

VOLUME – IA
Part I & II

TECHNICAL
CONDITIONS OF
CONTRACT
(TCC)



TECHNICAL CONDITIONS OF CONTRACT (TCC)

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VOLUME-IA PART – I CHAPTER – I PROJECT INFORMATION

INTRODUCTION

1.1.Hiring of professional consulting agency for preparation of Detailed Project Report (DPR) on implementation of new environmental norms for SO_x, NO_x, SPM, Mercury (Hg) in stack emission and reduction of specific water consumption for each units of Kothagudem thermal power station-V (2x250MW) and VI(1x500MW) and Kakatiya Thermal power plant (1x500MW and 1x600MW) to comply with new norms of MoEF&CC, notification issued by Government of India on 07th December 2015 and subsequent amendments thereon is intended.

The Bidder shall acquaint himself by a visit to the site, if felt necessary, with the conditions prevailing at site before submission of the bid. The information given here in under is for general guidance and shall not be contractually binding on BHEL/Owner. All relevant site data /information as may be necessary shall have to be obtained /collected by the Bidder.

A. PROJECT INFORMATION for Kakatiya Thermal Power Plant

1	Name of the Project and Station capacity	Kakatiya: Stage-I, 1X 500 MW & Stage II, 1x600 MW
3	Owner	TSGENCO
4	Site Location	Bhoopalapally in Warangal district of Telengana.
5	Latitude	18°38' N
6	Longitude	79°49'E
7	Nearest Town	Bhoopalpally-6 Km; Warangal-70Km
8	Nearest Railway Station	Uppal, Warangal
9	Nearest Airport	Hyderabad

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10	Site Conditions	
	Ambient Temperature	
	Ambient air temperature Minimum	9.9°C
	Ambient air temperature Maximum	44.9°C
	Relative Humidity	21% to 75%
	Annual rainfall, mm	550mm
	Plant Elevation above MSL	170 m
	Mean Wind Speed	47 m/s
	Wind load	As per the latest revision of IS 875/1987
	Seismic co-efficient	as per latest revision of IS-1893 (Part-IV)

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B. PROJECT INFORMATION for Kothagudem Thermal Power Station

1	Name of the Project and Station capacity	Kothagudem: Stage-V, 2x250 MW & Stage VI, 1x500 MW
3	Owner	TSGENCO
4	Site Location	Kothagudem: Village:Palwancha Tehsil :Palwancha District: Bhadradi Kothagudem/Khammam district of Telengana
5	Latitude	17.38° N,
6	Longitude	80.42° E
7	Nearest Town	Kothagudem Town-12 Km Bhadrachalam Town-24 Km
8	Nearest Railway Station	Bhadrachalam Road
9	Nearest Airport	Hyderabad
10	Site Conditions	
	Ambient Temperature	
	Ambient air temperature Minimum	12.9°C
	Ambient air temperature Maximum	44.9°C
	Relative Humidity	23% to 96%
	Annual rainfall, mm	1060 mm
	Site elevation	R L 91m
	Basic Wind Speed	50 m/s
	Wind load	As per the latest revision of IS 875/1987
	Seismic co-efficient	As per IS- 1893 Latest issue

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VOLUME-IA: PART – I CHAPTER – II

SCOPE OF WORK

The scope of work for preparation of detailed project report shall broadly comprise of following:

- 1.2.1 Evaluation of plausible technologies for each plant configuration to achieve to meet the latest environmental norms lay down by MoEF & CC, Govt. of India to be done. For any particular facility, Technology assessment must be conducted on a site specific basis. Following is to be taken in account
 - a) Plant existing equipment
 - b) Current operating scenarios
 - c) Physical layout and balance of plant considerations
 - d) Economic and long term planning consideration
- 1.2.2 Selected technologies by the bidder must have been proven in India and should include different control processes that could be implemented for different grades of coal/fuel, including opportunities for fuel switching between. Additionally, the ability of certain technologies to control multiple emission is to be considered when making final selections.
- 1.2.3 The suggested technologies should take into account cost as well as the performance i.e., actual capital costs, operating costs to arrive actual tariff implications.
- 1.2.4 Thorough field study has to be made on following;
 - a) Present operating conditions of the units
 - b) Process details
 - c) Availability of space etc.
 - d) Flue gas parameters
 - e) Structural arrangement (overground/ underground)
 - f) Design condition of existing equipments
 - g) Ducting condition
 - h) Availability of space etc.
- 1.2.5 Finalization of suitable technology for control of SO_x, NO_x, and Particulate matter (PM) to comply with the latest norms of MOEF&CC, Govt. of India. Present emission levels are to be thoroughly verified

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for finalization of technology required and design efficiency.

1.2.6 Following details to be provided in DPR :

- a) Description of process, components required
- b) Sizing of plant and equipment
- c) Layout preparation keeping in view of the existing structure over and underground
- d) Details of interference, re-routing/re location is to be provided. Degree of interference to be existing structures and protection required during construction shall be clearly given
- e) Time schedule for construction and commissioning shall be specified

1.2.7 Calculation of total area required for Pollution Control System (PCS) to be done. Assessment of actual area available in the field for installation of pollution control system duly considering storage area for raw materials, conveying facilities to be done.

1.2.8 Provision shall be made for additional Electrostatic Precipitators (ESP) fields while designing FGD for installation, as these two are series elements to control the pollutants.

