



## Request for Proposal For

### *Selection of an Agency to Setup & Manage an Incubation Centre at Moti Mahal, Gwalior*

Ref Number: GSCDCL/63/E-Tendering/2018-19

Date: [28 Aug 2018]

**Gwalior Smart City Development Corporation Limited**

**Nagar Nigam Office, City Centre, GWALIOR, Madhya Pradesh, 474003**

**Ph. No.: 0751 2438386; E-mail: gscdcltender@gmail.com**

**Website: [www.smartcitygwalior.org](http://www.smartcitygwalior.org)**

**NOTICE INVITING REQUEST FOR PROPOSAL (RFP)**

RFP No. GSCDCL/63/E-Tendering/2018-19

Date: 28/08/18

Gwalior Smart City Development Corporation Limited (“GSCDCL”) invites online bids from eligible Bidders through [www.mpeproc.gov.in](http://www.mpeproc.gov.in) for “**Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”.

The details are as under.

INFORMATION SHEET		
Sr. No.	Event's Name	Information
1.	RFP document Fee	Rs.15,000/- (Rupees Fifteen Thousand) to be paid only through Online e-Tendering Gateway
2.	Earnest Money Deposit (EMD)	Rs.2,07,284/- (Rupees Two lakhs Seven thousand two hundred Eighty Four only) to be paid only through online e-Tendering Gateway
3.	Last date for sending pre-bid queries	06/09/2018 till 17:00 hrs. at <a href="mailto:gscdcltender@gmail.com">gscdcltender@gmail.com</a>
4.	Date, Time & Place of Pre-bid Meeting	07/09/2018 at 16:00 hrs. Venue: GSCDCL, Nagar Nigam Office, City Centre, GWALIOR, Madhya Pradesh, 474003 Ph. No.: 0751 2438386
5.	Last date for Online Purchase of RFP Document	18/09/2018 till 17:30 hrs..
6.	Last date of Online Submission of Bids	19/09/2018 till 17:30 hrs.
7.	Date and Time for Opening of Pre-Qualification and Technical Proposal	20/09/2018 at 16:00 hrs.
8.	Date and Time for Presentation	21/09/2018 at 14:00 hrs. (in case any change will be intimated to the technically qualified bidders)
9.	Date and Time for opening of Financial Proposal	26/09/2018 at 16:30 hrs. (in case any change will be intimated to the technically qualified bidders)

1. The Bidders intending to participate in this RFP are mandatorily required to get enrolled/ registered on the e-procurement web site i.e. <https://www.mpeproc.gov.in/>.
2. RFP documents are available only online and can be purchased from <https://www.mpeproc.gov.in/> by making online payment as provided in RFP information sheet. The Bidders should submit their bids online. The relevant documents should be uploaded within the timelines in adherence to the RFP information sheet.
3. Conditional proposal will not be accepted and liable to be rejected. GSCDCL reserves the right to accept or reject any or all tender without assigning any reasons thereof.
4. Since the bids are being submitted online, it should be duly signed by the digital signature of the authorized signatory. Hence, the Bidders are advised to obtain the same at the earliest.

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**Executive Director  
Gwalior Smart City Development  
Corporation Limited**

## Table of Contents

<b>Disclaimer .....</b>	<b>6</b>
<b>1. Instruction to Bidders .....</b>	<b>8</b>
1.1. General Information and Guidelines.....	8
1.1.1. Purpose .....	8
1.1.2. Operation Period.....	8
1.1.3. Sub-Contracting .....	8
1.1.4. Completeness of Bid .....	8
1.1.5. Proposal Preparation Costs.....	8
1.1.6. Pre-bid Meeting and Queries.....	8
1.1.7. Amendment of RFP Document .....	9
1.1.8. Supplementary Information to the RFP .....	9
1.1.9. GSCDCL's Right to Terminate the Process .....	9
1.1.10. Verification of Information .....	9
1.1.11. Bidding Process .....	9
1.2. Key Requirements of the Bid.....	9
1.2.1. RFP Document Fee .....	9
1.2.2. Earnest Money Deposit (EMD).....	9
1.3. Bid Submission Instructions.....	10
1.3.1. Bid Submission Format .....	10
1.3.2. Bid Submission Instructions .....	10
1.3.3. Late Bid and Bid Validity Period .....	11
1.3.4. Modification and Withdrawal of Bids .....	11
1.3.5. Non-conforming Bids .....	11
1.3.6. Language of Bids .....	11
1.3.7. Authentication of Bid .....	11
1.3.8. Acknowledgement of Understanding of Terms .....	11
1.3.9. Conflict of Interest .....	12
1.3.10. Disqualification .....	12
1.3.11. Due diligence by the Bidders .....	13
1.4. Evaluation Process .....	13
1.4.1. Bid Opening.....	13
1.4.2. Evaluation of Pre-Qualification Proposals .....	14

1.4.3.	Evaluation of Technical Proposal .....	14
1.4.4.	Financial Proposal Evaluation .....	15
1.4.5.	Pre-Qualification Criteria .....	15
1.4.6.	Technical Evaluation Criteria.....	16
1.4.7.	Financial Evaluation .....	18
1.5.	Award of Contract .....	19
1.5.1.	Award Criteria .....	19
1.5.2.	Letter of Acceptance (LOA) .....	19
1.5.3.	Signing of Contract Agreement.....	19
1.5.4.	Failure to agree with the Terms and conditions of the RFP/Contract.....	19
1.5.5.	GSCDCL's Right to accept any Bid and to reject any or All Bids.....	19
1.5.6.	Performance Security.....	20
<b>2.</b>	<b>Scope of Work and Terms of Reference.....</b>	<b>22</b>
2.1.	Background .....	22
2.2.	Scope of Work .....	22
<b>3.</b>	<b>General Information.....</b>	<b>25</b>
3.1.	Contract Period.....	25
3.2.	Team Composition .....	25
3.3.	Deliverables, Payment Terms .....	25
	<b>Annexure 1 Pre-Qualification Proposal.....</b>	<b>28</b>
	Annexure 1.1 - Check-list for the Pre-Qualification Proposal.....	29
	Annexure 1.2 - Pre-Qualification Cover Letter.....	30
	Annexure 1.3 - Format to share Particulars of the Bidder .....	32
	Annexure 1.4. - Format for Project Citation.....	33
	Annexure 1.5 - Format for Declaration by the Bidder for not being Blacklisted / Debarred	
	34	
	Annexure 1.6 – Format of Power of Attorney for the Bidder .....	35
	Annexure 1.7 – Format for Annual Turnover .....	36
	<b>Annexure 2 Technical Proposal.....</b>	<b>37</b>
	Annexure 2.1 - Check-list for the documents to be included in the Technical Proposal	37
	Annexure 2.2. - Technical Bid Cover Letter .....	38
	Annexure 2.3 Details of past assignments.....	39
	Annexure 2.4: Team Composition .....	40
	<b>Annexure 3 Format for Project Undertaking .....</b>	<b>40</b>

<b>Annexure 4: Performance Bank Guarantee.....</b>	<b>42</b>
<b>Annexure 5: Format of sending pre-bid queries .....</b>	<b>46</b>
<b>Annexure 6: Format of Financial Bid .....</b>	<b>47</b>
<b>Annexure 6A: Financial Proposal Declaration.....</b>	<b>48</b>

## Disclaimer

Gwalior Smart City Proposal (**SCP**) was selected to implement the Area Based Development (**ABD**) and pan-city proposals by Government of India under Smart City Mission. Gwalior SCP proposes smart solutions in ABD and cross pan-city providing various smart feature/infrastructure.

To implement Smart City projects in Gwalior, Gwalior Municipal Corporation (**GMC**) and Madhya Pradesh Urban Development Corporation formed an SPV called Gwalior Smart City Development Corporation Ltd. (**GSCDCL**)

GSCDCL has prepared this RFP for “**Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”. This RFP is a detailed document which specifies terms and conditions on which the Bidders are expected to work. GSCDCL has taken due care in preparation of information contained herein and believes it to be accurate. However, neither GSCDCL or any of its authorities or agencies nor any of their respective officers, employees, agents, or advisors give any warranty or make any representations, express or implied as to the completeness or accuracy of the information contained in this document or any information which may be provided in connection or arising out of it.

The information provided in this document is to assist the Bidder(s) preparing their proposals. However, this information is not intended to be exhaustive, and interested parties are expected to make their own inquiries to supplement and verify information in this document. The information is provided on the basis that it is non-binding on GSCDCL or any of its authorities or agencies, or any of their respective officers, employees, agents, or advisors. Each Bidder is advised to consider the RFP as per its understanding and capacity. The Bidders are also advised to do appropriate examination, enquiry and scrutiny of all aspects mentioned in the RFP before bidding. The Bidders are encouraged to take professional help of experts on financial, legal, technical, taxation, and any other matters/ sectors appearing in the document or specified work. The Bidders should go through the RFP in detail and bring to notice of GSCDCL any kind of error, misprint, inaccuracy or omission.

GSCDCL reserves the right not to proceed with the Project, to alter the timeline reflected in this document and or to change the process or procedure to be applied. It also reserves the right to decline to discuss the Project further with any party submitting a proposal. No reimbursement of cost of any type will be paid to persons or entities submitting a proposal by under or pursuant under this RFP.

# Instructions to Bidders

## 1. Instruction to Bidders

### 1.1. General Information and Guidelines

#### 1.1.1. Purpose

Gwalior smart city project is running its implementation stage and to scale the existing technologies and to provide innovative solutions there is a need for the start-ups to participate in this activity. Thus setting up an incubation center in the city will provide budding entrepreneurs a requisite ecosystem at their disposal where they will be able to replicate their business ideas. The RFP is intended to examine the market feasibility of an incubator in the city and to recommend appropriate strategies for the design and operation of the facility.

Vision for the development of the city's Incubation center is:

*'Incubator set up in the city will foster an entrepreneurial culture, create jobs, accelerate the growth of new and existing businesses, encourage the commercialization of research, and improve small business access to critical resources.'*

#### 1.1.2. Operation Period

The Operation period for Operation and Management of an Incubation Centre at Moti Mahal is for a period of 3 (Three) years 3(Three) months (Operation Period) from the date of signing of Agreement which may be extended further by 2 (Two) years based on performance on pro rata basis.

#### 1.1.3. Sub-Contracting

The bidder shall be allowed to sub-contract following works as per the period defined in the Project timeline:

- I. Civil Works, Interior Works and furnishing and fixtures only

Sub-contracting shall be allowed only with prior written approval of Authority. However, even if the work is sub-contracted, the sole responsibility of the work shall lie with the sole bidder/ lead bidder in case of consortium. The sole bidder / lead bidder shall be held responsible for any delay/error/non-compliance etc. of its sub-contracted vendor. The details of the sub-contracting agreements (if any) between both the parties would be required to be submitted to Authority for prior approval before commencement of work.

#### 1.1.4. Completeness of Bid

The Bid should be complete in all respects. Failure to furnish all information required by the RFP document or submission of a proposal not substantially responsive to the RFP document in every respect will be at the Bidder's risk and may result in rejection of its Bid and forfeiture of the earnest money deposit (EMD).

#### 1.1.5. Proposal Preparation Costs

The Bidder shall submit the bid at its own cost and expense. GSCDCL shall not be held responsible for any cost incurred by the Bidder. Submission of a bid does not entitle the Bidder to claim any cost and rights over GSCDCL and GSCDCL shall be at liberty to cancel any or all bids without giving any notice.

All materials submitted by the Bidder shall be the absolute property of GSCDCL and no copyright etc. shall be entertained by GSCDCL.

#### 1.1.6. Pre-bid Meeting and Queries

1. GSCDCL will host a Pre-Bid meeting as per the date mentioned in the RFP information sheet. The representatives, limited to two individuals, of the interested organizations may attend the pre-bid meeting at their own cost. The purpose of the meeting is to provide Bidders with information regarding the RFP. Pre-Bid meeting will also provide each Bidder with an opportunity

to seek clarifications regarding any aspect of the RFP and the project.

2. The Bidder shall e-mail their queries to [gscdcltender@gmail.com](mailto:gscdcltender@gmail.com) in the form and manner as prescribed in [Annexure-05](#). The queries submitted through any other mode shall not be accepted. The response to the queries will be published on [www.mpeproc.gov.in](http://www.mpeproc.gov.in). No queries will be entertained thereafter. This response of GSCDCL shall become integral part of this RFP document. GSCDCL shall not make any warranty as to the accuracy and completeness of responses.
3. GSCDCL shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, GSCDCL reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring GSCDCL to respond to any question or to provide any clarification.
4. GSCDCL may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by GSCDCL shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by GSCDCL or its employees or representatives shall not in any way or manner be binding on GSCDCL.

#### **1.1.7.Amendment of RFP Document**

1. All the amendments made in the document would be published on the e-Tendering Portal ([www.mpeproc.gov.in](http://www.mpeproc.gov.in)) only and shall form part of this RFP.
2. The Bidders are advised to visit the e-tendering portal on regular basis to check for necessary updates. GSCDCL also reserves the right to amend the dates mentioned in this RFP.

#### **1.1.8.Supplementary Information to the RFP**

If GSCDCL deems it appropriate to revise any part of this RFP or to issue additional data to clarify an interpretation of provisions of this RFP, it may issue supplements to this RFP. Any such corrigendum shall be deemed to be incorporated by this reference into this RFP.

#### **1.1.9.GSCDCL's Right to Terminate the Process**

GSCDCL may terminate the RFP process at any time and without assigning any reason. GSCDCL reserves the right to amend/ edit/ add/ delete any clause of this RFP Document. This will become part of the RFP and information for the same would be published only on [www.mpeproc.gov.in](http://www.mpeproc.gov.in).

#### **1.1.10. Verification of Information**

The Bidders are encouraged to obtain for themselves, at their own responsibility and risk, all information that may be necessary for submission of the bid and entering into the Contract.

#### **1.1.11. Bidding Process**

The entire bidding process shall be online (e-Tendering) in three cover system. The Bidders shall have to submit their Bids online as per the RFP on the website [www.mpeproc.gov.in](http://www.mpeproc.gov.in).

