



**HINDUSTAN PETROLEUM CORPORATION LIMITED**  
(A GOVERNMENT OF INDIA ENTERPRISE)

**GLOBAL TENDER DOCUMENT**

**FOR**

**CONSULTANCY SERVICES**

**FOR**

**DESIGN AND DEVELOPMENT**

**OF**

**MAJOR INCIDENT RESPONSE UNITS**

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# **CHAPTER-1**

## **NOTICE INVITING TENDER**

**HINDUSTAN PETROLEUM CORPORATION LIMITED**  
(A Government of India Enterprise)  
Procurement- P&P, Gresham House –2 nd Floor,  
Sir P. M. Road, Fort,  
Mumbai- 400 001, India  
Phone: 022 22608536 / 521, Fax: 022 22642352

**GLOBAL NOTICE INVITING TENDER**

Hindustan Petroleum Corporation Limited invites sealed tenders in prescribed tender form under two-bid system (Part-I : Techno-Commercial Bid and Part-II : Price Bid) from **eligible Bidders as per the following details :**

**TENDER NO. : 11000200-HD-10002**

**JOB:** Consultancy Services for Design and Development of Major Incident Response Units (MIRU) at various locations in India

|       |   |  |
|-------|---|--|
| (i)   | <b>Tender can be downloaded from web site mentioned below</b> | 31.12.2011 to 15.02.2012 (both days inclusive) |
| (i)   | Pre-bid Meeting   | 18.01.2012 at 11.00 Hours IST                  |
| (iii) | Tender submission due date                                    | 15.02.2012 (up to 1500 Hours IST)              |

For viewing details including EMD, BID QUALIFICATION CRITERIA etc. please visit our web site [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com) and go to tender section by clicking the link "Tenders".

**Ch. Manager Procurement (P & P)**



**Subject : Tender no. 11000200-HD-10002 for Consultancy Services for design, development and setting up of Major Incident Response Units (MIRU) at various places in India**

Oil Marketing Companies, namely, Indian Oil Corporation Ltd (IOCL), Hindustan Petroleum Corporation Ltd (HPCL) and Bharat Petroleum Corporation Ltd (BPCL), herein referred to as OMCs are Public sector National Oil Companies and intend to engage agency/party for consultancy job to help OMCs set up Major Incident Response Units(MIRU) (approximately 12 nos) at different locations in India.

The Tenders are invited by HPCL on behalf of OMCs under two bid system, i.e.(A) Technical Bid with all commercial terms without price bid and (B) Price Bid for engaging Consultant who have expertise on the concept, design and development of large MIRU (Major Incident Response Unit) for fighting large Petroleum fires of Oil and Gas Installations internationally. The tender is due on **15.02.12 at 15.00 HRS** IST.

| Name of the work   | Cost of bidding document                     | EMD |   | Last date of receipt of tender |
|--|--|-----|---|--------------------------------|
|  |  |     |   |                                |
| Consultancy Services for Design and Development of <b><u>Major Incident Response Units</u></b> | Nil<br><br>{Exempted for downloaded tenders} |     | Rs. <b>9,20,000/-</b><br><b>or USD</b><br><b>18,400/-</b> | <b>15.02.2012</b>              |

Documents can be down loaded from [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com).

Bidders are requested to submit their competitive offer in line with the instructions given in the tender document. The EMD (A) , Techno commercial Bid(B)& Price bid (C) should be submitted separately duly signed and stamped in the separate sealed envelopes A,B&C. The sealed envelopes are to be put in another envelope. The combined sealed envelopes duly sealed should be submitted in the Tender box kept at the office of the Hindustan Petroleum Corporation Ltd at Gresham Assurance Building, 2nd Floor, Sir P.M.Road ,Fort, Mumbai – 400 001, India on or before **15.02.2012 (15.00 Hrs, IST)**. The tender (technical Bid) shall be opened on **15.02.2012 at 15.30 Hrs IST** in presence of attending tenderers.

Tender documents are available on our website [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com) and can be downloaded from website.

OMCs have signed MOU with Transparency International India for the adoption of the Integrity Pact Program and stand committed to following the principles of transparency, equity & competitiveness in public procurement.

This **Notice Inviting Tender (NIT)** is an invitation to offer made on the condition that the Tenderer will sign the Integrity Agreement, which is an integral part of tender documents,failing which , the tenderer will stand disqualified from the tendering Process and the bid of the bidder will be summarily rejected.

The NIT is an invitation to invite you to submit a formal proposal and commitment for your participation in the Consultancy job, based on the Bid Qualification Criteria(s) and eligibility conditions.

#### **1.0 EMD (EARNEST MONEY DEPOSIT):**

The EMD amount should be in the form of demand draft or pay order or Banker's cheque (in favour of Hindustan Petroleum Corporation Limited ) or Bank guarantee strictly as per format attached from branches of Indian Public Sector Banks/Any scheduled Bank other than Co-operative Bank or from foreign banks **duly** counter-guaranteed by Indian bank branches. Bank Guarantee from Indian branches of foreign banks will be accepted only if the Indian Branch of the bank is recognized as scheduled bank by Reserve Bank of India. However, Bank Guarantee from foreign branch bank will be accepted only if the same is counter signed by their Indian Branch or any Scheduled Indian Bank.

In case EMD is submitted in form of Bank Guarantee, it should be made on non-judicial stamp paper of appropriate value (denomination) and **should be valid for 180 days from due date / extended due date of the tender**. Cheque / FDR or EMD in any other form shall be treated as offer without EMD and shall not be acceptable.

Public sector undertaking (Declaration required) and Units registered with NSIC (Copy of valid registration certificate) are exempted from submission of EMD.

EMD (original instrument: DD/Pay order/ Banker's Cheque OR Bank Guarantee) should be kept in separate envelope (super-scribed with tender number, job & due date) and should be deposited by tender due date / time, in the tender box provided in the office of **CHIEF MANAGER - PROCUREMENT (P&P) AT HINDUSTAN PETROLEUM CORPORATION LTD, GRESHAM HOUSE (2 ND FLOOR), SIR P. M. ROAD, FORT, MUMBAI -400 001.** In case the EMD (original instrument) is not deposited in the tender box (as mentioned above) by tender due date/time, the offer of bidder shall be rejected.

Public sector undertaking and Units registered with NSIC may also send the hard copy of EMD exemption document by post to Chief Manager - Procurement (P&P) at the address mentioned above.

HPCL shall not be responsible for any postal delays or non-receipt of EMD by tender due date / time, reasons whatsoever.

**Offer received without requisite EMD as explained above shall be rejected.**

## **2.0 COMPLETION PERIOD**

The duration of the contract shall be for a firm period of **4 (Four ) months** from the date of LOI.

## **3.0 BIDDER QUALIFICATION**

Bidder(s) who qualify all of the following criteria as specified in Clause 3.1 & 3.2, are only eligible to quote and bids of bidders who meet these criteria and submit supporting documents as detailed in the tender shall only be accepted.

Proposals submitted by bidders who qualify as per the following criteria shall be technically and commercially evaluated by a team of Oil Marketing Companies. Bidders are requested to carefully read the Bid Qualification Criteria and furnish authentic and complete information in response.

### **BID QUALIFICATION CRITERIA (BQC)**

#### **3.1 Financial:**

- (i) **Annual turn-over:** Bidder shall meet the minimum prescribed pre-qualification requirements as follows:

Average Annual Financial Turnover as per audited Balance Sheet and Profit & Loss account during the last three Financial Years ending March'11 shall be Rs.1.38 Crores (USD 0.28 Million). For the vendors following the Financial year closing at the end of June, September or December, the last three financial years ending with the respective quarter of 2010 will be considered

The conversion of Turnover amount to INR in the case of foreign currency shall be done on the basis of TT (Telegraphic Transfer) selling rates on the date of Bid opening (Bid due date), as available in State Bank of India, Mumbai (on the date of un-priced bid opening). In case, exchange rate is not available in State Bank of India (Mumbai), alternative sources viz. Economics Times shall be considered for all the currencies.

### 3.2 **Technical:**

a) Bidder shall have provided consultancy for setting up at least two sets of Major Incident Response Unit (MIRU) consisting of minimum 2 Emergency response centers catering to group of Oil & Gas Installations at North America (USA, Canada), Europe, Japan and Russia in the past 7 years and the same should be functional for a period of minimum one year.

The Major Incident Response Unit (MIRU) shall consist of specialist resources, self-sufficient to respond and manage fire / other emergency incidents outside the normal design events such as fires involving multiple Oil tanks or large bunded areas, Major refinery /Major Petrochemical fires ,LPG Bottling plants fires/ vapour cloud explosion, major leakage at POL/Pipeline Fires and Spills etc.,

b) Bidder shall have carried out completed consultancy jobs as above (clause 3.2

a) meeting any of the following criteria :

i) Three similar completed works, each costing not less than Rs.1.84 crores or 0.37 Million USD or

ii) Two 2 similar completed works, each costing not less than Rs.2.30 crores or 0.46 Million USD or

iii) One similar completed work costing not less than Rs.3.7 crores or 0.92 Million USD.



**Explanatory notes-** Similar completed works means the bidder should have provided consultancy for setting up MIRU as mentioned under Clause 3.2(a).

**Special Terms & Conditions**

- 1) The Consultant team shall deploy a team comprising of Minimum three members having Qualification & experience profile as given below :

| Sr.No | Team Member             | Qualification                  | Experience  |
|-------|-------------------------|--------------------------------|---|
| 1     | Team Leader             | Graduate in Engineering.       | Minimum 15 years of providing consultancy in setting up Industrial Emergency response centres comprising of Oil & Gas installations in North America (USA, Canada), Europe, Japan and Russia. |
| 2     | Fire protection Expert. | Graduate in Fire Engineering . | Minimum 5 years as an operating member of MIRU installations in North America (USA, Canada), Europe, Japan and Russia.  |
| 3     | Operations Expert       | Science/Engineering Graduate   | Minimum 10 years in operations of Oil & Gas Installations .   |

- 2) One Consultant Team member should have experience of working in Oil & Gas Installations in India for minimum period of 10 years.
- 3) Bidder shall submit the complete CV (along with documentary proof )of the all the team members along-with the bid.

**Special Instructions to the Bidders:**

1. It is estimated that about 26 days (Including Kick off meeting, location visits, meeting after location visits, Meeting with Steering panel, Draft report review and Presentation of Final report) are required for the Consultant to visit all locations as per scope /discussions at various stages in India including conclusion /review for the complete duration of the Project .There shall be no additional payments in case the work demands extend beyond the said period. Bidder has to plan and schedule all the related aspects at no additional costs to Oil Companies.

2. Time the team spends on the office based findings/analysis/study shall not have any bearing to the entire job rates.
3. All travel costs, accommodation and boarding expenses shall be borne by the bidder. No mention of it shall be made in the bid response .No claim to this effect shall be entertained.
4. In case of Job needs, a team of OMC officials may visit the Consultant's office and the MIRU set up by the consultant for familiarization etc., all necessary arrangements for enabling necessary permissions for the team to visit MIRU units/meeting Company officials shall be arranged by the Bidder at no Extra cost.

3.Bidders shall furnish documentary evidence in authentic form i.e. copies of work orders/ relevant pages of contract, completion certificate from their clients, annual reports containing audited balance sheets and profit & loss accounts statement, in the first instance itself, in support of their fulfilling the qualification criteria. HPCL reserve the right to complete the evaluation based on the details furnished without seeking any additional information. Documentary proof in the form of mere statements shall not be considered.

**4.0** Parties who are affiliates of one another can decide which Affiliate will make a bid. Only one affiliate may submit a bid. Two or more affiliates are not permitted to make separate bids directly or indirectly. If 2 or more affiliates submit a bid, then any one or all of them are liable for disqualification. However up to 3 affiliates may make a joint bid as a consortium, and in which case the conditions applicable to a consortium shall apply to them. "Affiliate" of a Party shall mean any company or legal entity which:

- (a) controls either directly or indirectly a Party, or
- (b) which is controlled directly or indirectly by a Party; or
- (c) is directly or indirectly controlled by a company, legal entity or partnership which directly or indirectly controls a Party. "Control" means actual control or ownership of at least a 50% voting or other controlling interest that gives the power to direct, or cause the direction of, the management and material business decisions of the controlled entity.

**5.0** Bids may be submitted by:

- a) a single person/ entity (called sole bidder);
- b) a newly formed incorporated joint venture (JV) which has not completed 3 financial years from the date of commencement of business;

- c) a consortium (including an unincorporated JV) having a maximum of 3 (three) members;
- d) an Indian arm of a foreign company.

**6.0** Fulfillment of Eligibility criteria and certain additional conditions in respect of each of the above four types of bidders is stated below, respectively:

- a) The sole bidder (including an incorporated JV which has completed 3 financial years after date of commencement of business) shall fulfill each eligibility criteria.
- b) In case the bidder is a newly formed and incorporated joint venture and which has not completed three financial years from the date of commencement of business, then either the said JV shall fulfill each eligibility criteria or any one constituent member/ promoter of such a JV shall fulfill each eligibility criteria. If the bid is received with the proposal that one constituent member/ promoter fulfils each eligibility criteria, then this member/promoter shall be clearly identified and he/it shall assume all obligations under the contract and provide such comfort letter/guarantees as may be required by Owner. The guarantees shall cover inter alia the commitment of the member/ promoter to complete the entire work in all respects and in a timely fashion, being bound by all the obligations under the contract, an undertaking to provide all necessary technical and financial support to the JV to ensure completion of the contract when awarded, an undertaking not to withdraw from the JV till completion of the work, etc.
- c) In case the bidder(s) is/are a consortium (including an unincorporated JV), then the following conditions shall apply:
  - 1) Each member in a consortium may only be a legal entity and not an individual person;
  - 2) the Bid shall specifically identify and describe each member of the consortium;
  - 3) the consortium member descriptions shall indicate what type of legal entity the member is and its jurisdiction of incorporation (or of establishment as a legal entity other than as a corporation) and provide evidence by a copy of the articles of incorporation (or equivalent documents);
  - 4) One participant member of the consortium shall be identified as the "Prime member" and contracting entity for the consortium;
  - 5) this prime member shall be solely responsible for all aspects of the Bid/ Proposal including the execution of all tasks and performance of all consortium obligations;
  - 6) the prime member shall fulfill each eligibility criteria;

- 7) a commitment shall be given from each of the consortium members in the form of a letter signed by a duly authorized officer clearly identifying the role of the member in the Bid and the member's commitment to perform all relevant tasks and obligations in support of the Prime/lead member of the Consortium and a commitment not to withdraw from the consortium;
- 8) No change shall be permitted in the number, nature or share holding pattern of the Consortium members after pre-qualification, without the prior written permission of the Owner.
- 9) No change in project plans, timetables or pricing will be permitted as a consequence of any withdrawal or failure to perform by a consortium member;
- 10) No consortium member shall hold less than 25% stake in a consortium;
- 11) Entities which are affiliates of one another are allowed to bid either as a sole bidder or as a consortium only;
- 12) Any person or entity can bid either singly or as a member of only one consortium.

In case the bidder is an Indian arm (subsidiary, authorized agent, branch office or affiliate) of a foreign bidder, then the foreign bidder shall have to fulfill each eligibility criteria. If such foreign company desires that the contract be entered into with the Indian arm, then a proper back to back continuing (parent company) guarantee shall be provided by the foreign company clearly stating that in case of any failure of any supply or performance of the equipment, machinery, material or plant or completion of the work in all respects and as per the warranties/ guarantees that may have been given, then the foreign company shall assume all obligations under the contract. Towards this purpose, it shall provide such comfort letter/guarantees as may be required by Owner. The guarantees shall cover inter alia the commitment of the foreign company to complete the entire work in all respects and in a timely fashion, being bound by all the obligations under the contract, an undertaking to provide all necessary technical and financial support to the Indian arm or to render the same themselves so as to ensure completion of the contract when awarded, an undertaking not to withdraw from the contract till completion of the work, etc.

**Note:**

- i) Bidder shall submit documentary evidence to substantiate the above along with their offer; HPCL reserves the right to verify the correctness of documentary evidence furnished by the bidder.
- ii) HPCL reserves the right to assess the capability and capacity of the bidder.

- iii) HPCL reserves the right to verify the successful operation and performance of qualifying MIRUs and bidder shall arrange permissions for visiting these installations.

## **7.0 PRE BID MEETING**

- i. The Bidder(s) or his designated representative, who have confirmed participation in the bidding process are invited to attend a pre-bid meeting on **18.01.2012** which will take place at HPCL, Gresham Assurance House, 2<sup>nd</sup> Floor, Sir P.M. Road, Fort, Mumbai-400 001.
- ii. The Bidder is requested to submit any queries by fax/letter/online query/email to reach us at least one week before the date of pre-bid meeting. These queries shall be replied during the pre-bid meeting to the extent possible.
- iii. Pre-bid discussion shall be confined to techno – commercial discussions and site appraisals and there shall be no revision/discussion to BQC criteria.
- iv. Minutes of meeting, including the text of the questions raised (without identifying sources of the query) and the responses given shall be posted at the web site [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com). Any modification in the bid document that may become necessary as a result of the pre-bid meeting shall be made by the owner exclusively through the issue of corrigendum/addendum posted at web site and not through the minutes of pre-bid meeting.
- v. Non-attendance of the pre-bid meeting will not be a cause for disqualification of a bidder. Last date for receiving queries is **08.02.2012**

## **8.0 GENERAL INFORMATION**

- i) Bidder can view the tender Document at HPCL website <http://www.hindustanpetroleum.com>
- ii) Bid document is non-transferable.
- iii) HPCL will not be responsible for the cost incurred in preparation and submission of bids, regardless of the conduct of outcome of the bidding process.
- iv) HPCL shall not be responsible for any expenses incurred by bidders in connection with the preparation & submission of their bids, site visit and other expenses incurred during bidding process.
- v) Fax/ e-mail bids shall not be accepted.
- vi) HPCL reserves the right to accept or reject any one or all the tenders without assigning any reason.
- vii) A firm which is not a PSU or an associate or a joint venture of a PSU, hired to provide consultancy services for preparation or implementation of project, and any

of its affiliates, will be disqualified from subsequently providing goods or works or services related to the initial assignment for the project.

- viii) Hindustan Petroleum Corporation Ltd (HPCL) has developed the "Grievance redressal Mechanism" to deal with references / grievances if any that is received from parties who participated/ intends to participate in the Corporation Tenders. The details of the same are available on [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com) website.

#### 8.1 **Bid Submission**

Bids will be received on or before **15.00 HRS IST of 15.02.2012** at the office of the Chief Manager-Procurement- HPC at the address mentioned in NIT .

Tenders to be submitted at Office of: Chief Manager- procurement

**ADDRESS OF HPCL OFFICE :**

**Gresham House, 2<sup>nd</sup> Floor, Sir P.M. Road,  
Fort, Mumbai- 400 001**

- 8.2 HPCL will follow the purchase preference and price preference policy as per prevailing guidelines of Govt. of India.

#### 9.0 **BID OPENING:**

EMD & Techno Commercial bid shall be opened on **15.02.2012 at 15.30 hrs (IST)** in the presence of authorized representative of bidders (Restricted to one [1] person per bidder Only) at the office of Chief Manager-Procurement, HPC at the following address. Price Bid of only those bidders whose offer is found meeting both PQC & techno-commercially acceptable, shall be opened on a later date as per convenience of HPC after intimation to the qualified bidders.

#### 10.0 **MODE OF SUBMISSION OF TENDER:**

Bid shall be submitted in a sealed cover superscripted "**Tender-Do not Open**". This shall contain **three separately sealed envelopes** superscripted as below.

Part-A : EMD/Bid Security for Tender No\_\_\_\_\_

Part-B : Techno-Commercial Part for Tender No\_\_\_\_\_

Part-C : Priced Part for Tender No\_\_\_\_\_

#### **11.0 PART-A: PRE-QUALIFICATION CRITERIA PART:**

This part shall contain documents and certificates sought in Pre-Qualification Criteria . This envelope shall comprise the original signed copy of tender document, addendum (if any). The envelope shall have following information clearly written on the outside of the envelope, failing which HPC will assume no responsibility for the misplacement or premature opening of the bid.

##### Part-A Pre-Qualification Criteria [Un-priced]

Name of the work \_\_\_\_\_

Tender No. \_\_\_\_\_

Due date & Time of opening: \_\_\_\_\_

From: [Name & Address of the Bidder]\_\_\_\_\_

} Bidder to fill up  
this on the top of  
the cover while  
submitting their  
offer

**Envelope shall contain the following attachments specifying attachment number arranged in the order as follows:**

- a. Tender Document marked as “ORIGINAL” duly signed and stamped on each page in token of acceptance.
- b. Tender’s experience criteria documents i.e., covering letter along with list of clientele and locations, copies of the work orders/agreement, experience certificates, performance certificates from clients and Undertakings etc. required for pre-qualification.
- c. Copy of audited Balance sheet & Auditor’s Certificates for last three years

## 12.0 PART-B: TECHNO-COMMERCIAL PART:

This part shall contain technical and commercial (Un-priced) bid.

