



REQUEST FOR PROPOSAL
for
DEVELOPMENT OF A SEWAGE TREATMENT PLANT & ASSOCIATED
INFRASTRUCTURE
ON PPP BASIS
AT VARANASI, UTTAR PRADESH

FEBRUARY 2017

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DISCLAIMER

The information contained in this RFP or any other information provided to the Bidders, whether verbally or in writing or in any other form, by or on behalf of the Jal Nigam or NMCG and its employees or advisors is provided to the 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 further it is neither an offer nor an invitation by the Jal Nigam to the Bidders or any other Person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in the preparation and submission of their Bids.

This RFP includes statements which reflect various assumptions and assessments arrived at by the Jal Nigam, NMCG and their advisors for the Project. Such assumptions, assessments and statements do not purport to contain all the information that the Bidders may require. The information contained in this RFP may not be appropriate for all Persons and it is not possible for the Jal Nigam, NMCG and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Person who reads 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, statements and information contained in this RFP.

The information provided in this RFP to the Bidders is on a wide range of matters, some of which may depend upon interpretation of the law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of the law. The Jal Nigam, NMCG and their employees and advisors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on laws expressed in this RFP.

The Jal Nigam, NMCG and their employees and advisors make no representation or warranty and will have no liability to any Person, including any Bidder, under any law, statute, rules or regulations or tort or otherwise for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RFP and any assessment, assumption, statement or information contained in this RFP or deemed to form part of this RFP or arising in any way.

It will be deemed that by submitting the Bid, a Bidder agrees and releases the Jal Nigam, NMCG and their employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for any 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 under this RFP and/or in connection with the Bid Process, to the fullest extent permitted by Applicable Law and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in the future.

The Jal Nigam, NMCG and their employees and advisors also accept no liability of any nature, whether resulting from negligence or otherwise arising from reliance of any Bidder upon the content of this RFP. The Jal Nigam may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment, statement or assumptions contained in this RFP.

The issue of this RFP does not imply that the Jal Nigam is bound to qualify any Bidder or to award the Project to any Bidder. The Jal Nigam reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

GLOSSARY

In this RFP, unless the context otherwise requires, capitalised terms shall have the meaning given to them in the table below. Capitalised terms not defined below shall have the meaning given to them in the Concession Agreement.

Addendum or Addenda	means an addendum or addenda to the RFP.
Annexure	means an annexure to this RFP.
Appointed Date	means the date of signing of the Concession Agreement.
Associate	means, in relation to a Bidder or a Member of a Consortium, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who Controls such Bidder or Member of a Consortium.
Associated Infrastructure	means the supporting infrastructure facilities for the Varanasi STP, including the main pumping station and the 6.68 kilometres rising main, existing at the Site, as described in greater detail in the Technical Specifications, which need to be designed, financed, rehabilitated, operated and maintained by the Concessionaire in accordance with the Concession Agreement.
Bid	means a bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and Bids mean collectively, all the bids for the Project.
Bid Due Date	means the last date for submission of the Bids specified in the Bid Schedule, as may be extended from time to time in accordance with Clause 19.2.
Bid Price	means the price quoted by each Bidder in the Bid Price Sheet, as a part of its Financial Proposal, to undertake the Project
Bid Price Sheet	means the sheet provided in Annexure 2B, in which the Bidders shall quote: (a) the Bid Project Cost; (b) the O&M Charges for the first month after COD; (c) Guaranteed Energy Consumption for the O&M Period; and (d) the Land Requirement based on which the Bidder shall calculate its Bid Price.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by the Jal Nigam to award the Project to the Selected Bidder on the terms and conditions set out in this RFP. The Bid Process has commenced with the issuance of this RFP and will end on the date that the Concession

Agreement is executed with the Special Purpose Vehicle incorporated by the Selected Bidder for the Project.

Bid Project Cost	means the cost of construction of the Facilities and rehabilitation of the Associated Infrastructure, as quoted by a Bidder in its Bid, which must include the interest during construction, Taxes and all other pre-operative expenses in relation to the Facilities and the Associated Infrastructure.
Bid Schedule	means the schedule of the Bid Process set out in Clause 2.12, as may be amended from time to time.
Bid Security	means a bid security that must be submitted by a Bidder along with its Bid in accordance with Clause 15.
Bidder	means an interested Company or a Consortium of Companies which submits a Bid to the Jal Nigam in accordance with this RFP and includes each Member when the Bidder is a Consortium, and Bidders shall be construed accordingly.
Capex Annuity	means the amount payable to the Concessionaire per month during the O&M Period, towards reimbursement of 60% of the Bid Project Cost, as will be set out in the Concession Agreement.
Capital	means, in respect of the SPV that is incorporated by the Selected Bidder to act as the Concessionaire, the total capital of such SPV that will be raised by the issuance of equity shares, preference shares or convertible instruments.
Clause	means a clause of this RFP.
COD Certificate	means the certificate issued by the Jal Nigam to the Concessionaire to certify that the Facilities and the Associated Infrastructure have achieved COD, in accordance with the Concession Agreement.
Commercial Operations Date or COD	means the date on which the COD Certificate is issued to the Concessionaire in accordance with the Concession Agreement.
Companies Act	means the (Indian) Companies Act, 1956 and the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Company	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its jurisdiction.
Concession Agreement	means the tripartite concession agreement to be executed

between NMCG, the Jal Nigam and the Concessionaire. A draft of the Concession Agreement is attached to this RFP.

Concessionaire	means the Special Purpose Vehicle incorporated by the Selected Bidder to implement the Project.
Conflict of Interest	has the meaning ascribed to it in Clause 3.3.
Consortium	means any combination of Companies that have formed a consortium for the purpose of submitting a Bid and to implement the Project if such consortium is declared the Selected Bidder.
Construction Completion Certificate	means the certificate issued to the Concessionaire to certify completion of construction of the Facilities and rehabilitation of the Associated Infrastructure in accordance with the Concession Agreement.
Construction Completion Date	means the date on which the Construction Completion Certificate is issued to the Concessionaire in accordance with the Concession Agreement.
Construction Milestones	means the milestones for completion of construction of the Facilities and rehabilitation of the Associated Infrastructure by the Scheduled Construction Completion Date, as set out in the Concession Agreement.
Construction Period	means the period from the Effective Date until the Construction Completion Date.
Control	means, with respect to a Person: (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term Controlled shall be construed accordingly.
Effective Date	means the date on which all the Conditions Precedent have either been satisfied or waived by the Jal Nigam, NMCG, or the Concessionaire, as the case may be, in accordance with the Concession Agreement.
Effluent Disposal Pipeline	means the 5.5 kilometres pipeline to be laid by the Concessionaire as part of the Project, to transport and convey treated water from the STP to the outlet point specified by the

Jal Nigam.

Facilities	means, collectively, the Varanasi STP, the Effluent Disposal Pipeline, online monitoring system, the on-site testing laboratory facilities, the temporary storage facility for the residual sludge, the meters to measure the volume of the sewage conveyed to the Varanasi STP and the volume of by-products discharged from the Varanasi STP and such other facilities associated with the Varanasi STP, required to be set up by the Concessionaire, as described in greater detail in the Technical Specifications.
Financial Capacity	means the financial capacity and strength of the Bidder, as determined in accordance with Clause 4.2.
Financial Proposal	means the financial proposal, comprising the Bid Price Sheet, to be submitted by a Bidder in accordance with this RFP.
Financial Year	means each 12 month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a Bidder, then the 12 month period for which such Bidder files its statutory audited accounts in the normal course of its business.
Ganga 2016 Order	has the meaning ascribed to it in Clause 1.2.
GoI	means the Government of India.
Guaranteed Energy Consumption	means the maximum number of units of power quoted by a Bidder in its Financial Proposal, which it expects the Concessionaire to consume in each year of the O&M Period (other than any units expected to be generated and consumed from any power plant proposed to be set up by the Concessionaire), to operate and maintain the Facilities and the Associated Infrastructure.
Information Memorandum	means the information memorandum for the Project and provided as part of the RFP, at Schedule 1.
Jal Nigam	means the Uttar Pradesh Jal Nigam, a statutory body constituted under the Uttar Pradesh Water Supply and Sewerage Act, 1975.
Joint Bidding Agreement	means a binding joint bidding agreement to be entered into by the Members of a Consortium that submits a Bid pursuant to this RFP, in the format set out at Annexure 1K.
Land Price	means the price of the land required by the Bidder to develop the Facilities, determined by multiplying the Land

Requirement quoted by such Bidder and the Land Rate.

Land Rate	means the cost per Acre of the land forming the STP Site, which, for the purpose of this RFP shall be INR 56,66,000 (Rupees fifty six lakhs and sixty six thousand).
Land Requirement	means the area required by the Selected Bidder at the STP Site to construct, operate and maintain the Facilities (excluding the Effluent Disposal Pipeline).
Lead Member	means the Member nominated by the Members of the Selected Bidder to act as the lead member.
LOA	means the letter of award that will be issued by the Jal Nigam to the Selected Bidder in accordance with Clause 30.
Member	means a member of a Consortium.
MLD	means million litres per day.
MoWR	means the Ministry of Water Resources, River Development and Ganga Rejuvenation.
Net Worth	means the net worth of a Bidder, which shall be determined as follows: (a) subscribed and paid up equity share capital; and (b) reserves LESS (c) revaluation reserves; (d) miscellaneous expenditure not written off; (e) reserves not available for distribution to equity shareholders; and (f) aggregate value of the accumulated losses.
NMCG	means the National Mission for Clean Ganga, a statutory body constituted under the Environment (Protection) Act, 1986.
O&M	means operation and maintenance.
O&M Charges	means the amount required by a Bidder per month to operate and maintain the Facilities and the Associated Infrastructure, excluding the Power Charges, during the O&M Period. The O&M Charges for the first month after the COD will be the amount quoted by the Bidder in its Financial Proposal, which amount shall be adjusted to account for inflation for the subsequent months of the O&M Period, in accordance with the

Concession Agreement.

O&M Period	means the period of 15 years from the COD during which the Concessionaire is required to operate and maintain the Facilities and the Associated Infrastructure.
Performance Security	means a performance security that must be submitted by the Selected Bidder or the Concessionaire to the Jal Nigam on or before execution of the Concession Agreement to secure the obligations of the Concessionaire during the Construction Period in accordance with Clause 16.
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
Power Charges	means the cost of power for each Bidder determined by multiplying the Guaranteed Energy Consumption quoted by such Bidder and the Power Unit Rate (along with all other applicable charges as per applicable guidelines of the relevant authorities).
Power Unit Rate	means the cost per unit of power drawn from the grid (through a distribution licensee), which for the purpose of evaluation of the Financial Proposals is INR 7 (Rupees seven). For the purpose of reimbursement of Power Charges to the Concessionaire during the O&M Period, the Concessionaire will be paid on the basis of the then prevailing cost per unit of power charged by the relevant distribution licensee and/or the cost of fuel for any power consumed from any diesel generator back-up set, installed by the Concessionaire.
PPP	means public private partnership.
Pre-Bid Meeting	means the meeting to be held in accordance with Clause 8.2.
Preferred Bidder	means the Bidder which: (a) meets the Qualification Criteria and the eligibility criteria; and (b) quotes the lowest Bid Price.
Project	means: (a) the design, development, finance, construction, operation and maintenance of the Facilities at the Site; and (b) the design, finance, rehabilitation, operation and maintenance of the Associated Infrastructure, in accordance with the Concession Agreement.

