



PMC Cell – MM

## Oil and Natural Gas Corporation Ltd

Corporate Materials Management

2<sup>nd</sup> Floor, Tower-A, Pandit Deendayal Upadhyaya Urja Bhawan,  
5, Nelson Mandela Marg, Vasant Kunj, New Delhi -110 070  
Tel – (011)26752004 Fax – (011) 26129091

Circular No. 11/2017

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Dated: 01.03.2017

**Sub: Modification in the provisions on experience criteria in respect of Service Contracts.**

EPC, in its meeting (05/2017) held on 09.02.2017 reviewed the BEC/Tender conditions pertaining to acceptance of bids based on the experience of technical collaborator, parent/subsidiary company etc. and also bids submitted by the consortium of companies against tender for procurement of services.

Following decisions have been taken in the aforesaid meeting of EPC:

- (i) Bids under technical collaboration arrangement shall not be accepted.
- (ii) Bidders who does not meet the technical experience criteria on its own, can bid based on the experience of a Supporting Company who has control of bidding company by holding more than fifty percent of the paid up equity share capital of the bidding company.
- (iii) Bids from consortiums of companies shall be allowed for cases where multifarious fields / activities requiring single point responsibility are involved in one tender and not for cases of general nature where experience in only one field/activity is required. After framing the technical experience clause, it would need to be determined if experience in multifarious fields / activities is required. If yes, then Consortium bidding route would be incorporated in the tender, otherwise it would not be incorporated. In the BEC being approved by the CPA, this aspect shall also be covered.
- (iv) Where consortium bids are allowed, consortium member having majority stake in the consortium in term of bid value as per the scope of work, should be the leader to facilitate execution properly. (for example: In case of two member consortium leader should have more than 50% stake in term of bid value and for three member consortium, leader's stake should be more than 33.33%)

In accordance with the above, relevant BEC/tender conditions for service contracts stand modified as per Appendix – 1 and 2.

Above guidelines should be meticulously followed by all concerned in all future tenders including current tender where technical bids are yet to be opened.

 01/03/2017.  
(Ashwini Nagia)  
ED-Chief MM Services

Distribution: (Through ONGC's intranet website 'ongcreports.net').

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Copy to:

1. EO to CMD, ONGC, PDU Urja Bhawan, Vasant Kunj, New Delhi.
2. CEA to Director(T&FS) / Director (Offshore) / Director (HR) / Director (Exploration)/Director (Onshore) / Director (Finance), ONGC,PDU Urja Bhawan, Vasant Kunj, New Delhi.
3. CVO, ONGC,PDU Urja Bhawan, Vasant Kunj, New Delhi.

**Statement showing existing vis-à-vis modified provisions of BECs for Service Contracts**

Clause No.	Existing Provisions	Modified Provisions
2.1(a)	<p><b>(Work centers to choose and fill up the blanks as per the requirement of the individual tender, wherever required)</b></p> <p>The bidder should have minimum ...years of experience in providing (similar)*services.</p> <p>Bidder should have executed at least ... number of contracts of (similar)*nature in the last ... years.</p> <p>To this effect, Bidder should submit copies of respective contracts, alongwith documentary evidence in respect of satisfactory execution of each of those contracts, in the form of copies of any of the documents (indicating respective contract number and type of services), such as - (i) Satisfactory completion / performance report (OR) (ii) proof of release of Performance Security after completion of the contract (OR) (iii) proof of settlement / release of final payment against the contract (OR) (iv) any other documentary evidence that can substantiate the satisfactory execution of each of the contracts cited above.</p>	<p><b>(Work centers to choose and fill up the blanks as per the requirement of the individual tender, wherever required)</b></p> <p>(I) Bidder (i.e. Single bidder / Indian Joint Venture company Incorporated) should have minimum ...years of experience in providing (similar)*services.</p> <p>Bidder should have executed at least ... number of contracts of (similar)*nature in the last ... years.</p> <p>To this effect, Bidder should submit copies of respective contracts, along with documentary evidence in respect of satisfactory execution of each of those contracts, in the form of copies of any of the documents (indicating respective contract number and type of services), such as - (i) Satisfactory completion / performance report (OR) (ii) proof of release of Performance Security after completion of the contract (OR) (iii) proof of settlement / release of final payment against the contract (OR) (iv) any other documentary evidence that can substantiate the satisfactory execution of each of the contracts cited above.</p>

Clause No.	Existing Provisions	Modified Provisions
	<p>[As per requirements of individual case, after due deliberation in TC (while finalizing BEC) and approval of CPA, work center should suitably modify the following entries appearing above:</p> <p>(*) The word (similar)* should be defined with specific reference to the nature of required Services;</p> <p>Above details should be specified without restricting competition and also taking into account the nature and criticality of the Service.]</p>	<p>[As per requirements of individual case, after due deliberation in TC (while finalizing BEC) and approval of CPA, work center should suitably modify the following entries appearing above:</p> <p>(*) The word (similar)* should be defined with specific reference to the nature of required Services;</p> <p>Above details should be specified without restricting competition and also taking into account the nature and criticality of the Service.]</p> <p><b>(Provisions at (II) below should be incorporated when bids from consortium of companies are allowed by CPA at the time of approving the BEC)</b></p> <p>2.1(a)-II Where consortium bids are allowed, leader of consortium should himself meet the major portion of the experience criteria covering the activities of work to be performed by him in term of bid value in comparison to other members of the consortium, on its own and not through any other arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting,. (e.g. in case of a Consortium bid having two members, the consortium member who has more than 50% stake (in terms of the bid value) shall be the leader of the Consortium, and in case of a Consortium bid having three members, the leader of the Consortium should</p>

