

**STANDARD FORM OF CONTRACT**

**Consultant's Services**

6

## **CONTRACT FOR CONSULTANT'S SERVICES**

**Project Name: Appointment Of Project Management Unit  
(PMU) for NKGSCCL**

**Contract No. RFP No. : 01/NKGSCCL/Admn/ 2018-19 circulated vide memo no  
05/NKGSCCL/Admn-03/2018 dated 05/11/2018.**

**Between**

**New Town Kolkata Green Smart City Corporation Limited**  
Premises No . , 5th Floor, Utility Building, Near Tank No - 3  
New Town Kolkata – 700156

and

*[Name of Consultant]*

*Date* \_\_\_\_\_

## a) Form of Contract

(Text in brackets [ ] is optional; all notes should be deleted in the final text)

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]* , *[year]* , between, on the one hand, New Town Kolkata Green Smart City Corporation Limited for smart city New Town Kolkata (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

*[If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, *[name of member]* and *[name of member]* (hereinafter called the “Consultant”).]*

### WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the “ Client” has accepted the offer of the Consultant to provide the services on the terms and conditions set forth in this Contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (A) R.F.P Document.
  - (B) The General Conditions of Contract (including Attachment 1 “Corrupt and Fraudulent Practices);
  - (C) The Special Conditions of Contract;
  - (D) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Key Experts and Non Key Experts
    - Appendix C: Remuneration Cost Estimates
    - Appendix D: Reimbursables Cost Estimates
    - Appendix E: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D; Appendix E. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:

- a. the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
- b. the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *New Town Kolkata Green Smart City Corporation Limited*

\_\_\_\_\_  
*[Authorized Representative of the Client – name, title and signature]*

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

\_\_\_\_\_  
*[Authorized Representative of the Consultant – name and signature]*

*[For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]*

For and on behalf of each of the members of the Consultant *[insert the name of the Joint Venture]*

*[Name of the lead member]*

\_\_\_\_\_  
*[Authorized Representative on behalf of a Joint Venture]*

*[add signature blocks for each member if all are signing]*

## **b) General Conditions of Contract**

### **1. GENERAL PROVISIONS**

#### **1.1. Definitions**

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- b) “Applicable Law” means the laws and any other instruments having the force of law in India, as they may be issued and in force from time to time.
- c) “Client” means New Town Kolkata Green Smart City Corporation Ltd. (NKGSCCL), the implementing agency that signs the Contract for the Services with the selected Consultant. However, all functions of the ‘Client’ before the signing of the contract will be undertaken by NKGSCCL on behalf of the Client.
- d) “Consultant” means a legally-established professional consulting firm or an entity who submit their proposal that may provide or provides the Services to the Client under the Contract.
- e) “Contract” means a legally binding written agreement signed between the Client and the Consultant and includes all the attached documents listed in the RFP.
- f) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- g) “Day” means a calendar day.
- h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- i) “GoWB” means the Government of West Bengal.
- j) “GoI” means the Government of India.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business 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.
- l) “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 CV is taken into account in the technical evaluation of the Consultant’s proposal.
- m) “NKGSCCL” means the SPV New Town Kolkata Green Smart City Corporation Ltd. (NKGSCCL) to whom the selected PMU will be transferred, once the SPV is incorporated and is functional..
- n) “ITC” means the Instructions to Consultants that provide the Consultants with all information needed to prepare their Proposals.
- o) “LoI” means the Letter of Invitation being sent by the Client to the Consultants.
- p) “MoHUA” means Ministry of Housing and Urban Affairs, Govt. of India.
- q) “Module” means group of projects.
- r) “Non-Key Expert(s)” means an individual professional and support staff provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- s) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- t) “RFP” means the Request for Proposals to be prepared by the Client for the selection of Consultants, based on the SRFP.
- u) “SRFP” means the Standard Request for Proposals, which must be used by the Client as the basis for the preparation of the RFP.
- v) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- w) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.
- x) “SPV” means Special Purpose vehicle which is New Town Kolkata Green Smart City Corporation Ltd. (NKGSCCL).
- y) “TORs” means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

#### **1.2. Relation between Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

**1.3. Rights and obligations**

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the Agreement, in particular:

