

44
1/10/97

1/10/97

1/10/97

**PROJECT ENGINEER
FOR 82 MLD STP AT HARIDWAR
UNDER
HYBRID ANNUITY BASED PPP**

National Mission for Clean Ganga

1/10/97

CONTENTS

1. General

1.1 Definitions and Interpretation
 1.2 Relation between the Parties
 1.3 Rights and Obligations
 1.4 Governing law and jurisdiction
 1.5 Language
 1.6 Table of contents and headings
 1.7 Notices
 1.8 Location
 1.9 Authority of Member-in-Charge
 1.10 Authorised representatives
 1.11 Taxes and duties

2.

Commencement, Completion and Termination of Agreement

2.1 Effectiveness of Agreement
 2.2 Commencement of Services
 2.3 Termination of Agreement for failure to commence Services
 2.4 Expiry of Agreement
 2.5 Entire Agreement
 2.6 Modification of Agreement
 2.7 Force Majeure
 2.8 Suspension of Agreement
 2.9 Termination of Agreement

3.

Obligations of the Project Engineer

3.1 General
 3.2 Conflict of Interest
 3.3 Confidentiality
 3.4 Liability of the Project Engineer
 3.5 Accounting, inspection and auditing
 3.6 Project Engineer's actions requiring the MGC's prior approval
 3.7 Reporting obligations
 3.8 Documents prepared by the Project Engineer to be the property of the MGC
 3.9 Providing access to the Project Office and Personnel
 3.10 Accuracy of Documents

4.

Project Engineer's Personnel and Sub-Project Engineer

4.1 General
 4.2 Deployment of Personnel
 4.3 Approval of Personnel
 4.4 Substitution of Key Personnel
 4.5 Working hours, overtime, leave etc.
 4.6 Resident Team Leader and Project Manager
 4.7 Sub-Project Engineers

May 4/94

Mon

Handwritten mark: a horizontal line with an arrow pointing to the right and the word "Page" written vertically next to it.

Handwritten mark: a circle containing the word "Page" written vertically.

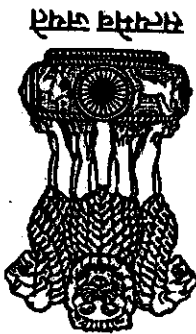
Handwritten mark: a horizontal line with a vertical tick mark at the right end.

- Annex-1: Terms of Reference
- Annex-2: Estimate of Personnel Costs
- Annex-3: Approved Sub-Project Engineer(s)
- Annex-4: Cost of Services
- Annex-5: Payment Schedule
- Annex-6: Bank Guarantee for Performance Security

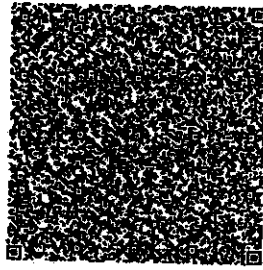
ANNEXES

9.1	Amicable settlement	9.1
9.2	Dispute resolution	9.2
9.3	Conciliation	9.3
9.4	Arbitration	9.4
9. Settlement of Disputes		
8.1	Good Faith	8.1
8.2	Operation of the Agreement	8.2
8. Fairness and Good Faith		
7.1	Performance Security	7.1
7.2	Liquidated Damages	7.2
7.3	Penalty for deficiency in Services	7.3
7. Liquidated damages and penalties		
6.1	Cost estimates and Agreement Value	6.1
6.2	Currency of payment	6.2
6.3	Mode of billing and payment	6.3
6. Payment to the Project Engineer		
5.1	Assistance in clearances etc.	5.1
5.2	Access to land and property	5.2
5.3	Change in Applicable Law	5.3
5.4	Payment	5.4
5. Obligations of the NMCC		

e-Stamp



IN-DL900545688965230	: Certificate No.
19-Feb-2018 10:22 AM	: Certificate Issued Date
IMPACC (IV) d1780003/ DELH/ DL-DLH	: Account Reference
SUBIN-DL780003834095906934220	: Unique Doc. Reference
NMCG AND UKPJN	: Purchased by
Article-5 General Agreement	: Description of Document
Not Applicable	: Property Description
0	: Consideration Price (Rs.)
(Zero)	: First Party
NMCG AND UKPJN	: Second Party
STC BVT LTD, MUMBAI	: Stamp Duty Paid By
NMCG AND UKPJN	: Stamp Duty Amount (Rs.)
1000	
(Onwards only)	



