

General Conditions of Contract- Volume-1C
(Common for PE&SD, Hyderabad)

BHARAT HEAVY ELECTRICALS LIMITED
General Conditions of Contract (Common for PE&SD, Hyderabad) Rev3.0, 10th Sep 2023

TABLE OF CONTENTS

1. **Chapter-1:** General Instructions to Tenderers
 - 1.1. Despatch Instructions
 - 1.2. Submission of Tenders
 - 1.3. Language
 - 1.4. Price Discrepancy
 - 1.5. Qualification of Tenderers
 - 1.6. Evaluation of Bids
 - 1.7. Data to be enclosed
 - 1.8. Authorisation and Attestation
 - 1.9. Earnest Money Deposit
 - 1.10. Security Deposit
 - 1.11. Return of Security Deposit
 - 1.12. Bank Guarantee
 - 1.13. Validity of offer
 - 1.14. Execution of Contract Agreement
 - 1.15. Rejection of Tender and other Conditions

2. Chapter-2

- 2.1. Definitions
- 2.2. Law Governing Contract and Court Jurisdiction
- 2.3. Issue of Notice
- 2.4. Use of land
- 2.5. Commencement of Work
- 2.6. Not used
- 2.7. Rights of BHEL
- 2.8. Responsibilities of Consultant in respect of Local Laws, Employment of Staffs etc
- 2.9. Progress Monitoring, Monthly Review and Performance Evaluation (Not applicable)
- 2.10. Time of Completion
- 2.11. Extension of Time for Completion
- 2.12. Over Run Compensation (Not Applicable)
- 2.13. Interest Bearing Recoverable Advances (Not applicable)
- 2.14. Quantity Variation (Not applicable)
- 2.15. Extra Works (Not applicable)
- 2.16. Supplementary Items (Not applicable)
- 2.17. Price Variation Clause (Not Applicable)
- 2.18. Insurance
- 2.19. Strikes & Lockout
- 2.20. Force Majeure
- 2.21. Arbitration and Reconciliation
- 2.22. Retention Amount (Not applicable)
- 2.23. Payments
- 2.24. Performance Guarantee for Workmanship (Not applicable)
- 2.25. Closing of Contracts
- 2.26. Reverse Auction
- 2.27. Suspension of Business Dealings
- 2.28. Other Issues
- 2.29. Fraud Policy
- 2.30. Loading Criteria
- 2.31. Limitation of Liability

CHAPTER -1**1. GENERAL INSTRUCTION TO TENDERERS****1.1. DESPATCH INSTRUCTION**

- i) The General Conditions of Contract form part of the Tender specifications. **All pages of the tender documents shall be duly signed, stamped and submitted along with the offer in token of complete acceptance thereof.** The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages
- ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the tenderers have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, the scope of work etc., he shall at once, contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Tenderer's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The specifications and terms and conditions shall be deemed to have been accepted by the tenderer in his offer. Non compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the tender.
- iii) Integrity pact (IP) shall be applicable for all tenders / contracts if indicated in NIT. This integrity pact shall be issued as part of the Tender documents and shall be returned by the bidder along with Techno-commercial bid duly filled, signed and stamped by the authorized signatory who signs the bid. Only those vendors / bidders who have entered into such an IP with BHEL shall be considered qualified to participate in the bidding. Entering into this pact shall be a preliminary qualification.

1.2. SUBMISSION OF TENDERS

- 1.2.1 The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT.

Offer shall be submitted online in e-procurement portal.

NO other mode of offer submission shall be acceptable & shall be rejected.

Note: Party can review & revise their submitted offers till due date & time of submission

- 1.2.2 The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances.
- 1.2.3 Tenders shall be opened by authorized officer of BHEL as specified in the NIT.
- 1.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bids and such Tenderers may depute their

representatives to witness the opening of the price bids. BHEL's decision in this regard shall be final and binding.

- 1.2.5 Before submission of Offer, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

1.3. LANGUAGE

- 1.3.1 The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.
- 1.3.2 All entries in the tender shall either be typed or written legibly in ink. Erasing and over-writing is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the tenderer.

1.4 PRICE DISCREPANCY:

- 1.4.1 **Conventional Price Bid opening:** In the case of price bid opening without resorting to Reverse Auction, if there are differences between the rates given by the tenderer in words and figures or in amount worked out by him, the following procedure for evaluation and award shall be followed:
- i) When there is a difference between the rates in figures and in words, the rates which corresponds to the amounts worked out by the Consultant, shall be taken as correct.
 - ii) When the amount of an item is not worked out by the Consultant or it does not correspond with the rate written either in figure or in words, then the rate quoted by the Consultant in words shall be taken as correct.
 - iii) When the rate quoted by the Consultant in figures and words tallies but the amount is not worked out correctly, the rate quoted by the Consultant shall be taken as correct and not the amount.
 - iv) In case of lump sum price, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.
 - v) In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers against the respective omission items for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However the overall price remaining the same as quoted originally, the rates for all the items in the 'Total quoted price (loaded for omissions)' shall be reduced item wise in proportion to the ratio of Original' total price and the 'Total quoted price (loaded for omissions)''.
 - vi) The 'Final Total Amount' shall be arrived at after considering the amounts worked out in line with 'i' to 'v' above.
- 1.4.2 **Reverse Auction (Applicable for this tender):** In case of Reverse Auction, the successful

bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. In case of omission of rates, the procedure shall be as per 'Guidelines for Reverse Auction' enclosed.