- a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- b) the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

**1.4. Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the contract.

**1.5. Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**1.6. Table of contents and headings**

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

**1.7. Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant’s Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number/address as the Consultant may from time to time specify by notice to the Authority;
- b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.9 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city as the purchaser’s office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

**1.8. Location**

The Services shall be performed at the offices of the Authority in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

**1.9. Authority of Lead Partner:**

In case the Consultant consists of a consortium of more than one entity, the Members hereby authorize the entity specified (Lead Consultant) to act on their behalf in exercising all the Consultant’s rights and obligations towards the “Authority” under this Contract, including without limitation the receiving of instructions and payments from the “Authority”. However, each member or constituent of Consortium of Consultant shall be jointly and severally liable for all obligations of the Consultant under the Contract.

**1.10. Authorised Representatives**

1.10.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials as specified in this RFP.

1.10.2. The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Tel: \*\*\*\*\* Fax: \*\*\*\*\* email: \*\*\*\*\*

1.10.3. The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

\*\*\*\*\*

\*\*\*\*\*

Tel: \*\*\*\*\* Mobile: \*\*\*\*\*

Fax: \*\*\*\*\* E-mail: \*\*\*\*\*

### **1.11. Taxes and Duties**

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

## **2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

### **2.1. Effectiveness of Agreement**

This Agreement shall come into force and effect on the date of this Agreement (the "Effective Date").

### **2.2. Commencement of Services**

The Consultant shall commence the Services within a period of 07 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

### **2.3. Termination of Agreement for failure to commence Services**

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination. In that case Earnest Money Deposit and Security Deposit will be forfeited.

### **2.4. Expiration of Agreement**

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the Authority; and (ii) the expiry of [24 Months or till project completion period whichever is earlier.] from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

### **2.5. Entire Agreement**

2.5.1. This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2. Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

### **2.6. Modification of Agreement**

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

### **2.7. Force Majeure**

#### **2.7.1. Definition**

- a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and 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 (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder

#### 2.7.2. No breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement 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 Agreement.

#### 2.7.3. Measures to be taken

- a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

#### 2.7.4. Extension of time

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

#### 2.7.5. Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

#### 2.7.6. Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### **2.8. Suspension of Agreement**

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

### **2.9. Termination of Agreement**

#### 2.9.1. By Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading
- f) 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 60 (sixty) days; or
- g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement



#### 2.9.2. By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- c) 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 60 (sixty) days; or
- d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

#### 2.9.3. Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, 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 materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof.

#### 2.9.4. Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

- a) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination; and
- b) except in the case of termination pursuant to Sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

#### 2.9.5. Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. OBLIGATIONS OF THE CONSULTANT**

#### **3.1. General**

##### 3.1.1. Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Sub-consultants or Third Parties.

##### 3.1.2. Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

##### 3.1.3. Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant and any Sub-Consultant, comply with the Applicable Laws.

### 3.2. Conflict of Interest

- 3.2.1. The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.
- 3.2.2. Consultant and Affiliates not to be otherwise interested in the Project  
The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of three years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the firm of the Consultant or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.
- 3.2.3. Prohibition of conflicting activities  
Neither the Consultant nor its Sub-consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:
- a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
  - b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
  - c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.
- 3.2.4. Consultant not to benefit from commissions, discounts, etc.  
The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.
- 3.2.5. The Consultant and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.
- 3.2.6. Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7. For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning 3.2.7 hereinafter respectively assigned to them
- a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the

Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;

- b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

### 3.3. Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (**“Confidential Information”**), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i. was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- ii. was obtained from a third party with no known duty to maintain its confidentiality;
- iii. is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- iv. is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

### 3.4. Liability of the Consultant

3.4.1. The Consultant’s liability under this Agreement shall be determined by the Applicable Laws and 3.4.1 the provisions hereof.

3.4.2. The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority 3.4.2 for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3. The Parties hereto agree that in case of negligence or wilful misconduct on the part of the 3.4.3 Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority’s property, shall not be liable to the Authority:

- i. for any indirect or consequential loss or damage; and
- ii. for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.

