

National Mission for Clean Ganga

SELECTION

OF

**PROJECT ENGINEER**

**For the Development of Sewage Treatment Plants  
(STPs)& associated Infrastructure and Operation and  
maintenance of all assets for 15 years in Mirzapur and  
Ghazipur, State of Uttar Pradesh Under  
Hybrid Annuity based PPP mode**

REQUEST FOR PROPOSALS  
(e-Procurement)

RFP No.: Pc-11011/2/2021-NMCG

Issued on: 25<sup>th</sup> June 2021

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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 a 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**

<b>Agreement</b>	As defined in Schedule-2
<b>Agreement Value</b>	As defined in Clause 6.1.2 of Schedule-2
<b>Applicable Laws</b>	As defined in Schedule-2
<b>Associate</b>	As defined in Clause 2.3.3
<b>Authorised Representative</b>	As defined in Clause 2.13.3
<b>NMCG</b>	As defined in Clause 1.1.1
<b>Bid Securing Declaration</b>	As defined in Clause 2.20.1
<b>Bidder</b>	As defined in Clause 2.1.1
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Conditions of Eligibility</b>	As defined in Clause 2.2.1
<b>Conflict of Interest</b>	As defined in Clause 2.3.1
<b>Consultancy</b>	As defined in Clause 1.2
<b>Consultancy Team</b>	As defined in [Paragraph 8] of Schedule-1
<b>CPP Portal</b>	Central Public Procurement Portal
<b>Project Engineer</b>	As defined in Clause 1.2
<b>CV</b>	Curriculum Vitae
<b>DBFOT</b>	Design, Build, Finance, Operate and Transfer
<b>DBSS</b>	Design Build and Services Schedule
<b>Deliverables</b>	As defined in Paragraph 4 of Schedule-1
<b>Documents</b>	As defined in Clause 2.12
<b>Effective Date</b>	As defined in Clause 2.1 of Schedule-2
<b>Eligible Assignments</b>	As defined in Clause 3.1.4
<b>Financial Proposal</b>	As defined in Clause 2.15.1
<b>Form of Agreement</b>	Form of Agreement as in Schedule-2
<b>INR, Re, Rs.</b>	Indian Rupee(s)
<b>Key Date or KD</b>	As defined in [Paragraph 6.2] of Schedule-1
<b>Key Personnel</b>	As defined in Clause 2.1.4
<b>Lead Member</b>	As defined in Clause 2.1.1
<b>LOA</b>	Letter of Award
<b>Member</b>	As defined in Clause 2.3.3 (a)
<b>Official Website</b>	As defined in Clause 1.11.2
<b>Personnel</b>	As defined in Clause 1.1.1(n) of Schedule-2

<b>PPP</b>	Public Private Partnership - Project means a project based on a contract or concession agreement between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges”
<b>Professional Personnel</b>	As defined in Clause 2.14.6
<b>Prohibited Practices</b>	As defined in Clause 4.1
<b>Project</b>	As defined in Clause 1.1.1
<b>Project Manager</b>	As defined in Clause 4.6 of Schedule-2
<b>Proposal</b>	As defined in Clause 1.2
<b>Proposal Due Date or PDD</b>	As defined in Clauses 1.5 and 1.8
<b>Resident Personnel</b>	As defined in Clause 1.1.1(o) of Schedule-2
<b>RFP</b>	As defined in Disclaimer
<b>Selected Bidder</b>	As defined in Clause 1.6
<b>Selection Process</b>	As defined in Clause 1.6
<b>Services</b>	As defined in Clause 1.1.1(q) of Schedule-2
<b>Sole Firm</b>	As defined in Clause 2.1.1
<b>Statutory Auditor</b>	An Auditor appointed under Applicable Laws
<b>Sub-Project Engineer</b>	As defined in Clause 1.1.1(r) of Schedule-2
<b>Support Personnel</b>	As defined in Clause 2.14.6
<b>STP</b>	Sewage Treatment Plant
<b>Team Leader</b>	As defined in Clause 2.1.4
<b>Technical Proposal</b>	As defined in Clause 2.14.1
<b>TOR</b>	As defined in Clause 1.1.3
<b>US\$</b>	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 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](http://www.nmcg.nic.in).
- 1.1.2 As part of this endeavour, with the approval of NMCG, UP Jal Nigam has decided to undertake the Development/ operation and maintenance of Sewage Treatment Plants (STPs) and associated infrastructure at Mirzapur and Ghazipur in the State of Uttar Pradesh, through Hybrid Annuity based Public-Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis. The details of the Project are as follows:

S.No	Name of the Project	Indicative Project cost (Rs Cr)
1	Development of Sewage Treatment Plants (STPs) on Hybrid Annuity PPP basis, in Ghazipur, Uttar pradesh	147.13
2	Development of Sewage Treatment Plants (STPs) on Hybrid nnuity PPP basis, in Mirzapur, Uttar pradesh	123.55

- 1.1.3 With a view to implement the Project, the UP Jal Nigam has under taken the bidding process for the selection of preferred Bidder. The detailed RFP document and draft Concession agreement are available in the web site. For smooth and timely development of the project the NMCG has decided to engage a Project Engineer who will assist the UP Jal Nigam and NMCG as per the scope of work defined in this document.

- 1.1.4 In pursuance of the above, the NMCG has decided to carry out the process for the selection of a dedicated Project Engineer (PE) for the Project. The detailed scope of work of the Project Engineer shall be in accordance with the Terms of Reference specified at Schedule-1 (the “**TOR**”).

## 1.2 Request for Proposals

The NMCG invites proposals (the “**Proposals**”) through Central Public Procurement Portal (<https://eprocure.gov.in/eprocure/app>) from firms, who meet the qualification criteria.

## 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 office of NMCG, UP Jal Nigam and the Project site, sending written queries to the NMCG, and attending a Pre-Bid Conference on the date and time specified in Clause 1.10.

## 1.4 Availability of RFP Document

Complete RFP document is available for download at website of the NMCG (<http://nmcg.nic.in/>) and Central Public Procurement Portal (<https://eprocure.gov.in/eprocure/app>).

## 1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 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 e-procurement portal. 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. 75 (Rupees Seventy-Five)] 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 Project Engineer shall be made in INR in accordance with the provisions of this RFP. The Project Engineer may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Project Engineer.

## 1.8 Schedule of Selection Process

The NMCG would endeavour to adhere to the following schedule:

S.No.	Event Description	Date and Time
1.	RFP Publish date	25 <sup>th</sup> June 2021
2.	RFP download start date and time	25 <sup>th</sup> June 2021 from 17:00 Hrs.
3.	Clarification start date & time	25 <sup>th</sup> June 2021 from 18:00 Hrs.
4.	Pre-Bid Conference by Virtual Meeting Platform	6 <sup>th</sup> July 2021 at 11:30 Hrs.
5.	Clarification end date and time	6 <sup>th</sup> July 2021 upto 17:00 Hrs.
6.	NMCG response to clarifications	15 <sup>th</sup> July 2021
7.	Bid Submission Start Date & Time	20 <sup>th</sup> July 2021 from 11:00 Hrs.
8.	Bid Submission end date & time	27 <sup>th</sup> July 2021 upto 12:00 Hrs.
9.	Last date & time for downloading the RFP	27 <sup>th</sup> July 2021 upto 12:00 Hrs.
10.	Last date & time for submission (upload) of online bidding document (Proposal Due Date or PDD)	27 <sup>th</sup> July 2021 upto 12:00 Hrs.
11.	Opening of Technical Proposals through e-procurement portal	27 <sup>th</sup> July 2021 at 12:30 Hrs.
12.	Presentation on Approach & Methodology by Virtual Meeting Platform	To be informed later
13.	Opening of Financial Proposal through e-procurement portal	To be informed later
14.	Signing of Agreement	Within 15 days of acceptance of LoA
15.	Validity of Proposal	180 days from Proposal Due Date

## 1.9 Pre-Bid 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:

Office of the General Manager,  
Ganga Pollution Control Unit,  
UP Jal Nigam,  
Bhagwanpur, Lanka  
Varanasi – 221005  
Phone: +91 33 2337 0145  
Email: gmgangavns@gmail.com

### **1.10 Pre-Bid Conference**

The Pre-Bid Conference will be conducted virtually on the date and time specified in Clause 1.8. The advisory along with details of meeting link will be uploaded two days prior to the meeting date.

### **1.11 Communications**

#### **1.11.1 Communications shall be addressed to:**

Shri. Rajat Kumar Gupta  
Sr. Solid Waste Management Specialist  
National Mission for Clean Ganga,  
1<sup>st</sup> Floor, Major Dhyan Chand National Stadium,  
India Gate, New Delhi – 110002  
Phone: +91 11 - 23072900

Email: rkgupta@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 Communications, including the envelopes (if any), should contain the following information, to be marked at the top in bold letters:**

RFP Notice No. \*\*\*\*\*  
\_\_\_\_\_ project.

