

पुणे
स्मार्ट सिटी
डेव्हलपमेंट
कॉर्पोरेशन लिमिटेड



PUNE
SMART CITY
DEVELOPMENT
CORPORATION LTD.

REQUEST FOR PROPOSAL
FOR
SELECTION OF THIRD PARTY AUDITOR (TPA)
FOR
**DEPLOYMENT AND OPERATION OF SMART ELEMENTS
PROJECT IN PUNE CITY**

Tender Number: SC12 /2017

Dated: 7th March 2017

Issued By

PUNE Smart City Development Corporation Limited (PSCDCL)

PMC Building, Near Mangala Theatre, Shivajinagar, Pune-411 005

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1 Disclaimer

The information contained in this Request for Proposal document (“**RFP**”) whether subsequently provided to the bidders, (“**bidder/s**”) verbally or in documentary form by Pune Smart City Development Corporation Limited (henceforth referred to as “**PSCDCL**” in this document) or any of its employees or advisors, is provided to bidders on the terms and conditions set out in this Tender document and any other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is not an offer or invitation to any party. The purpose of this RFP is to provide the bidders or any other person with information to prepare their technical proposal and formulae their financial offers (“**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by PSCDCL in relation to this scope. This RFP does not purport to contain all the information each bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Chief Executive Officer, PSCDCL and their employees or advisors to consider the objectives, technical expertise and particular needs of each bidder. The assumptions, assessments, statements and information contained in the Bid documents are made in consideration of the intended objectives of the project, and may not be complete, accurate or adequate. Each bidder must therefore conduct its own analysis of the information contained in this RFP and seek its own professional advice from appropriate sources.

Information provided in this RFP to the bidder is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. PSCDCL accepts no responsibility for the accuracy or otherwise for any interpretation of opinion on law expressed herein.

PSDCL, PMC and their employees and advisors make no representation or warranty and shall incur no liability to any person, including the bidder under law, statute, rules or regulations or tort, the principles of restitution or unjust enrichment or otherwise for any loss, cost, expense or damage which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, reliability or completeness of the RFP, and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

PSCDCL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any bidder upon the statements contained in this RFP. PSCDCL may in its absolute discretion, but without being under any obligation to do so, can amend or supplement the information in this RFP.

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The issue of this RFP does not imply that PSCDCL/ PMC is bound to select a bidder or to appoint the Selected bidder (as defined hereinafter), for implementation and PSCDCL/PMC reserves the right to reject all or any of the bidders or Bids without assigning any reason whatsoever.

The bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by PSCDCL/PMC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the bidder and PSCDCL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a bidder in preparation for submission of the Bid, regardless of the conduct or outcome of the Selection process.

2 Glossary

Terms	Meaning
Contract	As provided in Annexure 4
TPA	Third Party Auditor agency for Smart Elements Project
PMC	Pune Municipal Corporation
PSCDCL	Pune Smart City Development Corporation Ltd.
SCOC	Smart City Operations center
SPV	Special Purpose Vehicle
IT	Information Technology
CEO	Chief Executive Officer
ICT	Information and Communication Technology
RFP	Request for Proposal
PDD	Proposal Due Date
CV	Curriculum Vitae
SLA	Service Level Agreements
GC	General Conditions of Contract
SC	Special Conditions of Contract

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

3 Introduction

3.1 Background

- i. Pune is the seventh-most populous city in India and the second largest in the state of Maharashtra. The city is known for manufacturing and automobiles, as well as government and private sector research institutes for information technology (IT) education, management and training that attract migrants, students, and professionals from India, South East Asia, the Middle East, and Africa. As per 2011 census, Pune has a population of more than 9.4 million and population density of 603 people per sq. km. The decadal population growth rate from 2001 to 2011 was reported at 30.34%.
- i. The Pune Municipal Corporation (PMC) was established on 15 February 1950. The PMC is in charge of the civic needs and infrastructure of the metropolis.
- ii. Under the Smart City Mission of the Government of India, the proposal from PMC was ranked second in the first challenge round conducted in 2015. Thereafter, the Pune Municipal Corporation (PMC) has incorporated a Special Purpose Vehicle (SPV) company - Pune Smart City Development Corporation Limited (PSCDCL), under the Companies Act 2013, solely for the purpose of implementing the Smart City proposal. As per the guidelines of the Smart City Mission, PSCDCL will have equal shareholding from the Government of Maharashtra and the Pune Municipal Corporation (PMC). PSCDCL will receive funding from Government of India and PMC/ the State Government for implementing the smart city projects
- iii. PSCDCL had issued an RFP (Tender No. SC08/2016, dated 15th October 2016) for selection of agency for setting up network of smart elements in Pune city. Subsequently PSCDCL has selected Ms/ Larsen & Toubro for the above project.
- iv. PSCDCL now proposes to appoint an agency to carry out Third Party Auditor (TPA) for auditing, supervision and certification of deployment of smart elements in the above mentioned project. The details of the Smart Elements Project are provided in Annexure 8.

3.2 Request for Proposals

PSCDCL invites proposals (the “Proposals”) for selection of a Third Party Auditor (“TPA”) for auditing, supervision and certification of deployment of smart elements in Pune City. PSCDCL intends to select the TPA through an open competitive bidding process in accordance with the procedure set out herein.

3.3 Due diligence by bidders

Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to PSCDCL and the Project site, sending written queries to PSCDCL, and attending a Pre-Proposal Conference on the date and time specified in Clause 3.8.

3.4 Access to RFP documents

- i. This RFP document can be downloaded from the website <https://pmctenders.abcprocure.com>. However, the bids of only those bidders shall be considered for evaluation who have submitted along with their bids the EMD as prescribed in Clause 4.19. Bidders will also be required to transfer the EMD as an online payment through the e-procurement portal of Pune Municipal Corporation (the “e-procurement portal” or “e-procurement website”), i.e. <https://pmctenders.abcprocure.com>.
- ii. Bidders will also be required to make an online transfer of Rs. 5429 as Tender Fees through the e-procurement portal.
- iii. In case bidders submit their Proposals without the EMD and Tender Fees as mentioned above, PSCDCL reserves the right to reject the Bid without providing opportunity for any further correspondence to the Bidders concerned
- iv. Bidders are advised to study this RFP document carefully before submitting their proposals in response to the RFP notice. Submission of a proposal in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications. This RFP document is not transferable.
- v. The submission of the bid shall be online through the e-procurement portal of Pune Municipal Corporation i.e. <https://pmctenders.abcprocure.com>. The detailed information regarding the submission can be obtained from the above website
- vi. Digital signature is prerequisite for online submission. Employer will not be responsible for any delay or technical snag faced by the bidder/s in uploading their online tenders. The bidders are advised to submit their tenders adequately in advance to avoid the delays due to such instances.
- vii. For any further information regarding digital signature and submission of bids through the e-procurement portal, bidders may contact the department of Tender Cell, Pune Municipal Corporation, Pune. (Tel: +020—25501405)
- viii. Orientation procedure for uploading the RFP Document is available at:

**Office of the Assistant Engineer,
Tender Cell, Pune Municipal Corporation,
Shivajinagar, Pune 411 005, India**

3.5 Validity of the proposal

The Proposal shall be valid for a period of not less than 120 days from the Proposal Due Date (the “PDD”).

3.6 Brief description of the Selection Process

PSCDCL has adopted two stage selection process (collectively the “**Selection Process**”) for evaluating the Proposals comprising technical and financial proposals. In the first stage, a technical evaluation will be carried out as specified in Clause 4.21. Only bidders, whose technical proposals meet the prescribed eligibility requirements will be shortlisted for opening of financial bids. In the second stage, a financial evaluation will be carried out as specified in Clause 4.22 for the applicants meeting the eligibility requirements prescribed in the Technical Evaluation. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 4.22. The first ranked Applicant shall be selected for negotiation (the “Selected Applicant”) while the second ranked Applicant will be kept in reserve.

3.7 Currency conversion and payment

- i. For the purposes of technical evaluation of bidders, the conversion rate for US Dollars to Indian Rupees as published on the website of the Reserve Bank of India on the Proposal Due Date shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date 60 (sixty) days prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.
- ii. All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The bidder may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the bidder.

3.8 Schedule of selection process

#	Information	Details
1.	Project Name/ Name of Work	Specification for Selection of Third Party Auditor (TPA) for auditing, supervision and certification of

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#	Information	Details
		Deployment of Smart Elements in Smart City Operations center (SCOC) in Pune city
2.	Publication of Request for Proposal	7 th March, 2017
3.	RFP Reference No.	Tender No: SC12 /2017
4.	Website to download RFP	https://pmctenders.abcprocure.com http://www.punecorporation.org
5.	Submission deadline or Proposal Due Date (PDD)	24 th March 2017 at 2.30 pm
6.	Bid validity period	120 days from the date of commercial bid opening
7.	Procuring Agency and contact	Pune Smart City Development Corporation (PSCDCL) Email: punesmartcity@gmail.com
8.	Last date for submission for queries for clarification to PSCDCL	13 th March 2017
9.	Pre-Proposal Conference – Date, time, and venue	meeting date: 14 th March 2017 meeting time: 3 pm Address: Pune Muncpal Corporation
10.	Opening of Technical Proposal – date, time and venue	To be informed
11.	Presentation on the Technical Proposal	To be informed
12.	Opening of Financial Proposal	To be informed
13.	Letter of Award (LoA)	In due Course
14.	signing of Contract	In due Course

3.9 Pre-Proposal visit to the Site and inspection of data

- i. Prospective bidders are encouraged inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit or sending written queries to PSCDCL.
- ii. Bidders are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with PSCDCL, Applicable Laws and regulations

or any other matter considered relevant by them. Submission of bid shall be deemed to have been done after careful study and examination of the RFP document with full understanding of its implications.

3.10 Pre-Bid conference

- i. The date, venue and time of the Pre-Bid conference is provided in the table under clause 3.8.

3.11 Communications

- i. All communications, including proposal documents should be addressed to:

**The Chief Executive Officer,
Pune Smart City Development Corporation Limited
PMC Building, Near Mangala Theatre,
Shivajinagar, Pune-411 005.
Ph No: 020-25501103
E mail ID:- punesmartcity@gmail.com**

- ii. All communications including the bid envelopes should contain the following information:

Tender No: SC12 /2017

“Specification for Selection of Third Party Auditor (TPA) for auditing, supervision and certification of Deployment of Smart Elements in Smart City Operations center (SCOC) in Pune city”

4 Instructions to bidders

A. GENERAL

4.1 Scope of Proposal

- i. The detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Assignment are specified in this RFP. In case a bidder firm possesses the requisite experience and capabilities required for undertaking the Third Party Audit, it may participate in the Selection Process. Consortiums shall not be considered during the Selection Process. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.
- ii. Bidders are advised that the selection of TPA agency shall be on the basis of an evaluation by PSCDCL through the Selection Process specified in this RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that PSCDCL's decisions are without any right of appeal whatsoever.
- iii. The Bidder shall submit its Proposal in the form and manner specified in this section of the RFP. The Technical proposal shall be submitted as per the formats provided in Annexure 2 and the Financial Proposal shall be submitted as per the format at Annexure 3. Upon selection, the bidder shall be required to enter into an agreement with the PSCDCL in the form specified at Annexure 4.

4.2 Conditions of eligibility

- i. Bidders must read carefully the minimum conditions of eligibility (the "Conditions of Eligibility") provided herein. Proposals of only those bidders who satisfy the Conditions of Eligibility will be considered for evaluation. To be eligible for evaluation of its Proposal, the bidder shall fulfill the following;

Sl no	Basis requirement	Requirement details	Documents to be furnished
1	Legal entity	The selected agency should be registered in India as, A company registered under Indian Companies Act, 1956 OR A partnership firm registered under Indian Partnership Act, 1932. OR A partnership firm registered under Indian LLP act 2008	Copy of certificate of registration / incorporation

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Sl no	Basis requirement	Requirement details	Documents to be furnished
2	Financial: Turnover	Average Annual Turnover of the agency for last three financial years i.e. 2013-2014, 2014-2015, 2015-2016 should be at least Rs. 5 Crores.	Audited balance sheet with supporting CA Certificate
3	Experience	<p>The bidder should have relevant experience of offering 'Installation Supervision & Auditing services' of project implementation of large ICT projects. The relevant experience in ICT needs to be provided across the following features;</p> <ul style="list-style-type: none"> • be installed in infrastructure sites (roads, city, railways, airports etc.) • have multiple intelligent field devices, IoT devices, controllers, industrial grade computers, readers, road side units • involve field cabling (data, power, video, audio) • includes command control central and integration of field devices with CCC • involves customization of CCC software, creation of user & profiles, database management, report generation, NMS • involves monitoring of SLAs during operation and maintenance of the ICT project <p>The bidder should be able to demonstrate experience across the above features for at least 3 ICT projects with a minimum project cost of Rs. 5 crore. The above ICT projects should have been successfully supervised and audited in the last three years before submission of bid. Please note that the above project cost refers to cost of ICT projects for which the bidder has carried out installation, supervision and auditing services.</p> <p>It may be noted that the experience for the above six features may be demonstrated across the 3 ICT projects but it is mandatory for the bidder to show experience across the above six criteria.</p> <p>The cumulative contract value of the contracts for third party audit and supervision for the above 3 ICT projects should be at least 2 crore with each of the contracts having a value above Rs. 30 lakh.</p> <p>The projects which been implemented and are currently operational will be considered as completed project provided the bidder was involved</p>	<p>Order copies, completion certificates and performance certificate of audit and supervision work carried</p> <p>Supporting order copies, completion certificates and order details (features of the projects)</p> <p>Proof of payment Size of the project</p>

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Sl no	Basis requirement	Requirement details	Documents to be furnished
		in Supervision & Audit during whole implementation phase of the same project.	
4	Net worth	The agency should have positive net worth of Rs. 50 Lakh as on one month before PDD.	CA Certificate, CA's Registration Number and Seal
5	Local presence	The bidder should have a local office in Pune with the staff stationed in Pune as listed under Scope of Work in manpower section. In case, the bidder does not have a local office in Pune, the bidder shall provide an undertaking on stamp paper of Rs. 100 value that an office would be made operational in Pune, within one month of selection of bidder.	Office registration certificate with address details.
6	Tax registration and clearance	The bidder should have a registered number of i. Service Tax ii. Income Tax / PAN number	Copies of relevant certificates of registration
7	Mandatory Undertaking	The bidder should furnish undertaking of not being black listed by any Government agency or PSU or Municipality or PMC. The bidder should also provide the following undertakings; (a) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons; (b) not have, and their directors and officers not have, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a Audit contract within a period of three years preceding the commencement of the work, or not have been otherwise disqualified pursuant to debarment proceedings; (c) not have a conflict of interest while offering services to Implementation Agency	Self-certification by bidder
8	Man power	The bidder must have at least 25 full time technically qualified personnel on its payroll in the area of Information technology specifically in the areas of IT Audit/Data Center Audit/IT Infrastructure SLA Audit & Monitoring for IT related projects including IT Infrastructure, IT Security etc. as on date of bid submission.	Self-certification by bidder with details of employees (name, age, qualification, role)
9	Certification	Agency should have proposed key manpower certified as CISA, CISSP, Auditor for ISO 27001 / ISO 20000/ ITIL or equivalent.	Certificate copy

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- ii. The TPA shall deploy the following key personnel (the “Key Personnel”) who shall discharge their respective responsibilities. Each of the Key Personnel must fulfill the Conditions of Eligibility as specified below;

Sl no	Role	Duties to be carried out	Qualification & Experience	Man months during implementation phase (6 months)	Man months during O&M phase (60 months)
1	Audit & Supervision manager	Overall coordination, managing team, reporting to stake holders, Program management skills	Graduate engineer with 10+ years of experience in managerial level carrying supervision and audit function	6 Man months	60 Man months
2	Electrical engineer	Review execution as per electrical standards, to follow best practices, oversee cabling, checking of system performance at field and SCOC	Electrical engineer with 5+ years of relevant experience of Audit/ supervision experience	13 Man months (1,2,3,3,3,1)*	
3	Civil / structural engineer	Audit trenching, verification of work as per approved drawings, excavation supervision, safety audits, checking conduit fixing on roads-buildings, see foundation as per safety standards, quality of structure execution	Civil or structural engineer with 5+ years of relevant experience of Audit/ supervision	9 Man months (1,2,2,2,1,1)*	
4	IT / Network engineer	Checking of IT system, Network security, WiFi, Installation of OS-database, Configuration management, SoP's validation, Integration with elements and external systems, DC-DR site performance evaluation, reports generation, back-ups	Computer or IT engineer with 5+ years of relevant experience of Audit/ supervision	13 Man months (1,2,3,3,3,1)*	60 Man months

* Numbers indicated are head count required from month-1 to month-6

- iii. The Bidder shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its total revenues from professional fees during each of the 3 (three) financial years preceding the PDD and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Bidder does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Bidder
- i. The bidder should submit a Power of Attorney as per the format at Annexure 2; provided, however, that such Power of Attorney would not be required if the Application is signed by a partner of the bidder, in case the bidder is a partnership firm or limited liability partnership.
- ii. Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- iii. A bidder or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.
- iv. While submitting a Proposal, the Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Bidders may format the specified forms making due provision for incorporation of the requested information.

