirement:</b></p> <p>i) Windows 7 Operating System or above. ii) IE-7 and above Internet browser. iii) Signing type <b>digital</b> signature iv) JRE 8 latest update and above software to be downloaded and installed in the system.</p> <p>To disable "Protected Mode" for DSC to appear in The signer box following settings may be applied. .....</p> <ul style="list-style-type: none"><li>• Tools =&gt; Internet Options =&gt; Security =&gt; Disable protected Mode if enabled- i.e. Remove the tick from the tick box mentioning "Enable Protected Mode".</li><li>• Other Settings:</li></ul> <p>Tools =&gt; Internet Options =&gt; General =&gt; Click On Settings under "browsing history/ Delete</p>
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	<p>Browsing History” =&gt; Temporary Internet Files =&gt; Activate “Every time I Visit the Webpage”. To enable ALL active X controls and disable ‘use pop up blocker’ under Tools→Internet Options→custom level (Please run IE settings from the page <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a> once)</p> <p>For detailed settings bidders are advised to refer to the “Vendor Guide” and a video guide available under “View Video” link at <a href="http://www.mstcecommerce.com/eprochome">www.mstcecommerce.com/eprochome</a></p> <p>.....</p>
2.	<p>(A) Part I Techno-Commercial bid will be opened electronically on specified date and time as given in the NIT. Bidder(s) can witness electronic opening of bid.</p> <p>(B) Part II Price bid will be opened electronically of only those bidder(s) whose Part I Techno-Commercial Bid is found to be Techno-Commercially acceptable by MSTC. Such bidder(s) will be intimated date of opening of Part II Price bid, through valid email confirmed by them.</p> <p>Note: The tenderers are advised to offer their best possible rates. There would generally be no negotiations hence please submit your most competitive prices while submitting the price bid. However in case the lowest rate appears to be reasonable taking into account the prevailing market conditions, the order may be awarded to the lowest bidder and if the rate is still considered high, action as per prevailing instruction/guideline shall be taken.</p>
3.	All entries in the tender should be entered in online Technical & Commercial Formats without any ambiguity.
4	All notices and correspondence to the bidder(s) shall be sent by email only during the process till finalization of tender by MSTC. Hence the bidders are required to ensure that their corporate email I.D. provided is valid and updated at the stage of registration of vendor with MSTC (i.e. Service Provider). Bidders are also requested to ensure validity of their DSC (Digital Signature Certificate).
5.	<p>(i) Please note that there is no provision to take out the list of parties downloading the tender document from the web site mentioned in NIT. As such, bidders are requested to see the web site once again before the due date of tender opening to ensure that they have not missed any corrigendum uploaded against the said tender after downloading the tender document. <b>The responsibility of downloading the related corrigenda, if any, will be that of the downloading parties.</b></p> <p>(ii) No separate intimation in respect of corrigendum to this NIT (if any) will be sent to tenderer (s) who have downloaded the documents from web site. Please see website <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a> of MSTC Ltd.</p>
6.	E-tender cannot be accessed after the due date and time mentioned in NIT.
7.	<p>Bidding in e-tender:</p> <p>a. Bidder(s) need to submit necessary EMD, Tender fees (If ANY) to be eligible to bid online in the e-tender. Tender fee is non refundable. No interest will be paid on EMD. EMD of the unsuccessful bidder(s) will be refunded by MSTC.</p> <p>b. The process involves Electronic Bidding for submission of Techno Commercial Bid as well as Price Bid.</p> <p>c. The bidder(s) who have submitted the above fees can only submit their Techno Commercial Bids and Price Bid through internet in MSTC website <a href="http://www.mstcecommerce.com">www.mstcecommerce.com</a> → e-procurement →Psu/Govt depts→MSTC Vendor Login →My menu→ Auction Floor Manager→ live event →Selection of the live event→ Techno Commercial Bid.</p> <p>d. The bidder should allow to run an application namely <b>encryption applet</b> by accepting the risk and clicking on run. This exercise has to be done twice immediately after clicking on the Techno-Commercial bid. If this application is not run then the bidder will not be able to save/submit his bid.</p> <p>e. After filling the Techno-Commercial Bid, bidder should click ‘save’ for recording their Techno-Commercial bid. Once the same is done, the Price Bid link becomes active and the same has to be filled up and then bidder should click on “save” to record their price bid. Then once both the Techno-Commercial bid &amp; price bid has been saved, the bidder can click on the “Submit” button to register their bid</p>



	<p>a. In all cases, bidder should use their own ID and Password along with Digital Signature at the time of submission of their bid.</p> <p>b. During the entire e-tender process, the bidders will remain completely anonymous to one another and also to everybody else.</p> <p>c. The e-tender floor shall remain open from the pre-announced date &amp; time and for as much duration as mentioned above.</p> <p>d. All electronic bids submitted during the e-tender process shall be legally binding on the bidder. Any bid will be considered as the valid bid offered by that bidder and acceptance of the same by the Buyer will form a binding contract between Buyer and the Bidder for execution of supply. Such successful tenderer shall be called hereafter <b>SUPPLIER</b>.</p> <p>e. It is mandatory that all the bids are submitted with digital signature certificate otherwise the same will not be accepted by the system.</p> <p>f. Buyer reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part as the case may be without assigning any reason thereof.</p> <p>g. No deviation of the terms and conditions of the tender document is acceptable. Submission of bid in the e-tender floor by any bidder confirms his acceptance of terms &amp; conditions for the tender.</p> <p>h. Unit of Measure (UOM) is indicated in the e-tender Floor. Rate to be quoted should be in Indian Rupee as per UOM indicated in the e-tender floor/tender document.</p>
9.	Any order resulting from this open e-tender shall be governed by the terms and conditions mentioned therein.
10.	No deviation to the technical and commercial terms & conditions are allowed.
11.	After submitting online bid, the bidder cannot access the tender, once it has been submitted with digital signature
12.	MSTC has the right to cancel this e-tender or extend the due date of receipt of bid(s) without assigning any reason thereof.
13.	The online tender should be submitted strictly as per the terms and conditions and procedures laid down in the website <a href="http://www.mstcecommerce.com/eprochome/mstc">www.mstcecommerce.com/eprochome/mstc</a> of MSTC Ltd.
14.	The bidders must upload all the documents required as per terms of NIT. Any other document uploaded which is not required as per the terms of the NIT shall not be considered.
15.	The bid will be evaluated based on the filled-in technical & commercial formats.
16.	The documents uploaded by bidder(s) will be scrutinized. In case any of the information furnished by the bidder is found to be false during scrutiny, EMD of defaulting bidder(s) will be forfeited. Punitive action including suspension and banning of business can also be taken against defaulting bidders.



## SECTION 1: NOTICE INVITING REQUESTS FOR PROPOSAL

### SUB: ENGAGEMENT OF TRANSACTION ADVISOR FOR STRATEGIC DISINVESTMENT IN FERRO

#### SCRAP NIGAM LIMITED (FSNL), A SUBSIDIARY OF MSTC LIMITED

1. Govt. of India has 'in-principle' decided to disinvest MSTC'S 100% of equity shareholding of FSNL (A 100% subsidiary of MSTC Ltd) through strategic sale. MSTC Ltd. proposes to engage Transaction Advisor from a reputed professional consulting firm, investment bankers, merchant bankers, financial institutions, banks, etc. for providing Advisory services and managing the disinvestment process.
2. Proposals shall be submitted in two parts:  
Part I : Technical Bid and  
Part II : Price Bid
3. A Transaction Adviser shall be selected by the process as described in this RFP.
4. The Request for Proposal (RFP) includes the following documents:  
Section 1 - Notice Inviting proposal  
Section 2 - Terms of Reference  
Section 3 - Basic Eligibility Criteria  
Section 4 - Information to Bidders  
Section 5 - Standard Forms

The RFP can be downloaded from our website at [www.mstcecommerce.com/eprochome/mstc](http://www.mstcecommerce.com/eprochome/mstc) or from Central Public Procurement Portal i.e CPP-Portal at <http://eprocure.gov.in/cppp/>. [www.dipam.gov.in](http://www.dipam.gov.in)

The Bidders shall furnish, as part of his bid, an amount of **Rs.1, 00,000.00** (Indian Rupees One Lakh only) as non-refundable fee. The bidder shall have to deposit the amount **by NEFT/RTGS in favour of MSTC Limited, Kolkata**. The Bank details, format etc for sending Transaction fee by RTGS to MSTC is detailed below

Bank Details : Axis Bank ,Shakespeare Sarani Branch  
Account Details : Axis Bank A/c.No.005010200057840  
IFSC Code No. : UTIB0000005.

The UTR details of remittance of EMD will have to be entered in the designated space in the online format.

MSTC reserves the right to reject or accept or withdraw the RFP in full or part as the case without assigning reason thereof.

## SECTION 2: TERMS OF REFERENCE (TOR)

### i) Introduction:

Background & Activity of the company

FSNL is under the Ministry of Steel and it was incorporated on 28/03/1979.

