



**BHARAT HEAVY ELECTRICALS LIMITED
HEEP HARIDWAR INDIA-PIN 249403
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Sub: BHEL-HEEP/OPEN-TENDER (Pre Bid Tie Up and subsequent MOU signup with indigenous suppliers for setting 1 MW capacity for producing Green Hydrogen in Himachal Pradesh)

Dear Sir,

The Heavy Electricals Equipment Plant (HEEP) located at Haridwar, India is one of the major manufacturing plants of Bharat Heavy Electricals Ltd. The core business of HEEP includes design and manufacture of large steam and gas turbines, turbo generators and so on as a EPC contractor for many years having turn over of thousands of crores.

BHEL is hereby floating an enquiry to finalize Pre-bid Tie Up (MOU) with the indigenous suppliers for the following work on back to back terms and conditions of OIL tender No : CQI4810P24 for setting 1 MW capacity for producing Green Hydrogen in Himachal Pradesh.

Make in India preferences shall be applicable for the tender as per Clause 25 E, b, of BHEL GISTC ANNEXURE-F. Bidders to submit Make in India Certificate (format enclosed in tender documents) along with the offer.

“Supply of Electrolyser System for setting of 1 MW capacity in Himachal Pradesh for production of High Purity (99.999%) Green Hydrogen for commercial use with the following scope of work:

1. Engineering, Fabrication & Assembly, Supply, and Installation and commissioning at site, of Electrolyser system (which means stack, Feed water preparation section, rectifier, separator, dryer/purification section and its pump, Exchangers & Compressor (as applicable) and Spares/ special tools & tackles (if any), Necessary Drain and Vent piping, etc. as per the scope of work & supply in tender document.
2. Supply of Centralized PLC with SCADA based system including extension of the control bus over fiber optics and shall consider necessary accessories (Like FO Cable, Converters, LIU, Patch Panel, Patch Cords, pig tails, switches etc.) and with HMI, printer, furniture etc.
3. Supply of all the Chemicals/ Consumables required to run the system like KOH solution etc. (Initial filing), mandatory Spares and commissioning spares
4. Training at works/ Site
5. PGTR & SAT
6. Plant O&M for 10 years including necessary spares, consumables etc.
7. Statutory / PESO clearances.
8. Supply of Fire Fighting System/Extinguishers inside the container along with Safety and Hazard compliances.

Tender no	Bill of quantity	Unit	Quantity
NIT/BHEL/HEEP/1 MW Electrolyser/HP	Supply of Electrolyser system (with Stack, Feed water preparation section, rectifier, separator, dryer/purification section and its Pump, Exchangers & Compressor (as applicable) and Spares/ special tools & tackles (if any), Centralized PLC with SCADA, PGTR & SAT Plant along with Engineering, Fabrication & Assembly, and Installation and commissioning at site and O&M for 10 years including necessary spares, consumables etc.	Lumpsum	1

The tender documents can be downloaded from our web site www.bhel.com or www.bhelhwr.co.in or NIC portal to be submitted with requisite EMD & NDA. EMD & NDA originals must be submitted with Part-I.

Due date for submitting tender is 16.01.2024 (till 1.30 pm). Offer to be submitted before due date. Opening of tender (Technical Bid-Part I) shall be on same day 16.01.2024.

The tenders shall be submitted in two parts, as described below, on or before the due date.

- Part I – Pre-qualification requirement (PQR)- Annexure A, Technical & Quality Requirements- Annexure B, Bid Evaluation Criteria - ANNEXURE-C , Techno -Commercial Bid along with other required documents As per tender
- Part II – Price Bid/ Filled BOQ

(PRICE BIDS SHALL BE OPENED OF THOSE VENDORS ONLY WHO QUALIFY PQR, TECHNICAL & QUALITY REQUIREMENTS, CONFIRM FOR SIGNING DEED OF JOINT UNDERTAKING(FORMAT ENCLOSED) AND CONFIRM FOR SUBMISSION OF BID BOND OF 1 % OF THE VALUE OF MOU IN THE FORM OF BANK GUARANTEE OR SECURITY WITHIN 30 DAYS OF SINGNING OF MOU)

KINDLY FOLLOW “GENERAL TERMS & CONDITIONS” (ANNEXURE-F & G). In case of any dispute, more stringent terms & conditions shall prevail (please refer NIT document of M/s OIL, IFB No. CQI4810P24 for complete information).

REFERENCES

PRE-QUALIFYING REQUIREMENT	ANNEXURE-A
TECHNICAL & QUALITY REQUIREMENTS ALONG WITH SCOPE OF WORK	ANNEXURE-B
BID EVALUATION CRITERIA	ANNEXURE-C
DEED OF JOINT UNDERTAKING FORMAT	ANNEXURE-D
OTHER IMPORTANT TERMS & CONDITIONS	ANNEXURE-E
GENERAL TERMS & CONDITIONS (GISTC)	ANNEXURE-F
NON-DISCLOSURE AGREEMENT (NDA) FORMAT	ANNEXURE-G
INTEGRITY PACT	ANNEXURE-H
DECLARATION BY BIDDER MEETING PQR REQUIREMENTS	ANNEXURE-I
SAFETY DECLARATION	ANNEXURE-J

Annexure - “A”

PRE-QUALIFYING REQUIREMENT

A) TECHNICAL PREQUALIFICATION REQUIREMENTS (PQRs)

Bidder shall be a manufacturer or a channel partner of the manufacturer of either Alkaline Water Electrolyser (AEL) or Anion Exchange Membrane (AEM) or Proton Exchange Membrane (PEM) or Alkaline Membrane Solid Electrolyser (AMSE) or Solid Oxide Electrolyser (SOE) technology (Suitable/relevant documentary evidence to substantiate the fulfilment of this PQR is to be submitted along with the bid).

AND

Bidder should have done system integration & supplied at least one (1) Electrolyser system (AEL/PEM/AMSE/SOE) of capacity at least 250 kW as a single unit in India in the last 10 years and the system should have been in successful operation for at least 03 (three) months prior to the original bid closing date. (Requisite performance certificate from the end client/customer as documentary evidence to substantiate the fulfilment of this PQR is to be submitted along with the bid).

AND

The bidder who meets the Technical Criteria as mentioned above for supply of Electrolyzer system shall be required to enter a Deed of joint Undertaking (DJU) with BHEL. In such case, Deed of joint Undertaking (DJU) executed by the Bidder and BHEL shall be as per the format enclosed in the Tender Document, in which the Bidder and BHEL to sign an undertaking for successful completion of the Contract. The DJU format with acceptance should be submitted along with the Techno-Commercial bid, failing which the Bidder shall be disqualified and its bid shall be rejected. The DJU shall be valid for at-least five years from the original bid closing date.

B) Notes for eligibility criteria

1. Electrolyser Manufacturer shall be required to manufacture parts /components of Electrolyser system [which means the Stack, Rectifier, Feed water preparation section, Separator, Dryer/ purification and its pump, Exchangers & compressor (as applicable)] in India of value at least 20% of the total cost of Electrolyser system quoted by bidder.

Documents Required:

- i. Bidder shall submit an undertaking – (a) confirming adherence to the percentage requirement of Make in India components in the offered Electrolyser System and (b) indicating list of components to be manufactured in India.
 - ii. A certificate from the Statutory Auditor / Cost Auditor / Cost Accountant / Chartered Accountant (not being an employee / Director of the company) providing the percentage of Make in India component present in offered Electrolyser System, in support of undertaking submitted by bidder against sl. no. (i) Above.
2. Channel Partner: A Channel Partner is defined for this project as an entity that has a valid authorization/ agreement for a minimum period of 5 (Five) from the original bid closing date, with a Water Electrolyser Manufacturer to market/supply/assemble/ manufacture/maintain sells the manufacturer's products.

3. In case bidder is channel partner of manufacturer who is not meeting the Technical PQR on its own, can qualify based on the experience of said manufacturer who meets the Technical PQR.
4. Sub-contract orders shall not be acceptable/considered.
5. A job executed by a Bidder for its own plant/projects cannot be considered as experience for the purpose of meeting the Technical PQR of the tender. However, jobs executed for Subsidiary/Fellow subsidiary/Holding company will be considered as experience for the purpose of meeting bid eligibility Criteria subject to submission of tax paid invoice(s) duly certified by statutory auditor of the Bidder towards payments of statutory taxes in support of the job executed for the Subsidiary/Fellow subsidiary/Holding company. Such Bidder should submit these documents in addition to the documents specified in the bidding document to meet technical PQR.
6. Bidder shall have single point responsibility for completion of scope covered in the tender.

C) Supporting document required to be submitted by the Bidder (manufacturer or a channel partner) as documentary evidence for establishing experience as below:

- i) Proof towards manufacturer of an Alkaline Water Electrolyser (AEL) or Anion Exchange Membrane (AEM) or Proton Exchange Membrane (PEM) or Alkaline Membrane Solid Electrolyser (AMSE) or Solid Oxide Electrolyser (SOE) technology based Green Hydrogen Generation System.
- ii) In case item to be supplied through Channel Partner, relevant valid authorization/ agreement with technology provider, valid till 5 years from the original bid closing date.
- iii) Work order/ Letter of Acceptance along with schedule of rates and scope of work.
- iv) Completion Certificate issued by End Customer.
- v) Certificate of successful operation for at least 3 (three) months prior to the original bid closing date from End user/ Owner. The certificate shall indicate the type of Electrolyser, its capacity, start-up date and current system operating status. Documents shall indicate name, contact number & e-mail id of the end customer. In case of requirement, Bidder/ Electrolyser Manufacturer shall facilitate interaction with the end customer.
- vi) Qualification Data to be filled in by Manufacturer /Channel Partner in ANNEXURE: A



Annexure - “B”

TECHNICAL & QUALITY REQUIREMENTS
ALONG WITH SCOPE OF WORK



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**TECHNICAL SPECIFICATION FOR
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Checked and Prepared By:

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DATE: 05/01/2024



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1.0 INTENT OF SPECIFICATION

Bharat Heavy Electrical Limited (BHEL), a Govt. of India Undertaking, invites proposals for Engineering, Fabrication Assembly, Supply, and installation at Site, of the Electrolyser System Installation at site, of Electrolyser system (which means stack, Feed water preparation section, rectifier, separator, dryer/ purification section and its pump, Exchangers, PLC & Compressor (as applicable) and Spares/ special tools & tackles (if any), etc., as per the scope of work & supply detailed in this Specification.

2.0 PROJECT INFORMATION

OIL INDIA LIMITED (OIL), a Government of India "MAHARATNA" Category Enterprise, is engaged in Exploration, Production & Transportation of Crude Oil and Natural Gas and Production of LPG in India with participating interest in E&P sector in various overseas projects. OIL with intent to contribute towards Government of India's efforts for clean and green fuel is establishing a plant of 1 MW capacity in Himachal Pradesh for production of High Purity (99.999%) Green Hydrogen for commercial use.

3.0 CLIMATIC DATA

Temperature : Min 5°C, Max 45°C

Rainfall : Maximum rain fall 663.03mm

Humidity : 95% (non-condensing).

4.0 POWER SUPPLY

Following power supply voltage levels to be used unless otherwise specified:

- 415V AC, 3ph, 50Hz
- For Instruments & Control System: 110V AC, 50Hz UPS
- Panel/Cabinet Lightings: 230V AC, 50Hz non-UPS
- Input Interrogating Voltage: 24 V DC
- Solenoid Valves, Lamps: 24VDC (Intrinsically safe Type)

5.0 DEFINITIONS

Electrolyser System:

Electrolyser system means Stack, Feed water preparation section, rectifier, separator, dryer/ purification section and its pump, Exchangers & Compressor (as applicable) and Spares/ special tools & tackles (if any), etc., as per the scope of work & supply in tender document.

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Balance of Plant (BOP):

GH2 (Green Hydrogen) Plant excluding Electrolyser System.

6.0 SCOPE DIVISION

a) Owner's responsibility:

- i) Will provide land for installation and commissioning of the system within the state of Himachal Pradesh and provide necessary support during Operation & Maintenance (O&M). The offered land will be free of encumbrances and has clear access to accommodate large container traffic required for setting up the 1MW Electrolyser plant.
- ii) Capital Investment in procuring, installation, commissioning the system and O&M of the plant.
- iii) 33 KVA power supply.
- iv) Facilitating the bidder in applying for statutory clearances for the project.
- v) Conducting HAZOP, Qualitative/Quantitative Risk Analysis and Consequences Analysis.

b) Bidder's Responsibility:

- i) Supply of Electrolyser system along with spares, erection, testing and commissioning of the system.
- ii) Bidder shall supply the mandatory and commissioning spares, consumables as required for Electrolyser system for a minimum period of 3 (three) years. Bidder shall provide the list of the same.
- iii) Compressor (if applicable).
- iv) Training of owner's Engineers for the operation and maintenance of the plant.
- v) Commissioning & Site Acceptance Test (SAT)
- vi) Performance Guarantee Test Run (PGTR)
- vii) Comprehensive Operation and Maintenance (O&M) of the plant for 10 years for the project life from the date of successful SAT.
- viii) Data collection and analysis of the performance of the system during testing and subsequent operation.
- ix) Sharing of process and system level information with owner for in depth understanding of the system.
- x) Centralised PLC with SCADA based system

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- xi) Statutory / PESO clearances for complete GH2 plant
- xii) Warranty of the Electrolyser system
- xiii) Packaging and Transportation of all items under scope of supply

c) BHEL's Responsibility

- Supply of Balance of Plant (BoP) excluding Electrolyser system.
- Raw water/ Cooling water / Fire water shall be provided.
- Power supply at Rectifier input terminal
- H2 storage (if applicable)
- Packaging, Transportation, and storage at site of all items under scope of supply.
- Fabrication & Installation & commissioning of BoPs including Electrical, Instrumentation Mechanical works at site.
- Complete civil execution of the project.
- Fire protection system of entire plant excluding containerized electrolyser system.
- Warranty of the complete GH2 plant excluding containerized electrolyser system.

7.0 BIDDERS' SCOPE OF WORK FOR SUPPLY OF CONTAINERISED ELECTROLYSER SYSTEM

Bidder's scope of work for the supply of Containerized Electrolyser system are, but not limited to the following. (Please refer NIT document of M/s OIL, IFB No. CQI4810P24 for complete information. In case of discrepancy between the two, the most stringent shall prevail.)

- 6.1 Engineering, Fabrication & Assembly, Supply, and Installation and commissioning at site, of Electrolyser system (which means stack, Feed water preparation section, rectifier, separator, dryer/ purification section and its pump, Exchangers & Compressor (as applicable) and Spares/ special tools & tackles (if any), etc., as per the scope of work & supply in tender document.
- 6.2 Centralized PLC with SCADA based system including extension of the control bus over fiber optics and shall consider necessary accessories (Like FO Cable, Converters, LIU, Patch Panel, Patch Cords, pig tails, switches etc.) and with HMI, printer, furniture etc.
- 6.3 All the Chemicals/ Consumables required to run the system like KOH solution etc. (Initial filling)
- 6.4 Training at works/ Site
- 6.5 PGTR & SAT
- 6.6 Plant O&M for 10 years including necessary spares, consumables etc.

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- 6.7 Mandatory Spares, commissioning spares,
- 6.8 Statutory / PESO clearances
- 6.9 Safety and Hazard
- 6.10 Fire Fighting System/Extinguishers inside the container
- 6.11 Necessary Drain and Vent piping

Bidder's shall be responsible for the following:

- a) Preparation of BEDP for Electrolyser system of capacity 17 Kg/hr min including its BOP like rectifier, feed water purification/ polishing section, gas purification section, Exchangers, gas compression section, Hydrogen Dryer, Storage (as applicable) etc.
- b) Bidder shall prepare Process Flow Diagrams (PFDs), Piping & Instrumentation Diagrams (P&ID), Process design datasheets of all the major equipment of Electrolyser System.
- c) Bidder shall carryout detail engineering of Electrolyser system and its associated components including its mechanical, electrical, instrumentation, structural works etc. complete in all respect.
- d) Centralized SCADA based PLC system and the details of Instrumentation requirements to be complied by bidder for design, procurement, supply, and erection are given in Annexure - II. It may not exhaustive, bidders to confirm the same and required to submit the details. Instrument Cables, 24VDC system shall be in bidder's scope.
- e) The detail of other requirement (Mechanical, Inspection, safety etc.) to be complied by bidder during the design, procurement, supply, and erection are given in Annexure-III. It may not be exhaustive, bidders to confirm the same and required to submit the details.
- f) Bidder shall submit equipment layout (including terminal points) along with the technical bid with firm dimensions for Electrolyser.
- g) Bidder shall supply the containerized Electrolyser system and its connected accessories including ventilation, lighting, lightening & earthing protection, LT Distribution board for bidder's loads including associated LT power / control cables & accessories, cable trays, H2 leak detection system etc. as required.
- h) The Electrolyser system may employ multiple rectifier and cell module (stack) design for added reliability and redundancy. The Electrolyser system shall be designed such that one or more modules can be removed online for maintenance, without affecting the plant operation.
- i) Bidder shall design and supply adequate numbers of rectifiers to cater the load of each Electrolyser. The rectifier equipment shall be complete in all respect with Thyristor, converter, electronic control, annunciation, filter choke, etc. mounted in the suitable panel. Relevant IS/IEC standards shall be applicable for Rectifier Assembly.
- j) Bidder has the sole responsibility for assembly and supply of the Electrolyser system and its associated component, to the designated site of installation.

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- k) Bidder shall supply the mandatory and commissioning spares, consumables as required for Electrolyser system for a minimum period of 3 (three) years. Bidder shall provide the list of the same.
- l) Bidder shall supply PLC based control system having provision for display and monitoring the efficiency, power consumption, quantity and quality of hydrogen generated. Please refer Annexure II for details.
- m) All measuring instruments, controller, PLC, and control valves required for automated remote and safe operation of the Electrolyser system shall be provided.
- n) Bidder shall provide operation and maintenance manual for the supplied electrolyser system including guidelines for normal operation and troubleshooting etc.
- o) Bidder shall provide detail procedure for online removal and its maintenance of defective module/s or stack/s.
- p) All necessary software and licenses to be provided for the proper functioning and troubleshooting of logic / graphic/hardware.
- q) Bidder shall provide necessary civil inputs for preparation of civil drawings by BHEL.
- r) Bidder shall design and engineer Electrolyser system adhering to the Fire Safety, Flood, Safety Hazard, Earthquake norms and other load conditions as per the building codes in the State of Himachal Pradesh.
- s) Bidder has to perform all the Mechanical, Electrical, Instrumentation erection & commissioning activities complete in all respect, including conducting all field tests as required.
- t) The bidder shall mobilize all tools and tackle, skill & unskilled manpower, for all erection job related to electrical, mechanical, instrumentation etc. to the site for timely completion of the project.
- u) Supply of items as per the indicated specifications including Mandatory Spares, Start-up & Commissioning spares & consumable.
- v) Packaging, loading, transportation, unloading and storage at site of all the material under scope of supply, including all the clearances from regulatory authorities, as applicable.
- w) The suitable Hydrogen Dryer with a standby shall be provided to remove moistures from Hydrogen. The operation of Drying System shall be automatic and should be appropriately interfaced PLC maintenance work.
- x) Appropriate Safety devices/ Hydrogen leak detection system are to be provided for safe release of Hydrogen, in case of upset.
- y) All measuring instruments, controller, PLC and control valves required for automated remote and safe operation of the Electrolyser system, shall be provided.
- z) Electrolyser System should be designed & built to meet all safety/environment/regulatory requirement required by factory Act, PESO, Electricity Act, CPCB/ HPSPCB, and/or all other applicable & relevant guidelines by authorities.

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- aa) The Electrolyser System/ process should comply with all relevant National and International standards for safe and reliable operation of Hydrogen Generation system. Equivalent standards to ISO 22734 will be accepted.
- bb) All necessary software and licenses to be provided for the proper functioning and troubleshooting of logic / graphic/hardware.
- cc) The list of codes and regulations given in this document is not exhaustive. The bidder shall provide a list of all codes and standards to be followed by the bidder in their designs.
- dd) Bidder shall be responsible for arranging all the material, equipment and services for timely completion and smooth commissioning of the project.
- ee) All the rotary equipment like pumps, compressors (if applicable) etc. shall be with standby facility.
- ff) Scope of Work for comprehensive O&M service for ten (10) years shall be as per Annexure-IV.
- gg) SAT and PGTR as per details mentioned elsewhere in this specification.

8.0 TECHNICAL SPECIFICATION

The containerized electrolyser system shall be designed, meeting following technical spec.:

- a) Water Electrolyser system can be based on either Alkaline Water Electrolyser (AEL) or Anion Exchange Membrane (AEM) or Proton Exchange Membrane (PEM) or Alkaline Membrane Solid Electrolyser (AMSE) or Solid Oxide Electrolyser (SOE) technology.
- b) The capacity of electrolyser module/s to be supplied shall be minimum 17 Kg/hr.
- c) The quality of hydrogen produced will be as given below:
 - H₂ purity: 99.999 % min.

Note: Third party certification from any NABL accredited / Government approved Laboratories / Agencies to be provided, certifying the purity of produced Hydrogen.

- d) Bidder shall guarantee the product H₂ quality. Bidder shall design the gas purification system accordingly and confirm the same in the bid. Bidder shall specify any other impurity present if any in the product H₂.
- e) The green H₂ with 99.999% purity shall be produced at 26 Kg/cm² min, at the electrolyser system outlet.
- f) Turndown capacity of the unit (i.e., the minimum operable capacity of the Water Electrolyser system at which the system can produce hydrogen as per specification and at required pressure), shall be 40% max. The unit shall be capable of operating anywhere between the Turndown Capacity i.e., between

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40% (or as offered by the bidder) and 100%. Bidder shall guarantee turndown capacity.

