

**RAJKOT MUNICIPAL CORPORATION**

**TENDER No. : RMC/SMART CITY/01/2017-18**



**RFP for engagement of Consultant for  
Preparation of Master Plan, DPR and PMC for  
Green Field Area Rajkot Smart City**

**VOLUME-II, Part II  
CONDITIONS OF CONTRACT**

<b>Revised Milestone Dates</b>	
Tender Uploading	07-10-2017 : 17:00 hrs
Last date for downloading of online document:	17-10-2017 up to 17:00 hrs
Pre-bid meeting/conference	13-10-2017:12:00 hrs at RMC, CZ conference hall
Last date for the online submission of bid	17-10-2017 up to 18:00 hrs
Last date for the physical submission of Bid security / tender fee etc.	18-10-2017 up to 18:00 hrs
Verification of bid documents	23-10-2017 up to 18:00 hrs
Opening of technical bid	23-10-2017 at 12:00 hrs onwards
Presentation to the technical committee	25-10-2017 : 12:00 hrs at RMC, WZ conference hall
Tentative Dates of Declaring Qualified Bids.	27-10-2017 at 12:00 hrs onwards
Opening of financial bids: (For technically qualified bidder only)	28-10-2017 at 12:00 hrs onwards
Bid Validity	180 Days
For further particulars, visit us on <a href="http://www.rmc.nprocure.com">www.rmc.nprocure.com</a>	

**Office of General Manager - RSCDL  
Room No. 10, Floor-01, HarisinhjiGohilBhawan,  
RMC West Zone Office,  
Behind Big Bazar, 150 feet Ring Road, Rajkot - 360005  
Gujarat, INDIA**

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**CONTRACT FOR PROVISION OF SERVICES [INSERT: THE NAME OF THE SERVICES]**

Between

Rajkot Smart City Development Limited - RSCDL  
And  
[Insert: name of Consultant(s)]

Dated:.....,

## CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made  
the [ Insert: ordinal ] day of [ Insert: month ], [ Insert: year ].

BETWEEN

(Insert: Name of Client ), a ( insert: name of Client) of the **Rajkot Smart City Development Limited – RSCDL** and having its principal place of business at ( insert: address of Client ) (hereinafter called "**The Client**"), and

1. (Insert: name of Consultant), a corporation incorporated under the laws of [Insert: country of Consultant] and having its principal place of business at [Insert: address of Consultant] (hereinafter called "**The Consultant**").

or

2. A joint venture consisting of the following entities, each of which will be jointly and severally liable to the Client for the Consultant's obligations under this Contract, namely,.....and.....(hereinafter called the "**Consultant**")

WHEREAS

(A) The Client desires to engage the Consultant to provide the following Services [ Insert: brief description of the Services ] "**the Services**" or "**the Work**"; and

(B) The Consultant, having represented to the Client that they have the required infrastructures, professional skills, personnel and technical resources, have agreed to provide the services on the terms and conditions set forth in this Contract Agreement;

NOW IT IS HEREBY AGREED as follows:

### **Article 1: Contract Documents**

**1.1** Contract Documents (Reference **GCC Clause 1.1(iv)**) The following documents shall constitute the Contract between the Client and the Consultant, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices attached to the Contract Agreement
- (b) General Conditions of Contract
- (c) Special Conditions of Contract
- (d) [Add here: any other documents]

### **1.2 Order of Precedence**

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in **Article 1.1** (Contract Documents).

### **1.3 Definitions (Reference GCC Clause 1)**

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

## **Article 2: Contract Price and Payment Terms**

**2.1 Contract Price (Reference GCC Clause 1.1(v) and GCC Clause "Price")** The Client hereby agrees to pay to the Consultant the Contract Price in consideration of the performance by the Consultant of its obligations under the Contract. The Contract Price shall be [Insert: amount in words], [Insert: amount in figures], as specified in the Price Schedule. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the taxes, duties and related levies if and as identified.

## **Article 3: Effective Date**

**3.1 Effective Date (Reference GCC Clause 1.1 (viii))** The time allowed for delivery of the Service shall be determined from the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Client and the Consultant;
- (b) The Consultant has submitted to the Client the performance security and the advance payment security, in accordance with **GCC Clause 4.3.2** and **GCC Clause 4.3.3**;
- (c) The Client has paid the Consultant the advance payment, in accordance with **GCC Clause 4.0**;
- (d) Specify here: any other conditions, for example, opening/confirmation of letter of credit.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

**3.2** If the conditions listed under **3.1** are not fulfilled within **two (2) months** from the date of this Contract Agreement because of reasons not attributable to the Consultant, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time and/or other relevant conditions of the Contract.

**Article 4: Appendixes**

**4.1** The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

**APPENDIXES**

**Appendix 1:** The Work(Description of the Services/Requirements implementation schedule)

**Appendix 2:**Project Plan (delivery schedule to be included)

**Appendix 3:** Personnel

**Appendix 4:** Working Hours and SLA

**Appendix5:** Forms (performance/advance security forms)

**Appendix 6:** Price Schedules

**Appendix 7:** Minutes of Contract Finalization Discussions and Agreed to Contract Amendments

**Appendix 8:** Deliverable linked Payment schedule

IN WITNESS WHEREOF "**the Client**" and "**the Consultant**" have caused this Agreement to be duly executed by their authorized representatives the day and year first above written.

For and on behalf of the "**Client**"

**Signed:**

In the capacity of [Insert: title or other appropriate designation] in the presence of:

For and on behalf of the "**Consultant**"

**Signed:**

In the capacity of [Insert: title or other appropriate designation] in the presence of:

CONTRACT AGREEMENT dated the [ Insert: number ] day of [ Insert: month ], [ Insert: year ] BETWEEN [ Insert: name of Client ], "**the Client**" and [ Insert: name of Consultant ], "**the Consultant**"

## General Provisions and Interpretation

### 1.1 Definitions

#### 1.1.1 General

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings

- (i) "**Applicable Law**" means the laws and any other instruments having the force of law in the Client's city, State and country and in force from time to time.
- (ii) "**Client**" means the implementing agency that signs the Contract for the Services with the Selected Consultant.
- (iii) "**Consultant**" means a legally established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
- (iv) "**Contract**" means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (**GCC**), the Special Conditions (**SCC**), and the Appendices).
- (v) "**Contract Price**" means the price payable to the Consultant as specified in the Contract agreement, Subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the contract.
- (vi) "**Contract Documents**" means the documents listed in the contract agreement, including any amendments thereto.
- (vii) "**Day**" means a working day unless indicated otherwise.
- (viii) "**Effective Date**" means the date on which this Contract comes into force and effect pursuant to Clause **GCC 3.1.1**
- (ix) "**Experts**" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- (x) "**Foreign Currency**" means any currency other than the currency of the Client's country.
- (xi) "**GCC**" means these General Conditions of Contract.
- (xii) "**Government**" means the Government of the Gujarat or Government of India.
- (xiii) "**Joint Venture (JV)**" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client



for the performance of the Contract.

- (xiv) "**Key Expert(s)**" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- (xv) "**Local Currency**" means the currency of the Client's country.
- (xvi) "**Non-Key Expert(s)**" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (xvii) "**Party**" means the Client or the Consultant, as the case may be, and "**Parties**" means both of them.
- (xviii) "**SCC**" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (xix) "**Services**" means the work to be performed by the Consultant pursuant to this Contract, as described in **Appendix 1** hereto.
- (xx) "**Sub-consultants**" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (xxi) "**Third Party**" means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.

### **1.1.2 Entities**

- (i) Authority means **Rajkot Smart City Development Limited(RSCDL)**
- (ii) "**Member**" in case of Consultant consisting of a joint venture of more than one entity, means any of these entities, and "**Members**" means all of these entities.
- (iii) "**Party**" means the Client or the Consultant, as the case may be; and "**Parties**" means both of them.

