FINANCIAL TERMS & CONDITIONS OF NIT **ANNEXURE A2**

1) **Terms of Payment: -**

Terms of Payment: - The payment terms clauses outlined below shall apply independently to Section-A (COH of Boiler) and Section-B (RH- Replacement) within both Part-1 and Part-2.

Payments to Contractor is to be made in any one of the following forms for each individual **Section-A and Section-B**: -

If not mentioned otherwise in the notice inviting tender, payment will be made up to a total 90% against three progressive bills of 30 % each submitted by the contractor in quadruplicated mentioning the allotted and completed percentages of the activities. On the basis of completed measurement of work done, the bills will be verified by BHEL Site Engineer and certified by BHEL Resident Engineer to arrange payment.

FOR Section-A: - RAB-3 for 30% (Totaling 90%) will be due subject to completion of Hydraulic Test of the Boiler.

FOR Section-B: - RAB-3 for 30% (Totaling 90%) will be due only after Hydraulic Test of the Boiler.

Final Payment: -

FOR Section-A: Balance 10% & 100% of the amount as per actual executed under Optional works shall be payable after completion of Synchronization of the Unit and after submission of final overhauling report.

FOR Section-B: Balance 10 % shall be payable after completion of performance guarantee Test and against submission of BG of Equivalent value with validity till the end of Warranty Period for the respective Unit and after submission of final report.

Final bill shall be submitted along with followings:

i) ‘No Claim Certificate’ by Contractor as per Clause 2.6.11 of the GSCC
ii) Clearance certificates where ever applicable viz. Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department etc if applicable
iii) Indemnity Bond as per prescribed format.
iv) BHEL shall settle the final bills after deducting all liabilities of Contractor to BHEL.

Note:

1. All payments are subject to statutory deductions like Income Tax TDS, GST TDS etc. as per extant provisions and rules applicable.;
2. No request for advance payment will be entertained by BHEL.
3. BHEL reserves the right to withhold payment in case terms and conditions as per contract are not fulfilled by the contractor.
4. Payments shall be made according to the extent of work done as per measurements taken up and in line with the terms of payments described in the Tender documents.
5. Recoveries on account of electricity, water, statutory deductions etc. are made as per terms of contract.
6. Full rates for the work done shall be allowed only if the quantum of work has been done as per the specifications stipulated in the contract. If the work is not executed as per the stipulated specifications, BHEL may ask the contractor to redo the work according to the required specifications, without any extra cost. However, where this is not considered necessary ‘OR’ where the part work is done due to factors like non-availability of material to be supplied by BHEL ‘OR’ non-availability of fronts ‘OR’ non-availability of drawings, fraction payment against full rate, as is considered reasonable, may be allowed with due regard for the work remaining to be done. BHEL decision in this regard will be final and binding on the contractor.
7. *In order to facilitate part payment, BHEL at its discretion may further split the contracted rates/percentages to suit site conditions, cash flow requirements according to the progress of work, subject to following:*
   a) Provided no ‘part’ payment is recommended till 25% of work in the item rate is executed.
   b) Payment of item rate to be made in not more than three instalments, last stage payment to be not lower than 20% of the item rate.

   All payments are subject to income tax deduction at the applicable rates of the bill amount at source or as per Central Government Laws; No request for advance payment will be entertained by BHEL. BHEL reserves the right to withhold payment in case terms and conditions as per contract are not fulfilled by the contractor.

Payment shall be released within 45 days for MSE, 60 days for Medium and 90 Days for General Category bidders on the basis of completed measurement of work done, the bills will be verified by BHEL Site Engineer and certified by BHEL Resident Engineer to arrange payment.

Note: The term Final Bill herein refers to the comprehensive final billing of each Section under PART-1 and PART-2.

2) Liquidity Damage / Penalty for delay:

The penalty/ L.D. for delay clauses as detailed below shall be applicable separately on each Section i.e. **Section-A and Section-B.**

After the completion of work, duly certified by Engineer Incharge, a comprehensive delay analysis shall be carried out to ascertain the attribution of delays in the provisional time extensions granted to contractor. The delay analysis shall record:
a) Delays solely attributable to contractor
b) Delays attributable to BHEL
c) Delays on account of Force Majeure (as specified elsewhere in the contract)

The total period under the final time extension shall be equal to the period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/ levied for the portion of time extensions solely attributable to contractor and recoverable from the dues payable to the contractor.