1.5. QUALIFICATION OF TENDERERS

- i) Only tenderers who have previous experience in the work of the nature and description detailed in the Notice Inviting Tender and/or tender specification are expected to quote for this work duly detailing their experience along with offer
- ii) Offers from tenderers who do not have proven and established experience in the field shall not be considered.
- iii) Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered.
- iv) Offers from tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

1.6. EVALUATION OF BIDS

- i) Technical Bids submitted by the tenderer will be opened first and evaluated for fulfilling the Pre-Qualification Requirement and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer.
- ii) In case the same qualifying experience is claimed by more than one agency, then the agency who has executed the work as per documentary evidence submitted shall only be qualified. Scope of qualifying work should be totally with the agency who has executed and in case it is only labour + consumables without T&P, then the responsibility of execution is assigned to the first agency and not to the agency who has executed only as labour supply Consultant. Further, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job.
- iii) In case the qualifying experience is claimed by private organizations based on Work Order and completion certificates from another private organization, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job.
- iv) Assessing Bidder Capacity for executing the current tender shall be as per Notice Inviting Tender.
- v) Price Bids of shortlisted bidders shall only be opened either through the conventional price bid opening or through electronic Reverse Auction (if applicable), at the discretion of BHEL.
- vi) Price Bids of unqualified bidders shall not be opened. Reasons for rejection shall be intimated in due course after issue of LOI/LOA to successful bidder and receipt of unqualified acceptance from the successful bidder.
- vii) Bidders are advised to also refer to clause no 2.9.4 regarding evaluation of their performance in ongoing projects for the current tender.

1.7. DATA TO BE ENCLOSED

Full information shall be given by the tenderer in respect of the following. Non-submission of this information may lead to rejection of the offer.

i) INCOME TAX PERMANENT ACCOUNT NUMBER

Certified copies of Permanent Account Numbers as allotted by Income Tax Department for the Company/Firm/Individual Partners, etc. shall be furnished along with tender.

ii) ORGANIZATION CHART

The organization chart of the tenderer's organization, including the names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.

iii) Not used**iv) IN CASE OF INDIVIDUAL TENDERER:**

His / her full name, address and place & nature of business.

v) IN CASE OF PARTNERSHIP FIRM

The names of all the partners and their addresses, A copy of the partnership deed/instrument of Partnership duly certified by the Notary Public shall be enclosed.

vi) IN CASE OF COMPANIES:

- a. Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished).
- b. Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

1.8 Not used

1.9 EARNEST MONEY DEPOSIT

1.9.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

- i) EMD shall be furnished along with the offer in full as per the amount indicated in the Special Conditions of Contract / NIT.
- ii) The EMD is to be paid in the following forms:
 - (a) Cash deposit as permissible under the extant Income Tax Act (before tender opening).
 - (b) Electronic Fund Transfer credited in BHEL account (before tender opening).
 - (c) Banker's cheque / Pay order / Demand draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender (along with offer).
 - (d) Fixed Deposit Receipt (FDR) issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Consultant, a/c BHEL).
 - (e) Insurance Surety Bonds

In addition to above, the EMD amount in excess of Rs. Two lakh may also be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.

Note: In case required EMD as above is not available at the time of Technical Bid opening, offer of the bidder shall not be considered for further processing.

No other form of EMD remittance shall be acceptable to BHEL.

iii) **The EMD shall be waived in the following cases:**

- (a) Joint Venture or Subsidiary companies of BHEL.
- (b) Central/ State PSUs/ Government depts/Autonomous/ Educational/ Research institutions.

1.9.2 EMD by the Tenderer will be forfeited as per NIT conditions, if:

- i) After opening the tender and within the offer validity period, the tenderer revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
- ii) The Consultant fails to deposit the required Security deposit or commence the work within the period as per LOI/ LOA/ Contract.

EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provisions of extant "Guidelines on Suspension of business dealings with suppliers/ Consultants" and forfeited/ released based on the action as determined under these guidelines.

1.9.3 EMD shall not carry any interest.

1.9.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.