### **1.2. Key Requirements of the Bid**

#### **1.2.1.RFP Document Fee**

RFP can be downloaded from the website [www.mpeproc.gov.in](http://www.mpeproc.gov.in). RFP Document Fee of Rs 15,000/- (Rupees Fifteen Thousand Only) shall be paid only through online-Tendering Payment Gateway. The RFP document fee shall be non-refundable. Without the payment of tender fee the bids will be taken as incomplete and non-responsive and shall not be considered.

#### **1.2.2.Earnest Money Deposit (EMD)**

1. In terms of this RFP, a Bidder is required pay EMD of Rs.2,07,284/- (Rupees Two Lakh Seven Thousand Two Hundred Eighty Four Only) through the online system only.
2. The EMD of the Unsuccessful Bidder will be returned within 180 (One Hundred Eighty) days from the last date of Bid Submission. The EMD, for the amount mentioned above, of the successful Bidder would be returned upon submission of Performance Security as per the format provided in

[Annexure 4](#) of the RFP.

3. No interest will be paid by GSCDCL on the EMD amount and EMD will be refunded to the all Bidders (including the successful Bidders) without any accrued interest on it.
4. The Bid submitted without EMD, mentioned above, will be summarily rejected.
5. The EMD may be forfeited:
  - a. If a Bidder withdraws its bid or increases/decreases its quoted prices during the period of bid validity or its extended period, if any.
  - b. In case of a successful Bidder, if the Bidder fails to sign the contract in accordance with the terms and conditions of this RFP.
  - c. If during the bid process, a Bidder indulges in any such deliberate act as would jeopardize or unnecessarily delay the process of bid evaluation and finalization.
  - d. If, during the bid process, any information is found false/ fraudulent/ *mala fide*, then GSCDCL shall reject the bid and, if necessary, initiate action.
6. The decision of GSCDCL regarding forfeiture of the EMD shall be final and binding upon Bidders.
7. In case the bidding process is not completed within the period of 180 Days, GSCDCL may request for extending the validity of EMD and accordingly EMD should be extended by the Bidders.

### 1.3. Bid Submission Instructions

#### 1.3.1. Bid Submission Format

The entire Bid shall be submitted strictly as per the format specified in this RFP. Bids with any deviation from the prescribed format are liable for rejection.

#### 1.3.2. Bid Submission Instructions

1. Complete bidding process will be online (e-Tendering) in three covers system. Submission of bids shall be in accordance to the instructions given in the Table below:

Particulars	Instructions
<b>Cover 1</b>	Proof of submission of RFP Document Fee and EMD payment receipt
<b>Cover 2: Pre- Qualification Proposal</b>	The Pre-Qualification Proposal shall be prepared in accordance with the requirements specified in this RFP and the formats are prescribed in <a href="#">Annexure 1</a> of the RFP  Pre-Qualification Proposal should be submitted through online bid submission process only.
<b>Cover 3: Technical Proposal</b>	The Technical Proposal shall be prepared in accordance with the requirements specified in this RFP and the formats are prescribed in <a href="#">Annexure 2</a> of the RFP  Technical Proposal should be submitted through online bid submission process only.
<b>Financial Proposal</b>	The Financial Proposal shall be prepared in accordance with the requirements specified in this RFP and in the formats prescribed in <a href="#">Annexure 6</a> of the RFP.  Financial Proposal should be submitted through online bid submission process only. The Bidder shall quote in its Financial Bid : <ul style="list-style-type: none"> <li>• The cost to furnish/set up the Incubation center at Moti Mahal as described in Scope of Work (4520sq.ft.)</li> <li>• Manage and operate the Incubation Centre for three years.(Year1, Year 2 and Year 3)</li> </ul>

2. The following points shall be kept in mind for submission of bids;
  - a. GSCDCL shall not accept delivery of Bids in any manner other than that specified in this RFP. Bid delivered in any other manner shall be treated as defective, invalid and rejected.
  - b. The Bidder is expected to price all the items and services sought in the RFP and proposed in its technical proposal. The Bid should be comprehensive and inclusive of all the services to be provided by the Bidder as per the scope of work and in accordance with the terms and conditions as set out in the RFP.
  - c. GSCDCL may seek clarifications from the Bidder on the technical proposal. Any of the clarifications by the Bidder on the technical proposal should not have any commercial implications.
  - d. **Technical Proposal shall not contain any financial information. If any information is found in the Financial Proposal the entire bid shall be treated as disqualified and will be rejected.**
  - e. If any Bidder does not qualify the pre-qualification criteria stated in [Section 1.4.5](#) of this RFP, the technical proposal of the Bidder shall not be opened in the e-Tendering system.
  - f. It is required that all the proposals submitted in response to this RFP should be unconditional in all respects, failing which GSCDCL reserves the right to reject the proposal.

#### **1.3.3.Late Bid and Bid Validity Period**

Bids received after the due date and the specified time (including the extended period if any) for any reason whatsoever, shall not be entertained and shall not be opened in the e-Tendering system. The bids will be valid till 180 (One hundred eighty) days from the last date of bid submission as mentioned in the Information sheet.

#### **1.3.4.Modification and Withdrawal of Bids**

No bid shall be withdrawn in the interval between the last date of submission of bids and the expiration of the validity period as defined in clause 1.3.3 above. Entire EMD shall be forfeited if any of the Bidders withdraw their bid during the validity period.

#### **1.3.5.Non-conforming Bids**

A Bid may be construed as a non-conforming proposal and ineligible for consideration:

- a. If it does not comply with the requirements of this RFP
- b. If the Bid does not follow the format requested in this RFP or does not appear to address the particular requirements of GSCDCL.

#### **1.3.6.Language of Bids**

The Bids should be submitted in English language only. If any supporting documents submitted are in any language other than English, then the translation of the same in English language is to be duly attested by the Bidder and submitted with the bid, and English translation shall be validated at GSCDCL's discretion.

#### **1.3.7.Authentication of Bid**

- a. Authorized person of the Bidder who signs the bid shall obtain the Power of Attorney from the Bidder, which shall be submitted with the Bid. All pages of the bid and its annexures, etc. shall be signed and stamped by the person or persons signing the bid.
- b. The Bidder should submit a Power of Attorney as per the format set forth in Annexure 1.6, authorizing the signatory of the Bid.

#### **1.3.8.Acknowledgement of Understanding of Terms**

By submitting a Bid, each Bidder shall be deemed to acknowledge that the Bidder has carefully read all sections of this RFP, including all forms, schedules, annexure, corrigendum and addendums (if any) hereto, and has fully informed itself as to all existing conditions and limitations.

### **1.3.9. Conflict of Interest**

A Bidder shall not have a conflict of interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit the EMD of a Bidder or in case of a Selected Bidder, the Authority shall forfeit the Performance Security of such Selected Bidder as a mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the GSCDCL and not by way of penalty for, inter alia, the time, cost and effort of GSCDCL, including consideration of such Bidder's Bid, without prejudice to any other right or remedy that may be available to the GSCDCL hereunder or/and the Contract Agreement or otherwise. Without limiting the generality of the foregoing, a Bidder shall be considered to have a conflict of Interest ("Conflict of Interest") that affects the Bidding Process, if:

- a) the Bidder, or any of its Member or Associate (or any constituent thereof) and any other Bidder, or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, or Associate, as the case may be) in the other Bidder, its Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; Provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013. For the purposes of this clause indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person ("Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject to sub clause (aa) herein above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- b) a constituent of such Bidder is also a constituent of another Bidder; or
- c) such Bidder or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or any Associate thereof; or
- d) such Bidder has the same legal representative for the purposes of this Bid as any other Bidder; or
- e) such Bidder or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Bid of either or each of the other Bidder; or
- f) such Bidder has participated as a consultant for the Authority in the preparation of any documents, design or technical specifications of the Project.

For the purposes of this RFP

"Associate" shall mean in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder. As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or contract or otherwise.

### **1.3.10. Disqualification**

Even though the Bidders meet the pre-qualifying criteria, they could be disqualified if they have:

- a. Submitted the Bid after the date mentioned in advertisement.

- b. Made misleading or false representations in the forms, statements and experiences submitted in proof of the qualification requirements.
- c. Submitted the Bid, which is not accompanied by the required documents or is non- responsive.
- d. Failed to provide any clarifications related thereto.
- e. Where the bidder has already submitted the Bid and is a member of entity, which has already submitted the Bid, or vice versa.
- f. Violates any other condition mentioned herein before/herein after.
- g. If any such information which would have entitled GSCDCL to reject or disqualify the Bidder, becomes known after the bidder has been pre-qualified, GSCDCL reserves the right to cancel the pre- qualification of the bidder at any later stage too, without assigning any reason thereof.
- h. Bidders who canvass or attempt to influence the pre/post – qualification or selection process shall necessarily be disqualified from the process at any stage.
- i. Where the bidder has been declared as defaulter or blacklisted by GSCDCL/ Gwalior Municipal Corporation before the date of opening of techno commercial Bid

#### **1.3.11. Due diligence by the Bidders**

- a) Bidders are encouraged to inform themselves fully about the Project and the Incubation Centre Site, by visiting the project site, sending written queries (if any) to the GSCDCL, attending Pre Bid Meetings on the date and time as stipulated
- b) The Bidders are also advised to study all instructions, forms, terms, requirements and other information in the Bid Documents carefully.
- c) The response to this RFP shall be full and complete in all respects. Failure to furnish any information required by the RFP or submission of a proposal not substantially responsive to the RFP in any respect will be at the bidder's risk entirely and may result in rejection of its Bid. .
- d) The GSCDCL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bid document or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

#### **1.4. Evaluation Process**

- j. GSCDCL will constitute a Bid Evaluation Committee (BEC) to evaluate the responses of the Bidders
- b. The BEC constituted by GSCDCL shall evaluate the responses to the RFP and all supporting documents/ documentary evidence. Inability to submit requisite supporting documents/ documentary evidence, may lead to rejection.
- c. The successful bidder among the technically qualified bidders will be the bidder which bids the highest Score.
- d. The decision of the BEC in the evaluation of responses to the RFP shall be final. No correspondence shall be entertained outside the process of negotiation/ discussion with the BEC.
- e. The BEC may ask for meetings with the Bidders to seek clarifications on their proposals and may visit Bidder's client site to validate the credentials/ citations claimed by the Bidder.
- f. The BEC reserves the right to reject any or all proposals on the basis of any deviations.
- g. Each of the responses shall be evaluated as per the criteria and requirements specified in this RFP.
- h. Please note that BEC may seek inputs from their professional, external experts in the Bid evaluation process.

##### **1.4.1. Bid Opening**

- a. Total transparency shall be observed and ensured while opening the Bids. All Bids shall be opened in the presence of Bidder's representatives who choose to attend the Bid opening sessions on the specified date, time and address.
- b. GSCDCL reserves the rights at all times to postpone or cancel a scheduled Bid opening.
- c. Bid opening shall be conducted in the following;

- Initial screening – whether RFP Document fee and Bid Security/ EMD has been paid
  - Whether the bidder has the necessary pre-qualifications as stipulated in the document
  - Whether the proposal submitted by the bidder meets technical standards and qualifies on the basis of evaluation parameters set forth in this RFP;
- d. The venue, date and time for opening the Pre-qualification Proposal are mentioned in the RFP Information Sheet.
- e. Bidders who score at least 70 (Seventy) marks in the Technical Evaluation will be declared as Technically Qualified bidders.
- f. The Financial Proposals of only Technically Qualified Bidders will be opened.
- g. The Bidder's representatives who are present shall sign a register evidencing their attendance. In the event of the specified date of Bid opening being declared a holiday for GSCDCL, the bids shall be opened at the same time and location on the next working day. In addition to that, if the representative(s) of the Bidder remains absent, GSCDCL will continue process and open the bids of the all Bidders.
- h. During Bid opening, preliminary scrutiny of the Bid documents shall be made to determine whether they are complete, whether required EMD has been furnished, whether the Documents have been properly signed, and whether the bids are generally in order. Bids not conforming to such preliminary requirements shall be prima facie rejected. GSCDCL has the right to reject the bid after due diligence is done.

#### 1.4.2.Evaluation of Pre-Qualification Proposals

- a) GSCDCL shall open Cover 1 marked "RFP Document Fee and Earnest Money Deposit (EMD)". If the contents of the **Cover 1** are as per requirements of the RFP, GSCDCL shall open **Cover 2** marked "Pre-Qualification Proposal". Each of the Pre-Qualification condition mentioned in Section 1.4.5 of the RFP is mandatory. In case the Bidder does not meet any one of the conditions, the Bidder will be disqualified.
- b) The Pre-Qualification proposal must contain all the documents in compliance with instructions given in the [Annexure 1](#).
- c) Response to the Pre-Qualification Requirements shall be evaluated in accordance with the requirements specified in this RFP and in the manner prescribed in [Section 1.4.5](#) of the RFP.

#### 1.4.3.Evaluation of Technical Proposal

The evaluation of the Technical Proposals will be carried out in the following manner:

- a) Technical bids of only those Bidders who qualify the Pre-Qualification will be opened. GSCDCL will review the technical bids of such Bidders to determine whether the technical proposals are substantially responsive. Bids that are not substantially responsive are liable to be disqualified at GSCDCL's discretion.
- b) Bidders' technical solutions proposed in the bid document will be evaluated as per the requirements and guidelines specified in the [Annexure 2](#) and technical evaluation criteria as mentioned in [Section 1.4.6](#) of the RFP.
- c) Bidders shall make the technical presentation and showcase their proposed solution to GSCDCL as per the agenda mentioned in [Section 1.4.6](#) of the RFP.
- d) Each Technical Proposal shall be assigned a technical score out of a maximum of 100 points.
- e) The Bidders are required to submit all required documentation in support of the evaluation criteria specified (e.g. Detailed Project citations and copy of work order, client contact information for verification, and all others components) as required for technical evaluation.

