



GENERAL CONDITIONS OF CONTRACT

FOR

**PROCUREMENT OF
PROPRIETARY/ OEM SERVICES**

GAIL (India) Limited

(Rev. 0)



GENERAL CONDITIONS OF CONTRACT- PROPRIETARY/ OEM-SERVICES

SECTION – I DEFINITIONS & INTERPRETATIONS

1.1 Definition of Terms:

In this Contract (as defined here-in-after), save where the context otherwise requires, the following words and expressions shall have the meanings respectively assigned to them:

"Approved" means approval in writing including subsequent written confirmation of previous verbal approval(s).

"Bid/Tender/Offer" means the proposal along with required supporting documents submitted by the Bidder/Service Provider for consideration by the Owner.

"Bidder/Tenderer" means the person(s) / Firm / company /Corporation /Organization /entity, who participated in the Tender.

"Completion Certificate" means the certificate to be issued by the Engineer In-charge (EIC) when the Services have been completed entirely in accordance with Contract.

"Completion Date" means the date of actual completion of the services by the Service Provider as certified by the Owner.

"Contract" means an agreement between Owner and the Service Provider/Supplier for execution of the Service(s) as per Contract Documents and its subsequent amendment(s), if any in writing thereto.

"Contract Documents" means collectively the Tender Documents, Designs, Drawings, Scope of Services, Specifications, Schedule of Rates (SOR), Letter of Acceptance and agreed variations if any, and such other documents constituting the tender and acceptance thereof.

"Day" means a calendar day of 24 hours from midnight to midnight irrespective of the number of hours serviced in that day. "Week" means a period of any consecutive seven Days.

"Demobilization" means removal of all equipment, machinery, manpower from the site after completion of the services with the due permission of EIC.

"Drawings" means and include all Engineering sketches, general arrangements/ layout drawings, sectional plans, elevations, etc. related to the Contract together with modification and revision thereto.

"Owner/Service Receiver/ Company" means GAIL (India) Limited (GAIL), a public limited company, incorporated under the Company's Act 1956 and having its registered office at 16, Bhikaiji Cama Place, New Delhi - 66 and includes its successors, assigns and Site(s)/work center(s).

"Engineer-In-Charge" (EIC) means the person designated from time to time by Owner and shall include those who are expressly authorized by him to act for and on his behalf for operation/execution of this Contract for Services.

"Equipment/Materials/Goods" means and include all equipment, machinery, stores, goods which are required under the Contract for satisfactory performance of Services by the Service Provider.

"Fax of Acceptance" means intimation regarding notification of award by the Owner to the successful Bidder/Service Provider through a Fax/ Letter



“Guarantee/Warranty/ Defect Liability Period (DLP)” means the period and other conditions governing the warranty/guarantee/defect liability period of the services as provided in the Contract.

"Metric System" means all technical documents are given in the metric system and all service should be carried out according to the metric system.

“Mobilization” means stabilizing adequate infrastructure at designated Site comprising of Equipment, aids, tools, tackles, manpower etc in order to provide services as per the provision of Contract document.

“Negligence” means any act or failure to act (whether sole, joint or concurrent) by a person or an entity which was intended to cause, or which was reckless disregard of or wanton indifference to, avoidable and harmful consequences such person or entity knew, or should have known, would result from such act or failure to act. Notwithstanding the foregoing, negligence shall not include any action taken in good faith for the safeguard of life or property.

"Service(s)" means and include all services and activities/jobs to be performed by the Service Provider in pursuant to and in accordance with Contract or part thereof as the case may be and shall include all extra, additional, altered or substituted services and approvals from any agency/third party & license(s)/permissions from statutory authorities (if any), as required for purpose of the Contract.

"Service Provider" means Bidder/Tenderer whose tender has been accepted by the Owner and includes the Service Provider's legal representative(s), his successor(s) and permitted assign(s).

“Service Provider’s/ Bidder’s Representative” means such person(s) duly authorized by the Bidder/Service Provider in writing to the Owner as having authority to act for and on behalf the Bidder /Service Provider in matters affecting the Services and to provide the requisite services to Owner.

“Site” means the place(s) provided by the Owner where the Services are to be carried out/executed

“Specifications” means and include detailed description, statements to technical data, performance characteristics, and standards (Indian as well as International) as applicable and as specified in the Contract.

"Sub-Service Provider" means any person / firm / Organization / company /entity (other than the Service Provider) and it’s legal representatives, successors and permitted assigns named in the Contract as a Sub-Service Provider for a part of the Services or to whom a part of the Services has been sub-Contracted with the written prior consent of the Owner.

"Value of Contract” or “Total Contract Price” means the sum accepted or the sum calculated in accordance with the prices accepted in the Contract as payable to the Service Provider for the entire execution and full completion of the service, including Amendment(s) to Contract, if any.

“Willful Misconduct” means intentional disregard of good and prudent standards of performance or proper conduct under the Contract with knowledge that it is likely to result in any injury to any person or loss or damage of property.

“Working Day” means any Day which is not declared by the Owner to be holiday or off-day.



1.2 INTERPRETATIONS & PRIORITY OF CONTRACT DOCUMENTS

1.2.1 The documents forming the Contract are to be read together and interpreted as mutually explanatory of one another. If there is a direct inconsistency in specific obligation(s), then for the purposes of interpretation, and unless otherwise provided in the Contract, the priority of the Contract Documents shall be in accordance with following sequence:

- i) The Contract Agreement
- ii) Detailed Letter of Acceptance along with its enclosures
- iii) Fax of Acceptance
- iv) Scope of Services/ Job Specifications (specific to particular job only, wherever provided)
- v) Drawings
- vi) Special Conditions of Contract (SCC)
- vii) Technical Specifications (wherever applicable)
- viii) Instructions to Bidders (ITB)
- xi) General Conditions of Contract (GCC)
- x) Other Documents

Jobs shown in the Drawing but not mentioned in the Specifications or described in the Specifications without being shown in the Drawings shall nevertheless be deemed to be included in the same manner as if they had been specifically shown upon the Drawings and described in the Specifications.

Any amendment/change order issued by Owner upon signing of formal Contract shall take precedence over respective clauses of the formal Contract and its annexures.

1.2.2 All headings and marginal notes to the clauses of these General Conditions of Contract or to the Specifications or to any other Tender Document are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and they shall never be deemed to be part thereof or be used in the interpretation thereof the Contract.

1.2.3 Contract Documents unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the context so requires.

1.2.4 Should any provision of this Contract be found to be invalid, illegal or otherwise not enforceable by any court of law, such finding shall not affect the remaining provision(s)/clause(s) hereto and they shall remain binding on the parties hereto.

1.2.5 Special Conditions of Contract consisting of scope of services, specification of Services & items etc. shall be read in conjunction with the General Conditions of Contract, and any other documents forming part of this Contract wherever the context so requires.

1.2.6 The materials, design and services shall satisfy the relevant Standards, the Job Specifications contained herein and Codes referred to. Where the job specification stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied.



2.0 GENERAL INSTRUCTIONS & OBLIGATIONS

SECTION – II

2.1 FORMATION OF CONTRACT: Owner will be the sole judge in the matter of award of Contract and the decision of Owner shall be final and binding. The Contract shall come into force on the date of “Notification of Award”/ “Fax of Acceptance” and the same shall be binding on Owner and Service Provider.