Appointment of Project Engineer for

## 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 /Single entity or a consortium/joint venture of firms** and, 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 numbers 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. Bidder shall also submit the details of each member of the consortium in Form – 2 of Appendix I: Particulars of the Bidder and a Joint Bid Agreement with the provisions mentioned in clause 2.1.5.
- 2.1.2 Bidders are advised that the selection of Project Engineer 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 through e-procurement portal (<https://eprocure.gov.in/eprocure/app>) in the form and manner specified in this RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal (BoQ) shall be submitted in the form at Appendix-II. Upon selection, the Bidder shall be required to enter into an agreement with the NMCG and the UP Jal Nigam in the form specified at Schedule-2.
- 2.1.4 **Key Personnel**
- 2.1.4.1 The Consultancy Team shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below:

**Key Experts:**

<b>S. No.</b>	<b>Category Name</b>	<b>Minimum educational qualification and Discipline</b>	<b>Qualification and Expertise required</b>	<b>Nos. required</b>
1	Team Leader cum Waste Water Expert	Graduation in Engineering and Post-graduation in Public Health/Civil/ Environmental Engineering or Equivalent	Should have Sewage/Waste Water Technology expert with more than 12 years of overall experience, of which about 2 years of experience should be as a Team Leader or 3 years as Deputy Team Leader in similar projects. He should have undertaken planning, design, and supervision of construction/ Construction for at least 2 Eligible Assignment.	1
2	Senior Process Engineer	Post-graduation in Public Health/Environmental Engineering/ Chemical Engineering/ Bio technology or Equivalent	Should be Wastewater Treatment Process Expert with more than 10 years of overall experience, of which at least 5 years as Process Design Engineer in STP construction. He should have undertaken the process design and construction/ Review and Monitoring of construction of at least 2 Eligible Assignments.	1
3	Senior Engineer (Civil)	Bachelor's Degree in Civil Engineering	Should have more than 10 years of experience, of which about 5 years should be in sewage treatment plant works. He should have undertaken planning design and supervision of construction / Review and Monitoring of construction/ construction of at least 2 Eligible Assignments. For consideration of Eligible assignment for Senior Engineer (Civil) in accordance with Clause 3.1.4, projects will also include Water Treatment Plant of the capacity mentioned therein.	2
4	Senior Engineer (Mechanical)	Bachelor's Degree in Mechanical Engineering	Should have more than 10 years of experience of which 5 years shall be in supervising, installation and testing of pumps and associated equipment and plant. He should have undertaken the supervision of installation/	2

<b>S. No.</b>	<b>Category Name</b>	<b>Minimum educational qualification and Discipline</b>	<b>Qualification and Expertise required</b>	<b>Nos. required</b>
			installation & testing of mechanical equipment/pumps and associated components for at least 2 Eligible Assignments. For consideration of Eligible assignment for Senior Mechanical Engineer in accordance with Clause 3.1.4, projects will also include Water Treatment Plant of the capacity mentioned therein.	
5	Senior Engineer (Electrical)	Bachelor's Degree in Electrical Engineering	Should have more than 10 years of experience of which 5 years shall be in supervising electrical installations and instrumentation related to power driven equipment. He should have undertaken supervision of installation /installation of electrical installations / components / instrumentation for at least 2 Eligible Assignments -. For consideration of Eligible assignment for Senior Electrical Engineer in accordance with Clause 3.1.4, projects will also include Water Treatment Plant of the capacity mentioned therein.	2
6	Senior Engineer (Instrumentation)	Bachelor's Degree in Electrical/Electronics/ Instrumentation Engineering	Should have more than 10 years' experience of which 5 years shall be in supervising Instrumentation, Control and Automation and SCADA related works. He should have undertaken Installation/supervision of installation of Instrumentation, Control & automation/SCADA systems for at least 2 Eligible Assignments. -. For consideration of Eligible assignment for Senior Instrumentation Engineer in accordance with Clause 3.1.4, projects will also include Water Treatment Plant of the capacity mentioned therein.	1
7	Senior Structural Engineer	Post-graduation in Structural Engineering	Should be a Civil Engineer in the field of Structural design with more than 10 years of overall experience.	1

S. No.	Category Name	Minimum educational qualification and Discipline	Qualification and Expertise required	Nos. required
			He should have undertaken structural design for at least 2 projects in the Infrastructure sector.	
8	O & M Engineer	Graduation in Engineering	Must be a STP Operational Engineer with at least 10 years of overall experience in Municipal domestic wastewater treatment facilities of which at least 2 years in Operational & Management at STP. He should have undertaken at least 1 Eligible Assignment.	2

### Non Key Experts

S. No.	Category Name	Minimum educational qualification and Discipline	Qualification and Expertise required	Nos. required
1	Safety Expert	Graduate/Post graduate in Engineering/ Science/ Arts/ Commerce	Must be a licensed/registered Safety Engineer or with a Post Graduate Diploma in Fire Engineering and Industrial Safety Management. The personnel shall have more than 7 years of overall experience in the field of infrastructure/industrial safety. He should have undertaken at least 2 Infrastructure/Industrial Projects in the capacity of Safety Expert.	1
2	Support Engineer (Civil)	Diploma/ Graduate in Civil Engineering	<u>For Graduate Engineers:</u> Should have more than 5 years of experience, in sewage/water treatment plant works. <u>For Diploma Engineers:</u> Should have more than 10 years of experience, in sewage/water treatment plant works.	2
3	Support Engineer (Mechanical )	Diploma/ Graduate in Mechanical Engineering	<u>For Graduate Engineers:</u> Should have more than 5 years of experience in supervising, installation and testing of pumps and associated equipment and plant in STPs/WTPs. <u>For Diploma Engineers:</u> Should have more than 10 years of experience in supervising, installation and testing	2



S. No.	Category Name	Minimum educational qualification and Discipline	Qualification and Expertise required	Nos. required
			of pumps and associated equipment and plant in STPs/WTPs.	
4	Support Engineer (Electrical)	Diploma/ Graduate in Electrical Engineering	<p><u>For Graduate Engineers:</u> Should have more than 5 years of experience in supervising electrical installations and instrumentation related to power driven equipment in STPs/WTPs.</p> <p><u>For Diploma Engineers:</u> Should have experience of more than 10 years of experience in supervising electrical installations and instrumentation related to power driven equipment in STPs/WTPs.</p>	2

2.1.4.2 Each bidder shall submit exclusive Key Personnel for the assignment against the positions of Team Leader cum Waste Water Expert and Senior Process Engineer. The Key Personnel proposed for these positions shall not give consent to multiple bidders. If it is found that consent has been given to multiple bidders, the bid will be termed as non-responsive and the appropriate action will be taken against the erring Key Personnel.

2.1.5 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 Project Engineer 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

Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Project Engineer in relation to the Project until the completion of the assignment.

## 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 10 (ten) years preceding the PDD, has completed a minimum of 3 (three) Eligible Technical Assignments in STP specified in Clause 3.1.4. The technical experience mentioned herein is the minimum eligibility criteria for completed projects for any Bidder. Over and above this Bidder may submit additional completed /ongoing projects for claiming the Technical Capacity in accordance with clause 3.1.4 of the RFP document. However ongoing projects will be considered for evaluation only if the Bidder has received 80% of the professional fees /assignment value for the project.
- (B) **Financial Capacity:** The Bidder shall have received a minimum revenue of Rs. 10 (Ten) crore or US \$ 5 (Five) million per annum from professional fees during Financial Year 2017-18, 2018-19 and 2019-20. For the avoidance of doubt, professional fees hereunder refers to fees received by the Bidder for providing advisory or consultancy services(excluding Audit, Accounting, Taxation and Information Technology) to its clients for project development services/preparation of Detailed Project Reports(DPRs), Technical Feasibility Studies, Project Management Consultancy services, Third Party/Independent Engineer/Owners Engineer Services, Technical Audit services, Assessment of existing assets etc. for infrastructure projects.
- (C) **Availability of Key Personnel:** The Bidder shall offer and make available all Key Personnel meeting the requirements specified in clause 2.1.4.

2.2.3 The Bidder shall enclose with its Proposal, certificate(s) from its Statutory Auditors<sup>1</sup> stating its total revenues from professional fees during Financial Year 2017-18, 2018-19 and 2019-20 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.

If any bidder is unable submit the certificate from the statutory period along with the bid due to current COVID pandemic, such bidder may submit a self-certified Form-5. However, before opening of financial proposal the certificate from the statutory auditor in Form-5 shall have to be submitted to NMCG. Failing which the bid will be termed as non-responsive.

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 Proposal 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.

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<sup>1</sup> No separate annual financial statements should be submitted.

- 2.2.6 An 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 An 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 have the right to take necessary actions as per the Bid Securing Declaration.
- 2.3.2 The NMCG requires that the Project Engineer provides professional, objective, and impartial advice and at all times hold the NMCG’s interest’s paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Project Engineer 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, 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 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 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, 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 Proposal 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 Proposal 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-Project Engineer) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Project Engineer will depend on the circumstances of each case. While providing consultancy services to the NMCG for this particular assignment, the Project Engineer 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 An 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 Project Engineer shall include a partner in the Project Engineer’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Project Engineer, 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 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, traffic, location,

surroundings, climate, access to the site, availability of drawings and other data with the NMCG, 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 Proposal 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.

## **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 the 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 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-Bid Conference
- 6 Miscellaneous

#### **Schedules**

- 1 **Terms of Reference**
- 2 **Form of Agreement**
  - Annex-1: Terms of Reference
  - Annex-2: Approved Sub-Project Engineer(s)
  - Annex-3: Cost of Services
  - Annex-4: Payment Schedule
  - Annex-5: Bank Guarantee for Performance Security
- 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-Project Engineer(s)

Form-14: Certificate for Associates.

## **Appendix–II: Financial Proposal**

Form-1: Financial Proposal

### **2.10 Clarifications**

- 2.10.1 Bidders requiring any clarification on the RFP may submit their queries to the NMCG through e-procurement portal before the date mentioned in the Schedule of Selection Process at Clause 1.8.

The NMCG shall endeavour to respond to the queries within the period specified therein but not later than the date specified in the clause 1.8. The NMCG will post the reply to all such queries on the e-procurement portal and without identifying the source of queries. NMCG shall not be held responsible in any manner if prospective Bidders miss any notifications placed on e-procurement Portal.

- 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 an Bidder, modify the RFP document by the issuance of Addendum/ Amendment and posting it on e-procurement portal.
- 2.11.2 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 Deleted

2.13.3 The Proposal shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall initial each page. 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. At the time of uploading, the Proposals shall be digitally signed by the bidder or a person or persons duly authorised to bind the bidder to the contract (the “**Authorised Representative**”) as detailed below:

- (a) by the proprietor, in case of a proprietary firm; or
- (b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) by a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or

A copy of the Power of Attorney certified under the hands of a partner or director of the Bidder and notarised by a notary public in the form specified in 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 the 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) Scanned copy of the Bid Securing Declaration Form 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 both key Personnel and non key personnel have been included.
- (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.1.4 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 by the respective Personnel and countersigned by the Bidder. 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 63 (Sixty-Three) years at the time of submitting the proposal; and
- (l) the proposal is responsive in terms of Clause 2.22.3.
- (m) In addition to the above each Bidder is required to fill and submit a soft copy of the data sheet in MS Excel format. The Excel sheet is available in the website of NMCG for downloading 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 Project Engineer should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 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 may, if it considers necessary, propose suitable Sub-Project Engineers in specific areas of expertise. Credentials of such Sub-Project Engineers should be submitted in Form-13 of Appendix-I. A Sub-Project Engineer, 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 Project Engineer 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 Project Engineer, as the case may be.