- g) The H₂ generation capacity offered by the bidder shall be 17 Kg/hr. (min). Bidder shall select its model/s of its electrolyser or designed it accordingly to meet the minimum capacity of Green Hydrogen plant.
- h) The unit shall be designed to run 8,000 hr. min per years at 100 % capacity.
- i) The guaranteed Service life of electrolyser system shall not be less than 80,000 hours.
- j) Bidder shall submit the expected design figure of the following parameters, along with the technical bid.
- i) Design capacity (Kg H₂/hr).
 - ii) Electrical power consumption by electrolyser system in terms of KWh/Kg of H₂ produced.
 - iii) Total Power consumption, in terms of KWhr/ Kg of H₂ at 100% t'put
 - iv) Product H₂ Purity
 - v) Expected Life of electrolyser system
 - vi) Turndown capacity (%)
 - vii) DM water consumption in Litre per Kg of H₂
 - viii) Product H₂ pressure
 - ix) Cold start-up time required for Electrolyser
 - x) Standby start-up time required for Electrolyser
- k) The hydrogen gas mixture separated from stack and Electrolyte shall be cooled to the desired level to meet the proper working for the system. Hence complete cooling system, which will comprise either Refrigerant cooling or Chiller based cooling or Radiator based cooling system is required. The sizes shall be based on the total capacity of the plant.
- l) The Electrolyser system may employ multiple rectifier and cell module (stack) design for added reliability and redundancy. The Electrolyser system shall be designed such that one or more modules can be removed online for maintenance, without affecting the plant operation.
- m) Bidder shall design and supply adequate numbers of rectifiers to cater the load of each Electrolyser. The rectifier equipment shall be complete in all respect with Thyristor, converter, electronic control, annunciation, filter choke, harmonic filters (if required) etc. mounted in the suitable panel. Relevant IS/IEC standards shall be applicable for Rectifier Assembly. Rectifier shall be designed to take care of harmonics control and high power factor so that separate Power factor improvement system shall not be required.

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9.0 COMMISSIONING/SITE ACCEPTANCE TEST (SAT)

- a) After completion of all installation and necessary check, pre-commissioning & commissioning of the Electrolyser Plant shall be done as per the guidelines and under supervision of the bidder's representative & experts.
- b) The Site Acceptance Test (SAT) will be done at designated site in the presence of owner's personnel. All the instruments/equipment will be tested for their functionality as per the specifications.
- c) Bidder shall demonstrate the operating limits in terms of Capacity, Power consumption Product pressure, and product H₂ purity. The primary objective of the SAT is to verify the start-up, shutdown, emergency, safety and normal operation of the plant. The warranty for the unit shall start from the date of completion of successful SAT.

10.0 PERFORMANCE GUARANTEE

- a) Company shall perform PGTR within 3 months after SAT. Parameters to be considered during PGTR are described in PGTR.
- b) Bidder shall provide comprehensive performance warranty for the period of 12 months, which shall start from the date of Site Acceptance Test.
- c) During warranty period Bidder shall ensure that all the parameters as considered during PGTR, are maintained. Further services during warranty period shall also include comprehensive monitoring and maintenance of plant, ensuring continuous and smooth operation of complete electrolyser system along with replacement of any parts as required without any cost to Owner.

11.0 PERFORMANCE GUARANTEE TEST RUN (PGTR)

- a) Performance Guarantee Test Run (PGTR) shall be carried out within 3 months of commissioning (SAT) of the plant to ascertain the meeting of the guaranteed parameters as mentioned below:
 - Hydrogen production: 17 Kg/hr minimum.
 - Total Power consumption: _____ kW/Kg of H₂ (as guaranteed)
 - Hydrogen pressure: 26 kg/cm² min.
 - Hydrogen purity: 99.999 vol. % min.
- b) PGTR duration shall be at least 72 continuous hours.
- c) Bidder shall provide the PGTR test procedure for approval of Owner. PGTR test shall be carried out as per the approved PGTR test procedure.
- d) The Bidder shall be responsible for providing all material, equipment and manpower, specified or otherwise, which are required to carry out PGTR test.
- e) There shall be no incentive/ reward in case of positive performance deviation i.e., when tested capacity of Hydrogen generation is more than the guaranteed capacity.

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- f) In case it is found that the equipment/ system has failed to meet the guarantees, the Contractor shall carry out all necessary modifications and/ or replacements to make the equipment/ system comply with the guaranteed requirements at no extra cost to Owner and re-conduct the performance guarantee test(s) with Owner's consent. In case the specified performance guarantee(s) are still not met, 10% of PO value shall be kept on hold as per the payment terms.

12.0 SERVICE LIFE GUARANTEE OF ELECTROLYSER SYSTEM

- a) Bidder shall ensure the guaranteed life of the Electrolyser system is minimum 80,000 hrs from the date of commissioning.
- b) Bidder shall declare a list of components of the Electrolyser system and its nos., price, which need to be replaced before 80,000 hrs cycle life. The cost of replacement shall be loaded in the OpEx while calculating the LCOH.

13.0 PROJECT SCHEDULE

- a) All the jobs including supply and installation shall be completed within 15 (Fifteen) months from the date of PO/ FOA whichever is earlier. Bidder to confirm the same.
- b) Bidder shall submit a tentative project schedule for Bidder's scope of supply from date of PO to commissioning, including all major milestones.
- c) The project Schedule shall include but not limited to following milestones:
- i). Completion of BEDP
 - ii). Detail Engg.
 - iii). Statutory clearance
 - iv). Supply of major equipment
 - v). Electrical works
 - vi). Instrumentation work
 - vii). Erection/installation
 - viii). Commissioning

14.0 TRAINING

Bidder will provide on-site training on operation, maintenance and troubleshooting of critical equipment like electrolyser system, etc. & control system to Owner's personnel after the Site Acceptance Test (SAT) if desired by Owner. The schedule, nomination & venue for the training

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shall be confirmed by Owner. Bidder shall provide per mandays price for training of personal in the price schedule.

15.0 INSPECTION & TESTING

- a) The bidder to submit Quality Assurance Plan (QAP) for Electrolyser system and bought out items for BHEL/customer review and approval within 4 weeks from the date of PO/LOA, whichever is earlier. The QAP shall essentially cover raw material inspection, process parameters, performance test, etc.
- b) All comments shall be incorporated suitable in the QAP without any cost & time implication. All inspection & testing & inspection shall be as per approved QAP or relevant codes/ standards/ statues, whichever is more stringent.
- c) Drawings & documents, e.g. NDT procedures, WPS, PQR, Coating system including color coding, refractory & insulation systems, etc. shall be submitted in soft form for review and comments.
- d) Piping dimensions shall be as per ASME 16.10, 16.19 or Indian equivalent. Nonstandard piping dimensions shall not be acceptable.
- e) No negative tolerance of piping components shall be acceptable.
- f) Fittings, valves, instruments, other accessories etc. shall be duly tested and manufacturer's test certificates shall be furnished.
- g) Inspector will have liberty to inspect assembly to verify the dimensions as per the approved drawings.
- h) Equipment tag numbers shall be informed during detailed engineering, subject to acceptance of customer.
- i) Applicable Statutory compliances shall be ensured.
- j) Licensor shall provide Materials of Construction Diagrams, Damage mechanisms & Inspection methodologies including frequencies for the equipment & piping.
- k) Minimum thickness requirement shall be indicated for piping.
- l) Any or all the tests, at purchaser's option, shall be witnessed by Purchaser/its authorized inspection agency. However, such inspection shall be regarded as checkup and in no way absolve the bidder of his responsibility.
- m) Simulation test shall be carried out for the package at shop before dispatch of the Equipment.

16.0 SAFETY AND FIRE PROTECTION REQUIREMENTS FOR CONTAINERISED ELECTROLYSER SYSTEM:

- a) The scope includes Engineering, Supply, Construction, Erection, Testing and Commissioning of Fire Detection and Protection System for containerized Electrolyser system as per applicable PESO/NFPA standard and requirement.
- b) Automatic fire detection cum water spray system, if required, shall be provided as per requirement from applicable standards. The spray system consists water mains, Deluge valve, sprayers, Y type strainers, Detection system Instrumentations, Local Control Panels, cables etc. Fire Water for HVWS/MVWS spray shall be provided at one point near the container for further use.
- c) Additionally, H₂ flame detection sensor and remote display integrated with the Main Control system shall be provided.

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- d) The bidder to recommend the type of portable and mobile types of fire extinguisher required for the container to BHEL.
- e) The water Electrolyser system should have dual redundant safety circuit independent of operational control circuit.
Control circuit has to take shut-down in the below conditions:
- i) If cabinet is not adequate for ventilation and dilution of purge air
 - ii) Flooding in the cabinet
 - iii) Control panel emergency stop
 - iv) Hydrogen leak
 - v) Over and under voltage
 - vi) Reptile repellent cabinets
 - vii) Flame proof connections and fitting to be provided wherever necessary for ensuring safe operations.
 - viii) Proper venting facility should be provided to safely vent out the hydrogen gas from the system.
 - ix) Flame proof insulation, connection, junction boxes, etc. for the instruments, equipment will be provided wherever necessary.
 - x) The system should be capable of taking electrical surges.
 - xi) Hydrogen detector should be provided in the compartment of hydrogen detector to detect the leak.

17.0 STATUTORY COMPLIANCE

- f) Green Hydrogen Plant should be design & built to meet all safety / environment / regulatory requirement required by factory Act, PESO, CCOE, Electricity Act, CEA, CPCB/ UP CB, and/or all other applicable & relevant guidelines by authorities.
- g) The bidder shall comply ISO 22734 or equivalent for construction, safety, performance of the green hydrogen plant.
- h) Bidder shall assist in preparing the document/ check list/ audit etc. as required for clearance from different statutory bodies.

18.0 DOCUMENTATION AFTER PLACEMENT OF PO

Submission of following documents shall be included in the bidder's scope. The bidder has to provide soft copies and hard copies (4 nos.)

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- Process flow diagram (PFD), Piping & instrumentation diagram (P&ID) and Heat & Mass Balance
- Instrument indexes, Instrument loop diagram (ILD), Instrument specification sheet, Calculation sheet
- Process data sheet
- Dimensional data sheet
- Equipment data sheet
- GAD, As built and Isometric drawings
- Civil inputs
- Vendor documents (brought out items)
- Safety documentation (safety case, safety manual)
- Operating manuals/ guideline/ instructions
- Maintenance procedures
- Work instructions
- Engineering deliverables (design data not updated to reflect as-built condition)
- As-built deliverables (representing accurate record of the plant)
- Commissioning records
- Loop and logic diagrams, Instrument data sheets, Instrument connection and wiring list, Instrument hoop-up diagrams, Instrument wiring layout, Instrument air piping layout
- Control room panel layout
- Electrical Schematics/SLD, design Calculation, load list, Datasheets, power & Control wiring diagram, cable sizing and schedule datasheets
- System panel layouts (DCS)
- Sub vendor list.
- List of mandatory spares, commissioning spares, consumables & O&M spares.
- PG test procedure.
- Test reports as per approved Quality plan.
- Requirement/Location of Hydrants in the plant equipment layout as per PESO Norms.
- Additional requirements, as defined by Bidder/Customer/BHEL.

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19.0 TERMINAL POINTS (TP) shall be suitably marked in the equipment layout

- i. **TP1. Electrical/Substation:** Required input power shall be provided by BHEL at:
 - TP1.a** Inlet of Rectifier Terminal of the electrolyser system at Voltage level recommended by the Bidder.
 - TP1.b** 415V AC normal Supply: At the input terminal of Bidder's ACDB.
 - TP1.c** 110V AC UPS Supply: At the input terminal of Bidder's consumption point.
- ii. **TP2. Raw Water/ Cooling Water/ Fire Water:** Water shall be provided by BHEL at one point near the container.
- iii. **TP3. Hydrogen outlet:** H₂ Outlet of Electrolyser system /Compressor outlet (26 bar) as applicable.
- iv.

20.0 DOCUMENTS REQUIRED FROM BIDDER ALONG WITH TECHNICAL - BID

- A) Documents in support of PQR
- B) Electrical Load list of the Electrolyser System.
- C) Equipment Layout of the Electrolyser System along with terminal points
- D) Un-priced Price Bid format with "Quoted" in respective cell.
- E) Duly signed No Deviation format
- F) Duly signed Check list
- G) Details of terminal points
- H) Civil input for containerized electrolyser system
- I) Water requirement
- J) Total power requirement of Electrolyser system
- K) Filled up Annexures

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ANNEXURE-A

TECHNICAL DATA SHEET FOR HYDROGEN GENERATION PLANT

(To be filled by Bidder)

1	Capacity of proposed Hydrogen Plant	17kg/hr(min)
2	Technology	<i>Bidder to specify</i>
3	Type of enclosure proposed	Containerized
4	Number of Electrolyser Stream working in parallel	<i>Bidder to specify</i>
5	Number of Hydrogen Gas Compressors and Drives	<i>Bidder to specify</i>
6	Number of portable gas purity meters	<i>Bidder to specify</i>
7	Details of startup and commissioning spares	
	(i)	<i>Bidder to specify listwise</i>
8	Details of mandatory spares	
	(i)	<i>Bidder to specify listwise</i>
9	Hydrogen Purity	H2 purity: 99.999 % min
10	Power Consumption per meter cube of Hydrogen	<i>Bidder to specify</i>
11	Hydrogen pressure at outlet of Electrolyser system	<i>Bidder to specify</i>
12		
14	Power Supply Requirement (AC)	<i>Bidder to specify</i>
15	Load Data of Electrolyser in Kg	<i>Bidder to specify</i>
16	No. of Containers and their weight in Kg	<i>Bidder to specify</i>

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Annexure - “C”

BID EVALUATION CRITERIA

BID EVALUATION CRITERIA

1. Selection of Successful Bidder (Evaluation Methodology) :

Techno-Economic evaluation of the technically acceptable bids will be carried out for the final selection of Bidder as described below:

Selection of the bidder shall be based on the calculated Levelized Cost of Hydrogen (LCOH) produced considering only Bidder scope.

1. The LCOH shall be calculated as per the formula mentioned below:

$$\text{LCOH (Rs/Kg)} = \text{N (NPV of total cost of bidder scope)} / \text{H (Total H}_2\text{ production in 10 yrs)}$$

Where: -

Total Cost of bidder scope = Total CapEx of bidder scope (C) + Total OpEx (O) in 10 yrs,

CapEx (C) = Total cost as quoted by bidder including taxes as applicable.

OpEx (O) = O1+O2+O3 (As mentioned below)

N = NPV of total cost of bidder scope

H = Total Qty. of H₂ produced in 10 yrs i.e. 17 Kg per Hr x 8000 hrs per year x 10 Yrs.

O1 = Cost of total power consumed in 10 yrs. @ Rs 5.0 per KWhr.

O2 = Total cost of utilities consumptions in 10 yrs. as mentioned by bidder in his technical bid.

O3 = Total cost of comprehensive O&M in 10 yrs. as mentioned by bidder in his technical bid.

2. The total period for NPV calculation shall be total 11 yrs.

3. The Discount rate for NPV calculation shall be considered @ 10% in this technical bid.

4. The cash flow for the 1st year shall be the total CapEx (C) only, as quoted by bidder. The OpEx(O) shall be considered for the next 10 yrs, starting from 2nd year.

5. The total O&M costs (O3) shall be considered for 10 yrs, which shall start after the successful SAT.

6. The bidder with least LCOH value (Rs/kg) shall be selected as successful bidder.

7. The unit shall be considered operating 8000 hrs each year at 100 % throughput.

8. Utilities consumption shall be calculated considering 8000 hrs per years for all the 10 years.

9. For LCOH calculation, the Hydrogen production rate shall be considered @ 17 Kg/hr for all the 10 yrs. Total 8000 operating hrs. shall be considered for each yr. for all the 10 yrs.

10. Following prices of utilities shall be considered for LCOH calculation only, for all the 10(Ten) yrs.:

Sl. No	Stream	Unit	Price
1	Cost of renewable power	Rs/kwh	5.0
2	DM water	Rs/ KL	126.6
3	Nitrogen	Rs/Nm3	12
4	Cooling water	Rs/ KL	1.34
5	KOH or NaOH etc.	Rs/ kg	50

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Dr. [Signature]

Dr. [Signature]

11. Bidder shall submit following information required for calculation of LCOH, as per the table given below in the price bid only:

Sl. No	Stream	UOM	
i	DM water consumption as feed to unit for H2 production @ 17 Kg/hr.	KL/hr	To quote in Price Bid
ii	Electricity Power consumption by the electrolyser system/s, for 17 Kg /hr of H2 production.	KW hr	To quote in Price Bid
iii	Electricity Power consumption excluding electrolyser system (BOP), for 17 Kg/hr of H2 production.	KW hr	To quote in Price Bid
iv	Cooling water flow requirement for BoP	KL/hr	To quote in Price Bid
v	N2 consumption at B/L	Nm3/hr	To quote in Price Bid
vi	KOH/NaOH or other chemical/s as required	Kg/yr	To quote in Price Bid
vii	Cost of other utilities, if applicable.	Rs/hr	To quote in Price Bid

12. CapEx (C) shall be considered as quoted by the Bidder in its price bid.

13. The guaranteed life cycle of electrolyser system shall not be less than 80000 hours.

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DEED OF JOINT UNDERTAKING

FORM OF DEED OF JOINT UNDERTAKING TO BE PROVIDED BY CONTRACTOR AND MANUFACTURER/CHANNEL PARTNER ALONG WITH BID AS PER Clause 1.2 of BEC, SCC

(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)

DEED OF JOINT UNDERTAKING TO BE EXECUTED BY THE BIDDER / CONTRACTOR MEETING THE REQUIREMENTS OF CLAUSE 1.2 of BEC AND THE MANUFACTURER WHO MEETS THE REQUIREMENT OF CLAUSE 1.1 of BEC FOR SUCCESSFUL PERFORMANCE OF THE CONTRACT.

The DEED OF UNDERTAKING executed thisday ofTwo thousandby M/s.....a Company incorporated underhaving its Registered Office at..... (hereinafter called the "Bidder/Contractor", which expression shall include its successors, administrators, executors and permitted assigns) and M/sa Company registered under the..... having its Registered Office at(hereinafter called the "Manufacturer/Channel partner of "manufacturer name", which expression shall include its successors, administrators, executors and permitted assigns) in favour of BHEL, A Government of India Enterprise, incorporated under the Companies Act, 1956, having its Registered Office at BHEL HEPP, Haridwar-249403 (hereinafter called "BHEL " or "Employer" which expression shall include its successors, administrators, executors and assigns).

WHEREAS, the Employer invited Bids for **Establish a plant of 1 MW capacity in Himachal Pradesh for production of High Purity (99.999%) Green Hydrogen for commercial use**, in line with Special Conditions of Contract (SCC) of Tender No.....

AND WHEREAS vide clause 1.2 of BEC of bidding documents, it has been specified that bidder who meets the required experience vide clause 1.2 of BEC shall also have an Agreement as on the date of Techno-Commercial bid opening with Manufacturer who meets the criteria and furnish a Deed of Joint Undertaking as per the requirement of clause 1.2 of BEC.

WHEREAS M/s..... (Bidder) is submitting its proposal in response to the Invitation for Bid by the Employer bearing Tender No dated for 'Design, Engineering, Supply, Installation & Commissioning of Water Electrolyser System, for 17 KG/HR, of Green Hydrogen Production'

AND WHEREAS M/s(Bidder) meets the requirements specified at clause 1.2 of BEC and have an Agreement as on the date of Techno Commercial bid opening with M/s..... (hereinafter referred to as Manufacturer/Channel partner of manufacturer) who meets the requirements as specified in BEC. The Bidder and the Manufacturer/Channel partner of manufacturer are required to jointly execute and furnish along with the bid an irrevocable Deed of Joint Undertaking and be jointly responsible and bound unto the Employer for successful performance of the Contract

NOW THEREFORE, THIS DEED WITNESSETH AS UNDER:

That in consideration of the Award of the Contract by the Employer to the Contractor, we the Manufacturer of Alkaline Water Electrolyser (AEL) / Anion Exchange Membrane (AEM) / Proton exchange membrane (PEM) / Alkaline Membrane Solid Electrolyser (AMSE) / Solid Oxide Electrolyser (SOE) technology based Hydrogen Generation System and the Contractor, do hereby declare and undertake the following:

1. That we shall be jointly responsible to the Employer for the execution and successful performance of the complete Package and for performance of all the contractual obligations, as specified under the said contract(s).
2. Without prejudice to the generality of the Undertaking in paragraph 1 above, the manner of achieving the objective set forth in paragraph 1 above shall be as follows:
 - a. We the Manufacturer/ Channel partner of manufacturer shall be fully responsible for the complete Package. Further, the Manufacturer/ Channel partner of manufacturer shall depute their technical experts from time to time to the Contractor's works / Employer's project site as required by the Employer and agreed to by Contractor / Manufacturer to facilitate the successful performance of the Contract as stipulated in the aforesaid Contract and if necessary, the Manufacturer/ Channel partner of manufacturer shall advise the Contractor for suitable modifications of design and implement necessary corrective measures to discharge the obligations under the contract.
 - b. In the event the Manufacturer/ Channel partner of manufacturer and Contractor fail to demonstrate guaranteed parameters as specified in the contract, the Manufacturer and the Contractor shall promptly carry out all the corrective measures related to engineering services at their own expense and shall promptly provide corrected design to the Employer.
 - c. Implementation of the corrected design and all other necessary repairs, replacements, rectification or modifications to the Package work and payment of financial liabilities and penalties and fulfillment of all other contractual obligations as provided under the Contract shall be the responsibility of the Contractor.
 - d. In the event the Contractor fails to complete the project, BHEL shall have the right to carry-out unfinished work through technology provider or any other agency at the bidder's risk and cost.