Please write or type below this line

AGREEMENT

This AGREEMENT (hereinafter called the "Agreement") is made on the 19th day of the month of February 2018, between, on the one hand, the Uttarakhanda Pey Jal Nigam hereinafter called as UKPJN) which expression shall include their respective successors and permitted assigns, unless the context otherwise requires), National Mission for Clean Ganga (hereinafter after "NMCG") and, on the other hand, Shah Technical Consultants Private Limited having its office at 407, Raheja Center, Nariman Point, Mumbai - 400021 (hereinafter called the "Project Engineer" which expression shall include their respective successors and permitted assigns).

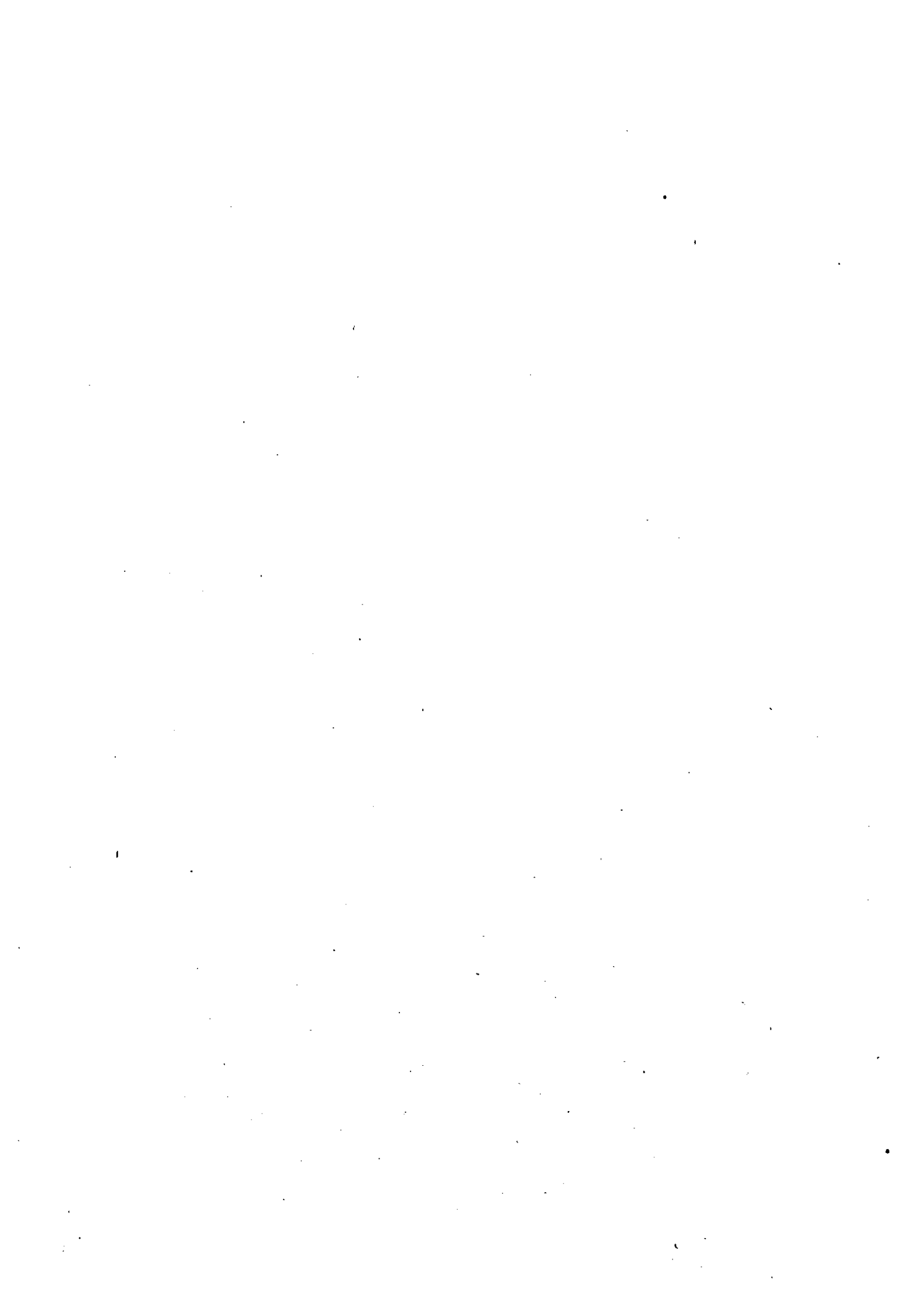


Signature

Statutory Alert:

1 The authenticity of this Stamp Certificate should be verified available on the website renders it invalid. All discrepancy in the details of this Certificate may be reported to the Registrar of Companies, Ministry of Corporate Affairs, New Delhi. In case of any discrepancy in the details of this Certificate, the Registrar of Companies, Ministry of Corporate Affairs, New Delhi, shall be notified immediately.

General Manager
 Construction Circle (Central)
 Uttarakhanda Pey Jal Nigam
 Hardwar



WHEREAS

- (A) The NMCG vide its Request for Proposal for seeking Project Engineer services (hereinafter called the "Consultancy") for the development of 82 MLD, Sewage Treatment plants(STPs) at Hardwar (68 MLD at Jagjeetpur & 14 MLD at Sarai). Project under Hybrid Annuity based PPP mode, (hereinafter called the "Project");
- (B) the Project Engineer submitted its proposals for the aforesaid work, whereby the Project Engineer represented to the NMCG that it had the required professional skills, and in the said proposals the Project Engineer also agreed to provide the Services to the NMCG on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the NMCG, on acceptance of the aforesaid proposals of the Project Engineer, awarded the Consultancy to the Project Engineer vide its Letter of Award dated 5th January 2018 (the "LOA"); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