- 1957- Scrap Recovery activities was started at TISCO by M/s Heckett



Engineering Company, USA, in India

- 1979- FSNL incorporated with shareholding of MSTC 60% and Heckett Engineer, USA 40% shareholder )
- 2001- Awarded Mini Ratna Category II
- 2002- FSNL became wholly owned subsidiary of MSTC Ltd.
- 2011- FSNL implemented Integrated Management System – ISO 9001:2008, 14001:2004 & OHSAS 18001:2007

**ii). The activities of the company.**

- ❖ FSNL is carrying out the job of recovery and processing of ferrous scrap from slag and processing of slag in steel plants.
- ❖ Scrap is recovered and returned to steel plants for recycling and the company is paid service charge.
- ❖ FSNL is the “Largest Recyclers” of Scrap & Slag in the country in the area of Blast Furnace & Steel Mill Services.
- ❖ FSNL is a profit making and dividend paying company since inception.

**iii). The location of the Headquarters and various units of the company.**

**a) Registered and Corporate Office**

FSNL Bhawan, Central Avenue, Equipment Chowk, Bhilai, Chattisgarh, Pin-490001

**b) Units:**

SAIL-RSP-Rourkela, SAIL-ISP-Burnpur, SAIL-BSP-Bhilai, SAIL-BSL-Bokaro, SAIL-DSP-Durgapur, SAIL-VISL-Bhadravati, SAIL-Salem-Taminadu, RINL-Visakhapatnam, NINL-Duburi, BHEL-Haridwar, RWF-Bengaluru, Air-India-Mumbai and Custodian Services for Warehousing at different states.

**iv). Shareholding Structure**

M/s MSTC Limited is holding 100% share of M/s FSNL.

At present the share capital of M/s FSNL is

Authorised - Rs. 50.00cr

Fully paidup - Rs.32.00 cr

v) No of Employees as on 30.09.2019 was 724.

vi) The company is not listed and is a wholly subsidiary of M/s MSTC.

vii) For further information, please visit company's website : [www.fsnl.nic.in](http://www.fsnl.nic.in)

**SCOPE OF WORK OF THE TRANSACTION ADVISOR**

The Advisor will be required to undertake tasks related to all aspects of the strategic disinvestment culminating into successful completion of the transaction and would, inter alia include but not limited to advising and assisting MSTC LTD. on modalities of disinvestment and the timing; recommend the need for intermediaries required for the process of sale/disinvestment and also help identification and selection of the same with proper Terms of Reference; preparation of all documents like Preliminary Information Memorandum (PIM), Confidential Information Memorandum (CIM), Request for Proposal (RFP), Confidentiality Agreement etc.; structuring the transaction; suggesting measures to fetch optimum sale value; positioning of the strategic sale, inviting and evaluating the bids, assisting and professionally guiding during the negotiations with prospective buyers, drawing up the sale/other agreements and advising on post sale matters on a continuous basis. The Terms of Reference would include:



- I. Advising MSTC Ltd. on the modalities and the timing of the strategic disinvestment of FSNL and preparing and submitting a detailed operational scheme to successfully implement the strategic disinvestment process, indicating tentative timelines for each activity.
- II. Preparing the deal collateral for the transaction including but not limited to:
  - a) Preliminary Information Memorandum (“PIM”) with intent to providing prospective buyers information about FSNL and its business to enable them to send in their Expression of Interest.
  - b) Confidential Information Memorandum (“CIM”) covering detailed information about FSNL and its business.
- III. Advise and assist MSTC Ltd. in identifying and selecting specialized professional intermediaries required for the transaction to be appointed by MSTC Ltd. and their work to be coordinated by the Advisor.
- IV. Facilitating execution of Non-Disclosure Agreements (“NDA”) and subsequent communication and providing the bidders with information on the asset and the transaction.
- V. Finalizing the process of strategic disinvestment (through bidding/ auction etc).
- VI. Supporting FSNL in setting up of the e-data room and assisting in the smooth conduct of the due diligence process.
- VII. Positioning the divestment of MSTC Ltd. equity in FSNL to generate interest among the prospective buyers/ purchasers/ investors.
- VIII. Managing a transparent process of bidding/interest solicitation from potential buyers including:
  - a) Preparation and issuance of advertisement/RFP etc; and organizing pre-bid meeting(s) and site visit(s);
  - b) Analysis of and framing/drafting replies to queries of prospective bidders and making necessary modifications, if required in the bid documents;
  - c) Invitation and evaluation of bids from prospective purchasers/ investors and preparation of requisite documents leading to short listing of bidders for negotiations.
  - d) Conducting Road Shows in India and abroad.
- IX. Assisting in negotiations with shortlisted bidders.
- X. Assist MSTC Ltd. in fixing the range of the fair reserve price considering the valuation of FSNL based on the methods like discounted cash flow; relative valuation; and Asset based valuation and highlighting the pros and cons of various methods and also highlighting the fact that many variations of these three valuations exist, While assisting in fixing reserve price, the report of the Asset Valuer will also be taken into consideration. MSTC Ltd. will have the option of valuation done from any other agency.
- XI. Preparation and execution of requisite agreements (share purchase agreement, shareholders’ agreement etc), and all legal documentation required for execution of the transaction on behalf of MSTC Ltd., on mutually acceptable terms with the successful bidder.
- XII. Ensuring compliance of applicable regulatory requirements including obtaining statutory approvals and clearances, wherever necessary, and coordinating and monitoring the progress of the transaction until its completion.



XIII. Assist in closure of the transaction.

XIV. Advising on post-sale matters, if any for a period of 12 months. Documents relating to the transaction be digitized and catalogued and handed over to MSTC/Govt. of India.

XV. Providing any other analytical and transactional support required by MSTC Ltd. for successful completion of the transaction.

The ToR mentioned above are indicative and non-restrictive in nature. There may be some services relevant but not expressly captured in the aforesaid Scope of Work, which upon being brought to the notice of the Advisor by MSTC Ltd. will also form an integral and mandatory part of the ToR.

The scope of work along with timelines for completion are as under :

SL NO	Milestones	Timeline
1	Submission of draft PIM & Approach Note	T+30 days
2	Submission of Final PIM	T+ 60 days
3	Submission of draft EOI to MSTC	T+ 90 days
4	Submission of draft +CIM	T + 150 days
5	VDR Creation	T+180 days
6	Issuance of EOI	T+180 days
7	Completion of evaluation of EOI	T+ 180 days
8	Assistance in due diligence by investor	T+360 days
9	Evaluation of Bids	T+ 330 days
10	Closure of transaction	T +360 days

Note: T = date of award

**SPECIAL NOTE :** Bidders may please note that the entire work including completion of the disinvestment process is to be completed within 1 year.

### **SECTION 3: ELIGIBILITY CRITERIA**

1. Bidder should be a reputed professional consulting firm/investment banker/ merchant banker/financial institution/bank having experience of at least 5 years for providing similar advisory services for disinvestment, strategic sale, M&A activities, private equity transaction etc.
2. Bidders should have advised, handled and successfully completed at least one transaction of merger/acquisition/takeover/strategic disinvestment of **similar nature** of the size of Rs 50 crore or more, between the period from 01.10.2016 to 30.09.2019.
3. Bidders are required to furnish an Affidavit-cum-Undertaking in the format as in **Annexure-1** regarding 'no conviction' and 'no conflict of interest'.
4. Consortium bids will not be allowed.

Sub-contracting of the assignment will not be allowed. The appointed advisor shall be solely responsible for all the required final deliverables.



## SECTION 4: INFORMATION TO BIDDERS

### 1. Structure of the Bid

- I. It is intended to select a Consultant / Bidder to perform the assignment as stated in Terms of Reference, through open tendering process. All interested Bidders must submit their offers as prescribed in the RFP.
- II. The RFP shall be submitted in two parts:

**Part I: Technical Bid and**

**Part II: Price Bid,**

### 2. Clarification of RFP Document

A prospective Bidder requiring any clarification of the RFP may notify MSTC in through e-mail. MSTC will respond to any request for clarification received earlier than 07 days prior to the last date of submission of Bid.

### 3. Pre bid Meeting

- I. Bidders may like to seek any clarification in writing on the document. All queries must be addressed to the following address:

Smt R Winifred,  
Deputy General Manager (CP)  
MSTC Limited  
225C, A. J. C. Bose Road, 5<sup>th</sup> Floor, Kolkata: 700 020,  
Mob: 7044002279  
e-mail : [rwinfred@mstcindia.co.in](mailto:rwinfred@mstcindia.co.in)

Shri. Malay Mandal  
Additional General Manager (CP)  
MSTC Limited  
225C, A. J. C. Bose Road, 5<sup>th</sup> Floor, Kolkata: 700 020, Fax: 033 -2290 0964  
e-mail : [malay@mstcindia.co.in](mailto:malay@mstcindia.co.in)

- II. The pre-bid meeting shall be held on **01.11.2019 at 02.30 PM** at MSTC Ltd, 225C, A. J. C. Bose Road, 3<sup>rd</sup> Floor, Kolkata: 700 020 to clarify the issues and to answer questions on any matter that may be raised at that stage. The attendance in pre bid conference is not mandatory, Objective of the pre bid conference is to provide clarifications on the clauses on the RFP.
- III. The Pre bid clarifications etc; will be hosted in [www.mstcindia.co.in](http://www.mstcindia.co.in) and bidders are advised to check the same for the details.

### 4. Clarification and amendment to RFP documents

- I. The prospective Bidder may request clarification of any of the RFP document in the Pre-bid meeting as mentioned above.
- II. At any time before the submission of Proposals, MSTC may, for any reason, whether at its own initiative or in response to a clarification requested by a bidder, modify the RFP documents by amendment. Any amendment shall be issued in writing through addenda. Addenda/corrigendum shall be hosted at MSTC websites ([www.mstcecommerce.com/eprochome/mstc](http://www.mstcecommerce.com/eprochome/mstc) and [www.mstcindia.co.in](http://www.mstcindia.co.in) only) and will



be binding on the bidders. MSTC may at its discretion extend the deadline for the submission of proposals.