For the periods, wherein the delay as per the comprehensive delay analysis carried out is solely attributable to contractor, **BHEL shall have the right to impose Liquidated Damage at the rate of 0.5% of the contract value, per day of delay or part thereof subject to a maximum of 10% of the contract value for Mandatory Work.**

Contract Value for this purpose, shall be the final executed value exclusive of ORC, Extra Works executed on Man-day rate basis, Supplementary/ Additional Items and PVC. Before levying LD, the contractor shall be duly intimated the amount and reasons thereof for imposition of LD.

Note:

- **The penalty on account of safety violations/deductions if any, shall be over and above the applicable Penalty/LD for delay.**
- **The penalty of delay shall be applicable separately for each Section. Here, contract value means amount allocated for respective Subsection i.e. Section A and Section B under Both Parts.**

3) TAXES & DUTIES:

3.1	The contractor shall pay all (save the specific exclusions as enumerated in this clause) taxes, fees, license, charges, deposits, duties, tools, royalty, commissions, other charges, etc. which may be levied on the input goods & services consumed and output goods & services delivered in course of his operations in executing the contract. In case BHEL is forced to pay any of such taxes/duties, BHEL shall have the right to recover the same from his bills or otherwise as deemed fit. However, provisions regarding **GST** on output supply (goods/service) and TDS/TCS as per Income Tax Act shall be as per following clauses.
3.2	**GST (Goods and Services Tax)**
3.2.1	GST as applicable on output supply (goods/services) are excluded from contractor's scope; therefore, contractor's price/rates shall be **exclusive** of GST. Reimbursement of GST is subject to compliance of following terms and conditions. BHEL shall have the right to deny payment of GST and to recover any loss to BHEL on account of tax, interest, penalty etc. for non-compliance of any of the following condition.
3.2.2	The admissibility of GST, taxes and duties referred in this chapter or elsewhere in the contract shall be limited to direct transactions between BHEL & its Contractor. BHEL shall not consider GST on any transaction other than the direct transaction between BHEL & its Contractor.
3.2.3	Contractor shall obtain prior written consent of BHEL before billing the amount towards such taxes. Where the GST laws permit more than 9one option or methodology for discharging the liability of tax/levy/duty, BHEL shall have the right to adopt the appropriate one considering the amount of tax liability on BHEL/Client as well as procedural simplicity with regard to assessment of the liability. The option chosen by BHEL shall be binding on the Contractor for discharging the obligation of BHEL in respect of the tax liability to the Contractor.
3.2.4	Contractor has to submit GST registration certificate of the concerned state. Contractor also needs to ensure that the submitted GST registration certificate should be in active status during the entire contract period.