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

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) "Additional Costs" shall have the meaning set forth in Clause 6.1.2;
- (b) "Agreement" means this Agreement, together with all the Annexes;
- (c) "Agreement Value" shall have the meaning set forth in Clause 6.1.2;
- (d) "Applicable Laws" means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (e) "Confidential Information" shall have the meaning set forth in Clause 3.3;
- (f) "Conflict of Interest" shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) "Dispute" shall have the meaning set forth in Clause 9.2.1;
- (h) "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) "Expatriate Personnel" means such persons who at the time of being so hired had their domicile outside India;
- (j) "Government" means the Government of India/ Jharkhand.
- (k) "INR, Re. or Rs." means Indian Rupees;

Handwritten signature

Handwritten signature

Handwritten signature

(l) "Member", in case the Project Engineer consists of a joint venture or consortium of more than one entity, means any of these entities, and "Members" means all of these entities;

(m) "Party" means the NMCG, UKPJM or the Project Engineer, as the case may be, and Parties means both of them;

(n) "Personnel" means persons hired by the Project Engineer or by any Sub-Project Engineer as employees and assigned to the performance of the Services or any part thereof;

(o) "Resident Personnel" means such persons who at the time of being so hired had their domicile inside India;

(p) "RFP" means the Request for Proposal document in response to which the Project Engineer's proposal for providing Services was accepted;

(q) "Services" means the work to be performed by the Project Engineer pursuant to this Agreement, as described in the Terms of Reference hereto;

(r) "Sub-Project Engineer" means any entity to which the Project Engineer subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and

(s) "Third Party" means any person or entity other than the Government, the NMCG, UKPJM, the Project Engineer or a Sub-Project Engineer.

