

HINDUSTAN URVARAK & RASAYAN LIMITED



GENERAL CONDITIONS OF CONTRACT (VOLUME-IB)

CONSULTANCY SERVICES FOR 2200 MTPD AMMONIA & 3850 MTPD UREA PLANTS AND ASSOCIATED OFFSITES & UTILITIES AT BARAUNI

BIDDING DOCUMENT NO : HURL/HQ/04/101/1

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Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 1 of 24

TABLE OF CONTENTS

SL. No.	DESCRIPTION	PAGE No.
1.0	DEFINITIONS AND RULES OF CONSTRUCTION	3
2.0	INSTRUCTIONS AND NOTICES	4
3.0	SETTLEMENT OF DISPUTES	4
4.0	ARBITRATION	5
5.0	GOVERNING LAWS	6
6.0	TERMS OF PAYMENT	6
7.0	CONTRACT PERFORMANCE GUARANTEE	6
8.0	TAXES, DUTIES AND INSURANCE	6
9.0	TRAVEL EXPENSES	8
10.0	PROCEDURE OF PAYMENT	8
11.0	PROGRESSIVE PAYMENT	8
12.0	TIME FOR COMPLETION	9
13.0	HANDLING OF DOCUMENTS	10
14.0	ASSOCIATION OF HURL ENGINEERS	12
15.0	ACCESS TO CONSULTANT'S OFFICE	12
16.0	TITLE	12
17.0	OWNER'S RIGHT	13
18.0	UNITS & STANDARDS/ CODES/ REGULATIONS	13
19.0	LANGUAGE AND MEASUREMENT	14
20.0	CHANGES/ ADDITIONS/ DELETIONS	14
21.0	LIABILITY OF THE CONSULTANT	15
22.0	PATENT INFRINGEMENT INDEMNIFICATION	15
23.0	TERMINATION	16
24.0	BANKRUPTCY	18
25.0	SUSPENSION OF THE OBLIGATION	18
26.0	FORCE MAJEURE	18
27.0	ABANDONMENT OF WORK	19
28.0	SUB- CONTRACT	20
29.0	LIMITATION OF LIABILITIES	20
30.0	NOT USED	
31.0	NOT USED	
32.0	NO WAIVER	21
33.0	NOTICE OF DEFAULT	21
34.0	SUSPENSION OF WORK	21
35.0	NOT USED	
36.0	NOT USED	
37.0	INSURANCE	22

1.0

DEFINITIONS AND RULES OF CONSTRUCTION

“Consultant” or “Technical Specialist” or “Contractor” shall mean the Bidder whose Bid has been accepted by the Owner for award of the work and shall include his legal representatives, successors and permitted assigns.

“Consultancy Assignment” or “Work” or “Study” or “Assessment” or “Services” shall mean the complete consultancy work as per the scope of services specified in the Technical specifications..

“Contract” shall mean the Contract Agreement entered into between the Employer and the selected Consultant, together with the documents referred to therein. These shall together constitute the Contract and the term “Contract” shall in all such documents be construed accordingly.

“Date of Completion of Contract”: Unless otherwise terminated under the provisions of any other relevant clause of the Document, Contract shall be deemed to have been completed after issuance of the certification from Engineer-in-Charge that there is no demand outstanding against the Consultant and all liabilities under the Contract have been satisfactorily fulfilled by the Consultant.

“Date of Contract” shall mean the date on which the Notice of Award of Contract or Letter of Award has been issued by the Owner or any other date mentioned in the Notice of Award of Contract or Letter of Award, as the effective date of Contract, whichever is earlier.

“Owner” or “HURL” or “Client” or “Employer” shall mean the HURL Ltd., New Delhi, India (A Government of India Enterprise) and shall include their legal representatives, successors and permitted assigns.

“Engineer” or “Engineer-in-Charge” or “E.I.C.” shall mean the officer appointed in writing by the Owner to act as “Coordinator” from time to time on behalf of Owner in all matters pertaining to this Contract. “Engineer-in-Charge” shall be authorized by the client for supervision, inspection, scrutiny and approval of some or all of the services rendered by the Consultant under the Contract.

Final Report (if any) will mean the final report/ document submitted by the Consultant in respect of **Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsites & Utilities at Barauni** ' as per HURL Specification

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 3 of 24

“Month” shall mean calendar month. “Day” or “Days” unless herein otherwise expressly defined shall mean calendar day or day of 24 hours each. Working days in a month shall be as defined by Consultant in its offer.

“Notice of Award of Contract”/ “Letter of Award” shall mean the official intimation from the Owner notifying the successful Bidder that its proposal has been accepted.

“Starting Date” shall mean the date from which the periods specified for various activities are measured and as set forth in the completion schedules. The starting date for each schedule, unless otherwise agreed, shall be as indicated in the respective schedule

The “Government” shall mean the “Government of India” or “Government of State where the site is located” or an authorized representative/ agency/ department of the “Government of India” or an authorized representative/ agency/ department of the “Government of the state where the site is located”.

“Week” shall mean a continuous period of seven (7) day

Words imparting singular shall also include plural and vice-versa and any word defined in the singular shall have the corresponding meaning when used in the plural and vice versa.

Any reference to “person” shall include firms, companies, corporations and association or bodies of individuals, whether incorporated or not and shall include their respective successors in business and permitted assigns.

2.0 INSTRUCTIONS AND NOTICES

2.1 All notices to be given on behalf of HURL and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any office for the time being entrusted with the functions, duties and powers of the Engineer-in-Charge.

2.2 All instructions, notices and communications, etc., shall be given in writing and if sent by registered/ speed post to the last known place of business of the Consultant, shall be deemed to have been served on the dates when in the ordinary course of post these would have been delivered to him.

3.0 SETTLEMENT OF DISPUTE

3.1 Except as otherwise specifically provided in the Contract all disputes concerning questions of fact arising under the Contract, shall be decided

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni ‘	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 4 of 24

by the Engineer-in-Charge subject to a written appeal by the Consultant to the Engineer, whose decision shall be final to the parties hereto.

3.2 Any disputes or differences including those considered as such by only one of the parties, arising out of or in connection with the Contract shall be to the extent possible settled amicably between the parties.

3.3 If amicable settlement cannot be reached then all disputed issues shall be settled by arbitration as provided in Clause 4.0 herein below.

4.0 ARBITRATION

4.1 In the event of any question, dispute or difference arising out of or in connection with this consultancy work, whether during the progress of the work or after its completion, abandonment or breach of Contract, the parties agree to promptly negotiate a reasonable settlement thereof amicably. Unless otherwise specified, in all cases of disputes which cannot be settled by mutual negotiations, the matter shall be referred for Arbitration, for which purpose the Client and the Consultant shall nominate one Arbitrator each. These Arbitrators shall appoint an Umpire not later than one month from the latest date of their respective appointment. The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996, the rules framed thereunder and any statutory modifications thereof. The costs of reference and arbitration award shall be payable by the parties to the extent and in a manner as may be determined by the Arbitrators or the Umpire.

In case the Consultant is an Indian Public Sector Enterprise/ Govt. Deptt. (but not a State Govt. Undertaking or Joint Sector Undertaking which is not a subsidiary of Central Govt. Undertaking), the dispute arising between the Owner and the Consultant shall be referred for resolution to a Permanent Arbitration Machinery (PAM) of the Department of Public Enterprises, Govt .of India.

4.2 Notwithstanding the existence of any dispute or difference and/or reference for the arbitration, the Consultant shall proceed with and continue without hindrance with the performance of the work under the Contract with due diligence and expedition in a professional manner and the payments due to the Consultant shall not be withheld by the Client on account of such difference or arbitration proceedings unless such payment is subject matter or one of the matters of the arbitration.

4.3 The arbitrators may from time to time with consent of the parties enlarge the time, for making and publishing the award. The venue of arbitration shall be New Delhi. The language of arbitration shall be English.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni ‘	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 5 of 24

5.0 GOVERNING LAWS

This Consultancy work shall be governed by the Indian Laws for the time being in force and the Delhi Courts alone shall have the exclusive jurisdiction on all matters arising under the contract.

6.0 TERMS OF PAYMENT

6.1 The consultancy fees/man days/month charges under this contract shall be paid as per the terms of payment specified in the Special Condition of Contract and Schedule of Rates

7.0 CONTRACT PERFORMANCE GUARANTEE

7.1 As a Contract Security, the successful Bidder, to whom the work is awarded, shall be required to furnish in favour of the Owner, a performance guarantee in the form of Bank Guarantee from any Bank as per list enclosed at Annexure - D1 in proforma as at Annexure-D to Conditions of Contract in favour of the Owner within thirty (30) days of Letter of award. The guarantee amount shall be equal to ten percent (10%) of the total Contract Price for the entire work in accordance with the terms and conditions specified in the Contract and in the Bid Documents. The guarantee shall be valid till the expiry of 12 months after successful Commissioning and Performance & Guarantee Test Run (PGTR) of the project. However, in case of delay in completion of the contract for the reasons attributable to the consultant, the validity of this Bank Guarantee shall be extended by the period of such delay by the consultant at their own expenses.

