

## SECTION 12.1

### **GENERAL CONDITIONS OF CONTRACT (GCC)**



**BPCL**  
**BHARAT PETROLEUM CORPORATION LIMITED**

**APRIL 2016**

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## **GENERAL CONDITIONS OF CONTRACT**

### **SECTION - I DEFINITION OF TERMS**

In the contract documents as herein defined where the context so admits, the following words and expressions will have following meanings :

- 1) "The Owner/Company/BPCL" means the Bharat Petroleum Corporation Limited, incorporated in India having its registered office at 4 & 6, Currimbhoy Road, Ballard Estate, Mumbai - 400 038 or their successors or assigns
- 2) "The Contractor" means the person or the persons, firm or Company whose tender has been accepted by the Owner and includes the Contractor's legal representative, his successor and permitted assigns.
- 3) The "Managing Director" shall mean the Chairman and Managing Director of the Bharat Petroleum Corporation Limited or his successor in office designated by the Owner.
- 4) The "Engineer-in-Charge" shall mean the person designated as such by the Owner and shall include those who are expressly authorised by the Owner to act for and on his behalf for operation of this contract.
- 5) The "Work" shall mean the works to be executed in accordance with the contract or part thereof as the case may be and shall include extra, additional, altered or substituted works as required for purpose of the contract.
- 6) The "Permanent Work" means and includes works which will be incorporated in and form a part of the work to be handed over to the Owner by the Contractor on completion of the contract.
- 7) The "Construction Equipment" means all appliances, Tools/Tackles and equipment of whatsoever nature for the use in or for the execution, completion, operation or maintenance of the work unless intended to form part of the Permanent work.
- 8) The "Site" means the areas on which the permanent works are to be executed or carried out and any other places provided by the Owner for purpose of the contract.
- 9) The "Contract Document" means collectively the Tender Document. Designs. Drawings or Specifications, agreed variations, if any, and such other document constituting the tender and acceptance thereof.
- 10) The "Consultant" means the consulting engineers Nominated/appointed by the Owner for this Project / job.
- 11) The "Sub-Contractor" means any person or firm or Company (other than the Contractor) to whom any part of the work has been entrusted by the Contractor, with the written consent of the Engineer-in-Charge, and the legal personal representatives, successors and permitted assigns of such person, firm or company.
- 12) The "Contract" shall mean the Agreement between the Owner and the Contractor for the execution of the works including therein all contract documents.
- 13) The "Specification" shall mean the various technical specifications attached and referred to in the tender documents. It shall also include the latest editions, including all addenda/corrigenda, of relevant Indian Standard Specification, specifications of the other country published before entering into Contract.
- 14) The "Drawings" shall include maps, plans and tracings or prints thereof with any modifications approved in writing by the Engineer-in-Charge and such other drawings as may, from time to time, furnished or approved in writing by the Engineer-in-Charge.
- 15) The "Tender" means the tender submitted by the Contractor for acceptance by the Owner.
- 16) The "Alteration Order" means an order given in writing by the Engineer-in-Charge to effect additions to or deletion from and alterations in the works.
- 17) The "Completion Certificate" shall mean the certificate to be issued by the Engineer-in-Charge to the contractor when the works have been completed to his satisfaction.
- 18) The "Final Certificate" in relation to a work means the certificate issued by the Engineer-in-Charge after the period of liability is over for releasing the retention money/PBG.
- 19) The "Period of Liability" in relation to a work means the specified period during which the Contractor stands responsible for rectifying all defects that may appear in the works.

**SECTION - II**  
**GENERAL INFORMATION ABOUT SITE**

**2.1 LOCATION OF SITE & ACCESSIBILITY:**

The site location is described in the Special Conditions of Contract which may be within the premises of existing Refinery. The intending tenderer should inspect the site and make himself familiar with site conditions and available facilities.

Entry into the BPCL areas is restricted depending on location/site. Only pass holders as also vehicles with special permits are permitted in such restricted areas. Inside the premises access to various work spots is also further regulated by permits issued for each area.

Non-availability of access roads or permits for entry of vehicles/equipment to any specific area shall in no case be the cause to condone any delay in execution of works or be the cause for any claims or extra compensations.

**2.2 SCOPE OF WORK**

The scope of work is defined in the Special Conditions of Contract and specifications. The Contractor shall provide all necessary materials, equipments / Tools and Tackles / Supervision / labour etc. for the execution and maintenance of the work till completion unless otherwise mentioned in these tender documents. All materials that go with the work shall be approved by Engineer-in-Charge prior to procurement and use.

**2.3 WATER SUPPLY, POWER SUPPLY AND OWNER'S LAND FOR CONTRACTOR'S FIELD, GODOWN AND WORKSHOP:**

Unless otherwise provided under Special Conditions of Contract, the tenderer will have to make his own arrangement for supply of water and power.

The tenderer should visit the site and acquaint himself with site conditions, availability of water, electricity, approach roads, construction materials as per specifications, shelter for his staff, etc. since these are to be provided/arranged by the tenderer (unless otherwise specified) at his cost.

The owner will, at his discretion and convenience based on availability for the duration of the execution of the work, make available, land for construction of contractor's field office, go-downs, workshop and fabrication yard required for the execution of the contract. The contractor shall at his own cost construct all these temporary buildings and provide suitable water supply and sanitary arrangement approved by the Engineer-in-Charge.

On completion of the works undertaken by the Contractor, he shall remove all temporary works/ shed erected by him and have the site cleaned as directed by Engineer-in-Charge if the contractor shall fail to comply with these requirements, the Engineer-in-charge may at the expenses of the Contractor remove such surplus and rubbish material, dispose off the same as he deems fit and get the site cleared as aforesaid; and the contractor shall forthwith pay the amount of all expenses so incurred and shall have no claim in respect of any such surplus materials disposed off as aforesaid. But the Owner reserves the right to ask the Contractor any time during the pendency of the contract to vacate the land by giving seven days notice on security reasons or on material interest otherwise.

**2.4 SAFETY STANDARDS FOR TEMPORARY BUILDINGS**

All temporary buildings, sheds, workshops, field stations etc. shall be constructed in conformation with the safety and security regulations of the owner as regards location and type of structure.

**SECTION - III**  
**GENERAL INSTRUCTION FOR THE TENDERER**

**3 SUBMISSION OF TENDER:**

3.1 The quotation should be submitted only in the manner and the form prescribed in the Request For Quotation (RFQ)/Tender enquiry.

3.2 Addenda/Corrigenda to this tender document if issued must be signed and submitted along with the tender document. The tenderer should consider the Addenda/Corrigenda and should price the work based on revised quantities when amendments for quantities are issued in addenda.

3.3 Tenders should always be placed in double sealed covers, superscribing **Tender No. \_\_\_\_\_** **Tender for \_\_\_\_\_ (name of job), Bharat Petroleum Corporation Limited,** due for opening on \_\_\_\_\_

The full name, postal address and telegraphic address of the tenderer shall be written on the bottom left hand corner of the sealed cover. (This will not be applicable in the case of e-tenders) Tenders received in open condition (priced bid) are liable to be rejected.

**3.4 Instructions for two part bidding**

i) The bid should be submitted in two parts viz.

- a. Techno-commercial bid.
- b. Price bid.

ii) Techno-commercial bid shall have the following information/details

- a. Technical deviation if any.
- b. Commercial deviation if any like extra taxes, duties etc.
- c. Copy of price bid with prices blanked off.
- d. Any other relevant information.

iii) Price Bid shall have only prices as per schedule of Rates.

iv) Techno-commercial bid and price bid shall be enclosed in two separate envelopes with the subject job, type of bid, bidders name super-scribed on top. Both these envelopes shall be sealed in a common envelope and submitted as specified above and in covering letter. (This will not be applicable in the case of e-tenders)

**4 DOCUMENTS:**

4.1 The tenders, as submitted shall include all documents/details asked for by BPCL in the RFQ/Tender enquiry.

**4.2 All pages to be initialed:**

Wherever signed tender documents are submitted, all signatures in the documents shall be dated, as well as all the pages of the documents shall be initialed at the lower right hand corner and signed wherever required in the tender papers by the tenderer or by a person holding power of attorney authorizing him to sign on behalf of the tenderer before submission of tender. Tenders without signatures as stated above are liable to be rejected.

**4.3 Rates to be in Figures and Words:**

The tenderer should quote the rates in English both in figures as well as in words. Offers received without the rates in figures and in words are liable for rejection. In case of discrepancy exists between the rate quoted in figures and in words, the rates quoted in words will prevail.

**4.4 Corrections and Erasures:**

All corrections and alteration in the entries of tender papers will be signed in full by the tenderer with date. No erasures or over-writings are permissible.

In case of priced bids containing overwriting/cuttings/erasures in the quoted rates and in case these are not attested by the signatory of the bid, such priced bids are liable to be rejected without giving any further notice.

**4.5 Signature of Tenderer:**

The tender shall contain the name, residence and place of business of person or persons making the tender and shall be signed by the tenderer with his usual signature with company stamp. Partnership firms shall furnish the full names of all partners in the tender. It should be signed in the partnership name by all the partners or by duly authorized representative followed by the name and designation of the person signing with company stamp.

Tender by Company or Corporation registered under the relevant companies act, shall be signed by the authorized representative and a power of attorney in that behalf shall accompany the tender.

4.6 Transfer of tender documents issued to one intending tenderer to another is not permissible.

5 **PURCHASE PREFERENCE:**

Owner reserves its right to allow Public Sector Enterprises (Central/State), purchase preference as admissible/applicable from time to time under the existing Govt. policy.priced.

Owner reserves its right to allow Micro and Small Enterprises (MSEs) and MSEs owned by Scheduled Caste (SC) or the Scheduled tribe (ST) entrepreneurs, purchase preference as admissible/applicable from time to time under the existing Govt. policy.

6 **EARNEST MONEY:**

- (a) The tenderer must submit/ deposit earnest money, if specified in the RFQ/Tender enquiry, failing which the tender is liable to be rejected. Earnest Money Deposit shall be submitted in the form of crossed Demand Draft in favour of "Bharat Petroleum Corporation Ltd." / Electronic Funds Transfer to BPCL Bank Account / Bank Guarantee executed by any Scheduled Bank approved by Reserve Bank of India (as per Proforma provided in Annexure 2). Earnest Money Deposit (EMD) shall be valid for a period of **6 (Six) months** from the due date of opening of Techno-commercial Bids and shall be submitted from any Indian Scheduled Commercial Bank / Indian Branch of Foreign Bank. EMD submitted by foreign vendors shall be in USD / EURO only.

In case of limited tender, Earnest Money deposit (EMD) is not applicable for registered contractors of BPCL.  
NOTE : Exemption of Bidding Document fee and EMD will be applicable for Micro and Small Enterprises (MSEs) registered with National Small Industries Corporation (NSIC)/ District Industries Centers (DIC) as per applicable government guidelines .Such bidder shall submit Notary attested copy of the certificate issued by NSIC or DIC, valid as on the date of bid opening, indicating that their registration includes the items/works under tender. The registration certificate should remain valid during the period of the contract that may be entered into such successful bidder. Such tenderers should ensure validity of the Registration Certificate for the purpose.

NOTE: No interest shall be paid by the Owner on the earnest money deposit by the tenderer. The earnest money of the unsuccessful tenderer will be refunded after the completion of BQC evaluation / Technical Evaluation / Priced Bid Evaluation as applicable.

**(b) CONVERSION OF EMD TO SECURITY DEPOSIT:**

The earnest money deposit (EMD) of the contractor whose tender may be accepted, if paid in forms other than Bank Guarantee, can be converted to security deposit for due performance of the contract if the contractor so desires. The "performance security deposit/retention money" vide clause 18 shall also be applicable limiting to a maximum of 10% of the contract value.

7 **TENDER VALIDITY:**

Tender submitted by tenderers shall remain valid for acceptance for a period of four months from the date of opening of the tender (Technical Bid in the case of two bid). The tenderer shall not be entitled during the said period of four months, without the consent in writing of the Owner, to revoke, or cancel his tender or vary the tender given or any term thereof.

In case of tenderer revoking or canceling his tender, varying any terms in regard thereof without prior consent of Owner in writing, appropriate penal action will be taken by BPCL as deemed fit including putting the tenderer/contractor on 'Holiday listing'/'Delisting' barring the tenderer/contractor from participating in future tenders for an appropriate period from the date of revocation/cancellation/varying the terms besides forfeiture of Earnest Money deposited by tenderer.

7.A **FIRMNESS OF QUOTE :**

Once the quotation is accepted, the rates quoted shall be firm till the entire work is completed.

7.B **LANGUAGE OF BID:**

The Bid, all correspondence and documents relating to the bid, between Bidder and BPCL, shall be written in English language only. Any supporting document furnished by Bidder may be written in other language provided that this literature is accompanied by an authenticated English translation in which case, for purpose of interpretation of the Bid, the English translation shall govern.

7.C **CURRENCIES OF BID & PAYMENT:**

For materials and services to be procured from India, Bidder shall quote the prices in INR only.

Indian bidders shall quote the rates/prices in Indian Rupees (INR) only for Indian component and in USD / EURO for Foreign Component. Foreign Bidders can quote their prices in INR / USD / EURO. Payment shall be subject to RBI guidelines.

8 **ADDENDA / CORRIGENDA:**

Addenda/ Corrigenda to the tender documents may be issued prior to the date of opening of the tenders to clarify documents or to effect modification in the design or tender terms. All addenda/corrigenda issued shall become part of tender Document.

9 **RIGHT OF OWNER TO ACCEPT OR REJECT TENDER:**

9.1 The right to accept the tender will rest with the Owner. The Owner, however, does not bind itself to accept the lowest tender, and reserves to itself the authority to reject any or all the tenders received without assigning any reason whatsoever.

9.2 The whole work may be split up between two or more contractors or accepted in part and not entirely if considered expedient.

9.3 Tenders in which any of the particulars and prescribed informations are missing or are incomplete in any respect and/or the prescribed conditions are not fulfilled are liable to be rejected.

9.4 Canvassing in connection with tenders is strictly prohibited and tenders submitted by the tenderer who resort to canvassing will be liable to rejection.

9.5 Tender containing uncalled remarks or any additional conditions are liable to be rejected.

10 A **INTEGRITY PACT (IP):**

Vendors are requested to sign & return IP document, attached as Annexure 7, if applicable as per the terms of the tender. This document is essential & binding.

Proforma of Integrity Pact shall be returned by the Bidder along with the bid documents (Technical Bid), duly filled up and signed by the same signatory who is authorized to sign the bid documents. All the pages of the Integrity Pact shall be duly signed. Bidder's failure to return the Integrity Pact duly signed along with the bid documents may result in the bid not being considered for further evaluation.

If the Bidder has been disqualified from the tender process prior to the award of the contract in accordance with the provisions of the Integrity Pact, BPCL shall be entitled to demand and recover from Bidder Liquidated Damages amount by forfeiting the EMD/ Bid Security as per provisions of the Integrity Pact.

If the contract has been terminated according to the provisions of the Integrity Pact, or if BPCL is entitled to terminate the contract according to the provisions of the Integrity Pact, BPCL shall be entitled to demand and recover from Contractor Liquidated Damages amount by forfeiting the Security Deposit/ Performance bank Guarantee as per provisions of the Integrity Pact.

Bidders may raise disputes/ complaints, if any, with the nominated Independent External Monitor.

10 B **HOLIDAY LISTING:**

The vendors / contractors are expected to adopt the ethics of highest standards and a very high degree of integrity, safety and quality consciousness, commitment and sincerity towards the work undertaken and dealing with BPCL in such matters. Also, while participating in the tender and performing the contracts, Contractors are required to meet certain performance criteria and adherence to the terms and conditions of the tender / contract.

BPCL shall have the right to remove from the list of approved suppliers / contractors or to ban business dealings, if any agency has been found to have committed misconduct or fraud or poor performance or anything unethical not expected from a reputed agency.

The guidelines and procedures for Holiday Listing as adopted by BPCL and available separately in BPCL website shall be applicable in the context of all tenders floated and consequently, all Orders / Contracts / Purchase Orders placed, by BPCL.

10 C **CONSULTANCY CONTRACTS:**

This General Conditions of Contract (GCC) will be binding for Consultancy jobs only to the extent of its applicability to the context of consultancy jobs.