## 5. Preparation of proposal

- I. The Language of the Bid shall be English. All documents upload should also be in English Language. In case the original document is in a different language, self attested English Translation must be furnished.
- II. Please note that all costs for submission of the proposal have to be borne by the bidders.
- III. MSTC reserves the right to accept any of the Proposals submitted and may reject any or all the proposals submitted.

## 6. Technical proposal

- I. In preparing the Technical Proposal, Bidders are expected to examine the documents comprising this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a Proposal. Only bidders who satisfy all the conditions of the eligibility criteria completely will be considered for further technical evaluation.
  - II. The technical proposal should provide the following information in MSTC e-procurement portal using the attached Standard Forms and uploading the required documents as detailed below in the links provided in the online format:-
    - a) Covering letter in the Letter Head of Company/Firm for Bid submission by the Bidder indicating documents attached mentioning the page number. Profile of the organization with full particulars of the constitution, ownership and business activities; as well as unabridged Annual Reports or audited financial accounts for the last three years to be furnished.
    - b) PoA/Authority letter authorizing the person of the bidder to sign the proposal and other documents in original. (to be submitted in original to MSTC )
    - c) Affidavit cum undertaking, duly signed by the authorized signatory of the bidder, as per paragraph 4.3 in original. (to be submitted in original to MSTC )
    - d) Certificate in original, duly signed by the authorized signatory of the bidder certifying that in case of appointment the agreement as per model attached at **Annexure-2** of this RFP would be signed by the bidder. (to be submitted in original to MSTC )
    - e) Certificate that in case any of the members of the deal team indicated in EoI is not available for any reason like resignation etc. a person of equal qualification and experience would be made available with the approval of MSTC Ltd. (to be submitted in original to MSTC )
    - f) A certificate that the team assigned for the transaction would have one expert in strategic disinvestment; one expert in valuation and one expert in drafting of transaction documents. The format of the certificate is at **Annexure-3**. (to be submitted in original to MSTC )
- \*(g) The EMD of Rs.1,00,000/- is to be paid to MSTC through RTGS/NEFT to the following Bank Account number and the details of transaction including UTR no. Is to be entered in the designated field in the online format.



- g) \* A certificate that Performance Guarantee of 10% of quoted fees would be given in the form of Demand draft in favor of "MSTC Ltd" or Bank guarantee valid for a period of 2 years from the date of the appointment letter. (to be submitted in original to MSTC )
- h) A certificate, that the Performance Guarantee would be extended by one more year if the transaction is not completed within a period of 2 years. (to be submitted in original to MSTC )
- i) Technical bid along with all schedules, certificates & Annexure, duly filled in, page numbered & signed by authorized signatory of Bidder is to be uploaded in the MSTC e-procurement portal.
- j) Certificate on unconditional bid in the format at **Annexure-4**. (to be submitted in original to MSTC )
- k) Bidder to indicate the total number of months required to complete the work, in the online technical bid in the space provided for it.

III. Documentary evidence in support of all the above are to be submitted by the bidder by uploading the filled documents in the e-tender

#### **7. Financial proposal**

- I. In preparing the Financial Proposal, Bidders are expected to take into account the requirements and conditions of the RFP specified herein. The Financial Proposal should be submitted only on the e-tendering platform.
- II. Bidders shall quote their rate on a "per month" basis as per the online format for their services in **Indian Rupees (INR)**.
- III. Evaluation of the Financial Proposal will be made on the Total price payable.
- IV. The Financial Proposal must remain valid for a duration of 90 (Ninety) days from the date of submission of the bid. MSTC will make its best effort to take a decision within this period. If MSTC wishes to extend the validity period of the proposals, the bidders may accordingly extend the validity of their bids. The bidders who do not agree have the right not to extend the validity of their proposals.
- V. The quoted price should remain firm till the completion of the contract.
- VI. **The price bid will have to be filled up by the bidders online only and no offline price bids will be accepted.**

#### **8. Submission, Receipt and Opening of proposals**

- I. Tenders shall be submitted on the MSTC e-tendering platform only. No tender in any other form will be considered. The Power of Attorney or Authorization or any other document constituting adequate proof of the ability of the signatory to bind the Bidder, scan copy shall be uploaded with the bid.
- II. For each Proposal, the Bidder should upload clear and legible copies of the documents.
- III. After evaluation of the technical Proposal of RFP is completed, MSTC shall notify the bidders, who have technically qualified for opening of their Financial Proposals.
- IV. The Physical copy for the documents is to be submitted to MSTC within the date and time mentioned in this Tender notice.

#### **9. Evaluation of Financial Proposals and Award of Contract**

- I. The evaluation of the bids shall be done as detailed under clause 11.



II. The successful bidder is expected to commence the Assignment on the date specified in the Agreement (Letter of engagement)

**10. Format of the Technical Bid:**

<b>Section (A)</b>	<b><u>Merger/ Acquisition/ Takeover/Strategic Disinvestment/Private equity Transaction Experience (weightage 20/100)</u></b>  Nature of the Transaction handled & which side was represented – buyer or seller  Was the transaction for Government or quasi Government or private sector.  The role played in the transaction  Intricacies experienced in the transactions  Innovative work done on the transactions
<b>*Section (B)</b>	<b><u>Sector Expertise &amp; Understanding of the Co. (weightage 15/100)</u></b>  Indicate work done in the sector - like studies or research undertaken. Exhibit strength/expertise in the sector, if any. The understanding of the company.
<b>Section (C)</b>	<b><u>Capital Market Understanding (weightage 5/100)</u></b>  Overall understanding of Indian capital market  The work done related to capital market  Is capital market experience relevant in the present case, if yes, how and how the same is proposed to be handled.
<b>Section (D)</b>	<b><u>Local Presence (weightage 5/100)</u></b>  Commitment to India, fund deployed, period of operations  Manpower  Office & other Infrastructure  Deal Team  Who in the Deal Team has executed transactions mentioned in 1 above.
<b>Section (E)</b>	<b><u>Valuation Methodology (weightage 15/100)</u></b>  Understanding of the Valuation Methodologies  Which one is most suitable for the present case and why
<b>Section (F)</b>	<b><u>Marketing Strength (weightage 10/100)</u></b>  Exhibit marketing strength



	<p>How the strength to help in the present case</p> <p>Proposed strategy for the present case.</p>
<b>Section (G)</b>	<p><b><u>Transaction Structure (weightage 15/100)</u></b></p> <p>Proposed structure</p> <p>The advantages of the proposed structure</p> <p>The deliverables</p> <p>The strength in the proposed structure</p>
<b>Section (H)</b>	<p><b><u>Deal Team and Manpower Commitment (weightage 15/100)</u></b></p> <p>.....</p> <ul style="list-style-type: none"><li>• Details of core team that would work on the transaction.</li><li>• Details of other professionals who would provide back up support</li></ul> <p>.....</p> <p>Note: An undertaking to be given that if during the process, any of the core team members is not available due to resignation, leave of absence, etc., another person of the same qualification and experience would be made available with the concurrence of Government.</p>

## 11. BID EVALUATION

- I. The short listed bidders would be required to demonstrate their credentials before MSTC through a presentation, covering the areas / criteria listed above, and to bring along 15 copies of the presentation, at the time of presentation. **The date, time and venue for the presentation will be intimated in due course.**
- II. MSTC would evaluate the Bidders on the criteria mentioned in paragraph 6 above based on their presentation and Proposals received and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring pre-determined marks/score out of 100, which will be announced before presentation, will be technically short-listed.
- III. After the short-listing of Bidders based on their presentations, the MSTC would open the Financial Bids of only the short-listed Bidders. The marks scored by the short-listed bidders will be announced before opening of the financial bids. The date and time of opening of the financial bids would be announced at the time of the presentations.
- IV. The marks scored by the short-listed bidders in the technical evaluation will then be given a weightage of 70. Similarly, the financial bids of the short listed bidders will be given a weightage of 30. The combined score of technical and financial bids will determine the H1, H2, H3 and so on.
- V. The party scoring the highest points/marks (H1) based on the above principles would be appointed for the transaction.
- VI. Consortium bids will not be allowed.
- VII. Sub contracting of the assignment will not be allowed. The appointed Advisor shall be solely responsible for all the required final deliverables.



## 12. DISCLAIMER:

- a) MSTC Ltd. reserves the sole right to accept or reject any or all proposals thus received without assigning any reason thereof.
- b) MSTC Limited will not be responsible for any delay on account of late submission of Bid due to online submission. Late receipt of Bid will not be considered.

## 13. TERMS OF PAYMENT:

The fees to be paid to the successful bidders will be paid in Indian Rupees on a monthly payout basis. However actual payment will be released on achieving of respective milestone detailed in the tender document.