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

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award.

1.2 Relation between the Parties

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

1.3 Rights and obligations
The mutual rights and obligations of the NMCG and the Project Engineer shall be as set forth in the Agreement, in particular:

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

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

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

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

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

(a) in the case of the Project Engineer, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Project Engineer's Representative set out below in Clause 1.10 or to such other person as the Project Engineer may from time to time designate by notice to the NMCG; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number as the Project Engineer may from time to time specify by notice to the NMCG;

(b) in the case of the NMCG, be given by e-mail and by letter delivered by hand and be addressed to the NMCG with a copy delivered to the NMCG Representative set out below in Clause 1.10 or to such other person as the NMCG may from time to time designate by notice to the Project Engineer; provided that if the Project Engineer does not have an office in the same city as the NMCG's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier, and

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

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

1.9 Authority of Member-in-charge

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

1.10 Authorised Representatives

1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the NMCG or the Project Engineer, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

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

Shri Madhava Kumar R

Sr. Economic & Finance Expert

National Mission for clean Ganga

1st Floor, Major Dhyan Chand national Stadium

India Gate, New Delhi - 110002

Tel: 011-23072900

Mobile: 98105-004-03

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

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

Shri K.K. Rastogi

General Manager – Construction Circle (Ganga)

Uttarakhand Pwaj Nigam

Jagjeerpur, Kankhal

Haridwar - 249408

Mobile: 999-7494-594

Email: gmangahw@gmail.com

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

Mr. Prasana M Shah

Director

Shah Technical Consultants Pvt. Ltd.

407, Raheja Center, Nariman Point,

Mumbai - 400021

Tel: 022 - 22871061/22820018

Mobile: 98210-79564

Email: stc@stc.co.in/prasanshah@stc.co.in

1.11

Taxes and duties

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

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

The Project Engineer shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

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

1/16/14

[Handwritten signature]

[Handwritten signature]

2.4 Expiry of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to the NMCG; and (ii) the expiry of 5 (five) year from the Effective Date. Upon Termination, the NMCG shall make payments of all amounts due to the Project Engineer hereunder.

Entire Agreement

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

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

2.5 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.6 Force Majeure

2.7.1 Definition

(a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquakes, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Project Engineer or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

(c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

(a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.

(b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

(c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

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

2.9.1 By the NMCG

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

- (a) the Project Engineer fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the NMCG may have subsequently granted in writing;

- (b) the Project Engineer becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;

- (c) the Project Engineer fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;

- (d) the Project Engineer submits to the NMCG a statement which has a material effect on the rights, obligations or interests of the NMCG and which the Project Engineer knows to be false;

- (e) any document, information, data or statement submitted by the Project Engineer in its Proposals, based on which the Project Engineer was considered eligible or successful, is found to be false, incorrect or misleading;

- (f) as the result of Force Majeure, the Project Engineer is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or

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

2.9.2 By the Project Engineer

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

- (a) the NMCG fails to pay any money due to the Project Engineer pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Project Engineer that such payment is overdue;

- (b) the NMCG is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the Project Engineer may have subsequently granted in writing) following the receipt by the NMCG of the Project Engineer's notice specifying such breach;

- (c) as the result of Force Majeure, the Project Engineer is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or

(d) the MCG fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

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

2.9.4 Cessation of Services

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

2.9.5 Payment upon Termination

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

(i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;

(ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and

(iii) except in the case of termination pursuant to sub-clauses (a) through (c) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement, including the cost of the return travel of the Project Engineer's personnel.

