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CONDITIONS OF CONTRACT

The following terms and conditions shall form a part of the tender document.

1.0 EARNEST MONEY DEPOSIT

EMD is not applicable for this tender

2.0 SECURITY DEPOSIT

Security Deposit means the security provided by the Contractor towards fulfilment of any obligations in terms of the provision of the contract.

Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work. **The total amount of Security Deposit will be 5% of the Contract Value.** The security Deposit should be furnished **before start of the work** by the contractor.

1. Mode of Security deposit:

The balance amount to make up the required Security Deposit of 5% of the contract Value may be furnished in any of 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) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit is enclosed.
- iv) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL and duly discharged on the back.
- v) Securities available from Indian Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly endorsed/hypothecated/pledged, as applicable, in favour of BHEL and duly discharged on the back).

(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)

a) Submission of Security Deposit:

- i) At least 50 % of the required Security Deposit, including the EMD, shall be submitted before start of work. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.
- ii) If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or it shall be recovered from payment/s due to the Contractor.

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- iii) 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, at the discretion of BHEL.
- b) The BG shall be submitted only through the Banker. Along with the BG, the Bank shall also furnish a letter of confirmation (in the prescribed formats enclosed with general conditions of contract).
- c) The validity of the Bank Guarantee furnished towards Security Deposit shall be up to three months more than the period of completion of work as stipulated in the LOI and the same will be kept valid by proper renewal till the completion of the work.
- d) BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of the contract. BHEL reserves the right to set off the Security Deposit, against any claims of any other contracts with BHEL.
- e) **Conditions for acceptance of bank guarantees**

Contractors are advised to obtain Bank Guarantee preferably from any of the following BHEL consortium banks

Sl. No.	Nationalised Bank		Nationalised Bank
1	Allahabad bank	19	Vijaya Bank
2	Andhra bank		Public Sector Banks
3	Bank of Baroda	20	IDBI
4	Canara Bank		Foreign bank
5	Corporation bank	21	CITI Bank N.A
6	Central bank of India	22	Deutsche Bank AG
7	Indian Bank	23	The Hongkong and Shanghai Banking Corporation Limited
8	Indian Overseas Bank	24	Standard Chartered Bank
9	Oriental bank of Commerce	25	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		Private bank
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

Bank Guarantees from Banks outside BHEL's consortium shall be as below:

The Bank Guarantees of all Public sector banks can be accepted (in addition to consortium banks)

The Bank Guarantees of Co-operative banks shall not be accepted.

Bank Guarantees of other than consortium bank and public sector bank can be accepted subject to an overall exposure limit (at New Delhi) of Rs. 10 crores for banks with networth of more than Rs. 500 crores as on last balance sheet date and Rs 5 crores for banks with net worth between Rs. 350 to Rs 500 crores (A certificate and copy of latest Balance Sheet to be given by the Bank at the time of submission of Bank Guarantees).

In case of private sector banks a clause to be incorporated in the text of Bank Guarantee that it can be enforceable by being presented at any branch of the bank.

In case of foreign vendors the bank guarantees issued by foreign banks may be confirmed by our consortium bank in India.

In case of Bank Guarantees given by Non-Consortium banks (Private sector or Public sector), the Bank Guarantees are to be enforceable in New Delhi or the town/ city in which the sector office is located.

f) **RETURN OF SECURITY DEPOSIT:**

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand certificate", returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, and furnishes performance bond BG in the prescribed proforma as per ANNEXURE-J, Security Deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.

g) **Bank Account Details for submission of EMD/ Security Deposit through electronic fund transfer mode.**

NAME OF THE COMPANY	BHARAT HEAVY ELECTRICALS LTD
ADDRESS OF THE COMPANY	TRANSMISSION BUSINESS GROUP, 5TH FLOOR, TOWER A ADVANT NAVIS IT BUSINESS PARK, PLOT NO. 7, SECTOR-142, EXPRESSWAY NOIDA, NOIDA – 201305 (U.P.)
NAME OF BANK	HDFC BANK
NAME OF BANK BRANCH	ARERA COLONY, BHOPAL
CITY	BHOPAL
ACCOUNT NUMBER	00620320000021
ACCOUNT TYPE	CASH CREDIT
IFSC CODE	HDFC0000062
MICR CODE	462240002

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3.0 TERMS OF PAYMENT :-

- 3.1** 100 % all activities towards the shipment lot including freight shall be paid within 60 days of submission of following documents after discharge of cargo at the final destination i.e 400/230 kV substation at Maitree, Bangladesh Project and as certified by BHEL's Engineer in charge.

