

# MODEL CONTRACT FOR CHARTER HIRE OF RIGS (Off-Shore)

## DRILLING AGREEMENT WITH GENERAL TERMS AND CONDITIONS

THIS AGREEMENT made and entered into \_\_\_\_ day of \_\_\_\_\_, between Oil and Natural Gas Corporation Limited, incorporated under the Companies Act 1956, having its Registered Office at Pandit Deen Dayal Upadhyaya Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070, INDIA, and its \_\_\_\_\_ **[name and address of office to be filled in]** (hereinafter referred to as 'Operator', which expression shall include its successors, administrators, executors and assignees) on the one part and M/s. \_\_\_\_\_ a Company organized and existing under the laws of Company's Act 1956 having its Registered Office at \_\_\_\_\_ hereinafter referred to as 'Contractor', which expression shall include its successors, administrators, executors and permitted assignees) on the other part.

### WITNESSETH

WHEREAS, Operator desires to have drilling operations conducted in the offshore waters of India, as may be designated by Operator, AND WHEREAS, Contractor is owner of " \_\_\_\_\_ " (hereinafter referred to as "Drilling Unit") and willing to perform such drilling operations on charter hire basis with Drilling Unit and its personnel as per Exhibit - \_\_\_\_

OR

Contractor has taken on lease the Rig \_\_\_\_\_ (hereinafter referred to as 'Drilling Unit') from \_\_\_\_\_ for \_\_\_\_\_ years sufficient to cover the duration of this Agreement and willing to perform such drilling operations with the Drilling Unit and its personnel as per Exhibit '...'. Contractor undertakes to get the lease period extended if the Agreement is extended to perform the drilling operations during the extended period.

Whereas, the Contractor confirms that it has the approval No..... dated ..... of the Government of India permitting it to enter into a Joint Venture/Technical Collaboration for rendering offshore drilling services in India and whereas the Contractor has entered into an Agreement with \_\_\_\_\_ on \_\_\_\_\_ (copy enclosed at Exhibit.....) and this Agreement is subsisting and is valid upto ..... i.e. covering the primary term of this Agreement for providing sufficient technical/management back up support for drilling operations under this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter provided, it is hereby agreed as follows:-

### 1.0 TERM

#### 1.1 COMMENCEMENT DATE

The Agreement is effective as of \_\_\_\_\_ (i.e. date of issue of **unconditional LOA (Letter of Award) / NOA (Notification of Award by Operator)**, and all commitments / obligations of the Contractor under this Agreement shall be operative from this date (i.e. date of issue of **unconditional LOA / NOA by Operator**).

The commencement date and time for the purposes of any compensation to the Contractor under this Agreement, shall start when :-

- i. **the Drilling Unit, ready in all respects and accepted thereafter by the Operator and Contractor commences operations** at the first drilling location nominated and made ready in all respects by Operator

**Note:**

- a. **“Commencement of Operations” is defined as under:**

**For Jack up rigs:** Drilling operations or workover operations, which includes lifting of 1<sup>st</sup> conductor casing for piling operation or installation of BOP stack or starting of making BHA as the case may be.

**For anchor moored floaters:** Drilling unit is ready for running of anchors. If time taken from running of anchors is more than 48 hours, the Contractor shall be paid zero rate for any such excess time.

- b. **Applicable for both Jack-up/ floaters**

However, any time lost due to location not being ready shall be paid at Non-Operating Day Rate.

Or

- ii. When the Drilling Unit **after acceptance by the Operator** is ready to commence voyage, to the first drilling location, Contractor shall serve on Operator 5 days written notice of such readiness from nearest harbour or within a radius of 20 Kms of the harbour. If at the expiry of the notice period, depending upon availability of AHTSV, (Anchor Handling Tug Supply Vessels), the Operator has not supplied the AHTSV for the tow (for jack-up) / for running of anchors (for floaters), the **operations** shall be deemed to have commenced from expiry of the notice and Non-Operating Day Rate shall be payable until Operator supplied AHTSV's have connected the tow. However, the cost of the AHTSVs for towing shall be to Contractor's account.

1.1.1 In case the Drilling Unit is not ready in all respect as provided in 1.1 (i/ii) above, and the readiness of the Drilling Unit as mentioned above is falling during the monsoon period, the movement of Drilling Unit will be allowed on the request of the Contractor by Operator to the 1<sup>st</sup> location before onset of monsoon subject to the following conditions:

- a. Movement of the Drilling Unit to the first location prior to inspection and acceptance of the Drilling Unit will be solely at the risk and cost of the Contractor.

ONGC/MM/03/(2)

The operations will commence only after inspection of the Drilling Unit by 3<sup>rd</sup> party and acceptance by Operator as provided under clause No. 1.6.2 and when the Drilling Unit commences Well operations.

**Applicable for Jack up rigs**) : Well operations means Drilling operations or workover operations, which includes lifting of 1<sup>st</sup> conductor casing for piling operation or installation of BOP stack or starting of making BHA as the case may be.

**(Applicable for Floaters)** : Well operations means Drilling operations or workover operations, which includes installation of BOP stack or starting of making BHA as the case may be).