Project Engineer	means the engineering firm appointed by NMCG, in accordance with the Concession Agreement.
Qualification Criteria	means the qualification criteria set out in Clause 4 that a Bidder is required to satisfy (in addition to the eligibility criteria), to be qualified for evaluation of the Financial Proposal.
Qualification Proposal	means the proposal to be submitted by each Bidder to demonstrate that it meets the Qualification Criteria and the other eligibility criteria as set out in Clause 3 and Clause 4.
RFP	means this request for proposal dated 22 February 2017 along with its Schedules and Annexures and includes any Addenda, if issued.
Rupee or INR	means Indian Rupees, the lawful currency of India.
Schedule	means a schedule of this RFP.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.
Scheduled Construction Completion Date	means the date which is 21 months from the Effective Date.
Second Preferred Bidder	means the Bidder who: (a) meets the Qualification Criteria and the eligibility criteria; and (b) quotes the second lowest Bid Price.
Section	means a section of this RFP.
Selected Bidder	means the eligible Bidder selected by the Jal Nigam for award of the Project.
Site	means the location for the Project, admeasuring 49.42 Acres in Varanasi, Uttar Pradesh, as set out in more detail in the Information Memorandum provided in Schedule 1.
SPV or Special Purpose Vehicle	means a company incorporated under the Companies Act by the Selected Bidder to carry out the obligations of the Concessionaire under the Concession Agreement.
STP	means a sewage treatment plant.
STP Site	means the part of the Site on which the Concessionaire is required to set up the Facilities (excluding the Effluent Disposal Pipeline), as indicated in the Information

Memorandum provided in Schedule 1.

Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, goods and services tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Selected Bidder.
Technical Capacity	means the technical capacity and experience of a Bidder, as determined in accordance with Clause 4.1.
Technical Specifications	means the technical specifications for design, construction, rehabilitation, operation and maintenance of the Facilities and the Associated Infrastructure (including specifically the Influent Standards and Discharge Standards), which the Concessionaire and/or its Subcontractors must comply with, as set out in the Concession Agreement.
Trial Operations	means the operation of the Facilities and the Associated Infrastructure on a trial basis for 3 months post the Construction Completion Date in accordance with the Concession Agreement.
Varanasi STP	means the STP of 50 MLD to be set up at the Site as part of the Project.
Website	means the web portal of the Jal Nigam available at the url: www.upjn.org

SECTION I INTRODUCTION

1. BACKGROUND

- 1.1 The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.
- 1.2 Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**Ganga 2016 Order**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order applies to all states in the catchment of the river Ganga basin, including Uttar Pradesh. The Ganga 2016 Order revised the legal status of NMCG (which was initially constituted as a registered society under the Societies Registration Act, 1860) to an authority constituted under the Environment (Protection) Act, 1986 and designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.
- 1.3 The Uttar Pradesh Jal Nigam (Jal Nigam) is a statutory body constituted under the Uttar Pradesh Water Supply and Sewerage Act, 1975, and has the power to develop, maintain and regulate water supply and sewerage works in Uttar Pradesh. With a view to implement the Namami Gange programme and the Ganga 2016 Order, the Jal Nigam, in association with the NMCG, has decided to undertake the development of an STP with a proposed capacity of 50 MLD along with other Facilities and Associated Infrastructure at Ramana, Varanasi on a PPP basis, through a hybrid annuity model (the Project). While the Jal Nigam will be the principal executing agency and bidding authority for the Project, NMCG will be responsible for making payments to the Concessionaire.
- 1.4 The objectives that NMCG and the Jal Nigam wish to achieve through the Project are to:
- (a) intercept raw sewage flowing into the river Ganga and divert the raw sewage to the Varanasi STP;
 - (b) treatment of the raw sewage at the Varanasi STP;
 - (c) implement viable technologies and international best practices for development, operation and maintenance of the Varanasi STP and other Facilities; and
 - (d) demonstrate large scale private sector participation and mobilisation of private sector investment to further the national aim of rejuvenation of the river Ganga.
- 1.5 The main features of the Project are set out below:
- (a) The Jal Nigam will provide such part of the Site as required by the Concessionaire to develop the Facilities and the Associated Infrastructure and implement the Project (based on the Land Requirement), free of all encumbrances, and along with all necessary rights of way.
 - (b) The Concessionaire will be required to design, finance, construct and complete the

Facilities on or prior to the Scheduled Construction Completion Date. As part of the Project, the Concessionaire will also be required to design, finance, rehabilitate and restore the Associated Infrastructure on or prior to the Scheduled Construction Completion Date, in accordance with the Concession Agreement.

- (c) In order to meet its power consumption requirements, the Concessionaire may construct and operate a biogas power plant on the Site, to utilise the bio gas generated from the treatment of raw sewage at the Varanasi STP to produce clean energy.
- (d) On and from the COD and until the expiry of the O&M Period, the Concessionaire will be required to operate and maintain the Facilities and the Associated Infrastructure in accordance with the Concession Agreement, such that the Facilities and the Associated Infrastructure meet the key performance indicators specified in the Concession Agreement.
- (e) Upon the expiry of the O&M Period, the Facilities, the Associated Infrastructure and any power plant set up by the Concessionaire, will be transferred to the Jal Nigam after the rectification of any defects or deficiencies, in accordance with the Concession Agreement.
- (f) The construction, rehabilitation and O&M of the Facilities and the Associated Infrastructure must be in accordance with Applicable Laws, Applicable Permits and other requirements specified in the Concession Agreement.
- (g) Prior to the Effective Date, NMCG will appoint a Project Engineer to supervise the construction, operation and maintenance of the Facilities and the Associated Infrastructure, and monitor compliance with the key performance indicators to be specified in the Concession Agreement. NMCG will solely bear the costs of the Project Engineer.
- (h) The Concessionaire shall operate the Facilities and the Associated Infrastructure at its risk for the term of the Concession Agreement.
- (i) 40% of the Bid Project Cost of the Project will be reimbursed to the Concessionaire during the Construction Period, which will be linked to completion and certification of specified Construction Milestones. From the COD, the Capex Annuity, the O&M Charges and the Power Charges at actuals (subject to a cap of the Power Charges based on Guaranteed Energy Consumption) will be paid on a monthly basis to the Concessionaire. If the Concessionaire consumes more than the Guaranteed Energy Consumption in any given month, it will be liable to pay damages to the Jal Nigam in accordance with the Concession Agreement.
- (j) The NMCG will set up a revolving escrow account for the Project, and all Construction Milestone linked payments, Capex Annuities, O&M Charges and the Power Charges will be paid to the Concessionaire through this escrow account. From the Effective Date until the Construction Completion Date, NMCG will ensure that the escrow account is funded with an amount equivalent to the construction payments due to the Concessionaire for the next Construction Milestone. From the COD and at all times thereafter until the expiry or termination of the Concession Agreement,

NMCG shall keep the escrow account funded with the Capex Annuities, O&M Charges and the estimated Power Charges for the subsequent 2 years.

- (k) Subject to early termination, the Concession Agreement shall be valid until the expiry of the O&M Period (i.e., 15 years from the COD).
- 1.6 The Jal Nigam is now inviting interested Companies to submit Bids to implement the Project.
- 1.7 The Selected Bidder is required to incorporate a Special Purpose Vehicle to implement the Project and such Special Purpose Vehicle will be required to execute the Concession Agreement with the Jal Nigam and NMCG in the format attached to this RFP.
- 1.8 The statements and explanations contained in this RFP are intended to provide the Bidders with an understanding of the subject matter of this RFP and the Project. Such statements and explanations should not be construed or interpreted as limiting in any way or manner:
- (a) the scope of the rights and obligations of the Concessionaire, which will be set out definitively in the Concession Agreement; or
 - (b) the Jal Nigam's right to alter, amend, change, supplement or clarify the rights and obligations of the Concessionaire or the terms and conditions that will be set out in the Concession Agreement in accordance with this RFP.

Consequently, any omissions, conflicts or contradictions between this RFP and the Concession Agreement are to be noted, interpreted and applied appropriately to give effect to this intent. NMCG and the Jal Nigam will not entertain any claims on account of such omissions, conflicts or contradictions.

2. BRIEF DESCRIPTION OF THE BID PROCESS

- 2.1 The Jal Nigam has adopted a single-stage Bid Process for declaration of the Selected Bidder for award of the Project, which is divided into 2 sub-stages.
- 2.2 The Bidders may download the RFP from the Website. The Jal Nigam is not responsible for the completeness of the RFP, if it is not downloaded directly from the Website.
- 2.3 Each Bidder is required to submit a single Bid, which should consist of 2 parts: (a) the Qualification Proposal; and (b) the Financial Proposal.
- 2.4 **Evaluation stages**

The evaluation of the Bids will be carried out in 2 sub-stages:

- (a) The first sub-stage will involve qualification of the Bidders based on the evaluation of their Qualification Proposals to determine compliance with the Qualification Criteria and the eligibility criteria in accordance with Clauses 3 and 4. Only those Bidders who are found to meet the eligibility criteria and the Qualification Criteria will be qualified for the next sub-stage.

- (b) The second sub-stage will involve evaluation of the Financial Proposals of those Bidders whose Qualification Proposals meet the requirements set out in this RFP, to identify the Selected Bidder for the Project.

2.5 Bid parameter

Each Bidder will be required to quote in the Bid Price Sheet the following 4 components: (a) the Bid Project Cost; (b) the O&M Charges for the first month after COD; (c) the Guaranteed Energy Consumption for each year of the O&M Period; and (d) the Land Requirement

Based on the above 4 components quoted by the Bidders in the Bid Price Sheet, the Bidder shall calculate the Bid Price using the following formula:

$$\text{Bid Price} = \text{Bid Project Cost} + (\text{O\&M Charges} \times 180) + \text{Power Charges} + \text{Land Price}$$

The only criterion for evaluation and comparison of Financial Proposals will be the Bid Price.

- 2.6 Generally, the Preferred Bidder shall be the Selected Bidder for the Project. If the Preferred Bidder withdraws its Bid or is not selected for any reason, then the Jal Nigam may, in its discretion, select the Second Preferred Bidder as the Selected Bidder or annul the Bid Process.
- 2.7 Bidders are required to submit the Bid Security along with their Bids. The Bidders shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India and payable at Varanasi in favour of "**General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam**" in the format set out at Annexure 1I. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 2.8 All Bids are required to be prepared and submitted in accordance with the terms of this RFP on or before the Bid Due Date.
- 2.9 The Bidders may inspect the Site and carry out, at their own cost, such inspections as may be required to submit their respective Bids at any time prior to the date specified in the Bid Schedule. The Jal Nigam shall facilitate such site visits provided that the Bidder gives the Jal Nigam at least 2 days prior written notice of its intention to visit the Site.
- 2.10 It will be assumed that the Bidders have accounted for all relevant factors, including technical data, status and condition of the Associated Infrastructure, Site conditions, climate, weather conditions, availability of power (including the requirement of any power back-up), water and other utilities for construction of the Facilities and rehabilitation of the Associated Infrastructure, access to Site, handling and storage of materials, Applicable Laws and Applicable Permits while submitting their Bids. The Bidders will be deemed to have full knowledge of the Project, including the scope of activities required to be undertaken by the Bidders to undertake the Project.
- 2.11 Any queries or requests for additional information relating to this RFP should be submitted in writing or e-mail to the officer designated below. The envelopes or communications must clearly bear the following subject line – "**Namami Gange - Varanasi STP PPP Project: Questions or Request for Additional Information**".