In such an event, the NMCG shall have the right to take necessary actions as per the Bid Securing Declaration.

## **2.15 Financial Proposal**

- 2.15.1 Financial proposal to be submitted online only through e-procurement portal and no hard copy should be submitted. Bidders are required to download the BOQ file and duly complete the blue coloured (unprotected) cells with their respective financial quotes and other details (such as name of the bidder etc.). No other cells should be changed. Once the details have been completed, the bidder should save it and submit the digitally signed BoQ, without changing the filename. If the BOQ file is found to be modified by the bidder, the bid will be rejected.
- 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 (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 upload the electronic copy of the Proposal (with all pages numbered serially and by giving an index of submissions) through e-procurement portal after digitally signing of all the documents.
- 2.16.2 The Bidder shall upload the Technical Proposal and the Financial Proposal separately by using the appropriate sections on e-procurement portal.
- 2.16.3 NMCG, if required, will request the Bidder to submit the hard copy of original Bid Securing Declaration and Power of Attorney for scrutiny.
- 2.16.4 Deleted
- 2.16.5 Deleted
- 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 Project Engineer under the Agreement.

## **2.17 Proposal Due Date**

- 2.17.1 Proposal should be submitted on or before the specified time on Proposal Due Date as mentioned in Clause 1.8 at the e-procurement portal.
- 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**

Bidders are encouraged to submit their proposals online well in advance before the prescribed due date and time to avoid any delay or problem during the bid submission process. The Tender Inviting Authority will not be held responsible

for any sort of delay or the difficulties faced during the submission of bids online by the bidders due to link failure/ internet problem etc.

## **2.19 Modification/ substitution/ withdrawal of Proposals**

2.19.1 The Bidder may modify their bids by using the appropriate option for bid modification on e-procurement portal 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 Deleted

2.19.3 Deleted

## **2.20 Bid Security**

The Bidder shall furnish 'Bid Securing Declaration Form' as per the format at Annexure-I, Form-15 along with the Technical Proposal.

## **2.21 Performance Security**

2.21.1 The Bidder, by submitting its Proposal 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 an 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 3% (three percent) 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 NMCG shall have the right to take necessary actions as per the Bid Securing Declaration

2.21.4 The Performance Guarantee shall remain valid up to 180 days beyond the end of the contract period. In case any extension in the contract period, accordingly, the validity of the Performance Guarantee shall be extended.

## **D. EVALUATION PROCESS**

### **2.22 Evaluation of Proposals**

- 2.22.1 The electronic “Technical Proposals” shall be opened first, through e-procurement portal on the date and time specified in clause 1.8. The “Financial Proposals” shall remain unopened in the e-procurement portal, until the subsequent public opening following the evaluation of the Technical Proposals.
- 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 Securing Declaration Form as specified in Clause 2.20.1.
  - (d) it is scanned and digitally signed 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.
  - (i) .
- 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 PROJECT ENGINEER**

### **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 Project Engineer 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. It may be noted that NMCG reserves the right to ask the selected bidder to justify and demonstrate

that the prices proposed in the Financial Proposal are not out of line with the rates being charged by the bidder for other similar assignments.

- 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 the NMCG.
- 2.25.3 The NMCG will examine the credentials of all Sub-Project Engineers 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 not attributable to the Project Engineer such as any incapacity or due to health, death etc, 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. The NMCG will not consider substitution of Key Personnel except for reasons not attributable to the Project Engineer 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. For substitutions against reasons other than mentioned above, a sum - upto 5% (Five per cent) of the remuneration specified for the original Key Personnel may be deducted from the payments due to the Project Engineer. 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. However, NMCG reserve the right to waive off the deduction in fee on the basis of merits of the case.

## **2.27 Indemnity**

The Project Engineer 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, to take necessary actions as per the Bid Securing Declaration, 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 Project Engineer 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 Project Engineer 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, NMCG reserves the right to take necessary actions as per the Bid Securing Declaration.

### **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 Project Engineer, 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 Project Engineer to the NMCG in relation to the Consultancy shall be the property of the 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. 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.

3.1.2 Deleted.

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

Item Code	Parameter	Maximum Marks	Criteria
1	Revenue from Professional Fees	100	Up to Rs 10 Cr: 50 Rs. 11-20 Cr: 70 More than Rs 20 Cr: 100 points
2.	Relevant Experience of the Bidder: STP Experience: 200	200	Up to 3 projects: 75 4-6 Projects: 150 More than 6 projects: 200
3	Proposed Methodology and Work Plan	200	Understanding of TOR, Appreciation of key challenges and suggestions on the TOR : 50 Innovation & quality assurance: 100 Work & Manpower Plan : 50
4	Relevant Experience of the Key Personnel	500	
i	Team Leader cum Waste Water Expert	80	Number of Eligible Assignments: 80 points Up to 2 assignments: 25 3-5 assignments: 40 6-8 assignments: 60 More than 8: 80
ii	Sr. Process Engineer	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
iii	Sr. Civil Engineer - 1	40	Number of Eligible Assignments: 40 points

<b>Item Code</b>	<b>Parameter</b>	<b>Maximum Marks</b>	<b>Criteria</b>
			Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
iv.	Sr. Civil Engineer - 2	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
v.	Sr. Engineer (Mechanical)-1	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
vi.	Sr. Engineer (Mechanical)-2	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
vii.	Sr. Engineer (Electrical)-1	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
viii.	Sr. Engineer (Electrical)-2	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
ix	Sr. Engineer (Instrumentation)	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
x	Sr. Structural Engineer	40	Number of Eligible Assignments: 40 points Up to 2 assignments: 15 3-5 Assignments: 25 More than 5 assignments: 40
xi.	O & M Engineer-1	30	Number of Eligible Assignments: 30 points Up to 2 assignments: 20 More than 2 assignments: 30
xii.	O & M Engineer -2	30	Number of Eligible Assignments: 30 points

Item Code	Parameter	Maximum Marks	Criteria
			Up to 2 assignments: 20 More than 2 assignments: 30
<b>Grand Total</b>		<b>1000</b>	

Notes:

(i) Total points scored by each Bidder, after evaluation of Technical Proposal as per the table above will be divided by 10 to assess the total marks for Technical Proposals. For example, if the Bidders gets a score of say 775, then the marks for Technical Proposal will be 775/10, which is equal to 77.5 marks.

### 3.1.4 Eligible Assignments

#### Eligible Technical Consultancy Assignments:

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, Project Management Consultancy (PMC)/Detailed Design/ Design Engineering construction supervision consultancy /Owner's Engineer/ consultancy assignments for the following projects shall be deemed as eligible assignments (the "Eligible Technical Assignments"):

- (i) Sewerage Schemes or Sewerage Systems that includes at least one 25 MLD Sewage Treatment Plant (STP)/Effluent Treatment Plant/Common Effluent Treatment Plant.

Experience in PPP projects:

Every Eligible Technical Assignments undertaken by the Applicant in project management consultancy/advisory/design engineering/Owner's Engineer/ consultancy assignments in Sewerage Schemes or Sewerage Systems including Sewage Treatment Plants undertaken through any form of Public Private Partnership (PPP) mode will be counted as 2(two) for evaluation under clause 3.1.3.

### 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 cost indicated in the Financial Proposal (BoQ), 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 Project Engineer. 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.
- 3.4.4 A bidder who has been awarded with three or more Project Engineer assignments from NMCG, shall not be eligible to submit the bids for this assignment. This includes the projects for which the bidder has been identified as “Selected Bidder” as defined in Clause 1.6 of the RFP document for that project.
- 3.4.5 National Mission for Clean Ganga has simultaneously invited Request for Proposal for the appointment of Project Engineer at Mirzapur & Ghazipur in Uttar Pradesh, Bhagalpur in Bihar and Maheshtala in West Bengal. If any Bidder turns out to be the highest ranked bidder for more than one project, 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 second project. This process shall continue till the project is awarded to the Selected Bidder.

#### 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, shall have the right to take necessary actions as per the Bid Securing Declaration.
- 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 an Bidder or Project Engineer, 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 Project Engineer 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 Project Engineer, 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 Project Engineer/ 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-BID CONFERENCE**

- 5.1 Pre-Bid Conference of the Bidders shall be convened at the designated date, time and in the manner as specified in Clause 1.10.
- 5.2 During the course of Pre-Bid Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the NMCG. The 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 the 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 The 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 the 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 and Bidder shall remain or become, as the case may be, the property of the NMCG. The NMCG will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- 6.5 The 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)

**Sewage Treatment Plants (STPs) & associated Infrastructure and operation and maintenance in of all assets for 15 years in Mirzapur & Ghazipur, Uttar Pradesh  
Under Hybrid Annuity based PPP mode**

Terms of Reference (TOR)

for

PROJECT ENGINEER

## **Terms of Reference (TOR) for Project Engineer**

### **1. Objective of the Project:**

The objectives for engaging a Project Engineer are as follows:

- a. To ensure effective development of Sewage Treatment Plants (STPs) & associated Infrastructure and operation and maintenance of all assets for 15 years in **Mirzapur & Ghazipur, Uttar Pradesh**, under Hybrid Annuity based PPP mode, by the selected concessionaire in a time bound manner.
- b. To ensure efficiency and continued performance of the assets in the long run
- c. To ensure quality in the development of STPs by timely addressing critical issues that may affect the adherence to the Key Performance Indicators.
- d. To ensure best value for money to the project proponent.