Following documents shall be required to be provided with contractor's bills for 100% Bill:

- (a) Three set of Freight Pre Paid B/L & Freight Invoice with following supporting documents (Original+ 2 Copies),
- (b) Export clearance documents like S/B, invoice, pkg. list,
- (c) Sailing report/Track report of shipping company or their agent.
- (d) Pre-shipment measurement report.
- (e) Copy of advance Cargo Arrival Notice given to the consignee.
- (f) Vessel Certificate
- (g) Scan Copy of Receiving issued on LR to transporters of BHEL site official
- (h) Statement of fact of berthing of the vessel at BHEL's Bangladesh Matree site.
- (i) Certificate from discharge port agent / shipping line/ port authority confirming that all Packages are discharged as per BL.

- 3.2** **Exchange rate for payment purpose shall be taken as SBI TT selling rate as applicable on date of invoice. If the same falls holiday then TT selling rate of previous bank (SBI) working day shall be taken.**

- 3.3** In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment.

4.0 OVERALL PRICE VARIATION-

The quantities indicated in "Bill of Quantity" attached with the tender are indicative only and individual quantity may vary up to any extent. Unit price will be firm and no price escalation is payable throughout the execution / extended period of the contract.

The total contract value is subject to variations depending upon the actual requirement. However, total executed value should not exceed beyond 30% of total contract value.

5.0 TRANSIT LD /PENALTY FOR DELAY IN COMPLETION :-

Bidder shall be responsible to expedite the movement of consignment after same is received for shipment.

In case the bidder is unable to transport the cargo within the stipulated time as per the Customs circular and in case any penalty and interest, if any is levied the same shall be recoverable from the bidder.

Demurrage charges of container, port charges due to delay after handing over of documents (after IGM Filling) shall be deducted from Bidder's account.

For delays in days beyond the stipulated transit period shall be 5% per week Prorata, limited to a maximum of 10% of the total freight amount / charges for each lot of cargo.

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6.0 TAXES & DUTIES**6.1 IMPORT DUTIES**

- 6.1.1 Bidder may please note that import for the project shall be in the name of our Employer / Owner of the Plant / Project and such import other than Office and Household Equipment shall be exempted from payment of Customs Duty, VAT & Supplementary Duty as per S.R.O-73 dtd. 19-03-1997. Also Regulatory Duty (RD), Advance Trade VAT (ATV) & AIT are exempted / not applicable.

Any documentation needed for availing of Duty Free Imports will be submitted by the bidder in reasonable time having regard to the time for delivery of the work and the time for completion.

- 6.1.2 However, if any of the taxes as mentioned above are paid by the bidder as per the extant law in force in Bangladesh, the same shall be reimbursed at actuals subject to production of documentary evidence in support of such payment. However, the bidder shall obtain prior approval of BHEL before deposition of such taxes.
- 6.1.3 Temporarily imported erection materials, machineries and spare parts during construction period of Project are exempted from payment of Customs Duty and VAT. Such items shall be exported within six months from the commercial operation date. Documentation for the same to be submitted / maintained by the bidder.
- 6.1.4 Any Taxes for exporting material from source country & as applicable in the source country shall be on bidder's account. However, bidder to take into consideration Duty Free Export Provisions in source country, as applicable, including that in GST in case of exports from India. As such, while offering the rates, the bidder may take into account the benefit of above provisions, as the cost of input to the bidder will be net of such taxes and adjust their offer price accordingly to make it more competitive.

