

NATIONAL MISSION FOR CLEAN GANGA

Selection

of

**Strategic Consultant for PPP Design and
Transaction Support**

For

**Interception & Diversion network and
Sewage Treatment Plants under Asansol,
Burdwan & Durgapur Municipalities in
West-Bengal**

REQUEST FOR PROPOSALS

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Disclaimer

The information contained in this Request for Proposals document (“**RFP**”) or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the NMCG or any of its employees or advisers, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the NMCG to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the NMCG in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the NMCG, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

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

The NMCG, its employees and advisers make no representation or warranty and shall have no liability to any person including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, 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.

The NMCG 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.

The NMCG may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the NMCG is bound to select any Bidder or to appoint the Selected Bidder, as the case may be, for the Consultancy and the NMCG reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

Glossary

Additional Costs	As in Item H of Form-2 of Appendix-II
Agreement	As defined in Schedule-2
Agreement Value	As defined in Clause 6.1.2 of Schedule-2
Applicable Laws	As defined in Schedule-2
Bidder	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorised Representative	As defined in Clause 2.13.3
NMCG	As defined in Clause 1.1.1
Bid Security	As defined in Clause 2.20.1
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 2.3.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in [Paragraph 8] of Schedule-1
Consultant	As defined in Clause 1.2
CV	Curriculum Vitae
DBFOT	Design, Build, Finance, Operate and Transfer
Deliverables	As defined in Paragraph 4 of Schedule-1
Documents	As defined in Clause 2.12
Effective Date	As defined in Clause 2.1 of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	As defined in Clause 1.1.1(i) of Schedule-2
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement	Form of Agreement as in Schedule-2
INR, Re, Rs.	Indian Rupee(s)
Key Date or KD	As defined in [Paragraph 6.2] of Schedule-1
Key Personnel	As defined in Clause 2.1.4
Lead Member	As defined in Clause 2.1.1
LOA	Letter of Award
Member	As defined in Clause 2.3.3 (a)
Official Website	As defined in Clause 1.11.2
Personnel	As defined in Clause 1.1.1(n) of Schedule-2
PPP	Public Private Partnership

Professional Personnel	As defined in Clause 2.14.6
Prohibited Practices	As defined in Clause 4.1
Project	As defined in Clause 1.1.1
Project Manager	As defined in Clause 4.6 of Schedule-2
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clauses 1.5 and 1.8
Resident Personnel	As defined in Clause 1.1.1(o) of Schedule-2
RFP	As defined in Disclaimer
Selected Bidder	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(q) of Schedule-2
Sole Firm	As defined in Clause 2.1.1
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub-Consultant	As defined in Clause 1.1.1(r) of Schedule-2
Support Personnel	As defined in Clause 2.14.6
Team Leader	As defined in Clause 2.1.4
Technical Proposal	As defined in Clause 2.14.1
TOR	As defined in Clause 1.1.3
US\$	United States Dollar

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.

Invitation for Proposals

1. INTRODUCTION

1.1 Background

1.1.1 Government of India has approved the Namami Gange Programme as an integrated approach for effective abatement of pollution in river Ganga. As part of this and to ensure that no untreated domestic sewage flow into the river Ganga, various interventions are planned such as Interception & Diversion works and development & operation of Sewage Treatment Plants(STPs). Considering various development models in practice for the construction, operation and maintenance of Sewage Treatment Plants, Government of India has approved the Hybrid Annuity based Public Private Partnership (PPP) mode as one of the options for the development & operation of STPs. Under this model, private investor/developer will design, build, finance, operate and transfer the asset (STP) to the Project Executing Agency/Jal Nigam/Jal Sansthan/Urban Local body at the end of the Concession Period (say 15 years). 40% of the Capital cost will be paid to the developer during construction of the STP. Balance 60% along with Operation & Maintenance (O&M) cost will be paid over the Concession Period on achievement of key performance indicators as per the contract. Entire cost of development and operation of the STPs will be 100% funded by the Government of India as central sector scheme. It is also the endeavour of NMCG to ensure that already commissioned STPs under various schemes are operational and performing as per design standards. It is also envisaged to explore the possibility of recycle/reuse of the treated waste water for non-potable purpose. The back ground note on hybrid Annuity based PPP mode is available in the website of National Mission for Clean Ganga (NMCG) at www.nmcg.nic.in.

As part of this endeavour, with the approval of National Mission for Clean Ganga (hereinafter NMCG) has decided to undertake the Development of Interception & Diversion network and Sewage Treatment Plants (the "Project") through Hybrid Annuity based Public-Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis in in the following towns in West-Bengal.

S. No.	Name of the Town	STP Capacity	Total Capacity	Total Project Cost (in INR)
1.	Burdwan	50 MLD	50 MLD	234.31 Crores
2.	Durgapur	25 MLD 2 nos. + 30 MLD one no.	80 MLD	287.53 Crores
3.	Asansol	8 nos. (8, 12, 17, 6, 20, 17, 11, 4 MLD)	95 MLD	384.96 Crores

1.1.2 With a view to inviting bids for the Project, the NMCG has decided to engage a suitable Strategic Consultant and Transaction Advisor to conduct a feasibility study, design suitable packaging of the projects, structure the PPP contracts, prepare the Tender documents and assist in managing the tender process as per the detailed scope of work. If found feasible, the Project may be awarded on DBFOT basis to a private entity (the "Concessionaire") selected

through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the concession agreement to be entered into between the NMCG, Kolkata Metropolitan Development Authority (KMDA) (State Project Executing Agency) and the Concessionaire (the “**Concession Agreement**”).

- 1.1.3 In pursuance of the above, the NMCG has decided to carry out the process for the selection of a dedicated Strategic Consultant and Transaction Adviser (TA) for the above mentioned project. This RFP is open to all interested firms/consulting companies including such empanelled TAs firms. The detailed scope of work shall be in accordance with the Terms of Reference specified in Schedule-1 (the “**TOR**”).
- 1.1.4 Those firms/companies who have been selected as Transaction Advisors for other projects/packages recently awarded by NMCG, for which 80% of the deliverables are yet to be achieved, are also eligible to submit their bids for this project, subject to the condition that such firms/companies should propose new team of Key Personnel for this assignment.
- 1.1.5 National Mission for Clean Ganga has simultaneously invited Request for Proposal for the appointment of Strategic Consultants for PPP design and Transaction advisory support for the development of Sewage Treatment Plants (STPs) & Integration of existing assets for three towns/packages. Bidders are free to submit proposals for all three packages. However maximum number of packages allocated to one consultant will be limited to 2 (two) only. Bidder has to submit along with the Proposal the preference of two packages if selected for more than 2 packages. Any change/modification in preference will not be entertained by NMCG after the submission of the Proposals. In case if the Bidder fails to submit the preference along with the Proposal, NMCG will decide upon the allocation of maximum 2 projects/packages to such selected Bidder on the basis of merits of the case. Further the Bidder can propose the same team of Key Personnel for maximum 2 (two) projects/ packages only.

1.2 Request for Proposals

The NMCG invites proposals (the “**Proposals**”) from interested firms for selection of a Strategic Consultant and Transaction Advisor (the “**Consultant**”) who shall prepare a Feasibility Report, tender documents for the Project for all STP projects in the State of West Bengal. The Consultant shall develop an appropriate structure for the Project (the “**PPP Model**”), prepare bid documents for selection of the Concessionaire and assist the Kolkata Metropolitan Development Authority (KMDA) in the bidding process (collectively the “**Consultancy**”). NMCG intends to select the Consultant through an open competitive bidding process in accordance with the procedure set out herein.

1.3 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 the project site and office of the Kolkata Metropolitan Development Authority

(KMDA) , sending written queries to NMCG and attending a Pre-Proposal Conference on the date and time specified in Clause 1.10.

1.4 Sale of RFP Document

RFP document can be downloaded from the Official Website of the NMCG.

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 90 days from the Proposal Due Date (the “PDD”).

1.6 Brief description of the Selection Process

The NMCG has adopted a Single stage two-envelope selection process (collectively the “**Selection Process**”) for evaluating the Proposals comprising technical and financial bids to be submitted in two separate sealed envelopes. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. The first ranked Bidder shall be selected for negotiation (the “**Selected Bidder**”) while the second ranked Bidder will be kept in reserve.

1.7 Currency conversion rate and payment

1.7.1 For the purposes of technical evaluation of Bidders, [Rs. 72 (Rupees seventy two)] per US\$ 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.

1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.8 Schedule of Selection Process

The NMCG would endeavour to adhere to the following schedule:

	Description	Date
1.	Last date for receiving queries/clarifications	22 nd January 2019
2.	Pre-Proposal Conference	24 th January 2019 at 3.00 PM

3.	NMCG response to queries	30 th January 2019
4.	Proposal Due Date or PDD	6 th February 2019 at 12:00 PM
5.	Opening of Proposals	6 th February 2019 at 12:30 PM
6.	Date for presentation on Approach & methodology	20 th February 2019
7.	Letter of Award (LOA)	Within 20 days of PDD
8.	Signing of Agreement	Within 7 days of LOA
9.	Validity of Proposals	90 days from Proposal Due Date

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

Prospective Bidders may visit the Site and review the available data at any time prior to PDD. For this purpose, they will provide at least two days' notice to the nodal officer specified below:

DR. BISWAJIT MUKHERJEE

Chief Engineer, Kolkata Metropolitan Development Authority

MOBILE: 9830372476

Email: kmdagap@gmail.com

1.10 Pre-Proposal Conference

The date, time and venue of Pre-Proposal Conference shall be:

Date: 24th January 2019,

Time: 3.00 PM

Venue: Auditorium, National Mission for Clean Ganga, 1st Floor,

Major Dhyan Chand National Stadium, India Gate New Delhi – 110002.

1.11 Communications

1.11.1 All communications including the submission of Proposal should be addressed to:

Shri. Madhava Kumar R

Sr. Economic & Finance Expert

National Mission for Clean Ganga, 1st Floor, Major Dhyan Chand Stadium, India Gate, New Delhi – 110002.

Phone: 011 - 23072900

Mobile: 9810500403

Email: madhvakumar@nmcg.nic.in and CC to ed.projects@nmcg.nic.in

1.11.2 The **Official Website** of the NMCG is:

<http://www.nmcg.nic.in>

1.11.3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

RFP Dated***** Strategic Consultant for PPP design and
Transaction Support for the Interception & Diversion network Sewage
Treatment Plants under Burdwan, Durgapur & Asansol Municipality, in West-
Bengal ----- .