1.2.9 Following details for raw materials to be provided in DPR

- a) Quantity of raw material required for each units
- b) Source of availability (Survey shall be carried out)
- c) Determination of purity of raw material
- d) Mode of transport of raw material
- e) Unloading and conveying facilities
- f) Mandatory storage quantity
- g) Storage yard details to be specified
- h) Storage location shall be specified

1.2.10 Water requirement for process and disposal shall be worked out and shall be designed such that the specific water consumption complies with the MoEF &CC, Govt. of India norms

1.2.11 Following shall be specified:

- a) Quantity of waste water generation
- b) Treatment method
- c) Quantity of by product generation and disposal and storage mechanism

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- d) Mode of transport of byproduct
- e) Area required for byproduct storage

1.2.12 Details of component-wise capital costs and recurring costs shall be given clearly for further submission to electricity regulatory commission.

1.2.13 Details regarding increase in auxiliary power consumption shall be given.

1.2.14 The detailed project report should encompass following details:

- a) Rationale in opting for particular pollution control equipment with respect to specific design of each unit.
- b) Mechanical, civil, electrical, control and instrumentation system along with layout of opted pollution control equipment.
- c) Distance, availability, vendors of reagent with respect of the location of units along with financial analysis
- d) The schedule of installing pollution control equipment.
- e) Operation and maintenance requirements.
- f) Tentative Bill of Quantities (BoQ) for accomplishing the task of installation of pollution control equipment along with specific recommendation

1.2.15 The Detailed Project Report (DPR) should be provided for each unit separately with following:

- a) Recommended detailed draft enquiry.
- b) Technical specifications for inviting tenders on e-procurement platform.
- c) Commercial aspects for approaching state electricity regulatory commission

1.2.16 Detailed Technical specifications for each unit that shall be suitable even for flexible and cycling Operations to meet the new environmental norms.

1.2.17 **CEA Guidelines:** The Following is to be taken into consideration for selection of plausible technologies to reduce/control pollutants:

- a) The installation of FGD reduces SPM emission level considerably and ESP upgradation may not be then required.
- b) To study other appropriate technologies such as utilization of washed coal to reduce or control the SO_x emissions.
- c) Ammonia dosing for reducing the SPM emission to desired level (with or without ESP Upgradation).

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- d) For any SO_x control mechanism, raw material processing and byproduct handling system combining for various adjacent units to achieve techno commercial advantages.
- e) Installation of NO_x control equipment other than SCR/ SNCR may be contemplated during annual /capital overhaul of units.
- f) The main selection criteria for selection of FGD technology are as follows:
 - 1) SO_x removal efficiency
 - 2) Unit size
 - 3) Balance plant life
 - 4) Capital expenditure
 - 5) Operational expenditure (reagent consumption)
 - 6) Auxiliary power consumption
 - 7) Life cycle cost benefit analysis
- g) In addition, following factors needs to be further evaluated before finalization of technology for a thermal power plant since each and every plant have specific requirements which needs to be evaluated on case to case basis such as:

- 1) Coal Quality
- 2) Unit size and no. of units
- 3) Space availability at plant
- 4) Availability of reagent and purity level of reagent
- 5) Disposal of by product
- 6) Balance plant life
- 7) Auxiliary power consumption.
- 8) Life cycle costing.
- 9) Availability of water.
- 10) Efficiency of FGD system.
- 11) Consideration of New stack/Modifications of stack
- 12) PLF of plant

1.2.18 After submission of DPR, the consultant shall accompany TSGENCO for presentation/discussion with TSERC (Telangana State Electricity Regulatory Commission) or any other regulatory/non-regulatory authorities and also shall assist the TSGENCO until the approval of DPR by TSERC.

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VOLUME-IA PART – I CHAPTER – III

1.3.1 Tools and Plants (T&Ps) and Monitoring & Measuring Equipment (MMEs) to be deployed by Contractor

All the monitoring and measuring instruments/tools etc. required for completion of the scope of works for DPR are to be arranged by the contractor within the quoted rate.

1.3.2 T&Ps and MME provided by BHEL

BHEL shall not provide any Tools and plants, monitoring and measuring equipment.

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VOLUME-IA PART – I CHAPTER – IV

TIME SCHEDULE

- 1.4.1 **The date of commencement of work (Zero Date) shall be date of award of LOI/LOA/Work order** .The total time schedule of this contract may be extended as required in order to accommodate any unforeseen conditions on mutually agreed basis.
- 1.4.2 Entire work as detailed in the tender specification shall be completed within 35 (Thirty Five) weeks from the zero date.
- 1.4.3 During the total period of contract, the contractor has to carry out the activities/ tests in a phased manner as required by BHEL and the program of milestone events. Following are the milestone events:
 - 1.4.4 Acceptance of Draft Detailed Project Report by approving authority in BHEL and TSGENCO
 - 1.4.5 Acceptance of Final Detailed Project Report by approving authority within BHEL and TSGENCO
 - 1.4.6 Completion of presentations/discussions with TSERC (Telangana State Electricity Regulatory Commission) or any other regulatory/non-regulatory authorities.
 - 1.4.7 Completion of all activities as per scope of DPR as per end-Customer /Statutory Body.
 - 1.4.8 During the work shall be deemed as completed in all respect only when so certified by the approving authority. The decision of BHEL in this regard shall be final and binding on contractor.