1.9.5 EMD of successful tenderer will be retained as part of Security Deposit.

1.10 SECURITY DEPOSIT

- 1.10.1 Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit towards fulfilment of any obligations in terms of the provisions of the contract.

The total amount of Security Deposit will be 5% (Five percent only) of the contract value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.

- 1.10.2 The security Deposit should be furnished by the Consultant within fifteen days of issue of "Letter of Award/Work Order" or start of the work, whichever is earlier. Bidder has to submit performance security required for the execution of the contract within the time period mentioned above. In case of delay in submission of performance security, enhanced performance security which would include interest (Repo rate + 4%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT/Contract, from the bills along with due interest. The component of interest submitted/recovered as mentioned above shall not be refunded in any circumstance.

- 1.10.3 The balance amount to make up the required Security Deposit of 3% of the contract value may be accepted in the following forms:-

- i) Cash (as permissible under the extant Income Tax Act).
- ii) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL.
- iii) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Consultant furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL).
- iv) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats.
- v) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Consultant, a/c BHEL).
- vi) Security deposit can also be recovered at the rate of 10% of the gross amount progressively from each of the running bills of the Consultant till the total amount of the required security deposit is collected. However in such cases at least 50% of the required Security Deposit, including the EMD, should be deposited in any form as prescribed before start of the work and the balance 50% may be recovered from the running bills as described above.

vii) Insurance Surety Bonds

(Note: In case of small value contracts not exceeding INR 20 lakhs, work can be started before the required Security Deposit is collected. However, payment can be released only after collection/ recovery of initial 50% Security Deposit).

Note: BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

1.10.4 The Security Deposit shall not carry any interest.

1.10.5 In case the value of work exceeds / reduces from the awarded / accepted value, the Security Deposit shall be correspondingly enhanced / reduced as given below:

- i) The enhanced part of the Security Deposit shall be immediately deposited by the Consultant or adjusted against payments due to the Consultant.
- ii) There will be no reduction in Security Deposit value in case of variation in contract value upto the lower limit specified in Quantity variation clause. In case of reduction of contract value beyond the lower limit specified in Quantity Variation clause, then the Security Deposit shall be re adjusted in proportion.
- iii) In case of reduction, the reduced Contract value shall be certified by BHEL Construction Manager after ascertaining / freezing of BOQ / Drawings from the Design / Engineering Centre. The reduced Security Deposit value can only be considered after taking into account the adequacy of the securities held by BHEL to meet the liabilities of the Consultant for the contract, and the performance of the contract in general.

In such cases, the revised value of Security Deposit shall be worked out only after execution of not less than the lower limit of the revised scope of work/contract value as per quantity variation clause, and as certified by Construction Manager. This reduction in value of Security Deposit shall not entitle the Consultant to any amendment of Contract and shall be operated at the discretion of BHEL

- iv) Contract value for the purpose of operating the reduced/increased value of Security Deposit due to Quantity Variation, shall be exclusive of Price Variation Clause, Over Run Compensation and Extra works done on manday rates.
- v) The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, with the approval of BHEL.

1.10.6 The validity of Bank Guarantees towards Security Deposit shall be initially upto the completion period as stipulated in the Letter of Intent/Award + 3 months, and the same shall be kept valid by proper renewal till the acceptance of Final Bills of the Consultant, by BHEL

1.10.7 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the Consultant's failure to fulfill any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.

1.11 RETURN OF SECURITY DEPOSIT

Security Deposit shall be refunded/Bank Guarantee(s) released to the Consultant along with the 'Final Bill' after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL.

The component of interest submitted/recovered in case of delayed submission of security deposit as mentioned in clause no. 1.10.2 shall not be refunded in any circumstance.

1.12 BANK GUARANTEES

Wherever Bank Guarantees are to be furnished/submitted by the Consultant, the following shall be complied with.

- i) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act.
- ii) The Bank Guarantees shall be as per prescribed formats.
- iii) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL Site Engineer / Construction Manager. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- iv) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly endorsed by the Construction Manager and submitted to the Regional HQ issuing the LOI/LOA.
- v) In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.
- vi) Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.
- vii) The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the PE&SD, BHEL, Hyderabad.

1.13 VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of **SIX MONTHS** from latest due date of offer submission (including extension, if any). In case BHEL (Bharat Heavy Electricals Ltd) calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

1.14 EXECUTION OF CONTRACT AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent/ Award by Bharat Heavy Electricals Limited. The Tenderer shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer shall be required to execute an agreement in the prescribed form, with BHEL, within a reasonable time after the acceptance of the Letter of Intent/Award, and in any case before releasing the first running bill. The contract agreement shall be signed by a person duly authorized/empowered by the tenderer.