- (iv) **"Client"** means the entity purchasing the Services, as specified in the **SCC**.
- (v) **"Project Manager"** means the person named as such in the **SCC** or otherwise appointed by the Client in the manner provided in **GCC Clause 1.3.1** (Project Manager) to perform the duties delegated by the Client.
- (vi) **"Consultant"** means the firm or consultant or Joint Venture or Consortium whose bid or Proposal to perform the Contract has been accepted by the Client and is named as such in the Contract Agreement.
- (vii) **"Consultant's Representative"** means any person nominated by the Consultant and named as such in the **SCC** or otherwise approved by the Client in the manner provided in **GCC 1.3.2** (Consultant's Representative) to perform the duties delegated by the Consultant.
- (viii) **"Subcontractor"** means any firm to whom any of the obligations of the Consultant, including preparation of any design or supply of any Goods or Services, is subcontracted directly or indirectly by the Consultant.
- (ix) **"Third Party"** means any person or entity other than the Government, the Trust, the Service Providers or a Subcontractor.
- (x) **"Owner's Engineers"** mean the client's engineer or a representative of the client who is an independent third party of the client to ensure the designing, execution and supervision aspects of works assigned.

### 1.1.3 Scope

- (i) **"Confidential Information"** means all information (whether in written, oral, electronic or other format) that have been identified or marked confidential at the time of disclosure including Project Data which relates to the technical, financial and business affairs, customers, Consultants, products, developments, operations, processes, data, trade secrets, design rights, know-how and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party whether a Party to this Agreement or to the Project Agreement in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement or to the Project Agreement).
- (ii) **"Deliverables"** means the products, infrastructure and services specifically developed for **"Green Field Area-Rajkot Smart City"** and agreed to be delivered by the Consultant in pursuance of the agreement and include all documents related to the service, user manuals, technical manuals, design, methodologies, process and operating manuals, service mechanisms, policies and guidelines, and all their modifications.
- (iii) **"Goods"** means all equipment, machinery, furnishings, Materials, and other tangible

items that the Consultant is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Consultant's Equipment.

- (iv) "**Proprietary Information**" means processes, methodologies and technical, financial and business information, including drawings, design prototypes, designs, formulae, flow charts, data, computer database and computer programs already owned by, or granted by third Parties to a Party hereto prior to its being made available under this Agreement, Project Agreement or a Project Engagement Definition.
  
- (v) "**Services**" means all technical, logistical, management, and any other Services to be provided by the Consultant under the Contract. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, study, documentation, transportation, insurance, testing, validation, expediting, site preparation, installation, integration, training, data migration, maintenance, operations and technical support.
  
- (vi) "**Service Level**" means the level and quality of service and other performance criteria which will apply to the Services as set out in any Project Agreement.
  
- (vii) "**The Project Plan**" means the document to be developed by the Consultant and approved by the Client, pursuant to **GCC 6.1**, based on the requirements of the Contract and the Preliminary Project Plan included in the Consultant's bid. The "**Agreed and Finalized Project Plan**" is the version of the Project Plan approved by the Client, in accordance with **GCC 6.1** Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
  
- (viii) "**Software**" is a collection of computer programs and related data that provide the instructions for telling a computer what to do and how to do it.
  
- (ix) "**Materials**" means all documentation in printed or printable form and all instructional and informational aides in any form (including graphics, audio, video, text etc.) and on any medium, provided to the Client under the Contract.
  
- (x) "**Intellectual Property Rights**" means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or reutilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease,

transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.

- (xi) **"Consultant's Equipment"** means all equipment, tools, apparatus, or things of every kind required in or for the services that is to be provided by the Consultant.

#### **1.1.4 Activities**

- (i) **"Delivery"** means the transfer of the Goods or Services from the Consultant to the Client specified in the Contract.
- (ii) **"Personnel"** means persons hired by the Consultant or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;

#### **1.1.5 Place and Time**

- (i) **"Day"** means calendar day of the English Calendar.
- (ii) **"Week"** means seven (7) consecutive Days, beginning Monday.
- (iii) **"Month"** means calendar month of the English Calendar.
- (iv) **"Title"** means twelve (12) consecutive Months.
- (v) **"Effective Date"** means the date on which this Contract comes into force and effect pursuant to Clause **GCC 3.1.1**
- (vi) **"Contract Period"** is the time period during which this Contract governs the relations and obligations of the Client and Consultant in relation to the Work, as specified in the **SCC**.
- (vii) **"The Coverage Period"** means the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available.

## **1.2 Interpretation**

### **1.2.1 Contract Documents**

Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole.

### **1.2.2 Governing Law**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

### **1.2.3 Governing Language**

This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

### **1.2.4 Relation between the parties**

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

### **1.2.5 Singular and Plural**

The singular shall include the plural and the plural the singular, except where the context other -wise requires.

### **1.2.6 Headings**

The headings shall not limit, alter or affect the meaning of this Contract. Persons Words importing persons or parties shall include firms, corporations, and government entities.

### **1.2.7 Entire agreement**

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

### **1.2.8 Amendment**

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.

### **1.2.9 Independent Consultant**

The Consultant shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract. Subject to the provisions of the Contract, the Consultant shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Consultant in connection with the performance of the Contract shall be under the complete control of the Consultant and shall not be deemed to be employees of the Client, and nothing contained in the Contract or in any subcontract awarded by the Consultant shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Client.

### **1.2.10 Joint Venture**

If the Consultant is a Joint Venture of two or more firms, all such firms shall be jointly and severally bound to the Client for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the Joint Venture. The composition or constitution of the Joint Venture shall not be altered without the prior consent of the Client.

### **1.2.11 Location**

The Services shall be performed at such locations as are specified in **Appendix 1** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.

### **1.2.12 Non waiver**

- (a) Subject to **GCC 1.2.12 (b)** of this Clause below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

### **1.2.13 Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **1.2.14 Fairness And Good Faith**

#### **(a) Good Faith**

The parties undertake to act in good faith with respect to each other's rights under this contract and to adopt all reasonable measures to ensure the realization of the objectives of this contract.

#### **(b) Operation of the Contract**

The parties recognize that it is impractical in this contract to provide for every contingency which may arise during the life of the contract, and the parties hereby agree that it is their intention that this contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this contract either party believes that this contract is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with "**Dispute Settlement**" 1.5 clause **GCC** hereof.

## **1.3 Representatives**

### **(a) Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specialized in the **SCC**.

### **(b) Trust of Member in charge**

In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

### **1.3.1 Project Manager**

If the Project Manager is not named in the Contract, then within **fourteen [14] days** from the Effective Date, the Client shall appoint and notify the Consultant in writing of the name of the Project Manager. The Client may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Consultant without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work. Such

appointment shall take effect only upon receipt of such notice by the Consultant. Subject to the extensions and/or limitations **specified in the SCC** (if any), the Project Manager shall have the authority to represent the Client on all day-to-day matters relating to the Contract, and shall normally be the person giving or receiving notices on behalf of the Client pursuant to **"Notices"1.4 Clause GCC**.

### **1.3.2 Consultant's Representative**

- (a) If the Consultant's Representative is not named in the Contract, then within **fourteen [14] days** from the Effective Date, the Consultant shall appoint the Consultant's Representative and shall request the Client in writing to approve the person so appointed. The request must be accompanied by detailed curriculum vitae for the nominee, as well as a description of any other responsibilities the nominee would retain while performing the duties of the Consultant's Representative. If the Client does not object to the appointment within fourteen **[14]\*** days, the Consultant's Representative shall be deemed to have been approved. If the Client objects to the appointment within fourteen **[14]** days giving the reason therefore, then the Consultant shall appoint a replacement within fourteen **[14]** days of such objection in accordance with the **Sub-Clause 1.3.2(a)** of this Clause **GCC**.
- (b) Subject to the extensions and/or limitations specified in the **SCC** (if any), the Consultant's Representative shall have the authority to represent the Consultant on all day-to-day matters relating to the Contract, and shall normally be the person giving or receiving notices on behalf of the Consultant pursuant to  
<sup>1\*</sup>unless specified otherwise in the **SCC**  
**"Notices"1.4 Clause GCC**.
- (c) The Consultant shall not revoke the appointment of the Consultant's Representative without the Client's prior written consent, which shall not be unreasonably withheld. If the Client consents to such an action, the Consultant shall appoint another person of equal or superior qualifications as the Consultant's Representative, pursuant to the procedure set out in **1.3.2(a)** of this **Clause GCC**.
- (d) The Consultant's Representative and staff are obliged to work closely with the Client's Project Manager and staff, act within their own authority, and abide by directives issued by the Client that are consistent with the terms of the Contract. The Consultant's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.
- (e) The Consultant's Representative may, subject to the approval of the Client (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at



any time. Any such delegation or revocation shall be subject to a prior notice signed by the Consultant's Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.

- (f) Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with **Sub-Clause 1.3.2(e)** of this Clause **GCC** shall be deemed to be an act or exercise by the Consultant's Representative.

