



STATE URBAN DEVELOPMENT AUTHORITY, HARYANA
(Department of Urban Local Bodies, Haryana)

Selection of Manpower providing agency for providing the Services of qualified Experts/Specialists and other employees at State and ULB level in Haryana under the scheme of National Urban Livelihood Mission (NULM).

Request for Proposal

RFP No. SUDAH/HR/2021/06

Dated: 02.10.2021

Download of RFP document: 02.10.2021

Pre-Bid conference: 06.10.2021

Submission of Online Proposal: 22.10.2021

Opening of Technical Proposal: 25.10.2021

Volume-III: Draft Service Agreement

Released by:

STATE URBAN DEVELOPMENT AUTHORITY, HARYANA
(Department of Urban Local Bodies, Haryana)
Bays No. 11-14, Sector-4, Panchkula

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AGREEMENT

THIS AGREEMENT (hereinafter referred to as the "Agreement") made on the _____
Day of the Month of _____, 2021 at Panchkula.

BETWEEN

The State Urban Development Authority, HARYANA acting through Mission Director of SUDA,H having its registered office at Urban Local Bodies Department, Bays No. 11-14, Sector 4, Panchkula, Haryana, hereinafter referred to as the "Client", which expression unless excluded by repugnant to context or meaning thereof, shall include its successors, affiliates and assigns of the First Part.

AND

_____, hereinafter referred to as the "Manpower Providing Agency", (hereinafter referred as Agency) which expression unless excluded by repugnant to context or meaning thereof, shall include its successors and assign of the Second Part.

WHEREAS

The State Urban Development Authority, Haryana has decided to engage Manpower providing agency for providing the Services of qualified Experts/Specialists and other employees at State and ULB level in Haryana under the scheme of National Urban Livelihood Mission (NULM) (Scope of Work).

- (A) To meet the above objectives, the Client is desirous of engaging Manpower Providing Agency for providing qualified experts/specialists/workers for deployment in Cell at State and ULB levels in Haryana as per the Scope of Work defined in _____ (RFP Document details) in an effective, efficient and timely manner.
- (B) _____ (Details of Bids) had submitted their proposals from which _____ (Details of Bids) **companies were selected for technical evaluation based on Highest Technical Score and Rank for the aforesaid assignment.** The Client pursuant to evaluation of proposals/bids received from interested proprietorship/ partnership firm or company of reputed Manpower Providing Agency, declared _____ as the 'Selected Manpower Providing Agency'. 'Selected Manpower Providing Agency' shall provide Services to the Client on the terms and conditions as set forth as per vide Letter No. _____ (NIT details), Request for Proposal (RFP) Document, Corrigendum and this Agreement.
- (C) The Client after examining the negotiated offer, awarded the assignment to the said Agency vide its Letter of Award _____ (Letter of Intent details).
- (D) The Manpower Providing Agency has for the purpose of carrying out the works envisaged in this Agreement, furnished Performance Bank Guarantee to State Urban Development

Authority (SUDA,H), Haryana of value @5% of the Project cost through _____
(BG details).

- (E) The Parties, superseding the remaining conditions precedent to the execution of this Agreement, now wish to enter into this Agreement (as defined below) to govern the manner and terms under which the Manpower Providing Agency shall provide qualified experts/specialists/workers for deployment at State and ULB levels in Haryana (Scope of work details) to the SUDA,H specified under this Agreement in accordance with the Roles and Responsibilities of the Manpower Providing Agency, (SUDA,H).

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

- The Manpower Providing Agency hereby represents warrants and confirms that the Agency-
- (a) has full capacity, power and authority to enter into this Agreement and during the continuance of this Agreement, shall continue to have full capacity, power and authority to carry out and perform all its duties and obligations as contemplated herein and has already taken and shall continue to take all necessary and further actions (including but without limiting to the obtaining of necessary approval/consents in all applicable jurisdictions) to authorize the execution, delivery and performance of this Agreement;
 - (b) has the necessary skills, knowledge, expertise, adequate capital and competent personnel, system and procedures, infrastructure and capability to perform its obligations in accordance with the terms of this Agreement and to the satisfaction of the SUDA,H;
 - (c) shall, on the execution of this Agreement and providing services to the SUDA,H, not violate, breach and contravene any conditions of any Agreement entered with any third party;
 - (d) has complied with and obtained necessary permissions/ licenses/ authorizations under the Central, State and local authorities and obtained all required permissions/ licenses for carrying out its obligations under this Agreement.

Article 1. DEFINITIONS AND INTERPRETATION

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them hereunder:

1.1. Definitions

- a. "Agreement" means this Agreement executed between the State Urban Development Authority, Haryana (SUDA,H) and the Selected Manpower Providing Agency (as Confirming Party) including its schedules and Annexures and includes any amendments made thereto in accordance with the provisions hereof;
- b. "Affected Party" means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 2.21**;
- c. "Applicable Law" means all laws, acts, ordinances, rules, regulations , notification, policies, circulars and guidelines in force and effect and shall also include judgments, decrees, injunctions, writs or orders of any Court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party under this Agreement, and each document, instrument and Agreement delivered hereunder or in connection herewith;
- d. "Appointed Date" means the date of signing of this Agreement;
- e. "Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time;
- f. "Change in Law" shall have the meaning assigned thereto in Article 2.21.
- g. "Commencement Date" shall have the meaning as assigned to it.
- h. "Dispute Resolution Procedure" means the procedure for resolution of disputes as set forth in this Agreement;
- i. "Force Majeure" or "Force Majeure Event" means an act, event, condition or occurrence as specified in 2.21;
- j. "Gol" means the Government of India;
- k. "GoH" means the Government of Haryana.
- l. "Letter of Award" or "LOA" means the letter no....., dated issued by the SUDA,H to the Selected Manpower Providing Agency for developing the Project in terms of this Agreement;
- m. "Selected Bidder" or "Successful Bidder" means the Person selected by the Participating Bidders through a competitive bidding process for implementing the Project;
- n. "Tax" means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable law(s);
- o. "Term" means the time period of two years commencing from the Appointed Date to the extent extended by any permitted time extensions as expressly provided under the terms of this Agreement;
- p. Agency means a natural person, private entity, government-owned entity or any combination of these, with a formal intent to enter into an Agreement or an existing Agreement.