Attention: Shri Sanjay Kumar Singh
 General Manager
 Ganga Pollution Prevention Unit
 STP Campus, Bhagwanpur
 Lanka
 Varanasi - 221005
 e-mail: gmgangavns@gmail.com
 Tel: +919473942688

2.12 The Jal Nigam shall endeavour to adhere to the following schedule for the Bid Process:

S. No.	Event	Date
1.	Issue of RFP	22 February 2017, 18:00 Hrs Office of the General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam, Varanasi
2.	Issue of the draft Concession Agreement and all Schedules to the RFP and the draft Concession Agreement	2 March 2017
3.	Site Visit	Up to 9 March 2017, 18:00 Hrs
4.	Last date for receiving queries from Bidders	Up-to 13 March 2017, 18:00 Hrs
5.	Pre-Bid Meeting	15 March 2017 at 15:00 Hrs Office of the General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam, Varanasi
6.	Issue of /Addendum by Jal Nigam latest by	27 March 2017, 18:00 Hrs
7.	Bid Due Date	29 April 2017, up to 12:00 Hrs Office of the General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam, Varanasi
8.	Opening of Qualification Proposals	29 April 2017 at 15:00 Hrs Office of the General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam, Varanasi
9.	Notification of qualified Bidders	Within 14 days from the date of opening of Qualification Proposals
10.	Opening of Financial Proposals	Within 5 days from the date of

S. No.	Event	Date
		notification of qualified Bidders
11.	Issue of LOA	Within 21 days from the date of opening of Financial Proposals
12.	Signing of the Concession Agreement	Within 30 days from the date of acceptance of LOA by the Selected Bidder

SECTION II ELIGIBILITY AND QUALIFICATION CRITERIA

3. ELIGIBILITY OF BIDDERS

3.1 Nature of Bidder

- (a) A Bidder may be a Company registered under the Companies Act or an equivalent law outside India, acting in its individual capacity or as a Consortium. The term Bidder used in this RFP shall apply to both a single entity as well as a Consortium.
- (b) If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
 - (i) The number of Members in such Consortium shall not exceed 3.
 - (ii) The Bid submitted by the Consortium should contain the required information for each Member and a brief description of the roles and responsibilities of each Member.
 - (iii) The Consortium will nominate one of the Members as the Lead Member. Such nomination will be supported by a power of attorney signed by all the Members of the Consortium and will be in the format set out in Annexure 1J. The Lead Member will have the authority to represent and bind all the Members during the Bid Process.
 - (iv) The Consortium is required to submit a binding and enforceable Joint Bidding Agreement, in the format set out in Annexure 1K, and the Members will not be permitted to amend or terminate the Joint Bidding Agreement, at any time during the validity of the Bid without the prior consent of the Jal Nigam.

3.2 Lock-in Restrictions and Change in Control

- (a) Each Bidder (whether a single entity or Consortium) is required to incorporate a Special Purpose Vehicle to implement the Project.
- (b) If the Selected Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the SPV to be incorporated by the Selected Bidder to implement the Project:

- (i) the Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD;
 - (ii) any Member, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed for the purpose of qualification, shall hold at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the COD; and
 - (iii) after the expiry of 3 years from the COD, the Lead Member and/or other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Consortium; or (B) the entity acquiring the shareholding of the Lead Member/any other Member in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1(b); or (C) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1(b).
- (c) If the Selected Bidder is a single entity, then:
- (i) the Selected Bidder shall hold at least 51% of the total Capital and voting rights of the Concessionaire until the COD, and at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the COD; and
 - (ii) after the expiry of 3 years from the COD, the Selected Bidder can exit the Concessionaire, subject to: (A) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1(b); or (B) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1(b).
- (d) If:
- (i) a Bidder is likely to breach or breaches its undertaking under this Clause 3.2;
 - (ii) post submission of the Bid, there occurs a change in Control of a Bidder or a Member of a Consortium or any of their Associates whose credentials have been taken into consideration for determining Technical Capacity; or
 - (iii) post submission of the Bid, if any Associate, whose credentials have been taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the Bidder or such Member,

then, the Selected Bidder shall give the Jal Nigam notice of such occurrence along with all relevant details and shall seek the approval of the Jal Nigam for such occurrence. If the Jal Nigam is of the view that such occurrence is likely to affect the Technical Capacity or the Financial Capacity of the Bidder adversely, then the Jal Nigam may disqualify the Bidder from participation in the Bid Process; or, if the Bidder has been declared as the Selected Bidder, withdraw the LOA or treat such occurrence as a Concessionaire event of default in accordance with the Concession Agreement, without the Jal Nigam incurring any liability towards the Selected Bidder

for such withdrawal or possible termination. While the Jal Nigam will not unreasonably withhold or delay such approval, the decision of the Jal Nigam will be final in this regard.

3.3 **Conflict of Interest**

A Bidder shall not have a conflict of interest (**Conflict of Interest**) that affects the Bid Process. Any Bidder found to have a Conflict of Interest will be disqualified. A Bidder may be considered to have a Conflict of Interest if the Bidder:

- (a) Controls, is Controlled by or is under common Control with any of the other Bidders;
- (b) receives or has received any direct or indirect subsidy, grant, loan, subordinated debt or other funded or non-funded financial assistance from any of the other Bidders;
- (c) is also a shareholder of any other Bidder. Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder having a shareholding of more than 5% of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 5% 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 subsection (72) of section 2 of the Companies Act;
- (d) has hired or appointed the same legal, financial or technical advisor as those hired by any of the other Bidders for this Project;
- (e) has a relationship with any of the other Bidders, directly or through common third parties, that puts them in a position to have access to information that may have an influence on the Bid of one or more of such Bidders, or influence the decisions of the Jal Nigam regarding the Bid Process;
- (f) submits more than one Bid for the Project either individually or through an Associate. This will result in the disqualification of all such Bids submitted by the Bidder and/or its Associates; or
- (g) has participated directly or through an Associate as a consultant or advisor in the preparation of the design of or technical specifications for the Project.

3.4 **Fraud and Corrupt Practices**

- (a) Bidders and their respective officers, employees, agents and advisors are required to observe the highest standards of ethics during the Bid Process. Notwithstanding anything to the contrary contained in this RFP, the Jal Nigam may reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that a Bidder has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice in or affecting the Bid Process.

- (b) Without prejudice to the rights of the Jal Nigam under Clause 3.4(a) above, in the event that a Bidder is found by the Jal Nigam to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during the Bid Process, such Bidder will not be eligible to participate in any tender or request for qualification issued by NMCG or the Jal Nigam for 5 years, from the date such Bidder is found by NMCG or the Jal Nigam to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any of the activities mentioned above.
- (c) For the purposes of this Clause 3.4, the following terms will have the meanings given to them below:
- (i) **corrupt practice** means:
- (A) offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the Bid Process (for the avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of NMCG or the Jal Nigam who is or has been associated in any manner, directly or indirectly, with the Bid Process or has dealt with matters relating to the Project or arising from it, before or after its execution, at any time prior to the expiry of 1 year from the date that such official resigns or retires from or otherwise ceases to be in the service of NMCG or the Jal Nigam, will be deemed to constitute influencing the actions of a Person connected with the Bid Process); or
- (B) appointing or engaging in any manner whatsoever, whether during or after the Bid Process or after the execution of the Concession Agreement, as the case may be, any Person, for any matter relating to the Project or the Bid Process, who at any time has been or is a legal, financial or technical advisor of NMCG or the Jal Nigam on the Project;
- (ii) **fraudulent practice** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or any other benefit or to avoid an obligation;
- (iii) **coercive practice** means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or the property of the Person to influence improperly the actions of a Person;
- (iv) **undesirable practice** means: (A) establishing contact with any Person connected or employed or engaged by NMCG or the Jal Nigam with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid Process; or (B) having a Conflict of Interest (as defined in Clause 3.3); and

- (v) **restrictive practice** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating full and fair competition in the Bid Process.

3.5 Other Eligibility Criteria

- (a) A Company that has been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, will not be eligible to submit a Bid.
- (b) If a Company has or its Associates have been barred by the Government of India (GoI), the Government of Uttar Pradesh (GoUP) or any of its instrumentalities from participating in any project or being awarded any contract and the bar subsists on the Bid Due Date, such Company will not be eligible to submit a Bid.
- (c) If the Bidder or any Member (in case of a Consortium) is party to any litigation (required to be disclosed as per Annexure 1H), which, in the Jal Nigam's opinion, affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations under the Concession Agreement, the Bid will not be evaluated further by the Jal Nigam.

Bidders will provide such evidence of their continued eligibility as the Jal Nigam may request at any time during or after the Bid Process.

If a Bidder is a Consortium, then the term "**Bidder**" as used in Clause 3.3, Clause 3.4 and Clause 3.5 shall include each Member of such Consortium, and the term "**Associate**" as used in Clause 3.3, Clause 3.4 and Clause 3.5 shall include Associates of each Member of the Consortium.

4. QUALIFICATION CRITERIA

The Bidders should satisfy the following minimum technical criteria and financial criteria set out in Clause 4.1 and Clause 4.2 respectively to qualify for evaluation of the Financial Proposals:

4.1 Technical Criteria

To demonstrate its technical capacity and experience (**Technical Capacity**), the Bidder must have the following experience:

- (a) Development/Design and Construction experience
 - (i) The Bidder shall have developed and/or designed and constructed 1 STP of at least 40 MLD capacity, 2 STPs of at least 30 MLD capacity each or 3 STPs of at least 20 MLD capacity each, which shall:
 - (A) have been developed or designed and constructed using any technology other than upflow anaerobic sludge blanket technology

(UASB), wastewater stabilisation ponds technology (WSP) or moving bed biofilm reactor technology (MBBR);

- (B) have been developed or designed and constructed in the 10 Financial Years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority/client, certifying that the STP(s) have been completed in terms of the concession agreement or similar contract executed for such STP(s); and
 - (C) have been successfully operational for any 2 Financial Years in the 10 Financial Years preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STPs, as evidenced by a certificate from the relevant government authority.
- (ii) To claim development experience, the entity claiming the experience shall have held, in the company developing the STP, a minimum of 26% equity share capital as on the commercial operations date of such project.
 - (iii) The Bidder will be required to implement the Project using the same technology which has been adopted for at least one of the STP(s) for which experience is being claimed under this paragraph (a) to demonstrate Technical Capacity.
- (b) Operation and maintenance experience
- (i) The Bidder shall have successfully operated and maintained 1 STP of at least 40 MLD capacity, 2 STPs of at least 30 MLD capacity each or 3 STPs of at least 20 MLD capacity for any 2 Financial Years in the 5 Financial Years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STPs. The STPs for which the Bidder is claiming O&M experience should have been developed using any technology other than upflow anaerobic sludge blanket technology (UASB), wastewater stabilisation ponds technology (WSP) or moving bed biofilm reactor technology (MBBR).
 - (ii) For this purpose, the Company claiming the experience will be required to submit a certificate issued by the relevant government authority.
- (c) It is clarified that:
- (i) the Bidder must demonstrate both development/design and construction experience specified in paragraph (a) above and O&M experience specified in paragraph (b) above to be technically qualified for evaluation of the Financial Proposals.

- (ii) the Bidder/Member may rely on the experience of its Associate(s) for demonstrating the Technical Capacity;
- (iii) in case of a Consortium, the development/design and construction experience set out in Clause 4.1(a) must be demonstrated by one Member and the O&M experience set out in Clause 4.1(b) may be claimed by a different Member;
- (iv) in case of a Consortium, if the Consortium is claiming O&M experience on the basis of more than 1 STP, then each of the STPs should have been operated and maintained by the same Member;
- (v) if the development/design and construction experience and the O&M experience is being claimed by a different Member, then the Member who demonstrates development/design and construction experience and the Member who demonstrates the O&M experience, must each hold 26% of the total Capital and voting rights of the Concessionaire for 3 years post COD;
- (vi) the development/design and construction experience and the O&M experience may be claimed in relation to the same STP. If, however, the development/design and construction experience and the O&M experience is being claimed for different STPs, then it is clarified that the STP for which O&M experience is being claimed may be based on a technology which is different from the technology used in the STP(s) for which development/design and construction experience is being claimed; and
- (vii) for certificates claiming development/design and construction and O&M experience that are issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the certificate is being issued. However, the certificate provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

4.2 **Financial Criteria**

To demonstrate its financial capacity to undertake the Project (**Financial Capacity**), the Bidder must meet each of the financial qualification criteria specified in this Clause 4.2.

- (a) Net worth
 - (i) In each of the 3 Financial Years immediately preceding the Bid Due Date, the Bidder's Net Worth (as per the annual financial statements) shall be at least INR 50,00,00,000 (Rupees fifty crores).
 - (ii) If the Bidder is a Consortium, then the Net Worth, as required in Clause 4.2 (a)(i) above will be demonstrated cumulatively, i.e., the Consortium as a whole should meet the requirement. Provided further that if the Bidder is subsequently declared the Selected Bidder for the Project, then any Member of the Consortium whose Net Worth was assessed for the purposes of

demonstrating that the Consortium has the Financial Capacity to undertake the Project, shall hold at least 26% of the total Capital and voting rights of the SPV incorporated by the Selected Bidder for the Project for 3 years post the COD.