6.2 Bangladesh VAT

- 6.2.1 The Bidder shall submit copy of VAT registration Certificate (Musak-8), TIN Certificate, Trade License to the BHEL site office immediately after receiving the Order but before raising the first Tax Invoice against this tender.
- 6.2.2 The subject job shall be a Construction Job. As per Section 6(4aa) of The Bangladesh Value Added Tax Act, 1991, VAT shall not be collected by the bidder from BHEL as the Employer (i.e. Customer of BHEL) shall make deduction of VAT from BHEL's invoice and deposit the same to the Government Treasury. Documentary evidence shall be provided to the bidder
- 6.2.3 Adequate documents for not charging/ claiming VAT from BHEL shall be made available to the Bidder.
- 6.2.4 The bidder shall raise Tax Invoice (Challan Patra) as per Rule 16(1) (Musak-11) of the Value Added Tax Rules, 1991 mentioning Name, Address and VAT Registration Number of BHEL site office.
- 6.2.5 Bidder shall note that the Tax Invoice complying with Rule 16(1) of the Value Added Tax Rules, 1991 must contain the 'Bill to' and 'Ship to' details as below:

BHEL Bangladesh VAT Regn. No. 00761853
 Bharat Heavy Electricals Limited
 2x660 MW Maitree Super Thermal Power Project, Moidara Village,
 Rampal Upazila, Bagerhat District, Bangladesh

- 6.2.6 Bidders shall quote price excluding Bangladesh VAT envisaging VAT exemption on the same. In this connection please note that VAT, if and as applicable, on Bidders Quoted Price and in case BHEL is unable to provide exemption documents shall be payable extra. In such case bidder shall submit self-certified copy of the Treasury Challan and / or self-attested copy of the Current Account (Musak-18) along with the Tax Invoice as an evidence of payment of output tax claimed from BHEL.

6.3 VALUE ADDED TAX DEDUCTION AT SOURCE:

- 6.3.1 BHEL will not deduct any VAT from Bidder's Gross Bill and such bidder need not to load any Output VAT in Bidder's quoted price

6.4 INCOME TAX DEDUCTION AT SOURCE:

- 6.4.1 Bidder should have valid 12-digit TIN number in Bangladesh prior to start of work.
- 6.4.2 Advance Income Tax (AIT) under the Income Tax Ordinance, 1984 (and rules made thereunder) shall be deducted at prevailing rates on Gross Invoice value from the bills unless Exemption Certificate from the appropriate authority/ authorities is/ are furnished under Income Tax Laws of Bangladesh
- 6.4.3 Since payment shall be made in Bangladesh. Bangladesh Income Tax (AIT) shall be deducted, if applicable.
- 6.4.4 The Bidder shall carry out their own tax diligence to get acquainted with the relevant rules and regulations of Bangladesh pertaining to the subject job.
- 6.4.5 Except otherwise mentioned above bidder shall quote their rates/ price inclusive of all taxes, duties, cess, any State or Central Levy, social security contribution and other Taxes in or outside Bangladesh (but excluding Bangladesh VAT & Import Duties) in line with provisions as mentioned above etc. together with variation thereto during contract period including extension, if any. BHEL shall not release any additional payment in this regard.
- 6.4.6 The bidder is responsible for compliance of all relevant Tax Laws of Bangladesh and all other related places outside Bangladesh in connection with this contract and BHEL will not bear any such liability.
- 6.4.7 New tax & duties, if imposed subsequent to latest due date of offer submission, as per NIT & TCN, as applicable, by statutory authority after due date of submission of latest price offer and within the contract period including extension, if any (provided reason for extension is not attributable to vendor), shall be reimbursed by BHEL at actual on production of relevant supporting document to the satisfaction of BHEL. However, the vendor shall obtain prior approval from BHEL before depositing new taxes & duties. Benefits and/or abolition of all existing taxes must be passed on to BHEL against new Taxes, if any, proposed to be introduced at a later date.

7.0 OVER RUN CHARGES-

No overrun charges are payable under the contract.

8.0 SECURED ADVANCE:-

No advance on materials shall be payable under the contract.