4.3 Conflict of interest

- i. A Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the “Conflict of Interest”). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, PSCDCL shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to PSCDCL for, inter alia, the time, cost and effort of PSCDCL including consideration of such Bidder’s Proposal, without prejudice to any other right or remedy that may be available to PSCDCL hereunder or otherwise.
- ii. PSCDCL requires that the Consultant provides professional, objective, and impartial advice and at all times hold PSCDCL’s interest paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other

clients, or that may place it in a position of not being able to carry out the assignment in the best interests of PSCDCL.

- iii. Without limiting the generality of the above, an Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- a. the Bidder, its Associate (or any constituent thereof) and any other Bidder, its Associate (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 or ownership interest of an Bidder, its Member or Associate (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, or Associate is less than 5 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.3.3(a), 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 (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) 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% (twenty six per cent) 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 its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
 - d. (d) such Bidder has the same legal representative for purposes of this Application as any other Bidder; or
 - e. such Bidder has a relationship with another Bidder, 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 Application of either or each of the other Bidder; or (f) there is a conflict among this and other consulting assignments of the Bidder (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Bidder or having common

- controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing TPA services to PSCDCL for this particular assignment, the TPA shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- f. a firm which has been engaged by PSCDCL to provide goods or works or services for a project, and its Associates, will be disqualified from providing services for the same project save and except as provided in Clause 4.3(iv); conversely, a firm hired to provide TPA services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
 - g. the Bidder, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (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 or ownership interest of an Bidder, its Member or Associate (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, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in sub-section (72) of section 2 of the Companies Act, 2013.
 - h. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the “Associate”). 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 by contract.

- iv. An Bidder eventually appointed to provide TPA services for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments

granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for PSCDCL in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for PSCDCL in accordance with the rules of PSCDCL. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

4.4 Number of Proposals

No Bidder or its Associate shall submit more than one Application for the Consultancy. A Bidder applying individually or as an Associate shall not be entitled to submit another application.

4.5 Cost of Proposal

The Bidders shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to PSCDCL, Project site etc. PSCDCL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

4.6 Site visit and verification of information

- i. Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit or sending written queries to PSCDCL.
- ii. Submission of bid shall be deemed to have been done after careful study and examination of the RFP document with full understanding of its implications.
- iii. The response to this RFP should be full and complete in all respects. Failure to furnish all information required by the RFP documents or submission of a proposal not substantially responsive to the RFP documents in every respect will be at the bidder's risk and may result in rejection of the bidder's Proposal.

4.7 Acknowledgement by bidder

- i. It shall be deemed that by submitting the Proposal, the Bidder has:
 - a. made a complete and careful examination of the RFP;
 - b. received all relevant information requested from PSCDCL;
 - c. acknowledged and accepted the risk of inadequacy, error or mistake in the

- d. information provided in the RFP or furnished by or on behalf of the
 - e. Authority or relating to any of the matters referred to in Clause 2.6 above;
 - f. satisfied itself about all matters, things and information, including matters referred to in Clause 4.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
 - g. acknowledged that it does not have a Conflict of Interest; and
 - h. agreed to be bound by the undertaking provided by it under and in terms hereof.
- ii. PSCDCL shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process including any error or mistake therein or in any information or data given by PSCDCL

4.8 Right to reject any or all proposals

- i. Notwithstanding anything contained in this RFP, PSCDCL reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- ii. Without prejudice to the generality of Clause 4.8 (i), PSCDCL reserves the right to reject any Proposal if:
 - a. at any time, a material misrepresentation is made or discovered, or
 - b. the Bidder does not provide, within the time specified by PSCDCL, the supplemental information sought by PSCDCL for evaluation of the Proposal.
- iii. Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then PSCDCL reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the PSCDCL, including annulment of the Selection Process.

B. DOCUMENTS

4.9 Contents of the RFP

- i. This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 4.11.

4.10 Clarifications

- i. Bidders requiring any clarification on the RFP may send their queries to PSCDCL in writing by speed post/ courier/ special messenger or by e-mail so as to reach before the date mentioned in the Schedule of Selection Process at Clause 3.8. The envelopes shall clearly bear the following identification:

"Queries concerning RFP for Selection Of Third Party Auditor (TPA) For Deployment And Operation Of Smart Elements Project In Pune City"

- ii. PSCDCL shall endeavor to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be sent by e-mail. PSCDCL will post the reply to all such queries on the e-procurement portal of PMC without identifying the source of queries.
- iii. PSCDCL reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 4.10 shall be construed as obliging PSCDCL to respond to any question or to provide any clarification.

4.11 Amendment of RFP

- i. At any time prior to the deadline for submission of Proposal, PSCDCL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP document by the issuance of Corrigendum /Addendum/ Amendment and posting it on the e-procurement website.
- ii. All such amendments will be posted on the e-procurement portal and will be binding on all Bidders.
- iii. In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, PSCDCL may, in its sole discretion, extend the Proposal Due Date

C. PREPARATION AND SUBMISSION OF PROPOSAL

4.12 Language

- i. The Proposal with all accompanying documents (the “Documents”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly as per the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

4.12.1.1.1.1 Format and signing of Technical Proposal

- i. The Bidder shall provide all the information sought under this RFP. PSCDCL would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- ii. The Bidder shall prepare one original set of the Technical Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Bidder shall submit 1 (one) copy of the Technical Proposal, along with Documents, marked “COPY”. In the event of any discrepancy between the original and its copies, the original shall prevail.
- iii. The Technical Proposal, and its copy, shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorised representative (the “Authorised Representative”) as detailed below;
 - a. by the proprietor, in case of a proprietary firm; or
 - b. by a partner, in case of a partnership firm and/or a limited liability partnership; or
 - c. by a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or

A copy of the Power of Attorney certified under the hands of a partner or director of the Bidder and notarised by a notary public in the form specified in Annexure 2 shall accompany the Proposal.

- iv. Bidders should note the Proposal Due Date, as specified in Clause 3.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be

entertained by PSCDCL, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 4.16. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, PSCDCL reserves the right to seek clarifications under and in accordance with the provisions of Clause 4.24.

4.13 Technical Proposal

- i. Bidders shall submit the technical proposal in the formats at Annexure 2 (the “Technical Proposal”).
- ii. While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:
 - a. The Earnest Money Deposit and Tender Fees are paid online through the e-procurement portal;
 - b. all forms are submitted in the prescribed formats and signed by the prescribed signatories;
 - c. Power of Attorney, if applicable, is executed as per Applicable Laws;
 - d. CVs of all Professional Personnel have been included;
 - e. Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 4.2(ii) of the RFP;
 - f. no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
 - g. the CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Bidder. Photocopy or unsigned / countersigned CVs shall be rejected;
 - h. the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
 - i. Professional Personnel proposed have good working knowledge of English language;
 - j. Key Personnel would be available for the period indicated in the TOR;
 - k. no Key Personnel should have attained the age of 70 (seventy) years at the time of submitting the proposal; and
 - l. the proposal is responsive in terms of Clause 4.21.

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- iii. Failure to comply with the requirements spelt out in this Clause 4.13 shall make the Proposal liable to be rejected.
- iv. If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of PSCDCL for a period of 5 (five) years. The award of this Consultancy to the Bidder may also be liable to cancellation in such an event.
- v. The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- vi. The proposed team shall be composed of experts and specialists (the “Professional Personnel”) in their respective areas of expertise and managerial/support staff (the “Support Personnel”) such that the Consultant should be able to complete the Consultancy within the specified time schedule.
- vii. The Key Personnel specified in Clause 4.2 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the applicable format at Annexure 2.
- viii. PSCDCL reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by PSCDCL to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of PSCDCL thereunder.
- ix. In case it is found during the evaluation or at any time before signing of the Contract or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Contract, and if the Selected Bidder has already been issued the LOA or has entered into the Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by PSCDCL without PSCDCL being liable in any manner whatsoever to the Bidder or Consultant, as the case may be.

- x. In such an event, PSCDCL shall forfeit and appropriate the EMD as mutually agreed pre-estimated compensation and damages payable to PSCDCL for, inter alia, time, cost and effort of PSCDCL, without prejudice to any other right or remedy that may be available to PSCDCL

4.14 Financial Proposal

- i. Bidders shall submit the financial proposal in the formats at Appendix 3 (the “Financial Proposal”) clearly indicating the total cost of the Assignment in both figures and words, in Indian Rupees, and signed by the Bidder’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.
- ii. While submitting the Financial Proposal, the Bidder shall ensure the following;
 - a. All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, geotechnical investigations etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered nonresponsive and liable to be rejected.
 - b. The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
 - c. Costs (including break down of costs) shall be expressed in INR.

4.15 Submission of Proposal

- i. **Submission of Technical Proposal:** The Bidders shall submit the Technical Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialled by the Authorised Representative of the Bidder as per the terms of the RFP. In case the proposal is submitted on the document downloaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by PSCDCL and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by PSCDCL, the latter shall prevail.

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- ii. The Technical Proposal shall be typed or written in indelible ink and signed by the Authorised Representative of the Bidder. All pages of the original Technical Proposal must be numbered and initialled by the person or persons signing the Proposal.
- iii. The Technical Proposal will be sealed in an outer envelope which will bear the address of PSCDCL, RFP Notice number, Assignment name as indicated at Clauses 3.11(i) and 3.11(ii) and the name and address of the Bidder. It shall bear on top, the following:

“Do not open, except in presence of the Authorised Person of PSCDCL”
- iv. If the envelope is not sealed and marked as instructed above, PSCDCL assumes no responsibility for the misplacement or premature opening of the contents of the Technical Proposal submitted and consequent losses, if any, suffered by the Bidder.
- v. The aforesaid outer envelope will contain one separate sealed envelopes clearly marked ‘Technical Proposal’. The envelope marked “Technical Proposal” shall contain:
 - a. Application in the prescribed format (Annexure 2) along with Forms 2 to 15 of Appendix-I and supporting documents; andThe scanned copy of the Technical Proposal will also be uploaded on the e-procurement portal as per applicable process.
- vi. **Submission of Financial Proposal:** The scanned copy of the original Financial Proposal as per the formats prescribed in the RFP shall be uploaded through the e-procurement portal of PMC. Each page of the submission shall be initialled by the Authorised Representative of the Bidder as per the terms of the RFP. No hardcopy submission of the Financial Proposal will be accepted by PSCDCL.
- vii. The completed Technical Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained. The completed Technical and Financial Proposal should be uploaded through the e-procurement portal on or before the specified time on Proposal Due Date.
- viii. The Technical Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.
- ix. The Financial Proposal shall be made in the Forms specified in this RFP. Scanned copies of the Forms in the Financial Proposal shall be uploaded through the e-procurement portal of PMC.

- x. The rates quoted shall be firm throughout the period of performance of the assignment upto and including discharge of all obligations of the TPA under the Contract.

4.16 Proposal Due Date (PDD)

- i. The Technical Proposal should be submitted at or before 14:30 hours on the Proposal Due Date specified in Clause 3.8 at the address provided in Clause 3.11(i) in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein. The Financial Proposal should also be uploaded before 14:30 hours on the Proposal Due Date specified in Clause 3.8.
- ii. PSCDCL, may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 4.11 uniformly for all bidders.

4.17 Late Proposals

Proposals received by PSCDCL after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

4.18 Modification / substitution / withdrawal of Proposals

- i. The Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by PSCDCL prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Bidder on or after the Proposal Due Date.
- ii. The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 4.15, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- iii. Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by PSCDCL, shall be disregarded.

4.19 Earnest Money Deposit

- i. The Bidder shall furnish as part of its Proposal, an Earnest Money Deposit (EMD) of Rs. 1,00,000 (Rupees One Lakh Only) through an online payment through the e-procurement portal of PMC as described in Clause 3.4(i) of this RFP.. The Selected Bidder’s EMD shall be returned, upon the Bidder signing the Contract and providing the Performance Security to PSCDCL.

- ii. Any Bid not accompanied by the EMD shall be rejected by PSCDCL as non-responsive.
- iii. PSCDCL shall not be liable to pay any interest on the EMD and the same shall be interest free.
- iv. The Bidder, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to PSCDCL's any other right or remedy hereunder or in law or otherwise, the EMD shall be forfeited and appropriated by PSCDCL as the mutually agreed pre-estimated compensation and damage payable to PSCDCL for, inter alia, the time, cost and effort of PSCDCL in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:
 - a. If an Bidder submits a non-responsive Proposal;
 - b. If an Bidder engages in any of the Prohibited Practices specified in Section 5 of this RFP;
 - c. If an Bidder withdraws its Proposal or increases their quoted prices during the period of its validity as specified in this RFP and as extended by the Bidder from time to time;
 - d. In the case of the Selected Bidder, if the Bidder fails to reconfirm its commitments during negotiations as required vide Clause 4.25 (i);
 - e. In the case of a Selected Bidder, if the Bidder fails to sign the Contract along with provision of Performance Security or commence the assignment as specified in Clauses 4.28 and 4.30 respectively; or
 - f. If the Bidder is found to have a Conflict of Interest as specified in Clause 4.3.
- v. The EMD of unsuccessful Bidders will be returned, without any interest, as promptly as possible, but not later than 30 days after signing the contract with the Selected Bidder or cancellation of the Bid process by PSCDCL.

4.20 Performance Security

- i. The Bidder, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to PSCDCL's any other right or remedy hereunder or in law or otherwise, its Performance Security shall be forfeited and appropriated by PSCDCL as the mutually agreed pre-estimated compensation and damages payable to PSCDCL for, inter alia, the time, cost and effort of PSCDCL in regard to the RFP, including the consideration and evaluation of the Proposal, under the following conditions:
 - a. If an Bidder engages in any of the Prohibited Practices specified in Clause 5 of this RFP;

- b. if the Bidder is found to have a Conflict of Interest as specified in Clause 4.3; and
 - c. if the Selected Bidder commits a breach of the Contract.
- ii. An amount equal to 5% (five per cent) of the Contract Value shall be deemed to be the Performance Security for the purposes of this Clause 4.20, which may be forfeited and appropriated in accordance with the provisions hereof.

D. EVALUATION PROCESS

4.21 Evaluation of Technical Proposals

- i. PSCDCL shall open the Technical Proposals at 15.00 hours on the Proposal Due Date. The Technical Proposal shall be evaluated first to evaluate whether the Bidders meet the prescribed technical requirements.
- ii. After the Proposal submission until the contract is awarded, if any bidder wishes to contact the Client on any matter related to its proposal, it should do so in writing at the Proposal submission address. Any effort by the firm to influence the Client during the Proposal evaluation, Proposal comparison or contract award decisions may result in the rejection of the bidder's proposal.
- iii. Prior to evaluation of Technical Proposals, the Authority will determine whether each Technical Proposal is responsive to the requirements of the RFP. PSCDCL may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Technical Proposal shall be considered responsive only if:
 - a. the Technical Proposal is received in the formats specified at Annexure 2;
 - b. it is received by the Proposal Due Date including any extension thereof pursuant to Clause 4.16;
 - c. The hard copies of the Technical Proposal are is signed, sealed, bound together in hard cover and marked as stipulated in the RFP;
 - d. it contains all the information (complete in all respects) as requested in the RFP;
 - e. it does not contain any condition or qualification; and
 - f. it is not non-responsive in terms hereof
- iv. PSCDCL reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal will be entertained by PSCDCL in respect of such Proposals. However, client reserves the right to seek clarifications or additional

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information from the applicant during the evaluation process. The Client will subsequently examine and evaluate Proposals in accordance with the Selection Process detailed out below. Failure to comply with the requirements provided above shall make the Technical Proposal liable to be rejected.