- (iii) The calculation of Net Worth must be based on the unconsolidated audited annual accounts of the Bidder for the preceding Financial Year. If the annual accounts for the Financial Year immediately preceding the Bid Due Date are not audited, the Bidder shall provide the provisional annual accounts for such Financial Year. The provisional annual accounts shall be accompanied by an undertaking by the Bidder to the effect that:
 - (A) if it is chosen as the Selected Bidder, the Bidder will submit the audited annual accounts for the Financial Year immediately preceding the Bid Due Date prior to the Effective Date; and
 - (B) the Net Worth as per such audited annual accounts shall not vary by more than 5% from the provisional accounts submitted by it with its Bid.

A Bidder or a Member of a Consortium is not permitted to rely on the Net Worth of its Associate for demonstrating its Financial Capacity.

- (b) In each of the 3 Financial Years immediately preceding the Bid Due Date, the Bidder (and in case of a Consortium, each Member) shall have had positive cash flows i.e., cash flows being greater than zero (as certified by the statutory auditor of the Bidder, and in case of a Consortium, the statutory auditor of a Member).
- (c) In the 3 Financial Years immediately preceding the Bid Due Date, the Bidder (and in case of a Consortium, any Member) has not,
 - (i) failed to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Bidder or its Associates;
 - (ii) been expelled from any project or contract by the GoI or the GoUP, or its instrumentalities; or
 - (iii) had any contract terminated by the GoI or the GoUP, or its instrumentalities for breach by such Bidder or its Associates, as the case may be.
- (d) The Bidder (and in case of a Consortium, any Member) is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years immediately preceding the Bid Due Date, as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member):

- (i) the Bidder undergoing any corporate debt restructuring or similar process under the laws of the country of its incorporation;
- (ii) the Bidder having been categorized as a willful defaulter in accordance with Applicable Laws;
- (iii) the Bidder being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
- (iv) the Bidder having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; or
- (v) the Bidder being convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
 - (A) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder or any of its directors, partners, trustees, officers or managers; or
 - (B) resulted in the permanent or temporary suspension of the rights of the Bidder to provide any service or carry on any type of business or operations.

SECTION III INSTRUCTION TO BIDDERS

PART A. GENERAL

5. SCOPE OF RFP

- 5.1 The Jal Nigam wishes to receive Bids in accordance with this RFP for award of the Project.
- 5.2 The RFP must be read as a whole. If any Bidder finds any ambiguity or lack of clarity in this RFP, the Bidder must inform the Jal Nigam at the earliest. The Jal Nigam will then direct the Bidders regarding the interpretation of the RFP. If any discrepancy, ambiguity or contradiction arises between the terms of the RFP and the Concession Agreement in relation to:
 - (a) the Bid Process, the provisions of the RFP shall prevail; and
 - (b) the scope of services or any other terms or conditions of the Concession Agreement, including technical specifications, the provisions of the Concession Agreement shall prevail.

5.3 This RFP is not transferable.

6. ACKNOWLEDGEMENT BY THE BIDDER

6.1 It shall be deemed that by submitting the Bid, the Bidder has:

- (a) made a complete and careful examination of the RFP (including all instructions, forms, terms and specifications) and any other information provided by the Jal Nigam under this RFP and the Bidder acknowledges that its submission of a Bid that is not substantially responsive to the RFP in every respect will be at the Bidder's risk and may result in rejection of the Bid;
- (b) received all relevant information requested from the Jal Nigam and NMCG;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Jal Nigam;
- (d) satisfied itself about all things, matters and information, necessary and required to submit a Bid;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the RFP or ignorance of any matter in relation to the Project shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from the Jal Nigam or NMCG, or a ground for termination of the Concession Agreement;
- (f) satisfied itself regarding the suitability of the Site conditions to undertake the Project; and
- (g) agreed to be bound by the undertakings provided by it under and in terms of this RFP.

6.2 The Jal Nigam shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or relating to the RFP or the Bid Process.

7. RIGHTS OF THE JAL NIGAM

7.1 The Jal Nigam, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend the Bid Process and/or amend and/or supplement the Bid 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 at any stage of the Bid Process;
- (c) retain any information, documents and/or evidence submitted to the Jal Nigam by and/or on behalf of any Bidder;

- (d) independently verify, disqualify, reject and/or accept any and all documents, information and/or evidence submitted by or on behalf of any Bidder;
- (e) reject any Bid, if:
 - (i) at any time, a material misrepresentation is made or uncovered; or
 - (ii) the Bidder in question does not provide, within the time specified by the Jal Nigam, the supplemental information sought by the Jal Nigam for evaluation of the Bid; or
- (f) accept or reject a Bid, annul the Bid Process and reject all Bids, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons whatsoever to any Person, including the Bidders.

If the Jal Nigam annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids for the Project.

7.2 If the Jal Nigam exercises its right under this RFP to reject a Bid and consequently, the Preferred Bidder for the Project gets disqualified or rejected, then the Jal Nigam reserves the right to:

- (a) select the Second Preferred Bidder as the Selected Bidder for the Project; or
- (b) take any such measure as may be deemed fit in the sole discretion of the Jal Nigam, including inviting fresh Financial Proposals from the qualified Bidders or annulling the entire Bid Process.

7.3 If it is found during the Bid Process, at any time before signing the Concession Agreement or after its execution and while it is in force, that one or more of the Qualification Criteria and/or the eligibility criteria have not been met by a Bidder or that the Bidder has ceased to meet them, or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Bidder will be disqualified.

If such Bidder has been declared as the Selected Bidder or has already been issued the LOA or has entered into the Concession Agreement, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated, by a notice in writing from the Jal Nigam to the Selected Bidder.

Upon any disqualification, cancellation or termination in accordance with this Clause 7.3, the Jal Nigam will not be liable in any manner whatsoever to the Bidder. Additionally, the Jal Nigam will have the right to forfeit and appropriate the Bid Security or, as the case may be, appropriate an equivalent amount from the Performance Security if the Concession Agreement has been executed, as a mutually agreed genuine pre-estimate of the loss suffered by the Jal Nigam for, amongst others, the Jal Nigam's time, cost and efforts in conducting the Bid Process. Such forfeiture will be without prejudice to any other right or remedy that the Jal Nigam may have under the RFP, the Concession Agreement or Applicable Law.

8. CLARIFICATIONS ON THE RFP

8.1 Clarifications and Queries

- (a) If a Bidder requires any clarification on or has any query in relation to the RFP, it should submit such query or request for clarification to the Jal Nigam in writing by e-mail to gmgangavns@gmail.com, fax to (0542-2368733) or by speed post or courier to the address specified in Clause 2.11. In case of any e-mail queries or clarifications, the subject of the e-mail must clearly bear the following subject: "**Namami Gange - Varanasi STP PPP Project: Request for Clarifications**". All queries or clarification requests should be received on or before the date and time mentioned in the Bid Schedule.
- (b) The Jal Nigam shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. However, the Jal Nigam reserves the right to not respond to any query or provide any clarification, in its sole discretion. The Jal Nigam's responses (including an explanation of the query but not identification of its source) will be made available to all the Bidders and shall be uploaded on the Website.
- (c) The Jal Nigam may, on its own initiative, if deemed necessary, issue clarifications to all the Bidders. All clarifications and interpretations issued by the Jal Nigam shall be deemed to be part of the RFP. Should the Jal Nigam deem it necessary to amend the RFP as a result of a request for clarification, it will do so following the procedure under Clause 9.
- (d) It shall be the responsibility of the Bidders to check the Website for the response to the queries or requests for clarifications. The Jal Nigam may, but shall not be obliged to communicate with the Bidders by e-mail, notice or any other means it may deem fit about the issuance of the clarifications.
- (e) Verbal clarifications and information given by NMCG, the Jal Nigam or any other Person for or on its behalf shall not in any way or manner be binding on NMCG or the Jal Nigam.

8.2 Pre-Bid Meeting

- (a) All interested Companies shall be invited to attend the Pre-Bid Meeting on the date, time and place mentioned in the Bid Schedule. The purpose of the Pre-Bid Meeting will be to clarify issues and answer questions on any matter relating to the RFP, the Bid Process and the Project.
- (b) All interested Companies may nominate up to 3 authorized representatives to participate in the Pre-Bid Meeting, by confirming the participation of its authorized representatives at the Pre-Bid Meeting at least 3 days prior to the date of the Pre-Bid Meeting. Such confirmation shall be sent by e-mail to gmgangavns@gmail.com.
- (c) During the course of the Pre-Bid Meeting, all interested Companies will be free to seek clarifications and make suggestions to the Jal Nigam.

- (d) Non-attendance of the Pre-Bid Meeting will not be a cause for disqualification of an interested Company from participating in the Bid Process.

9. AMENDMENT OF THE RFP

- 9.1 Up until the date that is mentioned in the Bid Schedule, the Jal Nigam may, for any reason, whether on its own initiative or in response to a query raised or clarifications requested by a Bidder in writing, amend the RFP by issuing an Addendum.
- 9.2 All Addenda will be issued on the Website.
- 9.3 The Bidders are required to read the RFP with any Addenda that may be issued in accordance with this Clause 9.
- 9.4 Each Addendum will be binding on the Bidders, whether or not the Bidders convey their acceptance of the Addendum.
- 9.5 Any oral statements made by NMCG or the Jal Nigam or its advisors regarding the Bid Process, the RFP or on any other matter, shall not be considered as amending the RFP.
- 9.6 The Jal Nigam will assume that the information contained in the Addendum will have been taken into account by the Bidder in its Bid. The Jal Nigam assumes no responsibility for the failure of a Bidder to submit the Bid in accordance with the terms of the Addendum or for any consequent losses suffered by the Bidder.

10. AVAILABILITY OF INFORMATION

- 10.1 The information relating to or in connection with the Project, the Bid Process and this RFP, including all notices issued by the Jal Nigam to all Bidders in accordance with this RFP; queries and responses or clarifications and any Addenda will be uploaded on the Website.
- 10.2 All such information will be made available for review by the Bidders until the Bid Due Date.
- 10.3 If a Bidder faces any technical issue or technical error in accessing the Website, the Bidder may seek assistance from the Jal Nigam by sending an e-mail request to gmgangavns@gmail.com, no later than 7 days prior to the Bid Due Date.
- 10.4 The Jal Nigam will use its best endeavours to respond to a written e-mail request and resolve the technical issue or error or provide an alternative solution to the Bidder within 3 days of receipt of such request.

11. CORRESPONDENCE WITH BIDDERS

Save as expressly provided in this RFP, NMCG and the Jal Nigam will not entertain any correspondence with the Bidders, whether in connection with the acceptance or rejection of their Bids or otherwise.

12. CONFIDENTIAL INFORMATION AND PROPRIETARY DATA

12.1 Proprietary Data

All documents and other information provided by the Jal Nigam or submitted by a Bidder to the Jal Nigam will remain or become the property of the Jal Nigam, as the case may be. Bidders are required to treat all information provided by the Jal Nigam in the RFP as strictly confidential and not to use them for any purpose other than for preparation and submission of their Bids.

12.2 Confidentiality Obligations of the Jal Nigam

The Jal Nigam will treat all information, submitted as part of a Bid in confidence and will require all those who have access to such material to treat it in confidence. The Jal Nigam may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising the Jal Nigam, NMCG or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the Jal Nigam and/or NMCG or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

13. GOVERNING LAW AND JURISDICTION

13.1 Governing Law

The Bid Process, this RFP and the Bids shall be governed by, and construed in accordance with, the laws of India.

13.2 Exclusive Jurisdiction

The competent courts at Allahabad shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids.

14. VALIDITY OF THE BIDS

14.1 The Bids shall remain valid for a period of 180 days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by the Jal Nigam as being non-responsive.

14.2 In exceptional circumstances, prior to the expiry of the Bid validity period, the Jal Nigam may

request Bidders to extend the Bid validity period.