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Proposal

- 2.1.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. The Bidder shall be a Sole Firm or a joint venture/consortium of firms, for which one of the member has been proposed as the lead member of the consortium (the “Lead Member”) as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP. If the Bidder is a consortium/joint venture the combined Technical and Financial capacity of all members shall be considered for determining the eligibility of the Bidder as per clause 2.2.2 of the RFP document. However maximum number of members/partners are limited to three and other terms and conditions of the RFP document are applicable to each member of the consortium/joint venture. Also all members of the consortium are jointly and severally responsible for performance of the assignment.
- 2.1.2 Bidders are advised that the selection of Consultant shall be on the basis of an evaluation by the NMCG 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 the NMCG’s decisions are without any right of appeal whatsoever.
- 2.1.3 The Bidder shall submit its Proposal in the form and manner specified in this Part-2 of the RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Bidder shall be required to enter into an agreement with the NMCG in the form specified at Schedule-2.
- 2.1.4 If the Bidder is a consortium then, the members of the Consortium shall enter into a binding Joint Bidding Agreement in an agreeable format, for the purpose of making and submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
- i. Nominate one of the Members as the Lead Member of the Consortium.
 - ii. Convey the intent to enter into the agreement by the Lead Member and subsequently perform all the obligations of the Consultant in terms of the agreement, in case the assignment is awarded to the Consortium;
 - iii. Clearly outline the proposed roles and responsibilities, if any, of each member; and
 - iv. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations under the RFP document.

2.2 Conditions of Eligibility of Bidders

2.2.1 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.

2.2.2 To be eligible for evaluation of its Proposal, the Bidder shall fulfil the following:

(A) **Technical Capacity:** The Bidder shall have, over the past 7 (seven) years preceding the PDD, undertaken a minimum of 3 (three) Eligible Assignments each in Financial/Transaction advisory Experience and a minimum of 3 (three) Eligible Assignments in Technical Consultancy Experience as specified in Clause 3.1.4.

(B) **Financial Capacity:** The Bidder shall have average annual turnover Rs.50 (fifty) crore or US \$ 25 (twenty-five) million per annum from consulting business (excluding Audit, Taxation and IT) during past 3 (three) financial years preceding the Proposal Due Date.

(C) **Availability of Key Personnel:** The Bidder shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause (D) below.

(D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience in years	Experience on Eligible Assignments
Team Leader and Strategy Expert	Post-Graduation in Management / Civil Engineering/Public Health Engineering/Environmental Engineering.	10	He should have experience of senior consulting leadership roles in strategy/program management/policy/PPP/Transaction Advisory/Project Planning/Project Supervision in water & sanitation /Infrastructure sector and should have undertaken at least 2 Eligible Assignments.
PPP Expert	Post Graduate in Management/ CA/CFA or equivalent	8	He should have PPP/project structuring/strategy/project management/ bid

			advisory for at least 2 PPP projects in any infrastructure sector defined in clause 3.1.4(A).
Financial Expert	Post Graduate in Management/ CA/CFA or equivalent	8	He should have undertaken financial modelling and analysis/financial structuring/valuation for at least 2 projects in any infrastructure sector defined in clause 3.1.4(A).
Waste Water Technology expert	Graduate in civil Engineering or equivalent degree with Post Graduation in Civil Engineering / Environmental Engineering/Public Health Engineering	8	He should have specific experience in design, construction, commissioning, Operation & Maintenance of waste water networks, treatment plants (STPs) and has demonstrated experience in at least 2 eligible projects.
Legal Expert	Graduate in Law	8	Should have prepared draft concession agreement and contractual documentation for at least 2 PPP projects in any infrastructure sector defined in clause 3.1.4(A).

- 2.2.3 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.
- 2.2.4 The Bidder should submit a Power of Attorney as per the format at Form-4 of Appendix-I; 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.

- 2.2.5 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.
- 2.2.6 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.
- 2.2.7 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.

2.3 Conflict of Interest

- 2.3.1 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, the NMCG shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the NMCG for, *inter alia*, the time, cost and effort of the NMCG including consideration of such Bidder’s Proposal, without prejudice to any other right or remedy that may be available to the NMCG hereunder or otherwise.
- 2.3.2 The NMCG requires that the Consultant provides professional, objective, and impartial advice and at all times hold the NMCG’s interests 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 the NMCG.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Bidder, its consortium member (the “**Member**”) or Associate (or any constituent thereof) and any other Bidder, its consortium member or 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 a 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 other Bidder, its consortium member 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) 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 consultancy services to the NMCG for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (g) a firm which has been engaged by the NMCG to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting 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

- (h) 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. 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.

- 2.3.4 A Bidder eventually appointed to provide Consultancy 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 the NMCG in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the NMCG in accordance with the rules of the NMCG. 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.

2.4 Number of Proposals

No Bidder or its Associate shall submit more than one Proposal for the Consultancy. A Bidder applying individually or as an Associate shall not be entitled to submit another Proposal either individually or as a member of any consortium, as the case may be.

2.5 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 the office of the Kolkata Metropolitan Development Authority (KMDA), NMCG, Project site etc. The NMCG will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Site visit and verification of information

Bidders are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, access to the site, availability of drawings and other data with the NMCG, Kolkata Metropolitan Development Authority (KMDA), Applicable Laws and regulations or any other matter considered relevant by them. Visits shall be organised for the benefit of prospective Bidders on dates, time and venue as specified in Clause 1.9.

2.7 Acknowledgement by Bidder

2.7.1 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 the NMCG
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the NMCG or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The NMCG 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 the NMCG/Kolkata Metropolitan Development Authority (KMDA).

2.8 Right to reject any or all Proposals

2.8.1 Notwithstanding anything contained in this RFP, the NMCG 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.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the NMCG 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 NMCG the supplemental information sought by the NMCG for evaluation of the Proposal.

Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If the Bidder is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then the NMCG 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 NMCG, including annulment of the Selection Process.

B. DOCUMENTS

2.9 Contents of the RFP

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 2.11:

Request for Proposal

- 1 Introduction
- 2 Instructions to Bidders
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

Schedules

- 1 **Terms of Reference**
- 2 **Form of Agreement**
 - Annex-1: Terms of Reference
 - Annex-2: Estimate of Personnel Costs
 - Annex-3: Approved Sub-Consultant(s)
 - Annex-4: Cost of Services
 - Annex-5: Payment Schedule
 - Annex-6: Bank Guarantee for Performance Security
 - Annex-7: Letter of Award

3 **Guidance Note on Conflict of Interest**

Appendices

Appendix-I: Technical Proposal

Form-1: Letter of Proposal

Form-2: Particulars of the Bidder

Form-3: Statement of Legal Capacity

Form-4: Power of Attorney

Form-5: Financial Capacity of Bidder

Form-6: Particulars of Key Personnel

Form-7: Proposed Methodology and Work Plan

Form-8: Abstract of Eligible Assignments of Bidder

Form-9: Abstract of Eligible Assignments of Key Personnel

Form-10: Eligible Assignments of Bidder

Form-11: Eligible Assignments of Key Personnel

Form-12: Curriculum Vitae (CV) of Key Personnel

Form-13: Proposal for Sub-Consultant(s)

Form 14: Certificate for Associate from Statutory Auditor

Form 15: Form of Bid Security (Bank Guarantee)

Appendix-II: Financial Proposal

Form-1: Covering Letter

Form-2: Financial Proposal

Form-3: Estimate of Personnel Costs

2.10 Clarifications

2.10.1 Bidders requiring any clarification on the RFP may send their queries to the NMCG 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 1.8. The envelopes shall clearly bear the following identification:

"Queries concerning RFP for (name of Assignment)"

The NMCG shall endeavour to respond to the queries within the period specified therein Clause 1.8. The responses will be sent by e-mail. The NMCG will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Bidders who have purchased the RFP document without identifying the source of queries.

2.10.2 The NMCG reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be

construed as obliging the NMCG to respond to any question or to provide any clarification.

2.11 Amendment of RFP

- 2.11.1 At any time prior to the deadline for submission of Proposal, the NMCG may, for any reason, whether at its own initiative or in response to clarifications requested by the Bidder, modify the RFP document by the issuance of Addendum/ Amendment. .
- 2.11.2 All such amendments will be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Bidders. The Bidders are requested to update themselves by visiting the official website of NMCG regularly, for such amendments.
- 2.11.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the NMCG may, in its sole discretion, extend the Proposal Due Date.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12 Language

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 on 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.

2.13 Format and signing of Proposal

- 2.13.1 The Bidder shall provide all the information sought under this RFP. The NMCG would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Bidder shall prepare one original set of the 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 Proposal, along with Documents, marked “COPY”. In the event of any discrepancy between the original and its copies, the original shall prevail.
- 2.13.3 The 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
- (d) by the Authorised Representative of the Lead Member, in case of consortium.

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 Appendix-I (Form-4) shall accompany the Proposal.

2.13.4 Bidders should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by NMCG 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 2.17.1. 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, the NMCG reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.24.

2.14 Technical Proposal

2.14.1 Bidders shall submit the technical proposal in the formats at Appendix-I (the “**Technical Proposal**”).

2.14.2 While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:

- (a) The Bid Security is provided;
- (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 2.2.2 (D) 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 75 (seventy five) years at the time of submitting the proposal; and
- (l) the proposal is responsive in terms of Clause 2.22.3.
- (m) Bid Process fee of Rs. 10,000/- (Rupees ten thousand only) in the form of Demand draft/Banker's Cheque Drawn in favour of National Mission for Clean Ganga, Payable at New Delhi has been enclosed
- (n) In addition to the above each Bidder is required to fill and submit a soft copy of the data sheet in MS.Excel format in a compact disc. The Excel sheet is available in the website of NMCG for down loading purpose.

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 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 the NMCG 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.

2.14.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

2.14.6 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. The Key Personnel specified in Clause 2.2.2(D) 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 format at Form-12 of Appendix-I.

2.14.7 A Bidder, if it considers necessary, either during the submission of the bid or at any point in time during the course of the assignment / work, may propose suitable Sub-Consultants in specific areas of expertise. Credentials of such Sub-Consultants should be submitted in Form-13 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel. .

2.14.8 The NMCG 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 the NMCG to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the NMCG thereunder.

2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement 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 Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, 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 the NMCG without the NMCG being liable in any manner whatsoever to the Bidder or Consultant, as the case may be.

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

2.15 Financial Proposal

2.15.1 Bidders shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) clearly indicating the total cost of the Consultancy (Item [G] of Form-2 of Appendix-II) 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.

2.15.2 While submitting the Financial Proposal, the Bidder shall ensure the following:

- (i) 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, geo-technical 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 non-responsive and liable to be rejected.
- (ii) 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.

(iii) Costs (including break down of costs) shall be expressed in INR.