Clause No.	Existing Provisions	Modified Provisions
		<p>have more than 33.33% stake (in terms of bid value) in the Consortium). Necessary documentary evidence to this effect should be submitted with techno-commercial bid.</p> <p>For this purpose the role and scope of work of each consortium member including the percentage of work to be performed by the respective consortium members should be attached/annexed with the Memorandum of Understanding in the un-priced bid.</p> <p>Other consortium partner(s) shall have relevant experience pertaining to the activities of work to be performed by them on their own and not through any other arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting, (other than the activity to be performed by leader of consortium). Necessary documentary evidence to this effect should be submitted with techno-commercial bid.</p> <p>2.1.2 The leader of the consortium should confirm unconditional acceptance of full responsibility of executing the entire 'Scope of work' of this tender. This confirmation should be submitted along with the techno-commercial bid.</p> <p>2.1.3 A constituent of the Consortium shall not be permitted to participate either in an individual capacity as a bidder or as a member of another Consortium in the same tender.</p>

Clause No.	Existing Provisions	Modified Provisions
		<p>2.1.4 Only that consortium member who has undertaken a particular activity in execution of a contract shall be considered as having technical experience of that particular activity.</p> <p>Note: For detailed conditions on consortium bid refer clause 1.3 of ITB.</p>
B.1 (2.1-b) of BEC	<p>In case the bidder is an Indian company/ Indian Joint venture company, either the Indian company/ Indian Joint venture company or its technical collaborator/ joint venture partner should meet the criteria laid down at 2.1(a).</p>	<p>The bidder should meet the experience criteria detailed above.</p> <p>In case the bidder is an Incorporated Indian Joint Venture Company, registered in India and incorporated under the Companies Act 1956 and any amendments thereunder, then the technical experience criteria laid down in the Technical BEC should be met as under:</p> <ul style="list-style-type: none"> <li>(i) The Joint Venture Company by itself should meet the experience criteria <u>or</u></li> <li>(ii) The Joint Venture Partner (who can be either a Indian or a foreign company) having a stake of at least 26% in the Joint Venture Company should meet the technical experience criteria stipulated in the tender on its own and cannot rely on any other arrangement such as Consortium or Supporting Company of the JV Partner for meeting the technical experience criteria. Documentary evidence in support of the above should be submitted along with the techno-commercial bid.</li> <li>(iii) In case of (ii) above, an undertaking from the Joint Venture partner, based on whose experience the JV seek qualification, shall be submitted with the techno commercial bid stating they shall maintain minimum 26% shareholding in the JV till the execution of the contract.</li> </ul>

Clause No.	Existing Provisions	Modified Provisions
<p>For continuity shifted from existing B.2.5 and shall be renumbered as B.1 – 2.2</p>	<p><b>Eligibility criteria in case bid is submitted on the basis of technical experience of the parent/subsidiary company (Applicable in ICB tenders only):</b></p> <p>Offers of those bidders who themselves do not meet the technical experience criteria as stipulated in the BEC can also be considered provided the bidder is a subsidiary company of the parent company in which the parent company has 100% stake or</p> <p>parent company can also be considered on the strength of its 100% subsidiary.</p> <p>However, the parent/subsidiary company of the bidder should on its own meet the technical experience as stipulated in the BEC and should not rely for meeting the technical experience criteria on its sister subsidiary/co-subsidiary company or through any other arrangement like Technical collaboration agreement.</p>	<p><b>Eligibility criteria in case bid is submitted on the basis of technical experience of another company (supporting company) which holds more than fifty percent of the paid up share capital of the bidder company or vice versa. (Applicable in ICB tenders only):</b></p> <p>Offers of those bidders (not under consortium arrangement) who themselves do not meet the technical experience criteria as stipulated in the BEC and are quoting based on the experience of another company (supporting company) can also be considered. In such case the supporting company should hold more than fifty percent of the paid up share capital of the bidding company.</p> <p>Bidder can also draw experience from a company in which the bidder holds more than fifty percent of the paid up share capital.</p> <p>However, the supporting company should on its own meet the technical experience as stipulated in the BEC and should not rely on any other company or through any other arrangement like Technical collaboration agreement.</p>

Clause No.	Existing Provisions	Modified Provisions
	<p>In that case as the subsidiary company is dependent upon the technical experience of the parent company or vice-versa with a view to ensure commitment and involvement of the parent/subsidiary company for successful execution of the contract, the participating bidder should enclose an Agreement <b>(as per format enclosed at Appendix A-1)</b> between the parent and the subsidiary company or vice-versa and Parent/Subsidiary Guarantee <b>(as per format enclosed at Appendix A-2)</b> from the parent/subsidiary company to ONGC for fulfilling the obligation under the Agreement, along with the techno-commercial bid.</p>	<p>In that case as the bidding company is dependent upon the technical experience of another company with a view to ensure commitment and involvement of the companies involved for successful execution of the contract, the participating bidder should enclose the following Agreements / Guarantees along with the techno-commercial bid:</p> <ul style="list-style-type: none"> <li>(i) An Agreement <b>(as per format enclosed at Appendix A-1)</b> between the bidder and the supporting company.</li> <li>(ii) Guarantee <b>(as per format enclosed at Appendix A-2)</b> by the supporting company to ONGC for fulfilling the obligation under the Agreement.</li> <li>(iii) Supporting Company shall also submit, a Performance Bank Guarantee <b>(as per <u>format</u> and instructions enclosed at Appendix A-3)</b>, equivalent to 50% of the value of the PBG which is to be submitted by the bidding company.</li> <li>(iv) Undertaking by supporting company stating that more than 50% share-holding between Supporting Company and Bidding Company shall be maintained till the execution / completion of the contract.</li> <li>(v) Undertaking from the supporting company to the effect that in addition to invoking the PBG submitted by the contractor, the PBG provided by supporting company shall be invoked by ONGC due to non-performance of the contractor.</li> </ul>