PART B. BID SECURITY AND PERFORMANCE SECURITY

15. BID SECURITY

- 15.1 The Bidder shall furnish as part of its Bid, a bid security for the Project (the **Bid Security**). The Bid Security shall be for an amount equivalent to INR 2,00,00,000 (Rupees two crores).
- 15.2 The Bid Security shall remain valid for the Bid validity period as specified in Clause 14.
- 15.3 The Bidder shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India. The Bid Security shall be issued in favour of the "**General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam**", payable at Varanasi and in the format set out in Annexure II.
- 15.4 If any Bid is not accompanied by a Bid Security, then such Bid shall be rejected by the Jal Nigam as non-responsive. Unless forfeited in accordance with Clause 15.5 below, the Bid Security of the unsuccessful Bidders will be returned by the Jal Nigam no later than 30 days from the date of execution of the Concession Agreement with the Selected Bidder.

The Bid Security of the Selected Bidder will be returned upon the Selected Bidder furnishing the Performance Security in accordance with Clause 16.

- 15.5 The Bid Security shall be forfeited and appropriated by the Jal Nigam as mutually agreed genuine pre-estimated compensation and damages payable to the Jal Nigam for time, cost and effort of the Jal Nigam, without prejudice to any other right or remedy that may be available to the Jal Nigam hereunder or otherwise, under the following conditions:
- (a) if a Bidder engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as specified in Clause 3.4;
 - (b) if a Bidder is disqualified in accordance with, Clause 3.2 (*Lock-in Restrictions and Change in Control*), Clause 3.3 (*Conflict of Interest*), Clause 3.5 (*Other Eligibility Criteria*), Clause 7.3 (*Rights of the Jal Nigam*), Clause 17 (*Number of Bids*) and Clause 31.3 (*Execution of Concession Agreement*);
 - (c) if, after the Bid Due Date, a Bidder withdraws its Bid during the Bid validity period;
or
 - (d) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:
 - (i) sign and return, as acknowledgement, the duplicate copy of the LOA;
 - (ii) furnish the Performance Security in accordance with Clause 16;
 - (iii) fulfil any other condition precedent to the execution of the Concession Agreement; or

- (iv) execute the Concession Agreement.

16. PERFORMANCE SECURITY

- 16.1 The Selected Bidder shall furnish to the Jal Nigam the Performance Security for a value equal to 10% of the Bid Project Cost, on or before execution of the Concession Agreement to secure the obligations of the Concessionaire under the Concession Agreement.
- 16.2 The Performance Security shall remain valid until 25 months from the Effective Date or 1 month from the COD, whichever is later.
- 16.3 The Selected Bidder shall provide the Performance Security in the form of a bank guarantee issued by a Scheduled Bank in India. The Performance Security shall be issued in favour of "**General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam**", payable at Varanasi and in the format set out in Appendix F.
- 16.4 If the Selected Bidder fails to furnish the Performance Security in accordance with this Clause 16 on or before the execution of the Concession Agreement, then the Jal Nigam shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(d).

PART C. PREPARATION AND SUBMISSION OF BIDS

17. NUMBER OF BIDS

Each Bidder shall be permitted to submit only 1 Bid for the Project, either individually or as a Member of a Consortium. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Bidder who submits or participates in more than 1 Bid for the Project shall cause all the Bids with the Bidder's participation to be disqualified.

18. LANGUAGE OF BIDS AND CORRESPONDENCE

- 18.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the Jal Nigam shall be in English.
- 18.2 Any document furnished by the Bidder may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall govern. If any document submitted by a Bidder is in a local language, then the English translation must be certified by an advocate and notarised. If any document submitted by a Bidder is in a foreign language, then the English translation must be certified by the embassy/consulate/high commission of the relevant foreign country in India. Supporting materials which are not translated into English or certified/notarised in accordance with this Clause 18.2 may not be considered by the Jal Nigam.

19. BID DUE DATE

- 19.1 The Bid shall be submitted on or before the date, time and place specified in the Bid Schedule.

- 19.2 The Jal Nigam may, at its discretion and for any reason, extend the Bid Due Date for all Bidders by issuing an Addendum in accordance with Clause 9, in which case all rights and obligations of the Jal Nigam and the Bidders will thereafter be subject to the Bid Due Date as extended.
- 19.3 Bids received by the Jal Nigam after the specified time on the Bid Due Date will not be eligible for consideration and will be summarily rejected.

20. QUALIFICATION PROPOSAL

- 20.1 The Qualification Proposal submitted by a Bidder shall comprise the following:
- (a) bid letter in the format set out in **Annexure 1A**;
 - (b) description of the Bidder /Consortium in the format set out in **Annexure 1B**;
 - (c) Power of Attorney in the format set out in **Annexure 1C**, executed by the Bidder or the Lead Member authorizing the signatory of the Bid to commit the Bidder;
 - (d) certificate issued by the statutory auditor of the Bidder, in the format set out in **Annexure 1D**, certifying the Net Worth of the Bidder and compliance with other financial qualification criteria specified in Clause 4.2;
 - (e) details of the eligible STP(s) for which development/design and construction experience is being claimed in the format set out in **Annexure 1E – Part 1** and details of the eligible STP(s) for which O&M experience is being claimed in the format set out in **Annexure 1E – Part 2**;
 - (f) certificate from the statutory auditor certifying the shareholding of the Bidder (or in case of a Consortium, the relevant Member) in the Company developing the STP(s) for which development is being claimed by the Bidder in the format set out in **Annexure 1F**;
 - (g) self-attested certificate regarding Associate, if applicable, in the format set out in **Annexure 1G**;
 - (h) information on any litigation that the Bidder is a party to, in the format set out at **Annexure 1H**;
 - (i) Bid Security in the format set out at **Annexure 1I**;
 - (j) certificate from the relevant government authority/client certifying that the STP has been completed/commissioned in accordance with the concession agreement or similar contract executed for such STP;
 - (k) certificate from the relevant government authority certifying that the STP has been completed and has been successfully operational for 2 Financial Years in the 10 Financial Year immediately preceding the Bid Due Date, in accordance with the

relevant concession agreement or similar contract executed for such STP;¹

- (l) certificate from the relevant government authority certifying that the Bidder (or, in case of a Consortium, the relevant Member) has successfully operated and maintained the STP for which O&M experience is being claimed, for at least 2 Financial Years in the 5 Financial Years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP;
 - (m) annual financial statements of the Bidder (including profit and loss statements) for the 3 Financial Years immediately preceding the Bid Due Date;
 - (n) self-attested copies of the certificate of incorporation, memorandum of association and articles of association. If the Bidder is a Consortium, then each Member shall submit self-attested copies of its certificate of incorporation, memorandum of association and articles of association;
 - (o) a demand draft of INR 20,000 (Rupees twenty thousand) as Bid processing fees, issued by a Scheduled Bank in India and payable at Varanasi in favour of the **General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam**; and
 - (p) copy of the RFP (including the draft Concession Agreement), with every page initialled by the authorised signatory of the Bidder, as acknowledgement of acceptance of all terms and conditions of the RFP (including the draft Concession Agreement).
- 20.2 If the Bidder is a Consortium, it will also be required to submit the following documents:
- (a) Power of Attorney in the format set out at **Annexure 1J**, executed by the Members of the Consortium authorizing the Lead Member of the Consortium to act on behalf of and commit the Consortium.
 - (b) Joint Bidding Agreement in the format set out at **Annexure 1K**.

21. FINANCIAL PROPOSALS

21.1 The Financial Proposal submitted by a Bidder shall comprise the following:

- (a) covering letter in the format set out in **Annexure 2A**; and
 - (b) Bid Price Sheet in the format set out in **Annexure 2B**.
- 21.2 The Bidders shall quote in the Bid Price Sheet the: (a) the Bid Project Cost; (b) the O&M Charges for the first month after COD; (c) Guaranteed Energy Consumption for each year of the O&M Period; and (d) the Land Requirement. Based on these 4 components quoted by a Bidder, the Bidder shall calculate its Bid Price, by using the formula set out in Clause 2.5.

¹ It is clarified that in case the Bidder is claiming development experience, the Bidders may submit a consolidated certificate from the relevant government authority for Clause 20.1(j) and Clause 20.1(k) above.

- 21.3 If the Bidder quotes more than 1 figure for any of the components of the Bid Price or if the Bidder offers a discount on any or all of the components of the Bid Price, the Financial Proposal of such Bidder will be deemed to be non-responsive.

22. COST AND CURRENCY OF BIDS

22.1 Cost of the Bid

The Bidders will bear their own costs associated with or relating to the preparation and submission of their Bids, including copying, postage, delivery charges and expenses associated with any presentations which may be required by the Jal Nigam or NMCG or any other costs incurred in connection with or relating to their Bids, including any costs incurred on conducting any due diligence. All such costs and expenses will be borne by the Bidders and the Jal Nigam, NMCG and their employees and advisors will not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of the Bid Process.

22.2 Currency of the Bid

All amounts in the Bid should be stated in Rupees.

23. SIGNING OF BIDS

- 23.1 Each Bid must be typed or written in indelible ink and should be physically signed by the authorised signatory. The name and position held by the Person signing the Bid must be typed or printed below the signature. A Bid submitted by a Consortium must be signed by a Person nominated by the Lead Member and shall be legally binding on all Members.
- 23.2 All pages of the Bid must be physically initialed by the authorized signatory of the Bidder. If any pages of the Bid are not physically initialed by the Bidder's authorized signatory, then the Jal Nigam may reject such Bid or require the authorized signatory of such Bidder to initial the pages that were not initialed at the Jal Nigam's office.

24. MARKING, SEALING AND SUBMISSION OF BIDS

- 24.1 Each Bidder shall submit as part of its Bid:

- (a) one original and one copy of the Qualification Proposal. The original shall be labelled "ORIGINAL" and the copy shall be labelled "COPY". The Bidder will also be required to provide a copy of the Qualification Proposal in digital form, which will be provided in a compact disc; and
- (b) one original of the Financial Proposal.

In the event of any discrepancy between the original and the copy of the Qualification Proposal, the original will prevail.

- 24.2 The Bid will contain no alterations, omissions or additions, unless such alterations, omissions or additions are signed by the Bidder or its authorized signatory. Any interlineations, erasures,

or overwriting will be valid only if they are signed by the Bidder or its authorized signatory.

- 24.3 The Qualification Proposal (including all the documents listed in Clause 20 above), in hard copy and the compact disc containing the digital copy, will be duly sealed in an envelope, which will be super-scribed as follows:

**"NAMAMI GANGE - VARANASI STP PPP PROJECT
QUALIFICATION PROPOSAL
DO NOT OPEN BEFORE SPECIFIED TIME ON BID DUE DATE"**

- 24.4 The Financial Proposal will be duly sealed in an envelope, which will be super-scribed as follows:

**"NAMAMI GANGE - VARANASI STP PPP PROJECT
FINANCIAL PROPOSAL
DO NOT OPEN BEFORE COMPLETION OF EVALUATION OF QUALIFICATION
PROPOSALS"**

- 24.5 The sealed envelopes containing the Qualification Proposal and Financial shall be placed in a sealed outer envelope, which will be super-scribed as follows:

**"NAMAMI GANGE - VARANASI STP PPP PROJECT
BID
DO NOT OPEN BEFORE SPECIFIED TIME ON BID DUE DATE"**

- 24.6 The sealed envelopes containing the Bid will clearly indicate the name, address and contact details of the Bidder. If the envelope is not sealed, marked and submitted as instructed in this Clause 24, the Jal Nigam assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

- 24.7 The Bid will either be hand delivered or sent by registered post acknowledgement due or courier to the address below:

“Office of the General Manager, Ganga Pollution Prevention Unit, STP Campus, Bhagwanpur, Lanka, Varanasi - 221005”

Please note that a Bid submitted by a Bidder to any address other than the above mentioned address will not be considered for evaluation.

Bids submitted by fax, telex, telegram or e-mail shall not be entertained and will be rejected.

- 24.8 The Jal Nigam will not be responsible for any delays, loss or non-receipt of Bids.