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1.4.9 Deliverables

Schedule of deliverables

1.4.10 On the basis of preceding sections, the consulting firm is required to deliver the following set of deliverables (in the form of MS Word document, Pdf document, Powerpoint presentations, Excel model and/or other formats as required) as per the timelines mentioned below:

Sl.No	Key submission	Time elapsed(Week)
0	Zero Date	T (date)
1.	<p>Inception Report</p> <p>Submission of a brief report/ presentation to BHEL/ TSGENCO after Preliminary field study of all plant units and preparation of action on project methodology, work plan & schedule of sub-activities</p>	T+5 Week
2.	<p>Draft Detailed Project Report</p> <p>Unitwise submission of five sets of spiral wound draft report along with editable copies, soft copies, software, source code, including all field data and test reports to BHEL for all plants. The draft DPR shall cover all scope of VOLUME-IA PART – I CHAPTER – II of TCC or elsewhere in tender document.</p>	T+26 Week
3.	<p>Final Detailed Project Report</p> <p>Unitwise submission of five sets of spiral-bound final reports along with soft copies for final acceptance by TSGENCO/ BHEL.</p>	T+30 week
4.	<p>Addendum to Final Detailed Project Report</p>	T+35 week

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	Submission of five sets of spiral-bound final addendum along with its soft copies on completion of presentations/discussions with TSERC (Telangana State Electricity Regulatory Commission) or any other regulatory/ non-regulatory authorities for final acceptance by TSGENCO/ BHEL and closure of the assignment	
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In case the meeting with TSGENCO/ TSERC or any other regulatory /non-regulatory authorities for presentation/discussions is delayed due to non-availability of time slot, beyond contract completion period, contract price will remain firm without any levy of LD on consultant or any claim by consultant on BHEL on account of this delay for those period.

1.4.11 Schedule of deliverables

The-deliverables given in this section are an outcome of the preceding sections. The consulting firm has to ensure that the deliverables cover the entire scope of work in totality to achieve the overall objective of the exercise. Subsequent additions to deliverables may be made by BHEL whenever required. While the deliverables are identified week wise, the consulting firm may work concurrently on various activities. The time elapsed mentioned in weeks is indicative and may change as the assignment progresses but while maintaining the total duration of the assignment.

Other aspects of deliverables

- 1.4.12 Presentations to the senior team of BHEL and TSGENCO will have to be made by the lead partner.
- 1.4.13 The deliverable shall be treated as completed when accepted by TSGENCO/ BHEL.
- 1.4.13 Transfer of Documents: Consulting firm shall transfer all relevant documents/ reports/ presentations/ excel models/ other files related to the above Scope of Work and Deliverables to BHEL and TSGENCO during the exercise and finally after the completion of the exercise.
- 1.4.14 During the delivery of reports/presentation/other documents, BHEL may seek back-up/ supporting data/ working files of given analysis in the deliverables; in such cases, the consulting firm is required to arrange for the sought data

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(indicating sources thereof) and consider the same as a part of the deliverable.

- 1.4.15 After submission of DPR, the consultant shall accompany TSGENCO for presentation/discussion with TSERC or any other regulatory/ non-regulatory authorities and also shall assist TSGENCO until the approval of DPR by TSERC
- 1.4.16 GUARANTEE PERIOD: Guarantee period is not applicable for this tender.

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VOLUME-IA PART – I CHAPTER-V

TERMS OF PAYMENT

1.5.0 Advance is not applicable for this tender.

1.5.1 Terms of payment

The progressive payment against milestone based bills for the completed items will be released on accepted rate/ price of contract value as mentioned below from clause no. 1.7.3.1 to 1.7.3.3 on pro- rata basis (for measured and accepted quantity).

Sl. No.	Activity/ work description	% of unit rate
1	On acceptance of Draft Detailed Project Report by approving authority in BHEL and TSGENCO	40%
2	On acceptance of Final Detailed Project Report by approving authority in BHEL and TSGENCO	40%
3	On completion of presentations/discussions with TSERC or any other regulatory/ non-regulatory authorities.	10%
4	On completion of all activities as per scope of DPR as per End Customer /Statutory Body.	10%

Note:

- a. Detailed definition of the terms “DRAFT REPORT” & “FINAL REPORT”, preparation and submission of reports shall be in line with scope (chapter 2 of TCC)

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- b. In case the meeting with TSGENCO/ TSERC for presentation/discussions is delayed due to non-availability of TSERC time slot, beyond the contractual completion period, contract price will remain firm without any levy of LD on consultant or any claim by consultant on BHEL on account of this delay.

1.5.3 NO CLAIM WHAT SO EVER MAY BE, WILL BE ENTERTAINED UNDER THIS CONTRACT, AFTER DULY SIGNING THE FINAL BILL AND ACCEPTED BY BHEL.