This Deed of Joint Undertaking shall be valid till **05 years** from the final bid submission close date. We, the Contractor and the Manufacturer/ Channel partner of manufacturer do hereby undertake and confirm that the undertaking herein contained shall be irrevocable and shall not be revoked till expiry of validity period of Deed of Joint Undertaking mentioned above. In case of delay in completion of contract, the validity of this Deed of Joint Undertaking shall be extended by such period of delay beyond the validity period mentioned above. We further agree that this Undertaking shall be without any prejudice to the various liabilities of the Contractor including Contract Performance Security as well as other obligations of the Contractor in terms of the Contract.

1. Any dispute that may arise in connection with this Deed of Joint Undertaking shall be settled as per arbitration procedure/rules mentioned in the Instruction to Bidders (ITB) of the tender document. This Deed of Joint Undertaking shall

be construed and interpreted in accordance with the Laws of India and District Haridwar shall have exclusive jurisdiction.

2. We, the Manufacturer and the Contractor agree that this Undertaking shall form an integral part of the Contract. We further agree that this Undertaking shall continue to be enforceable till its validity.
3. That this Deed of Joint Undertaking shall be operative from the effective date of the Contract.

IN WITNESS WHEREOF, the Manufacturer/ Channel partner of manufacturer and the Contractor through their authorized representatives have executed these presents and affixed common seal of their respective companies, on the day, month and year first mentioned above.

For (Employer) M/s

Witness:

.....
(Signature of the Authorized Representative)
Name:
Designation:
Common Seal of the Company

.....
(Signature of the Witness)
Name:
Address:

**For (Manufacturer/ Channel partner of manufacturer)
M/s**

Witness:

.....
(Signature of the Authorized Representative)
Name:
Designation:
Common Seal of the Company

.....
(Signature of the Witness)
Name:
Address:

Note: Power of Attorney of the person signing on behalf of Manufacturer and Bidder is to be furnished by Bidder.

ANNEXURE-E

OTHER IMPORTANT TERMS AND CONDITIONS

A. PAYMENT TERMS

Milest one No.	Payment Milestone	% of Lump-Sum Value
1	Supply of all the Electrolyser System along with Compressor (if applicable), Centralized PLC all mandatory spares along with its accessories at designated site.	50 %
2	Successful completion of fabrication, installation & commissioning of all the works in scope of work in all respects(excluding PGTR).	20 %
3	Site Acceptance Test (SAT) of the entire Green Hydrogen Plant.	10 %
4	On successful completion of PGTR of entire Green Hydrogen Plant, as specified, and issuance of Operational Acceptance Certificate	20 %
5	For O&M Period of the Contract after final completion of above Milestone 1 to 4	Quarterly

NOTE:

- i. Milestone payment above to be done within 45 days from realization of fund from M/s OIL.
- ii. Payment of O&M Charges shall be released on pro-rata basis in quarterly instalment at the end of each quarter against bills duly certified by BHEL for satisfactory performance.
- iii. All Charges related to travel, accommodation and local conveyance shall be inclusive in O&M charges. Refer detail scope of work of O&M in the tender document.
- iv. Quoted Prices shall be firm and fixed till complete execution of the entire order.
- v. Comprehensive O&M Contract must be provided for the ten (10) years @ 5 % escalation every year which shall start after the commissioning of the plant.

B. SPECIAL CONDITIONS OF CONTRACT (SCC)

S. No.	Contract terms	Special Conditions
1	MOBILIZATION	30 days from the date of issue of LOA
2	DURATION OF CONTRACT	This CONTRACT shall remain valid for a period of 15 months from the date of issue of LOA.
3	INSPECTION & TESTING	As per BHEL Technical Specification PBTU ES/BHEL GISTC
4	PERFORMANCE SECURITY	Waived Off
5	EMD	Waived Off
6	BID BOND	Within 30 days of signing DJU/MOU, 1 % of the Value of MOU shall be taken from bidder in the form of Bank Guarantee or security. This may be relaxed for registered vendors of BHEL.
7	SETTLEMENT OF DISPUTES / ARBITRATION	As per BHEL GISTC (Version June-2021, Rev: 06). Haridwar
8	LIQUIDATED DAMAGES	As per BHEL GISTC (Version June-2021, Rev: 06). Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on the value of respective delayed supplies subject to a maximum of 10% of the value of respective delayed supplies. Value of delayed supplies will mean the Gross Value payable to the vendor (Before LD) against such supplies excluding taxes and duties.
9	PAYMENT TERMS	Payment terms will be as specified in Payment terms in Annexure 'E'.
10	RISK PURCHASE	As per BHEL GISTC (Version June-2021, Rev: 06)
11	GUARANTEE / WARRANTY AND CORRESPONDING REPAIRS / REPLACEMENT OF GOODS	As per BHEL GISTC (Version June-2021, Rev: 06)
12	FORCE MAJEURE CLAUSE.	As per BHEL GISTC (Version June-2021, Rev: 06)
13.	LOCATION OF JOB	HIMACHAL PRADESH
14.	DEFECT LIABILITY PERIOD	12 (Twelve) months from the date of handover as accepted and certified by BHEL/OIL

C. GENERAL CONDITIONS OF THE CONTRACT

1. GENERAL OBLIGATION OF CONTRACTOR:

CONTRACTOR shall, in accordance with and subject to the terms and conditions of this Contract:

- 1.1 Perform the work described in the Terms of Reference / Scope of Work. The CONTRACTOR shall execute the work with professional competence and in an efficient and workman like manner.
- 1.2 Except as otherwise provided in the Terms of Reference and the special Conditions of the contract, employ all labours/ personnel as required to perform the work.
- 1.3 Perform all other obligations, work and services which are required by the terms of this contract or which reasonably can be implied from such terms as being necessary for the successful and timely completion of the work.
- 1.4 Comply with all applicable statutory obligations specified in the contract.
- 1.5 CONTRACTOR shall be deemed to have satisfied himself before submitting their bid as to the correctness and sufficiency of its bid for the services required and of the rates and prices quoted, which rates and prices shall, except insofar as otherwise provided, cover all its obligations under the contract.
- 1.6 CONTRACTOR shall be deemed, prior to submitting their bids, to have satisfied themselves about the weather conditions, working culture in the area, socio- political environment, safety & security aspects, law & order situation and law of the land, and obtain for themselves all necessary information as to the risks, contingencies and all other circumstances, which may influence or affect the various obligations under the Contract.
- 1.7 CONTRACTOR shall give or provide all necessary supervision during the performance of the services and as long thereafter within the warranty period as COMPANY may consider necessary for the proper fulfilling of CONTRACTOR's obligations under the contract.

2. GENERAL OBLIGATION OF COMPANY:

- 2.1 COMPANY shall, in accordance with and subject to the terms and conditions of this contract:
- 2.2 Pay CONTRACTOR in accordance with terms and conditions of the contract.
- 2.3 Allow CONTRACTOR access, subject to normal security and safety procedures, to all areas as required for orderly performance of the work as specified in the Scope of Works of the contract or work connected therewith.
- 2.4 Perform all other obligations required of COMPANY by the terms of this contract.

3. DUTIES AND POWER / AUTHORITY:

3.1 BHEL's site representative / engineer:

The duties and authorities of BHEL's site representative / engineer are to act on behalf of BHEL for:

- 3.1.1 Overall supervision, Co-ordination and Project Management at site
- 3.1.2 Proper and optimum utilization of equipment and services.

- 3.1.3 Monitoring of performance and progress
- 3.1.4 Commenting / countersigning on reports made by the CONTRACTOR's representative at site in respect of works, receipts, consumption etc. after satisfying himself with the facts of the respective cases.
- 3.1.5 He shall have the authority, but not obligation at all times and any time to inspect / test / examine / verify any equipment machinery, instruments, tools, materials, personnel, procedures and reports etc. directly or indirectly pertaining to the execution of the work. However, this shall not construe to imply an acceptance by the inspector.

Hence, the overall responsibility of quality of work shall rest solely with the CONTRACTOR.

- 3.1.6 Each and every document emerging from site in support of any claim by the CONTRACTOR has to have the countersignature / comments of the BHEL's representative / engineer without which no claim shall be entertained by the BHEL.

3.2 CONTRACTOR's Representative:

(a) The CONTRACTOR's representative shall have all the powers requisite for the performance of the Service/Works, subject to holding due authorization from the CONTRACTOR.

(b) Representative(s) shall liaise with BHEL's representative /engineer for the proper Co-ordination and timely completion of the works and on any matter pertaining to the works.

(c) Representative(s) shall extend full co-operation to BHEL's representative/inspector /engineer in the manner required by them for supervision/inspection/observation of equipment, material, procedures, performance, reports and records pertaining to works.

(d) To have complete charge of CONTRACTOR's personnel engaged in the performance of the work and to ensure compliance of rules and regulations and safety practice.

4. PERSONNEL TO BE DEPLOYED BY CONTRACTOR:

CONTRACTOR warrants that it shall provide competent, qualified and sufficiently experienced personnel to perform the work correctly and efficiently.

- 4.1.1 The CONTRACTOR should ensure that their personnel observe all statutory safety requirement including those prescribed by the COMPANY. Upon COMPANY's written request, CONTRACTOR, entirely at its own expense, shall remove immediately any personnel of the CONTRACTOR determined by the COMPANY to be unsuitable and shall promptly replace such personnel with personnel acceptable to the COMPANY. Replacement personnel should be mobilized within 15 days from the date of issuance of notice without affecting the operation of the COMPANY.
- 4.1.2 The CONTRACTOR shall be solely responsible throughout the period of the contract for providing all requirements of their personnel including but not limited to, their transportation to & fro from Duliajan/field site, enroute/local boarding, lodging, personal protective gear & medical attention etc. COMPANY shall have no responsibility or liability in this regard.

- 4.1.3 However, COMPANY shall provide available medical assistance/facilities to CONTRACTOR's Personnel in case of emergency at its own establishment on chargeable basis.
- 4.1.4 CONTRACTOR's key personnel shall be fluent in English language (both writing and speaking).

5. **SIGNING OF CONTRACT:**

The successful bidder is required to sign a Deed of Joint Undertaking with BHEL within a maximum period of 30 days of date of LOA. Until the contract is signed, the LOA as well as all terms and conditions along with BHEL GISTC as prescribed in the Tender, shall remain binding amongst the two parties. In the event of failure on the part of the successful Bidder to sign the contract, BHEL reserves the right to terminate the LOA issued to the successful Bidder and invoke the Bid Security or the Performance Security if submitted by the successful Bidder. Such CONTRACTOR shall be put on holiday as per the Banning Policy of BHEL [available at www.bhel.com, www.bhelhwr.co.in].

6. **CLAIMS, TAXES & DUTIES:**

- 6.1 **Claims:** CONTRACTOR agrees to pay all claims, taxes and fees for equipment, labour, materials, services and supplies to be furnished by it hereunder and agrees to allow no lien or charge resulting from such claims to be fixed upon any property of COMPANY. COMPANY may, at its option, pay and discharge any liens or overdue charges for CONTRACTOR's equipment, labour, materials, services and supplies under this CONTRACT and may thereupon deduct the amount or amounts so paid from any sum due, or thereafter become due, to CONTRACTOR hereunder.
- 6.2 **Notice of claims:** CONTRACTOR or COMPANY, as the case may be, shall promptly give the other, notice in writing of any claim made or proceeding commenced for which that party is entitled to indemnification under the CONTRACT. Each party shall confer with the other concerning the defense of any such claims or proceeding, shall permit the other to be represented by counsel in defense thereof, and shall not affect settlement of or compromise any such claim or proceeding without the other's written consent.
- 6.3 **Taxes:**
 - 6.3.1 CONTRACTOR, unless specified otherwise in the CONTRACT, shall bear all tax liabilities, duties, Govt. levies etc. including GST and customs duty, Corporate and personnel taxes levied or imposed on the CONTRACTOR on account of payments received by it from the COMPANY for the work done under this CONTRACT. It shall be the responsibility of CONTRACTOR to submit to the concerned Indian authorities, the returns and all other concerned documents required for this purpose and to comply in all respects with the requirements of the laws in this regard, in time.
 - 6.3.2 Tax levied on CONTRACTOR as per the provisions of Indian Income Tax Act and any other enactment/rules on income derived/payments received under the contract will be on CONTRACTOR's account.
 - 6.3.3 CONTRACTOR shall be responsible for payment of personal taxes, if any, for all the personnel deployed in India by CONTRACTOR.
 - 6.3.4 The CONTRACTOR shall furnish to the COMPANY, if and when called upon to do so, relevant statement of accounts or any other information pertaining to work done under the contract for submitting the same to the Tax authorities, on specific request from them in accordance with provisions under the law. CONTRACTOR shall be responsible for preparing and filing the return of income etc. within the prescribed time limit to the appropriate authority.
 - 6.3.5 Prior to start of operations under the contract, the CONTRACTOR shall furnish the COMPANY with the necessary documents, as asked for by the COMPANY and/ or any other information pertaining to the contract, which may be required to be submitted to the Income Tax

authorities at the time of obtaining "No Objection Certificate" for releasing payments to the CONTRACTOR.

- 6.3.6 Corporate income tax will be deducted at source from the invoice at the specified rate of income tax as per the provisions of Indian Income Tax Act as may be in force from time to time and COMPANY will issue TDS Certificate to the CONTRACTOR as per the provisions of Income Tax Act.
- 6.3.7 Corporate and personnel taxes on CONTRACTOR shall be the liability of the CONTRACTOR and the COMPANY shall not assume any responsibility on this account.
- 6.3.8 All local taxes, levies and duties, sales tax, Octroi, etc. on purchases and sales made by CONTRACTOR shall be borne by the CONTRACTOR.
- 6.3.9 CONTRACTOR shall provide all the necessary compliances/ invoice/documents for enabling BHEL to avail Input tax credit benefits in respect of the payments of GST which are payable against the CONTRACT. The CONTRACTOR should provide tax invoice issued under GST legislations for the goods and Services (indicating GST). Payment towards the components of GST shall be released by BHEL only against appropriate documents i.e.: Tax Invoice/Bill of entry for availing input tax credit (as applicable).
- 6.3.10 The tax invoices as per above provisions should contain all the particulars as required under the invoicing rules under the GST legislations, including, but not limited to the following:
- i. Name, Address and the GST Registration Number (under the relevant Tax Rules) of the Service Provider (CONTRACTOR)
 - ii. Name and Address and GST Registration Number of the Service Receiver (Address of BHEL)
 - iii. Description, Classification and Value of taxable service/goods and the amount of applicable tax (CGST, SGST, IGST, UTGST and Cess)
- 6.3.11 In case of imported goods, CONTRACTOR/supplier is required to provide original Bill of Entry or copy of Bill of Entry duly attested by Custom authority.
- 6.3.12 The CONTRACTOR should mention the Place of supply in the invoice raised under GST Law.
- 6.3.13 BHEL would not accept any invoice without its GSTIN mentioned on the invoice

Note: CONTRACTOR who is under composition levy of the GST legislation would raise Bill of supply instead of Tax invoice, which will have GSTIN of supplier as well as BHEL.

6.4 **Goods and Services Tax:**

- 6.4.1 "GST" shall mean Goods and Services Tax charged on the supply of material(s) and services. The term "GST" shall be construed to include the Integrated Goods and Services Tax (hereinafter referred to as "IGST") or Central Goods and Services Tax (hereinafter referred to as "CGST") or State Goods and Services Tax (hereinafter referred to as "SGST") or Union Territory Goods and Services Tax (hereinafter referred to as "UTGST") depending upon the import/interstate or intrastate supplies, as the case may be. It shall also mean GST compensation Cess, if applicable.
- 6.4.2 Where the BHEL is entitled to avail the input tax credit of GST:

BHEL will reimburse the GST to the Supplier of Goods / Services (Service Provider) at actual against submission of Invoices as per format specified in rules / regulation of GST to enable BHEL to claim input tax credit of GST paid. In case of any variation in the executed quantities, the amount on which the GST is applicable shall be modified in same proportion. Returns and

details required to be filled under GST laws & rules should be timely filed by supplier with requisite details.

6.4.3 Where the BHEL is not entitled to avail/take the full input tax credit of GST:

BHEL will reimburse GST to the Supplier of Goods / Services (Service Provider) at actual against submission of Invoices as per format specified in rules/ regulation of GST subject to the ceiling amount of GST as quoted by the bidder. In case of any variation in the executed quantities (If directed and/or certified by the In- Charge) the ceiling amount on which GST is applicable will be modified on pro- rata basis.

6.4.4 The CONTRACTOR will be under obligation for charging correct rate of tax as prescribed under the respective tax laws. Further the CONTRACTOR shall avail and pass on benefits of all exemptions/concessions available under tax laws. Any error of interpretation of applicability of taxes/ duties by the CONTRACTOR shall be to CONTRACTOR's account.

6.4.5 In case of statutory variation in GST, other than due to change in turnover, payable on the contract value during contract period, the Supplier of Goods/ Services (Service Provider) shall submit a copy of the 'Government Notification' to evidence the rate as applicable on the Bid due date and on the date of revision.

6.4.6 Beyond the contract period, in case BHEL is not entitled for input tax credit of GST, then any increase in the rate of GST beyond the contractual delivery period shall be to Service provider's account whereas any decrease in the rate GST shall be passed on to the BHEL.

6.4.7 Beyond the contract period, in case BHEL is entitled for input tax credit of GST, then statutory variation in applicable GST on supply and on incidental services, shall be to BHEL's account.

6.4.8 Claim for payment of GST / Statutory variation, should be raised within two [02] months from the date of issue of 'Government Notification' for payment of differential (in %) GST, otherwise claim in respect of above shall not be entertained for payment of arrears.

6.4.9 The base date for the purpose of applying statutory variation shall be the Bid Opening Date.

6.4.10 The CONTRACTOR will be liable to ensure to have registered with the respective tax authorities, wherever applicable and to submit self- attested copy of such registration certificate(s) and the CONTRACTOR will be responsible for procurement of material in its own registration (GSTIN) and also to issue its own Road Permit/ E-way Bill, if applicable etc.

6.5 Anti-profiteering clause

6.5.1 As per Clause 171 of GST Act it is mandatory to pass on the benefit due to reduction in rate of tax or from input tax credit to the consumer by way of commensurate reduction in prices.

6.5.2 In case rating of Contractor is negative/black listed after award of work for supply of goods/services, then BHEL shall not be obligated or liable to pay or reimburse GST to such vendor / Contractor and shall also be entitled to deduct / recover such GST along with all penalties/interest, if any, incurred by BHEL.

7. CUSTOMS DUTY, IF APPLICABLE:

7.1 CONTRACTOR shall be responsible to import the equipment / tools / spares / consumables etc. required for execution of the contract. The CONTRACTOR shall undertake to complete all the formalities as required under the Customs Act/Foreign Trade Policy (FTP) and indemnify BHEL from all the liabilities of Customs in this regard.

7.2 CONTRACTOR will be solely responsible for payment of all applicable Customs Duty and to comply all Rules and Regulations. Total Contract Price/Value is inclusive of all Customs Duty, if not mentioned otherwise elsewhere in the Contract.

7.3 Above clause is to be read with Customs Duty Clause in SCC, if any.

8. INSURANCE:

8.1 CONTRACTOR shall at his own expense arrange secure and maintain insurance with reputed insurance companies to the satisfaction of the Company as follows:

Contractor at his cost shall arrange, secure and maintain insurance as may be necessary and to its full value for all such amounts to protect the works in progress from time to time and the interest of Company against all risks as detailed herein. The form and the limit of such insurance, as defined here in together with the under works thereof in each case should be as acceptable to the Company. However, irrespective of work acceptance the responsibility to maintain adequate insurance coverage at all times during the period of Contract shall be that of Contractor alone. Contractor's failure in this regard shall not relieve him of any of his responsibilities & obligations under Contract. All costs on account of insurance liabilities covered under Contract will be to Contractor's account and will be included in Value of Contract. However, the Company may from time to time, during the currency of the Contract, ask the Contractor in writing to limit the insurance coverage risk and in such a case, the parties to the Contract will agree for a mutual settlement, for reduction in value of Contract to the extent of reduced premium amounts. Contractor shall cover insurance with Indian Insurance Companies.

8.2 Any deductible set forth in any of the above insurance shall be borne by Contractor.

8.3 CONTRACTOR shall require all of his sub-Contractor to provide such of the foregoing insurance coverage as Contractor is obliged to provide under this Contract and inform the Company about the coverage prior to the commencement of agreements with its sub-Contractors.

8.4 All insurance taken out by Contractor or their sub-contractor shall be endorsed to provide that the underwriters waive their rights of recourse on the Company and to the extent of the liabilities assumed by Contractor under this Contract.

8.5 Certificate of Insurance:

Before commencing performance of the CONTRACT, CONTRACTOR shall furnish BHEL with certificates of insurance indicating:

- a) Kinds and amounts of insurance as required herein
- b) Details of coverage
- c) Insurance corporation or companies carrying the aforesaid coverage
- d) Effective and expiry dates of policies
- e) That BHEL shall be given thirty (30) days written advance notice of any material change in the policy
- f) Waiver of subrogation endorsement has been attached to all policies and
- g) The territorial limits of all policies.

8.6 Contractor shall also inform the Company at least 60 days in advance regarding the expiry cancellation and / or changes in any of such documents & ensure revalidation / renewal, etc., as may be necessary well in time.