1.15 REJECTION OF TENDER AND OTHER CONDITIONS

- 1.15.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:-
- a. To reject any or all of the tenders.
 - b. To split up the work amongst two or more tenderers as per NIT
 - c. To award the work in part if specified in NIT
 - d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.
- 1.15.2 Conditional tenders, unsolicited tenders, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.
- 1.15.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted) by any unit / region / division of BHEL or tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India. BHEL reserves the right to reject a bidder in case it is observed that they are overloaded and may not be in a position to execute this job as per the required schedule in line with clause no. 9.0 of the 'NIT'. The decision of BHEL will be final in this regard.
- 1.15.4 If a tenderer who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.
- 1.15.5 BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognise such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the Consultant concerned.
- 1.15.6 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money/Security Deposit/any other money due.
- 1.15.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.
- 1.15.8 In case the Proprietor, Partner or Director of the Company/Firm submitting the Tender, has any relative or relation employed in BHEL, the authority inviting the Tender shall be informed of the fact as per specified format, along with the Offer. Failing to do so, BHEL

may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.

- 1.15.9 The successful tenderer should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL's Construction Manager/Site Incharge. The tenderer is solely responsible to BHEL for the work awarded to him.
- 1.15.10 The tender submitted by a techno commercially qualified tenderer shall become the property of BHEL who shall be under no obligation to return the same to the bidder.
- 1.15.11 Unsolicited discount received after the due date and time of Bid Submission shall not be considered for evaluation. However, if the party who has submitted the unsolicited discount/rebate becomes the L-I party, then the awarded price i.e contract value shall be worked out after considering the discount so offered.
- 1.15.12 BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.

CHAPTER-2

2.1 DEFINITION: The following terms shall have the meaning hereby assigned to them except where the context otherwise requires

- i) BHEL shall mean Bharat Heavy Electricals Limited (of PE&SD, Hyderabad), a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or its Power Sector Regional Offices/PESD HQ or its Authorised Officers or its Site Engineers or other employees authorised to deal with any matters with which these persons are concerned on its behalf.
- ii) “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of PE&SD, Hyderabad.
- iii) “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General Manager (Incharge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (Incharge) or General Manager of BHEL.
- iv) “ENGINEER” or “ENGINEER IN CHARGE” shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes ‘CONSTRUCTION MANAGER’ or ‘SITE INCHARGE’ as well as Officers at Site or at the Headquarters of PE&SD, Hyderabad.
- v) “CLIENT OF BHEL” or “CUSTOMER” shall mean the project authorities with whom BHEL has entered into a contract for supply of equipments or provision of services.
- vi) “CONSULTANT” shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the Consultant’s successors, heirs, executors, administrators and permitted assigns.
- vii) “CONTRACT” or “CONTRACT DOCUMENT” shall mean and include the Agreement of Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Tenderers, Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/Award/Acceptance issued by BHEL. Any conditions or terms stipulated by the Consultant in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement.
- viii) “GENERAL CONDITIONS OF CONTRACT” shall mean the ‘Instructions to Tenderers’ and ‘General Conditions of Contract’ pertaining to the work for which above tenders have been called for.
- ix) “TENDER SPECIFICATION” or “TENDER” or “TENDER DOCUMENTS” shall mean General

Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexures, Corrigendums, Amendments, Forms, procedures, Site information, etc and drawings/documents pertaining to the work for which the tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.

- xi) "LETTER OF INTENT/ AWARD" shall mean the intimation by a Letter/Fax/email to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the Consultant commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.
- xii) "COMPLETION TIME" shall mean the period by 'date/month' specified in the 'Letter of Intent/Award' or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.
- xiii) "SINGULAR AND PLURALS ETC" words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
- xiv) "HEADING" – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.
- xv) "MONTH" shall mean calendar month unless otherwise specified in the Tender.
- xvi) 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of twenty four (24) hours each. A week shall mean continuous period of seven (7) days.
- xxiii) "WRITING" shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
- xxiv) 'CONTRACT PRICE' or 'CONTRACT VALUE' shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained.
- xxv) "COMMENCEMENT DATE" or "START DATE" shall mean the commencement/start of work at Site as per terms defined in the Tender.
- xxvi) "SHORT CLOSING" or "FORE CLOSING" of Contract shall mean the premature closing of Contract, for reasons not attributable to the Consultant and mutually agreed between BHEL and the Consultant.
- xxvii) "TERMINATION" of Contract shall mean the premature closing of contract due to reasons as mentioned in the contract.

2.2 LAW GOVERNING THE CONTRACT AND COURT JURISDICTION

The contract shall be governed by the Law for the time being in force in the Republic of India. Subject to clause 2.21.1 or 2.21.2 of this contract, the Civil Court having original Civil Jurisdiction at Hyderabad for PESD, shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.