- q. “the Agency’s Representative” means the person authorized by the Agency who is responsible for all Agreemental aspects of the Agreement on behalf of the Agency.
- r. “the Agency’s Personnel” means any person instructed pursuant to this Agreement to undertake any of the Agency’s obligations under this Agreement, including the Agency’s employees, agents.
- s. “the Client’s Representative” means any entity appointed by the Client to act on the Client’s behalf with regard to procurement and/or management of this Agreement.
- t. “The Financial Limit” refers to the amount and is the maximum amount payable by the Client under this Agreement including Govt. Taxes as applicable from time to time.
- u. “Services” means the services set out in the Terms of Reference in Volume-II of the RFP.
- v. “Project Officer” means the person named in Article 6 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Agreement.
- w. “the Agreement Officer” means the person named in Article 6 who is responsible for all Agreemental aspects of the Agreement, and to whom invoices should be sent.
- x. “Officer in Charge for ULB means the person named in **Article 6** who is responsible for ensuring coordination between the city, the Agency, and Gov/State for the execution of the Services.
- y. “Agreement Documents” means the documents listed in the Agreement Agreement, including any amendments thereto.
- z. “GCC” mean General Conditions of the Agreement. “SCC” means the Special Conditions of Agreement.

1.2 Interpretation

(a) In this Agreement, unless the context otherwise requires

In the event of any inconsistency between the General Conditions and the Special Conditions of the Agreement, the Special Conditions shall prevail over the General Condition.

(b) In this Agreement Words and Expressions shall have the same meanings as are respectively assigned to them in the RFP.

(c) The following documents in relation with Request for Proposal (RFP) issued for selection of Manpower Providing Agency shall be deemed to form and be read and construed as part of this Agreement viz:

- i. Instructions to Bidders (ITB)
- ii. General Agreement Conditions (GCC)
- iii. Scope of Work (SOW)
- iv. Technical Bid
- v. Financial Bid

- vi. All the Forms and Annexure, amendments, supplements, corrigendum or clarifications thereto
- vii. Notification of Award.
- (d) Except as expressly provided in Article 3 the Agency is not the agent of the Client and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of the Client in any respect.
- (e) Nothing in this Agreement is intended to make nor shall it make the Client as the employer of the Agency or any of the Agency's Personnel.
- (f) All communications by the Agency relating to notifications or applications for consents or instructions must be addressed to the Client Agreement Officer whose name and address are given in Article 6.

Article 2: GENERAL TERMS AND CONDITIONS

2.1 MANPOWER PROVIDING AGENCY'S REPRESENTATIONS AND WARRANTIES

The Manpower Providing Agency hereby represents, warrants and confirms that the Manpower Providing Agency-

- (a) has full capacity, power and authority to enter into this Agreement and during the continuance of this Agreement, shall continue to have full capacity, power and authority to carry out and perform all its duties and obligations as contemplated herein and has already taken and shall and continue to take all necessary and further actions (including but without limiting to the obtaining of necessary approval/consents in all applicable jurisdictions) to authorize the execution, delivery and performance of this Agreement;
- (b) has the necessary skills, knowledge, expertise, adequate capital and competent personnel, system and procedures, infrastructure and capability to perform its obligations in accordance with the terms of this Agreement and to the satisfaction of the Government;
- (c) shall, on the execution of this Agreement and providing services to the SUDA,H, not violate, breach and contravene any conditions of any Agreement entered with any third party;
- (d) has complied with and obtained necessary permissions/licenses/authorizations under the Central, State and local authorities and obtained all required permissions/licenses for carrying out its obligations under this Agreement.

2.2 OBLIGATIONS OF THE MANPOWER PROVIDING AGENCY

- (a) The Manpower providing agency shall operate and provide services to the SUDA,H at its various towns/sites on five days a week from 9.00 AM to 5.00 PM or completion of assigned work with a lunch break of 30 minutes from 01:30 pm to 02:00 pm (even after 5.00 PM and 6th and 7th day of week and without any compensatory leave or other benefit). The manpower may also be called upon to perform duties on Saturdays and Sundays and other Gazetted Holidays, if required in emergent situation.
- (b) The regularity of the performance of the service will be the essence of this Agreement and shall form a central factor of this Agreement. The Manpower Providing Agency shall take all possible steps to ensure to maintain its performance as determined by the SUDA,H from time to time.
- (c) The assessment made by the Manpower Providing Agency in the tender including number of persons various descriptions as required to provide/give the required quality of services shall be final acceptable by and binding upon the Manpower Providing Agency.
- (d) If the SUDA,H notices that the personnel of the Manpower Providing Agency has/have been negligent, careless in rendering the said services, the same shall be communicated

immediately to the Manpower Providing Agency who will take corrective steps immediately to avoid recurrence of such incidents and reports to the SUDA,H.