- v. PSCDCL reserves the right to verify all statements, information and documents, submitted by the bidder in response to the RFP. Any such verification or the lack of such verification by PSCDCL to undertake such verification shall not relieve the bidder of its obligations or liabilities hereunder nor will it affect any rights of PSCDCL thereunder.
- vi. In case it is found during the evaluation or at any time before signing of the Contract or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the bidder or the bidder has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the TPA either by issue of the LOA or entering into of the Contract, and if the Selected bidder has already been issued the LOA or has entered into the Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by PSCDCL without PSCDCL being liable in any manner whatsoever to the bidder or TPA, as the case may be.
- vii. In such an event, PSCDCL shall forfeit and appropriate the EMD as mutually agreed pre-estimated compensation and damages payable to PSCDCL for, inter alia, time, cost and effort of PSCDCL, without prejudice to any other right or remedy that may be available to PSCDCL.
- viii. The Technical Evaluation shall be carried out on the basis of the criteria specified in the Table below. The evaluation committee of PSCDCL, at its discretion will carry out a scoring pattern within the allocated marks across the criteria shown in the Table.

No	Criteria	Evaluation parameter	Total Marks
1.	Relevant experience and credentials of the Bidder	Marking based on <ul style="list-style-type: none"> • No of relevant Projects in terms of experience indicated in Clause 4.2 – 15 marks • Comparative size and quality of relevant projects in terms of 	40

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No	Criteria	Evaluation parameter	Total Marks
		<p>experience indicated in Clause 4.2– 15 marks</p> <ul style="list-style-type: none"> • Experience and capacity of the firm, availability of experienced qualified manpower etc- 10 marks 	
2.	Key Personnel	<p>Marks to be provided based on qualification and competence of proposed personnel</p> <ul style="list-style-type: none"> • Audit and Supervision Manager – 10 marks • Electrical Engineer – 7 marks • Civil / Structural Engineer – 7 marks • IT Engineer - 6 marks 	30
3.	Approach and Methodology including Presentation to PSCDCL covering the	Approach document submitted in Technical Proposal including work plan, staffing schedule, schedule for audit management and Presentation made on approach to PSCDCL	30

- ix. Each of the Key Personnel must score a minimum of 60% (sixty percent) of the marks allocated to that Key Personnel. In case the Selected Bidder has a Key Personnel who scores less than 60% marks, that Key Personnel shall be replaced during negotiations.
- x. Only those bidders, whose Technical Proposals achieve a minimum score of 70 in technical evaluation will be considered for opening of Financial Proposal. However the CEO of PSCDCL reserves the right to lower the minimum required marks if none of the bidders achieve 70 marks for their Technical Proposals.

Notes

1. For any Project citations submitted by the bidder under technical qualifications section, must be awarded under a single work order.
2. Bidder to submit work order and end client work in-progress / completion certificate as supporting documents for each Project.
3. Project citations of only up to one level of sub-contracting will be considered for evaluation.

4.22 Evaluation of Financial Proposals

- i. PSCDCL will notify the bidders who secure the minimum qualifying technical score, indicating the date and time set for opening the Financial Proposals. The notification may be sent by registered letter, facsimile, or electronic mail.
- ii. The Financial Proposals will be opened publicly in the presence of bidder's representatives who choose to attend. The name of the bidders, their technical scores and the proposed prices will be read aloud and recorded when the Financial Proposals are opened.
- iii. Prior to evaluation of the Financial Proposals, the evaluation committee of PSCDCL will determine whether the Financial Proposals are complete in all respects, unqualified and unconditional, and submitted in accordance with the terms hereof.
- iv. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services and should be stated in INR only. The man-months considered for calculation of costs for the personnel in the Financial Proposal should match the man-months for the corresponding personnel given in the Technical Proposal. In case, the man-months considered for calculation of costs for the personnel in the Financial Proposal are more than the corresponding man-months given in the Technical Proposal, the man-months considered in the Financial Proposal shall be reduced to match the man-months given in the Technical Proposal with a corresponding reduction in the cost indicated in the Financial Proposal. In case the man-months considered for calculation of costs for the personnel in the Financial Proposal are less than the corresponding man-months given in the Technical Proposal, the TPA has to deploy the personnel for the man-months given in the Technical Proposal, without any claim or increase of the Financial Proposal. Omissions, if any, in costing of any item shall not entitle the bidder to be compensated and the liability to fulfil its obligations as per the Terms of Reference within the total quoted price shall be that of the bidder. The evaluation shall exclude those taxes, duties, fees, levies and other charges imposed under the Applicable Law as applicable on foreign and domestic inputs. The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be determined using the following formula:

$$S_f = 100 \times F_m / F;$$

in which S_f is the financial score, F_m is the lowest Financial Proposal, and F is the Financial Proposal (in INR) under consideration.

- v. Proposals will be finally ranked in accordance with their combined technical (S_t) and financial (S_f) scores:

$$S = S_t \times T_w + S_f \times F_w;$$

- vi. Where S is the combined score, and T_w and F_w are weights assigned to Technical Proposal and Financial Proposal that will be **0.80:0.20**.
- vii. The bidder achieving the highest combined technical and financial score will be considered to be the successful bidder and will be invited for contract signing (the “Successful Bidder”)

4.23 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising PSCDCL in relation to matters arising out of, or concerning the Selection Process. PSCDCL shall treat all information, submitted as part of the Proposal, in confidence and shall require all those who have access to such material to treat the same in confidence. PSCDCL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or PSCDCL or as may be required by law or in connection with any legal process.

4.24 Clarifications

- i. To facilitate evaluation of Proposals, PSCDCL may, at its sole discretion, seek clarifications from any Bidder regarding its Proposal. Such clarification(s) shall be provided within the time specified by PSCDCL for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- ii. If an Bidder does not provide clarifications sought under Clause 4.24 (i) above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, PSCDCL may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of PSCDCL.

E. APPOINTMENT OF TPA

4.25 Negotiations

- i. The Selected Bidder may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 60% (sixty per cent) marks as required under Clause 4.21(ix) shall be replaced by the Bidder with a better candidate to the satisfaction of PSCDCL. In case the Selected Bidder fails to reconfirm its commitment, PSCDCL reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.
- ii. PSCDCL will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of PSCDCL.
- iii. PSCDCL will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Bidder to the satisfaction of PSCDCL.

4.26 Substitution of Key Personnel

- i. PSCDCL will not normally consider any request of the Selected Bidder for substitution of Key Personnel as the ranking of the Bidder is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of PSCDCL.
- ii. PSCDCL expects all the Key Personnel to be available during implementation of the Contract. PSCDCL will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of PSCDCL. The terms and conditions governing the replacement of Key Personnel will be governed by the applicable clauses in the Contract (Clause 6.2 of Draft Contract enclosed in Annexure 4 of this RFP).

4.27 Award of TPA assignment

After selection, a Letter of Award (the “LOA”) shall be issued, by PSCDCL to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, PSCDCL may, unless it consents to extension of time for submission thereof, appropriate the EMD of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by PSCDCL on

account of failure of the Selected Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

4.28 Failure to agree with the terms and conditions of the RFP or Contract

Failure of the Selected Bidder to agree with the Terms & Conditions of the RFP and Contract shall constitute sufficient grounds for the annulment of the award of contract, in which event the contract may be awarded to the next most responsive bidder.

4.29 Execution of Contract

After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Contract within the period prescribed in Clause 3.8. The Selected Bidder shall not normally be entitled to seek any deviation in the Contract. PSCDCL and the Selected Bidder may carry out changes, which are agreed and documented during negotiations, and enter into the Contract on mutually agreed terms and conditions. PSCDCL reserves the right to accept any changes that are found beneficial to the TPA Assignment.

4.30 Commencement of Assignment

The TPA shall commence the Services at the Project site within 7 (seven) days of the date of issuance of the LoA, or such other date as may be mutually agreed. If the Consultant fails to either sign the Contract as specified in Clause 4.28 or commence the assignment as specified herein, PSCDCL may invite the second ranked Bidder for negotiations. In such an event, the EMD of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 4.19 (iv).

4.31 Proprietary data

Subject to the provisions of Clause v, all documents and other information provided by PSCDCL or submitted by an Bidder to PSCDCL shall remain or become the property of PSCDCL. Bidders and the Consultant, as the case may be, are to treat all information as strictly confidential. PSCDCL will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to PSCDCL in relation to the Consultancy shall be the property of PSCDCL.

5 Fraud and corrupt practices

- i. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, PSCDCL shall reject a Proposal without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the Selection Process. In such an event, PSCDCL shall, without prejudice to its any other rights or remedies, forfeit and appropriate the EMD or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to PSCDCL for, inter alia, time, cost and effort of PSCDCL, in regard to the RFP, including consideration and evaluation of such Bidder’s Proposal.
- ii. Without prejudice to the rights of PSCDCL under Clause 5 (i) hereinabove and the rights and remedies which PSCDCL may have under the LOA or the Contract, if an Bidder or Consultant, as the case may be, is found by PSCDCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Contract, such Bidder or Consultant shall not be eligible to participate in any tender or RFP issued by PSCDCL during a period of 2 (two) years from the date such Bidder or Consultant, as the case may be, is found by PSCDCL to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- iii. For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
 - g. “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of PSCDCL who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of PSCDCL, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the

Contract, who at any time has been or is a legal, financial or technical consultant/ adviser of PSCDCL in relation to any matter concerning the Project;

- h. “**fraudulent practice**” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- i. “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
- j. “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by PSCDCL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- k. “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

6 Miscellaneous

- i. The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the PSCDCL has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- ii. PSCDCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
 - a. suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - b. consult with any Bidder in order to receive clarification or further information;
 - c. retain any information and/or evidence submitted to PSCDCL by, on behalf of and/or in relation to any Bidder; and/or
 - d. independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- iii. It shall be deemed that by submitting the Proposal, the Bidder agrees and releases PSCDCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- iv. All documents and other information supplied by PSCDCL or submitted by an Bidder shall remain or become, as the case may be, the property of PSCDCL. PSCDCL will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- v. PSCDCL reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

7 Scope of Work

7.1 Scope of work for the TPA

Quantity details and locations of various smart elements under the project are as under:

Details of quantity covering field locations of VMD, WiFi, PA system, ECB, environmental sensors spread across Pune city, SCOC locations, DC-DR location as per the final details finalized between PSCDCL and the Implementation Agency for the Smart Elements Project .

Scope of work for the TPA

1. Audit Framework Design:

- a. to study the specifications of each component of the project and SOW of main bidder
- b. to understand project execution plan, quality management plan, locations and challenges of the project
- c. to coordinate with PSCDCL and Consultants to the project
- d. to review, comment and record all the test procedures, specifications and drawings as submitted by the main TPA for using during audit and supervision
- e. to present project status, record minutes of meeting and raise significant non-compliance if any during weekly review meeting, monthly meeting and whenever required by PSCDCL.
- f. to prepare audit & supervision reports showing progress in the formats agreed with PSCDCL.

2. Infrastructure Audit: TPA Agency shall undertake following tasks as a part of audit and supervision during the implementation period till the Go-Live of the Smart Elements Project

- a. Undertake inspection of material on arrival in stores
- b. Audit for physical and IT infrastructure shipped to each site for quality and requirements matching with approved specifications
- c. Supervision of site activity for carrying work as per approved drawings (work related to trenching, conduit laying, cabling, installation, foundation, termination, physical testing, markings, switching on, local testing, calibration)
- d. Supervision of safety precautions, road diversions, safety standards followed

- e. Testing of range for WiFi coverage, calibration, load testing, performance
- f. SCOC installation activities (work related to false flooring, conduit laying, cabling, installation, termination, physical testing, markings, switching on, software installation, configuring, testing, SoP creation, integration and calibration)
- g. Coordination and facilitating acceptance of installation, work carried by main TPA from PMC relevant staff such as Electrical, Health, Garden, IT and roads.
- h. Escalating any issue related to specifications, delivery time line, or any issue that can affect the project in terms of quality, safety or time line.
- i. Audit complete IT system, licenses, sizing, operating systems, user creations, configuration management, antivirus provision in terms of safety.
- j. Setting the system generated reports showing logs of activities, user logs, NMS reports, system performance (down time) reports
- k. To validate data integrity, data security, redundancy, configuration of DC-DR sites, functioning of DC-DR, network management
- l. To supervise integration of all elements and external systems as per specifications, proposed use cases, escalation

3. Operations and Maintenance – Audit & supervision activities during the operations period of 5 years post Go-Live

The following major activities have to be performed during O&M period:

- a. Review of all system generated reports, analysis of reports, publishing monthly summary of all elements performance and necessary non performances if any on monthly basis.
- b. Evaluate down time, adherence to agreed SLA norms, evaluating SLA and rating system for non-performance, guiding client for performance evaluation of quarterly basis.
- c. Auditing revenue streams, declared revenue, actual revenue, auditing & validating documentation of revenue generating (advertisements, WiFi users or any other) stream on monthly basis
- d. Carry periodic physical audit at field for each element for installation, quality and functional performance (monthly basis).

- e. Coordinate with other PMC departments, PSCDCL and other agencies for evaluating system functioning, establishing feedback mechanism for capturing issues & improvements
- f. Oversee re-configuring of SoP's as per changing needs of the client.
- g. Monitoring data size, back-up policy, data redundancy and proactively inform/ escalate any issue.
- h. Facilitate demonstration of field element and SCOC to key visitors from time to time.

7.2 Payment schedule

The payment schedule for the TPA shall be on the following basis:

1. Monthly payments shall be made to the TPA for the Implementation Phase of the Smart Elements Project which is expected to achieve Go-Live status in July 2017
2. Subsequently quarterly payments shall be made for the Operational Phase of 5 years post Go-Live. Twenty quarterly payments shall be made to the TPA post Go-Live of the Smart Elements Project.

The payments to the TPA shall be made by PSCDCL and the Implementation Agency – L&T on a 50:50 sharing basis.

8 Annexure 1: Project for setting up network of Smart Elements

8.1 Overview of Smart Elements Project

The city wide ‘Network of Smart Elements’ will accomplish the following broad objectives:

- Pune being selected as #2 in smart cities mission competition, PSCDCL would like to undertake smart city initiatives to make Pune a better place by increasing safety, livability of the people in the city and to effectively provide the delivery of few urban services.
- Improve the situational awareness of the city administrators and residents.
- Provide administrators, citizens, tourists and businesses real time and actionable information to aid their day to day decision making.

#	Element	Objective	High Level Scope
1	City Wi-Fi	<p>Wi-Fi services will provide fast internet connectivity on the go to citizens of Pune. The objective of City Wi-Fi element is to provide:</p> <ul style="list-style-type: none"> • Free City Wi-Fi (limited usage) • Paid City Wi-Fi 	<p>To Set up and provide City Wi-Fi Services at identified locations across the city.</p> <p>List of locations: Hospitals: 47 Gardens: 82 Key Road Stretches: 71</p>
2	Smart Parking	<p>Smart Parking will:</p> <ul style="list-style-type: none"> • Obtain real time situational awareness about the occupancy of parking lot for citizens • Facilitate generation of parking receipts and tickets based on occupancy of parking lots • Provide real time availability of parking lots • Reduce the time required for identifying parking slots • Better utilization of parking areas 	<p>Setting up Smart Parking System at identified locations across the city.</p> <p>List of locations: Total 32 locations for bike/ car parks including open/ closed parking spots</p>

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3	Emergency Box	Emergency Box will help improve the safety and security of citizens within the city where they can seek assistance from the Smart City Operations Center (Command & Control Center) by pressing a button near them.	Setting up Emergency boxes at identified locations across the city. Total Locations: 136 spots where emergency boxes to be installed
4	Public Address Systems	Public Address System (voice) will enable civic bodies to respond/ communicate effectively while dealing with emergencies.	Setting up Public addressing systems/ Devices at identified locations across the city. Total Locations: 136 spots where public address systems to be installed
5	Environmental Sensors	Smart Environmental Sensors should be able to read and report the following parameters: Temperature, Humidity, Radiation and Air Quality in the PMC area.	Setting up Environment Sensors at identified locations across the city. Total Locations- 50
6	Variable Messaging Display	Variable messaging displays will be used to display the useful information related to: <ul style="list-style-type: none"> • Traffic congestion • Accidents incidents • Ongoing Roadwork zones • Speed limits • Key notices or messages from PMC like information about any emergency or disaster • Display the parking availability information, etc. 	Setting up Variable Messaging Display (VMD) at identified locations across the city. Total Locations- 161
7	ABB Fiber Network Solution	<ul style="list-style-type: none"> • Successful Bidder will lay the ABB fiber network across Aundh-Baner-Balewadi (identified as area for Area Based Development) for providing connectivity to all 	Successful Bidder need to lay down the fiber network in Aundh- Baner- Balewadi (ABB) area.