- f) At any time during the Bid evaluation process, BEC may seek oral/ written clarifications from the Bidders. The Committee may seek inputs from their professional and technical experts in the evaluation process.
- g) GSCDCL reserves the right to do a reference check of the past experience stated by the Bidder. Any feedback received during the reference check shall be taken into account during the technical evaluation process.
- h) GSCDCL reserves the right to accept or reject any or all bids without giving any reasons thereof.
- i) GSCDCL shall inform to the Pre-Qualified bidders about the date and venue of the presentation.

#### 1.4.4. Financial Proposal Evaluation

- a) All the technically qualified Bidders will be notified to participate in Financial Proposal opening process.
- b) Financial Proposals for the technically qualified Bidders will then be opened on the notified date and time and reviewed to determine whether the financial proposals are substantially responsive. Bids that are not substantially responsive are liable to be disqualified at GSCDCL's discretion.
- c) Financial Proposals that are not meeting the condition mentioned in [Annexure 6](#) shall be liable for rejection.
- d) The bidder shall quote the cost for the following in the financial format in [Annexure 6](#)
  - i. Setup/Furnish the Startup incubator at Location as described in the Scope of Work as mentioned at Section 2 of this RFP
  - ii. Manage and Operate the Incubation Centre for 3 Years.
- e) The price quoted above shall include all levied taxes except GST.
- f) **Setup Price Quote cannot be more than 30% of the Total Financial Quote i.e. sum of setup price quote and O&M price quote**
- g) If there is a discrepancy between words and figures, the amount in words shall prevail. For any other calculation/ summation error etc. the bid may be rejected.

#### 1.4.5. Pre-Qualification Criteria

The proposal failing to meet any of the below mentioned pre-qualification eligibility criteria shall be disqualified and will not be considered for technical evaluation process.

S No	Basic Requirement	Specific Requirements	Documents Required
1	Legal Entity	The Bidder, shall be a legal person, which may be: <ul style="list-style-type: none"> <li>- A company, incorporated under Companies Act, 2013 or 1956, amended till date; or</li> <li>- A Limited Liability Partnership Firm, incorporated under Limited Liability Partnerships Act, 2008 and any amendments thereof,</li> </ul>	Copy of certificate of incorporation and/or registration under the relevant law.
2	Annual Turn over	The Bidder should have an average annual turnover - of atleast Rs.1.5 Cr. in last three financial years i.e. 2014-2015, 2015-2016, 2016-2017	Certificate from the Statutory auditor/ Chartered Accountant, clearly specifying the turnover of the Bidder
3	Experience of the bidder	a) The Bidder must have an experience of successful completion of setting up, commissioning and	Copy of Work order and Work Completion Certificate

S No	Basic Requirement	Specific Requirements	Documents Required
		management of at least one project costing not less than INR 1 Cr	
		b) The Bidder shall have experience of mentoring atleast 4 Hackathons/Startup events	Copy of Work order and Work Completion Certificate
4	Key Personnel	The Bidder must deploy the required key personnel's in the Team: 1. Project Director- Minimum 10 years' industry experience with minimum one project in the field of Innovation and Incubation centre setup / operations and maintenance. Should be full time employee and on the payroll of the bidder for at-least 3 years. 2. Onsite Project Lead - Minimum 7 years' industry experience in the field of Innovation and Incubation centre setup / operations and maintenance. 3. Project Consultants - Minimum 3 years' industry experience in the field of Innovation and Incubation centre setup / operations and maintenance	CVs duly countersigned by the Authorised Signatory of the bidder
5	Blacklisting	The Bidder should not have been blacklisted by Central Government/ any State Government/ Public Sector Undertaking in India or similar agencies globally for unsatisfactory past performance, corrupt, fraudulent or any other unethical business practices as on the last date of bid submission.	Undertaking by the authorized signatory as per the format given as per the RFP document

#### 1.4.6. Technical Evaluation Criteria

	Technical Evaluation Criteria	Technical Evaluation Parameter	Max Marks	Documentary proof
Years of Operation	TEC 1	The Bidder must be registered company and should be operational at least for last 2 years as on the last date of bid submission	10	<ul style="list-style-type: none"> <li>• Certificate of Incorporation</li> <li>• Memorandum and Articles of Association</li> </ul>
Average Annual turnover	TEC 2	Average annual Turnover of The Bidder for the last three financial years (FY 2014-15, FY 2015-16, FY2016-17):	Max 20	Certificate from the Statutory auditor/ Chartered Accountant, clearly specifying the turnover of the firm
	TEC 2.1	>=1.5 Cr.and <= 5 Crore	10	
	TEC 2.2	More than 5 Crore	20	

	Technical Evaluation Criteria	Technical Evaluation Parameter	Max Marks	Documentary proof
Work Experience	TEC 3.1.	The Bidder must have experience of setting up, commissioning and management of at least one Govt. funded Incubation Centres project in India	<b>Max 20</b>	Copy of Work order and Client Certificate is to be submitted along with citation
		a.	One Govt. Project	
		More than One Govt. Project	<b>10</b>	
	b	The Bidder must have experience of setting up, commissioning and management of at least two Incubation Centres project in India in other than Govt funded projects		Copy of Work order and Client Certificate is to be submitted along with citation
		>=2 and <= 5 projects	<b>5</b>	
		More than 5 projects	<b>10</b>	
	TEC 3.2.	The Bidder should also have experience of mentoring atleast 4 Hackathons/Startup events.		<b>Max 20</b>
>=4 events and <=6 events		<b>10</b>		
More than 6 events		<b>20</b>		
Technical Presentation	TEC 5	Presentation on credentials and approach for Project	<b>Max. 30</b>	Prequalified bidders will be required to make presentations on highlighting above experience and credentials and proposed approach for executing the Project to an BEC Prequalified bidders will be required to make presentations on the following parameters: <ul style="list-style-type: none"> <li>a. Bidder Introduction</li> <li>b. Firm Capabilities and Previous Experience in Setting up &amp; Management of an Incubation Centre as defined in scope of work in RFP.</li> <li>c. Understanding of the Scope of work and</li> </ul>

	Technical Evaluation Criteria	Technical Evaluation Parameter	Max Marks	Documentary proof
				project.(3 Marks) d. Proposed Plan for Setup/Furnish the Incubation Centre as described in Scope of work.(4Marks) e. Proposed Business Model and Implementation Plan as described in Scope of work.(7Marks) f. Tabulation of year wise composition of attainable targets(3 years) as described in scope of work.(3Marks) g. Management Plan for Monitoring of incubation Centre.(7Marks) h. List of atleast 10 successful entrepreneurs developed through bidders' earlier work experience (6 Marks)

**1.4.7.Financial Evaluation**

- a) The Bidders, whose bids are responsive, based on minimum qualification criteria as per the Pre-Qualification Criteria and have secured a technical score of at least 70 (Seventy) based on the technical evaluation criteria would be considered as technically qualified and would be eligible for opening of financial bids.
- b) For financial evaluation, the “**Total Financial Quote** “ quoted by the bidders in the Financial Proposal given in [Annexure 6](#) only shall be considered.

GSCDCL will determine whether the Financial Proposals are complete, and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the bidder to be compensated and the liability to fulfill its obligations as per this RFP rests with the bidder.

## 1.5. Award of Contract

### 1.5.1. Award Criteria

Post the evaluation process indicated in Section 1.4 above, the successful bidder, among the technically qualified bidders, will be selected on a Quality Cum Cost Based (QCBS) selection method as follows:

- a) The Financial Proposal of only the technically qualified Bidders shall be opened for financial evaluation.
- b) The Normalized Financial Score (Sf) of each bidder will be calculated as follows:

$$Sf = 100 \times (Fm/F)$$

#### Where;

Fm= Financial Bid of L1 bidder

F= Financial Bid of the Bidder

- c) The overall score of the bidder will be calculated as follows:

$$S = [(St \times Tw) + (Sf \times Fw)]$$

#### Where

**S = The combined score,**

**Tw= Weightage assigned to Technical Score= 0.70**

**Fw= Weightage assigned to Financial Score=0.30** Bidder achieving the highest combined score will be considered to be the successful bidder and will be issued the Letter of Acceptance (LoA).

- If there are more than one bidders achieving the highest combined score, then the bidder with higher Technical Score will be the successful bidder.
- For the purpose of determining the capability and capacity of the bidder to perform the Contract, the GSCDCL reserves the right to verify the authenticity of the documents submitted by the bidder for meeting the qualification requirements and may undertake verification of the manufacturing facilities available with the bidder.

### 1.5.2. Letter of Acceptance (LOA)

Prior to the expiration of the period of bid validity, GSCDCL will notify the successful Bidder in writing or by fax or email, that its bid has been accepted. Upon the successful Bidder's furnishing of Performance Bank Guarantee, GSCDCL will promptly notify each unsuccessful Bidder.

### 1.5.3. Signing of Contract Agreement

GSCDCL shall notify the successful Bidder that its bid has been accepted. The successful Bidder shall enter into Contract agreement with GSCDCL within the time frame mentioned in the Letter of Acceptance issued to the successful Bidder by GSCDCL.

### 1.5.4. Failure to agree with the Terms and conditions of the RFP/Contract

Failure of the Successful Bidder to agree with the Terms & Conditions of the RFP/ Contract shall constitute sufficient grounds for the annulment of the award, in which event GSCDCL may invite the next best Bidder for negotiations or may call for fresh RFP. GSCDCL reserves the right to forfeit the EMD of the Successful Bidder in such case.

### 1.5.5. GSCDCL's Right to accept any Bid and to reject any or All Bids

GSCDCL reserves the right to accept or reject any Bid, and to annul the bidding process and reject any or all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for GSCDCL's action.

#### **1.5.6. Performance Security**

- a) The Successful Bidder shall, within fifteen (15) working days from the date of issuance of LOA at its own expense submit unconditional and irrevocable Performance Security for an amount equivalent to 5% of the contract payable to the .in the name of the Executive Director, Gwalior Smart City Development Corporation Limited.
- b) The performance security shall be from a Nationalized Bank or a Scheduled Commercial Bank in the format prescribed in [Annexure 4](#), payable on demand, for the due performance and fulfilment of the Contract by the Successful Bidder.
- c) All charges whatsoever such as premium; commission etc. with respect to the performance security shall be borne by the Successful Bidder.
- d) The performance security shall be valid for at least 180 (one hundred and eighty) days post the expiry date of the Contract Period. No interest shall be payable on the performance security.
- e) In case the project is extended beyond the project schedule as mentioned in the RFP, the performance security shall be accordingly extended by the Successful Bidder.
- f) In the event of the Successful Bidder being unable to service the requirements for whatever reason, GSCDCL would invoke the performance security. Notwithstanding and without prejudice to any rights whatsoever of GSCDCL under the requirement in the matter, the proceeds of the performance security shall be payable to GSCDCL as compensation for any loss resulting from the Successful Bidder's failure to complete its obligations under the requirements set in by GSCDCL. GSCDCL shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 (fourteen) days, indicating the obligation(s) for which the Successful Bidder is in default.
- g) GSCDCL shall also be entitled to make recoveries from the Successful Bidder's bills, performance security, or from any other amount due to him, the value equal to any payment made to it due to inadvertence, error, collusion, misconstruction or misstatement.
- h) The performance security may be discharged/ returned by GSCDCL upon being satisfied that there has been due performance of the obligations of the Bidder under the Contract.

# Scope of Work

## 2. Scope of Work and Terms of Reference

### 2.1. Background

The Government of India has setup the Atal Innovation Mission (AIM) at NITI Aayog. The overarching purpose of this Mission is to promote a culture of innovation and entrepreneurship in India. The Government realizes that there is a need to create high class incubation facilities across various parts of India with suitable physical infrastructure in terms of capital equipment and operating facilities, coupled with the availability of sectoral experts for mentoring the start-ups. Accordingly, AIM proposes to support establishment of Atal Incubation Centre (AICs) that would support innovators and start-up businesses in their pursuit to become successful entrepreneurs.

The objective is to promote and establish incubation centers in India which would support and encourage start-ups in specific subjects/sectors such as manufacturing, transport, energy, health, education, agriculture, water and sanitation etc. and would provide them with necessary infrastructure facilities and other value added services.

### 2.2. Scope of Work

One of the prime focus of Gwalior Smart City Development Corporation Limited (GSCDCL) is to support the youth of Gwalior City to build their successful future through providing a platform to the youth and promoting Entrepreneurship opportunities who wants to build their own enterprises.

#### Section A:

Under Atal Innovation Mission – Start Up India Scheme, Government of India have suggested scope of areas/sectors for establishing Incubation Centers and they are as follows:

- i. Agriculture and Allied Fields
- ii. Bio Technology
- iii. Building Materials/Construction Technology
- iv. Electricity, New and Renewable Energy and Environmental sustainability
- v. Education
- vi. Health and Pharmaceuticals
- vii. Information & Communication Technology (ICT)
- viii. Sensor Technology
- ix. Manufacturing and Engineering
- x. Micro and nano electronics
- xi. New Materials including Nano Materials
- xii. Water, Sanitation and Solid Waste Management
- xiii. Housing – Urban and Rural
- xiv. Transport
- xv. Other emerging areas or of social / national importance

The Bidder have to specify the area/sector for which the Bidder will be establishing the Incubation Centre from the above mentioned sectors only.