### **1.3.3 Objections and Removals**

If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

#### **Replacement**

Except as the Client may otherwise agree,

- i. The Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and
- ii. The remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

### **1.4 Notices**

#### **1.4.1**

Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent, pursuant to **Sub-Clause 1.4.3** of this **Clause GCC** below, by personal delivery, registered post, special courier, cable, telegraph, telex, facsimile, electronic mail, or Electronic Data Interchange (EDI), with the following provisions.

- (a) Any notice sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be confirmed within **two (2\*) days** after dispatch by notice sent by registered post or special courier, except as otherwise specified in the Contract.
- (b) Any notice sent by registered post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered **ten (10\*) days** after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by mail or special courier.

- (c) Any notice delivered personally or sent by cable, telegraph, telex, facsimile, electronic mail, or **EDI** shall be deemed to have been delivered on the date of its dispatch.
- (d) Either party may change its postal, cable, telex, facsimile, electronic mail, or EDI addresses for receipt of such notices by **ten (10) days'** notice to the other party in writing.

#### **1.4.2**

Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.

#### **1.4.3**

Pursuant to "**Representatives**" **1.3 Clause GCC**, notices from/to the Client are normally given by, or addressed to, the Project Manager, while notices from/to the Consultant are normally given by, or addressed to, the Consultant's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Consultant's Representative (or deputy), or if their related authority is limited by the sub-clause **1.3.1** or "**Representatives**" **1.3.2(b)** of "**Representatives**" **1.3**

Clause of **SCC** for **GCC**, or for any other reason, the Client or Consultant may give and receive notices at their fallback addresses. The address of the Project Manager and the fallback address of the Client are as **specified in the SCC** or as subsequently established/amended. The address of the Consultant's Representative and the fallback address of the Consultant are as specified in **SCC** of the Contract Agreement or as subsequently established/ amended.

Manager and the fallback address of the Client are as **specified in the SCC** or as subsequently established/amended. The address of the Consultant's Representative and the fallback address of the Consultant are as specified in **SCC** of the Contract Agreement or as subsequently established/ amended.

## **1.5 Dispute Settlement**

### **1.5.1 Dispute and Mutual Consultation**

The Parties shall seek to resolve any dispute amicably by mutual consultation.

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen [14\*] days after receipt. If that Party fails to respond within fourteen [14\*] days, or the dispute cannot be amicably settled within fourteen [14\*] days following the response of that Party.

### **1.5.2 Arbitration – No Arbitration**

## **1.6 Copyright, Confidential Information, and Ownership**

### **1.6.1 Copyright**

As applicable, the Client's and Consultant's rights and obligations with respect to the designs, methodologies, algorithms, surveys, data, analysis, results and reports among other things in the deliverables, are specified in the **SCC**. **Subject to the SCC**, the Intellectual Property Rights in all the designs, methodologies, data, analysis, results and reports among other things in the deliverables of the Contract Agreement shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Client. The Consultant shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Client may consider necessary or desirable to perfect the right, title, and interest of the Client in and to those rights. In respect of such deliverable, the Consultant shall ensure that the holder of a moral right in such an item does not assert it, and the Consultant shall, if requested to do so by the Client and where permitted by applicable law, ensure that the holder of such a moral right waives it.

### **1.6.2 Confidential Information**

Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

Unless otherwise specified in the **SCC**

### **1.6.3**

For the purposes of **sub-clause 1.6.2** of this clause **GCC**, the Consultant is also deemed to be the Receiving Party of Confidential Information generated by the Consultant itself in the course of the performance of its obligations under the Contract and relating to the businesses, services, finances, Consultants, employees, or other contacts of the Client or the Client's use of the deliverables.

### **1.6.4**

Notwithstanding **sub-clause 1.6.2** and **sub-clause 1.6.3** of this clause **GCC** the Consultant may furnish to its Subcontractor Confidential Information of the Client to the extent reasonably required for the Subcontractor to perform its work under the Contract, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause as if that person were party to the Contract in place of the Receiving Party.

### **1.6.5**

The Consultant shall not, without the Client's prior written consent, use any Confidential Information received from the Client for any purpose other than those that are required for the performance of the Contract.

### **1.6.6**

The obligation of the Receiving Party under **sub-clause 1.6.2** throughof this clause **GCC**, however, shall not apply to that information which

- (a) Now or hereafter enters the public domain through no fault of the Receiving Party;
- (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- (c) Otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

### **1.6.7**

The above provisions of this **GCC** Clause shall not in any way modify any undertaking of confidentiality given by the Consultant prior to the date of the Contract in respect of the System or any part thereof.

### **1.6.8**

The provisions of this **GCC** Clause shall survive the termination, for whatever reason, of the Contract for three [3] years or such longer period as may be specified in the **SCC**.

### **1.6.9**

The ownership of the deliverables and other Services or Goods shall be transferred to the Client at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.

Ownership and the terms of usage of the deliverables supplied under the Contract shall be governed by **sub-clause 1.6.1** of this clause **GCC** and any elaboration in the Requirements.

All plans, drawings, specifications, designs, reports, algorithms, source code of software, any similar thing prepared utilizing the Client's domain knowledge, and other documents and tools prepared by the Consultant for the Client under this contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this contract, deliver all such documents to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents, tools and software, if any. Restriction about the future use of these documents and software, if any, shall be specified in the **SCC**.

## **2 GUARANTEES, LIABILITIES, INDEMNITIES, INSURANCE AND RISKS**

### **2.1 Time Guarantee and Liquidated Damages Trigger**

#### **2.1.1 Guarantee**

The Consultant guarantees that it shall complete the performance of various activities of the contract within the time periods specified in the Implementation Schedule in the Requirements part of **Tender Documents** and/or the Agreed and Finalized Project Plan pursuant to **GCC Clause 6.1**, or within such extended time to which the Consultant shall be entitled under **GCC Clause 3.1.5**(Extension of Time).

#### **2.1.2 Triggering of Liquidated Damages**

- (a) If the Consultant fails to perform the various activities within the time specified in the Implementation Schedule in the Requirements part of **Tender Documents** or the Agreed and Finalized Project Plan, or any extension of the time previously granted under **GCC Clause 3.1.5** (Extension of Time), the Consultant shall pay to the Client liquidated damages at the rate specified in the **SCC** as a percentage of the Contract Price, or the relevant part of the Contract Price if an item/activity has not been performed. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the **SCC ("the Maximum")**. Once the Maximum is reached, the Client may consider termination of the Contract, pursuant to **GCC Clause 3.2.2**.
- (b) Unless otherwise specified in the **SCC**, liquidated damages payable under **Sub-clause 2.1.2(a)** of this clause **GCC** shall apply only to the failure to perform the activities/items as specified in the Implementation Schedule in the Requirements and/or Agreed and Finalized Project Plan. This shall not limit, however, any other rights or remedies the Client may have under the Contract for other delays.
- (c) If liquidated damages are claimed by the Client for the activity or item, the Consultant shall have no further liability whatsoever to the Client in respect to the time guarantee for the activity or item. However, the payment of liquidated damages shall not in any way relieve the Consultant from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

## **2.2 Service Conformity Guarantee and Performance Security Trigger**

### **2.2.1**

The Consultant guarantees that, once the Acceptance Certificate(s) has been issued, the work is in compliance with the Client's requirements set forth in the Requirements and it conforms to all other aspects of the Contract. The Consultant acknowledges that **GCC Clause 6.2.5** regarding Acceptance governs how conformance of the work to the Contract requirements will be determined.

### **2.2.2**

If, for reasons attributable to the Consultant, the work does not conform to the Requirements or does not conform to all other aspects of the Contract, the Consultant shall at its cost and expense make such changes, modifications, and/or additions as may be necessary to conform to the Requirements and meet all standards. The Consultant shall notify the Client upon completion of the necessary changes, modifications, and/or additions and shall request the Client to recheck.

### **2.2.3**

If the work fails to conform to the Requirements, the Client may consider termination of the Contract, pursuant to **GCC Clause 3.2**, and forfeiture of the Consultant's Performance Security in accordance with **GCC Clause 4.3** in compensation for the extra costs and delays likely to result from this failure.

## 2.3 IPR Warranty and Indemnity

### 2.3.1 IPR Warranty

The Consultant hereby represents and warrants that the performance of the Service, does not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Client to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Consultant shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used.