2.9.6 Disputes about Events of Termination

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

the am

Wong

3. OBLIGATIONS OF THE PROJECT ENGINEER

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Terms of Reference

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

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

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

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

The Project Engineer agrees that, during the term of this Agreement and after its termination, the Project Engineer or any Associate thereof and any entity affiliated with the Project Engineer, as well as any Sub-Project Engineer and any entity affiliated with such Sub-Project Engineer, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/lenders at any time; provided further that this restriction shall not apply to consultancy/advisory services provided to the NMCG in continuation of this Consultancy or to any subsequent consultancy/advisory services provided to the NMCG in accordance with the rules of the NMCG. For the avoidance of doubt, an entity affiliated with the Project Engineer shall include a partner in the Project Engineer's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Project Engineer, as the case may be, and any Associate thereof.

Handwritten signatures and initials at the top of the page.

3.2.3 Prohibition of conflicting interests

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

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

3.2.4

Project Engineer not to benefit from commissions, discounts, etc.

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

3.2.5

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

3.2.6

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

3.2.7

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

(a)

"corrupt practice" means (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any

4/11

person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the NMCG who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the NMCG, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the NMCG in relation to any matter concerning the Project;

(b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;

(c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the NMCG under this Agreement;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the NMCG with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and

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

3.3 Confidentiality

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

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

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

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

(ii) was obtained from a third party with no known duty to maintain its confidentiality;

(iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Project Engineer, its Sub-Project Engineers and the Personnel of either of them shall give the NMCG, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and

(iv) is provided to the professional advisers, agents, auditors or representatives of the Project Engineer or its Sub-Project Engineers or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Project Engineer or its Sub-Project Engineers or Personnel of either of them, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance, with such undertaking.

3.4 Liability of the Project Engineer

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

3.4.2 The Project Engineer shall, subject to the limitation specified in Clause 3.4.3, be liable to the NMCG for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or willful misconduct on the part of the Project Engineer or on the part of any person or firm acting on behalf of the Project Engineer in carrying out the Services, the Project Engineer, with respect to damage caused to the NMCG's property, shall not be held liable to the NMCG.

(i) for any indirect or consequential loss or damage; and

(ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Project Engineer may be entitled to receive from any insurance maintained by the Project Engineer to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.

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



3.5 Accounting; inspection and auditing

The Project Engineer shall:

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

3.6 Project Engineer's actions requiring the NMCG's prior approval

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

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

3.7 Reporting obligations

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

3.8 Documents prepared by the Project Engineer to be property of the NMCG/UKPJN

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

3.8.2 The Project Engineer shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the UKPJN/NMCG, together with a detailed

Don
16/11/14

inventory thereof. The Project Engineer may retain a copy of such Consultancy Documents. The Project Engineer, its Sub-Project Engineers or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the NMCG/UKPJN.

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

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

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

4. PROJECT ENGINEER'S PERSONNEL AND SUB-PROJECT ENGINEERS

4.1 General

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

4.2 Deployment of Personnel

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

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

4.2.2

4.2.2

4.2.2

4.3 Approval of Personnel

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

4.3.2 If the Project Engineer hereafter proposes to engage any person as Professional Personnel, it shall submit to the UKPJN/MMCG its proposal along with a CV of such person in the form provided at Appendix-1 (Form-12) of the RFP. The UKPJN/MMCG may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Project Engineer may propose an alternative person for the UKPJN/MMCG's consideration. In the event the UKPJN/MMCG does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the UKPJN/MMCG.

4.4 Substitution of Key Personnel

The NMCG expects all the Key Personnel to be available during implementation of the Agreement. The NMCG will not consider substitution of Key Personnel except for reasons not attributable to the Project Engineer such as any incapacity, resignation or due to health. Such substitution shall ordinarily be subject to equally or better qualified and experienced personnel being provided to the satisfaction of the NMCG. As a condition to such substitution, a sum up to 10% (ten per cent) of the remuneration specified for the original Key Personnel may be deducted from the payments due to the Project Engineer. In the case of a further substitutions hereunder, such deduction shall be up to 15% (fifteen per cent) of the remuneration specified for the original Key Personnel for each substitution.