1.5.4 PVC (Price Variation Clause) and ORC (Over Run Charges) not applicable for this tender

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VOLUME-IA PART – I CHAPTER – VI

PROGRESS OF WORK

- 1.6 It is the responsibility of the contractor to provide all relevant information on a regular basis regarding work progress etc. The progress reports shall indicate the progress achieved against plan, indicating reasons for delays, if any. The report shall also give remedial actions which the contractor intends to make good the slippage or lost time so that further works can proceed as per the original plan the slippages do not accumulate and affect the overall programme

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VOLUME-IA PART-I CHAPTER -VII GENERAL

- 1.7.0 In addition to the clause 2.8 of General Conditions of Contract (Volume-1C of Book-II) the contractor shall comply with the following:
- 1.7.1 Bidders are requested to furnish the following at PS-Marketing, BHEL HQ, Siri fort, New Delhi, Pin- 110049 immediately after release of Letter of Intent (LOI)
- I. Security Deposit and Additional Security Deposit (Not applicable).
 - II. Unqualified Acceptance for LOI and after issue of DLOI
 - III. Unqualified Acceptance for Detailed LOI.
 - IV. Rs.100/- Stamp Paper for preparation of Contract Agreement.
 - V. Option (whether a or b of said clause) exercised towards Performance Security Deposit for the subject contract as per Sl. No. 16 of Volume IA Part II Chapter 1 of TCC.
- 1.7.2 Bidders are requested to furnish the proof of documents for the following at PS-Marketing, if applicable
- I. PF Regn No.
 - II. Labour License No.
 - III. Workmen Insurance Policy No.
- 1.7.3 BOCW Act & BOCW Welfare Cess Act (if applicable)**
- 1.7.3.1 The Contractor Should Register their Establishment under BOCW Act 1996 read with rules 1998 by submitting Form I (Application for Registration of Establishment) and Form IV (Notice of Commencement /Completion of Building Other Construction Work) to the respective Labour Authorities i.e.,
- a) Assistant Labour Commissioner (Central) in respect of the project premises which is under the purview of Central Govt.–NTPC, NTPL etc.
 - b) Appropriate State authorities in respect of the project premises which is under the purview of State Govt.
- 1.7.3.2 The Contractor should comply with the provisions of BOCW Welfare Cess Act 1996 in respect of the work awarded to them by BHEL
- 1.7.3.3 The contractor should ensure compliance regarding Registration of Building Workers as Beneficiaries, Hours of work, welfare measures and other conditions of service with particular reference to Safety and Health measures like Safety Officers, safety committee, issue of Personal protective

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equipments, canteen, rest room, drinking water, Toilets, ambulance, first aid centre etc.,

1.7.3.4 The contractor irrespective of their nature of work and manpower (Civil, Mechanical, Electrical works etc.) should register their establishment under BOCW Act 1996 and comply with BOCW Welfare Cess Act 1996.

1.7.3.5 Contractor shall make remittance of the BOCW cess as per Act in consultation with BHEL as per the rates in force (presently 1%). BHEL shall reimburse the same upon production of documentary evidence. However, BHEL shall not reimburse the Fee paid towards the registration of establishment, cess paid towards registration of beneficiaries and contribution of beneficiaries remitted.

1.7.3.6 Non-compliance to provisions of the BOCW act and BOCW welfare Cess act is not acceptable. In case of any non-compliance, BHEL reserves the right to withhold any sum it deems fit. Only upon total compliance to the BOCW act and also discharge of total payment of Cess under the BOCW Cess act by the contractor, BHEL shall consider refund of the amounts.

1.7.4 PROVIDENT FUND (if applicable)

1.7.4.1 The contractor is required to extend the benefit of Provident Fund to the labour employed by you in connection with this contract as per the Employees Provident Fund and Miscellaneous Provisions Act 1952. For due implementation of the same, you are hereby required to get yourself registered with the Provident Fund authorities for the purpose of reconciliation of PF dues and furnish to us the code number allotted to you by the Provident Fund authorities within one month from the date of issue of this letter of intent. In case you are exempted from such remittance an attested copy of authority for such exemption is to be furnished. Please note that in the event of your failure to comply with the provisions of said Act, if recoveries therefore are enforced from payments due to us by the customer or paid to statutory authorities by us, such amount will be recovered from payments due to you.

1.7.4.2 The final bill amount would be released only on production of clearance certificate from PF / ESI and labour authorities as applicable.

1.7.5 OTHER STATUTORY REQUIREMENTS (if applicable)

1.7.5.1 The Contractor shall submit a copy of Labour License obtained from the Licensing Officer (Form VI) u/r25 read with u/s 12 of Contract Labour (R&A) Act 1970 & rules and Valid WC Insurance copy or ESI Code (if applicable) and PF code no along with the first running bill.