- (e) If any of the personnel of the Manpower Providing Agency indulges in theft, negligence or any illegal/ irregular activity, misconduct, the Manpower Providing Agency shall take appropriate action against its erring personnel and intimate accordingly to the SUDA,H or itself can take action in accordance with law.
- (f) The Manpower Providing Agency shall furnish a personal guarantee of its Managing Director/ Partner, guaranteeing the due performance by the Manpower Providing Agency of its obligations under this Agreement.

2.3 DISCIPLINE

- (a) The Manpower Providing Agency shall issue identity cards, on its own name and trading style, to its personnel deputed for rendering the said Services, which at SUDA,H's option, and would be subject to verification at any time. The SUDA,H may refuse the entry into its premises to any personnel of the Manpower Providing Agency not bearing such identity card or not being perfectly dressed.
- (b) The SUDA,H shall always have the right and liberty to do surprise inspection at its sites.
- (c) The service rendered by the Manpower Providing Agency under this Agreement will be under close supervision, co-ordination and guidance of the SUDA,H. The Manpower Providing Agency shall frame appropriate procedure for taking immediate action as may be advised by the SUDA,H from time to time.
- (d) It is understood between the parties hereto that the Manpower Providing Agency alone shall have the right to take disciplinary action against any person(s) to raise any dispute and/or claim whatsoever against the SUDA,H. SUDA,H shall under no circumstances be deemed or treated as the employer in respect of any person(s) engaged/employed by the Manpower Providing Agency for any purpose, whatsoever nor would SUDA,H be liable for any claim(s) whatsoever, of any such person(s).

2.4 NATURE OF AGREEMENT

The parties hereto have considered agreed to and have a clear understanding on the following aspects:

- (a) This Agreement is on the principal to principal basis and does not create and shall not deem to create any employer-employee relationship between the SUDA,H and the Manpower Providing Agency. The Manpower Providing Agency shall not by any acts, deeds or otherwise represent any person that the Manpower Providing Agency is representing or acting as agent of SUDA,H except to the extent and purpose permitted herein.

- (b) This Agreement is for providing the aforementioned services and is not an Agreement for supply of Agreement labour. It is clearly understood by the Manpower Providing Agency that the persons employed by Manpower Providing Agency for providing services as mentioned herein, shall be the employees of the Manpower Providing Agency only and not of the SUDA,H. The Manpower Providing Agency shall be liable to make payment to its said employees towards their monthly wages/salaries and other statutory dues like Employees Provident Fund, Employees State Insurance, minimum wages, etc.
- (c) SUDA,H shall not be liable for any obligations/responsibilities, Agreemental, legal or otherwise, towards the Manpower Providing Agency's employees/ agents directly and/or indirectly, in any manner whatsoever.

2.5 STATUTORY COMPLIANCE

The Manpower Providing Agency shall obtain all registration(s)/ permission(s)/ license(s) etc. which are/may be required under any labour or other legislation(s) for providing the services under this Agreement.

- (a) It shall Manpower Providing Agency's responsibility to ensure compliance of all the Central and State Government Rules and Regulations with regard to the provisions of the service under this Agreement. The Manpower Providing Agency indemnifies and shall always keep SUDA,H indemnified against all losses, damages, claims actions taken against SUDA,H by any authority/office in this regard.
- (b) The Manpower Providing Agency undertakes to comply with the applicable provisions of all welfare legislations and more particularly with the Agreement Labour (Regulation and Abolition) Act, 1970, if applicable, for carrying out the purpose of this Agreement. The Manpower Providing Agency shall further observe and comply with all government laws concerning employment of staff employed by the Manpower Providing Agency and shall duly pay all sums of money to such staff as may be required to be paid under such laws. It is expressly understood that the Manpower Providing Agency is fully responsible to ascertain and understand the applicability of various Acts, and take necessary action to comply with the requirements of law.
- (c) The Manpower Providing Agency shall give an undertaking by the 22nd of each month in favour of the SUDA,H that he has complied with all his statutory obligations.

2.6 ACCOUNTS AND RECORDS

- (a) The Manpower Providing Agency shall maintain accurate accounts (including record of admissible and availed leaves) and records, statements of all its operations and expenses in connection with its functions under this Agreement in the manner specified by the SUDA,H.

- (b) The Manpower Providing Agency shall forthwith upon being required by the SUDA,H, allow SUDA,H or any of its authorizes representatives to inspect, audit or take copies of any records maintained where by the Manpower Providing Agency. The Manpower Providing Agency shall also cooperate in good faith with the required SUDA,H to correct any practices which are found to be deficient as a result of any such audit within a reasonable time after receipt of the report from the SUDA,H. However, upon discovery of any discrepancies or under payment the Manpower Providing Agency shall immediately, reimburse the SUDA,H for such discrepancies or overcharge.