- b. Subject to Clause 1.4, after movement of Drilling Unit to 1<sup>st</sup> designated location prior to monsoon, if the Contractor fails to commence the operations as per the Agreement within the stipulated mobilization period, Operator shall have, without prejudice to any other provision in the contract, the right to terminate the Agreement irrespective of the onset of the monsoon.
- c. Contractor shall procure at its own expense and maintain, with respect to and from the date Drilling Unit is moved to the **designated drilling location** or platform, **as the case may be**, all insurance policies as described in Clause No.14 of the Agreement.
- d. All costs, expenditure and liability arising out of pollution and contamination due to the above deployment shall be to the account of the Contractor and Contractor indemnifies the Operator for the same .
- e. Contractor shall be solely responsible for any damage to pipeline/platform due to any reason and shall indemnify Operator upto an amount of US\$ 1 Million.
- f. Force Majeure and Arbitration clauses will not be applicable during this period and till Drilling Unit has commenced its operation as per the terms of the Agreement.
- g. Logistics support (sea/air)/other services like potable water/HSD etc. shall be provided by Operator, subject to its availability on chargeable basis and Contractor will be required to make advance payments for such services.
- h. Any payment to Contractor shall be due only after the Drilling Unit has commenced its operation as per the terms of the Agreement.

### **1.1.2 MOBILIZATION**

The Contractor shall mobilize and deploy the Drilling Unit along with crew so as to commence the operations at the designated first drilling location nominated by Operator **within a period of 180 days from the date of LOA/ NOA from Operator.**

- a) Applicable for Contractor(s) offering rigs which are in operation with ONGC:

Immediately after de-hiring from the ongoing contact.

In case such a Drilling Unit is to be repaired/dry docked before deployment against the new contract, time required for such activity indicated by the Contractor at the bidding stage will be considered (subject to the maximum mobilization period of 180 days from the date of de-hiring).

The succeeding day of issue of **LOA/NOA** shall be counted as Day 1 for the purposes of Mobilization period.

The rig will be deployed by Operator anywhere in offshore Indian waters. However, the 1<sup>st</sup> drilling location will be West Coast / East Coast (to be incorporated as per requirement) offshore Indian waters.

In case the Drilling Unit is under automatic extension for the completion of Well/ Wells-in-progress under previous contract with ONGC, and / or the mobilization period of (180) days falls between 16<sup>th</sup> May and 15<sup>th</sup> October (for rigs where the nominated 1<sup>st</sup> drilling location is in West Coast) / between 16<sup>th</sup> October and 15<sup>th</sup> February (for rigs where the nominated 1<sup>st</sup> drilling location in East Coast) the mobilization period of (180) days stands extended upto 15<sup>th</sup> October and 15<sup>th</sup> February respectively.

(The year for the monsoon period as above will be the respective year according to year of LOA/NOA by which scheduled mobilization date falls).

**b)** Contractor has agreed to the following schedule and milestones for completing the mobilization of the Drilling Unit as per the mobilization period of 180 days) :-

- i. Modification/up-gradation/ repairs schedule (if any)
- ii. Inspection schedule
- iii. Towing schedule (if any)
- iv. Commencement schedule

A kick-off meeting will be held within 15 days from the date of LOA/ NOA which the Contractor should attend and submit the schedules alongwith various dates.

After the kick-off meeting Contractor shall submit fortnightly report or any other report as desired by Operator showing progress in each activities of mobilization.

**c)** In case the Contractor fails to mobilize and deploy the Drilling Unit alongwith crew and/or fails to commence operations within the period specified above, Operator shall have, without prejudice to any other provision in the contract, including clause 1.4, the right to invoke the performance bond, forfeit the amount of performance bond and terminate the Agreement. Apart from termination, Contractor will be put up on holiday of two years **as per Clause No.22.8.1 of model contract conditions.**

Applicable only for Class-I –under construction (new generation) Rigs:

The Contractor shall mobilize and deploy the Drilling Unit along with crew so as to commence the operations at the designated first drilling location nominated by

Operator within a period of 730 days from the date of LOA/ NOA from Operator.

## 1.2 EXPIRY DATE

This Agreement shall come to an end if before the expiry of the term of the Agreement:

(a) The drilling of the last well is completed/terminated or the well is abandoned and all equipment belonging to Operator or its third parties are off-loaded and the drilling unit is:-

1. Ready for Jack down

OR

2. Floater is ready for pulling its last anchor

(b) Subject to availability AHTSV shall be provided for towing of rig to sheltered water or any other demobilisation point, mutually agreed, at Contractor's cost.

## 1.3 DURATION

a) **Unless extended at the option of Operator**, this Agreement shall be for a firm period of \_\_\_years (Primary term) from Commencement of operations as defined under clause 1.1(i) or 1.1(ii).

(b) The Agreement will be automatically extended, under the same rates, terms and conditions to cover the time necessary to complete or abandon, to the satisfaction of Operator, the Well in progress at the end of the Primary Term of the Agreement or extension thereof, as the case may be.