25. SUBSTITUTION/WITHDRAWAL OF BIDS

- 25.1 The Bidder may substitute or withdraw its Bid after submission, provided that written notice of the substitution or withdrawal is received by the Jal Nigam prior to the specified time on

- the Bid Due Date. No Bid will be substituted or withdrawn by the Bidder on or after the specified time on the Bid Due Date.
- 25.2 The substitution or withdrawal notice will be prepared, sealed, marked, and delivered in accordance with Clause 24, with the envelopes being additionally marked "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 25.3 Any alteration/modification in the Bid or additional information supplied after the specified time on the Bid Due Date, unless such additional information has been expressly sought for by the Jal Nigam, will be disregarded.
- 25.4 If the Jal Nigam receives a substitution notice from a Bidder before the specified time on the Bid Due Date, then the Bidder will be allowed to substitute its original Bid, which will be returned unopened.
- 25.5 If the Jal Nigam receives a withdrawal notice before the specified time on the Bid Due Date, then the Jal Nigam will return the Bid to such Bidder unopened.

PART D. OPENING AND EVALUATION OF BIDS

26. OPENING OF BIDS

- 26.1 The Jal Nigam will open only those Bids that are submitted on or before the specified time on the Bid Due Date. If any Bid is received after the specified time on the Bid Due Date, it will be rejected and will be returned unopened to the Bidder.
- 26.2 The Jal Nigam will open the outer envelopes of the Bids and the Qualification Proposals at the time and on the date specified in the Bid Schedule at the following address:
- “Office of the General Manager, Ganga Pollution Prevention Unit, STP Campus, Bhagwanpur, Lanka, Varanasi - 221005”
- The Bids will be opened in the presence of the Bidders whose designated representatives choose to be present.
- 26.3 The names of all Bidders who have submitted Bids will be read out, and such other details the Jal Nigam, at its sole discretion, may consider appropriate, will be announced at the opening of Bids.
- 26.4 The Jal Nigam will prepare a record of the opening of the Bids that will include, as a minimum, the names of the Bidders from whom Bids have been received. The Bidders' representatives who are present will be requested to sign the record. The omission of a Bidder's representative's signature on the record will not invalidate the contents and effect of the record.
- 26.5 Once all the Qualification Proposals have been opened, they will be evaluated for responsiveness and to determine whether the Bidders are qualified for opening of the Financial Proposals. The procedure for evaluation of the Qualification Proposals is set out in Clause 27.

26.6 Once the Qualification Proposals have been evaluated, all Bidders whose Qualification Proposals meet the Qualification Criteria and the eligibility criteria, will be informed of a date, time and place for opening of their Financial Proposals. The Financial Proposals will be opened in the presence of the representatives of the qualified Bidders that choose to be present. The procedure for evaluation of the Financial Proposals is set out in Clause 28.

26.7 The qualification of Bidders will be entirely at the discretion of the Jal Nigam. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bid Process or selection will be given.

26.8 Any information contained in a Bid will not in any manner be construed as binding on the Jal Nigam, its agents, successors or assigns; but will be binding on the Bidder.

27. DETERMINATION OF RESPONSIVENESS AND EVALUATION OF QUALIFICATION PROPOSALS

27.1 The Jal Nigam will examine the Qualification Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Qualification Proposals are generally in order. If any Bidder is found to be disqualified in accordance with the terms of the RFP or if any Qualification Proposal is found to be non-responsive or not meeting the Technical Capacity or the Financial Capacity, the Bid comprising such Qualification Proposal will be rejected by the Jal Nigam and not included for further consideration. No request for alteration, modification, substitution or withdrawal shall be entertained by the Jal Nigam in respect of such Bid.

27.2 Prior to evaluation of the Qualification Proposals, the Qualification Proposals will be evaluated to determine responsiveness to the RFP. A Qualification Proposal, shall be considered responsive only if:

- (a) the Qualification Proposal and all documents specified in Clause 20 are received in the prescribed formats;
- (b) the Bid is received by the specified time on the Bid Due Date;
- (c) it is signed, sealed and marked as stipulated in Clauses 23 and 24;
- (d) it contains all the information and documents (complete in all respects) as requested in this RFP; and
- (e) it does not contain any condition or qualification.

27.3 The Jal Nigam shall then evaluate and determine whether the Bidders who have submitted responsive Qualification Proposals satisfy the eligibility criteria and the Qualification Criteria set out at Clause 3 and Clause 4 respectively.

27.4 In order to determine whether the Bidder satisfies the eligibility criteria and the Qualification Criteria, the Jal Nigam will review the documentary evidence of the Bidder's eligibility and qualifications submitted by the Bidder and any additional information which the Jal Nigam seeks from the Bidder.

27.5 Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, the Jal Nigam reserves the right to reject the Bid submitted by such Bidder.

27.6 Upon completion of evaluation of the Qualification Proposals, the Jal Nigam will notify the Bidders the qualified Bidder of the date and time on which their Financial Proposals will be opened. The Financial Proposals of those Bidders who do not qualify will not be opened.

28. EVALUATION OF FINANCIAL PROPOSALS

28.1 The Jal Nigam shall open the Financial Proposals of only those Bidders whose Qualification Proposals meet the criteria set out in this RFP.

28.2 In the presence of representatives of the qualified Bidders that choose to be present at the selection meeting, the Jal Nigam shall open the Financial Proposal of each qualified Bidder and announce the Bid Project Cost, the O&M Charges, the Guaranteed Energy Consumption and the Land Requirement and the overall Bid Price quoted by such Bidder.

28.3 Following the opening of the Financial Proposals,

(a) the Jal Nigam shall evaluate the Financial Proposals for responsiveness. If any Financial Proposal is found:

- (i) not to be complete in all respects;
- (ii) not duly signed by the authorized signatory of the Bidder;
- (iii) not to be in the prescribed format; or
- (iv) to contain more than 1 figure for any component of the Bid Price, discounts, alterations, conditions, deviations or omissions,

then such Financial Proposal shall be deemed to be substantially non-responsive.

(b) The Jal Nigam shall notify a qualified Bidder whose Financial Proposal is found to be substantially non-responsive, that such qualified Bidder's Financial Proposal shall not be considered for award of the Project.

(c) The Jal Nigam shall, for each qualified Bidder that has submitted a substantially responsive Financial Proposal, tabulate the Bid Price.

(d) In the course of tabulation, if the Jal Nigam finds a discrepancy between words and figures quoted in the Financial Proposal, then the amount in words shall prevail.

(e) Once the Bid Price for each qualified Bidder that has submitted a substantially responsive Financial Proposal has been tabulated, the Jal Nigam shall rank the qualified Bidders based on the Bid Price. The qualified Bidder with the lowest Bid Price will be the Preferred Bidder; the qualified Bidder with the second lowest Bid Price will be the Second Preferred Bidder.

(f) The Preferred Bidder shall ordinarily be the Selected Bidder.

- (g) If the Bid Price determined for 2 or more qualified Bidders is the same, then the Bidder whose Net Worth is higher shall be the Preferred Bidder.

If the Preferred Bidder is disqualified or rejected for any reason whatsoever, then the procedure set out in Clause 7.2 shall follow.

29. CLARIFICATION ON BIDS

- 29.1 To facilitate evaluation of the Bids, the Jal Nigam may, in its sole discretion, seek clarifications and/or any additional information from any Bidder regarding its Bid (including if the Bid is not signed, marked and sealed in accordance with Clauses 23 and 24). Such clarification(s) will be provided within the time specified by the Jal Nigam for this purpose. Any request for clarification(s) and all responses to such clarification(s) will be in writing. Any clarification submitted by a Bidder that is not in response to a request by the Jal Nigam will not be considered.
- 29.2 If a Bidder does not provide clarifications and/or any additional information sought under Clause 29.1 within the prescribed time, its Bid may be liable for rejection. If the Bid is not rejected, the Jal Nigam may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder will be barred from subsequently questioning such interpretation of the Jal Nigam.

PART E. AWARD OF PROJECT

30. LETTER OF AWARD (LOA)

- 30.1 After declaration of the Selected Bidder, the Jal Nigam will issue the LOA to the Selected Bidder in duplicate:
 - (a) declaring it as the Selected Bidder;
 - (b) accepting its Financial Proposal;
 - (c) requesting it to sign and return, as acknowledgement, a copy of the LOA within 15 days of receipt of the LOA;
 - (d) requesting it to submit the Performance Security in accordance with Clause 16; and
 - (e) requesting it to incorporate the Special Purpose Vehicle, which will act as the Concessionaire.
- 30.2 If the Selected Bidder fails to return a duly signed copy of the LOA to the Jal Nigam within 15 days of receipt of the LOA, then the Jal Nigam may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA, and forfeit the Bid Security. If the Jal Nigam elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

31. EXECUTION OF THE CONCESSION AGREEMENT

- 31.1 The Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement in the draft form provided by the Jal Nigam, with minimal changes or amendments to reflect facts or to correct minor errors. The Jal Nigam shall, within 15 days of

the acceptance of the LOA by the Selected Bidder, provide the Selected Bidder with the final execution draft of the Concession Agreement.

- 31.2 The Jal Nigam shall not entertain any request from the Selected Bidder for negotiations of or deviations to the final execution draft of the Concession Agreement provided by the Jal Nigam under Clause 31.1.
- 31.3 If the Selected Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Concession Agreement, the Jal Nigam may elect to disqualify the Selected Bidder and revoke the LOA issued to the Selected Bidder. If the Jal Nigam elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.
- 31.4 Subject to satisfaction of the conditions specified in Clause 30.1 and any other conditions specified in the LOA, the Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement within 30 days from the date of acceptance of the LOA by the Selected Bidder.
- 31.5 If the Special Purpose Vehicle fails to execute the Concession Agreement on or before the date specified in Clause 31.4, the Jal Nigam may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA and forfeit the Bid Security. If the Jal Nigam elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

**ANNEXURE 1A
FORMAT OF BID LETTER**

Date:

Place:

To,

Uttar Pradesh Jal Nigam
[]

Sub: **Bid for Namami Gange – Varanasi STP PPP Project**

Sir/Ma'am,

Please find enclosed our Qualification Proposal in respect of the above mentioned project and complying with the Request for Proposal (RFP) issued by the Uttar Pradesh Jal Nigam (Jal Nigam) dated []

We hereby confirm the following:

1. The Qualification Proposal is being submitted by _____ (*name of the Bidder/Lead Member*), who is the Bidder/Lead Member of the Consortium [comprising _____ (*mention the names of the entities who are Members*)]², in accordance with the terms and conditions stipulated in the RFP.
2. We have examined in detail and have understood the terms and conditions stipulated for qualification of the Bidders in the RFP issued by the Jal Nigam. We agree and undertake to abide by all these terms and conditions. We acknowledge and agree to submission of an unconditional Bid.
3. This statement is made for the express purpose of qualifying as a Bidder for the design, finance, construction, rehabilitation, completion, operation and maintenance of the Facilities and Associated Infrastructure in accordance with the Concession Agreement.
4. We acknowledge that the Jal Nigam and NMCG will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidder for implementing the Project, and we certify that all information provided in the Bid and Annexures is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
5. The information submitted with respect to our qualification criteria is complete, and strictly as per the requirements stipulated in the RFP. We would be solely responsible for any errors or omissions in our Bid.
6. We shall make available to the Jal Nigam any additional information it may find necessary or require to supplement or authenticate the Bid.
7. We acknowledge the right of the Jal Nigam to reject our Bid without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.
8. We acknowledge the right of the Jal Nigam to not award the Project without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.

² To be deleted for a single entity bidder.