8.7 If any of the above policy expire or/are cancelled during the term of this CONTRACT and CONTRACTOR fails for any reason to renew such policies, BHEL in no case shall be liable for any

loss/damage occurred during the term when the policy is not effective. Furthermore, a penal interest @ 1% of the Total contract value shall be charged towards not fulfilling of the contractual obligations. Notwithstanding above, should there be a lapse in any insurance required to be taken by the Contractor for any reason whatsoever, loss / damage claims resulting therefrom shall be to the sole account of Contractor.

- 8.8 Contractor on demand from Company shall furnish the Insurance Policy having detail terms and conditions, with respect to any Certificate of Insurance submitted to the Company.

CONTRACTOR shall, at his own expense, arrange appropriate comprehensive insurance to cover all risks assumed by the CONTRACTOR under this CONTRACT in respect of CONTRACTOR's equipment, tools and any other belongings of the CONTRACTOR and its personnel as well deputed under this CONTRACT during the entire period of their engagement in connection with this CONTRACT including extensions if any. The CONTRACTOR shall also carry adequate insurance cover against damage/loss to third party person/property. BHEL will have no liability on this account.

8.9 Principal Assured:

The following are to be included as Principal Assured(s) in the Insurance Policies (except in case of Workmen's Compensation / Employer's Liability insurance):

"Bharat Heavy Electrical Ltd., and CONTRACTOR's name (as appearing in the Contract/LOA)"

8.10 Waiver of subrogation:

All insurance policies of the CONTRACTOR with respect to the operations conducted hereunder as set forth in clauses hereof, shall be endorsed by the underwriter in accordance with the following policy wording:

"The insurers hereby waive their rights of subrogation against BHEL or any of their employees or their affiliates and assignees".

8.11 Deductible:

The CONTRACTOR shall take policy with minimum deductible as per IRDA prescribed for the policy(ies). That portion of any loss not covered by insurance provided for in this article solely by reason of deductible provision in such insurance policies shall be to the account of the CONTRACTOR.

8.12 Compliance with Sec 25(1), of "The General Insurance Business (Nationalization) Act 1972"

Section 25(1) of "The General Insurance Business (Nationalization) Act 1972" is reproduced below:

"No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government".

The above requirement of aforesaid Act needs to be complied with by the CONTRACTOR wherever the aforesaid provisions of Act apply, and compliance confirmations submitted.

8.13 **Loss Payee Clause:**

The Insurance Policies should mention the following in Loss Payee Clause:

“In respect of Insurance claims in which BHEL’s interest is involved, written consent of BHEL will be required”.

8.14 **On account payment to BHEL in case of claim**

In case any loss or damage happen and where BHEL’s interest is involved, BHEL reserves the right to recover the loss amount from the CONTRACTOR prior to final settlement of the claim.

8.15 CONTRACTOR shall require all of its SUB-CONTRACTORS to provide such of the foregoing insurance cover as the CONTRACTOR is obligated to provide under this CONTRACT.

8.16 CONTRACTOR shall at all time during the currency of the contract provide, pay for and maintain the following insurance amongst others:

- i) **Workman Compensation and / Employers’ Liability Insurance:** Workmen's compensation and employer's liability insurance as required by the laws of the country of origin of the employee.
- ii) **Commercial General Liability Insurance:** Commercial General Public Liability Insurance covering liabilities including contractual liability for bodily injury, including death of persons, and liabilities for damage of property. This insurance must cover all operations of CONTRACTOR required to fulfil the provisions under this Contract.
- iii) **Comprehensive General Automotive Liability:** Automobile Public Liability Insurance covering owned, non-owned and hired automobiles used in the performance of the work hereunder, with bodily injury limits and property damage limits shall be governed by Indian Insurance Regulations.
- iv) **Carrier’s Legal Liability Insurance:** Carrier’s Legal Liability Insurance in respect of **all CONTRACTOR’s items** to be transported by the CONTRACTOR to the site of work, for physical loss or destruction of or damage to goods or merchandise, while in transit.
- v) **Public Liability Act Policy:** Public Liability Act Policy covering the statutory liability arising out of accidents occurring during the currency of the contract due to handling hazardous substances as provided in the Public Liability Insurance Act 1991 and the Rules framed there under.
- vi) **Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY):** CONTRACTOR shall, ensure that all his/ its personnel deployed under this contract have obtained additional insurance coverage under the Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) through the participating banks and submit the proof of such insurance coverage to the satisfaction of BHEL.
- vii) CONTRACTOR's equipment used for execution of the work hereunder shall have an insurance cover with a suitable limit (as per international standards).
- viii) **Any other insurance policy set forth in the SCC**

Note: An undertaking by the service provider has to be mandatorily provided during the Mobilization time that they have taken all the Insurance provisions as per the contract and as the Law and Insurance Regulation.

9.0 LIABILITY:

- 9.1** Except as otherwise expressly provided herein, neither COMPANY nor its servants, agents, nominees, CONTRACTORS, or sub- CONTRACTORS shall have any liability or responsibility whatsoever to whomsoever for loss of or damage to the equipment and/or loss of or damage to the property of the CONTRACTOR and/or their CONTRACTORS or sub-CONTRACTORS, irrespective of how such loss or damage is caused and even if caused by the negligence of COMPANY and/or its servants, agent, nominees, assignees, CONTRACTORS and sub-CONTRACTORS.
- 9.2** The CONTRACTOR shall protect, defend, indemnify and hold harmless COMPANY from and against such loss or damage and any suit, claim or expense resulting there from. Neither COMPANY nor its servants, agents, nominees, assignees, CONTRACTORS, sub-CONTRACTORS shall have any liability or responsibility whatsoever for injury to, illness, or death of any employee of the CONTRACTOR and/or of its CONTRACTORS or subCONTRACTOR irrespective of how such injury, illness or death is caused and even if caused by the negligence of COMPANY and/or its servants, agents nominees, assignees, CONTRACTORS and sub-CONTRACTORS. CONTRACTOR shall protect, defend, indemnify and hold harmless COMPANY from and against such liabilities and any suit, claim or expense resulting there from.
- 9.3** The CONTRACTOR hereby agrees to waive its right of recourse and further agrees to cause its underwriters to waive their right of subrogation against COMPANY and/or its underwriters, servants, agents, nominees, assignees, CONTRACTORS and sub-CONTRACTORS for loss or damage to the equipment of the CONTRACTOR and/or its sub-CONTRACTORS and/or their employees when such loss or damage or liabilities arises out of or in connection with the performance of the contract limited to the CONTRACTOR's liabilities agreed to under this Contract.
- 9.4** The CONTRACTOR hereby further agrees to waive its right of recourse and agrees to cause its underwriters to waive their right of subrogation against COMPANY and/or its underwriters, servants, agents, nominees, assignees, CONTRACTORS and sub-CONTRACTORS for injury to, illness or death of any employee of the CONTRACTOR and of its CONTRACTORS, sub-CONTRACTORS and/or their employees when such injury, illness or death arises out of or in connection with the performance of the contract limited to the CONTRACTOR's liabilities agreed to under this Contract.
- 9.5** Except as otherwise expressly provided herein, neither CONTRACTOR nor its servants, agents, nominees, CONTRACTORS or sub- CONTRACTORS shall have any liability or responsibility whatsoever to whomsoever for loss of or damage to the equipment and/or loss or damage to the property of the COMPANY and/or their CONTRACTORS or sub-CONTRACTORS, irrespective of how such loss or damage is caused and even if caused by the negligence of CONTRACTOR and/or its servants, agents, nominees, assignees, CONTRACTORS and sub- CONTRACTORS. The COMPANY shall protect, defend, indemnify and hold harmless CONTRACTOR from and against such loss or damage and any suit, claim or expense resulting there from.
- 9.6** Except as otherwise expressly provided herein, neither CONTRACTOR nor its servants, agents, nominees, assignees, CONTRACTORS, sub- CONTRACTORS shall have any liability or

responsibility whatsoever to whomsoever for injury or illness, or death of any employee of the COMPANY and/or of its CONTRACTORS or sub- CONTRACTORS irrespective of how such injury, illness or death is caused and even if caused by the negligence of CONTRACTOR and/or its servants, agents, nominees, assignees, CONTRACTORS and sub- CONTRACTORS. COMPANY shall protect, defend indemnify and hold harmless CONTRACTOR from and against such liabilities and any suit, claim or expense resulting there from.

- 9.7 The COMPANY agrees to waive its right of recourse and further agrees to cause its underwriters to waive their right of subrogation against CONTRACTOR and/or its underwriters, servants, agents, nominees, assignees, CONTRACTORS and sub-CONTRACTORS for loss or damage to the equipment of COMPANY and/or its CONTRACTORS or sub-CONTRACTORS when such loss or damage or liabilities arises out of or in connection with the performance of the contract.
- 9.8 The COMPANY hereby further agrees to waive its right of recourse and agrees to cause its underwriters to waive their right of subrogation against CONTRACTOR and/or its underwriters, servants, agents, nominees, assignees, CONTRACTORS and sub-CONTRACTORS for injury to, illness or death of any employee of the COMPANY and of its CONTRACTORS, subCONTRACTORS and/or their employees when such injury, illness or death arises out of or in connection with the performance of the Contract.

10.0 LIMITATION OF LIABILITY:

- a) Notwithstanding any other provisions herein to the contrary, except only in cases of Wilfull misconduct and/or criminal acts and/or criminal negligence, neither the CONTRACTOR nor the COMPANY (BHEL) shall be liable to the other, whether in Contract, tort, or otherwise, for any consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided however that this exclusion shall not apply to any obligation of the CONTRACTOR to pay Liquidated Damages to the COMPANY and/or COMPANY's right to forfeit the Performance Bank Guarantee(s) in terms of the contract.
- b) Notwithstanding any other provisions incorporated elsewhere in the contract, the aggregate liability of the CONTRACTOR in respect of this contract, whether under Contract, in tort or otherwise, shall not exceed 100% of the Contract Price (if not specified otherwise in SCC), provided however that this limitation shall not apply to the cost of repairing or replacing defective equipment by the CONTRACTOR, or to any obligation of the CONTRACTOR to indemnify the COMPANY with respect to Intellectual Property Rights.
- c) COMPANY shall indemnify and keep indemnified CONTRACTOR harmless from and against any and all claims, costs, losses and liabilities in excess of the aggregate liability amount in terms of clause (b) above.

11.0 LIABILITY OF UNION GOVERNMENT OF INDIA:

It is expressly understood and agreed upon by and between CONTRACTOR and BHARAT HEAVY ELECTRICALS LIMITED, and that BHARAT HEAVY ELECTRICALS LIMITED is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that Union of India is not a party to this agreement and has no liabilities, obligations or rights, whatsoever hereunder. It is expressly understood and agreed that BHARAT HEAVY ELECTRICALS LIMITED is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles of the Contract law. The bidder/ CONTRACTOR expressly agrees, acknowledges

and understands that BHARAT HEAVY ELECTRICALS LIMITED is not an agent, representative or delegate of the Union of India. It is further understood and agreed that Union of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, bidder/ CONTRACTOR hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Union of India arising out of this contract and covenants not to sue the Union of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement.

12.0 CONSEQUENTIAL DAMAGE:

Except as otherwise expressly provided, neither party shall be liable to the other for special, indirect or consequential damages resulting from or arising out of the contract, including but without limitation, to loss or profit or business interruptions, howsoever caused and regardless of whether such loss or damage was caused by the negligence (either sole or concurrent) of either party, its employees, agents or sub- CONTRACTORS.

13.0 INDEMNITY AGREEMENT:

13.1 Except as provided hereof CONTRACTOR agrees to protect, defend, indemnify and hold COMPANY harmless from and against all claims, suits, demands and causes of action, liabilities, expenses, cost, liens and judgments of every kind and character, without limit, which may arise in favour of CONTRACTOR's employees, agents, CONTRACTORS and sub-CONTRACTORS or their employees or in favour of any third party(is) on account of bodily injury or death, or damage to personnel/property as a result of the operations contemplated hereby, regardless of whether or not said claims, demands or causes of action arise out of the negligence or otherwise, in whole or in part or other faults.

13.2 Except as provided hereof COMPANY agrees to protect, defend, indemnify and hold CONTRACTOR harmless from and against all claims, suits, demands and causes of action, liabilities, expenses, cost, liens and judgments of every kind and character, without limit, which may arise in favour of COMPANY's employees, agents, CONTRACTORS and subCONTRACTORS or their employees or in favour of any third party(is) on account of bodily injury or death, or damage to personnel/property as a result of the operations contemplated hereby, regardless of whether or not said claims, demands or causes of action arise out of the negligence or otherwise, in whole or in part or other faults.

14.0 INDEMNITY APPLICATION:

The indemnities given herein above, whether given by COMPANY or CONTRACTOR shall be without regard to fault or to the negligence of either party even though said loss, damage, liability, claim, demand, expense, cost or cause of action may be caused, occasioned by or contributed to by the negligence, either sole or concurrent of either party.

15.0 ROYALTY PATENTS:

Each party shall hold harmless and indemnify the other from and against all claim and proceedings for or on account of any patent rights, design, trade mark or other protected rights arising from any use of materials, equipment, processes, inventions and methods, which have not been imposed on the attending party by the terms of the contract or the specifications forming part thereof.

16.0 WARRANTY AND REMEDY OF DEFECTS:

16.1 CONTRACTOR warrants that they shall perform the work in a first class, workmanlike, and professional manner and in accordance with their highest degree of quality, efficiency and current state of the art technology/industry practices and in conformity with all specifications, standards and drawings set forth or referred to in the Terms of Reference and with instructions and guidance, which COMPANY may, from time to time, furnish to the CONTRACTOR.

16.2 Should COMPANY discover at any time during the tenure of the Contract or till the Unit / equipment / tools are demobilised from site or base camp (if applicable) that the work does not conform to the foregoing warranty, CONTRACTOR shall after receipt of notice from COMPANY, promptly perform any and all corrective work required to make the services conform to the Warranty. Such corrective Work shall be performed entirely at CONTRACTOR's own expenses. If such corrective Work is not performed within a reasonable time, the COMPANY, at its option may have such remedial Work performed by others and charge the cost thereof to CONTRACTOR subject to a maximum of the contract value payable for the defective work which needs corrective action which the CONTRACTOR must pay promptly. In case CONTRACTOR fails to perform remedial work, or pay promptly in respect thereof, the performance security shall be forfeited.

17.0 SUBCONTRACTING /ASSIGNMENT:

17.1 CONTRACTOR shall not subcontract, transfer or assign the contract, or any part under this contract, to any third party(ies). Except for the main services under this contract, CONTRACTOR may sub-contract the petty support services subject to COMPANY's prior written approval. However, CONTRACTOR shall be fully responsible for complete execution and performance of the services under the Contract.

17.2 Consequent upon of placement of contract, if successful bidder(s)(other than Micro /Small Enterprise) is procuring materials/services from their sub-vendor, who is a Micro or Small Enterprise registered with District Industry Centers or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of MSME with prior consent in writing of the purchasing authority/Engineer in Charge the details like Name, Registration No., Address, Contact No., details of material and value of procurement made, etc. of such enterprises shall be furnished by the CONTRACTOR at the time of submission of invoice/bill.

18.0 RECORDS, REPORTS AND INSPECTION:

The CONTRACTOR shall, at all times during the currency of the contract, permit the COMPANY and its authorized employees and representatives to inspect all the Work performed and to witness and check all the measurements and tests made in connection with the said work. The CONTRACTOR shall keep an authentic,accurate history and logs including safety records of each service item with major items consumed, which shall be open at all reasonable times for inspection by the COMPANY's designated representatives and its authorized employees. The CONTRACTOR shall provide the COMPANY's designated representatives with a daily written report, on form prescribed by the COMPANY showing details of operations during the preceding 24 hours and any other information related to the said services requested by the COMPANY whenever so requested. The CONTRACTOR shall not, without COMPANY's written consent allow

any third person(s) access to the said information or give out to any third person information in connection therewith.

19.0 CONFIDENTIALITY, USE OF CONTRACT DOCUMENTS AND INFORMATION:

19.1 CONTRACTOR shall not, without COMPANY's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing pattern, sample or information furnished by or on behalf of COMPANY in connection therewith, to any person other than a person employed by CONTRACTOR in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only, as may be necessary for purposes of such performance with prior permission from COMPANY. However, nothing hereinabove contained shall deprive the CONTRACTOR of the right to use or disclose any information which is:

- a) possessed by the CONTRACTOR, as evidenced by the CONTRACTOR's written records, before receipt thereof from the COMPANY which however the CONTRACTOR shall immediately inform to COMPANY ; or
- b) required to be disclosed by the CONTRACTOR pursuant to an order of a court of competent jurisdiction or other governmental agency having the power to order such disclosure, provided the CONTRACTOR uses its best efforts to provide timely notice to COMPANY of such order to permit COMPANY an opportunity to contest such order subject to prior permission from COMPANY.

19.2 CONTRACTOR shall not, without COMPANY's prior written consent, make use of any document or information except for purposes of performing the contract.

19.3 Any document supplied to the CONTRACTOR in relation to the contract other than the Contract itself remain the property of COMPANY and shall be returned (in all copies) to COMPANY on completion of CONTRACTOR's performance under the Contract if so required by COMPANY.

19.4 During the currency of the Contract, COMPANY and its employees, agents, other CONTRACTORS, sub-CONTRACTORS (of any tier) and their employees etc. may be exposed to certain confidential information and data of the CONTRACTOR. Such information and data held by the COMPANY, its employees, agents, other CONTRACTORS, sub-CONTRACTORS (of any tier) and their employees in the strictest Confidence and shall not be disclosed to any other party except on a need to know basis.

However, the above obligation shall not extend to information which:

- i) is, at the time of disclosure, known to the public which CONTRACTOR shall immediately inform COMPANY ;
- ii) is lawfully becomes at a later date known to the public through no fault of CONTRACTOR subject to CONTRACTOR's undertaking that no information has been divulged by them to the public;
- iii) is lawfully possessed by CONTRACTOR before receipt thereof from COMPANY which should be immediately informed to COMPANY;
- iv) is developed by CONTRACTOR independently of the information disclosed by COMPANY which should be shared with the COMPANY;

v) CONTRACTOR is required to produce before competent authorities or by court order subject to prior permission from COMPANY;

20.0 REMUNERATION AND TERMS OF PAYMENT:

- 20.1** COMPANY shall pay to the CONTRACTOR during the term of the Contract the amount due from time to time calculated according to the rates of payment set and in accordance with other provisions hereof. No other payments shall be due from COMPANY unless specifically provided for in the Contract. All payments will be made in accordance with the terms hereinafter described.
- 20.2** Request for payment/part payment to third party i.e. other than the party on whom the contract has been awarded will not be entertained by BHEL under any circumstances.
- 20.3** MANNER OF PAYMENT: All payments due by COMPANY to CONTRACTOR hereunder shall be made at CONTRACTOR's designated bank. Bank charges, if any will be on account of the CONTRACTOR.
- 20.4** Payment of any invoices shall not prejudice the right of COMPANY to question the validity of any charges therein, provided COMPANY within one year after the date of payment shall make and deliver to CONTRACTOR written notice of objection to any item or items the validity of which COMPANY questions.
- 20.5** INVOICES: Mobilization charges will be invoiced only upon completion of mobilization as certified by COMPANY representative and CONTRACTOR is ready at site for starting the services / operation. Payment of mobilization charges shall be made within 45 days following the date of receipt of undisputed invoices by COMPANY.
- 20.6** CONTRACTOR shall send invoice to COMPANY on the day following the end of each month for all daily or monthly charges due to the CONTRACTOR.
- 20.7** CONTRACTOR will submit 02 (two) sets of all invoices duly super scribed 'Original' and 'copy' as applicable to the COMPANY for processing payment. Separate invoices for the charges payable under the contract shall be submitted by the CONTRACTOR for foreign currency and Indian currency.
- 20.8** Payment of monthly invoices, if undisputed, shall be made within 30 days following the date of receipt of invoice by COMPANY.
- 20.9** COMPANY shall within 30 days of receipt of the invoice notify the CONTRACTOR of any item under dispute, specifying the reasons thereof, in which event, and payment of the disputed amount may be withheld until settlement of the dispute, but payment shall be made of any undisputed portion on or before the due date. This will not prejudice the COMPANY's right to question the validity of the payment at a later date as envisaged in clause no. 27.4 above.
- 20.10** The acceptance by CONTRACTOR of part payment on any billing not paid on or before the due date shall not be deemed a waiver of CONTRACTOR's rights in any other billing, the payment of which may then or thereafter be due.

20.11 Payment of Final demobilization charges shall be made if applicable within 45 days on receipt of invoice by COMPANY accompanied by the following documents from the CONTRACTOR:

- a) Audited account up to completion of the Contract.
- b) Tax audit report for the above period as required under the Indian Tax Laws.
- c) Documentary evidence regarding the submission of returns and payment to taxes for the expatriate personnel engaged by the CONTRACTOR or by its sub- CONTRACTOR.
- d) Proof of re-export of all items including the unutilized spares and consumables (excepting consumables consumed during the contract period) and also cancellation of re-export bond if any.
- e) Any other documents as required by applicable Indian Laws.

In case, no demobilization charges are payable, the documents mentioned above will have to be submitted by the CONTRACTOR before release of the final payment by the COMPANY. A certificate from Chartered Accountant on (a), (b) & (c) above will suffice

20.12 CONTRACTOR shall maintain complete and correct records of all information on which CONTRACTOR's invoice are based up to 02 (two) years from the date of last invoice. Such records shall be required for making appropriate adjustments or payments by either party in case of subsequent audit query/objection.