2.3 ISSUE OF NOTICE**2.3.1 Service of notice on Consultant**

Any notice to be given to the Consultant under the terms of the contract shall be served by sending the same **by Registered Post / Speed Post to** or leaving the same at the Consultant's last known address of the principal place of business (or in the event of the Consultant being a company, to or at its Registered Office). In case of change of address, the notice shall be served at changed address as notified in writing by the Consultant to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice.

2.3.2 Service of notice on BHEL

Any notice to be given to BHEL in-charge/PE&SD Hyderabad under the terms of the Contract shall be served by sending the same by post to or leaving the same at BHEL address or changed address as notified in writing by BHEL to the Consultant.

2.4 USE OF LAND

No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the Consultant without written permission of BHEL.

2.5 COMMENCEMENT OF WORK

2.5.1 The Consultant shall commence the work as per the time indicated in the Letter of Intent/Award from BHEL and shall proceed with the same with due expedition without delay.

2.5.2 If the Consultant fails to start the work within stipulated time as per LOI/ LOA or as intimated by BHEL, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.

2.5.3 All the work shall be carried out under the direction and to the satisfaction of BHEL.

2.6 Not used**2.7 RIGHTS OF BHEL**

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the Consultant for any compensation.

- 2.7.1** In case of inadequate manpower deployed by the Consultant, BHEL reserves the right to deploy additional manpower through any other agency for expediting activities in the interest of the project. Supplied manpower shall be put on job by the Consultant and payments and other statutory compliances related to manpower shall be the Consultant's responsibility. In case of Consultant's failure to fulfill his obligations in respect of such manpower, BHEL reserves the right to take necessary action as per contract conditions.
- 2.7.2** To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.
- 2.7.3** To terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the Consultant after due notice of a period of 14 days by BHEL in any of the following cases:
- i) Consultant's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to Consultant including unexecuted portion of work does not appear to be executable within balance available period considering its performance of execution.
 - ii) Withdrawal from or abandonment of the work by Consultant before completion of the work report as per contract.
 - iii) Non-completion of work by the Consultant within scheduled completion period as per Contract or as extended from time to time, for the reasons attributable to the Consultant.
 - iv) Termination of Contract on account of any other reason (s) attributable to Consultant.
 - v) Assignment, transfer, subletting of Contract without BHEL's written permission.
 - vi) Non-compliance to any contractual condition or any other default attributable to Consultant.

Risk & Cost Amount against Balance Work:

Risk & Cost amount against balance work shall be calculated as follows:

$$\text{Risk \& Cost Amount} = [(A-B) + (A \times H/100)]$$

Where,

A= Value of Balance scope of Work (*) as per rates of new contract

B= Value of Balance scope of Work (*) as per rates of old contract being paid to the Consultant at the time of termination of contract i.e. inclusive of PVC & ORC, if any.

H = Overhead Factor to be taken as 5.

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).

* Balance scope of work (in case of termination of contract):

Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work for calculating risk & cost amount.

Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities.

Items for which total quantities to be executed have exceeded the Contract Quantities based on drawings issued to Consultant from time to time till issue of Termination letter, then for these items total Quantities as per issued drawings would be deemed to be contract quantities.

Substitute/ extra items whose rates have already been approved would form part of contract quantities for this purpose. Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose

NOTE: In case portion of work is being withdrawn at risk & cost of Consultant instead of termination of contract, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work' for calculating Risk & Cost amount.

LD against delay in executed work in case of Termination of Contract:

LD against delay in executed work shall be calculated in line with LD clause no. 2.7.10 of GCC, for the delay attributable to Consultant. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

Method for calculation of "LD against delay in executed work in case of termination of contract" is given below.

- i) Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to Consultant = T1
- ii) Let the value of executed work till the time of termination of contract = X
- iii) Let the Total Executable Value of work for which inputs/fronts were made available to Consultant and were planned for execution till termination of contract = Y
- iv) Delay in executed work attributable to Consultant i.e. $T2 = [1 - (X/Y)] \times T1$
- v) LD shall be calculated in line with LD clause (clause 2.7.10) of the Contract for the delay attributable to Consultant taking "X" as Contract Value and "T2" as period of delay attributable to Consultant.

2.7.3.2 In case Consultant fails to deploy the resources as per requirement, BHEL can deploy own/hired/otherwise arranged resources at the risk and cost of the Consultant and recover the expenses incurred from the dues payable to Consultant. Recoveries shall be actual expenses incurred plus 5% overheads or as defined in TCC.

2.7.3.3 Once the risk & cost action under the clause no. 2.7.3.1 is initiated on partial or full withdrawal of scope/termination of contract, the Consultant shall not be eligible to participate in any or all the tenders published by BHEL to get the work executed under the clause 2.7.3.1.