9. We certify that in the 3 Financial Years immediately preceding the Bid Due Date, we or our Associates have not been affected by any of the following circumstances:
- (i) failure to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against us or our Associates;
 - (ii) expulsion from any project or contract by GoI or the GoUP, or its instrumentalities;
 - (iii) termination of a contract by GoI or the GoUP, or its instrumentalities for breach by us or our Associates;
 - (iv) undergoing any corporate debt restructuring or similar process under the laws of the country of its incorporation;
 - (v) having been categorized as a willful defaulter in accordance with Applicable Laws;
 - (vi) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
 - (vii) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; or
 - (viii) having being convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
 - (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against us or any of our directors, partners, trustees, officers or managers; or
 - (ii) resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.
10. We certify that we or our Associates have not been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants.
11. We certify that we or our Associates have not been barred by GoI or the GoUP, or its instrumentalities from participating in any project or being awarded any contract and no such bar subsists on the Bid Due Date.
12. We declare that:
- (a) we have examined and have no reservations to the RFP and do not seek any deviations to the RFP, including any Addendum issued by the Jal Nigam;
 - (b) we do not have any Conflict of Interest in accordance with Clauses 3.3 of the RFP;
 - (c) we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 3.4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Jal Nigam or NMCG; and
 - (d) we hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP and submission of the Bid, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
13. We understand that the Jal Nigam may cancel the Bid Process at any time and that the Jal Nigam is neither bound to accept any Bid that it may receive nor to invite the Bidders to

- submit a Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 7 of the RFP.
14. The [Bidder/ Consortium of which we are the Lead Consortium Member (*strike out whichever is not applicable*),] satisfies the legal requirements and in our opinion by itself/along with its Members and Associates meets all the Qualification Criteria and eligibility criteria laid down in the RFP.
 15. We declare that we and our Associates are not submitting separate Bids for the Project.
 16. We declare that we are not submitting more than 1 Bid for the Project.
 17. 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 could cast a doubt on our ability to undertake the Project.
 18. We further certify that in regard to matters relating to security and integrity of the country, we or any of our Associates have not been charge-sheeted by any agency of the state or convicted by a court of law.
 19. 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, which could have a material adverse effect on our ability to undertake the Project.
 20. We undertake that in case due to any change in facts or circumstances during the Bid Process, we attract the provisions of disqualification in terms of the provisions of the RFP, we shall inform the Jal Nigam of the same immediately.
 21. In the event of us being declared as the Selected Bidder for the Project, we agree to incorporate a Special Purpose Vehicle, which will enter into a Concession Agreement provided by the Jal Nigam. We agree not to seek any changes in or deviations from the aforesaid draft and agree to abide by the same.
 22. We agree and undertake to abide by all the terms and conditions of the RFP.
 23. We have studied the RFP and all the information carefully. We understand that except to the extent expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Jal Nigam or in respect of any matter arising out of or concerning or relating to the Bid Process including the award of the Project.
 24. [A power of attorney, by all Members of the Consortium, appointing the Lead Member, authorizing the Lead Member to sign the Bid related documents and sign the Concession Agreement, is included as part of the Bid.]³
 25. A Power of Attorney from the [Bidder/Lead Member] authorizing the undersigned as the authorised representative, signatory and contact person who is authorised to perform all tasks including, but not limited to providing information, responding to queries, entering into contractual commitments on behalf of the Bidder etc., in respect of the Project is included as a part of the Bid.
 26. I/We certify that if selected, we will adopt the same technology for the Varanasi STP as used in at least one of the STP(s) for which we are claiming experience to demonstrate our Technical Capacity to undertake the Project.
 27. We certify that in terms of the RFP, our Net Worth is INR [●] (Rupees in words).
 28. We certify that we have the Technical Capacity and Financial Capacity to undertake the Project.
 29. We have enclosed a Demand Draft/ Pay Order of INR 10,000 (non-refundable) in favour of the General Manager, Ganga Pollution Prevention Unit, Uttar Pradesh Jal Nigam, payable at

³ To be deleted for a single entity bidder.

- Varanasi (DD No. _____ dated _____ drawn on _____, Bank)
as the Bid processing fee.
30. We agree and understand that the Bid is subject to the provisions of the RFP. In no case, we shall have any claim or right against the Jal Nigam if the Project is not awarded to us or our Bid is not opened.
 31. We have submitted all the relevant information as per the formats specified in the RFP, in 1 original and, where required, 1 copy, along with the requisite Bid Security.
 32. Our Bid shall remain valid for a period of not less than 180 days from the Bid Due Date.

For and on behalf of :

Signature :

(Authorised Representative and Signatory)

Name of the Person :

Designation :

ANNEXURE 1B
DESCRIPTION OF THE BIDDER

1. (a) Name:
(b) Country of incorporation:
(c) Principal Address:
(d) Date of incorporation and/or commencement of business:
2. Brief description of the Bidder including details of its main lines of business: [*Note. Such description shall not exceed 5 type-written pages.*]
3. Details of individual(s) who will serve as the point of contact/communication for Jal Nigam and NMCG:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Telephone Number:
 - (e) E-mail Address:
 - (f) Fax Number:
4. In case of a Consortium:
 - (a) The information above (1-3) should be provided for all the Members of the Consortium.
 - (b) Additional information regarding each Member of the Consortium should be provided as per table below:

S. No.	Name of Member	Proposed percentage holding in the total Capital of the SPV
1.		
2.		
3.		

ANNEXURE 1C
FORMAT OF POWER OF ATTORNEY AUTHORISING THE SIGNATORY OF THE BID

(on Stamp Paper)

Know all men by these presents, We (*name of the Company and address of the registered office*) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (*name*), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the **Attorney**) 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 Bid for the Namami Gange Varanasi STP PPP Project proposed or being developed by the Uttar Pradesh Jal Nigam (**Jal Nigam**) and the National Mission for Clean Ganga (**NMCG**), including but not limited to signing and submission of all Bid documents and other documents and writings, participate in investor consultations and other conferences and providing information/responses to the Jal Nigam, representing us in all matters before the Jal Nigam and NMCG, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Jal Nigam and NMCG in all matters in connection with or relating to or arising out of our Bid for the Project and/or upon award of the Project to us and/or till the entering into of the Concession Agreement with the Jal Nigam and NMCG.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney 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 Attorney 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, Title and Address of the Attorney)

Instructions:

- (1) 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.*
- (2) Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' 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.*

ANNEXURE 1D

FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR FOR NET WORTH AND COMPLIANCE WITH OTHER FINANCIAL QUALIFICATION CRITERIA

(On the letter head of the statutory auditor)

Based on the books of accounts of (*insert name of the Bidder/Member*) (**Bidder/Member**) and other published information authenticated by it, this is to certify that:

- (a) As on (*insert date*), the Bidder's/Member's Net Worth is Rs..... (Rupees).

Further, the annual Net Worth as per the balance sheets of past 3 Financial Years (including the above) exceeds Rs. 50,00,00,000 (Rupees Fifty Crore). The details are provided below:

Financial Year	Net Worth (Rs. Crores)
Financial Year []	
Financial Year []	
Financial Year []	

The Net Worth of has been calculated in accordance with the terms set out in the Request For Proposal (**RFP**) issued by the Uttar Pradesh Jal Nigam on [*insert date*].

- (b) The Bidder/Member has had positive cash flows for each of the 3 Financial Years immediately preceding the Bid Due Date.
- (c) The Bidder/Member is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years preceding the Bid Due Date:
- (i) undergoing any corporate debt restructuring or similar process under the laws of the country of its incorporation;
 - (ii) having been categorized as a willful defaulter in accordance with Applicable Laws;
 - (iii) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
 - (iv) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; or
 - (v) having being convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
 - (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder/Member or any of our directors, partners, trustees, officers or managers; or
 - (ii) resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.

Name of the auditor:
Seal of the auditor:
Signature:
Name:
Membership Number:
Designation:
Date:

ANNEXURE 1E
PART I
FORMAT OF DETAILS OF THE ELGIBLE SEWAGE TREATMENT PLANT

Item (1)	Refer Instruction	Details of the Project
Entity claiming experience		
Capacity of the project and technology		
Entity for which project was developed/designed and constructed	(2)	
Project Cost		
Location		
Date of award, completion/ commissioning of project/Status of project	(3), (4)	
Whether credit is being taken for the experience of an Associate (Yes/No)	(5)	
In case of development experience, shareholding in the company developing and owning the project	(6)	
Confirmation that the STP is or was successfully operational for at least 2 Financial Years in the 10 Financial Years immediately preceding the Bid Due Date	(7)	

Instructions:

- (1) *Bidders are expected to provide information in respect of the projects for which they are claiming design and construction/development experience. A separate sheet should be filled for each project.*
- (2) *In case of development experience, details such as name, postal address, email address and contact details of the authority/implementing agency (i.e., concession grantor) should be provided. In case of design and construction experience, details such as name, postal address, email address and contact details of both the developer (i.e., the concessionaire) and the authority/implementing agency (i.e., the concession grantor) should be provided.*
- (3) *The date of award of the project and completion or commissioning of the project, as the case may be, should be indicated.*
- (4) *In case of development experience, the completion certificate/commissioning certificate issued by the relevant government authority, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been commissioned*

and completed (as required under the relevant concession agreement or similar contract) should be provided.

In case of design and construction experience, the completion certificate/commissioning certificate issued by the client, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been successfully commissioned and completed (as required under the relevant concession agreement or similar contract for the STP) should be provided.

- (5) *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
- (6) *A certificate from the statutory auditor should be furnished stating the shareholding in the entity developing the project in the format set out at Annexure 1F.*
- (7) *A certificate issued by the relevant government authority specifying the number of years for which the STP has been successfully operational, in accordance with relevant concession agreement or similar contract executed for the STP, should be provided.*
- (8) *Experience for any activity relating to a project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*
- (9) *It may be noted that in the absence of any detail in the above format and/or the certificate(s) issued by the relevant government authority/client, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

**ANNEXURE 1E
PART II**

**FORMAT OF DETAILS OF THE OPERATION AND MAINTENANCE (O&M) OF
ELIGIBLE SEWAGE TREATMENT PLANT**

Item (1)	Refer Instru ction	Details of the Project
Entity claiming experience		
Capacity of the project and technology		
Entity for which project being operated and maintained	(2)	
Location		
Duration for which O&M experience is being claimed (From month, year to month, year)	(3)	
Whether credit is being taken for the experience of O&M as an Associate (Yes/No)	(4)	

Instructions:

- (1) *Bidders are expected to provide information in respect of the STPs for which they are claiming operations and maintenance experience. A separate sheet should be filled for each project.*
- (2) *Details such as name, postal address, email address and contact details of the client and the relevant government authority (i.e., the implementing agency) should be provided.*
- (3) *The duration of the O&M experience must be at least 2 Financial Years in the 5 Financial Years immediately preceding the Bid Due Date.
A certificate issued by the relevant government authority (i.e., the implementing agency) certifying the Bidder/Member/Associate that the Bidder/Member/Associate has successfully operated and maintained the STP for at least 2 Financial Years in the 5 Financial Years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for the project, should be provided.*
- (4) *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
- (5) *It may be noted that in the absence of any detail in the above format and the certificate(s) issued by the relevant government authority, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

ANNEXURE 1F
FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR REGARDING
DEVELOPMENT EXPERIENCE

Based on its book of accounts and other published information authenticated by it, this is to certify that (name of the Bidder/Member/Associate) is/was an equity shareholder in (title of the project company) which developed an STP of [Insert capacity of STP] MLD at [Insert location of STP] for [Insert name of implementing agency] and held/holds Rs.cr. (Rupees crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of [Insert name of the project company] as on the [Bid Due Date/commercial operations date/date of issuance of the completion certificate or any other equivalent certificate by the relevant government authority.] for such STP.

Name of the audit firm:

Seal of the audit firm:
signatory)

(Signature, name and designation of the authorised

Date:

ANNEXURE 1G
FORMAT OF SELF-ATTESTED CERTIFICATE REGARDING ASSOCIATE

Self-Attested 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. }

Name of the Bidder/Member:

Seal of the Bidder/Member:

(Signature, name and designation of the authorised signatory).