#### Section B:

##### Roles and Responsibilities

##### Successful Bidder

###### a) Furnish/Setup the Startup incubator with the following features:

- Seating Capacity for about 50 people with modern furniture and office chairs along with the Interior and Civil Works
- The Detailed Drawings of the Civil Works, Interior Works and Furnishing Works have to prepared and submitted by the successful bidder
- Dedicated Lease Line Internet Connection with 15 mbps bandwidth
- Mini Cafeteria with refreshments and tea / coffee machine
- Fully Air Conditioned
- Wi-Fi Internet
- Event Area/Common area/Recreational activity area for 50 people

- Dedicated Mentoring Rooms

**b) Operation and Management of the Incubation Centre for 3 years:**

The Selected bidder should deliver the following services:

**i. Incubation Strategy and Business Model**

- Mention the area/sector for establishing the Incubation Centre.
- Undertake all marketing activities for building and promoting entrepreneurship.
- Run various events including mentoring, pitching evenings, and social gathering for building the network of entrepreneurs and accordingly deploy an organizing team for the same.
- One startup 3 days program/workshop/conclave every six months at the proposed Incubation Centre.
- One Mentoring Session per month with noted mentor.
- Raise sponsorships for sustaining network development activities.
- Maintain a list of all its members/participants, event calendar and financial information through a real time platform which will work through a website.
- Appoint and Train a dedicated Startup Incubator Director/manager for managing the startup incubator, Setup and execute rules and guidelines.
- Pay all the running expenses related to Utilities, Housekeeping, internal maintenance, Office boys and internet, pantry
- Provide access/connect to Angel Networks/funds for the funding requirements of the budding entrepreneurs
- The bidder have to take the Approval from GSCDCL before organizing any event within 15 days(before the event) like, approval on the list of engagement of mentors, type of events/sessions to be organized etc.
- Electricity monthly charges will be paid by the bidder.
- The bidder should arrange the DG setup or UPS System to avoid fluctuations and for continuous power supply.

**ii. Tabulation of year wise composition of attainable targets(3 years)**

- Number of incubatees (individual/group) to be admitted
- Number of incubatees expected to be graduated year wise
- Number of new products/technologies developed/innovations to be commercialized

**Gwalior Smart City Development Corporation Limited:**

- Provide minimum 4520sq.ft.of area to furnish/setup the required Incubation Centre at Moti Mahal to conduct the activities as mentioned in this RFP only
- Provide free access to the assigned space as per the area defined in the agreement.
- All assets will remain under the ownership of GSCDCL.
- All legal and statutory clearances in concern with the property including property tax, Municipal Corporation Charges etc. will be paid by the GSCDCL.
- Generator available with GSCDCL will cater to Startup Incubator
- The Work will commence only after the approval of GSCDCL on the drawings prepared by the bidder and GSCDCL can assist in providing the design guidelines to maintain standardization across all its spaces

# General Information

### 3. General Information

#### 3.1. Contract Period

The time for completing the Assignment (to Setup/Furnish of the Incubation Center as described in Scope of Work) would be 3 months.

#### 3.2. Team Composition

The Key Experts to be proposed in this assignment shall be on payroll of the Bidder. The minimum Qualification Requirement of Key Experts is indicated below:

S.no.	Discipline	Minimum Qualification	Minimum Experience	No of Resources Required	Expected Minimum Deployment during the project tenure
1.	Project Director	B.E./B.Tech/ MBA	<ul style="list-style-type: none"> <li>Minimum 10 years' industry experience with minimum one project in the field of Innovation and Incubation center setup / operations and maintenance.</li> <li>Should be full time employee and on the payroll of the bidder for at-least 3 years.</li> </ul>	1	Minimum 2 days per week
2.	Onsite Project Lead	BE/ B.Tech/ MBA	Minimum 7 years' industry experience in the field of Innovation and Incubation center setup / operations and maintenance.	1	Full Time
3.	Project Consultant	BE/ B.Tech	Minimum 3 years' experience industry experience.	2	Full Time

#### 3.3. Deliverables, Payment Terms

The following outputs are expected to be delivered in stages in total duration of assignment.

S.no.	Deliverables	No. of Copies	Time Period	Payment Schedule
<b>A</b>	<b>Setup Phase</b>			
A1.	Submission of "Incubation Center Inception Report" including establishment plan and approval by GSCDCL of the Inception report	1 Hard copy with soft copy over email	T1+ 30 days	20% of <b>Setup price Quote</b>
A2.	Submission of "Operating Model Report" and approval by GSCDCL of the report. This report will comprise of Governance Mechanism, Operating Models for various events, schemes and	1 Hard Copy with soft copy over email	T1 + 60 days	40% of <b>Setup Price Quote</b>

S.no.	Deliverables	No. of Copies	Time Period	Payment Schedule
	programs and progress reporting metrics.			
A3.	Procurement and Installation of Furniture & Fixture and Hardware & Software for operations. The incubation center has to be approved by GSCDCL.	1 Hard copy with soft copy over email	T1+ 90 days (3months)	40% of Setup price Quote
<b>B</b>	<b>Operation and Maintenance Phase</b>			
B1.	Implementation Monthly Progress Report	1 Hard copy with soft copy over email	T2+36 Months	<b>O&amp;M Price quote paid through 12 equal quarterly installments.</b>

Note: The period between the submission of draft report and its discussion would not be included in the period of assignment.

1. T1 = Date of Signing of Contract / Agreement
2. T2 = Date of Completion of Setup/Furnishing of Incubation Centre

The payment will be become due on approval of the draft reports and on raising of bills/ invoice by the consultant after the approval of the stage report .The processing time of the payment will be 60 days for final payment and 30 days for all other payments.

**Formats of the various reports like “Incubation Center Inception Report” and “Implementation Support Monthly Progress Report” will be suggested by the appointed consultant and approved by GSCDCL.**

1. Payment against Setup/Furnishing the incubation center shall be released after post inspection by GSCDCL.
2. Payment against Management and Operational cost shall be paid by GSCDCL on quarterly basis after completion of the quarter and the activities planned for the quarter

### 3.4 Procedure for Monitoring & Review of the Assignment

The Consultant’s work will be monitored and reviewed by the Evaluation/Audit Committee under the GSCDCL assigned Committee.

#### **Note: Monthly Progress Reports**

The Consultant shall submit progress reports on monthly basis to the Client to keep track of the project activities during the entire implementation phase.

### 3.5 SLAs and Penalties

Penalty for non-deliverable of expected services as described in Scope of work are as follows:

<b>Penalties for Setup Phase</b>	
<b>Parameter for SLA</b>	<b>Penalties</b>
Delay in Submission of Incubation Centre Inception Report	<ul style="list-style-type: none"> <li>Penalty of 1.5% of payment for deliverable (A1) will be levied on the bidder per week, if the bidder is unable to submit the 'Complete' Inception Report in 30 days.</li> </ul>
Delay in Procurement and Installation of Furniture, Fixture, Hardware and Software for Operations.	<ul style="list-style-type: none"> <li>Penalty of 2% of payment for deliverable (A3) will be levied on the bidder per week, if the bidder is unable to procure and install the required furniture, fixture, hardware and software for operations within 90 days.</li> </ul>
Delay in Submission of "Operating Model Report"	<ul style="list-style-type: none"> <li>Penalty of 2% of payment for deliverable (A2) will be levied on the bidder per week, if the bidder is unable to submit the 'Complete' Operating Model Report in 60 days.</li> </ul>
<b>Penalties for Operation and Management Phase</b>	
Replacement of the Hardware/Software items, as per requirement	<ul style="list-style-type: none"> <li>Penalty of 0.5% of payment for deliverable (B1) will be levied on the Bidder in case the bidder is unable to replace any damaged hardware and software item within 24hours.</li> </ul>
Replacement of Furniture	<ul style="list-style-type: none"> <li>Penalty of 0.5% of payment for deliverable(B1) will be levied on the Bidder, in case the bidder is unable to replace any damaged furniture within 24Hours</li> </ul>
One startup 3 days program/workshop/conclave every six months at the proposed Incubation Centre.	<ul style="list-style-type: none"> <li>Penalty of 2% of payment for deliverable (B1) will be levied on bidder in case the required workshops are not conducted every 6 months.</li> </ul>
One Mentoring Session per month with noted mentor.	<ul style="list-style-type: none"> <li>Penalty of 1% of payment for deliverable (B1) will be levied on bidder in case the required Mentoring session is not conducted per month.</li> </ul>
In case the Non-deployment of the staff as described in the RFP	Penalty will be charged from the Bidder on the Non-deployment of required staff on per week basis: <ul style="list-style-type: none"> <li>Project Director – Rs.30,000/-</li> <li>Project Team Leader – Rs.10,000/-</li> <li>Project Consultants – Rs.5,000/-</li> </ul>

However, the amount of maximum penalty on all the above mentioned defaults shall be limited to 10% of the contract amount.

Any penalties/ liquidated damages, as applicable, for delay and non-performance, as mentioned above, shall be deducted from the due payments of the respective invoice and/or the Performance Security submitted by the Successful Bidder.

# Annexures

**Annexure 1 Pre-Qualification Proposal****Annexure 1.1 - Check-list for the Pre-Qualification Proposal**

<b>S No.</b>	<b>List of Document</b>	<b>File Name</b>	<b>Submitted (Y / N)</b>	<b>Description</b>
1.	Proof of Tender Fee and EMD submitted			Tender fee and EMD payment receipt
2.	Pre-Qualification Cover Letter As per format provided at Annexure 1.2			Reference No: Date of Letter:
3.	Bidders' Particulars As per format provided at Annexure 1.3			Name of Bidder(s):
4.	Format for Project Citation As per format provided at Annexure 1.4			Name of Project(s): Client Details: Scope of Work:
5.	Power of Attorney in favor of Authorized signatory As per format provided at Annexure 1.6			Date of PoA: Name of Authorize Person:
6.	Copy of certificate of incorporation and/or registration under the relevant law			Identity Number: Date of Incorporation/registration:
7.	Copy of Annual Turnover Certificate from the Statutory Auditor for the last 3 (Three) financial years 2014-15, 2015-16 and 2016-17 As per format provided at Annexure 1.7			Year-wise details of turnover Average Turnover:
8.	a. The Bidder should have an experience of successful completion of setting up, commissioning and management of atleast one Incubation Centre project costing not less than INR 1Cr. and operating from atleast last 2years. b. The Bidder shall have an experience of mentoring atleast 4 Hackathons/Startup Events.			Customer Name: Work Order/ Agreement Number: Date of Work Order/ Agreement: Project Value: Completion Date:
9.	Declaration for not blacklisted by Central Government/ any State Government/ Public Sector Undertaking entity in India for unsatisfactory past performance, corrupt, fraudulent or any other unethical business practices as on date of submission of the proposal. As per format provided at Annexure 1.5			Reference No: Date of Letter:

**Annexure 1.2 - Pre-Qualification Cover Letter**

(To be submitted on the Letterhead of the Bidder)

Date:

To  
Executive Director  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Centre,  
Gwalior, Madhya Pradesh, 474003

Subject: Bid for “**Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”

RFP Reference No: \_\_\_\_

Dear Sir/Madam,

Having examined the RFP, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the professional services as required and outlined in the “**Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”, we hereby submit our Prequalification Proposal & Technical Proposal, for the same.

We hereby declare that:

We hereby acknowledge and unconditionally accept that the GSCDCL can at its absolute discretion apply whatever criteria it deems appropriate, not just limiting to those criteria set out in the RFP and related documents, in short listing of Bidder for providing services.

We have submitted EMD of INR [ ] and Tender fee of INR [ ] online through e-Tendering Portal ([www.mpeproc.gov.in](http://www.mpeproc.gov.in)),

We hereby declare that all information and details furnished by us in the Bid are true and correct, and all documents accompanying such application are true copies of their respective originals.

We confirm that the information contained in this proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to GSCDCL is true, accurate, and complete. This proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead GSCDCL as to any material fact.

We have carefully read and understood the terms and conditions of the RFP and the conditions of the contract applicable to the RFP. We do hereby undertake to provision as per these terms and conditions.

In the event of acceptance of our bid, we do hereby undertake:

To commence Services as stipulated in the RFP document

To undertake the Project for entire contract period from the date of signing of the contract as mentioned in the RFP document.

We affirm that the prices quoted are inclusive of design, development, delivery, installation, commissioning, training, providing facility management and handholding support, and inclusive of all out of pocket expenses, taxes, levies discounts etc.

We do hereby undertake, that, until a formal contract is prepared and executed, this bid, together with your written acceptance thereof and notification of award of contract, shall constitute a binding contract between us.

We understand that the GSCDCL may cancel the bidding process at any time and that GSCDCL is not bound to accept any bid that it may receive without incurring any liability towards the Bidder.

Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Centre at Moti Mahal, Gwalior

We fully understand and agree to comply that on verification, if any of the information provided in our bid is found to be misleading the selection process, we are liable to be dismissed from the selection process or termination of the contract during the project, if selected to do so

In case of any clarifications please contact \_\_\_\_\_ email at

Thanking you,

Yours sincerely,

(Signature of the Bidder)

Printed Name

Designation

Seal

Date:

Place:

Business Address:

**Annexure 1.3 - Format to share Particulars of the Bidder**

The Table below provides the format in which general information about the Bidder must be furnished.

S No	Information	Details
1.	Name of Bidder	
2.	Address and contact details of Bidder:	
3.	Registration Number and Year of Registration	
4.	Web Site Address	
5.	EPF Registration No	
6.	GSTIN	
7.	Permanent Account Number (PAN)	
8.	Revenue for the last 3 years ( 2014-15,2015-16,2016-17)Year wise)	
9.	Name, Designation and Address of the contact person to whom all references shall be made regarding this RFP:	
10.	Telephone number of contact person:	
11.	Mobile number of contact person:	
12.	Fax number of contact person:	
13.	E-mail address of contact person:	

Please submit the relevant proofs for all the details mentioned above along with your Bid response

Authorized Signatory

Name

Seal

**Annexure 1.4. - Format for Project Citation**

<b>S No</b>	<b>Item</b>	<b>Details</b>	<b>Attachment Ref. Number</b>
1.	Name of the Project		
2.	Date of Work Order		
3.	Client Details		
4.	Scope of Work		
5.	Contract Value		
6.	Completion Date		

**Note:** The Bidder is required to use above formats for all the projects referenced by the Bidder for the Pre-Qualification criteria and technical bid evaluation.