10 D **FOREIGN BIDDERS:**

It is mandatory for the foreign bidder to furnish the documents for the compliance to requirement of PAN No. , Tax Residency Certificate and Form No.10F (applicable for foreign bidder in case of services in India is required as per scope of bidding document) as per Income Tax Act in case his receipts are subject to tax deduction at source in India:

**(a) PAN No.**

PAN as per the Indian Income Tax requirements shall be submitted, failing which the Supplier/Contractor/Consultant shall be responsible for any additional tax deduction at source as per the provisions of the Indian Income Tax Act/Rules and the same shall be deducted from the payment made to supplier/contractor/consultant.

**(b) Tax Residency Certificate (TRC)**

TRC containing prescribed particulars as per the Annexure 5 from the Government of foreign country in order to claim the benefits of DTAA as per the Indian Income Tax requirements shall be submitted, failing which the relief under DTAA will not be available and consequently the actual rate of withholding tax will be applicable and deducted from the payment made to supplier/contractor/consultant (i.e., non-resident taxpayer). The TRC shall be duly verified by the Government of the country of which the assessee claims to be a resident for the purposes of tax.

**(c) Form 10F**

In additional to TRC, in order to claim the benefits of DTAA, bidder shall also submit additional information in form no. 10F as per Annexure 6. Form 10F has to be signed & verified by the assessee himself.

The above shall be furnished before release of any payment or within one month of the release of Order, whichever is earlier. In case of failure to submit the above information, any additional tax liability on Owner, will be deducted from the payment due to the contractor.

11 **COLLECTION OF DATA TENDERER'S RESPONSIBILITY :**

The tenderer shall visit the site and acquaint himself fully of the site and no claims whatsoever will be entertained on the plea of ignorance or difficulties involved in execution of work or carriage of materials.

12 **TIME SCHEDULE :**

The time period allowed for carrying out the job shall be as shown in tender document. Request for revision for time schedule after tenders are opened will not be received for consideration.

13 **SIGNING OF THE CONTRACT:**

The successful tenderer shall be required to execute an agreement in the proforma attached with tender enquiry within a period of one month of the receipt by him of the notification of acceptance of tender. The payment will not be processed till the time the agreement is executed.

14 A **FIELD MANAGEMENT:**

The field management will be the responsibility of the Engineer-in-Charge, who will be nominated by the Owner. The Engineer-in-Charge may also authorize his representatives to perform his duties and functions.  
Coordination of Work - The Engineer-in-Charge shall coordinate the work of various agencies engaged at site to ensure minimum disruption of work carried out by different agencies. It shall be the responsibility of the contractor to plan and execute strictly in accordance with the site instructions to avoid hindrance to the works being executed by other agencies.

14 B **RETIRED GOVERNMENT OR COMPANY OFFICER:**

No Engineer of Gazetted rank or other Gazetted Officer, employed in Engineering or Administrative duties in an Engineering Department of the States/Central Government or of the Owner is allowed to work as a Contractor for a period of two years after his retirement from Government service or from the employment of the Owner without the previous permission of the Owner. The contract, if awarded, is liable to be cancelled if either the contractor or any of his employees is found at any time to be such a person, who had not obtained the permission of the State/ Central Government, or of the Owner as aforesaid before submission of tender, or engagement in the Contractor's service as the case may be.

## **SECTION - IV**

### **INTERPRETATION OF CONTRACT DOCUMENTS**

**15      INTERPRETATION OF CONTRACT DOCUMENT:**

- 15.1 Except if and to the extent otherwise provided by the Contract, the provisions of the General Conditions of Contract and special conditions shall prevail over those of any other documents forming part of the contract. Several documents forming the contract are to be taken as mutually explanatory. Should there be any discrepancy, inconsistency, error or omission in the contract or any of the matter may be referred to Engineer-in-Charge, who shall give his decisions and issue to the Contractor instructions directing in what manner the work is to be carried out. The decision of the Engineer-in-Charge shall be final and conclusive and the contractor shall carry out work in accordance with this decision.
- 15.2 Works shown upon the drawing but not mentioned in the specifications or described in the specification without being shown on the drawings shall nevertheless be held to be included in the same manner as if they had been specifically shown upon the drawings and described in the specifications.
- 15.3 Headings and marginal notes to the clauses of these General Conditions of Contract or to specifications or to any other tender document are solely for the purpose of giving a concise indication and not a summary of the content thereof, and they shall never be deemed to be part thereof or be used in the interpretation or construction thereof of the Contract.
- 15.4 Singular and Plural:  
In these contract documents unless otherwise stated specifically, the singular shall include the plural and vice-versa wherever the context so requires. Words indicating persons shall include relevant incorporated companies/ registered as associations/ body of individual/ firm or partnership.

**16      SPECIAL CONDITIONS OF CONTRACT:**

- 16.1 Special Conditions of contract shall be read in conjunction with the General Conditions of Contracts, specification of work, Drawings and any other documents forming part of this contract wherever the context so requires.
- 16.2 Notwithstanding the sub-division of the documents into these separate sections and volumes every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the contract so far as it may be practicable to do so.
- 16.3 Where any portion of the General Conditions of Contract is repugnant to or at variance with any provisions of the Special Conditions of Contract then, unless a different intention appears the provisions of the Special Conditions of Contract shall be deemed to over-ride the provision of the General Conditions of Contract and shall to the extent of such repugnance or variations, prevail.
- 16.4 Wherever it is mentioned in the specifications that the Contractor shall perform certain work or provide certain facilities, it is understood that the contractor shall do so at his own cost.
- 16.5 The materials, designs and workmanship shall satisfy the relevant Indian Standards, the Job specifications contained herein and codes referred to. Where the job specifications stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied.

**17      CONTRACTOR TO OBTAIN HIS OWN INFORMATION:**

The contractor in fixing rate shall for all purposes whatsoever be deemed to have him self independently obtained all necessary information for the purpose of preparing his tender. The contractor shall be deemed to have examined the Contract Documents, to have generally obtained his own information in all matters whatsoever that might affect the carrying out the works at the scheduled rates and to have satisfied himself to the sufficiency to his tender. Any error description of quantity or omission there from shall not vitiate the contract or release the Contractor from executing the work comprised in the contract according to drawing and specifications at the scheduled rates. He is deemed to have known the scope, nature and magnitude of the works and the requirements of materials and labour involved etc. and as to what all works he has to complete in accordance with the contract documents whatever be the defects, omissions or errors that may be found in the Contract Documents. The Contractor shall be deemed to have visited surrounding to have satisfied himself to the nature of all existing structures, if any, and also as to the nature and the conditions of the Railways, roads, bridges and culverts means of transport and communications, whether by land, water or air, and as to possible interruptions thereto and the access to and regress from the site, to have made enquiries, examined and satisfied himself as to the sites for obtaining sand, stones, bricks and other materials, the sites for disposal of surplus materials the available accommodation as to whatever required, depots and such other building as may be necessary for executing and completing the works, to have made local independent enquiries as to the sub-soil water and variations thereof, storms, prevailing winds, climate conditions and all other similar matters affecting these works. He is deemed to have acquainted himself as to his liability for payment of Government taxes, customs duty and other charges. Any neglect or failure on the part of the Contractor in obtaining necessary and reliable information upon the foregoing or any other matters affecting the contract shall not relieve him from any risk or liabilities or the entire responsibility from completion of the works at the scheduled rates and time in strict accordance with the contract documents.

No verbal agreement or inference from conversation with any officer or employee of the owner either before or after the execution of the contract agreement shall in any way affect or modify any of the terms or obligations herein contained.

**18 SECURITY DEPOSIT TOWARDS PERFORMANCE/RETENTION MONEY:**

- 18.1 To ensure performance of the contract and due discharge of the contractual obligations, the successful contractor will have to provide security deposit of 10% of the contract value within 30 days of receipt by him of the notifications of acceptance of tender unless otherwise specified in the Special Conditions of Contract.

This Security deposit may be furnished in the form of an Account payee Demand Draft payable to BPCL or Bank Guarantee in the prescribed format. The contractor shall have the option to adjust any Earnest Money Deposit- (EMD), if paid in forms other than Bank Guarantee, towards security deposit if he so desires.

In the case of security deposit submitted in the form of Bank guarantee, the Bank Guarantee shall be valid and remain in force till the completion of contractual completion period, defect liability period (if applicable) plus a claim period of 3 months. The Bank Guarantee shall be in the form prescribed (Annexure 2).

The security deposit will be retained till the successful completion of the work and thereafter till the expiry of the defect liability period (refer clause-72), if applicable. This retention money/Bank guarantee held shall be released after the expiry of the defect liability period provided that any defects appearing during that period are corrected by the contractor and subject to Clause 18.2 below.

If the Contract Value is in more than one currency, the Security deposit shall also be in multiple currencies amounting to 10% for each currency of awarded contract.

In the case of value/rate/quantity contracts, the security deposit shall be based on individual release orders issued.

- 18.2 If the contractor/ sub-contractor or their employees shall break, deface or destroy any property belonging to the Owner or other agency during the execution of the contract, the same shall be made good by the Contractor at his own expenses and in default thereof, the Engineer-in-Charge may cause the same to be made good by other agencies and recover expenses from the contractor (for which the certificate of the Engineer-in-Charge shall be final). These expenses can be recovered from the security deposit/retention money if recovery from other sources is not possible.
- 18.3 All compensation or other sums of money payable by the contractor to the Owner under terms of this contract may be deducted from his security deposit/retention money or from any sums which may be or may become due to the contractor by the Owner on any account whatsoever and in the event of his security deposit/retention money being reduced by reasons of any such deductions. The contractor shall within ten days thereafter make good any sum or sums, which may have been deducted from his security Deposit/retention money. No interest shall be payable by the Owner from sum deposited as security deposit/retention money.
- 18.4 The security deposit shall be held by the Owner, as security for the due performance of the Contractor's obligations under the contract, provided that nothing herein stated shall make it incumbent upon the Owner to utilize the security deposit/retention money in preference to any other remedy which the Owner may have, nor shall be construed as confining the claims of the Owner against the contractor to the quantum of the Security Deposit/retention money.
- 18.5 The Bank guarantee if submitted shall be from any Indian scheduled bank or an international bank of repute having a branch in India or a corresponding banking relationship with an Indian scheduled bank. The security deposit/retention money shall be in Indian Rupee in the case of domestic bidders and in the quoted currency in the case of foreign bidders (INR/USD/EURO as the case may be.).

**19 TIME OF PERFORMANCE:**

- 19.1 The work covered by this contract shall be commenced as detailed in the purchase order or as per the instructions of the Engineer in charge and be completed in stages on or before the dates as mentioned in the time schedule of completion of work. The contractor should bear in mind that time is the essence of this agreement unless such time

be extended pursuant to the provision of clause No. 21. Request for revision of Completion time after tenders are opened will not receive consideration.

- 19.2 Time Schedule of Completion: The general time schedule of completion is given in the tender document. Contractor should prepare a detailed monthly and weekly execution programme, jointly with the Engineer-in-Charge within two weeks of receipt of Letter of Intent or acceptance of tender. The work shall be executed strictly as per the time schedule given in this document. The period of completion given includes the time required for testing, rectifications, if any, retesting and completion in all respects to the entire satisfaction of the Engineer-in-Charge.

20 **FORCE MAJEURE:**

Any delays in or failure of the performance of either party hereto shall not constitute default here under or give rise to any claims for damages, if any, to the extent such delays or failure of performance is caused by occurrences such as Acts of God or the public enemy expropriation or confiscation of facilities by Govt./authorities, compliances with any order or request of any Government authorities, acts of war, rebellion or sabotage or fires, floods, explosions, riots or strikes. The contractor shall keep records of the circumstances referred to above and bring these to the notice of Engineer-in-Charge in writing immediately on such occurrences.

21 **EXTENSION OF TIME:**

If the contractor shall desire an extension of the time for completion of the work on the grounds of his having been unavoidably hindered in its execution or on any other grounds, he shall apply in writing to the Engineer-in-Charge within two weeks of the date of hindrance on account of which he desires such extension as aforesaid, and the Engineer-in-Charge shall if in his opinion (which shall be final), reasonable grounds have been shown thereof, authorize such extension of time as may in his opinion be necessary or proper.

In the event of extension of Time of the contract, if granted, the contractor shall be required to suitably extend the period of Bank Guarantee if submitted, towards security Deposit/retention money suitably.

22. **LIQUIDATED DAMAGES FOR DELAY:**

- 22.1 Time is the essence of the contract. In case the contractor fails to complete the whole work within the stipulated period, he shall be liable to pay liquidated damages of 0.5% of the value of contract per week and or part thereof of the delay subject to a maximum of 5% of the value of the contract. The parties agree that this is a genuine pre-estimate of the loss/damage which will be suffered by the owner on account of delay on the part of the contractor and the said amount will be payable on demand without there being any proof of the actual loss or damages having been caused by such delay/breach. The owner shall be at liberty to adjust or deduct the said amount of liquidated damages from any amount due to the contractor including Security Deposit.

- 22.2 The owner shall be at liberty to deduct or retain from any amount payable to the contractor periodically, the proportionate or full amount of liquidated damages as the case may be for the delay periodically caused by the contractor.

23 **SUM PAYABLE BY WAY OF COMPENSATION TO BE CONSIDERED AS REASONABLE COMPENSATION WITHOUT REFERENCE TO ACTUAL LOSS:**

All sums payable by way of compensation under any of the conditions shall be considered as reasonable compensation without reference to the actual loss or damage, which shall have been sustained by the Owner.

24 **TERMINATION/OFFLOADING:**

- 24.1 The contractor fully understands that timely completion of the work as per the schedule is of paramount necessity as otherwise it would lead to adversely affecting the schedules of other works/project with resultant financial and other losses to the Company/owner. In view of this, the contractor unconditionally agrees and binds himself to be liable for all the consequences for non-completion of the work within the stipulated time.
- 24.2 In case a situation is brought about by the contractor warranting termination/off-loading of the whole or any part of the work for any reason whatsoever, the Company/owner shall have the liberty and right to entrust/engage/award the work so terminated/off loaded at the risk and cost of the contractor to any other agency/contractor by adopting any mode of inviting tenders, i.e. open/limited/single party/negotiation basis etc. in order to ensure completion of the work as per the schedule or at the quickest possible time.

25. **FORFEITURE OF SECURITY DEPOSIT:**

Whenever any claim against the Contractor for the payment of a sum of money arises out of or under the contract, the Owner shall be entitled to recover such sum by appropriating in part or whole, security deposit of the contractor, forming whole or part of such security being insufficient or if no security has been taken from the Contractor then the balance or the total sum recoverable, as the case may be, shall be deducted from any sum then due or which at any time thereafter may become due to the Contractor. The contractor shall pay to the owner on demand any balance remaining due.

**ACTION WHEN WHOLE OF SECURITY DEPOSIT IS FORFEITED:**

In any case in which, under any clause or clauses of this contract, the contractor shall have forfeited the whole of his security deposit (whether paid in one sum or deducted by installment) or have committed a breach of any of the terms contained in this contract the owner shall have power to adopt any of the following courses as he may deem best suited to his interest.

- a) To rescind the contract (of which rescission notice in writing to the contractor under the hand of the owner shall be conclusive evidence) in which case the security deposit of the contractor shall stand forfeited and be absolutely at the disposal of the Owner.
- b) To employ labour paid by the owner and to supply materials to carry out the work any part of the work, debiting contractor with the labour cost of tools and plants and equipment charges, the cost of the materials for which a certificate of the Engineer-in-Charge shall be final and conclusive against the Contractor and 10% of costs as above to cover all departmental charges and crediting him with the value of the work done in all respects in the manner and at the same rates as if it had been carried out by the Contractor under the term of his contract. The certificate of Engineer-in-Charge as to the value of the work done shall be final and conclusive against the contractor.
- c) To measure up the work of the contractor and to take such part thereof as shall be unexecuted out of his hand to give it to another contractor to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor, if the whole work had been executed by him (of the amount of which excess, the certificate in writing of the Engineer-in-Charge shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by the Owner under the contract or otherwise or from his security deposit or from the proceeds of sale thereof, of a sufficient part thereof.

In the event of any of the above course being adopted by the Owner, the contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any agreements or made any advances on account of or with a view to the execution of the work of the performance of the contract. In case the Contractor shall not be entitled to recover or be paid any sum for any work actually performed under this contract unless the Engineer-in-Charge will certify in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid the value so certified.