3.4.4. This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to the Agreement Value.

### **3.5. Accounting, inspection and auditing**

The Consultant shall:

- a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

### **3.6. Consultant's actions requiring the Authority's prior approval**

The Consultant shall obtain the Authority's prior approval in writing before taking any of the following actions:

- a) Appointing such members of the professional personnel as are not listed in Annex-2;
- b) any other action that is specified in this Agreement.

### **3.7. Reporting obligations**

The Consultant shall submit to the Authority the reports and documents specified in the 3.7.1 Agreement, in the form, in the numbers and within the time periods set forth therein.

### **3.8. Documents prepared by the Consultant to be property of the Authority**

- 3.8.1. All reports and other documents (collectively referred to as "Consultancy Documents") prepared 3.8.1 by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.8.2. The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.
- 3.8.3. The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as "Claims") which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

### **3.9. Materials furnished by the Authority**

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority.

### **3.10. Providing access to Project Office and Personnel**

The Consultant shall ensure that the Authority, and officials of the Authority having authorisation from the Authority, are provided unrestricted access to the office of the Consultant and to all Personnel during office hours. The Authority's official, who has been authorised by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

### **3.11. Accuracy of Documents**

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any

negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

#### **4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS**

##### **4.1. General**

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

##### **4.2. Deployment of Personnel**

4.2.1. The designations, names and other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annex-2 of this Agreement. The estimates of Personnel Cost and man day rates are specified in Annex-3 of this Agreement.

4.2.2. Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-2 may be made by the Consultant by written notice to the Authority, provided that (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 30% (thirty per cent), and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.2. Any other adjustments shall only be made with the written approval of the Authority.

4.2.3. If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

##### **4.3. Approval of Personnel**

4.3.1. The Key Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.3.2. If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-11) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

##### **4.4. Substitution of Key Personnel**

4.4.1. The Authority during the contract period will not normally consider any request of the Selected Applicant for substitution of the Key Personnel as the ranking of the Applicant is based on the evaluation of the Key Personnel and any change therein may upset the ranking. Substitution may, however, be permitted in exceptional circumstances if the Key Personnel is not available for reasons of any incapacity or due to health, reasons beyond the control of the Applicant, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Decision of the Authority in this regard will be final.

4.4.2. The Authority expects the Key Personnel to be available during the contract period. The Authority will not consider substitution of the Key Personnel except for reasons of any incapacity or due to health, reasons beyond the control of the Applicant. Applicant may be allowed to have substitution limited to two personnel under unavoidable circumstances subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority after due Knowledge Transfer for at within 15 days.

4.4.3. In case of substitution beyond the permissible limit, penalty of 2% of quoted price shall be imposed on each such substitution.

4.4.4. Substitution of the Project Manager will not normally be considered during the contract period, except in exceptional circumstances subject to approval of the purchaser, and may lead to disqualification of the Applicant or termination of the Agreement.

##### **4.5. Working hours, overtime, leave, etc.**

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

#### **4.6. Project Manager**

The person designated as the Project Manager of the PMU shall be responsible for the coordinated, timely and efficient functioning of the PMU and shall be responsible for day to day performance of the Services.

#### **4.7. Sub-Consultants**

Hiring of Sub-Consultants is not permissible under this project.

### **5. OBLIGATIONS OF THE AUTHORITY**

#### **5.1. Assistance in Clearances**

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure that the Government shall:

- a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub- Consultants or Personnel to perform the Services;
- b) facilitate prompt clearance through customs of any property required for the Services; and
- c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

#### **5.2. Access to land and property**

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services.

#### **5.3. Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

The tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

#### **5.4. Payment**

In consideration of the Services performed by the Consultant under this Agreement, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

### **6. PAYMENT TO THE CONSULTANT**

#### **6.1. Cost estimates and Agreement Value**

6.1.1. An abstract of the cost of the Services payable to the Consultant is set forth in Annex-4 of the Agreement.

6.1.2. Except as may be otherwise agreed under Clause 2.6 and subject to Clauses 4.2.2 and 6.1.3, the 6.1.2payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. .... (Rs. ....).