7.2 not used

7.3 The Contract Performance Guarantee is intended to secure the performance of the entire Contract. However, it is not to be construed as limiting the damages stipulated in other clauses in the Bid Documents.

7.4 The Performance Guarantee will be returned to the Contractor without any interest on successful completion and fulfillment of all obligations at the end of the Contract.

8.0 TAXES, DUTIES AND INSURANCE

8.1 All taxes, duties & levies (including , surcharge and cess there upon as applicable) , insurance charges for Consultant's personnel, license fees, etc. (excluding GST) shall be included in the bid price for the entire scope of work and the same shall be borne by the Consultant . HURL will not bear any expenditure, whatsoever on this account . GST shall be paid by Owner at actual as brought out at para 21.3 of ITB.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni '4	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 6 of 24

Any statutory variations in GST & any new cess and/or levies there upon during the currency of the contract on GST coming into effect after seven (7) days prior to last date of submission of bids, shall also be paid by Owner, subject to submitting the documentary evidences..GST on the consultancy services rendered by the consultant for quantity variation/Extra work shall be paid by the owner separately.

Further, If any new Tax or Duty or cess and/ or levies is imposed on the Consultancy Fee after seven (7) days prior to last date of submission of bids, the same shall be reimbursed to the consultant against the documentary evidences.

Payments to Service Provider for claiming GST and cess thereupon amount will be made provided the above formalities are fulfilled. Further, HURL may seek copies of challan and certificate from Chartered Accountant for deposit / submission of Return of GST thereupon collected from Owner.

Any changes in statutory rules and regulations under GST regime shall be followed by the Consultant.

Refer Annexure-F2 to GCC for General Guidelines for Goods & Service Tax (GST)

8.2 Bidders are required to ascertain themselves the applicable taxes & duties including income tax rates as applicable on the seven (7) days prior to the last date of submission of bids and Owner would not undertake any responsibility whatsoever in this regard.

8.3 Please note that the responsibility of payment of above taxes thereupon lies with the Service Provider only. Contractor providing taxable service shall issue an Invoice as per the law, a Bill or as the case may be, a Challan which is signed, serially numbered and in accordance with GST rules. The invoice shall also contain the following:

- (a) Name, Address & GST Registration No. of such Person/Contractor
- (b) Name & Address of the Person/Contractor receiving Taxable Service
- (c) Description, Classification & Value of Taxable Service provided like HSN/SAC Code.
- (d) GST Amount & Cess thereupon, if any.

8.4 As regards Income Tax, Surcharge on Income Tax and other Corporate Taxes, including Cess wherever applicable, the Consultant shall be responsible for such payments to the concerned authorities.

However, the Owner is entitled to deduct taxes at source from the payment to be made to the contractor in accordance with the Indian Tax

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 7 of 24

laws and rules as applicable from time to time and deposit it with the concerned Authorities within the prescribed time. The Contractor shall be required to submit the PAN details to the Project Manager before the submission of the first bill.

8.5 Tax liability, if any, on deputation of the Consultant's Personnel abroad shall also be borne by the Consultant and shall be the responsibility of the Consultant as per Tax Laws of India.

8.6 The Consultant shall be liable to take/ maintain all necessary insurance at its own cost.

9.0 TRAVEL EXPENSES

All the Travel expenses, boarding & lodging charges, insurance & taxes incurred by the Consultant's personnel for journeys to site or HURL office at Delhi or to HURL projects or anywhere else required to carry out the services under the scope of this assignment, will be borne by the Consultant and shall be included in the bid price. Owner will not take any responsibility whatsoever on this account. All the travel expenses (including, boarding, lodging, taxes & insurance) of the engineers of HURL traveling to Consultant's office in India / abroad shall be borne by HURL.

10.0 PROCEDURE OF PAYMENT

10.1 All the Invoices of payment shall be supported by necessary Documents and submitted in quadruplicate for the certification of Engineer-in-Charge for which he will require a maximum time of fifteen (15) days before the same are submitted for processing the payment of amount admitted. The Owner shall pay to the Consultant all the admissible payment within fifteen (15) days of certification of the Engineer-in-Charge of the amount payable for the services. In the event, there is any query in respect of any item of such invoice requiring clarification, the Engineer-in-Charge shall notify the same within 15 days of receipt of such invoice by the Owner that such a query has arisen and both the parties shall endeavor to reach an agreement within a period of fifteen (15) days thereafter. If no mutual agreement can be reached within a period of forty five (45) days after receipt of the invoices by the Engineer-in Charge, the Owner shall make payment against the balance of invoice (original amount less the amount in question) to the Consultant within fifteen (15) days thereafter i. e within sixty (60) days from the date of receipt of invoice by the Engineer-in-charge. The invoice for the balance amount under question shall be separately submitted for future consideration of the Owner / settled under arbitration

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 8 of 24

10.2 All payments made during the Contract shall be on account payments only. The Final Payment will be made on completion of the entire work and on fulfillment by the Contractor of all his liabilities under the Contract.

10.3 Consultant shall furnish the details of Bank Account in the prescribed format along with Bid in order to facilitate the Owner to release Payments electronically through Electronic Fund Transfer system wherever technically feasible. The Bidder shall hold the Owner harmless & Owner shall not be liable for any direct indirect or consequential loss or damage sustained by the bidder on account of any error in the information or change in Bank details provided to the Owner in the prescribed form without intimation to Owner duly acknowledged.

11.0 PROGRESSIVE PAYMENT

11.1 All payments against the services shall be paid against production of invoice in quadruplicate by the Consultant. The payment of such fees shall be released on stage-wise completion of the services including submission of the "Deliverables" and subject to acceptance, approval and certification by the Engineer-in Charge in accordance with provisions of Terms of Payments as specified.

12.0 TIME FOR COMPLETION

12.1 The entire scope of Work covered under this Contract shall be completed within the time stated in the bidding document or within such extended time granted to the Contractor by the Employer . The time allowed for execution of the Works as specified in the bidding document or the extended time in accordance with these Conditions shall be the essence of the Contract.

12.2 GUARANTEE AGAINST PROJECT TIME SCHEDULE AND LIQUIDATED DAMAGES FOR DELAY IN COMPLETION

Consultant guarantees that services shall be rendered with all diligence & care in the most expeditious manner and shall be free from defects and fit for respective uses & purposes intended as stated elsewhere in the bidding document.

Consultant guarantees that the Consultancy Services covered under this AGREEMENT shall be performed in such a way so as to enable HURL achieve (a) scheduled Mechanical Completion (i.e. 32 months from date of issuance of LOA to LSTK Contractor) and (b) scheduled Commissioning and PGTR (i.e. 36 months from date of issuance of LOA to LSTK Contractor) (except in the event Mechanical Completion / Commissioning / PGTR is delayed for reasons not attributable to CONSULTANT).

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 9 of 24

In case of delay in scheduled Mechanical Completion of the project and / or scheduled Commissioning and PGTR, for the reasons attributable to Consultant, Consultant shall pay liquidated damages @ 0.5% (Zero decimal five percent) of the total lump sum fee of home office services (Part-A of Schedule of Rates) per complete week of delay subject to a maximum of 5.00% (Five decimal Zero percent) of the total lump sum fee of home office services (Part-A of Schedule of Rates).

13.0 HANDLING OF DOCUMENTS/ CONFIDENTIALITY

13.1 Confidential information shall mean all technical information relating directly or indirectly to the Project, which is disclosed to CONSULTANT by or on behalf of OWNER, and to OWNER by the CONSULTANT.

13.2 CONSULTANT shall not disclose confidential information to any third party without prior written approval of the OWNER.

13.3 CONSULTANT shall use the Confidential Information only for the Work to be performed for implementing this Contract, and will limit disclosure of confidential information within its Organization to only those of its employees who need to make use of it for the aforesaid purposes.

13.4 The CONSULTANT shall be required to enter into Secrecy Agreement for non-disclosure of information with OWNER/ Licensor(s).

13.5 The CONSULTANT shall enter into secrecy agreement with the Licensor / Third Parties, consistent with normal industry practice, on OWNER's request and keep in force confidentiality agreements concerning third parties' proprietary information, which agreements shall permit CONSULTANT to use such parties' proprietary information in the Work.

13.6 The CONSULTANT and his employees, agents and sub-Contractor(s) and the employees and agents of the Sub-contractor's shall treat as strictly confidential and shall take all steps necessary to ensure confidential handling of all maps, plans, charts, designs, drawings, photographs, data. Reports, tests, specifications, methods and other information developed or acquired by the CONSULTANT from or by means of the tender documents or any facility extended to the CONSULTANT pursuant thereto or the award or performance of the works or any of them or otherwise disclosed or made available to the CONSULTANT or any of the aforesaid persons nor shall report, disclose or reproduce the same in any book, Clause, disclose or reproduce the same in any book, article, speech or other publications, provided always that the OWNER may upon application by the CONSULTANT to the OWNER in this behalf permit report, disclosure

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 10 of 24

or re-production of the same in any book, article, speech or the publications if it is satisfied that this would not involve the disclosure of any classified or other information which would not be in the interest of public or security to disclose.