**CONTRACTOR REMAINS LIABLE TO PAY COMPENSATION IF ACTION NOT TAKEN UNDER CLAUSE 26:**

In any case in which any of the powers conferred upon the owner by clause 26 thereof shall have become exercisable and the same had not been exercised, the non exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercised in the event of any further case of default by the contractor for which any clause hereof he is declared liable to pay compensation amounting to the whole of his security deposit and the liability of the contractor for past and future compensation shall remain unaffected. In the event of the Owner putting in force the power under sub-clause (a), (b) or (c) of clause 26 vested in him under the proceeding clause he may, if he so desires takes possession of all or any tools and plants materials and stores in or upon the works or the site thereof belonging to the contractor or procured by him and intended to be used for the execution of the work or any part thereof paying or allowing for the same in account at the contract rates or in case of these not being applicable at current market rates to be certified by the Engineer-in-Charge whose certificate thereof shall be final otherwise the Engineer-in-Charge may give notice in writing to the contractor or his clerk of the works, supervisor or other authorized agent, requiring him to remove such tools, plant, materials or stores from the premises (within a time to be specified in such notice) and in the event of the contractor failing to comply with any such requisition, the Engineer-in-Charge may remove them at the contractors expense or sell them by auction or private sale on account of the contractor and at his risk in, all respects without any further notice as to the date, time or place of sale and the certificate of the Engineer-in-Charge as to the expense of any such removal and the amount of proceeds and any expenses of any such sale shall be final and conclusive against the contractor.

**NO COMPENSATION FOR ALTERATION IN OR RESTRICTION OF WORK:**

If at any time from the commencement of the work the owner shall for any reasons whatsoever, not require the whole or part thereof as specified in the tender to be carried out, the Engineer-in-Charge shall give notice in writing of the fact to the contractor, who shall have no claim to any payment or compensation whatsoever on account of any profit or advantage which he might have derived from the execution of the work in full, but which he did not derive in consequence of the full amount of the work not having been carried out, neither shall he have any claim for compensation by reason of any alterations having been made in the original specifications, drawings, designs and instructions which shall involve any curtailment of the work as originally contemplated.

29      **CHANGES IN CONSTITUTION OF THE CONTRACTOR:**

The Contractor, whether an individual, Proprietary Concern, Hindu Undivided Family, Partnership Firm, Private Limited Company or Public Limited Company, shall not make any change(s) in its constitution, by transfer of substantial shareholding or of management (in case of a company) or by addition or deletion of Partners, change in the terms of Partnership, or make any other material change(s) without prior approval of Owner. Any such unauthorized change shall attract the provisions of clause 35 hereof.

30      **IF THE CONTRACTOR DIES:**

Without prejudice to any of the rights or remedies under his contract, if the contractor (if an individual) dies, the Owner shall have the option of terminating the contract without compensation to the contractor.

31      **EMPLOYEES OF THE OWNER NOT INDIVIDUALLY LIABLE:**

No director or official or employee of the Owner shall in any way be personally bound or liable for the acts or obligations of the Owner under the contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

32      **OWNER NOT BOUND BY PERSONAL REPRESENTATIONS:**

The contractor shall not be entitled to any increase on the item rates of the contract or any other right or claim whatsoever by reason of representation, explanation or statement or alleged representation, promise or guarantees given or alleged to have been given to him by any person.

33      **CONTRACTOR'S OFFICE AT SITE:**

The contractor shall provide and maintain an office at the site, if space provided by the owner, for the accommodation of his agent and staff and such office shall be open at all reasonable hours to receive instruction, notices, or other communications.

34      **CONTRACTOR'S SUBORDINATE STAFF AND THEIR CONDUCTS:**

34.1      The contractor, on or after award of the work shall name and depute a qualified personnel having sufficient experience in carrying out work of similar nature to whom the equipments materials, if any, shall be issued and instructions for works given. The contractor shall also provide to the satisfaction of the Engineer-in-Charge sufficient and qualified staff to supervise the execution of the-works, competent sub-agents, supervisor and leading hands including those specially qualified by previous experience to supervise the type of works comprised in the contract in such manner as will ensure work of the best quality, expeditious working. Whenever in the opinion of the Engineer-in-Charge, additional properly qualified supervision staff is considered necessary, they shall be employed by the contractor without additional charges on account thereof. The Contractor shall ensure to the satisfaction of the Engineer-in-Charge that sub-contractors, if any shall provide competent and efficient supervision over the work entrusted to them.

34.2      If and whenever any of the Contractor's or sub-contractor's agents, sub-agents, assistants supervisor or other employees shall in the opinion of Engineer-in-Charge be guilty of any misconduct or be incompetent or insufficiently qualified or negligent in the performance of their duties or that in the opinion of the owner or Engineer-in-Charge, it is undesirable for administrative or any other reason for such person or persons to be employed in the works, the contractor, if so directed by the Engineer-in-Charge, shall at once remove such person or persons from employment thereon. Any person or persons so removed from the works shall not again be employed in connection with the works without the written permission of the Engineer-in-Charge. Any person so removed from the works shall be immediately replaced at the expense of the contractor by a qualified and competent substitute. Should the contractor be requested to repatriate any person removed from the works he shall do so and shall bear all costs in connection herewith.

34.3      The contractor shall be responsible for the proper behaviour of all the staff, supervisor, workmen and others and shall exercise a proper degree of control over them and in particular, and without prejudice to the said generality, the contractor shall be bound to prohibit and prevent any employees from trespassing or acting in any way detrimental or prejudicial to the interest of the community or of the properties or occupiers of land and properties in the neighborhood and in the event of such employee so trespassing, the contractor shall be responsible therefore and relieve the Owner of all consequent claims or actions for damages or injury or any other grounds whatsoever. The decision of the Engineer-in-Charge upon any matter arising under this clause shall be final. Contractor shall ensure that none of their employees are ever engaged in any anti-national activities.

34.4      All contractor's personnel entering upon the Owner's premises shall be properly identified by badges issued by owner which must be worn all times on Owner's premises.

35 **SUB-LETTING OF WORK:**

Sub letting of contracts shall not be generally permitted. However owner may permit sub letting of work on specific cases subject to the following:-

- i) No part of the contract nor any share of interest there shall in any manner or degree be transferred assigned sublet by the contractor directly or indirectly to any firm or corporation whosoever except as provided for in the succeeding sub-clause, without the consent in writing of the Owner.
- ii) Sub Contractors for Temporary Works Etc.:- The Owner may give written consent to sub-contract for execution of any part of the works at the site, being entered into by the contractor provided each individual sub-contract is submitted to the Engineer-in-Charge before being entered into and is approved by him.
- iii) List of Sub-Contractors to be supplied: - At the commencement of every month the contractor shall furnish to the Engineer-in-Charge list of all sub-contractors or firms engaged by the contractor and working at the site during the previous month with particulars of the general nature of the sub-contract or works.
- iv) Contractor's Liability Not Limited By Sub-Contractors:- Notwithstanding any sub-letting with such approval as aforesaid and notwithstanding that the Engineer-in-Charge shall have received copies of any sub-contracts, the contractor shall be and shall remain solely responsible for the quality and proper and expeditious execution of the works and the performance of all the conditions of the contract in all respects as if such sub-letting or sub-contracting had not taken place and as if such work had been done directly by the Contractor.
- v) Owner may Terminate Sub-Contracts:- If any sub-contractor engaged upon the works at the site executes any work which in the opinion of the Engineer-in-Charge is not in accordance with the Contract documents, the owner may by written notice to the contractor request him to terminate such sub-contract and the contractor upon the receipt of such notice shall terminate such sub contract and the latter shall forthwith leave the works, failing which the owner shall have right to remove such sub-contractors from the Site.
- vi) No Remedy For Action Taken Under This Clause:- No action taken by the owner under the clause shall relieve the contractor of any of his liabilities under the contract or give rise to any right to compensation, extension of time or otherwise failing which, the owner shall have right to remove such sub-contractors from the Site.

36 **POWER OF ENTRY:**

If the contractor shall not commence the work in the manner previously described in the contract document or if he shall, at any time in the opinion of the Engineer-in-Charge.

- i. Fail to carry out the works in conformity with the contract documents, or
- ii. Fail to carry out the works in accordance with the time schedule, or
- iii. Substantially suspend work or the works for a period of Fourteen days without authority from the Engineer-in-Charge, or
- iv. Fail to carryout and execute the works to the satisfactions of the Engineer-in-Charge, or
- v. Fail to supply sufficient or suitable constructional equipments, temporary works, labour materials or things, or
- vi. Commit or suffer or permit any other breach of any of the provisions of the contract on his part to be performed or observed or persist in any of the above mentioned breaches of the contract for the fourteen days, after notice in writing shall have been given to the Contractor by the Engineer-in-Charge requiring such breach to be remedied, or
- vii. Abandon the works, or
- viii. During the continuance of the contract, become bankrupt, make any arrangement or composition with his creditors, or permit any execution to be levied or go into liquidation whether compulsory or voluntary not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction.

Then in any such case, the Owner shall have the power to enter upon the works and take possession thereof and of the materials, temporary works, constructional equipment, and stock thereon, and to revoke the contractor's license to use the same, and to complete the works, by his agents, other contractor or workmen, or to re-let the same upon any terms and to such other person firm or corporation as the Owner in his absolute discretion may think proper to employ and for the purpose aforesaid to use or authorize the use of any materials, temporary works constructional equipment, and stock as aforesaid without making payment or allowances to the contractor for the said materials other than such as may be certified in writing by the Engineer-in-Charge to be reasonable, and without making any payment or allowance to the contractor for the use of the temporary said works, constructional equipments and stock or being liable for any loss of damage thereto, and if the Owner shall by reason of his taking possession of the works or of the works being completed by other contractors (due account being taken of any such extra work or works which may be omitted) then the amount of such excess as certified by the Engineer-in-Charge shall be deducted from any money which may be due for work done by the contractor under the contract and not paid for. Any deficiency shall forthwith be made good and paid to the Owner by the contractor and the Owner shall have power to sell in such manner and for such price as he may think fit all or any of the constructional equipment, materials etc. belonging to and to recoup and retain the said deficiency or any part thereof out of the proceeds of the sale.

37 **CONTRACTOR'S RESPONSIBILITY WITH OTHER AGENCIES:**

Without repugnance to any other condition, it shall be the responsibility of the contractor executing the work, to work in close co-operation and co-ordinate the works with other contractors or their authorized representatives and

the contractor will put up a joint scheme, showing the arrangements, with other contractors / agencies for carrying his portion of work to the Engineer-in-Charge, and get the approval. The contractor before finally submitting the schemes to the Engineer-in-Charge shall have the written agreement of the other agencies. The Engineer-in-Charge before communicating his approval of the scheme, with any required modifications shall get the final agreement of all the agencies, which shall be binding. No claim shall be entertained on account of the above.

The contractor shall conform in all respects with the provisions of any statutory regulations, ordinances or by laws of any local or duly constituted authorities or public bodies which may be applicable from time to time to the works or any temporary works. The contractor shall keep the Owner Indemnified against all penalties and liabilities of every kind arising out of non-adherence to such statutes ordinances, laws, rules, regulations, etc.

38 **OTHER AGENTS AT SITE:**

The contractor shall have to execute the work in such place and condition where other agencies might also be engaged for other works such as site grading, filling and leveling, electrical and mechanical engineering works etc. No claim shall be entertained to works being executed in the above circumstances.

39 **NOTICES:**

Any notice hereunder may be served on the contractor or his duly authorized representative at the job site or may be served by registered mail or speed post direct to the address furnished by the Contractor. Proof of issue of any such notice could be conclusive of the contractor having been duly informed of all contents therein.

40 **RIGHTS OF VARIOUS INTERESTS:**

i) The Owner reserves the right to distribute the work between more than one contractor. The contractor shall co-operate and afford other contractors reasonable opportunity for access to the works for the carriage and storage of materials and execution of their works.

ii) Whenever the work being done by any department of the Owner or by other contractors employed by the Owner is contingent upon work covered by the contract, the respective rights of the various interests involved shall be determined by the Engineer-in-Charge to secure the completion of the various portions of the work in general harmony.

41 **RIGHT OF OWNER TO DETERMINE / TERMINATE CONTRACT**

i) Owner shall, at any time be entitled to determine and terminate the contract, if in the opinion of the Owner the cessation of the work becomes necessary owing to paucity of funds or for any other cause whatsoever, in which case, the cost of approved materials at the site at current market rates as verified and approved by Engineer-in-Charge and of the value of the work done to date by the contractor shall be paid for in full at the rates specified in the contract. A notice in writing from the Owner to the contractor of such determination and termination and the reason thereof, shall be the conclusive proof of the fact that the contract has been so determined and terminated by the Owner.

ii) Should the contract be determined under sub-clause (i) of this clause and the contractor claims payments to compensate expenditure incurred by him in the expectation of completing the whole of the work, the Owner shall consider and admit such claim as are deemed fair and reasonable and are supported by vouchers to the satisfaction of the Engineer-in-Charge. The Owner's decision on the necessity and propriety of any such expenditure shall be final and conclusive and binding on the contractor.

42 **PATENTS AND ROYALTIES:**

42.1 The contractor, if licensed under any patent covering equipment, machinery, materials or compositions of matter to be used or supplied or methods and process to be practiced or employed in the performance of this contract, agrees to pay all royalties and licence fees which may be due with respect thereto. If any equipment, machinery, materials or composition matters, to be used or supplied or methods and process to be practised or employed in the performance of this contract, is covered by a patent under which contractor is not licensed then the contractor before supplying or using the equipment, machinery, materials, compositions method or processes shall obtain such licences, and pay such royalties and licence fees as may be necessary for performance of the contract. In the event, the contractor fails to pay any such royalties or obtain any such licence, any suit for infringement of such patents which is brought against the contractor or the Owner as a result of such failure will be defended by the contractor at his own expenses and the contractor will pay any damages and costs awarded in such suit. The contractor shall promptly notify the owner if the contractor has acquired knowledge of any patent under which a suit for infringement could be reasonably brought because of the use by the Owner of any equipment, machinery, materials, and process methods to be supplied hereunder. The contractor agrees to and does hereby grant to Owner, together with the right to extend the same to any of the subsidiaries of the Owner as irrevocable, royalty-free licence to use in any country, any invention made by the contractor or his employee in or as a result of the performance of the work under the contract.



The Owner shall indemnify and save harmless the contractor from any loss on account of claims on contractor for the contributory infringement of patent rights arising out and based upon the claim that the use by the Owner of the process included in the design prepared by the Owner and used in the operation of the plant infringes on any patent right with respect to any sub-contract entered into by contractor pursuant to the provisions of sub-contractor an undertaking to provide the Owner with the same patent protection that contractor is required to provide under the provisions of this clause.

42.2 All drawings, blue prints, tracings, reproducible, models, plans, specification and copies thereof, furnished by the Owner as well as drawings, tracings, reproducible, plans specifications, design, calculations etc. prepared by the contractor for the purpose of execution of works covered in or connected with this contract shall be the property of Owner and shall not be used for any other work but are to be delivered to the Owner at the completion of the contract.

42.3 Where so desired by Engineer-in-Charge, the contractor agrees to respect the secrecy of any document, drawings etc. issued to him for the execution of this contract, and restrict access to such documents, drawing etc. to the minimum and further, the contractor agrees to execute an individual SECRECY agreement from each or any person employed by contractor having access to such documents, drawings and to any other agency or individual, without the written approval by Engineer-in-Charge.

43 **LIENS:**

43.1 If, at any time, there should be evidence or any lien or claim for which the Owner might have become liable and which is chargeable to the contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify the owner against such lien or claim and if such lien or claim be valid the Owner may pay and discharge the same and deduct the amount so paid from any money which may be or may become due and payable to the Contractor. If any lien or claim remain unsettled after all payments are made, the contractor shall refund or pay to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim including all costs and reasonable expenses.

43 2 Contractor will not disclose details of the work to any person or persons except those engaged in its performance, and only to the extent required for the particular portion of the work being done.  
Contractor will not give any items concerning details of the work to the press or a news disseminating agency without prior written approval from Engineer-in-Charge. Contractor shall not take any pictures on site without written approval of Engineer-in-Charge

44 **OPERATION OF CONTRACT:**

44.1 Law Governing:  
Regardless of the place of contracting, place of performance or otherwise, this Agreement, and all amendments, modifications, alterations, or supplements, thereto shall be governed by the laws of India and respective state laws for the nature, validity and interpretation thereof.

44.2 Non-Waiver of Default:

Any failure by the Owner or Contractor at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions or rights, and shall not affect or impair same, or the right of the Owner or the Contractor, as the case may be at any time to avail itself of same.