### **2. Scope of the Project**

- 2.1** These Terms of Reference for the Project Engineer (the “TOR”) are being specified in view of the Contract Agreement to be entered between NMCG, UP Jal Nigam and the Concessionaire (the “Concession Agreement”), for the **Development of Sewage Treatment Plant (STP) on Hybrid Annuity PPP basis, under Uttar Pradesh Jal Nigam (UPJN), in Mirzapur and Ghazipur, State of Uttar Pradesh** on design, build, finance operate and transfer (“DBFOT) basis under Hybrid Annuity based PPP mode”). The scope of work for the concessionaire is as follows:

- (a) Designing, financing, rehabilitating, restoring, upgrading, supplying, constructing, erecting, installing, testing, commissioning and completing the following sewerage infrastructure works and facilities by the scheduled construction completion date and operating and maintaining the facilities and the associated infrastructure for 15 years from the date of COD, in compliance to applicable laws, applicable permits, technical specifications, designs and drawings, the construction plan, the EHS plan, the resource plan, Mobilization plan of manpower, material & machinery, QA/QC plan and good industry practices to ensure compliance with the KPIs.;

#### **Mirzapur**

#### **Sewage Treatment Plants:**

- Development of 1 no. 8.5 MLD STP in Bisunderpur, Mirzapur.
- Development of 1 no. 8.5 MLD STP in Pakka Pokhra, Mirzapur.
- Repair and Rehabilitation of 1 no. 14 MLD STP (UASB) in Pakka Pokhra, Mirzapur.
- Development of onsite treatment (constructed wetland) and disposal system of 1 MLD capacity at Chorwa Nala, Mirzapur

#### **Associated Infrastructure:**

- Interception and diversion of drain (I&D) - 15.00 No. in Mirzapur
- Construction of 1 no. 8.50 MLD Main Pumping Station (MPS) in Bisunderpur and, 1 no. 5.06 MLD lifting Station in Ghore Sheed drain.
- Rehabilitation and augmentation of 1 no. MPS in Katchery existing capacity 14 MLD & augmentation capacity 22.50 MLD, and 1 no. Sewage Pumping Station (SPS) in Chetganj existing capacity 8.50 MLD & augmentation capacity 11 MLD and their rising main.
- Construction of 1 no. 22.50 MLD Effluent Pumping Station in Pakka Pokhra.
- Laying of 520.00 m of rising main, in Mirzapur
- Laying of 2000.00m of treated effluent pumping main, in Mirzapur
- Laying of 2069.00 m of intercept sewer, in Mirzapur.
- Laying of 460.00 m of treated effluent conduit, in Mirzapur.
- Repair and rehabilitation of 2515.00m existing rising main, in Mirzapur
- Rehabilitation of existing 14 MLD STP based on UASB technology in Pakka Pokhra in Mirzapur

### **Ghazipur**

#### **Sewage Treatment Plants:**

- Development of 1 no. 21 MLD STP in village Jamuna Deva near Ghazipur city.

#### **Associated Infrastructure:**

- Construction of 1 no. 21 MLD MPS at Ghazipur STP site.
  - Operation and maintenance of 1 no. 5.84 MLD Intermediate Pumping Station (IPS) in Stimer Ghat (IPS1), and 1 no. 5.44 MLD IPS at Jalkal Parishad (IPS2) Ghazipur and their rising main.
  - Operation and maintenance of 82733.00m sewer network, in Ghazipur
  - Laying of 8700.00 m of rising main, in Ghazipur.
  - Laying of 1300.00 m of treated effluent conduit, in Ghazipur.
- (b) Operating and maintaining the all the Facilities from their respective COD until the End of Concession, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the relevant O&M Manual, ESHS Documents, and Good Industry Practices, as applicable, to ensure compliance with the relevant KPIs; and
- (c) Handback of all the Facilities upon End of Concession or Early Termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

### **3. Definitions and interpretation**

- 3.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

3.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Concession Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

3.3 The rules of interpretation stated in Clauses 1.2 & 1.3 of the Concession Agreement shall apply, mutatis mutandis, to this TOR.

#### **4. Role & Functions:**

4.1 The role and functions of the Project Engineer shall include and not limited to the following:

- (i) Review, analysis and qualifying assessment of field investigations carried out and reported by the Concessionaire in respect of topographical surveys, hydraulic & hydrologic data verification, sub-surface investigation including laboratory testing and reports of geologists wherever applicable, investigation of construction material including lab testing.
- (ii) Review, analysis and qualifying assessment of Design Memorandums, specifications and construction drawings prepared and submitted by the concessionaire.
- (iii) Conduct Kick Off meetings
- (iv) Review and Monitor the submissions of the Concessionaire such as:
  - a. Work Schedule
  - b. Detailed Survey report
  - c. Basic Engineering
  - d. Detailed design and Drawings for
    - i. Civil Works
      - 1. Geo-tech reports
      - 2. Lab testing reports
      - 3. Third Party Inspection report
    - ii. Mechanical and Electrical Works
    - iii. Automation and Instrumentation works
    - iv. Any other allied works
  - e. QA/QC plans
  - f. Environment Health and Safety Plan, material safety data and hazardous chemicals if any.
- (v) review of the Drawings and Documents as set forth in Paragraph 4 and 5;
- (vi) Identification of Construction Milestones & Project progress monitoring and issue of Milestone Construction Certificates, Construction Completion Certificate, monitoring Trail run, recommendations for issuance of COD certificate by Jal Nigam etc..

- (vii) To Assist UP Jal Nigam for getting Statutory permissions
  - (viii) Ensure compliance with Statutory provisions under various applicable laws
  - (ix) Review, inspection, supervision and monitoring of Construction Works as set forth in Paragraph 6; conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 6
  - (x) Review, inspection and monitoring of O&M as set forth in Paragraph 6;
  - (xi) determining, as required under the Concession Agreement, the costs of any works or services and/or their reasonableness;
  - (xii) determining, as required under the Concession Agreement, the period or any extension thereof, for performing any duty or obligation;
  - (xiii) Determining the Events of default and guidance on consequent Termination notices and Payment as detailed in clauses 16.1 to 16.6 of the Concession Agreement; or
  - (xiv) Determine deficiencies in the commissioning & trial runs; prepare the final acceptance document for acceptance of commissioning & trial runs. Prepare & Issue Commercial Operation certificate through UP Jal Nigam.
  - (xv) Any other matter which is not specified in ((xii), (xiii), or (xiv) above and which creates an obligation or liability on the Employer /NMCG beyond the provisions of the Concession Agreement.
  - (xvi) Ensuring Interim Availability of the existing Facilities during construction period and certifying Scheduled Outages during Scheduled Maintenance.
  - (xvii) The Project Engineer shall submit regular periodic reports, as specified in the Concession Agreement to UP Jal Nigam and NMCG, in respect of its duties and functions under the Concession Agreement.
  - (xviii) The Project Engineer shall aid and advise the Employer on any proposal for variation under Article 20 of the Concession Agreement.
  - (xix) Assisting the Parties in resolution of Disputes as set forth in Paragraph 10;
  - (xx) Assisting the employer in the fulfilment of Hand back requirements as detailed in clause 19.3 of the Concession Agreement; and
  - (xxi) Undertaking all other duties and functions in accordance with this agreement.
  - (xxii) Project Engineer shall utilize best of analytical tools /computational models for review/analysis of structural/hydraulics wherever essential.
- 4.2 The Project Engineer shall discharge its duties in an efficient manner, consistent with the highest standards of professionalism and Good Industry Practice.
- 4.3 The Project Engineer must function in a manner to assist and equip the employer to ascertain that the Concessionaire shall operate and maintain the Facilities in a manner that:



- (i) Is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (ii) Results in the Facilities achieving the KPIs as detailed in schedule 10 of the Concession Agreement and certify within 7 days the KPI adherence Report as per clause 8.12 (c) of the Concession Agreement.
  - (iii) Ensures that the UP Jal Nigam Area Facilities are capable of treating Sewage up to the Design Capacity on a daily basis;
  - (iv) Ensures efficient treatment of Sewage and handling and disposal of STPs By- Products and the Treated Effluent
  - (v) - STPs are safe and reliable, subject to normal wear and tear of the Facilities and the Associated Infrastructure;
  - (vi) Is in compliance with the technology license agreement executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Facilities and/or the Associated Infrastructure;
  - (vii) Maintains the safety and security of personnel, material and property at the Site, in accordance with the approved EHS Plan, Applicable Laws and Applicable Permits; and
  - (viii) Ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EHS Plan, Applicable Laws and Applicable Permits.
- 4.4 Overall, The Project Engineer shall assist the UP Jal Nigam in supervising the construction, rehabilitation, operation and maintenance of the Facilities and shall work closely with the UP Jal Nigam and NMCG to monitor compliance with the KPIs. The detailed scope of work of the Project Engineer during various stages of the project, to be read in conjunction with the provisions of the Concession Agreement, is outlined in Paragraphs 4-12 of the TOR.
- 4.5 If UP Jal Nigam/NMCG intends to replace the Project Engineer, the UP Jal Nigam/NMCG shall, not less than 42 days before the intended date of replacement, give notice to the Operator of the name, address and relevant experience of the intended replacement Project Engineer. The UP Jal Nigam/NMCG shall not replace the Project Engineer with a person against whom the Operator raises reasonable objection by notice to the UP Jal Nigam/NMCG, with supporting particulars

## **5. Development Period**

- 5.1 During the Development Period, the Project Engineer shall undertake a detailed review of the basic engineering Designs, furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and Sewage Flow Analysis. The Project Engineer shall complete such review and send its comments/observations to the UP Jal Nigam

and the Concessionaire within 10 (ten) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

- 5.2 The Project Engineer shall review and assist the UP Jal Nigam in approval of the submissions by the concessionaire relating to the design and, Construction Plan, of new STPs and rehabilitation Plan of existing facilities so as to confirm to the scope as per **Schedule 1** of the Concession Agreement.
- 5.3 The basic engineering drawings for the construction and rehabilitation in the above case shall mean the designs and documents to be submitted by the Concessionaire and approved by the UP Jal Nigam as a Condition Precedent and shall include but not limited to
- (a) Conduct Kick off meeting, Scrutiny of contractor's submittals
  - (b) Process description, process calculations and hydraulic Calculations;
  - (c) List of design codes and standards;
  - (d) Master drawing schedule;
  - (e) Drainage design;
  - (f) STP Facilities layout;
  - (g) Process flow diagram;
  - (h) Hydraulic flow diagram;
  - (i) Mass balance diagram;
  - (j) Process and instrumentation diagram;
  - (k) Single line diagram;
  - (l) Electrical load list; and
  - (m) Structure design and drawings
  - (n) Pump Characteristics and
  - (o) General arrangement diagrams of all units of Facilities and;
  - (p) Any other information, design, drawings, etc needed for effective Development/rehabilitation and operation of Facilities.
- 5.4 The Project Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 10 (ten) days of receiving such Drawings or Documents.
- 5.5 The Project Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 10 (ten) days of receipt thereof.
- 5.6 Upon reference by the NMCG/UP Jal Nigam, the Project Engineer shall review and; comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 10 (ten) days from receipt of such reference from the NMCG/UP Jal Nigam