Clause No.	Existing Provisions	Modified Provisions
For continuity shifted from existing B.2.6 and shall be renumbered as B.1 – 2.3	<p><u>Eligibility criteria in case bid is submitted on the basis of technical experience of sister subsidiary/co-subsidiary company:(Applicable in ICB Tenders only):</u></p>	<p><u>Eligibility criteria in case bid is submitted on the basis of technical experience of such companies that are controlled by a 'ultimate controlling company'.:(Applicable in ICB Tenders only):</u></p>
Remain in paragraph of Section B shall also be renumbered accordingly.	<p>Offers of those bidders who themselves do not meet the technical experience criteria stipulated in the BEC can also be considered based on the experience criteria of their Sister subsidiary/Co-subsidiary company within the ultimate parent/holding company subject to meeting of the following conditions;</p> <p>i. Provided that the sister subsidiary/co-subsidiary company and the bidding company are both 100% subsidiaries of an ultimate parent/holding company either directly or through intermediate 100% subsidiaries of the ultimate parent/holding company or through any other 100% subsidiary company within the ultimate/holding parent company. Documentary evidence to this effect to be submitted by the ultimate parent/holding company along with the techno-commercial bid.</p>	<p>(For the purpose of this clause 'ultimate controlling company' is the one that holds more than fifty percent of the paid up share capital of each of the companies viz. the bidding company, all the supporting companies, intermediate company and 'any other company' mentioned in the clause.)</p> <p>Offers of those bidders (not under consortium arrangement) who themselves do not meet the technical experience criteria stipulated in the BEC can also be considered based on the experience of the company within the 'ultimate controlling company' subject to meeting of the following conditions;</p> <p>i. Provided that the supporting company and the bidding company are both controlled by an ultimate controlling company either directly or through its intermediate company or through 'any other company' within the ultimate controlling company.</p>

Clause No.	Existing Provisions	Modified Provisions
	<p>ii. Provided that the sister subsidiary/ co-subsiary company on its own meets and not through any other arrangement like Technical collaboration agreement meets the technical experience criteria stipulated in the BEC.</p> <p>iii. Provided that with a view to ensure commitment and involvement of the ultimate parent/holding company for successful execution of the contract, the participating bidder shall enclose an agreement <b>(as per format enclosed at Appendix A-3)</b> between them, their ultimate parent/holding company and the sister subsidiary/co-subsiary company.</p> <p>iv. Provided that the turnover of the ultimate/holding parent company in the last financial year is more than US\$ 1 billion. Copy of the latest published Audited Annual Report to be submitted by the ultimate/holding parent company, along with the techno-commercial bid.</p> <p>v. In case of contracts involving multifarious activities such as  - (a) manufacturing /supply (b) installation and commissioning (c) servicing and maintenance of any equipment, then in that case, the bidding company can draw on the experience of their multiple subsidiary sister company(ies)/co-subsiary company(ies) specializing in</p>	<p>ii. Provided that the supporting company on its own and not through any other arrangement like Technical collaboration agreement meets the technical experience criteria stipulated in the BEC.</p> <p>iii. Provided that with a view to ensure commitment and involvement of the ultimate controlling company for successful execution of the contract, the bidding company shall enclose an agreement <b>(as per format enclosed at Appendix A-4)</b> between them, their ultimate controlling company and the supporting company.</p> <p>iv. Provided that an additional PBG <b>(as per <u>format</u> and instructions enclosed at Appendix A-3)</b>, equivalent to 50% of the value of the PBG to be submitted by the bidding company, is submitted either by Supporting Company which supports the bidding company or the Ultimate Controlling Company.</p> <p>v. Provided that the turnover of the ultimate controlling company in the last financial year is more than US\$ 1 billion. Copy of the latest published Audited Annual Report</p>

Clause No.	Existing Provisions	Modified Provisions
	<p>each sphere of activity, i.e. (a) manufacturing/supply (b) installation and commissioning (c) servicing and maintenance. However, all the sister subsidiary company(ies)/co-subsiary company(ies) and the bidding company should be 100% subsidiary company(ies) of an ultimate parent/holding company either directly or through intermediate 100% subsidiaries of the ultimate parent/holding company or through any other 100% subsidiary company within the ultimate/holding parent company. Documentary evidence to the effect that all the sister subsidiary company(ies)/ co-subsiary company(ies) are 100% subsidiaries of the ultimate/holding parent company should be submitted along with the techno-commercial bid.</p>	<p>to be submitted by the ultimate/ holding parent company, along with the techno-commercial bid.</p> <p>vi. In case of contracts involving multifarious activities such as - (a) manufacturing /supply (b) installation and commissioning (c) servicing and maintenance of any equipment, then in that case, the bidding company can draw on the experience of multiple supporting company(ies) specializing in each sphere of activity, i.e. (a) manufacturing/supply (b) installation and commissioning (c) servicing and maintenance. However, all the supporting companies and the bidding company should be controlled by a ultimate controlling company, either directly or through its intermediate company or through 'any other company' within the ultimate controlling company.</p> <p>vii. In case of scenario at (vi) above, separate agreement for such activity(s) among each supporting, bidding company and the ultimate controlling company shall be submitted (<b>as per format enclosed at Appendix A-4</b>). However, in such cases, additional PBG as per clause (iv) above shall be furnished by the ultimate controlling company.</p>
		<p><u>Note for clause No. B.1(2.2) and B.1(2.3):</u></p> <p>A certificate from the statutory Auditor of the bidding company as well as of the supporting company to establish the relationship and equity percentage holding between bidding company and the supporting company or bidding company, intermediary company, supporting company and ultimate controlling company as the case may be. The certificates should be duly certified by the Company Secretary or one of</p>