2.7 INDEMNIFICATION

- (a) The Manpower Providing Agency shall at its own expenses make good any loss or damage suffered by the SUDA,H as a result of the acts of commission or omission, negligently or otherwise of its personnel while providing the said services at any time of the premises of the SUDA,H or otherwise.
- (b) The Manpower Providing Agency shall at all times Indemnify and keep indemnified the SUDA,H against any claim on account of disability/death of any of its personnel caused while providing the services within/outside the site or other premises of the SUDA,H which may be made under the workmen's Compensation Act, 1923 or any other Acts or any other Statutory modifications hereof or otherwise for or in respect of any claim for damage or compensation payable in consequence of any accident or injury sustained by the working or their personnel of the Manpower Providing Agency or in respect of any claim, damage or compensation under labour laws or other laws or rules made there under by any Person whether in the employment of the Manpower Providing Agency or not, who provided or provides the service at the site or any other premises of the SUDA,H shall be as provided hereinbefore.
- (c) The Manpower Providing Agency shall at all times indemnify and keep indemnified the SUDA,H against any claim by any third party for any injury, damage to the property or person of the third party or for any other claims whatsoever for any acts of commission or omission of its employees or personnel during the hours of providing the services at the SUDA,H's premises or before and after that.
- (d) That, if at any time, during the operation of this Agreement or thereafter the SUDA,H is made liable in any manner whatsoever by any order, direction or otherwise of any Court of Law or tribunal, to pay any amounts whatsoever in respect of or to any of present or ex-personnel of the Manpower Providing Agency or to any third party in any event not restricted but including as mentioned in sub-clauses No (a), (b) and (c) hereinabove, the Manpower Providing Agency shall immediately pay to the SUDA,H all such amounts and costs also and in all such cases/events the decision of the SUDA,H shall be final and

binding upon the Service Provider/Manpower Providing Agency. The SUDA,H shall be entitled to deduct any such amounts as aforesaid, from the security deposit and/or from any pending bills of the Service Provider/Manpower Providing Agency.

2.8 LIABILITIES AND REMEDIES

In the event of failure of the Manpower Providing Agency to provide the services or part thereof as mentioned in this Agreement for any reasons whatsoever, the SUDA,H shall be entitled to procure services from other sources and the Manpower Providing Agency shall be liable to pay forthwith to the SUDA,H the difference of payments made to such other sources, besides damages at double the rate of payment.

2.9 LOSSES SUFFERED BY MANPOWER PROVIDING AGENCY

The Manpower Providing Agency shall not claim any damages, costs, charges, expenses, liabilities arising out of performance/non-performance of services, which it may suffer or otherwise incur by reason of any act/omission, negligence, default or error in judgment on part of itself and/or its personnel in rendering or non-rendering the services under this Agreement.

2.10 TERM

The Agreement shall be effective for a period of two years with effect from _____ upto _____ and can be extended further for such period and on such terms and conditions as may be deemed fit and proper by the SUDA,H. Accordingly, the Performance Bank Guarantee (PBG) of estimated project value will be submitted or renewed for over and above the Agreement period as per State Govt. instructions letter No. DGS&D/ Admin/Performance Security/2020/87180-89559, dated 14.12.2020.

2.11 TERMINATION

- (a) Either party can terminate this Agreement by giving one month's written notice to the other without assigning any reason and without payment of any compensation thereof. However, the SUDA,H may give only 24 hours' Notice of Termination of this Agreement to the Manpower Providing Agency if it is seen that there is a major default in compliance of the terms and conditions of this Agreement or the Manpower Providing Agency has failed to comply with its statutory obligations.
- (b) If Manpower Providing Agency commits breach of any covenant or any clause of this Agreement, SUDA,H may send a written notice to Manpower Providing Agency to rectify such breach within the time limit specified in such notice. In the event Manpower Providing Agency fails to rectify such breach within the stipulated time, the Agreement shall forthwith stand terminated and Manpower Providing Agency shall be liable to SUDA,H for losses or damages on account of such breach.

- (c) The SUDA,H shall have the right to immediately terminate this Agreement if the Manpower Providing Agency becomes insolvent, ceases its operations, dissolves, files for bankruptcy or bankruptcy protection, appoints receivers, or enters into an arrangement for the benefit of creditors.

2.12 ASSIGNMENT OF AGREEMENT

This Agreement is executed on the basis of the current management structure of the Manpower Providing Agency. Henceforth, any assessment of this Agreement in part or whole, to any third party without the prior written consent of the SUDA,H shall be a ground for termination of this Agreement forthwith.

2.13 COMPOSITION AND ADDRESS OF MANPOWER PROVIDING AGENCY

- (a) The Manpower Providing Agency shall furnish to the SUDA,H all the relevant papers regarding its constitution, names and addresses of the management and other key personnel of the Manpower Providing Agency and proof of its registration with the concerned Government authorities required for running such a business of Manpower Providing Agency.
- (b) The Manpower Providing Agency shall always inform the SUDA,H in writing about any change in its address or the names and address of its key personnel. Further, the Manpower Providing Agency shall not change its ownership without prior approval of the SUDA,H.

2.14 SERVICE OF NOTICES

Any notice or other communication required or permitted to be given between the parties under this Agreement shall be given in writing at the following address or such other addresses may be intimated from time to time in writing.

SUDA,H	Manpower Providing Agency

2.15 CONFIDENTIALITY

It is understood between the parties hereto that during the course of business relationship, the Service Provider may have access to confidential information of SUDA,H and Agency undertakes that it shall not, without SUDA,H's prior written consent, disclose, provide or make available any confidential information in any form to any person or entity or make use of such information. This clause shall survive for a period of 5 years from the date of expiry of this Agreement or earlier termination thereof.

2.16 ENTIRE AGREEMENT

This Agreement represents the entire Agreement, the parties and supersedes all previous or other writings and understandings, oral or written, and further any modifications to this Agreement, if required shall only be made in writing.