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- 1.7.5.2 The contactor shall submit monthly running bills along with the copies of monthly wages (of the preceding month) u/r78(1)(a)(1) of Contract Labour Rules, copies of monthly return of PF contribution with remittance Challans under Employees Provident Fund Act 1952 and copy of renewed WC Insurance policy or copies of monthly return of ESI contribution with Challans under ESI Act 1948 (if applicable) in respect of the workmen engaged by them.
- 1.7.5.3 The Contractor should ensure compliance of Sec 21 of Contract Labour (R&A) Act 1970 regarding responsibility for payment of Wages. In case of “Non-compliance of Sec 21 or non-payment of wages” to the workmen before the expiry of wage period by the contactor, BHEL will reserve its right to pay the workmen under the orders of Appropriate authority at the risk and cost of the Contractor.
- 1.7.5.4 The Contractor shall submit copies of Final Settlement statement of disbursement of retrenchment benefits on retrenchment of each workman under I D Act 1948, copies of Form 6-A (Annual Return of PF Contribution) along with Copies of PF Contribution Card of each member under PF Act and copies of monthly return on ESI Contribution – Form 6 under ESI Act 1948 (If applicable) to BHEL along with the Final Bill.
- 1.7.5.5 In case of any dispute pending before the appropriate authority under I D act 1948, WC Act 1923 or ESI Act 1948 and PF Act 1952, BHEL reserve the right to hold such amounts from the final bills of the Contractor which will be released on submission of proof of settlement of issues from the appropriate authority under the act.
- 1.7.5.6 In case of any dispute prolonged/pending before the authority for the reasons not attributable to the contractor, BHEL reserves the right to release the final bill of the contractor on submission of Indemnity bond by the contractor indemnifying BHEL against any claims that may arise at a later date without prejudice to the rights of BHEL.
- 1.7.6 DEPLOYMENT OF SKILLED / SEMI-SKILLED TRADESMEN**

The following clause is applicable in case the contract value / contract price is Rs. Five crores and above.

The contractor shall, at all stages of work deploy skilled / semi-skilled tradesmen who are qualified and possess certificate in particular trade from CPWD Training Institute / Industrial Training Institute / National Institute of Construction Management and Research (NICMAR), National Academy of Construction, CIDC or any similar reputed and recognized Institute managed / certified by State / Central Government. The number of such qualified tradesmen shall not be less than 20% of total skilled / semi-skilled workers

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required in each trade at any stage of work. The contractor shall submit number of man days required in respect of each trade, its scheduling and the list of qualified tradesmen along with requisite certificate from recognized Institute to Engineer-in-Charge for approval. Notwithstanding such approval, if the tradesmen are found to have inadequate skill to execute the work of respective trade, the contractor shall substitute such tradesmen within two days of written notice from Engineer-in-Charge. Failure on the part of contractor to obtain approval of Engineer-in-Charge or failure to deploy qualified tradesmen will attract a compensation to be paid by contractor at the rate of Rs. 100 per such tradesman per day. Decision of Engineer-in-Charge as to whether particular tradesman possesses requisite skill and amount of compensation in case of default shall be final and binding.

1.7.7 RECOVERY OF COMPENSATION PAID TO VICTIM(S) BY BHEL IN CASES OF DEATH/ PERMANENT INCAPACITATION OF PERSON DUE TO AN ACCIDENT DURING THE WORKS

BHEL shall recover the amount of compensation paid to victim(s) by BHEL towards loss of life / permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees as detailed below.

- 1.7.7.1 Victim: Any person who suffers permanent disablement or dies in an accident as defined below.
- 1.7.7.2 Accident: Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious occurrence caused during the manufacturing / operation and works incidental thereto at BHEL factories/ offices and precincts thereof, project execution, erection and commissioning, services, repairs and maintenance, trouble shooting, serving, overhaul, renovation and retrofitting, trial operation, performance guarantee testing undertaken by the company or during any works /during working at BHEL Units/ Offices/ townships and premises/ Project Sites.
- 1.7.7.3 Compensation in respect of each of the victims:
 - (i) In the event of death or permanent disability resulting from Loss of both limbs: Rs. 10,00,000/- (Rs. Ten Lakh)
 - (ii) In the event of other permanent disability: Rs. 7,00,000/- (Rs. Seven Lakh)
- 1.7.7.4 Permanent Disablement: A disablement that is classified as a permanent total disablement under the proviso to Section 2 (I) of the Employee's Compensation Act, 1923.

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1.7.8 GENERAL

1.7.8.1 Site Visit by the Bidder

The prior to submitting his tender for the work, visit, examine and acquire full knowledge & information and necessary conditions prevailing at the site and its surroundings of the plant premises together with all statutory, obligatory, mandatory requirements of various authorities about the site of works at his own expense, and obtain and ascertain for himself on his own responsibility that may be for preparing his tender and entering into a contract, and take the same into account in the quoted contract price for the work.

1.7.8.2 The bidder shall satisfy themselves about the following factors required as per scope of DPR:

- i) All other information pertaining to and needed for the work including information as to the risks, contingencies and other circumstances which may influence or affect the work or the cost thereof under this contract.
- ii) Site conditions including access to the site, the bidder should note that information, if any, in regard to the local conditions, as contained in these tender documents, has been given to tenderer merely for guidance and is not warranted to be complete.

1.7.8.3 A bidder shall be deemed to have full knowledge of the site, whether he inspects it or not, and no extra charges consequent on any misunderstanding or otherwise shall be allowed.

1.7.8.4 The bidder and any of his personnel or agents will be granted permission by the TSGENCO/BHEL or his authorized nominee, on receipt of formal application in respect thereof a week in advance of the proposed date of inspection of site, to enter upon his premises and lands for purpose of such inspection, but only on the express condition that the tenderer (and his personnel and agents) will relieve and indemnify the Employer (and his personnel and agents) from and against all liability in respect thereof and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused which, but for the exercise of such permission, would not have arisen.

1.7.8.5 Scope of work covered under this specification requires quality workmanship, engineering and green belt management along with the supply of all consumables, tools and tackles and testing instruments. The contractor shall ensure timely completion of work. The contractor shall have adequate tools, measuring instruments etc. in his possession. He shall also

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have adequate trained, qualified and experienced engineers, supervisory staff and skilled personnel. The manpower deployment identified by contractor shall match with above scope of works.