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		<p>smart elements as mentioned in this RFP document</p> <ul style="list-style-type: none"> For implementation across the entire city, Successful Bidder can use MPLS or any other network topology for deploying the smart elements as mentioned in this RFP document. 	
8	Smart City Operations Center	<p>Key Objectives of Smart City Operations Center:</p> <ul style="list-style-type: none"> To serve as the centralized monitoring & decision making hub for managing equipment, devices, resources and assets for Smart Elements project To serve as a centralized decision making center which supports and strengthens coordination in response to incidents/ emergency situations To serve as central information, communication, incident management hub for PMC To provide integration points for other existing or proposed command centers from other government agencies e.g. Police, Disaster, etc. <p>Smart City Operations Center (SCOC) will enable city administration and its stakeholders in the following:</p> <ul style="list-style-type: none"> Effective decision making Delivering effective governance by aggregating various data feeds from sensors and systems 	<p>Setting up Smart City Operations Center (SCOC) (i.e. Command & control Center) with 25 operators Control Room.</p> <p>SCOC Solution should have central infrastructure and Services management platform to centrally monitor and manage all the services.</p>

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		<ul style="list-style-type: none">• Providing interface /dashboards to generate alert and notifications in real time• Quick and effective response to emergency or disaster situation	
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9 Annexure 2: Formats for Technical Proposal

9.1 Letter of Proposal

<<To be printed on lead TPA company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Subject: Selection of TPA for auditing, supervision and certification of network of smart elements project in Pune City

Reference: Tender No :SC12/17 Dated 07/03/2017

Dear Sir/ Madam,

With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as TPA for the auditing, supervision and certification of network of smart elements project. The proposal is unconditional and unqualified

We are submitting our Proposal as [sole applicant].

We understand you are not bound to accept any Proposal you receive. If negotiations are held during the period of validity of the Proposal, i.e., before [date], we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us, subject only to the modifications resulting from negotiations in accordance with the RFP.

1. We acknowledge that PSCDCL will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the TPA for assignment, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the TPA for the aforesaid assignment.

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3. We shall make available to PSCDCL any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. We acknowledge the right of PSCDCL to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
 - (a) We have examined and have no reservations to the RFP , including any Addendum issued by the Client;
 - (b) We do not have any conflict of interest in accordance with the terms of the RFP;
 - (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
 - (d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the TPA, without incurring any liability to the Applicants.
8. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Services for the Project or which relates to a grave offence that outrages the moral sense of the community.
9. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or

convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that we have not been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFP.

10. We further certify that no investigation by a regulatory authority is pending either against us or against our affiliates or against our CEO or any of our Directors/Managers/employees.
11. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Client in connection with the selection of TPA or in connection with the selection process itself in respect of the above mentioned assignment.
12. We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall we have any claim or right of whatsoever nature if the TPA assignment is not awarded to us or our proposal is not opened or rejected.
13. We agree to keep this offer valid for one hundred eighty (180) days from the PDD specified in the RFP.
14. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith.
15. In the event of our being selected as the TPA for the assignment, we agree to enter into a Contract in accordance with the contract prescribed in the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
16. We have studied the RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by PSCDCL or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
17. The Technical proposal and Financial Proposal is being submitted separately online as prescribed in the RFP. This Technical Proposal read with the Financial Proposal shall constitute the application which shall be binding on us.
18. We agree and undertake to abide by all the terms and conditions of the RFP Document.

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF
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We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

(Name and seal of the Applicant/Member in Charge)

9.2 Particulars of the Bidder

<<To be printed on lead TPA company's letterhead and signed by Authorized signatory>>

To whomsoever it may concern,

TPA information Format

Please find the details of bidder for participation in “selection Selection of TPA for auditing, supervision and certification of Smart City Operations Center in Pune City” tender:

Particulars of Applicant

1. State the following:

Name of Company or Firm:

Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):

Country of incorporation: Registered address:

Year of Incorporation:

Year of commencement of business:

Principal place of business:

Brief description of the Company including details of its main lines of business

PAN No: / Equivalent

TIN No: / Equivalent

Name, designation, address and phone numbers of authorised signatory of the Applicant:

Name: Designation: Company: Address: Phone No.:

E-mail address:

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2. For the Applicant, , state the following information:

(i) In case of non-Indian Firm, does the Firm have business presence in India?

Yes/No

If so, provide the office address (es) in India.

(ii) Has the Applicant been penalized by any organization for poor quality of work or breach of contract in the last five years?

Yes/No

(iii) Has the Applicant/ Member ever failed to complete any work awarded to it by any public authority/ entity in last five years?

Yes/No

(iv) Has the Applicant been blacklisted by any Government department/Public Sector Undertaking in the last five years?

Yes/No

(v) Has the Applicant suffered bankruptcy/insolvency in the last five years?

Yes/No

Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.

Yours sincerely,

Signature of Authorized signatory (with official seal)

Name :

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF
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Designation :
Address :
Telephone& Fax :
E-mail address :

9.3 Power of Attorney

<<To be printed on lead TPA company's letterhead and signed by Authorized signatory>>

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms..... son/daughter/wife and presently residing

at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the “**Authorised Representative**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Third Party Auditor for the Smart Elements Project, proposed to be developed by the (the “**Client**”) including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Client, representing us in all matters before the Client, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Client in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Contract with the Client.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE..... THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THISDAY OF, 20.....

For.....

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

(Signature, name, designation and address)

Witnesses

- 1.
- 2.

Notarised

Accepted

(Signature, name, designation and address of Attorney)

Notes

- *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 executed on a non-judicial stamp paper of Rs. 100 (hundred) and duly notarised by a notary public.*
- *Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

9.4 Format for Applicants experience

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an JV for carrying out consulting services similar to the ones requested under this assignment.]

- (a) Minimum of 3 assignments for which the applicant has carried out third party installation supervision and auditing services for ICT projects
- (b) Projects which have been implemented and are currently operational will be considered as eligible assignments provided applicant was involved in supervision and auditing during the implementation phase of the project
- (c) Limit each project to 2 single sided pages (1 sheet double sided)
 - Use projects with copy of proof of experience as required for meeting the minimum qualification criteria prescribed.
 - Exhibit projects in the last five years from the PDD.

Assignment Name and project cost:	Approx. value of the contract (in INR in Crore):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore):

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Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff – months provided by associated Consultants:
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of Associated Consultants, If any:	
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the assignment:	

Firm's Name:

Authorized Signature:

Note:

Client certificates shall be provided for each project. In case Client certificates are not available for some projects before the PDD and the applicant is subsequently selected as the preferred bidder, the applicant shall be required to submit the Client certificate for the specific projects for which Client certificate was not submitted. In the event of the applicant not providing these Client certificates within 15 days of award, PSCDCL may cancel the award to the applicant and appropriate the EMD submitted by the applicant as damages.

For the purpose of evaluation of Applicants the conversion rate of USD to INR shall be considered at the applicable currency conversion rate published by the Reserve Bank of India (RBI) 60 days before the PDD. In case of any other currency the same shall first be converted to USD as on the date 60 (Sixty) days prior to the Proposal Due Date and the amount so derived in USD shall be converted in to INR at

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the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date.

Please limit the description of the project in two A4 size sheets of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

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9.5 Format for Curriculum Vitae of Proposed Key Personnel

Please provide one page summary of experience. Limit each CV to 4 pages single-sided (2 sheets double-sided) plus a one page executive summary

1.	Proposed Position				
2.	Name of Firm	<i>Insert name of firm proposing</i>			
3.	Name of Staff	<i>[First] [Middle] [Surname]</i>			
4.	Date of Birth	<i>[Day, Month, Year]</i>	Nationality		
5.	Education	<i>Indicate college/university and other specialized education of staff member, giving names of institutions, qualifications obtained, and date</i>			
6.	Membership of Professional Organizations				
7.	Training & Publications :	<i>[Indicate significant training since education degrees (under 5) were obtained]</i>			
8.	Countries of Work Experience	<i>List countries where staff has worked in the last ten years</i>			
9.	Languages	Language	Proficiency (good/ fair/ poor)		
			Speaking	Reading	Writing
		<i>English</i>			
		<i>Language 2</i>			
10.	Employment Record <i>[Starting with present position, list in reverse order every employment held by staff member since</i>	Name of Organization	Position Held	Duration	
				_____ to Present	

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	<i>graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:</i>			
11.	Detailed Tasks Assigned			
12.	Work Undertaken that Best Illustrates Capability to Assigned Handle the Tasks Assigned	<p><i>[Among the assignments in which the Staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]</i></p> <p>Name of assignment or project:</p> <p>Year:</p> <p>Location:</p> <p>Client:</p> <p>Main project features:[<i>size in INR , type , and services provided</i>]</p> <p>Positions held:</p> <p>Activities performed:</p>		

9.6 Format for Annual turnover over last 3 financial years

<<To be printed on lead TPA company's letterhead and signed by Authorized signatory>>

S. No.	Financial Year	Annual Revenue from Consultancy Services of Applicant (INR)
1.	2013-14	
2.	2014-15	
3.	2015-16	
Average Annual Turnover		[indicate sum of the above figures divided by 3]

Certificate from the Statutory Auditor

This is to certify that..... [Name of the Firm] [Registered Address] has received the payments shown above against the respective years.

Name of Authorized Signatory:

Designation:

Name of firm:

(Signature of the Statutory Auditor)

Seal of the Firm

Note:

1. In case the Consultant does not have a statutory auditor, it may provide the certificate from its chartered accountant.

9.7 Format for Net Worth

S. No.	Financial Year	Net Worth (INR)
1.	2013-14	
2.	2014-15	
3.	2015-16	

Certificate from the Statutory Auditor

This is to certify that..... [*Name of the Firm*] [*Registered Address*] has a net worth as shown above against the respective years. The net worth shall mean (Subscribed and Paid up Equity + Reserves) less (Revaluation Reserves + miscellaneous expenditure not written off).

Name of Authorized Signatory:

Designation:

Name of firm:

(Signature of the Statutory Auditor)

Seal of the Firm

Note:

1. In case the Consultant does not have a statutory auditor, it may provide the certificate from its chartered accountant.

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9.8 Undertaking for number of technically qualified full time professionals on companies payroll

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Dear Sir/Madam,

I have carefully gone through the Terms & Conditions contained in the RFP Document with Tender No _____ for “**Selection of Third Party Auditor (TPA) for deployment and operation of Smart Elements Project in Pune City**”.

I hereby declare that my company <name of bidder> has <number to be defined by TPA> technically qualified professionals as on 28 Feb 2017. I further undertake that my company will deploy the required number of Key professionals and support staff required for providing TPA Services to PSCDCL as per the Scope of Work prescribed for the Project.

Details of the employees are:

#	Name of Resource	Educational Qualification	Total Work Experience
1			
2			
3			

I further certify that I am competent officer in my company to make this declaration.

Yours sincerely,

Signature of Authorized signatory (with official seal)

Name :
Designation :
Address :
Telephone& Fax :

E-mail address :

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9.9 Self-Declaration – No Blacklisting

<<To be printed on each company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Dear Sir/Madam,

In response to the RFP with Tender No. _____ dated _____ for "**Selection of Third Party Auditor (TPA) for deployment and operation of Smart Elements Project in Pune City**", as an owner/ partner/ Director of _____, I/ We hereby declare that presently our Company/ agency _____ is having unblemished record and is not declared ineligible for corrupt and fraudulent practices either indefinitely or for a particular period of time by any State/ Central Government/ PSU.

We further declare that presently our Company/ agency _____ is not blacklisted and not declared ineligible for reasons other than corrupt and fraudulent practices by any State/ Central Government/ PSU on the date of Bid Submission.

If this declaration is found to be incorrect then without prejudice to any other action that may be taken, my/ our security may be forfeited in full and the tender if any to the extent accepted may be cancelled.

Name of the TPA :
Authorized signatory :
Seal of the Organization :
Business Address :
Date :
Place :

9.10 : Approach paper on methodology and work plan for performing the assignment
(not more than six pages)

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9.11 : Composition of the team personnel, and task(s) of each team member

1. Key Professionals

Sl. No.	Name	Position	Task
1.			
2.			
3.			
4.			
..			
..			

2. Support Staff:

Sl. No.	Name	Position	Task
----------------	-------------	-----------------	-------------

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1.			
2.			
3.			
4.			
..			
..			

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9.12 :: Activity Schedule

1. Detailed activity schedule:

#	Designation	Name	Man Days (MD)		Week Numbers																										
			At Project site	Away from Project site (specify)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20							
1.																															
2.																															
3.																															
4.																															
5.																															
6.																															
7.																															
8.																															
9.																															
10.																															
11.																															
Total Man days																															

2. Submission of Reports

Sl No.	Reports	Date
1.	Weekly reports (Implementation Phase till Go-Live)	

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2.	Monthly Reports (Implementation Phase till Go-Live)	
3.	Quarterly Reports (O&M Phase post Go-Live)	

10 Annexure 3: Financial Proposal

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

10.1 Covering Letter for Financial Proposal

<<To be printed on company's letterhead and signed by Authorized signatory>>

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Dear Sir/Madam,

Subject: Appointment of Third Party Auditor (TPA) for deployment and operation of Smart Elements Project in Pune City

I/We,..... (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Third Party Auditor for above.

I/We agree that this offer shall remain valid for a period of 120 (one hundred and twenty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note: The Financial Proposal is to be submitted strictly as per forms given in the RFP.

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10.2 Financial Proposal format

<<To be printed on company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Dear Sir/Madam,

Subject: Appointment of Third Party Auditor (TPA) for deployment and operation of Smart Elements Project in Pune City

We, the undersigned, offer to provide the consulting services for the above in accordance with your Request for Proposal dated [Date], and our proposal. Our attached financial proposal is for the sum of [Amount in words and figures]. This amount is exclusive of the local taxes which we have estimated at (Amount in Words and Figures).

Our financial proposal shall be binding upon us subject to the modifications resulting from contract negotiations, up to the expiration of the validity period of the proposal, i.e., [Date].

We understand that you are not bound to accept any proposal you receive.

We remain

Yours Sincerely,

Signature of Authorized Signatory (with official seal)

Name :

Designation :

Address :

Telephone& Fax :

E-mail address :

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10.3 Summary of Costs

Item No.	Description	Amount (Rs.)
A.	PERSONNEL AND LOCAL COSTS	
I	Remuneration for Key Professionals (inclusive of all personal allowances)	
II	Remuneration for Support Personnel (inclusive of all personal allowances)	
III	Office Rent	
IV	Office Consumables like stationery, communication etc.	
V	Office Furniture and Equipment (Rental)	
VI	Reports and Document Printing	
VII	Surveys & Investigations	
VIII	Miscellaneous Expenses	
B	SUBTOTAL OF PERSONNEL AND LOCAL COSTS	
C	APPLICABLE TAXES (SERVICE TAX)	
E	TOTAL COST (INCLUDING TAXES)	

1. The financial evaluation shall be based on the above Financial Proposal.
2. No escalation on any account will be payable on the above amounts.
3. All other charges not shown here and all insurance premia are considered included in the man day rate/ overhead/ miscellaneous expenses.
4. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.