2.16 Submission of Proposal

2.16.1 The Bidders shall submit the 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 the NMCG 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 the NMCG, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the NMCG, RFP Notice number, Consultancy name as indicated at Clauses 1.11.1 and 1.11.3 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 the
National Mission for Clean Ganga (NMCG)”

If the envelope is not sealed and marked as instructed above, the NMCG assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Bidder.

2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked ‘**Technical Proposal**’ and the other clearly marked ‘**Financial Proposal**’. The envelope marked “Technical Proposal” shall contain:

- (i) Application in the prescribed format (Form-1 of Appendix-I) along with Forms 2 to 15 of Appendix-I and supporting documents; and
- (ii) Bid security as specified in Clause 2.20.1

The envelope marked “Financial Proposal” shall contain the Financial Proposal in the prescribed format (Forms 1, 2 & 3 of Appendix-II).

2.16.4 The Technical Proposal and Financial 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 and Financial Proposal must be numbered and initialled by the person or persons signing the Proposal.

2.16.5 The completed 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.

2.16.6 The 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.

- 2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

- 2.17.1 Proposal should be submitted at or the date and time specified in Clause 1.8 at the address provided in Clause 1.11.1 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.

- 2.17.2 The NMCG may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

2.18 Late Proposals

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

2.19 Modification/ substitution/ withdrawal of Proposals

- 2.19.1 The Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the NMCG prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Bidder on or after the Proposal Due Date.

- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

- 2.19.3 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 the NMCG, shall be disregarded.

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Proposal, a bid security of [Rs. 1,00,000 (Rupees One Lakh only)] in the form of a Demand Draft/ Bank Guarantee issued by one of the Nationalised/ Scheduled Banks in India in favour of the National Mission for Clean Ganga payable at New Delhi (the "**Bid Security**"), returnable not later than 30 (thirty) days from PDD except in case of the two highest ranked Bidders as required in Clause 2.25.1. In the event that the first ranked Bidder commences the assignment as required in Clause 2.30, the second ranked Bidder, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case later than 120 (one hundred

and twenty) days from PDD. The Selected Bidder's Bid Security shall be returned, upon the Bidder signing the Agreement and submission of Performance Security in accordance with the provisions thereof.

- 2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the NMCG as non-responsive.
- 2.20.3 The NMCG shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.20.4 The Bidder, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the NMCG's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the NMCG as the mutually agreed pre-estimated compensation and damage payable to the NMCG for, *inter alia*, the time, cost and effort of the NMCG in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:
 - (a) If a Bidder submits a non-responsive Proposal;
 - (b) If a Bidder engages in any of the Prohibited Practices specified in Section 4 of this RFP;
 - (c) If a Bidder withdraws its Proposal 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 2.25.1;
 - (e) In the case of a Selected Bidder, if the Bidder fails to sign the Agreement or commence the assignment as specified in Clauses 2.29 and 2.30 respectively; or
 - (f) If the Bidder is found to have a Conflict of Interest as specified in Clause 2.3.

2.21 Performance Security

- 2.21.1 The Bidder, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the NMCG's any other right or remedy hereunder or in law or otherwise, its Performance Security shall be forfeited and appropriated by the NMCG as the mutually agreed pre-estimated compensation and damages payable to the NMCG for, *inter alia*, the time, cost and effort of the NMCG in regard to the RFP, including the consideration and evaluation of the Proposal, under the following conditions:
 - (a) If a Bidder engages in any of the Prohibited Practices specified in Clause 4.1 of this RFP;
 - (b) if the Bidder is found to have a Conflict of Interest as specified in Clause 2.3; and

(c) if the Selected Bidder commits a breach of the Agreement.

2.21.2 An amount equal to 10% (ten cent) of the Agreement Value shall be deemed to be the Performance Security for the purposes of this Clause 2.21, which may be forfeited and appropriated in accordance with the provisions hereof.

2.21.3 If the selected Bidders fails to submit the Performance Guarantee before the signing of the agreement, the LoA shall be deemed to be withdrawn and the Bid security shall be forfeited by NMCG as the compensation payable to NMCG for the loss of time, cost and effort of NMCG in regard to the RFP

D. EVALUATION PROCESS

2.22 Evaluation of Proposals

2.22.1 The NMCG shall open the Proposals on the date and time specified in clause 1.8, at the place specified in Clause 1.11.1 and in the presence of the Bidders who choose to attend. The envelopes marked “Technical Proposal” shall be opened first. The envelopes marked “Financial Proposal” shall be kept sealed for opening at a later date.

2.22.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.

2.22.3 Prior to evaluation of Proposals, the NMCG will determine whether each Proposal is responsive to the requirements of the RFP. The NMCG may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:

- (a) the Technical Proposal is received in the form specified at Appendix-I;
- (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
- (c) it is accompanied by the Bid Security as specified in Clause 2.20.1.
- (d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.16;
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
- (f) it contains all the information (complete in all respects) as requested in the RFP;
- (g) it does not contain any condition or qualification; and
- (h) it is not non-responsive in terms hereof.

2.22.4 The NMCG reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the NMCG in respect of such Proposals.

- 2.22.5 The NMCG shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.
- 2.22.6 After the technical evaluation, the NMCG shall prepare a list of shortlisted Bidders in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Bidders along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Bidders who choose to be present. The NMCG will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4.
- 2.22.7 Bidders are advised that Selection shall be entirely at the discretion of the NMCG. Bidders shall be deemed to have understood and agreed that the NMCG shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.
- 2.22.8 Any information contained in the Proposal shall not in any way be construed as binding on the NMCG, its agents, successors or assigns, but shall be binding against the Bidder if the Consultancy is subsequently awarded to it.

2.23 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 the NMCG in relation to matters arising out of, or concerning the Selection Process. The NMCG 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. The NMCG 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 the NMCG or as may be required by law or in connection with any legal process.

2.24 Clarifications

- 2.24.1 To facilitate evaluation of Proposals, the NMCG may, at its sole discretion, seek clarifications from any Bidder regarding its Proposal. Such clarification(s) shall be provided within the time specified by the NMCG for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.24.2 If a Bidder does not provide clarifications sought under Clause 2.24.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the NMCG 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 the NMCG.

E. APPOINTMENT OF CONSULTANT

2.25 Negotiations

2.25.1 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. In case the Selected Bidder fails to reconfirm its commitment, the NMCG reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.

2.25.2 The NMCG will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of NMCG.

2.25.3 The NMCG 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 the NMCG.

2.26 Substitution of Key Personnel

2.26.1 The NMCG 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 death, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the NMCG.

2.26.2 The NMCG expects all the Key Personnel to be available during implementation of the Agreement. NMCG will not consider substitution of Key Personnel, except for reasons not attributable to the Consultant such as any incapacity, resignation or due to ill health. Such substitution shall ordinarily be subject to equally or better qualified and experienced personnel being provided to the satisfaction of the NMCG. As a condition to such substitution, a sum of 5% (Five per cent) of the remuneration specified for the original Key Personnel may be deducted from the payments due to the Key personnel who is proposed to be substituted. In the case of a further substitutions hereunder, such deduction shall be up to 10% (Ten per cent) of the remuneration specified for the original Key Personnel for each substitution.

2.27 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the NMCG for an amount not exceeding the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

2.28 Award of Consultancy

After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the NMCG to the Selected Bidder and the Selected Bidder shall, within 3 (Three) 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, the NMCG may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the NMCG on account of failure of the Selected Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

2.29 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Bidder shall not be entitled to seek any deviation in the Agreement.

2.30 Commencement of assignment

The Consultant shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.29 or commence the assignment as specified herein, the NMCG may invite the second ranked Bidder for negotiations. In such an event, the Bid Security of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.31 Proprietary data

Subject to the provisions of Clause 2.23, all documents and other information provided by the NMCG or submitted by a Bidder to the NMCG shall remain or become the property of the NMCG. Bidders and the Consultant, as the case may be, are to treat all information as strictly confidential. The NMCG will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the NMCG in relation to the Consultancy shall be the property of NMCG.

3. CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Bidder's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel.

3.1.2 Only those Bidders whose Technical Proposals get a score of 70 (seventy) marks or more out of 100 (one hundred) shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score (S_T).

3.1.3 The scoring criteria to be used for evaluation shall be as follows.

Item Code	Parameter	Maximum Marks	Criteria for evaluation and marks allocation.
1.	Financial Capacity/Turnover	5	Average Annual Turnover from consulting business, during past 3 (three) financial years preceding the Proposal Due Date (Excluding IT, Audit and Taxation) <ul style="list-style-type: none"> • 50Cr – 100Cr : 1 mark • 101 Cr – 150Cr : 2 marks • 151 Cr – 250Cr : 3 marks • >250Cr : 5 marks
2	Financial/Transaction Advisory/	20	Number of eligible Financial Consultancy/Transaction Advisory Assignments as defined in Clause 3.1.4 3-6 : 5 marks 7-10 : 10 marks 11-15 : 15 marks > 15 : 20 marks
3	Technical Consultancy experience	15	Number of eligible Technical Consultancy Assignments as defined in Clause 3.1.4 3-5 : 5 marks 6-7 : 10 marks >7: 15 marks
4.	Proposed Methodology and Work Plan	25	Understanding of the project and appreciation of key challenges: 10 marks Overall approach and methodology, tools and

			frameworks: 15 marks
5.	Relevant Experience of the Key Personnel		
5(a)	Team Leader and Strategy expert	10	Experience: 5 Marks Up to 10 years: 0 >10≤12 years: 3 >12≤15 years: 4 >15 years: 5 No: of projects:5 Marks Up to 2 : 0 3-5 : 2 6-8 :4 >8 : 5
5(b)	PPP Expert	8	Experience: 4 Marks Up to 8 years: 0 >8≤10 years: 2 >10 years: 4 No: of projects:4 Marks Up to 2 : 0 3-5 : 2 >5 : 4
5(c)	Financial Expert	7	Experience: 3 Marks Up to 8 years: 0 >8≤10 years: 2 >10 years: 3 No: of projects:4 Marks Up to 2 : no marks 3-5 : 2 >5 : 4
5(d)	Waste Water Technology Expert	7	Experience: 3 Marks Up to 8 years: 0 >8≤10 years: 2 >10 years: 3 No: of projects:4 Marks Up to 2 : no marks 3-5 : 2 >5 : 4
5(e)	Legal Expert	3	No of Projects: 3 marks: Up to 2: 0 3-4 :2 >4 : 3
Grand Total		100	

3.1.4 Eligible Assignments

A. Eligible Financial Consultancy/Transaction Advisory/Sectoral Assignments.

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments granted by

the government, regulatory commission, tribunal, multilateral agencies, statutory authority, public or private sector entity for any large infrastructure project in respect of greenfield or brownfield Public Private Partnership (PPP) concession design, restructuring, transaction support and project management (the “**Eligible Financial Assignments**”) where the payment of professional fee to the Applicant was at least Rs.1 Crore (Rupees one crore) in case of a project in India, or US \$ 2,50,000/- (US\$ Two hundred fifty thousand) for any infrastructure project elsewhere (the “**Projects**”).