21.0 PAYMENT OF COMMISSION / FEE / REMUNERATION OF INDIAN AGENT / CONSULTANT / REPRESENTATIVE / RETAINER / ASSOCIATE OF FOREIGN PRINCIPAL (APPLICABLE IN ICB TENDERS ONLY):

The Commission/Fee/remuneration of the Indian agent/consultant/associate/representative/retainer, if any, will be paid within 30 days of the payment of invoice made to the CONTRACTOR, The amount of commission/fee/remuneration as a percentage of invoice value as per contract provisions will be deducted by COMPANY/ BHEL from the monthly invoices of the CONTRACTOR and paid to the Indian agent/consultant/representative/retainer/associate.

22.0 DETAILS OF STATUTORY PAYMENTS LIKE EPF AND ESI, ETC:

Wherever applicable, the CONTRACTOR (including those engaging 'International Workers') shall have itself registered under Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 and follow the relevant statutory provisions including Rules made there-under concerning contractual workers.

The CONTRACTOR shall be required to submit the following documents/details to the Corporation:

- (i) Copy of PF-ECR duly stamped by the designated Bank, along with a print of the digitally signed PDF data sheet of the ECR, as proof of payment, each month, details of this PDF data sheet shall be verified by the appropriate authority (i.e. Payment Making Authority) in the COMPANY from the official website of EPFO (<http://www.epfindia.gov.in>).

- (ii) (a) Copy of the online challan endorsed/stamped by the designated bank as proof of receipt of payment towards monthly contribution of ESI contribution.
- (b) Copy of Return of contribution in respect of ESI for each contribution period of the six months i.e. for the contribution period ended 30th Sept and the contribution period ended 31st March.
- (iii) As an Annexure to each EPF-ECR and ESI Challan(s), CONTRACTOR shall also furnish the following Certificates:
 - 1) The furnished information is correct to the best of his knowledge.
 - 2) In case any discrepancies or irregularities is / are noticed in this undertaking, then BHEL is free to inform the PF / ESIC Authorities.
 - 3) Before the completion of contract, CONTRACTOR shall serve one-month notice to all his contractual workers, informing that their services will be terminated.
 - 4) Within one month on completion / expiry of the contract, CONTRACTOR shall pay all the dues / terminal dues such as leave with wages, bonus (if applicable), Gratuity (if applicable), to all his contractual workmen, failing which CONTRACTOR's Bank Guarantee / Security Deposit may be withheld by BHEL.

COMPANY may verify the deposit of statutory contribution made by the CONTRACTORS with the EPFO / ESI authorities, where deemed necessary. However, before making payment of the last bill / invoice of the CONTRACTOR, the COMPANY may verify the details / status of the payment towards EPF / ESI made by the CONTRACTOR from the authorities / official website of EPF / ESI (i.e. <http://www.epfindia.gov.in> and <http://www.esic.in>). In case the information furnished by the CONTRACTOR is found to be incorrect the COMPANY shall take appropriate action against the CONTRACTOR in accordance with law.

The CONTRACTOR agrees and undertakes to indemnify BHEL for any liabilities arising out of declarations made by him in future on violation or provisions of the EPF Act 1952 and ESI Act 1948.

23.0 TIMELY MOBILIZATION AND LIQUIDATED DAMAGES:

a) Time is the essence of this Contract. If the CONTRACTOR fails to mobilize and deploy the required manpower / equipment and / or fails to commence the operation within the period specified as specified under mobilization clause under SCC, BHEL shall have, without prejudice to any other right or remedy in law or contract including sub clause (b) below, the right to terminate the contract.

b) If the contractor is unable to mobilize / deploy and commence the operation within the period specified in sub clause (a) above, it may request BHEL for extension of the time with unconditionally agreeing for levy and recovery of LD. Upon receipt of such a request, BHEL may at its discretion, extend the period of mobilization and shall recover from the CONTRACTOR, as an ascertained and agreed Liquidated Damages, a sum equivalent to @ 0.5% of contract value including mobilization cost, per week or part thereof of delay subject to maximum of 7.5% of the Contract Price.

c) The parties agree that the sum specified above is not a penalty but a genuine pre-estimate of the loss / damage which will be suffered by BHEL on account of delay on the part of the CONTRACTOR and the said amount will be payable without proof of actual loss or damage caused by such delay.

d) LD will be calculated on the basis of Total Contract value [(if not specified otherwise in SCC] excluding duties and taxes, where such duties / taxes have been shown separately in the contract. However, the applicable GST on the LD shall have to be borne by the CONTRACTOR. Accordingly, the liquidated damages shall be recovered from the CONTRACTOR along with applicable GST.

24.0 SET-OFF:

Any sum of money due and payable to the CONTRACTOR (including Performance Security refundable to them) under this or any other Contract, whether in progress or in future, may be appropriated by BHEL and set-off against any claim of BHEL (or such other person or persons contracting through BHEL) for payment of a sum of money arising out of this contract or under any other contract made by the CONTRACTOR with BHEL (or such other person or persons contracting through BHEL).

25.0 WITHHOLDING:

COMPANY may withhold or nullify the whole or any part of the amount due to CONTRACTOR, after informing the CONTRACTOR of the reasons in writing, on account of subsequently discovered evidence in order to protect COMPANY from loss on account of :

- 25.1 For non-completion of jobs assigned as per Scope of Work/Terms of Reference.
- 25.2 Defective work not remedied by CONTRACTOR.
- 25.3 Claims by COMPANY's recognized sub-CONTRACTOR of CONTRACTOR or others filed or on the basis of reasonable evidence indicating probable filing of such claims against CONTRACTOR.
- 25.4 Failure of CONTRACTOR to pay or provide for the payment of salaries/ wages, contributions, taxes or enforced savings with-held from wages etc with respect to personnel engaged by the CONTRACTOR.
- 25.5 Failure of CONTRACTOR to pay the cost of removal of unnecessary debris, materials, tools, or machinery.
- 25.6 Any failure by CONTRACTOR to fully reimburse COMPANY under any of the indemnification provisions of this Contract. If, during the progress of the work CONTRACTOR shall allow any indebtedness to accrue for which CONTRACTOR, under any circumstances in the opinion of COMPANY, may be primarily or contingently liable or ultimately responsible and CONTRACTOR shall, within five days after demand is made by COMPANY, fail to pay and discharge such indebtedness, then COMPANY may during the period for which such indebtedness shall remain unpaid, with-hold from the amounts due to CONTRACTOR, a sum equal to the amount of such unpaid indebtedness.
- 25.7 Withholding will also be effected on account of the following:

- i) Order issued by a Court of Law or statutory authority in India.
- ii) Income-tax deductible at source according to law prevalent from time to time in the country.
- iii) Any obligation of CONTRACTOR which by any law prevalent from time to time to be discharged by COMPANY in the event of CONTRACTOR's failure to adhere to such laws.
- iv) Any payment due from CONTRACTOR in respect of unauthorised imports.

When all the above grounds for withholding payments are removed, payment shall thereafter be made for amounts so with-held.

25.8 COMPANY reserves the right to disburse or deposit the amount so withheld to the concerned person(s) or agency or government authority, as the case may be, besides nullifying such amount on account of loss suffered by the COMPANY against **25.2, 25.3, 25.6 & 25.7** above.

26.0 APPLICABLE LAWS:

The Contract shall be deemed to be a Contract made under, governed by and construed in accordance with the laws of India for the time being in force and shall be subject to the sole and exclusive jurisdiction of Courts situated in Dibrugarh (or the Place where the contract is executed) and Principal Bench of Gauhati High Court (or the High Court under whose territorial jurisdiction, the place of execution of contract falls).

This Agreement including all matter connected with this Agreement, shall be governed by the laws of India (both substantive and procedural) for the time being in force and shall be subject to exclusive jurisdiction of Courts, mentioned hereinabove. Foreign companies, operating in India or entering into Joint ventures in India, shall also be governed by the laws of India and shall be subject to sole and exclusive jurisdiction of above Courts.

The CONTRACTOR shall ensure full compliance of various Indian Laws and Statutory Regulations, as stated below, to the extent applicable, as stated below, but not limited to, in force from time to time and obtain necessary permits/licenses etc. from appropriate authorities for conducting operations under the Contract:

- a) The Mines Act 1952
- b) The BHEL Mines Regulations, 1984
- c) The Employees' Compensation Act, 1923
- d) The Code of Wages, 2019
- e) The Contract Labour (Regulation & Abolition) Act, 1970 and the rules framed there under
- f) The Employees' Pension Scheme, 1995
- g) The Interstate Migrant Workmen Act., 1979 (Regulation of employment and conditions of service).
- h) The Employees Provident Fund and Miscellaneous Provisions Act, 1952
- i) Goods and Service Tax Act
- j) Customs & Excise Act & Rules
- k) Factories Act, 1948
- l) Industrial Disputes Act, 1947
- m) Payment of Gratuity Act, 1972

- n) Environmental Protection Act, 1986 & other pollution control Acts. Note: The above Acts are only indicative and not exhaustive. The Acts shall include the rules and regulations framed thereunder.

27.0 LABOUR LAWS:

- i) CONTRACTOR shall comply with the provisions of various labour related laws, including but not limited to the Code of Wages, 2019, Employee Provident Fund and Miscellaneous Provisions Act 1952, COMPANY's Liability Act 1938, Employees' Compensation Act 1923, Industrial Disputes Act 1947, the Maternity Benefit Act 1961 and Contract Labour (Regulation and Abolition) Act 1970, Employment of Children Act 1938, Employees' State Insurance Act, 1948 or any modifications / amendment thereof or any other law relating thereto and rules made there under from time to time.
- ii) No Labour below the age of eighteen [18] years shall be employed on the work.
- iii) CONTRACTOR shall not pay less than what is provided under law to labourers engaged by him on the work.
- iv) CONTRACTOR shall at his expense comply with all labour laws and keep the COMPANY indemnified in respect thereof.
- v) CONTRACTOR shall pay equal wages for men and women in accordance with applicable Labour laws.
- vi) If the CONTRACTOR is covered under the Contract Labour (Regulation and Abolition) Act, he shall obtain a license from licensing authority [i.e. office of the Labour Commissioner] by payment of necessary prescribed fee and the deposit, if any, before starting the work under the Contract. Such fee / deposit shall be borne by the CONTRACTOR.
- vii) CONTRACTOR must obtain the PF Code from the concerned PF Authority under Employees Provident Fund and Miscellaneous Provisions Act, 1952. Similarly, CONTRACTOR must obtain ESI Code under Employees State Insurance Act.
- viii) CONTRACTOR being the employer of the labours / personnel to be engaged under the contract shall be liable to pay gratuity to the labours / personnel as per the provision of the Payment of Gratuity Act, 1972 and accordingly, shall keep the COMPANY indemnified in respect thereof. If however, COMPANY requires to pay gratuity to such labour(s) as per the direction of the competent authority under the Act, COMPANY shall recover such amount from the outstanding dues payable to the CONTRACTOR under the contract or any other contract(s).
- ix) CONTRACTOR shall furnish to Engineer in Charge the distribution return of the number & description, by trades of the work people employed on the works. CONTRACTOR shall also submit on the 4th & 19th of every month to Engineer in Charge a true statement showing in respect of the 2nd half of the preceding month & the 1st half of the current month (1) the accidents that occurred during the said fortnight showing the circumstances under which they happened and the extent of damage and injury caused by them and (2) the number of female workers who have been allowed Maternity Benefit as provided in the Maternity Benefit Act 1961 on Rules made there under and the amount paid to them.

- x) Engineer in Charge shall on a report having been made by an inspecting officer as defined in Contract Labour (Regulation and Abolition) Act 1970 have the power to deduct from the money due to the CONTRACTOR any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non-fulfillment of the conditions of the Contract for the benefit of workers, non- payment of wages or of deductions made from his or their wages which are not justified by the terms of the Contract or non-observance of the said regulations.
- xi) The CONTRACTOR shall indemnify the COMPANY against any payments to be made under and for the observance of the provisions of the aforesaid acts without prejudice to his right to obtain indemnity from his Sub-CONTRACTOR.

28.0 STATUTORY REQUIREMENTS:

During the tenure of this CONTRACT nothing shall be done by the CONTRACTOR in contravention of any law, act and/or rules/regulations, thereunder or any amendment

29. GENERAL HEALTH, SAFETY & ENVIRONMENT (HSE) GUIDELINES:

- 29.1 M It will be solely the CONTRACTOR's responsibility to fulfil all the legal formalities with respect to the Health, Safety and Environmental aspects of the entire job (namely; the person employed by him, the equipment, the environment, etc.) under the jurisdiction of the district of that state where it is operating. Ensure that all sub-CONTRACTORs hired by CONTRACTOR comply with the same requirement as the CONTRACTOR himself and shall be liable for ensuring compliance all HSE laws.
- 29.2 It will be entirely the responsibility of the Contractor/his Supervisor/representative to ensure strict adherence to all HSE measures and statutory rules during operation in BHEL's installations and safety of workers engaged by him. The crew members will not refuse to follow any instruction given by company's Installation Manager/Safety Officer/Engineer/Official/ Supervisor/Junior Engineer for safe operation.
- 29.3 Any compensation arising out of the job carried out by the Contractor whether related to pollution, Safety or Health will be paid by the contractor only.
- 29.4 Any compensation arising due to accident of the Contractor's personnel while carrying out the job, will be payable by the contractor.
- 29.5 When there is a significant risk to health, environment or safety of a person or place arising because of a non-compliance of HSE Measures Company shall have the right to direct the contractor to cease work until the noncompliance is corrected.

30.0 POLLUTION AND CONTAMINATION:

The CONTRACTOR shall be liable for all surface and sub-surface pollution to the extent caused by CONTRACTOR and resulting from CONTRACTOR's operation/service or spillage or dumping of solvents/additive substances or pollutants, which the CONTRACTOR brings to the Site for use in connection with Work to be performed under this Contract.

Notwithstanding anything to the contrary contained herein, it is agreed that except on the ground of willful misconduct or criminal misconduct, COMPANY shall release, indemnify and hold CONTRACTOR and its subCONTRACTORs harmless from any and all claims, judgments, losses, expenses and any costs related thereto (including but not limited to Court costs and "Attorney's fees") for:

- a) Damage to or loss of any reservoir or producing formation; and/ or

- b) Damage to or loss of any well; and/ or
- c) Any other subsurface damage or loss; and/ or
- d) Any property damage or loss or personal injury or death arising out of or in connection with a blowout, fire explosion and loss of well control regardless of cause.

31.0 STATUTORY VARIATION / NEWLY ENACTED LAW:

- 30.1** All duties, taxes except otherwise specified in the Contract as applicable on the closing date of bid submission as per relevant acts and rules shall be in CONTRACTOR's account. Variation in case of custom duty on CIF value declared by the bidder shall be to COMPANY account.
- 30.2** In the event of introduction of any new legislation or any amendment or enforcement of any Act or Law, rules or regulations of Government of India or State Government(s) or Public Body, which becomes effective after the date of submission of Price Bid or revised price bid, if any, for this CONTRACT and which results in increased / decreased cost of the works under the CONTRACT through increased / decreased liability of taxes and / or duties, required to be paid by the CONTRACTOR, (other than personnel and Corporate taxes), the Parties shall agree to a revision in pricing to reflect such change subject to the production of documentary proof to the satisfaction of the COMPANY / CONTRACTOR as applicable to the extent which directly is attributable to such introduction of new legislation or change or amendment as mentioned above and adjudication by the competent authority (applicable when disputed by COMPANY) & the courts wherever levy of such taxes / duties are disputed by COMPANY / CONTRACTOR.
- 30.3** Any increase in net amount of the duties and taxes (i.e. the amount of taxes/duties payable minus eligible credit of taxes/duties paid on input services/inputs) after the contractual completion/mobilization date during the extended period will be to the CONTRACTOR's account, where delay in completion/mobilization period is attributable to the CONTRACTOR. However, any decrease in net amount of the duties and taxes (i.e. the amount of taxes/duties payable minus eligible credit of taxes/duties paid on input services/inputs) after the contractual completion/mobilization date will be to COMPANY's account.
- 30.4** The Contract Price and other prices given in the Schedule of Prices are based on the applicable tariff as indicated by the CONTRACTOR in the Schedule of Prices. In case this information subsequently proves to be wrong, incorrect or misleading, COMPANY will have no liability to reimburse/pay to the CONTRACTOR the excess duties, taxes, fees, if any finally levied/imposed by the concerned authorities. However, in such an event, COMPANY will have the right to recover the difference in case the rate of duty/tax finally assessed is on the lower side.
- 30.5** Notwithstanding the provision contained in Clause-39.1 to 39.4 above, the COMPANY shall not bear any liability in respect of:
- i. Personal taxes on the personnel deployed by CONTRACTOR, his sub- CONTRACTOR/sub-sub-CONTRACTORS and Agents etc.
 - ii. Corporate taxes and Fringe benefit tax in respect of CONTRACTOR and all of their sub-CONTRACTORS, agents etc.
 - iii. Other taxes & duties including Customs Duty and GST in addition to new taxes etc. in respect of sub-CONTRACTORS, vendors, agents etc. of the CONTRACTOR.
 - iv. Any liability on the CONTRACTOR, which was accrued under the old law or contract, which the CONTRACTOR is obligated to pay either to the COMPANY or to the Government Authority.

30.6 In order to ascertain the net impact of the amendment/ revisions/enactment of various provisions of taxes/duties, the CONTRACTOR is liable to provide following disclosure to COMPANY:

i. Details of each of the input services used in relation to providing service to COMPANY including estimated monthly value of input service and GST tax amount.

ii. Details of Inputs (material/consumable) used/required for providing service to COMPANY including estimated monthly value of input and GST paid/payable on purchase of inputs.

30.7 The above provisions would be applicable only in case of variation in rate of taxes and duties on supply of services to BHEL and not applicable on taxes and duties on input (goods and services) towards such services.

30.8 Any claim or reduction on account of change in law shall be accompanied with undertaking that the provisions of anti- profiteering clause under GST Act have been complied with.

31.0 SEVERABILITY:

Should any provision of this agreement be found to be invalid, illegal or otherwise not enforceable by any court of law, such finding shall not affect the remaining provisions hereto and they shall remain binding on the parties hereto.

32 .0 COMMISSION OF MISCONDUCT / SUBMISSION OF FRAUDULENT DOCUMENT BY THE BIDDER/CONTRACTOR AND BANNING THEREOF:

The information and documents furnished by the bidder/CONTRACTOR in respect of the tender/contract are accepted by COMPANY to be true and genuine. However, if it comes to the notice of the COMPANY anytime either during the pendency of the tender or after award of the contract or after completion the contract that a Bidder/CONTRACTOR furnished fraudulent document/false information in relation to the subject tender/contract or committed any misconduct, appropriate action shall be taken against the Bidder/CONTRACTOR for debarment/banning of the bidder/CONTRACTOR from participating in any future tender of the COMPANY in terms of the COMPANY's Banning Policy, 2017 besides making the CONTRACTOR liable for other penal action including termination of ongoing contract(s) at his/her risk and peril. In such event, the Bid Security/Performance Security in respect of ongoing contract(s) shall be forfeited by the COMPANY.

33.0 COMPLETION OF CONTRACT:

Unless otherwise terminated under the provisions of any other relevant Clause or extended through written communication, this Contract shall be deemed to have been completed at the expiry of the Period specified in the contract or period of defect liability, as provided for under the Contract, whichever is later.

34.0 TERMINATION:

34.1 Termination on expiry of the contract: This Agreement shall be deemed to have been automatically terminated on the expiry of the contract period unless BHEL has exercised its option to extend this contract in accordance with the provisions, if any, of this contract.

34.2 Termination of contract for death: If the CONTRACTOR is an individual or a proprietary concern and the individual or the proprietor dies or if the CONTRACTOR is a partnership concern and one of the partners dies then unless, the COMPANY is satisfied that the legal heir of the individual or the proprietary concern or the surviving partners are capable of carrying out and completing Contract, the COMPANY is entitled to cancel the Contract for the uncompleted part without being in any way liable for any compensation payment to the estate of the deceased CONTRACTOR and/or to the surviving partners of the CONTRACTOR's firm on account of the cancellation of Contract. The decision of the COMPANY in such assessment shall be final & binding on the parties. In the event of such cancellation, the COMPANY shall not hold the estate of the deceased CONTRACTOR and/or the surviving partners of CONTRACTOR's firm liable for any damages for non-completion of the Contract.

34.3 Termination on account of Force Majeure: Unless the contract provides otherwise, either party shall have the right to terminate this Contract on account of Force Majeure as set forth in Article-31.0 [above](#).

34.4 Termination on account of insolvency: In the event that the CONTRACTOR or its collaborator or its guarantor at any time during the term of the Contract, becomes insolvent or makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt or under the process of insolvency or liquidation, then the COMPANY shall, by a notice in writing have the right to terminate the Contract and all the CONTRACTOR's rights and privileges hereunder, shall stand terminated forthwith.

However, COMPANY shall be at liberty to give the Receiver or Liquidator or Insolvency Professional Manager, as appointed by the Competent Court/Tribunal, the option of carrying out the Contract subject to its technical & financial competence and his providing a guarantee for due and faithful performance of the Contract.

34.5 Termination for Unsatisfactory Performance: If the COMPANY considers that, the performance of the CONTRACTOR is unsatisfactory, or not as per the provision of the Contract, the COMPANY shall notify the CONTRACTOR in writing and specify in details the cause of dissatisfaction.

34.6 The COMPANY shall have the option to terminate the Contract by giving 15 days notice in writing to the CONTRACTOR, if CONTRACTOR fails to comply with the requisitions contained in the said written notice issued by the COMPANY. In the event CONTRACTOR rectifies its non- performance to the satisfaction of the COMPANY, the option of termination may not be exercised by the COMPANY. If however CONTRACTOR repeats non- performance subsequently, COMPANY shall exercise the option to terminate contract by giving 07 days notice. Such CONTRACTOR shall be put on holiday as per the Banning Policy of BHEL [available at www.BHEL-india.in].