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10.4 Estimate of Personnel Costs

NO	Position	Name	Man day rates (Rs.)	Total Man days	Amount (Rs.)
A I. Remuneration for Professional Personnel (including all personal allowances)					
Total					
A II. Remuneration for Support Personnel (including all personal allowances)					
Total					

11 Annexure 4: Draft Contract

CONTRACT FOR CONSULTANCY SERVICES

between

PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED

and

[Name of Third Party Audit agency]

Dated: _____

FORM OF CONTRACT

I. COVER AGREEMENT

This CONTRACT FOR THIRD PARTY AUDIT SERVICES (hereinafter called the “Cover Agreement”) is made at Pune on the ----- day of the month of ----- [●], by and between

PUNE SMART CITY DEVELOPMENT CORPORATION LTD., a statutory body under the under the Companies Act 2013 having its principal office at Pune Municipal Corporation Building, Shivajinagar, Pune-05, hereinafter referred to as the “**Client**” which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the **First Part.**

AND

[●] (a [company] incorporated under the provisions of the Companies Act [●], with Corporate Identity Number[●], having its registered office at [●], hereinafter referred to as the “**Third Party Auditor**” or “**TPA**”, which expression unless repugnant to the context or meaning thereof shall include its successors and permitted assigns and substitutes). of the Other Part

WHEREAS

- A. The Client issued the Request for Proposal (ref: Tender No SC08/ 2016 dated 15th October 2016) to seek the services of a System Integrator for setting up a network of smart elements in the city of Pune (the “**Smart Elements Project**”).
- B. After evaluation of the bids received, the Client accepted the bid submitted by M/s Larsen & Toubro and issued its Purchase Order (Outward No 193 dated 6th January 2017) to M/s Larsen & Toubro (hereinafter referred to as the “**Implementation Agency**”).
- C. The Client intends to undertake selection of third party auditor (TPA) for review, auditing, supervision and certification of deployment of the Smart Elements Project by the

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

Implementing Agency (the “**TPA Assignment**”). The TPA Assignment shall be financed by the Authority and the Implementation Agency, in accordance with the terms and conditions set forth in this Contract.

- D. The Client had accordingly invited proposals by its Request for Proposals dated [●] (the “**Request for Proposals**” or “**RFP**”) prescribing the technical and commercial terms and conditions for selection of the Third Party Auditor for deploying and operating Smart Elements in Pune, and invited bids for selection of bidders. The copy of the RFP is annexed at **Appendix F**.
- E. After evaluation of the bids received, the Client has accepted the bid of the selected Bidder. Thereafter the Client and the TPA participated in negotiations, pursuant to which the TPA was issued the Letter of Award No. [●] dated [●] (the “**LOA**”), requiring, *inter alia*, the execution of this Contract within 15 (fifteen) days of the date of issue thereof.
- F. The TPA has proposed to the Client to render certain services and the Client has agreed to avail of such services from the TPA, in accordance with the terms and conditions specified in this Contract.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1 CONTRACT

- 1.1 The Parties shall be bound by the terms and conditions contained in this Contract. “**Contract**” shall mean, collectively, this Cover Agreement, the General Conditions of Contract (“**GCC**”), the Special Conditions of contract (“**SCC**”), the Appendices listed below, and any other appendices, annexes, schedules, exhibits and documents that may from time to time be attached hereto or thereto, or incorporated herein or therein, and as any or all of the same may be amended, modified or supplemented, or superseded, from time to time in accordance with the terms of Clause 2 of the GCC.

The following Appendices shall form an integral part of this Contract:

APPENDIX A:	Terms of reference containing, inter-alia, the Description of the Services and reporting requirements,
APPENDIX B:	Key Professional and Additional Personnel
APPENDIX C:	Approach and Methodology including work plan for performing the Assignment including presentations if any

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APPENDIX D:	Duties of the Client.
APPENDIX E:	Monthly Rates and Maximum Out of Pocket Expenses, Payment Schedule
APPENDIX F:	Copy of RFP, technical proposal submitted by the Consultant, and the financial proposal as submitted by the Consultant and as amended pursuant to the post bid negotiations.
APPENDIX G:	Copy of letter of invitation.
APPENDIX H:	Copy of letter of acceptance.
APPENDIX I:	Format of bank guarantee for Performance Security.

2 RIGHTS AND OBLIGATIONS

- 2.1 The mutual rights and obligations of the Client and the TPA shall be as set forth in the Contract; in particular:
- 2.1.1 The TPA shall carry out the Services in accordance with the provisions of the Contract including without limitation, the terms of reference annexed herewith and in the manner set out in Approach and Methodology (Appendix C) submitted by the TPA along with the Proposal;
- 2.1.2 The Client shall be responsible to comply with its obligations set forth in the Contract and make payments to the TPA as set forth in Appendix E hereof and in accordance with the provisions of this Contract.

3 PRIORITY OF DOCUMENTS

- 3.1 The Cover Agreement and other documents comprising this Contract are to be taken as mutually explanatory. The Parties expressly agree that to the extent of any conflict, inconsistency or contradiction between any clauses forming part of the documents constituting this Contract, the documents shall be interpreted in the following order of precedence:
- 3.1.1 The Cover Agreement will override all provisions of other documents comprising the Contract.

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- 3.1.2 the provisions of the SCC shall be subject to the Cover Agreement, but shall override all provisions of other documents comprising this Contract;
- 3.1.3 the provisions of the GCC shall be subject to the Cover Agreement and the SCC, but shall take precedence over all other documents comprising this Contract;
- 3.1.4 the Appendices shall be subject to each of the Cover Agreement, SCC and the GCC; and;
- 3.1.5 Within each of the documents comprising this Contract, in case of any ambiguities or discrepancies, the specific clause relevant to the issue will prevail over the general clauses.

4 GOVERNING LAW

- 4.1 This Contract shall be governed by and be construed and interpreted in accordance with Indian law and the courts of Pune, India shall have exclusive jurisdiction over all matters arising out of or relating to this Contract.

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

FOR AND ON BEHALF OF PSCDCL

BY AUTHORISED REPRESENTATIVE

Name:

Designation:

FOR AND ON BEHALF OF

[THIRD PARTY AUDITOR]

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

BY AUTHORISED REPRESENTATIVE

Name:

Designation

Witness

Signature:

Name:

Address:

II. GENERAL CONDITIONS (GC) OF CONTRACT

1 GENERAL PROVISIONS

1.1. Definitions

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

- (a) **“Applicable Law”** means all applicable laws of the Government’s country, including statutes, bye-laws, rules, regulations, notifications, circulars, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, made pursuant thereto, all applicable schemes, guidelines, administrative and departmental regulations of governmental authorities having authority or jurisdiction in relation to the Assignment or any part thereof or having authority or jurisdiction in relation to the performance or discharge of the respective rights and obligations of the Parties hereunder, all judgments, decrees, injunctions and orders of any court or tribunal of competent jurisdiction and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (b) **“Affiliate”** means, with respect to any Party, any other entity that, directly or indirectly:
 - (a) Controls such Party; (b) is Controlled by such Party; (c) is Controlled by the same person who, directly or indirectly, Controls such Party; and “Control” with respect to any person, shall mean: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting share capital, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such person; (b) the possession, directly or indirectly, of a voting interest of more than fifty

percent (50%); and the terms “Controlling” and “Controlled by” shall be construed accordingly.

- (c) “**Client**” has the meaning ascribed thereto in the description of Parties in the Cover Agreement.
- (d) “**Conflict of Interest**” has the meaning set forth in Clause 4.1.2(i) of the GCC;
- (e) “**Contract**” has the meaning ascribed thereto in Clause 1 of the Cover Agreement;
- (f) “**Contract Value**” the total value of payments to be made for the Services to the TPA by the Client;
- (g) “**Corrupt Practice**” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution
- (h) “**Key Professional**” means the TPA Personnel specified in Appendix B;
- (i) “**GC**” or “**GCC**” means the General Conditions of Contract;
- (j) “**Government**” means the Government of Client’s country;
- (k) “**Local Currency**” means the currency of the Government;
- (l) “**Material Adverse Effect**” means material adverse effect on (a) the ability of the TPA to observe and perform any of its rights and obligations under and in accordance with the provisions of this Contract; and/or (b) the legality, validity, binding nature or enforceability of this Contract on the Consultant.
- (m) “**OPE**” means out of pocket expenses;
- (n) “**Party**” means the Client or the Consultant, as the case may be, and Parties means both of them;

- (o) **“Performance Security”** means the irrevocable and unconditional bank guarantee provided by the TPA from a Nationalised or Scheduled Indian bank except Cooperative Banks, as guarantee for the performance of its obligations in respect of this Contract, and in accordance with the provisions of the SCC.
- (p) **“Personnel”** means persons engaged by any of the Members of the TPA or by any Sub-TPA and assigned to the performance of the Services or any part thereof; provided always that Personnel constituting the Key Professional shall be employees of the TPA;
- (q) **“SC” or “SCC”** means the Special Conditions of Contract by which these General Conditions of the Contract may be amended or supplemented;
- (r) **“Services”** means the work to be performed by the TPA under this Contract; and
- (s) **“State Government”** means the government of the State in which the Smart Elements Project is located;
- (t) **“Sub-consultant”** means any entity to which the TPA subcontracts any part of the Services in accordance with the provisions of Clause 5 of the GCC;
- (u) **“Taxes”** means all taxes, duties, levies, cess, imposts, surcharge, assessments, fees, charges and other impositions as may be levied under the Applicable Law;
- (v) **“Third Party Auditor”** or **“TPA”** has the meaning ascribed thereto in the description of Parties in the Cover Agreement.
- (w) **“TPA Assignment”** means the assignment to provide the Services by the TPA to the Client as per the meaning ascribed in the Cover Agreement;
- (x) **“Fraudulent Practice”** means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

1.2. Language

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

1.3. Notices

- 1.3.1. Any notice, request or consent made pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

1.4. Location

- 1.4.1. The Services shall be performed at such locations as are specified in the RFP, this Contract and, where the location of a particular task is not so specified, at such locations, whether in Country or elsewhere, as may be required by the Client and agreed with the TPA.

1.5. Authorized Representatives

- 1.5.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the TPA may be taken or executed by the officials designated in the SCC as the representatives of the Client and the Consultant, as the case may be; provided that either Party may, from time to time, by 15 (fifteen) days notice in writing, change its authorised representative. Notwithstanding anything to the contrary in this Contract, the Client's representative shall have no authority to (a) amend, alter, modify or waive any provision or term of this Contract, or (b) relieve the TPA of any of its duties, obligations or responsibilities under this Contract or waive any failure or breach on the part of the Consultant.

1.6. Taxes and Duties

- 1.6.1. Unless otherwise specified in the SCC, the TPA shall pay all taxes, duties, fees and other impositions as may be levied under Applicable Law, the amount of which is deemed to be included in the Contract Value.
- 1.6.2. The Client shall be entitled to deduct any Taxes required to be deducted at source under Applicable Law from any payments to be made by it to the Consultant. Further, in the event that the Client receives notification or assessment of any Taxes (whether as an agent, or in substitution of the Consultant, any Sub-consultants or its Personnel, servants, agents or otherwise) in respect of or arising out of the performance of the Consultant's obligations under this Contract which remain outstanding, the Client shall notify the TPA of the same and the TPA shall promptly take all necessary action for settlement and/or any other lawful disposal of such notification or assessment. Furthermore, the TPA shall pay forthwith on demand to the Client all costs including fines and penalties, which the Client may incur as a result of:
- (a) the Client having been required by any governmental authority to pay any Taxes which the TPA is liable to bear hereunder; or
 - (b) any cost actually sustained by the Client for failure by the TPA to pay any Taxes for which it is responsible under this Contract.

1.7. Interpretation.

In this Contract, unless otherwise stated or except where the context otherwise requires:

- 1.7.1. The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.
- 1.7.2. a reference to any document, agreement, deed or other instrument (including, without limitation, references to this Contract) shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, novated or substituted.

- 1.7.3. a reference to any Applicable Law includes any amendment, modification, re-enactment or change in interpretation or applicability of such law and a reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to.
- 1.7.4. where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning;
- 1.7.5. the words 'include' and 'including' are to be construed without limitation. The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to this Contract as a whole. Where a wider construction is possible, the words 'other' and 'otherwise' shall not be construed ejusdem generis with any foregoing words;
- 1.7.6. in the Contract, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of the Contract;
- 1.7.7. any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done;
- 1.7.8. the rule of interpretation which requires that a contract be interpreted against the person or Party drafting it shall have no application in the case of this Contract;
- 1.7.9. References to a person (or to a word importing a person) shall be construed so as to include:
- (i) Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other Governmental Authority (whether or not in each case having separate legal personality);

- (ii) That person's successors in title and assigns or transferees permitted in accordance with the terms of the Contract; and
- (iii) References to a person's representatives shall be to its officers, Personnel, legal or other professional advisors, subcontractors, agents, attorneys and other duly authorized representatives.

1.7.10. reference to a "day" shall mean a calendar day

1.7.11. Reference to a provision of the GCC shall be a reference to such provision as may be amended or supplemented by the SCC.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1. Effectiveness of Contract

2.1.1. This Contract shall come into effect on the date the Contract is signed by both the Parties and such later date as may be stated in the SCC ("**Effective Date**").

2.2. Commencement of Services

2.2.1. The TPA shall commence the Services from the tenth (10th) day of the Effective Date or any date prior to that with written approval from the Client ("**Commencement Date**"). If the TPA does not commence the Services within the aforesaid period or if the TPA fails to provide the Performance Security within the period specified in the SCC, the Client may, by not less than seven (7) days' notice to the Consultant, declare this Contract to be null and void and this Contract shall stand terminated in the event of such declaration and the TPA shall be deemed to have accepted such termination. Further, the Client may, in the event of such termination, forfeit the Performance Security as liquidated damages and not as penalty, in respect of losses and costs incurred by the Client on account of such termination; provided that in the event the Performance Security has not been submitted by the Consultant, the Client shall be entitled to forfeit the bid security and claim the remaining sum (by which the value of

the Performance Security exceeds the bid security) from the Consultant. The Parties agree that the liquidated damages amounts specified herein are a genuine pre-estimate as of the date hereof of damages likely to be incurred.

2.3. Expiration of Contract

2.3.1. Unless terminated earlier pursuant to Clause 3 of the GCC, this Contract shall expire when Services have been completed to the satisfaction of the Client and all undisputed payments have been made or at the end of such time period as shall be specified in the SCC, whichever is later.

2.4. Force Majeure

2.4.1. Definition

- (i) For the purposes of this Contract, “**Force Majeure**” means an event, act, or circumstances, or combination of events, acts or circumstances, which materially and adversely affects the affected Party's performance of its obligations pursuant to the terms of this Contract, but only if and to the extent that such events, acts or circumstances are beyond the reasonable control of the affected Party, were not the fault of the affected Party, were not reasonably foreseeable at the time of execution of this Contract and could not have been prevented or overcome or mitigated by the affected Party. Force Majeure includes, but is not limited to war, riots, civil disorder, strikes (excluding strikes or labour disturbance at the facilities of the TPA or Client) earthquake, fire, explosion, storm, flood or other adverse weather conditions, any unlawful or unauthorised act, failure to act, restraint or regulation, of any governmental authority (other than the Client) affecting the performance by a Party of its obligations hereunder; but shall not include the following circumstances, except to the extent that they are consequences of an event of Force Majeure:

- a) unavailability of Personnel or unavailability, late delivery, or changes in cost of any material, equipment, services, technology, software required for the performance of the Services;
- b) insufficiency of finances or funds, financial insolvency, financial distress or this Contract becoming onerous to perform;
- c) failure to comply with any Applicable Law; or
- d) any delay or default of any Sub-consultants or Personnel.

2.4.2. No Breach of Contract

- (i) The failure of or delay by a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:
 - a) has taken all precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract and to mitigate the consequences of any event of Force Majeure; and
 - b) has informed the other party as soon as possible, and in any event within a period of seven (7) days of the occurrence of the Force Majeure event:
 - c) the dates of commencement and estimated cessation of such event of Force Majeure; provided that in case of a continuing Force Majeure event, the affected Party shall provide periodic reports at intervals of not more than seven (7) days; and
 - d) the manner in which the Force Majeure event(s) affects the Party's obligation(s) under the Contract.
- (ii) The affected Party shall also notify the other Party of the cessation of the Force Majeure event. The Parties agree that neither Party shall be able to suspend or

excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above. Further, the affected Party shall not be relieved of the performance of that part of its obligations under this Contract which is not affected by the event of Force Majeure.

2.4.3. Extension of Time

- (i) If either Party becomes unable to perform all or part of its obligations under this Contract on account of an event of Force Majeure, the affected Party shall be permitted an extension of time for the performance of such obligations to the extent affected by the event of Force Majeure and, if the TPA is the affected Party, it shall be entitled to an extension of time for the performance of the relevant Services for a period equal to the time during which the impossibility of performance due to Force Majeure continues. Further, to the extent the TPA is required to re-mobilize its Personnel for resuming the performance of its obligations under the Contract consequent to an event of Force Majeure, the TPA shall be entitled to an extension of time for such period as may be determined by the Client in consultation with the Consultant.