Provided that all Eligible Assignments relating to projects based on the same Model Concession Agreement and awarded by the same public entity shall be counted as one Eligible Assignment.

Infrastructure sectors include power, roads, bridges, ports, airports, railways, logistics, Townships, industrial infrastructure (industrial townships, SEZs, industrial parks), tourism infrastructure, urban transport, urban utility infrastructure (city gas utility, solid waste management), water treatment plants, distribution networks, sewer networks, sewage treatment plants, common effluent treatment plants, desalination plants. DPR preparation and technical assessment assignments will not be counted as Eligible Assignment

B. Eligible Technical Consultancy Assignments:

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments/Project Management consultancy in respect of preparation of feasibility report and/or detailed project report including engineering surveys and social and environmental impact assessment, Project supervision & monitoring etc. for the following projects shall be deemed as eligible assignments (the “**Eligible Technical Assignments**”):

(i) Sewerage Schemes or Sewerage Systems including Sewage Treatment Plants having an estimated capital cost of at least Rs. 50 (fifty) crore in case of a project in India, and US \$ 25 (twenty five) million for projects elsewhere.

3.2 Short-listing of Bidders

Bidders ranked as aforesaid, shall be short-listed for financial evaluation in the second stage. However, if the number of such Bidders is less than two, the NMCG may, in its sole discretion, shortlist the Bidder(s) whose technical score is less than 70 (seventy) points even if such Bidder(s) do(es) not qualify in terms of Clause 3.1.2; provided that in such an event, the total number of short-listed Bidders shall not exceed two.

3.3 Evaluation of Financial Proposal

3.3.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score (S_F).

3.3.2 For financial evaluation, the Total Value of the Assignment as indicated in the Financial Proposal, will be considered. .

- 3.3.3 The NMCG will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Proposal (F_M) will be given a financial score (S_F) of 100 points. The financial scores of other Proposals will be computed as follows:

$$S_F = 100 \times F_M/F$$

(F = amount of Financial Proposal)

3.4 Combined and final evaluation

- 3.4.1 Similar to the ranking of Financial Proposal, for calculating the final Technical Score (S_T) proposals with highest technical marks will be given a score 100 marks (T_M). The Technical Score (S_T) for other proposals will be computed as follows:

$$S_T = 100 \times T/T_M$$

- 3.4.2 Proposals will finally be ranked according to their combined technical (S_T) and financial (S_F) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where S is the combined score, and T_w and F_w are weights assigned to Technical Proposal and Financial Proposal, which shall be **0.80** and **0.20** respectively.

- 3.4.3 The Selected Bidder shall be the first ranked Bidder (having the highest combined score). The second ranked Bidder shall be kept in reserve and may be invited for negotiations in case the first ranked Bidder withdraws, or fails to comply with the requirements specified in Clauses 2.25, 2.29 and 2.30, as the case may be.

Without prejudice to the clause 3.4.2, and in accordance with the clause 1.1.4, if the Bidder is also the first ranked Bidder (having the highest combined score) for more than two packages/projects for which the proposals have been submitted by the Bidder, then as per the preference of the Bidder submitted as part of the Proposal, the Selection of the such Bidder will be restricted to 2 (two) packages only. Also with the same team of Key Personnel maximum number of packages/projects will be limited to 2 (two) only.

- 3.4.4 National Mission for Clean Ganga has simultaneously invited Request for Proposal for the appointment of Transaction Advisor for **Interception & Diversion works (I&D) and Sewage Treatment Plants in Agra, Etawah & Firozabad in Uttar Pradesh** and **Interception & Diversion works (I&D) and Sewage Treatment Plants in Budhana & Muzaffarnagar in Uttar Pradesh**. If any Bidder turns out to be the highest ranked bidder for more than two projects, the Bidder will be allocated with the project for which he has

highest financial score. In such a case NMCG shall invite the next highest ranked Bidder as per the Technical Score to match with the financial proposal of the first overall highest ranked bidder if the financial proposal of the second highest ranked bidder is higher than that of the first highest ranked Bidder. In such a case, the second highest ranked Bidder shall be the first ranked Bidder for the third project. This process shall continue till the project is awarded to the Selected Bidder.

3.5 Award of project/assignment

- 3.5.1 Based on the availability of Detailed Project Report (DPR), NMCG shall issue a Letter of Award for the project as mentioned in clause: 1.1.1. The consultancy assignment will be for an indicative duration of 30 weeks from the date of award of work e. Details of availability of the DPR is mentioned in the Annexure III. Accordingly, the consultant shall mobilize the Key Personnel and support personnel for completing the deliverables as per the RFP document.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 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, the NMCG 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, the NMCG shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the NMCG for, *inter alia*, time, cost and effort of the NMCG, in regard to the RFP, including consideration and evaluation of such Bidder’s Proposal.
- 4.2 Without prejudice to the rights of the NMCG under Clause 4.1 hereinabove and the rights and remedies which the NMCG may have under the LOA or the Agreement, if a Bidder or Consultant, as the case may be, is found by the NMCG 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 Agreement, such Bidder or Consultant shall not be eligible to participate in any tender or RFP issued by the NMCG during a period of 2 (two) years from the date such Bidder or Consultant, as the case may be, is found by the NMCG 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.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**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 the NMCG 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 Agreement 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 the NMCG, 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 Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the NMCG in relation to any matter concerning the Project;

- (b) “**fraudulent practice**” means a misrepresentation or omission 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 persons or property to influence any person’s participation or action in the Selection Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the NMCG with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

5. PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Bidders shall be convened at the designated date, time and place. Only those Bidders, who have downloaded the RFP document from the Official Website of NMCG, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Bidder shall be allowed to participate on production of an authority letter from the Bidder.
- 5.2 During the course of Pre-Proposal Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the NMCG. NMCG shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which NMCG has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 NMCG, 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 the NMCG 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.
- 6.3 It shall be deemed that by submitting the Proposal, the Bidder agrees and releases NMCG, 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.
- 6.4 All documents and other information supplied by the NMCG or submitted by a Bidder shall remain or become, as the case may be, the property of NMCG. NMCG will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- 6.5 NMCG reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

SCHEDULES

SCHEDULE-1
(See Clause 1.1.3)

**Consultancy for PPP Design and Transaction Support for
Interception & Diversion network and Sewage Treatment Plants under Asansol,
Burdwan & Durgapur Municipality, in
West-Bengal**

Terms of Reference (TOR)

Terms of Reference (TOR)

1. General

- 1.1 National Mission for Clean Ganga (the “NMCG”) seeks the services of a qualified firm for acting as a Strategic Consultant for PPP Design and Transaction Adviser for appraising the Project, developing a Revenue Model, designing PPP contracts and preparing Bid Documents for the Project (collectively the “**Consultancy**”). The Terms of Reference (the “**TOR**”) and the scope of the Consultancy for this assignment are specified below.
- 1.2 The Consultant shall be responsible for preparing the relevant Schedules of the Concession Agreement and for bringing out any special feature or requirement of the Project referred to in the Concession Agreement.
- 1.3 The Consultant shall assist NMCG/ Kolkata Metropolitan Development Authority (KMDA) by furnishing clarifications as required for the structuring, documentation and award of the Project.

2. Objective

The objective of this Consultancy (the “**Objective**”) is to support Kolkata Metropolitan Development Authority (KMDA) in Designing, Structuring, and Executing PPP Contracts for Setting up Sewage / Effluent treatment plants and associated Infrastructure for the State of West Bengal. The consultant should have to recommend a PPP structure that achieves the following objectives:

- a) Consider all existing challenges / issues and address end to end problem from sewage management to treatment
- b) Participation by the best available companies in the bidding process;
- c) Ensuring consistent desired performance by the concessionaires towards achieving the goal of Clean Ganga Mission
- d) Easing the administration and performance management of contracts by NMCG and local urban utility bodies
- e) Optimizing financial outflow and building a capital flow schedule in line with the budget allocation under Namami Gange Programme

It is clarified that the Consultant needs to work in close cooperation with the Kolkata Metropolitan Development Authority (KMDA) for all purpose including collection/collation of available data, bid process management and assisting the Kolkata Metropolitan Development Authority (KMDA) in seeking requisite approvals for successful project procurement in a time bound manner.

3. Broad Scope of Services

3.1 The scope of services covered are as follows:

- (i) evaluation of the strategic objectives of NMCG and/or State level Project implementing agencies in relation to the Project
- (ii) collection, compilation and analysis of relevant technical/financial data relating to all costs and revenues if any;

- (iii) Review of condition assessment report prepared by Central Public Sector Undertakings to define the scope of the project.
- (iv) Developing an integrated model for clustering/packageing the upgradation and operation & maintenance of existing treatment plants and associated infrastructure with the proposed /new treatment plants.
- (v) review cost estimates contained in the Detailed Project Report;
- (vi) prepare a reasonable estimation of the likely cost of the project;
- (vii) assisting NMCG and/or State level Project implementing agencies in identification of project risks and in allocation of the same in an efficient and economic manner;
- (viii) designing concession model / structure that addresses end to end infrastructure requirements / gaps and minimizes the administrative and monitoring overhead for NMCG and Urban local bodies
- (ix) identification and quantification of estimated financial impact of the Project on government resources;
- (x) Support in preparing the draft Concession Agreement;
- (xi) preparation of a consolidated list of approvals/consents/clearances required from Government Instrumentalities;
- (xii) Support in preparation of Bid documents including the relevant Schedules of the Concession Agreement.
- (xiii) Assisting the NMCG and/or State level Project implementing agencies in the bidding process.

In making its projections, recommendations and Reports, the Consultant shall identify the underlying assumptions and reach an agreement with NMCG and/or State level Project implementing agencies in relation thereto. The Consultant should also render advisory services for conducting the bid process for selection of the concessionaire for the project. The Consultant shall also maintain, update and disseminate the necessary data and information related to the Project and the bid process. During interaction with the bidders and stakeholders, the Consultant shall assist Kolkata Metropolitan Development Authority (KMDA) in responding to all queries satisfactorily and within the specified time.

4. Detailed Scope of Services:

The scope of work for the consultant is defined below, to be completed in an indicative period of 30 weeks.