The envelope shall have following information clearly written on the outside of the envelope, failing which HPC will assume no responsibility for the misplacement or premature opening of the bid.

Part-B Techno- Commercial bid [Un-priced]

Name of the work \_\_\_\_\_

Tender No. \_\_\_\_\_

Due date & Time of opening: \_\_\_\_\_

From: [Name & Address of the Bidder]\_\_\_\_\_

} Bidder to fill up  
this on the top of  
the cover while  
submitting their  
offer

**Envelope shall contain the following attachments specifying attachment number arranged in the order as follows:**

- a. Covering letter with details of Company
- b. Income tax PAN NO.(Foreign companies shall give details of their Indian associate/ JV partner/ Consortium etc.,)
- c. Certificate, Partnership deed in case of partnership firm [or] Memorandum and Article of Association in case of Limited Company.[or] Certificate from notary incase of proprietorship.
- d. Service Tax Number with a copy of registration certificate.
- e. EPF No with a copy of certificate.
- f. ESI No with copy of certificate.
- g. Sales Tax Registration No with a copy of certificate.



- h. Earnest Money Deposit (as per Serial No.1 above) **in a separate envelope.**
- i. Details of contact person, email id, cell no
- j. Worksheet on number of manpower/officers and approximate CTC (Cost to Company) taken for estimate

### 13.0 **PART-C SEALED PRICED BID:**

This part of the bid shall contain only the “Priced Bid” duly filled in all respects. The envelope shall have the following information clearly written on outside of the envelope, failing which HPC will assume no responsibility for the misplacement or premature opening of the bid.

#### Part-C: Priced bid

Name of the work \_\_\_\_\_  
 Tender No. \_\_\_\_\_  
 Due date & Time of opening: \_\_\_\_\_  
 From: [Name & Address of the Bidder]\_\_\_\_\_



Bidder to fill up this on the top of the cover while submitting their offer

#### **This envelope shall contain the following:**

- a. Schedule of Rates (Item rate) for subject tender shall be duly filled in both in figures and words, signed and stamped.
- b. **Part-C** of the offer shall contain only the above documents and no other conditions. All corrections must be duly stamped and signed. Any other conditions mentioned in **Part-C** shall not be taken into account and if insisted upon, the tender shall be liable for rejection.

### 14. **Contacting the owner.**

Bidder shall contact the Owner regarding technical matters on the following address:

Gopala Krishna Rao Baratam

Tel: 00912222637266

***Email: gbaratam@hpcl.co.in***

In case of any queries regarding the tender, the same may be addressed to:

C Gokulkrishnan,

Tel. 00912222608521.

***E-mail i.d.: cgokul@hpcl.co.in***

# **CHAPTER-2**

## **INSTRUCTION TO BIDDERS**

## **GENERAL:**

Oil Marketing Companies, namely, Indian Oil Corporation Ltd (IOCL), Hindustan Petroleum Corporation Ltd (HPCL) and Bharat Petroleum Corporation Ltd (BPCL), herein referred to as OMCs are Public sector National Oil Companies, under the aegis of Ministry of Petroleum and Natural Gas, Govt. of India, are engaged in Refining and marketing of petroleum products. These OMCs have their Oil Installations in cluster at various places in India.

OMCs propose to set up Major Incident Response Units (approximately 12 nos) at different locations in India and intend to engage agency/party for consultancy job to help OMCs set up Major Incident Response Units.

The Tenders are invited by HPCL on behalf of OMCs under two bid system, i.e.(A) Technical Bid with all commercial terms without price bid and (B) Price Bid for engaging Consultant who have expertise on the concept, design and development of large MIRU or MIRU (Major Incident Response Unit) for fighting large Petroleum fire of Oil Installations internationally. The tender is due on *15.02.2012 at 15.00 hrs IST.*

- 1.1 Bids are invited for the subject tender and the overall description of the activities is set out in the scope of work and technical requirements stipulated at various sections of the bid document.
- 1.2 The bidding documents are and shall remain the exclusive property of HPC and the Bidder has no right to use them for any other purpose except bidding. The successful Bidder only can use them for reference in conducting the work under bid.
- 1.3 On no account will any person to whom bidding documents are furnished, part with possession thereof, or copy or disclose the provision thereof to anyone else. The information therein is confidential, and that the bidding documents are therefore being furnished only to the Bidder in the strictest confidence.
- 1.4 Bidding documents are non-transferable.
- 1.5 The detail as called for in the bidding documents shall be filled and completed by Bidder in all respects and shall be submitted with requisite information and annexure.
- 1.6 All bid documents shall be completed in English.
- 1.7 If the space in any proforma of the bidding documents is insufficient, additional pages shall be separately added. These pages shall be numbered, also carry the bidding document number, signed by the Bidder and entered in the index in the bid.

- 1.8 Bidder shall clearly indicate his legal constitution and the person signing the bid shall state his capacity as also the source of his ability to bind the Bidder. The Power of Attorney or Authorization or other document constituting adequate proof of the ability of the Signatory to bind the Bidder, shall be annexed to the Bid. HPC may reject outright any bid unsupported by adequate proof of the signatory's authority.
- 1.9 The complete bid shall be signed and stamped by the Bidder on each page as a token of acceptance.
- 1.10 The General/Special Conditions of the Contract shall form a part of the contract.
- 1.11 Tenders shall be submitted in the office of the Chief Manager- Procurement, Gresham Assurance Bldg, Mumbai.
- 1.12 Tenders shall be submitted in the prescribed form downloaded from the web site [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com)
- 1.13 Tender documents issued shall be submitted wholly without detaching any part. The Tenderer shall agree to the terms and conditions, specifications/scope of work; etc., and quote their prices accordingly.
- 1.14 Tender shall be for the entire scope of work mentioned in the tender documents.
- 1.15 Before quoting, the tenderer shall visit the site and fully understand the scope of work under this contract, working conditions, Labor deployment requirements, risk contingencies and such other factors which may affect their tender.
- 1.16 **Validity of offer** : 120 (One hundred twenty) days from the date of opening of tender.

## **2. METHODOLOGY FOR AWARD OF CONTRACT**

### **HOW TO QUOTE:**

Vendors are required to quote in the Price bid format.

- Rates exclusive of all taxes and duties to be quoted in priced bid.
- Bidder shall submit breakup of all taxes and duties in the un-priced bid.

## 2.1. METHOD OF EVALUATION:

Scrutiny of Un-priced bids basis will be carried out as per the qualification criteria as mentioned in Bid Qualification criteria section of tender document.

### Financial Evaluation:

After Technical evaluation of the tender is over, all the qualified bidders, will be notified and PRICE BID shall be opened with prior intimation to qualified bidders.

- After opening of priced bid, the bids shall be financially evaluated based on the total cost and the lowest bidder shall be established.
- Evaluation of bids shall be done on the rates quoted by vendor in priced bid & taxes quoted extra in the unpriced bid.
- The LOI (followed by Detailed Purchase Order/s) shall be placed on overall lowest bidder.

- **SECURITY SEPOSIT**

**The consultant, with whom the contract is awarded will have to make a security deposit of one percent (1%) of the total contract value in the form of account payee crossed Demand draft drawn/bank guarantee in favour of the owner (from any scheduled banks other than co-operative bank) within 15 days from the date of intimation of acceptance of their tender, failing which the owner reserves the right to cancel the contract and forfeit the EMD.**

**Security deposit shall bear no interest and will be returned to the consultant after the completion period.**

The Detailed scope of work has been given separately in the tender document.

## 3. SITE VISIT

- 3.1 The bidder is advised to visit at least 8 nos locations (as mentioned in the scope) and examine the site of works and their surrounding and obtain for himself on his own responsibility all information that may be necessary for preparing of the bid and entering into the contract. The cost of visiting the sites shall be at bidder's own expenses. No extra claim on account of non-familiarity of site conditions shall be entertained during execution of works.
- 3.2 The bidder and any of his personnel or agents will be granted permission by the Owner to enter upon his premises and lands for the purpose of such inspection, but only upon the explicit condition that the bidder, his personnel or agents will

release and indemnify the Owner and his personnel and agents from and against all liability in respect thereof and will be responsible for personnel injury (whether fatal or otherwise), loss of or damage and expenses incurred as a result hereof.

#### **4.0 INFORMATION REQUIRED WITH BIDS**

The following details are required to be submitted along with the offer :

- a. **Audited Annual Report** for 2010-11, 2009-10 & 2008-09 by any Independent Chartered or Certified Accountant.
- b. Details of Purchase Order(s)/ Agreement along with completion certificate/ certified final bill by client in support of Clause 3.2 of NIT. The documents submitted should substantiate nature and scope of work carried out and completed by the Bidder.
- c. All information as sought in Chapter-8 (Document & Proforma) of Tender Document. Viz. Commercial Entity, Plan, Resumes of Key Personnel, Schedule for Milestones, signed Milestones Chart, Signed Min. Key personnel chart etc.
- d. Declaration for not having been banned/delisted by any Government or quasi Government agencies or PSUs.
- e. Details of PAN (Permanent Account Number ) No. and Power of attorney holder
- f. Parent Company Guarantee, if applicable
- g. Any additional information/ document required by owner.

#### **5.0 BID CLARIFICATIONS/AMENDMENTS BY HPCL**

- 5.1 HPCL may issue clarifications / amendments in the form of addendum/ corrigendum during the bidding period and may also issue amendments subsequent to receiving the bids. For the addendum/corrigendum issued during the bidding period, bidders shall confirm the inclusion of addendum/corrigendum in their bid. Bidder shall follow the instructions issued along with addendum/ corrigendum.
- 5.2 Bidders shall examine the Bidding Document thoroughly and submit to HPCL any apparent conflict, discrepancy or error. HPCL shall issue appropriate clarifications or amendments, if required. Any failure by Bidder to comply with the aforesaid shall not excuse the Bidder from performing the Services in accordance with the contract if subsequently awarded.
- 5.3 The Bidder(s) or his designated representative, who have confirmed participation in the bidding process are invited to attend a pre-bid meeting which will take place at HPCL, Gresham Assurance House, 2<sup>nd</sup> Floor, Sir P.M. Road, Fort, Mumbai-400 001.

- 5.4 The purpose of the meeting will be to clarify issues and to answer queries on any matter related to the tender and bidding process that have been raised before or during the meeting.
- 5.5 The bidder is requested, as far as possible, to submit any queries by fax/letter/email to reach owner's office not later than one week before the meeting. It may not be practicable to answer queries received late, but queries and responses/ clarification will be posted in the form of record notes at the web site [www.hindustanpetroleum.com](http://www.hindustanpetroleum.com) within one week from the date of pre-bid meeting. Any modification in the bid document that may become necessary as a result of the pre-bid meeting shall be made by the owner exclusively through the issue of corrigendum/addendum posted at web site and not through the minutes of pre-bid meeting.
- 5.6 Nonattendance in the pre-bid meeting will not be a cause for disqualification of the bidder.

#### **6.0 CONFIDENTIALITY OF DOCUMENTS**

Bidder shall treat the Bidding Document and contents therein as private and confidential and shall not use the Bidding Document for any other purposes.

#### **7.0 APPLICABLE LANGUAGE**

The bid prepared by the bidder, all correspondences and documents related to this bid shall be written in English language only. For document submitted in any other language, an English translation shall also be submitted, in which case, for the purpose of interpretation of the bid, the English translation shall govern.

#### **8.0 CAUTION AND DISCLAIMER**

Transfer of Bid document by the bidder is not permitted.

Bidder shall make his own interpretation of any and all information provided in the Bidding Document. HPCL shall not be responsible for the accuracy or completeness of such information and/or interpretation.

Although certain information's are provided in the Bidding Document, however, bidder shall be responsible for obtaining and verifying all necessary data and information as required by him.

HPCL reserves the right to accept or reject any/all tender in whole or in part without assigning any reason whatsoever.



HPCL shall not be bound to accept the lowest tender and reserves the right to accept any or more tenders in part. Decision of HPCL in this regard shall be final.

#### **8.1 RECEIPT OF BID**

Bids received late i.e. after due date and time, due to any reason (s) whatsoever shall be rejected. Bids received without requisite EMD (as specified in tender/NIT) shall also be rejected

#### **8.2 DEVIATIONS TO TENDER REQUIREMENTS**

8.2.1 The bidders are required to submit offers strictly as per the terms and conditions & scope given in the Bidding Document and not to stipulate any deviations. The offer of bidders stipulating deviations to any of the following terms/conditions will not be considered for priced bid opening. However, HPCL reserves the right to give opportunity to bidder for withdrawal of deviation to the following clauses. In case, bidders refuse to withdraw the deviation against following clauses, the offers shall be rejected without any further correspondence with them

- i) Suspension & Termination (Article 18 & 19 of Terms & Conditions)
- ii) General Warranties (Article 12 of Terms & Conditions)
- iii) Force Majeure (Article 17 of Terms & Conditions)
- iv) Scope of work
- v) Validity of offer
- vi) Payment (Article 8 of Terms & Conditions)
- vii) Arbitration (Article 27 of Terms & Conditions)
- viii) Firm Prices
- ix) Security Deposit
- x) Contract Price ( Article 7 of Terms and Conditions)
- xi) Survival of Contract Provisions (Article 28.14)
- xii) Integrity Pact
- xiii) Milestone Chart ( Document & Performance)

**Bidder's standard Terms and Conditions shall not be considered. If Bidder insists on its Terms and Conditions, it shall subject such Bid to rejection**

8.2.2 In case Bidders wish to stipulate any deviation to Bidding Document requirements other than those stated above, they shall indicate the same as per the proforma enclosed in the Bidding Document. Bidder shall note that clarification/queries/deviations mentioned elsewhere in the offer shall not be given any cognizance. However HPCL reserves their right to reject bids containing deviations to any of the Bidding Document stipulations.

### **8.3 UNSOLICITED POST BID MODIFICATION**

Bidders are advised to quote strictly as per terms and conditions of the Bidding Document and not to stipulate any deviation / exceptions. Once, quoted the bidders shall not make any subsequent price changes, whether resulting or arising out of any technical / commercial clarifications sought/allowed on any deviations or exceptions mentioned in the bid unless discussed and agreed by HPCL in writing.

### **8.4 DETERMINATION OF RESPONSIVENESS**

- i) Prior to the financial evaluation of bids, the HPCL will determine whether each bid is substantially responsive to the requirements of the Bidding Document.
- ii) For the purpose of this Clause, a substantially responsive bid is one which conforms to all the terms and conditions and specifications of the Bidding Document without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, or performance of the works or which limits in any substantial way, inconsistent with the Bidding Document, the HPCL's rights or Bidder's obligation under the Contract and retention of which deviation or reservation would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- iii) If a bid is not substantially responsive to the requirements of the Bidding Document, it may be rejected by the HPCL. Such rejection may be intimated to the Bidder.

### **9.0 EVALUATION OF PRICE BIDS**

9.1 The "PRICE BIDS" of only substantially responsive bidders and techno – commercially accepted shall be considered for opening.

9.2 Indian Bidders shall quote the prices in Indian Rupees only.

Foreign Bidders shall quote the prices in USD or in the currency of country of origin. In case the foreign bidders are submitting their offers through authorized Indian Representatives, they shall ensure that the bids are submitted strictly on their behalf & in their respective foreign currency only. Such bids in Indian Currency will not be accepted. If successful, Purchase order will be on foreign bidder only .

To facilitate evaluation & comparison, HPCL shall convert all Bid prices of foreign Bidder expressed in the amounts in various currencies in which Bid price is payable, to Indian Rupees at the TT selling rates on the date of un priced bid opening as available in State Bank of India, Mumbai . In case, exchange rate is not available in State Bank of India (Mumbai), alternative sources viz. Economics Times etc. shall be considered for all the currencies.

- 9.3 The quoted prices shall be checked to determine the arithmetical correctness of the same.
- 9.4 HPCL reserves their right to extend purchase/price preference to NSIC/Public Sector Enterprises as admissible under the existing policies of Government of India as on the date of opening un-priced bids.
- 9.5 HPCL reserves their right to negotiate the quoted price with lowest bidder.

#### **10.0 REBATE**

No suo-moto reduction in prices quoted by bidder shall be permitted after opening of the bid. If any bidder unilaterally reduces the prices quoted by him in his bid after opening of bids, the bid (s) of such bidder(s) will be liable to be rejected. Such reduction shall not be considered for comparison of prices but shall be binding on the bidder in case he happens to be a successful bidder for award of work.

#### **11.0 VERIFICATION BY OWNER**

All statements submitted by Bidder regarding experience, manpower availability, equipment and machinery availability etc., are subject to verification by the Owner either before placement of order or after placement of order. If any data submitted by the Bidder at the bid stage is found to be incorrect, the offer is liable to be rejected or the Contract is liable to be terminated.

#### **12.0 OWNER'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS**

12.1 Owner reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or Bidders or; any obligations to inform the affected Bidder or Bidders of the ground for the Owner's action.

12.2 The submission of any bid connected with these documents and specifications shall constitute an agreement that the Bidder shall have no cause for action or claim, against the Owner for rejection of his bid. The Owner shall always be at liberty to reject or accept any bid or bids at his sole discretion and any such action will not be called into question and the Bidder shall have no claim in that regard against the Owner.

### 13.0 PURCHASE ORDER (PO)

13.1 Purchase Order shall be prepared for award of the Job . Successful bidder shall be intimated regarding award of Job through Fax/Letter of Intent. Until the final PO is prepared and executed, this Bidding Document together with the annexed documents, modification, deletions agreed upon by the HPCL and Bidder's acceptance thereof shall constitute a binding contract between the successful bidder and the HPCL based on terms contained in the aforesaid documents and the finally submitted and accepted prices.

13.2 The Purchase Order shall consist of the following:

- a) Original Bidding Document along with its enclosures issued.
- b) Addendum/Corrigendum to Bidding Document issued, if any.
- c) Fax/Letter of Intent.
- d) The detailed Letter of Award/Acceptance along with Statement of Agreed Variations (if any) and enclosures attached therewith.

13.3 The statement of agreed variations shall be prepared based on the finally retained deviations, if any, by the Bidder and accepted by HPCL. All other correspondences between HPCL and the Bidder prior to issue of Fax/Letter of Intent shall be treated as Null & Void. Any deviations or stipulations made and accepted by HPCL after award of the job shall be treated as amendments to the contract document as above.

### THE FORMS /ATTACHMENTS TO THIS TENDER ARE AS UNDER:

- 1. Grievance Redressal Mechanism **Annexure I**
- 2. Bank Guarantee in lieu of EMD & security deposit– **Annexure II**
- 3. Declaration for not being Delisted **Annexure III**
- 4. Deviations ,if any **Annexure IV**
- 5. Parent company guarantee **Annexure V**
- 6. Bank Particulars for foreign bidders **Annexure VI**
- 7. Proforma for Annual Turn over **Annexure VII**
- 8. Proforma for Past experience **Annexure VIII**
- 9. Proforma for non involvement of agent **Annexure IX**
- 10. Proforma for Bidders query for Pre bid **Annexure X**
- 11. Integrity pact **Annexure XI**

# **CHAPTER-3**

## **DEFINITIONS & INTERPRETATIONS**

### **DEFINITIONS**

Except as otherwise expressly provided or unless the context otherwise requires, in this Contract, the following terms shall have the meanings set forth below:

**"Acceptance of the Work "or Provisional Acceptance "**shall mean acceptance by Owner of the Consultant's Work

**"Affiliate"** means with respect to any Person, any other Person controlling, controlled by or under common control with such Person. In this context "control" means ownership of fifty per cent (50%) or more of the voting securities or equivalent interest of a Person.

**"Approval"** means approval in writing by an authorized signatory of Owner or Consultant (as the case may be), and **"approve"** or **"approved"** shall be construed accordingly.

**"Certificate of Acceptance"** means the Certificate to be issued by the Owner in respect of the Work.

**"Consultant"** means collectively, the Successful Bidder for relevant job on whom PO has been placed, a corporation established under the laws of India, and its respective successors-in-interest and permitted assigns.

**"Consultant's Personnel"** means all directors, officers, employees and other personnel of Consultant.

**"Contract"** means this Contract and the Exhibits hereto.

**"Contract Price"** means the lump sum fixed price described in Price Bid, payable by Owner to Consultant in consideration of performing the Work, in accordance with the terms, conditions and provisions of this Contract.

**"Days"** means calendar days unless otherwise specified.

**"Design Information"** means designs, drawings, technical data, reports, surveys or other documents required as deliverable by owner to Consultant,

**"Document Control Requirements"** means the requirements for document control.

**"INR"** means legal tender currency of India.

**"Key Personnel"** means individuals who are considered by Owner to be critical to the completion of the Work in accordance with this Contract and notified by Owner to Consultant pursuant to Article 21.2 as being key personnel.