## **6. Construction Period**

- 6.1 In respect of the Designs Drawing and Documents received by the Project Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall also apply, mutatis mutandis.
- 6.2 The Project Engineer shall review, and assist the UP Jal Nigam in reviewing the submissions by the concessionaire, the Construction plan as defined in clause 7.2 and 7.3 of the Concession Agreement including **Phase 1 and Phase II Design & Drawings**, as well as the **‘As Built’ drawings on completion** and EHS plans as defined in clause 7.4 of the Concession Agreement.
- 6.3 The Project Engineer shall assist the UP Jal Nigam submit their comments on effectiveness or otherwise of the work plan submitted for meeting the specified payment milestones and completion of the work on or before the scheduled construction completion date.
- 6.4 The Project Engineer shall review, in particular, the submissions by the Concessionaire as per Schedule 1 of the Concession Agreement, and assist UP Jal Nigam in assessing the effectiveness them.
- 6.5 The Project Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the / UP Jal Nigam and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.6 The Project Engineer shall inspect the Construction Works and the Project as and when necessary, and submit a report of such inspection (the “Inspection Report”), preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case. The report shall contain, an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Project Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Project Engineer shall send a copy of its Inspection Report to the / UP Jal Nigam and the Concessionaire within 3 (three) days of the inspection.
- 6.7 However serious lapses, defects and/or deficiencies shall be reported to the UP Jal Nigam/NMCG immediately without waiting for the monthly progress submissions as mentioned in the previous paragraph.
- 6.8 For determining that the Construction Works conform to Specifications and Standards, the Project Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Project Engineer in accordance with approved norms/Good Industry Practice for quality assurance. The Project Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 6.9 The timing of tests referred to in Paragraph 6.8, and the criteria for acceptance/rejection of their results shall be determined by the Project Engineer in accordance with the norms /rules and Good Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and

independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- 6.10 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Project Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 6.11 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Project Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Project Engineer identifies that completion of the Project is not feasible within the time specified in the Concession Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Project Engineer shall review the same and send its comments to the NMCG/ UP Jal Nigam and the Concessionaire forthwith.
- 6.12 If at any time during the Construction Period, the Project Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and common public in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the common public, it shall make a recommendation to the NMCG/ UP Jal Nigam forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 6.13 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and common public, it may, by notice in writing, require the Project Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Project Engineer shall inspect the suspended works and make a report to the NMCG/ UP Jal Nigam forthwith, recommending whether or not such suspension may be revoked by the NMCG/ UP Jal Nigam.
- 6.14 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Project Engineer shall determine the extension of dates set forth in the project completion schedule, to which the Concessionaire is reasonably entitled, and shall notify the NMCG/ UP Jal Nigam and the Concessionaire of the same.
- 6.15 Upon reference from the NMCG/ UP Jal Nigam, the Project Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the NMCG/ UP Jal Nigam to the Concessionaire.
- 6.16 The Project Engineer shall aid and advise the Concessionaire in preparing the Operation & Maintenance Manual.
- 6.17 Upon reference from the NMCG/ UP Jal Nigam the Project Engineer shall undertake the assessment of cost of civil works, as per applicable schedule of rates, for the reduction of Scope of work if any as per Article 20 of the Concession Agreement.

- 6.18 The Project Engineer shall review the construction progress as per payment milestones proposed by the concessionaire and provide necessary recommendation/s to UP Jal Nigam for issuance of 'Milestone Construction Certificates'.
- 6.19 The Project Engineer shall support the employer in ensuring that the provisions specified in Clause 8, of the Concession Agreement including those for liquidated damages and Bonus, are being complied with.
- 6.20 On completion of construction and at behest of Employer, the Project Engineer may review the work done as per 'as built' drawings and identify defects and suggest changes as per clause 8.14 of the Concession Agreement.
- 6.21 Similarly, the Project Engineer may inspect the trial process and may point out the defects and cause changes or retrial of the process as per the terms of the Concession Agreement.
- 6.22 Project Engineer shall ensure that the Concessionaire shall meet the Guaranteed Interim Availability of the existing UP Jal Nigam Area STPs and associated infrastructure within 30 days from the Effective Date of the Concession Agreement.
- 6.23 Project Engineer shall also ensure that the STP by-products and Treated Effluents discharged from the Existing Facilities meet the relevant Discharge Standards in accordance with the Clause 8.13 of the Concession Agreement.

## **7. Operation Period**

- 7.1 In respect of the Designs, Drawings, and Documents received by the Project Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 7.2 The Project Engineer shall review the O&M Manual and the Scheduled Maintenance Programme submitted by the concessionaire and provides its recommendations on the same, including suggestions for change, if any.

The O&M Manual shall cover:

- a) O&M Procedures;
- b) O&M Plan;
- c) Provision of Spare Parts;
- d) Sampling and Testing Methodologies;
- e) Storage and control of Inventory;
- f) Arrangements for data security and Integrity;
- g) Procedures for recording and disposal of complaints;
- h) Operational Contingencies Plans;
- i) Human Resources Plans;
- j) EHS Plans;
- k) Emergency procedures;
- l) Management of Assets Plans. And
- m) Annual Scheduled Maintenance Programme.

- 7.3 The Project Engineer shall review the annual Maintenance Program furnished by the Concessionaire and send its comments thereon to the NMCG/ UP Jal Nigam and the Concessionaire within 10 (ten) days of receipt of the Maintenance Program.
- 7.4 The Project Engineer shall review the reports generated from online monitoring systems to assess adherence to KPIs and submit the monthly KPI Adherence Report to UP Jal Nigam
- 7.5 The Project Engineer shall verify the daily reports submitted by the concessionaire regarding the volume of sewage and its quality re influent standards and monitor and record the same on regular basis;
- 7.6 The Project Engineer shall monitor, review and advise the UP Jal Nigam on the reports submitted by the concessionaire as per clause 8.8(b)(iii) (A) to (G) of the Concession Agreement.
- 7.7 The Project Engineer shall regularly verify the report submitted by the concessionaire on the tests conducted at the Inlet Point, the Outlet Point or at any other point at the Facilities for the Digested Sludge. Separately, the Project Engineer shall also have the right to take random samples of the incoming Sewage, the Digested Sludge and the Treated Effluent at any time during the O&M Period to test compliance with the Influent Standards and the Discharge Standards.
- 7.8 The Project Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the NMCG/ UP Jal Nigam and the Concessionaire within 7 (seven) days of receipt of such report.
- 7.9 The Project Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Project Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Project Engineer shall send a copy of its O&M Inspection Report to the NMCG/ UP Jal Nigam and the Concessionaire within 7 (seven) days of the inspection.
- 7.10 The Project Engineer may inspect the project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 7.11 The Project Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 7.12 The Project Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Concession Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the NMCG/ UP Jal Nigam for such delay.

- 7.13 The Project Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire.
- 7.14 In the event that the Concessionaire notifies the Project Engineer of any modifications that it proposes to make to the project, the Project Engineer shall review the same and send its comments to the NMCG/ UP Jal Nigam and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 7.15 The Project Engineer shall undertake sewage flow sampling, as and when required by the NMCG/ UP Jal Nigam, under and in accordance with the provisions of this agreement. Cost if any will be reimbursed as per actuals.
- 7.16 The Project Engineer shall review and report to the employer on all the reports (Daily, Monthly, Quarterly and Annual), including monthly Environmental Monitoring Reports as detailed in Schedule 10 of the Concession Agreement.
- 7.17 The Project Engineer shall provide necessary training/capacity building to the operators/technicians of the STP, as and when required, so as to address the gap in skill sets of the manpower deployed by the Concessionaire.
- 7.18 The Project Engineer will provide necessary assistance to NMCG and UP Jal Nigam for the understanding various projects undertaken through other Central Government/State Government schemes /Urban Local Bodies and advice NMCG/UP Jal Nigam accordingly so that the overall objective preventing flow of untreated sewage into the river Yamuna is accomplished. The support by the proposed PE will include, but not limited to the following:
- 7.18.1 Preparation of a road map/policy note for completion of sewage related work at the City Level taking into consideration various schemes implemented through NMCG/Central/State Government funding and/or through Urban Local Body funding;
- 7.18.2 Assist in developing dovetailing partnerships with other schemes in the sewage sector like AMRUT, SMART City Mission and Swachh Bharat Mission to develop Synergistic plans.
- 7.18.3 Assist in identification of suitable new technologies for improving sewage infrastructure, economizing investment and for sustainable development and operation of the project;
- 7.18.4 Collecting information on regular monitoring and of implementation of various projects by the project implementing agencies/Urban Local Bodies and to produce status report;
- 7.19 Assist in identification of bottlenecks in implementation of projects and suggesting remedial actions.

## **8. Termination**

- 8.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Project Engineer shall, in the presence of a representative of the Concessionaire, inspect the project for determining compliance by the Concessionaire and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Project Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount then it shall recommend

retention of the required amount in the Escrow Account and the period of retention thereof.

- 8.2 The Project Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 60 (sixty) days after Termination for determining the liability of the Concessionaire, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Project Engineer, it shall make a report in reasonable detail and send it forthwith to the NMCG/ UP Jal Nigam and the Concessionaire.

## **9. Determination of costs and time**

- 9.1 The Project Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Concession Agreement.
- 9.2 The Project Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Concession Agreement.

## **10. Assistance in Dispute resolution**

- 10.1 When called upon by either Party in the event of any Dispute, the Project Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 10.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Concession Agreement, the Project Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **11. Opinion and Assessment**

As and when requested by NMCG/ UP Jal Nigam, the Project Engineer shall provide its opinion and assessment on the events related to Emergency, Change in Law, Force Majeure, Minor or total Casualties, Variation and unforeseen Site conditions etc.