The detailed scope of work is as outlined below:

I Requirement Assessment: The Consultant shall undertake a rapid commercial assessment of the current and proposed projects by making site visits and assess city wise STP/I&D/network development requirements. The consultant shall undertake a detailed assessment and triangulate using different variables that play a key role in impacting capacity projections like (i) the amount of water supply (ii) sewage generation per capita (iii) the growth rate of population and (iv) floating population and other local factors to understand future STP/I&D capacity requirement. The consultant shall also assess the performance of current assets and key issues that are driving low utilization/poor performance. Using this, the consultant shall do the following:

- a) Review and refine demand projection for all STP//I&D plants for next 30 years.
- b) Baseline the current issues that should have to be addressed in the new model
- c) Review the existing plant capacities and their re-development schedule
- d) Rapid review of the DPRs provided by NMCG / Urban local bodies
- e) Estimate number of new plants/rehabilitation of existing plants required year-wise, for development

II Project Technical Evaluation: The consultant shall undertake a rapid plant assessment, using the available reports and field visits, of the current and proposed plants / infrastructure projects to assess current plant status, residual life, and high level estimates of Capital and O&M costs for each of the projects. Following shall be covered by the consultant:

- a) Review of the Condition Assessment Report prepared by CPSUs and further detail as required
- b) Review of existing DPRs to assess the adequacy and update the same based on gap between the Condition Assessment Report and the DPR
- c) Assess technical complexity and ability for a private concessionaire in executing the infrastructure projects and the conditions precedent required for making the project successful – land availability, right of way, power availability, upgrade of existing sewage network and tapping etc.
- d) Determination of financial costs for the projects, which should include financing and other soft costs and any other infrastructure that may be required for the development of the project facilitates including costs for I&D works
- e) Estimate O&M costs (fixed and variable) as well as necessary periodic capital investments, including manpower requirements and associated costs towards chemicals and power
- f) Assess project cost estimated in the DPRs and recommend revised costing, if required.

- g) Estimation of cost for upgradation and Operation & maintenance of the existing treatment plants and associated infrastructure.

III PPP Concession Structuring and Model Contract Design: The consultant shall use the inputs from requirements analysis and project evaluation reports to develop a strategy and Concession packages for tendering out current and new plants. The concession model and city specific packages shall be developed to ensure the following:

- a) Cover I&D networks, STP plants and tertiary treatment plants etc. - Consider all existing challenges / issues and address end to end problem from sewage management to treatment
- b) Cover both current plants / infrastructure and new plants while designing the package
- c) Ensuring consistent desired performance by the concessionaires towards achieving the goal of Clean Ganga Mission
- d) Ensure participation by the best available companies in the bidding process
- e) Ensure ease of administration and performance management of contracts by NMCG and local Urban utility bodies
- f) Optimize financial outflow and building a capital flow schedule
- g) Review the current Hybrid Annuity Model design and recommend areas for optimization
- h) Recommendations on Treated effluent discharge standards and sludge quality that would be converted as the Key Performance Indicators (KPIs) for the private operator
- i) Approach and timelines for integrating current plants in case of an integrated contract

The concession package should be unique for each city and should be tailored to the local on-ground situation i.e. the sewage network in the area, the number of new STPs, STP capacity required and the number of gross polluting industries etc. While defining various options for consideration, the Consultant shall also evaluate options such as small capacity plants vs large capacity plants, integrated contracts vs standalone contracts and define the contracting strategy to attract the best-in-class players and ensure end-to-end O&M performance. NMCG wishes to move towards an integrated city wise tender and consultant should evaluate the possibility of the same for each city depending on the current sewage network infrastructure and condition of existing STP plants and I&D infrastructure. The Consultant shall evaluate different STP technologies basis capital cost, O & M cost, power, land, manpower, shock, modularity and effluent treatment parameters. Consultant

shall also explore the possibility of packaging the STPs of more than one cities wherever feasible.

IV Financial Plan and Projection: The Consultant shall conduct the following to determine the financing plan for the PPP:

- a) Assess the capital and O&M costs of developing the project using an integrated approach.
- b) Identify the scope and revenue generating potential for sale of treated waste water to captive buyers located in the vicinity of the proposed treatment asset and/or exploring other possibilities for re use of treated waste water.
- c) Prepare a detailed financial model(s) with cost and revenue inputs from the technical study to test the bankability of the Project. The model should be used to provide inputs for evaluating and finalizing the transaction structure.
- d) During transaction structuring, identify the risks and issues that could impact the Project and recommend the mitigation measures.

V Tender Document Preparation: The Consultant should undertake detailed review and revision of Request for Proposal (RFP) and Concession agreement by providing inputs and developing the documents along with NMCG. The document should clearly spell out the scope of work, roles and responsibilities of all the stakeholders, financing framework of the project (including capital and O&M costs and revenue generation), optimal PPP project structure and institutional framework, mechanism for resolution of disputes etc. In addition, the Consultant shall ensure the following is covered:

- a) Detail out the exact scope of work of the concessionaire
- b) Detail out the respective conditions precedent for the tendering authority and concessionaire
- c) Assist in preparing the Project Information Memorandum for Bidding
- d) Formulate and recommend appropriate bid parameters for the Project on which the bidders' proposals should be evaluated. Develop practical and effective evaluation criteria that are specific, measurable, achievable, relevant and timely
- e) Develop Financing plan and assess cash flow projections for the next 15 years basis the new contracting model
- f) Formulate the proposed bidding procedures, criteria and timetable, prepare draft bid documents ("Draft Bid documents"), for the project including the concession agreement

VI Support on Regulations and Policies

- a) Conduct a rapid due diligence on the existing State/Central/Local regulations and policies to assess the ability of the Project Executing agency to execute the transaction
- b) Conduct an exercise in order to understand any regulatory & policy issues that may impact a private sector party's ability to implement and operate the Project as required.
- c) Identify potential constraints that may discourage the participation of investors in the financing and execution of the PPP and propose appropriate remedies;
- d) Develop a suitable institutional and contractual framework for optimal implementation of the project.
- e) Draft the concession agreement that would set out various features of the transaction structure including but not limited to, signatories to Agreement, role of the parties, payment mechanism including payment security, penalties for non-performance, termination and dispute resolution procedure, transfer of assets at end of agreement and other issues critical for the transaction structure etc.
- f) Develop Request for Proposals, addressing pre bid queries and preparation of addendums, corrigendum etc.

VII Conduct Concessionaire outreach: If required, at the request of NMCG, the Consultant shall conduct outreach events with both domestic as well as leading global concessionaire / technology provider / operator / Bankers and financial institutions including one-on-one meetings, presentations, joint meetings, workshops and facilitating meetings with potential investors for NMCG to explain to them the new PPP contracting model and generate bidder interest in participation in the tender. NMCG may ask consultant to make further edits to the document on the basis of investor feedback.

VIII Support in running tendering process:

- a) Assist in preparation of documents necessary for the approval, organize and manage the pre-bid conference and prepare the draft responses to the queries submitted by the bidders.
- b) Assist in managing the tender process, addressing investor queries, support NMCG in doing bid evaluation and assessing the technology plans shared by the bidder.
- c) Assistance in evaluation of bids received and preparation of suitable reports in each stage of evaluation
- d) Recommendation on the final selection of the preferred Bidder and assistance in issuance of Letter of Award.
- e) Assist in finalizing the Concession Agreement and assistance in signing the agreement.

5. Project Appraisal

Based on the parameters specified in the draft Bid Documents as well as the Financial Model, the Consultant shall prepare an Appraisal Report for the Project outlining the salient features of the Project, its financial viability and its social and economic benefits. The Consultant shall work out the financial viability of the Project with a view to estimating the likely IRR over a concession period of 15 (fifteen) years.

6. Scope not exhaustive

The Scope of Services specified in this Paragraph 3 are not exhaustive and the Consultant shall undertake such other tasks as may be necessary to appraise the project financially, prepare the Financial Model and successfully complete the bid process for the Project.

7. Deliverables

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the “**Deliverables**”) during the course of this Consultancy. Each deliverable shall include an executive summary, analyses, assumptions, results of computations, tables, charts, recommendations, and such other contents that generally comprise deliverables for similar consultancy work by way of best practices. 5 (Five) hard copies and 3 (three) soft copies of all the Reports mentioned herein below shall be submitted to NMCG/ and or Kolkata Metropolitan Development Authority (KMDA) . The deliverables shall include:

- I. Inception Report - The Inception Report shall be a further elaboration of the Consultant’s submissions towards understanding of the RFP, the methodology to be followed and Work Plan, etc
- II. Rapid requirement and Technical Assessment report
- III. Project Appraisal Report including Financial Model & Analysis
- IV. Request for Proposal (RFP) and draft Concession Agreement including Schedules
- V. Assistance in conducting the Bid Process & closing of Bid Process Report
- VI. Assistance in Bidding Process & Bid Evaluation Report – both for Technical evaluation & Financial Evaluation.
- VII. Assistance in signing of the Concession Agreement

8. Time and Payment Schedule

8.1 Subject to the provisions of Paragraph 10.1 of the TOR, the indicative duration of the assignment from the date of issue of Letter of Award may be 30 weeks, including the time taken NMCG/State Level Project implementing agencies in providing the requisite documents or in conveying its comments on the Draft Reports. However, it may be noted that this engagement is deliverable based

and time duration shall be construed accordingly. The payment shall be on the basis of deliverables only. The indicative time duration, deliverables and payment pattern as mentioned in clause 8.2 for which Letter of Award has been issued by NMCG. .

8.2 The schedule for completing the Deliverables shall be determined by the maximum number of weeks from 7th Day of the Date of Letter of Award. (the “**Key Dates**” or “**KD**”). Time schedule for important Deliverables of the Consultancy and the payment schedule linked to the specified Deliverables are given below:

Key Date No.	Description of Deliverables	Week No.	Payment
KD1	Inception Report	1	10%
KD2	Rapid requirement and Technical Assessment Report	3	10%
KD3	Project Appraisal report, Financial Model, Draft RFP documents and Concession Agreement	4	30%
KD4	Assistance in conducting the Bid Process & closing of Bid Process (submission of Bids)	12	30%
KD5	Assistance in Bid evaluation report for PPP projects and selection of preferred bidder.	4	10%
KD 6	Assistance in signing of the Concession agreement	6	10%
	Total	30	100

8.3 Payment shall be made upon completion of each Deliverable for which bills are raised by the Consultant.

9. Meetings

9.1 NMCG may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held at the NMCG’s office. Further, the Consultant may be required to attend meetings and conferences with pre-qualified bidders or the Selected Bidder.

9.2 NMCG may, in its discretion, may require the Consultant to participate in extended meetings and/ or work from the offices of NMCG and/or Kolkata Metropolitan Development Authority (KMDA) and the Consultant shall, on a best endeavour basis and without unreasonable delay, provide such services at the offices of the NMCG and/or Kolkata Metropolitan Development Authority (KMDA) .