2.2 SIGNING OF AGREEMENT: The successful Tenderer/Service Provider shall be required to execute an Agreement within 15 days of the FOA in the format attached at Annexure- I. In the event of failure on the part of the Service Provider to sign the Agreement within the aforesaid stipulated period, Employer may consider the Contract as terminated..

2.3 LIABILITY OF GOVERNMENT OF INDIA: It is expressly understood and agreed by and between Bidder /Service Provider and Owner that Owner is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that Owner is an independent legal entity with power and authority to enter into Contracts solely on its own behalf under the applicable Laws of India and general principles of Contract Law. The Bidder/Service Provider expressly agrees, acknowledges and understands that Owner is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, Bidder/Service Provider hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this Contract and covenants not to sue to Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement/Contract.

2.4 SITE VISIT: The Bidder/Service Provider shall be deemed to have visited the Site(s)/work centre(s) and familiarized itself while submitting the Tender.

2.5 ACTION IN CASE OF CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES AND POOR PERFORMANCE:

The Bidder(s)/Service Provider(s) are required to abide by the following documents available on GAIL’s website (www.gailonline.com):

- (i) PROCEDURE FOR ACTION IN CASE OF CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES
- (ii) PROCEDURE FOR EVALUATION OF PERFORMANCE OF VENDORS/ SUPPLIERS/ CONTRACTORS/ CONSULTANTS
- (iii) FRAUD PREVENTION POLICY OF GAIL.



2.6 GENERAL OBLIGATIONS OF SERVICE PROVIDER:

- 2.6.1 Single point responsibility of the Service Provider shall include to perform the services in accordance with the Scope of Services /Specifications and Activity Schedule of the Tender Document and carry out its obligations with all due diligence and efficiency, in accordance with generally accepted professional techniques and practices and shall observe sound management practices and employ appropriate advance technology and safe methods. When completed, the job/services shall be fit for the purpose for which the services are intended as specifically defined in the Contract.
- 2.6.2 The coordination and inspection of the day-to-day job under the Contract shall be the responsibility of the Engineer-in-Charge (EIC). The EIC or his authorized representative including any statutory authority shall at all reasonable times, have full power and authority to access and inspect the Services wherever in progress either on the Site or at the Service Provider's premises/workshops and the Service Provider shall afford or procure every facility and assistance to carry out such inspection. Such Inspection shall not release the Service Provider from any obligation under the Contract.

2.7 SERVICE PROVIDER's REPRESENTATIVE & PERSONNEL:

- 2.7.1 Service Provider shall appoint a person ("*Service Provider's Representative*") who shall be responsible for and authorized to represent it at all times during the progress of the Service and to receive and to act on any request made by Owner in the performance of the Service pursuant to the terms of this Contract. All such decisions taken by the Service Provider's Representative and its outcomes shall be binding on the Service Provider. He shall have complete charge of his personnel engaged in the performance of the Service and to ensure compliance of rules and regulations and safety practice.

2.8 FAILURE BY THE SERVICE PROVIDER TO COMPLY WITH THE PROVISIONS OF THE CONTRACT:

- 2.8.1 If the Service Provider refuses or fails to provide the Service or any part thereof or ensure its performance within the time specified in the Contract or fails to perform any of his obligation under the Contract or in any manner commits a breach of any of the provisions of the Contract it shall be open to the Owner at its option by written notice to:-
- a) TO DETERMINE THE CONTRACT in which event the Contract shall stand terminated and shall cease to be in force and effect on and from the date appointed by the Owner on that behalf, whereupon the Service Provider shall stop forthwith any of the Service then in progress, except such Service as the Owner may, in writing, require to be done to safeguard any property or work or installations from damage.
 - b) In such event of determination of contract, Owner shall also have the right of taking possession and utilizing, such materials, equipment and plants available at service site belonging to the Service Provider as may be necessary and the Service Provider shall not be entitled for any compensation for use or damage to such materials, equipment and plant. Notwithstanding provisions of the said clause, it is expressly understood that failure by the Service Provider for removal of material/tools/plant/store etc. within the period mentioned in notice of EIC shall be liable for compensation handling and storage charges @5% of the estimated value of material tools/plant/store for each month or part of a month.



2.8.2 Before taking any action as per Clause 2.8.1 above, if in the judgment of the Owner, the default or defaults committed by the Service Provider is/are curable and can be cured by the Service Provider if an opportunity given to him, then the Owner may issue Notice in writing calling the Service Provider to cure the default within such time specified (not less than 30 days) in the Notice.

2.9 SERVICE PROVIDER REMAINS LIABLE TO PAY COMPENSATION IF ACTION NOT TAKEN UNDER CLAUSE 2.8 : If in any case in which any of the powers conferred upon the Employer by clause 2.8 thereof shall have become exercisable and the same had not been exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercisable in the event of any further case of default by the Service Provider for which by any clause or clauses hereof he is declared liable to pay compensation and the liability of the Service Provider for past and future compensation shall remain unaffected.

2.10 CHANGE IN CONSTITUTION: Any change(s) in the constitution of the Service Provider shall give prior notice to the Owner along with relevant documents and certificates issued by the concerned authorities for approval.

2.11 TERMINATION OF CONTRACT:

2.11.1 TERMINATION OF CONTRACT IN CASE OF LIQUIDATION / BANKRUPTCY, ETC: If the Service Provider shall dissolve or become bankrupt or insolvent or cause or suffer any receiver to be appointed of his business or any assets thereof compound with his Creditors, or being a corporation commence to be wound up, not being a member's voluntary winding up for the purpose of amalgamation or reconstruction, or carry on its business under a Receiver for the benefits of its Creditors any of them, Owner shall be at liberty to terminate the Contract forthwith upon coming to know of the happening of any such event as aforesaid by notice in writing to the Service Provider or to give the Receiver or Liquidator or other person, the option of carrying out the Contract subject to his providing a guarantee up to an amount to be agreed upon by the Owner for due and faithful performance of the Contract.

2.11.2 TERMINATION OF CONTRACT FOR CORRUPT / FRAUDULENT / COLLUSIVE / COERCIVE PRACTICES AND NON-PERFORMANCE : If the Bidder/Service Provider is found to have indulged in Corrupt/ Fraudulent /Collusive/Coercive practices, the Contract shall be terminated and the Bidder/ Service Provider shall be banned for define duration from future business with GAIL as per policy.

Due to non-performance of the Service Provider leading to termination of the Contract, the action shall be as defined at clause no. 2.8 hereinabove and detailed procedure for evaluation of performance.

2.12 AMOUNT PAYABLE IN CASE OF TERMINATION: In all cases of termination herein set forth, the obligation of the Owner to pay, shall be limited to the extent of service rendered by Service Provider as per provision of the Contract upto the date of termination, subject to the Service Provider complying with other terms of the Contract. Notwithstanding the termination of the Contract, the parties shall continue to be bound by the provisions of this Contract that reasonably require some action or forbearance after such termination. The amount that may have become due to the Service Provider on account of service already executed by him shall not be payable to him until after the expiry of Six (6) calendar months reckoned from the date of termination of Contract. This amount shall be subject to deductions, retentions as per contract etc.