**Annexure 1.5 - Format for Declaration by the Bidder for not being Blacklisted / Debarred**

(To be submitted on the Letterhead of the Bidder)

Date: dd/mm/yyyy

To

Executive Director  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Center,  
Gwalior - 474003  
Madhya Pradesh

**Subject:** Declaration for not being debarred/ black-listed by Central Government/ any State Government/ Public Sector Undertaking in India or similar agencies globally as on the date of submission of the bid

RFP Reference No: XXXX

Dear Sir/ Ma'am,

I, authorized representative of \_\_\_\_\_, hereby solemnly confirm that \_\_\_\_\_ (" Company") is not debarred/ black-listed by the Central Government/ any State Government/ Public Sector Undertaking in India or similar agencies globally for unsatisfactory past performance, corrupt, fraudulent or any other unethical business practices or for any other reason as on last date of submission of the Bid. In the event of any deviation from the factual information/ declaration, GSCDCL reserves the right to reject the bid or terminate the Contract without any compensation to the Successful Bidder.

Thanking you,

Yours faithfully,

\_\_\_\_\_  
Signature of Authorized Signatory (with official seal)

Date :

Name :

Designation :

Address :

Telephone & Fax :

E-mail address:

**Annexure 1.6 – Format of Power of Attorney for the Bidder**

**Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**

*[To be executed on non-judicial stamp paper of the appropriate value in accordance with relevant Stamp Act. The stamp paper to be in the name of the company who is issuing the power of attorney]*

Know by all men by these presents, We \_\_\_\_\_ (Name of the Bidder and address of the registered office) do hereby constitute, appoint and authorize Mr. / Ms \_\_\_\_\_ (name and residential address of Power of attorney holder) who is presently employed with us and holding the position of \_\_\_\_\_ as our Attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Proposal for the “**Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”, including signing and submission of all documents and providing information / responses to the Gwalior Smart City Development Corporation Limited (GSCDCL), representing us in all matters before GSCDCL, and generally dealing with the GSCDCL in all matters in connection with our Proposal for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said Attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid Attorney shall and shall always be deemed to have been done by us.

For \_\_\_\_\_

Name:

Designation:

Date:

Time:

Seal:

Business Address:

Accepted,

\_\_\_\_\_ (Signature)

(Name, Title and Address of the Attorney)

Note:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
- The Power of Attorney should be supported by a duly authorized resolution of the Board of Directors of the Bidder authorizing the person who is issuing this power of attorney on behalf of the Bidder.

**Annexure 1.7 – Format for Annual Turnover**

**ANNUAL TURNOVER**

Requirements: The Average Annual Turnover to be provided in the following format for the last 3 Financial Years (2014-15, 2015-16 and 2016-17).

<b>Financial Information</b>			
<b>Financial Year</b>	<b>2014 - 2015</b>	<b>2015 – 2016</b>	<b>2016- 2017</b>
<b>Annual Turnover (in Lakh)</b>			
<b>Average Annual Turnover</b>			
<b>Note: Financial Information shall be certified by the Statutory Auditors.</b>			

Annexure 2 Technical Proposal

**Annexure 2.1 - Check-list for the documents to be included in the Technical Proposal**

S No.	List of Documents	Name of File Name	Submitted (Y / N)	Description
1.	Technical Bid Covering Letter			Reference No: Date of Letter:
2.	Project Undertaking			Reference No: Date of Letter:
3.	Assignment details			

**Annexure 2.2. - Technical Bid Cover Letter**

(To be submitted on the Letterhead of the Bidder)

Date: dd/mm/yyyy

To

Executive Director  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Center,  
Gwalior - 474003  
Madhya Pradesh

Subject: Bid for **“Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior”**

RFP Reference No: XXXX

Dear Sir/Madam,

Having examined the RFP, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the professional services as required and outlined in the RFP for **“Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior”**.

We attach hereto the technical response as required by the RFP, which constitutes our proposal. We undertake, if our proposal is accepted, to adhere to the implementation plan (Project schedule) for providing Professional Services in **“Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior”** put forward in RFP or such adjusted plan as may subsequently be mutually agreed between us and GSCDCL or its appointed representatives.

If our proposal is accepted, we will obtain a Performance security issued by a nationalized bank in India, for a sum of equivalent to Rs. - \_\_\_\_\_/- of the contract value for the due performance of the contract.

We agree for unconditional acceptance of all the terms and conditions set out in the RFP document and also agree to abide by this tender response for a period of 180 (one hundred and eighty) days from the last date of submission of Bid and it shall remain binding upon us with full force and virtue, until within this period a formal contract is prepared and executed, this tender response, together with your written acceptance thereof in your notification of award, shall constitute a binding contract between us and GSCDCL.

We confirm that the information contained in this proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to GSCDCL is true, accurate, and complete. This proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead GSCDCL as to any material fact.

We agree that you are not bound to accept any tender response you may receive. We also agree that you reserve the right in absolute sense to reject all or any of the products/ services specified in the tender response.

It is hereby confirmed that I/We are entitled to act on behalf of our company/ corporation/ firm/ organization and empowered to sign this document as well as such other documents, which may be required in this connection.

Date:

(Signature)

(Name)

(In the capacity of )

[Seal / Stamp of Bidder]

**Annexure 2.3 Details of past assignments**

Name of the assignment	
Month, year of commencement	
Month, year of completion	
Client name	
Client address including liaison and contact number & e-mail	
Contract value	
Objective of assignment	
<i>[State the desired expectations of the Client and the ground conditions at the time of being commissioned.]</i>	
Scope of work	
<i>[List the activities to performed as part of the contract; refer to the activities that qualify as 'similar services' above.]</i>	
Results achieved	
<i>[List the results achieved as a result of the activities performed. A before/after approach may be used to illustrate this.]</i>	

For each assignment, please furnish a copy of work order/ contract/ completion/ on-going certificate.

#### Annexure 2.4: Team Composition

The Contractor will have to appoint the following key personnel during the execution and entire contract period, apart from other key personnel and support staff as necessary.

S.no.	Discipline	Minimum Qualification	Minimum Experience	Required Nos
1.	Project Director	B.E./B.Tech/MBA	Minimum 10 years' industry experience with minimum one project in the field of Innovation and Incubation center setup / operations and maintenance. Should be full time employee and on the payroll of the bidder for at-least 3 years.	1
2.	Onsite Project Lead	BE/ B.Tech/ MBA	Minimum 7 years' industry experience with minimum 3 years of experience in the field of Innovation and Incubation center setup / operations and maintenance.	1
3.	Project Consultant	BE/ B.Tech	Minimum 3 years' experience industry experience.	2

#### Annexure 3 Format for Project Undertaking

(On the Letterhead of the Bidder)

#### PROJECT UNDERTAKING

Date:

To:

Executive Director,  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Center  
Gwalior - 474003  
Madhya Pradesh

**Subject: "Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior".**

Dear Sir/Madam,

We have read and understood the Request for Proposal (RFP) in respect of the captioned Project provided to us by GSCDCL.

We hereby agree and undertake as under:

We abide by guidelines and procedures for **Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior** for GSCDCL and we agree to bind ourselves by the Bid Documents.

We shall abide by the scope of work mentioned under Section 2.0 and all the terms and conditions stipulated in this RFP.

We have gone through the scope of work and have made our independent assessment of expenses involved in operation and management based on the assessment are submitting our bid.

Any direct or indirect deviations from the terms of the Bid Documents, if any in our Proposal, are hereby revoked unconditionally.

Notwithstanding any qualifications of conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is unqualified and unconditional in all respects.

Dated this.....Day of .....2018.

Name of the Bidder

Signature of the Authorized Person

Name of the Authorized Person

#### Annexure 4: Performance Bank Guarantee

RFP Ref : <--->

Date:

Bank Guarantee No.:  
To

**The Executive Director,  
Gwalior Smart City Development Corporation Limited (GSCDCL)**

Dear Sir,

PERFORMANCE BANK GUARANTEE – For “<Name of the Project>” WHEREAS

M/s. “<Name of the Successful bidder>” a <company/firm/partnership/or as applicable> registered under the < appropriate registration authority as applicable> having its registered office at < Address of the Successful Bidder> (hereinafter referred to as “our constituent”, which expression, unless excluded or repugnant to the context or meaning thereof, includes its successors and assigns), agreed to enter into a Contract for “<Name of the Project>” (Hereinafter, referred to as “Contract”) with you.

We are aware of the fact that as per the terms of the Contract, M/s. “<Name of the Successful Bidder>” is required to furnish an unconditional and irrevocable Bank Guarantee in your favour for an amount of <INR\_\_\_\_\_/- > < (Rs. (in word)s only) >, to guarantee the due performance by our constituent as per the Contract and do hereby agree and undertake to pay any and all amount due and payable under this bank guarantee, as security against breach/ default of the said Contract by our Constituent.

In consideration of the fact that our constituent is our valued customer and the fact that he has entered into the said Contract with you, we <name of the bank>, <address of the bank>, have agreed to issue this Performance Bank Guarantee.

Therefore, we <name of the bank>, <address of the bank> hereby unconditionally and irrevocably guarantee you as under:

1. In the event of our constituent committing any breach / default of the said Contract, and which has not been rectified by him, we hereby agree to pay you forthwith on demand such sum(s) not exceeding the sum of <INR > < Rupees (in words) only> without any demur.
2. Notwithstanding anything to the contrary, as contained in the said Contract, we agree that your decision as to whether our constituent has made any such default(s) / breach(es), as aforesaid

and the amount or amounts to which you are entitled by reasons thereof, subject to the terms and conditions of the said Contract, will be binding on us and we shall not be entitled to ask you to establish your claim or claims under this Performance Bank Guarantee, but will pay the same forthwith on your demand without any protest or demur.

3. This Performance Bank Guarantee shall continue and hold good till **<total period of validity of PBG>**, subject to the terms and conditions in the said Contract.
4. We bind ourselves to pay the above said amount at any point of time commencing from the date of the said Contract until **<total period of validity of PBG>**.
5. We further agree that the termination of the said Agreement, for reasons solely attributable to our constituent, virtually empowers you to demand for the payment of the above said amount under this guarantee and we would honour the same without demur.
6. We hereby expressly waive all our rights: Requiring to pursue legal remedies against **GSCDCL**; and for notice of acceptance hereof any action taken or omitted in reliance hereon, of any defaults under the Contract and any resentment, demand, protest or any notice of any kind.
7. We the Guarantor, as primary obligor and not merely Surety or Guarantor of collection, do hereby irrevocably and unconditionally give our guarantee and undertake to pay any amount you may claim (by one or more claims) up to but not exceeding the amount mentioned aforesaid during the period from and including the date of issue of this guarantee through the period.
8. We specifically confirm that no proof of any amount due to you under the Contract is required to be provided to us in connection with any demand by you for payment under this guarantee other than your written demand.
9. Any notice by way of demand or otherwise hereunder may be sent by special courier, telex, fax, registered post or other electronic media to our address, as aforesaid and if sent by post, it shall be deemed to have been given to us after the expiry of 48 hours when the same has been posted. If it is necessary to extend this guarantee on account of any reason whatsoever, we undertake to extend the period of this guarantee on the request of our constituent under intimation to you.
10. This Performance Bank Guarantee shall not be affected by any change in the constitution of our constituent nor shall it be affected by any change in our constitution or by any amalgamation or absorption thereof or therewith or reconstruction or winding up, but will ensure to the benefit of you and be available to and be enforceable by you during the period from and including the date of issue of this guarantee through the period.

Notwithstanding anything contained hereinabove, our liability under this Performance Guarantee is restricted to **<INR\_\_\_\_\_>/- < Rs. (in words) only>**, and shall continue to exist, subject to the terms

and conditions contained herein, unless a written claim is lodged on us on or before the aforesaid date of expiry of this guarantee.

We hereby confirm that we have the power/s to issue this Guarantee in your favour under the Memorandum and Articles of Association / Constitution of our bank and the undersigned is / are the recipient of authority by express delegation of power/s and has / have full power/s to execute this guarantee under the Power of Attorney issued by the bank in your favour. We further agree that the exercise of any of your rights against our constituent to enforce or forbear to enforce or any other indulgence or facility, extended to our constituent to carry out the contractual obligations as per the said Contract, would not release our liability under this guarantee and that your right against us shall remain in full force and effect, notwithstanding any arrangement that may be entered into between you and our constituent, during the entire currency of this guarantee.

Notwithstanding anything contained herein:

We are liable to pay the guaranteed amount or part thereof under this Performance Bank Guarantee only and only if we receive a written claim or demand on or before **<total period of validity of PBG>**, from the date of the said Contract.

Any payment made hereunder shall be free and clear of and without deduction for or on account of taxes, levies, imports, charges, duties, fees, deductions or withholding of any nature imposts.

This Performance Bank Guarantee must be returned to the bank upon its expiry. If the bank does not receive the Performance Bank Guarantee within the above-mentioned period, subject to the terms and conditions contained herein, it shall be deemed to be automatically cancelled.

This guarantee shall be governed by and construed in accordance with the Indian Laws and we hereby submit to the exclusive jurisdiction of courts of Justice in India for the purpose of any suit or action or other proceedings arising out of this guarantee or the subject matter hereof brought by you may not be enforced in or by such court.

Dated ..... this ..... day ..... 2018.

Yours faithfully,

For and on behalf of the **<name of the bank>**,

(Signature with Stamp & Seal)

Designation

<name of the bank> <address of the bank>

This guarantee will attract stamp duty as a security bond.

A duly certified copy of the requisite Authority conferred on the official/s to execute the guarantee on behalf of the bank should be annexed to this guarantee for verification and retention thereof as documentary evidence in the matter.

**Annexure 5: Format of sending pre-bid queries**

RFP Reference No: XXXX

Bidder's Request For Clarification				
Name and complete official address of the Bidder submitting query / request for clarification			Telephone, Fax and E-mail of the organization Tel: Fax: Email:	
Sr. No.	Clause No.	Page No.	Content of RFP Requiring Clarification	Change Requested/ Clarification required
1				
2				

Signature:

Name of the Authorized signatory:

seal:

Date and Stamped:

Note: Bidder(s) are requested to send the queries in PDF with Sign and Seal and also in MS Excel for making consolidation process easy.