Application for such consent shall be submitted to the OWNER in writing outlining the intended use of the relative material and shall be submitted to the OWNER at least one month prior to the expected use accompanied by the text of the relative publication in which it is sought to be used. Photographs should be accompanied by their caption. An application shall not be understood to have been permitted unless expressly permitted in writing by the OWNER/ Licensor.

13.7 The above stated confidentiality requirements shall not apply to:

Information which is or becomes, through no fault of CONSULTANT, or its employees, representatives or subcontractors, part of the public knowledge; or

Information which is or becomes available to CONSULTANT without obligation of confidence and also without restriction on use from sources having the legal right to disclose such information without restriction on use and disclosure, such sources being other than OWNER, its licensors or other contractors, or a member or members of the Paradip Refinery Project; or

Information, which is already in CONSULTANT 's possession without restriction on use and also without restriction on disclosure and was not received in anticipation of the Work.

Information shall not be considered within any of the above exceptions merely because it is embraced by more general information within one of said exceptions. A combination of features of technical information shall not be considered to be within any of the above exceptions unless the combination itself and its principle of operation are within said exceptions.

13.8 HURL shall also observe and abide by similar secrecy provisions and hold in confidence all data, documents, and technical information prepared by Consultant and made available to HURL under this AGREEMENT.

13.9 Except as otherwise prescribed in any Confidentiality Agreement with third parties, the obligations set forth in Clause 13 shall survive termination of this Contract.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni '4	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 11 of 24

14.0 ASSOCIATION OF HURL ENGINEERS

14.1 HURL may depute their engineers/ representatives to be present during the entire period of consultancy assignment or any part thereof and they would be closely associated by the Consultant in all activities relating to the assignment for a fruitful interaction. HURL's authorized representatives will have to be provided necessary information whenever asked for.

14.2 The engineers will also discuss results of studies/ assignments and may make certain suggestions. The Consultant shall provide all facilities for HURL engineers/ representatives to have fruitful participation in the work. The Consultant shall submit all study results, draft sections/ documents to the E.I.C. for his approval and the final document will be prepared after incorporating charges/ modifications/ additions/ alterations suggested by the E.I.C. The travel charges (to & fro) and the boarding and lodging charges of HURL engineers/ representatives shall be borne by HURL.

15.0 ACCESS TO CONSULTANTS OFFICE

The authorized representative(s) of HURL shall be provided access to the Consultant's and/or his sub-Consultant's premises at any reasonable time during the pendency of this work for expediting, inspection, checking of the progress of the Consultant's work.

16.0 TITLE

16.1 **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 or on behalf of CONSULTANT.

16.2 **Warranty of Title:** CONSULTANT warrants good title to the Work.

16.3 **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.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 12 of 24

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.

16.4 Ownership of Designs & Drawings: All designs, drawings, specifications, data, computer printouts, programs and files, documents, reports, studies, manuals, programs, analyses and all other items including copies and originals thereof, 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 same (properly sorted and indexed), to OWNER in accordance with the provisions of this Contract and in any event upon issue of certificate of approval or earlier termination of this Contract. The provisions of this Clause 16.4 shall survive any termination of this Contract.

17.0 OWNER'S RIGHT

Owner reserves the right for the following :-

17.1 Rejection of any or all offers without assigning any reason whatsoever.

17.2 Rejection of any offer with incomplete scope of works or which is an incomplete offer in the opinion of the Owner.

17.3 Review of the work performed by the Consultant either by Owner or through another consultant separately appointed by Owner and ask for any clarification and changes/ modifications to the work performed by the Consultant. Such changes shall be mutually discussed and agreed between the Owner and the Consultant and the same shall be incorporated by the Consultant in his work without any cost liability to the Owner and without any dilution of the responsibility of the Consultant.

18.0 UNITS & STANDARDS/ CODES/ REGULATIONS

The International System of Units (SI) will be used for carrying out the services mentioned in the specification. Indian Standards, Codes and Regulations, wherever applicable shall be adopted and adhered to by the Consultant. In case of such Indian Standards/ Codes/ Regulations being not available in particular areas, applicable and acceptable international standards shall be followed. The Consultant shall also comply with any changes/ modifications in the Standards while undertaking the above studies and preparation of various reports.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 13 of 24

19.0 LANGUAGE AND MEASUREMENT

The report must be submitted in English language. All reports, documents, correspondence of any other written material in connection with this work shall be submitted in English language only. However, the Public Hearing Document, if any, shall be made in both Hindi & local vernacular language. The metric system of measurement shall be used exclusively for carrying out these services.

20.0 CHANGES/ ADDITIONS/ DELETIONS

20.1 HURL shall have the right to request in writing additions or changes in the scope of services to be performed by the Consultant. If in the Consultant's opinion, any such additions or changes affect the completion schedule or the fee, HURL will be advised accordingly and the same shall be mutually settled. However, the Consultant shall continue to carry out the work pending final settlement, if any.

If in Consultant's judgment, fulfillment of any of its obligations under this AGREEMENT would be jeopardized by a change requested by HURL, Consultant shall explain in writing to HURL the reasons for not accepting these changes within 15 days of receipt of written request from HURL for the same.

For each addition in Scope of Services, Consultant shall promptly submit in writing to HURL the estimated extra cost, completion time for additional scope of work and its effect on overall time schedule, if any, together with relevant detail and particulars of any of the variations required to be made to any of Consultant's or HURL's obligations.

20.2 HURL reserves the right to delete any item/s or part thereof from the scope of services to be performed by the Consultant. For such purposes HURL shall give to the Consultant a 30 days notice in writing on receipt of which the Consultant shall take necessary steps as may be directed by HURL and shall stop incurring any expenditure and performing services in connection with the item/s of work so deleted.

20.3 The corresponding fee for the deleted item(s) of work will be arrived based on the fee identified in the Contract and shall be deducted from the fee payable to the Consultant under the Contract. The Consultant, however, shall be entitled for the compensation for the amount of work and services already performed in connection with the item(s) deleted from the scope, at a mutually acceptable fee.

20.4 In the event of any data furnished by HURL/ LSTK CONTRACTOR / Process Licensors requiring modification later on, Consultant shall be entitled to reimbursement of extra costs involved and enhanced time

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 14 of 24

schedule that may arise therefrom unless such inaccuracies or incompleteness or deficiencies in data could have been detected by a reasonably competent Consultant undertaking services similar to the Work being undertaken by selected Consultant.

21.0 LIABILITY OF THE CONSULTANT

21.1 Should any defect or inadequacy appear in rendering the services by the Consultant prior to the date of final acceptance of the work and release of Contract Performance Guarantee by the Owner, the Consultant shall perform at its own initiative and free of any cost to HURL, all such services as shall be necessary to remedy the said defect or inadequacy.

22.0 PATENT INFRINGEMENT INDEMNIFICATION

22.1 If CONSULTANT's work or part thereof or any methods, designs or document furnished or specified by CONSULTANT or any Subcontractor under this Contract infringes any patent, trademark, design or copyright or would involve the un-authorized use of a third party's trade secrets, CONSULTANT shall, at its sole expense render consultation, assistance and modifications to the Work or part thereof or any methods, designs or things furnished by CONSULTANT or any Subcontractor under this contract as may be necessary to avoid such infringement or un-authorized use.

22.2 If any alleged infringement or un-authorized use as specified in Paragraph 22.1 is claimed or pursued in courts of Law or otherwise by a third party against the OWNER, the CONSULTANT agrees to fully defend and indemnify OWNER and hold it harmless in respect of any resulting liability.

OWNER shall give prompt written notice informing CONSULTANT of such claim or suit and CONSULTANT shall, at its sole expense settle such claim or suit in such a way without impairing the work and without affecting the CONSULTANT's indemnity under this Paragraph 22.2 and/ or at CONSULTANT's sole cost replace the infringing elements with non-infringing ones.

22.3 OWNER agrees to provide prompt, written notice to CONSULTANT and to co-operate with and to assist the CONSULTANT in defense of any claim or suit as may be reasonably required by the CONSULTANT. Should OWNER seek to settle infringement claims or proceedings it shall first seek CONSULTANT's approval (which shall not be unreasonably withheld) in respect of such settlement. Notwithstanding the foregoing, the CONSULTANT shall in every case secure and guarantee the right of OWNER to continue using the work or part thereof without hindrance or interruption and shall reimburse OWNER for all costs incurred by OWNER in securing such right to the extent CONSULTANT fails to do so.