2.7.4 Recoveries arising out of Risk & Cost and LD or any other recoveries due from Consultant

Following sequence shall be applicable for recoveries from Consultant:

- a) Dues available in the form of Bills payable to Consultant, SD, BGs against the same contract.
- b) Demand notice for deposit of balance recovery amount shall be sent to Consultant, if funds are insufficient to effect complete recovery against dues indicated in (a) above.
- c) If Consultant fails to deposit the balance amount to be recovered within the period as prescribed in demand notice, following action shall be taken for balance recovery

- i) Dues payable to Consultant against other contracts in the same Region shall be considered for recovery.
- ii) If recovery cannot be made out of dues payable to the Consultant as above, balance amount to be recovered, shall be informed to other Regions/Units for making recovery from the Unpaid Bills/Running Bills/SD/BGs/Final Bills of Consultant.
- iii) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against Consultant.

2.7.5 To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.

2.7.6 To effect recovery from any amounts due to the Consultant under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to Consultant's failure to fulfill any of his obligations. BHEL shall levy overheads of 5% on all such payments along with interest as defined elsewhere in the GCC.

2.7.7 While every endeavour will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The Consultant will not be normally entitled for any compensation/extra payment on this account unless otherwise specified elsewhere in the contract.

2.7.8 In case the execution of works Report comes to a complete halt or reaches a stage wherein worthwhile works Report cannot be executed and there is no possibility of commencement of work Report for a period of not less than two months, due to reasons not attributable to the Consultant and other than Force Majeure conditions, BHEL may consider permitting the Consultant to de mobilize the concerned manpower/staffs from this work forthwith and re mobilize at an agreed future date. Cost of such demobilization/remobilization shall be mutually agreed. ORC in such cases shall not be applicable for the period between the period of demobilization and re mobilisation. The duration of contract/time extension shall accordingly get modified suitably. In case of any conflict, BHEL decision in this regard shall be final and binding on the Consultant.

2.7.9 In the unforeseen event of inordinate delay in receipt of drawings, Documents, etc, due to which inordinate discontinuity of work Report is anticipated, BHEL on its own or Consultant's request at its discretion may consider to short close the contract in following cases:

- a) The balance works (including but not limited to deploy the manpower, etc) are minor vis a vis the scope of work envisaged as per the contract.
- b) There has been no significant work in past 6 months OR no significant work is expected in next 6 months (example in Hydro projects or in projects where work has stopped due to reasons beyond the control of BHEL).

c) The balance works Report cannot be done within a reasonable period of time as they are dependent on unit shut down or on other facilities of customer or any other reasons not attributable to the Consultant.

d) Work Report does not start within six months of LOI/ LOA date.

At the point of requesting for short closure, Consultant shall establish that he has completed all works possible of completion and he is not able to proceed with the balance works due to constraints beyond his control. In such a case, the estimated value of the unexecuted portion of work (or estimated value of services to be provided for carrying out milestone/stage payments like Trial Operation/PG Test, etc) as mutually agreed, shall however be reduced from the final contract value.

2.7.10 LIQUIDATED DAMAGES/PENALTY

If the consultant/agency fails to deploy the requisite HSE manpower as per TCC. BHEL shall have the right to impose Liquidated Damage/Penalty at the rate of 1.0% of the contract value, per week of delay or part thereof subject to a maximum of 10% of the contract value. For this purpose, the period of delay shall be the delay attributable to the Consultant for the completion of work as per contract. Contract Value for this purpose, shall be the final executed value exclusive of ORC, Extra Works executed on Manday rate basis and taxes.

At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) Consultant, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out and shall be considered to be exhausted in the same order. The total period of time extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions attributable to contractor and recoverable from the dues payable to the contractor.

2.8 RESPONSIBILITIES OF THE CONSULTANT IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF STAFF ETC.

The following are the responsibilities of the Consultant in respect of observance of local laws, employment of personnel, payment of taxes etc. The consultant shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the Consultant in discharging any of his responsibilities hereunder:

2.8.1 The Consultant shall pay and bear all taxes, fees, license charges, Cess, duties, deposits, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.

2.8.2 The Consultant shall be responsible for the proper behaviour and observance of all regulations by the staff employed by him.

2.8.10 The Consultant shall ensure that no damage is caused to any person/property of other parties working at customer premises. If any such damage is caused, it is responsibility of the Consultant to make good the losses or compensate for the same.

2.8.11 The Consultant will be directly responsible for payment of salary to his staff. A pay roll

sheet giving all the payments given to the staffs and duly signed by the Consultant's representative should be furnished to BHEL for record purpose, if so called for.

2.9 PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION (not applicable)

2.10 TIME OF COMPLETION

2.10.1 The time schedule shall be as prescribed in the Contract. The time for completion shall be reckoned from the date of commencement of work at Site as certified by BHEL Engineers

2.10.2 The entire work shall be completed by the Consultant within the time schedule or within such extended periods of time as may be allowed by BHEL under clause 2.11

2.11 EXTENSION OF TIME FOR COMPLETION

2.11.1 If the completion of work as detailed in the scope of work gets delayed beyond the contract period, the Consultant shall request for an extension of the contract and BHEL at its discretion may extend the Contract.