2.17 AMENDMENT/MODIFICATION

The parties can amend this Agreement at any time. However, such amendment shall be effective only when it is reduced in writing and signed by the authorized representatives of both parties hereto.

2.18 SEVERABILITY

If, for any reason, a Court of Competent Jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

2.19 CAPTIONS

The various captions used in this Agreement are for the organizational purpose only and may not be used to interpret the provisions hereof. In case of any conflicts between the captions and the text, the text shall prevail.

2.20 WAIVER

At any time any indulgence or concession granted by the SUDA,H shall not alter or invalidate this Agreement nor constitute the waiver of any of the provision hereof after such time, indulgence or concession shall have been granted. Further, the failure of the SUDA,H to enforce at any time, any of the provisions of this Agreement or to exercise any option which is herein provided for requiring at any time the performance by the Manpower Providing Agency of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions of this Agreement nor in any way affect the validity of this Agreement or any part thereof or the right of the SUDA,H to enforce the same in part or in the entirety of it. Waiver, if any, has to be in writing.

2.21 FORCE MAJEURE

Neither party shall be in default if a failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including Acts of God, Civil Commotion, Strikes, Acts of Terrorism, Labour Disputes and Governmental or Public Authority's demands or requirements.

- (a) Where the performance by the Agency of its obligations under this Agreement is delayed, hindered or prevented by an event or events beyond the reasonable control of the Agency and against which an experienced Agency could not reasonably have been expected to take precautions, the Agency shall promptly notify the Client in writing, specifying the nature of the force majeure event and stating the anticipated delay in the performance of this Agreement.

- (b) From the date of receipt of notice given in accordance with Clause 2.23(a), the Client may, at its sole discretion, either suspend this Agreement for up to a period of 6 months (“the Suspension Period”) or terminate this Agreement forthwith.
- (c) If by the end of the Suspension Period the Parties have not agreed to a further period of suspension or re-instatement of the Agreement, this Agreement shall terminate automatically.

(d) TWO COUNTERPARTS

This Agreement is made in duplicate. The Manpower Providing Agency shall return a copy of this Agreement duly signed and stamped as a token of acceptance of all terms and conditions mentioned above. In the event of commencement of order acceptance, it will be taken that all terms are acceptable.

Article 3: OBLIGATIONS OF THE AGENCY & MANPOWER PROVIDED BY THE AGENCY

3.1 Obligations

- (a) The Agency shall perform all its obligations under this Agreement (including the provision of the Services) with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- (b) Joint Venture/ Consortium ventures are not allowed.

3.2 Personnel

- (a) All members of the Agency's Personnel shall be appropriately qualified, experienced and in a suitable physical condition so as to ensure that the Agency complies with all the Agency's obligations under this Agreement.
- (b) No changes or substitutions may be made to members of the Agency's Personnel identified as key personnel in Article 4 of this Agreement without prior written consent of the Client.
- (c) Replacement of personnel will only be considered under exceptional circumstances (e.g.: Death, Prolonged illness and on leaving the company) and will be subject to prior approval by Client. In case the firm makes replacements in any position, the following penalties apply unless otherwise specified in the Special Conditions of the Agreement:
 - On 1st replacement –0.5% deduction of total estimated project cost.
 - On 2nd replacement –1.0% deduction of total estimated project cost.
 - On subsequent replacements – 1.0% deduction of total estimated project cost, but limited to maximum 2.5% of the total estimated project cost.
- (d) If the Client considers any member of the Agency's Personnel unsuitable, the Agency shall substitute such member as quickly as reasonably possible without direct or indirect charge to the Client with a replacement acceptable to the Client.
- (e) The Agency is responsible for all Acts and Omissions of the Agency's Personnel and for the health, safety and security of such Manpower and their property.
- (f) Whenever required any of the designated Agency's Personnel will be available at any time to attend meetings with State Urban Development Authority, Haryana.
- (g) Agency to submit an undertaking (in the prescribed format) stating that the full time Manpower engaged under this Agreement will not be deployed on any other assignments out of the purview of this Agreement.
- (h) Penalty will be imposed only if delay is on part of the Agency. Penalty clause will not be applicable if the conditions of delay are beyond the control of the Agency i.e. natural calamities / riots, etc.

3.3 Sub-Agency

The Agency shall not sub-Agreement any of its obligations under this Agreement.

3.4 Disclosure of Information

The Agency and the Agency's Personnel shall not, without the prior written consent of the Client, disclose to any third party any confidential information obtained during or arising

from this Agreement (other than in the proper performance of this Agreement or as may be required by authority of competent jurisdiction). In addition, no publicity is to be given to this Agreement without the prior written consent of the Client.

3.5 Intellectual Property Rights

- (a) Subject to Clause 3.5(b), all intellectual property rights in material (including but not limited to reports, data, designs whether or not electronically stored, but not including the Software) specially developed by the Agency or the Agency's Personnel for the Client or pursuant to the performance of the Services commissioned by the Client, shall be the jointly-owned property of SUDA,H and Urban Local Bodies.
- (b) The Agency hereby grants to the Client a world-wide, non-exclusive, irrevocable license to use all Software, including source and object code format.
- (c) The Agency undertakes that commercial off-the-shelf licensed software that is not covered by Clause 3.5(b) will be procured in the name of the Client or in such a manner that it does not interfere with the enjoyment of rights under Clauses 3.5(a) and 3.5(b).
- (d) To the extent that it does not interfere with rights granted under Clause 3.5(b), ownership of intellectual property in Software created by the Agency or the Agency's Personnel pursuant to the performance of Services commissioned by the Client shall remain with the Agency.
- (e) For the purpose of Clause 3.5(b) "use" shall mean and include reproduction, making of derivatives, adaptations, publications and sub-licensing of all the Software and the intellectual property rights therein, but excludes commercial sub-licensing of the Software or its derivatives and adaptations.