22.4 If any design information furnished by the OWNER or by any third party on behalf of the OWNER under this contract infringes a patent, design or copyright or would involve the unauthorised use of a third party's trade secrets resulting in any suit or action against CONSULTANT consequent upon the use of such design information by the CONSULTANT in its work, the OWNER shall fully defend, indemnify and hold harmless the CONSULTANT in respect of any and all liability resulting from such infringement including the costs that may be incurred by CONSULTANT in defending against any suit or cause of action brought against CONSULTANT.

23.0 TERMINATION

23.1 Termination for Default

23.1.1 The Owner may without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Consultant, terminate the Contract in whole or in part

- a) If the Consultant fails to deliver any or all of the services within the time period(s) specified in the Contract or any extension thereof granted by the Owner in writing.
- b) If the Consultant fails to perform any other obligations(s) under the Contract or
- c) If the Consultant, in either of the above circumstances, does not cure its failure within a period of thirty (30) days after receipt of the default notice from the Owner.

23.1.2 In the event the Owner terminates the Contract in whole or in part, pursuant to para 23.1.1, the Owner may get the services done, upon such terms and in such manner as it deems appropriate, similar to those not rendered, and the Consultant shall be liable to the Owner for any excess costs for such similar services. However, the Consultant shall continue performance of the Contract to the extent not terminated.

23.2 Termination for Convenience

23.2.1 The Owner, may by written notice sent to the Consultant, terminate the contact, in whole or in part, at any time for its convenience, The notice of termination shall specify that termination is for Owner's convenience, the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni ⁴	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 16 of 24

23.2.2 The studies/services that are completed and ready for final reporting within thirty (30) days after the Consultant's receipt of notice of termination shall be accepted by the Owner at the Contract terms and prices. For the remaining services, the Owner may elect:

- a) To have any portion completed and delivered at the Contract terms and prices; and/or
- b) To cancel the remainder and pay to the Consultant an agreed amount for partially completed services.

23.3 **Termination for Insolvency**

23.3.1 The Owner may at any time terminate the Contract by giving written notice to the Consultant, without compensation to the Consultant, if the Consultant becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Owner.

23.3.2 Upon termination of the Contract at any time for whatever reason by HURL, compensation shall be payable to the Consultant for all services performed satisfactorily until the date of termination. In addition the Consultant will be paid for such of those items of work which have been partially completed as per conditions stipulated under clause 23.2.2. The Consultant shall provide available Documentary evidences to this effect, acceptable to HURL

23.3.3 Following issuance by HURL of a notice of termination and prior to the effective date of such termination, the Consultant shall:

- i) terminate performance of work in progress under the Contract on the date and to the extent specified in the notice of termination;
- ii) Incur no further costs for services except as necessary to complete performance of any portion of the work under the Contract not terminated by the said notice.
- iii) terminate all outstanding orders, service Contracts and sub-Contracts to the extent that they relate to the performance of work terminated by the notice;
- iv) transfer title and deliver to HURL in the manner, at the times and to the extent, if any, as directed by HURL, all completed or partially completed reports, designs, data, maps, plans, photographs, specifications, and computations, etc. which, if the Contract had been continued, would have been required to be furnished to HURL.

The termination of the Contract shall not relieve the Consultant of its duties and liabilities as per the Contract for the portion of the services performed prior to the effective date of termination.

24.0 BANKRUPTCY

24.1 If the Consultant shall become bankrupt or have a receiving order made against him or compound with his creditors or being a corporation commence to be wind up, not being a voluntary winding up for the purpose only or amalgamation or reconstruction, or carry on their business under a receiver for the benefit of their creditors or any of them, HURL shall be at liberty.

- (a) To terminate the assignment forthwith with a notice in writing to the Consultant or to the liquidator or receiver or to any person in whom the Consultant may become vested.
- (b) To give such liquidator, receiver or other person the option of carrying out the consultancy assignment subject to their providing a guarantee for the due and faithful performance of the assignment upto an amount to be determined by HURL.

25.0 SUSPENSION OF THE OBLIGATION

25.1 The obligations stipulated in this specification can only be suspended in the case of any particular item or work, in the event of Force Majeure as defined in Clause 26.0 or as the result of an agreement between the parties.

25.2 In the event of Force Majeure, neither of the parties may be considered in default of its obligations under the terms of the Specifications.

26.0 FORCE MAJEURE

26.1 Neither party shall be considered in default of its obligation if such performance is prevented or delayed due to "FORCE MAJEURE". "FORCE MAJEURE" shall be deemed to be any cause beyond the reasonable control of CONSULTANT or HURL, as the case may be which prevents or impedes the due performance of the AGREEMENT and which by due diligence the affected Party is unable to avoid or overcome through its individual concerted efforts which includes, without limitation Acts of God, Earthquakes, Typhoon, Cyclone, Flood, Lightning, Land Slide, Fire Explosion, Plague, Epidemic, Strikes, Lockouts, Sabotage, Blockages, War, Riot, Invasion, Revolution, Act of Foreign Enemies, Hostilities (whether War be declared or not), Confiscation of Power by Military, Trade

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni ‘	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 18 of 24

Embargoes, Destruction Or Requisition / Ordinance by order of any Government or Sub Division or any Public Authority.

- 26.2 If either Party is prevented or delayed in the performance of its obligations under this AGREEMENT by FORCE MAJEURE, and if the affected Party gives written notice within 14 DAYS thereof to the other Party specifying the matter constituting FORCE MAJEURE with necessary evidence that Contractual obligation is thereby prevented or delayed, and the further period for which it is estimated that such prevention or delay will continue, then the affected Party shall be excused from the performance or punctual performance as the case may be, of such obligation from the date of such notice till a period of time on account of Force Majeure.
- 26.3 HURL and CONSULTANT shall be diligent in attempting to prevent or remove the causes of FORCE MAJEURE. The Parties upon receipt of notice of FORCE MAJEURE shall confer promptly with each other and agree upon a course of action to remove or alleviate such causes.
- 26.4 Force Majeure is no one's fault, therefore each party should bear its own cost. If, by virtue of Article 26.2, either Party is prevented from fulfilling its Contractual obligation by cause of FORCE MAJEURE lasting for a continuous period of 2 (two) months or more, then the Parties shall consult each other with a view of agreeing to what action should in the circumstances be taken and what amendment to the terms of AGREEMENT ought to be made.
- 26.5 No ground for exemption can be invoked if consultant has failed to give timely notice by registered letter and subsequently supported it by documentary evidence.
- 26.6 Delay or non-performance by a party hereto caused by the occurrence of any event of FORCE MAJEURE shall not:
- (a) Constitute a default or breach of the CONTRACT,
 - Or
 - (b) Give rise to any claim for damages or additional cost or expense occasioned thereby,
- if such delay or non-performance is caused by the occurrence of any event of FORCE MAJEURE. FORCE MAJEURE conditions are not payable under any circumstances.

27.0 ABANDONMENT OF WORK

If any work included in the scope of specification to be done by the Consultant is abandoned or suspended for any cause or reasons which

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 19 of 24

can not be attributed to the Consultant, payment shall be made on a pro-rata basis for the work actually done and reported by him.

28.0 SUB-CONTRACT

The Consultant cannot assign or sub-Contract any portion of this work without the prior written consent of HURL. Such consent shall not operate to release or relieve CONSULTANT of any obligation or liability under this AGREEMENT.

29.0 LIMITATION OF LIABILITIES

29.1 HURL shall in no way be responsible for any liabilities arising out of the Consultant's Contractual obligations with the Consultant's personnel, experts, engineers, sub-Contractors, licensors, collaborators, vendors, or subsidiaries. Similarly, the Consultant shall in no way be responsible for any liabilities arising out of HURL's personnel, sub-Contractors, licensors, collaborators, vendors or subsidiaries.

29.2 The Consultant and HURL both agree that each shall assume full risk of damages or injury to its own properties, employees and representatives caused by any act or omission to act by their respective employees or representatives, during the performance of this Contract.

29.3 Notwithstanding anything therein contained elsewhere in this AGREEMENT or implied to contrary:

- i) Either Party shall in no circumstances be liable in respect of indirect and/ or consequential losses or damages suffered by the other Party in connection with or arising out of AGREEMENT.
- ii) Consultant's total Maximum Liability on all accounts whatsoever of the project shall be limited to 5.0% (Five decimal zero percent) of the total lump sum fee against Home Office Services (Part-A) of Schedule of Rates.

However, this limit of 5.0% shall exclude the following:

- a) Unlimited Corrective engineering/ engineering review, as applicable, mentioned at Clause 21.1 above and Technical Specifications.
- b) Liability towards any patent infringement by CONSULTANT.

30.0 Not used
31.0 not used

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni '4	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 20 of 24

32.0 NO WAIVERS

If the Owner, in any instance, does not insist upon strict performance of any of the terms of the assignment, it shall not be construed as a waiver or relinquishment in the future till the assignment is in force and shall not relieve the Consultant of any of its responsibilities under the assignment.