2.11.2 Based on the monthly reviews jointly signed, the works balance at the end of original contract period less the backlog attributable to the Consultant shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the Consultant is bound to complete the portion of backlog attributable to the Consultant. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.

2.11.3 However if any 'Time extension' is granted to the Consultant to facilitate continuation of work and completion of contract, due to backlog attributable to the Consultant alone, then it shall be without prejudice to the rights of BHEL to impose penalty/LD for the delays attributable to the Consultant, in addition to any other actions BHEL may wish to take at the risk and cost of Consultant.

2.11.4 A joint programme shall be drawn for the balance amount of work to be completed during the period of 'Time Extension', along with matching resources (with weightages) to be deployed by the Consultant as per specified format. Review of the programme and record of shortfall shall be done every month of the 'Time extension' period in the same manner as is done for the regular contract period.

2.11.5 During the period of 'Time extension', Consultant shall maintain their resources as per mutually agreed program.

2.11.6 At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) Consultant, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out and shall be considered to be exhausted in the same order. The total period of time

extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions attributable to Consultant and recoverable from the dues payable to the Consultant.

2.12 OVERRUN COMPENSATION (NOT APPLICABLE for this tender)

2.13 INTEREST BEARING RECOVERABLE ADVANCES (not applicable for this tender)

2.14 QUANTITY VARIATION (Not applicable for this contract)

2.15 EXTRA WORKS (Not applicable for this contract)

2.16 SUPPLEMENTARY ITEMS (Not applicable for this tender)

2.17 PRICE VARIATION COMPENSATION (NOT APPLICABLE for this tender)

2.18 INSURANCE

2.18.1 It is the sole responsibility of the Consultant to insure his workmen/staffs, etc. against accidents and injury while at work and to pay compensation, if any, to workmen/staffs. The work will be carried out in a protected area and all the rules and regulations of the client /BHEL in the area of project which are in force from time to time will have to be followed by the Consultant.

2.18.2 If due to negligence and or non-observation of safety and other precautions by the Consultants, any accident/injury occurs to the property / manpower belong to third party, the Consultant shall have to pay necessary compensation and other expense, if so decided by the appropriate authorities.

2.18.4 The Consultant will take necessary precautions and due care to protect the material, while in his custody from any damage/ loss due to theft or otherwise till the same is taken over by BHEL or customer. For lodging / processing of insurance claim the Consultant will submit necessary documents. BHEL will recover the loss including the deductible franchise from the Consultant, in case the damage / loss is due to carelessness / negligence on the part of the Consultant. In case of any theft of material under Consultant's custody, matter shall be reported to police by the Consultant immediately and copy of FIR and subsequently police investigation report shall be submitted to BHEL for taking up with insurance. However this will not relieve the Consultant of his contractual obligation for the material in his custody.

2.19 STRIKES & LOCKOUT

2.19.1 The Consultant will be fully responsible for all disputes and other issues connected with his labour. In the event of the Consultant's labour resorting to strike or the Consultant

resorting to lockout and if the strike or lockout declared is not settled within a period of one month, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL shall be deducted from the Consultant's bills.

- 2.19.2 For all purposes whatsoever, the employees of the Consultant shall not be deemed to be in the employment of BHEL

2.20 FORCE MAJEURE

- 2.20.1 "Force Majeure" shall mean any event beyond the reasonable control of the parties including but not limited to fire, flood, earthquake or other acts of God, war, riots, civil war and restraints of Governing States, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected. The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party : a) any strike, work-to-rule action, go-slow or similar labour difficulty (b) late delivery of equipment or material (unless caused by Force Majeure event) and (c) economic hardship.
- 2.20.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.
- 2.20.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period equal to period of delay caused due to such Force Majeure event.
- 2.20.4 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not
Constitute a default or breach of the Contract.
Give rise to any claim for damages or additional cost or expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

2.21 ARBITRATION

- 2.21.1.1 Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided in Clause 2.21.2 herein below or otherwise) in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract (hereinafter referred to as the 'Dispute'), then, either Party may, commence arbitration in respect of such Dispute by issuance of a notice in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the

‘Notice’). The Notice shall contain the particulars of all claims to be referred to arbitration in sufficient detail and shall also indicate the monetary amount of such claim. The arbitration shall be conducted by a sole arbitrator to be appointed by the Head of the PE&SD BHEL issuing the Contract within 60 days of receipt of the complete Notice. The language of arbitration shall be English.