9.0 PRICE VARIATION.

Prices will be firm for total contract period and extended period, if any, and no price escalation / price variation will be applicable.

10.0 VALIDITY OF OFFER

The offer shall be kept open for acceptance for a minimum period of four months from the date of opening of tenders. In case BHEL calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderer.

11.0 COMMENCEMENT OF WORK:-

The Bidder shall commence the work on specific intimation from BHEL in writing or the time indicated in the LOA and shall proceed with the same with due expedition without delay. If the Bidder fails to commence the work as per the terms of Order/Contract, BHEL, at its sole discretion will have the right to cancel the Order/Contract. His Earnest Money and/or Security Deposit will stand forfeited without prejudice to any and all of BHEL's other rights and remedies in this regards.

Before arrival of the carrier, the Bidder will inspect the cargo available in Port whether under the custody of the Bidder or BHEL or its supplier or any other authorized representative and ensure its sea worthiness. Any deficiency in this regard shall be brought to the notice of BHEL in writing suggesting remedial measures to enable BHEL to make it sea worthy. Alternatively, such action can be taken by the Bidder after obtaining written approval of BHEL to the action as well as to the cost. Such cost incurred by the Bidder shall be reimbursed by BHEL to the Bidder, if agreed.

The Bidder shall also intimate BHEL in writing about the documents required for loading of the cargo on the carrier. He will be responsible for examination of all the required documents before arrival of the carrier and any discrepancy in the same shall be attended to by the Bidder /BHEL in time to ensure loading on the carrier arranged by the Bidder.

12.0 DETENTION OF CARRIER :-

It will be the responsibility of the Bidder to ensure that all the declared and available cargo is loaded on the carrier and unloaded from the carrier in time without its detention. If the carrier is detained without any written request from BHEL, the Bidder shall be fully responsible for detention of the carrier and BHEL shall in no way be liable to pay any detention charges whatsoever.

In case of non-availability of Barges to receive heavy lifts directly from Vessel on its arrival at load port /discharge port, the detention charges of stoppage of vessel at port of origin will have to be borne by the bidder.

For loading /unloading of cargoes on to/from wharf, the availability of Hydraulic axles is essentially required at the time of arrival of vessel. Due to non-availability of required Trailers/tools & equipments the trucking & terminal handling charges will be to bidder's Accounts.

13.0 OBSERVANCE OF LOCAL LAWS:-

The Bidder shall comply with all Laws, Statutory Rules, and Regulations etc. The Bidder shall obtain all necessary permits/approval from the local Governing Body, Police and other concerned Authorities as may be required under law of load port country / transit country/ discharge port country for smooth execution of the Contract..

The Bidder shall pay all taxes, fees, license charges, deposits, duties, tolls, royalty, commissions or other charges that may be leviable on account of any of the operations connected with the execution of this contract in load port country/transit country/ discharge port country.

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The Bidder shall be responsible for the proper behavior and observance of all applicable regulations by the staff employed in load port country/transit country/ discharge port country.

14.0 SAFETY OF MEN, EQUIPMENT, MATERIAL & ENVIRONMENT:

All safety rules, codes applied by BHEL/its customer at site shall be observed by the Bidder and his workmen without exception. The Bidder shall be responsible for the safety of the equipment/materials and work to be performed by him.

The contractor shall take all necessary safety precautions and arrange for appropriate appliances as to prevent loss of human lives, injuries, to personnel engaged and damage to property. If the bidder fails to take appropriate safety precautions or to provide necessary safety devices and equipment required as per law of the land, bidder shall be sole responsible for the same and BHEL shall have the right to take corrective steps at the risk and cost of the contractor.