**SECTION - V**  
**PERFORMANCE OF WORK**

**45 EXECUTION OF WORKS:**

- 45.1 All the works shall be executed in strict conformity with the provisions of the contract documents and with such explanatory detailed drawings, specifications, and instructions as may be furnished from time to time to the contractor by the Engineer-in-Charge whether mentioned in the contract or not. The contractor shall be responsible for ensuring that works throughout are executed in the most substantial, proper and workman like manner with the quality of material and workmanship in strict accordance with the specifications following all safety requirements of BPCL and as stipulated in work permits as per the directions and to the entire satisfaction of the Engineer-in-Charge.
- 45.2 Wherever it is mentioned in the specifications that the Contractor shall perform certain work or provide certain facilities/materials, it is understood that the contractor shall do, so at his cost unless otherwise specified.
- 45.3 The materials, design and workmanship shall satisfy the relevant Indian Standards, the Job specification contained herein and codes referred to. Where the job specification stipulate requirements in addition to those contained in the standards codes and specifications, these additional requirements shall also be satisfied.

**46 COORDINATION AND INSPECTION OF WORK:**

The coordination and inspection of the day-to-day work under the contract shall be the responsibility of the Engineer-in-Charge. The written instructions regarding any particular job will be normally be passed by the Engineer-in-Charge or his authorized representative. A work order book / logbook will be maintained by the Contractor for each job in which the aforesaid written instructions will be entered. These will be signed by the contractor or his authorized representative by way of acknowledgment within 12 hours. The non maintaining of the order book or non signing by the contractor shall not preclude the contractor from complying with the instructions.

**47 WORK IN MONSOON AND DEWATERING:**

- 47.1 The completion of the work may entail working in the monsoon also. The contractor must maintain a minimum labour force as may be required for the job and plan and execute the construction and erection according to the prescribed schedule. No extra rate will be considered for such work in monsoon.
- 47.2 During monsoon and other period, it shall be the responsibility of the contractor to keep the construction work site free from water at his own cost.

**48 WORK ON SUNDAYS AND HOLIDAYS:**

For carrying out work on Sundays and Holidays if needed, the contractor will approach the Engineer-in-Charge or his representative at least two days in advance and obtain permission in writing. No special compensation on this account will be payable.

**49 GENERAL CONDITIONS FOR CONSTRUCTION AND ERECTION WORK:**

- 49.1 Place of Work:  
The work has to be executed at specified premises as per the tender. Contractor should apprise himself of all the conditions prevailing in such location and the restrictions placed on movement of personnel and equipment, types of equipment and tools permitted, working methods allowed etc. in the light of security and safety regulations operative in the area.  
The safety regulations to be complied with, by the contractor will also be provided along with the tender. No idle time wages or compensation for temporary stoppage of work or restrictions would be paid, and the rate quoted for the various items of work should cover the cost of all such contingencies and eventualities. Substantial structures and utilities exist both above ground and underground, adjacent to the work site. (The construction activity gets restrained by the existence of such structures and utilities). Special care is necessary in transportation, storage, working on equipments and other construction activities to protect the existing features and prevent damage to any facility. Necessary protective structures barricades etc. have to be erected at various places as directed by Engineer-in-Charge. No extra payment of such protective works will be made unless specially provided in the tender.
- 49.2 The working time or the time of work is 48 hours per week normally. Overtime work is permitted in cases of need and the Owner will not compensate the same. Shift working at 2 or 3 shifts per day may become necessary and the contractor should take this aspect into consideration for formulating his rates for quotation. No extra claims will be entertained by the Owner on this account.
- 49.3 The contractor must arrange for the placement of workers in such a way that the delayed completing of the work or any part thereof for any reasons whatsoever will not affect their proper employment. The Owner will not entertain any claim for idle time payment whatsoever.
- 49.4 The contractor shall submit to the Owner reports at regular intervals regarding the state and progress of work. The details and proforma of the report will mutually be agreed after the award of contract.

50 **DRAWINGS TO BE SUPPLIED BY THE OWNER:**

- 50.1 Where drawings are attached with tender, these shall be for the general guidance of the contractor to enable him to visualize the type of work contemplated and scope of work involved. The contractor will be deemed to have studied the drawings and formed an idea about the work involved.
- 50.2 Detailed working drawings on the basis of which actual execution of the work is to proceed will be furnished from time to time during the progress of the work. The contractor shall be deemed to have gone through the drawings supplied to him thoroughly and carefully and in conjunction with all other connected drawings and bring to the notice of the Engineer-in-Charge, discrepancies, if any, therein before actually carrying out the work.
- 50.3 Copies of all detailed working drawings relating to the works shall be kept at the contractor's office of the site and shall be made available to the Engineer-in-Charge at any time during the contract. The drawings and other documents issued by the Owner shall be returned to the Owner on completion of the works. Reference is also invited to clause 42.2 and 42.3 above regarding drawings and other documents.

51 **DRAWINGS TO BE SUPPLIED BY THE CONTRACTOR:**

- 51.1 Where drawings/data are to be furnished by the contractor, they shall be as enumerated in the special conditions of contract, and shall be furnished within the specified time.
- 51.2 Where approval of drawings before manufacture / construction / fabrication has been specified, it shall be contractor's responsibility to have these drawings prepared as per the directions of Engineer-in-Charge and got approved before proceeding with manufacture construction / fabrication, as the case may be. Any changes that may have become necessary in these drawings during the execution of the work shall have to be carried out by the contractor to the satisfaction of Engineer-in-Charge at no extra cost. All final drawings shall bear the certification stamps duly signed by both the contractor and the Engineer-in-Charge.
- 51.3 A period of 3 weeks from the date of receipt shall be required normally for approval of drawings by the Engineer-in-Charge.

52 **SETTING OUT WORKS:**

- 52.1 The Engineer-in-Charge shall furnish the contractor with only the four corners of the work site and a level bench mark and the contractor shall set out the works and shall provide efficient staff for the purpose and shall be solely responsible for the accuracy of such setting out.
- 52.2 The contractor shall provide, fix and be responsible for the maintenance of all stacks, templates, level marks, profiles and other similar things and shall take all necessary precaution to prevent their removal or disturbance and shall be responsible for the consequence of such removal or disturbance should the same take place and for their efficient and timely reinstatement. The contractor shall also be responsible for the maintenance of all existing survey marks, boundary marks, distance marks and centre line marks, either existing or supplied and fixed by the contractor. The work shall be set out to the satisfaction of the Engineer-in-Charge. The approval thereof or joining in setting out the work shall not relieve the contractor of any of his responsibilities.
- 52.3 Before beginning the works, the contractor shall at his own cost, provide all necessary reference and level posts, pegs, bamboos, flags, ranging rods, strings and other materials for proper layout of the work in accordance with the scheme, for bearing marks acceptable to the Engineer-in-Charge. The centre, longitudinal or face lines and cross lines shall be marked by means of small masonry pillars. Each pillar shall have distinct marks at the centre to enable theodolite to be set over it. No work shall be started until all these points are checked and approved by the Engineer-in-Charge in writing but such approval shall not relieve the contractor of any of his responsibilities. The contractor shall also provide all labour, material and other facilities, as necessary, for the proper checking of layout and inspection of the points during construction.
- 52.4 Pillars bearing geodetic marks located at the site of work under construction should be protected and fenced by the contractor.
- 52.5 On completion of works, the contractor must submit the geodetic documents according to which the work was carried out.

53 **RESPONSIBILITY FOR LEVEL AND ALIGNMENT:**

The contractor shall be entirely and exclusively responsible for the horizontal and vertical alignment, the levels and correctness of every part of the work and shall rectify effectually any errors or imperfections therein. Such rectifications shall be carried out by the contractor, at his own cost, when instructions are issued to that effect by the Engineer-in-Charge.

54 **MATERIALS TO BE SUPPLIED BY CONTRACTOR:**

- 54.1 The contractor shall procure and provide the whole of the materials required for construction including tools, tackles, construction plant and equipment for the completion and maintenance of the works except the materials which will be issued by Owner and shall make his own arrangement for procuring such materials and for the transport thereof.. The materials procured by the contractor shall be BPCL approved/specified quality.
- 54.2 All materials procured should meet the specifications given in the tender document. The Engineer-in-Charge may, at his discretion, ask for samples and test certificates for any batch of any material procured. Before procuring, the contractor should get the approval of Engineer-in-Charge for any material to be used for the works.

54.3 Manufacturer's certificate shall be submitted for all materials supplied by the contractor. If, however, in the opinion of the Engineer-in-Charge any tests are required to be conducted on the materials supplied by the contractor, these will be arranged by the contractor promptly at his own cost.

**55 MATERIALS SUPPLIED BY OWNER:**

55.1 If the specifications of the work provides for the use of any materials of special description to be supplied from the Owner's stores, price for such material to be charged therefore as hereinafter mentioned being so far as practicable for the convenience of the contractor but not so as in any way to control the meaning or effect of the contract. The contractor shall be bound to purchase and shall be supplied such materials as are from time to time required to be used by him for the purpose of the contract only. The sums due from the contractor for the value of the actual materials supplied by the Owner will be recovered from the running account bill on the basis of the actual consumption of materials in the work covered and for which the running account bill has been prepared. After the completion of the works, however, the contractor has to account for the full quantity of materials supplied to him as per relevant clauses in this document.

55.2 The value of the materials as may be supplied to the contractor by the Owner will be debited to the contractor's account at the rates shown in the schedule of chargeable materials and if they are not entered in the schedule, they will be debited at cost price, which for the purpose of the contract shall include the cost of carriage and all other expenses whatsoever such as normal storage supervision charges which shall have been incurred in obtaining the same at the Owner's stores. All materials so supplied to the contractor shall remain the absolute property of the Owner and shall not be removed on any account from the site of the work, and shall be at all times open for inspection to the Engineer-in-Charge. Any such materials remaining unused at the time of completion or termination of the contract shall be returned to the Owner's stores or at a place as directed by the Engineer-in-Charge in perfectly good condition, at contractor's cost.

**56 CONDITIONS FOR ISSUE OF MATERIALS:**

- i) Materials specified to be issued by the Owner will be supplied to the contractor by the Owner from his stores/location. It shall be the responsibility of the contractor to take delivery of the materials and arrange for its loading, transport and unloading at the site of work at his own cost. The materials shall be issued between the working hours and as per the rules of the Owner framed from time to time.
- ii) The contractor shall bear all incidental charges for the storage and safe custody of materials at site after these have been issued to him.
- iii) Materials specified to be issued by the Owner shall be issued in standard sizes as obtained from the manufacturer.
- iv) The contractor shall construct suitable godown at the site of work for storing the materials safe against damage by rain, dampness, fire, theft etc. He shall also employ necessary watch and ward establishment for the purpose.
- v) It shall be duty of the contractor to inspect the material supplied to him at the time of taking delivery and satisfy himself that they are in good condition. After the materials have been delivered by the Owner, it shall be the responsibility of the contractor to keep them in good condition and if the materials are damaged or lost, at any time, they shall be repaired and/ or replaced by him at his own cost, according to the directions of the Engineer-in-Charge.
- vi) The Owner shall not be liable for delay in supply or non-supply of any materials which the Owner has undertaken to supply where such failure or delay is due to natural calamities, act of enemies, transport and procurement difficulties and any circumstances beyond the control of the Owner. In no case, the contractor shall be entitled to claim any compensation or loss suffered by him on this account.
- vii) It shall be the responsibility of the contractor to arrange in time all materials required for the works other than those to be supplied by the Owner. If, however, in the opinion of the Engineer-in-Charge the execution of the work is likely to be delayed due to the contractor's inability to make arrangements for supply of materials which normally he has to arrange for, the Engineer-in-Charge shall have the right, at his own discretion, to Issue such materials If available with the Owner or procure the materials from the market or elsewhere and the contractor will be bound to take such materials at the rates decided by the Engineer-in-Charge. This, however, does not in any way absolve the contractor from responsibility of making arrangements for the supply of such materials in part or in full, should such a situation occur, nor shall this, constitute a reason for the delay in the execution of the work.
- viii) None of the materials supplied to the contractor will be utilized by the contractor for manufacturing item, which can be obtained from standard manufacturer in finished form.
- ix) The contractor shall, if desired by the Engineer-in-Charge, be required to execute an indemnity bond for safe custody and accounting of all materials issued by the Owner.
- x) The contractor shall furnish to the Engineer-in-Charge sufficiently in advance a statement showing his requirements of the quantities of the materials to be supplied by the Owner and the time when the same will be required by him for the works, so as to enable the Engineer-in-Charge to make necessary arrangement for procurement and supply of the material.
- xi) A daily account of the materials issued by the Owner shall be maintained by the contractor indicating the daily receipt, consumption and balance in hand. This account shall be maintained in a manner prescribed by the Engineer-in-Charge along with all connected papers viz. requisition, issues etc. and shall be always available for inspection in the contractor's office at site.

- xii) The contractor should see that only the required quantities of materials are got issued. The contractor shall not be entitled to cartage and incidental charges for returning the surplus materials, if any, to the stores/location where from they were issued or to the place as directed by the Engineer-in-Charge.
- xiii) Materials/ Equipment supplied by Owner shall not be utilized for any other purpose(s) than issued for.

57      **MATERIALS PROCURED WITH ASSISTANCE OF OWNER:**

Notwithstanding anything contained to the contrary in any or all the clause of this document where any materials for the execution of the contract are procured with the assistance of Owner either by issue from Owner's stock or purchase made under orders or permits or licences issued by Government, the contractor shall hold the said materials as trustee for the Owner and use such materials economically and solely for the purpose of the contract and not dispose them off without the permission of the owner and return, if required by the Engineer-in-Charge, all surplus or unserviceable materials that may be left with him after the completion of the contract or at its termination for any reason, whatsoever on his being paid or credited such prices as the Engineer in-Charge shall determine having due regard to the condition of the materials. The price allowed to the contractor however, shall not exceed the amount charged to him excluding the storage charges if any. The decision of the Engineer-in-Charge shall be final and conclusive in such matters. In the event of breach of the aforesaid condition, the contractor shall in terms of the licenses or permits, and/or for criminal breach of trust, be liable to compensate the Owner a double rate or high rate, in the event of those materials at that time having higher rate or not being available in the market, then any other rate to be determined by the Engineer-in-Charge and his decision shall be final and conclusive.

58      **MATERIALS OBTAINED FROM DISMANTLING:**

If the contractor in the course of execution of the work is called upon to dismantle any part for reasons other than those stipulated in clauses 64 & 68 hereunder, the materials obtained in the work of dismantling etc. will be considered as the Owner's property and will be disposed off to the best advantage of the Owner.

59      **ARTICLES OF VALUE FOUND:**

All gold, silver and other materials, of any description and all precious stones, coins, treasure relics, antiquities and other similar things which shall be found in, under or upon the site, shall be property of the Owner and the contractor shall duly preserve the same to the satisfaction of the Engineer-in-Charge and shall from time to time deliver the same to such person or person indicated by the Owner.

60      **DISCREPANCIES BETWEEN INSTRUCTIONS:**

Should any discrepancy occur between the various instructions furnished to the contractor, his agents or staff or any doubt, arise as to the meaning of any such instructions or should there be any misunderstanding between the contractor's staff and the Engineer-in-Charge's staff, the contractor shall refer the matter immediately in writing to the Engineer-in-Charge whose decision thereon shall be final and conclusive and no claim for losses alleged to have been caused by such discrepancies between instructions, or doubts, or misunderstanding shall in any event be admissible.

61      **ALTERATIONS IN SPECIFICATIONS AND DESIGNS AND EXTRA WORK:**

A) The Engineer-in-Charge shall have power to make any alterations in, omissions from, additions to or substitutions for, the schedule of rates, the original specifications, drawings, designs and instructions that may appear to him to be necessary or advisable during the progress of the work and the contractor shall be bound to carry out such altered / extra / new items of work in accordance with any instructions which may be given to him in writing signed by the Engineer-in-Charge and such alterations, omissions, additions or substitutions shall not invalidate the contract and any altered additional or substituted work which the contractor may be directed to do in the manner above specified as part of the work shall be carried out by the contractor on the same conditions in all respect on which he agree to do the main work. The time for completion of work may be extended for the part of the particular job at the discretions of the Engineer-in-Charge, for only such alteration, additions or substitutions of the work, as he may consider as just and reasonable. The rates for such additional, altered or substituted work under this clause shall be worked out in accordance with the following provisions:

- a) If the rates for the additional, altered or substituted work are specified in the contract for the work, the contractor is bound to carry out the additional, altered or substituted work at the same rates as are specified in the contract.
- b) If the rates for the additional, altered or substituted work are not specifically provided in the contract for the work, the rates will be derived from the rates for similar class of works as specified in the contract for the work. The opinion of the Engineer-in-Charge as to whether the rates can be reasonably so derived from items in the contracts will be final and binding on the contractor.
- c) If the rates for the altered, additional or substituted work cannot be determined in the manner specified in sub-clause (a) and (b) above, then the contractor shall inform the Engineer-in-Charge of the rate which is his intension to charge for such class of work supported by analysis of the rate or rates claimed, and the Engineer-in-Charge shall determine the rates on the basis of the prevailing market rates of materials, labour

cost at schedule of labour plus 10% to cover contractor's supervision, overheads and profit and pay the contractor accordingly. The opinion of the Engineer-in-Charge as to the current market rates of materials and the quantum of labour involved per unit of measurement will be final and binding on the contractor.