2.4.4. Payments

- (i) During the period of existence of an event of Force Majeure, to the extent the TPA is unable to perform any Services as a result of such event of Force Majeure, the TPA shall not be entitled to continue to be paid under the terms of this Contract or to be reimbursed for any costs incurred by it during such period (except to the extent such costs relate to that part of the Services that the TPA continues to perform in accordance with the provisions of this Contract), provided that the TPA shall be paid reasonable and properly incurred expenses in demobilising and reactivating the Services after the end of such period.
- (ii) In the event of force majeure affecting the Project, the TPA and the Client shall discuss and mutually agree on adjustments, if any, that may be required to the scope, level or schedule of the Services provided by the TPA and the

remuneration payable to the TPA and any such mutually agreed changes shall be given effect by issuance of a Supplementary Work Order by the Client.

3. TERMINATION

3.1. By the Client

3.1.1. The Client may terminate the Contract if:

- (i) the TPA becomes insolvent or bankrupt or is unable to pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of its creditors;
- (ii) any meeting is convened for consideration of a resolution for, or a resolution is passed for the voluntary winding up of the Consultant, or if the TPA commences a voluntary proceeding under any applicable bankruptcy, insolvency, winding up or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consents to the appointment or taking possession by a receiver, liquidator, assignee (or similar official) for any part of its property;
- (iii) an involuntary proceeding against the TPA has been commenced under any applicable bankruptcy, insolvency, winding up or other similar law now or hereafter in effect, or in any case, proceeding or other action for the appointment of a receiver, liquidator, assignee (or similar official) for any part of its property, or for the winding up or liquidation of its affairs, or other action has been presented to a court or other governmental authority, and such proceedings are not dismissed, withdrawn or stayed within sixty (60) days of such commencement;
- (iv) a Material Adverse Effect occurs;
- (v) the TPA fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 4 of the Cover Agreement;

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

- (vi) the TPA submits to the Client a false statement which affects the rights, obligations or interests of the Client;
- (vii) any document, information, data or statement submitted by the TPA in its proposal in response to the RFP, based on which the TPA was considered eligible or successful is found to be false, incorrect or misleading; or any representation or warranty of the TPA set forth in this Contract is found to be false, incorrect or misleading;
- (viii) there is a breach of the Consultant's obligations under Clause 4.1.2 of the GCC;
- (ix) the TPA repudiates or abandons this Contract or otherwise takes any action or evidences or conveys an intention not to be bound by this Contract;
- (x) the aggregate liquidated damages payable by the TPA under Clause 8.0 of the GCC exceed the ceiling specified thereunder;
- (xi) there is any other breach of the TPA of the provisions of this Contract or if the TPA does not remedy a failure in the performance of its obligations under the Contract to the satisfaction of the Client, within a period of sixty (60) days or such longer period as the Client may have subsequently approved in writing;
- (xii) as the result of Force Majeure, the TPA is unable to perform a material portion of the Services, as the case may be, for a continuous period of more than one sixty (60) days or an aggregate period exceeding ninety (90) days; or
- (xiii) the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

{The Members constituting the TPA further agree and acknowledge that the occurrence of the events listed in this Clause 3.1 in respect of any Member shall be deemed to be occurrence of such event in respect of all the Members and the TPA and the Client shall have the right to terminate this Contract in accordance with the provisions hereof.}

Upon the occurrence of the any of the events specified above, the Client shall give at least thirty (30) days' written notice to the TPA for terminating this Contract. For the avoidance of doubt, it is hereby clarified that the aforesaid notice period of thirty (30) days shall not be deemed to be a cure period and would be for the purpose of taking steps to bring the Services to a close in a prompt and orderly manner.

3.2. By the TPA

3.2.1. The TPA may terminate this Contract upon the occurrence of any of the following events:

- (i) if, as the result of Force Majeure, the TPA is unable to perform a material portion of the Services to be performed under any Work Order, as the case may be, for a continuous period of more than one sixty (60) days or an aggregate period exceeding ninety (90) days;
- (ii) if the Client does not remedy a failure in the performance of its obligations under this Contract, within a period of sixty (60) days after receipt of a notification from the TPA or within such further period as the TPA may have subsequently approved in writing; or
- (iii) If the Client fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 4 of the Cover Agreement.

Upon the occurrence of the any of the events specified above, the TPA may by not less than thirty (30) days' written notice to the Client terminate, this Contract. For the avoidance of doubt, the Parties agree that the aforementioned period of thirty (30) days shall not be deemed to be a cure period and would be for the purpose of taking steps to taking over the performance of Services from the TPA in a prompt and orderly manner.

3.3. Cessation of Rights and Obligations

3.3.1. Upon termination of this Contract pursuant to actual Termination, or upon expiration of this Contract pursuant to relevant clause hereof, all rights and obligations of the

Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in relevant clause hereof, (iii) the TPA's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 5.5 hereof, (iv) the rights of indemnity of the Client specified in clause 15.2 and (v) any right which a Party may have under the Applicable Law.

3.4. Cessation of Services

3.4.1. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 3.1 and 3.2 of the GCC, the TPA shall, immediately upon dispatch or receipt of such notice, as the case may be, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the TPA and equipment and materials furnished by the Client, the TPA shall proceed as provided under Clause 5.5 of the GCC.

3.5. Payment upon Termination

3.5.1. Upon termination of this Contract pursuant to Clauses 3.1 (other than Clauses 3.1.1(xii) and 3.1.1(xiii)), the Client shall pay to the TPA (subject to set-off in respect of any sums due from the TPA to the Client, including any liquidated damages payable under this Clause 3.5 and or under Clause 8 of the GCC), remuneration pursuant to Clause 8 of the GCC for deliverables satisfactorily completed prior to the effective date of termination and in respect of such Services, reimbursable expenditures actually incurred prior to the effective date of termination. "For the avoidance for doubt, it is clarified that termination of this Contract pursuant to Clause 3.1 (other than Clauses 3.1.1(xii) and 3.1.1(xiii)), the TPA shall be entitled to remuneration only in respect of deliverables and/or milestones that have been satisfactorily completed and shall, notwithstanding the provisions of Clause 8.1.3 of the GCC, not be entitled to claim any remuneration or reimbursement of OPE in respect of any milestones/deliverables that have not been satisfactorily completed."

- 3.5.2. Upon termination of this Contract pursuant to Clauses 3.1.1(xii), 3.1.1(xiii) and Clause 3.2, the Client shall make the following payments to the TPA (subject to set-off in respect of any sums due from the TPA to the Client, including any liquidated damages payable under Clause 8 of the GCC):
- (i) remuneration pursuant to Clause 8 of the GCC for Services satisfactorily performed prior to the effective date of termination and in respect of such Services, reimbursable expenditures actually incurred prior to the effective date of termination; and
 - (ii) Reimbursement of reasonable costs incurred by the TPA incidental to the prompt and orderly close of Services and handing over to the Client. “For the avoidance of doubt, it is clarified that the Client shall not under any circumstances (either in the event of termination of the Contract for any reason whatsoever or otherwise), be liable for any consequential or indirect loss or damage to the Consultant, including without limitation any loss of profit, loss of contract, liability under other agreements, or liability to third parties.”
 - (iii) In case of termination pursuant to Clause 3.1 (other than Clauses 3.1.1(xii) and 3.1.1(xiii)), the Client shall be entitled to forfeit and appropriate the Performance Security. In the event the termination is due to a failure of the TPA to establish or maintain the Performance Security in the amounts and on the terms required under this Contract, the TPA shall be liable to pay a sum equivalent to the value of the Performance Security as prescribed under the SCC, as liquidated damages and not as penalty, in respect of losses and costs incurred by the Client on account of such termination. The Parties agree that the liquidated damages amounts specified herein are a genuine pre-estimate as of the date hereof of damages likely to be incurred. Further, without prejudice to the other rights and remedies of the Client under this Contract or at law, the Client shall be entitled to blacklist the TPA and/or its Affiliates from participating in any tender or procurement process of the Client issued during a period of two (2) years from the date of notification of blacklisting.

4. OBLIGATIONS OF THE CONSULTANT

4.1.1. General

- (i) The TPA shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The TPA shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-consultants or third parties.

4.1.2. Conflict of Interest

- (i) Any breach of an obligation under Clause 4 shall constitute a conflict of interest ("Conflict of Interest"). The TPA shall comply and shall ensure the Sub-consultants and Affiliates of the foregoing comply with the provisions of Clause 4.1.2 and any breach of such an obligation shall constitute an event of default by the TPA for the purposes of this Contract. The TPA shall promptly disclose any Conflict of Interest to the Client. For the avoidance of doubt, the TPA agrees that a disclosure of any Conflict of Interest shall not in any manner whatsoever be deemed to cure such Conflict of Interest.
- (ii) For the purposes of this Contract, "**Selection Process**" shall mean the selection process adopted by the Client for the short-listing of applicants, evaluation of proposals (comprising the financial and technical proposals) of applicants, negotiations with Successful Applicants, and all other acts incidental thereto (including without limitation the expression of interest stage, Request for Proposal Stage, negotiation stage, etc) prior to the execution of this Contract.

4.1.3. TPA Not to Benefit from Commissions, Discounts, etc

- (i) The remuneration of the TPA pursuant to Clause 8 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services, and the TPA shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the TPA shall use their best efforts to ensure that the Personnel, any Sub-consultants and agents of either of them, similarly shall not receive any such additional remuneration.

4.1.4. TPA and Affiliates Not to Engage in Certain Activities

- (i) The TPA agrees, that, during the term of the Contract and after the termination or expiry of this Contract, the TPA shall not and shall ensure that the Affiliates of any of the Members, its Sub-consultants and any Affiliates of the Sub-consultants, do not provide goods, works, services, loans, capital or equity (other than the Services and any continuation thereof) for any project or works resulting from or closely related to the Services for a period of 2 (two) years ; Further, the TPA shall during the course of performance of the Services and for a period of two (2) years after the expiry or termination of this Contract, ensure that there is no conflict of interest with that of the TPA Assignment, Smart Elements Project or the Client and to this end not enter into any arrangements (formal or informal) or undertake activities such that its interests conflict with any of its obligations under the Contract or are prejudicial to the interests of the Smart Elements Project or of the Client.
- (ii) Further the TPA shall not and shall ensure that the Sub-consultants, the Affiliates of the foregoing and Personnel will not use improperly, for purposes of competition or gain, or pass on to others, any information or document, provided by the Client or any other persons involved in the Project.

For the purposes of this Clause 4.1.4, an 'Affiliate' shall also include a partner in the firm of the Consultant/Sub-Consultant, as the case may be, or a person who holds more than

five per cent (5%) of the subscribed and paid up share capital of the Consultant/Sub-consultant, as the case may be, and any Affiliate thereof.

4.1.5. Prohibition of Conflicting Activities

- (i) The TPA shall not and shall ensure that the Sub-consultants and the Personnel do not engage, either directly or indirectly, for a period of two (2) years after the termination or expiry of this Contract, in any business or professional activities which would conflict with the activities assigned to it under the Contract.
- (ii) The TPA shall, and shall ensure that Affiliates of the foregoing and Personnel, observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or act or omit to act in a manner prejudicial to the interests of the Client or the TPA Assignment during the Selection Process or while performing its obligations (collectively, “**Prohibited Practices**”). Notwithstanding anything to the contrary contained in this Contract, the Client shall be entitled to terminate the Contract forthwith by a communication in writing to the TPA, without being liable in any manner whatsoever to the TPA or Affiliates of the foregoing or Personnel, if it determines that the TPA has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Contract (including in course of performance under or pursuant to this Contract). In such an event, the Client shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Client towards, *inter alia*, time, cost and effort of the Client, without prejudice to the Client’s any other rights or remedy hereunder or in law.
- (iii) Without prejudice to the rights of the Client under Clause 4.1.5 (ii) above and the other rights and remedies which the Client may have under this Contract or at law, if the TPA or any Sub-consultants or Affiliates of the foregoing are found by

the Client to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Contract, the Client shall be entitled to blacklist the TPA and the Consultant shall not be eligible to participate in any tender (including but not limited to any request for proposal) issued during a period of 2 (two) years from the date the Consultant/any Sub-consultants or Affiliate is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

- (iv) For the purposes of Clauses 4.1.5 (ii) and (iii), the following terms shall have the meaning hereinafter respectively assigned to them:
- a) “**corrupt practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning this Contract, or any official of the Government or the State Government or PSCDCL before or after the execution thereof (including in course of performance under or pursuant to this Contract), at any time prior to the expiry of one (1) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of this Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or this Contract, who at any time has been or is a legal, financial or technical adviser to the Client in relation to any matter concerning the Project;

- b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Client under or pursuant to the Contract;
- d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process or the process of selection of persons for the execution of various components of the Project; or (ii) offering or attempting to offer to any third person any material or other benefit which such person is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the Selection Process or during the execution of this Contract; and
- e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among the persons who have bid or proposed to submit bids in response to the RFP with the objective of restricting or manipulating a full and fair competition in the Selection Process

4.1.6. **Confidentiality**

- (i) The TPA shall ensure that the Affiliates of the TPA and the Sub-consultants and Personnel do not, without the prior written consent of the Client, disclose, divulge, furnish or make known or accessible to, or use for the benefit of, anyone other than the Parties hereto, the contents of this Contract, , any proprietary or confidential information relating to the Smart Elements Project, the Services,

any information which may come to the TPA's knowledge in the course of negotiations or otherwise concerning this Contract and/or the Smart Elements Project (including but not limited to any information provided by or pertaining to other entities involved in the Smart Elements Project, such as other consultants, contractors etc.) or the commercial or financial arrangements or affairs of the Client (collectively, "Information"); provided, however, that the TPA may disclose Information to its Personnel and the officers, employees of the Consultant and/or its Affiliates (the Consultant's "Representatives") who have a legitimate need to know the Information for the performance of Services. The TPA shall be responsible for informing its Representatives of the confidentiality requirements imposed by this Contract and shall be responsible for any breach of the terms and conditions hereof by its Representatives. Further, the TPA agrees and acknowledges that monetary damages would not be an adequate compensation for the Client in the event the TPA breaches its confidentiality obligations under this Contract and the Parties agree that in the event of a breach or threatened breach of confidentiality, the Client shall, at its option, also be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach.

- (ii) The restrictions imposed by above Clause (i) shall not apply to the disclosure of any Information by the TPA: (i) which is now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality; (ii) was in the possession of the TPA or its Representatives on a non-confidential basis at the time of its disclosure under this Contract; (iii) becomes lawfully available to the TPA or its Representatives on a non-confidential basis from any source, except the Client and its Affiliates (the "Disclosing Party"), provided that such source was not bound by an obligation of confidentiality to the Disclosing Party or any other person with respect to such information; (iv) that is independently developed by the TPA without reference to Information provided by the Disclosing Party; (v) that is disclosed to the legal advisers, auditors and other professional advisers of the TPA, provided such

persons are under an obligation to maintain confidentiality of such information; (vi) that is required to be disclosed by the TPA pursuant to Applicable Laws; provided that the TPA shall furnish only that portion of the Information which it is advised by its counsel is legally required to be disclosed and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such Information to the extent reasonably requested by the Disclosing Party; or (vii) that is approved for disclosure or release by written authorization of the Disclosing Party.

- (iii) The confidentiality obligations under this Contract shall survive for a period of two (2) years after the expiration or termination of this Contract or for a period of three (3) years from the date of the latest of the disclosures made under or in relation to this Contract, whichever is later.

5. TPA'S ACTIONS REQUIRING CLIENT'S PRIOR APPROVAL

- 5.1. Notwithstanding anything contained in the Contract, the TPA shall obtain the Client's prior approval in writing before entering into a subcontract for the performance of any part of the Services,. The TPA acknowledges that notwithstanding that the selection of the Sub-consultant the TPA shall not be relieved of any of its duties, liabilities or obligations under this Contract and shall remain fully liable for the performance of the Services pursuant to this Contract. The TPA shall be fully responsible for the acts or omissions of Sub-consultants or Personnel and shall take the risk of Sub-consultants' insolvency and of any acts, defaults, delay, negligence or failure by any Sub-consultants or Personnel of the Sub-consultant to perform its obligations in relation to the Services. The Client shall not be deemed to have any contractual obligation or liability to, or relationship with, any Sub-consultants or Personnel. For the avoidance of doubt, it is clarified that the TPA shall be solely responsible for all payments to the Sub-TPAs and the Client shall not, in any manner whatsoever, be liable for any sums payable to the Sub-Consultants.
- 5.2. The TPA agrees that the aggregate value of all sub-contracts with Sub-consultants in respect of the Services shall not exceed twenty percent (20%) of the Work Order Value. The Client will be provided by the TPA with particulars (name, financial& technical background, sub-consultancy fee) of the sub-consultant.
- 5.3. The TPA shall obtain the Client's prior approval in writing (such approval not to be unreasonably withheld or delayed) for any other action that may be specified in the SCC.