The Bidder shall insure his workmen against all accidents and the policy shall be presented to BHEL on demand. Otherwise, BHEL will arrange the same and the expenditure towards this will be debited to the contractor. In case of a fatal or disabling injury accident to any person during execution of the contract due to lapses by the bidder, the victim and/or his/her dependents shall be compensated by the bidder as per statutory requirements. However, if considered necessary BHEL shall have the right to impose appropriate financial penalty on bidder and recover the same from payments due to the bidder for suitably compensating the victim and/or his/her dependence before imposing any such penalty. Appropriate enquiry shall be held by BHEL giving opportunity to the bidder for presenting his case. The above safety conditions are not exhaustive but give an idea for the bidder and bidder shall adhere to all safety precautions warranted for the execution of the contract.

The Bidder shall be responsible for provision of all the safety notices and safety equipment as enjoined on him by the application of relevant statutory regulation / provisions and/or as called upon by BHEL from time to time related to execution of this contract. Bidder shall be held responsible for any violation of statutory regulations (local, state or central) and BHEL instruction that may endanger safety of men, equipment and material.

15.0 INSURANCE :-

Bidder shall arrange the Insurance of materials for material handling at Mongla port, transportation from Mongla port to Maitree site handing over the material at Maitree site and up to return back of containers to liner/shipper.

The Bidder shall during the performance of the contract take a suitable insurance to cover against bodily injury, death or damage to property of the Bidder or his employees or any other person engaged.

The Bidder shall during the performance of the contract take out a Third Party insurance cover against bodily injury or death suffered by any third party/parties or damage to property occurring during the course of execution of this contract in accordance with appropriate statutory requirements.

If due to Bidder's carelessness, negligence, non-observance of safety precautions, improper security arrangements or due to non-compliance of paper work needed for lodging insurance claim, damage to BHEL/its Customer's property, and if BHEL is unable to recover its claim from the Insurance Company, the deficit will be recovered from the Bidder.

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16.0 RESPONSIBILITY OF CONTRACTOR IN RESPECT OF STATUTORY RULES / REGULATIONS PERTAINING TO BOWC.

It shall be mandatory for the contractor to comply with Building and Other Construction Worker (Regulation of Employment and Conditions of Service) Act, 1996 and Rules of 1998 read with Building and other Construction Workers welfare Cess act, 1996 and Cess Rules.

It shall be the sole responsibility of the contractor to apply for a license to the Competent Authority under the Building and Other Construction Worker (Regulation of Employment and Conditions of Service) Act, 1996 and Rules of 1998 read with Building and other Construction Workers welfare Cess act, 1996 and Cess Rules and obtain proper certificate thereof by specifying the scope of its work. It shall also be responsibility of the contractor to furnish a copy of such certificate of license / permission to BHEL within 2 months from date of start of work at site or along with 1st RA bill whichever is earlier.

It shall be the responsibility of the sub-contractor to furnish the receipts / challans towards deposit of the cess together with the number, name and other details of beneficiaries (building or construction workers) engaged by the sub-contractor during the preceding month.

The onus shall lie on the contractor to register with the authorities and provide the details of the amount remitted to the authorities. In case the contractor fails to comply with the BOCW act, no payments shall be released to the contractor.

In case the customer owns the responsibility of compliance of BOCW act and deducts the amount from BHEL, the same shall be deducted from the RA bills of the contractor.

In the event of any penalty or other implication due to non-compliance of statutory obligation the same shall be on contractor's account.

17.0 Delay and Extension of Time:-

If, in the opinion of the Engineer, the work is delayed

- (i) by reason of abnormally bad weather, or
- (ii) by reason of serious loss or damage by fire, or
- (iii) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or
- (iv) by delay on the part of the agency or tradesman engaged by the BHEL in executing work not forming part of the contract, or
- (v) By reason of any other cause which in the absolute discretion of the Engineer is beyond the contractor's control, then in any such case, the Engineer (or higher authority) may make fair and reasonable extension in the completion dates of the individual items of work of the contract as whole. Such extension which will be communicated to the contractor by the Engineer in writing shall be final and binding on the contractor. No other claim in this respect for compensation, idle labour or otherwise howsoever is admissible. Upon the happening of any such event causing delay the contractor shall immediately give notice thereof in writing to the Engineer but shall nevertheless use constantly his best endeavour to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of the Engineer to proceed with the work.
- (vi) In case of delay in completion of work BHEL reserve the right to grant time extension under the following options depending upon the performance of the vendor:
 - a. Time extension without levy of LD in case it is found that delay is not attributable to the vendor

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- b. Time extension with deduction of applicable LD in line with Liquidity Damage clause if the delay is solely attributable to the vendor.
- c. In case facts of delay is not settled, BHEL reserve the right to grant provisional time extension for delay in completion of total work or part thereof and running/ interim payments to the vendor will be released without deduction of LD subject to submission of additional Bank guarantee equivalent to maximum LD amount valid till completion of work under their scope and grant of final time extension.