### 2.3.2 IPR Indemnity

The Consultant shall indemnify and hold harmless the Client and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Client or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of performance of the service.

### 2.3.3

Such indemnities shall not apply if any claim of infringement

- (a) Is asserted by a parent, subsidiary, or affiliate of the Client's organization;
- (b) Is a direct result of a design mandated by the Client's Requirements and the possibility of such infringement was duly noted in the Consultant's Proposal or Bid;

### 2.3.4

If any proceedings are brought or any claim is made against the Client arising out of the matters referred to in **Sub-clause 2.3.2** of this clause **GCC**, the Client shall promptly give the Consultant notice of such proceedings or claims, and the Consultant may at its own expense and in the Client's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Consultant fails to notify the Client within **twenty-eight [28\*] days** after receipt of such notice that it intends to conduct any such proceedings or claim, then the Client shall be free to conduct the same on its own behalf. Unless the Consultant has so failed to notify the Client within the **twenty-eight [28\*] days**, the Client shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Client shall, at the Consultant's request, afford all available assistance to the Consultant in conducting such proceedings or claim and shall be reimbursed by the Consultant for all reasonable expenses

incurred in so doing.

### 2.3.5

The Client shall indemnify and hold harmless the Consultant and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Consultant or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Consultant in connection with this Contract by the Client or any persons (other than the Consultant) contracted by the Client, except to the extent that such losses, liabilities, and costs arise as a result of the Consultant's breach of **Sub- clause of this clause GCC**.

Such indemnity shall not cover

- (a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
- (b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Client or any other person contracted by the Client, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

Such indemnities shall also not apply

- (a) If any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Consultant's organization;
- (b) To the extent that any claim of infringement is caused by the alteration, by the Consultant, or any persons contracted by the Consultant, of the design, data, drawing, specification, or other documents or materials provided to the Consultant by the Client or any persons contracted by the Client.

### 2.3.6

If any proceedings are brought or any claim is made against the Consultant arising out of the matters referred to in Sub-clause 2.3.2 of this clause GCC, the Consultant shall promptly give the Client notice of such proceedings or claims, and the Client may at its own expense and in the Consultant's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Client fails to notify the Consultant within **twenty-eight [28\*] days** after receipt of such notice that it intends to conduct any such proceedings or claim,

Unless otherwise specified in the SCC



Then the Consultant shall be free to conduct the same on its own behalf. Unless the Client has so failed to notify the Consultant within the **twenty-eight [28\*] days**, the Consultant shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Consultant shall, at the Client's request, afford all available assistance to the Client in conducting such proceedings or claim and shall be reimbursed by the Client for all reasonable expenses incurred in so doing.

Unless specified in the SCC

## 2.4 Limitation of Liability

### 2.4.1

- (a) Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be as determined under the Applicable Law.
- (b) The Consultant shall not be liable to the Client, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, or loss of **"interest"** costs, provided that this exclusion shall not apply to any obligation of the Consultant to pay liquidated damages to the Client; and the Consultant shall replace all the equipment which is intentionally / accidentally damaged during the course of supply of services.
- (c) The aggregate liability of the Consultant to the Client, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, agreed by the both parties; provided that this limitation shall not apply to any obligation of the Consultant to indemnify the Client with respect to intellectual property rights infringement.

## 2.5 Indemnity

### 2.5.1

The Consultant and each and every Subcontractor shall abide by the job safety, insurance, other prevalent measures and the Applicable Law.

### 2.5.2

Subject to **Sub-clause 2.5.3** of this **Clause GCC**, the Consultant shall indemnify and hold harmless the Client and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Client or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property arising in connection with the service and by reason of the negligence of the Consultant or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Client, its contractors, employees, officers, or agents.

### 2.5.3

If any proceedings are brought or any claim is made against the Client that might subject the Consultant to liability under **Sub-clause 2.5.2** of this clause **GCC**, the Client shall promptly give the Consultant the notice of such proceedings or claims, and the Consultant may at its own expense and in the Client's name get conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Consultant fails to notify the Client within **twenty-eight [28\*] days** after receipt of such notice that it intends to conduct any such proceedings or claim, then the Client shall be free to conduct the same on its own behalf. Unless the Consultant has so failed to notify the Client within the **twenty-eight [28\*] day** period, the Client shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Client shall, at the Consultant's request, afford all available assistance to the Consultant in conducting such proceedings or claim and shall be reimbursed by the Consultant for all reasonable

expenses incurred in so doing.

#### **2.5.4**

The Client shall indemnify and hold harmless the Consultant and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Consultant or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Client, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under "**Insurances**" **Clause 2.6** of **GCC**, provided that such fire, explosion, or other perils were not caused by any negligent act or failure of the Consultant.

#### **2.5.5**

If any proceedings are brought or any claim is made against the Consultant that might subject the Client to liability under **Sub-clause 2.5.4** of this clause **GCC**, the Consultant shall promptly give the Client the notice of such proceedings or claims, and the Client may at its own expense and in the Consultant's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Client fails to notify the Consultant within **twenty-eight [28\*] days** after receipt of such notice that it intends to conduct any such proceedings or claim, then the Consultant shall be free to conduct the same on its own behalf. Unless the Client has so failed to notify the Consultant within the **twenty-eight [28\*] days**, the Consultant shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Consultant shall, at the Client's request, afford all available assistance to the Client in conducting such proceedings or claim and shall be reimbursed by the Client for all reasonable expenses incurred in so doing.

#### **2.5.6**

The party entitled to the benefit of an indemnity under this **GCC** Clause shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

Unless otherwise specified in the **SCC**

## 2.6 Insurances

### 2.6.1

The Consultant

- (i) Shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the '**Sub-consultants**', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the **SCC**, and
- (ii) At the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in **Clause GCC Clause 3.1.2**.

### 2.6.2

The Client shall be named as co-insured under all insurance policies taken out by the Consultant pursuant to **Sub-clause 2.6.1** of this clause **GCC**, except for the Third-Party Liability, and the Consultant's Subcontractors shall be named as co-insured under all insurance policies taken out by the Consultant pursuant to **Sub-clause 2.6.1** of this clause **GCC**. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

### 2.6.3

The Consultant shall deliver to the Client certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

### 2.6.4

The Consultant shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Consultant.

### 2.6.5

If the Consultant fails to take out and/or maintain in effect the insurance referred to in **Sub-clause 2.6.1** of this clause **GCC**, the Client may take out and maintain in effect any such insurance and may from time to time deduct from any amount due to the Consultant under the Contract any premium that the Client shall have paid to the insurer or may otherwise recover such amount as a debt due from the Consultant.

### **2.6.6**

Unless otherwise provided in the Contract, the Consultant shall prepare and conduct all and any claims made under the policies affected by it pursuant to this **GCC** Clause and all monies payable by any insurers shall be paid to the Consultant. The Client shall give to the Consultant all such reasonable assistance as may be required by the Consultant in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Client's interest is involved, the Consultant shall not give any release or make any compromise with the insurer without the prior written consent of the Client. With respect to insurance claims in which the Consultant's interest is involved, the Client shall not give any release or make any compromise with the insurer without the prior written consent of the Consultant.

## **2.7 Force majeure**

### **2.7.1**

**"Force Majeure"** means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

Force Majeure shall not include

- (i) Any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor
- (ii) Any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

### **2.7.2 No Breach of Contract**

Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

### **2.7.3 Measures to be Taken**

A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

A Party affected by an event of Force Majeure shall notify the other Party of such event as

soon as possible, and in any case not later than **fourteen [14\*]** calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either

- (a) Demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
- (b) Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to **Clauses GCC Clause 1.5**.

#### **2.7.4**

The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under **GCC Clause 3.1.6**.

#### **2.7.5**

No delay or non performance by either party to this Contract caused by the occurrence of any event of Force Majeure shall

- (a) Constitute a default or breach of the Contract;
- (b) Subject to **GCC Clauses Clause 3.1.3**, and **Clause 3.1.4** give rise to any claim for damages or additional cost or expense occasioned by the delay or non performance,

if, and to the extent that, such delay or non performance is caused by the occurrence of an event of Force Majeure.

#### **2.7.6**

If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than **sixty [60\*] days** or an aggregate period of more than one hundred and twenty **[120\*]** days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.<sup>5</sup>

<sup>5</sup>unless otherwise specified in the SCC

### **2.7.7**

In the event of termination pursuant to **GCC Clause 3.1.6**, the rights and obligations of the Client and the Consultant shall be as specified in GCC "**Termination**" Clause 3.2.