- 1.7.8.6 It is not the intent to specify herein all details of all material. Any item related this work not covered by this but necessary to complete the system will be deemed to have been included in the scope of the work.
- 1.7.8.7 All the necessary certificates and licenses required to carry out this scope of work are to be arranged by the contractor then and there at no extra cost.
- 1.7.8.8 All the work shall be carried out as per instructions of TSGENCO/BHEL engineer. TSGENCO/BHEL engineer's decision regarding the correctness of the work and method of working shall be final and binding on the contractor.
- 1.7.8.9 The contractor at his cost shall arrange necessary security measures for adequate protection of his machinery, equipment, tools, materials etc. TSGENCO/BHEL shall not be responsible for any loss or damage to the contractor's construction equipment and materials.
- 1.7.8.10 The Contractor may have to execute work in such a place and condition where other agencies also will be under such circumstances. However, completion time of DPR, agreed will be subject to the condition that contractor's work is not hampered by the other agencies.
- 1.7.8.11 Contractor has to work in close co-ordination with other agency at site, if applicable
- 1.7.8.12 No member of the already erected structure / buildings, other component and auxiliaries should be removed / modified without specific approval of TSGENCO/BHEL engineer.
- 1.7.8.13 Contractors shall ensure that all their Staff / Employees are exposed to periodical training programme conducted by qualified agencies/ personnel on latest ISO 9001 Standards.
- 1.7.8.14 The contractor's work shall not hinder other work, either underground or over ground, such as electrical, phone lines, water or sewage lines, etc. In areas of overlap, the contractor shall work in coordination with other related contractors. Any damage by the landscape contractor's team to such utilities will be penalized and contractor shall be responsible for cost for such damages.

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1.7.8.15 DOCUMENTATION

A. Following documents are required to be submitted to BHEL

Inception Report

Submission of a brief report/presentation to BHEL/TSGENCO after Preliminary field study of all plant/ units and preparation of action on project methodology, work plan & schedule of sub-activities

Draft Detailed Project Report

Unit-wise submission of five sets of spiral wound draft report along with editable copies, soft copies, software, source code, including all field data and test reports to BHEL for all plants. The draft DPR shall cover all scope of VOLUME-IA PART – I CHAPTER – II of TCC or elsewhere in tender document.

Final Detailed Project Report

Unit-wise submission of five sets of spiral-bound final reports along with soft copies for final acceptance by TSGENCO/ BHEL and closure of the assignment

Any other document required for the complete scope of work.

TECHNICAL CONDITIONS OF CONTRACT (TCC)

VOLUME-IA PART-I CHAPTER - VIII

TAXES AND OTHER DUTIES

1.8 Goods and service Tax (GST) & Cess

1.8.1 The successful bidder shall furnish proof of GST registration with GSTN Portal in the State in which the Project is being executed, covering the services under this contract. Registration should also bear endorsement for the premises from where the billing shall be done by the successful bidder on BHEL for this project/ work.

1.8.2 Contractor's price/rates shall be Total lump sum firm price inclusive of all prevailing taxes, duties and other levies excluding GST for the preparation of DPR as per the total scope defined as per BHEL NIT & tender specification, amendment & agreements till placement of order.

GST will be payable as actual. Contractor shall submit to BHEL the GST compliant tax invoice/debit note/revised tax invoice on the basis of which BHEL will claim the input tax credit in its return. the applicable rate shall be @ 18% GST, as applicable presently

1.8.3 GSTIN of BHEL will be provided to the expert service provider along with the work order.

1.8.4 GST charged in the tax invoice/debit note/revised tax invoice by the contractor shall be released separately to the contractor only after contractor files the outward supply details in GSTR-1 on GSTN portal and input tax credit of such invoice is matched with corresponding details of outward supply of the contractor and has paid the GST at the time of filing the monthly return.

1.8.5 In case BHEL has to incur any liability (like interest / penalty etc.) due to denial/reversal / delay of input tax credit in respect of the invoice submitted by the contractor, for the reasons attributable to the contractor, the same shall be recovered from the contractor.

1.8.6 Further, in case BHEL is deprived of the Input tax credit due to any reason attributable to contractor, the same shall not be paid or Recovered if already paid to the contractor.

1.8.7 Tax invoice/debit Note/revised tax invoice shall contain all such particulars as prescribed in GST law and comply to the timelines for issue of the same. Invoices shall be submitted on time to the concerned BHEL Engineer In Charge.

1.8.9 TDS under GST (if/ as & when applicable) shall be deducted at prevailing rates on gross invoice value from the running bills.

1.8.10 E-way bills / Transit passes / Road Permits, if required for materials / T&P etc., bought into the project site is to be arranged by the Contractor only.

TECHNICAL CONDITIONS OF CONTRACT (TCC)

1.8.11 BHEL shall not reimburse any amounts towards any interest / penalty etc., incurred by contractor. Any additional claim at a later date due to issues such as wrong rates / **wrong** classification by contractor shall not be paid by BHEL.