Note:

1. In preparation of RFP, the role of transaction advisor is to assist the Legal Advisor.
2. ***The above mentioned fees shall be paid within 60 days from the completion of the work***  
.....  
stipulated in the Tender document.  
.....
3. ***The fee quoted by the Bidder should include all the applicable taxes, cess, duties etc. The fee will be payable in Indian rupees after successful completion of the transaction.***  
.....
4. ***The Fee quoted by the bidder shall remain FIRM till successful completion of transaction.***  
.....
5. ***The fee quoted should be unconditional. The travel related expenses and all the other expenses including those related to due diligence would have to be borne by the Advisor.***  
.....
6. ***Expenditure on account of fees to legal/accounting or any other consultant, if appointed by MSTC LTD. should not be included in the financial bid.***  
.....
7. The Bidders will be liable to pay taxes/duties/cess etc. applicable as per prevailing law at their end.

## 14. CONTRACT AGREEMENT:

The Bidder shall be required to enter into a Contract Agreement with MSTC Ltd. on Non-Judicial Stamp Paper as per norms on the model form of agreement enclosed at Annexure-2 .

## 15. ARBITRATION:

In the event of any dispute or difference as to the meaning, scope, interpretation or performance under the contract between the parties hereto, the same shall be resolved by the process of Arbitration of a Sole Arbitrator to be appointed by the parties hereto on consent. In case the parties fail to agree to such appointment of the Sole Arbitrator within 30 days of the invocation of Arbitration, any of the parties invoking Arbitration shall be at liberty to approach the competent Court of Civil jurisdiction for seeking appropriate directions for appointment of such sole Arbitrator. The provisions of the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder or any statutory modification thereof shall apply to such Arbitration proceedings. The language of the arbitration shall be English. The place of arbitration shall be Kolkata, India. The cost of the arbitration proceeding will be borne equally by the parties to the arbitration. The Award including Interim Award, if any of the arbitrator shall be final & binding on the parties.



## 16. JURISDICTION:

Subject to the aforesaid, the competent court at Kolkata alone shall have exclusive Jurisdiction to entertain and try any proceedings including relating to such Arbitral proceedings arising out of and/or relating to the Agreement between the parties hereto.

## 17. INTEGRITY PACT

The bidder will have to sign the Integrity Pact Agreement with MSTC as available in MSTCs website [www.mstcindia.co.in](http://www.mstcindia.co.in)

The Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs), appointed by MSTC. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

The parties signing Integrity Pact shall not approach the Courts while representing the matters to IEMs and they will await their decision in the matter. Help desk number: (033)-2290-1004

Details of Independent External Monitors (IEMs) : S.No	Name	Address
1	Shri. Girish Chandra Chaturvedi, IEM	P-2, Gaurav Adhikari Society Plot No. C-58/6, Sector - 62 Noida - 201309
2	Shri V. P. Haran, IEM	23, IFS Vilas, P-6, Builders Area, Greater Noida, U.P. - 201310



## SECTION 5: STANDARD FORMS

1. Affidavit cum Undertaking –Annexure-1(To be uploaded in MSTC e-procurement portal)
2. Bidder Details-Appendix A(To be uploaded in MSTC e-procurement portal)
3. Details of pending enquiry/investigations-Appendix B(To be uploaded in MSTC e-procurement portal)
4. Details of Conflict of Interest – Appendix C(To be uploaded in MSTC e-procurement portal)
5. Agreement of Advisory Services- Annexure 2
6. Deal Team –Annexure 3(To be uploaded in MSTC e-procurement portal)
7. Format of Unconditional Bid –Annexure 4(To be uploaded in MSTC e-procurement portal)

.....

**AFFIDAVIT CUM UNDERTAKING**

We, the undersigned (“**Bidder**”) are submitting our bid in respect of the Request for Proposal No [●], Dated [●] (“**Bid**”) issued by MSTC Ltd. ( Company) in relation to [●] and in this connection we hereby solemnly affirm, declare and undertake as follows:

1. Details of the Bidder as disclosed in **Appendix-A** enclosed herewith are true and correct as on date.
- 2 There has been no conviction by any court of law or indictment/adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) or any of our promoters or directors or that of our Indian Sister Concern(s).
- 3 No enquiry/investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) or any of our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency.
- 4 The details of enquiry/investigations for non-Grave Offences pending against us/our Indian Sister Concern(s)/ our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency are disclosed in **Appendix-B** enclosed herewith.
- 5 There are no Conflict of Interest with respect to the Proposed Transaction as on date.
- 6 During the tenure of our engagement for the Proposed Transaction, we shall keep the MSTC Ltd., informed, without delay, of any situations, circumstances, relationships, possible source or potential areas of Conflict of Interest in the format enclosed as **Appendix-C** herewith and we shall not take up work in relation to any such assignment without obtaining prior approval of MSTC Ltd. and granting of such approval shall be the sole discretion of MSTC Ltd. and shall be binding on us.
- 7 We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any advisory or consulting assignment or render any services on a similar transaction or any other transaction which could have a direct Conflict of Interest, in any manner or capacity to a Competitor of the Company during the term of our engagement in respect of the Proposed Transaction without prior written approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.
- 8 We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the Government/Company, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.
- 9 We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality, objectivity and have made provisions for identification, avoidance and resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.
- 10 We understand that:
  - (i) in cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, MSTC Ltd. would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through or by restricting or modifying the work to be performed by us in respect of the Proposed Transaction. MSTC Ltd. may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is



absolutely necessary in view of MSTC Ltd. to avoid the appearance of a Conflict of Interest.

- (ii) MSTC Ltd. would be entitled to terminate our appointment if any of the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.
- (iii) if at any time after our appointment as an Advisor, either we or any of our Indian Sister Concern or the respective promoters/directors is convicted by a court of law in India or any indictment/adverse order is passed by a regulatory authority in India for a Grave Offence, we shall stand disqualified from continuing as Advisor to MSTC Ltd. and shall be bound to inform them without any delay and shall voluntarily withdraw from the Proposed Transaction failing which MSTC Ltd. may terminate our appointment after giving an opportunity of being heard.

#### Definitions

Unless otherwise defined in this Affidavit, the following capitalized terms used herein shall have the meanings set out below:

**1 Advisor** means the Bidder and includes bidder(s) who have been selected for the Proposed Transaction by MSTC Ltd. in terms of the Bid.

**2 Conflict of Interest:** Conflict of interest in relation to the Proposed Transaction shall without limitation is deemed to exist or have arisen if:

- (i) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in any activity or business which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of MSTC Ltd. or any such activity/association would or may impair his ability to render fair, impartial, technically sound and objective assistance or advice, or unbiased services or may result in it being given an unfair competitive advantage to any other person.
- (ii) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in advising and/or have taken up engagement for advising/consulting any other Entity whether under a formal engagement or otherwise in relation to any transaction/matter ("**Third Party Transaction**") which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of MSTC Ltd.
- (iii) The Advisor has any business or financial interests in any other Entity that would impair, or give the appearance of impairing, impartial decisions in relation to Proposed Transaction, in offering any advice recommendations or in providing technical assistance or other services to MSTC Ltd. as part of Advisor's engagement obligations/duties.
- (iv) In relation to a strategic sale by MSTC Ltd., the Advisors has taken up engagement with buyer/potential buyer of such strategic sale or their Sister Concerns.
- (v) Any other situation, possible source or potential areas of interests which may impair Advisor's ability to render fair, impartial, technically sound, and objective assistance or advice, or unbiased services on in conflict of their professional duties towards MSTC Ltd. in respect of the Proposed Transaction or result in it being given an unfair competitive advantage to any other person.

**3 Company** means MSTC Ltd.

**4 Competitor** of the Company means an Entity in India that is engaged in the business substantially similar to the business of the Company. Business of an Entity shall be deemed to be substantially similar to the business of the Company if turnover or profit of such Entity from the business activity(ies) in which the Company is engaged, exceeds 33% of its total turnover or profit (in any of the last three years).

**5 Entity** shall mean and include an individual, proprietorship, HUF, an association of person/body of Individuals, a partnership firm, limited liability partnership, company or any other persons.



**6 Grave Offence** means offences of such nature that it materially affects the reputation, business or operations adversely or outrages the moral sense of the community and such other offences which may be considered by the Government/Company as grave on case to case basis after considering the facts and relevant legal principles.

**7 Proposed Transaction** means the transaction to be undertaken by MSTC Ltd. as described in bid no [●], issued by the Government.

**8 Senior Managerial Personnel's** means Chairman cum Managing Director, Director Finance, company secretary, or persons having equivalent positions and all such other employees of the Entity who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors and include the functional heads.

**9 Sister Concern** in relation to the Advisor, means any Entity in which the Advisor has a significant influence or which has "significant influence" over the Advisor and includes a group and a joint venture company. "Significant influence" means holding of at least twenty percent or more of total voting rights or the power to participate in and influence the management, financial or operating policy decisions of that Entity, or of business decisions under an agreement or has twenty percent profit sharing in such Entity.

Appendix A, B and C hereto shall constitute and shall be deemed to form an integral part of this document.