5.4. Reporting Obligations

- 5.4.1. The TPA shall submit to the Client the reports and documents specified in TOR, in the numbers, and within the periods set forth in the said Appendix.

5.5. Documents Prepared by the TPA to be the Property of the Client

- 5.5.1. All plans, drawings, specifications, designs, reports, other documents and software prepared by the TPA pursuant to this Contract shall be the property of the Client, and the TPA shall, no later than upon termination or expiration of this Contract, deliver all such documents and software to the Client, together with a detailed inventory thereof. All deliverables including any primary data shall also be submitted to the Client in a digital format. The TPA may retain a copy of such documents and software. All documents or other material or equipment made available to the TPA by the Client shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the TPA shall furnish forthwith to the Client, an inventory of such documents, materials and equipment and shall return the same or otherwise dispose of the same in accordance with the instructions of the Client. Any intellectual property (including without limitation (i) rights associated with works of authorship, copyrights, moral rights, and rights of publicity; (ii) trademark, trade name, internet domain name and other forms of electronic address rights; (iii) trade secret rights, know-how; (iv) patents, designs, algorithms, and other industrial property rights; (v) all other proprietary rights of every kind and nature; and (vi) all forms of protection of any of the foregoing, including registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force) developed during the course of, or as a result of, Services hereunder shall be and remain property of Client and shall not be used by the TPA for any purpose other than the performance of the Services hereunder; Any materials pertaining to the Services (including any reports and documents prepared by the TPA), of which the ownership or the intellectual property rights do not vest with the Client under Applicable Laws, shall automatically, absolutely and irrevocably, stand assigned to the Client (without any royalty, fees or payments other than the remuneration provided for in this Contract) as and when such documents or materials are created and the

TPA agrees to execute all documents and perform such acts as may be requested by the Client for securing the rights assigned by the TPA. .

- 5.5.2. The TPA shall ensure that plans, drawings, specifications, designs, reports, documents, software and any other materials provided by the TPA pursuant to this Contract do not and will not infringe intellectual property rights of any third party. The TPA shall indemnify the Client against all claims, proceedings, actions, damages, legal costs (including but not limited to attorney's fees and court costs), expenses and any other liabilities arising from or incurred by the use by the Client of any documents or materials provided by the TPA pursuant to this Contract, which involves any infringement or alleged infringement of the intellectual property rights of any third party. If, in any suit or claim relating to such infringement or alleged infringement, a temporary restraining order or preliminary injunction is granted, the TPA shall make every effort to secure the suspension of the injunction or restraining order. If, in any such suit or claim, any such material, or any part, combination or process thereof, is finally held to constitute an infringement and its use is permanently enjoined, the TPA shall secure for the Client a license, at no cost to the Client, authorizing continued use of the infringing work. If the TPA is unable to secure such license within a reasonable time, the TPA shall, at its own expense and without impairing any performance requirements, either replace the affected work, or part, combination or process thereof with non-infringing materials or modify the same so that they become non-infringing.

5.6. Liability of the TPA

- 5.6.1. The TPA's liability and the Client's remedies under this Contract shall in addition to and not in derogation of the Client's rights and remedies under Applicable Law.

5.7. Insurance to be taken out by the TPA

- 5.7.1. The TPA shall, within a period of thirty (30) days from the Effective Date, take out and maintain at the TPA own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverages, as shall be specified in the SCC. Within 15 (fifteen) days of receiving any insurance policy certificate in respect of

insurances required to be obtained and maintained under this clause, the TPA shall furnish to the Client, copies of such policy certificates, copies of the insurance certificates and, from time to time, evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the terms of this Contract. If the TPA or any Sub-consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Client shall apart from having other recourse available under this Contract have the option without prejudice to the obligations of the TPA, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the TPA, and the TPA shall be liable to pay such amounts on demand by the Client. The insurance policies so procured shall mention the Client as the beneficiary of the TPA and the TPA shall procure an undertaking from the insurance company in this regard.

5.8. Accounts and Audit

5.8.1. The TPA shall and shall ensure that all Sub-consultants:

- a) keep accurate and systematic accounts and records in respect of the Services provided under this Contract, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the TPA's costs and charges); and
- b) permit the Client or any person designated by the Client to periodically, and up to two (2) years from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Client.

5.9. Clarification and/or Interpretation of Reports

5.9.1. After submission of the deliverables by the TPA, to the satisfaction of the Client, if any clarifications are required by the Client (including without limitation on account of

any ambiguity or doubts on the interpretation of any matter contained in such reports or documents), the TPA shall, as a part of the scope of Services and at no additional cost to the Client, on receipt of a written request from the Client, provide such clarification to the satisfaction of Client within a period of ten (10) days from the date of receipt of the request from the Client and if required by the Client, attend meetings and/or hold discussions with the Client on the same.

6. TPA'S PERSONNEL

6.1. Description of Personnel

6.1.1. The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Key Professional are described in Appendix B. The Key Professional listed in Appendix B is hereby approved by the Client for performance of the Services pursuant to this Contract. If additional work is required beyond the scope of the Services specified in TOR, the level of effort and/or staff assigned in terms of man month may be increased by an agreement in writing between the Client and the TPA and the cost relating thereto shall be determined as per the man month rates indicated in the financial bid.

6.2. Removal and / or Replacement of Personnel

6.2.1. The TPA shall ensure that all the Key Professionals specified in Appendix B shall be available during the term of this Contract. If, for any reason beyond the reasonable control of the TPA, it becomes necessary to replace any of the Key Professionals, the TPA shall forthwith, and in any event within a period of thirty (30) days from the date when the relevant Key Professional cease to be available for the Project, provide as a replacement a person of equivalent or better qualifications; provided that during the term of this Contract, the TPA may replace not more than four (4) Key Professionals and there shall be not more than two (2) replacements for any particular position. In case of a critical vacancy, if the TPA is unable to provide a permanent replacement within the aforementioned period, the TPA shall, subject to approval by the Client, provide a temporary resource for no more than six (6) months. The temporary

resource shall be of equivalent or better qualifications and the TPA shall be paid no more than ninety percent (90%) of the agreed rate of the personnel being replaced. Permanent replacement personnel shall be subject to Client approval, and for the first replacement of Key Professional for a particular role, such permanent replacement shall be paid at ninety percent (90%) of the agreed rate of the Key Professional being replaced and for a subsequent replacement for such role, the permanent replacement Key Professional shall be paid at eighty percent (80%) of the then applicable rate. Thereafter a reduction of 10% of the original quoted rates shall be applicable in each subsequent replacement.

- 6.2.2. If the Client finds that any of the Personnel have committed misconduct or has been charged with having committed a criminal action, or if the Client has reasonable cause to be dissatisfied with the performance or conduct of any of the Personnel, then the TPA shall, without any additional cost to the Client, at the Client's written request forthwith and in any event within a period of three (3) months from the date of the request by the Client provide as a replacement a person with qualifications and experience acceptable to the Client.
- 6.2.3. For any of the Personnel provided as a replacement under clauses above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the TPA may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the personnel replaced

6.3. Personnel of TPA

- 6.3.1. All Personnel of TPA and Sub-consultants who participate in the performance of the Services shall, for all purposes, be considered employees/personnel of the TPA. The TPA shall pay and shall ensure that all Sub-consultants pay remuneration and benefits

of such employees and withhold all Taxes in accordance with all Applicable Laws. The TPA hereby acknowledges and agrees that the Client shall not in any manner whatsoever be liable for any labour claim or dispute that may be raised by any Personnel. The TPA shall indemnify the Client, its Affiliates and officers, directors, shareholders, agents of the foregoing against any claims, actions, liabilities, costs and expenses (including, without limitation, legal fees) in relation to or arising out of claims by any Personnel.

7. OBLIGATIONS OF THE CLIENT

7.1. Assistance and Exemptions

7.1.1. Unless otherwise specified in the SCC, the Client shall use its reasonable efforts to facilitate and assist the TPA in:

- (i) obtaining work permits and such other documents as shall be necessary to enable the TPA, Sub-consultants or Personnel to perform the Services. The Client shall assist the TPA in procuring necessary entry and exit visas, residence permits, exchange permits and any other documents required for stay in India of the Personnel and, if appropriate, their eligible dependents;
- (ii) arranging for prompt clearance through customs of any property reasonably required for the Services. For the avoidance of doubt, the Parties agree that any import duties and other costs and expenses in respect of such materials shall be borne solely by the TPA and the Client shall in no manner be responsible for the same;
- (iii) arranging for the issuance to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

7.1.2. The TPA agrees and acknowledges that notwithstanding anything to the contrary in this Contract, the TPA shall not be relieved in any manner whatsoever from the performance of its obligations under this Contract or be entitled to any extension of

time or additional costs in case of any delay in procurement of visas, work permits etc. in respect of any expatriate Personnel or any delay in customs clearance of any material required for performance of the Services or any other delay attributable to officials, agents and representatives of the Government;

7.2. Change in applicable law

7.2.1. If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the TPA in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultants under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto

7.3. Access to sites and assets under Smart Elements Project

7.3.1. The Client shall, as required from time to time, upon reasonable prior notice and subject to the Personnel complying with all reasonable safety precautions applicable to any site(s), procure that the TPA has free of charge, unimpeded access to those areas under Pune Municipal Corporation and PSCDCL in respect of which access is required for the performance of the Services.

7.4. Information and approvals

7.4.1. As part of the scope of Services, the TPA shall coordinate and support the submission of all data, information and documentation that are required for the Client to monitor and evaluate the progress and performance of the Smart Elements Project. In the event the TPA requires any information or documents from the Client or if any meetings with the Client, Implementation Agency or other persons are required for preparing the applications for consents, approvals or permits, the TPA shall make any request for such information, documents and meetings within reasonable time, and sufficiently in advance to ensure that the schedule for performance of the Services is complied with and there are no delays in the execution of the Smart Elements Project.

7.5. Payments

- 7.5.1. In consideration of the Services performed by the TPA under this Contract, the Client and the Implementation Agency shall make to the TPA such payments and in such manner as is provided by Clause 8 of the GCC.

8. PAYMENTS TO THE TPA

8.1. Payment Terms and mode of billing & payment

- 8.1.1. In consideration of the Services to be provided by the TPA under this Contract, the Client shall make to the TPAs such payments and in such manner as is provided in this Contract.

- 8.1.2. The TPA shall be entitled to raise a periodic invoice on a monthly or quarterly basis in respect of Services performed in the previous calendar month as per Annexure E. Each invoice shall stipulate the completed milestones prior to the thirtieth (30th) day of the previous month. The invoice shall be submitted in three (3) copies, accompanied by the following documents :

- (i) if not previously submitted, the progress report for the immediately preceding month;
- (ii) itemised statements accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials of the amounts payable. Monthly statements should be submitted, distinguishing the portion of total eligible costs which pertains to remuneration from that portion related to reimbursable expenditures;
- (iii) in case of reimbursement of out of pocket (direct) expenses, with supporting documents;
- (iv) details of deployment of Personnel (including time-sheets and attendance records) and supporting documents.

- 8.1.3. The Client shall pay to the TPA (i) remuneration determined on the basis of the time actually spent by such Personnel in the performance of Services after the Effective Date at the rates referred to and subject to such additional provisions as set forth in SC and (ii) reimbursable expenditures actually and reasonably incurred by the TPA in the performance of the Services at actuals provided an invoice for the same is accompanied with the necessary supporting documentation.
- 8.1.4. Unless the Client shall have a raised a dispute in respect of any amounts claimed under an invoice, it shall be required to make payment in respect thereof within thirty (30) days of having received the invoice complete in all particulars with relevant supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the TPA, the Client may add or subtract the difference from any subsequent payments.
- 8.1.5. The Parties agree and acknowledge that the Client have no obligation to make, and may withhold, any payment to the TPA at any time when the TPA is in material breach of any term or provision of this Contract. On the payment date next succeeding the date on which all such material breaches have been remedied, the Client shall make the payments withheld due to such breaches, less any amounts paid by or on behalf of the Client in an effort to remedy any such breaches or the costs incurred by the Client as a result thereof.
- 8.1.6. The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the TPA and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final statement shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Client unless the Client, within such ninety (90)-day period, gives written notice to the TPA specifying in detail deficiencies in the Services, the final report or final statement. The TPA shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing

process shall be repeated. Any amount which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the TPA to the Client within thirty, (30) days after receipt by the Consultants of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with the above.

8.1.7. All payments under this Contract shall be made to the account of the TPA specified in the SC.

9. Currency of Payment

9.1. Payments shall be payable in local currency i.e. Indian Rupees

10. EXTENSION OF TIME FOR PERFORMANCE; SUSPENSION BY THE CLIENT

10.1. Extension of time

10.1.1. The TPA agrees and acknowledges that time shall be of the essence in the performance of its obligations under this Contract. The TPA must commence and proceed to carry out the Services in accordance with timelines stipulated in the Contract with due diligence and expedition.

10.1.2. The time period(s) specified in the Contract shall be extended to the extent the TPA demonstrates to the satisfaction of the Client that the time required for completion of Services was delayed by reason of any delay which is solely attributable to a breach or default of the Client.

10.1.3. The TPA shall, within seven (7) days of learning of any cause of delay specified in Clause 10.1.2 above, intimate the Client of the same with details relevant to such cause, extent and the contemplated delay upon the performance of the Services, and its plans to overcome or minimize the delay. The Parties shall mutually determine any extension of time that may be required for performance of Services affect by such

breach or default of the Client. The TPA agrees and acknowledges that any extension of time under this Clause 10.1 shall not of itself entitle the TPA to an adjustment of the rates or the Contract Value.

10.2. Suspension

- 10.2.1. The Client may, from time to time and without assigning any reasons, by notice to the TPA, suspend the carrying out of the Services or any part thereof and the TPA shall, on the written order of the Client suspend the carrying out of the Services or any part thereof for such time or times and in such manner as the Client may reasonably require.
- 10.2.2. The Client may at any time following a suspension under this Clause 7.2 give notice to the TPA to proceed with the Services which are the subject of the suspension. Upon receipt of such notice, to the extent that any remobilisation is required, the TPA shall ensure that such remobilisation is achieved within such reasonable period as may be mutually agreed between the Parties.
- 10.2.3. Any period of suspension under Clause 10.2.1 shall not exceed forty five (45) days from the date of issue of the notice of suspension in a single instance and sixty (60) days in aggregate in a period of three hundred and sixty five (365) days and if either limit is exceeded, the TPA may notify the Client either requiring the Client to hold discussions for mutually agreeing a schedule for resumption of Services.
- 10.2.4. Any costs reasonably incurred by the TPA as a direct result of suspension (including any costs for demobilisation and remobilisation of Personnel) under Clause 10.2.1 shall be reimbursed by the Client to the TPA upon receipt of an invoice therefor in respect of each month in which such costs were incurred. The TPA shall use its best efforts to mitigate and minimise the costs and expenses it incurs as a result of such suspension.
- 10.2.5. Without prejudice its rights under Clause 3.1, the Client shall have the right to direct suspension of the Services or any part thereof in the event of any default or breach of

any requirement of this Contract by the TPA for such time that the TPA continues to be in default or breach of such requirement of the Contract and in case of such suspension, the TPA shall not be entitled to claim any costs arising out of such suspension.

11. LIQUIDATED DAMAGES

- 11.1. If the TPA fails to complete a deliverable within the period specified in the Contract, except to the extent that such delay is solely on account of Force Majeure affecting the TPA or any breach or default of the Client, the TPA shall pay to the Client, as fixed and agreed liquidated damages, (and not as penalty) at the rate of zero decimal point five percent (0.5%) of the Contract Value for every week of delay in completion of such deliverable.
- 11.2. The aggregate maximum of liquidated damages payable to the Client under this Clause shall be subject to a maximum of ten percent (10%) of the Contract Value. The TPA acknowledges that the terms, conditions and amounts fixed pursuant to this Clause 11 for liquidated damages are reasonable, considering the losses and costs that the Client will incur in the event of the TPA's failure to provide each deliverable within the period specified therefore.
- 11.3. The Parties hereby agree that the liquidated damages amounts specified herein are a genuine pre-estimate as of the date hereof of damages likely to be incurred by the Client and shall be without prejudice to the Client's right to terminate this Contract under Clause 3.1. Liquidated damages shall be recovered from payments due to the TPA and or be paid to the Client by the TPA within a period of thirty (30) days from the date of notification of liquidated damages payable by the TPA.