3.2.5	Contractor/Vendor has to issue invoice indicating HSN/SAC code, Description, Value, Rate, applicable tax and other particulars in compliance with the provisions of relevant GST Act and Rules made thereunder.
3.2.6	Vendor has to submit GST compliant invoice within seven days from the due date of invoice as per GST Law. In case of delay, BHEL reserves the right of denial of GST payment if there occurs any hardship to BHEL in claiming the input thereof. In case of goods, vendor has to provide scan copy of invoice & GR/LR/RR to BHEL before movement of goods starts. Special care should be taken in case of month end transactions.
3.2.7	Vendor has to ensure that invoice in respect of such services which have been provided/completed on or before end of the month should not bear the date later than last working day of the month in which services are performed.
3.2.8	Subject to other provisions of the contract, GST amount claimed in the invoice shall be released on fulfilment of all the following conditions by the Contractor: - a) Supply of goods and/or services have been received by BHEL. b) Original Tax Invoice has been submitted to BHEL. c) Contractor/ Vendor has submitted all the documents required for processing of bill as per contract/ purchase order/ work order. d) In cases where e-invoicing provision is applicable, vendor/contractor is required to submit invoice in compliance with e-invoicing provisions of GST Act and Rules made thereunder. e) Contractor has filed all the relevant GST return (e.g. GSTR-1, GSTR-3B, etc.) pertaining to the invoice submitted and submit the proof of such return along with immediate subsequent invoice. In case of final invoice/ bill, contractor has to submit proof of such return within fifteen days from the due date of relevant return. f) Respective invoice has appeared in BHEL's GSTR - 2A for the month corresponding to the month of invoice and in GSTR-2B of the month in which such invoices has been reported by the contractor along with status of ITC availability as "YES" in GSTR-2B. Alternatively, BG of appropriate value may be furnished which shall be valid at least one month beyond the due date of confirmation of relevant payment of GST on GSTN portal or sufficient security is available to adjust the financial impact in case of any default by the contractor. g) Contractor has to submit an undertaking confirming the payment of all due GST in respect of invoices pertaining to BHEL. h) Contractor shall be required to submit an acknowledgment (in the specified format) confirming the receipt of payment in cases where amount due in respect of invoice(s) raised by the contractor are directly paid by BHEL to the labour / employee(s) of such contractor or any other third party at the request of such contractor.
3.2.9	Any financial loss arises to BHEL on account of failure or delay in submission of any document as per contract/purchase order/work order at the time of submission of Tax invoice to BHEL, shall be deducted from contractor's bill or otherwise as deemed fit.
3.2.10	TDS as applicable under GST law shall be deducted from contractor's bill.
3.2.11	Contractor shall comply with the provisions of e-way bill wherever applicable. Further wherever provisions of GST Act permits, all the e-way bills , road permits etc. required for transportation of goods needs to be arranged by the contractor.
3.2.12	Contractor shall be solely responsible for discharging his GST liability according to the provisions of GST Law and BHEL will not entertain any claim of GST/interest/penalty or any other liability on account of failure of contractor in complying the provisions of GST Law or discharging the GST liability in a manner laid down thereunder.
3.2.13	In case declaration of any invoice is delayed by the vendor in his GST return or any invoice is subsequently amended/altered/deleted on GSTN portal which results in any adverse financial implication on BHEL, the financial impact thereof including interest/penalty shall be recovered from the Contactor's due payment.
3.2.14	Any denial of input credit to BHEL or arising of any tax liability on BHEL due to non-compliance of GST Law by the Contractor in any manner, will be recovered along with liability on account of interest and penalty (if any) from the payments due to the Contactor.
3.2.15	In the event of any ambiguity in GST law with respect to availability of input credit of GST charged on the invoice raised by the contractor or with respect to any other matter having impact on BHEL, BHEL's decision shall be final and binding on the contractor.
3.2.16	**Variation in Taxes & Duties:** Any upward variation in GST shall be considered for reimbursement provided supply of goods and services are made within schedule date stipulated in the contract or approved extended schedule for the reason solely attributable to BHEL. However downward variation shall be subject to adjustment as per actual GST applicability.

	In case the Government imposes any new levy/tax on the output service/goods after price bid opening, the same shall be reimbursed by BHEL at actual. The reimbursement under this clause is restricted to the direct transaction between BHEL and its contactor only and within the contractual delivery period only. In case any new tax/levy/duty etc. becomes applicable after the date of Bidder's offer but before opening of the price Bid, the Bidder/Contractor must convey its impact on his price duly substantiated by documentary evidence in support of the same before opening of price bid. Claim for any such impact after opening the price bid will not be considered by BHEL for reimbursement of tax or reassessment of offer.
3.3	**Income Tax:** **TDS/TCS** as applicable under Income Tax Act, 1961 or rules made thereunder shall be deducted/collected from contractor's bill.

4. Bonus Clause, PVC and ORC: Bonus Clause, PVC and ORC shall not be applicable for subject tender. Idling, Demobilization/ Re-mobilization charges shall not be payable in case of occurrence.

5. Defect Liability Period:

FOR Section-A: shall be **30 days from the date of Synchronization** of the Unit under the Parts 1 & 2.

FOR Section-B: shall be **12 Months from the date of taking over of the Unit by Customer under the Parts 1 & 2**.