2.13 MEMBERS OF THE EMPLOYER NOT INDIVIDUALLY LIABLE: No Director, or official or employee of the Employer shall in any way be personally bound or liable for the acts or obligations of the Employer under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

2.14 EMPLOYER NOT BOUND BY PERSONAL REPRESENTATIONS: The Service Provider shall not be entitled to any increase on the scheduled rates or any other right or claim whatsoever by reason of any representation, explanation statement or alleged representation, promise or guarantees given or alleged to have been given to him by any person.

2.15 FORCE MAJEURE:

2.15.1 In the event of either party being rendered unable by Force Majeure to perform any obligations required to be performed by them under the Contract the relative obligation of the party affected by such Force Majeure shall upon written notification to the other party be suspended for the period during which Force Majeures event lasts. The cost and loss sustained by the either party shall be borne by the respective parties.

The term "Force Majeures" as employed herein shall include:

- (a) act of terrorism;
- (b) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
- (c) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (d) epidemics, earthquakes, flood, fire, hurricanes, typhoons or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (e) freight embargoes, strikes at national or state-wide level or industrial disputes at a national or state-wide level in any country where Services are performed, and which affect an essential portion of the Services but excluding any industrial dispute which is specific to the performance of the Services or the Contract.

For the avoidance of doubt, inclement weather, third party breach, delay in supply of materials (other than due to a nationwide transporters' strike) or commercial hardship shall not constitute a Force Majeure event.

2.15.2 Notification of Force Majeure

The affected party shall notify within 10 (ten) days of becoming aware of or the date it ought to have become aware of the occurrence of an event of Force Majeure giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing the affected party from, or delaying the affected party in performing its obligations under the Contract.

2.15.3 Right of either party to terminate

If an event of Force Majeure occurs and its effect continues for a period of 180 (one hundred eighty) days or more in a continuous period of 365 (three hundred sixty five) days after notice has been given under this clause, either party may terminate the Contract by issuing a written notice of 30 (thirty) days to the other party. Further, the Service Provider shall with all reasonable diligence remove from the Site all the Service Provider's equipment and shall give similar facilities to his Sub Service Provider to do so.



2.15.4 Payment in case of termination due to Force Majeure

The Contract Price attributable to the Services performed till the date of the commencement of the relevant event of Force Majeure with effective recovery/ retention shall be payable to Service Provider.

The Service Provider has no entitlement and Owner has no liability for:

- a) any costs, losses, expenses, damages or the payment of any part of the Total Contract Price during an event of Force Majeure; and
- b) any delay costs in any way incurred by the Service Provider due to an event of Force Majeure.

2.16.5 Time for performance of the relative obligation suspended by the Force Majeure shall then stand extended by the period for which such cause lasts.

2.16 ASSIGNMENT/SUBLET: The Service Provider shall not, save with previous written consent of the Engineer-in-charge, sublet, transfer or assign the Contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever. Provided, nevertheless, that any such consent shall not relieve the Service Provider from any obligation, duty or responsibility under the Contract. The basic scope of Services cannot be sublet. Further, Sub-letting of whole Contract is prohibited.

2.17 LIENS: If, at any time there should be evidence of any lien or claim for which the Employer might have become liable and which is chargeable to the Service Provider, the Employer shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify the Employer against such lien or claim and if such lien or claim be valid, the Employer may pay and discharge the same and deduct the amount so paid from any money which may be or may become due and payable to the Service Provider. If any lien or claim remain unsettled after all payments are made, the Service Provider shall refund or pay to the Employer all money that the latter may be compelled to pay in discharging such lien or claim including all costs and reasonable expenses.

Further, Service Provider will indemnify and hold the Employer harmless, for a period of two years after the issue of Completion/Execution Certificate, from all liens and other encumbrances against the Employer on account of debts or claims alleged to be due from the Service Provider or his Sub-Service Provider to any person and on behalf of Employer, the Service Provider will defend at his own expense, any claim or litigation brought against the Employer or the Service Provider including Sub-Service Provider in connection therewith. Service Provider shall defend or contest at his own expense, any fresh claim or litigation against the Employer by any person including his Sub-Service Provider, till its satisfactory settlement even after the expiry of two years from the date of issue of Completion/Execution Certificate.

2.18 DELAYS BY EMPLOYER OR HIS AUTHORISED REPRESENTATIVE: In case the Service Provider's performance is delayed due to any act or omission on the part of the Employer or his authorized Representative, then the Service Provider shall be given due extension of time for the completion of the Service, to the extent such omission on the part of the Employer has caused delay in the Service Provider's performance of his Services. No adjustment in Contract Price shall be allowed for reasons of such delays and extensions granted except as provided in Tender Document.

2.19 PRICE REDUCTION SCHEDULE: Time is the essence of the Contract. In case the Service Provider fails to mobilize / deploy the required manpower and the complete equipments so as to



commence the Services within Mobilisation Period and complete the Services within the stipulated period, then, unless such failure is due to Force Majeure as defined in Clause 2.11 herein above or due to Owner's defaults, the total Value of Contract (excluding taxes and duties) shall be reduced by ½ (half) % of the total Value of Contract per complete week of delay or part thereof subject to a maximum of 5 (five) % of the total Value of Contract, by way of reduction in price for delay and not as penalty.

The Owner shall be at liberty to adjust or deduct the said amount from amount due to the Service Provider. The decision of the EIC with respect to applicability of Price Reduction Schedule shall be final and binding on the Service Provider.

PRS is the reduction in the consideration / contract value for the goods / services covered under this contract. In case of delay in supply/ execution of contract, Service provider should raise invoice for reduced value as per Price Reduction Schedule Clause (PRS clause). If Service provider has raised the invoice for full value, then Service provider should issue Credit Note towards the applicable PRS amount with applicable taxes.

In such cases if Service provider fails to submit the invoice with reduced value or does not issue credit note as mentioned above, GAIL will release the payment to Service provider after giving effect of the PRS clause with corresponding reduction of taxes charged on vendor's invoice, to avoid delay in delivery/collection of material.”

In case any financial implication arises on GAIL due to issuance of invoice without reduction in price or non-issuance of Credit Note, the same shall be to the account of Service provider. GAIL shall be entitled to deduct / setoff / recover such GST amount (CGST & SGST/UTGST or IGST) together with penalties and interest, if any, against any amounts paid or becomes payable by GAIL in future to the Supplier/Contractor/Service Provider under this contract or under any other contract.