3.6 Confidentiality

- (a) Neither of the Parties shall, without the consent of the other, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly carry out their duties) any information concerning the operations, Agreements, commercial or financial arrangements or affairs of the other Party. Both Parties agree that confidentiality obligations do not apply to:
 - i. Information that is already known to third parties without breach of this Agreement; and
 - ii. Or an appropriately empowered public authority, or as a result of an obligation arising under the Right to Information Act or other public disclosure law.

3.7 Access and Audit

- (a) The Agency shall keep accurate and systematic accounts, files and records ("the Records"). The Records shall clearly identify, among other things, the basis upon which invoices have been calculated and the Agency shall keep the Records throughout the duration of this Agreement and for seven years following its termination.
- (b) The Agency shall upon request provide the Client or its representatives or audit officials

unrestricted access to the Records in order that the Records may be inspected and copied. The Agency shall co-operate fully in providing to the Client or its representative's answers to such enquiries as may be made about the Records.

- (c) Where it is found by the Client that any over payment has been made to the Agency, the Agency shall reimburse the Client such amount within 28 days of the date of the Client's written demand.

3.8 Corruption, Commission and Discounts

The Agency warrants and represents to the Client that neither the Agency nor any of the Agency's Personnel:

- (a) gives, offers or agrees to give or accept, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any Agreement or for showing or forbearing to show favour or dis-favour to any person or entity in relation to any Agreement;

OR

has entered into any Agreement in connection with which commission has been paid or agreed to be paid by or to the Agency or Agency's Personnel or on their behalf or to their knowledge unless, before such Agreement was made, Particulars of any such commission and of the terms of any Agreement for the payment of such commission were disclosed in writing to the Client, whose written consent was subsequently given to such payment.

- (b) Neither the Agency nor any of the Agency's Personnel shall accept for or on their own benefit any trade commission, discount or similar payment or benefit in connection with this Agreement.

3.9 Conflict of Interest

- (a) Neither the Agency nor any of the Agency's Personnel shall engage in any business or professional activity which conflicts or could conflict with any of their obligations in relation to this Agreement.
- (b) The Agency and the Agency's Personnel shall notify the Client immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

3.10 Insurances

- (a) The Agency shall maintain professional indemnity insurance cover of an amount not less than the Financial Limit.
- (b) At the request of the Client, or its representatives, the Agency shall provide evidence showing that such insurance has been taken out and maintained and that current premiums have been paid.

3.11 Indemnity

- (a) Except where arising from the negligence of the Client or Client's employees, the Agency shall indemnify the Client in respect of any costs or damages howsoever arising out of or related to breach of warranty or representation, Agreement or statutory duty, or tortuous acts or omissions by the Agency or the Agency's Personnel or any claims made against the Client by third parties in respect thereof.

Article-4: FEES AND PAYMENT

4.1 TERMS OF PAYMENT

The payment shall be made in Indian Rupees either in form of Bank Cheque/Demand Draft or through online/RTGS system, at City level or at SUDA,H level as per decision of Mission Director by following the following schedule:

- a. The Agency will open a separate bank account for each deployed manpower engaged by the Agency and deployed in SUDA,H into which the Agency shall deposit the monthly remuneration before the 10th of every month.
- b. The billing cycle will 26th of preceding month to 25th of every running month.
- c. The Payable/due monthly remuneration will be worked out based on the Performance and attendance of each manpower. The illustrative Performance format is at Annexure-I.
- d. The Agency will work out monthly bill of all the experts/specialists/manpower placed in different towns and State level based on their performance and attendance.
- e. The Agency will submit its final bill(s) supported with certified attendance for processing/payment to designated officer (at State level or at ULB level) on or before last working day of the each month.
- f. The processing of bill(s) will be completed by 5th of next month and payment will be released in Indian Rupees after deduction of due TDS or other applicable taxes, in shape of online transfer by 7th of next month. In case of any calculation or other type of error, the amount worked out of designated officer will be released by 7th of next month as above and balance, if any, shall be settled after discussion with Agency by 15th of next month.
- g. The Agency will ensure the payment of monthly salary (including duly approved admissible leaves) through online system to persons deployed through them by 10th of every month and deposit of their deductions and dues within time limit as prescribed under different Laws/Acts.
- h. The Agency will submit authenticated proof of payment of monthly salary of all the experts/specialists and deposit of entire amount of their deductions/dues by 20th of every month other-wise the payment of next bill will not be processed and released.
- i. The Agency will be liable to make up any kind theft/ loss happened due to negligence or intention of expert/specialist/manpower provided on outsource basis by the Agency. The Agency may deduct/recover such amount of loss/damage from the guilty/ responsible person/employee/expert as per agreement executed by the Agency with that person/ employee/expert will be deducted from their monthly bill(s).

4.2 Other terms:

- a. Fees and charges for the services to be rendered are defined in Letter of Allotment (LoA).