34.7 Termination due to change of ownership and Assignment: In case the CONTRACTOR's rights and /or obligations under this Contract and/or the CONTRACTOR's rights, title and interest to the equipment/ material, are transferred or assigned without the COMPANY's written consent, the COMPANY may at its option, terminate this Contract. COMPANY shall not be however under any obligation to accord consent to the CONTRACTOR for change of ownership & assignment of the contract.

34.8 If at any time during the term of this Contract, breakdown of CONTRACTOR's equipment results in CONTRACTORS being unable to perform their obligations hereunder for a period of 15 successive days, COMPANY at its option, may terminate this Contract in its entirety or partially to the extent of non- performance, without any further right or obligation on the part of the COMPANY, except for the payment of money then due. No notice shall be served by the COMPANY under the condition stated above.

34.9 Termination for delay in mobilization: CONTRACTOR is required to mobilize complete equipment along with crew for commencement of services at the specified site within the maximum allowed number of days from the date of LOA/Notice for Mobilization as specified in the special conditions of contract. If the CONTRACTOR (successful bidder) fails to complete the mobilization as above, BHEL shall have, without prejudice to any other clause of the CONTRACT, the right to terminate the contract.

34.10 Notwithstanding any provisions herein to the contrary, the Contract may be terminated at any time by the COMPANY on giving 30 (thirty) days written notice to the CONTRACTOR due to any other reason not covered under the above Article from **34.1 to 34.8** and in the event of such termination the COMPANY shall not be liable to pay any cost or damage to the CONTRACTOR except for payment of services as per the Contract upto the date of termination.

34.11 Consequence of Termination: In all cases of termination herein set forth, the relative obligations of the parties to the Contract shall be limited to the period up to the date of termination. Notwithstanding the termination of this Contract, the parties shall continue to be bound by the provisions of this Contract that reasonably require some action or forbearance after such termination.

Upon termination of this Contract, CONTRACTOR shall return to COMPANY all of COMPANY's properties, which are at the time in CONTRACTOR's possession.

In the event of termination of contract, COMPANY will issue Notice of termination of the contract with date or event after which the contract will be terminated. The contract shall then stand terminated and the CONTRACTOR shall demobilize their personnel & materials.

Demobilization charges shall not be payable by COMPANY in case of Article from 34.4 to 34.7.

35.0 TO DETERMINE THE CONTRACT:

In such an event (i.e., termination under Article No. 34.4 to 34.9 above), the contract shall stand terminated and shall cease to be in force from the date of such notification by the COMPANY. Thereafter the CONTRACTOR shall stop forthwith any of the work then in progress, except those work which the COMPANY may, in writing, require to be done to safeguard any property or work, or installations from damages, and the COMPANY may take over the remaining unfinished work of the CONTRACTOR and complete the same through a fresh CONTRACTOR or by other means, at the risk and cost of the CONTRACTOR, and any of its sureties if any, shall be liable to the COMPANY for any excess cost occasioned by such work

having to be so taken over and completed by the COMPANY over and above the cost at the rate / cost specified in the schedule of quantities and rates / prices.

36.0 WITHOUT DETERMINING THE CONTRACT:

In such an event (i.e. termination under Article No. 34.4 to 34.9 above), the COMPANY may take over the work of the CONTRACTOR or any part thereof and complete the same through a fresh CONTRACTOR or by other means, at the risk and cost of the CONTRACTOR. The CONTRACTOR and any of its sureties are liable to the COMPANY for any excess cost over and above the cost at the rates specified in the schedule of quantities and rates/prices, occasioned by such work having been taken over and completed by the COMPANY.

37.0 ERRING/DEFAULTING AGENCIES:

Erring and defaulting agencies like bidder, CONTRACTOR, supplier, vendor, service provider will be dealt as per BHEL's Banning Policy dated 6th January, 2017 available in BHEL's website: www.BHEL-india.com. Moreover, BHEL reserves the right to take legal or any other action on the basis of merit of the case.

38.0 MISCELLANEOUS PROVISIONS:

CONTRACTOR shall give notices and pay all fees at their own cost required to be given or paid by any National or State Statute, Ordinance, or other Law or any regulation, or bye-law of any local or other duly constituted authority as may be in force from time to time in India, in relation to the performance of the services and by the rules & regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the services.

CONTRACTOR shall conform in all respects with the provisions of any Statute, Ordinance of Law as aforesaid and the regulations or bye-law of any local or other duly constituted authority which may be applicable to the services and with such rules and regulation, public bodies and Companies as aforesaid and shall keep COMPANY indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or Law, regulation or bye-law.

During the tenure of the Contract, CONTRACTOR shall keep the site where the services are being performed reasonably free from all unnecessary obstruction and shall store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works no longer required. On the completion of the services, CONTRACTOR shall clear away and remove from the site any surplus materials; rubbish or temporary works of every kind and leave the whole of the site clean and in workmanlike condition to the satisfaction of the COMPANY.

Key personnel cannot be changed during the tenure of the Contract except due to sickness/death/resignation of the personnel or any other justified situation in which case the replaced person should have equal experience and qualification, which will be again subject to prior approval, by the COMPANY.

Annexure - “F”

GENERAL TERMS & CONDITIONS (GISTC)



BHARAT HEAVY ELECTRICALS LIMITED

HEEP-HARIDWAR, UTTARAKHAND (249403)

General Instructions and Standard Terms & Conditions for bidding against Tender Enquiry (GISTC)

For Indian Bidders (Version June-2021, Rev: 06)

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1. GENERAL.

These general terms & conditions shall apply to all the Tender Enquiries, notice inviting tenders, request for quotations concerning the supply of goods and / or rendering of services to Bharat Heavy Electricals Ltd., HEEP, Haridwar (hereinafter referred to as BHEL or the Purchaser). In case of placement of order these conditions will become part of Purchase Order (P.O) until unless the deviations are specifically agreed by BHEL.

2. ORIGIN OF QUOTATION.

- a) The quotation should preferably be from the principal bidder. However tender specific authorized registered dealer/agent can also submit the bid on their behalf, failing which the quotation is liable to be ignored. BHEL prefers to deal directly with the principal manufacturers.
- b) An agent cannot quote on behalf of more than one principal in the same Tender Enquiry.

3. SUBMISSION OF TENDER.

- a) Bid / Quotation must be enclosed in sealed cover on which tender enquiry number and the due date MUST BE written and be invariably sent under REGISTERED POST / SPEED POST / COURIER / Dropped in the Tender Box: addressed as follows:

Quotation against Enquiry No. _____

Dated: _____

Due on: _____

To,

**THE HEAD OF MATERIALS MANAGEMENT,
Heavy Electrical Equipment Plant,
Bharat Heavy Electricals Limited,
HARIDWAR-249403 (Uttarakhand), INDIA.**

- b) TENDER ROOM is located at: Room No. - 415, 4th Floor, Main Admin. Building, BHEL-HEEP, Haridwar.

Quotations / Bids not in accordance with General Instructions and Standard Terms & Conditions are likely to be ignored.



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- c) In case of Three / Two Part Bid, technical bid containing technical offer, duly signed and un-priced copy of the Price Bid should be kept in one envelope. Price Bid containing only the price should be kept in a separate envelope. All envelopes indicating Part-1 or Part-2 or Part-3 as the case may be to be put in a bigger envelope. Please note that un-priced bid should be the exact replica of price bid but without prices.
- d) The bid / quotation must be posted before due date, keeping allowance for postal transit time. Quotations sent by any mode but not received in time will be ignored. Tender received through authorized E-mail is also acceptable. However, in time submission of tender in tender box shall be the responsibility of the bidder, sent through any mode. Documents submitted with the offer / bid shall be signed and stamped in each page by authorized representative of the bidder.
- e) Any additional documents submitted by supplier / bidder, during processing of registration application / tender or after placement of order shall not be accepted unless it is submitted with forwarding letter and duly signed and stamped.
- f) The bids of the bidders who are on the banned list and also the bids of the bidders, who engage the services of the banned firms, shall be rejected. The cutting / overwriting in the bid / offer must be duly attested by the signatories to the bid. The list of firms banned by BHEL is available on BHEL web site www.bhel.com.
- g) Being PMD vendor, if you are not quoting against this tender enquiry, please send your regret letter positively for our reference with valid reasons for not participating in the tender enquiry. Repeated lack of response on the part of bidder may lead to deletion such PMD vendor from BHEL's approved vendor list.
- h) The bidders will submit Integrity Pact, duly signed by its authorized signatory, along with their bids wherever estimated tender value is Rs. 2 Crore or more.
- i) In case of open tender, technically qualified unregistered bidders may apply online for registration through <http://www.bhel.com/index.php/vender>.
- j) BHEL reserves the right to award tendered quantities among more than one bidder (after acceptance of L1 price by the other bidders). BHEL can also consider awarding of part of the tendered quantity to other than L-1 bidder at L1 counter offered rates, if the quantity offered by the L-1 bidder is less than the quantity tendered for.
- k) In case of e-Tendering (Online bidding through e-portal), offline bid submitted in hard copy or in any other form by the vendor / supplier will not be accepted and will be rejected out rightly. Only e-portal bid will be accepted.

4. TENDER OPENING.

Tender opening is scheduled to start in the Tender Room at 2:00 PM, on the due date. Therefore, bid / quotations must reach this office / tender Box latest by 1:45 PM on due date. Only participating bidders are allowed to attend tender opening. **TENDERS RECEIVED AFTER THE SPECIFIED TIME OF THEIR 'SUBMISSION' WILL BE TREATED AS LATE TENDERS AND SHALL NOT BE CONSIDERED UNDER ANY CIRCUMSTANCES.** The bidders or their authorized representatives may be allowed to attend tender opening if duly authorized by their principals, through a tender specific letter on that particular day. General authorization letter is not acceptable.

Note: - Foreign bidders willing to attend the bid opening has to provide the requisite documents to the concerned Purchase executives for arranging gate pass for them.

5. SPECIFICATION, DRAWINGS & STANDARD.

- a) Bidders must give their detailed specification in the quotation along with relevant technical literature / catalogue etc. against the tender enquiry.
- b) The Bid should be accompanied with relevant copies of catalogues, drawings or specification as per tender enquiry.

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If these documents are not furnished, the offer is liable to be rejected.

- c) Wherever national / international (N/IN) standards are referred, the latest N/IN standards are to be followed. Mention year & date of standard revision that shall be followed for the supply.
- d) All Drawings and Standards are proprietary of BHEL. It must not be used in anyway detrimental to the interest of the company or without permission of BHEL.

6. PRICE SCHEDULE.

- a) Kindly quote your prices in figures and words both. In case of any discrepancy in value, the prices quoted in words shall be considered for evaluation and establishing L1 status.
- b) Prices quoted should not be more than the prices quoted to any other BHEL units / offices / divisions. Vendor to submit copy of latest Purchase Order placed by any unit of BHEL for similar items in the technical bid. In case no order has been placed on such items, specific confirmation that no order has been placed on such items should be provided.
- c) Prices should be quoted on F.O.R. Destination basis. Transit insurance shall be arranged by BHEL and not to be included in the prices. The offers quoted on other than F.O.R destination basis may result in non-consideration of such bids.
- d) In case BHEL accepts the EX-Works prices, such offers will be loaded by 1.5% of EX-Works value towards freight or with actual freight charges as per BHEL freight rate contract whichever is higher.
- e) In case of Indigenous items covered by DGS & D Rate Contract, the bidders should submit latest valid copy of the rate contract along with bid / quotation
- f) Applicable **IGST / CGST / SGST** and any other statutory levy should be indicated separately and clearly in the bid / quotation.

- g) Bidders can dispatch goods through any Indian Bank Association approved transporters having their branch at HARIDWAR / destination. If material is dispatched through other than Indian Bank Association approved transporter, material to be delivered on door delivery BHEL Stores basis.
- h) In case of dispatch of material through any other unapproved transporter, payment shall be made only after receipt of material and any additional charges payable to the transporter shall be to the bidder's account.
- i) Any demurrage / godown rent payable to the transporter / or to godown's owner due to any delay attributed by the supplier shall be recovered from supplier's account.
- j) Currency of Evaluation shall be INR.

NB: Financial evaluation of L1, L2Status will be on the basis of Landed Cost to BHEL.

7. REVERSE AUCTION.

Wherever RA is declared in the special terms and conditions of tender enquiry, following shall be applicable and Bidders to confirm the same:

"BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders.

Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking."

8. DELIVERY TERMS.

- a) Goods shall be delivered on 'FOR Destination' basis to the named destination unless otherwise called for in the tender enquiry.
- b) Loading on account of 3rd party inspection charges in case of Indian bidders shall be 0.20%.

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9. LIQUIDATED DAMAGES (LD) FOR LATE DELIVERY.

a) Where items of Purchase Order are independently usable.

Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on the value of respective delayed supplies subject to a maximum of 10% of the value of respective delayed supplies. Value of delayed supplies will mean the Gross Value payable to the vendor (Before LD) against such supplies excluding taxes and duties.

b) Where the total items are required for a main equipment and items are interdependent.

Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on total value of Purchase Order subject to maximum of 10% of the total value of Purchase Order. Purchase Order value for this purpose shall be the Total Gross Value payable to the vendor (Before LD) excluding taxes and duties.

c) Bidders are requested to quote the best delivery meeting the delivery requirements. BHEL reserves the right to reject the offers not meeting BHEL's delivery requirement.

d) Commencement of delivery period shall be reckoned from the date of PO / LOI or any other agreed milestone.

e) Bidder shall deliver the goods in the manner and schedule agreed under the terms and conditions of Purchase order.

f) **DELIVERY IN CASE OF REJECTION:** In case the material is rejected, then date of replacement will be considered as the actual date of delivery.

g) **DELIVERY AGAINST BANK DOCUMENTS:** In case payment terms quoted by bidder are documents through bank, and the delivery terms being "FOR Haridwar / FOR Transporter Go-down" then date of delivery will be date of intimation by transporter / bidder of delivery of material at Haridwar for the LD purpose.

h) Where the payments are through bank, the documents may be presented for negotiation to BHEL authorized / nominated bank.

10. PAYMENT TERMS.

a) BHEL's standard payment term is Payment after receipt and acceptance of materials / items at HEEP, BHEL-Store or at desired destination unless otherwise specified in Special Terms attached to the tender enquiry.

b) BHEL reserves the right to accept or reject the offer of the bidder who quotes the payment term other than BHEL's standard payment term.

c) Loading on account of deviation in payment terms shall be done as per extant rules of BHEL-Haridwar.

d) 100% payment along with taxes, freight & insurance will be made after receipt and acceptance of material and within 75 days from the date of invoice subject to submission of non-discrepant documents within 15 days of supply as per terms and conditions of Purchase Order. In case any discrepancy found in the documents, BHEL will notify the same to vendor within 7 days of receipt. Vendor has to clear all the discrepancies in one go within 7 days thereafter else the payment of vendor may get delayed.

e) For MSEs (covered under MSME Act) which are registered and periodically renewed with BHEL, the payment will be made within 45 days or as prescribed in the relevant act.

f) Adherence to the above time schedule of payment is contingent upon Vendor complying with GST Rules w.r.t availment of Input Tax Credit by BHEL.

g) In case GST credit is delayed / denied to BHEL, due to non / delayed receipt of goods and / or tax invoice or expiry of the timeline prescribed in GST Law for availing such ITC, or any other reason not attributable to BHEL, GST amount shall be recoverable from Vendor along with interest levied / leviable on BHEL.

h) The taxes and duties that are reimbursed would be the ones applicable as on the contractual Purchase order delivery date or the amount actually paid whichever is less.

i) **The loading criteria for the different payment terms shall be as under;**

Payment Terms	Days of
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	Loading
After Receipt & Acceptance of material within 75 days of supply.	No Loading
Against Delivery at BHEL-Stores Haridwar.	45
Against documents through bank (CAD):	45
Letter of Credit (LC)	120
Usance LC	No Loading if usance period is > 120 Days.
	Loading of days' difference i.e. difference between 120 days and usance period if the usance period is < 75 days.
Advance	Delivery Period + 120 Days - Advance Payment Days.

j) Payment of Liquidated Damages (LD) shall not in any way relieve the vendor from any of its obligations & liabilities under the contract.

11. TAXES & DUTIES.

- The bidder to specify in their offer (part 1 bid) the category of their registration under GST like Registered, Unregistered and composite dealer.
- The provisional GST registration number of Bharat Heavy Electrical Ltd, Heavy Electricals Equipment Plant, Ranipur, Haridwar is "05AAACB4146P1ZL" with state Code as "05" and State Name as "Uttarakhand".
- Please quote our provisional GST registration number in all invoices raised for supply of goods and services under GST regime and also ensure filing of timely return and payment of tax and compliance of other applicable provisions on supplier under GST regime.
- No GST will be reimbursed to unregistered or composite dealer. In the event, any GST is quoted by composite dealer, the same shall be added to the cost of supply in evaluating the bid.
- Since, input credit of GST will be available to BHEL-Haridwar only after correct filing of return and payment of applicable GST by supplier, reimbursement of GST shall be made by BHEL-Haridwar on matching of vendor inputs at GST portal,

ensuring availability of input credit to BHEL Haridwar. Payment of GST will be made to vendor after matching of input credit and vendor to ensure submission of their invoices along with consent to accept payment of tax after such matching in all cases where bills are submitted directly to BHEL-Haridwar or through bank or under LC or through any other mode.

- In the event of any disallowance of input credit or applicability of interest or any other financial liability arises on BHEL-Haridwar due to any default of supplier under GST, such implication shall be to supplier's account.
- In the event of any change in the status of the vendor after the submission of the bid but before the supply, GST applicable at the time of supply or in the bid, based on the registration status of the vendor, whichever is lower shall be payable.
- Where ever applicable If PAN (Permanent Account Number) of the recipient is not available, income tax is deductible either at the normal rate or at the rate of 20 percent, whichever is higher as per Section 206AA of Indian Income Tax Act 1961.
- The bidder shall clearly indicate HSN (*Harmonised System Nomenclature*) / SAC (*Service Accounting Code*), its description and applicable rate of GST for each item in his techno-commercial bid.
- Statutory Variation in Taxes & duties as applicable at the time of supply shall be payable. However, in the event of no change in law but bidder quoting certain tax structure in bid document which is lower than the applicable one, such amount shall be the maximum amount of tax that can be claimed by bidder.
- IMPORTED GOODS OFFERED BY INDIAN BIDDERS AGAINST DEALER INVOICE:** Wherever the material being offered is imported, the bidder must quote the prices inclusive of IGST. The rate and value of IGST as included in the price must be indicated separately. In case quantum of IGST is not mentioned by the bidder the same will not be considered for evaluation. However, bidder will have to pass on the benefit of IGST to BHEL at the time supply.

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- l) In case of directly dispatchable items to Customer's Site, BHEL-Haridwar will inform the GST registration number of the respective customer which must be mentioned on the vendor's invoice. Vendor to ensure availability of such information from BHEL-Haridwar before dispatch of any material. However, while filing GSTN-1, BHEL Haridwar GSTN number to be quoted.

Note: - Vendors must ensure compliance of all the applicable rules and procedure as envisaged in the GST Regime. Any loss to BHEL-Haridwar due to fault / non-compliance by the vendor will be to the vendor's account.

12. BANK GUARANTEE.

In case the bank guarantees are required to be deposited towards security deposit/performance guarantee or for any other purpose as per the terms of this tender enquiry, such bank guarantees of the requisite value in the denominated currency of the purchase order should be from one of the Indian branch of BHEL consortium banks and the bank guarantee should be in the proforma as prescribed by BHEL. The proforma of bank guarantee and the list of consortium banks are displayed at BHEL website www.bhelhwr.co.in. However, in case the bank guarantee is not from BHEL consortium banks, then the bidder has to get the bank guarantee confirmed from one of the Indian branch of BHEL consortium banks and the bank charges for such confirmation will be borne by the bidder.

13. GUARANTEE / WARRANTY AND CORRESPONDING REPAIRS / REPLACEMENT OF GOODS.

Goods shall comply with the specifications for material, workmanship and performance. Unless otherwise specified, the warranty shall be for a period of 18 months from the date of receipt. If the delivery is found non-compliant during the warranty period, leading to rejection, the Seller shall arrange free replacement / repair of goods, within one month from the date of intimation or any mutually agreed period. The rejected goods shall be taken away by the Seller at his cost and replaced on Delivered Duty Paid (DDP) (FOR - BHEL Stores / designated destination basis) within such period. In the event

of the Seller's failure to comply, Purchaser may take action as appropriate, including Repair / Replenish rejected goods & disposal of rejections, at the risk & cost of the Seller. In case the defects attributable to Seller are detected during processing of the goods at BHEL or at our subcontractor's works, the Seller shall be responsible for free replacement / repair of the goods as required by BHEL.

- b) **RETURN OF REJECTED MATERIAL FOR REPLACEMENT:** The bidder shall have to pay 5% incidental charges while taking back supplied material if it is found rejected on receipt. The rejected material shall be sent back only after receipt of replacement / submission of BG / refund of amount paid.

14. QUALITY REQUIREMENT.

Your bid / quotation should have specific confirmation regarding meeting all our quality requirements such as. (i) Test Certificate (TC), (ii) Guarantee Certificate (GC) / Warranty Certificate (WC), (iii) Quality Plan (QP) (if applicable); and (iv) Pre-Dispatch Inspection at your works (if applicable).