#### Appendix-A

##### BIDDER DETAILS

Name of the Bidder	
Address: Registered Office: Corporate Office Tel: Email:	
Constitution	Company/Partnership/LLP/Others (If selected others, please provide the nature of constitution)
SEBI registration no, if registered with SEBI	
Details of registration with other professional statutory bodies	

#### Appendix-B

##### DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

S. No	Name of the Sister Concern(s)/concerned person(s) against whom the enquiry/investigation has been initiated	Relationship with the bidder	Name of the investigating agency	Nature of pending enquiry/investigation and law under which the enquiry has been initiated	Brief facts/interim orders /other relevant information in respect of the pending enquiry/investigation

**DETAILS OF PRESENT/POTENTIAL CONFLICTS/FACTS OR INTERESTS THAT MAY BE DEEMED AS POTENTIAL CONFLICT OF INTEREST**

S. No	Name of the Entity, in which interests Conflicts exit/may arise	Relationship of the Bidder with the Entity	Nature/reason of conflict/potential conflict	Duration of the subsistence of conflict, if any	Such other information as may be relevant and material in deciding whether there is a conflict/potential conflict of interest

**Agreement for Transaction Advisory Services**

\*THIS AGREEMENT (hereinafter referred to as 'Agreement') is made at Kolkata on this ----- day of --  
---- BY AND BETWEEN MSTC Ltd., (hereinafter referred to as "MSTC LTD." which expression shall  
mean and include its successors and assigns) of the ONE PART AND (NAME OF SUCCESSFUL  
BIDDER) incorporated under the Companies Act, 1956/Companies Act, 2013 and having its registered  
office at ----- and having its offices at New Delhi (hereinafter referred to as "(NAME OF  
SUCCESSFUL BIDDER)" which expression shall mean and include its successors and permitted  
assigns of the OTHER PART.

WHEREAS

\*(i) FSNL (hereinafter referred to as "XYZ"), a Public Sector Enterprise, under the Ministry of ----  
----- having its registered office at -----engaged in-----.

\*(ii) MSTC which presently holds 100% of the paid up equity of FSNL intends to disinvest 100%  
of the share capital of FSNL through strategic sale/ESOP/other means, with transfer of  
management control to a strategic partner. Pursuant to MSTC having issued an advertisement  
in The Economic Times and on the official website of MSTC Ltd. as well as of FSNL inviting  
submission of Expression of Interest from reputed professional consulting firms, merchant  
bankers, investment bankers, financial institutions, banks etc. to act as Advisor; (NAME OF  
SUCCESSFUL BIDDER) submitted an Expression of Interest.

\*(iii) Further to the presentation made by (NAME OF SUCCESSFUL BIDDER) to the Inter  
Ministerial Group on ----- and the financial bid submitted for the assignment, MSTC Ltd.  
appointed (NAME OF SUCCESSFUL BIDDER) as its Advisor for the proposed disinvestment in  
FSNL vide letter No-----dated -----.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, THE DETAILED REQUEST FOR  
PROPOSAL CONTAINING THE TERMS AND CONDITIONS, AND FOR OTHER GOOD AND  
VALUABLE CONSIDERATION, THE RECEIPT ADEQUACY AND SUFFICIENCY OF WHICH  
HEREBY ACKNOWLEDGE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1, General Provisions

1.1 Definitions

1.1.1 Unless the context requires otherwise, the following terms, wherever used in this  
Agreement shall have the following meanings:

- a. 'Agreement' means this Agreement and any subsequent amendments hereto between  
MSTC and (NAME OF SUCCESSFUL BIDDER);
- b. 'Business Day' means a day other than one on which either the Central Government  
Offices, Banks or (NAME OF SUCCESSFUL BIDDER)'s Offices are required to close  
in New Delhi;
- c. 'Effective Date' means the date on which this Agreement comes into force and effect  
pursuant to Clause 2.1;
- d. 'Local Currency' means Indian Rupee or any other lawful currency of the Republic of  
India;
- e. 'Party or Parties' means MSTC Ltd. and (NAME OF SUCCESSFUL BIDDER) or both,  
as the case may be;
- f. 'Personnel' means persons hired by (NAME OF SUCCESSFUL BIDDER) as  
employees and assigned to the performance of the Services or any part of the  
Services;
- g. 'Services' mean the services to be performed by (NAME OF SUCCESSFUL BIDDER)  
as the Advisor for this transaction and as described in Clause 3.1.

1.2 Relationship between the Parties

1.2.1 This Agreement shall be construed as establishing a relationship of principal and advisor  
and not of principal and agent, between MSTC Ltd. on the one part and (NAME OF  
SUCCESSFUL BIDDER) on the other part.





For (NAME OF SUCCESSFUL BIDDER)  
BIDDER)

(NAME OF SUCCESSFUL

-----  
2. General Provisions

Effective date

\*2.1.1 This Agreement shall come into force and effect on the Effective Date being -----.

2.2 Entire Agreement

2.2.1 This agreement contains all covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either of the parties has authority to make and the parties shall not be bound by or liable for any statement, representation, promise or agreement made prior to the date hereof but not set forth in this Agreement.

2.3 Modification

2.3.1 Modification of the terms of the Agreement including any modification of the scope of the services may only be made by written agreement between the parties. Each party shall give due consideration, and not unreasonably delay a considered response to any proposal for modification made by a Party.

2.4 Force Majeure

Definition

2.4.1 For the purpose of this Agreement, 'Force Majeure' means an event or circumstance which is beyond the reasonable control of the affected Party and which makes affected Party's performance of its obligation under this Agreement impossible or so impractical as reasonably to be considered impossible in the circumstance and includes but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, cyclone flood, drought or other adverse weather or other conditions and situations including breakage of equipment of facilities, structural collapse, air crash, shipwreck etc.

2.4.2 Force Majeure shall not include:

- a. Strikes, lockouts or other industrial action, confiscation or any other action in and/ or by the parties or their employees:
- b. Any event which is caused by the negligence or wilful action of a party;
- c. Any event which is in control of a party;
- d. Any event which a diligent party could reasonably have been expected both (a) to have taken into account on the Effective Date of this Agreement and/or thereafter during the terms of the Agreement and (b) to have avoided or overcome in the course of carrying out obligations under this agreement; and
- e. Insufficiency of funds or failure to make any payments.

No Breach of Agreement

2.4.3 The failure of a party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability arises from an event of Force Majeure, provided the party affected by that event has complied with its obligations under para 2.4.4 in respect of such event.



#### Measure to be taken

2.4.4 A party affected by an event of Force Majeure shall take all reasonable measure to remove its inability to fulfil its obligations under this Agreement with a minimum of delay and shall notify the other Party in writing of the event concerned as soon as possible and in any event not later than ten days following the occurrence of the event concerned and shall similarly give notice of the restoration of normal conditions as soon as possible. Parties shall together take all reasonable measure to minimise the consequences of any event of Force Majeure.

#### Extensions of time

2.4.5 Subject to the above provisions of this Clause 2.4, any period within which a Party shall, pursuant to this Agreement complete any action or task shall be extended for a period equal to the time during which that Party was unable to perform such action as a result of Force Majeure.

#### Consultation

2.4.6 Not later than ten days after (NAME OF SUCCESSFUL BIDDER) has served a notice to MSTC LTD. as per Paragraph 2.4.4 notifying its inability to perform a portion of the services as a result of an event of Force Majeure, the Parties shall consult between themselves with a view to agreeing on appropriate measure to be taken in the circumstances.

#### 2.5 Earlier Termination

##### Termination by MSTC Ltd.

2.5.1 MSTC LTD. may by not less than ten days written notice of termination to (NAME OF SUCCESSFUL BIDDER) terminate this agreement if:

\*a) (NAME OF SUCCESSFUL BIDDER) in a breach of its obligations under this Agreement and the terms and conditions mentioned in the RFP dated----- and the Affidavit-cum-Undertaking submitted by you at RFP stage and has not remedied the same within thirty days (or such longer period as MSTC LTD. may have subsequently approved in writing) following the receipt by (NAME OF SUCCESSFUL BIDDER) of notice from MSTC LTD. specifying the breach. Provided that (NAME OF SUCCESSFUL BIDDER) shall not be held to be in breach of any obligation under this Agreement if breach arises as a result of failure on the part of MSTC LTD. to meet MSTC LTD.'s obligations under this agreement;

b) (NAME OF SUCCESSFUL BIDDER) fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 6;

c) (NAME OF SUCCESSFUL BIDDER) is unable as a result of Force Majeure to perform a material portion of the services for a period of not less than sixty days;

d) (NAME OF SUCCESSFUL BIDDER) becomes insolvent or bankrupt or goes into liquidation or receivership whether compulsory or voluntary;

e) MSTC LTD. decided at any time to abandon the project;

\*f) A suitable strategic partner willing to purchase 100% of MSTC holding in FSNL is not found and MSTC LTD. wishes to appoint another advisor for the sale of MSTC LTD.'s holding in FSNL;

g)(NAME OF SUCCESSFUL BIDDER) is found guilty of any criminal offence in any court of law or of violation of regulations of a statutory body that material adversely affects its ability to carry out the engagement;

h)In case the event of a conflict of interest during the engagement that materially adversely affects the ability of (NAME OF SUCCESSFUL BIDDER) to carry out the engagement and not remedied within 15 days of arising due to handling of the transaction by (NAME OF SUCCESSFUL BIDDER) as Advisor to the MSTC LTD. for disinvestment in FSNL.