- b. All payments by the SUDA,H shall be made after deduction of due tax at source (DTS)/ Tax deduction at Source (TDS) wherever applicable as per the provisions of the Income Tax Act, 1961 or any kind of Tax liability under any other Act.
- c. The Manpower Providing Agency (being the employer in relation to persons engaged/employed/deployed by it to provide the services under this Agreement) shall alone be responsible and liable to pay wages/salaries to such persons. In no case, the remuneration/amount shall not be less than the minimum wages as fixed or prescribed under the Minimum Wages Act, 1948 (Act XI of 1948) or by the State Government and/or any authority constituted by or under any law for the category of workers employed by it from time to time of all the relevant labour laws. He will also observe compliance.
- d. The Manpower Providing Agency will have to produce the register of wages or the register of wages-cum-muster roll of the preceding month along-with the bill to be submitted on the last working day of every calendar month for verification to the nominated official of SUDA,H/ULB's. The Manpower Providing Agency shall ensure that payment to the employees deployed under this Agreement in the presence of an authorized representative of the SUDA,H/ULB's.

4.3 SUBMISSION AND VERIFICATION OF BILLS

The Manpower Providing Agency shall submit on a monthly basis the bills as per payment Terms & Conditions for the services rendered to enable the SUDA,H to verify and process the same.

4.4 Applicable Provisions and Financial Limit

- (a) Unless different provisions are substituted in Article 5, inclusive shall apply in relation to fees and payment.
- (b) The components which comprise the Financial Limit are set out in the Schedule of Fees of Article 5. No expenditure may be incurred in excess of the Financial Limit and no virements between components shown in the schedule of Fees are permitted without the prior written authority of the Client Agreement Officer.

4.5 Fees

- (a) Any fees payable are deemed to cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including, but not limited to, clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in this Agreement.

4.6 Invoicing Instructions

- (a) Invoices should be submitted against agreed milestones or as specified Schedule of Payments in duplicate and in accordance with the remainder of Clause 5.6.
- (b) The Client shall unless otherwise expressly provided in Article 6 make payments due by

direct credit through the prevailing Clearing Systems. All invoices must contain details of the bank account to which payments are to be made.

- (c) Invoices should include a form of letterhead, the Agreement reference number and bear an original signature. They should be numbered sequentially and dated, and marked "For the attention of the Agreement Officer" named in Article 6. The final invoice presented in connection with this Agreement should be endorsed "Final Invoice".

4.7 Payments

- (a) Subject to the Client being satisfied that the Agency is or has been carrying out their duties, obligations and responsibilities under this Agreement, sums duly approved shall be paid within 30 days of receipt of a valid invoice.
- (b) If for any reason the Client is dissatisfied with performance of this Agreement or there has been a unreasonable delay without clients approval an appropriate sum may be withheld from any payment otherwise due. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- (c) Should the Client determine after paying for a particular Service that the Service has not been completed satisfactorily, the Client may recover, or withhold from further payments, an amount not exceeding that previously charged for that Service until the unsatisfactory Service is remedied to its satisfaction.

4.8 Taxes and Duties

- (a) The Agency shall be entirely responsible for service tax and all other taxes, stamp duties, license fees, and other such levies imposed within/outside India.
- (b) If any tax exemptions, reductions, allowances or privileges are available to the Agency in India, the Client shall use its best efforts to enable the Agency to benefit from any such tax savings to the maximum allowable extent.

4.9 Suspension or Termination without Default of the Agency

- (a) The Client may, at its sole discretion, suspend or terminate this Agreement at any time by so notifying the Agency and giving the reason(s) for such suspension or termination.
- (b) Where this Agreement has been suspended or terminated pursuant to Clause 5.6(a), the Agency shall:
 - i. take such steps as are necessary to terminate the provision of the Services, in a cost-effective, timely and orderly manner; and
 - ii. provide to the Client, not more than 60 days after the Client notifies the Agency of the suspension or termination of this Agreement an account in writing, stating:
 - a. any costs due before the date of suspension or termination;
 - b. any costs incurred by the Agency after the date of suspension or termination, which the Agency necessarily incurred in the proper performance of this

Agreement and which it cannot reasonably be expected to avoid or recover.

- (c) Subject to the Client's approval, the Client shall pay such amount to the Agency within 30 days of receipt from the Agency of an Invoice in respect of the amount due.

4.10 Suspension or Termination with Default of the Agency

4.10.1 The Client may notify the Agency of the suspension or termination of this Agreement where the Services or any part of them are not provided to the satisfaction of the Client, giving the reasons for such dissatisfaction and, in the case of suspension, the action required by the Agency to remedy that dissatisfaction and the time within which it must be completed.

4.10.2 Where this Agreement is suspended under Clause 5.7.1 and the Agency subsequently fails to remedy the dissatisfaction, the Client may terminate this Agreement forthwith.

4.10.3 The Client may, without prejudice to its other rights, including but not limited to the right to claim for costs and losses incurred terminate this Agreement forthwith where:

- a) the Agency or any member of the Agency's Personnel, either directly or through their servants or agents, breaches any of their obligations under this Agreement, or
- b) the Agency or any member of the Agency's Personnel has committed an offence under the Prevention of Corruption Acts 1988 or the National Security Act 1980 or in breach of this Agreement; or
- c) the Agency is an individual or a partnership or a joint venture and at any time:
 - i. become bankrupt; or
 - ii. is the subject of a receiving order or administration orders; or
 - iii. makes any composition or arrangement with or for the benefit of the Agency's creditors; or
 - iv. makes any conveyance or assignment for the benefit of the Agency's creditors; or
- d) the Agency is a company and:
 - i. an order is made or a resolution is passed for the winding up of the Agency; or
 - ii. a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Agency.
 - iii. the Agency is a partnership or joint venture or a company and there is a Change in Control. However, the Agreement will continue if the Client states that it has "no objection" to the continuation of the Agreement after the Change in Control.