- d) Provisions, contained in sub-clause (a) to (c) above shall not, however, apply:  
Where the value of alterations / additions / deletions or substitutions exceeds beyond plus or minus 25% of the estimated contract value (i.e. quoted item rates of contractor shall hold good for variations etc. within plus or minus 25% of estimated contract value)
- B) In the event and as a result of such alternatives / additions / substitutions / deletion, the scope of contract work exceed the value stipulated in the contract by more than the limits given in clause (d) above, the Contractor shall claim revision of the rates supported by the proper analysis in respect of such items for quantities in excess of the above limits, notwithstanding the fact that the rates for such items exist in the tender for the main work or can be derived in accordance with the provision of sub-clause (b) of Clause 61 A, and the Engineer-in-Charge may revise their rates having regard to the prevailing market rates, and the contractor shall be paid in accordance with the rates so fixed. But, under no circumstances the contractor shall suspend / stop / slowdown the work on the plea of non-settlement of rates of items falling under this clause.

**62. ACTION WHERE NO SPECIFICATIONS ISSUED:**

In case of any class of work for which there is no such specification given by the Owner in the tender documents, such work shall be carried out in accordance with Indian Standard Specifications and if the Indian Standard Specifications do not cover the same the work should be carried out as per standard Engineering Practice subject to the approval of the Engineer-in-Charge.

**63. ABNORMAL RATES:**

The contractor is expected to quote rate for each item after analysis of cost involved for the completion of item/work, considering all specifications and conditions of contract. This will avoid loss of profit or gain, in case of curtailment or change of specification for any item. In case it is noticed that the rates for any item, quoted by the tenderer are unusually high or unusually low (i.e. in case of variation plus or minus 25% between tendered rates and estimates), it will be sufficient cause for the rejection of the tender unless the Owner is convinced about the reasonableness of the rates on scrutiny of the analysis for such rate to be furnished by the tenderer on demand.

**64 INSPECTION OF WORK:**

- 64.1 The Engineer-in-Charge will have full power and authority to inspect the works at any time wherever in progress either on the Site or at the contractor's premises / workshop where situated premises /workshops of any person, firm or corporation where work in connect with the contract may be in hand or where materials are being or are to be supplied, and the contractor shall afford or procure for the Engineer-in-Charge every facility and assistance to carry out such Inspection. The contractor shall at all time during the usual working hours and at all other time for which reasonable notice of the intention of the Engineer in-Charge or his representative to visit the works have been given to the contractor, either himself be present to receive order and instructions or post a responsible agent duly accredited in writing for the purpose. Orders given to the contractor's agent shall be considered to have the same force as if they had been given to the contractor himself. The contractor shall give not less than seven days, notice in writing to the Engineer-in-Charge before covering up or placing any work beyond reach of inspection and measurement any work in order that the same may be inspected and measured. In the event of breach of above the same shall be uncovered at contractor's expense carrying out such measurement or inspection.
- 64.2 No materials shall be dispatched by the contractor before obtaining the approval of Engineer-in-Charge in writing. The contractor is to provide at all times during the progress of the work and the maintenance period, proper means of access with ladders, gangways, etc. and the necessary attendance to move and adopt as directed for inspection or measurement of the works by the Engineer- in-Charge.

**65 ASSISTANCE TO THE ENGINEERS:**

The contractor shall make available to the Engineer-in-Charge, free of cost necessary instruments and assistance in checking of setting out of works and taking measurement of work.

**66. TESTS FOR QUALITY OF WORKS:**

- 66.1 All workmanship shall be of the respective kinds described in the contract documents and in accordance with the instructions of the Engineer-in-Charge and shall be subjected from time to time to such test at contractor's cost as the Engineer-in-Charge may direct at place of manufacture or fabrication or on the site or at all or any such places. The contractor shall provide assistance, instruments, labour and materials as are normally required for examining, measuring and testing any workmanship as may be selected and required by the Engineer-in-Charge.
- 66.2 All the tests necessary in connection with the execution of the work as decided by Engineer-in-Charge shall be carried out at the field testing laboratory of the Owner by paying the charges as decided by the Owner from time to time. In case of non-availability of test facility with the Owner, the required test shall be carried out at the cost of contractor at government or any other testing laboratory as directed by Engineer-in-Charge.

- 66.3 If any tests are required to be carried out in connection with the work or materials of which workmanship is not supplied by the contractor, such tests shall be carried out by the contractor as per the instructions of Engineer-in-Charge and cost of such tests shall be reimbursed by the Owner.
67. **SAMPLES:**
- The contractor shall furnish to the Engineer-in-Charge for approval when requested or if required by the specifications, adequate samples of all materials and finishes to be used in the work. Such samples shall be submitted before the work is commenced and in ample time to permit tests and examinations thereof. All materials furnished and finishing applied in actual work shall be fully identical to the approval samples.
68. **ACTION AND COMPENSATION IN CASE OF BAD WORK:**
- If it shall appear to the Engineer-in-Charge that any work has been executed with unsound, imperfect or unskilled workmanship or with materials of any inferior description, or that any materials or articles provided by the contractor for the execution of the work are unsound or of a quality inferior to that contracted for, or otherwise not in accordance with the contract, the contractor shall on demand in writing from the Engineer-in-Charge or his authorised representative, specifying the work, materials or articles complained of, notwithstanding that the same have been inadvertently passed, certified and paid for forthwith shall rectify or remove and reconstruct the works specified and provide other proper and suitable materials or articles at his own charge and cost, and in the event of failure to do so within a period to be specified by the Engineer-in-Charge in his demand aforesaid, the contractor shall be liable to pay compensation at the rate of one percentage of the estimated cost of the whole work, for every week limited to a maximum of 10 per cent of the estimated cost of the whole work, while his failure to do so shall continue and in the case of any such failure the Engineer-in-Charge may on expiry of notice period rectify or remove and re-execute the work or remove and replace with others, the materials or articles complained of as the case may be at the risk and expenses of the contractors in all respects. The decision of the Engineer-in-Charge as to any question arising under this clause shall be final and conclusive.
69. **SUSPENSION OF WORKS:**
- The contractor shall, if ordered in writing by the Engineer-in-Charge or his representative, temporarily suspend the works or any part thereof for such period and such time as so ordered and shall not, after receiving such written order, proceed with the work therein ordered to be suspended, until he shall have received a written order to proceed therewith. The contractor shall not be entitled to claim/ compensation for any loss or damage sustained by him by reason of temporary suspension of the works aforesaid. An extension of time for completion, corresponding with the delay caused by any such suspension of the works as aforesaid will be granted to the contractor, should he apply for the same, provided that suspension was not consequent to any default or failure on the part of the contractor.
70. **OWNER MAY DO PART OF WORK:**
- Upon failure of the contractor to comply with any instructions given in accordance with the provisions of the contract, the owner has the alternative right, instead of assuming charge for entire work to place additional labour force, tools, equipments and materials on such parts of the work, as the owner may designate or also engage another contractor to carry out the work. In such cases, the owner shall deduct from the amount which otherwise might become due to the contractor, the cost of such work and materials with ten percent added to cover all departmental charges and should the total amount thereof exceed the amount due to the contractor, the contractor shall pay the difference to the owner.
71. **POSSESSION PRIOR TO COMPLETION:**
- The Engineer-in-Charge shall have the right to take possession of or use any completed or partially completed work or part of the work. Such possessions or use shall not be deemed to be an acceptance of any work completed in accordance with the contract agreement. If such prior possession or use by the Engineer-in-Charge delays the progress of work, suitable adjustment in the time of completion will made and contract agreement shall be deemed to be modified accordingly.
72. **PERIOD OF LIABILITY FROM THE DATE OF COMPLETION OF WORK:**
- 72.1 The contractor shall guarantee the installation/site work for a period of - 12 (twelve) Months from the date of completion of work, unless otherwise specified. Any damage that may lie undiscovered at the time of issue of completion certificate, connected in any way with the equipment or materials supplied by him or in the workmanship shall be rectified or replaced by the contractor at his own expense as deemed necessary by the Engineer-in-Charge or in default, the Engineer-in-Charge may cause the same made good by other workmen and deduct expenses (for which the certificate of Engineer-in-Charge shall be final) from any sums that may be then or at any time thereafter, become due to the contractor or from his security deposit.

- 72.2 If the contractor feels that any variation in work or in quality of materials or proportions would be beneficial or necessary to fulfill the guarantee called for, he shall bring this to the notice of the Engineer-in-Charge in writing. The work will not be considered as complete and taken over by the Owner until all the temporary works etc., constructed by the contractor is removed and work site cleaned to the satisfaction of Engineer-in-Charge.
- 72.3 Care of Works:  
From the commencement to completion of works, the contractor shall take full responsibility for the care of all works including all temporary works, and in case any damage, loss or injury happens to the works or to any part thereof or to any temporary work, from any cause whatsoever, he shall at own cost repair and make good the same, so that at completion, the work shall be in good order and in conformity in every respect with the requirements of the contract and the Engineer-in-Charge's instructions.
- 72.4 Effects prior to taking over:  
If at any time, before the work is taken over, the Engineer-in-Charge shall
- a) Decide that any work done or materials used by the contractor or any sub-contractor is defective or not in accordance with the contract or that the works or any portion thereof are defective or do not fulfill the requirements of contract (all such matters being herein after called 'Defects' in this clause) and
  - b) As soon as reasonably practicable, notice given to the contractor in writing of the said decisions specifying particulars of the defects alleged to exist or to have occurred, then the contractor shall at his own expenses and with all speed make good the defects so specified.
- In the case contractor shall fail to do so, the Owner may take, at the cost of the contractor, such steps as may in all circumstances, be reasonable to make good such defects. The expenditure, so incurred by the Owner shall be recovered from the amount due to the contractor. The decision of the Engineer-in-Charge with regard to the amount be recovered from the contractor will be final and binding on the contractor. As soon as the works have been completed in accordance with the contract (except in minor respects that do not affect their use for the purpose for which they are intended and except for maintenance thereof provided in clause 72.1) and have passed the tests on completion, the Engineer-in-Charge shall issue a certificate (hereinafter called completion certificate) in which he shall certify the date on which the work have been so completed and have passed the said tests and the Owner shall be deemed to have taken over the works on the date so certified. If the works have been divided into various groups in the contract, the Owner shall be entitled to take over any group or groups before the other or others and thereupon the Engineer-in-Charge shall issue a completion certificate which will however, be for such group or groups as taken over only.
- 72.5 Defects after taking over:  
In order that the contractor could obtain a completion certificate, he shall make good with all possible speed, any defect arising from the defective materials supplied by the Contractor or workmanship or any act of omission of the contract that may have been noticed or developed after the works or group of the works has been taken over. The period allowed for carrying out such work will be normally one month. If any defect be not remedied within a reasonable time, the Owner may proceed to do the work at the contractor's risk and expense and recover such expenses and other charges from amount payable to the contractor including security deposit and the contractor, on demand of owner, shall pay the balance amount, if any, to the owner. If by reason of any default on the part of the contractor a completion certificate has not been issued in respect of every portion of the work within one month after the date fixed by the contract for the completion of the works, the Owner shall be at his liberty to use the works or any portion thereof in respect of which a completion certificate has been issued provided that the works or the portion thereof so used as aforesaid shall be afforded reasonable opportunity for completing these works for the issue of completion certificate.
- 72.6 The Security Deposit/retention money deducted / furnished as per clause 18 of GCC shall be retained for the period of liability as given in clause 72.1 above. This Retention amount or Bank Guarantee furnished against Security Deposit/retention money shall be released only on expiry of the period of liability and also based on the certification of the Engineer-in-charge that no defect/damage has been reported / observed during the stipulated period of liability for the contract.
- 72.7 Performance of contractor shall be evaluated on each job by Engineer-in-Charge and recorded. The format given below is only indicative of major parameters on which performance will be evaluated. However, the detailed contractor performance monitoring format prevailing at the time of evaluation of contractor performance will be used. Review of performance will be carried out at appropriate intervals by BPCL.



### PERFORMANCE OF CONTRACTOR

Date... ..

JOB : .....

CONTRACTOR : .....

CONTRACT NO. & DATE .....

DATE OF START : ..... DATE OF COMPLETION: .....

PARAMETERS	REMARKS
Resource Mobilisation	
Quality consciousness	
Safety awareness	
Concern for Housekeeping	

ENGINEER-IN-CHARGE  
NAME  
DESIGNATION

**SECTION VI**  
**BILLS / MEASUREMENT / PAYMENT**

73. **SCHEDULE OF RATES AND PAYMENTS:**

i) Contractor's Remuneration

The price to be paid by the Owner to contractor for the whole of the work to be done and the performance of all the obligations undertaken by the contractor under the contract documents shall be ascertained by the application of the respective item rates (the inclusive nature of which is more particularly defined by way of application but not of limitation, with the succeeding sub-clause of this clause) and payment to be made accordingly for the work actually executed and approved by the Engineer-in-Charge. The sum so ascertained shall (excepting only as and to the extent expressly provided herein) constitute the sole and inclusive remuneration of the contractor under the contract and no further payment whatsoever shall be or become due or payable to the contractor under the contract.

ii) Schedule of rates to be inclusive:

The prices/rates quoted by the contractor shall remain firm till the issue of final completion certificate and shall not be subject to escalation. Schedule of rates shall be deemed to include and cover all costs, expense and liabilities of every description and all risk of every kind to be taken in executing, completing and handing over the work to the Owner by the Contractor. The Contractor shall be deemed to have known the nature, scope, magnitude and the extent of the works and materials required, though the contract document may not fully and precisely furnish them. He shall make such provision in the item rates as he may consider necessary to cover the cost of such items of work and materials as may be reasonable and necessary to complete the works. The opinion of the Engineer-in-Charge as to the items of work which are necessary and reasonable for completion of work shall be final and binding on the contractor, although the same may not be shown on or described specially in contract documents. Generality of this present provision shall not be deemed to cut down or limit in any way because in certain cases it may and in other cases it may not be expressly stated that the contractor shall do or perform a work or supply articles or perform services at his own cost or without addition of payment or without extra charges or words to the same effect or that it may be stated or not stated that the same are included in and covered by the schedule of rates.

iii) Schedule of Rates to Cover Constructional Equipments, Materials, Labour etc.

Without in any way limiting the provisions of the preceding sub-clause, the schedule of rates shall be deemed to include and cover the cost of all constructional equipment, temporary work (except as provided for herein), pumps, materials, labour, the insurance, fuel, stores and appliances to be supplied by the contractor and other matters in connection with each item in the schedule of rates and the execution of the works or any portion thereof, finished, complete in every respect and maintained as shown or described in the contract documents or may be ordered in writing during the continuance of this contract.

iv) Schedule of Rates to cover Royalties, Rents and Claims:

The Schedule of Rates shall be deemed to include and cover the cost of all royalties and fees for the articles and processes, protected by letters, or otherwise incorporated in or used in connection with the works, also all royalties, rents and other payments in connection with obtaining materials of whatsoever kind for the works and shall include an indemnity to the Owner which the contractor hereby gives against all actions, proceedings, claims damages, costs and expenses arising from the incorporation in or use on the works of a such articles, processes or materials, Octroi or other municipal or local Board charges levied on materials, equipment or machineries to be brought to site for use on work shall be borne by the contractor.

v) Schedule of Rates to Cover Taxes and Duties:

No claim or exemption or reduction of customs duties, excise duties, sales tax, quarry or any port dues, transport charges, stamp duties or Central or States Government or Local Body or Municipal Taxes or duties, taxes or charges (from or of any other body), whatsoever, will be granted or obtained, all of which expenses shall be deemed to be included in and covered by the Schedule of Rates. Contractor shall also obtain and pay for all permits, or other privileges necessary to complete work.

vi) Schedule of Rates to cover Risk of Delay:

The schedule of Rates shall be deemed to include and cover the risk of all possibilities of delay and interference with the contractors conduct of work which occur from any cause including orders of owner in the exercises of his powers and on account of extension of time granted due to various reasons and for all other possible or probable cause of delay.

vii) Schedule of Rates cannot be altered:

For work under unit rate basis, no alteration will be allowed in the schedule of Rates by reason of work or any part of them being modified, altered, extended, diminished or omitted. The schedule of Rates are fully Inclusive rates which have been fixed by the contractor and agreed to the Owner and cannot be altered.