**Annexure 6: Format of Financial Bid**

**(To be uploaded separately as part of the Financial Proposal only)**

To:

Executive Director,  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Center  
Gwalior – 474003, Madhya Pradesh  
Sir,

I have carefully gone through the Terms & Conditions contained in the RFP Document “**Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**”.

I/We hereby our financial bid as follows:

S.No.	Description	Bid Amount excluding GST
1	Setup/Furnish the Startup incubator at Location as described in the Scope of work ( 4520 sqft shell space) <b>Setup price Quote</b>	
F2	Manage and Operate the Incubation Centre for 3 Years (As defined in the scope of work) <b>O&amp;M Price quote</b>	
3	<b>Total Financial Quote (1+2)</b>	

\*Note

I/We also agree to execute the work as per the specifications, terms and conditions of tender. I/We further certify that I am competent officer in my company to make this declaration.  
I/we confirm that the Setup Price Quote is not more than 30% of the Total Financial Quote i.e. sum of setup price quote and O&M price quote

Yours Sincerely,

Signature of Authorized Signatory (with official seal)

Name :

Designation :

Address :

Telephone, Fax and email address:

**Annexure 6A: Financial Proposal Declaration**

(To be uploaded separately as part of the Financial Proposal only)

To:

Executive Director,  
Gwalior Smart City Development Corporation Limited (GSCDCL)  
Nagar Nigam, City Center  
Gwalior - 474003  
Madhya Pradesh

**Sub: “Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior”**

Ref: Tender No: <No.> Dated <DD/MM/YY>

Dear Sir/ Madam,

We, the undersigned Bidder, having read and examined in detail all the bidding documents in respect of RFP “**Request for Proposal for Selection of an Agency to Setup & Manage an Incubation Center at Moti Mahal, Gwalior**” do hereby propose to provide services as specified in the Bid Document referred above.

**1. PRICE AND VALIDITY**

- All the prices mentioned in our Tender are in accordance with the terms as specified in the Tender documents. All the prices and other terms and conditions of this Tender are valid for entire contract duration.
- We hereby confirm that our Tender prices include all taxes except GST. Taxes are quoted separately under relevant sections, as specified in the Bid Document formats.
- We have studied the clause relating to Indian Income Tax and hereby declare that if any income tax, surcharge on Income Tax, Professional and any other corporate Tax is altered under the law, we shall pay the same.

**2. DEVIATIONS**

We declare that all the services shall be performed strictly in accordance with the Bid Documents and there are no deviations except for those mentioned in Pre-Qualification Envelope, irrespective of whatever has been stated to the contrary anywhere else in our bid.

Further we agree that additional conditions, if any, found in our bid documents, other than those stated in the deviation schedule in Pre-Qualification Envelope, shall not be given effect to.

**3. QUALIFYING DATA**

We confirm having submitted the information as required by you in your Instruction to Bidders. In case you require any other further information/documentary proof in this regard before evaluation of our Tender, we agree to furnish the same in time to your satisfaction.

**4. BID PRICE**

We declare that our Bid Price is for the entire scope of the work as specified in the Bid Document. The bid price at which the contract is awarded shall hold good for entire tenure of the contract. These prices are indicated in the subsequent sub-sections of this Section.

## 5. CONTRACT PERFORMANCE GUARANTEE

We hereby declare that in case the contract is awarded to us, we shall submit the contract Performance Bank Guarantee in the form prescribed in the Bid Document.

We hereby declare that our Tender is made in good faith, without collusion or fraud and the information contained in the Tender is true and correct to the best of our knowledge and belief.

We understand that our Tender is binding on us and that you are not bound to accept a Tender you receive. We confirm that no Technical deviations are attached here with this commercial offer.

Thanking you,

Yours faithfully,

(Signature of the Authorized Signatory)

Name

Designation

Seal.

Date:

Place:

Business Address:

# Draft Contract Agreement

## 1 Definitions and Interpretation

### 1.1. Definitions

1. **Affected Party** shall mean the party claiming to be affected by a Force Majeure event in accordance with clauses of the RFP.
2. The following documents shall be deemed to form and construed as an integral part of this **Agreement** with decreasing order of priority viz.:
  - (i) Terms and conditions of Agreement
  - (ii) Annexures to the Agreement
  - (iii) Any correspondence exchanged with respect to this Agreement or additional document constituting part of the Agreement.
  - (iv) Work specifications
  - (v) Offer of the Bidder
  - (vi) Bidder's submission to RFP
  - (vii) Request for Proposal(RFP)
3. **Applicable Law** shall mean all laws in force and effect, as of date hereof and which may be publicized or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project.
4. **Applicable permits** shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Contractor under applicable law, in connection with the project during the subsistence of this Agreement.
5. **Authority** shall mean any agency, legislative, judicial or executive authority, public or statutory person, whether autonomous or not, of the GoI (Government of India) or GoMP (Government of Madhya Pradesh) or Gwalior Municipal Corporation or any local authority including the GSCDCL, its division or any other sub-division or instrumentality or any thereof.
6. **Bidders** shall mean a Bidding Company or Bidding Consortium, which has submitted a Bid in response to this RFP Document.
7. **Contractor** means \_\_\_\_\_, a company having its registered office in \_\_\_\_\_, which has been appointed by GSCDCL for the Project, which includes the Contractor's personnel, representatives, successors and permitted assignees
8. **Contract Period** shall mean a period of **3 (Three) years 3 months** from the Effective which may be extended further by additional 2 (Two) years based on performance by the contractor.
9. **Effective Date** means; the date on which this Contract is signed and executed by the

parties hereto.

10. **Encumbrance** includes mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the project, claims for any amounts due on account of taxes, cess, electricity, water and other utility charges.
11. **Expiry Date** shall mean the date of completion of the Contract Period or the date of Termination of the Agreement, whichever is earlier
12. **GSCDCL** means; the Gwalior Smart City Development Corporation Limited. The project shall be executed in Gwalior City and shall be owned by GSCDCL
13. **Good Industry Practice** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations as under this Agreement, which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof, of any of them of a project similar to that of the project.
14. **Government Agency** shall mean Government of India (GoI), Government of Madhya Pradesh (GoMP), Gwalior Municipal Corporation, GSCDCL or any other state government or central government department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over the Contractor, or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement.
15. **Letter of Award** shall mean the letter issued by GSCDCL to the successful Contractor, post the successful completion of the bidding process.
16. **Material Adverse Effect** means consequences of events which has a material adverse effect on (a) the ability of the Contractor to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
17. **Material Breach** shall mean a breach by either party of any of its obligations under this Agreement which has or is likely to have a material adverse effect on the project and which such party shall have failed to cure.
18. **Parties shall** mean the parties to the agreement and “party” means one of them, as the context may admit or require.
19. **Performance Security** means the deposit provided by the Contractor as a guarantee for the performance of its obligations of the Project.
20. **Person** means (unless otherwise specified or required by the context), any individual,

company, corporation, partnership, joint venture, trust, unincorporated organization, government or government agency or any other legal entity.

21. **Preliminary Notice** shall mean the notice of intended termination by the party entitled to terminate this Agreement to the other party setting out, inter alia, the underlying event of default.
22. **Project** shall mean Setup and Manage of Incubation Center at Moti Mahal, Gwalior.
23. **Project Agreements** shall mean collectively this Agreement and any other material contract (other than any commercial agreement with the users) entered into or may enter into by the Contractor in connection with the Project.
24. **Project Officer** shall mean a GSCDCL official appointed for supervision and monitoring of compliance by the Contractor with the O&M and commissioning requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in the work specifications.
25. **Project Area** shall mean jurisdiction of GSCDCL granted to the Contractor to implement, maintain and operate the Project.
26. **Project Facilities** shall mean facilities provided by GSCDCL to Contractor for undertaking the Project.
27. **Proposal / Request for Proposal (RFP)** shall mean the 'Request for Proposal Document', dated \_\_\_\_\_ issued by GSCDCL to the interested bidders in the proposal stage, as amended and modified from time to time together with all Annexures, Schedules, Maps along with such common set of deviations, corrigendum, addendum, amendments which have been issued from time to time.
28. **Rupees** or **Rs.** refers to the lawful currency of the Republic of India.
29. **Standards of Reasonable and Prudent Supplier** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions.
30. **Tax** shall mean and include all taxes, fees, cesses, levies that may be payable by the Contractor under the applicable law.
31. **Termination** shall mean the early termination of this Agreement pursuant to termination notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.
32. **Termination Date** shall mean the date specified on the termination notice as the date on which the termination occurs.
33. **Termination Notice** shall mean the notice of Termination by either Party to the other

Party, in accordance with the applicable provisions of this Agreement.

## **1.2. Interpretations**

In this Agreement, unless the context otherwise requires:

1. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transaction entered into herein under;
2. References to Applicable Laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
3. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
4. The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
5. The words “include” and “including” are to be construed without limitation;
6. Any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
7. The schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
8. Any reference at any time to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
9. Reference to recitals, clause(s), sub-clause(s), or schedule(s) in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, clause(s), sub-clause(s), and schedule(s) of or to this Agreement;
10. Any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any other party or by CEO shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such party or Project Officer on his behalf and not otherwise;
11. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates.

## **2 Conditions Precedent**

### **3.1 Responsibilities of the Contractor**

The Contractor shall fulfil the following conditions precedent within 30 (thirty) days from the Appointed Date:

- The Contractor shall have executed a Performance Security in favour of Executive Director, Gwalior Smart City Development Corporation Limited for a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) in the form of Bank Guarantee.
- The Performance Security shall be valid for the entire Contract Period plus 180 days.
- The Contractor shall submit a Project implementation and operation & maintenance report to ensure successful implementation and operations of the Project.
- The Contractor shall have deployed the requisite team for implementation of the Project.
- The Contractor shall have received all applicable permits and clearances, if any, from concerned authorities under relevant laws applicable.

### **3.2 Cost of satisfying the conditions precedent**

The cost of satisfying the above conditions precedent shall be borne by the respective Parties responsible for satisfaction of the Conditions Precedent.

### **3.4 Non- fulfilment of the Conditions Precedent**

- In case of non-fulfilment of the Conditions Precedent attributable to reasons beyond the control of the Contractor or GSCDCL, the period for satisfaction of Conditions Precedent may be extended by mutual consent of the Contractor and GSCDCL.
- If any of the Conditions Precedent contemplated in clauses 3.1 and 3.2 are not satisfied in full or have not been waived, within the time stipulated or such extended time that the Parties may agree upon, then and in such event either party shall have the right to terminate this Agreement by 30 (thirty) days' notice in writing to the other party, given at any time thereafter, but prior to such conditions precedent being satisfied or waived, and if the conditions precedent are not satisfied or waived within such notice period, upon expiry of such notice, this Agreement shall terminate.
- If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Clause 3.1, the Contractor shall not be compensated in any manner whatsoever and the Performance Security shall be forfeited and encashed.
- If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Clause 3.2, then GSCDCL shall release the Performance Security.
- The termination under the above circumstances shall be subject to terms & conditions as mentioned in this Agreement.

### **3.5 Rights, Title and Use of Project Facilities**

The Contractor shall use the Project Facilities solely for this Project and shall hand it over to GSCDCL free of cost without any encumbrances on the expiry of this Contract or on Termination Date in event of an early Termination.

### **3 Scope of Work**

The Contractor will carry out the work as mentioned at Clause 2 of the RFP.

### **4 Delivery Timelines**

The delivery timelines are as per the clause 1.1.2. & 3.1. of the RFP

### **5 Payment Terms**

The payment terms are as per the Clause 3.3.of the RFP.

### **6 SLA and penalties**

The SLAs and penalties for delay in deliveries/non-performance are as per clause 3.5.of the RFP.

### **7 Project Personnel**

#### **7.1 GSCDCL- Project Officer**

GSCDCL shall appoint a GSCDCL official as Project Officer. The Project Officer shall undertake, *interalia*, the following activities during the Commissioning Period:

- a. Ensure that the commissioning procedure is followed in accordance with the provisions of this Agreement
- b. Issue a Readiness Certificate if he/she is satisfied about the fulfilment of the commissioning requirements.
- c. Designate tests on equipment and machinery;
- d. The Project Officer shall, in the ordinary course, maintain a record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
  - i. Manpower deployed and other organizational arrangements of the Contractor;
  - ii. Reviews of documents submitted to it by the Contractor to meet the commissioning requirements.
  - iii. Inspections undertaken and notices/instructions issued to the Contractor;
  - iv. Review of compliance with the commissioning requirements;
  - v. Payments;
  - vi. Force majeure events;
  - vii. Breaches and defaults by the parties.

#### **7.1 Contractor- Project Officer**

The Contractor will appoint a Project officer for coordination with the GSCDCL-Project officer. This person will be a Single point of contact for all the activities related to the project execution

## **8 Performance Security**

- a. The Contractor shall, for due and punctual performance of its obligations hereunder relating to the Project, execute and deliver to GSCDCL a Performance Security in form of a Bank Guarantee infavor of Executive Director, Gwalior Smart City Development Corporation Limited for a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) valid for 180 days after completion of the Contract Period. If the Contract period is extended by GSCDCL then the Contractor will have to extend the validity of the Performance Security for the extended period accordingly.
- b. Provided that if the Agreement is terminated due to any event other than a Contractor's event of default, the Performance Security if subsisting as on the termination date shall, subject to GSCDCL's right to receive amounts, from the Contractor under this Agreement, be duly discharged and released to the Contractor.
- c. The Contractor shall keep the Performance Security replenished at all times. Such replenishment may be required if the GSCDCL has withdrawn/ deducted from the Performance Security owing to a default and the replenishment shall have to be done by the Contractor within 5 (five) working days of the withdrawal by GSCDCL from the Performance Security. Failure to do so on part of the Contractor shall result in an event of default by the Contractor.