- 2.20 NO WAIVER OF RIGHTS:** None of the terms and conditions of this Contract shall be deemed waived by either party unless such waiver is executed in writing by the duly authorized representative of both the parties.
- 2.21 CERTIFICATE NOT TO AFFECT RIGHT OF EMPLOYER AND LIABILITY OF SERVICE PROVIDER:** No interim payment certificate(s) issued by the EIC of the Employer, nor any sum paid on account by the Employer, nor any extension of time for execution of the service granted by Employer shall affect or prejudice the rights of the Employer against the Service Provider or relieve the Service Provider of his obligations for the due performance of the Contract, or be interpreted as approval of the Service done and no certificate shall create liability for the Employer to pay for alterations, amendments, variations or additional services not ordered, in writing, by Employer or discharge the liability of the Service Provider for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which he is bound to indemnify the Employer.
- 2.22 LANGUAGE AND MEASURES:** All documents pertaining to the Contract including Specifications, Schedules, Notices, Correspondence, operating and maintenance Instructions or any other writing shall be written in English/Hindi language. The Metric System of measurement shall be used in the Contract unless otherwise specified.
- 2.23 RELEASE OF INFORMATION:** The Service Provider shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs, or other reproduction



of the Service under this Contract or description of the site dimensions, quantity, quality or other information concerning the Service unless prior written permission has been obtained from the Owner. The same includes proprietary or confidential information related to Service/project.

2.24 COMPLETION PERIOD, CONTRACT PERIOD AND COMPLETION OF CONTRACT:

The Completion Period of Service and Contract Period shall be as mentioned in Special Conditions of Contract. Unless terminated under the provisions of any other relevant clause, this Contract shall be deemed to have been completed at the expiration of the Defect Liability Period as provided for under the Contract.

2.25 INDEPENDENT CAPACITY:

The parties intend that an independent Service Provider relationship will be created by this Contract. The Service Provider and his/her employees or agents performing under this Contract are not employees or agents of the Employer. The Service Provider will neither hold himself/herself out as nor claim to be an officer or employee of the Employer by reasons hereof, nor will the Service Provider make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of work will be solely with the Service Provider.

2.26 NOTICE

2.26.1 TO THE SERVICE PROVIDER:

Any notice to be given to the Service Provider or his duly authorised representative at the job Site under the terms of the Contract may be served by the Owner by facsimile / e-mail or through registered post/Courier at the address/contact information furnished by the Service Provider. Proof of issue of any such notice could be conclusive of the Service Provider having been duly informed of all contents therein.

2.26.2 TO THE OWNER:

Any notice to be given to the EIC of the Owner under the terms of the Contract may be served by the Service Provider, by facsimile / e-mail or delivering the same through registered post /Courier at the concerned site office.

2.26.3

Either party may change a nominated address to another address in the country where the Services are being provided by prior written notice to the other party, with a copy to EIC and the EIC may do so by prior notice to both the parties.

2.27 CONFIDENTIALITY:

The Service Provider, its Sub-Service Provider and their personnel shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information related to Service/project, this Contract, or Employer's business or operations without the prior written consent of the Employer.

2.28 INTELLECTUAL PROPERTY RIGHT:

The Service Provider shall retain the copy right and other intellectual property rights in the Service Provider's document and other design documents made by (or on behalf of) the Service Provider.

Subject to the confidentiality obligations, by signing the Contract, within the Contract Price, the Service Provider shall be deemed to give to the Owner a non-terminable, transferable, non-exclusive and royalty-free right to copy, use and communicate the Service Provider's documents for the operation, maintenance, repair of the Service and Statutory purposes, but not for any other purpose. Such documents of the Service Provider shall not be used, copied or communicated to a



third party by or on behalf of the Owner for the purposes other than those permitted, without the Service Provider's Consent/ prior approval.

3.0 PERFORMANCE OF SERVICE

SECTION - III

- 3.1 EXECUTION OF SERVICES:** All Services shall be provided in strict conformity with the provisions of the Contract Documents and with such explanatory detailed specification and instruction as may be furnished from time to time to the Service Provider by EIC. The Service Provider shall provide the services to the satisfaction of the Owner and accept full responsibility for the satisfactory quality of such services as performed by them.
- 3.2 CHANGES IN SERVICES:** During the performance of the Services, EIC / Owner may make a change in the Services within the general scope of this Contract including, but not limited to, changes in methodology and minor additions to or deletions from the Services and Service Provider shall render the service as changed. Changes of this nature will be affected by a written order (i.e. Amendment) by the Owner. In case of increase in compensation, the same shall be dealt as per clause No. 4.4.
- 3.3 ACTION AND COMPENSATION IN CASE OF POOR SERVICE:** If it shall appear to the EIC that any service has been rendered with unsound, imperfect or unskilled way, or with materials /manpower of any inferior description, or that any materials / manpower provided by the Service Provider for the execution of the Service are unsound, or of a quality inferior to that Contracted for, or otherwise not in accordance with the Contract, the Service Provider shall on demand in writing from the EIC or his authorized representative specifying the Service, materials or manpower complained of notwithstanding that the same may have been inadvertently passed, certified and paid for, forthwith rectify the service so specified and at his own cost.
- 3.4 DEFECTS LIABILITY PERIOD:** The Service Provider unless otherwise specified elsewhere in the tender document shall guarantee the installation/Service for a period of 12 months from the date of completion of Service mentioned in the Completion Certificate issued by the EIC. Any damage or defect that may arise or lie undiscovered at the time of issue of Completion Certificate, connected in any way with the equipment or materials supplied by him or in the workmanship, shall be rectified or replaced by the Service Provider at his own expense as deemed necessary by the EIC. In case of default, the EIC may carry out such services at the risk and cost of the service provider. The decision of EIC in this regard shall be final and binding.
- 3.5 COMPLETION CERTIFICATE:** The Service Provider shall be furnished with a certificate by the EIC of such completion within 1 month of application, but no certificate shall be given nor shall the Service be deemed to have been rendered until all scaffolding, Equipment(s) & machine(s), surplus material etc. are cleared off the Site completely. EIC's certification about completion of service in all aspects shall be binding and conclusive. The Service Provider, after obtaining the Completion Certificate, is eligible to present the final bill for the Service executed by him under the terms of Contract. The execution Certificate against Rate/ Maintenance contract shall be issued by EIC against written request from Service Provider.
- 3.6 LIMITATION OF LIABILITY:** Notwithstanding anything contrary contained herein, the aggregate total liability of Service Provider under the Contract shall not exceed the Total Contract Value, except for the following: (a) In the event of breach of any Applicable Law; (b) In the event of fraud, willful misconduct or illegal or unlawful acts, or gross Negligence of the Service Provider or any person acting on behalf of the Service Provider; or (c) In the event of acts or omissions of the Service Provider which are contrary to the most elementary rules of diligence which a conscientious Service Provider would have followed in similar circumstances; or (d) In



the event of any claim or loss or damage arising out of infringement of Intellectual Property; or
(e) For any damage to any third party, including death or injury of any third party caused by the Service Provider or any person or firm acting on behalf of the Service Provider during execution.

3.7 INDEMNITY: If any action is brought before a Court, Tribunal or any other Authority against the Owner or an officer or agent of the Owner, for the failure, omission or neglect on the part of the Service Provider (or sub-service providers) to perform any acts, matters, covenants or things under the Contract, etc. the Service Provider, shall in such cases indemnify and keep the Owner and/or their representatives harmless from all such losses, damages etc. arising out of such action.

4.0 PAYMENT, INSURANCE AND TAXES SECTION – IV

4.1 DEDUCTION FROM THE CONTRACT PRICE: All costs, damages or expenses which Owner may have paid or incurred, which under the provisions of the Contract, the Service Provider is liable to pay should be paid by the Service Provider within 15 (fifteen) days of the receipt of the corresponding bills/ claims else the Owner may deduct the same from any moneys due to the Service Provider like R.A Bills, Final Bills etc. or may be recovered by actions of law or otherwise, if the Service Provider fails to satisfy the Owner of such claims.