During provisional time extension period ORC/ PVC shall not be payable to the contractor. The Final Delay analysis shall be prepared on completion of the work. In case of delay is not attributable to contractor as per final delay analysis the ORC/ PVC shall be released along with the final bill without any interest charges attributable to BHEL.

In case of delay attributable to contractor, LD shall be deducted for that period in line with clause "Compensation/ LD/ Penalty for delay in execution" of conditions of contract and balance ORC/ PVC (if any) shall be released along with the final bill without any interest charges attributable to BHEL.

PVC/ ORC shall be governed by respective clauses in the NIT.

18.0 RIGHTS OF BHEL

BHEL reserves to itself the following rights without entitling the Vendor for any compensation

- a) To get the work done through another agency at the risk and cost of the Vendor, in the event of poor progress, or the vendor's inability to progress the work for completion as stipulated in the Contract, poor quality of work, persistent disregards of instructions of BHEL, assignment, transfer, subletting of the contracted work without written permission of BHEL, non-fulfilment of any contractual obligations etc. and to claim/recover compensation for such losses from the vendor from Security Deposit/other dues.
- b) To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of construction and get it done through other agency to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion period due to other emergent reasons/BHEL's obligations to its customer.
- c) To terminate the contract after due notice and forfeit Security Deposit and recover the loss sustained in getting the balance work done through other agencies in addition to liquidated damages/penalty in the events of
 - i) Vendor's continued poor progress.
 - ii) Withdrawal from or abandonment of the work before completion of the work.
 - iii) Corrupt or illegal act of the Vendor.
 - iv) Insolvency of the Vendor.
 - v) Persistent disregard of the instructions of BHEL.
 - vi) Assignment, transfer, subletting of the contract work without BHEL's written permission.
 - vi) Non-fulfilment of any contractual obligations.
- d) To recover any moneys due from the Vendor, from any moneys due to the vendor under this or any other contract or from the Security Deposit.
- e) To recover additional cost incurred in execution of work along with BHEL overhead (i.e. @ 5% of executed value of such work) in case BHEL has decided to execute the work at risk & cost of the contractor. The work can be executed either directly by BHEL or through another agencies.

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- f) To claim compensation for losses sustained in case of termination of Contract and to levy Liquidated Damage/Penalty for delay in completion of work.
- g) To terminate the Contract or to restrict the quantum of work and pay only for the portion or work done in case BHEL's contract with its customer is terminated/ altered/ deferred/ disputed/ frustrated for any reasons.
- h) To effect recoveries from any amounts due to the vendor under this or any other contract or in any other form the moneys which BHEL is forced to pay to anybody due to vendor's failure to fulfil any of his obligations.
- i) To restrict or increase the quantity and nature of work to suit project requirements, since the tender specification is based on preliminary documents and quantities furnished therein are indicative and approximate and the rates quoted shall not be subject to revision.
- j) While every endeavour will be made by BHEL to this end, BHEL cannot guarantee uninterrupted work due to conditions beyond its control. The vendor will not be entitled to any compensation/extra payment on this account. No idle charges will be payable by BHEL in any case.
- k) In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Vendor.

19.0 CONSEQUENCES OF CANCELLATION:

Whenever BHEL exercises its authority to terminate the contract/withdraw a portion of work, the work may be got completed by any other means at the vendor's risk and cost provided that in the event of the cost of completion (as certified by the BHEL's Engineer which shall be final and binding on the vendor) being less than the contract value, the advantage shall accrue to BHEL. If the cost of completion exceeds the money due to the Vendor under the Contract, the Vendor shall either pay the excess amount demanded by BHEL or the same shall be recovered from the vendor. This will be in addition to the forfeiture of Security Deposit and recovery of liquidated damages as per relevant clauses.