## **12. Miscellaneous**

- 12.1 The Project Engineer shall notify its programme of inspection to the NMCG/ UP Jal Nigam and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 12.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Project Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Project Engineer thereon shall be furnished to the NMCG/ UP Jal Nigam forthwith.
- 12.3 The Project Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 12.4 Upon completion of its assignment hereunder, the Project Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant



records, and hand them over to the NMCG/ UP Jal Nigam or such other person as the NMCG/ UP JAL NIGAM may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the NMCG/UP Jal Nigam

- 12.5 Wherever no period has been specified for delivery of services by the Project Engineer, the Project Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.
- 12.6 Project Engineers shall be expected to fully comply with all the provisions of the “Terms of Reference”, and shall be fully responsible for supervising the Design, Construction and maintenance and operation of the Facility in accordance with the provisions of the Concession Agreement and other schedules. Any failure of the Project Engineer in notifying to the Employer and the Concessionaire on non- compliance of the provisions of the Concession Agreement and other schedules by the Concessionaire, non-adherence to the provision of this ToR and non-adherence to the time schedule prescribed under this ToR shall amount to non-performance.
- 12.7 The project Engineer shall develop & maintain a project website and with the approval of NMCG/UP Jal Nigam post from time to time, information (textual and Audio- Visual) on project progress on a continuous basis. On completion of services as per this RFP document, the website with all necessary technical information shall be handed over to UP Jal Nigam.

### **13. Time and Payment Schedule**

- 13.1 Subject to the provisions of Paragraph 13.1 of the TOR, the total duration for the assignment shall be 3 years (2 years of construction and 1 year operation for STP) including the time taken by UP Jal Nigam in providing the requisite documents or in conveying its comments on the Draft Reports.
- 13.2 Time schedule for important Deliverables of the Consultancy and the payment schedule linked to the specified Deliverables of the Concessionaire for the Project. However, an indicative set of payments for the delivery of services are as follows:

#### **A. During Development Period [Before Effective Date of the project procurement]**

The development period in this project is expected to be maximum six months from the signing of the concession agreement by the Concessionaire, although, this period might increase/decrease depending on project specific situations. A maximum of 6% of the value of contract payable during the construction period will be paid to the Project Engineer during the development period irrespective of the time taken.

The billing shall be on the monthly basis upon submission of monthly progress report. In case the ‘Effective Date’ for the project procurement has been declared before six months, the Project Engineer is eligible for the payment of

entire 6% of the value of contract payable during construction period after deducting the payment already made. For avoidance of doubt, if the Project Engineer claimed only 3% out of 6% before 'Effective Date' of the project procurement, the Project Engineer is eligible to claim the balance 3% after declaring the 'Effective Date'.

B. During construction period [From the date of Effective Date of the project procurement]

S.No	Particulars	% of fee paid	Cumulative %
1	Certification for the achievement of first construction milestone by the Concessionaire	5%	5%
2	Certification for the achievement of second construction milestone by the Concessionaire	5%	10%
3	Certification for the achievement of third construction milestone by the Concessionaire	5%	15%
4	Certification for the achievement of fourth construction milestone by the Concessionaire	5%	20%
5	Certification for the achievement of fifth construction milestone by the Concessionaire	5%	25%
6	Certification for the achievement of sixth construction milestone by the Concessionaire	5%	30%
7	Certification for the achievement of seventh construction milestone by the Concessionaire	5%	35%
8	Certification for the achievement of Eighth construction milestone by the Concessionaire	5%	40%
9	Monthly Payment in accordance with the deployment of Key Personnel. (*Please see the note below)	54%	94%

\*Payment is limited to 2.25% per month of the contract value for construction period. The billing shall be on the basis of man months/man-days deployed for the month along with the submission of monthly progress report. If in any month, the deployment is lower than 2.25% of the value then balance of in that month shall be added to the next month on cumulative basis.

### C. Payment of fees for supervision of O&M

S.No.	Particulars	% of Fee Paid	Cumulative %
1	Payment during O & M period on submission of certificate for adherence to KPIs on prorata basis for 12 months (Billing on the basis of man days/man months spend on the project )	8 % for each month = 96 %	96 %
2	Final certification of 12 months of O & M period.	4 %	100%

- 13.3 Payment shall be made in respect of each Deliverable upon completion thereof, for which bills may be raised by the Project Engineer.
- 13.4 Expected man-days for each both key and non-key personnel as required in the Clause 2.1.4 of the RFP document:

Position	Nos.		Man-days	
	Mirzapur	Ghazipur	Development and Construction period	O & M period
<b>Key Experts</b>				
Team leader cum waste water engineer	1		730	
Senior Process Engineer	1		365	60
Senior Civil Engineer (2 X 730)	1	1	1460	
Senior Mechanical Engineer (2 x 180)	1	1	360	60
Senior Electrical Engineer (2 x 180)	1	1	360	30
Senior Instrumentation Engineer	1		365	30
Senior Structural Engineer	1		365	
O & M Engineer	1	1	730	730
<i>Ghazipur - (1 x 365)</i>		1		365
<i>Mirzapur – (1 x 1095)</i>		1	730	365
<b>Sub total</b>			<b>4735</b>	<b>910</b>
<b>Non Key Experts</b>				
Safety Expert	1		365	
Support Engineer – Civil (2x730)	1	1	1460	
Support Engineer – Mechanical (2x180)	1	1	360	
Support Engineer – Electrical (2x180)	1	1	360	
<b>Sub Total</b>			<b>2545</b>	<b>-</b>
<b>Total</b>			<b>7280</b>	<b>910</b>

### 14. Meetings

- 14.1 UP Jal Nigam may review with the Project Engineer, any or all of the documents

and advice forming part of the Consultancy, in meetings and conferences which will be held at the office of the UP Jal Nigam/NMCG. UP Jal Nigam /NMCG may, in its discretion, require the Project Engineer to participate in extended meetings and/ or work from the offices of UP Jal Nigam/NMCG and the Project Engineer shall, on a best endeavour basis and without unreasonable delay, provide such services at the offices of the UP Jal Nigam/NMCG.

## **15. Reporting**

- 15.1 The Project Engineer may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from UP Jal Nigam/NMCG. The Project Engineer shall report to UP Jal Nigam for routine activities and deliverables. All major and critical issues shall be reported to NMCG and UP Jal Nigam simultaneously.
- 15.2 The Project Engineer will make a presentation on the inception report for discussion with the UP Jal Nigam /NMCG at a meeting. This will be a working document. Regular communication with UP Jal Nigam/NMCG is required in addition to all key communications. This may take the form of telephone/ teleconferencing, emails, and occasional meetings.
- 15.3 The Deliverables will be submitted as per schedule provided in this RFP.

## **16. Documents to be made available by UP Jal Nigame/NMCG**

NMCG/UP Jal Nigam shall provide to the Project Engineer 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.
- (d) A copy of signed Concession Agreement for the Project.
- (e) Available data as may be required by the Project Engineer will be provided by UP Jal Nigam on request.

## **17. Completion of Services**

All the Deliverables shall be compiled, classified and submitted by the Project Engineer to UP Jal Nigam in both hard & soft form, to the extent possible. The documents comprising the Deliverables shall remain the property of UP Jal Nigam/NMCG and shall not be used by the Project Engineer for any purpose other than that intended under these Terms of Reference without the permission of UP Jal Nigam/NMCG. The Consultancy shall stand completed on acceptance by UP Jal Nigam of all the Deliverables of the Project Engineer. Unless completed earlier, the Services shall be deemed completed and finally accepted by UP Jal Nigam and the final Deliverable shall be deemed approved by UP Jal Nigam as satisfactory upon expiry of 60 (sixty) days after receipt of the final Deliverable unless UP Jal Nigam, within such 60 (sixty) day period, gives written notice to the Project Engineer specifying in detail, the deficiencies in the

Services. The Project Engineer 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 5 (five) years from the Effective Date, unless extended by mutual consent of the UP Jal Nigam and the Project Engineer.

SCHEDULE-2  
(See Clause 2.1.3)

**AGREEMENT**

**FOR**

**PROJECT ENGINEER SERVICES FOR**

**Development of Sewage Treatment Plants (STPs) & associated Infrastructure  
and operation and maintenance of all assets for 15 years in Mirzapur and  
Ghazipur, Uttar Pradesh Under Hybrid Annuity based PPP mode**

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## AGREEMENT

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the ..... day of the month of ..... 20..., between, on the one hand, the Uttar Pradesh Jal Nigam (hereinafter called as UP Jal Nigam) which expression shall include their respective successors and permitted assigns, unless the context otherwise requires), National Mission for Clean Ganga (herein after “NMCG”) and, on the other hand, ..... (hereinafter called the “**Project Engineer**” which expression shall include their respective successors and permitted assigns).

### WHEREAS

- (A) The NMCG vide its Request for Proposal for seeking Project Engineer services (hereinafter called the “**Consultancy**”) Sewage Treatment Plants (STPs) & associated Infrastructure and operation and maintenance of all assets for 15 years in Mirzapur and Ghazipur, Uttar Pradesh, Under Hybrid Annuity based PPP mode (hereinafter called the “**Project**”);
- (B) the Project Engineer submitted its proposals for the aforesaid work, whereby the Project Engineer represented to the NMCG that it had the required professional skills, and in the said proposals the Project Engineer 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) the NMCG, on acceptance of the aforesaid proposals of the Project Engineer, awarded the Consultancy to the Project Engineer vide its Letter of Award dated ..... (the “**LOA**”); 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) “**Agreement**” means this Agreement, together with all the Annexes;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
- (c) “**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;
- (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;

- (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (g) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) “**Government**” means the Government of .....;
- (i) “**INR, Re. or Rs.**” means Indian Rupees;
- (l) “**Member**”, in case the Project Engineer 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, UP Jal Nigam or the Project Engineer, as the case may be, and Parties means both of them;
- (n) “**Personnel**” means persons hired by the Project Engineer or by any Sub-Project Engineer 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 Project Engineer’s proposal for providing Services was accepted;
- (q) “**Services**” means the work to be performed by the Project Engineer pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “**Sub-Project Engineer**” means any entity to which the Project Engineer 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, UP Jal Nigam, the Project Engineer or a Sub-Project Engineer.

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; 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 Project Engineer. The Project Engineer 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 Project Engineer shall be as set forth in the Agreement, in particular:

- (a) the Project Engineer shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the NMCG shall make payments to the Project Engineer 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 Project Engineer, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Project Engineer's Representative set out below in Clause 1.10 or to such other person as the Project Engineer 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 Project Engineer 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 Project Engineer; provided that if the Project Engineer 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 Project Engineer.