**"Lien"** means any mortgage, hypothecation, pledge, security interest, attachment, lease, claim or other encumbrance of any kind.

**"MIRU"** shall mean Emergency Response Centre

**"MIRU"** shall mean Major Incident Response Unit

**"Milestone"** means the milestone to be achieved by a specified date or within a specified period

**"Milestone Value"** means in respect of any Milestone that part of the Contract Price payable in respect of that Milestone.

**"OMC"** means Oil marketing Companies

**"Scope of Work"** means the activities set forth in tender to be undertaken by Consultant.

**"Subcontractor"** shall mean any person or entity providing services included in the Scope of Work pursuant to a subcontract with Consultant.

**"Work"** means the Design and Consultancy services more fully described in the Scope of Work to be provided in accordance with this Contract, all necessary work and services to be performed by Consultant to satisfy its obligations under this Contract.

**"CCOE"** means Chief Controller of Explosives or their nominated officials.

**"PESO"** means Petroleum & Explosives Safety Organisation.

**"Change in Law"** shall mean the occurrence after the Effective Date of any enactment of new Indian Law or the modification of existing Indian Law, or the repeal or re-enactment of any Indian Law.

**"Change Order"** shall mean the order to be issued by HPC on the Contractor for carrying out any change in scope of work (addition / deletion) as mutually agreed.

**"Contract Period"** shall mean the period during which the Agreement is valid and subsisting.

**"Expiry Date"** shall mean the date of expiry of contract period.

**"Law"** shall mean the Constitution of India and any act, rule, regulation, notification, directive, ordinance, order or instruction having the force of law enacted or issued by the Government.

**‘OISD’** means Oil Industry Safety Directorate of Govt. of India.

**“OEM”** means Original Equipment Manufacturer.

**“Owner”** means Hindustan Petroleum Corporation Ltd.

**‘Party / Vendor’** shall mean the Contractor and their respective successors, authorized representative and permitted assigns.

**‘Operator / Contractor’** shall mean the Contractor and their respective successors, authorized representative and permitted assigns.

**‘Permits’** shall mean all consents, licenses, approvals, permits, no objection certificates or other authorization of whatever nature which is required to be granted by the Government or under Law for the purpose of implementation of this Agreement and the Bid Package.

**‘Storage’** shall mean the keeping or storing of the Petroleum Products in the Storage Facility.

**‘Storage Facility’** shall mean the Petroleum Products facility available in the Terminal.

**‘Tax’** shall mean any Indian tax, duty, import or levy of any nature whatsoever and wherever charged levied, imposed by the Government together with any interest and penalties in relation thereto other than interest and penalties imposed directly as a result of any act or omission by the Contractor.

**Interpretation :**

- (a) References in the singular shall include references in plural & vice-versa. The words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, association, organization or other entities (whether or not having a separate legal personality).
- (b) References to a particular clause, paragraph, sub-paragraph or schedule shall, except where the context otherwise requires, be a reference to that clause, paragraph, sub-paragraph or schedule in or to this tender.
- (c) The word “include” & “including” are to be construed without any limitation.
- (d) No permit/license shall be treated as having been granted for the purpose of this tender unless such permit/license has been finally granted or issued by the relevant competent authority without such grant or issue being subject to any



appeal, but the possibility of proceedings for judicial review of such permit being instituted shall not prevent a permit being treated as granted unless such judicial review proceedings have, in fact, been instituted.

- (e) In determining whether any permit has been granted or renewed, or whether any written confirmation in respect of any permit has been given, on a timely basis, regard shall be had to :
- (i) the practice & procedure of the Government having jurisdiction in respect of the relevant permit :
  - (ii) any representation made by HPC, the contractor or the responsible Govt regarding the expedition with which applications for the relevant permit are to be determined & :
  - (iii) any reasonable request (having due regard to sub para (i) & (ii) above) regarding the period with in which HPC/Contractor seeks the determination of its application for the relevant permit, and the materiality of the implications of any delay in such determination, which have been made known to the Govt upon the making of its' application or in the course f its determination.

# **CHAPTER-4**

## **SCOPE OF WORK**

# **CONSULTANCY SERVICES**

## **FOR**

### **DESIGN AND DEVELOPMENT**

### **OF**

### **MAJOR INCIDENT RESPONSE UNITS (MIRU)**

#### **SCOPE OF WORK**

#### **1.0 BRIEF DESCRIPTION**

Oil Marketing Companies, namely, Indian Oil Corporation Ltd (IOCL), Hindustan Petroleum Corporation Ltd (HPCL) and Bharat Petroleum Corporation Ltd (BPCL), herein referred to as OMCs are Public sector National Oil Companies. These OMCs have their Oil Installations in clusters at various places in India.

There are approximately 300 POL Terminals , 200 LPG Bottling plants and Pipe line locations spread all across the country. OMCs propose to set up MIRU (Major Incident Response Unit) at different locations in India and intend to engage agency/party for a consultancy job to analyze and suggest so as to help the OMCs to set up MIRU.

This Global tender is floated by HPCL on behalf of OMCs for inviting response from potential firms/consultants/agencies who have expertise on the concept design and development of large MIRU Internationally for fighting large Petroleum fire of Oil/LPG Installations and controlling major oil spillage .

#### **2.0 BROAD OUTLINE OF TYPICAL MIRU**

Whereas the Indian Oil Industry complies with best practices related to prevention of emergency incidents at POL terminals/ LPG Bottling Plants , it is recognised that accidents / fires can still happen and that there must be a response capability for them. The MIRU envisaged shall have following broad outlines :

- The Major Incident Response Unit (MIRU) shall consist of specialist resources, self-sufficient to respond and manage fire / other emergency incidents outside

the normal design events for which there are equipment/systems provided On - site. This shall include incidents such as fires involving multiple tanks or large banded areas, LPG Bottling plants fires/ vapour cloud explosion, major leakage at POL/Pipeline locations.

- Each of these units shall be able to cater to emergencies upto about 300 kms, however the consultant shall advise the modalities and the area of coverage by each MIRU.
- The MIRU shall be a Centre of Excellence with constant readiness to provide this response capability in an efficient manner. It shall include the necessary trained specialist personnel and resources in terms of Buildings, Infrastructure, Communications Equipment, Training aids and Response Hardware. The MIRU personnel will direct regular exercises and procedures to ensure the constant state of readiness. The MIRU shall include all necessary hardware which can be Transported to respond to large scale Emergency Incidents.
- The conceptual requirements shall be defined in the feasibility study with detailed specifications being developed following the study but it is anticipated that they shall include, but not be limited to, suitable capacity pumps, monitors/ fire fighting chemicals, equipment and chemicals for control of oil spillage and the necessary ancillary equipment such as hoses etc.

### **3.0 SCOPE OF WORK OF CONSULTANT**

The broad scope of work shall include but not be limited to the following:

1. Consultant shall visit at least Eight locations(POL ,LPG & Refineries) in India ,review Oil handling facilities and have interaction with client to determine how the feasibility analysis shall be utilised and provide functional report. These eight locations, encompasses coastal, inland and at least one North-East Indian location. The consultant shall visit State owned Fire brigades/Fire stations at each of these locations and study the existing set up.

Each Location will be evaluated on Worst case scenario for the Maximum credible loss scenario. All evaluations will be based on International Standards like API 620,2021,NFPA 30,UL 142 and OISD(Oil Industry Safety Directorate)/PESO(Petroleum & Explosives Safety Organization)

2. Consultant shall study availability/resources of replenishment of water supply, Capabilities of foam systems on storage tanks and availability of firefighting facility from other locations.

3. Consultant shall advise the number of MIRUs strategically required in India considering geographical spread, Transportation Infrastructure, cluster of locations with minimum response time along with Scenario based fire protection review and standard Operating Procedures(SOP's).
4. Consultant shall carry out residual Basic Design, Detailed Engineering of individual facilities for preparation of detailed document on design, development and operations of MIRU.
5. Carry out cost analysis of Land , Infrastructure ,equipment, personnel, operating costs of each of the MIRU including Time lines for establishing MIRU.
6. Consultant shall develop Detailed report with Model tender document (with Schedule of rates) including detailed specification of Hardware, Communications and Infrastructure (including Buildings, Ware house/stock yard, required lay out ), proposed vendors and OEM's for setting up MIRU. The model tender document so prepared should be such that it can be used for any cluster of locations to set up MIRUs.
7. Consultant shall prepare a detailed tender document with details as below:
  - a. Suggest the model for MIRU, suitable for the Oil & Gas Installations.
  - b. Prepare the list of equipment, fire fighting chemicals and Oil Spillage control equipment with complete specifications.
  - c. Suggest the layout including block diagrams(to scale) of Buildings and Facilities.
  - d. Suggest manpower requirement with qualification and experience required to operate and maintain MIRU.

Consultant shall deploy technically qualified and experienced personnel to comply with the above.

8. Organisational set up, Manpower – Qualification, Experience and training needs.
9. Detailed philosophy, process flow on operating ,managing and maintaining the MIRU's
10. The consultant should present all the findings and recommendations to the management steering committee at various stages of the job for approval.

11. This Consultancy job shall not cover physical implementation process of setting up MIRU in India.

Subsequent to the completion of above scope of job, the consultant has to finally submit his recommendations on

- The feasibility of upgrading State owned **Fire Brigade** /Private Fire Brigade to meet the Mitigation needs of Major Incidents in Petroleum Industry.
- The feasibility of upgrading **Fire Departments of OMC Refineries** to meet the Mitigation needs of Major Incidents in Petroleum Industry.

# **CHAPTER-5**

## **TERMS AND CONDITIONS**

## TERMS AND CONDITIONS OF CONTRACT

### **ARTICLE 1 :**

#### **1.1 DEFINITIONS**

Except as otherwise expressly provided or unless the context otherwise requires, in this Contract, the following terms shall have the meanings set forth below:

**"Acceptance of the Work" or Provisional Acceptance** "shall mean acceptance by Owner of the Consultant's Work in accordance with the provisions of Article 11

.

**"Affiliate"** means with respect to any Person, any other Person controlling, controlled by or under common control with such Person. In this context "control" means ownership of fifty per cent (50%) or more of the voting securities or equivalent interest of a Person.

**"Approval"** means approval in writing by an authorized signatory of Owner or Consultant (as the case may be), and "approve" or "approved" shall be construed accordingly.

**"Approved Subcontractors"** means subcontractors approved pursuant to Article 22.1 including, without limitation, Subcontractors listed in Exhibit 5.

**"Certificate of Acceptance"** means the Certificate referred to in Article 11.1 to be issued by the Owner in respect of the Work.

**"Consultant"** means collectively, \_\_\_\_\_ [insert complete name of Consultant], a corporation established under the laws of \_\_\_\_\_ [insert state/country], and its respective successors-in-interest and permitted assigns.

**"Consultant's Personnel"** means all directors, officers, employees and other personnel of Consultant.

**"Contract"** means this Contract and the Exhibits hereto.

**"Contract Price"** means the lump sum fixed price described in Article 7.1, payable by Owner to Consultant in consideration of performing the Work, in accordance with the terms, conditions and provisions of this Contract.

**"Days"** means calendar days unless otherwise specified.



More definitions and interpretations have been included in Chapter III on 'Definitions and Interpretations'.

## **ARTICLE 2 :**

### **CONSULTANT'S WORK AND RESPONSIBILITIES:**

- 2.1 **The Work.** Consultant shall perform the Work.
- 2.2 **Additional Responsibilities.** Except as may otherwise be specifically provided in this Contract, Consultant shall be responsible for providing managerial, administrative, design and engineering services and labor, and any other items not specifically described in this Contract if:
- (a) it reasonably may be inferred in accordance with standards employed by leading engineering firms in the petroleum refining industry that the provision of such additional items or work undertaken was contemplated by or as part of this Contract and/or the Project management ; or
  - (b) the provision of such additional items or work undertaken is necessary in order for Consultant to satisfy the warranties set forth in Article 12.1 and to make the Work comply with this Contract.  
Work undertaken and additional items provided pursuant to this Article 2.2 shall not give rise to any adjustment in the Contract Price.
- 2.3 **Special Requirements.** Consultant shall comply with the project control requirements, the quality assurance requirements, the health, safety and environmental requirements contained in and the document control requirements.

## **ARTICLE 3 :**

### **SCHEDULE OF WORK:**

- 3.1 **Commencement of Work.** Consultant shall commence the Work promptly upon the Effective Date, and shall thereafter perform its obligations pursuant to this Contract in accordance with the Schedule of Work. Time is of the essence and

Consultant recognizes the importance to Owner of the completion of the Work in accordance with the Schedule of Work.

3.2 **Work Program.** Within 15 days after the Notification of Award of Contract, Consultant shall submit to Owner for approval a detailed program showing how Consultant proposes to perform the Work in accordance with the Schedule of Work.

3.3 **Approval of Program.** Owner shall, within 15 days of receipt of such program, notify Consultant in writing that:

3.3.1 The work program is approved; or

3.3.2 The work program is rejected, in which case reasons for such rejection shall be given; or

3.3.3 Further information is required to clarify or substantiate the work program.

Provided that if none of the above actions is taken within the said period of 15 days, Owner shall be deemed to have approved the program submitted subject to the exceptions listed under Article 6.4. Consultant shall, within 7 days of receiving notification under Article 3.3.3, provide the further information requested failing which the program shall be deemed to have been rejected. Owner shall, within 7 days of receipt of such further information, approve or reject the program in accordance with this Article 3.3. In the event of a program being rejected under Article 3.3.2, or deemed to have been rejected, Consultant shall within 7 days thereafter submit a revised program taking account of the reasons given for the rejection or incorporating the further information requested by Owner. After Owner's approval of such detailed program, Consultant shall comply therewith, provided that such program may thereafter be modified with Owner's prior, written consent.

3.4 **Priority of Work.** Consultant shall give the Work the high priority, and no other work of Consultant shall take precedence over the Work, nor shall Consultant make any allocation of its resources which would have the effect of delaying the timely performance of the Work.

3.5 **Maintenance of Schedule of Work.** If Consultant is not performing the Work at a rate which will maintain the Schedule of Work, Consultant shall, at its expense and without entitlement to any additional compensation, cause Consultant's Personnel to work such overtime and shall furnish such additional personnel and other resources and Materials as may be required to comply with the Schedule of Work.

3.6 **Adjustments of Schedule of Work.** The Schedule of Work shall be adjusted only

- (i) By an extension of time granted pursuant to Article 17.2, or
- (ii) When the Parties otherwise agree in writing that the Schedule of Work should be extended or accelerated.

#### **ARTICLE 4 :**

##### **CONSULTANT'S ACCEPTANCE OF THE WORK:**

- 4.1 **Acceptance of the Work.** Consultant acknowledges that it has entered into this Contract for the considerations set forth herein and that Consultant has carefully examined and satisfied itself in respect of all pertinent matters which may bear upon the performance of the Work, the calculation of the Contract Price and the determination of the Schedule of Work and all other pertinent matters and conditions.
- 4.2 **Information Provided by Owner.** The accuracy or reliability of the Design Information and of any other information supplied, prepared or commissioned at any time by Owner or any third party, including the Owner's Representative, in connection with the Setting up of MIRU Project and /or the Work is to the best of Owner's knowledge and Consultant shall exercise its knowledge and competence in scrutinizing such information.

#### **ARTICLE 5 :**

##### **STANDARDS OF PERFORMANCE :**

In performing the Work, Consultant shall conform in all respects to the standards of performance hereinafter set forth.

- 5.1 **Professional Performance.** Consultant shall perform the Work in a professional manner, using sound engineering and design principles and management and supervisory procedures, and in accordance with the highest standards of care employed by leading international engineering firms in the petroleum refining industry. Consultant represents that it has the required skills and capacity to perform the Work in the foregoing manner.
- 5.2 **Management, Design and Engineering.**
  - 5.2.1 **Management, Design and Engineering.** Consultant shall perform the Work to conform to the requirements of this Contract, including the Scope of Work.
  - 5.2.2 **Documents, Drawings and Manuals.** Consultant shall submit to Owner for approval, within the time periods specified in this Contract, or in the absence of

any specified periods, within periods mutually agreed between Owner and Consultant and if mutual agreement is not reached with the periods specified by Owner, such designs, drawings, patterns, models and manuals as may be specified in this Contract, or as may be reasonably required in order to enable Owner to approve the Work. Owner shall signify its approval or disapproval in accordance with Article 6.4. Consultant shall be responsible for any discrepancies, errors, or omissions in the documents and other particulars supplied by it whether or not such documents and particulars have been approved by Owner. Consultant shall not depart from the approved drawings, samples, patterns, models or manuals except as directed in writing by Owner.

### 5.3 **Provision of Services.**

5.3.1 **General.** Except for items required to be provided by Owner pursuant to this Contract, Consultant shall provide all services, supplies and utilities, required for the design and performance of the Work.

5.3.2 **Compliance with Codes and Standards.** Consultant agrees that the Work and all systems, components and parts of the Work shall comply with but not limited to:

- (i) those design criteria, codes and standards which are specified in or referenced by this Contract; and
- (ii) the requirements of all relevant statutes, laws, rules, regulations and the requirements of the Indian authorities, including:
  - a) Factories Act, 1948;
  - b) Petroleum Act, 1934 & the Petroleum Rules, 2002;
  - c) Tariff Advisory Committee Guidelines;
  - d) Liquid effluent discharge, as per Minimal National Standards for liquid effluents and air emissions conforming to Pollution Control Board Standards;
  - e) Civil Aviation Rules;
  - f) Indian Boiler Regulation Act;
  - g) The Electricity Act, 2003 and the Rules and Regulations made there under;
  - h) Requirement of Chief Controller of Explosives;
  - i) OISD Guidelines/norms (latest)
  - j) Pollution Control Board Stipulations/Requirements;
  - k) Requirements of Central/State Government Authorities;
  - l) MOEF stipulations/requirements.
  - m) Building and Other Construction Workers' ACT, 1996
  - n) MB LalCommittee's,OISPP& JIC Recommendation

Consultant also agrees that all design criteria, codes and standards included in this Contract, are and at all times prior to the Final Acceptance of the Work will be in compliance with the requirements of such authorities.

- iii) Any modification to the agreed Design Criteria shall be subject to Consultant providing the justification and Owner's approval of the same.

#### 5.4 **Conduct of the Work.**

- 5.4.1 **Procedures.** Consultant shall perform, design and develop the Work in accordance with the latest practicable techniques and innovations consistent with the management, engineering and design of the Work and the Schedule of Work. Consultant shall also perform the management, design and development to incorporate, consistent with the Schedule of Work, experience gained in the course of designing, developing and managing other similar work designed, developed and/or managed by Consultant.

- 5.5 **Compliance with Applicable Laws and Regulations.** Consultant shall abide by all applicable laws, regulations and ordinances of all governmental authorities and of the political subdivisions thereof applicable to this Contract and the performance by Consultant of the Work in any jurisdiction, and by all rules and regulations of those Persons and entities having control or jurisdiction over the Work. Consultant represents that it is fully aware of all of the legal requirements, business practices, and rules and regulations which must be followed when performing the Work. Consultant shall furnish to Owner, promptly upon request, such information concerning Consultant and their respective employees, personnel, servants and agents as Owner may be required to furnish to any applicable governmental agencies or authorities.

#### 5.6 **Permits and Licenses.**

- 5.6.1 **In Consultant's Name.** Consultant shall obtain and maintain any registrations, and permits (including immigration, temporary residence, work and exit permits), which are required by Indian or other foreign laws, or Indian or other foreign regulations, for the performance of the Work and which are required to be in the name of Consultant or its employees or agents.

Owner shall assist the Consultant, at the specific request of the Consultant, in the form of Recommendation/ Facilitation letters to the Departments/ Statutory bodies concerned in obtaining and maintaining such Registrations/Licenses & Permits.

- 5.6.2 **In Owner's Name.** Consultant shall provide technical assistance to Owner in obtaining and maintaining (including the preparation and submission to Owner of all documentation necessary there for), any Indian and non-Indian registrations, and permits (including import and export licenses for the Work), which are required to be in the name of Owner or its employees or agents.