The Arbitrator shall pass a reasoned award.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder as in force from time to time shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be Hyderabad. The Contract shall be governed by and be construed as per provisions of the laws of India. Subject to this provision 2.21.1.1 regarding ARBITRATION, the principal civil court exercising ordinary civil jurisdiction over the area where the seat of arbitration is located shall have exclusive jurisdiction over any DISPUTE to the exclusion of any other court.

- 2.21.1.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No.

4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018 as amended from time to time.

- 2.21.1.3 The cost of arbitration shall initially be borne equally by the Parties subject to the final allocation thereof as per the award/order passed by the Arbitrator.

- 2.21.1.4 Notwithstanding the existence of any dispute or differences and/or reference for the arbitration, the Consultant shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner unless the dispute inter-alia relates to cancellation, termination or short-closure of the Contract by BHEL.

2.21.2 CONCILIATION:

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), 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 (IEC) to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

1. 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 Procedure 2.3 to this GCC. The Procedure 2.3 together with its 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.

The Consultant hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure 2.3 to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure 2.3 with effect from the date as intimated by BHEL to it.

2.21.3 No Interest payable to Consultant

Notwithstanding anything to the contrary contained in any other document comprising in the Contract, no interest shall be payable by BHEL to Consultant on any moneys or balances including but not limited to the Security Deposit, EMD, Retention Money, RA Bills or the Final Bill, or any amount withheld and/or appropriated by BHEL etc., which becomes or as the case may be, is adjudged to be due from BHEL to Consultant whether under the Contract or otherwise.

2.22 RETENTION AMOUNT (not applicable to this tender)

2.23 PAYMENTS

Payments to Consultants are made in any one of the following forms.

2.23.1 Running Account Bills (RA Bills):

- i) These are for interim payments when the contracts are in progress. The bills for such interim payments are to be prepared by Consultant as per mutually agreed prescribed formats.
- ii) Recoveries on account of statutory deductions, etc are made as per terms of contract
- iii) In order to facilitate part payment, BHEL Engineer at his discretion may further split the contracted rates/percentages to suit contract/project conditions, cash flow requirements according to the progress of work.
- iv) The payment terms for shall be as per Chapter-I of SCC, and Clause no. 11.2 of TCC.
- v) All payments due to the Consultants shall be made by e mode only, unless otherwise found operationally difficult for reasons to be recorded in writing.

2.23.2 Final Bill

Final Bill' is used for final payment on closing of Running Account for works or for single payment after completion of works. 'Final Bill' shall be submitted as per mutually agreed prescribed format after completion of works as per scope, along with the following.

- i) 'No Claim Certificate' by Consultant
- iii) Clearance certificates where ever applicable viz Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department, etc
- iv) Indemnity bond as per prescribed format.

BHEL shall settle the final bills after deducting all liabilities of Consultant to BHEL

2.24 PERFORMANCE GUARANTEE FOR WORKMANSHIP (not applicable for this tender)**2.25 CLOSING OF CONTRACTS**

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of Consultant.

2.26 REVERSE AUCTION: (applicable for tender).

BHEL reserves the right to go for Reverse Auction for Price Bid Opening by BHEL appointed service provider, instead of opening the submitted sealed price bid in the conventional way. The Business Rules for Reverse Auction shall be as per BHEL guidelines issued from time to time.

2.27 SUSPENSION OF BUSINESS DEALINGS

BHEL reserves the right to take action against Consultants who either fail to perform or Tenderers/Consultant who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time refer www.bhel.com for latest guideline.

2.28 OTHER ISSUES

- 2.28.1 Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 200/- unless otherwise required under relevant statutes.
- 2.28.2 In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall prevail.
- 2.28.3 Unless otherwise specified in NIT, offers from consortium/ JVs shall not be considered.
- 2.28.4 BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts like providing services for Hot water flushing, Chemical Cleaning, Transportation, etc.

2.29 FRAUD POLICY

The bidder along with its associate/ collaborators/ sub-Consultants/ 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

2.30 **LOADING CRITERIA**

Deviated Penalty: Any loading on penalty/LD clause shall be 10% or to the extent to which it is not agreed by vendor.

Deviated Payment Terms: Deviations on Commercial terms from NIT are generally not acceptable. In case of deviations w.r.t Payment terms, the price will be loaded at Base rate of SBI (as applicable on the date of bid opening/Techno-commercial bid in case of 2 part bids) + 6% for the period of relaxation.

2.31 **2.31 LIMITATION OF LIABILITY**

In no event will Consultant be liable for any incidental, consequential, special, punitive or indirect damages, loss of profits, revenues, or use, or the loss or corruption of data, even if informed of the possibility of these damages. The aggregate liability of Consultant for any claims arising out of or related to this contract will in no case exceed Consultant accepted purchase order value under which liability arose. To the extent permitted by applicable law, these limitations and exclusions will apply whether liability arises from breach of contract, indemnity, warranty, tort, operation of law, or otherwise.