### **2.7.8**

Notwithstanding **GCC Clause 3.1.5**, Force Majeure shall not apply to any obligation of the Client to make payments to the Consultant under this Contract.

## **3 TERM, TERMINATION AND MODIFICATION OF CONTRACT**

### **3.1 Term**

#### **3.1.1 Effectiveness of contract**

This Contract shall come into force and effect on the date (the "**Effective Date**") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

#### **3.1.2 Commencement of Services**

The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

#### **3.1.3**

The Consultant shall commence work within the period specified at **Sub-clause 3.1.2** of this clause **GCC**, and the Consultant shall thereafter proceed with the work in accordance with the time schedule specified in the Implementation Schedule in the Requirements Section and any refinements made in the Agreed and Finalized Project Plan.

#### **3.1.4**

The Consultant shall adhere to the timelines in the Implementation Schedule in the Requirements Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Consultant shall be entitled under **GCC Clause 3.1.5**(Extension of Time).

#### **3.1.5 Extension of time**

The time(s) specified in the Schedule of Implementation shall be extended if the Consultant is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following

- (a) Any occurrence of Force Majeure as provided in **GCC Clause "Force Majeure"2.7** ;
- (b) Default of the Client; or
- (c) Any other matter specifically mentioned in the Contract;

By such period as shall be fair and reasonable in all the circumstances and as shall fairly reject the delay or impediment sustained by the Consultant.

#### **3.1.6**

Except where otherwise specifically provided in the Contract, the Consultant shall submit to the Project Manager a notice of a claim for an extension of the time, together with



particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Client and the Consultant shall agree upon the period of such extension. In the event that the Consultant does not accept the Client's estimate of a fair and reasonable time extension, the Consultant shall be entitled to refer the matter under "**Settlement of Disputes**" of **GCC Clause 1.5**.

### **3.1.7**

The Consultant shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

## **3.2 Termination**

### **3.2.1 Expiration of contract**

Unless terminated earlier pursuant to **GCC Clause 3.1** hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.

### **3.2.2 Termination by the Client**

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs **3.2.2(a)** through **3.2.2(f)** of this Clause. In such an occurrence the Client shall give at least **thirty [30\*]** calendar days' written notice of termination to the Consultant in case of the events referred to in **3.2.2(a)** through **3.2.2(d)**; at least **sixty [60\*]** calendar days' written notice in case of the event referred to in **3.2.2(e)**; and at least **five [5\*]** calendar days' written notice in case of the event referred to in **3.2.2(f)** <sup>1</sup>

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to **Clause GCC Clause 3.2**;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;  
<sup>1</sup>unless otherwise specified in the SCC
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to **Clause GCC Clause 1.5**;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than **sixty [60\*]** calendar days;<sup>2</sup>
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in **Clause GCC Clause 3.1**.

**Sub-Clause:** Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving **fourteen [14\*]** calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract. For the purposes of this Clause

- (i) **"corrupt practice"** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) **"fraudulent practice"** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) **"collusive practice"** is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) **"coercive practice"** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) **"obstructive practice"** is (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation by the Trust into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (bb) acts intended to materially impede the exercise of the Client's inspection and audit rights provided for under Clause **"Consultant's Responsibilities"** GCC.
- (g) If the Client, in its sole discretion and for any reasons whatsoever, decides to terminate this contract.

<sup>2</sup>Unless otherwise specified in the SCC

### **3.2.3 Termination by the Consultant**

The Consultant may terminate this Contract, by not less than **thirty [30\*]** calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause **GCC 1.5** within **forty-five [45\*]** calendar days after receiving written notice from the Consultant that such payment is overdue.<sup>3</sup>
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than **sixty [60\*]** calendar days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause **GCC**

- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within **forty- five [45\*] days** (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

### **3.2.4 Termination of contract for failure to become effective**

If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than **twenty two [22\*] days** written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.<sup>4</sup>

### **3.2.5 Cessation of rights and obligations**

Upon termination of this Contract pursuant to **GCC Clause 3.2** or **GCC Clause 3.2.2** hereof, or upon expiration of this Contract pursuant to Clause **3.2.3**, all rights and obligations of the Parties hereunder shall cease, except

- (i) Such rights and obligations as may have accrued on the date of termination or expiration,
- (ii) The obligation of confidentiality set forth in **Clause GCC 1.6**,
- (iii) The Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in **Clause 5.1** and **Clause 5.1.3** any right which a Party may have under the Applicable Law.

### **3.2.6 Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses **3.2.2** or **GCC 3.2.3**, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses **GCC Clause 5.1.7**

<sup>3</sup>unless otherwise specified in the **SCC**

<sup>4</sup>unless otherwise specified in the **SCC**

### **3.2.7 Payment upon Termination**

Upon termination of this Contract, the Client shall make the following payments to the Consultant

- (a) Remuneration for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures for expenditures actually incurred prior

to the effective date of termination; and pursuant;

- (b) In the case of termination pursuant to paragraphs **(d)** and **(e)** of **GCC Clause 3.2.2**, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

### **3.2.8 Disputes about Events of termination**

If either party disputes whether an event specified in paragraphs under **Sub-clause 3.2.2** or **Sub-clause 3.2.3** of this Clause **GCC** occurred, such party may, within **forty-five [45\*]** Days after receipt of notice of termination from the party, refer the matter to arbitration pursuant to "**Dispute Settlement**"1.5 clause **GCC** hereof, and this contract shall be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

## **3.3 Modification**

### **3.3.1 Permitted Modifications**

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

In cases of substantial modifications or variations, the prior written consent of the Authority's is required.

### **3.3.2 Introducing a Change**

Client shall have the right to propose, and subsequently require, the Project Manager to order the Consultant from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the Service (interchangeably called "**Change**"), provided that such Change falls within the general scope of the work, does not constitute unrelated work, and is technically practicable, taking into account the capability of the Consultant.

### **3.3.3**

The Consultant may from time to time during its performance of the Contract propose to the Client (with a copy to the Project Manager) any Change that the Consultant considers necessary or desirable to improve the quality or efficiency of the Service. The Client may at its discretion approve or reject any Change proposed by the Consultant.

### **3.3.4**

Notwithstanding **Sub-clause 3.3.2** and **Sub-clause 3.3.3** of this clause **GCC**, no change

made necessary because of any default of the Consultant in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time.

### **3.3.5 Assignment**

Neither the Client nor the Consultant shall, without the express prior written consent of the other, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or hereunder, except that the Consultant shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

## **4. PAYMENT**

### **4.1 Price**

#### **4.1.1**

The Contract Price shall be as specified in **Vol. III, Price Bid** (Contract Price and Terms of Payment) of the Contract Agreement.

#### **4.1.2**

Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**.

#### **4.1.3**

The Consultant shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

### **4.2 Payment Terms**

#### **4.2.1**

The Client shall pay to the Consultant as specified in **Vol. 1 Instruction to Bidder**  
The Contract Price shall be paid in **Indian Rupees**.

#### **4.2.2**

No payment made by the Client herein shall be deemed to constitute acceptance by the Client of any deliverable.

#### **4.2.3**

Payments shall be made promptly by the Client, preferably at the earliest after submission of a valid invoice by the Consultant. In the event that the Client fails to make any payment by its respective due date or within the period set forth in the Contract, the Client shall pay to the Consultant interest on the amount of such delayed payment at the rate(s) specified in the **SCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

#### 4.2.4 Mode of Billing and payments

Billings and payments in respect of the Services shall be made as follows

- (a) **Advance payment. No Advance payment**
- (b) **The Itemized Invoices.** As soon as practicable and not later than **fifteen [15\*] days** after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the **SCC**, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to **Clauses GCC 4.1** and **GCC 4.2** for such interval, or any other period indicated in the **SCC**. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration reimbursable expenses separately.
- (c) The Client shall pay the Consultant's invoices within **sixty [60\*] days** after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.<sup>1</sup>
- (d) **The Final Payment.** Subject to **SCC**, the final payment under this Clause shall be made only after three months from the completion certificate, Final invoice identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory **ninety [90\*] calendar days** after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final invoice approved by the Client in accordance with the above.