Date:

**ANNEXURE 1H
 FORMAT OF INFORMATION ON LITIGATION**

(To be provided by the Bidder/each Member)

S. No.	Name	Forum and Counterparty	Brief Description of the matter	Estimated financial liability	Current Status of Litigation	Orders passed against the Bidder/Member

ANNEXURE 11
FORMAT OF BID SECURITY

(On stamp paper)

B.G. No. [____]

Dated:

1. In consideration of you, the Uttar Pradesh Jal Nigam (referred to as **Jal Nigam**, which expression will, unless it is repugnant to the subject or context thereof include, its successors and assigns) having agreed to receive the Bid of [*insert name of Bidder*]/the Consortium, represented by [*Member*] with its registered office at [*Insert Address*] (referred to as the **Bidder** which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the design, financing, construction, completion, operation and maintenance of the Facilities and the Associated Infrastructure on the Site (collectively the **Project**), pursuant to the Request for Proposal dated [____] (referred to as the **RFP**) issued in respect of the Project and other related documents including without limitation the draft Concession Agreement, we (Name of the Bank) having our registered office at [____] and one of its branches at [____] (referred to as the **Bank**), at the request of the Bidder, do hereby in terms of Clause 15 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFP by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Jal Nigam an amount of Rs. [____] (referred to as the **Guarantee**) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder fails to fulfil or comply with all or any of the terms and conditions contained in the RFP.
2. Any such written demand made by the Jal Nigam stating that the Bidder is in default of due and faithful compliance with the terms and conditions contained in the RFP will be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Jal Nigam is disputed by the Bidder or not, merely on the first demand from the Jal Nigam stating that the amount claimed is due to the Jal Nigam by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFP, for the following events:
 - (a) if a Bidder engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as specified in Clause 3.4 of the RFP;
 - (b) if a Bidder is disqualified in accordance with, Clause 3.2 (*Lock-in Restrictions and Change in Control*), Clause 3.3 (*Conflict of Interest*), Clause 3.5 (*Other Eligibility Criteria*), Clause 7.3 (*Rights of the Jal Nigam*), Clause 17 (*Number of Bids*) and Clause 31.3 (*Execution of Concession Agreement*) of the RFP;
 - (c) if, after the Bid Due Date, a Bidder withdraws its Bid during the Bid validity period;
or

- (d) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:
 - (i) sign and return, as acknowledgement, the duplicate copy of the LOA;
 - (ii) furnish the Performance Security in accordance with Clause 16;
 - (iii) fulfil any other condition precedent to the execution of the Concession Agreement; or
 - (iv) execute the Concession Agreement.

Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.

- 4. This Guarantee shall be irrevocable and remain in full force for a period of 180 days from the Bid Due Date inclusive of a claim period of 30 days or for such extended period as may be mutually agreed between the Jal Nigam and the Bidder, and agreed to by the Bank, and will continue to be enforceable till all amounts under this Guarantee have been paid.

If the Bidder is declared as the Selected Bidder, then the validity of the Bid Security of such Selected Bidder shall be extended until the date on which the Selected Bidder submits the Performance Security. The Bid Security of the Selected Bidder will be returned upon the Selected Bidder furnishing the Performance Security.

In the event this Bidder is not selected for award of the Project, the Bid Security shall remain in force up to and including a period of 30 days from the date of execution of the Concession Agreement.

- 5. We, the Bank, further agree that the Jal Nigam will be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFP including, those events listed at paragraph 3 above. The decision of the Jal Nigam that the Bidder is in default as aforesaid will be final and binding on us, notwithstanding any differences between the Jal Nigam and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
- 6. The Guarantee will not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
- 7. In order to give full effect to this Guarantee, the Jal Nigam will be entitled to treat the Bank as the principal debtor.
- 8. The obligations of the Bank under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the RFP or the Bid submitted by the Bidder.
- 9. The obligations of the Bank under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Bank

from or prejudice or diminish its liability under this Guarantee, including (whether or not known to it, or the Jal Nigam):

- (a) any time or waiver granted to, or composition with, the Bidder or any other person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions; or change in the Bidder, as the case may be;
 - (c) any variation of the RFP, so that references to the RFP in this Guarantee shall include each such variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of the Bidder or the Jal Nigam under the RFP or any unenforceability, illegality or invalidity of the obligations of the Bank under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee or security, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity; and
 - (e) any extension, waiver, or amendment whatsoever which may release a guarantor or surety (other than performance of any of the obligations of the Bidder under the RFP).
10. Any notice by way of request, demand or otherwise will be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
11. We undertake to make the payment on receipt of your notice of claim on us addressed to [*name of Bank along with branch address*] and delivered at our above branch which will be deemed to have been duly authorised to receive the notice of claim.
12. It shall not be necessary for the Jal Nigam to proceed against the Bidder before proceeding against the Bank and the Guarantee will be enforceable against the Bank, notwithstanding any other security which the Jal Nigam may have obtained from the Bidder or any other person and which will, at the time when proceedings are taken against the Bank, be outstanding or unrealised.
13. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Jal Nigam in writing.
14. The Bank represents and warrants that it has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
15. For the avoidance of doubt, the Bank's liability under this Guarantee will be restricted to Rs. [___]. The Bank will be liable to pay the amount or any part of the Guarantee only if the Jal Nigam serves a written claim on the Bank in accordance with paragraph 11 of this Guarantee, on or before (indicate date falling 180 days after the Bid Due Date).
16. Capitalized terms used but not defined herein shall have the meanings given to them in the RFP.

Signed and Delivered by.....Bank

By the hand of Mr./Ms. its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

In the presence of:

Name of the witness

Signature of the witness

Address of the witness

ANNEXURE 1J
FORMAT OF POWER OF ATTORNEY FOR APPOINTING LEAD MEMBER
(On Requisite Stamp Paper)

Whereas the Uttar Pradesh Jal Nigam (the **Jal Nigam**) has invited Bids from interested parties for the **NMCG-Jal Nigam Varanasi STP PPP Project** (the **Project**).

Whereas,, and (collectively, the **Consortium**) being Members of the Consortium are interested in submitting a Bid for the Project in accordance with the terms and conditions of the Request for Proposal (**RFP**) issued by the Jal Nigam on [*Insert Date*], and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its implementation.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, having our registered office at, and having our registered office at, (hereinafter collectively referred to as the **Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **Attorney**). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bid Process and, in the event the Consortium is awarded the Project, during the implementation of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of the Consortium's Bid for the Project, including but not limited to signing and submission of all Bid related documents and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with Jal Nigam and the National Mission for Clean Ganga, and/or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/or upon award of the Project and/or till the Concession Agreement is entered into with the Jal Nigam and the National Mission for Clean Ganga.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney 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 Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/Consortium.

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

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....

(To be executed by all the Members of the Consortium)

(Notarised)
Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (1) *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.*
- (2) *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' 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.*
- (3) *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, the power of attorney provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

ANNEXURE 1K
FORMAT OF JOINT BIDDING AGREEMENT

THIS JOINT BIDDING AGREEMENT ("**Agreement**") is entered into on this [●] Day of [●] 201[●]

AMONGST

1. [●], with its registered office at (referred to as the **First Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its registered office at (referred to as the **Second Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

[[AND

3. [●], with its registered office at [●] (referred to as the **Third Part** which expression will, unless repugnant to the context include its successors and permitted assigns).]

The above mentioned parties of the FIRST [and] [,] SECOND, [and] [,] [THIRD] are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) Uttar Pradesh Jal Nigam (referred to as the **Jal Nigam**, which expression will, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No. [___] dated [___] (the **RFP**) for selection of a Bidder for the design, finance, construction, completion, operation and maintenance of the Facilities and the Associate Infrastructure on the Site, in Varanasi, on a hybrid annuity PPP basis in accordance with the Concession Agreement (the **Project**).
- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- (C) It is a necessary condition under the RFP that the Members will enter into a Joint Bidding Agreement and furnish a copy of it with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this Agreement, the capitalised terms will, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bid Process for the Project.

2.2 The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

3.1 The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it will incorporate a special purpose vehicle (**SPV**) under the Companies Act for entering into the Concession Agreement with NMCG and Jal Nigam for undertaking the Project.

3.2 The Members of the Consortium undertake that they shall be jointly and severally responsible and liable for all matters arising out of or in relation to this RFP.

4. Role of the Parties

4.1 The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from all Parties and bind all Parties for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.

4.2 Party of the Second Part will be [].

[4.3 Party of the Third Part will be [].]

5. Shareholding in the SPV

5.1 The Parties agree that the proportion of shareholding among the Parties in the SPV will be as follows:

First Party:

Second Party:

[Third Party:]

5.2. The Parties undertake that:

(a) the First Party, acting as the Lead Member of the Consortium, will control the SPV and subscribe for and hold a minimum of 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the COD; and

(b) the [Second and/or the Third] Party, whose [Technical Capacity and/or Financial Capacity] is being assessed, will hold at least 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the COD.

5.3. The Parties undertake that they will comply with all equity lock-in requirements set out in this Agreement and in the Concession Agreement.

6. Representations of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any applicable law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

7. Termination

This Agreement will be effective from the date hereof and will continue in full force for the entire duration of the Project in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated in case the Consortium is not selected or upon return of the Bid Security as per the RFP, as the case may be.

8. Miscellaneous

8.1 This Agreement will be governed by the laws of India.

8.2 The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of Jal Nigam.

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

SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE FIRST PART by:	SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE SECOND PART by:
Signature) (Name) (Designation) (Address)	Signature) (Name) (Designation) (Address)
SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE THIRD PART by:	
Signature) (Name) (Designation) (Address)	

In the presence of:

1

2.

Instruction:

- The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by 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.*

ANNEXURE 2A
FINANCIAL PROPOSAL COVER LETTER

(On the letter head of the Bidder/Lead Member)

From

[insert name of Bidder/Lead Member]
[insert address of Bidder/Lead Member]

Date: *[insert date]*

To

Uttar Pradesh Jal Nigam

[]

Dear Sir,

Sub: Financial Proposal for the Namami Gange Varanasi STP PPP Project

We, the undersigned *[insert name of the Bidder/Lead Member]* having read, examined and understood in detail the RFP for development of the Project, hereby submit our Financial Proposal. We hereby undertake and confirm that:

- (a) We have submitted our Financial Proposal strictly in accordance with the RFP for development of the Project without any deviations or condition and our Financial Proposal is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Authority.
- (b) The Bid Price comprising: (i) the Bid Project Cost; (ii) the O&M Charges for the first month after COD; (iii) the Guaranteed Energy Consumption for the first month after COD; and (iv) the Land Requirement shall be as per the Bid Price Sheet attached as Annexure 2B.

We confirm that the values quoted by us in the Bid Price Sheet shall remain firm for the purpose of the Concession Agreement subject to provisions thereunder.

We hereby unconditionally and irrevocably agree and accept that the decision made by the Jal Nigam in respect of any matter concerning or arising out of the RFP and the selection of Selected Bidder thereof shall be binding on us.

We hereby expressly waive any and all claims in respect of Bid process.

Dated the _____ day of _____ 2017.

Thanking you,

Yours truly,

.....

(Name and signature of Authorized Signatory)

**ANNEXURE 2B
FORMAT OF BID PRICE SHEET**

	Units	Figure			Rs. Lakh
A. Project Cost (excluding all taxes)	Amount		Bid Price	A	
Taxes to be detailed separately here	(Rs. Lakh)		=	B x 180	
[Tax.....; applicable %]				C x [7] =	
[Tax.....; applicable %]				Power	
[Tax.....; applicable %]				Charges	
[Tax.....; applicable %]				D x [] =	
Bid Project Cost (A)			Bid Price	=	
B. O&M Charges for the first month after COD	Amount				
	(Rs. Lakh)				
C. Guaranteed Energy Consumption					
For average BOD >2,60,000 kg/month	KwH				
For Year 1 post COD					
For Year 2 post COD					
For Year 3 post COD					
For Year 4 post COD					
For Year 5 post COD					
For Year 6 post COD					
For Year 7 post COD					
For Year 8 post COD					
For Year 9 post COD					
For Year 10 post COD					
For Year 11 post COD					
For Year 12 post COD					
For Year 13 post COD					
For Year 14 post COD					
For Year 15 post COD					
Total for 15 years = C					
D. Land Requirement	Acres				