15. VALIDITY.

The quotation should be valid for a minimum period of 90 days effective from the date of opening of tender, unless otherwise specified in the tender enquiry.

16. RIGHT OF ACCEPTANCE.

- a) **BHARAT HEAVY ELECTRICALS LIMITED HARIDWAR** reserves the right to reject any or all the bids / quotations without assigning any reason thereof. BHEL also reserves the right to increase or decrease the tendered quantities. Bidders should be prepared to accept order for reduced quantity without any extra charges.
- b) Any discount / revised offer / bids submitted by a bidder on its own shall be considered, provided it is received on or before the due date and time of offer / bid submission (Part-1). Conditional discounts shall not be considered for evaluation of tenders.
- c) Unsolicited discounts / revised offers / bids given after Part-1 bid opening shall not be accepted. No change in price will be



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permitted within the validity period asked for in the tender enquiry.

- d) In case of changes in scope and / or technical specification and / or commercial terms & conditions having price implication, techno-commercially acceptable bidders shall be asked by BHEL to submit the impact of such changes on their price bids. In case a bidder opts to submit revised price bid instead of impact called for then the latest price bid shall prevail. However, in both situations, original price bid will be necessarily opened.
- e) The bidder whose bid is technically not accepted will be informed & EMD wherever submitted shall be returned after finalization of contract. EMD shall be forfeited in the event of bidder opting out after tender opening.
- f) BHEL reserves the right to short close the existing Purchase Order / Rate Contract / Work Order or any extension thereof at any stage.

17. TRANSIT INSURANCE.

- a) Transit Insurance will be covered by BHEL under its open Insurance Policy. Seller shall inform dispatch particulars (Purchase Order, RR /GR, Invoice value etc.) to "Finance department (Store bill Section), BHEL Ranipur, Haridwar (Uttarakhand-India) with value of consignment to the Purchaser within 07 days of dispatch for BHEL to arrange insurance coverage in its policy. Failure on the part of seller to inform dispatch particulars will make him liable to pay for any transit damages / losses suffered by the Purchaser.
- b) If Quoted Prices are inclusive of transit insurance, no weightage shall be given while evaluating the bids for Cost of Insurance, being in BHEL Scope.

18. RISK PURCHASE.

In case of abnormal delays (beyond the maximum late delivery period as per Penalty clause) in supplies / defective supplies or non-fulfillment of any other terms and conditions given in

Purchase Order, BHEL may cancel the Purchase Order in full or part thereof, and may also make the purchase of such material from elsewhere / alternative source at the risk and cost of the supplier. BHEL will take all reasonable steps to get the material from alternate source at optimum cost. If bidder does not agree to the above Risk Purchase Clause, BHEL reserves the right to reject the offer. In case for compelling reasons BHEL accepts the offer without acceptance of this clause by the bidder and in the eventuality of Risk Purchase, appropriate action will be taken as per BHEL extant rules. This will be without prejudice to any other right of BHEL under the contract or under General Law.

19. FORCE MAJEURE CLAUSE.

Notwithstanding any other thing contained anywhere else in the contract or PO (Purchase Order), In case the discharge of obligation under the contract by either party is impeded or made unreasonably onerous, neither party shall be considered in breach of the contract to the extent that performance of their respective obligation is prevented by an event of Force Majeure that arises after the effective date (PO date).

In the above clause, Force Majeure means an event beyond the control of the parties to the contract which prevents a party from complying with any obligation of the contract including but not limited to:

- Act of God (Such as but not limited to earthquake, drought, tidal waves, floods etc.).
- War (whether war be declared or not), Hostilities Invasion, Act of foreign enemy etc.
- Rebellion, revolution, insurrection, civil war etc.
- Contamination of Radio Activity from any nuclear fuel or from any other nuclear waste or any other hazardous materials.
- Riots, commotions, strike unless restricted to the employees of supplier.
- Acts of terrorism.
- Other unforeseeable circumstances beyond the control of the parties and which the affected party cannot avoid even by using its best efforts.
- Cancellation of contract by customer.



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- i) Change in law / government. Regulation making the performance impossible.
- j) Pandemic or Epidemic.

The party claiming to be affected by force majeure shall notify the other party in writing immediately without delay on the intervention and on the cessation of such circumstances.

Irrespective of any extension of time, if an event of force majeure occurs and its effect continues for more than 180 days the affected party shall have right to cancel the contract.

As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, either Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.

The party shall, and shall ensure that its Subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with Good Operating Practices (but without incurring unreasonable additional costs) to:

- a) Prevent Force Majeure Events affecting the performance of the party's obligations under this Agreement.
- b) mitigate the effect of any Force Majeure Event and
- c) Comply with its obligations under this Agreement.

If the war like situation has developed in a country where a seller's works is located in this P.O. or there is political instability and Indian Embassy located in that country forbids or advises for not having any business dealing with the sellers located in such zone / region/ country, then BHEL reserves the right to cancel the order.

20. NON-DISCLOSURE AGREEMENT.

All Drawing and Technical Documents relating to the product or it's manufacture submitted by one party to the other, prior or subsequent to the formation of contract, shall remain property of the submitting party. Drawing, technical documents or other technical information received by one party, shall not without the consent of the other party, be used for any other purpose than

that, for which they were provided. Such technical information shall not without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party. Patterns supplied by BHEL will remain BHEL's property which shall be returned by the bidder on demand to BHEL. Bidder shall in no way share or use such intellectual property of BHEL to promote his own business with others or to make a commercial advantage. BHEL reserves the right to claim damages from the bidder, or take appropriate action as deemed fit against the bidder, for any infringement of the provisions contained herein as available under law or equity.

21. SETTLEMENT OF DISPUTES / ARBITRATION.

In case of any dispute arising out of as in connection with this contract, the same shall be referred to arbitration under Arbitration & Conciliation Act 1996 of a sole arbitrator who shall be appointed by mutual consent of the parties. The seat & venue of arbitration shall be Haridwar.

The proceedings shall be conducted in English. The Governing law of contract shall be the substantive law of India.

22. WHARFAGE / DEMURRAGE RESPONSIBILITY.

In the event of delay in receipt of documents by Manager (Stores-Shipping) BHEL-Haridwar and in case where dispatches are made through Unapproved Transporter the sole responsibility for wharfage / demurrage for such delay shall be that of supplier.

23. CONDITIONS FOR AVAILING MICRO & SMALL ENTERPRISES (MSE'S) BENEFITS.

- a) "MSE Suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate having deemed validity (**five years** from the date of issue of acknowledgement in EM II) or valid NSIC certificate or EM II certificate along with attested copy of a CA certificate (Format enclosed at annexure-1 where deemed validity of EM II certificate of five years has expired) applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid



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opening (Part 1 in case of two-part bid) or vendor has to give Udyog Adhar Memorandum (UAM). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above required documents is found or the requisite documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above require document are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer. **UAM need not required to be notarized or attested.**

b) Any new supplier will be eligible for registration with BHEL as MSE supplier provided at least any one of the following documents are submitted along with application for registration: -

1. Udyog Adhar Memorandum (UAM).
2. Valid National Small Industries Commission (NSIC) Certificate.
3. Entrepreneurs Memorandum part II (EM II) certificate (valid based on deemed validity of 5 years) or
4. EM II certificate along with attested copy of CA Certificate (as per prescribed format at annexure-A) applicable for the relevant financial year (latest audited), where the deemed validity of EM II is over.
5. However, credentials of all MSE suppliers will be verified before advancing the intended benefits.
6. MSE bidders claiming SC/ST status will have to submit SC/ST certificate of the Proprietor from competent authority. Attested (notarized or attested by Gazetted officer) copy to be submitted along with the offer.
7. In case techno-commercial accepted bidders include MSE source and their prices (based on landed cost – considering quoted prices) are within the price band of 15% w.r.t. L-1 bidder, then BHEL can offer **25%** of quantity of respective item (rounded off to nearest number) to MSE bidders at L-1 price and in case, more than one MSE bidder is in 15 % band and the same is accepted by more than one MSE bidders then **25%** quantities of respective items will be considered for ordering on proportionate basis amongst MSE bidders.
8. There will be minimum of **3%** reservation for women owned MSEs within the above mentioned 25% reservation.

9. The reservation for MSEs owned by SC/ST will be **6.25%** { 25% out of target of 25% - refer para 4 of Public Procurement Policy for the Micro and Small Enterprises(MSEs)}.
10. The definition of MSEs owned by Women Entrepreneurs is clarified as under:
 - a) In case of proprietary MSE, proprietor shall be Woman.
 - b) In case of partnership MSE, the Woman partners shall be holding at least 51% of share in the unit.
 - c) In case of Private Limited companies, at least 51% share shall be held by Women promoters.
11. The definition of MSEs owned by SC/ST is clarified as under:
 - a) In case of proprietary MSE, proprietor(s) shall be SC/ST.
 - b) In case of partnership MSE, the SC/ST partners shall be holding at least 51% of shares in the unit.
 - c) In case of Private Limited companies, at least 51% share shall be held by SC/ST promoters.
12. While distributing the **25%** quantity amongst MSE bidders the decimal points in quantity shall be ignored for all the bidders except the L-1 amongst MSE bidders. Balance quantity after allocating the quantity to other MSE bidders ignoring the quantities in decimal, shall be given to L-1 (amongst MSE) bidder. However, if there are more than one MSE bidder at the same price level than preference for additional quantities due to ignoring off the decimal (as mentioned above) shall be given to the bidder offering favorable terms to BHEL and if the conditions offered are also same then preference will be given to the bidder having high SPR rating.
13. In case there are more than one MSE bidders (with different landed cost to BHEL) within 15% price band of lowest bidder and quantity to be offered is 1 no. only, then preference shall be given to the MSE bidder with lowest landed cost.
14. In case there are more than one MSE bidders (with same landed cost to BHEL) within 15% price band of lowest bidder and quantity to be offered is 1 no. only, then preference shall be given first, based on the favorable terms in the bid and in case terms are also same, the bidder with high SPR rating shall be given preference.
15. If L1 bidder is MSE bidder, entire quantity will be given to such MSE bidder only.
16. Note: It may however be noted that MSE guidelines as on date (Date of Technical Bid Opening Part-1) shall prevail.



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17. "As per the OM No. F.No. 1(2)(1)/2016-MA dtd. 09.02.2017 issued from the Office of Development Commissioner (Micro, Small & Medium Enterprises), "Traders and agents should not be allowed to avail the benefits extended under the PP Policy."

In view of this, it is clarified that benefits of MSE (such as EMD Waiver, Tender fee exemption, Price preference, Payment preference etc.) will be given only to those MSE Vendors who are manufacturers of offered items against the NIT. No MSE benefits shall be provided to Agents / Stockists / Dealers / Traders etc. for the items offered but not manufactured by themselves."

24. INFORMATION TO THE BIDDERS.

- a) Purchase related information is available at our Business-to-Business (B2B) Portal available on our website <https://hwr.bhel.com>. The user ID & password can be obtained by sending a request to concerned purchase executives.
- b) Intimate your change in mail address or communication address or changes, if any, by email to AGM (SDX/MM) giving your bidder Code.
- c) Please resolve your rejections and unexecuted overdue purchase order immediately which are posted at our B2B Portal, which can be visited through our site <https://hwr.bhel.com>
- d) Copy of this Tender Enquiry is being sent through the post.
- e) The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
In case, the bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/guidelines.
- f) Supplier must upload digitally signed e-Invoice on B2B portal for processing of Bills.

In other cases, inked signed hard copy of Invoice to be submitted for processing of Bills.

25. MAKE IN INDIA (GOVT-NOTIFICATION).

- A. This tender enquiry shall be governed by notification no. P-45021/2/2017-PP (BE-II) dated 04.06.2020 of government of INDIA and subsequent circulars issued afterwards. Accordingly, the minimum local content, the margin of purchase preference and the procedure for preference to make in INDIA shall be adhered.
- B. The margin of purchase preference shall be 20%.
 - 'Class-I local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this order.
 - 'Class-II local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this order.
 - 'Non- local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this order.
- C. Vendor to specifically confirm if they are Class-I or Class-II local supplier or not as per above mentioned notification. Accordingly, the 'Class-I local supplier' / 'Class-II local Supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier' / 'Class-II local Supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- D. In cases of Procurement for a Value in Excess of Rs. 10 Crores, the 'Class-I local supplier' / 'Class-II local Supplier' shall be required to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in the case of companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of suppliers other than companies) giving the percentage of Local Content.
- E. Requirement of Purchase Preference:



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Purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified hereunder -

a. In the procurements of goods or works, which are covered by para 3(b) of mentioned Govt. circular and which are divisible in nature, the 'class-I local supplier' shall get purchase preference over 'Class-II supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among All qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local supplier, then such balance quantity may also be ordered on the L1 bidder".

b. In the procurements of goods or works, which are covered by para 3(b) of mentioned Govt. circular and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'class-I local supplier' shall get purchase preference over 'Class-II supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference,

and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

- iii. In case such lowest eligible 'Class-I local supplier', fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 prices, the contract may be awarded to the L1 bidder.

c. 'Class-II local supplier' will not get purchase preference in any procurement, undertaken by procuring entities.

F. For this procurement, the local content to categorize a supplier as a Class-I local supplier/ Class-II local supplier/ Non-local supplier and purchase preference to Class-I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT.

G. Procurements where estimated value to be procured is less than Rs. 5 lakhs shall be exempted from GOI order No. P-45021/2/2017-PP (BE-II) dated 04.06.2020.

H. For procurement of Goods & Services which are divisible in nature, following shall be operated for **MSE bidders** under Public procurement Policy for the Micro and Small Enterprises (MSEs) Amendment Order, 2019, Ref. No. AA: SSP: MSE: Amndt, dtd. 30.11.2018, Circular No. 44 of 2018-19;-

a. If L1 bid is not from "Class-I local Supplier" and price quoted by MSE bidder falls within the margin of Purchase preference (L1+15% for MSEs), then 25 % of total order quantity of respective item (rounded off to nearest number) shall be awarded to MSE bidder, subject to MSE bidder matching the L1 Price. Out of Remaining 75% quantity, distribution shall be operated as per below sub-clause (2) –

b. If "Class- I Local Supplier" (Next to L1, other than MSE) quoted price falling within the Margin of Purchase Preference, and "Class-I local supplier" matches the L1 price, then 50% of remaining Quantity (after allocation of 25% to



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MSE) i.e. 37.5% shall be awarded to local supplier and 37.5% shall be awarded to foreign bidder.

Note: L1 Price refers to lowest evaluated / landed cost to Company.

For Further details, please refer GOI order no. P-45021 / 2 / 2017 - PP (BE-II) dated 04.06.2020.

26. RESTRICTIONS UNDER RULE 144(XI) OF THE GENERAL FINANCIAL RULES (GFRs), 2017

All provisions of Order No. F.No.6/18/2019-PPD of Department of Expenditure (DoE) shall be applicable for this tender enquiry (Order copy is available at <https://doe.gov.in/procurement-policy-divisions>). Accordingly, any bidder from a country which shares a land border with India (except the countries to which the Govt. of India has extended lines of credit or in which the Govt. of India is engaged in development projects for which list is available at <https://www.mea.gov.in/>) will be eligible to bid in this tender only if the bidder is registered with the Competent Authority as specified in Annex I of the said Order of DoE.

Updated list of the countries to which lines of credit have been extended or in which development projects are undertaken are available on the Ministry of External affairs website (<https://www.mea.gov.in/>)

For the purpose of this order, definition of Bidder from a country which shares a land border with India shall be same as defined in the Annex III of the said order.

Registration with the competent authority as stipulated in the said order is responsibility of bidder. Bidder has to submit a certificate certifying following along with offer:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that bidder (.... Name of Bidder) is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that bidder (.....Name of bidder) fulfils all requirements in this regard and is eligible to be considered"

If the bidder is from such country which shares a land border with India evidence of valid registration by the Competent Authority shall also be attached along with offer."

27. NOTE.

- a) Special conditions of enquiry, if enclosed by BHEL, will supersede the respective standard / general terms of enquiry.
- b) Any other Standard terms and Conditions of the bidder attached / referred against the tender enquiry will be treated as null and void ab initio.
- c) In order to protect the commercial interests of BHEL, it becomes necessary to take action against suppliers / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business / money / reputation, indulged in malpractices, cheating, bribery, fraud or any other misconducts or formation of cartel so as to influence the bidding process or influence the price etc. Guide- lines for Suspension of Business Dealings with Suppliers / Contractors shall prevail over which is available at BHEL website <http://www.bhel.com>
- d) The bidder along with its associate / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL-Management about any fraud or suspected fraud as soon as it comes to their notice.
- e) "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. **Victim:** Any person who suffers permanent disablement or dies in an accident as defined below.
 2. **Accident:** Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious

Quotations / Bids not in accordance with General Instructions and Standard Terms & Conditions are likely to be ignored.



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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.

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).

4. Permanent Disablement: A disablement that is classified as a permanent total disablement under the proviso to Section 2(l) of the Employees Compensation Act, 1923.”

f) The bidder shall be in compliance with applicable laws, rules and regulations throughout the terms of the contract for conducting its business generally and to perform its obligations under this contract.

Annexure - “G”

NON-DISCLOSURE AGREEMENT (NDA)

FORMAT

ANNEXURE (NON DISCLOSURE AGREEMENT)

NON-DISCLOSURE AND PROPRIETARY INFORMATION AGREEMENT

BETWEEN

_____ (Name of the Vendor), having its registered offices in _____ (Address of Vendor), registered under the no. _____ of the Companies' register of _____ (Name of Place and Country), capital stock of _____ (Value), with a place of business in _____ (Name of Place and Country) (hereinafter referred to as "_____ (Name of Vendor)" which expression shall unless repugnant to the context shall include its successors & assigns.

AND

Bharat Heavy Electricals Ltd a company incorporated under the Indian Companies Act 1956 having its registered offices at BHEL House, Siri Fort, New Delhi -110 049 and having one of its works at Heavy Electrical Equipment Plant, Ranipur, Haridwar-249403 (Uttarakhand), India registered under the No. 4281 of 1964-65 of the companies register of Delhi, capital stock of Rs 4895.2 million with a place of registered office in New Delhi (hereinafter referred to as "BHEL") which expression shall unless repugnant to the context shall include its successors & assigns. hereinafter also referred to individually as "the Party" or collectively as "the Parties".

BACKGROUND

This Agreement sets forth the rights and obligations of the Parties with respect to the use, handling, protection and safeguarding of Proprietary Information that is disclosed by and between the Parties.

WHEREAS

A) the Parties wish to pursue exploratory discussions concerning a possible collaboration between them in relation to the Tender Enquiry No..... also mentioned in Exhibit 1;

B) It is anticipated that during the possible discussions it may be necessary for BHEL to share certain confidential and proprietary information in written, oral, visual and/or physical/sample/ form to the other party (collectively "Proprietary Information", more fully detailed in clause I herein below) for the purpose of enabling the parties to interact and deliberate the aforementioned order and take it further (hereinafter referred to as "Purpose")

C) ~~The purpose of entering in to NDA is that during the ensuing discussions and negotiations, it may occur that either Party discloses to the other technical, financial or business information of a proprietary or confidential nature, which the Parties intend to protect against, making it available;~~

~~by any means to any third person, and other unauthorized use and/or further disclosure by the recipient, in accordance with the terms and conditions set forth herein~~The parties desire to protect such Proprietary Information and ensure that it is not disclosed to any third party without the permission of the party disclosing such Proprietary Information;

NOW, THEREFORE, the Parties have agreed as follows:

1. The term "Proprietary Information" shall mean any information or data of whatsoever kind of a confidential or proprietary nature disclosed by BHEL (hereinafter called the "Disclosing Party") to the vendor) hereinafter called the "Receiving Party"), including but not limited to, commercial information, know-how and technical information in the form of designs, drawings, concepts, requirements, specifications, trade secrets, IPR, brand name, marketing plans & all other non-public information, software, interfaces, components, processes, or the like, that have been or will be disclosed by ~~either Party~~the Disclosing Party to the other Receiving Party pursuant to this Agreement, either in writing, orally or other form, which is designated as "Proprietary" or "Confidential" by the ~~D~~disclosing Party by means of formal declaration or an appropriate stamp, legend or any other written or orally notice . Notwithstanding anything to the contrary contained hereinabove, all the drawings and other technical information shared regarding the above mentioned order by the Disclosing Party shall be considered Proprietary Information with or without being marked as confidential/proprietary at the time of sharing the same.

2. Proprietary Information may be conveyed, without limitation, through any written or printed documents, samples, models, electronic form on disk, tape, other storage media or any other means of disclosing such Proprietary Information that ~~either Disclosing Party~~ may elect to use during the life of this Agreement, but if ~~an originating~~Disclosing Party originally discloses information orally or visually, the ~~receiving~~Receiving Party will protect such information as Proprietary Information to the extent that the ~~originating~~Disclosing Party :

- identifies the Information as Proprietary at the time of original disclosure,
- summarizes the Proprietary Information in writing.

Information stored in electronic form on disk, tape, other storage media will be adequately marked if a proprietary legend displays when the information originally runs on a computer system and when the information is printed from its data file. Proprietary Information also includes any information which can be obtained by examination, testing or analysis of any hardware or material substance or any component part of such hardware or material substance provided by the Disclosing Party even though the requirements in Clause 1 for marking and designation have not been fulfilled.

3. ~~Each~~ The Disclosing Party, to the extent of its rights to do so, shall disclose to the other only the Proprietary Information which the Disclosing Party deems appropriate to fulfil the objectives of this Agreement. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves shall be made in compliance with, and subject to the Indian laws and regulations.