4.10.4 Where this Agreement is terminated in accordance with this Clause, or because of change in CV without prior approval from the Client, the Agency shall without prejudice to the

Client's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner but shall not be entitled to any further payment in relation to this Agreement.

- 4.10.5** In case of termination of Agreement the client is entitle to forfeit the Bank Guarantee submitted by the Agency even without issuing any Notice to the Agency.

GENERAL PROVISIONS

4.11 Variations

No variation/amendment in the terms or scope of this Agreement shall be effective without the prior written consent of both Parties and recorded in writing in the form of a letter entitled "Agreement Amendment No.". Without such consent neither Party shall have any liability in respect of work performed outside the Services set out in Volume II of the RFP.

4.12 Assignment

The Agency shall not, without the prior written consent of the Client, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of the Agency, any of its rights or obligations under this Agreement or any part, share or interest therein.

4.13 Limit of Liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Agency or the Agency's Personnel the Agency's liability under this Agreement shall be subject to the amount of the Financial Limit.

4.14 Retention of Rights

Clauses 3.4, 3.5, 3.6, 3.7 and 3.11 of Article 3 and 2.25, 2.27 of Article 2 any relevant clauses listed under Article 3 shall continue in force following the termination of this Agreement.

4.15 Taxes and Duties

The Manpower Providing Agency shall be entirely responsible for all taxes, duties, etc. incurred. The due tax shall be deducted from the payment of Manpower Providing Agency as per Income Tax Act or other Act.

5. RESOLUTION OF DISPUTES

5.1. Amicable Settlement

The parties hereby agree that if there is any dispute arising out of the said Agreement, the parties shall endeavor to make all the efforts to resolve the matter amicably by mutual discussions, meetings and negotiations between the parties.

5.2 Arbitration Clause

Subject to the provisions of Articles 5.1, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by a Sole Arbitrator to be appointed by the Administrative Secretary to Government Haryana, Urban Local Bodies Department. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The expenses of the arbitration as determined by the Arbitrator shall be borne by the Manpower Providing Agency. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself.

5.3. Places of Arbitrations

The place of arbitration shall ordinarily be Panchkula but by both the Parties of Agreement, the arbitration hearings, if required, may be held elsewhere.

5.4. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any order and awards shall be in English or Hindi and, if oral hearings take place, English or Hindi shall be the language to be used in hearings. Any party using language other than Hindi and English shall supply the other party an authorized transcript of true translation of its submissions into English or Hindi as its costs and expenses.

5.5. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

5.6. Bars of Jurisdiction

1. Notwithstanding anything contained contrary in any other Law enforced in the territory of India from time to time:-
 - (a) No proceeding other than Arbitration Proceeding shall be carried out in respect of any dispute, differences or controversy whatever nature between the parties, howsoever arising under, out of or in relation to this Agreement.

AND

- (b) The Court having territorial jurisdiction in Panchkula shall have exclusive jurisdiction to try and adjudicate the dispute arising out of this Agreement. No other Court can entertain the dispute arising out of this Agreement.

Article 6: Special Conditions

[Select the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]

6.1 Officials

The Agreement Officer is: [please insert details as below]

Name:

Designation: Mission Director

State Urban Development Authority, Haryana,

Bays No. 11-14, Sector-4, Panchkula (Haryana).

Telephone: 0172-2570020

Email: suda.haryana@yahoo.co.in

6.2 The Project/Nodal Officer/Officer In-Charge is: [please insert details as below]

Name:

Commissioner, Municipal Corporation/Executive officer, Municipal Council/Secretary, Municipal Committee of town/ULB or any other officer/official nominated for this purpose.

Telephone:

Email: suda.haryana@yahoo.co.in

6.3 The Agency Representative is: [please insert details as below]

Name:

Designation: Communication Address: Phone:

Fax:

Email:

6.4 Additional Documents To Be Included In This Agreement

The following documents are included in and form part of the Agreement:

Annex X. Minutes of the meeting between the Client and the Agency dated xxxx 2021

[If there are any modifications to the General Conditions of Agreement, the clauses that replace GCC clauses should be inserted here. Additional clauses can also be inserted here, but care should be taken to ensure that this does not cause interpretation difficulties.]

6.5 Payment Schedule

The payment schedule is contained at Article 5 on Terms of Payment *[Any changes should be advised to the Agency during negotiations.]*

6.6 Marking and Documentation

The marking and documentation within and outside the Lots shall be: [insert in detail the markings on the packing and all documentation required; sample below]

SSK

Details of Project Officer as in 1.2 of SCC

Standard International Norms for Marking

Article 7: Terms of Reference and Agency's Personnel Schedule.

As Detailed in volume 2 of Scope of Work.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

In witness whereof the SUDA,H and the Manpower Service Provider above said have here unto subscriber their hands on the day month and year first mentioned above in the presence of the following witnesses:

SIGNED, SEALED AND DELIVERED

WITNESSES

1. Signature:
Name:
Date:
Designation:

Signature:
Name:
Date:
Designation:

2. Signature:
Name:
Date:
Designation:

For and on behalf of the
SUDA,H

SIGNED, SEALED AND DELIVERED

WITNESSES

3. Signature:
Name:
Date:
Address:

Signature:
Name:
Date:
Address:

4. Signature:
Name:
Date:
Address:

For and on behalf of the
Manpower Providing Agency.