- For any defect reported by customer within defect liability period. Sub-contractor will attend to defect(s) free of cost as per Shutdown provided by customer.
- Note: - Subcontractor will not be relieved from its liability even if attended/reported defect repeats within 12 months from the date of attending of the defect and has to attend to defect(s) free of cost.

6. Security Deposit shall be: - 10% of CV (Contract value means amount allocated to **respective Section-A and Section-B under Part-1 & 2.**

SD amount shall be submitted or collected or deducted for each Section-A and Section-B under Part-1 & part 2. separately as below: -

Section-A: - SD amount for **Section-A under Part-1 & 2**. shall be submitted/collected/ deducted on mandatory SOW portion only, at the time of execution and on submission of Invoice, separately and shall be released after completion of defect liability period.

Section-B: - SD amount for **Section-B under Part-1 & 2**. shall be submitted/collected/ deducted on mandatory SOW portion only, at the time of execution and on submission of Invoice, separately and shall be released after completion of defect liability period subjected to compliance of performance guarantee.

For **Optional works** Security deposit shall be collected @10% on executed value and on submission of invoices and shall be released after completion of defect liability period for each **Section-A and Section-B under Part-1 & 2**.

Security Deposit Refund:

FOR Section-A: Shall fall due after completion of Defect liability period for Mandatory & Optional works, if executed.

FOR Section-B: Shall fall due after completion of Defect liability period subjected to compliance of performance guarantee for Mandatory & Optional works, if executed.

7. BUILDING & OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996 (BOCW Act) AND RULES OF 1998 READ WITH BUILDING & OTHER CONSTRUCTION WORKERS CESS Act, 1996 & CESS RULES, 1998.

7.1	In case any portion of work involves execution through building or construction workers, then compliance to the above titled Acts shall be ensured by the contractor and contractor shall obtain license and deposit the cess under the Act. In the circumstances it may be ensured as under:-
7.2	It shall be the sole responsibility of the contractor in the capacity of employer to forthwith (within a period of 15 days from the award of work) apply for a licence to the Competent Authority under the BOCW Act and obtain proper certificate thereof by specifying the scope of its work. It shall also be responsibility of the contractor to

	furnish a copy of such certificate of licence / permission to BHEL within a period of one month from the date of award of contract.
7.3	It shall be the sole responsibility of the contractor as employer to ensure compliance of all the statutory obligations under these act and rules including that of payment / deposit of 1% cess on gross payment made for value of work involving building or construction workers engaged by the contractor within a period of one month from the receipt of payment.
7.4	It shall be the responsibility of the sub-contractor to furnish the receipts /challans towards deposit of the cess together with the number, name and other details of beneficiaries (building workers) engaged by the sub-contractor during the preceding month.
7.5	It shall be the absolute responsibility of the sub-contractor to make payment of all statutory payments & compensations to its workers including that is provided under the Workmen's Compensation Act, 1923.
7.6	The contractor shall, however ensure before deposit of any BOCW Cess, that customer is not depositing the same in order to avoid excess deposit of cess.
7.7	The contractor shall bear cost of BOCW cess either by way of deposit or through recovery by BHEL in case the same is deposited by the customer.
7.8	In case of failure in above mentioned compliances, BOCW Cess @ 1% as well as applicable penalty as specified in BOCW Act/Rules shall be deducted from the contractor.
Note:	
1	The Gross amount is to be construed as cost of construction in line with the provisions of the BOCW of the BOCW Cess act and in case of compliance by customer by way of deduction at source in line with clause No 3(2) of the act an equitable adjustment to the relatable cost of construction attributable to the bidder shall be made in terms of above.
2	In case compliance by customer by way of deduction at source in line with clause no 3(2) of the act is not resorted to, the compliance of BOCW Cess act shall be ensured by the bidder in line with the provisions of BOCW Cess act in terms of above.
3	The bidder may consider the cost of construction for levy of BOCW Cess inclusive of GST, however, due to whatsoever reason if the GST does not form the cost of construction for levy of aforesaid Cess an equitable adjustment thereof shall be made to the contract price.