For lumpsum contract, the payment will be made according to the work actually carried out for which purpose an item wise or workwise, Schedule of rates shall be furnished, suitable for evaluating the value of work done and preparing running account bills.

74. **PROCEDURE FOR MEASUREMENT / BILLING OF WORK IN PROGRESS:**

i) Measurements:

All measurements shall be in metric system. All the works in progress will be jointly measured by the representative of the Engineer-in-Charge and the Contractor's authorised agent progressively. Such measurement will be got recorded in the measurement book by the Engineer-in-Charge or his authorised representative and signed in token of acceptance by the contractor or his authorised representative.

For the purpose of taking joint measurement the contractor's representative shall be bound to be present whenever required by the Engineer-in-Charge. If, however, he absents for any reason whatsoever the measurement will be taken by the Engineer-in-Charge or his representative and this will be deemed to be correct and binding on the contractor.

ii) Billing:

The contractor will submit a bill in approved proforma in duplicate (triplicate in the case of jobs executed through PMC) to the Engineer-in-Charge of the work giving abstract and detailed measurements for the various items executed during a month, before the expiry of the 1st week of the succeeding month. The Engineer-in-Charge shall take or cause to be taken the requisite measurements for the purpose of having the same verified and the claim, as far as admissible, adjusted, if possible, before the expiry of 10 days from presentation of the bill.

iii) Dispute in Mode of Measurements:

In case of any dispute as to the mode of measurement not covered by the contract to be adopted for any item of work, mode of measurement as per latest Indian Standard Specifications shall be followed.

75. **LUMPsumS IN TENDER:**

For the items in tender where it includes lumpsum in respect of parts of work, the contractor shall be entitled to payment in respect of the items at the same rates as are payable under this contract for such items, or if part of the work in question is not in the opinion of the Engineer-in-Charge capable of measurement of determination, the owner may at his discretion pay the lumpsum amount entered in the tender or a percentage thereof and the certificate in writing of the Engineer-in-Charge shall be final and conclusive against the contractor with regards to any sum or sums payable to him under the provisions of the clause.

76. **RUNNING ACCOUNT PAYMENTS TO BE REGARDED AS ADVANCES:**

All running account payments shall be regarded as payment by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the requiring of bad, unsound and imperfect, or unskilled work to be removed and taken away and reconstructed or re-erected or be considered as an admission of the due performance of the contract, or any part thereof in this respect, or of the accruing of any claim by the contractor, nor shall it conclude, determine or affect in any way the powers of the Owner under these conditions or any of them as to the final settlement and the adjustments of the accounts or otherwise, or in any other way vary or affect the contract.

The final bill shall be submitted by the contractor within one month of the date of physical completion of the work, and settled immediately but not later than 60 days. Otherwise the Engineer-in charge's certificate of the measurement and of total amount payable for the work accordingly shall be final and binding on all parties. The final bill shall be presented by the contractor along with 'No claim certificate' in a format acceptable to the owner or such other documents as directed by the owner.

77. **EXTRA WORK:**

Should the contractor consider that he is entitled to any extra payment for extra job carried out whatsoever in respect of the works, he shall forthwith give notice in writing to the Engineer-in-Charge that he claims extra payment for the extra work. Such notice shall be given to the Engineer-in-Charge within one week from the ordering of any extra work or happening of any event, upon which the contractor bases such claims, and such notice shall contain full particulars of the nature of such claim with full details and amount claimed. Failure on part of the contractor to put forward any claim with the necessary particulars as above within the time above specified shall be an absolute waiver thereof. No omission by the owner to reject any such claim and no delay in dealing therewith shall be waiver by the owner of any rights in respect thereof.

78. **PAYMENT OF CONTRACTOR'S BILL:**

Generally no payment shall be made for works estimated to cost less than Rs. 50,000/- till the whole of the work shall have been completed. But in case of works estimated to cost more than Rs. 50,000/-, the contractor on submitting the bill thereof shall be entitled to receive a monthly payment proportionate to the part thereof

approved and passed by the Engineer-in-Charge, whose certificate of such approval and passing of the sum so payable shall be final and conclusive against the contractor. This payment will be made after making necessary deductions as stipulated elsewhere in the contract document for materials, security deposit or any moneys due to the Owner etc.

79. **MODE OF PAYMENT:**

Payment will be made to the contractor normally through NEFT or RTGS mode.

80. **COMPLETION CERTIFICATE:**

80.1 Application for Completion Certificate:

When the contractor fulfills his obligation under clause 72.4, he shall be eligible to apply for completion certificate. The contractor may apply for separate completion certificate in respect of each such portion of the work by submitting the completion documents along with such application for completion certificate.

The Engineer-in-Charge shall normally issue to the contractor the completion certificate within one month after receiving an application from the contractor after verifying from the completion documents and satisfying himself that the work has been completed in accordance with and as set out in the construction and erection drawings and the contract documents.

The contractor, after obtaining the completion certificate is eligible to present the final bill for the work executed by him under the terms of contract.

80.2 Completion Certificate:

The contractor shall be furnished with a certificate by the Engineer-in-Charge of such completion, but no certificate shall be given nor shall the work be deemed to have been executed until all scaffolding surplus materials and rubbish is cleared off the site completely or until the work shall have been measured by the Engineer-in-Charge whose measurement shall be binding and conclusive. The work will not be considered as complete and taken over by the Owner, until all the temporary works, labour and staff colonies etc. constructed are removed and the work site cleaned of all debris etc., as described in clause in 80.3 below and to the satisfaction of the Engineer-in-Charge.

If the contractor shall fail to comply with the requirements of this clause on or before the date fixed for the completion of the work, the Engineer-in-Charge may at the expenses of the contractor remove such scaffolding, surplus materials and rubbish and dispose off the same as he thinks fit and clean off such dirt as aforesaid, and the contractor shall forthwith pay the amount of all expenses so incurred and shall have no claim in respect of any such scaffolding or surplus materials as aforesaid except for any sum actually realised by the sale thereof.

80.3 Clearing the site:

Cart away all debris generated from the work and dispose it off without giving rise to any complaints from local, municipal or government authorities. Metal scraps or any other scrap including wooden packing materials shall be disposed as instructed by the Engineer-in-Charge or as follows:

- a) All unused scrap steel bar/ structural steel sections/pipe materials etc., (Free issue by owner) shall be the property of the owner and the same shall be returned by the contractor category-wise at their own cost to Owner's store. The weightment slip issued by the Warehouse (in original) is required to be attached along with the final bill/ material reconciliation statement. In case, the material is supplied by the contractor, as per their scope of work, the scrap material generated out of the same should be taken out at their own cost before the settlement of the final bill.
- b) Insulation material (either issued by owner to the contractor or supplied by contractor) shall be kept in the area allocated by owner. During the insulation activities, the contractor should keep the work area clean on day-to-day basis. On completion of insulation job, all debris/packing should be taken out to the designated location or as directed by the Engineer in charge for disposal at their own cost before the settlement of the final bill.

80.4. The financial implication of above, if any, should be taken care of in the quoted rates; and no separate claim shall be entertained on this account. The final bill of the contractor shall be linked with the area cleaning in all respects, including removal of shuttering material, disposal of debris/scrap etc. to the entire satisfaction of Engineer-in-Charge.

81. **FINAL DECISION AND FINAL CERTIFICATE:**

Upon Expiry of the period of liability and subject to the Engineer-in-Charge being satisfied that the works have been duly maintained by the contractor during monsoon or such period as herein before provided in clause 72 and that the contractor has in all respect duly made up any subsidence and performed all his obligations under the contract, the Engineer-in-Charge shall (without prejudice to the rights of the Owner to retain the provisions of relevant clause hereof) give a certificate herein referred to as the final certificate to that effect. The contractor shall not be considered to have fulfilled the whole of his obligations under the contract until Final Certificate have been given by

the Engineer-in-Charge notwithstanding any previous entry upon the work and taking possession, working or using of the same or any part thereof by the owner.

82. **CERTIFICATE FOR PAYMENTS AND EVIDENCE OF COMPLETION:**

Except the final certificate, no other certificate or payments against a certificate or on general account shall be taken to be an admission by the Owner of the due performance of the contract or any part thereof or occupancy or validity of any claim by the contractor.

**SECTION VII  
TAXES/DUTIES/INSURANCE**

**83. TAXES, DUTIES, OCTROI ETC.:**

The contractor agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes, duties, octroi etc. now in force or hereafter Imposed, increased or modified, from time to time in respect of work and materials and all contributions and taxes for unemployment compensation, insurance and old age pensions or annuities now or hereafter imposed by any Central or State Government authorities which are imposed with respect to or covered by the wages, salaries, or other compensations paid to the persons employed by the contractor and the contractor shall be responsible for the compliance with all obligations and restrictions imposed by the Labour Law or any other law affecting employer - employee relationship and the contractor further agrees to comply and secure the compliance by all sub-contractors, with all applicable Central, State, Municipal and local laws and regulations and requirements of any Central, State or Local Government agency or authority. Contractor further agrees to defend, indemnify and hold harmless from any liability or penalty which may be Imposed by the Central, State or Local Authority by reason of any violation by contractor or sub-contractor of such laws, regulations or requirements and also from all claims, suits or proceeding that may be brought against the Owner arising under, growing out of, or by reason of the work provided for by this contract by third parties, or by Central or State Government authority or any administrative sub-division thereof.

**84. INSURANCE:**

Contractor shall at his own expenses carry and maintain insurance with reputable insurance companies to the satisfaction of the Owner as follows:

- i) **Employees State Insurance Act:**  
The Contractor agrees to and does hereby accept full and exclusive liability for the compliance with all obligations imposed by the Employees State Insurance Act, 1948, and the contractor further agrees to defend, indemnify and hold Owner harmless from any liability or penalty which may be imposed by the Central, State or Local Authority by reason of any asserted violation by contractor or sub-contractor, of the Employee State Act, 1948 and also from all claims suits or proceedings that may be brought against the Owner arising under, growing out of or by reason of the work provided for by this contract whether brought by employees of the contractor, by third parties or by Central or State Government authority or any political sub-division thereof.  
The contractor agrees to filing, with the Employees State Insurance Corporation, the Declaration Forms and all forms which may be required in respect of the contractor's or sub-contractor's employees whose aggregate remuneration as fixed by the concerned authorities and who are employed in the work provided for or those covered by ESI Act under any amendment to the Act from time to time. The contractor shall deduct and secure the agreement of the sub-contractor to deduct the employee's contribution as per the first schedule of the Employee State Insurance Act from wages and affix the Employee's contribution Cards at Wages payment intervals. The contractor shall remit and secure the agreement of the sub-contractor to remit to the authorized bank, Employee's State Insurance Corporation Account, the Employee's contribution as required by the Act. The contractor agrees to maintain all Cards and records as required under the Act in respect of employees and the payments and the contractor shall secure the agreement of the subcontractor to maintain such records. Any expenses incurred for the contribution, making contribution or maintaining records shall be to the contractor's or sub-contractor's account.  
The Owner shall retain such sum as may necessary, from the total contract value until contractor shall furnish satisfactory proof that all contributions as required by the Employees State Insurance Act, 1948, have been paid.
- ii) **Workman's Compensation and Employee's Liability Insurance:**  
Insurance shall be effected for all the Contractor's employees engaged in the performs of this contract, if any of the work is sublet, the contractor shall require the sub-contractor to provide workman's compensation and employer's liability Insurance for the latter's employees if such employees are not covered under the contractors insurance.
- iii) **Any other Insurance Required Under Law or Regulations or by Owner:**  
Owner shall cover Project Material and Equipments under and over all Marine-cum-Erection Insurance Policy. Contractor shall carry and maintain any and all other insurance which be required under any law or regulation from time to time. He shall also carry and main any other insurance which may be required by the Owner.
- iv) **Automobile Liability Insurance:**  
Contractor shall take out an Automobile Liability Insurance to cover all risks to Owner for each of his vehicles plying on works of this contract and these insurance shall be valid for the total contract period. No extra payments will be made for this insurance. Owner shall not be liable for any damage or loss not made good by the insurance company, should such damage or toss result from unauthorised use of the vehicle.

85. **DAMAGE TO PROPERTY:**

- i) Contractor shall be responsible for making good, to the satisfaction of the Owner any loss of and any damage to all structures and properties belonging to the Owner or being executed or procured or being procured by the Owner or of other agencies within the premise all the work of the Owner, if such loss or damage is due to fault and/or the negligence willful acts or omission of contractor, his employees, agents, representative or sub-contractor.
- ii) The contractor shall indemnify and keep the Owner harmless of all claims for damage to property other than Owner's property arising under or by reason of this agreement if such claims results from the fault and/or negligence or willful acts or omission of contractor, his employees, agents, representatives or sub-contractors.

**SECTION VIII**  
**LABOUR LAWS AND OTHER REGULATIONS**

**86. LABOUR LAWS:**

- i) No labour below the age of eighteen years shall be employed on the work.
- ii) The contractor shall not pay less than what is provided under the Minimum Wages Act for the applicable trade or category of workman to the worker engaged by him on the work and also ensure that any sub-contractors engaged by him also pay not below the applicable minimum wages under the Act and hold the company, indemnified in respect of any claims that may arise in respect or non-compliance with this requirements.
- iii) The contractor shall observe all the formalities required under the provisions of the contract labour (Regulation and abolition) Act 1970 and the rules made thereunder and as may be amended from time to time. He shall pay the required deposit under the Act Appropriate to the number of workmen to be employed by him or through sub-contractor and get him self registered under the Act. He shall produce the certificate of registration granted by the Govt. authority under the Act to the company before commencement of work. The company recognises only the contractor and not his sub-contractors under the provisions of the Act. The contractor will have to submit daily a list of his employees, who will be entering the Company's premises for the work awarded. He will also keep his wage register available at all times as close to the work site as possible and produce the same for inspection whenever required by designated Company officials. If the company so desires, a deposit may be taken from the Contractor to be refunded only after the Company is satisfied that all the workmen employed by the contractor have been fully paid for the period of work in Company's premises at least at rates equal to or better than wages provided for under the Minimum Wages Act.
- iv) The Contractor will comply with the provisions of the employee's Provident Fund Act and the Family Pension Fund Act as may be applicable and as amended from time to time. Contractor shall obtain their own provident fund account number. Offer of the contractor who does not have provident fund account will be liable for rejection.
- v) The Contractor will comply with the provisions of the Payment of Gratuity Act 1972 as may be applicable and as amended from time to time.

**87. IMPLEMENTATION OF APPRENTICES ACT 1961:**

The Contractor shall comply with provisions of the Apprentices Act 1961 and the Rules/orders issued thereunder from time to time. If he fails to do so, his failure will be breach of the contract and the Engineer-in-Charge may, at his discretion, cancel the contract. The contractor shall also be liable for any pecuniary liability arising on account of any violation by him of the provision of the act.

**88. CONTRACTOR TO INDEMNIFY THE OWNER:**

- i) The contractor shall indemnify the owner and every member, officer and employee of the Owner, also the Engineer-in-Charge and his staff against all actions, proceedings, claims, demands, costs, and expenses whatsoever arising out of or in connection with the matters referred to in clause 84 and all actions/ proceedings, claims, demands, costs and expenses which may be made against the Owner for or in respect of or arising out of any failure by the contractor in the performance of his obligations under the contract documents. The Owner shall not be liable for or in respect of any demand or compensation payable by law in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the contractor or his sub-contractor and contractor shall indemnify and keep indemnified the Owner against all such damages and compensations and against all claims, damage, proceedings, costs, charges and expenses whatsoever, thereof or in relation thereto.
- ii) Payment of Claims and Damages:  
Should the Owner have to pay any money in respect of such claims or demands as aforesaid the amount so paid and the costs incurred by the Owner shall be charged to and paid the Contractor and the contractor shall not be at liberty to dispute or question the rig of the Owner to make such payments notwithstanding the same may have been made without his consent or authority or in law or otherwise to the country.  
In every case to which by virtue of the provisions of Section 12, sub-section (I) of workmen's compensation Act 1923 or other applicable provisions of workmen's Compensation Act any other Act, the Owner is obliged to pay compensation to a workmen employed by contractor in execution of the works, the Owner will recover from the contractor the amount of compensation so paid and without prejudice to the rights of Owner under Section 12 sub-section (2) of the said Act. Owner shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due to the contractor whether under the contract or otherwise. The Owner shall not be bound to contest any clime made under Section 12, sub-section (I) of the said Act except on the written request of contractor and upon his giving to the Owner full security for all costs for which the Owner might become liable on consequence of contesting such claims.