##### Termination by (NAME OF SUCCESSFUL BIDDER)

2.5.2 (NAME OF SUCCESSFUL BIDDER) may by not less than ten days written notice to MSTC LTD. terminate the Agreement if:

a) MSTC LTD. fails to pay any money to (NAME OF SUCCESSFUL BIDDER) pursuant to this Agreement, which is not subject to dispute pursuant to Clause 6, within thirty days or any further extended period of time as may be agreed between the Parties after receiving written notice from (NAME OF SUCCESSFUL BIDDER) that the payment concerned is due/overdue;

b) MSTC LTD. is in breach of its obligations under this Agreement and has not remedied the same within thirty days (or such period as (NAME OF SUCCESSFUL BIDDER) may have been subsequently approved in writing) following the receipt by MSTC LTD.



of (NAME OF SUCCESSFUL BIDDER)'s written notice specifying the breach. Provided that MSTC LTD. shall not be held to be in breach of any obligation under this Agreement if breach arises as a result of failure on the part of (NAME OF SUCCESSFUL BIDDER) to meet (NAME OF SUCCESSFUL BIDDER)'s obligations under this agreement;

- c) MSTC LTD. shall have failed to comply with any final decision reached as a result of arbitration pursuant to Clause 6
- d) MSTC LTD. is unable as a result of Force Majeure to perform its obligations for a period of not less than sixty days.

## 2.6 Cessation of Rights and Obligations

2.6.1 On termination pursuant to any part of Clause 2.5 and / or expiration of this Agreement all rights and obligations of the Parties shall cease, except (i) rights and obligations that have accrued as of the date of termination or expiration (ii) any right which a Party have under law and (iii) the obligations in Clauses 3.2, 3.3 and 4.3.

## 2.7 Cessation of Services

2.7.1 On the termination of this Agreement by notice of either Party to the other pursuant to Paragraphs 2.5.1 and 2.5.2 (NAME OF SUCCESSFUL BIDDER) will take all necessary steps to bring the services to a close within thirty days of the receipt of the notice of termination. Upon cessation of services either on expiry or termination (including earlier termination) of the agreement hereunder (NAME OF SUCCESSFUL BIDDER) shall hand over to MSTC Ltd. such material documents and records prepared directly by (NAME OF SUCCESSFUL BIDDER) in connection with the services whether in final or draft form, complete or in the process of being completed, on paper and if applicable CDs/DVDs together with material documents and records as provided by MSTC Ltd. to (NAME OF SUCCESSFUL BIDDER) save the copies thereof will be allowed to be retained by (NAME OF SUCCESSFUL BIDDER) for their files.

## 3. Obligations of (NAME OF SUCCESSFUL BIDDER)

### 3.1 Scope of Services

3.1.1 MSTC Ltd. proposes to divest/undertake strategic sale of a part of its shareholding in FSNL to a prospective strategic partner, and for that purpose have appointed (NAME OF SUCCESSFUL BIDDER) as advisor to advise and assist MSTC Ltd. in selection of the prospective strategic partner, to maximise realisation from the sale of its shareholding.

3.1.2 (NAME OF SUCCESSFUL BIDDER)'s scope of services as Advisor to MSTC Ltd. shall include the services as set out below to assist and advise MSTC Ltd. in identifying, negotiating and concluding the strategic sale with the most appropriate partner, keeping in view MSTC Ltd.'s strategic objectives and evaluation criteria for the strategic partner, however it is clarified that the decision whether to proceed with and consummate the transaction lies solely with MSTC Ltd. and the work and findings of (NAME OF SUCCESSFUL BIDDER) shall not in any way constitute recommendation as to whether MSTC Ltd. should or should not consummate the transaction. (NAME OF SUCCESSFUL BIDDER)'s service shall include the following:

#### Phase I: Transaction strategy

3.1.3 (NAME OF SUCCESSFUL BIDDER) shall, in consultation with MSTC Ltd. evolve a transaction strategy covering modalities, timing of disinvestment and the timeline for various activities. (NAME OF SUCCESSFUL BIDDER) will assist MSTC Ltd. and will not associate in any manner, directly or indirectly, any other party or the buyer in the present transaction, in analysing possible transaction strategies from the perspective of MSTC Ltd. and the strategic partner. (NAME OF SUCCESSFUL BIDDER) would analyse the positive and negative financial aspect of each of these alternative strategies.

3.1.4 (NAME OF SUCCESSFUL BIDDER) shall advise and assist MSTC Ltd. in identifying and selecting specialized professional intermediaries required for the transaction to be appointed by MSTC Ltd. and their work to be coordinated by the (NAME OF SUCCESSFUL BIDDER).

#### Phase II: Partner log

3.1.5 Working closely with MSTC LTD., and drawing upon knowledge of (NAME OF SUCCESSFUL BIDDER) or of prospective strategic partners, (NAME OF SUCCESSFUL BIDDER) will develop a list of potential strategic partners with sufficient interest and apparent resources to enter into a transaction with XYZ/MSTC Ltd.. In doing so, (NAME OF SUCCESSFUL BIDDER) would:

- Use its international offices and network;
- Use its contracts and industry knowledge; and



- Include any other partners MSTC Ltd. would like to consider.

3.1.6 (NAME OF SUCCESSFUL BIDDER) will obtain and develop information on each of the potential strategic partners identified, so that together (NAME OF SUCCESSFUL BIDDER) & MSTC Ltd. can place in priority those strategic partners, which have the best potential for consummating the transaction with MSTC LTD.. In doing so, (NAME OF SUCCESSFUL BIDDER) will use its global presence and long-standing relationships with potential strategic partners who may be (NAME OF SUCCESSFUL BIDDER)'s global clients.

Phase III: Information Memorandum

3.1.7 The next phase is to incorporate the financial data and other relevant information of FSNL into an Preliminary Information Memorandum/Confidential Information Memorandum. The purpose of this Memorandum is to provide prospective strategic partners with information on the business and the unique selling points of FSNL so as to enable them to decide whether to provide initial indications of interest and initiate serious discussions.

3.1.8 This Memorandum would contain information relating to the following areas:

- Background of FSNL and key features that differentiate it from its competitors;
- Current activities;
- Rationale for divestment and inviting a strategic partner;
- Product profile;
- Manufacturing facilities;
- Financial performance;
- Management;
- Customers and suppliers;
- Contracts;
- Research and development activities;
- Details of surplus real estate assets; and
- Any other relevant details.

3.1.9 The Information Memorandum so prepared will be made available on a confidential basis to interested strategic partners. (NAME OF SUCCESSFUL BIDDER) will take approximately six weeks to prepare the Information Memorandum once (NAME OF SUCCESSFUL BIDDER) has been provided with all the necessary data.

Phase IV: Pricing Analysis

3.1.10 (NAME OF SUCCESSFUL BIDDER) will assist FSNL/MSTC Ltd. in performing a pricing analysis of the Company. In performing the pricing analysis (NAME OF SUCCESSFUL BIDDER) proposes to use the 'discounted cash-flow' approach, the 'relative valuation' approach and the 'asset based valuation' approach to determine a range of fair values.

3.1.11 The pricing analysis will be based on illustrative profit projections and the information provided by FSNL to (NAME OF SUCCESSFUL BIDDER). The projections would show a possible outcome based on the assumptions as per the business plan prepared by the management of FSNL ('the Management'). It is clarified (NAME OF SUCCESSFUL BIDDER) must emphasise that the realisation of the projections would be dependent on the continuing validity of the assumptions on which they are based. (NAME OF SUCCESSFUL BIDDER)'s review therefore shall not, and cannot be directed to providing any assurance about the achievability of the financial projections. Since the projections relate to the future, actual results are likely to be different from the projected results because events and circumstances do not occur as expected, and the differences may be material.

3.1.12 (NAME OF SUCCESSFUL BIDDER) will present its findings in the form of a Pricing Analysis within three weeks of completing the Information Memorandum and receipt of any additional information of that it may require for this purpose. This will allow MSTC LTD. & (NAME OF SUCCESSFUL BIDDER) to discuss a range of supportable asking prices. (NAME OF SUCCESSFUL BIDDER)'s findings will be subject to the following conditions and limitations:

- The findings can serve as only one input to the process of negotiating a price, the actual terms will be set through direct negotiations;
- The findings are solely for the internal use;
- Events subsequent to the date of (NAME OF SUCCESSFUL BIDDER)'s analysis may materially alter our estimate; and
- The findings are based upon the information provided to (NAME OF SUCCESSFUL BIDDER) by FSNL/MSTC LTD..



#### Phase V: Partner Approach

3.1.13 (NAME OF SUCCESSFUL BIDDER) will initiate contacts with only prospective strategic partners on an agreed list. If the prospective strategic partner indicates a sufficient level of interest in the businesses, and if MSTC LTD. instructs, (NAME OF SUCCESSFUL BIDDER) will forward the Information Memorandum to them upon receipt of a signed Confidentiality Agreement.

3.1.14 (NAME OF SUCCESSFUL BIDDER) will control the release of any further information based on the level of interest evinced by the potential strategic partner and after obtaining MSTC LTD.'s approval.

#### Phase VI: Negotiations and deal support

3.1.15 (NAME OF SUCCESSFUL BIDDER) will assist and provide inputs to MSTC Ltd. during the negotiation process will the prospective partner by:

- Discussing the pricing analysis;
- Negotiating the financial terms;
- Outlining preferable terms;
- Briefly describe the tax and accounting implications of each proposal;
- Suggesting counterproposal alternatives;
- Communicating with interested parties;
- Reporting potential problems to MSTC Ltd.;
- Evaluating alternative financial structures;
- Assist in negotiating the terms and conditions of the shareholders agreement; and
- Assisting in negotiating sessions leading to a transaction.

3.1.16 (NAME OF SUCCESSFUL BIDDER) will be present at all meetings and handle all necessary arrangements during the negotiation process.