## **9 Project Implementation and Operation & Maintenance (O&M) Obligations**

- a) The Contractor shall be responsible for safety of all assets deployed as part of this Project and shall make necessary safety and security arrangements including insurance of such assets.
- b) The Contractor shall have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the project, to deal with the Project Officer/ GSCDCL and to be responsible for all necessary exchange of information required pursuant to this Agreement.
- c) The Contractor shall suspend forthwith the whole or part of the operations upon receiving a written notice from the Project Officer who may require the Contractor to suspend the activities in whole or part if, in the reasonable opinion of the Project Officer; the operations are being carried on in a manner that is not in conformity with the terms and conditions of this Agreement. Such notice from the Project Officer shall specify the non-conformity of Contractor's obligations. The Contractor shall be entitled to continue performance as soon as said non-conformity is remedied.
- d) The Contractor shall be deemed to be in material breach if the Project Officer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Contractor:
  - i. There has been a failure/undue delay in carrying out a scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the terms and conditions of this Agreement.

- ii. There has been a serious and persistent letup in adhering to the requirements and thereby the Project and Project facilities or any part thereof is not safe for operations.
  - iii. There has been a persistent breach of terms and conditions of this Agreement.
- e) For avoidance of doubt, persistent breach shall mean:
- i. Any breach by the Contractor which has not been remedied by the Contractor, as required under the provisions of this Agreement despite a notice to remedy in respect thereof issued by the Project Officer / GSCDCL, and/or
  - ii. Recurrence of a breach by the Contractor, during the pendency of notice to remedy by the Project Officer / GSCDCL requiring the Contractor to remedy a breach, and/or
  - iii. Repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to notice to remedy or otherwise.
  - iv. Upon occurrence of a material breach, GSCDCL shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, depending upon the nature of obligation in respect of which a material breach has occurred, be entitled to both levy a penalty and thereafter terminate this Agreement if the breach is serious in nature.

## **10 Taxes, Duties and Statutory Levies**

- i. The Contractor shall bear all personnel taxes levied or imposed on its personnel, vendors, consultants, or any other member of Contractor's Team, etc. on account of payment received under this Agreement.
- ii. The Contractor shall bear all corporate taxes, levied or imposed on the Contractor on account of payments received by it from the GSCDCL for the work done under this Agreement.
- iii. The Contractor shall bear all taxes and duties etc. levied or imposed on the Contractor under the Agreement including but not limited to GST, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof. It shall be the responsibility of the Contractor to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose.
- iv. The Contractor agrees that it shall comply with the Indian Income Tax act in force from time to time and pay Indian Income Tax, as may be imposed / levied on them, for the payments received by them for the works under this Agreement.
- v. Should the Contractor fail to submit returns/ pay taxes in times as stipulated under the Indian Income Tax Act and consequently any interest or penalty is imposed by the Indian Income Tax authority, the Contractor shall pay the same. Contractor shall indemnify GSCDCL against any and all liabilities or claims arising out of this Agreement for such taxes including interest and penalty any such Tax Authority may assess or levy against the GSCDCL / Contractor.

## 11 Insurance

a. The material procured under this Project shall be fully insured by the Contractor, against any loss or damage. The Contractor shall submit to the Project Officer, documentary evidence issued by the insurance company, indicating that such insurance has been taken.

b. The Contractor during the term of this Contract:

Shall take out and maintain, at his own cost but on terms and conditions approved by the GSCDCL, insurance with financially sound and reputable insurers against the risks, and for the coverage, as specified below:

- i. GSCDCL's liability and workers' compensation insurance in respect of the Personnel of the Contractor / Contractor's Team, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
- ii. Insurance against loss of or damage to (i) the Contractor's assets and property used in the performance of the Services, (ii) any documents prepared by the Contractor in the performance of the Services
- iii. Shall pay all premiums in relation thereto and shall ensure that nothing is done to make such insurance policies void or voidable
- iv. At GSCDCL's request, shall provide evidence to GSCDCL showing that such insurance has been arranged and maintained and that the current premiums therefore have been paid.

## 12 Limitation of Liability of Parties

- a. Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Agreement.
- b. Except in the case of Gross Negligence or Willful Misconduct on the part of the Contractor / Contractor's Team or on the part of any person or firm acting on behalf of the Contractor executing the work or in carrying out the services, the Contractor, with respect to damage caused by the Contractor including to property and/or assets of the GSCDCL or of any of GSCDCL's vendors shall regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Contract Price or (B) the proceeds the Contractor may be entitled to receive from any insurance maintained by the Contractor to cover such a liability, whichever of (A) or (B) is higher.
- c. For the purposes of this Clause 5.5 (b) of this section, "**Gross Negligence**" means any act or failure to act by a Party which was in reckless disregard of or gross indifference to the obligations of the Party under the Agreement and which causes harmful consequences to life, personal safety or real property of the other Party which such Party

- knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act. Notwithstanding the foregoing, Gross Negligence shall not include any action taken in good faith for the safeguard of life or property. "**Willful Misconduct**" means an intentional disregard of any provision of this Agreement which a Party knew or should have known if it was acting as a reasonable person, would result in harmful consequences to life, personal safety or real property of the other Party but shall not include any error of judgment or mistake made in good faith.
- d. This limitation of liability shall not affect the Contractor liability, if any, for direct damage by Contractor / Contractor's Team to a Third Party's real property, tangible personal property or bodily injury or death caused by the Contractor / Contractor's Team or any person or firm/company acting on behalf of the Contractor in executing the work or in carrying out the Services.

### **13 Obligations of the Parties**

#### **Contractor's Obligation**

The Contractor shall at its own cost and expense:

- a. Maintain the amenities for housing his/her team including office space, office furniture, electricity and connectivity infrastructure (adequate Internet and Intranet bandwidth) without any additional cost.
- b. Obtain all applicable permits as required by or under the applicable law and be in compliance thereof at all the times during the Contract Period;
- c. Shall indemnify GSCDCL in respect of any claims made against it (GSCDCL) in relation to the use of licenses, permits, and/or any intellectual property, used/required for the Project.
- d. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the project.
- e. Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies GSCDCL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall GSCDCL be treated as employer in this regard.
- f. Be responsible for all the health, security, environment and safety aspects of the Project at all times during the Contract Period.
- g. Shall at all times obtain and maintain necessary insurance, workmen compensation insurance policies throughout the Contract Period for the other employees deployed for this Project.

- h. Upon receipt of a request thereof, afford access to the Project Facilities to the authorized representatives of GSCDCL for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- i. Take all approvals, permissions and authorizations which he may require or is obliged to seek from GSCDCL or any other Organization under its Agreement, in connection with implementation of the Project and the performance of its obligations.
- j. Maintain the Project Area and Project Facilities with utmost care and ensure clean and hygienic conditions at the Project area at all times.

### **GSCDCL's Obligations**

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, GSCDCL shall have the following obligations:

- a. GSCDCL shall make available the site free of cost to the Contractor to undertake the Project.
- b. Wherever appropriate GSCDCL will provide all support to Contractor on a best effort basis in securing applicable permits. However any delay in obtaining the required permits is solely the responsibility of Contractor only
- c. Observe and comply with all its obligations set forth in this Agreement.

## **14 No breach of obligations**

The Contractor shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure event as per clauses of the RFP
- b. GSCDCL's event of default
- c. Compliance with the instructions of the Project Officer /GSCDCL or the directions of any government agency other than instructions issued as a consequence of a breach by the Contractor of any of its obligations hereunder.
- d. Closure of the Project or part thereof with the approval of the Project Officer /GSCDCL for no fault of the Contractor.

## **15 Indemnity**

- a. The Contractor agrees to indemnify and hold harmless the GSCDCL and its officers and employees (each known as "GSCDCL Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities,

costs (including reasonable attorneys' fees and disbursements) and expenses (collectively known as "Losses") to which GSCDCL Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:

- i. Any negligence or wrongful act or omission by the Contractor or the Contractor's Team or any third party associated with Contractor in connection with or incidental to this Agreement; or
  - ii. Any breach of any of the terms of the RFP, the Contractor's Bid as agreed, the Tender and this Agreement; by the Contractor, the Contractor's Team or any third party.
  - iii. Any infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied goods and related services or any part thereof.
  - iv. Against any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, and movable or immovable as mentioned in any Intellectual Property Rights, licenses and permits
- b. GSCDCL agrees to indemnify and hold harmless the Contractor and its officers and employees (each known as "Contractor Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively known as "Losses") to which Contractor Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
- I. Any mis-statement or any breach of any representation or warranty made by GSCDCL or
  - II. The failure by GSCDCL to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee of GSCDCL or
  - III. Any claim or proceeding by any third party against Contractor arising out of any act, deed or omission by the GSCDCL.

For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Contractor Indemnified Party to the financial position it would have been in had the Losses not occurred.

- c. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.
- d. Notwithstanding anything in this Clause 8, the obligations of both parties shall be limited to the extent determined under Clause 5.5.

## **16 Force Majeure**

### **1.7 Force Majeure Event**

Notice of Force Majeure Event Any of the following events resulting in material adverse effect shall constitute a Force Majeure Event:

- a. Lightning, earthquake, landslides, tempest, cyclone, hurricane, whirlwind, storm, flood, and other unusual or extreme adverse weather or environmental conditions (including, without limitation, any such conditions at sea affecting the delivery of equipment to the Project) or other events of natural disaster of rare severity;
- b. Meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at high speeds;
- c. Fire or explosion, chemical or radioactive contamination or ionizing radiation; not attributed to the Contractor,
- d. Epidemic or plague;
- e. Strikes, lock-outs or other industrial action or labour disputes of GSCDCL excluding those by the Contractor or its Employees;
- f. Act of war (whether declared or undeclared), threat of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, revolution, religious strife, bombs, sabotage, terrorism or threat of such acts or other similar events of a political or social nature;
- g. Expropriation, confiscation, nationalization or requisition of the Project by GoI, GoMP, or GSCDCL except as provided under this Contract Agreement;
- h. Any decision or order of a court or tribunal, which has the effect of restraining all or any part of the activities concerning the construction, operation, maintenance or management of the Project including the determination, levy, demand, collection, retention and appropriation of Financials;
- i. Any other similar things beyond the control of the Party/Parties.

#### **1.8 Notice of Force Majeure Event**

As soon as practicable and in any case within 3 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Party which is rendered wholly or partially unable to perform any of its obligations under this Contract Agreement because of a Force Majeure Event (“the Affected Party”) shall notify the other party of the same, setting out, inter alia, the following in reasonable detail:

- a. The nature and extent of the Force Majeure Event;
- b. The estimated Force Majeure Period;
- c. The nature of and the extent to which, performance of any of its obligations under this Contract Agreement is affected by the Force Majeure Event;
- d. The measures, which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
- e. Any other relevant information concerning the Force Majeure Event, and/or the rights and obligations of the Parties under this Contract Agreement.

#### **1.9 Performance of Obligations**

The Affected Party shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- a. Due notice of the Force Majeure Event has been given to the other Party as required by the preceding Clause 9.2;
- b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. There shall be no Termination of this Contract Agreement except as provided in Clause 9.4;
- d. Where the Contractor is the Affected Party, the various deadlines set forth in this Contract and the Contract Period shall be extended by the period for which such Force Majeure Event shall subsist;
- e. Where the Contractor is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Facility as a result of the Force Majeure Event and to restore the Facility, in accordance with the Good Industry Practice and its relative obligations under this Contract;
- f. When the Affected Party is able to resume performance of its obligations under this Contract, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- g. The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Contract; and
- h. Any insurance proceeds received by the Contractor shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice and in consultation with the GSCDCL, unless otherwise agreed to by GSCDCL.

#### **1.10 Termination Due To a Force Majeure Event**

If a Force Majeure Event as described in Clause 9.1 continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the parties are unable to reach an agreement in this regard, the affected party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement. Upon Termination of this Agreement on account of a Force Majeure Event, the Affected Party shall be entitled to receive any outstanding payments due to it for under the Contract Agreement up to the date of Termination.

### **17 Events of default and termination**

#### **17.1 Events of default**

Event of default shall mean either Contractor event of default or GSCDCL event of default or both as the context may admit or require.

##### **a. Contractor event of default**

Any of the following events shall constitute an event of default by the Contractor (“Contractor event of default”) unless such event has occurred as a result of one or more

reasons of force majeure:

- I. The Contractor has failed to replenish the Performance security within 5 (five) working days of the encashment by GSCDCL of the earlier Performance Security;
- II. Any representation made or warranty given by the Contractor under this Agreement is found to be false or misleading;
- III. The Contractor has abandoned the Project;
- IV. The Contractor has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- V. The Contractor has suffered an attachment levied on any of its assets which has caused or is likely to cause a material adverse effect on the project and such attachment has continued for a period exceeding 90 (ninety) days.
- VI. Any other instance explicitly not mentioned in this Agreement as having constituted an event of default.
- VII. the Contractor fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension, within 30 (Thirty) days of receipt of such notice of suspension or within such further period as the GSCDCL may have subsequently granted in writing;
- VIII. the Contractor 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;
- IX. the Contractor fails to comply with any final decision reached as a result in accordance with the dispute redressal mechanism of this agreement hereof;
- X. the Contractor submits to the GSCDCL a statement which has a material effect on the rights, obligations or interests of the GSCDCL and which the Contractor knows to be false;
- XI. as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- XII. GSCDCL, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

**b. GSCDCL event of default**

Any of the following events shall constitute an event of default by GSCDCL (“GSCDCL” event of default), unless caused by a Contractor event of default or a force majeure event:

- I. GSCDCL is in material breach of any of its obligations under this Agreement and has failed to cure such breach within 45 (Forty Five) days of receipt of notice thereof issued by the Contractor;
- II. GSCDCL fails to comply with any final decision reached as a result of arbitration.

## **17.2. Termination due to event of default**

### **a. Termination notice**

Subject to the procedures of this Agreement, if a party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub clauses 10.1(a) or 10.1(b), it shall issue termination notice setting out:

- I. In sufficient detail the underlying event of default;
- II. The termination date, which shall be a date occurring not earlier than 30 days from the termination notice;
- III. The estimated termination payment including the details of computation thereof; and,
- IV. Any other relevant information

### **b. Withdrawal of termination notice**

Notwithstanding anything inconsistent contained in this Agreement, if a party who has been served with the termination notice cures the underlying event of default to the satisfaction of the other party at any time before the termination occurs, the termination notice shall be withdrawn by the party which had issued the same.