Clause No.	Existing Provisions	Modified Provisions
		the Directors of the company concerned.  The above certificate should not be more than 30 days old as on the original date of techno-commercial bid opening.
2.2	Details of experience and past performance of the bidder and the collaborator (in case of collaboration) or of joint venture partner (in case of a joint venture), on works/ jobs done of similar nature in the past and details of current work in hand and other contractual commitments, indicating areas and clients are to be submitted along with the techno-commercial bid, in support of the experience laid down at para 3.1(a) and 3.1(b) above.	Details of experience and past performance of the bidder and incorporated joint venture partner (in case of a joint venture), on works/ jobs done of similar nature in the past and details of current work in hand and other contractual commitments, indicating areas and clients are to be submitted along with the techno-commercial bid, in support of the experience laid down at para 2.1(a) and 2.1(b) above.
2.4 (a) of BEC- ICB	Indian companies/ Joint Venture companies :- Indian bidders whose proposal for technical collaboration/ Joint Venture involves foreign equity participation or payment of royalty and / or lumpsum for technical know-how and wherever Govt. approval is necessary, are required to submit copy of Govt. approval, on their application submitted to SIA, prior to the date price bid opening	Indian companies/ Joint Venture companies(Incorporated JV):- Indian bidders whose proposal for Joint Venture involves foreign equity participation or payment of royalty and / or lumpsum for technical know-how and wherever Govt. approval is necessary, are required to submit copy of Govt. approval, on their application submitted to SIA, prior to the date price bid opening
2.4(b) of BEC – ICB	Bidders should submit Memorandum Of Understanding (MOU) / Agreement with their technical collaborator/joint venture partner ( in case of Joint venture) clearly indicating their roles under the scope of work.	To be deleted
2.4 (c)	MOU/ Agreement concluded by the bidder with technical collaborator/ joint venture partner (in case of joint venture), should also be addressed to ONGC, clearly stating that the MOU /Agreement is applicable to this tender and shall be binding on them for the contract period. Notwithstanding the MOU/Agreement, the responsibility of completion of job under this contract will be with the bidder.	To be deleted

## Statement showing existing vis-à-vis modified Tender Conditions for Service Contracts

Clause No.	Existing Provisions	Modified Provisions
1  1.1(a) of ITB	<p>Eligibility and experience of the bidder:-</p> <p>The bidder should have minimum ...years of experience as indicated in BEC in providing similar services. Bidder should have executed at least ... contracts of similar nature in the last ...years and should submit documentary evidence to this effect in the form of satisfactory completion of services from reputed clients.</p>	<p>Eligibility and experience of the bidder:-</p> <p><b><i>Work centers to choose and fill up the blanks as per the requirement of the individual tender, wherever required</i></b></p> <p>Bidder (i.e. Single bidder / Indian Joint Venture company Incorporated) should have minimum ...years of experience in providing (similar)*services.</p> <p>Bidder should have executed at least ... number of contracts of (similar)*nature in the last ...years.</p> <p>To this effect, Bidder should submit copies of respective contracts, along with documentary evidence in respect of satisfactory execution of each of those contracts, in the form of copies of any of the documents (indicating respective contract number and type of services), such as - (i) Satisfactory completion / performance report (OR) (ii) proof of release of Performance Security after completion of the contract (OR) (iii) proof of settlement / release of final payment against the contract (OR) (iv) any other documentary evidence that can substantiate the satisfactory execution of each of the contracts cited above.</p> <p><b><i>[As per requirements of individual case, after due</i></b></p>

Clause No.	Existing Provisions	Modified Provisions
		<p><b><i>deliberation in TC (while finalizing BEC) and approval of</i></b> CPA, work center should suitably modify the following entries appearing above:</p> <p>(*) The word (similar)* should be defined with specific reference to the nature of required Services;</p> <p>Above details should be specified without restricting competition and also taking into account the nature and criticality of the Service.]</p>
1.1(b) of ITB	In case the bidder is an Indian company/ Indian Joint venture company, either the Indian company/ Indian Joint venture company or its technical collaborator/ joint venture partner should meet the criteria laid down at 2.1(a).	<p>b. The bidder should meet the experience criteria detailed above.</p> <p>In case the bidder is an Incorporated Indian Joint Venture Company, registered in India and incorporated under the Companies Act 1956 and any amendments thereunder, then the technical experience criteria laid down in the Technical BEC should be met as under:</p> <p>(i) the Joint Venture Company by itself should meet the experience criteria <u>or</u></p> <p>(ii) the Joint Venture Partner (who can be either a Indian or a foreign company) having a stake of at least 26% in the Joint Venture Company should meet the technical experience criteria stipulated in the tender on its own and cannot rely on any other arrangement such as Consortium or Supporting Company of the</p>

		<p>JV Partner for meeting the technical experience criteria. Documentary evidence in support of the above should be submitted along with the techno-commercial bid.</p> <p>(iii) An undertaking from the Joint Venture partner, based on whose experience the JV has qualified, shall be submitted with the techno commercial bid stating the they shall maintain minimum 26% shareholding in the JV till the execution of the contract.</p>
1.2 of ITB	<p>Details of experience and past performance of the bidder and the collaborator (in case of collaboration) or of joint venture partner (in case of a joint venture), on works/ jobs done of similar nature in the past and details of current work in hand and other contractual commitments, indicating areas and clients are to be submitted along with the techno-commercial bid, in support of the experience laid down at para 3.1(a) and 3.1(b) above.</p>	<p>Details of experience and past performance of the bidder and incorporated joint venture partner (in case of a joint venture), on works/ jobs done of similar nature in the past and details of current work in hand and other contractual commitments, indicating areas and clients are to be submitted along with the techno-commercial bid, in support of the experience laid down at para 1.1(a) and 1.1(b) above.</p>
1.3 of ITB of ICB and IND	<p>In case the bidder is a consortium of companies, the following requirement should be satisfied by the bidder:</p> <p>a) The leader of the consortium should satisfy the minimum experience requirement as per para 1.1(a) above.</p>	<p><b>(Work Center to delete whichever not applicable)</b></p> <p>Bids from consortium of companies shall not be considered.</p> <p style="text-align: center;">OR</p> <p>1.3 In case the bidder is a consortium of companies, the following requirement should be satisfied by the bidder:</p> <p>1.3.1 Where consortium bids are allowed, leader of consortium should himself meet the major portion of the experience criteria</p>