6.1.3. Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clause 2.6, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

#### **6.2. Currency of payment**

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

#### **6.3. Mode of billing and payment**

Billing and payments in respect of the Services shall be made as follows:- The Professionals required for this assignment are categorized as (i) Core Team Onsite and (ii) Expert Support Team for Core onsite Personnel. Core Team shall provide full person man days/ months' time on the project (field), no home input will be considered in this category. However for Expert Support Team input may be considered into home and field.

Payment will be made on monthly basis on Submission of bill in triplicate along with worksheet showing details of work perform for each day which to be counter sign by Project Director and NKGSCCL.

## **7. LIQUIDATED DAMAGES AND PENALTIES**

### **7.1. Performance Security**

- 7.1.1. The Bid security i.e. EMD of Rs 1,00,000/- will be converted as Initial Security Deposit for successful bidder.
- 7.1.2. For the purposes of this Agreement, performance security shall be deemed to be an amount equal to an amount calculated as 2% of quoted price less initial security deposit of Rs 1,00,000/- within 07 days from the date of issuing Letter of Intent (LOI), by a Demand Draft / Banker's Cheque to be issued from any scheduled bank in favor of the "New Town Kolkata Green Smart City Corporation Limited" payable at Kolkata.

### **7.2. Liquidated Damages**

#### **7.2.1. Liquidated Damages for error/variation**

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of the Agreement Value.

#### **7.2.2. Liquidated Damages for delay**

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the Agreement Value shall be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

#### **7.2.3. Encashment and appropriation of Performance Security**

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

#### **7.2.4. Penalty for deficiency in Services**

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarment for a specified period may also be initiated as per policy of the Authority.

## **8. FAIRNESS AND GOOD FAITH**

### **8.1. Good Faith**

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

### **8.2. Operation of the Agreement**

The Parties recognise that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

## **9. SETTLEMENT OF DISPUTES**

### **9.1. Amicable settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

### **9.2. Dispute resolution**

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

**9.3. Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the CEO/ the Chairman of NKGSCCL, or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.3.

**9.4. Miscellaneous provisions:**

- I. "Nothing contained in this Contract shall be construed as establishing or creating between the Parties, a relationship of master and servant or principal and agent.
- II. Any failure or delay on the part of any Party to exercise right or power under this Contract shall not operate as waiver thereof.
- III. The Consultant shall notify the Authority of any material change in their status, in particular, where such change would impact on performance of obligations under this Contract.
- IV. Each constituent of the Consultant, in case of a consortium, shall be jointly and severally liable to and responsible for all obligations towards the Authority for performance of works/services under the Contract.
- V. The Consultant shall at all times indemnify and keep indemnified the Authority against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under the Project.
- VI. The Consultant shall at all times indemnify and keep indemnified the Authority against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Consultant's) employees or agents or by any other third Party resulting from or by any action, omission or operation conducted by or on behalf of the Consultant.
- VII. The Consultant shall at all times indemnify and keep indemnified the Authority against any and all claims by Employees, Workman, Contractors, sub-contractors, suppliers, agent(s), employed engaged or otherwise working for the Consultant, in respect of wages, salaries, remuneration, compensation or the like.
- VIII. All claims regarding indemnity shall survive the termination or expiry of the Contract.
- IX. It is acknowledged and agreed by all Parties that there is no representation of any type, implied or otherwise, of any absorption, regularization, continued engagement or concession or preference for employment of persons engaged by the Consultant for any engagement, service or employment in any capacity in any office or establishment of the Government of India/ State or the Authority.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED**  
**For and on behalf of**  
**Consultant:**

  
  
  
  
  
  
  
  
  
  

(Signature)  
(Name)  
(Designation)  
(Address) (Fax No.)  
In the presence of:  
1.  
2.

**SIGNED, SEALED AND DELIVERED**  
**For and on behalf of**  
**Authority:**

  
  
  
  
  
  
  
  
  
  

(Signature)  
(Name)  
(Designation)  
(Address) (Fax No.)  
In the presence of:  
1.  
2.



**10 Annexure – 1: Terms of Reference**

**11 Annexure – 2: Deployment of Resources and Reporting Requirement**

**(Reproduce as per RFP : Form-6 of Appendix-I)**

**12 Annexure - 3: Cost of Services**

**(Reproduce as per RFP BOQ: Form-2 of Appendix-II)**