- iii) Employment Liability:
  - a) The contractor shall be solely and exclusively responsible for engaging or employing persons for the execution of work. All employees engaged by the contractor shall be on his/ their payroll and paid by him/ them. All disputes or differences between the contractor and his/ their employees shall be settled by him/ them. Owner has absolutely no liability whatsoever concerning the employees of the contractor. The contractor shall indemnify owner against all loss or damage or liability arising out of or in the course of his/ their employees. The contractor shall make regular and full payment of wages without giving any complaint by any employee of the contractor or his sub-contractor regarding non-payment of wages/ salaries or other dues. Owner reserves the right to make such payments directly, to such employee or sub-contractor of the contractor and recover the amount in full from the bills of Contractor, and the contractor shall not claim any compensation or reimbursement thereof. The Contractor shall comply with the Minimum Wages Act applicable to the area with regard to payment of wages of his employees and also of employees of his sub-contractor.
  - b) The Contractor shall advise in writing to all of his employees and the employees of his sub-contractor as follows:  
It is fully understood that your appointment and/ or deployment is only in connection with the work / job and it does not give you any right of claim for employment by owner.

**89.A HEALTH AND SANITARY ARRANGEMENTS FOR WORKERS:**

In respect of all labour directly employed in the works for performance of the contractor's part this agreement, the contractor shall comply with or cause to be complied with all the rules and regulations of the local sanitary and other authorities or as framed by the Owner from time to time for the protection of health and sanitary arrangements for all workers.

**89.B MEDICAL FITNESS CERTIFICATION :**

Contractor shall follow guidelines for medical fitness certification of workers employed for working at height more than 30 metres using temporary structures.

**90. SAFETY REGULATIONS:**

- i) In respect of all labour, directly or indirectly employed In the work for the performance of contractor's part of this agreement, the contractor shall at his own expenses arrange for all safety provisions as per safety codes of C.P.W.D. Indian Standard Institution, the Electricity Act, The Mines Act and any such other acts as applicable.
- ii) The Contractor shall ensure that he, his sub-contractor and his, or their personnel or representatives shall comply with all Fire / Safety regulations issued from time to time by the Company or otherwise howsoever and should any injury resulting in death or not or loss / or damage due to Fire to any property or a portion thereof, occurred as a result of failure to comply with such regulations, the contractor shall be held responsible for the consequences thereof and shall keep the company harmless and indemnified.

**91. A ARBITRATION:**

- a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of the Company against the Contractor or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to and finally resolved by Sole Arbitrator, who shall be appointed by Director (Refinery) of BPCL as per the procedure given in sub-clause (b) given herein below.
- b) Procedure for appointing the sole arbitrator: A party wishing to commence an arbitration (the "Claimant") shall file with the Director (Refinery) of BPCL a Notice of Arbitration which shall comprise:
  - i. a demand that the dispute be referred to arbitration;
  - ii. a reference to the arbitration clause or the arbitration agreement that is invoked and a copy of it;
  - iii. a reference to the contract out of or in relation to which the dispute arises and where possible, a copy of it;
  - iv. a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount.
  - v. any other details which the claimant wishes to refer and rely upon.

Upon receipt of the above notice of arbitration, the Director (Refinery) of BPCL shall appoint the Sole Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996.

- c) The venue of arbitration shall be Mumbai (in case of Mumbai Refinery) or Kochi (in case of Kochi Refinery). The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.

- d) The arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the arbitrator may think fit having regard to the matters in difference i.e. dispute, before him. The arbitrator shall have all summary powers and may take such evidence oral and/or documentary, as the arbitrator in his absolute discretion thinks fit and shall be entitled to exercise all powers under the Indian Arbitration & Conciliation Act 1996 including admission of any affidavit as evidence concerning the matter in difference i.e. dispute before him.
- e) The parties against whom the arbitration proceedings have been initiated, that is to say, the Respondents in the proceeding, shall be entitled to prefer a cross-claim, counter claim or set off before the Arbitrator in respect of any matter in issue arising out of or in relation to the Agreement without seeking a formal reference of arbitration for such counter-claim, cross claim, or set off and the Arbitrator shall be entitled to consider and deal with the same as if the matters arising therefrom has been referred to him originally and deemed to form part of the reference made by the Director(Refinery).
- f) The arbitrator shall be at liberty to appoint, if necessary any accountant or engineering or other technical person to assist him, and to act by the opinion so taken.
- g) The arbitrator shall have power to make one or more awards whether interim or otherwise in respect of the dispute and difference and in particular will be entitled to make separate awards in respect of claims of cross claims of the parties.
- h) The arbitrator shall be entitled to direct any one of the parties to pay the costs to the other party in such manner and to such extent as the arbitrator may in his discretion determine and shall also be entitled to require one or both the parties to deposit funds in such proportion to meet the arbitrators expenses whenever called upon to do so.
- i) The parties hereby agree that the courts in the city of Mumbai (in case of Mumbai Refinery) or Kochi (in case of Kochi Refinery) alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this agreement and any award or awards made by the Sole Arbitrator hereunder shall be filed (if so required) in the concerned courts in the city of Mumbai (in case of Mumbai Refinery) or Kochi (in case of Kochi Refinery) only.

**91.B SETTLEMENT OF DISPUTES BETWEEN PUBLIC SECTOR UNDERTAKING/ PUBLIC SECTOR ENTERPRISES/ GOVERNMENT DEPARTMENT:**

- i. If the CONTRACTOR is a Public Sector Undertaking or Enterprise or is a Government Department, any dispute or difference between the parties hereto arising out of any notified claim of the CONTRACTOR in terms hereof and/ or arising out of any amount claimed by the OWNER (whether or not the amount claimed by the OWNER or any part thereof shall have been deducted from the Final Bill of the CONTRACTOR or any amount paid by the OWNER to the CONTRACTOR in respect of the work) which cannot be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government, shall be referred to the Permanent Machinery of Arbitrators of Department of Public Enterprises, New Delhi, under the guidelines issued by Government of India. The Arbitration and Conciliation Act, 1996 or any other law for the time being in force shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute. However, any party aggrieved may file an appeal against the award before the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India for setting aside the award published by PMA. Upon such reference the dispute shall be decided by the Law Secretary whose decision on the appeal shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.
- ii. Notwithstanding the existence of any dispute or arbitration in terms hereof or otherwise, the CONTRACTOR shall continue and be bound to continue and perform the works to completion in all respects according to the Contract (unless the Contract or works be determined by the OWNER) and the CONTRACTOR shall remain liable and bound in all respects under the Contract.

**92. JURISDICTION :**

The contractor shall be governed by the Laws in force in INDIA. The contractor hereby submits to the jurisdiction of the Courts situated at Mumbai (Ernakulam-in the case of Kochi Refinery), for the purpose of actions and proceedings arising out of the contract and the courts at Mumbai (Ernakulam-in the case of Kochi Refinery), only will have jurisdiction to hear and decide such actions and proceedings.

**SECTION - IX  
VARIOUS PROFORMA**

**ANNEXURE 1  
PROFORMA OF AGREEMENT**

CONTRACT AGREEMENT FOR THE WORK OF .....  
..... DATED .....

..... between M/s  
..... in the town of  
..... hereinafter called the "CONTRACTOR" (which term shall unless excluded by or repugnant to the subject or context include its successors and permitted assignees) of the one part and the Bharat Petroleum Corporation Limited hereinafter called the "OWNER" (which term shall, unless excluded by or repugnant to the subject to context include its successors and assignees) of the other part.

WHEREAS

- A. The Owner being desirous of having provided and executed works mentioned, enumerated or referred to in the tender documents including Short Tender Notice, General Tender Notice, General Conditions of Contract, Special Conditions of Contracts, Specifications, Drawings, Plans, Time Schedule for Completion of jobs, Agreed Variations, other documents, has called for Tender.
- B. The contractor has inspected the site and surroundings of the works specified in the tender documents and has satisfied himself by careful examination before submitting his tender as to the nature of the surface strata, soil, sub-soil and ground, the form and nature of site and local conditions, the quantities, nature and magnitude of the work, the availability of labour and material necessary for the execution of work, the means of access to site, the supply of power and water thereto and the accommodation he may require and has made local and independent enquiries and obtained complete information as to the matters and things referred to, or implied in the tender documents or having any connection therewith and has considered the nature and extent of all probable and possible situations, delays, hindrances, or interferences to or with the execution and completion of the work to be carried out under the Contract and has examined and considered all other matters, conditions and things and probable and possible contingencies and generally all matters incidental thereto and ancillary and thereof effecting the execution and completion of the work and which might have influenced him in making his tender.
- C. The Notice Inviting Tender, General Conditions of Contract, Special Conditions of Contract, Specification, Drawings, Plans, Time Schedule of Jobs, and other documents, copies of all which are hereto annexed and marked "A", the letter of submission of tender and Acceptance of Tender and statement of agreed variations with its enclosures, copies of which are also hereto annexed and marked "B" form part of his contract though separately set out herein and or included in the expression "CONTRACT" wherever herein used.

And whereas:

The Owner accepted the Tender of the Contractor for the Provision and the execution of the said work at the rates stated in the Schedule of Quantities of works and finally approved by Owner (hereinafter called the "Schedule of Rates") upon the terms and subject to the conditions of contract.

Now this Agreement Witnesseth And, it is hereby agreed and declared as follows:

In consideration of the payment to be made to the contractor for the work to be executed by him, the contractor hereby consents with the owner that the contractor shall and will duly provide, execute and complete the said works and shall do and perform all other acts and things in the contract mentioned or described or which are to be implied therefrom or may be reasonably necessary for the completion of the said works and at the said times and in the manner and subject to the terms and conditions or stipulations mentioned in the contract.

In consideration of the due provision, execution and completion of the said works, the Owner does hereby agree with the contractor that the Owner will pay to the contractor the respective amounts for the works actually done by him and approved by the Owner at the Schedule of Rates and such other sum payable to the contractor under provision of Contract, such payments to be made at such time in such manner as provided for in the contract.

**AND**

In consideration of the due provision, execution and completion of the said works the contractor does hereby agree to pay such sums as may be due to the Owner for the services rendered by the owner to the contractor, such as power supply, water supply and other as set for in the said contract and such other as may become payable to the Owner towards the controlled items of consumables materials or towards loss, damage to the Owner equipments, materials, construction equipments and machinery, such payments to be made at such time and in such manner as is provided in the contract.

It is specifically and distinctly understood and agreed between the Owner and the Contractor that the contractor shall have no right title or interest in the site made available by the Owner for the execution of the work or in the buildings, structures or works executed on the said site by the contractor or in the goods, articles, materials etc. brought on the said site (unless the same specifically belongs to the contractor) and the contractor shall not have or dressed to have any lien whatsoever charge for unpaid bills nor will be entitled to assume or retain possession or control of the site or structures and the Owner shall have an absolute and unfettered right to take full possessions of the site and remove the contractor, their servants, agents and materials belonging to the contractor and lying on the site.

The contractor shall be allowed to enter upon the site for execution of the works only as a licensee simpliciter and shall not have any claim, right, titles or interest in the site or the structures erected thereon and the Owner shall be entitled to terminate such licence at any time without assigning reason.

The materials including sand, gravel, stone, loose earth, rock etc., dug up or excavated from the said site shall, unless otherwise expressly agreed under this contract, exclusively belong to the Owner and the contractor shall have no right

to claim over the same and such excavations and materials should be disposed off on account of the Owner according to the instructions in writing issued from time to time by the Engineer-in-Charge.  
In witness whereof the parties have executed these presents in the day the year first above written

Signed and Delivered for and  
on behalf of Owner i.e.  
Bharat Petroleum Corporation Limited

Signed and Delivered for and  
on behalf of Contractor  
(Name, designation and address of authorized signatory)

DATE.....

DATE.....

PLACE.....

PLACE.....

In Presence of Two Witnesses

BPCL witnesses – Signature, Name & Address:-

Contractor's witnesses – Signature, Name & Address:-

1. ....

1. ....

2. ....

2. ....

## ANNEXURE 2

### **PROFORMA OF BANK GUARANTEE for EARNEST MONEY /INITIAL/ FULL SECURITY DEPOSIT** **(On non-judicial paper of appropriate value)**

To,

Bharat Petroleum Corporation Ltd.  
(Address)

Dear Sirs,

M/s. \_\_\_\_\_ (hereinafter referred as "BIDDER"/"CONTRACTOR") (Bidder's / Contractor's name and address) have taken tender for the WORK of \_\_\_\_\_ (Name of Work) for Bharat Petroleum Corporation Limited, with registered office in Bharat Bhavan, 4 & 6 Currimbhoy Road, Ballard Estate, Mumbai, India and having Refinery at ..... (*Mumbai / Kochi as the case may be*) (hereinafter referred as "OWNER").

The tender conditions provide that the BIDDER / CONTRACTOR shall pay a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) as earnest money /initial/ full security deposit in the form therein mentioned .

The form of payment of earnest money / initial / full security deposit includes guarantee executed by schedule "A" Bank, undertaking full responsibility to indemnify OWNER in case of default. The said BIDDER/CONTRACTOR have approached us and at their request and in consideration of the premises, we \_\_\_\_\_ (Bank's name) having our office at \_\_\_\_\_ ( hereinafter referred as "GUARANTOR") have agreed to give such guarantee as hereinafter mentioned.

1. GUARANTOR hereby undertake and agree that if default shall be made by BIDDER / CONTRACTOR in performing any of the terms and conditions of the tender, GUARANTOR do hereby irrevocably bind themselves and undertake to pay the OWNER on first demand in writing by OWNER without protest or demur or proof or condition and without reference to the BIDDER / CONTRACTOR, the said amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_)
2. OWNER will have the full liberty without reference to GUARANTOR and without effecting this guarantee to postpone for any time or from time to time the exercise of any of the powers and rights conferred on OWNER under the tender with the said BIDDER/CONTRACTOR and to enforce or to forbear from endorsing any powers or rights or by reason of time being given to the said BIDDER / CONTRACTOR which under law relating to the sureties would but for provision have the effect of releasing the GUARANTOR.
3. OWNER will have the right to recover the said sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) from GUARANTOR in manner aforesaid and such rights will not be affected or suspended by reason of the fact that any dispute or disputes have been raised by the said BIDDER / CONTRACTOR and or that any dispute or disputes are pending before any officer, tribunal or court.
4. The guarantee herein contained shall not be determined or affected by the liquidation or winding up, dissolution or change of constitution or insolvency of the said \_\_\_\_\_ (Bidder's / Contractor's Name).
5. GUARANTOR'S liability under this guarantee is restricted to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_). This guarantee shall remain in force until \_\_\_\_\_ unless a demand (3 months beyond bid validity) under guarantee is made against GUARANTOR within the aforesaid date, in which event the validity of this bank guarantee shall automatically be extended for another 3 (three) months, all rights under the said guarantee shall be forfeited and GUARANTOR shall be relieved and discharged from all liabilities thereunder.

6. GUARANTOR have power to issue this guarantee in your favour under Memorandum and Articles of Association and the undersigned has full power to do under the Power of Attorney dated \_\_\_\_\_granted to him by the Bank.

Yours faithfully,

\_\_\_\_\_Bank  
by its Constituted Attorney.

Signature of a person duly authorized to  
Sign on behalf of the bank.

NOTE: In case of earnest money, BIDDER shall be applicable and in case of initial / full security deposit, CONTRACTOR shall be applicable.