	<p>b) The leader of the consortium should confirm unconditional acceptance of full responsibility of executing the 'Scope of work' of this tender. This confirmation should be submitted along with the techno-commercial bid.</p>	<p>covering the activities of work to be performed by him in term of bid value in comparison to other members of the consortium, on its own and not through any other arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting,. (e.g. in case of a Consortium bid having two members, the consortium member who has more than 50% stake (in terms of the bid value) shall be the leader of the Consortium and in case of a Consortium bid having three members, the leader of the Consortium should have more than 33.33% stake (in terms of bid value) in the Consortium). Necessary documentary evidence to this effect should be submitted with techno-commercial bid.</p> <p>For this purpose the role and scope of work of each consortium member including the percentage of work to be performed by the respective consortium members should be attached/annexed with the Memorandum of Understanding in the un-priced bid.</p> <p>Other consortium partner(s) shall have relevant experience pertaining to the activities of work to be performed by them on their own and not through any other arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting, (other than the activity to be performed by leader of consortium). Necessary documentary evidence to this effect should be submitted with techno-commercial bid.</p> <p>1.3.2 The leader of the consortium should confirm unconditional acceptance of full responsibility of executing the 'Scope of work' of this tender. This confirmation should be</p>
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<p>c) All the members of the consortium must undertake in their MOU that each party shall be jointly and severally liable to ONGC for any and all obligations and responsibilities arising out of this contract.</p>	<p>submitted along with the techno-commercial bid.</p> <p>1.3.3 The Leader of the Consortium can submit the bid on behalf of the Consortium. Memorandum of Understanding (MoU) between the Consortium members duly signed by the Chief Executives of the Consortium members must accompany the techno-commercial bid. The MoU should clearly define the role / scope of work to be performed by each constituent and should clearly define the leader of the Consortium. All the members of the Consortium must resolve and affirm in the MoU that each party shall be jointly and severally liable to ONGC for any and all obligations and responsibility arising out of the Contract and for discharging all obligations under the Contract. MoU signed between the members of the Consortium shall form part of the contract. In case of award of contract, the MoU shall be kept valid through the entire contract period, including extensions, if any. After award of contract, no alterations / modifications would be permitted in the MoU.</p> <p>1.3.4 The tender document can be purchased in the name of any of the constituent (Leader or member) of the Consortium.</p> <p>1.3.5 The bid shall be signed by all the constituents of the Consortium. Alternatively, the Leader of the Consortium may sign the bid provided a Power of Attorney from each member authorizing the Leader for signing and submission of bid on behalf of individual member must accompany the techno-commercial bid. Other members of the Consortium may participate in techno-contractual discussions and also sign the minutes of such discussions / meetings along with the Leader of the Consortium. However, Integrity Pact should be signed by all the constituents of the Consortium.</p>
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		<p>1.3.6 Leader of the Consortium on behalf of the Consortium shall co-ordinate with ONGC during the period the bid is under evaluation and also during the execution of the contract, if the same is awarded. The Leader of the Consortium shall also be responsible for resolving dispute / misunderstanding / undefined activities, if any, amongst all the constituents of the Consortium.</p> <p>1.3.7 Any correspondence exchanged between ONGC and the Leader of Consortium shall be binding on all the constituents of the Consortium. The Leader of the Consortium should confirm unconditional acceptance of full responsibility of executing the 'Scope of Work' of the tender. This confirmation should be submitted along with the techno-commercial bid.</p> <p>1.3.8 Contract, if awarded, shall be in the name of the Consortium clearly specifying the names of all the constituents and also mentioning that the Consortium is led by which constituent. Accordingly, EMD/Bid Bond and SD/PBG shall be submitted in the name of the Consortium clearly specifying the names of all the constituents along with that of the leader.</p> <p>1.3.9 In the event of award of contract to the Consortium, the contract shall be signed by each constituent of the Consortium. Alternatively, the Leader of the Consortium may sign the contract subject to submission of a Power of Attorney (duly notarized) from each constituent authorizing the Leader of the Consortium to sign the contract on behalf of the individual member of the Consortium. Irrespective of whether the Contract is signed by all the constituents of the Consortium or by the Leader of the Consortium, all the constituents of the Consortium shall be jointly and severally responsible for satisfactory execution of the contract.</p> <p>1.3.10 Payment for work done under the contract shall be made</p>
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		<p>by ONGC only to the Leader of the Consortium. However, in case payment is to be made directly to each constituent corresponding to their part of the scope of work, the same shall be clearly indicated in the bid along with the constituent-wise details of the price break-up.</p> <p>1.3.11 No alteration or modification in the constituents or composition of a Consortium shall be permitted after submission of bid and also after award of the Contract during currency of the contract. A constituent of the Consortium shall be allowed to undertake and carry out only that activity for which that constituent has been evaluated and qualified technically.</p> <p>1.3.12 A constituent of the Consortium shall not be permitted to participate either in an individual capacity as a bidder or as a member of another Consortium in the same tender.</p> <p>1.3.13 Before forming a Consortium, the individual constituents of the Consortium are advised to investigate the capabilities, availability of expertise and resources such as construction equipment, experienced personnel, financial soundness, past experience and concurrent engagements of the companies with whom they propose to form a Consortium.</p> <p>1.3.14 Consortium can be formed either between Indian and foreign companies or only Indian companies or between foreign companies. However, Consortium formed even with one constituent being a foreign company can participate only in ICB tender. In NCB tender, all constituents of the Consortium should be Indian Companies.</p> <p>1.3.15 Only that consortium member who has undertaken a particular activity in execution of a contract shall be considered</p>
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		as having technical experience of that particular activity.
1.4 (a) of ITB	Indian companies/ Joint Venture companies :- Indian bidders whose proposal for technical collaboration/ Joint Venture involves foreign equity participation or payment of royalty and / or lumpsum for technical know-how and wherever Govt. approval is necessary, are required to submit copy of Govt. approval, on their application submitted to SIA, prior to the date price bid opening	Indian companies/ Joint Venture companies(Incorporated JV):- Indian bidders whose proposal for Joint Venture involves foreign equity participation or payment of royalty and / or lumpsum for technical know-how and wherever Govt. approval is necessary, are required to submit copy of Govt. approval, on their application submitted to SIA, prior to the date price bid opening
1.4 (b) of ITB	Bidders should submit Memorandum Of Understanding (MOU) / Agreement with their technical collaborator/joint venture partner ( in case of Joint venture) clearly indicating their roles under the scope of work.	To be deleted
1.4 (c) of ITB	MOU/ Agreement concluded by the bidder with technical collaborator/ joint venture partner (in case of joint venture), should also be addressed to ONGC, clearly stating that the MOU /Agreement is applicable to this tender and shall be binding on them for the contract period. Notwithstanding the MOU/Agreement, the responsibility of completion of job under this contract will be with the bidder.	To be deleted
7.13	<b>Joint venture/ consortium bids:-</b>	<b>Joint venture bids and consortium bids where consortium bids are specifically allowed as per provisions under clause 1.3 above.</b>