4.2 SCHEDULE OF RATES AND PAYMENTS: The Contract Value to be paid by the Owner to Service Provider shall be ascertained by the application of the respective Schedule of Rates (the inclusive nature of which is more particularly defined by way of application but not of limitation, with the succeeding sub-clause of this clause) and payment to be made accordingly for the Services actually executed and approved by the Engineer-in-Charge. The sum so ascertained shall (except only as and to the extent expressly provided herein) be final and binding.

4.3 PROCEDURE FOR BILLING OF SERVICES: The Bill(s) complete in all respect with details and enclosure(s) is to be submitted by Service Provider in line with terms of the Contract. Owner shall make all endeavour to release payments of undisputed amount of the bills submitted within 15 (Fifteen) days from the date of certification by the Engineer-in-Charge. The payment shall be made based on the mode of measurement as specified in the Contract. Otherwise, the mode of measurement shall be adopted as per latest Indian Standard Specifications.

MODE OF PAYMENT

DOMESTIC BIDDER: GAIL (India) Limited has initiated payments electronically to Service Provider electronically through ‘e-banking’. The successful bidder should give the details of his bank account as per the bank mandate form.

FOREIGN BIDDER: Through an irrevocable Letter of Credit (L/C) as per payment schedule specified in contract less Indian Agent’s Commission/Fee (as quoted by the Foreign Bidder, if applicable) to be established by Purchaser through an Indian Nationalized Bank within 30 days of acceptance of award by the Seller (unconditional acknowledgment of Fax of Acceptance) and its furnishing requisite Performance Bank Guarantee. L/C opening charges payable to the L/C opening bank shall be borne by the Purchaser. In case the Seller requires a confirmed L/C, the confirmation charges shall be borne by the Seller. Any other charges not specified herein shall be on Seller’s account.

Agency Commission (if applicable) will be paid by GAIL in Indian currency in India (on conversion rate as applicable on the date of payment to vendor) after satisfactory completion of order. A valid registration certificate should also exist at the time of agency commission being paid directly by GAIL.



Alternatively, Payments to foreign bidder shall also be released through Cash against Documents (CAD) through bank through bank/ wire transfer

4.4 NOTICE OF CLAIMS FOR ADDITIONAL PAYMENTS:

4.4.1 Should the Service Provider consider that he is entitled to any extra payment for any extra/additional Job(s)/Service(s) or material change in original Specifications carried out by him in respect of job, he shall forthwith give notice in writing to the Engineer-in-Charge that he claims extra payment containing full particulars of the nature of such claim with full details of amount claimed. Irrespective of any provision in the Contract to the contrary, the Service Provider must intimate his intention to lodge claim on the Owner within 10 (ten) days of the commencement of happening of the event and quantify the claim within 30 (thirty) days, failing which the Service Provider will lose his right to claim any compensation/reimbursement/damages etc. Failure on the part of Service Provider to put forward any claim without the necessary particulars as above within the time above specified shall be an absolute waiver thereof. No omission by Owner to reject any such claim and no delay in dealing therewith shall be waiver by Owner of any of these rights in respect thereof.

4.4.2 Engineer-in-Charge shall review such claims within a reasonable period of time and cause to discharge these in a manner considered appropriate after due deliberations thereon. However, Service Provider shall be obliged to carry on with the Jobs/services during the period in which his claims are under consideration by the Owner, irrespective of the outcome of such claims, where additional payments for Services considered extra are justifiable in accordance with the Contract provisions, Owner shall arrange to release the same in the same manner as for normal job payments. Such of the extra services so admitted by Owner shall be governed by all the terms, conditions, stipulations and specifications as are applicable for the Contract. The rates for extra services shall generally be the unit rates provided for in the Contract.

4.5 INSURANCE: Service Provider shall, at his own expense, arrange appropriate insurance to cover all risks assumed by the Service Provider under this Contract in respect of its personnel deputed under this Contract as well as Service Provider's equipment, tools and any other belongings of the Service Provider or their personnel during the entire period of their engagement in connection with this Contract. Owner will have no liability on this account.

4.6 TAXES AND DUTIES:

4.6.1 The Service Provider, unless specified otherwise elsewhere in the Contract agrees to and does hereby accept full and exclusive liability for the payment of any and all Taxes, Duties, including GST now or hereafter imposed, increased, modified from time to time in respect of Services and materials and all contributions and taxes for unemployment compensation, insurance and old age pensions or annuities now or hereafter imposed by any Central or State Government authorities which are imposed with respect to or covered by the wages, salaries, or other compensations paid to the persons employed by the Service Provider and the Service Provider shall be responsible for the compliance of all Sub-Service Providers, with all applicable Central, State, Municipal and local law and regulation and requirement of any Central, State or local Government agency or authority. Service Provider further agrees to defend, indemnify and hold Owner harmless from any liability or penalty which may be imposed by the Central, State or Local authorities by reason or any violation by Service Provider or Sub- Sub-Service Provider of such laws, suits or proceedings that may be brought against the Owner arising under, growing out of, or by reason of the service provided for by this Contract, by third parties, or by Central or State Government



authority or any administrative sub-division thereof. Tax deductions will be made as per the rules and regulations in force in accordance with acts prevailing from time to time.

- 4.6.2 Service Provider shall ensure timely submission of correct invoice(s), as per GST rules/regulation, with all required supporting document(s) within a period specified in Contract to enable GAIL to avail input credit of GST (CGST & SGST/UTGST or IGST). Further, returns and details required to be filled under GST laws & rules should be timely filed by Service Provider with requisite details.

If input tax credit is not available to GAIL for any reason not attributable to GAIL, then GAIL shall not be obligated or liable to pay or reimburse GST (CGST & SGST/UTGST or IGST) claimed in the invoice(s) and shall be entitled to deduct / setoff / recover such GST amount (CGST & SGST/UTGST or IGST) or Input Tax Credit amount together with penalties and interest, if any, against any amounts paid or becomes payable by GAIL in future to the Service Provider under this contract or under any other contract.

- 4.6.3 Where Owner has the obligation to discharge tax liability under reverse charge mechanism and Owner has paid or is /liable to pay GST to the Government on which interest or penalties becomes payable as per rules (as amended from time to time) for any reason which is not attributable to Owner or Input Tax credit with respect to such payments is not available to Owner for any reason which is not attributable to Owner, then Owner shall be entitled to deduct/ setoff / recover such amounts against any amounts paid or payable by Owner to Service Provider.

- 4.6.4 A foreign Service Provider shall be entirely responsible for all taxes, stamp duties, licence fees and other such levies imposed outside the Employer's country. For Foreign bidders who is not having the permanent establishment/ tax residency in India/ GST Registration, IGST (Intergraded Goods and Services Tax) in respect of Services/ Works shall be payable by GAIL wherever applicable to statutory authorities in India under reverse charge mechanism. Further, in cases where GST is not charged by foreign bidders in the invoices and GAIL makes payment of IGST under Reverse Charge to Exchequer, if the foreign bidder is later on required to discharge tax liability as service provider, then GAIL will not reimburse tax, interest and penalty amount to such foreign vendor on this account.