20.0 LAW GOVERNING THE CONTRACT AND COURT JURISDICTION:

The Contract shall be governed by the Law for the time being enforced in the Republic of India. The Civil Court at Delhi having ordinary Original Civil Jurisdiction shall alone have exclusive jurisdiction in regard to all claims in respect of this contract.

21.0 FORCE MAJEURE:

The following shall amount to force majeure conditions:

- 13.1 Acts of God, Act of any Government, war, sabotage, riots, civil commotion, Police action, revolution, flood, fire cyclone, earthquake, epidemic and other similar causes over which the vendor has no control.
- 13.2 If the vendor suffers delay in the due execution of the contract, due to delays caused by force majeure conditions, as defined above, the agreed time of completion of the work covered by this contract may be extended by a reasonable period of time in consultation and after agreement of BHEL's clients/owner, provided that on the occurrence of any such contingency, the Vendor immediately reports to BHEL in writing the causes of delay. The Vendor shall not be eligible for any compensation on this account.

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22.0 REQUIREMENT OF PERFORMANCE:-

All the permissions and Clearances or any other relevant authorization from competent authority shall be obtained by the Bidder at his own cost. Any contingency arising in this respect shall be the responsibility of the Bidder. Also the Bidder shall be responsible for any mishap, accident enroute and consequences therefore including legal complications, if any.

The contract as entered into between BHEL and the Bidder shall in no way, nullify, reduce, mitigate or absolve the parties of any responsibility, obligation or liability that may devolve upon them under the acts or laws governing such activity.

The Bidder shall take all due care for protecting the consignments from rains and be responsible for their safe and sound condition during his possession and the vehicles carrying such consignments shall be suitably equipped for the same. The Bidder shall take all due care of consignments, follow instructions given on the package, special instructions if any by supplier while loading/unloading/stowing of the cargo. During transshipment he shall provide all packing and lashing at his own cost.

All the safety precautions required in transportation such as lashing and securing the consignments, providing pilots/escort (if necessary) shall be the responsibility of the Bidder at his own cost.

Any information / documents like route survey reports, third party approvals given to BHEL shall not in any way absolve or relieve the Contractor from any of his obligation, responsibility, or liability as per scope of work.

The Bidder shall be liable for any defects in the construction of any part of the Works, where such defects are due to any bad workmanship, the use of defective or inferior quality materials, error, omission, or negligence of the Contractor.

The Contractor shall be liable for the consequences of faulty design and specifications, lack of care and negligence for that part of the Works, which was designed and specified by the Contractor for the period specified. The Contractor shall keep the Employer fully and effectively indemnified against all legally enforceable losses, damages, injuries, deaths, actions, proceedings, claims, demands and all associated costs suffered by the Employer or any third party.

23.0 CONFIDENTIALITY, USE OF CONTRACT DOCUMENTS AND INFORMATION:-

Bidder 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 Bidder in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

Bidder shall not, without Company's prior written consent, make use of any document or information provided by the Company except for purposes of performing the contract.

Any document supplied to the Bidder 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 Bidder's performance under the Contract if so required by Company. All information obtained by Bidder in the conduct of operations and the information/drawings/documents provided to the Bidder shall be considered confidential and shall not be divulged by Bidder or its employees to anyone other than the Company's personnel. This obligation of Bidder shall be in force even after the termination of the contract.

24.0 Model Conciliation Clause For Conducting Conciliation Proceedings Under The BHEL Conciliation Scheme, 2018

The Parties the if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which terms shall means 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 unable to settle mutually), arise inter-se the Parties, the same may, be refereed 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-A to this GCC.

The Annexure-A together with it's appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these GCC."