10. Reporting

- 10.1 The Consultant may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from NMCG and/or Kolkata Metropolitan Development Authority (KMDA).
- 10.2 The Consultant will make a presentation on the inception report for discussion with the NMCG at a meeting. This will be a working document. Regular communication with NMCG and/or Kolkata Metropolitan Development Authority (KMDA) is required in addition to all key communications. This may take the form of telephone/ teleconferencing, emails, and occasional meetings.
- 10.3 The Deliverables will be submitted as per schedule provided in this RFP.

11. Documents to be made available by NMCG and /or Kolkata Metropolitan Development Authority (KMDA)

NMCG and /or Kolkata Metropolitan Development Authority (KMDA) shall provide to the Consultant the following documents as per availability:

- (a) Detailed Project Report;
- (b) Condition Assessment report from CPSUs for the town under consideration.
- (c) Any Policy documents that would impact the project implementation.

Available data as may be required by the Consultant will be provided by NMCG and/or Kolkata Metropolitan Development Authority (KMDA) on request.

12. Completion of Services

All the Deliverables shall be compiled, classified and submitted by the Consultant to NMCG in both hard & soft form, to the extent possible. The documents comprising the Deliverables shall remain the property of NMCG and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of NMCG. The Consultancy shall stand completed on acceptance by NMCG of all the Deliverables of the Consultant. Unless completed earlier, the Services shall be deemed completed and finally accepted by NMCG and the final Deliverable shall be deemed approved by NMCG as satisfactory upon expiry of 90 (ninty) days after receipt of the final Deliverable unless NMCG, within such 90 (ninty) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Consultancy shall in any case be deemed to be completed upon expiry of 18

months from the Effective Date, unless extended by mutual consent of the NMCG and the Consultant.

SCHEDULE-2
(See Clause 2.1.3)

AGREEMENT

FOR

**STRATEGIC CONSULTANT FOR PPP DESIGN AND TRANSACTION
SUPPORT FOR THE
INTERCEPTION & DIVERSION NETWORK AND SEWAGE TREATMENT
PLANTS UNDER ASANSOL, BURDWAN & DURGAPUR MUNICIPALITY,
IN
WEST-BENGAL.**

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AGREEMENT

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the day of the month of 20..., between, **National Mission for Clean Ganga** (hereinafter called as NMCG), Kolkata Metropolitan Development Authority (hereinafter called as KMDA), which expression shall include their respective successors and permitted assigns, unless the context otherwise requires, on one hand, and, on the other hand, (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The NMCG vide its Request for Proposal for seeking Strategic Consultancy and Transaction Advisory services (hereinafter called the “**Consultancy**”) for the Interception & Diversion network and Sewage Treatment Plants under Asansol, Burdwan and Durgapur Municipalities, in West-Bengal on Hybrid Annuity based PPP mode (hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the NMCG that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the NMCG on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) NMCG on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy for -----to the Consultant vide its Letter(s) of Award dated (the “**LOAs**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “**Additional Costs**” shall have the meaning set forth in Clause 6.1.2;
- (b) “**Agreement**” means this Agreement, together with all the Annexes;
- (c) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
- (d) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (e) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;

- (f) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) “**Date of Letter of Award**” shall mean the date on which the project/assignment has been awarded to the consultant.
- (h) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (i) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (j) “**Expatriate Personnel**” means such persons who at the time of being so hired had their domicile outside India;
- (k) “**Government**” means the Government of India or the Government of the State in which the project is implemented
- (l) “**INR, Re. or Rs.**” means Indian Rupees;
- (l) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (m) “**Party**” means the NMCG or the Consultant, as the case may be, and Parties means both of them;
- (n) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (o) “**Resident Personnel**” means such persons who at the time of being so hired had their domicile inside India;
- (p) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (q) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) “**Third Party**” means any person or entity other than the Government, the NMCG and/or Kolkata Metropolitan Development Authority (KMDA), the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

- 1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which

a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP, Replies to queries & Addenda; and
- (d) Letter of Award.

1.2 Relation between the Parties

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

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State in which the NMCG has its headquarters shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the NMCG; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number as the Consultant may from time to time specify by notice to the NMCG;
- (b) in the case of the NMCG, be given by e-mail and by letter delivered by hand and be addressed to the NMCG with a copy delivered to the NMCG Representative set out below in Clause 1.10 or to such other person as the NMCG may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city as the NMCG's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

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

1.9 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards the NMCG under this Agreement, including without limitation the receiving of instructions and payments from NMCG.

1.10 Authorised Representatives

- 1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the NMCG or the

Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

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

.....

.....

Tel:

Mobile:

Email:

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

.....

.....

Tel:

Mobile:

Email:

1.10.4 The Kolkata Metropolitan Development Authority (KMDA) may, from time to time, designate one of its officials as its Representative. Unless otherwise notified, the Kolkata Metropolitan Development Authority (KMDA) Representative shall be:

.....

.....

Tel:

Mobile:

Email:

1.11 Taxes and duties

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

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

The Consultant shall commence the Services within a period 7(seven) days from the Date of Letter of Award, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the NMCG may, by not less than 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

2.4 Expiry of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to NMCG; and (ii) the expiry of 15 months from the Effective Date. Upon Termination, the NMCG shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

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

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

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.2 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

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

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

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

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

The NMCG may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By NMCG

The NMCG may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the NMCG may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;

- (d) the Consultant submits to the NMCG a statement which has a material effect on the rights, obligations or interests of the NMCG and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) NMCG, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

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

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

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 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, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

2.9.5 Payment upon Termination

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

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

2.9.6 Disputes about Events of Termination

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

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Terms of Reference

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

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of 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 provided to the NMCG in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the NMCG in accordance with the rules of the NMCG. 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.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the NMCG shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the NMCG shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the NMCG towards, *inter alia*, the time, cost and effort of the NMCG, without prejudice to the NMCG's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the NMCG under Clause 3.2.5 above and the other rights and remedies which the NMCG may have under this Agreement, if the Consultant is found by the NMCG to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the NMCG to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "**corrupt practice**" means (i) 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 NMCG who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the NMCG, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner

whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the NMCG 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 NMCG under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the NMCG with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

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

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

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-

Consultants and the Personnel of either of them;

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

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the NMCG for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the NMCG's property, shall not be liable to the NMCG:
 - (i) for any indirect or consequential loss or damage; and
 - (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher. .
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to the Agreement Value.

3.5 Accounting, inspection and auditing

The Consultant shall:

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

3.6 Consultant's actions requiring the NMCG's prior approval

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

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the NMCG prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

3.7 Reporting obligations

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

3.8 Documents prepared by the Consultant to be property of the NMCG

- 3.8.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the NMCG, and all intellectual property rights in such Consultancy Documents shall vest with the NMCG. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the NMCG under law, shall automatically stand assigned to the NMCG as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the NMCG may deem necessary to secure its rights herein assigned by the Consultant.

3.8.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the NMCG together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the NMCG.

3.8.3 The Consultant shall hold the NMCG harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'Claims') which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the NMCG.

3.9 Providing access to Project Office and Personnel

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

3.10. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the NMCG against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

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

4.2 Deployment of Personnel

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and man day rates are specified in Annex-3 of this Agreement.

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

4.3 Approval of Personnel

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

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the NMCG its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. The NMCG may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the NMCG's consideration. In the event the NMCG does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the NMCG.

4.4 Substitution of Key Personnel

The NMCG expects all the Key Personnel to be available during implementation of the Agreement. NMCG will not consider substitution of Key Personnel except for reasons not attributable to the Consultant such as any incapacity, resignation or due to health. Such substitution shall ordinarily be subject to equally or better qualified and experienced personnel being provided to the satisfaction of the NMCG. As a condition to such substitution, a sum of 5% (Five per cent) of the remuneration specified for the original Key Personnel may be deducted from the payments due to the Key personnel who is proposed to be substituted. In the case of a further substitutions hereunder, such deduction shall be up to 10% (Ten per cent) of the remuneration specified for the original Key Personnel for each substitution.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the man days of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the NMCG, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Resident Team Leader and Project Manager

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the

Personnel. In addition, the Consultant shall designate a suitable person as Project Manager (the “**Project Manager**”) who shall be responsible for day to day performance of the Services.

4.7 Sub-Consultants

Sub-Consultants listed in Annex-3 of this Agreement are hereby approved by the NMCG. The Consultant may, with prior written approval of the NMCG, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

5. OBLIGATIONS OF THE NMCG/KMDA

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Sub-Consultants and Personnel with necessary support and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services; and
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 KMDA shall:

- (a) provide all necessary support, information/data and other documents as may be required by the Consultant to enable the Consultant it sub Consultant or Personnel to perform the services;
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.3 Access to land and property

The NMCG/KMDA warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1.3.

5.4 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or

reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.5 Payment

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

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-5 of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. (Rupees.), as mentioned in Annexure 5.

6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

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

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:-

- (a) A Mobilisation Advance for an amount upto 10% (ten per cent) of the Assignment Value shall be paid to the Consultant on request and against a Bank Guarantee from a Scheduled Bank in India in an amount equal to such advance, such Bank Guarantee to remain effective until the advance payment has been fully set off as provided herein. The advance outstanding shall attract simple interest @ 10% (ten per cent) per annum and shall be adjusted in four equal instalments from the first four stage payments due and payable to the Consultant, and the accrued interest shall be recovered from the fifth instalment due and payable thereafter.

- (b) For the Letter of Award has been issued by NMCG, the Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:
- (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the NMCG, the work pertaining to the preceding stage.
 - (ii) The NMCG shall pay to the Consultant, only the undisputed amount.
- (c) The NMCG shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the NMCG of duly completed bills with necessary particulars (the “**Due Date**”). Interest at the rate of 8% (eight per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (d) 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 Consultant and approved as satisfactory by the NMCG. The Services shall be deemed completed and finally accepted by the NMCG and the final deliverable shall be deemed approved by the NMCG as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the NMCG unless the NMCG, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The NMCG shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the NMCG.
- (e) Any amount which the NMCG has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the NMCG within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the NMCG for reimbursement must be made within 1 (one) year after receipt by the NMCG of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (f) 10% (ten per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 1 (one) year from the Letter of Award the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period

after expiry of one year from the date of Letter of Award including travel costs and personnel costs, at the agreed rates.

- (g) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the NMCG by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 10% (ten per cent) of the Agreement Value (the “**Performance Security**”); provided, however, that the Consultant shall be required to provide a Performance Security in the form of a bank guarantee substantially in the form specified at Annex-6 of this Agreement.