In case Foreign bidders who is having the permanent establishment/ tax residency in India/ GST Registration, GST (CGST & SGST/UTGST or IGST) in respect of Services/ Works shall be quoted and paid by the bidder. In such cases, all other provision w.r.t. to GST (CGST & SGST/UTGST or IGST) in respect of Services/ Works shall be as per provision applicable to Indian bidder mentioned herein above

- 4.6.5 Wherever TDS under GST Laws has been deducted from the invoices raised / payments made to the vendors, as per the provisions of the GST law / Rules, Vendors should accept the corresponding GST-TDS amount populated in the relevant screen on GST common portal (www.gst.gov.in). Further, Vendors should also download the GST TDS certificate from GST common portal (reference path: Services > User Services > View/Download Certificates option)".

4.7 INCOME TAX:

- 4.7.1 Income Tax deduction shall be made from all payments of the Service Provider as per rules and regulation in force in accordance with the Income Tax Act prevailing from time to time. As per the provisions of the income Tax Act, 1961, Permanent Account No. (PAN) is compulsorily required to be mentioned in Tax Deduction at Source (TDS) certificate issued to the payee. Therefore, the bidder must submit the details of PAN / the copy of application filed for allotment of PAN (if PAN no. not available) to EIC immediately on receipt of FOA/Contract Document,



failing which, TDS will be applied as per applicable law and TDS certificate will not be issued. Therefore, in case the Service Provider does not furnish PAN, OWNER shall deduct at source as provided in the Income Tax Act 1961, or in the relevant Finance Act, or as directed in the orders u/s 195(3) or 197 or 195(2), as the case may be, or at such higher rate as may be required by Section 206AA of Income Tax Act 1961, from time to time.

- 4.7.2 In case of foreign bidder, the Service Provider must apply through the local embassy / consulate of India for obtaining PAN card. In case, foreign Service Provider don't have the PAN, then amount will be deducted and deposited as per law and TDS certificate will also not be provided. Further, such Service Provider shall comply all other provisions mentioned elsewhere in the Tender Document related to making remittances to non-residents including Permanent Establishment, Tax Residency Certificate (TRC) if non-resident desire to avail benefits available under Double Tax Avoidance Agreement (DTAA), Withholding Tax etc., as per Income Tax Act, 1961 (as amended from time to time).

In case , Service provider is unable to provide “ NO Business Connection in India and NO Permanent Establishment in India”, they have to provide Withholding Tax (WHT) Certificate issued by Indian Income Tax dept along with a copy of PAN card.

4.8 STATUTORY VARIATIONS:

- 4.8.1 All duties, taxes (except where otherwise expressly provided in the Contract) as may be levied / imposed in consequences of execution of the Jobs/Services or in relation thereto or in connection therewith as per the Acts, Laws, Rules, Regulations in force on the due date of submission of Bid for this Contract shall be to Service Provider's account. Any increase / decrease in such duties, taxes after the due date of submission of bid but within the Contractual completion date as stipulated in the Contract will be to the account of Owner subject to submission of documentary proof to the satisfaction of Owner.
- 4.8.2 Any increase in the duties and taxes after the Contractual completion period will be to the Service Provider's account, where delay in completion /mobilization period is attributable to the Service Provider and the taxes & duties are not cenvatable (i.e. Input Tax Credit (ITC) not available). In case of applicability of ITC / cenvatable taxes & duties, payment shall be made as per the prevailing rates during the execution of contract. However, any benefit of decrease in duties and taxes after the Contractual completion will be passed on to the Owner.
- 4.8.3 In the event of introduction of any new legislation or any change or amendment or enforcement of any Act or Law, rules or regulations of Government of India or State Government(s) or Public Body which becomes effective after the due date of submission of Bid for this Contract but within the Contractual completion period (including extended period allowed due to reasons attributed to Owner) and which results in increased cost of the jobs/services under the Contract through increased liability of taxes, (other than personnel and Corporate taxes), duties, the Service Provider shall be indemnified for any such increased cost by the Owner subject to the production of documentary proof to the satisfaction of the Owner to the extent which directly is attributable to such introduction of new legislation or change or amendment as mentioned above and adjudication by the competent authority & the courts wherever levy of such taxes / duties are disputed by Owner.
- 4.8.4 Similarly, in the event of introduction of new legislation or any change or amendment or enforcement of any Act or Law, rules or regulations of Government of India or State Government(s) or Public Body which becomes effective after the due date of submission of Bid for this Contract and which results in any decrease in the cost of the services/ jobs through reduced liability of taxes, (other than personnel and Corporate taxes) duties, the Service Provider shall pass on the benefits of such reduced cost, taxes or duties to the Owner, to the extent which is



directly attributable to such introduction of new legislation or change or amendment as mentioned above.

4.9 DAMAGES TO PROPERTY, ANY PERSON AND THIRD PARTY

Service Provider shall be responsible for making good to the satisfaction of the Owner any loss or any damage to structures and properties belonging to the Owner or being executed or procured or being procured by the Owner or of other agencies within in the premises of the Owner, if such loss or damage is due to fault and/or the Negligence or Willful Misconduct or omission of the Service Provider, his employees, agents, representatives or Sub-Service Providers.

4.10 Service Provider is required to submit No Claim Certificate and Indemnity Bond along with final bill as per proforma provided at Annexure-II and III respectively.

5.0 LAWS, HEALTH, SAFETY & ENVIRONMENT

SECTION – V

5.1 LABOUR LAWS:

Wherever Service provider's Personal is deployed at Owner's site, the Service Provider will follow all the applicable labours laws of India.

5.2.1 **SAFETY REGULATIONS:** The Service Provider shall observe and abide by all fire and safety regulations of the Owner. Before starting service, Service Provider shall consult with Owner's safety Engineers or EIC and must make good to the satisfaction of the Owner any loss or damage due to fire to any portion of the service done or to be done under this agreement or to any of the Owner's existing property. In respect of all labour, directly employed in the Service, the Service Provider shall at his own expense arrange for all the safety provisions as per safety codes of C.P.W.D., Indian Standards Institution and such other acts as applicable.

5.3 **GENERAL RULES:** Smoking within the battery area, tank farm, dock limits or any such area identified by EIC or mentioned in SCC or any guideline, is strictly prohibited. Violators of the no smoking rules shall be discharged immediately after imposing the applicable penalty(ies). Decision of EIC in the matter shall be final and binding on the Service Provider.

5.4 **FIRST AID AND INDUSTRIAL INJURIES:** Service Provider shall maintain first aid facilities for its employees and those of its Sub-Service Provider. Service Provider shall make outside arrangements for ambulance service and for the treatment of industrial injuries. All critical industrial injuries shall be reported promptly to Employer, and a copy of Service Provider's report covering each personal injury requiring the attention of a physician shall be furnished to the Employer.

5.5 ENVIRONMENT:

5.5.1 Owner acknowledges their commitment to conduct their respective operations in a manner which not only complies with all relevant environmental protection and pollution control legislation but also such operations do not cause environmental damage or pollution and in a manner which acknowledges other cultural and associated considerations. In recognition of this commitment, the Service Provider shall perform the services in such a way as to avoid or minimize environmental damage or pollution and fully recognize the special aspects of the environment as communicated by Owner or as applicable. Service Provider shall comply with, and the Service Provider shall ensure compliance with all applicable environmental protection and pollution control legislation as it relates to the services.