33.0 NOTICE OF DEFAULT

In the event of any default by either party hereto, in respect of any of its obligations and responsibilities under the Contract, the party not in default shall give notice in writing to the other party calling upon it to rectify such default. Should the party in default does not rectify such default within a period of thirty (30) days of the receipt thereof within the said period, the other party shall be entitled to treat it as a breach of Contract and notice to that effect shall be given forthwith.

34.0 SUSPENSION OF WORK

34.1 The Consultant shall, on receipt of the order in writing of the Engineer-in-Charge, suspend the progress of the works or any part thereof, for such time and in such manner as the Engineer-in-Charge may consider necessary for any of the following reasons:

- i) On account of any default on part of the Consultant; or
- ii) For proper execution of the works or part thereof for reasons other than the default of the Consultant;
- iii) For safety of the works or part thereof

The Consultant shall, during such suspension, properly protect and secure the works to the extent necessary and carry out the instructions given in that respect by the Engineer-in-Charge.

34.2 If the works are suspended by the Engineer-in-Charge for reasons as set out in items (ii) and (iii) above, the Consultant shall be allowed (a) suitable extension of time in the completion date equal to the duration of suspension of works and (b) reasonable and demonstrable compensation for expenditure arising for execution of the work during such suspended period.

35.0 Not used

36.0 Not used

37.0 INSURANCE

37.1 **Insurance to be Taken Out by CONSULTANT:** During the performance of WORK hereunder, CONSULTANT shall take out, carry and maintain insurance as per international practice including the following listed below:

37.1.1 Workman's compensation insurance, covering all employees of CONSULTANT and their subcontractors and any other personnel of CONSULTANT for statutory benefits as set out and required by law (and/ or CONSULTANT 's Home Country) in the area of operation or area in which CONSULTANT may become legally obliged to pay benefits for bodily injury or death.

37.1.2 Transit/ Travel Insurance and Medical Insurance

37.1.3 Insurance against fire, theft, damage and loss of all property owned by CONSULTANT at the construction site.

37.1.4 Group Personnel Accident Insurance covering CONSULTANT's employees not otherwise already covered under Para 37.1.1 above, operating from the PROJECT site as per CONSULTANT's established practices.

37.1.5 **Subcontractors' Insurance:** CONSULTANT shall ensure that its Subcontractors maintain insurance similar to the insurance required of the CONSULTANT, with limits of liability and levels of deductibles acceptable to CONSULTANT.

37.1.6 If CONSULTANT fails to fulfill any of its obligations under this Clause, OWNER may, but shall not be obligated to, procure insurance meeting the requirements of this Clause 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.

37.2 INDEMNIFICATION:

37.2.1 CONSULTANT shall, and hereby guarantees that CONSULTANT and its Subcontractors shall, indemnify and hold harmless the OWNER, its Affiliates and any co-venturers for loss of and damage to property not owned by and not under the care, custody or control of OWNER, its affiliates or any co-ventures and deaths and injuries to the extent such damage, death or injury is caused by the negligent or wrongful acts or omissions of any of CONSULTANT , its Affiliates and/ or Subcontractors in performance of CONSULTANT 's obligation under this Contract.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni ' 4	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 22 of 24

37.2.2 a) CONSULTANT shall indemnify and hold harmless OWNER including its employees, servants and agents against any loss or liability that may arise on account of death of or injury to CONSULTANT's personnel and loss or damage to CONSULTANT's property.

b) OWNER shall indemnify and hold harmless CONSULTANT including its employees, servants and agents against 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.

37.2.3 **EFFECT OF INSURANCE:** The obligations of CONSULTANT to indemnify and hold harmless OWNER against claims referred to in clause 37.2.1 shall not be limited or reduced by any insurance provided in accordance with clause 37.0 except to the extent that the proceeds of any such insurance shall be applied to reduce claims made against OWNER.

37.2.4 **SUBCONTRACTORS:** CONSULTANT shall ensure that its subcontracts contain indemnification provisions in favor of OWNER, its Affiliates and any co-ventures and their respective officers, directors, employees, servants, CONSULTANTS and agents no less beneficial than those of clause 37.2.1 and 37.2.2.

37.3 INSURANCE AND INDEMNIFICATION BY OWNER:

37.3.1 OWNER shall take out or cause its Contractors to take out and maintain insurance for the PLANT and materials for incorporation therein against "All Risks" of loss or damage, to the full replacement value thereof, in accordance with good international practice. Such insurance shall be in OWNER's name and OWNER shall be the loss payee. Cover shall be provided for materials in transit to the site. In the event of any loss or damage, CONSULTANT shall assist OWNER in preparing the insurance claim to be submitted by OWNER, and shall provide services as necessary to re-procure lost or damaged materials and to require Contractors to repair, replace or reconstruct the damaged part of the PLANT, all such services, materials and construction being at OWNER's cost. OWNER shall, to the extent reasonably possible, procure that its insurers under such insurance policies waive their rights of subrogation against CONSULTANT.

37.3.2 OWNER shall take out and maintain Third Party Liability Insurance, for an insured amount to be agreed by the CONSULTANT as sufficient to cover potential loss or damage to adjacent property and injury to persons arising out of the Project. Such insurance shall be in OWNER's name and OWNER shall be the loss payee.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 23 of 24

37.3.3 OWNER shall release and hold CONSULTANT harmless from and against any claim for loss or damage to the Plant (including materials for incorporation therein) or other property of OWNER. OWNER shall indemnify and hold CONSULTANT harmless from and against any claim by a third party (other than CONSULTANT's employees or Subcontractors) for loss or damage to property or death or injury to persons which arises out of the Project, except where such loss, damage or injury is solely due to CONSULTANT's negligence or default.

37.3.4 The CONSULTANT shall further develop the insurance programme for the Project, and shall ensure that appropriate provisions are inserted into all contracts with Contractors and Vendors, including a "Mutual Hold Harmless" provision whereby each Contractor or other party working on the Site undertakes to bear all liability for loss, damage or injury to its personnel and its property, and to indemnify and hold OWNER, CONSULTANT, and all other contractors harmless from any claim that may arise from such loss, damage or injury.

Package: Consultancy Services for 2200 MTPD Ammonia & 3850 MTPD Urea Plants and associated Offsite & Utilities at Barauni	General Conditions of Contract (GCC) (Volume-IB)
Bid. Doc. No.: HURL/HQ/04/101/1	Page 24 of 24

PROFORMA OF LETTER OF UNDERTAKING
(To be submitted by the Bidder along with his Bid)
(To be executed on non-judicial Stamp Paper of requisite value)

Ref. No.....

Date:.....

To

HURL Limited.

Contracts Department

Core-2, 2nd Floor, Scope Minar

Laxmi Nagar District Centre

New-Delhi-110092,

Dear Sir,

- 1.0 I*/We* have read and examined bidding documents relating to the Consultancy Assignment for Project Management Consultancy Services for setting up a brown field Ammonia Urea Complex along with its associated offsite & utility facilities at Barauni of HURL, including subsequent amendments..... and clarifications.....
- a) Conditions of Contract (Vol.-I) comprising of:
Volume-IA: Instructions to Bidders (ITB)
Volume-IB: General Conditions of Contract (GCC)
Volume-IC: Special Conditions of Contract (SCC)
 - b) Technical Specifications(Vol.-II)
 - c) Bid Proposal Sheets for Techno Commercial Proposal (Vol.-IIIA) and for Price Proposal (Vol.-IIIB) along with Price Schedule/SOR
- 2.0 I*/We* hereby submit our Bid and undertake to keep the bid valid for a period of six (6) months from the date of opening of Techno-Commercial bid. I*/We* hereby further undertake that during the said period, I*/We* shall not vary/alter or revoke my*/our* bid.
- 2.1 This undertaking is in consideration of HURL agreeing to open my*/our* Bid and consider and evaluate the same for the purposes of award of Work in terms of provisions of Conditions of Contract of the Bidding Documents.

3.0 Should this Bid be accepted, I*/We* also agree to abide by and fulfill all the terms and conditions and provisions of the above mentioned Bidding Documents.

Date :

Name of Authorized Person :

Place :

Designation :

* Strike out whichever is not applicable

**CONSULTANCY SERVICES FOR 2200 MTPD AMMONIA & 3850 MTPD
UREA PLANTS AND ASSOCIATED OFFSITE & UTILITIES AT BARAUNI
(NO DEVIATION CERTIFICATE)**

Bidder's Name and Address : To
HURL, Contracts Department
Core-2, 2nd Floor, Scope Minar
Laxmi Nagar District Centre
New-Delhi-110092

Dear Sirs,

- 1.0 With reference to our Bid Proposal No..... dated..... for Project Management Consultancy Services for setting up a brown field Ammonia Urea Complex along with its associated offsite & utility facilities at Barauni of HURL, we hereby confirm that we comply with all terms, conditions and specifications of the Bidding Documents read in conjunction with Amendment(s)/ Clarification(s)/ Addenda/ Errata (if any) issued by the Employer prior to opening of Techno-Commercial Bids and the same has been taken into consideration while making our Techno-Commercial Bid & Price Bid and we declare that we have not taken any deviation in this regard.
- 2.0 We further confirm that any deviation, variation or additional condition etc. or any mention, contrary to Bidding Documents and its Amendment(s)/Clarification(s)/Addenda / Errata (if any) as mentioned at 1.0 above found anywhere in our Techno-Commercial Bid and/ or Price Bid, implicit or explicit, shall stand unconditionally withdrawn, without any cost implication whatsoever to Employer, failing which the Bid Security shall be forfeited.