**FORMAT OF AGREEMENT BETWEEN BIDDER AND THEIR SUPPORTING COMPANY**

(TO BE EXECUTED ON STAMP PAPER OF REQUISITE VALUE AND NOTORISED)

This agreement made this \_\_\_\_ day of \_\_\_\_ month \_\_\_\_ year by and between M/s. \_\_\_\_\_ (Fill in the Bidder's full name, constitution and registered office address) Corporate Identity Number ----- hereinafter referred to as bidder on the first part and M/s. \_\_\_\_\_ (Fill in full name, constitution and registered office address of company which hold more than fifty percent of the paid up share capital of the bidding company / company in which it holds more than fifty percent of the paid up share capital. as the case may be) Corporate Identity Number -----hereinafter referred to as "Supporting Company" of the other part:

**WHEREAS**

M/s. Oil and Natural Gas Corporation Limited (hereinafter referred to as ONGC) Corporate Identity Number ----- has invited offers vide their tender No. \_\_\_\_\_ for \_\_\_\_\_ and M/s. \_\_\_\_\_ (Bidder) intends to bid against the said tender and desires to have technical support of M/s. \_\_\_\_\_ [Supporting Company] and whereas Supporting Company represents that they have gone through and understood the requirements of subject tender and are capable and committed to provide the services as required by the bidder for successful execution of the contract, if awarded to the bidder.

Now, it is hereby agreed to by and between the parties as follows:

1. M/s. \_\_\_\_\_ (Bidder) will submit its bid to ONGC for the full scope of work as envisaged in the tender document and liaise with ONGC directly for any clarifications etc. in this context.
2. M/s. \_\_\_\_\_ (Supporting Company) undertakes to provide technical support and expertise, expert manpower and procurement assistance and project management to support the bidder to discharge its obligations as per the Scope of work of the tender / Contract for which offer has been made by the Supporting Company and accepted by the bidder.
3. Bidder and the Supporting Company undertakes to maintain more than 50% share-holding between Supporting Company and Bidding Company till the execution / completion of the contract.
4. This agreement will remain valid till validity of bidder's offer to ONGC including extension if any and till satisfactory performance of the contract in the event the contract is awarded by ONGC to the bidder.
5. It is further agreed that for the performance of work during contract period bidder and Supporting Company shall be jointly and severally responsible to ONGC for satisfactory execution of the contract.
6. However, the bidder shall have the overall responsibility of satisfactory execution of the contract awarded by ONGC.

In witness whereof the parties hereto have executed this agreement on the date mentioned above.

For and on behalf of  
(Bidder)

For and on behalf of  
(Supporting Company)

M/s.  
Witness:  
1)  
2)

M/s.  
Witness:  
1)  
2)

GURANTEE BY THE SUPPORTING COMPANY / GUARANTOR

THIS DEED OF GUARANTEE executed at ..... this ..... day of ..... by M/s ..... (mention complete name) a company duly organized and existing under the laws of ..... (insert jurisdiction/country), having Corporate Identity Number ----- and its Registered Office at ..... hereinafter called "the Guarantor and or the Supporting company" which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

WHEREAS

1. M/s Oil & Natural Gas Corporation Limited, a company duly incorporated under the Companies Act 1956, having Corporate Identity Number ----- and its Registered Office at ----- and having an office, amongst others, at ..... (insert purchase centre address) hereinafter called "ONGC " which expression shall unless excluded by or repugnant to the context thereof, be deemed to include its successor and assigns, has invited tender number ..... for ..... on ..... 2. M/s ..... (mention complete name), a company duly organized and existing under the laws of ..... (insert jurisdiction/country), having Corporate Identity Number ----- and its Registered Office at ..... (give complete address) hereinafter called "the Bidder and or Contractor as the context may require which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns, have in response to the above mentioned tender, submitted their bid bearing number ..... to ONGC

3. The Bidder/Guarantor Company holds more than 50 % paid up equity capital of the Supporting Company/Bidder. Further, Bidder/Guarantor Company undertakes to maintain more than 50% paid up equity capital of the Supporting Company/Bidder till the execution / completion of the contract.

4. The Bidder does not meet the Experience criteria required under the aforesaid tender.

5. The Guarantor Company meets all the Experience criteria parameters stipulated under the aforesaid tender and wishes to support the Bidder to make it eligible to submit its bid.

6. ONGC is willing to consider the bid of the Bidder Company only if the bid is accompanied with a guarantee from the Guarantor Company guaranteeing technical support for satisfactory performance of the work covered under the said tender including any change therein as may be deemed appropriate by ONGC Corporation at any stage.

The Guarantor represents that they have read the terms and conditions and understood the requirement of the above said tender and are capable of and committed to provide technical and such other supports as may be required by the Bidder Company for successful execution of the same.

Accordingly, at the request of the Bidder Company and in consideration of and as a requirement of the aforesaid tender, the Guarantor hereby gives this guarantee to ONGC and undertakes as follows:

1. The Guarantor unconditionally agrees that in case of non-performance by the Bidder / Contractor Company of any of its obligations under the Bid or the Contract that may be awarded in any respect, the Guarantor shall, immediately on receipt of notice of demand from ONGC, take up the job without any demur or objection, in continuation and without loss of time and without any cost to the Corporation and duly perform the obligations of the Company to the satisfaction of the Corporation.