**6.0 DISPUTE RESOLUTION AND ARBITRATION****SECTION – VI****6.1 CONCILIATION**

GAIL (India) Limited has framed the Conciliation Rules 2010 in conformity with Part – III of the Arbitration and Conciliation Act 1996 as amended from time to time for speedier, cost effective and amicable settlement of disputes through conciliation. All issue(s)/dispute(s) arising under the Contract, which cannot be mutually resolved within a reasonable time, may be referred for conciliation in accordance with GAIL Conciliation Rules 2010 as amended from time to time. A copy of the said rules have been made available on GAIL's web site i.e www.gailonline.com.

Where invitation for Conciliation has been accepted by the other party, the Parties shall attempt to settle such dispute(s) amicably under Part-III of the Arbitration and Conciliation Act, 1996 and GAIL (India) Limited Conciliation Rules, 2010. It would be only after exhausting the option of Conciliation as an Alternate Dispute Resolution Mechanism that the Parties hereto shall invoke Arbitration Clause. For the purpose of this clause, the option of 'Conciliation' shall be deemed to have been exhausted, even in case of rejection of 'Conciliation' by any of the Parties.

6.2 ARBITRATION

All issue(s)/dispute(s) excluding the matters that have been specified as excepted matters and listed at clause no. 6.2.6 and which cannot be resolved through Conciliation, such issue(s)/dispute(s) shall be referred to arbitration for adjudication by Sole Arbitrator.

The party invoking the Arbitration shall have the option to either opt for Ad-hoc Arbitration as provided at Clause 6.2.1 below or Institutionalized Arbitration as provided at Clause 2.2 below, the remaining clauses from 6.2.3 to 6.2.7 shall apply to both Ad-hoc and Institutional Arbitration:-

6.2.1 On invocation of the Arbitration clause by either party, GAIL shall suggest a panel of three independent and distinguished persons (Retd Supreme Court & High Court Judges only) to the other party from the Panel of Arbitrators maintained by 'Delhi International Arbitration Centre (DIAC) to select any one among them to act as the Sole Arbitrator. In the event of failure of the other party to select the Sole Arbitrator within 30 days from the receipt of the communication from GAIL suggesting the panel of arbitrators, the right of selection of the sole arbitrator by the other party shall stand forfeited and GAIL shall appoint the Sole Arbitrator from the suggested panel of three Arbitrators for adjudication of dispute(s). The decision of GAIL on the appointment of the sole arbitrator shall be final and binding on the other party. The fees payable to Sole Arbitrator shall be governed by the fee Schedule of 'Delhi International Arbitration Centre'.

OR

6.2.2 If a dispute arises out of or in connection with this contract, the party invoking the Arbitration shall submit that dispute to any one of the Arbitral Institutions i.e ICADR/ICA/DIAC/SFCA and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd Supreme Court/High Court Judge to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the



parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

- 6.2.3 The cost of arbitration proceedings shall be shared equally by the parties.
- 6.2.4 The Arbitration proceedings shall be in English language and the seat, venue and place of Arbitration shall be New Delhi, India only.
- 6.2.5 Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matter relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at New Delhi.
- 6.2.6 **List of Excepted matters:**
- a) Dispute(s)/issue(s) involving claims below Rs 25 lakhs and above Rs 25 crores.
 - b) Dispute(s)/issue(s) relating to indulgence of Service Provider/ Contractor/Vendor/Bidder in corrupt/fraudulent/collusive/coercive practices and/or the same is under investigation by CBI or Vigilance or any other investigating agency or Government.
 - c) Dispute(s)/issue(s) wherein the decision of Engineer-In-Charge/owner/GAIL has been made final and binding in terms of the Contract.
- 6.2.7. Disputes involving claims below Rs 25 Lakhs and above Rs. 25 crores:- Parties mutually agree that dispute(s)/issue(s) involving claims below Rs 25 Lakhs and above Rs 25 crores shall not be subject matter of Arbitration and are subject to the exclusive jurisdiction of the Court(s) situated at New Delhi.

6.3. GOVERNING LAW AND JURISDICTION:

The Contract shall be governed by and construed in accordance with the laws in force in India. The Parties hereby submit to the exclusive jurisdiction of the Courts situated at New Delhi for adjudication of disputes, injunctive reliefs, actions and proceedings, if any, arising out of this Contract.

6.4. DISPUTES BETWEEN CPSE'S/GOVERNMENT DEPARTMENT'S/ ORGANIZATIONS

Subject to conciliation as provided above, 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 as mentioned in OPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at First level, through it's administrative Ministry/Department, whose decision will be final and binding on all concerned.

- 6.5 **CONTINUANCE OF THE CONTRACT:** Notwithstanding the fact that settlement of dispute(s) (if any) may be pending, the parties hereto shall continue to be governed by and perform the Services in accordance with the provisions under this Contract.



PROFORMA FOR CONTRACT AGREEMENT

[To be executed on non-judicial stamp paper of appropriate value]

LOA No. GAIL /

dated -----

Contract Agreement for the Services of ----- of GAIL (India) Ltd. made on ----- between (Name and Address)-----, hereinafter called the “Service Provider” (which term shall unless excluded by or repugnant to the subject or context include its successors and permitted assignees) of the one part and GAIL (India) Limited hereinafter called the “Employer” (which term shall, unless excluded by or repugnant to the subject or context include its successors and assignees) of the other part.

WHEREAS

- A. The Employer being desirous of having provided and executed certain services mentioned, enumerated or referred to in the Tender Documents including Letter Inviting Tender, General Tender Notice, General Conditions of Contract, Special Conditions of Contract, Specifications, Drawings, Plans, Time Schedule of completion of jobs, Schedule of Rates, Agreed Variations, other documents has called for Tender.
- B. The Service Provider has inspected the Site and surroundings and nature of Services specified in the Tender Documents and has satisfied himself by careful examination before submitting his tender as to the form and nature of Site and local conditions, the quantities, nature and magnitude of the Services, the availability of labour and materials necessary for the execution of Services, the means of access to above said place, the supply of power and water thereto and the accommodation he may require and has made local and independent enquiries and obtained complete information as to the matters and thing referred to, or implied in the Tender Documents or having any connection therewith and has considered the nature and extent of all probable and possible situations, delays, hindrances or interferences to or with the execution and completion of the Services to be carried out under the Contract, and has examined and considered all other matters, conditions and things and probable and possible contingencies, and generally all matters incidental thereto and ancillary thereof affecting the execution and completion of the Services and which might have influenced him in making his tender.
- C. The Tender Documents including the Notice Letter Inviting Tender, General Conditions of Contract, Special Conditions of Contract, Schedule of Rates, General Obligations, Specifications, Drawings, Plans, Time Schedule for completion of Services, Letter of Acceptance of Tender and any statement of agreed variations with its enclosures copies of which are hereto annexed form part of this Contract though separately set out herein and are included in the expression “Contract” wherever herein used.