## **1.9 Authority of Member-in-charge**

In case the Project Engineer 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 Project Engineer's rights and obligations towards the NMCG under this Agreement, including without limitation the receiving of instructions and payments from the 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 Project Engineer, 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 UP Jal Nigam may, from time to time, designate one of its officials as the UP Jal Nigam Representative. Unless otherwise notified, the UP Jal Nigam Representative shall be:

.....

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Tel: .....

Mobile: .....

Email: .....

- 1.10.4 The Project Engineer may designate one of its employees as Project Engineer's Representative. Unless otherwise notified, the Project Engineer's Representative shall be:

.....

.....

Tel: .....

Mobile: .....

Email: .....

## **1.11 Taxes and duties**

Unless otherwise specified in the Agreement, the Project Engineer shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the NMCG/UP Jal Nigam 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 Project Engineer shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

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

If the Project Engineer 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 Project Engineer, declare this Agreement to be null and void, and in the event of such a declaration, the Performance Security of the Project Engineer 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 the NMCG; or (ii) the expiry of 5 (five) year from the Effective Date. Upon Termination, the NMCG shall make payments of all amounts due to the Project Engineer 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 Project Engineer 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 6.1.3 and 8.2 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, pandemic, 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-Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer, suspend all payments to the Project Engineer hereunder if the Project Engineer 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 Project Engineer to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Project Engineer of such notice of suspension.

### 2.9 Termination of Agreement

#### 2.9.1 By the NMCG

The NMCG may, by not less than 30 (thirty) days' written notice of termination to the Project Engineer, 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 Project Engineer 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 Project Engineer 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 Project Engineer fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Project Engineer submits to the NMCG a statement which has a material effect on the rights, obligations or interests of the NMCG and which the Project Engineer knows to be false;
- (e) any document, information, data or statement submitted by the Project Engineer in its Proposals, based on which the Project Engineer was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Project Engineer is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or



- (g) the NMCG, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

#### 2.9.2 By the Project Engineer

The Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer may have subsequently granted in writing) following the receipt by the NMCG of the Project Engineer's notice specifying such breach;
- (c) as the result of Force Majeure, the Project Engineer 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 Project Engineer'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 Project Engineer'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 Project Engineer 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 Project Engineer (after

offsetting against these payments any amount that may be due from the Project Engineer 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 Project Engineer'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 PROJECT ENGINEER**

#### **3.1 General**

##### 3.1.1 Standards of Performance

The Project Engineer 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 Project Engineer 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-Project Engineers or Third Parties.

##### 3.1.2 Terms of Reference

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

##### 3.1.3 Applicable Laws

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

### **3.2 Conflict of Interest**

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

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

The Project Engineer agrees that, during the term of this Agreement and after its termination, the Project Engineer or any Associate thereof and any entity affiliated with the Project Engineer, as well as any Sub-Project Engineer and any entity affiliated with such Sub-Project Engineer, 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 Project Engineer shall include a partner in the Project Engineer's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Project Engineer, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Project Engineer nor its Sub-Project Engineer 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 Project Engineer not to benefit from commissions, discounts, etc.

The remuneration of the Project Engineer pursuant to Clause 6 hereof shall constitute the Project Engineer's sole remuneration in connection with this Agreement or the Services and the Project Engineer 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 Project Engineer shall use its best efforts to ensure that any Sub-Project Engineer, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

- 3.2.5 The Project Engineer 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 Project Engineer, without being liable in any manner whatsoever to the Project Engineer, if it determines that the Project Engineer 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 Project Engineer 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 Project Engineer shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Project Engineer 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 Project Engineer, its Sub-Project Engineers 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 Project Engineer, its Sub-Project Engineers 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 the NMCG; and any other information which the Project Engineer 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 Project Engineer, its Sub-Project Engineers 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 Project Engineer, its Sub-Project Engineers and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Project Engineer, its Sub-Project Engineers 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 Project Engineer, its Sub-Project Engineers 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 Project Engineer or its Sub-Project Engineers or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Project Engineer or its Sub-Project Engineers 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 Project Engineer**

3.4.1 The Project Engineer's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Project Engineer 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 Project Engineer or on the part of any person or firm acting on behalf of the Project Engineer in carrying out the Services, the Project Engineer, 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 Project Engineer may be entitled to receive from any insurance maintained by the Project Engineer to cover such a liability in accordance with this Clause, whichever of (a) or (b) is higher.

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

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

The Project Engineer 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 Project Engineer'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 Project Engineer's actions requiring the NMCG's prior approval**

The Project Engineer 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-3.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Project Engineer 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 Project Engineer shall remain fully liable for the performance of the Services by the Sub-Project Engineer and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

### **3.7 Reporting obligations**

The Project Engineer 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 Project Engineer to be property of the NMCG/UP Jal Nigam**

- 3.8.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Project Engineer (or by the Sub-Project Engineers or any Third Party) in performing the Services shall become and remain the property of the UP Jal Nigam/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 UP Jal Nigam/NMCG under law, shall automatically stand assigned to the UP Jal Nigam/NMCG as and when such Consultancy Document is created and the Project Engineer agrees to execute all papers and to perform such other acts as the UP Jal Nigam/NMCG may deem necessary to secure its rights herein assigned by the Project Engineer.
- 3.8.2 The Project Engineer shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the UP Jal Nigam/NMCG, together with a detailed inventory thereof. The Project Engineer may retain a copy of such Consultancy Documents. The Project Engineer, its Sub-Project Engineers or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the NMCG/UP Jal Nigam.

- 3.8.3 The Project Engineer shall hold the NMCG/UP Jal Nigam 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 Project Engineer or its Sub-Project Engineers or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the NMCG/UP Jal Nigam.

### **3.9 Providing access to Project Office and Personnel**

The Project Engineer shall ensure that the NMCG/UP Jal Nigam, and officials of the NMCG/UP Jal Nigam are provided unrestricted access to the Project Office and to all Personnel during office hours. The UP Jal Nigam/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 Project Engineer and verify the records relating to the Services for his satisfaction.

### **3.10. Accuracy of Documents**

The Project Engineer 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 UP Jal Nigam/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 Project Engineer or arises out of its failure to conform to good industry practice. The Project Engineer shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

## **4. PROJECT ENGINEER’S PERSONNEL AND SUB-PROJECT ENGINEERS**

### **4.1 General**

The Project Engineer 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 Project Engineer’s Personnel are described in Annex-3 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 UP Jal Nigam/NMCG and the Project Engineer, 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-3 of the Agreement are hereby approved by the UP Jal Nigam/NMCG. No other Professional Personnel shall be engaged without prior approval of the UP Jal Nigam/NMCG.
- 4.3.2 If the Project Engineer hereafter proposes to engage any person as Professional Personnel, it shall submit to the UP Jal Nigam/NMCG its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. The UP Jal Nigam/NMCG may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Project Engineer may propose an alternative person for the UP Jal Nigam/NMCG's consideration. In the event the UP Jal Nigam/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 UP Jal Nigam/NMCG.

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

The NMCG expects all the Key Personnel to be available during implementation of the Agreement. The NMCG will not consider substitution of Key Personnel except for reasons not attributable to the Project Engineer 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. For substitutions against reasons other than mentioned above, a sum of upto 5% (Five per cent) of the remuneration specified for the original Key Personnel may be deducted from the payments due to the Project Engineer. In the case of a further substitutions hereunder, such deduction shall be 10% (Ten per cent) of the remuneration specified for the original Key Personnel for each substitution. However, NMCG reserves the right to waive off the deduction in fee on the basis of merits of the case.

### **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 Project Engineer'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-3. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the UP Jal Nigam/NMCG, and the Project Engineer 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 Project Engineer's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Project Engineer 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-Project Engineers**

Sub-Project Engineers listed in Annex-2 of this Agreement are hereby approved by the NMCG. The Project Engineer may, with prior written approval of the NMCG, engage additional Sub-Project Engineers or substitute an existing Sub-Project Engineer. The hiring of Personnel by the Sub-Project Engineers shall be subject to the same conditions as applicable to Personnel of the Project Engineer under this Clause 4.

### **5. OBLIGATIONS OF THE NMCG**

#### **5.1 Assistance in clearances etc.**

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

- (a) provide the Project Engineer, its Sub-Project Engineers and Personnel with necessary support and such other documents as may be necessary to enable the Project Engineer, its Sub-Project Engineers 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 Access to land and property**

The UP Jal Nigam warrants that the Project Engineer 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 Project Engineer 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 Project Engineer as a result thereof pursuant to Clause 6.1.3.

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

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Project Engineer 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 Project Engineer 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.

#### **5.4 Payment**

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

## **6. PAYMENT TO THE PROJECT ENGINEER**

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

- 6.1.1 An abstract of the cost of the Services payable to the Project Engineer is set forth in Annex-3 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**”).
- 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 Project Engineer 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 Project Engineer 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 Agreement Value shall be paid to the Project Engineer 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 at the rate of SBI MCLR (yearly) per annum at the time of recovery and shall be adjusted in eight equal instalments from the first eight monthly/milestone payments due and payable to the Project Engineer during construction period and the accrued interest shall be recovered from the ninth installment due and payable thereafter. The Project Engineer may choose to replace the bank guarantee with reduced amount equivalent to balance outstanding and interest thereof subject to the condition that 50% of the mobilization advance has already been recovered.
- (b) The Project Engineer shall be paid for its services as per the Payment Schedule at Annex-4 of this Agreement, subject to the Project Engineer fulfilling the following conditions:

- (i) No payment shall be due for the next stage till the Project Engineer completes, to the satisfaction of the NMCG, the work pertaining to the preceding stage.
  - (ii) The NMCG shall pay to the Project Engineer, only the undisputed amount.
- (c) The NMCG shall cause the payment due to the Project Engineer 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 Project Engineer 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 Project Engineer specifying in detail, the deficiencies in the Services. The Project Engineer 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 Project Engineer to the NMCG within 30 (thirty) days after receipt by the Project Engineer 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 Project Engineer in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (f) All payments under this Agreement shall be made to the account of the Project Engineer as may be notified to the NMCG by the Project Engineer.