### ANNEXURE 3

#### **PROFORMA OF BANK GUARANTEE FOR MOBILIZATION ADVANCE** **(On non-judicial paper of appropriate value)**

To,

Bharat Petroleum Corporation Ltd.  
(Address)

Dear Sirs,

In consideration of Bharat Petroleum Corporation Limited, with registered office in Bharat Bhavan, 4 & 6 Currimbhoy Road, Ballard Estate, Mumbai, India and having Refinery at .....(*Mumbai / Kochi as the case may be*) (hereinafter referred to as "The Company" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) having placed on Messrs..... (*Name*) ..... (*Constitution*) ..... (*address*) (hereinafter referred to as "The Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, representatives and assigns) an order for ..... (*Name of Job*) under and in terms of a Contract as evidenced by a Letter of Acceptance No. .... and / or Purchase Order No. .... dated ..... valued at Rs. .... (Rupees ..... only), issued by the Company to the Contractor, read with the relevant Tender Documents (hereinafter collectively called "the Contract" which expression shall include any formal contract entered into between the Company and the Contractor in supersession of the said Letter of Acceptance and all amendments and/or modifications therein or in the terms of the said advance as herein stipulated).

AND WHEREAS the Company has agreed to advance the Contractor, inter-alia, recoverable interest bearing mobilization advance up to a maximum of 10% ( ten percentage) of the contract value (hereinafter referred to as "MOBILIZATION ADVANCE") in the manner provided for in the Bidding Document, a sum of Rs.....(Rupees.....only) being the first / second installment (*Delete whichever is not applicable*) of Mobilization Advance upon the condition, inter-alia, that the said Advance together with interest thereon at the rate of 10% (10 percentage) per annum on reducing balance basis on the amount of the said Advance for the time being outstanding shall, without prejudice to any other mode of recovery available to the Company, be recoverable by the Company by deduction from the gross accepted amount of any Running Account Bills of the Contractor commencing from the first Running Account Bill of the Contractor in equal monthly installments together with the interest accrued within a time span of ..... Months in the manner provided for in the Bidding Document and meanwhile, the said Advance shall be secured by an undertaking from a Bank as hereinafter appearing.

We \_\_\_\_\_ (*Name of the Bank*), a body registered/constituted under the \_\_\_\_\_ Act, having Registered Office/Head Office at \_\_\_\_\_ (hereinafter called the "Bank" which expression shall include its successors and assigns), at the request of the Contractor and with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably undertake to pay the Company forthwith on first demand without protest or demur or proof or satisfaction and without reference to the Contractor, any and all amounts demanded from us by the Company with reference to this Undertaking upto an aggregate limit of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) being 110% of the aforesaid advance and interest thereon at the rate hereinabove provided.

AND the Bank doth hereby further agree as follows: -

- i) This Guarantee/Undertaking shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Company upon the Bank made up to the midnight of \_\_\_\_\_ (*contractual completion date*) provided that the Bank shall upon the written request of the Company made upon the Bank at any time within 6 (six) months from the said date extend the validity of the Bank Guarantee by a further 6 (six) months so as to enable claims to be made under this Guarantee by a further 6 (six) months from the said date with the intent that the validity of this Guarantee shall automatically stand extended by a further 6 (six) months upon such request by the Company.
- ii) The Company shall have the fullest liberty without reference to the Bank and without affecting in any way the liability of the Bank under this guarantee/undertaking, at any time and/or from time to time to amend or vary the contract and/or any of the terms and conditions thereof or relative to the said Advance and/or to extend time for performance of the said contract in whole or part and/or payment of the said Advance in whole or part or to postpone for any time and/or from time to time any of the said obligations of the Contractor and/or the rights, remedies or powers exercisable by the Company against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract and/or the said Advance, or the securities, available to the Company and the Bank shall not be released from its liability under these Presents and the liability of the Bank shall remain in full force and effect notwithstanding any exercise by the Company of the liberty with reference to any or all the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Company or any indulgence by the Company to the Contractor or of any other act, matter or thing whatsoever which under any law could (but for this provision) have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.

- iii) The obligations of the Bank to the Company hereunder shall be as principal to principal and shall be wholly independent of the Contract and it shall not be necessary for the Company to proceed against the Contractor before proceeding against the Bank and the guarantee/undertaking herein contained shall be enforceable against the Bank as Principal debtor notwithstanding the existence of any undertaking or security for any indebtedness of the Contractor to the Company (including relative to the said Advance) and notwithstanding that any such undertaking or security shall at the time when claim is made against the bank or proceedings taken against the Bank hereunder, be outstanding or unrealised.
- iv) As between the Bank and the Company for the purpose of this undertaking, the amount stated in any claim, demand or notice made by the Company on the Bank with reference to this undertaking shall be final and binding upon the Bank as to be the amount payable by the Bank to the Company hereunder notwithstanding any dispute or disputes has been raised by the Seller and are pending before any arbitration, Tribunal or Court.
- v) The liability of the Bank to the Company under this undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Company, the Contractor and/or the Bank and/or the Bank and the Company or otherwise howsoever touching or affecting these presents or the liability of the Contractor to the Company, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to the Company under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to the Company in terms hereof.
- vi) This undertaking shall not be determined or affected by any change in the constitution of the Bank or that of the Contractor or the Company or any irregularity in the exercise of borrowing powers by or on behalf of the Contractor.
- vii) The Bank agrees that the guarantee herein contained shall continue to be enforceable till the sum due to the Company on account of the said advance is adjusted as aforesaid or till the Company discharges this guarantee.
- viii) The Bank further undertakes not to revoke this guarantee during its currency without the previous consent of the Company.
- ix) The Bank also agrees that the Company shall be entitled to enforce this guarantee, notwithstanding any other security or guarantee that it may have in relation to the vendor's liability for the said advance.
- x) Without prejudice to any other mode of service, a demand or claim or other communication may be transmitted by the Company to the Bank either by post or by fax. If transmitted by fax, the transmission shall be complete as soon as acknowledged by bank.
- xi) Notwithstanding anything contained herein:
  - (i) The Bank's liability under this guarantee/undertaking shall not exceed \_\_\_\_\_ (*Amount in figures & words*);
  - (ii) This guarantee/undertaking shall remain in force upto \_\_\_\_\_ and any extension(s) thereof; and
  - (iii) The Bank shall be released and discharged from all liability under this guarantee/undertaking unless a written claim or demand is issued to the Bank on or before \_\_\_\_\_ or the date of expiry of any extension(s) thereof if this guarantee/undertaking has been extended.
- xii) This Guarantee shall be treated as an unconditional guarantee and the Contractor shall have no right to object or obstruct in any way the enforcement of this guarantee.

Yours faithfully,

Signature: \_\_\_\_\_

Name & Designation: \_\_\_\_\_

Name of the Branch: \_\_\_\_\_

Dated: \_\_\_\_\_



**ANNEXURE 4**  
**PROFORMA OF BANK GUARANTEE TOWARDS ADVANCE**  
**(On non-judicial stamp paper of appropriate value)**

To,

Bharat Petroleum Corporation Ltd.  
(Address)

Dear Sir,

WHEREAS Bharat Petroleum Corporation Ltd. with registered office in Bharat Bhavan, 4 & 6 Currimbhoy Road, Ballard Estate, Mumbai, India and having Refinery at .....(*Mumbai / Kochi as the case may be*) (hereinafter referred to as "the Corporation" which expression shall unless repugnant to the context include their legal representatives, successors and assigns, have entered into a contract (hereinafter referred to as "the Contract") with M/s \_\_\_\_\_ AND WHEREAS one of the conditions of the said contract is that the Corporation should make an advance payment to the contractor \_\_\_\_\_ (Rupees \_\_\_\_\_ only) being .....% (..... percent) of the value of the contract against a bank guarantee from Schedule 'A' bank.

AND WHEREAS at the request of the contractor, the Corporation has agreed to accept the Bank Guarantee from \_\_\_\_\_ Bank (hereinafter referred to the "Surety") having their registered office at \_\_\_\_\_.

NOW THIS GUARANTEE WITNESSETH that in consideration of the Corporation having at the request of the contractor agreed to accept bank guarantee of the surety in respect of advance of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) payable by the Corporation to the contractor as per terms of the said contract, the Surety hereby undertake and agree that if the said amount advance payment shall become reduced and/ or extinguished under terms of the contract between Corporation and Contractor, the Surety do hereby irrevocably bind themselves and undertake to pay to the Corporation on first demand in writing by the Corporation without protest or demur or proof or condition and without reference to the contractor, the amount not exceeding altogether a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) being the amount of advance payment or such other unadjusted amount of the said advance. The decision of the Corporation as to the whether the terms and conditions of the Contract or this guarantee have been observed shall be final and binding on the Surety.

THE GUARANTEE HEREIN CONTAINED is not revocable during the currency of the contract and will remain in force until:

- a) Payment has been made to the Corporation by the Surety of the aggregate amount payable hereunder.
- b) The Contract for which this advance payment is being made is completed to the entire satisfaction of the Corporation and intimation thereof has been given to the surety by the Corporation whichever is earlier.

NOTWITHSTANDING anything stated above, the liability of the surety under this guarantee is restricted to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) and this guarantee will remain in force upto \_\_\_\_\_ in the first instance and in case Contractor's obligations under the contract are not completed within the said period, the Surety to hereby agree to further extend the guarantee till such time as is required to fulfill the contractor's obligation.

Our grantee shall remain in force until \_\_\_\_\_ unless a demand in writing for claim under this guarantee is lodged with us before that date i.e. on or before \_\_\_\_\_ all your rights under the said guarantee shall be forfeited and we shall be released and discharged from liability hereunder.

We have the power to issue this guarantee in your favour under Memorandum and Articles of Association and the undersigned has full power to do so under the Power of Attorney dated \_\_\_\_\_ granted to him by the bank.

\_\_\_\_\_  
By its Constituted Attorney

\_\_\_\_\_  
Signature of Person duly  
Authorised to sign on  
Behalf of the Bank

## **ANNEXURE 5**

### **TAX RESIDENCY CERTIFICATE**

TRC obtained by the Non-resident from Government of foreign country shall contain the following particulars:

- i. Name of the assessee
- ii. Status (individual, company, firm, etc.) of the assessee
- iii. Nationality (in case of individual)
- iv. Country or specified territory of incorporation or registration (in case of others)
- v. Assessee's tax identification number in the country or specified territory of residence or in case of no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory
- vi. Residential status for the purpose of Tax
- vii. Period for which the certificate is applicable
- viii. Address of the applicant for the period for which the certificate is applicable

**ANNEXURE 6****FORM NO. 10 F****[See sub-rule (1) of rule 21AB of the Income-tax Act, 1961]****Information to be provided under sub-section (5) of section 90 or sub-section (5) of section 90A of the Income-tax Act, 1961**

1. I \_\_\_\_\_\*son/daughter of Shri \_\_\_\_\_ in the capacity of \_\_\_\_\_(designation)do provide the following information, relevant to the previous year \_\_\_\_\_,\*in my case/in the case of \_\_\_\_\_ for the purposes of sub-section (5) of \*section 90/section 90A:-

Sl. No.	Nature of information	Details #
(i)	Status (individual, company, firm etc.) of the assessee	:
(ii)	Permanent Account Number (PAN) of the assessee if allotted	:
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	:
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	:
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	:
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	:

2. I have obtained a certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A from the Government of \_\_\_\_\_(name of country or specified territory outside India).

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Permanent Account Number : \_\_\_\_\_

Verification

I \_\_\_\_\_do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and is truly stated.

Verified today the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Signature of the person providing the information

Place: \_\_\_\_\_

**Notes:**

- \* Delete whichever is not applicable.
- #Write N.A. if the relevant information forms part of the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A."

## ANNEXURE 7

### Format of Integrity Pact

(To be executed on plain paper and applicable for all tenders of value above Rs. 1 crore)

### INTEGRITY PACT

#### Between

Bharat Petroleum Corporation Limited (BPCL) hereinafter referred to as "The Principal",

And

..... hereinafter referred to as "The Bidder/ Contractor/Supplier"

#### Preamble

The Principal intends to award, under laid down organization procedures, contract/s for

..... The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder/s, Contractor/s and Supplier/s.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organisation "Transparency International" (TI). Following TI's national and international experience, the Principal will appoint an Independent External Monitor (IEM) who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above. Accordingly, the Principal has appointed **Mr. .... as IEM** with the following address:-

**Mr. ....**

.....

.....

.....

**Tel:** .....

#### Section 1 – Commitments of the Principal

1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:

- a) No employee of the Principal, personally or through family members, will in connection with the tender, or the execution of the contract, demand, take a promise for or accept, for himself/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
- b) The Principal will, during the tender process, treat all Bidders with equity and reason. The Principal will, in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential / additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.
- c) The Principal will exclude from the process all known prejudiced persons.

2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

#### Section 2 – Commitments of the Bidder / Contractor / Supplier

1) The Bidder / Contractor / Supplier commits itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- a) The Bidder / Contractor/Supplier will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person, any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange, any advantage of any kind whatsoever during the tender process or during the execution of the contract.

- b) The Bidder / Contractor / Supplier will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
  - c) The Bidder / Contractor / Supplier will not commit any offence under the relevant Anti-Corruption Laws of India; further the Bidder / Contractor / Supplier will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d) The Bidder / Contractor / Supplier will, when presenting his bid, disclose any and all payments he has made, is committed to, or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- 2) The Bidder / Contractor / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section 3 – Disqualification from tender process and exclusion from future contracts**

If the Bidder, before contract award, has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

- 1) If the Bidder/Contractor/Supplier has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is also entitled to exclude the Bidder / Contractor / Supplier from future Contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.
- 2) A transgression is considered to have occurred if the Principal after due consideration of the available evidences, concludes that no reasonable doubt is possible.
- 3) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- 4) If the Bidder / Contractor / Supplier can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

### **Section 4 – Compensation for Damages**

- 1) If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from the Bidder liquidated damages equivalent to Earnest Money Deposit/Bid Security.
- 2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor/Supplier liquidated damages equivalent to Security Deposit / Performance Bank Guarantee.
- 3) The Bidder agrees and undertakes to pay the said amounts without protest or demur subject only to condition that if the Bidder / Contractor / Supplier can prove and establish that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder / Contractor/Supplier shall compensate the Principal only to the extent of the damage in the amount proved.

### **Section 5 – Previous Transgression**

- 1) The Bidder declares that no previous transgression occurred in the last 3 years with any other Company in any country conforming to the TI approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

### **Section 6 – Equal treatment of all Bidders /Contractors /Suppliers/ Subcontractors**

- 1) The Bidder/Contractor/Supplier undertakes to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- 2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors/Suppliers and Subcontractors.
- 3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

### **Section 7 – Punitive Action against violating Bidders /Contractors / Suppliers/Subcontractors**

If the Principal obtains knowledge of conduct of a Bidder, Contractor, Supplier or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor, Supplier or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

### **Section 8 – Independent External Monitors**

- 1) The Principal has appointed competent and credible Independent External Monitors for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairperson of the Board of the Principal.
- 3) The Bidder/Contractor/Supplier accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Bidder/Contractor/Supplier. The Bidder/Contractor/Supplier will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to this project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/Contractor/Supplier/Subcontractor with confidentiality.
- 4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/Supplier. The parties offer to the Monitor the option to participate in such meetings.
- 5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation, or to take other relevant action. The Monitor can in this regard submit non-binding recommendation. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action. However, the Independent External Monitor shall give an opportunity to the Bidder/Contractor/Supplier to present its case before making its recommendations to the Principal.
- 6) The Monitor will submit a written report to the Chairperson of the Board of the Principal within 8 to 10 weeks from the date of reference or intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.
- 7) If the Monitor has reported to the Chairperson of the Board a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- 8) The word 'Monitor' would include both singular and plural.

### **Section 9 – Pact Duration**

This Pact begins when both parties have legally signed it. It expires for the Contractor/Supplier 12 months after the last payment under the respective contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairperson of the Principal.

### **Section 10 - Other provisions**

- 1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Mumbai. The Arbitration clause provided in the main tender document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.
- 2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

- 3) If the Bidder/Contractor/Supplier is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- 4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

.....  
For the Principal

.....  
For the Bidder/Contractor/Supplier

Place .....

Witness 1  
(Signature/Name/Address)

Date .....

Witness 2:  
(Signature/Name/Address)

**BHARAT PETROLEUM CORPORATION LTD**

**ACKNOWLEDGEMENT**

We, M/s. \_\_\_\_\_ having office at \_\_\_\_\_ received the copy of GENERAL CONDITIONS OF CONTRACT and confirm our acceptance to all the terms and conditions as mentioned herein in this General Conditions of Contract and we are hereby returning this copy of Acknowledgement duly signed.

**For & on behalf of M/s.** \_\_\_\_\_

**Signature :**

**Name :** \_\_\_\_\_

**Designation :** \_\_\_\_\_

**( Seal / Stamp )**

**Place :**

**Date :**