2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the work (including discharge of the warranty obligations) under the contract that may be awarded to the Bidder/ Contractor.
3. The Guarantor shall be jointly with the Bidder / Contractor as also severally responsible to ONGC for satisfactory performance of the contract that may be awarded to the Bidder / Contractor by ONGC. .
4. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate laws in force in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
5. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws in force in India and shall be subject to the exclusive jurisdiction of the courts of ..... India.
6. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.
7. The Guarantor is providing Performance Bank Guarantee ( BG No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_) of USD/INR....., to ONGC as guarantee for performance by the Bidder / Contractor. The Guarantor hereby expressly agrees that if in the opinion of ONGC, the Bidder / Contractor has failed to perform its obligations under the contract in any manner, ONGC shall have unfettered right to invoke the said Bank guarantee. The guarantor hereby agrees that decision of ONGC about performance of the bidder / contractor shall be final and shall not be questioned by the Guarantor. Guarantor shall have no objection to invocation of the Performance Bank Guarantee submitted by the Guarantor.
8. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgment.

For & on behalf of (Supporting Company)  
M/s \_\_\_\_\_

Witness:

1. Signature \_\_\_\_\_  
Full Name \_\_\_\_\_  
Address \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_  
official seal \_\_\_\_\_

2. Signature \_\_\_\_\_  
Full Name \_\_\_\_\_  
Address \_\_\_\_\_

**Instructions:**

- (i) The above agreement shall be acceptable, only if signed by any of the following officials (who are empowered to sign such agreements) from the respective companies:
- CEO, (or)
  - any of the full time Directors at the Board level, (or)
  - Proprietor in case of Sole Proprietorship concerns, (or)
  - all Partners (or any of the Partners holding power of attorney on behalf of other Partners) in case of Partnership concerns, (or)
  - any official holding valid authorization for signing such agreements.

**Proforma of Bank Guarantee towards Performance Security by the Supporting Company / Ultimate Controlling Company (as the case may be) of the bidding company.**

**PERFORMANCE GUARANTEE**

Ref. No. \_\_\_\_\_  
Bank Guarantee No \_\_\_\_\_ Dated \_\_\_\_\_

To,

Oil & Natural Gas CORPORATION LIMITED

\_\_\_\_\_  
India

Dear Sirs,

1. In consideration of Oil & Natural Gas CORPORATION Limited, incorporated under the Companies Act, 1956, having its Registered Office at \_\_\_\_\_ -- New Delhi-110001, India Corporate Identity Number \_\_\_\_\_ and one of its offices at \_\_\_\_\_ (hereinafter referred to as 'ONGC', which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and assignees) having entered into a CONTRACT No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called 'the CONTRACT' which expression shall include all the amendments thereto) with M/s \_\_\_\_\_ having its registered/head office at \_\_\_\_\_ Corporate Identity Number \_\_\_\_\_ (hereinafter referred to as the 'CONTRACTOR') which expression shall, unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees).

Further, M/s \_\_\_\_\_ (Name of the Supporting company) having its registered/head office at \_\_\_\_\_ Corporate Identity Number \_\_\_\_\_ based on whose experience/technical strength, the CONTRACTOR has qualified for award of contract (hereinafter referred to as the 'SUPPORTING COMPANY') which expression shall, unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees) has agreed to provide complete technical and other support to the CONTRACTOR for successful completion of the contract as mentioned above, entered between ONGC and the CONTRACTOR and ONGC having agreed that the 'SUPPORTING COMPANY' shall furnish to ONGC a performance guarantee for Indian Rupees/US\$ ..... towards providing complete financial and other support to the CONTRACTOR for successful completion of the contract as mentioned above,

2. We (name of the bank) \_\_\_\_\_ registered under the laws of \_\_\_\_\_ having head/registered office at \_\_\_\_\_ (hereinafter referred to as "the Bank", which expression shall, unless repugnant to the context or meaning thereof, include all

its successors, administrators, executors and permitted assignees) do hereby guarantee and undertake to pay immediately on first demand in writing any/all moneys to the extent of Indian Rs./US\$ (in figures) \_\_\_\_\_ (Indian Rupees/US Dollars (in words) \_\_\_\_\_) without any demur, reservation, contest or protest and/or without any reference to the 'SUPPORTING COMPANY'. Any such demand made by ONGC on the Bank by serving a written notice shall be conclusive and binding, without any proof, on the bank as regards the amount due and payable, notwithstanding any dispute(s) pending before any Court, Tribunal, Arbitrator or any other authority and/or any other matter or thing whatsoever, as liability under these presents being absolute and unequivocal. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable until it is discharged by ONGC in writing. This guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the 'SUPPORTING COMPANY' and shall remain valid, binding and operative against the bank.

3. The Bank also agrees that ONGC 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 'SUPPORTING COMPANY' and notwithstanding any security or other guarantee that ONGC may have in relation to the 'SUPPORTING COMPANY's' liabilities.

4. The Bank further agrees that ONGC 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 CONTRACT or to extend time of performance by the said CONTRACTOR(s) from time to time or to postpone for any time or from time to time exercise of any of the powers vested in ONGC against the said CONTRACTOR(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said CONTRACTOR(s) or for any forbearance, act or omission on the part of ONGC or any indulgence by ONGC to the said CONTRACTOR(s) or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

5. The Bank further agrees that the Guarantee herein contained shall remain in full force during the period that is taken for the performance of the CONTRACT and all dues of ONGC under or by virtue of this CONTRACT have been fully paid and its claim satisfied or discharged or till ONGC discharges this guarantee in writing, whichever is earlier.

6. This Guarantee shall not be discharged by any change in our constitution, in the constitution of ONGC or that of the 'SUPPORTING COMPANY'.

7. The Bank confirms that this guarantee has been issued with observance of appropriate laws of the country of issue.

8. The Bank also agrees that this guarantee shall be governed and construed in accordance with Indian Laws and subject to the exclusive jurisdiction of Indian Courts of the place from where the purchase CONTRACT has been placed.

9. Notwithstanding anything contained herein above, our liability under this Guarantee is limited to Indian Rs./US\$ (in figures) \_\_\_\_\_ (Indian Rupees/US Dollars (in words) \_\_\_\_\_) and our guarantee shall remain in force until \_\_\_\_\_.(indicate the date of expiry of bank guarantee)

Any claim under this Guarantee must be received by us before the expiry of this Bank Guarantee. If no such claim has been received by us by the said date, the rights of ONGC under this Guarantee will cease. However, if such a claim has been received by us within the said date, all the rights of ONGC under this Guarantee shall be valid and shall not cease until we have satisfied that claim.