7.1.2 For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the NMCG may make deductions from any subsequent payments due and payable to the Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the NMCG in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 20% (twenty per cent) of the Agreement Value. .

7.2.2 Liquidated Damages for delay

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

7.2.3 Encashment and appropriation of Performance Security

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

7.3 Penalty for deficiency in Services

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

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

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

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

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Director General, NMCG and the Chairman of the Board of Directors/Managing Director of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State where the NMCG has its headquarters and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be [a sole arbitrator whose appointment] / [an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment]¹ shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the NMCG agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the NMCG agree that an Award may be enforced against the Consultant and/or the NMCG, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

¹ Where the Agreement Value specified in Clause 6.1.2 of this Agreement is expected to be less than Rs. 2 crore, the provision for a sole arbitrator shall be retained and where the Agreement Value is likely to be more than Rs. 2 crore, the provision for a Board shall be retained. Depending upon the Agreement Value, one of the two square parentheses shall be deleted from Clause 9.4.2 prior to issuance of the RFP.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
NMCG

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
Kolkata Metropolitan
Development Authority
(KMDA)

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.

Annex-1

Terms of Reference
(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Estimate of Personnel Costs
(Refer Clause 4.2)

(Reproduce as per Form-3 of Appendix-II)

Annex-3

Approved Sub-Consultant(s)
(Refer Clause 4.7)

(Reproduce as per Form-13 of Appendix-I)

Annex-4

Cost of Services
(Refer Clause 6.1)

(Reproduce as per Form-2 of Appendix-II)

Annex-5

Payment Schedule
(Refer Clause 6.3)

Key Date No.	Description of Deliverables	Week No	Payment
KD1	Inception Report	1	10%
KD2	Rapid requirement and Technical Assessment Report	3	10%
KD3	Project Appraisal report, Financial Model, Draft RFP documents and Concession Agreement	4	30%
KD4	Assistance in conducting the Bid Process & closing of Bid Process (submission of Bids)	12	30%
KD5	Assistance in Bid evaluation report for PPP projects and selection of preferred bidder.	4	10%
KD 6	Assistance in signing of the Concession agreement	6	10%
	Total	30	100

Notes:

1. *The above payments shall be made to the Consultant provided that the payments to be made at any time shall not exceed the amount certified by the Consultant in its Statement of Expenses.*
2. *All Reports shall first be submitted as draft reports for comments of the NMCG. The NMCG shall provide its comments no later than 2 (two) weeks from the date of receiving a draft report and in case no comments are provided within such 2 (two) weeks, the Consultant shall finalise its report..*
3. *Mobilisation Advance up to 10% (ten per cent) of the total Agreement Value shall be paid on request against Bank Guarantee of a Scheduled Bank. This shall attract 10% (ten per cent) simple interest per annum and shall be adjusted against the first 4 (four) bills in four equal instalments and the accrued interest will be recovered from the 5th (fifth) bill.*

Bank Guarantee for Performance Security
(Refer Clause 7.1.2)

To

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.....
.....

In consideration of National Mission for Clean Ganga”,(hereinafter referred to as “NMCG“) which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, having its office at (hereinafter referred as the “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the NMCG’s Agreement no. dated valued at Rs. (Rupees), (hereinafter referred to as the “**Agreement**”) the assignment for consultancy services in respect of the Project, and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the NMCG for performance of the said Agreement.

We, (hereinafter referred to as the “**Bank**”) at the request of the Consultant do hereby undertake to pay to the NMCG an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the NMCG by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the NMCG stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the NMCG by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).

3. We, (indicate the name of the Bank) do hereby undertake to pay to the NMCG any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the NMCG under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the NMCG certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, (indicate the name of Bank) further agree with the NMCG that the NMCG shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the NMCG against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the NMCG or any indulgence by the NMCG to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the NMCG in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. crore (Rupees crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the NMCG serves a written claim on the Bank in accordance with Paragraph 2 hereof, on or before [... (indicate the date falling 608 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, theday of, 20.....

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Annex- 7

Letter of Award
(Refer para (B), Agreement section)

SCHEDULE-3
(See Clause 2.3.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the NMCG and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
 - (a) NMCG and consultants:
 - (i) Potential consultant should not be privy to information from the NMCG which is not available to others;
 - (ii) potential consultant should not have defined the project when earlier working for the -----(NAME OF THE PROJECT EXECUTING AGENCY);
 - (iii) potential consultant should not have recently worked for the NMCG overseeing the project.
 - (b) Consultants and concessionaires/contractors:
 - (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
 - (ii) no consultant should be involved in owning or operating entities resulting from the project; or
 - (iii) no consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the NMCG who have current or recent connections to the companies involved, therefore, needs to be avoided.
4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared,

competing companies are likely to bring this to the notice of the NMCG. All conflicts must be declared as and when the consultants become aware of them.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the NMCG.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope-creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the NMCG but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/potential conflict of interest to the NMCG at the earliest. Officials of the NMCG involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

APPENDICES

APPENDIX-I

(See Clause 2.1.3)

TECHNICAL PROPOSAL

Form-1

Letter of Proposal
(On Bidder's letter head)

(Date and Reference)

To,

.....
.....
.....

Sub: Selection of Strategic Consultant for PPP Design and Transaction Support for Interception & Diversion network and Sewage Treatment Plants under Asansol, Burdwan & Durgapur Municipalities, in West-Bengal

Dear Sir,

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 Consultant for the Project. The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to the NMCG any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the NMCG to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or any of our Associates 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 Bidder, 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.

7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by NMCG;
 - (b) I/We do not have any Conflict of Interest in accordance with Clause 2.3 of the RFP Document;
 - (c) I/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 Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the NMCG or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/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 Consultant, without incurring any liability to the Bidders in accordance with Clause 2.8 of the RFP document.
9. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
10. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates 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 Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/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 Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
13. I/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 the NMCG in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.

14. The Bid Security of Rs. (Rupees) in the form of a Demand Draft is attached, in accordance with the RFP document.
15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date specified in the RFP.
17. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form-4.
18. In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
19. I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the NMCG or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
20. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.
22. I/We have submitted our Proposals for selection of Strategic Consultant(s) for Public Private Partnership (PPP) design and Transaction Advisory support for the Development of new Sewage Treatment Plants (STPs) and integration of existing sewage treatment infrastructure for ----- (include the Name of Packages). If we become the first ranked bidder for all the projects/packages, our preference of selection to the project /packages shall be as follows:
 First:------(Name of the package)
 Second:------(Name of the package)
 Third:------(Name of the package)

Yours faithfully,

(Signature, name and designation of the authorised signatory)
(Name and seal of the Bidder / Lead Member)

APPENDIX-I

Form-2

Particulars of the Bidder

1.1	Title of Consultancy:
1.2	Title of Project: Project
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	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 Name, designation, address and phone numbers of authorised signatory of the Bidder: Name: Designation: Company: Address: Phone No.: E-mail address:
1.5	If the Bidder is Lead Member of a consortium, state the following for each of the other Member Firms:

	<p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation</p> <p>(iii) Registered address and principal place of business.</p>
1.6	<p>For the Bidder, (in case of a consortium, for each Member), state the following information:</p> <p>(i) In case of non Indian Firm, does the Firm have business presence in India?</p> <p style="text-align: right;">Yes/No</p> <p>If so, provide the office address(es) in India.</p> <p>(ii) Has the Bidder or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>(iii) Has the Bidder/ Member ever failed to complete any work awarded to it by any public authority/ entity in last five years?</p> <p style="text-align: right;">Yes/No</p> <p>(iv) Has the Bidder or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>(v) Has the Bidder or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the Bidder is not eligible for this consultancy assignment.</p>
1.7	<p>Does the Bidder's firm/company (or any member of the consortium) combine functions as a consultant or adviser along with the functions as a contractor and/or a manufacturer?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, does the Bidder (and other Member of the Bidder's consortium) agree to limit the Bidder's role only to that of a consultant/ adviser to the NMCG and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity?</p> <p style="text-align: right;">Yes/No</p>
1.8	<p>Does the Bidder intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services?</p>

	<p style="text-align: right;">Yes/No</p> <p>If yes, does the Bidder agree that it will only be acceptable as Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Consultant?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of consultant/ adviser for the NMCG only?</p> <p style="text-align: right;">Yes/No</p> <p style="text-align: center;">(Signature, name and designation of the authorised signatory)</p> <p style="text-align: center;">For and on behalf of</p>
--	--

APPENDIX-I

Form-3

Statement of Legal Capacity

(To be forwarded on the letter head of the Bidder)

Ref. Date:

To,
.....
.....
.....

Dear Sir,

Sub: Selection of Strategic Consultant for PPP Design and Transaction Support for Interception & Diversion network and Sewage Treatment Plants under Asansol, Burdwan & Durgapur Municipalities, in West-Bengal

I/We hereby confirm that we, the Bidder (along with other members in case of consortium, the constitution of which has been described in the Proposal[§]), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (insert Bidder's name) will act as the Lead Member of our consortium.

I/We have agreed that (insert individual's name) will act as our Authorised Representative/ will act as the Authorised Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further, the authorised signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorised signatory)
For and on behalf of

[§] Please strike out whichever is not applicable

APPENDIX-I

Form-4

Power of Attorney

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 of 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 Strategic Consultant and Transaction Advisor(Consultant) for the Project, proposed to be developed by **National Mission for Clean Ganga (hereinafter NMCG)** 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 NMCG, representing us in all matters before the NMCG; signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the NMCG 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 Agreement with the NMCG.

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 THIS DAY OF, 20.....

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised

Accepted

.....
(Signature, name, designation and address of the 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 Bidder 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 Bidder.*
- *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, Bidders 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.*

APPENDIX-I

Form-5

Financial Capacity of the Bidder
(Refer Clause 2.2.2 (B))

S. No.	Financial Year	Annual Revenue (Rs./US \$ in million)
1.		
2.		
3.		

Certificate from the Statutory Auditor[§]

This is to certify that (name of the Bidder) has received the payments shown above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

[§] In case the Bidder does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Bidder.

APPENDIX-I

Form-6

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments ^s
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.							
2.							
3.							
4.							
5.							
6.							

\$Refer Form 9 of Appendix I Experience of Key Personnel

APPENDIX-I

Form-7

Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than three pages)

The Bidder shall clearly state its understanding of the TOR and also highlight its important aspects. The Bidder may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

2. Methodology and Work Plan (not more than seven pages)

The Bidder will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Bidder will submit a brief write up on its proposed team and organisation of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Bidder is a consortium, it should specify how the expertise of each firm is proposed to be utilised for this assignment. The Bidder should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

Note: Marks will be deducted for writing lengthy and out of context responses.