- 5.7 **Cooperation with Other Consultant.** Consultant recognizes that other consultants have been, and may be, engaged by Owner to advise Owner and to perform other services with regard to the associated with the Setting up of MIRU Project . Consultant shall cooperate with Owner's other consultants, provide access to Consultant's premises and coordinate its activities with the activities of such consultants under Owner's direction.
- 5.8 **Notification of Suits and Claims; Owner's Right to Defend.**
- 5.8.1 **Consultant to Notify.** Consultant shall give Owner immediate written notice of any suit or action filed against Consultant arising out of the performance of the Work, and of any claim against Consultant which if paid could result in a claim by Consultant for indemnification or for which insurance coverage is not in effect or which will be in an amount which exceeds the amount of insurance coverage. Consultant shall promptly furnish to Owner copies of all papers received by Consultant pertinent to any such suit or action.
- 5.8.2 **Owner's Right to Defend.** If requested by Owner, Consultant shall do any and all things necessary or appropriate to effect an assignment and subrogation in favor of Owner of all Consultant's rights and claims, except against Owner, arising from or growing out of any suit, action or claim referred to in Article 5.8.1, and shall authorize Owner or Owner's designated representatives to exercise any such rights to settle or defend any such claims or take charge of any such litigation affecting Consultant. In the event of such a request by Owner, Owner shall, subject to and in accordance with Article 8.2, reimburse Consultant for the costs of such litigation incurred by Consultant, if any, including judgments, settlements, and court costs and, if Owner does not retain its own counsel, reasonable attorney's fees.
- 5.8.3 **Provision in Subcontracts.** Consultant shall cause a provision similar to this Article 5.8 to be inserted in all of its subcontracts.
- 5.9 **Conflicts of Interest; Commission Payments.**
- a) Consultant represents and agrees that no person or entity has been retained or employed to solicit this Contract upon any arrangement or understanding for the payment of any commission, fee or other compensation of any kind, except for payments to bona fide employees of Consultant. Consultant further represents that neither it, nor any of its Affiliates, nor any of their Affiliates, nor any of their respective officers, directors, employees, consultants or agents have made, received, provided or offered any such commission fee or compensation. Consultant agrees that neither it, nor any such other entity or person shall make, receive, provide or offer, any gift, entertainment, payment, loan or other consideration for the purpose of influencing the procurement of any particular Materials or services or the acceptance of any particular Subcontractor or otherwise for the purpose of influencing any individual or organization to any

course of conduct in any way relating to or affecting this Contract or the Scope of Work, except for payments permitted above to solicit this Contract and except for incentive payments by Consultant in connection with the performance of the Work.

- b) Consultant further represents and agrees that it shall not participate in any other procurement or work contracts of Setting up of MIRU Project either directly or indirectly.
- c) Consultant shall, within 30 days after notification of award of Contract, submit to the Owner a list of its Affiliates. If the Consultant is a joint venture company, within 30 days after notification of award of Contract, the Consultant shall submit to the Owner a list of Affiliates of the participants in the joint venture company, i.e. the Consultant.
- d) Consultant which is not a PSU or an associate or a joint venture of a PSU and which has been engaged to provide goods or works for Setting up of MIRU Project and any of its affiliates will be disqualified from providing consultancy services for the same project. Conversely, a firm which is not a PSU or an associate or a joint venture of a PSU, hired to provide consultancy services for the Setting up of MIRU Project, and any of its affiliates, will be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project. Consultants or any of their affiliates who are not PSUs or an associate or a joint venture of a PSU will not be hired for any assignment, which by its nature, may be in conflict with another assignment of the consultants."
- e) Breach of the foregoing warranties or agreements shall constitute a material breach of this Contract, and shall give Owner the immediate right to terminate this Contract pursuant to Article 19.1.4. Consultant shall cause a provision similar to this Article 5.9 to be inserted in all of its subcontracts.

## **ARTICLE 6 :**

### **OWNER'S RESPONSIBILITIES :**

- 6.1 **Owner** For the purposes of this Contract, "Owner" or "COMPANY" means HINDUSTAN PETROLEUM CORPORATION LIMITED (HPCL), an Indian Company having Registered Office at 17, Jamshedji Tata Road, Mumbai - 400 020 and respective successors - in - interest and permitted assigns.
- 6.2 **Owner's Representative** Upon execution of this Contract, Owner shall designate a representative ("Owner's Representative") who shall be appointed to represent Owner under this Contract and notice given to and received from Owner's Representative shall have the same effect as if given to or received from Owner. Owner shall notify Consultant of the designation of the Owner's Representative by delivering to Consultant a letter naming such person or any replacement. Except

as expressly stated in this Contract, the Owner's Representative shall have no authority to relieve the Consultant of any of its duties, obligations, liabilities or responsibilities under this Contract.

- 6.3 **Delegation** With the prior, written approval of Owner, Owner's Representative may, from time to time, delegate any of his duties to assistants, and may at any time revoke any such delegation.
- 6.4 **Approvals** Owner shall expeditiously review and, where appropriate, approve all drawings, specifications, proposals and requests submitted by Consultant pursuant to this Contract. Except as expressly otherwise specified elsewhere in this Contract, Owner shall approve within 45 working days of receipt of any such submission, in the case of submissions requiring action by governmental agencies or committees, and within 15 working days of receipt of any such submission, in the case of submissions requiring action by Owner only. If no approval is given in the case of a submission requiring action by Owner only, a note of the reasons for such non-approval shall be provided. In case no written advice, comment or instruction is received by Consultant within such periods, or within any periods for review and approval stated elsewhere in this Contract, each submission for approval shall be considered approved
- 6.5 **Information as to Local Law** If requested to do so, Owner will provide reasonable assistance to Consultant in obtaining information relating to laws, regulations and ordinances, including safety regulations, in India and applicable to the performance of Consultant's obligations hereunder.
- 6.6 **Permits and Licenses** Owner shall obtain and maintain any registrations, licenses (including import licenses for the Work), and permits which are required by any applicable Indian laws or regulations and which are required to be in the name of Owner or its employees or agents.
- 6.7 **Deleted.**
- 6.8 **RBI Permission** As applicable
- 6.9 **Additional Responsibilities.** Owner shall be responsible for the matters if specifically brought out and agreed elsewhere in the tender.

## **ARTICLE 7:**

### **CONTRACT PRICE, TAXES :**

- 7.1 **Contract Price.** A breakdown of the Contract Price shall be arrived on the basis of milestone for Item. In consideration of Consultant's agreeing to perform the



Work in accordance with this Contract, Owner shall pay to Consultant the Contract Price on a fixed price, lump sum basis. The Contract Price shall be adjusted only in accordance with Article 8.2.

**7.2 Amounts Included in the Contract Price.** The Contract Price set forth in this Contract for all items shall be inclusive, without limitation, of all costs, risk and expense, overhead, profit and/or fees related to the satisfactory performance and completion of the Work except service tax which shall be applicable extra as per Govt. Norms. The contract prices shall include any and all costs related to management, design, engineering. Said lump sum prices and other rates mentioned in Article 7.1 above shall include, but not be limited to, the costs of all management, (including, but not limited to, wages, benefits, payroll, taxes, travel expenses, and other costs related thereto as are paid to employees), all equipment, rental of third party equipment, communications equipment, communications charges (including those incurred by Owner while in Consultant's offices during visits), general administrative costs of Consultant's operation (including travel, lodging, boarding, transport facility, offices) all reproduction and graphics costs of whatever kind, stationery, postage and courier expenses, all insurance requirements and coverage, and financing, and all other costs or expenses of any type or kind whatsoever which directly or indirectly relate to accomplishing the Work and complying in full with the provisions of the Contract, and which are not otherwise set forth or referred to in the Contract as a reimbursable expense. All downtime due to weather and mechanical breakdown of the consultants equipment shall be to Consultant's account and is deemed to be included in the said fixed lump sum prices and other rates mentioned in Article 7.1 above. Excluded from the above is mechanical breakdown, failure or any other delay arising from another Contractor on the Owner.

**7.3 Taxes and Duties.**

**7.3.1 Taxes and Duties.** Consultant shall promptly pay all, and Owner shall have no obligation to reimburse or indemnify Consultant or its Subcontractors for, any taxes (except service tax), duties, tariffs, fees and other charges (including any deductions or withholdings), imposed by any competent authority in India or outside India or by any political subdivision or taxing authority or agency thereof, pursuant to any laws or regulations (whether now or hereafter in effect), on or with respect to any payments made by Owner to Consultant pursuant to this Contract, including, without limitation, payments of the Contract Price or reimbursable costs.

The statutory variation in Excise duty, Education Cess ,Service tax and Sales tax / VAT on finished goods and introduction of new tax, from bid due date till the contractual completion period shall be to HPCL account against submission of the documentary evidence. However, any increase in the rate of these taxes and duties beyond the contractual delivery period shall be to Bidder account. Any decrease in the rate of these taxes and duties shall be passed on to HPCL.

**Note to Foreign Bidders not having Permanent establishment/permanent address in India:**

As per prevailing Service tax regulations, OWNER is expected to pay service tax for quoted services availed from Foreign Service provider and will be borne by the OWNER

- 7.3.2 **Owner's Right to Withhold.** Owner may withhold or deduct from the payment of any amount otherwise payable to Consultant under this Contract, or pay on Consultant's behalf, such taxes and other sums, if any, as Owner may be required to withhold, deduct and/or pay under the laws of any jurisdiction in India or outside India or of any political subdivision or taxing authority or agency thereof, including but not limited to the income tax on the income accruing or arising or deemed to accrue or arise in India.

**ARTICLE 8:**

**PAYMENT**

8.1 **Payment of Contract Price.**

The Contract Price shall become payable by Owner in accordance with the following provisions of this Article.

8.1.1 **Completion of and Payment for Work Subject to Milestones.**

- 8.1.1.1 **Major Milestones.** Details of the Major Milestones and the Weightages of Work represented by each Major Milestone are set forth in Table-1& 2 of Section "Unpriced bid"

- 8.1.1.2 **Milestones** The Milestone values will be arrived on the basis of major Milestone schedule given in Table 1&2 of Sections "Documents & proforma" These Milestones and Milestone Values shall be used in the calculation of the Work Value pursuant to Article 19.3.1. Part payment against incomplete Milestone shall not be made.

- 8.1.1.3 **Certification** All Work which is the subject of a Milestone, shall be accomplished on or before the fixed dates or within the specified periods for achieving such Milestones as set out in the Schedule of Work. Consultant shall certify to Owner and to the Owner's Representative in writing the achievement of each Milestone (whether the Milestone was achieved by the date or within the period specified in the Schedule of Work or not), and Owner shall, within 20 days after receipt of such certification, confirm or deny the achievement of all such Milestones. Such confirmation or denial shall be indicated by Owner in writing, but such confirmation shall in no event constitute the acceptance of any Work.

- 8.1.1.4 **Contents of the Certificate.** The certificate to be issued in respect of each Milestone shall:

- (a) identify the Milestone, with reference to the Schedule of Work;

- (b) give the date on which the Work to which the Milestone relates was commenced and achieved in accordance with this Contract;
- (c) include a statement as to whether the Milestone was properly achieved in accordance with the Schedule of Work;
- (d) in any case where the date of achievement was after the date of the expiration of the period fixed by the Schedule of Work, give an explanation for the delay in achievement; and
- (e) specify the Milestone Value claimed.

#### 8.1.1.5 **Payment**

Subject to Article 8.1.1.3, Consultant shall be entitled to payment of the Milestone Value for each Milestone as achieved in accordance with this Contract. Owner shall pay to Consultant in respect of such Milestones as properly certified as complete by Consultant in accordance with Article 8.1.1.4, the relevant Milestone Value in respect of each Milestone so certified, within 15 days of receipt of certification from **Consultant**, at owner's Disbursement Section at Mumbai.

Payment shall be tendered to the consultant in electronic mode (e-payment) through any of the designated banks. The consultant will comply by furnishing full particulars of Bank account (mandate) to which the payments will be routed. Owner reserves the right to make payment in any alternate mode also.

**Payment to foreign Bidders**– Mode of payment to foreign Bidders shall be through Electronic Fund Transfer to bidders bank account. The bidders are required to provide Name and address of their bank, Bank Account No, SWIFT code & IBAN No for this purpose. Bank charges on HPCL Bank side as well as successful bidders bank end shall be to bidders account

In case of foreign Vendor, all remittance of Rupee component shall be made directly to the Vendor payable within India against Bills duly certified by the Bidder. For this purpose, Vendor shall undertake necessary formalities including opening of bank account in India. All connected liabilities on account of this shall be to Vendor's account.

- (i) Only the charges of Owner's Bank in India shall be to Owner's account. All other Bank charges including those in Bidder's country shall be to Bidder's account.
- (ii) All payments shall be made in the Currency quoted.
- (iii) No Interest charges for delay in payments, if any, shall be payable by the Owner.

- (iv) No variation in payment terms shall be accepted for Foreign Bidders and deviation from above will make their bid NON-RESPONSIVE.

## **8.2 Reimbursable Costs**

8.2.1 **Reimbursable Costs** Consultant shall not be entitled to any adjustment of the Contract Price to be paid pursuant to Article 8.1 except in respect of reimbursable costs pursuant to:

8.2.1.1 Articles 5.8.2, 9.3, 12.2.2, 19.3.2(b) and ; or

8.2.1.2 any supplemental agreement in writing between Owner and Consultant providing that any further costs should be reimbursed to the Consultant.

8.2.2 **Calculation of Cost** Such costs shall be calculated by reference to the breakdown of prices or if in Owner's opinion there is no applicable price, on the basis of actual cost to Consultant. Owner's opinion in this regard shall be final and binding on the Consultant.

8.2.3 **Submission of Invoice** Consultant shall submit to Owner an invoice stating the amount for payment against certified Milestones as per Article 8.1.1.

8.2.4 **Payment of Invoice** Owner shall pay the invoice submitted by Consultant pursuant to Article 8.2.3 within 15 days after receipt of certified bills at Disbursement Section at Mumbai; provided, however, that if any item on such invoice is disputed by Owner, Owner shall promptly notify Consultant as to such item, the amount thereof, and the reasons why such item is being disputed, and Owner may deduct the amount thereof from such invoice pending resolution of the matter, but shall pay the undisputed items on such invoice in accordance with the provisions of this Article 8.2.4.

8.2.5 **Future variations in Taxes** :Variations of taxes and duties arising out of the amendments to the Central / Stateenactments, in respect of services covered under this bid shall be to HPCL's account, so long as :

- They relate to the period after the opening of the un-price bid, but before the contracted completion period (excluding permitted extensions due to delay on account of the consultant, if any) or the actual completion period, whichever is earlier; and
- The vendor furnishes documentary evidence of incurrence of such variations, in addition to the invoices/documents for claiming Cenvat /Input Tax credit, service tax, wherever applicable. The adjustment will be effected on pro rata basis, however no adjustment in Contract Price shall be made for any variation in direct taxes (Corporate Tax, Income Tax, Withholding Tax etc.).

**8.3 : Retainage – Not Applicable**

#### 8.4 **General Terms of Payment.**

- 8.4.1 **Accounts** All payments by Owner to Consultant pursuant to Articles 8.1 and 8.2, shall be made by e-payment to an account or accounts to be designated by Consultant and maintained by Consultant, or by such other person or entity as Consultant may from time to time designate, with a bank or banks in in which Consultant's relevant bank account is located and shall be deemed to have been fully discharged when deposited in the account or accounts designated by Consultant as aforesaid, provided that, once all acts necessary to initiate the relevant wire transfer have been completed within the time specified for such payment, any delays within the international or domestic banking system in the transfer of such payments to Consultant's account or accounts as aforesaid shall not give rise to a claim that Owner has breached its payment obligations hereunder. If funds are not received in the account or accounts designated by Consultant, Owner will furnish upon Consultant's written request, documentary substantiation that all acts necessary to initiate the transfer of such funds have been taken by Owner's bank or banks. All costs associated with such wire transfer and incurred in India shall be on Owner's account, and all other costs shall be on Consultant's account.
- 8.4.2 **Currencies** All appropriations for invoices submitted for payment pursuant to this Article, and all payments by Owner to Consultant shall be made in INR.
- 8.4.3 **Effect of Payment** The making of any payment shall in no event constitute the acceptance by Owner of any Work performed by Consultant pursuant to this Contract.

#### **ARTICLE 9 :**

##### **CHANGES :**

- 9.1 **Changes** Consultant agrees to effect such changes in the Work as Owner may, from time to time, request. Any request by Owner for a change shall be delivered to Consultant in writing and shall be sufficiently definite and detailed to give Consultant an adequate basis on which to prepare a preliminary change order pursuant to Article 9.2. Throughout the performance of the Work, Consultant shall have a continuing obligation to propose to Owner for Owner's consideration:
- (a) all such changes as Consultant considers desirable including, any change which in the Consultant's opinion will reduce the cost of the Work, or improve the efficiency or value to Owner, or may otherwise be of benefit to Owner; and
  - (b) such other changes known to Consultant as may be necessary to incorporate significant new developments in technology which are applicable or appropriate to the Work.

Consultant shall submit any such proposal in the form of a preliminary change order, at its own cost. The preliminary change order shall give all details, documents etc. mentioned in Article 9.2.

- 9.2 **Preliminary Change Orders** Upon receipt of Owner's request for a change, Consultant shall prepare a preliminary change order and furnish same to Owner within a reasonable period of time following receipt of such request. Each preliminary change order submitted by Consultant to Owner pursuant to this Article 9.2, shall be in writing and be accompanied by such information and data as will be required by Owner to evaluate properly the proposed execution of the work in question, the effect on the Scope of Work, the Schedule of Work, Consultant's standards of performance, the Basic Design, the technical soundness of the Work, the Detailed Engineering, the other undertakings by Consultant and the General Warranties contained in this Contract and the effect on the Contract Price, if any.
- 9.3 **Change Orders** Except as provided in Article 9.4, before Consultant deviates from the Scope of Work or the Schedule of Work, or acts upon any preliminary change order, the Parties shall have executed, in advance, a written change order (which may be the preliminary change order signed by both Parties), incorporating the changes in question and providing for any change in any Milestone, Milestone Value, the Schedule of Work or other dates or periods for completion, any agreed cost consequences and any change in the Scope of Work, Consultant's standards of performance, General Warranties, the technical soundness of the Work or other provisions of this Contract in each case resulting from the change order. Any increased costs shall be paid by Owner to Consultant subject to and in accordance with Article 8.2; provided, however, that except as provided in Article 9.4, Owner shall not be liable to pay for any changes for which a written change order shall not have been executed in advance by the Parties. If the change results in a reduction in Consultant's costs the Contract Price shall be reduced accordingly. In calculating cost adjustments under this Article 9, the prices set forth in Contract Price breakdown & Unit Rates shall be used to the extent covered thereby, and actual costs of Consultant shall be used for determining other costs. Any cost adjustment shall take into account, among other things, the elimination or avoidance of Work to be performed resulting from the changes in the Scope of Work and from assistance given by Owner.
- 9.4 **Performance of Change Pending Agreement** If Owner and Consultant fail to agree on the cost effect of a change, or the effect on the Schedule of Work, or any of the other matters referred to in Article 9.3, and as a result, a change order of the type referred to in Article 9.3 is not executed, Owner may nevertheless require Consultant to perform the Work as changed by delivering to Consultant a change order signed by Owner, unless the aggregate amount of increased costs as fixed by Owner involved in all disputed change orders would thereupon exceed five percent (5%) of the Contract Price. Consultant's performance of the Work as changed shall not prejudice either Party's position regarding the effects of such change.

9.5 **Variations in Price** Except as otherwise provided in this Contract, any increase in costs resulting from any change under this Article 9 shall be on the account of Owner, provided that no cost adjustment shall be granted with respect to a change if:

- (i) the provision of the additional Work or services is necessary in order for Consultant to satisfy its responsibility to make the Work comply with this Contract; or
- (ii) the additional Work or services are required because of delays in the Schedule of Work attributable to Consultant or to late deliveries of services or to labor shortages; or
- (iii) the additional Work or services are required because of a breach of Consultant's General Warranties set forth in Article 12; or
- (iv) the change relates to reperformance of any of the Work because of Consultant's failure to follow the requirements of this Contract.

9.6 **Non Allowable Changes** The following shall not be considered under any circumstances as changes in the Work, or within or to the Scope of Work or the Project management or the Basic Design and Detailed Engineering, nor shall any of the following be taken into account when calculating the cost consequences of changes pursuant to this Article 9, nor shall any of the following of themselves be considered the basis for any adjustment pursuant to this Article 9:

- (i) any escalation in the cost of the Work or labor thereof;
- (ii) any increase in manpower hourly rates; and/or
- (iii) currency fluctuations in respect of costs included within the Contract Price.

In addition, a request by Owner that Consultant perform services or provide work not specifically included within the Scope of Work will not be considered a request for a change in the Scope of Work if it is reasonable to infer that the services or work requested were intended to be within this Contract or are necessary to make the Work comply with this Contract.

## **ARTICLE 10 :**

### **RIGHT TO INSPECT :**

10.1 **Inspection and Examination** All management, design, development by Consultant or for which Consultant is responsible, shall be subject during normal business hours to inspection by Owner, Owner's Representative, or Owner's

designated consultants and/or other representatives, at any and all times during management, design and development and at any and all places where such management, design and development are carried on, provided such inspection shall, to the extent possible, be carried out in conjunction with Consultant's similar activities and, if not, upon prior consultation with Consultant in order to avoid any unreasonable delay in the performance of the Work. In furtherance of the foregoing, Consultant shall arrange for Owner to have access to all places where design and development are being carried out.