## **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 3% (three per cent) of the Agreement Value (the “**Performance Security**”); provided, however, that the Project Engineer shall be required to provide a Performance Security in the form of a bank guarantee substantially in the form specified at Annex-5 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 Project Engineer 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 Project Engineer and such error or variation is the result of negligence or lack of due diligence on the part of the Project Engineer, the consequential damages thereof shall be quantified by the NMCG in a reasonable manner and recovered from the Project Engineer 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 0.1% (zero point one 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 Project Engineer, 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 Project Engineer 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 Project Engineer 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 or the officer nominated by him, and the Chairman of the Board of Directors of the Project Engineer 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]<sup>2</sup> 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 Project Engineer and the NMCG agree and undertake to carry out such Award without delay.
- 9.4.4 The Project Engineer and the NMCG agree that an Award may be enforced against the Project Engineer 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.**

SIGNED, SEALED AND DELIVERED

For and on behalf of  
Project Engineer:

(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 UP Jal Nigam  
of

(Signature)  
(Name)

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<sup>2</sup> 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.

(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

**Approved Sub-Project Engineer(s)**  
(Refer Clause 4.7)

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

Annex-3

**Cost of Services**

*(Refer Clause 4.2 & 6.1)*

(Reproduce BoQ as per Form-1 of Appendix-II)

#### Annex-4

### **Payment Schedule<sup>3</sup>**

*(Refer Clause 6.3)*

*To be reproduced from TOR.*

#### *Notes:*

1. *The above payments shall be made to the Project Engineer provided that the payments to be made at any time shall not exceed the amount certified by the Project Engineer 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 Project Engineer shall finalise its report..*
3. *Mobilisation Advance upto 10% (ten per cent) of the total Agreement Value shall be paid on request against Bank Guarantee of a Scheduled Bank. This shall attract simple interest at the rate of SBI MCLR (yearly) per annum at the time of recovery and shall be adjusted against the in eight equal instalments from the first 8 (eight) monthly/milestone payments due and payable to the Project Engineer during construction period and the accrued interest shall be recovered from the ninth instalment due and payable thereafter.*

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<sup>3</sup> The Payment Schedule is indicative and may be suitably modified to meet project-specific requirements, which should be in conformity with the Schedule provided in the TOR at Schedule-1.

**Bank Guarantee for Performance Security**  
(Refer Clause 7.1.2)

To

-----  
-----  
.....  
.....  
.....

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 “**Project Engineer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the NMCG’s Letter of Award no. .... dated ..... valued at Rs. .... (Rupees .....), (hereinafter referred to as the “**Award**”) the assignment for consultancy services in respect of the ..... Project, and the Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer of any of the terms or conditions contained in the said Agreement or by reason of the Project Engineer’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 Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer 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 Project Engineer or for any forbearance, act or omission on the part of the NMCG or any indulgence by the NMCG to the said Project Engineer 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 Project Engineer(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 [.....].

For .....

Name of Bank:

Seal of the Bank:

Dated, the .....day 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.





**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. Project Engineers 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 Project Engineers should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the NMCG and a Project Engineer or between Project Engineers and present or future concessionaries/contractors. Some of the situations that would involve conflict of interest are identified below:
  - (a) NMCG and Project Engineers:
    - (i) Potential Project Engineer should not be privy to information from the NMCG which is not available to others;
    - (ii) potential Project Engineer should not have defined the project when earlier working for the NMCG;
    - (iii) potential Project Engineer should not have recently worked for the NMCG overseeing the project.
  - (b) Project Engineers and concessionaires/contractors:
    - (i) No Project Engineer 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 Project Engineer should be involved in owning or operating entities resulting from the project; or
    - (iii) no Project Engineer 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 Project Engineers. 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 Project Engineers 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 Project Engineer’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 Project Engineer 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 Project Engineers 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 Project Engineers 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 Project Engineers. 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 Project Engineers to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Project Engineers 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: Appointment of Project Engineer for ..... Project

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

1. 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.
2. This statement is made for the express purpose of appointment as the Project Engineer for the aforesaid Project.
3. I/We shall make available to the NMCG any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the NMCG to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. 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.
6. I/We declare that:
  - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the 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.
7. 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 Project Engineer, without incurring any liability to the Bidders in accordance with Clause 2.8 of the RFP document.
  8. 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 Project Engineer.
  9. 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.
  10. 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.
  11. 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.
  12. 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 Project Engineer or in connection with the Selection Process itself in respect of the above mentioned Project.
  13. The Bid Securing Declaration Form, in accordance with the RFP document.
  14. 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.

15. I/We agree to keep this offer valid for 180 (one hundred eighty) days from the Proposal Due Date specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form-4.
17. In the event of my/our firm/ consortium being selected as the Project Engineer, 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.
18. 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.
19. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Proposal which shall be binding on us.
20. 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.

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	<p>State the following:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation:</p> <p>Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>Name, designation, address and phone numbers of authorised signatory of the Bidder:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>E-mail address:</p>
1.4	<p>For the Bidder, , 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 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 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 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, , suffered bankruptcy/insolvency in the last five years?</p> <p style="text-align: right;">Yes/No</p> <p><b>Note: If answer to any of the questions at (ii) to (v) is yes, the Bidder is not eligible for this consultancy assignment.</b></p>
1.5	<p>Does the Bidder's firm/company combine functions as a Project Engineer 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 agree to limit the Bidder's role only to that of a Project Engineer/ 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>
1.6	<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 Project Engineer, 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 Project Engineer?</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 Project Engineer/ 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: right;">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: RFP for Project Engineer: ..... Project

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<sup>\$</sup>), 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 .....

---

<sup>\$</sup> 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 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 Project Engineer for the ..... Project, proposed to be developed by the ..... (the “**NMCG**”) including but not limited to signing and submission of all Proposals, 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	Income from Professional Fees (Rs./US \$ in million)
1.		
2.		
3.		

  

**Certificate from the Statutory Auditor<sup>\$</sup>**

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)

<sup>\$</sup> 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.

If any bidder is unable submit the certificate from the statutory period along with the bid due to current COVID pandemic, such bidder may submit a self-certified Form-5. However, before opening of financial proposal the certificate from the statutory auditor in Form-5 shall have to be submitted to NMCG. Failing which the bid will be termed as non-responsive.

**Note:** Please do not attach any printed Annual Financial Statement.

APPENDIX-I

Form-6

**Particulars of Key & Non Key Personnel**

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience		Present Employment		No. of Eligible Assignments <sup>\$</sup>
				General	Project Specific	Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5 A)	(5B)	(6)	(7)	(8)
1.								
2.								
3.								
4.								
5.								
6.								

<sup>\$</sup>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 two 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 five 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<sup>§</sup>

(Refer Clause 3.1.4)

S.N o	Name of Proje ct	Nam e of Clie nt	Star t Dat e	End Dat e	Estimat ed capital cost of Project (in Rs. crore/ US\$ million)	Total value of the Profession al fees	Payment <sup>\$\$</sup> of profession al fees received by the Bidder (in Rs. crore)	Treatme nt Capacity in MLD/
(1) <sup>£</sup>	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1								
2								
3								
4								

<sup>§</sup> The Bidder should provide details of only those projects that have been undertaken by it under its own name or by its associate. If the project has been undertaken by the associate, a certificate for associate relationship shall be submitted in the format prescribed in form no 14 Appendix I.

<sup>\$\$</sup> Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.

<sup>£</sup> 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<sup>§</sup>

This is to certify that the information contained in Column 6, 7, 8 & 9 above are correct as per the accounts/documents of the Bidder and/ or the clients produced before us.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

<sup>\$</sup> 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<sup>\$</sup>** (Refer Clause 3.1.4)

Name of Key Personnel:

Designation:

S.No	Name of Project <sup>\$</sup>	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							

<sup>\$</sup> Use separate Form for each Key Personnel.

<sup>\$\$</sup> 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.	Name of Bidder:	
2.	Name of the Project:	
3.	STP/ETP/CETP capacity in MLD	
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.	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 style="text-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.

## APPENDIX-I

### Form-11

#### **Eligible Assignments of Key Personnel** (Refer Clause 3.1.4)

1.	Name of Key Personnel:	
2.	Designation of Key Personnel:	
3.	Name of the Project:	
4.	STP/ETP/CETP Capacity in MLD	
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.	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 style="text-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. Same format can be used for non key personnel as well.

## 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.
- 3 In accordance with Clause 2.1.4.2 of the RFP document, I have given exclusive consent to M/s.....{*Name of the Bidder*} for the proposed Key Personnel position and I have not given consent to any other bidders.\*
- 4 I am also aware that if found in contravention with the declaration in para 3 above, NMCG is free to take appropriate action as it deems fit.\*

(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. The same format can be used for non-key personnel and support professional proposed by the bidder.

\* Applicable only for the positions of Team Leader cum Waste Water Expert and Senior Process Engineer.

## APPENDIX-I

### Form-13

#### **Proposal for Sub-Project Engineer(s)**

<b>1. Details of the Firm</b>				
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				
<b>2. Services that are proposed to be sub contracted:</b>				
<b>3. Person who will lead the Sub- Project Engineer</b>				
Name:				
Designation:				
Telephone No:				
Email:				
<b>4. Details of Firm's previous experience</b>				
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-Project Engineer(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix –I.
2. Use separate form for each Sub-Project Engineer

## 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

APPENDIX-I

Form-15

**Form of Bid-Securing Declaration**

Date: \_\_\_\_\_

Tender Reference No.: \_\_\_\_\_

Project Name: \_\_\_\_\_To:

\_\_\_\_\_

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Bidding, or submitting Proposals in any contract with the Employer for the period of time of 6 (six) months from the date of notification, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have submitted a non-responsive proposal; or
- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of Bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security in accordance with the Bid conditions.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) notification of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Name of the Bidder\* \_\_\_\_\_

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\*

\_\_\_\_\_

Title of the person signing the Bid

\_\_\_\_\_

\_\_\_\_\_

Signature of the person named above

\_\_\_\_\_

\_\_\_\_\_



Date signed \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the Bid.]*

APPENDIX-II  
(See Clause 2.1.3)

Form-1

**Financial Proposal (BoQ)**

**(This form is provided at <https://eprocure.gov.in/eprocure/app>. Bidders are advised to download and fill the required details in the permitted cells and upload the same)**