APPENDIX-I

Form-8

Abstract of Eligible Assignments of the Bidder^{\$}
(Refer Clause 3.1.4)

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. crore/ US\$ million)	Payment ^{\$\$} of professional fees received by the Bidder (in Rs. crore)	Name of the associate if the project is undertaken by an associate
(1) [£]	(2)	(3)	(4)	(5)	(6)
1					
2					
3					
4					

^{\$} The Bidder should provide details of only those projects that have been undertaken by it under its own name/Associate.

^{\$\$} Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.

[£] The names and chronology of Eligible Projects included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

Certificate from the Statutory Auditor^{\$}

This is to certify that the information contained in Column 4 and 5 above are correct as per the accounts and other documents of the Bidder and/ or the clients submitted before us.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

^{\$} In case the Bidder does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Bidder.

Note: The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.

APPENDIX-I

Form-9

Abstract of Eligible Assignments of Key Personnel[§]
(Refer Clause 3.1.4)

Name of Key Personnel:

Designation:

S.No	Name of Project [§]	Name of Client	Estimated capital cost of project (in Rs. cr./ US\$ million)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man days spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

^{\$} Use separate Form for each Key Personnel.

^{\$\$} The names and chronology of projects included here should conform to the project-wise details submitted in Form-11 of Appendix-I.

Note: The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

APPENDIX-I

Form-10

Eligible Assignments of Bidder
(Refer Clause 3.1.4)

1.	of Bidder:	
2.	Name of the Project:	
3.	Components/Size in MLD etc	
4.	Description of services performed by the Bidder Firm:	
5.	Name of client and Address: (indicate whether public or private)	
6.	Name and telephone no. of client's representative:	
7.	Estimated capital cost of the Project (in Rs crore or US\$ million):	
8.	Payment received by the Bidder (in Rs. crore):	
9.	Start date of the services (month/year):	
10.	Finish date of the services (month/year):	
11.	Whether the Project is successfully operational? If no Please indicate the reasons thereof	
12.	Brief description of the Project:	
<p>It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.</p> <p align="right">(Signature and name of Authorised Signatory)</p>		

Notes:

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.
3. Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.
4. NMCG reserves the right to verify the facts of the case in serial number 11 and take a decision on consideration of this project experience as an eligible project.

APPENDIX-I

Form-11

Eligible Assignments of Key Personnel
(Refer Clause 3.1.4)

1.	of Key Personnel:	
2.	Designation of Key Personnel:	
3.	Name of the Project:	
4.	Components /Size in MLD etc	
5.	Name of Consulting Firm where employed:	
6.	Description of services performed by the Key Personnel (including designation):	
7.	Name of client and Address: (indicate whether public or private)	
8.	Name and telephone no. of client's representative:	
9.	Estimated capital cost of the Project (in Rs crore or US\$ million):	
10.	Start date of the services (month/year):	
11.	Finish date of the services (month/year):	
12.	Whether the Project is successfully operational? If no Please indicate the reasons thereof	
13.	Brief description of the Project:	
<p>It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.</p> <p align="right">(Signature and name of Key Personnel)</p>		

Notes:

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.
3. Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.
4. NMCG reserves the right to verify the facts of the case in serial number 12 and take a decision on consideration of this project experience as an eligible project.

APPENDIX-I

Form-12

Curriculum Vitae (CV) of Key Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:
(Starting with present position, list in reverse order every employment held.)
7. List of projects on which the Personnel has worked

Name of project	Description of responsibilities
-----------------	---------------------------------

8. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

- 1 I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.
- 2 I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications and my experience.

(Signature and name of the Key Personnel)

Place.....

(Signature and name of the authorised signatory of the Bidder)

Notes:

1. Use separate form for each Key Personnel
2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-8 of Appendix-I.

3. Each page of the CV shall be signed in ink and dated by both the Personnel concerned and by the Authorised Representative of the Bidder firm along with the seal of the firm. Photocopies will not be considered for evaluation.

APPENDIX-I

Form-13

Proposal for Sub-Consultant(s)

1. Details of the Firm				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in business in the above Fields				
2. Services that are proposed to be sub contracted:				
3. Person who will lead the Sub- Consultant Name: Designation: Telephone No: Email:				
4. Details of Firm's previous experience				
Name of Work	Name, address and telephone no. of Client	Total Value of Services Performed	Duration of Services	Date of Completion of Services
1.				
2.				
3.				

(Signature and name of the authorised signatory)

Note:

1. The Proposal for Sub-Consultant(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix –I.
2. Use separate form for each Sub-Consultant

APPENDIX-I

Form-14

Certificate for Associate from Statutory Auditor

Certificate regarding Associate

Based on the authenticated record of [*Insert name of the Company*], this is to certify that [more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/Member/ Associate) is held, directly or indirectly, by (name of Bidder/Member/Associate)

By virtue of the aforesaid, the latter exercises control over the former, who is an Associate.]

[..... (name of Bidder/Member/Associate) has the power, directly or indirectly, to direct or influence the management and policies of (Bidder/Member) by operation of law, contract or otherwise]. By virtue of the aforesaid, the former exercises control over the latter, who is an Associate.]

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder/Member and the Associate. In the event the Associate is under common Control with the Associate/Consortium Member or the Control is exercised by operation of law, the relationship may be suitably described and similarly certified herein. }

Signature, name and designation of the authorized signatory
of the Statutory Auditor:

Name, Address & Seal of the Statutory Auditor

Date:

APPENDIX I

Form-15

FORM OF BID SECURITY (BANK GUARANTEE)

(In stamp paper)

B.G.No:

Dated:

WHEREAS,(name of Bidder including names of all Joint Venture Participants) (hereinafter called "the Bidder") has submitted its Bid (hereinafter called the "Bid") dated (date) for the performance of (name of Contract).

KNOW ALL PEOPLE by these presents that We (name of Bank) of (name of country) having our registered office at (hereinafter called "the Bank") are bound unto (hereinafter called "the Owner") in the sum offor which payment well and truly to be made to the said Owner, the Bank binds itself, its successors, and assigns by these presents.

[The Bidder should insert the amount of the guarantee in words and in figures. This figure should be the same amount as set out in RFP clause no. 2.20. The details related to the Bid Security are set out in the same RFP Clause].

The CONDITIONS of this obligation are:

- a. If the Bid has been termed as non-responsive in accordance with the clause 2.20.4 of the RFP document.
- b. if the Bidder withdraws its Bid during the Bid Validity Period; or
- c. if the Bidder, having been notified of the acceptance of its Bid by the Owner during the period of Bid validity,
 1. fails to sign the Agreement in accordance with and when required by RFP Clause 2.29; or
 2. fails to provide the performance security to the Owner in accordance with and when required by RFP clause 2.21
- d. If the Bidder fails to commence the assignment as per Clause 2.30 of the RFP document.

We undertake to pay to the Owner up to the above amount upon receipt of its first written demand, without the Owner having to substantiate its demand, provided that in its demand the Owner will note that the amount claimed by it is due to it owing to the occurrence of one or more of the conditions set out above, specifying the occurred condition or conditions.

This Guarantee will remain in full force up to and including 45 days after the expiry of the Bid Validity Period and it may be extended by the Owner in accordance with the Bidding Documents, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date or the extended date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

SEALED with the Common Seal of the said Bank this day of, [Year].

WITNESS
(signature, name and address)

SIGNATURE OF THE BANK
SEAL

Name: _____

Position: _____

APPENDIX-II

FINANCIAL PROPOSAL

Form-1

Covering Letter
(On Bidder's letter head)

(Date and Reference)

To,

.....
.....
.....

Dear Sir,

Subject: Appointment of Consultant for Preparation of Feasibility Report for the
..... Project

I/We, (Bidder's name) herewith enclose the Financial Proposal for selection of
my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 90 (ninety) 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.

APPENDIX-II
(See Clause 2.1.3)

Form-2

Financial Proposal

Project: Selection of Strategic Consultant for PPP Design and Transaction Support for Interception & Diversion network and Sewage Treatment Plants under Asansol, Burdwan & Durgapur Municipalities, in West-Bengal.

Item No.	Description	Amount (Rs.)
1.	ASANSOL	
A.	Personnel Costs, Over Head Expenses And Travel Costs (A)	
B	Goods & Services Tax (B)	
C	TOTAL (including taxes) (A+B) (in Rs.) In Indian Rupees(in figures) (in words)	
2.	BURDWAN	
A.	Personnel Costs, Over Head Expenses And Travel Costs (A)	
B	Goods & Services Tax (B)	
C	TOTAL (including taxes) (A+B) (in Rs.) In Indian Rupees(in figures) (in words)	
3.	DURGAPUR	
A.	Personnel Costs, Over Head Expenses And Travel Costs (A)	
B	Goods & Services Tax (B)	
C	TOTAL (including taxes) (A+B) (in Rs.) In Indian Rupees(in figures) (in words)	

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note:

1. The financial evaluation shall be based on the above Financial Proposal. The total in Item 7 shall, therefore, be the amount for purposes of evaluation.

2. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.

APPENDIX-II

Form-3

Estimate of Personnel Costs for -----

ID No.	Position	Name	Man day Rate (Rs.)	Total Man Days	Amount (Rs.)
A I. Remuneration for Resident Professional Personnel (including all personal allowances)					
Total					
A II. Remuneration for Resident Support Personnel (including all personal allowances)					
Total					
B I. Remuneration for Expatriate Personnel (including all personal allowances)					
Total:					

Yours faithfully,

(Signature, name and designation of the authorised signatory)

APPENDIX III – List of Existing, Ongoing, Approved and Proposed Projects covered under this Assignment.

Major components of the project

Asansol:

- Construction of new STP – 8 nos. (8 MLD, 12 MLD, 17 MLD, 6 MLD, 20 MLD, 17 MLD, 11 MLD & 4 MLD)
- I&D sewer pipe laying – 4.502 km
- Laying of rising main – 23.973 km
- Proposed Pumping stations – 13 nos.
- On-line treatment of 39 drains
- Diversion structures – 8 nos.
- Operation & maintenance of 15 years

Burdwan:

- Construction of a new 50 MLD capacity STP
- Laying of I&D network – 19 Km
- Proposed MPS- 1 no.
- Proposed LSs- 5 nos.
- Structural steel Bridge for carrying pumping main-3 nos.
- Pedestals for carrying the pipe.
- Operation & maintenance for 15 years

Durgapur:

- Construction of new STPs- 3 nos. (25 MLD capacity each 2 nos. & 30 MLD capacity 1 no.)
- I&D of two nos. drain
- Laying of I&D network – 5.66 Km
- Laying of rising main – 5.73 km
- Proposed Pumping stations – 3 nos.
- Operation & maintenance for 15 years