<sup>1</sup>unless otherwise specified in the **SCC**

- (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.
- (f) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

#### **4.2.5 Suspension**

**The Client** may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension.

- (i) Shall specify the nature of the failure, and
- (ii) Shall request the Consultant to remedy such failure within a period not exceeding **thirty (30)** calendar days after receipt by the Consultant of such notice of suspension.



## **4.3 Securities**

### **4.3.1 Issuance of Securities**

The Consultant shall provide the securities specified below in favour of the Client at the times and in the amount, manner, and form specified below.

### **4.3.2 Advance Payment Security – Not Applicable**

### **4.3.3 Performance Security**

- (a) The Consultant shall, within **7 [Seven]** days of the notification of Contract award, provide a performance security for the due performance of the Contract in the amount, validity and currency as specified in the **Vol. 1, Instruction to bidder**.
- (b) The security shall be a bank guarantee in the form provided in the **Appendix-5**, or it shall be in fixed deposit receipt in the name of RSCDL. No any other form is acceptable to the Client.
- (c) The security shall automatically become null and void once all the obligations of the Consultant under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Consultant no later than **twenty-eight (28) days** after its expiration.
- (d) Upon Acceptance of the entire work, the security shall be reduced to the amount specified in the **SCC**, on the date of such Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Consultant.

## **4.4 Taxes and Duties**

### **4.4.1**

The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax including GST and liabilities arising out of the Contract unless it is stated otherwise in the **SCC**. As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.

### **4.4.2**

If any tax exemptions, reductions, allowances, or privileges may be available to the Consultant, the Client shall use its best efforts to enable the Consultant to benefit from any such tax savings to the maximum allowable extent.

### **4.4.3**

For the purpose of the Contract, it is agreed that the Contract Price Specified in **Article 2** (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date **thirty (30) days** prior to the date of proposal submission(also called "**Tax**" in this **GCC** sub-Clause). If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Consultant, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

## **5. RESPONSIBILITIES**

### **5.1 Consultant's Responsibilities**

#### **5.1.1 Standard of Performance**

The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.

The Consultant shall employ and provide such qualified and experienced Experts and Sub-Consultants as are required to carry out the Services.

The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

#### **5.1.2**

The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

#### **5.1.3 Consultant to affiliate not to engage in certain activities**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.

#### **5.1.4 Prohibition of conflicting activities**

The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

### **5.1.5 Accounting, Inspection and Auditing**

The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services in such form and detail as will clearly identify relevant time changes and costs.

The Consultant shall permit and shall cause its Sub-consultants to permit, the authorities and/or persons appointed by the authorities to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the authorities if requested by the authorities. The Consultant's attention is drawn to **GCC Clause 2.4** which provides, inter alia, that acts intended to materially impede the exercise of the authority's inspection and audit rights provided for under this **GCC Clause 5.1** constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the authority's prevailing sanctions procedures.)

### **5.1.6 Maintaining of records and reports**

Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

### **5.1.7 Equipment and materials furnished by the Client**

Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions.

While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

### **5.1.8**

Other Consultant responsibilities, if any, are as stated in the **SCC**.

## **5.2 Client's Responsibilities**

Unless otherwise specified in the **SCC**, the Client shall use its best efforts to

### **5.2.1**

Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.

### **5.2.2**

Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.

### **5.2.3**

Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.

### **5.2.4**

Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.

### **5.2.5**

Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the applicable law in the Client's country.

### **5.2.6**

Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned

therein by the Experts in the execution of the Services.

### **5.2.7 Access to facilities**

The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the wilful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

### **5.2.8 Counter personnel**

The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in SCC.

If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix 1**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to **GCC** clause **4.2.3** as specified.

Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

### **5.2.9 Services, facilities and Property of the Client**

The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix 1**) at the times and in the manner specified in said **Appendix 1**.

In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix 1**, the Parties shall agree on

- (i) Any time extension that it may be appropriate to grant to the Consultant for the performance of the Services,
- (ii) The manner in which the Consultant shall procure any such services, facilities and property from other sources, and
- (iii) The additional payments, if any, to be made to the Consultant as a result thereof pursuant to **Clause GCC 4**.

## **6 SUBJECT OF CONTRACT**

### **6.1 Project Plan**

#### **6.1.1**

In close cooperation with the Client and based on the Preliminary Project Plan included in the Consultant's proposal/bid, the Consultant shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as specified in the SCC and/or Requirements.

#### **6.1.2**

The Progress and other reports specified in the SCC shall be prepared by the Consultant and submitted to the Client in the format and frequency specified in the Requirements.

#### **6.1.3**

The Consultant shall formally present to the Client the Project Plan in accordance with the procedure specified in the SCC.

#### **6.1.4**

The Consultant shall undertake to deliver in accordance with the Agreed and Finalized Project Plan and the Contract.

### **6.2 Documents Approval**

#### **6.2.1 Instructions and Specifications**

(a) The Consultant shall execute the work and the implementation activities necessary for successful performance of the work in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.

#### **6.2.2 Codes and Standards**

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date of signing the Contract shall apply unless otherwise specified in the SCC. During Contract execution, any changes in such codes and standards shall be applied after approval by the Client.

#### **6.2.3 Approval/Review of Documents by the Project Manager**

(a) The Consultant shall prepare and furnish to the Project Manager the documents as specified in the SCC for the Project Manager's approval or review. Any part of the Service covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents. **Sub-clause 6.2.3(b)** onwards of this clause GCC shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- (b) Within **fourteen [14\*] days** after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with **Sub-clause 6.2.3(a)** of this clause **GCC**, the Project Manager shall either return one copy of the document to the Consultant with its approval endorsed on the document or shall notify the Consultant in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the **fourteen [14\*] days**, then the document shall be deemed to have been approved by the Project Manager.<sup>1</sup>
- (c) The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.
- (d) If the Project Manager disapproves the document, the Consultant shall modify the document and resubmit it for the Project Manager's approval in accordance with **Sub-clause 6.2.3(b) of this clause GCC**. If the Project Manager approves the document subject to modification(s), the Consultant shall make the required modification(s), and the document shall then be deemed to have been approved, subject to **Sub-clause 6.2.3(e)** of this clause **GCC**. The procedure set out in **Sub-clause 6.2.3(a)** through **Sub-clause 6.2.3(d)** of this clause **GCC** shall be repeated, as appropriate, until the Project Manager approves such documents.
- <sup>1</sup>unless otherwise specified in the SCC
- (e) If any dispute occurs between the Client and the Consultant in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the parties within a reasonable period, then, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Consultant shall proceed with the Contract in accordance with the Project Manager's instructions, provided that after the dispute resolution, the Term of contract shall be extended accordingly.
- (f) The Project Manager's approval, with or without modification of the document furnished by the Consultant, shall not relieve the Consultant of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Consultant by or on behalf of the Client.
- (g) The Consultant shall not depart from any approved document unless the Consultant has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this **Clause 6.2.3** of this clause **GCC**.



#### **6.2.4 Inspections**

The Client or its representative shall have the right to inspect any of the ongoing works/activities at any location.

#### **6.2.5**

The Client shall issue an acceptance certificate against each successful deliverable as per the implementation schedule and as further detailed in the **SCC**.

### **6.3 Personnel**

#### **6.3.1 Description of personnel**

The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Appendix 3**.

If required to comply with the provisions, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix 4** may be made by the Consultant by a written notice to the Client, provided

- (i) That such adjustments shall not alter the original time-input estimates for any individual by more than **10 percentage** or **one week**, whichever is larger; and
- (ii) That the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth.

If additional work is required beyond the scope of the Services specified in **Appendix 1**, the estimated time-input for the Key Experts may be increased by agreement in writing between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth, the Parties shall sign a Contract amendment.

#### **6.3.2 Replacement of personnel**

Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts, Site Engineer, Supervisor and any PMC staff. Notwithstanding the above, the substitution of Key Experts, Site Engineer, Supervisor and any PMC staff during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration. If Consultant is replacing the key Experts, Site Engineer, Supervisor and any PMC staff without approval of RSCDL, then following exclusive penalty will be applied.

- For Key expert – Rs. 10,000/- (Rupees Ten Thousand) per day.
- Site Engineer / Quality Control Engineer – Rs. 5000/- (Rupees Five Thousand) per day.
- Site Supervisor – Rs. 3000/- (Rupees Three Thousand) per day.
- Administrative staff – Rs. 2000/- (Rupees Two Thousand) per day.