25.0 ARBITRATION:

- (i) Except as provide elsewhere in this Contract, in case amicable settlement is not reached between the Parties, 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 relation to interpretation of any provision of the Contract; or, in any manner touching upon the contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Unit/Region/Division issuing the Contract.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be New Delhi.

The cost of arbitration shall be borne as per the award of the Arbitrator.

Subject to the arbitration in terms of clause L above, the court at New Delhi shall have exclusive jurisdiction over nay matter arising out of or in connection with this Contract.

Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this contract with due diligence and expedition in a

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professional manner except where the contract has been terminated by either Party in terms of this contract.

- (ii) In the event of 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 as mentioned in DPE OM No.4(1)/2013-DPE9GM)/FTS-1835 dated 22.05.2018.

26.0 FACILITIES PROVIDED TO MSEs

- (i) Following facilities shall be provided to MSEs
 - a) Exemption from submission of EMD
- (ii) "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 Udyog Aadhar Memorandum or 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 opening (Part 1 in case of two part bid). 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 are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer.

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PROFORMA OF BANK GUARANTEE (in lieu of SECURITY DEPOSIT)

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, New Delhi-110049 through its Unit at BHEL, Transmission Business Group, Noida (name of the Unit) having agreed to exempt _____ (Name of the Vendor / Contractor / Supplier) with its registered office at _____¹ (hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract reference No. _____ dated _____² valued at Rs. _____³ (Rupees _____) (hereinafter called the said Contract), of Security Deposit for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract, on production of a Bank Guarantee for Rs. _____⁴ (Rupees _____ only),

We _____ (indicate the name and address of the Bank) having its Head Office at _____ (address of the head Office) (hereinafter referred to as the Bank), at the request of _____ [Contractor(s)], being the Guarantor under this Guarantee, do hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand

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

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

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

We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force up to and including _____⁵ and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁶, (3 months more than the present date of validity of Bank Guarantee) we shall be discharged from all the liability under this guarantee thereafter.

We, _____ (indicate the name of the Bank) further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said

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Contract and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

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

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

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

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

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

Date _____ Day of _____
for _____ (indicate the name of the Bank) _____

(Signature of Authorised signatory)

¹ ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER .

² DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

³ CONTRACT VALUE

⁴ BG AMOUNT IN FIGURES AND WORDS

⁵ VALIDITY DATE (At least 3 months more than completion period)

⁶ DATE OF EXPIRY OF CLAIM PERIOD (At least 3 months more than the present date of validity of BG)

Notes:

- 1 The expiry of claim period shall be at least 3 months more than the validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
- 2 The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate

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prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.

3 In Case of Bank Guarantees submitted by Foreign Vendors:

- a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
- b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1** In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2** In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

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PROFORMA OF BANK GUARANTEE (in lieu of EARNEST MONEY if permissible in NIT)

(On non-Judicial paper of appropriate value)

Bank Guarantee No.....

Date.....

To,

M/s Bharat Heavy Electricals Limited
 Transmission Business Group (TBG)
 5th Floor, Advant Navis IT Business Park
 Plot No. 7, Sector-142, Expressway Noida,
 UP-201305

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....¹(Tender Conditions), M/s having its registered office at² (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of³ invited by M/s Bharat Heavy Electricals Limited through its Unit at BHEL, Transmission Business Group, Noida.

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

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of Rs.....⁴ is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee,

We, the.....[Name & address of the Bank]

having our Registered Office at.....(hereinafter referred to as the Bank) being the Guarantor under this Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs.⁴ (in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

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

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

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

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

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

This Guarantee shall be irrevocable and shall remain in force upto and including.....⁵ and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the⁶ we shall be discharged from all liabilities under this Guarantee.

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

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

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

For and on behalf of

(Name of the Bank)

Date.....

Place of Issue.....

- 1 Details of the Invitation to Bid/Notice Inviting Tender
- 2 Name and Address of the Tenderer
- 3 Details of the Work
- 4 BG Amount in words and Figures
- 5 Validity Date (At least six months from date of tender opening)
- 6 Date of Expiry of Claim Period (At least 3 months more than the present date of validity of BG)

Note:

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