12. SETTLEMENT OF DISPUTES

12.1. Amicable Settlement

- 12.1.1. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation

12.2. Disputes settlement

- 12.2.1. Any Dispute between the Parties as to matters arising out and relating to this Contract would that cannot be settled amicably within thirty (30) days after receipt by one Party

of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions under the SC.

13. RESPONSIBILITY FOR ACCURACY OF PROJECT DOCUMENTS

13.1. General

13.1.1. The TPA shall be responsible for accuracy of the documents, drawings, estimate and all other details prepared by him as part of these services. The TPA shall indemnify the client against any inaccuracy in the output related to providing the Services, which might surface during the TPA Assignment. The TPA will also be responsible for correcting, any errors attributable to the TPA during the execution of the Services.

14. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

14.1. The TPA represents and warrants to the Client that:

14.1.1. it is duly organised, validly existing and in good standing under the the applicable laws of its Country;

14.1.2. it has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby

14.1.3. 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 Contract;

14.1.4. it has the financial standing and capacity to undertake the Project;

14.1.5. this Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

14.1.6. it is subject to laws of India with respect to this Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

- 14.1.7. there are no actions, suits, proceedings, or investigations pending or, to the TPA's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the TPA under this Contract or materially affect the discharge by the TPA of its obligations under the Contract.
- 14.1.8. no representation or warranty by the TPA contained herein or in any other document furnished by it to the Client contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- 14.1.9. no sums, in cash or kind, have been paid or will be paid, by or on behalf of the TPA, to any person by way of fees, commission or otherwise for securing the Contract or for influencing or attempting to influence any officer or employee of the Client in connection therewith.

15. MISCELLANEOUS

15.1. Assignment and Charges

- 15.1.1. The Contract shall not be assigned by the TPA save and except with prior consent in writing of the Client, which the Client shall be entitled to decline without assigning any reason whatsoever.
- 15.1.2. The Client shall, from time to time, be entitled to assign any rights, interests and obligations under this Contract to third parties.

15.2. Indemnity

- 15.2.1. The TPA agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys' fees and other costs of defence or investigation to the extent related to or arising out of, whether directly or indirectly, (a) the breach by the TPA of any obligations under this Contract; (b) the alleged

negligent, reckless or otherwise wrongful act or omission of the TPA including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) death or bodily injury to any person (including any third party attributable to any act, omission, breach, default or negligence of the TPA or any personnel of the Client) or loss of or damage to any property of the Client or any third party (collectively “**Indemnified Matter**”)

15.2.2. As soon as reasonably practicable after the receipt by the Client of a notice of the commencement of any action by a third party, the Client will notify the TPA of the commencement thereof; provided, however, that the omission so to notify shall not relieve the TPA from any liability which it may have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive till the final resolution of all claims for indemnification and/or contribution.

15.2.3. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.

15.3. Waiver

15.3.1. Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under the Contract:

- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under the Contract:
- (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 the Contract in any manner.

15.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Contract or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or

deemed as waiver of such breach or acceptance or any variation or the relinquishment of any such right hereunder.

15.4. Notices

15.4.1. Unless otherwise stated, all notices, demands and other communications under the Contract including but not limited to a notice of waiver of any term, breach of any term of the Contract and termination of the Contract, shall be in writing and must be sent by hand, reputed pre-paid commercial courier, registered post or by facsimile. Any such demand, notice or other communication shall be deemed to have been duly given when addressed to the receiving Party at the address specified in the SCC, or such other address as may be notified from time to time, and shall be deemed to be delivered (i) if personally delivered, when delivered, (ii) three (3) days after dispatch if sent within India by courier and five (5) days after dispatch if sent internationally by courier, (iii) seven (7) days after mailing, if sent by registered post, postage prepaid and (iv) if sent by facsimile, when successfully transmitted (with electronic evidence of receipt).

15.5. Severability

15.5.1. If for any reason whatever any provision of the Contract 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 will 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 failure to agree upon any such provisions shall not be subject to dispute resolution under the Contract or otherwise.

15.6. No Partnership

15.6.1. Nothing contained in the Contract 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.

15.7. Language

15.7.1. All notices required to be given under the Contract and all communications, documentation and proceedings which are in any way relevant to the Contract shall be in the language specified the SCC.

15.8. Exclusion of Implied Warranties etc.

15.8.1. The Contract 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 or any representation by any Party not contained in the Contract.

15.9. Contract to Override Other Agreements

15.9.1. The Contract supersedes all previous agreements or arrangements between the Parties (except any agreements or arrangements which form part of this Contract), including any memorandum of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.

15.10. Survival

15.10.1. Clauses 4.1.2, 4.1.6, 5.8, 15.2 and any other provisions of this Contract which have been expressly stated to or which by their nature should survive the termination or expiry of this Contract, shall survive any termination or expiry of this Contract. Further, any termination or expiry of this Contract shall be without prejudice to the rights and obligations of the Parties under law or any rights accrued prior to the date of such termination or expiry.

15.11. Counterparts

15.11.1. The Contract may be executed in [two] counterparts, each of which when executed and delivered shall constitute an original of the Contract.

III. SPECIAL CONDITIONS OF CONTRACT

The Clause numbers mentioned hereinafter refer to the corresponding Clauses of the GCC, to which a particular SCC relates. A SCC shall supplement the corresponding Clause of the GCC, to which it relates.

Number of GC Clause	Amendments of, and Supplements to, Clauses in General Conditions of Contract
1.1(a)	The words “the Governments Country” shall mean India
1.1(f)	The Contract Value payable in Indian Rupees is _____ (exclusive of Service Tax)
1.1(o)	<p>Performance Security</p> <p>a) The TPA shall prior to the Effective Date and as a condition precedent to its entitlement to payment under this Contract, provide to the Client a legal, valid and enforceable Performance Security in the form of an unconditional and irrevocable bank guarantee as security for the performance by the TPA of its obligations under this Contract, in the form set out in in this Contract for an amount equal to five percent (5%) of the Contract Value.</p> <p>b) The Performance Security shall be obtained from a Nationalised or Scheduled Indian bank except Cooperative Banks, in compliance with Applicable Laws (including, in case the TPA is a non-resident, in compliance with applicable foreign exchange laws and regulations).</p> <p>c) The Performance Security shall be extended accordingly such that the Performance Security remains valid until the expiry of a period of one hundred and eighty (180) days from the date of submission of the last</p>

deliverable under this Contract. If the Client shall not have received an extended/replacement Performance Security in accordance with this Clause 6.5 at least thirty (30) days prior to the date of expiry of the then existing Performance Security, the Client shall be entitled to draw the full amount of the bank guarantee then available for drawing and retain the same by way of security for the performance by the TPA of its obligations under this Contract until such time as the Client shall receive such an extended/replacement Performance Security whereupon, subject to the terms of this Contract, the Client shall refund to the TPA the full amount of the bank guarantee, unless the Client has drawn upon the Performance Security in accordance with the provisions of this Contract, in //which case only the balance amount remaining shall be returned to the TPA; provided that the Client shall not be liable to pay any interest on such balance. The Client shall return the bank guarantee provided as Performance Security to the issuer thereof for cancellation promptly upon receipt of any extension/replacement therefore. Subject to satisfactory completion of all deliverables under this Contract, the Performance Security shall, subject to any drawdowns by the Client in accordance with the provisions hereof, be released by the Client within a period of one hundred eighty (180) days from the date of submission of the last deliverable under this Contract.

- d) The Client shall have the right to claim under the Performance Security and appropriate the proceeds if any of the following occur:
- i. the TPA becomes liable to pay liquidated damages;
 - ii. occurrence of any of the events listed Clause 3.1.1 of the GCC;
 - iii. any material breach of the terms hereof; and/or
 - iv. without prejudice to paragraph (c) above, the TPA fails to extend the validity of the Performance Security or provide a replacement

SELECTION OF THIRD PARTY AUDITOR (TPA) FOR DEPLOYMENT AND OPERATION OF SMART ELEMENTS PROJECT IN PUNE CITY

	Performance Security in accordance with the provisions of this Contract.
1.2	In Clause 1.2 of the GCC, the reference to “the language specified in the SCC” shall mean “English”
1.3	<p>The addresses are</p> <p>Client : Pune Smart City Development Corporation Ltd (PSCDCL) Pune Municipal Corporation, Near Mangla Theatre Shivaji Nagar, Pune-411 005. Ph No: 020-25501103 E mail ID:- punesmartcity@gmail.com</p> <p>TPA : _____</p>
1.5	<p>the following shall be the “the officials designated in the SCC”:</p> <p>For the Client: _____</p> <p>For the TPA: _____</p>
1.6	<p>The following shall be added in Clause 1.6 of the GCC:</p> <p>Save and except for service tax leviable under Applicable Law on the services provided by the TPA to the Client, the rates set forth in this Contract includes all Taxes and all Taxes shall be to the account of and borne by the TPA. For the avoidance of doubt, it is hereby clarified that the Client shall not be in manner responsible for any service tax liability arising in relation to the services provided by a Sub-consultant to the TPA.</p> <p>Without prejudice to the above, the TPA shall be responsible for and bear all personal income tax obligations arising with respect to the Personnel, wherever</p>

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	<p>such personal income tax obligations may arise (i.e. whether in India or abroad). Further, the TPA shall be responsible for any labour welfare taxes and dues, social security taxes, contributions to compulsory savings funds and any other contributions relating to labour welfare and social security, required to be paid pursuant to Applicable Laws in connection with the Personnel.</p>
2.1	<p>The Effective Date under Clause 2.1 of the GCC shall be:</p> <p>_____</p>
2.3	<p>The following shall be added in Clause 2.3 of the GCC:</p> <p>The duration of the TPA Assignment shall be from the Effective Date to the Go-Live of the Smart Elements Project and subsequently 5 (years) from Go-Live date for the Smart Elements Project.</p>
5.6	<p>The following shall be added in Clause 5.6 of the GCC:</p> <p>(a) Except in case of negligence, fraud or wilful misconduct on the part of the TPA or on the part of any person or firm acting on behalf of the TPA in carrying out the Services, the TPA, with respect to damage caused by the TPA to the Client's property, the TPA shall not be liable to the Client:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds the total payments for Professional Fees and Reimbursable Expenditure made or expected to be made to the TPA hereunder or the insurance proceeds available under the professional liability insurance obtained by the TPA, whichever is higher.</p> <p>(b) This limitation of liability shall not affect the TPA's liability, if any, for damage to third parties (i.e. any person other than the Client or the TPA) caused by the TPA or any person or firm acting on behalf of the TPA (including Sub-</p>

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	Consultants and Personnel) in carrying out the Services, including by way of indemnity to the Client.
5.7	The risks and the coverage shall be as follows:

- a) **Third Party motor vehicle liability insurance** as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the TPA or its Personnel or any Sub TPAs or their Personnel for the period of consultancy.
- b) **Third Party liability insurance** with a minimum coverage, for Rs. 1.00 million for the period of consultancy.
- c) **Professional Liability Insurance** - The TPA will maintain at its expense Professional Liability Insurance including coverage for errors and omissions caused by TPA's negligence, breach in the performance of its duties under this Contract from an Insurance Company permitted to offer such policies in India and included in the list of General Insurers (Non-Life) approved by the Insurance Regulatory And Development Authority (IRDA) , for a period of Five (5) years after the expiry or termination of the Contract and commencing from the Commencement Date, (i) for an amount not less than the Contract Value or (ii) the proceeds the TPA may be entitled to receive from any insurance maintained by the TPA to cover such a liability, whichever of (i) or (ii) is higher with a minimum coverage of [insert amount and currency]. The Client shall be designated as a beneficiary in the professional liability insurance procured by the TPA. In the event the TPA does not intend to procure a separate professional liability insurance policy in respect of this Contract, the TPA's general professional liability insurance policy shall procure endorsement of Client's name as a beneficiary for an amount not less than the Contract Fee Ceiling. The TPA shall submit the entire policy document for the Professional Liability Insurance.

	<p>The indemnity limit in terms of “Any One Accident” (AOA) and “Aggregate limit on the policy period” (AOP) should not be less than the amount stated in the Contract.</p> <p>d) Employer’s liability and workers’ compensation insurance The TPA shall and shall ensure that all Sub-Consultants procure insurance coverage in respect of the Personnel, in accordance with Applicable Laws and any such life, health, accident, travel or other insurance as may be appropriate; and all insurances and policies should start from the date of commencement of services and remain effective as per relevant requirements of contract agreement.</p> <p>e) Any other insurance that may be necessary to protect the Client, its employees and its assets (against loss, damage or destruction, at replacement value) including rioting and all Force Majeure Events that are insurable.</p>
8	<p>Payments</p> <p>The Payment schedule for the TPA is provided in Annexure E. The payments will be made on a monthly basis from the Effective Date till Go-Live of the Smart Elements Project. Post achievement of Go-Live status for the Smart Elements Project, the payments shall be a made on a quarterly basis till expiry of this Contract.</p> <p>The Payments to the TPA shall be shared on a 50:50 basis between the Client and the Implementing Agency for the Smart Elements Project.</p>
12.2	<p>Dispute Settlement</p> <p>a) If any dispute or difference of any kind whatsoever arises between the Parties in connection with or arising out of or relating to or under this Contract, including disputes related to its validity, interpretation, breach or termination (“Dispute”), the Parties shall promptly and in good faith</p>

negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the Party raising the Dispute notifies the same to the other Party, either Party may refer such Dispute for arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the Parties. In case of failure of the Parties to mutually agree on a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each of the Client and the TPA shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be Pune and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The Parties shall use their reasonable efforts to facilitate the conduct of the arbitration proceedings in an expeditious manner and the award rendered by the arbitral tribunal shall be final and binding on the Parties. In case of a sole arbitrator, the costs and expenses of the sole arbitrator shall be shared equally between the Parties and in case the arbitral panel consists of three arbitrators, each Party shall bear the cost of the arbitrator appointed by it and the costs of the third/presiding arbitrator shall be shared equally between the Parties, provided that the arbitral tribunal shall have the power to make an order in respect of costs. The Parties agree that nothing contained herein shall restrict or impair the power of the arbitral panel to make an award in respect of the costs and expenses of the arbitral proceedings and the apportionment thereof.

LIST OF APPENDICES TO THE CONTRACT

The list of Appendices to the Contract document which would be attached is described below.

APPENDIX	DESCRIPTION	NOTE
Appendix A:	Terms of reference containing, inter-alia, the Description of the Services and reporting requirements.	<i>This shall be as per the Terms of Reference provided in RFP</i>
Appendix B:	Key Professional and Additional Personnel, minimum qualification requirements of Key Professional and Additional Personnel.	<i>This would be the finalised based on the Proposal submitted by the Successful TPA and any subsequent discussions between the Client and the TPA. .</i>
Appendix C:	Approach and Methodology including work plan and presentations if any	<i>This would be based on the finalised Approach and Methodology submitted in the Proposal of the Successful TPA</i>
Appendix D:	Duties of the Client	<i>This would be finalised based on the Proposal submitted by the Successful TPA and any subsequent discussions between the Client and the TPA.</i>
Appendix E:	Monthly Rates, and maximum out of pocket expenses.	<i>This would summarise all changes and modifications resulting from negotiations between the Client and the TPA before the date on which this</i>

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APPENDIX	DESCRIPTION	NOTE
		<i>Contract will come into effect as prescribed in the SC</i>
Appendix F:	Copy of RFP, technical proposal submitted by the Consultant, and the financial proposal as submitted by the Consultant and as amended pursuant to the post bid negotiations.	<i>Copy to be inserted</i>
Appendix G:	Copy of letter of invitation / letter of award	<i>Copy to be inserted</i>
Appendix H:	Copy of letter of acceptance	<i>Copy to be inserted</i>
Appendix I:	Format of bank guarantee for Performance Security.	<i>Copy to be inserted</i>