1.8.12 All taxes and duty other than GST & Cess

The contractor shall pay all (except the specific exclusion viz. GST & Cess) taxes, fees, license charges, deposits, duties, tools, royalty, commissions, Stamp Duties, or other charges / levies, which may be levied on the input goods & services consumed and output goods & services delivered in course of his operations in executing the contract and the same shall not be reimbursed by BHEL. In case BHEL is forced to pay any of such taxes, BHEL shall have the right to recover the same from his bills or otherwise as deemed fit.

1.8.13 Statutory Variations

Statutory variations are applicable under the GST Acts, against production of proof. The changes implemented by the Central / State Government during the tenure of the contract viz. increase / decrease in the rate of taxes, applicability, etc. and its impact on upward revision / downward revision are to be suitably paid/ adjusted from the date of respective variation. The bidder shall give the benefit of downward revision in favour of BHEL. No other variations shall be allowed during the tenure of the contract.

1.8.14 New Taxes/Levies

In case Government imposes any new levy / tax after submission of bid during the tenure of the contract, BHEL shall reimburse the same at actual on submission of documentary proof of payment subject to the satisfaction of BHEL that such new levy / tax is applicable to this contract.

1.8.15 Direct Tax

BHEL shall not be liable towards Income Tax of whatever nature including variations thereof arising out of this contract as well as tax liability of the bidder and their personnel. Deduction of tax at source at the prevailing rates shall be effected by BHEL before release of payment as a statutory obligation, unless exemption certificate is produced by the bidder. TDS certificate will be issued by BHEL as per the provisions of Income Tax Act.

TECHNICAL CONDITIONS OF CONTRACT (TCC)

END OF VOLUME-IA PART – I

TECHNICAL CONDITIONS OF CONTRACT (TCC)

VOLUME-IA PART – II CHAPTER – IX (Not Applicable)

Form WAM 23

PROFORMA OF BANK GUARANTEE (in lieu of EARNEST MONEY)

(On non-Judicial paper of appropriate value)

(Para 4.7.6 of Works Accounts Manual)

Bank Guarantee No.....

Date.....

To
(Employer's Name and Address)
.....

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....¹ (Tender Conditions), M/s. registered office at³ (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of.....⁴ invited by Bharat Heavy Electricals Limited² having its

(hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, Asiad, New Delhi 110049 through its unit at Bharat Heavy Electricals Limited,,Power sector -Marketing(T&G) Siri Fort, Asiad, New Delhi 110049

The Tender Conditions provide that the Tenderer shall pay a sum of Rs⁵ as Earnest Money Deposit in the form therein mentioned. The form of payment of Earnest Money Deposit includes Bank Guarantee executed by a Scheduled Bank.

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of⁶ is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee,

we, the(Name & address of the Bank)
..... having our Head Office at
.....(hereinafter referred to as the Bank) being the Guarantor under this Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs.....⁶ (in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.⁶

TECHNICAL CONDITIONS OF CONTRACT (TCC)

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Tenderer in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder and the Tenderer shall have no claim against us for making such payment.

We Bank further agree that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend the time of submission of from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Tenderer and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Tenderer or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Tenderer or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

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

This Guarantee shall be irrevocable and shall remain in force upto and including.....⁷ and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the we shall be discharged from all liabilities under this Guarantee.

We, Bank lastly undertake not to revoke this guarantee during its currency except with the ⁸ previous consent of the Employer in writing.
Notwithstanding anything to the contrary contained hereinabove:

- a) ⁶ The liability of the Bank under this Guarantee shall not exceed.....
- b) This Guarantee shall be valid up to⁷
- c) Unless the Bank is served a written claim or demand on or before⁸ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of
(Name of the Bank)

(Signature of Authorised signatory)

Date.....

Place of Issue.....

TECHNICAL CONDITIONS OF CONTRACT (TCC)

- ¹ Details of the Invitation to Bid/Notice Inviting Tender (Tender Ref. No. Eg. - BHEL PSSR SCT XXXX)
- ² Name of Tenderer
- ³ REGISTERED Office Address of the Tenderer ⁴ Details of the Work i.e Tender Description
- ⁵ EMD Amount as mentioned in Notice Inviting Tender
- ⁶ BG Amount in words and Figures (BG Amount shall be Minimum of EMD amount less Rs. 2 Lakhs)
- ⁷ Validity Date
- ⁸ Date of Expiry of Claim Period (Claim Period shall be minimum of 3 Months after the validity date of Bank Guarantee)

Note:

1. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
2. In Case of Bank Guarantees submitted by Foreign Vendors-
 - a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India) can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor Country's Bank)
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by any of the Consortium Banks only will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.
 - b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time).

TECHNICAL CONDITIONS OF CONTRACT (TCC)

VOLUME-IA PART – II CHAPTER – X

(Not Applicable)

Form WAM 22

PROFORMA OF BANK GUARANTEE (in lieu of SECURITY DEPOSIT)

(On non-Judicial paper of appropriate value)

(Para 4.7.6 of Works Accounts Manual)

Bank Guarantee No.....

Date.....

To
(Employer's Name and Address)

.....