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

WITNESS NO. 1

\_\_\_\_\_  
(Signature)  
Full name and official  
address (in legible letters)

\_\_\_\_\_  
(Signature)  
Full name, designation and address (in  
legible letters) with Bank stamp

Attorney as per power of Attorney  
No.....  
Dated .....

WITNESS NO. 2

\_\_\_\_\_  
(Signature)  
Full name and official  
address (in legible letters)

**INSTRUCTIONS FOR FURNISHING Bank Guarantee by the Supporting Company / Ultimate Controlling Company (as the case may be) of the bidding company.**

1. The Bank Guarantee by Indian Contractors will be given on non-judicial stamp paper / franking receipt as per stamp duty applicable at the place from where the contract has been finalized. The non-judicial stamp paper / franking receipt should be either in name of the issuing bank or the contractor.

2. Foreign parties are requested to execute bank guarantee as par law in their country.

3. Foreign bidders will give bank guarantee either in the currency of the offer or US \$ (US Dollar). i.e. Indian Rs/US \$ have been mentioned only for illustration. Therefore, in case where bank guarantee is being given in currency other than 'Rupees' or U.S.\$, indicate the relevant currency of the offer. For determining the equivalent amount of Customs duty (payable in Indian Rupees), in other currencies, the rate of exchange prevailing on the date of issue of Bank Guarantee would be applicable.

4. The expiry date as mentioned in clause 9 should be arrived at by adding 60 days to the contract completion date unless otherwise specified in the bidding documents.

5. The bidders will give Bank Guarantee from any of the following categories of Banks:

(a) Any Scheduled Bank incorporated in India, Bank Guarantee issued by foreign branches / foreign offices of such Scheduled Banks be counter guaranteed by the Indian Branch of any Scheduled Bank incorporated in India.

OR

(b) Any Branch of an International Bank situated in India and registered with Reserve Bank of India as scheduled foreign bank.

OR

(c) Any foreign Bank which is not a Scheduled Bank in India provided the Bank Guarantee issued by such Bank is counter guaranteed by any Branch situated in India of any Scheduled Bank incorporated in India.

6. In case Bank Guarantee is being given by the Ultimate Controlling Company of the bidder, reference of the Supporting Company in the format should be modified accordingly.

(Appendix No A-4)

**FORMAT OF AGREEMENT BETWEEN BIDDER THEIR SUPPORTING COMPANY AND THE ULTIMATE CONTROLLING COMPANY**

**(TO BE EXECUTED ON STAMP PAPER OF REQUISITE VALUE AND NOTORISED)**

This agreement made this \_\_\_\_ day of \_\_\_\_ month \_\_\_\_ year by and between M/s. \_\_\_\_\_ (Fill in Bidder's full name, constitution and registered office address) \_\_\_\_\_ Corporate Identity Number -----hereinafter referred to as "Bidder" of the first part and

M/s. \_\_\_\_\_ (Fill in full name, constitution and registered office address of Supporting Company of the Bidder) Corporate Identity Number -----herein after referred to as "Supporting Company" of the second part and

M/s. \_\_\_\_\_ (Fill in the full name, constitution and registered office address of the Ultimate Controlling Company of both the companies viz. bidder and the supporting company) hereinafter referred to as "Ultimate Controlling Company" of the third part.

**WHEREAS**

M/s. Oil & Natural Gas Corporation Limited Corporate Identity Number ----- (hereinafter referred to as ONGC) has invited offers vide their tender No. \_\_\_\_\_ for \_\_\_\_\_ and

M/s. \_\_\_\_\_ (Bidder) intends to bid against the said tender and desires to have a technical support of M/s. \_\_\_\_\_ (Supporting Company) and

Supporting Company represents that they have gone through and understood the requirements of subject tender and are capable and committed to provide the services as required by the bidder for successful execution of the contract, if awarded to the bidder.

Now, it is hereby agreed to by and between all the three parties as follows:

1. M/s. \_\_\_\_\_ (Bidder) will submit an offer to ONGC for the full scope of work as envisaged in the tender document.
2. M/s. \_\_\_\_\_ (Supporting Company) undertakes to provide technical support and expertise and expert manpower, material, if any, to support the bidder to discharge its obligations as per the Scope of work of the tender / Contract for which offer has been made by the bidder.
3. This agreement will remain valid till validity of bidder's offer to ONGC including extension if any and also till satisfactory performance of the contract in the event the bid is accepted and contract is awarded by ONGC to the bidder.
4. Supporting Company unconditionally agrees that in case of award of contract to the Bidder, if the Bidder is unable to execute the contract, they shall, immediately on receipt of notice by ONGC, take up the job without any demur or objection, in continuation without loss of time and without any extra cost to ONGC and duly perform the obligations of the Bidder/Contractor to the satisfaction of ONGC.
5. The Ultimate Controlling Company also confirms and undertakes that the commitment made by the supporting company in providing the technical support and technical expertise and expert manpower to support the bidder for execution of the contract are honoured.
6. The Ultimate Controlling Company also takes full responsibility in getting the contract executed through the supporting company in case the Bidder/Contractor is unable to execute the contract.
7. In witness whereof the parties hereto have executed this agreement on the date mentioned above.

For and on behalf of  
(Bidder)

M/s.  
Witness  
1)

For and on behalf of  
(supporting company)

M/s.  
Witness  
1)

For and on behalf of  
(Ultimate Controlling  
Company)

M/s.  
Witness  
1)

2)

2)

2)

Note: In case of contracts involving - (a) manufacture/supply (b) installation and commissioning (c) servicing and maintenance of any equipment, as the bidding company can draw on the experience of their multiple supporting companies specializing in each sphere of activity, i.e. (a) manufacture/supply (b) installation and commissioning (c) servicing and maintenance, therefore, in that case, the above format shall be signed by all the supporting company(ies) and necessary modifications may be made in the above format to include all supporting companies.