- 10.2 **Rejection and Replacement** Owner and its designated consultants and representative shall have the right to reject any portion of the Work which is deficient, not within specifications and shall be satisfactorily redone. For reasons solely attributable to Consultant, the cost associated with such re-performance shall be on the sole account of Consultant and not reimbursable. After completion of the necessary performance, the relevant work shall be subject to further inspection and examination by Owner and its designated consultants and representatives.
- 10.3 **Consultant to Furnish Supplies and Services for Inspection** Not applicable
- 10.4 **Inspection on behalf of Third Parties** Not applicable
- 10.5 **Consequences of Inspection or Failure to Inspect** The right of inspection by Owner and by its designated consultants and representatives is intended solely for Owner's benefit, it being understood that no exercise of or failure to exercise such right shall relieve Consultant of any of its obligations hereunder or prejudice any of Owner's rights under this Contract.

## **ARTICLE 11 :**

### **ACCEPTANCE PROCEDURE:**

- 11.1 **Notice of Acceptance.** Subject to Article 11.2, Consultant shall notify Owner in writing when Consultant believes that it has completed the Work. Within 15 days after receipt of Consultant's notice of such completion of the Work, Owner shall advise Consultant in writing of any portions of the Work which remain to be performed, and Consultant shall thereupon complete such portions and again notify Owner in writing that Consultant believes that the Work has been completed. Within 15 days after receipt from Consultant of each subsequent notice of completion of the Work, Owner shall advise Consultant of any continuing or additional portions of the Work which remain to be performed. Owner shall issue a Certificate of Acceptance of the Work (the "Certificate of Acceptance"), after the Work has been completed and accepted, and dated to reflect the actual



date of Acceptance of the Work. This procedure shall be applied for both Provisional & Final Acceptance of the work

11.2 **Conditions.** The issue of the Certificate of Acceptance shall be conditional upon:

- (i) legally effective releases, executed by Consultant and any persons claiming by, through, under or against Consultant who might have an interest in the Work or part thereof adverse to Owner, of all claims and liens against Owner arising under or by virtue of this Contract, except such claims and liens, if any, in such stated amounts which Consultant, with the written consent of Owner, may exclude from the operation of such releases; and
- (ii) Consultant's written declaration, together with such supporting documents as Owner may reasonably require, that all claims and demands against, and debts incurred by Consultant, in respect of this Contract, have been settled, except claims excluded with the consent of Owner from the releases referred to in the foregoing sub Article (i), and all taxes due and payable by Consultant pursuant to Article 7 have been paid or otherwise provided for.

11.3 **Discretion of Owner.** Notwithstanding the foregoing, Owner, in its sole discretion, may accept the Work at any time and issue a Certificate of Acceptance even if, after corrective measures have been taken by Consultant, the Work as a whole does not satisfy the requirements of this Contract. Such acceptance and such notice shall not relieve Consultant of its obligations under this Contract unless:

- (i) Owner fails to give Consultant access to the Work or part thereof to effect the requested or required corrections within 60 calendar days of the date Consultant makes written request therefore; and
- (ii) Consultant is ready, willing and able to perform such corrections within such period.

11.4 **Costs of Corrections** If Consultant is required to correct any defects or deficiencies in the Work in connection with the issue of the Certificate of Acceptance of the Work pursuant to this Article 11, or which result from a breach of Consultant's General Warranties or otherwise in accordance with the terms of this Contract, the costs associated with the correction of such defects or deficiencies shall be on the sole account of Consultant and shall not be reimbursable.

## **ARTICLE 12 :**

### **GENERAL WARRANTIES :**

12.1 **General Warranties.** Consultant warrants that:

12.1.1 **Personnel.** All professional personnel of Consultant and its Subcontractors shall have proper qualifications for the Work assigned to them hereunder.

12.1.2 **Standard of Care and Work** Consultant and each Subcontractor shall perform their obligations under this Contract in conformity with the highest international standards.

12.1.3 **Management, Design and Development** The management, design and development of the Work shall conform with this Contract and shall be free of defects and deficiencies. The management, design and development shall be such that the Work shall comply with the terms of this Contract and shall meet all design, safety and performance and other criteria as specified herein.

12.1.4 **Work** The Work shall be fit for the purposes and uses intended and capable of use in the manner contemplated in this Contract.

## 12.2 **Remediation.**

12.2.1 **Notice.** At any time Owner may, till the Final Acceptance of Work, by notice in writing to Consultant, require Consultant to remedy any defect in the Work by re-performance or replacement.

12.2.2 **Obligation to Remedy Breach.** Consultant shall be obligated to effect, at its own expense, in the shortest practicable time, such re-performance as are necessary to remedy the breach of any provision hereof as the result of such breach. In case of any defect or deficiency in the Work arising till the date of Final Acceptance of the Work which has not resulted from a failure by Consultant to perform its obligations under this Contract . Consultant shall nevertheless correct such defect or deficiency.

12.2.3 **Program for Reperformance and Replacements.** As soon as practicable, and in any event within 5 days after the receipt by Consultant of Owner's notice under Article 12.2.1, Consultant shall submit for Owner's approval, a plan for effecting the re-performance required to remedy such breach

12.2.4 **Owner's Recourse.** If Consultant does not begin its plan for re-performance within the time mutually agreed, or if Consultant and Owner fail to reach agreement on such a program within 5 days of the receipt by Owner of Consultant's plan submitted pursuant to Article 12.2.3, Owner, after advising Consultant in writing, shall be entitled, at its option and at Consultant's reasonable expense, to perform or have third parties perform such work or services as is necessary to remedy or cause to be remedied such breach or to pursue such other remedies as may be available to it under this contract or at law. Reasonableness of the expenses as aforesaid shall be judged in relation to the expenses that the Consultant would have incurred at the time of said re-

performance of Work. Recourse under this Article 12.2.4 shall not prejudice Owner's rights under Article 19.

12.2.5 **Other Rights and Remedies.** The rights and remedies of Owner provided by this Article 12.2 are in addition to any other rights and remedies provided at law or in equity or otherwise.

12.2.6 **Limitations to Consultant's Warranty.** Notwithstanding Consultant's obligations under the Contract in relation to the re-performance or replacement of defective Work, Consultant's liability to Owner in respect of such re-performance or replacement shall be limited to 20% of the Contract Price in the aggregate, in excess of which sum Owner shall save indemnify and hold harmless Consultant.

12.3 **Special Completion Warranty.**

12.3.1 **Special Completion Warranty.** Without limiting the effect of the General Warranties or any other provision of this Contract, Consultant Warrants that completion of Work, shall occur no later than the delivery periods specified in the Tender Document subject to and in accordance with Article 17.2.

12.3.2 **Effect of Breach.** Time is of the essence of the performance by Consultant of its obligations under this Contract. In addition, therefore, to Owner's rights under Article 3.1, if Consultant breaches the special completion warranty set forth in Article 12.3.1 and provided such breach is solely on account of reasons attributable to Consultant, Consultant shall pay to Owner as liquidated damages for delay (and not as a penalty) one-half percent (0.5%) of the Contract Price as of the date of execution of this Contract for each week of delay in completing Work up to a maximum aggregate amount in respect of such delay of five percent (5%) of the Contract Price as at the date of execution of this Contract.

12.3.3 **Payments.** Any amount required to be paid by Consultant pursuant to Article 12.3.2 may be deducted by Owner from any amounts otherwise payable to Consultant in accordance with Article 8. If no such amounts remain to be paid or if the aggregate of such amounts remaining to be paid is less than the amount payable by Consultant under Article 12.3.2, Owner shall deliver an invoice to Consultant for the amount due on the balance thereof and Consultant shall pay such amount upon demand to such bank account as Owner shall designate. The provisions of this Article 12.3 shall be without prejudice to Owner's rights under Article 19.

12.3.4 **Effect of Acceptance.** Subsequent Acceptance of the Work shall not affect Consultant's obligation, if any, to make payments due in accordance with this Article 12.3.

12.4 **Deleted**

## **ARTICLE 13 :**

### **EFFECT OF APPROVALS, ACCEPTANCE AND PAYMENT :**

The obligations of Consultant hereunder shall not, except as expressly provided herein, be reduced or affected by any inspection, test, approval or payment, whether preliminary or final, or by the Certificate of Acceptance of the Work, it being agreed that the obligations of Consultant hereunder shall continue until Final Acceptance of Work.

## **ARTICLE 14 :**

### **TITLE :**

- 14.1 **Title to Work.** Consultant agrees that title to the Work or any part thereof shall pass to Owner from Consultant upon commencement of the Work, or any portion thereof, by Consultant. Consultant shall, however, retain care, custody, and control of the Work and exercise due care thereof. Such transfer of title shall in no way affect Owner's rights under any other provision of this Contract.
- 14.2 **Warranty of Title.** Consultant warrants good title to the Work.
- 14.3 **Protection of Title.** For the purpose of protecting Owner's interest in all Work with respect to which title has passed to Owner but which remains in the possession of another party, Consultant shall take or cause to be taken all steps necessary under the laws of the appropriate jurisdictions to protect Owner's title and to protect Owner against claims by other parties with respect thereto. If, after notice in writing from Owner and the lapse of a reasonable time in which to obtain a discharge, Consultant fails to discharge, or, in a manner acceptable to Owner, effectively to provide for such discharge or to secure Owner against any Lien or claim upon the Work, arising from Consultant's or a Subcontractor's performance of the Work, Owner shall have the right, at its option, upon notice in writing to Consultant to provide by agreement, payment or otherwise for the discharge of such Lien or claim. Consultant shall reimburse Owner for all amounts expended by Owner to obtain such discharge, including all costs and attorneys' fees and expenses. Consultant shall cause the Work to be suitably marked with an identifying mark or symbol indicating that the Work is the property of Owner.
- 14.4 **Ownership of Designs and Drawings.** All designs, drawings, specifications, data, computer printouts, programs and files, documents, reports, studies, manuals, programs, analysis and all other items produced by Consultant or Subcontractors in the performance of the Work (herein collectively referred to as the "Work Product"), shall become and remain the property of Owner, and Consultant shall deliver the Work Product (properly sorted and indexed), to Owner in accordance with the provisions of this Contract and in any event upon

termination of this Contract. The provisions of this Article 14.4 shall survive any termination of this Contract.

## **ARTICLE 15 :**

### **PROPRIETARY INFORMATION; COMPUTER DATA; LICENSES AND INVENTIONS**

#### **15.1 Proprietary Information of Owner.**

**15.1.1 Proprietary Information Defined.** As used in this Article 15, "Proprietary Information", shall mean all information which Consultant, directly or indirectly, acquires from Owner or its Affiliates or from the performance of the Work, or any other information concerning the technical and business activities and know-how of Owner or its Affiliates, except information falling into any of the following categories:

- (a) information which, prior to the time of disclosure hereunder, is lawfully in the public domain;
- (b) information which, after disclosure hereunder, enters the public domain, except where such entry is the result of Consultant's or a Subcontractor's breach of this Contract;
- (c) information, other than that obtained from third parties which, prior to disclosure hereunder, was already lawfully in Consultant's possession either without limitation on disclosure to others or which subsequently becomes free of such limitation;
- (d) information obtained by Consultant from a third party who is lawfully in possession of such information and not subject to a contractual or fiduciary relationship to Owner or any of its Affiliates with respect to said information; it being understood that Consultant may use and disclose such information in accordance with the terms under which it was provided by such third party; and
- (e) information obtained pursuant to any confidentiality agreement to which Owner and Consultant are, or shall become, parties.

**15.1.2 Consultant's Procedures.** Consultant represents that it has a policy and procedure designed to protect trade secret rights and its own proprietary information including notices to its employees to prevent unauthorized copying, publication and disclosure of such information. Consultant agrees that Proprietary Information shall be subject to such policy and procedure. In addition, Consultant agrees that it shall not disclose any Proprietary Information, nor use Proprietary Information other than on Owner's behalf, except as Owner may otherwise authorize in writing. If disclosure to a third party is so authorized, Consultant shall first enter into a written confidentiality agreement with said party containing the same terms and conditions with respect to use or disclosure of Proprietary Information as this Article 15.1 contains.

- 15.1.3 **Documents.** Consultant also agrees to safeguard any documents and information which Owner may supply to Consultant hereunder. Consultant may make copies of such documents only to the extent necessary for the performance of the Work. On completion of the Work, Consultant agrees to return to Owner all documents supplied by Owner and to destroy all copies thereof. Should Consultant, however, desire to retain certain documents and receives Owner's written approval therefore, Consultant shall treat said documents as it does Proprietary Information.
- 15.1.4 **Confidentiality Agreements with Third Parties.** Consultant also agrees to enter into written confidentiality agreements with third parties upon Owner's request and to keep in force confidentiality agreements concerning third parties' proprietary information, which agreements shall permit Consultant to use such parties' proprietary information in the Work.
- 15.2 **Consultant's Confidential Information.** It is not Owner's desire to be afforded access to Consultant's or any Subcontractor's confidential information. It is therefore agreed that any information which Consultant or Subcontractors supply to Owner shall not be subject to any obligation of confidence, (notices on drawings, proposals, graphs, tables, specifications and the like to the contrary notwithstanding), and Owner shall not be liable for any use or disclosure of any of such information unless such information is the subject of an express written confidentiality agreement between Owner and Consultant. Consultant also agrees that it will not disclose to Owner any information which is subject to an obligation of confidence by Consultant or any Subcontractor to any third persons.
- 15.3 **Computer Data.** Consultant undertakes to assure to Owner access to the computer programs and computer data used by Consultant in the performance of the Work for use by or on behalf of Owner for 2 years from the Acceptance of Work as a whole, and shall deliver details of all computer programs underlying the development of technical data and the technical reports generated with the respective programs used in the design along with relevant supplemental information.
- 15.4 **Licenses.** On or before the date of the Certificate of Acceptance of the Work, Consultant shall deliver or cause to be delivered to Owner, such licenses of all patents and other proprietary rights held by Consultant, any Subcontractor, or any of their respective Affiliates as may be required for Owner in the optimal use of the Work in the manner intended. Such licenses shall be in such form as shall be approved by Owner, shall be perpetual, irrevocable, non-exclusive and royalty free to Owner, and shall permit the right to grant sublicenses to any operator of the Setting up of MIRU Project for the purposes of operation thereof.

## **ARTICLE 16:**

### **FRUSTRATION:**

In the event of this Contract being frustrated whether by war or by any other supervening event which may occur independently of the will of the Parties, the sum payable by the Owner to Consultant shall be the same as that which would have been payable under Articles 19.3.2 (a) and (b) if this Contract had been terminated in accordance with Article 19.1.3 or 19.2.2, provided that this Contract shall not be frustrated by any of the events listed in Article 17.1.4.

## **ARTICLE 17 :**

### **FORCE MAJEURE AND EXTENSIONS OF TIME :**

#### **17.1 Force Majeure**

**17.1.1 Events of Force Majeure.** For purposes of this Contract, "Event of Force Majeure", shall mean, any circumstance not within the reasonable control of the Party affected and which, despite the exercise of reasonable diligence, such Party is unable to prevent, avoid or remove.

**17.1.2 Effect of Force Majeure.** Should any Event of Force Majeure prevent or delay the performance by a Party of any of its obligations under this Contract (other than a payment obligation when, as and if due hereunder) then, provided that notice is given to the other Party in accordance with the provisions of Article 17.1.5, the Party which is prevented or delayed in the performance of its obligations, shall be excused from performance in accordance with the time specified in this Contract, for so long as the relevant Event of Force Majeure continues, and to the extent that such Party's performance is prevented, hindered or delayed, such Party shall be excused from performance of the obligations prevented, hindered or delayed until the expiration of any extension of time agreed between the Parties or granted to Consultant in accordance with Article 17.2.

**17.1.3 Instances of Force Majeure.** Events of Force Majeure shall include, without limitation, but subject to the provisions of Articles 17.1.1 and 17.1.4, the following:

- (a) acts of God;
- (b) acts of war or the public enemy whether war be declared or not;
- (c) public disorders, insurrection, revolution, rebellion, sabotage, riots or violent demonstrations;
- (d) explosions, fires, earthquakes, flood, cyclone, epidemic or other natural calamities; and
- (e) strikes or lockouts or other industrial action by workers or employees, other than Consultant's or any Subcontractor's personnel, workers or employees.
- (f) Law & Order problems , proclamation, regulations of ordinance of any Government or Subdivision or Statutory Authority.

**17.1.4 Certain Delays not Excused.** Notwithstanding that an Event of Force Majeure may otherwise exist, the provisions of this Article 17 shall not excuse:

- (a) late performance or delivery of Work caused by Subcontractors or by inefficiencies on the part of Consultant or Subcontractors;
- (b) late performance by Consultant or any Subcontractor caused by Consultant's or any Subcontractor's failure to hire an adequate number of personnel or labor or by inefficiencies on the part of Consultant or any Subcontractor;
- (c) submission of designs, drawings or other documents or information for approval at such a time which does not leave sufficient time to permit an orderly review thereof prior to development of the Work; or
- (d) delays resulting from inclement weather conditions of any kind or from any other similar cause.

17.1.5 **Notice of Force Majeure; Procedure.** If either Party desires to invoke an Event of Force Majeure as a cause for delay in the performance of any obligation hereunder, that Party shall, not later than 10 days after the commencement of such Event of Force Majeure, give written notice to the other Party of:

- (a) the date of commencement and nature of the Event of Force Majeure; and
- (b) the date on which the Event of Force Majeure terminated (if before the date of notice), alternatively, if the Event of Force Majeure is continuing, its expected duration.

17.1.6 **Mitigation of Delay.** The Party affected by the Event of Force Majeure shall use all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate acceptable sources of services, and reasonable adjustment of Work activities.

17.1.7 **Costs During Force Majeure.** In the event of an Event of Force Majeure, each Party shall bear any costs incurred by it resulting there from.

## 17.2 **Extensions of Time.**

17.2.1 **Relevant Events.** Consultant may apply to Owner for an extension of time in respect of any Milestone, if any, if the following events occur ("Relevant Event"), which delays or prevents, or will delay or prevent, Consultant from achieving such Milestone by the time specified in the Schedule of Work:

- (a) a Change Order under Article 9;
- (b) an Event of Force Majeure;
- (c) a notice of suspension served under Article 18; or
- (d) any delay, impediment or prevention by Owner.

17.2.2 **Certain Delays not Excused.** Consultant shall not be entitled to any extension of time in respect of any delays caused directly or indirectly by any of the following:



- (a) any default by Consultant; or
- (b) Inclement weather conditions adversely affecting the progress of the Work (including, without limitation, monsoon or other storm conditions); or
- (c) any event which is not expressly provided for in article 17.2.1(a) to (e) as a Relevant Event.

17.2.3 **Mitigation of Delay.** Consultant shall use and continue to use its best endeavors to reschedule work activities to avoid or reduce the effects of any Relevant Event upon achievement of each Milestone.

17.2.4 **Notice.** If Consultant wishes to pursue a claim for an extension of time, Consultant shall, not later than 10 days after the commencement of the Relevant Event in respect of which the extension of time is claimed, give written notice (in addition to any other notice which may be required under this Contract) to Owner, which:

- (a) gives full and detailed particulars of the cause of the delay;
- (b) specifies which of the Relevant Events listed in Article 17.2.1(a) to (e) Consultant considers to be applicable;
- (c) gives the date on which the Relevant Event relied upon commenced, and, if the Relevant Event has ceased, the date on which it ceased, or, if the Relevant Event is continuing, the expected duration; and
- (d) gives full and detailed particulars of:
  - (i) the effect of any delay to date and of any further delay which may reasonably be expected upon the Schedule of Work; and
  - (ii) the measures which Consultant has adopted to date and/or proposes to adopt or continue to adopt pursuant to Article 17.2.3 in order to minimize the effects of any delay to date and of any future delay.

17.2.5 **Supporting Documentation.** Consultant shall keep such contemporary records as may be necessary to substantiate any application, at a location acceptable to Owner, and such other records as Owner may reasonably request. Consultant shall permit Owner to inspect all such records and shall provide Owner with copies as required.

17.2.6 **Procedure.** Upon receipt of a notice served in accordance with Article 17.2.4, Owner and Consultant shall endeavor to agree the period of extension of time in respect of the relevant Milestone(s), if any, to which Consultant is entitled and any necessary consequential adjustments to the Schedule of Work. Any such agreement shall be recorded in writing signed by Owner and by Consultant. If the Parties are unable to agree, Owner shall grant to Consultant such extension of time (if any), as it considers in the circumstances to be appropriate and reasonable, which decision shall be final and binding on the Consultant. Such an extension of time shall be notified in writing to Consultant by Owner.