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, Asiad, New Delhi 110049 through its unit at Bharat Heavy Electricals Limited, Power Sector -Marketing(T&G) Siri Fort, Asiad, New Delhi 110049 having agreed to exempt _____¹ (Name of the Vendor / Contractor / Supplier) with its registered office _____²

(hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract arising vide Letter of Intent (LOI) reference

No. _____ dated _____³ valued at Rs. _____⁴ (Rupees _____ only)⁴ (hereinafter called the said Contract), of Security Deposit for the due fulfilment by the said Contractor of the terms and conditions contained in the said

Contract, on production of a Bank Guarantee for Rs. _____⁵ (Rupees _____ only),

We, the(Name & address of the Bank)

..... having our Head Office at

.....(hereinafter referred to as the Bank), at the request of

_____ [Contractor(s)], being the Guarantor under this Guarantee, do

hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to

prove or demonstrate reasons for its such demand

Any such demand made on the bank, shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____⁵.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal or

TECHNICAL CONDITIONS OF CONTRACT (TCC)

Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this guarantee shall be a valid discharge of our liability for payment hereunder and the Contractor(s) shall have no claim against us for making such payment.

We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force upto and including _____⁶ and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁷, we shall be discharged from all the liability under this guarantee thereafter.

We, _____ (indicate the name of the Bank) further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

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

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

We, BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁵
- b) This Guarantee shall be valid up to⁶
- c) Unless the Bank is served a written claim or demand on or before _____⁷ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

TECHNICAL CONDITIONS OF CONTRACT (TCC)

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

Date _____ Day of _____

for _____ (indicate the name of the Bank)

(Signature of Authorised signatory)

¹ NAME OF VENDOR /CONTRACTOR / SUPPLIER

² REGISTERED OFFICE ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER.

³ LETTER OF INTENT(LOI) REFERENCE NO. WITH DATE

⁴ CONTRACT VALUE (AS MENTIONED IN LOI)

⁵ BG AMOUNT IN FIGURES AND WORDS

⁶ VALIDITY DATE

⁷ DATE OF EXPIRY OF CLAIM PERIOD (CLAIM PERIOD SHALL BE MINIMUM OF 3 MONTHS AFTER VALIDITY DATE)

Note:

1. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
2. In Case of Bank Guarantees submitted by Foreign Vendors-
 - a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India) can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor Country's Bank)
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by any of the Consortium Banks only will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.
 - b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time).

TECHNICAL CONDITIONS OF CONTRACT (TCC)

VOLUME-IA PART – II CHAPTER – XI

Procedure 2.3 of Arbitration & Conciliation

TECHNICAL CONDITIONS OF CONTRACT (TCC)

Procedure-2.3

PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format 7** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-8** hereto.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores Conciliation shall be carried out by 3 Conciliators nominated by BHEL. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-9**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-5**.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.

TECHNICAL CONDITIONS OF CONTRACT (TCC)

- 7.** The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
- 8.** Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
- 9.** In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
- 10.** Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
- 11.** When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
- 12.** In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
- 13.** Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.
- 14.** In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after

TECHNICAL CONDITIONS OF CONTRACT (TCC)

seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.

- 15.** The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
- 16.** Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
- 17.** In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
- 18.** A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
- 19.** The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
- 20.** Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
- 21.** Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged

TECHNICAL CONDITIONS OF CONTRACT (TCC)

absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.

22. The proceedings of Conciliation under this Scheme may be terminated as follows:

- a. On the date of signing of the Settlement agreement by the Parties; or,
- b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
- c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
- d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
- e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

Sl No	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator) In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator)

TECHNICAL CONDITIONS OF CONTRACT (TCC)

SI No	Particulars	Amount
		<p>In cases involving claim and/or counter-claim of more than Rs 10 crores.</p> <p style="text-align: center;">Rs 1,00,000/- (per Conciliator)</p> <p>Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on the,</p> <p>Signing of the Settlement Agreement after approval of the Competent Authority</p> <p>or</p> <p>Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.</p>
3	Secretarial expenses	<p>Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.</p> <p>Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC</p>
4	<p>Travel and transportation and stay at outstation</p> <p>Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)</p>	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
	Others	<p>As per the extant entitlement of whole time Functional Directors in BHEL.</p> <p>Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.</p>

TECHNICAL CONDITIONS OF CONTRACT (TCC)

5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region /
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Sl No	Particulars	Amount
		Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

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- 24.** The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
- 25.** If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
- 26.** The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
- 27.** Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
- 28.** The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 4 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
- 29.** The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement,

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except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.

- 30.** The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:
 - a.** Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - b.** admissions made by the other party in the course of the Conciliator proceedings;
 - c.** proposals made by the Conciliator;
 - d.** The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
- 31.** The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 32.** None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 33.** The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.
- 34.** The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

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STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO THE IEC BY BOTH THE PARTIES

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Clam(s)/Counter Claim(s):

SI. No.	Description of claim(s)/Counter Claim	Amount (in INR)Or currency applicable in the contract	Relevant contract clause

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note– *The Statement of Claims/ Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/ Counter Claims. The statement of Claims/ Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.*

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FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

M/s. (Stakeholder's name)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY BHEL**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully

Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

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FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

BHEL (Head of the Unit/Division/Region/Business Group)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY A STAKEHOLDER**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above-referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/ LOA. In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully

Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

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9

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: **INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising in connection with the subject Contract No /MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure ---- to the subject Contract/MoU/Agreement/LOI/LOA, if possible.

Name and contact details of Conciliator(s)

- a)
- b)
- c)

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please.

Encl: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

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END OF VOLUME - IA PART – II