Date : (Signature).....

Place : (Printed Name)

(Designation).....

(Common Seal)

FORMULA FOR PRICE ESCALATION

For the purpose of price adjustment, the formula to be used shall be as follows :

$$E1 = E0 [0.20 + 0.80 \times \frac{L1}{L0}]$$

Where

E1 - Adjusted Price of Additional Fee (Part-B of Schedule of Rates) in each billing (In INR).

E0 - Value of consultancy services [Additional Fee (Part-B of Schedule of Rates)] provided in each Corresponding billing as established in the Contract (in INR)

L - Indian field Labour Index, which shall be All India Consumer Price Index for Industrial Workers : (All India monthly average) as published by Labour Bureau, Simla

The Billing Period shall mean the billing period as per Contract time schedule or actual period whichever is earlier.

Subscript "0" refers to indices as on the date corresponding to the date falling at the expiry of eighth months period from the schedule Mechanical completion date of the LSTK Contract.

Subject "1" will correspond to the month of billing.

PROFORMA FOR BANK GUARANTEE FOR EARNEST MONEY DEPOSIT / BID SECURITY

Bank Guarantee No.

Date.....

To :

HURL Limited.

Contracts Service

Core-2,2ndFloor,Scope Minar

Laxmi Nagar District Centre

New-Delhi-110092,

Dear Sirs,

In accordance with Invitation for Bids under your Bid Document No., M/s having its Registered/Head Office athereafter called the 'Bidder') wish to participate in the said bid for [Name of Package].....

As an irrevocable bank guarantee against Bid Security for an amount of(*)..... valid for.....days from.....(**)..... is required to be submitted by the Bidder as a condition precedent for participation in the said bid which amount is liable to be forfeited on the happening of any contingencies mentioned in the Bidding Documents.

We, the[Name & address of the Bank].....having our Head Office at.....(#).....guarantee and undertake to pay immediately on demand by.....[Name of the Owner] (hereinafter called the 'Owner') the amount of(*)..... without any reservation, protest, demand and recourse. Any such demand made by the 'Owner' shall be conclusive and binding on us irrespective of any dispute or difference raised by the Bidder.

This Guarantee shall be irrevocable and shall remain valid upto(@)..... If any further extension of this guarantee is required, the same shall be extended to such required period (not exceeding one year) on receiving instructions from M/s.....[Bidder's Name]..... on whose behalf this guarantee is issued.

In witness whereof the Bank, through its authorised officer, has set its hand and stamp on this day of 20.....at.....

.....
(Signature)

.....
(Name)

.....
(Designation with Bank Stamp)

Authorised Vide
Power of Attorney No.....
Date.....

NOTE:

1. (*) The amount shall be as specified in the bidding documents.
- (**) This shall be the date of opening of Envelope-I (Techno-Commercial) bid.
- (#) Complete mailing address of the Head Office of the Bank to be given.
- (@) This date shall be two hundred twenty five (225) days from the date of opening of Envelope-I (Techno-Commercial) bid.
2. The Bank Guarantee shall be from a Bank as per provisions of the Bidding Documents. The List of Banks acceptable to the Owner is enclosed as **Annexure-B1**.
3. The BG should be on Non-Judicial stamp paper /e-stamp paper of appropriate value as per stamp act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG is executed, whichever is higher. The Stamp paper / e-Stamp paper shall be purchased in the name of Bidder/ Bank issuing the Guarantee.
4. While getting the Bank Guarantee issued, Bidders as required to ensure compliance to the points mentioned in **Bank Guarantee Verification Check List (Annexure-E1)** in the bidding documents. Bidders are required to fill up this Check List and enclose the same with the Bank Guarantee.

Name of Banks acceptable for Bank Guarantee towards BID Security

SCHEDULED COMMERCIAL BANKS

A. STATE BANK OF INDIA.

B. NATIONALISED BANKS

- | | |
|--------------------------|-------------------------------|
| 1. Allahabad Bank | 11. Oriental Bank of Commerce |
| 2. Andhra Bank | 12. Punjab National Bank |
| 3. Bank of India | 13. Punjab & Sind Bank |
| 4. Bank of Maharashtra | 14. Syndicate Bank |
| 5. Canara Bank | 15. Union Bank of India |
| 6. Central Bank of India | 16. United Bank of India |
| 7. Corporation Bank | 17. UCO Bank |
| 8. Dena Bank | 18. Vijaya Bank |
| 9. Indian Bank | 19. Bank of Baroda |
| 10. Indian Overseas Bank | |

C. SCHEDULED PRIVATE BANKS (INDIAN BANKS)

1. Catholic Syrian Bank
2. City Union Bank
3. Dhanlaxmi Bank Ltd.
4. Federal Bank Ltd.
5. Jammu & Kashmir Bank Ltd.
6. Karnataka Bank Ltd.
7. Karur Vysya Bank Ltd.
8. Lakshmi Vilas Bank Ltd.
9. Nainital Bank Ltd.
10. Kotak Mahindra Bank
11. Ratnakar Bank Ltd.
12. South Indian Bank Ltd.
13. Tamilnad Mercantile Bank Ltd.
14. ING Vysya Bank Ltd.
15. Axis Bank Ltd.
16. IndusInd Bank Ltd.
17. ICICI Bank
18. HDFC Bank Ltd.
19. DCB Bank Ltd.
20. Yes Bank Ltd

D. SCHEDULED PRIVATE BANKS (FOREIGN BANKS)

1. Abu Dhabi Commercial Bank Ltd.
2. Bank of America NA
3. Bank of Bahrain & Kuwait B.S.C
4. Mashreq Bank p.s.c

5. Bank of Nova Scotia
6. Credit Agricole Corporate and Investment Bank
7. BNP Paribas
8. Barclays Bank
9. Citi Bank N.A.
10. Deutsche Bank A.G.
11. The Hongkong Shanghai Banking Corporation Ltd.
12. HSBC Bank Oman S.A.O.G
13. Societe Generale
14. Sonali Bank Ltd.
15. Standard Chartered Bank
16. J.P Morgan Chase Bank
17. State Bank of Mauritius Ltd
18. DBS Bank Ltd.
19. Bank of Ceylon
20. Bank Internasional Indonesia
21. A B Bank
22. Shinhan Bank
23. CTBC Bank Co. Ltd.
24. Mizuho Bank Ltd.
25. Krung Thai Bank Public Company Ltd.
26. Antwerp Diamond Bank N.V.
27. The Bank of Tokyo-Mitsubishi UFJ Limited
28. Austalia & Newzealand Banking Group Limited
29. Sumitomo Mitsui Banking Corporation
30. American Express Banking Corporation
31. Common Wealth Bank of Australia
32. Credit Suisse A.G.
33. First Rand Bank Ltd.
34. Industrial & Commercial Bank of China Ltd.
35. JSC VTB Bank
36. National Australia Bank
37. Rabobank International
38. Sberbank
39. UBS AG
40. United Overseas Bank Ltd.
41. Westpac Banking Corporation
42. Woori Bank
43. The Royal Bank of Scotland N.V.
44. Doha Bank Qsc

E OTHER PUBLIC SECTOR BANK

1. 1. IDBI Bank LTD

PROFORMA OF BANK GUARANTEE FOR ADVANCE

(To be stamped in accordance with Stamp Act)

Ref

Bank Guarantee No.....

Date.....

To

HURL Limited.

Contracts Service

Core-2, 2nd Floor, Scope Minar

Laxmi Nagar District Centre

New-Delhi-110092,

Dear Sirs,

In consideration of the HURL Limited (hereinafter referred to as the 'Owner', which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. _____ with its registered / Head office at _____ (hereinafter referred to as the 'Contractor' or 'Consultant', which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract, by issue of Owner's Letter of Award No. _____ dated ___/___/___ and the same having been unequivocally accepted by the contractor, resulting into a Contract valued at Rs. _____ for _____ (scope of work) _____ contract (hereinafter called the 'Contract') and the Owner having agreed to make an advance payment to the Contractor for performance of the above Contract amounting to ___ (in words and in figures) _____ as an Advance against Bank Guarantee to be furnished by the Contractor.

We _____ (name of the bank) _____ having its Head Office at _____ (address) _____ (hereinafter referred to as the 'Bank' which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Owner, immediately on demand any, or all monies payable by the Contractor to the extent of _____ (in words and in figures) _____ at any time upto _____ without any demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by the Owner on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Owner.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at

any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Owner and the Contractor or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under these presents by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would but for this provision, have the effect of relieving the Bank.