## **ARTICLE 18 :**

### **SUSPENSIONS :**

- 18.1 **Suspension.** Owner may at any time, and from time to time, and for any reason, by written notice to Consultant, suspend further performance of the Work. Any notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon the date specified in any such notice of suspension, Consultant shall promptly suspend further performance of the Work, and during the period of such suspension shall properly care for and protect the Work including all design work in progress.
- Owner may, at any time, terminate the suspension by written notice to Consultant specifying the effective date of termination, and Consultant shall use its best efforts to resume performance of its obligations pursuant to this Contract immediately upon receipt of such notice. If Consultant's performance of the Work has been delayed as a result of such a suspension, the Consultant shall be entitled to an extension of time in respect of relevant Milestone(s), subject to and in accordance with Article 17.2.

- 18.2 **Deleted**

## **ARTICLE 19:**

### **TERMINATION:**

- 19.1 **Owner's Right to Terminate.** Owner may terminate this Contract as follows:
- 19.1.1 **Convenience.** Owner may terminate this Contract for its convenience at any time and without cause. In such event, Owner shall give Consultant not less than 30 days written notice of its decision to terminate this Contract.
- 19.1.2 **Basic design/Detailed Engineering.** Owner may terminate this Contract upon the conclusion of the Basic Design/Detailed Engineering aspects of the Work, or any part thereof. In such event, Owner shall give Consultant not less than 15 days written notice of its decision to terminate this Contract as aforesaid.
- 19.1.3 **Force Majeure.** If an Event of Force Majeure continues for more than 6 months after the notice of the Event of Force Majeure is given or if the Event of Force Majeure has rendered impossible the performance of this Contract, then Owner may terminate this Contract by giving Consultant at least 30 days prior written notice of termination.

19.1.4 **Default.** If Consultant shall assign or transfer this Contract or any right or interest herein, except as permitted under Article 28.2; or if the interest of Consultant shall devolve upon any Person, entity or corporation otherwise than as herein permitted; or if Consultant shall fail without cause to make timely payment for labor, services or Materials, or disregard laws or ordinances or lawful requirements of any competent governmental authority, or reasonable instructions of Owner related to quality and progress of Work; or if, except for the reasons stated in Article 17.1, Consultant shall fail, neglect, refuse or be unable at any time during the course of the Work to perform the Work at a rate deemed sufficient by Owner to give reasonable assurance that Consultant will complete the Work in accordance with the Schedule of Work; or if Consultant otherwise commits a material breach of its obligations under this Contract; and, in the case of any of the foregoing events, if capable of remedy, Consultant fails to remedy such breach within 30 days after receiving written notice thereof from Owner, Owner may terminate this Contract forthwith, by giving Consultant written notice of such immediate termination.

19.1.5 **Bankruptcy, Liquidation.** If Consultant or any guarantor providing a Parent Company Guarantee hereunder shall become voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets except for the purposes of amalgamation or reconstruction, Owner may terminate this Contract by giving Consultant written notice of immediate termination. In the event that such notice is not given for any reason, Consultant shall remain fully responsible for its obligations set forth in this Contract.

## 19.2 **Consultant's Right to Terminate.**

19.2.1 **Default.** If Owner commits a material breach of its obligations under this Contract and fails to remedy such breach within 60 days after receiving written notice thereof from Consultant, Consultant may terminate this Contract by giving Owner written notice of immediate termination.

19.2.2 **Force Majeure.** If an Event of Force Majeure continues for more than 6 months after the notice of the Event of Force Majeure is given or if the Event of Force Majeure has rendered impossible the completion of the Work, in accordance with the Schedule of Work and the terms of this Contract, then Consultant may terminate this Contract by giving Owner at least 30 days prior written notice of termination.

19.2.3 **Suspension.** If performance of the Work shall have been suspended by Owner pursuant to Article 18.1 for a period of at least 3 consecutive months, and if by the end of such 3 month period Owner shall not have issued a notice of termination of

such suspension pursuant to Section 18.1, Consultant may give Owner 30 days prior written notice of Consultant's intention to terminate this Contract. If Owner terminates the suspension by written notice during such period of 30 days, Consultant shall resume performance of its obligations under this Contract. If the Owner does not issue such notice, Consultant's notice of termination shall take effect on the expiration of the period of 30 days.

19.3 **Effect of Termination.** If this Contract is terminated pursuant to the provisions of this Article 19, the following provisions shall apply:

19.3.1 **Calculation of Work Value.** Immediately upon notice of termination of this Contract by either Party in accordance with this Article 19, the Parties shall consult with one another in order to agree on the percentage of Work completed up to the date of termination. If agreement cannot be reached, Owner shall determine such percentage, which determination shall be final and binding on the Consultant.

19.3.2 **Payment Obligations on Termination.** Without prejudice to any rights and remedies which Owner or Consultant may otherwise have, if this Contract is terminated, Owner shall, subject to the provisions of Article 19.3.3, pay to Consultant:

- (a) an amount equal to  $(C \times P/100) - PVW$  where C is the Contract Price, P is the Work Value and PVW is that part of the Contract Price actually paid to Consultant pursuant to Article 8.1 pursuant to Article 8.3.(b) all costs which are reimbursable subject to and in accordance with Article 8.2 and incurred to the date of termination, and remaining unpaid.
- (c) except in the case of a termination pursuant to either Article 19.1.4 or 19.1.5, reasonable, proper and unavoidable costs incurred as a direct result of termination, including costs of any cancellation charges that Consultant is obligated to pay Subcontractors as a result of such termination.

Subject to Article 19.3.3, Owner shall pay to Consultant such amounts after receipt of an invoice therefore in accordance with Article 8.2, and the provisions of Article 8.2 shall apply to such payment. If when finally determined, the amount PVW in sub-clause (a) above exceeds the amount  $(C \times P/100)$  in sub-clause (a) above, Consultant shall pay to Owner the amount of such excess within 30 days after receipt of an invoice therefore. Consultant shall make every effort to minimize the charges referred to in sub-clause (c) above. Consultant, as a condition of receiving payment under this Article 19.3.2, shall execute all papers and take all other steps which may be required to vest in Owner or its designee all rights, setoffs, benefits, title and interest of Consultant in and to the Work and Materials and in and to subcontracts, purchase orders and other commitments (as specified by Owner) entered into by Consultant for the benefit of this Contract or in respect of the Work. All amounts payable to Consultant pursuant to this Article 19.3.2 shall be mutually agreed upon by Owner and Consultant, but in the absence of

such agreement Owner shall determine such amounts, which determination shall be final and binding on the Consultant.

19.3.3 **Termination for Default or Bankruptcy.** In the case of termination by Owner for default or bankruptcy in the circumstances contemplated by Articles 19.1.4 and 19.1.5, Consultant shall not, pending settlement of Owner's claims by reason of such termination, be entitled to receive any further payment and shall hold Owner harmless in respect of all loss or damage suffered by Owner on account of such termination. Owner shall be entitled to set off the amount of its claims against any sums otherwise due to Consultant.

19.3.4 **Accrued Liabilities.** Accrued liabilities of Consultant under Articles 11 and 13, and any liabilities (actual or potential) of Consultant under Articles 14, 23 and 24 for acts and omissions with respect to Work partially or fully completed at the time of termination shall not be affected by any such termination.

19.3.5 **Option to Take Over Work.** In the event of a termination of this Contract under this Article 19, Owner shall have the right to delivery and possession of the partially completed Work and to finish the Work itself or with the assistance of third parties. If Owner exercises its rights under this Article 19.3.5 following a termination pursuant to Article 19.1.4 or 19.1.5, Consultant shall be liable for the excess of the cost actually incurred by Owner or third parties, to all parties, persons or entities in order to complete the Work, over the cost of the Work Consultant has not performed. Owner shall have the right, at its sole discretion to select third parties to assist in or undertake such completion of the Work, such selection to be based upon such criteria as Owner shall determine. Owner shall, in so completing the Work, make such expenditures as in Owner's sole judgment are necessary therefore.

19.4 **Effect of Termination Generally.** If this Contract is terminated for any reason pursuant to this Article 19, Consultant shall take immediate steps to bring its services to a close in a prompt and orderly manner and shall make every effort to keep expenditures for that purpose to a minimum. Consultant shall preserve and protect all Work and all property of Owner subject to Consultant's supervision, shall deliver or relinquish such Work and such other property to or as directed by Owner and shall assign to Owner such of Consultant's subcontracts, purchase orders and other commitments as Owner may request.

## **ARTICLE 20 :**

### **PARENT COMPANY GUARANTEE:**

- 20.1 **Submission of Guarantee.** Consultant shall, within 10 days of the execution of this Contract, submit to Owner a duly executed Parent Company Guarantee in the form set forth in with only such revisions thereto as may previously have been agreed in writing by Owner, from a parent company of Consultant, the identity of which shall have been submitted in writing to Owner prior to execution of this Contract, and against which Owner shall have raised no objection.
- 20.2 **Failure to Submit.** Notwithstanding any other provision of this Contract:
- 20.2.1 Submission by Consultant of the Parent Company Guarantee in accordance with Article 20.1 shall be a condition precedent to Consultant's entitlement to any payment, or any further payment, as the case may be, under this Contract; and
- 20.2.2 Failure by Consultant to provide a Parent Company Guarantee in accordance with the foregoing provisions of this Article 20 shall entitle Owner either to suspend the Work or to terminate this Contract forthwith by notice in writing to that effect, notwithstanding that Consultant may have been permitted to proceed with the Work, and Consultant shall not be entitled to any compensation whatsoever as a consequence of such suspension or termination.

## **ARTICLE 21 :**

### **MANAGEMENT, KEY PERSONNEL AND PROJECT MANAGER :**

- 21.1 **General.** Consultant shall provide, maintain and be responsible for all management during the performance of the Work. Consultant's procedures for managing, designing and developing the Work shall generally be those of Consultant, which are subject to review and/or approval by Owner. Owner shall have the right, but not the obligation, to be represented at the Consultant's offices to liaise closely with Consultant's management during the performance of the Work. This representation may include appropriate management, technical, administrative and clerical personnel to review and/or approve Work performed by Consultant.
- 21.2 **Key Personnel.**
- 21.2.1 Within 15 days of the Effective Date, Consultant shall submit to Owner a staff organization plan setting out a proposed staffing schedule for the Work.

21.2.2 Owner may notify Consultant at any time that individuals filling positions described in the staff organization plan are Key Personnel. Consultant shall ensure that Key Personnel shall be employed on or in relation to the Work full time until the issue of the Certificate of Acceptance of the Work. The Key personnel employed by the consultant shall have minimum experience as indicated in the Minimum manpower deployment chart. In the event that it becomes necessary to replace any or all Key Personnel, Consultant shall provide alternative personnel acceptable to Owner with such skills, experience and knowledge that will fully fulfill the role of the individuals replaced in achieving completion of the Work in accordance with this Contract. Such replacement shall take place within 14 days of non-availability of the Key Personnel being replaced. All Key Personnel shall be fluent in the English language. Owner reserves the right to make deduction towards the shortfall in actual deployment and availability of key personnel having qualification and experience as specified and agreed upon, for periods till acceptance of work. The minimum manpower and experience therein has been specified in the tender.

## **ARTICLE 23:**

### **INSURANCE:**

- 23.1 **Consultant's Insurance.** Consultant shall carry, at its own expense and with Insurance companies acceptable to Owner, the following minimum insurance coverage (on an occurrence basis), at all times during the course of the Work:
- (a) Worker's compensation insurance and employer's liability insurance to the full extent permitted by all laws (including without limitation maritime, transportation, wages, maintenance & cure), applicable wherever the Work is to be performed and wherever the contracts for employment of the persons whose services are used by Consultant in connection with the Work are made or expressed to be made;
  - (b) Comprehensive automobile liability insurance, for bodily injury and property damage combined and covering owned, hired and non-owned vehicles utilized in connection with the Work performed. Such coverage shall be primary to (and non-contributory with), all insurance (including self insurance), that may be maintained by or otherwise available to Owner. Consultant shall submit to Owner certificates evidencing coverages of the types set forth above (and from time to time evidencing renewal of any of the same that expire during the term of this Contract).
- 23.2 **Owner's Rights.** If Consultant fails to fulfill any of its obligations under this Article 23, Owner may, but shall not be obligated to, procure insurance meeting the requirements of this Article 23 at Consultant's expense and may deduct the cost thereof from any sums that may be or become due to Consultant under this Contract. The specific amounts and types of insurance, and the other obligations

of Consultant relating to insurance shall not in any manner constitute or be construed as a limitation on Consultant's liability under this Contract.

#### **ARTICLE 24 :**

##### **INDEMNIFICATION :**

- 24.1 **Indemnification by Consultant.** Consultant shall hold harmless and indemnify Owner including Owner's agents, servants or employees against any claims, loss or liability for personal injury or death or damage to Consultant and its Subcontractor's property, and arising out of or in connection with the Work performed under this Contract.
- 24.2 **Indemnification by Owner.** Owner shall indemnify and hold harmless Consultant, including consultant's employees, servants, agents any loss or liability that may arise on account of death of or, injury to Owner's personnel and loss or damage to Owner's property arising out of or connected with Work performed under this Contract.

#### **ARTICLE 25:**

##### **PATENT INDEMNIFICATION:**

- 25.1 **Indemnity.** Consultant shall indemnify Owner against all loss, cost, damage and expense arising from any claim asserted against Owner that the Work or part thereof, or any methods, designs or things furnished or specified by Consultant or any Subcontractor under this Contract, or any use thereof in the reasonable contemplation of the Parties at the time furnished, or any methods, processes or acts employed by Consultant in connection with the performance of its obligations hereunder, constitutes an infringement of any intellectual property right, patent, trade secret, proprietary information, know-how, copyright (statutory or non-statutory), unpatented invention or any unauthorized use of the work of others.
- 25.2 **Defense of Claims.** Consultant shall, at its own expense, defend any suit or proceeding based on any claim referred to in Article 25.1 asserted against Owner. Owner shall give Consultant such assistance as Consultant may reasonably require in the defense of such suit, and shall have the right to be represented therein by counsel of its own choosing at its own expense. If Consultant fails to defend diligently any such suit or proceeding, Owner may settle the claim which is the basis thereof without the consent of Consultant and without relieving Consultant of the obligation to indemnify provided in Article 25.1.
- 25.3 **Elimination of Infringement.** In case the Work, any part thereof, or any use thereof, is in any such suit or proceeding held to constitute infringement and its use is enjoined, Consultant shall promptly at its own expense either:



- (i) procure for Owner the right to continue using the Work or part thereof or such process or apparatus; or
- (ii) replace the relevant parts of the Work with a non-infringing part of equal utility and efficiency and satisfactory to Owner; or
- (iii) modify the Work or part in a way satisfactory to Owner so that it becomes non-infringing.

25.4 **Persons included within Indemnity.** In this Article 25 the term Owner shall include Owner, its Affiliates and any co-ventures, and their respective officers, directors, employees, shareholders, servants, consultants and agents, or any of them as the context may require.

## **ARTICLE 26:**

26.1 **Owner's Right to Readjustment.** Notwithstanding the issue by Owner of any approval, the Certificate of Acceptance or payment to Consultant shall be entitled to a refund from Consultant in the event that any examination or audit of the documentation referred to in Article 26.2 above establishes that Consultant or any Subcontractor did not incur any amount claimed, or was overpaid for such amount claimed. Such right of refund shall continue for a period of one year after the date of the Certificate of Acceptance of the Work or the date of any termination of this Contract, whichever is earlier.

## **ARTICLE 27 :**

### **DISPUTES**

27.1 **General.** Any dispute or difference of any kind whatsoever between Owner and Consultant arising under, out of or in connection with this Contract (including without limitation any question regarding its existence, validity or termination), or the execution of the Work including without limitation any dispute as to any decision, opinion, instruction, determination, certification or valuation of Owner or Owner's Representative whether during the execution of the Work or after completion or delivery thereof and whether before or after the termination, abandonment or breach of this Contract, shall be settled in accordance with the provisions of this Article 27.

27.2 **Notice.** Each Party shall notify the other in writing when it considers a dispute or difference has arisen and which it wishes to refer to the other Party for amicable settlement pursuant to Article 27.3, and to arbitration pursuant to Article 27.4 in the event that amicable settlement is not reached. Such notice shall contain

sufficient information as to the dispute or difference to enable the other Party to be fully informed as to the nature of the dispute, the amount of any monetary claim and the length of any extension of time claimed.

27.3 **Amicable Settlement.** Where notice of dispute or difference has been given under Article 27.2, the Parties shall attempt to settle such dispute amicably before commencement of arbitration, provided that unless the Parties agree otherwise, such dispute may be referred to arbitration subject to and in accordance with Article 27.4 on or after the sixtieth day after the day on which notice of dispute or difference was given, even if no attempt at amicable settlement has been made.

27.4 **Arbitration.**

- a) Subject to Article 27.5, arbitration shall not be commenced until after the Certificate of Acceptance of the Work has been issued.
- b) All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the agreement, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.
- c) The appointing authority shall either himself act as the Sole Arbitrator or nominate some officer/retired officer of Hindustan Petroleum Corporation Limited (referred to as owner or HPCL) or a retired officer of any other Government Company in the Oil Sector of the rank of Ch. Manager & above or any retired officer of the Central Government not below the rank of a Director, to act as the Sole Arbitrator to adjudicate the disputes and differences between the parties. The contractor/vendor shall not be entitled to raise any objection to the appointment of such person as the Sole Arbitrator on the ground that the said person is/was an officer and/or shareholder of the owner, another Govt. Company or the Central Government or that he/she has to deal or had dealt with the matter to which the contract relates or that in the course of his/her duties, he/she has/had expressed views on all or any of the matters in dispute or difference.
- d) In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates his office for any

reasons whatsoever, the Appointing Authority aforesaid, shall nominate another person as aforesaid, to act as the Sole Arbitrator.

- e) Such another person nominated as the Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his predecessor. It is expressly agreed between the parties that no person other than the Appointing Authority or a person nominated by the Appointing Authority as aforesaid, shall act as an Arbitrator. The failure on the part of the Appointing Authority to make an appointment on time shall only give rise to a right to a Contractor to get such an appointment made and not to have any other person appointed as the Sole Arbitrator.
- f) The Award of the Sole Arbitrator shall be final and binding on the parties to the Agreement.
- g) The work under the Contract shall, however, continue during the Arbitration proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.
- h) The Arbitrator may give a composite or separate Award(s) in respect of each dispute or difference referred to him and may also make interim award(s) if necessary.
- i) The fees of the Arbitrator and expenses of arbitration, if any, shall be borne equally by the parties unless the Sole Arbitrator otherwise directs in his award with reasons. The lump sum fees of the Arbitrator shall be Rs. 40,000/- per case for transportation contracts and Rs. 60,000/- for engineering contracts and if the sole Arbitrator completes the arbitration including his award within 5 months of accepting his appointment, he shall be paid Rs. 10,000/- additionally as bonus. Reasonable actual expenses for stenographer, etc. will be reimbursed. Fees shall be paid stage wise i.e. 25% on acceptance, 25% on completion of pleadings/documentation, 25% on completion of arguments and balance on receipt of award by the parties.
- j) Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made there under, shall apply to the Arbitration proceedings under this Clause.
- k) The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at **Mumbai** for all purposes. The Arbitration shall be held at Mumbai and conducted in English language.

- l) The Appointing Authority is the Director Marketing of Hindustan Petroleum Corporation Limited.

27.5 **Interim Arbitration** An arbitration may commence prior to issue of the Certificate of Acceptance of the Work in any of the following circumstances:

- (a) Where a dispute or difference is finally settled pursuant to Article 27.3 either Party may, if the other Party fails to comply with such settlement refer such failure itself to Arbitration under Article 27.4,
- (b) If the dispute or difference relates to the entitlement of the Consultant to issue of the Certificate of Acceptance of the Work; or
- (c) If this Contract is terminated.

Where a dispute or difference is finally settled pursuant to Article 27.3 either Party may, if the other Party fails to comply with such settlement refer such failure itself to Arbitration under Article 27.4, and such Arbitration may commence prior to the issue of the Certificate of Acceptance of the Work.

27.6 **Continuation of Work** Unless this Contract has already been terminated, Consultant shall continue with the Work with all due diligence during the process of amicable settlement and arbitration.

27.7 **Resolution of dispute or differences between Indian Public Sector Enterprises/ Government Departments :**

If the Consultant is a Public Sector Enterprise in India, the procedure detailed in Article 27.4 to 27.6, for resolution of dispute or differences between the Owner and Consultant, shall stand amended as per the directions of the Government of India given in their memorandum OM No. 15/9/86-BPE (FIN) dt.30/03/1989, subject to both Owner & Consultant remaining Public Sector Enterprises in India and the directions of Government of India's office memorandum OM No. 15/9/86-BPE (FIN) dt.30/03/1989 given in this regard remaining effective the date of Owner's Acceptance of Work.