#### Phase VII: Facilitating due diligence review

3.1.17 (NAME OF SUCCESSFUL BIDDER) will assist FSNL in the smooth conduct of the due diligence process.

#### Phase VIII: Completion of the transaction

3.1.18 If Parties express continuing interest, (NAME OF SUCCESSFUL BIDDER) will assist MSTC Ltd. in concluding the transaction. In doing so, (NAME OF SUCCESSFUL BIDDER) will work alongside FSNL / MSTC Ltd.'s legal counsel to incorporate the terms and conditions of the transaction into a joint venture agreement. However, on account of the peculiarities and complexities of this transaction, it will be crucial that the legal counsel take full responsibility of documentation and completion. The law firm will be appointed directly by FSNL / MSTC Ltd. and any fee payable to them will be paid directly by FSNL /MSTC Ltd..

#### 3.2 Confidentiality

3.2.1 (NAME OF SUCCESSFUL BIDDER) and Personnel of (NAME OF SUCCESSFUL BIDDER) shall not, during the term of this Agreement, and for a period of one year commencing from the date of terminating or expiry of this Agreement, disclose to any party other than MSTC/FSNL, other concerned consultants, valuers, lawyers or any information (other than publicly available information) relating to the services, this agreement, FSNL's business or operations without the prior written consent of MSTC Ltd., unless such disclosure is requested by any statutory or regulatory or judicial/ quasi – judicial authority constituted under the laws of India and having jurisdiction over a Party, or unless such disclosure is required in connection with any litigation affecting a party, or unless such disclosure is necessary to perform (NAME OF SUCCESSFUL BIDDER)'s services or obligations under this Agreement or unless such information has entered the public domain other than by a breach of the Agreement.

3.2.2 Provided that no confidentiality is required to be maintained in respect of disclosure required and made on account of marketing strategy/ ies agreed upon among the parties. External professionals appointed, if any will also be bound by such requirement/s of confidentiality as may be stipulated by MSTC Ltd..

#### 3.3 Indemnification of MSTC LTD. by (NAME OF SUCCESSFUL BIDDER)

3.3.1 (NAME OF SUCCESSFUL BIDDER) agrees to indemnify and hold harmless MSTC Ltd. officers, employees and representatives of MSTC Ltd. (each, an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of the negligence or wilful misconduct of (NAME OF SUCCESSFUL BIDDER) or its personnel in providing the services.



3.3.2 In the event that (NAME OF SUCCESSFUL BIDDER) disputes an indemnity claim of an Indemnified Person, any amounts to be paid by (NAME OF SUCCESSFUL BIDDER) will be finally decided by the Arbitration Tribunal or courts of law. It is understood and agreed that an indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and / or filing of appeals or revision from awards/orders/judgements/decrees, if the Indemnified Person has notice from (NAME OF SUCCESSFUL BIDDER) that legal action and /or appeal is intended.

3.3.3 MSTC will have to be given notice of a dispute of the claim by (NAME OF SUCCESSFUL BIDDER) within fifteen days of the receipt of Notice of Claim.

#### 3.4 Limitation of liability

3.4.1 In the particular circumstance of this case, MSTC Ltd. agree that the aggregate liability of (NAME OF SUCCESSFUL BIDDER) and directors, officers and employees and representatives of (NAME OF SUCCESSFUL BIDDER) (Whether direct or indirect, in contract or tort or otherwise) to MSTC arising out of this Agreement, including any indemnity liability as per clause 3.3 above, shall be limited to the aggregate fees actually payable to (NAME OF SUCCESSFUL BIDDER) under this Agreement by MSTC Ltd..

#### 3.5 Documents Prepared by (NAME OF SUCCESSFUL BIDDER)

3.5.1 MSTC and (NAME OF SUCCESSFUL BIDDER) agree that the analysis provided to MSTC Ltd. is for the use and information of MSTC Ltd. for the strategic sale/disinvestment of MSTC'S stake in FSNL. (NAME OF SUCCESSFUL BIDDER) shall own no responsibility to any action taken by any other person based on any advice given by (NAME OF SUCCESSFUL BIDDER) to MSTC Ltd..

#### 3.6 (NAME OF SUCCESSFUL BIDDER)'s Personnel

3.6.1 For the services (NAME OF SUCCESSFUL BIDDER) shall deploy such personnel as are qualified and experienced in the opinion of (NAME OF SUCCESSFUL BIDDER) to carry out the services. Provided that in the event MSTC Ltd., at any point in time while the services are being carried out, expressly communicates to (NAME OF SUCCESSFUL BIDDER) the opinion that any of the Personnel need to be substituted for (NAME OF SUCCESSFUL BIDDER) will take into account such opinion and will not unreasonably continue to deploy such personnel to carry out the services.

#### 4. Obligation of MSTC LTD.

##### 4.1 Assistance

4.1.1 MSTC/FSNL shall provide to (NAME OF SUCCESSFUL BIDDER) all relevant information and particulars in the possession of MSTC Ltd. and which they have legal authority provide and all assistance required by (NAME OF SUCCESSFUL BIDDER) to enable (NAME OF SUCCESSFUL BIDDER) to perform its services.

4.1.2 Further, MSTC Ltd. shall issue to officials, agents and representatives of MSTC/FSNL such instructions as it is competent to issue as may be specified by (NAME OF SUCCESSFUL BIDDER) as being necessary or appropriate for the prompt and effective rendering of the services.

4.1.3 In the event that any such information and particulars are not in the possession of MSTC and FSNL or in the event that MSTC LTD. And FSNL do not have the legal authority to provide information and particulars to (NAME OF SUCCESSFUL BIDDER) or in the event that assistance sought by (NAME OF SUCCESSFUL BIDDER) cannot be provided or in the event that instructions as specified by (NAME OF SUCCESSFUL BIDDER) cannot be issued then MSTC LTD. shall forthwith inform (NAME OF SUCCESSFUL BIDDER) of their inability.

4.1.4 MSTC Ltd. shall evolve a proper mechanism to take decisions and to communicate to (NAME OF SUCCESSFUL BIDDER) in writing regarding these decisions. MSTC Ltd. shall accept full responsibility for the contents of the document/s or announcement/s that it may require and authorise (NAME OF SUCCESSFUL BIDDER) to issue, sign or execute.

##### 4.2 Access to information and decision

4.2.1 MSTC Ltd. shall keep (NAME OF SUCCESSFUL BIDDER) informed of any material developments or facts of proposals in relation to the business or operations of FSNL and in particular where these may have any effect on the agreement or in execution of (NAME OF SUCCESSFUL BIDDER)'s services.

4.2.2 MSTC LTD. shall not require/insist on (NAME OF SUCCESSFUL BIDDER) to issue or approve, or to arrange for the issue or distribution of a particular document or announcement, if at any time (NAME OF SUCCESSFUL BIDDER) becomes aware of information which, in the opinion of (NAME OF SUCCESSFUL BIDDER) after due consultation with MSTC Ltd., renders the document or announcement untrue, incomplete untrue, incomplete or misleading in any material respect.



4.3 \* indemnification of (NAME OF SUCCESSFUL BIDDER) by MSTC LTD.

4.3.1 MSTC Ltd. agrees to indemnify and hold harmless (NAME OF SUCCESSFUL BIDDER) and directors, officers, employees and representatives of (NAME OF SUCCESSFUL BIDDER) (each an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of (NAME OF SUCCESSFUL BIDDER)'s engagement hereunder and / or directly or indirectly arising as a consequence of any statement, data, representation or other information, whether included in any information memorandum or advertisement or otherwise given in the performance of the services, which had been provided and/ or approved by MSTC Ltd.. Provided that the above mentioned indemnity to Indemnified Person(s) shall only be available in case of the liability or loss arising out of the negligence or wilful misconduct of the MSTC Ltd. or its employees under this Agreement.

4.3.2 In the event that MSTC Ltd. disputes an indemnity claim of an Indemnified Person, any amounts to be paid by MSTC LTD. will be as finally decided by the Arbitration Tribunal or by the court of law, It is understood and agreed that an Indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and / or filing of appeals or revision from awards/ orders/ judgement/ decree, if the Indemnified Person has notice from MSTC Ltd. that legal action and / or appeal is intended.

4.3.3 (NAME OF SUCCESSFUL BIDDER) will have to be given notice of a dispute of the claim by MSTC LTD. within fifteen days of the receipt of Notice of Claim.

4.3.4. In the particular circumstances of this case, (NAME OF SUCCESSFUL BIDDER) agrees that the aggregate liability of MSTC Ltd. and its officers, employees and representatives of MSTC Ltd. (whether direct or indirect, in contract, tort or otherwise to (NAME OF SUCCESSFUL BIDDER) arising out of this Agreement, including any indemnity liability as per clause 4.3 above shall be limited to the aggregate fees actually payable by MSTC Ltd. to (NAME OF SUCCESSFUL BIDDER) under this Agreement.

4.3.5. The provisions of the clauses 3.3 and 4.3 above shall be operative in full force and effect regardless of any termination or expiration of this Agreement.

5. Payment of (NAME OF SUCCESSFUL BIDDER)

5.1 Currency of payment

5.1.1 Except as may be otherwise agreed in this agreement and/or other written agreement between the parties, all payments due to (NAME OF SUCCESSFUL BIDDER) under this agreement shall be made in Indian Rupees.