The bank also agrees that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained hereinabove, our liability under this guarantee is limited to _____ (*) _____ and it shall remain in force up to and including _____ @ _____ and shall be extended from time to time for such period (not exceeding one year) as may be desired by M/s. _____ on whose behalf this guarantee has been given.

In witness whereof the Bank, through its authorized Officer, has set its hand and stamp on this _____ day of _____ 2017 at _____

(Signature)

(Name)

(Designation with Bank stamp)
(Attorney as per power of attorney
No. _____ Dated _____)

Note: 1. * This amount shall be as specified in Clause 4.0 of SPECIAL CONDITIONS OF CONTRACT (Vol-IC)

@ The date shall be ninety (90) days beyond the schedule date for completion of commissioning and Performance & Guarantee Test Run (PGTR) identified under the Package/Contract.

2. The List of Banks acceptable to the Owner is enclosed as **Annexure-D1**.
3. The BG should be on non-judicial stamp paper /e-stamp paper of appropriate value as per stamp act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG is executed, whichever is higher. The Stamp paper / e-stamp paper shall be purchased in the name of Bidder/ Bank issuing the Guarantee.
4. While getting the Bank Guarantee issued, the Contractor is required to ensure compliance to the points mentioned in **Annexure-E2**: Form of Bank Guarantee Verification Check List. Further, the Contractor is required to fill up this Annexure-VIII and enclose the same with the Bank Guarantee

PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE

(To be stamped in accordance with Stamp Act)

Ref

Bank Guarantee No.....

Date.....

To

HURL Limited.

Contracts Service

Core-2, 2nd Floor, Scope Minar

Laxmi Nagar District Centre

New-Delhi-110092,

Dear Sirs,

In consideration of the HURL Limited, (hereinafter referred to as the 'Owner', which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s _____ with its Registered/Head Office at _____ (hereinafter referred to as the 'Contractor' or 'Consultant', which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Owner's Letter of Award No. _____ dated _____ and the same having been unequivocally accepted by the Contractor resulting in a 'Contract' bearing No. _____ dated _____ valued at _____ for (Scope of Contract) and the Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to 10% (ten percent) of the said value of the Contract to the Owner.

We _____ (Name & address), having its Head Office at _____ (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Owner, on demand any and all monies payable by the Contractor to the extent of _____ @ _____ as aforesaid at any time upto _____ * (days/month/year) without any demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by the Owner on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and Contractor or any dispute pending before any court, tribunal or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Owner.

The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Owner and the Contractor or any other course of or remedy or security available to the Owner. The Bank shall not be released of its obligations under these presents by any exercise by the Owner of its liberty with reference to the matter aforesaid or any of them or by reason of any other acts of omission or commission on the part of the Owner or any other indulgence shown by the

Owner or by any other matters or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

The Bank also agrees that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to _____@_____ and it shall remain in force upto and including _____* and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s _____ whose behalf this guarantee has been given.

In witness whereof the Bank, through its authorized Officer, has set its hand and stamp on this _____ day of _____ 2014 at _____

(Signature)

(Name)

(Designation with Bank stamp)
(Authorized vide Power of Attorney
No. _____ Dated _____)

NOTE: 1. * The date shall be three (15) Months beyond the schedule date for completion of commissioning and Performance & Guarantee Test Run (PGTR) identified under the Package/Contract.

@ This amount shall be 10 % of the total contract price as mentioned at Clause 7 of GCC (Vol-IB)

2. The List of Banks acceptable to the Owner is enclosed as **Annexure-D1**.
3. The BG should be on non-judicial stamp paper /e-stamp paper of appropriate value as per stamp act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG is executed, whichever is higher. The Stamp paper / e-stamp paper shall be purchased in the name of Bidder/ Bank issuing the Guarantee.
4. While getting the Bank Guarantee issued, the Contractor is required to ensure compliance to the points mentioned in **Annexure-E2**: Form of Bank Guarantee Verification Check List. Further, the Contractor is required to fill up this Annexure-VIII and enclose the same with the Bank Guarantee.

**Name of Banks acceptable for Bank Guarantee for
Advance & Contract Performance**

SCHEDULED COMMERCIAL BANKS

A. . STATE BANK OF INDIA.

B. NATIONALISED BANKS

- | | |
|--------------------------|-------------------------------|
| 1. Allahabad Bank | 11. Oriental Bank of Commerce |
| 2. Andhra Bank | 12. Punjab National Bank |
| 3. Bank of India | 13. Punjab & Sind Bank |
| 4. Bank of Maharashtra | 14. Syndicate Bank |
| 5. Canara Bank | 15. Union Bank of India |
| 6. Central Bank of India | 16. United Bank of India |
| 7. Corporation Bank | 17. UCO Bank |
| 8. Dena Bank | 18. Vijaya Bank |
| 9. Indian Bank | 19. Bank of Baroda |
| 10. Indian Overseas Bank | |

C. SCHEDULED PRIVATE BANKS (INDIAN BANKS)

1. Catholic Syrian Bank
2. City Union Bank
3. Dhanlaxmi Bank Ltd.
4. Federal Bank Ltd.
5. Jammu & Kashmir Bank Ltd.
6. Karnataka Bank Ltd.
7. Karur Vysya Bank Ltd.
8. Lakshmi Vilas Bank Ltd.
9. Nainital Bank Ltd.
10. Kotak Mahindra Bank
11. Ratnakar Bank Ltd.
12. South Indian Bank Ltd.
13. Tamilnad Mercantile Bank Ltd.
14. ING Vysya Bank Ltd.
15. Axis Bank Ltd.
16. IndusInd Bank Ltd.
17. ICICI Bank
18. HDFC Bank Ltd.
19. DCB Bank Ltd.
20. Yes Bank Ltd

D. SCHEDULED PRIVATE BANKS (FOREIGN BANKS)

1. Abu Dhabi Commercial Bank Ltd.
2. Bank of America NA
3. Bank of Behrain & Kuwait B.S.C
4. Mashreq Bank p.s.c

5. Bank of Nova Scotia
6. Credit Agricole Corporate and Investment Bank
7. BNP Paribas
8. Barclays Bank
9. Citi Bank N.A.
10. Deutsche Bank A.G.
11. The Hongkong Shanghai Banking Corporation Ltd.
12. HSBC Bank Oman S.A.O.G
13. Societe Generale
14. Sonali Bank Ltd.
15. Standard Chartered Bank
16. J.P Morgan Chase Bank
17. State Bank of Mauritius Ltd
18. DBS Bank Ltd.
19. Bank of Ceylon
20. Bank Internasional Indonesia
21. A B Bank
22. Shinhan Bank
23. CTBC Bank Co. Ltd.
24. Mizuho Bank Ltd.
25. Krung Thai Bank Public Company Ltd.
26. Antwerp Diamond Bank N.V.
27. The Bank of Tokyo-Mitsubishi UFJ Limited
28. Austalia & Newzealand Banking Group Limited
29. Sumitomo Mitsui Banking Corporation
30. American Express Banking Corporation
31. Common Wealth Bank of Australia
32. Credit Suisse A.G.
33. First Rand Bank Ltd.
34. Industrial & Commercial Bank of China Ltd.
35. JSC VTB Bank
36. National Australia Bank
37. Rabobank International
38. Sberbank
39. UBS AG
40. United Overseas Bank Ltd.
41. Westpac Banking Corporation
42. Woori Bank
43. The Royal Bank of Scotland N.V.
44. Doha Bank Qsc

E OTHER PUBLIC SECTOR BANK

1. IDBI Bank LTD

BANK GUARANTEE VERIFICATION CHECKLIST FOR BID SECURITY

S. No.	Details of checks	YES / NO
1.	Is the BG on Non-Judicial Stamp Paper/E-Stamp Paper of appropriate value, as per Stamp Act?	
2.	Whether date, purpose of purchase and name of the purchaser are indicated on the stamp paper? (The date of purchase of stamp paper should be of any date on or before the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. The stamp papers (other than E-Stamp Paper) should be duly signed by the stamp vendor.)	
3.	In case of BGs from Banks abroad, has the BG been executed on Letter Head of the Bank?	
4.	Has the executing Officer of BG indicated his name, designation and Power of Attorney No./ Signing Power no. etc., on the BG?	
5.	Is each page of BG duly signed /initialed by executant and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars under seal of Bank as required in the prescribed proforma?	
6.	Does the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents?	
7.	Are the factual details such as Bidding Document No./Specification No., Amount of BG and Validity of BG correctly mentioned in the BG?	
8.	Whether overwriting/cutting if any on the BG have been properly authenticated under signature & seal of executant?	
9.	Whether the BG has been issued by a Bank in line with the provisions of Bidding documents?	
10.	In case BG has been issued by a Bank other than those specified in Bidding Document, is the BG confirmed by a Bank in India acceptable as per Bidding documents?	