## **ARBITRATION CLAUSE (FOR FOREIGN BIDDERS)**

1. Disputes or difference arising out of or in relation to this agreement shall be settled by Arbitration in India. The arbitration shall be by a Sole Arbitrator appointed by HPCL. The Sole Arbitrator will adjudicate the disputes and differences between the parties except those in respect of which the decision of any person is by the agreement expressed to be final and binding.

2. In the event of the Sole Arbitrator to whom the matter is originally referred to, is unable to act or he/she vacates the office, HPCL, shall nominate another Sole Arbitrator to settle the said disputes and differences.
3. The second Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his/her predecessor.
4. The award of the arbitrator shall be final, conclusive and binding on all the parties to the agreement subject to the provisions of the # *Arbitration & Conciliation Act, 1996*, as in force in India and the rules made there under and for the time being in force. This agreement shall be covered by the laws of India.
5. The award shall be made in writing and shall be published by the Sole Arbitrator within six months after entering upon reference or within such further time mutually extended by the parties. The Sole Arbitrator shall have power to order and direct the parties to abide by, observe and perform such directions as the Sole Arbitrator may think fit and proper to issue having regard to the fact that the arbitration proceedings have to be completed within the specified period solely on the principles of Natural Justice.
6. The Sole Arbitrator shall be at liberty to appoint, if so necessary, any Accountant or Engineer or other person to assist him/her and act by the opinion so taken.
7. The Sole Arbitrator shall have powers to make one or more awards whether interim or otherwise in respect of the disputes and differences, and in particular, shall make separate awards in respect of each claim or cross claim of the parties.
8. The Sole Arbitrator shall be entitled to direct any of the parties to pay the cost of arbitration in such a manner and to such an extent as the Sole Arbitrator may in his discretion determine and shall also be entitled to require one or both the parties to deposit funds in such proportions to meet the arbitration expenses. The parties to arbitration, whenever called upon to do so, shall be bound to comply with such directions without any demur.
9. Notwithstanding anything contained to any other law, the parties hereby agree that the courts in the city of Bombay alone shall have jurisdiction in respect of all or anything arising under this agreement and any award(s) made by the Sole Arbitrator hereunder shall be filed in the court in the city of Bombay only.

#### **ARTICLE 28 :**

#### **MISCELLANEOUS :**

- 28.1 **Independent Contractor.** Consultant is an independent contractor under this Contract, and shall have complete charge of all personnel performing any Work under this Contract. Consultant shall perform all Work in accordance with its own methods and shall be fully responsible for the Work performed by it or on its behalf hereunder in accordance with the terms of this Contract. Consultant shall not be deemed an agent of Owner for any purpose pursuant to this Contract.

- 28.2 **Assignment.** This Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors-in-interest and duly permitted assigns.
- 28.2.1 **Assignment by Owner.** Owner may, without the consent of Consultant, assign the benefit of this Contract, or any part thereof and any interest therein or there under, to an Affiliate.
- 28.2.2 **Assignment by Consultant.** Subject to Article 28.2.3 Consultant may not assign the benefit of this Contract or any interest therein or there under to any third party. Any such purported assignment shall be null and void and of no force or effect whatsoever.
- 28.2.3 **Assignment of Proceeds.** Subject to Consultant giving prior written notice to Owner, Consultant may enter into a charge, subject to the terms of this Contract, on any monies due or to become due Consultant under this Contract in favor of its bankers or a third party providing finance in respect of this Contract or assign to its bankers or any such third party the right to receive, subject to the terms of this Contract, any monies due or to become due under this Contract to Consultant.
- 28.3 **Entire Contract; Modifications.** This Contract constitutes the entire agreement between Owner and Consultant concerning the subject matter hereof. All previous documents, undertakings and agreements, whether oral or written, between the Parties concerning the subject matter hereof are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in this Contract, except as the same may be made part of this Contract in accordance with its terms. No modifications to this Contract shall be made except by written agreement between the Parties, except as otherwise expressly provided in this Contract.
- 28.4 **Resolution of Inconsistencies.** In the event of any inconsistency between any of the Articles of this Contract, and any Exhibit to this Contract, the Articles of this Contract shall prevail. Subject thereto, the provisions of this Contract shall be mutually explanatory. If any inconsistency in this Contract shall become apparent, it shall be resolved by Owner in writing in consultation with Consultant and in accordance with the foregoing order of priority. Consultant shall immediately notify Owner of any inconsistency which Consultant discovers. If Consultant continues to perform Work after discovering any inconsistency without notifying Owner, Consultant shall be responsible for any consequences, including any necessary rectification or revision of the Work.
- 28.5 **Waiver.** The failure of either Party to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or any other term of this Contract. Any waiver must be made in writing.

- 28.6 **Language.** The official text of this Contract shall be in the English language. Except as otherwise specifically provided to the contrary, all documents, advisements, notices, waivers and all other communications, written or otherwise, between Owner and Consultant in connection with this Contract shall be in the English language, and Consultant shall ensure that all agreements and communications between Consultant and Subcontractors and other consultants shall be in the English language.
- 28.7 **Metric System.** Except as otherwise may be provided in this Contract, all weights and measures to be made hereunder, shall be expressed in the metric system, including, without limitation, drawings, plans, specifications, designs, surveys, tenders, advertisements, estimates, reports and all other documents and Work originated by Consultant. Consultant shall require all Subcontractors' documents to be expressed in the metric system.
- 28.8 **Notices.** All notices required to be given under this Contract by Owner to Consultant shall be in writing and shall be addressed to Consultant at the address intimated, or at such other address as it may from time to time notify, and all notices required to be given under this Contract by Consultant to Owner shall be in writing and addressed to Owner at the address intimated or at such other address as it may from time to time notify.
- Notices shall be served by actual delivery, telex or facsimile transmission and shall be deemed to be received, either when actually delivered or when actually received by recipient's telex or facsimile machine. Confirmation of notices shall be sent by airmail. A notice with respect to a change of address shall be effective only when actually received.
- 28.9 **Applicable Law.** This Contract shall be governed by and construed in all respects in accordance with the laws for the time being of India, without reference or regard to such country's conflicts of law rules or provisions.
- 28.10 **Severability.** The validity of remaining Articles, provisions, terms and parts of this Contract shall not be affected by a court, administrative board or other proceeding of competent jurisdiction deciding that an Article, provision, term or part of this Contract is illegal, unenforceable, in conflict with any law or contrary to public policy. In such event the Parties shall, by amendment of this Contract, properly replace such provision by a reasonable new provision or provisions which, as far as legally possible, shall approximate what the Parties intended by such original provision and the purpose thereof.
- 28.11 **Counterparts.** This Contract may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and such counterparts together, shall constitute one and the same instrument.

28.12 **Effectiveness of Contract.** This Contract shall become effective, and the Parties shall become bound by all conditions applicable to their conduct pursuant to this Contract, on the date of acceptance of PO.

Unless and until this Contract becomes effective in accordance with this Article 28.12, Owner shall incur no financial obligation of any nature whatsoever to Consultant under this Contract.

28.13 **Publications.** Except as may be required by applicable law, no copy of this Contract shall be released or otherwise delivered by or on behalf of Consultant to any unaffiliated third party, and no announcement, statement or publication relating to this Contract, or the Work, shall be publicly released by or on behalf of Consultant, without the prior written approval of Owner. Consultant shall cause a provision similar to this Article 28.13 to be inserted in all of its subcontracts.

28.14 **Survival of Contract Provisions.** The following provisions of this Contract shall expressly survive any termination of this Contract:

|          |                |  |
|----------|----------------|--|
| 28.14.1  | Article 7.3.   | Taxes and Duties.  |
| 28.14.4  | Article 14.    | Title.   |
| 28.14.5  | Article 15.    | Proprietary Information; Computer Data; Licenses and Inventions. |
| 28.14.6  | Article 20.    | Parent Company Guarantee.  |
| 28.14.7  | Article 23.    | Insurance.   |
| 28.14.8  | Article 24.    | Indemnification.   |
| 28.14.9  | Article 25.    | Patent Indemnification.  |
| 28.14.10 | Article 26.    | Accounting Records and Audit.                                    |
| 28.14.11 | Article 27.    | Disputes.  |
| 28.14.12 | Article 28.13. | Publications.  |
| 28.14.13 | Article 29.    | Limitations of Liability.  |

28.15 **Set off.** Notwithstanding any other provision hereof relating to rights of set off or deduction, Owner may, but shall not be under any obligation, at any time, and from time to time, to set off any and all sums due from Owner to Consultant against sums due to Owner from Consultant hereunder. Consultant may not at any time set off sums payable by it to Owner under this Contract.

## **ARTICLE 29:**

### **LIMITATIONS OF LIABILITY:**

29.1 **Consequential Damages.** Neither Party shall be liable to the other Party for any indirect or consequential damages in connection with or arising out of this Contract including, but not limited to, loss of use, revenue or profit.



29.2 **Benefit and Extent of Limitations.** The provisions of this Article 29 shall be for the benefit of the Parties and their respective officers, directors, employees and agents. The limitations set forth in this Article 29 shall be without prejudice to any rights which Owner may have against Subcontractors, manufacturers and other third parties, and any recovery by Owner or Consultant against any Subcontractor, manufacturer or third party shall not affect Consultant's obligations under this Contract.

## **SIGNATURES**

Authorized signature of Owner

Authorized signature of Consultant

Seal \_\_\_\_\_  
(if any) in the presence of:

Seal \_\_\_\_\_  
(if any) in the presence of:

Name \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

# **CHAPTER-6**

## **UNPRICED BID**

**Name of work : Consultancy Services for Design and Development  
of Major Incident Response Units**

**BILL OF QUANTITIES**

| Item | Description   | Lump Sum<br>(INR)           |                             |
|------|---|-----------------------------|-----------------------------|
|      |   | (In Words)                  | (In figures)                |
| 1    | Consultancy Services for Design ,<br>Development, Engineering and<br>Feasibility study of MIRU as per the<br>detailed scope and terms & conditions of<br>the contract | <i>[Do not quote here.]</i> | <i>[Do not quote here.]</i> |
|      | ----- % Service Tax   | <i>[Do not quote here.]</i> | <i>[Do not quote here.]</i> |
|      | <b>TOTAL</b>  | <i>[Do not quote here.]</i> | <i>[Do not quote here.]</i> |

Bidder shall quote the percentage rates of taxes including service tax (as on bid due date) in their quoted rates.

| Taxes    | % Considered<br>(Do not quote rates/amount) |
|----------|---|
| 1) ..... | .....                                       |
| 2) ..... | .....                                       |
| 3) ..... | .....                                       |
| 4) ..... | .....                                       |
| 5) ..... | .....                                       |
| 6) ..... | .....                                       |
| 7) ..... | .....                                       |
| 8) ..... | .....                                       |

Duly filled list of taxes and their percentages shall be submitted along with, un-priced bid. Taxes submitted along with Priced bid shall not be considered.

**Table-1**

**WEIGHTAGES**

| Sr.No. | MAJOR MILESTONES  | WEIGHTAGES |
|--------|---|------------|
| 1      | INITIAL DOCUMENT REVIEW ,VISIT TO ALL LOCATIONS, PREPARATION OF BASIC DESIGN AND SUBMISSION OF DRAFT FEASIBILITY REPORT | 30         |
| 2      | SUBMISSION OF MODEL TENDER DOCUMENT WITH DETAIL ENGINEERING,SPECIFICATIONS AND BOQ                                      | 30         |
| 3      | COST ANALYSIS REPORT  | 20         |
| 4      | SUBMISSION OF FINAL REPORT  | 10         |
| 5      | ACCEPTANCE OF REPORT  | 10         |
|        | TOTAL   | 100        |

**TABLE 2**  
**SCHEDULE FOR MAJOR MILESTONES**

| Sr.No. | MAJOR MILESTONES  | MAJOR INCIDENT<br>RESPONSE UNIT |        |
|--------|---|---------------------------------|--------|
|        |   | Start                           | Finish |
| 1      | COMPLETION OF ALL LOCATION VISITS<br>,PREPARATION OF BASIC DESIGN AND<br>SUBMISSION OF DRAFT REPORT | Start                           |        |
|        |   | Finish                          |        |
| 2      | SUBMISSION OF MODEL TENDER<br>DOCUMENT WITH DETAIL ENGINEERING<br>,SPECIFICATIONS AND BOQ           | Start                           |        |
|        |   | Finish                          |        |
| 3      | COST ANALYSIS REPORT  | Start                           |        |
|        |   | Finish                          |        |
| 4      | SUBMISSION OF REPORT  | Start                           |        |
|        |   | Finish                          |        |
| 3      | ACCEPTANCE of REPORT  | Start                           |        |
|        |   | Finish                          |        |

# **CHAPTER-7**

## **PRICE BID**

**Name of work : Consultancy Services for Design and Development of  
Major Incident Response Units(MIRU)**

**SCHEDULE OF LUMP SUM PRICES**

| Item | Description   | Lump Sum<br>(INR) |              |
|------|---|-------------------|--------------|
|      |   | (In Words)        | (In figures) |
| 1    | Consultancy Services for Design ,<br>Development, Engineering and<br>Feasibility study of MIRU as per the<br>detailed scope and terms & conditions<br>of the contract |                   |              |
|      |   |                   |              |
|      | <b>TOTAL</b>  |                   |              |



# **CHAPTER-8**

## **ANNEXURES**

## ANNEXURE I

### GRIEVANCE REDRESSAL MECHANISM

#### 1.0 Background

Hindustan Petroleum Corporation (HPCL) has developed the following mechanism to deal with references / grievances if any that are received from Parties who participated/intends to participate in the Corporation Tenders. The scheme is as under :

#### 2.0 Definitions : Grievance

For the purpose of this scheme, the word 'Grievance' would mean a written and signed representation received from party, who has participated/intends to participate in the tender of the Company, seeking inter-alia a review of the **process of finalisation of tender** on the grounds that his right as a party to the tender has been affected for the reason to be provided by him which needs to be examined and decided in the interest of equity.

#### Grievance Redressal Cell (GRC)

It is the group that will review the references received from the Parties and decide the matter.

#### 3.0 Authorities to handle grievances

- 3.1 There will be a process to deal with the grievances received from the tendering parties or the prospective tenderers based on the Tender document issued.
- 3.2 The first level of such process will comprise of a Grievance Redressal Cell. This Cell will consist of the following :

#### VISAKH REFINERY

ED - Refinery  
Head- Finance  
Head- Materials  
(Co-ordinator)

#### MUMBAI REFINERY

ED - Refinery  
Head - Finance  
Head - Materials  
(Co-ordinator)

#### MKTG. /Corporate

ED - Retail/Direct Sales/  
Corporate (Finance)  
LPG/Projects & Pipelines  
GM - O & D  
DGM - Aviation  
Head Finance  
(Commercial)  
Head- Procurement (SBU/  
Dept. concerned)  
(Co-ordinator)

- 3.3 The Co-ordinator for each of the Cell is respective Head - Materials/Procurement of - Visakh Refinery, Mumbai Refinery, Marketing SBUs & Corporate.
- 3.4 All the grievances will be lodged with the Co-ordinator of the Cell.



- 3.5 This Cell will examine the grievances and decide the matter.
- 3.6 The second level of Grievance Redressal Mechanism is the Executive Committee - Refineries for both Mumbai & Visakh Refineries, Executive Committee - Marketing & Executive Committee -Corporate for respective functions. The decision of the Executive Committee is final.

**4.0 Grievance Redressal Process**  
**LEVEL - I**

- 4.1 If a grievance is received by the Grievance Redressal Cell, the Co-ordinator will first acknowledge the receipt of the grievance to the aggrieved party within 48 hours from the time of receipt of the grievance (Excluding intervening Holidays).
- 4.2 The Grievance Redressal Cell (GRC) will forward the Grievance to the Tender Inviting Authority at the earliest, who will offer his comments/views to the Cell within 2 days of receipt from GRC.
- 4.3 On receipt of comments from Tender Inviting Authority, the Grievance Redressal Cell will meet and look into the grievances expressed by the aggrieved party along with the views/comments of the Tender Inviting Authority. The Grievance Redressal Cell can call for relevant records and documents to enable it to firm up its decision on the grievance.
- 4.4 The Grievance Redressal Cell will decide the matter within 14 days and thereafter communicate the decision to the aggrieved party.

**LEVEL - II**

- 4.5 The second level of Grievance Redressal Mechanism is the Executive Committee - Refineries for both Mumbai & Visakh Refineries and Executive Committee - Marketing & Executive Committee -Corporate for respective functions which would examine and decide on any appeal / representation on the decision of the Grievance Redressal Cell.
- 4.6 Parties aggrieved by the decision of the Grievance Redressal Cell, can appeal / represent to the Executive Committee. The decision of the Executive Committee is final.

**5.0 Time limitations for the handling of grievances**

- 5.1 Grievances regarding the Pre-qualification process should be lodged by the aggrieved party within one week from the date of Publication calling for pre-qualification bid. Grievances received after one week from date of Publication will not be considered.
- 5.2 The decision on Grievance pertaining to Pre-Qualification should be finalised before the shortlisting of the parties is concluded.
- 5.3 Specific Grievances regarding the Notice Inviting Tender (NIT) should be lodged by the aggrieved party within one week from the last date of sale of tender document, or one week prior to the Due date for Bid Submission, whichever is earlier. Grievances regarding NIT, received thereafter shall not be considered.

- 5.4 Grievances relating to the tender process (other than “Notice Inviting Tender related grievances”) should be lodged within one week from the date of opening the unpriced bids.
- 5.5 The Grievance Redressal Cell shall examine the case and decide within 15 working days from the date of receipt of the grievance and advise the function concerned of the same so that they can process the tender further.
- 5.6 Any grievance after price bid opening should be redressed before award of the contract. No grievances shall be entertained which are received after one week of price bid opening.
- 5.7 The Co-ordinator of the Grievance Redressal Cell, on receipt of the grievance by the aggrieved party, should inform the Tender Inviting Authority not to finalise the contract till the disposal of the grievance by the Grievance Redressal Cell. The grievance lodged should be disposed of within a reasonable period of 14 working days so that there is no undue delay in awarding the contract.

**6.0 Interim Suspension of Tendering Process**

- 6.1 After any grievance is received by the Co-ordinator of the Grievance Redressal Cell, the Cell Members will meet and examine whether the tendering process relating to the concerned matter is to be suspended or not in consultation with the Tender Inviting Authority. The Cell will examine whether there exists a prima facie ground for suspending the tendering process and decide the matter. It may consult, if required, the Executive Committee as to whether the tendering process has to be suspended till a final decision is taken on the grievance.
- 6.2 The decision to suspend the tendering process or not and disposal of the grievance should preferably be taken by the Grievance Redressal Cell and/or Executive Committee at the earliest but not later than 14 working days from the receipt of grievance keeping in mind the schedule of activities connected with the tender concerned.
- 6.3 When it is decided to suspend the Tendering Process, the grievance should be examined and disposed off by the Grievance Redressal Cell & Executive Committee at the earliest, but not later than 15 days since it will be necessary to either continue with the tender as per earlier norms or it is decided to re-invite the tender with suitable changes.

**7.0 Other General Provisions**

- 7.1 A final written reply to the aggrieved party will be given by Coordinator of Grievance Redressal Cell / Executive Committee within 21 working days from the date of receipt of the grievance, in line with the minutes of respective GRC/ EC.
- 7.2 The Grievance Redressal Cell / Executive Committee, while firming up its recommendations, can seek the views of other relevant Departments like Finance, Vigilance and Legal or any other Department concerned with the issue.

- 7.3 The Grievance Redressal Cell & Executive Committee is entitled to give a personal hearing to the aggrieved party, if necessary.
- 7.4 If a Grievance is related to a contract already awarded and acted upon, and if the Grievance Cell & Executive Committee is of the view that the grievance needs review for remedial action for future tenders, it would submit its recommendation to the concerned SBU/Dept. head for future tenders.
- 7.5 Company's Tender Grievance Redressal Mechanism will be displayed in its Website in the Tenders Page.
- 7.6 The Grievance Redressal Cell & Executive Committee will maintain a grievance register giving details of the tender number, date of receipt of grievance letter, nature of grievance in brief, details of the decisions taken and the date of communication to the aggrieved party.
- 7.7 The Grievance Redressal Cell & Executive Committee will also submit a quarterly report on the grievances handled to the Committee of Functional Directors. A copy of Yearly Report will be submitted to the Board for information.
- 7.8 The relevant clause/provision of Grievance Redressal Mechanism should also be incorporated in GTC of all Tender documents giving the Officer-designate of the Grievance Redressal Cell, to whom the grievance letter should be addressed.