5.2 Payments

5.2.1 In consideration of the services performed by (NAME OF SUCCESSFUL BIDDER) under this agreement MSTC Ltd shall pay to (NAME OF SUCCESSFUL BIDDER) the following:

Success fee:

\*5.2.2 MSTC Ltd shall pay (NAME OF SUCCESSFUL BIDDER) point ----- percent (-----%) of the gross consideration to be paid by the strategic partner to MSTC Ltd. for purchase of its shares in FSNL and/ or allotment of new shares, if any as success fee. The success fee shall be payable on the completion of the services as defined in Clause 3.1 signified by the signing of the shareholders agreement by the MSTC LTD. and the strategic partner.

5.2.3 The Gross Consideration includes the consideration made available to FSNL or the MSTC Ltd. The Gross consideration also covers any staged payments or payments/investment through equity as long as it is a payment in lieu of the MSTC's stake in FSNL on the date of signing the shareholders' agreement.

Earlier Termination Fee

5.2.4 In the event that the agreement is terminated as per Paragraph 2.5.1 (e), MSTC Ltd. shall pay to (NAME OF SUCCESSFUL BIDDER) a drop-dead fee as defined in the RFP. All payment to (NAME OF SUCCESSFUL BIDDER) shall be subject to deduction as per applicable laws in India.

5.3 Mode of Billing and Payment

5.3.1 As soon as practicable, after (NAME OF SUCCESSFUL BIDDER) is entitled to receive the amount under Clause 5.2 above, (NAME OF SUCCESSFUL BIDDER) shall send to MSTC Ltd. invoice for the amount due. The said fee/ payment shall be payable by MSTC Ltd. to (NAME OF SUCCESSFUL BIDDER) within 30 days of the date of entitlement and /or date of submission of claim of (NAME OF SUCCESSFUL BIDDER) whichever is later.

5.4 Changes in Scope of Work



5.4.1 If MSTC Ltd. requests a change in the scope of work beyond the definition of 'Services', payment for the additional work will be determined based on the agreed scope of effort to be employed by (NAME OF SUCCESSFUL BIDDER) subject to the agreement of the parties on all issue involved,

5.5 Expenses of Parties

5.5.1 In performing its services, (NAME OF SUCCESSFUL BIDDER) shall bear the following expenses:

(a) All fees and expenses related to external professionals appointed by (NAME OF SUCCESSFUL BIDDER); and

(b) All out of pocket, travelling/hotel and other cost, charges and expenses incurred by (NAME OF SUCCESSFUL BIDDER) or its officers, employees or agents in connection with performing any services, save and except Clause 5.5.2 which shall be borne by MSTC Ltd..

5.5.2 MSTC Ltd. shall bear the following expenses:

(a) Fees and expenses related to external legal advisors for drafting and providing shareholders agreement and such other related agreements related to the strategic sale;

(b) Fees and expenses related to external professionals appointed by MSTC and FSNL, including fees and expenses, if any related to FSNL's auditors and MSTC's own legal advisors;

(c) Travelling/hotel and other cost incurred in connection with domestic or international travel of MSTC/FSNL's personnel, officers and employee;

(d) All advertisement and printing expenses relating to the services under this agreement; and

(e) Restructuring costs, if any, as per clause 5.4 hereof.

5.5.3 The parties shall bear the cost of their respective telephone calls, facsimile transmission, couriers, dispatches and postage.

## 6. **ARBITRATION:**

In the event of any dispute or difference as to the meaning, scope, interpretation or performance under the contract between the parties hereto, the same shall be resolved by the process of Arbitration of a Sole Arbitrator to be appointed by the parties hereto on consent. In case the parties fail to agree to such appointment of the Sole Arbitrator within 30 days of the invocation of Arbitration, any of the parties invoking Arbitration shall be at liberty to approach the competent Court of Civil jurisdiction for seeking appropriate directions for appointment of such sole Arbitrator. The provisions of the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder or any statutory modification thereof shall apply to such Arbitration proceedings. The language of the arbitration shall be English. The place of arbitration shall be Kolkata, India. The cost of the arbitration proceeding will be borne equally by the parties to the arbitration. The Award including Interim Award, if any of the arbitrator shall be final & binding on the parties.

### 6.1 **JURISDICTION:**

Subject to the aforesaid, the competent court at Kolkata alone shall have exclusive Jurisdiction to entertain and try any proceedings including relating to such Arbitral proceedings arising out of and/or relating to the Agreement between the parties hereto.

## 7. Representations

7.1 MSTC Ltd. represents and warranties of MSTC Ltd.

7.1.1 MSTC Ltd. represents and warrants that :

(a) MSTC Ltd. has full power and authority to enter into this agreement and to execute, deliver and perform its obligations under this agreement, and to carry out the transaction contemplated hereby;

(b) it has taken all necessary steps required for the authorisation, execution, delivery and performance of this agreement;

(c) This agreement constitutes legal, valid and binding obligations upon MSTC enforceable against it in accordance with the terms hereof;

(d) No representation or warranty by or information from it contained herein or in any other document furnished by it or on its behalf by MSTC to (NAME OF SUCCESSFUL BIDDER) contains or will contain any untrue statement of material fact or omit to state a material fact necessary to make such representation or warranty or information not misleading;

(e) The execution, delivery and performance of this agreement will not conflict with any covenant, agreement, understanding, decree or order to which it is a Party.



7.2 Representation and Warranties of (NAME OF SUCCESSFUL BIDDER)

7.2.1 (NAME OF SUCCESSFUL BIDDER) represents and warrants that:

- (a) (NAME OF SUCCESSFUL BIDDER) is duly organised. Validly existing and in good standing under the laws of jurisdiction of its incorporation;
- (b) (NAME OF SUCCESSFUL BIDDER) has full power and authority to execute, deliver and perform its obligation under this agreement and to undertake the services contemplated herein;
- (c) (NAME OF SUCCESSFUL BIDDER) has taken all necessary corporate and other action under relevant laws and its constitutional documents to authorise the execution, delivery and performance of this agreement;
- (d) This agreement constitutes legal, valid and binding obligations enforceable against (NAME OF SUCCESSFUL BIDDER) in accordance with the terms hereof;
- (e) (NAME OF SUCCESSFUL BIDDER) is subject to civil and commercial laws of India with respect to this agreement and it hereby expressly irrevocably waives any immunity in any jurisdiction in respect thereof;
- (f) (NAME OF SUCCESSFUL BIDDER) is not debarred from performing the services on account of any litigation;
- (g) The execution, delivery and performance of this agreement will not conflict with any of the terms of the (NAME OF SUCCESSFUL BIDDER)'s memorandum and articles of association or any covenant, agreement, understanding, decree or order to which it is party or any onMSTC Ltd.ng assignment;
- (h) No representation or warranty by or information from it contained herein or in any other document furnished by it to MSTC Ltd. contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty or information not misleading.

8. Other Terms of Agreement

8.1 Fairness and Good Faith  
Good Faith

8.1.1 The parties undertake to act in good faith with respect to one and others rights under the agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this agreement.

Operation of the Agreement

8.1.2 The Parties recognise that it is impractical in this agreement to provide for every contingency and possibility which may arise during the life of the agreement (in respect of the services) and the Parties agree that it is their intention that this agreement shall operate fairly between them and without detriment to the interest of either of them and that if during the term of this agreement, a party believes that this agreement is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause of causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute to arbitration in accordance with Clause 6.

8.2 Publicity

8.2.1 The Parties shall consult each other on any publicity, press releases, advertisement and publications and public statements concerning the services and this agreement in advance, before release. If MSTC Ltd. completes the transaction, FSNL reserves the right to publish an announcement of FSNL's role. The text if any such advertisement will be subject to MSTC's approval, which will not be unreasonably withheld.

8.3 Waivers

8.3.1 No failure or delay of a Party hereto in exercising any right of remedy hereunder shall operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or future exercise, of any right and remedy. The right and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

8.4 Waiver of Sovereign Immunity

8.4.1 MSTC Ltd. hereby waives any immunity from jurisdiction of any court of arbitration proceeding or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of judgement or otherwise) in respect of itself and/or any of its property, save and except for military property, military assets, present and future premises and assets of the missions/ consulates and the constitutional authorities and their offices and assets required for scientific and technological activities of MSTC Ltd..

8.5 Liability to pay stamp duty



8.5.1 The stamp duty, if any, payable on this agreement and its counterparts shall be paid by MSTC Ltd..

8.6 This agreement has been prepared and signed in two originals, one to be retained by each party.

IN WITNESS WHEREOF of Parties have caused this agreement to be signed as of the day and year first above written.

**FORMAT FOR THE DEAL TEAM**

Certified that the deal team would comprise of the following:

S.No.	Name	Expert in the field of	Qualification	Experience	Remarks
1	Shri/Smt.	strategic disinvestment			
2	Shri/ Smt	valuation			
3	Shri/ Smt	documentation of strategic disinvestment			
4	Shri/ Smt				

Seal with Signature of the authorized signatory of the bidder



**FORMAT OF UNCONDITIONAL BID ON THE LETTERHEAD OF THE BIDDER**

This is to certify that the fee quoted by us for engagement as Advisor for disinvestment through strategic sale of FSNL is in accordance with the terms and conditions laid down in the Request for Proposals displayed on the website of the Department of Investment & Public Asset Management and is unconditional.

Seal with signatures of authorized signatory of the Bidder

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