Provided that the party in breach shall compensate the other party for any direct costs/consequences occasioned by the event of default which caused the issue of termination notice.

## **17.3. Termination Payments and Rights on termination**

### **a. Contractor event of default**

- I. GSCDCL shall be entitled to appropriate the amounts in the Performance Security,
- II. GSCDCL shall be entitled to enter upon and take possession and control of the Project forthwith;
- III. GSCDCL may prohibit the Contractor and any person claiming through or under the Contractor from using/dealing with the Project;
- IV. In case of breach by the Contractor of any terms and conditions of the RFP or that of agreement, the Executive Director, GSCDCL shall have absolute right to terminate the contract without notice to the Contractor and forfeit the performance security. The GSCDCL reserves its right to encash performance bank guarantee even before termination of the contract on breach.

### **b. GSCDCL event of default**

- I. Contractor shall be entitled to appropriate the amounts in the Performance Security if subsiding,
- II. Contractor shall be entitled to receive all expenses done with respect to the Project as on date of Termination Notice, provided the Contractor produces proof of all such unpaid expenses.

Notwithstanding anything contained in this Agreement, GSCDCL shall not, as a consequence of termination or otherwise, have any obligation whatsoever, including but not limited to, obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, with respect to any person in the employment of or engaged by the Contractor in connection with the Project, and the handover of the Project and Project Facilities by the Contractor to GSCDCL shall be free from any such obligation.

## **18 Hand back and Transfer Requirements**

### **18.1. Ownership**

Without prejudice and subject to the Agreement, the ownership of the Project developed by the Contractor and Project Facilities provided by GSCDCL to the Contractor, including all modifications, renovations and improvements made therein by the Contractor, shall at all times remain that of GSCDCL.

### **18.2. Contractor's Obligations**

The Contractor shall at the end of the Agreement Period hand back peaceful possession of the Project and Project Facilities including fixed assets, improvements made therein by the Contractor, to GSCDCL free of cost and in good operable condition.

- a. On the Transfer Date, the Contractor shall, transfer and assign to the GSCDCL or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Contractor after the Effective Date all of the Contractor's right, title and interest in and to the Project Assets and the Facility. The Contractor shall also deliver to the GSCDCL or its nominated agency on such date such operating manuals, plans, reports, accounts and other information as may reasonably be required by the GSCDCL or its nominated agency to enable it to continue the operation of the Facility either directly or by its nominated agency. The personnel of the Contractor shall continue to be the employees of the Contractor and the transfer of the Project Assets and the Facility shall not in any manner affect their status as employees of the Contractor and they shall have no claim to any type of employment or compensation from the GSCDCL or its nominated agency.
- b. The Contractor shall to the extent possible assign to the GSCDCL or its nominated agency at the time of transfer all unexpired guarantees and warranties by suppliers and all insurance policies. The Contractor shall ensure that any rights, which are to be so assigned, are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterpart to the Contractor.
- c. The Contractor shall, to the extent possible at the time of transfer assign to the GSCDCL or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Contractor and subsisting at the time of transfer except contracts with employees.

- d. The transfer of Facility shall be treated as a transfer on a going-concern basis. The transfer of immovable property comprising the Project shall be deemed to be a termination of all contracts in relation to the Facility and the title to all such immovable property shall automatically revert to the GSCDCL or its nominated agency. The Facility shall be deemed to be transferred to the GSCDCL or its nominated agency by constructive delivery and possession.
- e. At the time of transfer of the Facility, the Facility shall be in such condition as is reasonable in all the circumstances, taking into account their age, the design, materials used, and maintenance carried out.
- f. The Contractor shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Transfer of the Facility to GSCDCL.
- g. On the Transfer Date, the Contractor shall hand over the possession of the Facility to the GSCDCL or its nominated agency. Furthermore, the Contractor and its employees shall vacate the Facility forthwith.
- h. From the Transfer Date, the obligations and the rights of the Contractor under this Contract Agreement shall terminate vis-à-vis the GSCDCL, and the GSCDCL or its nominated agency shall take over the Facility and the Project Assets and their operation, maintenance & management and any other rights or obligations arising out of this Contract, which either may expressly or implicitly survive termination of this Contract; provided, however, that the Contractor may continue with any other business operations arising other than in connection with this Contract and; provided further that the Contractor shall no longer act in its capacity as Contractor in relation or pursuant to this Contract.
- i. At least 3 (Three) months before the expiry of the Agreement Period a joint inspection of the Project and Project Facilities shall be undertaken by GSCDCL, Project Officer and the Contractor. GSCDCL/ Project Officer shall, within 15 (fifteen) days of such inspection prepare and furnish to the Contractor a list of works/ jobs, if any, to be carried out. The Contractor shall promptly undertake and complete such works/ jobs at least 1 (One) month prior to the expiry of the Agreement Period and ensure that the Project and Project Facilities continue to meet such requirements until the same are handed back to GSCDCL.
- j. The Contractor hereby acknowledges GSCDCL's rights specified above enforceable against it upon Termination and its corresponding obligations arising thereof. The Contractor undertakes to comply with and discharge promptly all such obligations.

### **18.3. GSCDCL's Obligations**

GSCDCL shall, subject to GSCDCL's right to deduct amounts from the Performance Security towards:

- a. Carrying out works/ jobs listed under Clause 11.2, which have not been carried out by the Contractor
- b. Purchase of items, which have not been handed back to GSCDCL in terms of Clause

11.2 and

- c. Any outstanding dues, which may have accrued in respect of the Project during the Agreement Period

duly discharge and release to the Contractor, the amounts in the Performance Security account or balance therein after deductions in respect to (a), (b) and (c) above, as the case may be, upon issuance of certificate from Project Officer regarding compliance by the Contractor with the Hand back and Transfer Requirements.

## **19 Dispute resolution**

- a. All disputes or differences arising out of or in connection with this Contract, shall be raised before the Competent Authority, as defined in Contract data in writing giving full description and grounds of Dispute. It is clarified that merely recording protest while accepting measurement and/or payment shall not be taken as raising a dispute. Disputes between the Parties shall be resolved amicably within thirty days of such dispute arising, and at least one party having brought such dispute to the notice of either Party.
- b. No issue of dispute can be raised after 45 (forty five) days of its occurrence. Any dispute raised after expiry of 45 (forty five) days of its first occurrence shall not be entertained and the Employer shall not be liable for claims arising out of such disputes.
- c. The Competent Authority shall decide the matter within 45 (forty five) days of receipt of notice of such disputes.
- d. Appeal against the order of the Competent Authority can be preferred within 30 (thirty) days of the receipt of the Order of the Competent Authority to the Appellate Authority as defined in the Contract data. The Appellate Authority shall decide the dispute within a further period of 45 (forty five) days.
- e. If the dispute persists then the aggrieved party shall refer the case to the tribunal constituted under Madhya Pradesh Madhyasthata Adhikaran Adhiniyam, 1983. Costs associated with arbitration and/or litigation shall be borne by the respective parties. Statutory costs and fees other than the costs stated above, wherever applicable shall be paid by the Party referring the dispute to the tribunal. Place for dispute resolution shall be at Gwalior. The language of arbitration shall be English.
- f. Appeals against arbitration orders can be filed only in Courts within the state of Madhya Pradesh. The language of all proceedings to this effect shall be English.
- g. Notwithstanding the pendency of the outcome of any arbitration or suit, the Contractor shall continue to discharge his obligations under this Contract.
- h. The courts at Gwalior shall have exclusive jurisdiction in respect of disputes
- i. Pending the resolution of any dispute, the parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such resolution.

## 20 Change in Law

Change in law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:

- I. The enactment of any new Indian law;
- II. The repeal, modification or re-enactment of any existing Indian law
- III. A change in the interpretation or application of any Indian law by a court of record.

**Provided that change in law shall not include any change in the rates of taxes.**

## 21 Representations and warranties

### 21.1. Representations and warranties of the Contractor

The Contractor represents and warrants to GSCDCL that:

- a. It is duly organized, validity existing and in good standing in accordance with the laws of India;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. It has the financial standing and capacity to undertake the Project as per the requirements of the RFP;
- e. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Contractor's memorandum and articles of association or any applicable laws or any covenant, Agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. There are no actions, suits, proceedings or investigations pending, or to the Contractor's knowledge, threatened against it at law or in equity before any court or before any judicial, quasi-judicial or other authority, the outcome of which may constitute Contractor event of default or which individually or in the aggregate may result in material adverse effect; It has complied with all applicable laws and has not been subjected to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect;
- h. Subject to the receipt by the Contractor from GSCDCL of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Contractor in

and to the Project shall pass to and vest in GSCDCL on the termination date free and clear of all encumbrances without any further act or deed on the part of the Contractor or GSCDCL

- i. No representation or warranty by the Contractor contained herein or in any other document furnished by it to GSCDCL or to any government agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state material fact necessary to make such representation or warranty not misleading.
- j. No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Contractor to any person to procure the contract.
- k. Without prejudice to any express provision contained in this Agreement, the Contractor acknowledges that prior to the execution of this Agreement, the Contractor has after a complete and careful examination made an independent evaluation of the project requirements and the information provided by GSCDCL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Contractor in the course of performance of its obligations hereunder.
- l. The Contractor also acknowledges and hereby accepts the risk of inadequacy. Mistake or error in or relating to any of the matters set forth above and hereby confirms that GSCDCL shall not be liable for the same in any manner whatsoever to the Contractor.

## **21.2. Representations and warranties of GSCDCL**

GSCDCL represents and warrants to the Contractor that:

- a. GSCDCL has full power and authority to grant the contract;
- b. This Agreement constitutes GSCDCL legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- c. There are no legal suits or other legal proceedings pending or threatened against GSCDCL in respect of the Project and Project Facilities.

## **21.3. Obligation to notify change**

In the event that any of the representations or warranties made/given by a party ceases to be true or stands changed, the party who had made such representation or given such warranty shall promptly notify the other of the same.

## **22 Miscellaneous**

### **22.1. Assignment and charges**

- a. The Contractor shall not assign in favour of any person for this Agreement or any part of this agreement, the rights, benefits and obligations hereunder save and except with prior written consent of GSCDCL
- b. The Contractor shall not create nor permit to subsist any encumbrance over the Project

and Project Facilities

### **22.2. Governing law and jurisdiction**

This Agreement shall be governed by the laws of India. The courts at Gwalior, Madhya Pradesh shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **22.3. Waiver**

- a. Waiver by either party of any default by the other party in the observance and performance of any provision of or obligations under this Agreement:
  - I. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - II. Shall not be effective unless it is in writing and executed by a duly authorized representative of such party; and
  - III. Shall not affect the validity or enforceability of this Agreement in any manner.
- b. Neither the failure by either party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a party to the other party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

### **22.4. Survival/ Termination of this Agreement**

- a. Shall not relieve the Contract or GSCDCL of any obligations already incurred hereunder which expressly or by implication survives termination hereof, and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of the either party, shall not relieve the either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.

### **22.5. Entire Contract**

This Agreement and the annexures together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing and duly executed by persons especially empowered in this behalf by the respective Parties.

### **22.6 Copyright**

The Contractor, hereby transfers to the GSCDCL copyright, and all other intellectual property rights subsisting in or accruing to the Contractor, in relation to the Documents made or to be made by or on behalf of the Contractor, during the Contract Period for which such copyright subsists in such works. The GSCDCL hereby grants to the Contractor non-exclusive royalty-free license to use such documents and drawings

solely for the purpose of complying with its obligations under this Contract.

## 22.7. Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized national courier, mail, registered speed post, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

### **If to GSCDCL:**

#### **The Chief Executive Officer**

Gwalior Smart City Development Corporation Limited  
Gwalior Municipal Corporation, Narayan Krishna Shejwalkar Bhawan,  
City Center, Gwalior- 474011

### ***If to the Contractor:***

**The \_\_\_\_\_**

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Or such address, telex number or facsimile number as may be duly notified by the respective parties from time to time, and shall be deemed to have been made or delivered, in the case of any communication made by letter, when delivered by hand, by recognized national courier or by mail (registered, return receipt requested) at that address, and in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## 22.8. Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as nearly as is practicable. Provided that the failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

## 22.9. No partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a

partnership between the parties. Neither party shall have any authority to bind the other in any manner whatsoever.

#### **22.10. Language**

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

#### **22.11. Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other Agreement between the parties and any representation by any party not contained in a binding legal Agreement executed by the parties.

#### **22.12. Counterparts**

This Agreement may be constituted in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only one Agreement.

#### **22.13. Costs**

The Contractor shall bear all the costs related to the signing and registration of this Agreement including but not limited to stamp duties and registration charges.

#### **22.14 Confidentiality**

- a. Except with the prior written consent of the GSCDCL, the Contractor including its officers, employees, or agents shall not at any time communicate to any person or entity (other than to any of its or their respective officers or employees who require the same to enable them to properly carry out their duties) any information concerning the operations, contracts, commercial or financial arrangements or affairs of the Contract/Project, nor shall the Contractor make public any information related to the Project.
- b. Both Parties agree that confidentiality obligations do not apply to:
  - a. Information that is already known to third parties without breach of this Contract; and
  - b. Information that is required to be disclosed by an order of a court of competent jurisdiction or an appropriately empowered public authority, or as a result of an obligation arising under the Right to Information Act or other public disclosure law.

#### **22.15 Assignment and Charges**

- a. The Contractor shall not assign in favour of any person for this Agreement or any part of this agreement, the rights, benefits and obligations hereunder save and except with

prior written consent of GSCDCL

- b. The Contractor shall not create nor permit to subsist any encumbrance over the Project and Project Facilities

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

**SIGNED, SEALED AND DELIVERED**

For and on behalf of GSCDCL by:

For and on behalf of Contractor by:

Signature

Signature

Name

Name

Designation

Designation

In the presence of:

- 1.
- 2.