4.5 Working hours, overtime, leave, etc.

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

4.6 Resident Team Leader and Project Manager

The person designated as the Team Leader of the Project Engineer's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Project Engineer shall designate a suitable person as Project Manager (the "Project Manager") who shall be responsible for day to day performance of the Services.

4.7 Sub-Project Engineers

Sub-Project Engineers listed in Annex-3 of this Agreement are hereby approved by the NMCG. The Project Engineer may, with prior written approval of the NMCG, engage additional Sub-Project Engineers or substitute an existing Sub-Project Engineer. The hiring of Personnel by the Sub-Project Engineers shall be subject to the

Handwritten signatures and initials at the top of the page.

4. same conditions as applicable to Personnel of the Project Engineer under this Clause

5. OBLIGATIONS OF THE NMCG

5.1 Assistance in clearances etc.

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

- (a) provide the Project Engineer, its Sub-Project Engineers and Personnel with necessary support and such other documents as may be necessary to enable the Project Engineer, its Sub-Project Engineers or Personnel to perform the Services; and

- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to land and property

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

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Project Engineer in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Project Engineer under this Agreement shall be increased or decreased accordingly by the agreement between the Parties hereinafter and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.4 Payment

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

6. PAYMENT TO THE PROJECT ENGINEER

6.1 Cost estimates and Agreement Value

6.1.1 An abstract of the cost of the Services payable to the Project Engineer is set forth in Annex 4 of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein ^{Don}

(the "Agreement Value"). The Parties agree that the Agreement Value is Rs.5,53,59,700 (Rupees Five Crores, Fifty Three Lakhs, Fifty Nine Thousand and Seven Hundred only), which does not include the Additional Costs specified in Annex-4 (the "Additional Costs"). Additional Costs shall be payable by NMCG on submission of adequate documents for the purpose by the Project Engineer.

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

6.2 Currency of payment

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

6.3 Mode of billing and payment

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

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

(b) The Project Engineer shall be paid for its services as per the Payment Schedule at Annex-5 of this Agreement, subject to the Project Engineer fulfilling the following conditions:

(i) No payment shall be due for the next stage till the Project Engineer completes, to the satisfaction of the NMCG, the work pertaining to the preceding stage.

(ii) The NMCG shall pay to the Project Engineer, only the undisputed amount.

(c) The NMCG shall cause the payment due to the Project Engineer to be made within 30 (thirty) days after the receipt by the NMCG of duly completed bills with necessary particulars (the "Due Date"). Interest at the rate of 8% (eight per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.

(d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Project Engineer and approved as satisfactory by the NMCG. The Services shall be deemed completed and finally accepted by the NMCG and the final deliverable shall be deemed approved by the NMCG as satisfactory upon

expiry of 90 (ninety) days after receipt of the final deliverable by the NMCG unless the NMCG, within such 90 (ninety) day period, gives written notice to the Project Engineer specifying in detail, the deficiencies in the Services. The Project Engineer shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The NMCG shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the NMCG.

(e) Any amount which the NMCG has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Project Engineer to the NMCG within 30 (thirty) days after receipt by the Project Engineer of notice thereof. Any such claim by the NMCG for reimbursement must be made within 1 (one) year after receipt by the Project Engineer in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.

(f) All payments under this Agreement shall be made to the account of the Project Engineer as may be notified to the NMCG by the Project Engineer.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

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

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

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

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

7.2.2 Liquidated Damages for delay

In case any error or variation is detected in the reports submitted by the Project Engineer and such error or variation is the result of negligence or lack of due diligence on the part of the Project Engineer, the consequential damages thereof shall be quantified by the NMCG in a reasonable manner and recovered from the Project