### **6.3.3 Approval of personnel**

If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (**CVs**). If the Client does not object in writing (stating the reasons for the objection) within **twenty two [22\*] days** from the date of receipt of such **CVs**, such additional Key Experts shall be deemed to have been approved by the Client.

<sup>2</sup>The rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.

<sup>2</sup>Unless otherwise specified in the **SCC**

### **6.3.4 Removal and / or Replacement of personnel**

(a) Except as the Client may otherwise agree, no changes shall be made in the key personnel. If, for any reason beyond the reasonable control of the Consultant it becomes necessary to replace any of the personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If Client

- (i) finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action, or
- (ii) has reasonable cause to be dissatisfied with the performance of any of the personnel, then the Consultant shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualification and experience acceptable to the Client.

(c) Any of the personnel provided as a replacement under sub-clauses (a) and (b) above, the rate of remuneration applicable to such person, shall be subject to the prior written approval by the Client except as the Client may otherwise agree.

(d) Except as the Client may otherwise agree,

- (i) The Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and
- (ii) The remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

### **6.3.5 Working Hours, Overtime, Leave etc**

Working hours and holidays for Experts are set forth in **Appendix 4**. To account for travel time to/from the Client's country, experts carrying out Services inside the

Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Client's country as is specified in **Appendix 4**.

The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix 4** and the Consultant's remuneration shall be deemed to cover these items.

Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

## SPECIAL CONDITIONS OF CONTRACT

### 1 General Provisions and Interpretation

#### 1.1: Definitions

##### 1.1.1 General

I.

- a) Applicable Law means the laws prevalent in republic of India shall govern this Contract.

II.

- a) **The Client is:** Rajkot Smart City Development Limited - RSCDL  
b) **The Project Manager is:** General Manager- RSCDL / City Engineer, Rajkot Municipal Corporation (RMC).

##### 1.1.2 (vii): The Consultant's Representative is:

**Name:** [Insert: name and provide title and address further below, or state " to be nominated within ..... of the Effective Date"]

**Title:**[if appropriate, insert: title]

##### 1.1.5(vi):The Contract shall be for a period of 6 months.

#### 1.2: Deleted

#### 1.3: Representatives

1.3 (a) Authorized representative of client:.....

##### 1.3.1 Project Manager Extensions and /or Limitations:

No additional extensions and/ or limitations.

##### 1.3.2 Consultant's Representative's Extensions and/or Limitations:

#### 1.4 Notices Address of the Project Manager:

Office of City Engineer,  
Room No-5, First Floor,  
Rajkot Municipal Corporation (Central Zone),Dhebarbhai Road, Rajkot – 360001  
Gujarat, India Website: [www.rmc.gov.in](http://www.rmc.gov.in), [rmc.smartcity@gmail.com](mailto:rmc.smartcity@gmail.com)

**Fallback address of the Client:**

Office of City Engineer,  
Rajkot Municipal Corporation (Central Zone),  
“Dr. Ambedkar Bhavan”, Room No-5, 1<sup>st</sup> Floor,  
Dhebarbhai Road, Rajkot – 360001  
Gujarat, India  
Website: [www.rmc.gov.in](http://www.rmc.gov.in), [rmc.smartcity@gmail.com](mailto:rmc.smartcity@gmail.com)

Address of the Consultant's Representative: 1).....

Fallback address of the Consultant: 2).....

**As appropriate, insert:** personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI protocol

## **1.5 Dispute Settlement**

**(i) Arbitration- Arbitration is not permitted.**

**(ii) For any dispute, the disputed matter is first of all referred to Chairman – RSCDL. The decision of Chairman RSCDL is final and binding to the bidders. If bidder is not satisfied then same will be refer to court having jurisdiction in Rajkot City.**

## **1.5 Copyright, Confidential Information, and Ownership**

1.6.6 Persons, topics, and conditions for which the confidentiality clause does not apply-Not Applicable

1.6.8 The Government of Gujarat shall have complete access to all types of technical and / or financial information it obtains or develops with respect to the Consultant and its Information Technologies.

1.6.9 Restriction about the future use, if any: Nothing shall be used for any purpose what so ever without the prior written consent of the Client.

## **2 GUARANTEES,LIABILITIES,INDEMNITIES, INSURANCE AND RISKS**

### Triggering of Liquidated Damages

**2.1 Liquidated damages:** If the successful bidder fails to execute the work as per schedule, each day of delay will carry a liquidated damage of **Rs.50,000** up to maximum of **10 percent** of contract value.

**2.2 Limitation of Liabilities:** The Consultant's liability under this Contract shall be up to one time the contract price as determined under the Applicable Law.

**2.3**The Consultant shall maintain professional indemnity insurance cover of an amount not less than the Contract Price.

At the request of the Client, or its representatives, the Consultant shall provide evidence showing that such insurance has been taken out and maintained and that current premiums have been paid.

## **3. TERMINATION AND MODIFICATION OF CONTRACT**

### **3.1 Term**

**3.1.1 Effectiveness conditions:**All the resources under the contract shall be deployed as per the Contract Conditions.

**3.1.2 Commencement of Services:** The Consultant shall commence work within **15 days** from the Effective Date.

### **3.2 Termination**

**3.2.1 Expiration of Contract and extension:** The contract shall terminate at the end of **60 months** from the Effective Date.

**3.2.3 Termination of Contract for Failure to Become Effective:**The time from the date of signing of contract shall be **thirty (30) days**.

## **4: PAYMENT**

### **4.1 Price**

**4.1.1** Contract price shall not exceed **130%** of the agreement value in case of additional services being entrusted to the Consultant during the course of the contact. Additional service shall be paid at the same rates specified in the Price Schedule at **Appendix 6**.

**4.1.2 Currency Ceiling** - The Foreign currency ceiling shall be taken as the value of dollar up to **4th decimal** as on **15th day** prior to last date of bid submission

### **4.2 Payment Terms**

**4.2.1** Subject to the provisions of **GCC**, the Client shall pay the Contract Price to the Consultant according to the manner specified below.

- a. The payment to be made based on the Invoices submitted by the consultant after acceptance of the deliverables submitted by the consultant.
- b. The client to accept deliverables based on proof checking, review and recommendation undertaken by the client appointed Programme management consultant. The feedback on the deliverables OR acceptance shall be completed within **10 working days** from the date of submission of the deliverables.
- c. The payment shall be made in a phase wise manner as per **Appendix-8**. The payment percentage included in the **Appendix 8** refers to the percentage of Lump-sum Fee quoted by the firm.
- d. The remaining **10%** of the Lump-sum Fee (**LSF**) as defined in the **Clause-5.5.6** of the **Volume-II**, Bid Data Sheet to be withheld by the Client. This amount to be released after **3 months** from the date of completion of project, provided the consultant provides the requisite technical assistance during execution as detailed in **Volume-II, Part I Scope of work**.

**4.2.2 Mode of Billing and Payments:** (a) Advance payments: No advance payments would be made by the Client.

All monetary transaction shall be in **Indian Rupees**.

**4.3.2 Advance Payment Security:** Not Applicable.

**4.3.3 Performance Security:** Performance Security equivalent to **10 (Ten) percent** of the Contract price shall be furnished as per the terms set in the **Clause 4.3.3 of GCC**, either in the form of a Bank Guaranteesubstantially in the form specified in **Appendix 5** of the contract or by fixed deposit receipt in the name of RSCDL. For the successful bidder the Performance Security will be retained by Client until the completion of the assignment by the Consultant. The Performance Security shall be released after three months upon the completion of the contract and its acceptance by the Client



## 5 Special Conditions of Responsibilities

### 5.1 Consultant's responsibilities

- i. **Limitation of Obligations:**
- ii. **Accounting, Inspecting and Auditing Specific bases:**None

### 5.2 Details of Access to Facilities

The Consultant shall have access to all the facilities required to perform the services mentioned in **Volume-I Scope** of the **RFP** document.

**5.3 Details of Counter Personnel:**Not applicable.

## 6 SUBJECT OF CONTRACT

### 6.1 Project Plan

- (1) Project Plan shall be **Annexure-2**.
- (2) Apart from the deliverables mentioned in **Appendix 8**, the Consultant shall submit progress report to the client as and when requested.

[Note: Other reports may be needed to monitor Contract performance/progress, for example:]

### 6.2 Documents Approval 6.2.2 Codes and Standards

The Methodological Quality Standards adopted shall be as stated in **Volume-I Scope, Part II** and **Part-III**.