Date : ____

Name of Authorized Person : ____

Place : ____

Designation : ____

Note: Consultant is required to fill up this form and enclose along with the Bank Guarantee.

**FORM OF BANK GUARANTEE VERIFICATION CHECKLIST FOR
ADVANCE PAYMENT/ CONTRACT PERFORMANCE**

BANK GUARANTEE VERIFICATION CHECKLIST

- | | | |
|----|-----------------------------|--|
| 1. | Bank Guarantee No. | : |
| 2. | Issuing Bank | : |
| 3. | Amount of BG | : |
| 4. | Nature of BG & No. of Pages | : |
| 5. | Validity of BG | : |
| 6. | Package Description | : |
| 7. | Party & Contracts reference | :Name, Address, Tel, Fax, E-mail,
Contract No. Package Name |
| 8. | Bank Reference | :Name, Address, Tel. Fax, E-mail |

S. No.	Details of checks	YES / NO
1.	Is the BG on non-judicial stamp paper/e-stamp paper of appropriate value, as per Stamp Act?	
2.	Whether date, purpose of purchase and name of the purchaser are indicated on the stamp paper? (The date of purchase of stamp paper should be of any date on or before the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. The stamp papers (other than e-stamp paper) should be duly signed by the stamp vendor.)	
3.	In case of BGs from Banks abroad, has the BG been executed on Letter Head of the Bank?	
4.	Has the executing Officer of BG indicated his name, designation and Power of Attorney No./ Signing Power no. etc., on the BG?	
5.	Is each page of BG duly signed /initialed by executant and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars under seal of Bank as required in the prescribed proforma?	
6.	Does the Bank Guarantees compare verbatim with the Proforma prescribed in the Bid Documents?	
7.	Are the factual details such as Bidding Document No./Specification No., NOA/LOA/Contract No., Contract Price, Percentage of Advance, Amount of BG and Validity of BG correctly mentioned in the BG?	
8.	Whether overwriting/cutting if any on the BG have been properly authenticated under signature & seal of executant?	
9.	Whether the BG has been issued by a Bank in line with the provisions of Bidding documents?	
10.	In case BG has been issued by a Bank other than those specified in Bidding Document, is the BG confirmed by a Bank in India acceptable as per Bidding documents?	

Date : _____ Name of Authorized Person : _____

Place : _____ Designation : _____

Note: Consultant is required to fill up this form and enclose along with the Bank Guarantee.

GENERAL GUIDELINES FOR GOODS & SERVICE TAX (GST)

1.0 SCHEDULE OF RATES / BID PRICES

- 1.1. Unless stated otherwise in the Bidding Documents, the Contract shall be for the whole works as described in Bidding Documents, based on the rates and prices submitted by the Bidder and accepted by the Employer. The prices quoted by the Bidders will be inclusive of all taxes except **GST (CGST & SGST/UTGST or IGST)**.
- 1.2. All duties, taxes and other levies [if any] payable by the Contractor under the Contract, or for any other cause except final **GST (CGST & SGST/UTGST or IGST)** shall be included in the rates / prices and the total bid-price submitted by the Bidder. **GST (CGST & SGST/ UTGST or IGST)** on the contract value shall be indicated in Agreed Terms & Conditions and SOR.

2.0 GST (CGST & SGST/UTGST or IGST)

- 2.1 Bidders are required to submit copy of the GST Registration Certificate while submitting the bids wherever **GST (CGST & SGST/UTGST or IGST)** is applicable.
- 2.2 Quoted prices should be inclusive of all taxes and duties, except **GST (CGST & SGST or IGST or UTGST)**. Please note that the responsibility of payment of **GST (CGST & SGST or IGST or UTGST)** lies with the Supplier of Goods / Services only. Supplier of Goods / Services (Service Provider) providing taxable service shall issue an Invoice/Bill, as the case may be as per rules/ regulation of GST. Further, returns and details required to be filled under GST laws & rules should be timely filed by Supplier of Goods / Services (Service Provider) with requisite details.

Payments to Service Provider for claiming **GST (CGST&SGST/UTGST or IGST)** amount will be made provided the above formalities are fulfilled. Further, HURL may seek copies of challan and certificate from Chartered Accountant for deposit of **GST (CGST & SGST/UTGST or IGST)** collected from Owner.

- 2.3 In case CBEC (Central Board of Excise and Customs)/ any equivalent government agency brings to the notice of HURL that the Supplier of Goods / Services (Service Provider) has not remitted the amount towards **GST (CGST & SGST/UTGST or IGST)** collected from HURL to the government exchequer, then, that Supplier of Goods / Services (Service Provider) shall be put under Holiday list of HURL for period of six months.
- 2.4 In case of statutory variation in **GST (CGST & SGST/UTGST or IGST)**, other than due to change in turnover, payable on the contract value during contract period, the

Supplier of Goods / Services (Service Provider) shall submit a copy of the 'Government Notification' to evidence the rate as applicable on the Bid due date and on the date of revision.

- 2.5 Beyond the contract period, in case HURL is not entitled for input tax credit of **GST (CGST & SGST/UTGST or IGST)**, then any increase in the rate of **GST (CGST&SGST/UTGST or IGST)** beyond the contractual delivery period shall be to Service Provider's account whereas any decrease in the rate **GST (CGST & SGST/UTGST or IGST)** shall be passed on to the Owner.
- 2.6 Beyond the contract period, in case HURL is entitled for input tax credit of **GST (CGST & SGST/UTGST or IGST)**, then statutory variation in applicable **GST (CGST & SGST/UTGST or IGST)** on supply and on incidental services, shall be to HURL account.
- 2.7 Claim for payment of **GST (CGST & SGST/UTGST or IGST)**/ Statutory variation, should be raised within two [02] months from the date of issue of 'Government Notification' for payment of differential (in %) **GST (CGST & SGST/UTGST or IGST)**, otherwise claim in respect of above shall not be entertained for payment of arrears.

The base date for the purpose of applying statutory variation as provided in the bidding document..

- 2.8 Owner/HURL will reimburse the **GST (CGST & SGST/UTGST or IGST)** to the Supplier of Goods / Services (Service Provider) at actual against submission of Invoices as per format specified in rules/ regulation of GST to enable Owner/HURL to claim input tax credit of **GST (CGST & SGST/UTGST or IGST)** paid. In case of any variation in the executed quantities, the amount on which the **GST (CGST & SGST/UTGST or IGST)** is applicable shall be modified in same proportion. Returns and details required to be filled under GST laws & rules should be timely filed by supplier with requisite details.
- 2.09 Owner/HURL will reimburse **GST (CGST & SGST/UTGST or IGST)** to the Supplier of Goods / Services (Service Provider) at actual against submission of Invoices as per format specified in rules/ regulation of GST subject to the ceiling amount of **GST (CGST & SGST/UTGST or IGST)** as quoted by the bidder, subject to any statutory variations, except variations arising due to change in turnover. In case of any variation in the executed quantities (If directed and/or certified by the Engineer-In-Charge) the ceiling amount on which **GST (CGST & SGST/UTGST or IGST)** is applicable will be modified on pro-rata basis.
- 2.11 In case HURL is required to pay entire/certain portion of applicable **GST (CGST & SGST/UTGST or IGST)** and remaining portion, if any, is to be deposited by Bidder directly as per **GST (CGST & SGST/UTGST or IGST)** laws, entire applicable rate/amount of **GST (CGST & SGST/UTGST or IGST)** to be indicated by bidder in the SOR.

Where HURL has the obligation to discharge **GST (CGST & SGST/UTGST or IGST)** liability under reverse charge mechanism and HURL has paid or is /liable to pay **GST (CGST & SGST/UTGST or IGST)** to the Government on which interest or penalties

becomes payable as per GST laws for any reason which is not attributable to HURL or ITC with respect to such payments is not available to HURL for any reason which is not attributable to HURL, then HURL shall be entitled to deduct/ setoff / recover such amounts against any amounts paid or payable by HURL to Contractor / Supplier.

- 2.13 Contractor shall ensure timely submission of invoice(s) as per rules/ regulations of **GST** with all required supporting document(s) within a period specified in Contracts/ LOA to enable HURL to avail input tax credit. Further, returns and details required to be filled under **GST** laws & rules should be timely filed by supplier with requisite details.

If input tax credit with respect to **GST (CGST & SGST/UTGST or IGST)** is not available to HURL for any reason which is not attributable to HURL, then HURL shall not be obligated or liable to pay or reimburse **GST (CGST & SGST/UTGST or IGST)** charged in the invoice(s) and shall be entitled to / deduct/ setoff /recover the such **GST (CGST & SGST/UTGST or IGST)** thereupon together with all penalties and interest if any, against any amounts paid or payable by HURL to Supplier of Goods / Services.

3.0 ANTI-PROFITEERING CLAUSE

As per Clause 171 of GST Act it is mandatory to pass on the benefit due to reduction in rate of tax or from input tax credit to the consumer by way of commensurate reduction in prices. The Supplier of Goods / Services may note the above and quote their prices accordingly.