AND WHEREAS

The Employer accepted the Tender of the Service Provider for the provision and the execution of the said Services at the rates stated in the Schedule of Rates of the Services and finally approved by Employer (hereinafter called the "Schedule of Rates") upon the terms and subject to the conditions of Contract.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

- 1. In consideration of the payment to be made to the Service Provider for the Services to be executed by him, the Service Provider hereby covenants with Employer that the Service Provider shall and will duly provide, execute and complete the said Services and shall do and perform all other acts and things in the Contract mentioned or described or which are to be implied there from or may be reasonably necessary for the completion of the said Services and at the said times and in the manner and subject to the terms and conditions or stipulations mentioned in the Contract.
- 2. In consideration of the due provision execution and completion of the said Services, Employer does hereby agree with the Service Provider that the Employer will pay to the service provider the respective amounts for the Services actually done by him and approved by the Employer at the Schedule of Rates and such other sum payable to the Service Provider under provision of Contract, such payment to be



made at such time in such manner as provided for in the Contract.

AND

- 3. In consideration of the due provision, execution and completion of the said Services the Service Provider does hereby agree to pay such sums as may be due to the Employer for the services rendered by the Employer to the Service Provider, such as power supply, water supply and others as set for in the said Contract and such other sums as may become payable to the Employer towards the controlled items of consumable materials or towards loss, damage to the Employer's equipment, materials construction plant and machinery, such payments to be made at such time and in such manner as is provided in the Contract.

It is specifically and distinctly understood and agreed between the Employer and the Service Provider that the Service Provider shall have no right, title or interest in the Site made available by the Employer for execution of the Services or in the goods, articles, materials etc., brought on the said Site (unless the same specifically belongs to the Service Provider) and the Service Provider shall not have or deemed to have any lien whatsoever charge for unpaid bills will not be entitled to assume or retain possession or control of the Site or structures and the Employer shall have an absolute and unfettered right to take full possession of Site and to remove the Service Provider, their servants, agents and materials belonging to the Service Provider and lying on the Site.

The Service Provider shall be allowed to enter upon the Site for execution of the Services only as a licensee simpliciter and shall not have any claim, right, title or interest in the Site or the structures erected thereon and the Employer shall be entitled to terminate such license at any time without assigning any reason.

The materials including sand, gravel, stone, loose, earth, rock etc., dug up or excavated from the said Site shall, unless otherwise expressly agreed under this Contract, exclusively belong to the Employer and the Service Provider shall have no right to claim over the same and such excavation and materials should be disposed off on account of the Employer according to the instruction in writing issued from time to time by the Engineer-In-Charge.

In Witness whereof the parties have executed these presents in the day and the year first above written.

Signed and Delivered for and on behalf of Employer.
GAIL (India) Limited

Signed and Delivered for and on behalf of the Service Provider
Name of the Service Provider

Date : _____

Date : _____

Place: _____

Place: _____

IN PRESENCE OF TWO WITNESSES

1. _____

1. _____

2. _____

2. _____



[On the Letter-head of Service Provider]

NO CLAIM CERTIFICATE

We, _____, a company incorporated under the laws of India/ a Consortium between * ___ and * ___ (*name of Consortium partners to be inserted*)/ a Partnership Firm consisting of * ___ and * ___ (*name of Partners to be inserted*)/ a Sole Proprietorship (as the case may be), having its registered office at _____ and carrying on business under the name and style M/s. _____ were awarded the contract by GAIL (India) Ltd. in reference to Tender No. _____ dated _____ (“Service Provider”).

After completion of the above-said jobs under the contract, we have scrutinized all our claims, contentions, disputes, issues and we hereby confirm that after adjusting all payments received by us against our R.A. Bills, our balance entitlement under the Contract is to a sum of Rs. _____ (Rupees _____ only) as per our Final Bill dated _____ towards full and final settlement of all our claims, dues, issues and contentions from GAIL (India) Ltd.

We confirm and declare that with the receipt of aforesaid monies, all our claims, dues, disputes, differences between M/s. _____ and GAIL (India) Ltd. under and with reference to said Contract stands fully and finally settled.

We further absolve GAIL (India) Ltd. from all liabilities present or future arising directly or indirectly out of the Contract.

We further confirm that the present settlement has been arrived at after mutual negotiations and is freely and fairly entered into between the parties. There is no economic duress or any other compulsion on us in entering into this settlement.

Signature with Seal of Service Provider

Dated :



INDEMNITY BOND

WHEREAS GAIL (India) Ltd. (hereinafter referred to as “**GAIL**”) which expression shall, unless repugnant to the context include its successors and assigns, having its registered office at 16, Bhikaiji, Cama Place, R.K. Puram, New Delhi 110066 has entered into a contract with M/s *___ (hereinafter referred to as the “**Service Provider**”) which expression shall unless repugnant to the context include its representatives, successors and assigns, having its registered office at *___ and on the terms and conditions as set out, inter-alia in the [*mention the work order/LOA/Tender No.*] and various documents forming part thereof, hereinafter collectively referred to as the ‘**CONTRACT**’ which expression shall include all amendments, modifications and / or variations thereto.

GAIL has also advised the Service Provider to execute an Indemnity Bond in general in favour of GAIL indemnifying GAIL and its employees and Directors including Independent Directors from all consequences which may arise out of any prospective litigation or proceedings filed or may be initiated by any third party, including any Banker / financial institution / worker(s) / vendor(s)/ sub- contractor(s) etc. who may have been associated or engaged by the Service Provider directly or indirectly with or without consent of GAIL for above jobs/services.

NOW, THEREFORE, in consideration of the promises aforesaid, the Service Provider hereby irrevocably and unconditionally undertakes to indemnify and keep indemnified GAIL and all its employees, Directors, including Independent Directors, from and against all/any claim(s), damages, loss, which may arise out of any litigations/ liabilities that may be raised by the Service Provider or any third party against GAIL under or in relation to this contract. The Service Provider undertakes to compensate and pay to GAIL and/or any of its employees, Directors including Independent Directors, forthwith on demand without any protest the amount claimed by GAIL for itself and for and on behalf of its employees, Directors including Independent Directors together with direct/indirect expenses including all legal expenses incurred by them or any of them on account of such litigation or proceedings.

AND THE SERVICE PROVIDER hereby further agrees with GAIL that:

(i) This Indemnity shall remain valid and irrevocable for all claims of GAIL and/or any of its employees and Directors including Independent Directors arising out of said contract with respect to any such litigation / court case for which GAIL and/or its employees and Directors including Independent Directors has been made party until now or here-in-after.



(ii) This Indemnity shall not be discharged/revoked by any change/modification/amendment/assignment of the contract or any merger of the Service Provider with other entity or any change in the constitution/structure of the Service Provider's firm/Company or any conditions thereof including insolvency etc. of the Service Provider, but shall be in all respects and for all purposes binding and operative until any/all claims for payment of GAIL are settled by the Service Provider and/or GAIL discharges the Service Provider in writing from this Indemnity.

The undersigned has full power to execute this Indemnity Bond for and on behalf of the Service Provider and the same stands valid.

SIGNED BY :

For [*Service Provider*]
Authorised Representative

Place:

Dated:

Witnesses:

1.

2.