#### 6.2.1 Approval/Review of Technical Documents by the Project Manager

The list of documents shall be:[Insert:relevant codes if any]

- (1) Project Plan.
- (2) Staff deployment and 2 month roaster of staff.
- (3) Document containing personnel replacements.

**6.2.2 Acceptance Certificate Issuance Details:** Upon receipt of every deliverable from the Consultant, the Project In-charge from RMC, shall issue the certificate of acceptance.

**APPENDIX 1**  
**DESCRIPTION OF THE SERVICES**

[Give detailed descriptions of the Services to be provided; Implementation schedule dates for completion of various tasks; place of performance for different tasks; specific tasks to be approved by Client etc.]

**APPENDIX 2**  
**PROJECT PLAN**  
**(WITH DELIVERABLES AND DELIVERY SCHEDULE)**

[List format, frequency and contents of deliverables and reports; persons to receive them; dates of submission;]

**APPENDIX 3  
KEY PERSONNEL**

Provide the names of at least two candidates qualified to meet the specified requirements stated for each position. The data on their experience should be supplied on separate sheets using the tables given hereunder for each candidate.

Propose alternative management and implementation arrangements requiring different key personnel, whose experience records should be provided.

1	Title of position
	Name of prime candidate
	Name of alternate candidate
2	Title of position
	Name of prime candidate
	Name of alternate candidate
3	Title of position
	Name of prime candidate
	Name of alternate candidate

Position		Candidate <input type="checkbox"/> Prime <input type="checkbox"/> Alternative
Candidate Information	Name of candidate	Date of Birth

	Professional Qualifications	
Present Employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (Manager/personal /officer)
	Fax	Telex
	Job title of candidate	Years with present Employer

Summarize professional experience over the last twenty years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company/Project/Position/Relevant technical and management experience

#### APPENDIX 4

### HOURS OF WORK FOR KEY PERSONNEL AND SERVICE LEVEL AGREEMENT

[List here the hours of work for key personnel, details of SLAs etc.]

#### APPENDIX 5

### Performance Security Form (Bank Guarantee)

[Insert: Client's Name, and Address of Office]

**Date.:** [Insert: date] **PERFORMANCE GUARANTEE No.:** [Insert: Performance Guarantee Number]

We have been informed that on [Insert: date of award] you awarded Contract No. [Insert: Contract number] for [Insert: title and/or brief description of the Contract] (hereinafter called "**the Contract**") to [Insert: complete name of Consultant] (hereinafter called "**the Consultant**"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Consultant, we hereby irrevocably undertake to pay you any sum(s) not exceeding [Insert: amount(s) in figures and words] upon receipt by us of your first demand in writing declaring the Consultant to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing, to the Consultant, the Operational Acceptance Certificate for the System, the value of this guarantee will be reduced to any sum(s) not exceeding [Insert: amount(s) in figures and words]. This remaining guarantee shall expire no later than [Insert: number and select: of months/of years (of the Warranty Period that needs to be covered by the remaining guarantee)] from the date of the Operational Acceptance Certificate for the System, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Applicable Law.

\_\_\_\_\_  
[Signature(s)]

\_\_\_\_\_  
**1** The Client shall insert the amount(s) specified and denominated in the **SCC** for **GCC**

**Clauses 4.1.1.**

**[Insert:** Client's Name, and Address of or Office]

**Date:** [insert: date]

**APPENDIX 6**

**PRICE SCHEDULES**

**A. Consultancy Fee: (Amount in Lacs)**

No.	Components	Fees as LSF in Rs.	
		In Figures	In Words
A	Urban Planning and Infrastructure Master Planning Fee		
B	Preparation of Detailed Project reports(DPRs), RFP, etc. Fee		
C	Project Management Consultancy fee		
	Total		

Breakup of the quoted "Lump-sum Fee"

**A). URBAN PLANNING AND INFRASTRUCTURE MASTERPLANNING:**

**A. Detail urban planning and Infrastructure Master Planning LSF Breakup:**

**Within these two broad components the split by sub-components or by individual studies are as follows:**

Sr. No.	Master Plan	Component wise breakup for LSF	
		In Figures	In Words
1	Urban Plan		
2	Transport Plan		
3	Water		
a)	Water Supply management plan		
b)	Waste water management plan		
c)	Storm water management plan		
4	Solar Power plan		
5	Solid waste management plan		
6	Gas plan		

<b>7</b>	Smart infrastructure plan		
<b>8</b>	District cooling plan		
<b>9</b>	Safety and security plan		
<b>10</b>	Disaster management plan		
<b>11</b>	Green Spaces, Recreation, Plan		
<b>12</b>	Rejuvenation of Water Bodies Plan		
<b>13</b>	Miscellaneous Plan		
	<b>Total Master Plan LSF</b>		



**B. Detail of Preparation of Detailed Project Reports (DPRs) LSF Breakup: (Amount in Lacs)**

Sr. No.	Project	Component wise breakup for LSF	
		In Figures	In Words
1	Preparation of DPR for Transport plan including Development of arterial and sub-arterial Integrated road infrastructure, Grade separator, Public transport like, city bus, BRT, LRT and NMT facility, with pedestrian way signages etc.		
2	DPR for Development of smart solar power generation, transmission and distribution systems including for Green Field Area		
3	DPR for Development of source, Water treatment plant(s), storage reservoirs, distribution network, automated control and integrated with command centre and so on, for Green Field Area		
4	DPR for Development of collection network, Sewerage treatment plant(s), pumping stations, disposal, reuse network, automated control and command centre and so on, for Green Field Area		
5	DPR for Development of Solid Waste Management Infrastructure including automated control and command centre, required for Green Field Area (including seed capital area)		
6	DPR for Development of storm water disposal system for Green Field Area		
7	DPR for Development of infrastructure in 930 acres like Government Complex/Building/Shopping Centre/ Affordable Housing etc.		
8	DPR for Development of infrastructure for part of 400 acres of returnable lands under various scheme		
9	DPR for Development of Parks & Gardens with Landscaping and Rejuvenation of existing 3 water bodies (lakes) forming Recreational Spaces for Green Field Area – Rajkot Smart City.		
10	DPR for Rejuvenation of existing 3 water bodies (lakes) forming Recreational Spaces for Green Field Area – Rajkot Smart City.		
11	Any other		
	<b>Total DPR LSF</b>		

**C. Detail of Project Management Consultancy – PMC LSF Breakup: (Amount in Lacs)**

Sr. No.	Detailed project reports(DPRs)	Component wise breakup for LSF	
		In Figures	InWords
1	PMC for Transport sector		
2	PMC for Smart Solar Power		
3	PMC for Smart water supply		
4	PMC for Waste water system		
5	PMC for Solid waste system		
6	PMC for Storm water		
7	PMC for IT Infra. & smart Infra.		
8	PMC for Govt. Complex/Building/Affordable Housing etc.		
9	PMC for Returnable lands under various schemes		
10	PMC for Parks & Gardens, Landscaping Recreational Spaces		
11	PMC for Rejuvenation of three water bodies		
12	Any other		
	<b>Total PMC LSF</b>		

## **APPENDIX 7**

### Minutes of Contract Finalization Discussions and Agreed to Contract Amendments

**APPENDIX 8**

Payment is linked to following milestones/ deliverables.

<b>Stage No.</b>	<b>Description of Services</b>	<b>Break up in % of Awarded value</b>	<b>Time limit of activity</b>	<b>Penalty for delay</b>
<b>Feasibility Study</b>				
1	Submission of Draft Master plan in line of Gujarat Town Planning and Urban Development act – 1976 its Amendment and Rules etc . including Layout, 2d, 3d views, Zoning, sub zoning, brief of modern and Smart infrastructure etc	30% of respective bid	Stage – I – 3 (Three) Months.	0.2% of the awarded value and maximum limited to 20% of awarded value
2	Detail Design and Drawings and necessary details	60% of respective bid	Stage – II – 1 (One) Month from the approval of Stage - I.	
3	Detail Project report including DTP, BOQ and Detail Design of all Components and DTP	10% for each individual Components max. upto 90%	Stage – III – 3 (three) Months	
4	Supervision and Deployment of Man power during Execution	Equally Monthly Payment of 90% of the respective Bid	48 (Forty Eight) Months	
5	Completion of the project	10%	After 3 month from the date of completion	