## **BANK GUARANTEE FORMATS : ANNEXURE II**

1. BG FORMAT FOR EMD
2. BG FORMAT FOR SECURITY DEPOSIT

BID SECURITY FORM

(SPECIMEN)

**DRAFT BANK GUARANTEE IN LIEU OF BID SECURITY (EMD)**

**(On Non-Judicial stamp paper of appropriate value)**

TO : Hindustan Petroleum Corporation Limited

(Address as applicable)

IN CONSIDERATION OF MESSRS. HINDUSTAN PETROLEUM CORPORATION

LIMITED a Government of India Company registered under the Companies Act, 1956, having its registered office at 17, Jamshedji Tata Road, Mumbai-20 (hereinafter called "The

Corporation" which expression shall include its successor in business and assigns) issued a tender on Messrs. .... a partnership firm/sole proprietor business/a company registered under the Companies Act, 1956 having its office at (hereinafter called "the Tenderer" which expression shall include its executors, administrators and assigns) against Tender no..... dated ..... (hereinafter called "the tender" which expression shall include any amendments/alterations to "the tender" issued by "the Corporation") for the supply of goods to/execution of services for "the Corporation" and "the Corporation" having agreed not to insist upon immediate payment of Earnest Money for the fulfilment of the said tender in terms thereof on production of an acceptable Bank Guarantee for an amount of R..... (Rupees ..... only).

We, ..... Bank having office at .....  
Mumbai

(hereinafter referred to as "the Bank" which expression shall include its successors and assigns) at the request and on behalf of "the Tenderer" hereby agree to pay to the Corporation without any demur on first demand an amount not exceeding Rs..... (Rupees ..... only) against any loss or damage, costs, charges and expenses caused to or suffered by "the Corporation" by reason of non performance and



fulfillment or for any breach on the part of "the Tenderer" of any of the terms and conditions of the said "tender".

2. We, ..... Bank further agree that "the Corporation" shall be sole Judge whether the said "Tenderer" has failed to perform or fulfill the said "tender" in terms thereof or committed breach of any of the terms and conditions of "the order" and the extent of loss,

damage, cost, charges and expenses suffered or incurred or would be suffered or incurred by "the Corporation" on account thereof and we waive in favour of "the Corporation" all the rights and defences to which we as guarantors and/or "the Tenderer" may be entitled to.

3. We, ..... Bank further agree that the amount demanded by "the Corporation" as such shall be final and binding on "the Bank" as to "the Bank" 's liability to pay and the amount demanded and "the Bank" to undertake to pay "the Corporation" the amount so demanded on first demand and without any demur notwithstanding any dispute raised by "the Tenderer" or any suit or other legal proceedings including arbitration pending before any court, tribunal or arbitrator relating thereto, our liability under this guarantee being absolute and unconditional.

4. We, ..... Bank further agree with "the Corporation" that "the Corporation" shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said "tender"/or to extend time of performance by "the Tenderer" from time to time or to postpone for any time to time any of the powers exercisable by "the Corporation" against "the Tenderer" and to forbear to enforce any of the terms and conditions relating to "the tender" and we shall not be relieved from our liability by reason of any such variation or extension

being granted to "the Tenderer" or for any forbearance, act or omission on the part of "the Corporation" or any indulgence by "the Corporation" to "the tenderer" or by any such matter or things whatsoever which under the law relating to sureties would but for this provision have the effect of relieving us.

5. NOTWITHSTANDING anything hereinbefore contained, our liability under this Guarantee is restricted to Rs. .... (Rupees..... only). Our liability under this guarantee shall remain in force until expiration of nine months (8 month validity + 1 month claim period) from the due date of opening of the said "tender". Unless a demand or claim under this guarantee is made on us in writing within said period, that is, on or before ..... all rights of "the Corporation" under the said guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereunder.

6. We, ..... Bank further undertake not to revoke this guarantee during its currency except with the previous consent of "the Corporation" in Writing.

7. We, ..... Bank lastly agree that "the Bank" 's liability under this guarantee shall not be affected by any change in the constitution of "the Tenderer".

8. "The Bank" has power to issue this guarantee in favour of "the Corporation" in terms of the documents and/or the Agreement/Contract or MOU entered into between "the Tenderer" and "the Bank" in this regard.

IN WITNESS WHEREOF the Bank has executed this document on this ..... day of .....

For ..... Bank  
(by its constituted attorney)

(Signature of a person authorised  
to sign on behalf of "the Bank")

**DRAFT COMPOSITE BANK GUARANTEE FOR SECURITY DEPOSIT/PERFORMANCE GUARANTEE**

(On Non-Judicial stamp paper of appropriate value)

TO : Hindustan Petroleum Corporation Limited

(Address as applicable)

IN CONSIDERATION OF MESSRS. HINDUSTAN PETROLEUM CORPORATION LIMITED, a Government of India Company registered under the Companies Act, 1956, having its registered office at 17, Jamshedji Tata Road, Mumbai-20 (hereinafter called "The Corporation" (which expression shall include its successor in business and assigns) having placed an order on Messrs ..... a partnership firm/sole proprietor business/a company registered under the Companies Act, 1956 having its office at ..... (hereinafter called "the supplier" (which expression shall include executors, administrators and assigns) vide order No..... dated..... (hereinafter called "the order" which expression shall include any amendments/alterations to "the order" issued by "the Corporation") for the supply of goods to/execution of services for "the Corporation" and "the Corporation" having agreed : a) not to insist upon immediate payment of Security deposit for the fulfillment and performance of the said order b) to pay "the supplier" as and by way of advance up to a sum of Rupees\_\_\_\_\_ (Rupees \_\_\_\_\_ only) being \_\_\_\_% of the value of the order"; c) that "the supplier" shall furnish a security for the performance of "the supplier's" obligations and/or discharge of "the supplier's" liability in connection with the said "order"; and "the Corporation" having agreed with "the supplier" to accept a composite Bank Guarantee for the mobilization advance, security deposit, retention money and performance guarantee.

---

We, ..... Bank having office at ..... (hereinafter referred to as "the Bank" which expression shall include its successors and assigns) at the request and on behalf of "the supplier" hereby agree to pay to "the Corporation" without any demur on first demand an amount not exceeding Rs..... (Rupees.....only) against any loss or damage, costs, charges and expenses caused to or suffered by "the Corporation" by reason of non performance and fulfillment or for any breach on the part of "the supplier" of any of the terms and conditions of the said "order".

2. We, ..... Bank further agree that "the Corporation" shall be sole judge whether the said "Supplier" has failed to perform or fulfill the said "order" in terms thereof or committed breach of any terms and conditions of "the order" and the extent of loss, damage, cost, charges and expenses suffered or incurred or would be suffered or incurred by "the Corporation" on account thereof and we waive in the favour of "the Corporation" all the rights and defences to which we as guarantors and/or "the Supplier" may be entitled to.
3. We, ..... Bank further agree that the amount demanded by "the Corporation" as such shall be final and binding on "the Bank" as to "the Bank" 's liability to pay and the amount demanded and "the Bank" undertake to pay "the Corporation" the amount so demanded on first demand and without any demur notwithstanding any dispute raised by "the Supplier" or any suit or other legal proceedings including arbitration pending before any court, tribunal or arbitrator relating thereto, our liability under this guarantee being absolute and unconditional.
4. We, ..... Bank further agree with "the Corporation" that "the Corporation" shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said "order"/or to extend time of performance by "the Supplier" from time to time or to postpone for any time to time any of the powers exercisable by "the Corporation" against "the Supplier" and to forbear to enforce any of the terms and conditions relating to "the order" and we shall not be relieved from our liability by reason of any such variation or extension being granted to "the Supplier" or for any forbearance, act or omission on the part of "the Corporation" or any indulgence by "the Corporation" to "the Supplier" or by any such matter or things whatsoever which under the law relating to sureties would but for this provision have the effect of relieving us.
5. However, it has been agreed between "the Supplier" and "the Corporation" that there shall be only one Composite Bank Guarantee for both the advance and security deposit performance guarantee/Retention Money @ of \_\_\_\_% valid till the end of the defects liability period as per the terms of the P.O. No. \_\_\_\_\_ dated \_\_\_\_\_ and that in proportion with the recovery of advance @ \_\_\_\_% per bill the same amount/value automatically stands credited to the defects liability account/security deposit or retention money as the case may be and will continue to be credited/treated till the entire advance of Rs. \_\_\_\_\_ is fully recovered from the running bills and from the date of full recovery of the advance of Rs. \_\_\_\_\_ this guarantee automatically, shall stand valid towards the \_\_\_\_% retention money/defects liability, fully valid in all @ respects unto a further period of **3 (three)** months, as per the Purchase Order of "the Corporation".

6. Notwithstanding anything contained herein above :
- i) Our liability under this guarantee shall not exceed Rs.....
  - ii) This Bank Guarantee shall be valid upto and including .....; and
  - iii) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before the expiry of 30 days from the date of expiry of this guarantee.
7. We, ..... Bank further undertake not to revoke this guarantee during its currency except with the previous consent of "the Corporation" in writing.
8. We, ..... Bank lastly agree that "the Bank"'s liability under this guarantee shall not be affected by any change in the constitution of "the Supplier".
9. "The Bank" has power to issue this guarantee in favour of "the Corporation" in terms of the documents and/or the Agreement/Contract or MOU entered into between "the Supplier" and "the Bank" in this regard.

IN WITNESS WHEREOF the Bank has executed this document on this

..... day of .....

For ..... Bank

(by its constituted attorney)

(Signature of a person authorised

to sign on behalf of "the Bank")\*

## ANNEXURE III

### DECLARATION (To be submitted along with Un priced bid)

(M/s. \_\_\_\_\_) hereby declare / clarify that we have not been banned or delisted by any Government or Quasi Government Agencies of Public Sector Undertakings (PSUs) of Government of India.

Stamp and Signature of Bidder

Note : If a bidder has been banned by any Government or Quasi Government agencies or PSUs of Government of India, this fact must be clearly stated with details. If this declaration is not given along with the Unpriced bid, the tender will be rejected as Non-responsive.

### CONTACT PARTICULARS

|                |  |
|----------------|--|
| NAME OF PERSON |  |
| TEL NO. OFFICE |  |
| TEL NO. RES.   |  |
| MOBILE NO.     |  |
| E-MAIL ID      |  |

**ANNEXURE-IV****DEVIATION FORM**

|       | EXCEPTION AND DEVIATIONS STATEMENT |            |         |            |
|-------|------------------------------------|------------|---------|------------|
| S.NO. | PAGE NO. OF TENDER DOCUMENT        | CLAUSE NO. | SUBJECT | DEVIATIONS |
|       |                                    |            |         |            |

Bidder shall list all the deviations in the above given format only on their Letterhead. The Deviation sheet should be submitted along with Un-priced Bid.

In case no deviation sheet is submitted along with un-priced bid, it would be concluded that bidder has accepted all specifications, terms and conditions.

**PARENT COMPANY GUARANTEE**

This **GUARANTEE** ("**Guarantee**") is issued on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a Company organized and existing under the laws of \_\_\_\_\_ having its Registered Office at \_\_\_\_\_ (hereinafter referred to as "**Guarantor**" and/or "\_\_\_\_\_"), at the request and/or behest of \_\_\_\_\_, a Company organized and existing under the laws of \_\_\_\_\_ having its Registered Office at \_\_\_\_\_ (hereinafter referred to as "**Indian arm**"), in favour of **Hindustan Petroleum Corporation Limited**, a listed Public Limited Company organized under the laws of India having its Registered Office at Petroleum House, 17, Jamshedji Tata Road, Churchgate, Mumbai – 400 020 (hereinafter referred to as "**Beneficiary**" or "**HPCL**").

**WHEREAS:**

The Beneficiary floated a global tender dated \_\_\_\_\_ inviting offers from Vendors for \_\_\_\_\_ (purpose). The Indian arm have submitted their quotation dated \_\_\_\_\_ and advised the Beneficiary that the Indian arm is the subsidiary/ authorized agent/ branch office/ affiliate\* of the Guarantor. The Guarantor vide its letter dated \_\_\_\_\_ informed the Beneficiary that its Indian arm, will quote and participate in the tender in their place and desire that the contract be placed by the Beneficiary on the Indian arm. For this reason, the Guarantor is ready and willing to give a Parent Company Guarantee (PCG) inter alia for the performance of their Indian arm to the terms and conditions of the tender and on failure to assume the said obligations.

.

**We**, the Guarantor are hereby recording the terms and conditions governing our obligations under this Guarantee with the intent of being legally bound by the same and hereby agree, covenant and bind ourselves as follows:-



1. The Guarantor hereby irrevocably and unconditionally guarantees to HPCL that its wholly owned Indian arm Company will perform its obligations under the terms and conditions of the tender, if the contract is being awarded to them in future for \_\_\_\_\_ and agrees to provide further comfort letters/ guarantees, if so desired by beneficiary, in terms of the tender.
2. The Guarantor unconditionally and irrevocably guarantees to the Beneficiary that it will make available or cause to be made available to the Indian arm all financial, technical and other resources required to ensure that the Indian arm can carry out its obligations as per the tender terms and conditions and that the Indian arm at all times fully and effectively discharge its obligations under the terms and conditions of tender, including by discharging the obligations within the time and cost so stipulated.
3. The Guarantor hereby agrees that if the Indian arm shall in any respect commit any breach or fails to fulfill any of the terms of the Contract/Tender or complete it in all respects or if there is a failure to make any supplies or if any material, equipment or machinery under the contract so supplied is not of the required specifications or does not perform as envisaged under the contract, then the Guarantor will forthwith perform the same and fulfill all the obligations required under tender terms & conditions on behalf of their Indian arm, without any extra cost and time implications.
4. The Guarantor further undertakes to indemnify all losses, damages, expenses, claims, costs and proceedings which may be suffered or incurred by Beneficiary due to the failure or breach on the part of its Indian arm Company.
5. The Guarantor assures and undertakes that during the term of the contract or of any guarantee for performance as per the contract, the Indian arm shall continue to be the subsidiary/ authorized agent/ branch office/ affiliate\* of the Guarantor and the Guarantor's liability shall not be affected due to any incapacity or lack of power or legal personality or change in the status of the Indian arm or the Guarantor.

6. The Guarantor's liabilities under this Guarantee shall not exceed the liability of the Indian arm under the tender terms and conditions but this shall in any manner not affect the Guarantor's own responsibilities and liabilities under the Guarantee.
7. The obligation of the Guarantor shall take effect from the date of this Guarantee and shall remain in full force until all the obligations of the Indian arm have been fully performed and discharged and/or all sums of money payable to Beneficiary have been fully paid under the contract being entered into by Beneficiary with the Indian arm Company. The Guarantor further undertakes to perform forthwith without insisting on any proof of breach of Contract by its Indian arm Company and purely relying on Beneficiary's written demand.
8. The liabilities of the Guarantor shall not be discharged, diminished or otherwise affected by:-
  - (a) Any change in the Articles of Association or Bye-Laws or constitution of the Indian arm Company or the Guarantor.
  - (b) Any time, indulgence, waiver or consent given to Indian arm Company by the Beneficiary.
  - (c) Any amendment to the Contract or any security or other guarantee or indemnity to which Indian arm Company has agreed.
  - (d) The dissolution, amalgamation, reconstruction or reorganization of Indian arm Company or Guarantor.

**9. NOTICE:**

Any notice, demand, declaration or other communication to be given by the Beneficiary or the Guarantor to the other shall be in writing, in English language and delivered in person or by Air Mail or by Courier Services or by Facsimile or by E-Mail to the address given below :-

|                        |  |
|------------------------|--|
| <b>For Guarantor</b>   |  |
| <b>Attention of</b>    |  |
| <b>Mailing Address</b> |  |
| <b>Email Address</b>   |  |
| <b>Fax No.</b>         |  |

|                        |  |
|------------------------|--|
| <b>For Beneficiary</b> |  |
| <b>Attention of</b>    |  |
| <b>Mailing Address</b> |  |
| <b>Email Address</b>   |  |
| <b>Fax No.</b>         |  |

10. **GOVERNING LAW AND JURISDICTION:**

This Guarantee shall be exclusively governed by and construed in accordance with the laws of India without giving effect to the principles of conflict of laws therein. No party shall take a plea that any forum is inconvenient. It may be enforced in terms of the Indian laws.

**11. DISPUTE RESOLUTION**

Any dispute arising out of or in relation to this Guarantee shall be resolved by arbitration of a sole arbitrator to be appointed as per the rules set out in the tender document.

12. This Guarantee may be executed in one or more counterparts, all of which shall be read and construed as one document and any fax copy or scanned copy or print of a scanned copy of a signed Guarantee shall be deemed to be an original signature.
13. No modification, alteration or amendment of this Guarantee or any of its terms or provisions shall be valid or legally binding unless the Beneficiary consents to the same in writing.
14. No failure to take any action with respect to a breach of this Guarantee or a default by any other party shall constitute a waiver of the Beneficiary's right to enforce any provision of this Guarantee or to take action with respect to such breach or default or any subsequent breach or default.
15. Waiver of any breach or failure to comply with any provisions of this Guarantee shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Guarantee, unless any such waiver has been consented to by the concerned party in writing.
16. This document has been executed by a duly authorized signatory on behalf of the Guarantor having the requisite power to do so.

**IN WITNESS WHEREOF** the Guarantor has duly executed this Guarantee as at the date first above written.

**For and on behalf of Guarantor,**

\_\_\_\_\_

**Witness**

**(Signature)**

**Signature :**

**Name :**

**Designation :**

**Date :**

**Note:**

\* Strike off that which is not applicable and retain the correct relationship between Guarantor and Indian arm.

**BANK PARTICULARS FOR FOREIGN BIDDERS**

|                         |  |
|-------------------------|--|
| <b>Name of Bank</b>     |  |
| <b>Address of Bank</b>  |  |
| <b>Bank Account no:</b> |  |
| <b>SWIFT CODE</b>       |  |
| <b>IBAN no</b>          |  |

**Annexure VII**

**PROFORMA FOR SUBMISSION OF DETAILS OF SPECIFIC EXPERIENCE AND ANNUAL TURNOVER  
DETAILS AS CALLED FOR IN TENDER DOCUMENT**

| S.No. | Description | Details |
|-------|-------------|---------|
|-------|-------------|---------|

1. Annual turnover for the last three financial years, ending 31<sup>st</sup> March, of the previous financial year:

2. Documentary Evidence :

|                              |                          |
|------------------------------|--------------------------|
| 1. Annual Turnover Statement | Submitted/ Not Submitted |
|------------------------------|--------------------------|

NOTE 1: Annual Turnover over statements for the last three years shall be verifiable statement of annual accounts certified by a Chartered Accountant, Public Accountant or Stock exchanges, in the form of printed annual reports or similar document.

**SIGNATURE OF THE BIDDER :** \_\_\_\_\_

**NAME OF THE BIDDER** : \_\_\_\_\_

**Annexure VIII**

**PAST EXPERIENCE DURING LAST 7 YEARS (With reference to the clause 3.2 # Bid - qualification criteria)**

| Sn. | DESCRIPTION OF WORK | POSTAL ADDRESS OF CLIENT & NAME OF OFFICER IN CHARGE | CONTRACT VALUE | STARTING DATE | SCHEDULED COMPLETION DATE | ACTUAL COMPLETION DATE | REMARKS |
|-----|---------------------|--|----------------|---------------|---------------------------|------------------------|---------|
|     |                     |  |                |               |                           |                        |         |

Documentary Evidence :

- |     |                                |                          |
|-----|--------------------------------|--------------------------|
| i)  | Copy of Work Order             | Submitted/ Not Submitted |
| ii) | Copy of Completion Certificate | Submitted/ Not Submitted |

**SIGNATURE OF BIDDER** : \_\_\_\_\_

**NAME OF BIDDER** : \_\_\_\_\_



**PROFORMA OF CERTIFICATE OF NON-INVOLVEMENT OF AGENT**

Where Indian Agent/Consultant/Representative/Retainer/Associates is not involved, the bidder shall certify in the proforma given below on its letterhead.

This is to Certify that we have not engaged/involved any Indian Agent/Representative/Consultant/Retainer/Associates who is not our employee for the purposes of accompanying bid or any resultant Contract and therefore, no Agent's/Retainer's/Representative's/Consultant's/Associate's commission is payable in India or abroad against or in connection with any resultant Contract.

**SIGNATURE OF THE BIDDER :** \_\_\_\_\_

**NAME OF THE BIDDER** : \_\_\_\_\_

**FOR BIDDER'S QUERIES FOR PRE BID DISCUSSION**

| SL.<br>NO. | REFERENCE OF BIDDING DOCUMENT |             |            |         | BIDDER'S `QUERY |
|------------|-------------------------------|-------------|------------|---------|-----------------|
|            | PAR<br>T/<br>VOL.             | Page<br>No. | Clause No. | Subject |                 |
|            |                               |             |            |         |                 |

**NOTE: The Pre-Bid Queries may be sent by fax / e mail on numbers specified in Notice Inviting Tender (NIT)**

**SIGNATURE OF BIDDER** : \_\_\_\_\_

**NAME OF BIDDER** : \_\_\_\_\_

## **INTEGRITY PACT- Annexure XI**

**Attached separately**