4. The Receiving Party hereby agrees and covenants that, from the effective date of this Agreement until the expiry date as per article 11 and the following period as per article 12, the Proprietary Information that ~~either Party~~ it receives from the ~~other Disclosing Party~~ shall:

- be protected and kept in strict confidence by the Receiving Party which must use the same degree of care it uses to protect its own confidential information and in no case less than a reasonable care;
- be only disclosed to and used by those persons within the Receiving Party's organization ~~or that of its parent or controlled companies~~ who have a need to know and solely for the purposes specified in this Agreement, and be treated by such persons or entities with the same degree of care and subject to the same restrictions;
- to procure that each third party to whom Proprietary Information is disclosed under this Agreement is made aware of the provisions of this Agreement prior to such disclosure to it and that each such third party is bound by obligations of confidentiality which are no less onerous than those contained in this Agreement;
- neither be disclosed nor caused to be disclosed or made available, either directly or indirectly, to any third Party or persons other than those mentioned in subparagraph b) above or other persons upon which both of the contractual Parties shall agree in an amendment to this Agreement;

e) not to reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Proprietary Information and which are provided to the Receiving Party hereunder;

~~e) f)~~ not to copy, reproduce or reduce to writing any part of such Proprietary Information except as may be reasonably necessary for the purpose referred to in the Recitals of this Agreement

PROVIDED THAT the Receiving Party shall be entitled to make any disclosure required by court order or government or regulatory requirement of the Disclosing Party's Proprietary Information subject to notifying the Disclosing Party as soon as possible of such requirement

5. Any Proprietary Information and copies thereof disclosed by ~~either the Disclosing Party~~ to the other shall remain the property of the ~~D~~disclosing Party and shall be immediately returned or destroyed by the ~~R~~receiving Party upon request or upon expiry of this Agreement.

6. The ~~R~~receiving Party shall have no obligations or restrictions with respect to any Proprietary Information for which the ~~R~~receiving Party can prove that:

a) is in or which comes into the public domain otherwise than as a result of a breach of this Agreement by any person to whom a disclosure of Proprietary Information is made as permitted under this Agreement or of any other duty of confidentiality relating to the Proprietary Information of which the Receiving Party has knowledge; or

b) it has been in its possession without restriction at the time of the disclosure, as evidenced by written documentation in its files; or

c) it has been lawfully received from a third Party without breach of this Agreement; or

d) it has been or is published without violation of this Agreement; or

~~e) it has been independently developed in good faith by employees of the receiving Party who did not have access to the Proprietary Information; or~~

~~f) it has not been properly declared, designated or confirmed as Proprietary or Confidential; or~~

~~g) e)~~ disclosure of such proprietary information is required by Law or by a court of competent jurisdiction.

7. With respect to any exchange of Proprietary Information which may occur as a result of this Agreement, it is expressly understood and agreed that the persons listed in Exhibit 2 shall, on behalf of the respective Parties, be the exclusive individuals authorized to receive from and transmit to the other Party Proprietary Information under this Agreement. Each Party may

replace at any time its respective authorized individuals identified in such Exhibit 2, within its own organization. Any such new designation by a Party shall be made by written notice to the other at the address indicated in such Exhibit 2.

8. Any Proprietary Information which is identified as "Classified Information", or whose export is subject to an export license, shall be identified as such by the Disclosing Party at the time of disclosure and the disclosure, protection, use and handling thereof, shall remain subject to the security procedures and restrictions imposed by the Disclosing Party's Government.
9. The disclosure of Proprietary Information under this Agreement by either the Disclosing Party to the ~~other~~ Receiving Party shall not be construed as granting to the Receiving Party any right, whether express or implied by licence or otherwise, on the matters, inventions or discoveries to which such information pertains, or as granting any trademark, patents, copyrights, trade secret right or other form of intellectual property right.
10. This Agreement covers the exchange of Proprietary Information which may be made by either the Disclosing Party to the ~~other~~ Receiving Party until ten years from signing of the agreement or any extension thereto which may be agreed upon by the Parties in writing. Proprietary information relevant to the Program detailed in Exhibit 1, already made available to the ~~other~~ Receiving Party before the effective date, shall also be protected under this Agreement.

It is understood by the parties that, prior to disclosure, the Disclosing Party shall have obtained any government authorisation needed for the export of the Proprietary Information

11. The expiry of the period contemplated in Article 10 of this Agreement shall not relieve the Receiving Party from complying with the obligations imposed by Article 4 here above with respect to the use and protection of the Proprietary Information, received prior the date of such expiry, for a period of ten (10) years after such expiry.
12. The Parties are independent contractors. Each will bear all costs and expenses in connection with this Agreement. This Agreement is intended to facilitate only the exchange of Proprietary Information in connection with the contract entered between both the parties and is not intended to be, and shall not be construed to create a teaming agreement, joint venture, association, partnership, or other business organisation or agency arrangement and no Party

shall have the authority to bind the other without the other Party's separate prior written agreement.

13. The Receiving Party shall indemnify the Disclosing Party for all costs, expenses or damages that Disclosing Party incurs as a result of any violation of any provisions of this Agreement. This obligation shall include court, litigation expenses, and actual, reasonable attorney's fees. The Receiving Party also agrees that monetary damages may be inadequate compensation to the Disclosing Party in the event the Receiving Party breaches any provision of this Agreement. Therefore, the parties agree that in the event of a breach or threatened breach of confidentiality, the Disclosing Party shall also be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach.

~~13.~~14. This Agreement shall be governed by and shall be interpreted in accordance with the substantive Indian laws. Irrespective of the foregoing each Party shall remain bound by the provisions of its own national laws and regulations with respect to the transfer or use of Classified Information or information whose export is subject to an export license.

~~14.~~15. All disputes among the Parties, in connection with or arising out of the existence, validity, construction, performance and termination of this Agreement (or any terms thereof), which the Parties are unable to resolve among themselves, shall be finally settled by an Arbitration ~~under the arbitration & conciliation Act 1996 by a sole arbitrator who shall be appointed by mutual consent of the parties~~ as per the Arbitration & Conciliation Act, 1996. The Arbitration shall be held in Haridwar (India), in English language, in accordance with the rules laid down in the Arbitration and Conciliation act of India 1996, of a sole arbitrator mutually appointed by both the parties. The courts of Haridwar shall have exclusive jurisdiction.

~~15.~~16. The foregoing constitutes the entire Agreement among the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications, either oral or written, acceptances, understandings and agreements among the Parties with respect to or in connection with any of the matters to which such Agreement applies or refers.

~~16.~~17. Notices to _____ (**Name of Vendor**) shall be made at the following address:

(Complete Address of Vendor)

Attention: Mr. _____ (**Name of the Authorised Person of Vendor**)

Notices to BHEL shall be made at the following address:

BHARAT HEAVY ELECTRICALS LIMITED,
HEAVY ELECTRICAL EQUIPMENT PLANT,
Ranipur, Haridwar-249403 (Uttarakhand), India

Attention: _____ (**Name of the PPX Incharge**)

~~17~~18. The effective date of this Agreement shall be the date of the last signature appearing herein.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement, to be executed by its duly authorized officer.

Date :

Signed for and on behalf of
(**Name of Vendor**)

By:

Title:

Signature:

Signed for and on behalf of

BHEL By:

Title:

Signature:

~~18~~19. No failure or delay by either party in exercising or enforcing any right, remedy or power here under shall operate as a waiver hereof.

~~19~~20. In the event that any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining portion hereof shall remain in full force & effect.

EXHIBIT 1

to the
NON-DISCLOSURE AGREEMENT
between

_____ (Name of Vendor)

and
BHARAT HEAVY ELECTRICALS LIMITED

dated:

The Non Disclosure Agreement covers the exchange of Proprietary Information which may occur during the discussions and negotiations in view of a possible cooperation between the Parties in the following programs:

- Description of Material or Servicesfor which the Enquiry issued
- / Purchase order to be placed

_____ (Name of Vendor) list of products that require an exchange of Proprietary Information which may be occur during the discussions and negotiations in view of a possible cooperation for the above programs :

EXHIBIT 2

to the
NON-DISCLOSURE AGREEMENT
between

_____ (Name of Vendor)

and
Bharat Heavy Electricals Ltd.

dated:

Personnel of the Parties authorized to receive and/or transmit Proprietary Information under this Agreement:

For **(Name of Vendor)**

(Name of Person)

Tel.

Fax

Address.

For Bharat Heavy Electricals Ltd.

Mr.

Tel. 01334

Fax 01334

Address. Main Administration Building

BHEL, HEPP, Haridwar

India

Tel.

Fax

Address.

Mr.

Tel. 01334

Fax 01334

Address. Main Administration Building

BHEL, HEPP, Haridwar

India

Annexure - “H”

INTEGRITY PACT

Clause on IP in the tender

Integrity Pact (IP)

- (a) IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

SI	IEM	Email
1.	Shri Otem Dai, IAS (Retd.)	iem1@bhel.in
2.	Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in
3.	Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in

- (b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.
- (c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.

Note:

No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below:

Details of contact person(s):

(1)
Name: Dushyant Kumar _____
Deptt: PPX-EM _____
Address: BHEL HARIDWAR _____
Phone: 01334-28-5622 _____
Email: dushyant@bhel.in _____
Fax: _____

(2)
Name: CHANDRA KISHORE _____
Deptt: PPX-EM _____
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INTEGRITY PACT**Between**

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for _____

_____ (hereinafter referred to as "Contract"). The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint panel of Independent External Monitor(s) (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

- 1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - 1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - 1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - 1.1.3 The Principal will exclude from the process all known prejudiced persons.
- 1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

- 2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits himself to observe the following principles during participation in the tender process and during the contract execution.

- 2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- 2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- 2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- 2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and shall await their decision in the matter.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process, terminate the contract, if already awarded, exclude from future business dealings and/ or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

- 4.1 If the Principal has disqualified the Bidder (s) from the tender process before award / order acceptance according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- 4.2 If the Principal is entitled to terminate the Contract according to Section 3, or terminates the Contract in application of Section 3 above, the Bidder(s)/ Contractor (s) transgression through a violation of Section 2 above shall be construed breach of contract and the Principal shall be entitled to demand and recover from the Contractor an amount equal to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee, whichever is higher, as damages, in addition to and without prejudice to its right to demand and recover compensation for any other loss or damages specified elsewhere in the contract.

Section 5 - Previous Transgression

- 5.1 The Bidder declares that no previous transgressions occurred in the last 3 (three) years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason or action can be taken as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 6 - Equal treatment of all Bidder (s)/ Contractor (s) / Sub-contractor (s)

- 6.1 The Principal will enter into Integrity Pacts with identical conditions as this Integrity Pact with all Bidders and Contractors.
- 6.2 In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor(s) and ensure that all Sub-contractors also sign the Integrity Pact.
- 6.3 The Principal will disqualify from the tender process all Bidders who do not sign this Integrity Pact or violate its provisions.

Section 7 - Criminal Charges against violating Bidders/ Contractors /Subcontractors

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

Section 8 -Independent External Monitor(s)

- 8.1 The Principal appoints competent and credible panel of Independent External Monitor (s) (IEMs) for this Integrity Pact. The task of the IEMs is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Integrity Pact.
- 8.2 The IEMs are not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.
- 8.3 The IEMs shall be provided access to all documents/ records pertaining to the Contract, for which a complaint or issue is raised before them as and when warranted. However, the documents/records/information having National Security implications and those documents which have been classified as Secret/Top Secret are not to be disclosed.
- 8.4 The Principal will provide to the IEMs sufficient information about all meetings among the parties related to the Contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the IEMs the option to participate in such meetings.

- 8.5 The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEMs would not be legally binding and it is restricted to resolving issues raised by a Bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some Bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process or during execution of Contract, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to the CMD, BHEL at the earliest. They may also send their report directly to the CVO, in case of suspicion of serious irregularities requiring legal/ administrative action. Only in case of very serious issue having a specific, verifiable Vigilance angle, the matter should be reported directly to the Commission. IEMs will tender their advice on the complaints within 30 days.
- 8.8 The CMD, BHEL shall decide the compensation to be paid to the IEMs and its terms and conditions.
- 8.9 IEMs should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the Principal should be looked into by the CVO of the Principal.
- 8.10 If the IEMs have reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code / Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the IEMs may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- 8.11 After award of work, the IEMs shall look into any issue relating to execution of Contract, if specifically raised before them. As an illustrative example, if a Contractor who has been awarded the Contract, during the execution of Contract, raises issue of delayed payment etc. before the IEMs, the same shall be examined by the panel of IEMs. Issues like warranty/ guarantee etc. shall be outside the purview of IEMs.
- 8.12 However, the IEMs may suggest systemic improvements to the management of the Principal, if considered necessary, to bring about transparency, equity and fairness in the system of procurement.
- 8.13 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

- 9.1 This Integrity Pact shall be operative from the date this Integrity Pact is signed by both the parties till the final completion of contract for successful Bidder, and for all other Bidders 6 months after the Contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.
- 9.2 If any claim is made/ lodged during currency of this Integrity Pact, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 - Other Provisions

- 10.1 This Integrity Pact is subject to Indian Laws and exclusive jurisdiction shall be of the competent Courts as indicated in the Tender or Contract, as the case may be.
- 10.2 Changes and supplements as well as termination notices need to be made in writing.
- 10.3 If the Bidder(s)/ Contractor(s) is a partnership or a consortium or a joint venture, this Integrity Pact shall be signed by all partners of the partnership or joint venture or all consortium members.
- 10.4 Should one or several provisions of this Integrity Pact turn out to be invalid, the remainder of this Integrity Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 10.5 Only those bidders / contractors who have entered into this Integrity Pact with the Principal would be competent to participate in the bidding. In other words, entering into this Integrity Pact would be a preliminary qualification.
- 10.6 In the event of any dispute between the Principal and Bidder(s)/ Contractor(s) relating to the Contract, in case, both the parties are agreeable, they may try to settle dispute through Mediation before the panel of IEMs in a time bound manner. In case, the dispute remains unresolved even after mediation by the panel of IEMs, either party may take further action as the terms & conditions of the Contract. The fees/expenses on dispute resolution through mediation shall be shared by both the parties. Further, the mediation proceedings shall be confidential in nature and the parties shall keep confidential all matters relating to the mediation proceedings including any settlement agreement arrived at between the parties as outcome of mediation. Any views expressed, suggestions, admissions or proposals etc. made by either party in the course of mediation shall not be relied upon or introduced as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of mediation proceedings. Neither of the parties shall present IEMs as witness in any Alternative Dispute Resolution or judicial proceedings in respect of the dispute that was subject of mediation.

 For & On behalf of the Principal
 (Office Seal)

 For & On behalf of the Bidder/ Contractor
 (Office Seal)

Place _____
 Date _____

Witness: _____
 (Name & Address) _____

Witness: _____
 (Name & Address) _____

ANNEXURE-I

(To be filled by the manufacturer or channel partner with whom EPC contractor is having a valid Deed of Joint Undertaking)

We, M/s..... hereby confirm that we meet the qualifying requirements. In this regard, we declare that we are a manufacturer of Water Electrolyser hydrogen generator system based on AEL/AEM/PEM /AMSE/SOE technology.

We have supplied a Water Electrolyzer hydrogen generator system based on AEL/AEM/PEM/ AMSE/SOE technology (same technology which is being supplied to BHEL/OIL) of hydrogen production capacity and the system is installed, commissioned and is in operation satisfactorily for at least three months prior to the bid due date. The above electrolyser system was supplied in the last ten years (from the original bid closing date) and should have been in successful operation for at least 3 (three) months prior to the original bid closing date.

The details of system are given below:

S. No.	Description	Data / details
1.	Name of client with full Address, Telephone No. and e-mail address	
2.	Name of Plant (Location and Address)	
3.	Name of Package / Contract along with Order/ LOA No. & Date	
4.	Capacity of Plant	
5a.	Scope of work included in the order	Indicate Yes / No
i.	Design	
ii.	Engineering	
iii.	Manufactured	
iv.	Supervised Erection	
v.	Supervised Commissioning	
5b.	Actual date of commissioning	
5c.	No. of years in successful operation prior to bid due date	
6.	Following documents are enclosed in support of meeting the stipulated qualifying Requirements	Indicate Yes / No
6a.	Letter of Award/ Contract Agreement / Order	

6b.	Proof towards Water Electrolyser Manufacturer for AEL / AEM / PEM / AMSE / SOE based hydrogen generation system (the same technology which is being supplied to OIL)	
6c.	Completion certificate from end customer for supply of the water electrolyzer based hydrogen generation system.	
6d.	Certificate/letter/e-mail from end customer for satisfactory operation of water electrolyzer system for at least three months prior to the bid due date. (The certificate shall indicate the type of water electrolyzer, its capacity, start-up date and current system operating status)	
6e.	Any other relevant documents	
7.	Whether order received directly from the Owner of Plant	

Note:

1. Bidder has to strictly fill detail as above while filling this Attachment to establish meeting the Qualification Requirement.
2. Copies of documents in support of above information shall be submitted as per BEC of Tender Document.

Annexure-J

SAFETY MEASURES (SM)

**To,
Manager(BD)
Bharat Heavy Electrical Ltd.
HEEP, Haridwar**

SUB: SAFETY MEASURES

Description of work/service: Establish a plant of 1 MW capacity in Himachal Pradesh for production of High Purity (99.999%) Green Hydrogen for commercial use Sir,

We hereby confirm that we have fully understood the safety measures to be adopted during execution of the above contract and that the same have been explained to us by the concerned authorities. We also give the following assurances.

- a) Only experienced and competent persons shall be engaged by us for carrying out work under the said contract.
- b) The names of the authorized persons who would be supervising the jobs on day to day basis from our end are the following:
 - i) _____ ii) ____ iii) ____

The above personnel are fully familiar with the nature of jobs assigned and safety precautions required.

- c) Due notice would be given for any change of personnel under item(b) above.
- d) We hereby accept the responsibility for the safety of all the personnel engaged by us and for the safety of the Company's personnel and property involved during the course of our working under this contract. We would ensure that all the provisions under the Oil Mines Regulations, 1984 and other safety rules related to execution of our work would be strictly followed by our personnel. Any violation pointed out by the Company's Engineers would be rectified forthwith or the work suspended till such time the rectification is completed by us and all expenditure towards this would be on our account.

e) We confirm that all persons engaged by us would be provided with the necessary Safety Gears at our cost.

f) All losses caused due to inadequate safety measures or lack of supervision

on our part would be fully compensated by us and the Company will not be responsible for any lapses on our part in this regard.

g) We shall abide by the HSE (Health, Safety & Environmental) points mentioned in the Special Conditions of Contract (SCC):

(Seal)

Yours Faithfully,

Date _____

M/s. _____

FOR & ON BEHALF OF CONTRACTOR

Certificate

In line with Government Public Procurement (Preference to Make in India), Order 2017, P-45021/2/2017-PP (BE-II) dated 16.09.2020, we hereby certify that we M/s _____ (supplier name) are local supplier meeting the requirement of minimum local content _____ (in %) as defined in above order for the material against Enquiry No. _____

Details of location at which local value addition will be made is as follows:

We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

Seal and Signature of Supplier

SPECIAL TERMS AND CONDITIONS:

Risk Purchase:

In case of abnormal delays (beyond the maximum late delivery period as per LD clause) in supplies / defective supplies or non-fulfilment of any other terms and conditions given in Purchase Order, BHEL may cancel the Purchase Order in full or part thereof, and may also make the purchase of such material from elsewhere / alternative source at the risk and cost of the supplier. BHEL will take all reasonable steps to get the material from alternate source at optimum cost. If bidder does not agree to the above Risk Purchase Clause, BHEL reserves the right to reject the offer. In case for compelling reasons BHEL accepts the offer without acceptance of this clause by the bidder and in the eventuality of Risk Purchase, appropriate action will be taken as per BHEL extant rules. This will be without prejudice to any other right of BHEL under the contract or under General Law.

Action against Bidders / vendor / supplier / contractor in case of default:

In order to protect the commercial interests of BHEL, BHEL shall take action against suppliers / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business/ money/ reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding process or influence the price etc.

Suspension of Business Dealings could be in the form of "Hold" or "Banning" a supplier/ contractor or a bidder and shall be as per "Guidelines for Suspension of Business Dealings with Suppliers/ Contractors" available at BHEL's website "<https://www.bhel.com/guidelines-suspension-business-dealings-supplierscontractors>"

Conflict of Interest:

"A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. **The bidder found to have a conflict of interest shall be disqualified.** A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; **or**
- b) they receive **or** have received any direct or indirect subsidy/ financial stake from any of them; **or**
- c) they have the same legal representative/agent for purposes of this bid; **or**
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; **or**
- e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid; **or**
- f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
 - 1. The principal manufacturer directly or through one Indian agent on his behalf; and
 - 2. Indian/foreign agent on behalf of only one principal; **or**
- g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; **or**
- h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business. "

MODEL CONCILIATION CLAUSE FOR CONDUCTING CONCILIATION PROCEEDINGS UNDER THE BHEL CONCILIATION SCHEME, 2018

The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

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 in Annexure----- to this GCC/Agreement/Contract/MoU etc. (strike off whichever is inapplicable).

The Annexure ----- together with it's Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this GCC/Agreement/Contract/MoU etc., (strike off whichever is inapplicable).

The Purchaser/Contractor/Seller etc. (insert the description of the other party to the Agreement/Contract/MoU etc., - whichever is applicable) agrees that the Purchaser/Contractor/Seller etc. (insert the description of BHEL - whichever is applicable) may make any amendments or modifications to the provisions stipulated in the Annexure -----to this GCC/Agreement/Contract/MoU etc., (strike off whichever is inapplicable) from time to time and confirms that it shall be bound by such amended or modified provisions of the Annexure -----with effect from the date as intimated by BHEL to it.