(c) Period of break down, Dry Dock time, Repair time and Hull Inspection time of the Drilling Unit unpaid by Operator may be added at the option of the Operator to the duration of the primary term or extension thereof as the case may be.

(d) Operator shall have the option to terminate this Agreement, at any time during last thirty (30) days before the expiry date of the Primary Term or any extension thereof, if the last Well being drilled is completed or abandoned prior to such expiry date and, in the opinion of Operator, another Well cannot be drilled within the remaining Agreement period

(BL/03/26 dated 03.05.2012)

## 1.4 LIQUIDATED DAMAGES.

(i) The Contractor shall deploy the Drilling Unit at the designated first drilling location nominated by Operator, anywhere in Indian waters to commence operation within the stipulated mobilisation period as per Clause No.1.1.2.

- (ii) **Operator** reserves the right to extend the date of mobilisation until weather is cleared for deployment of unit to **first location, if scheduled mobilisation date as per the Mobilization clause 1.1.2** falls between the monsoon period (from 16<sup>th</sup> May to 15<sup>th</sup> October – both days inclusive **for rigs where designated 1<sup>st</sup> drilling location is in West Coast offshore Indian waters / from 16<sup>th</sup> October to 15<sup>th</sup> February both days inclusive for rigs where designated 1<sup>st</sup> drilling location is in East Coast Offshore Indian waters**) without imposition of any liquidated damages.

**This provision is applicable only when the original scheduled mobilization period falls in the monsoon period.**

- (iii) If the Contractor **delays** to mobilise / deploy the Drilling Unit and commence the operations within the stipulated mobilization period, it may request Operator for extension of time with unconditionally agreeing for payment of Liquidated Damages. Upon receipt of such requests, Operator may, at its discretion, extend the period of mobilization and as its sole remedy can recover from Contractor as ascertained and agreed Liquidated Damages and not by way of penalty a sum equivalent to 1/2 % of annual contract value (i.e. Effective Day Rate based on which bids were evaluated x 365 days) for each week of delay or part thereof subject to maximum of 10% of annual contract value.
- (iv) Operator shall have at any time but before Commencement Date, the right to terminate the Contract in the event Contractor fails to deploy the Drilling Unit at the first drilling location within the mobilization period as per CI 1.1.2 or within the extended period as per Para iii of clause 1.4, without prejudice to any other clauses including LD Clause. **If the mobilization period is extended at the request of the Contractor, and if extended mobilization period falls in monsoon, such extended mobilization period shall be with levy of Liquidated Damages.**
- (v) LD will be calculated on the basis of annual contract value (i.e. Effective Day Rate based on which bids were evaluated x 365 days) excluding duties and taxes, where such duties/taxes have been shown separately in the contract.
- (vi) The parties agree that this is a genuine pre-estimate of the loss/damage which will be suffered on account of delay on the part of the contractor and the said amount will be payable on demand, without there being any proof of the actual loss or damages caused by such delay.
- (BL/03/39 dated 24.08.2017)
- (vii) **The applicable GST on the LD shall have to be borne by the contractor. Accordingly, the liquidated damages shall be recovered from the contractor along with applicable GST.**

**1.5 Non – substitution of rig (Contract condition in Booklet No: ONGC/MM/03):**

The Contractor shall mobilize the rig \_\_\_\_\_ (Name of the rig) within the stipulated mobilization period and ONGC shall not allow substitution of the rig under any circumstances.

## **1.6 INSPECTION**

**1.6.1 Operator shall get the Drilling Unit and equipment inspected through any of the following internationally reputed third party inspection agency as per the tender specifications. Operator at its option can nominate any one of the following third party inspection agency for inspection of the Drilling Unit and the cost of the third party inspection will be borne by Operator:**

- a) MODU SPEC**
- b) Oilfield Audit Services Inc.**
- c) DNV**
- d) ABS**
- e) Any other third party inspection agency nominated by Operator**

**1.6.2 Operator will accept the Drilling Unit only after Operator nominated third party inspection agency confirms that the Drilling Unit is as per the tender specifications and that the Drilling Unit has undergone regular repair/ maintenance / overhauling as per required industry practice.**

**1.6.3 Contractor confirms completion of inspection and complete readiness of Drilling Unit in all aspects, to the satisfaction of Operator including conformity to Operator's tender specification certified by third party inspection agency at least 30 days prior to stipulated mobilization period or extended period as per clause 1.4(iii).**

**1.6.4 In case the Contractor fails to adhere to the above time schedules Operator reserves its right to invoke the performance bond, forfeit the amount of performance bond and terminate the Agreement without prejudice to any other right or remedy available as per the Agreement.**

**1.6.5 Contractor agrees to provide the documents required for obtaining Visa, at his own cost, (for the inspectors) of the country where the Drilling Unit is offered for inspection.**

**1.6.6 Contractor agrees that notice for inspection as per 1.6.3 above is required to be given by the Contractor 15 days in advance.**

**1.6.7 Maximum time allowed on board the Drilling Unit for inspection of the Drilling Unit is 20 mandays (for Jack-up / Platform Rigs)/ 25 man days (for floater rigs). The Contractor has to offer the Drilling Unit for inspection on complete readiness of the Drilling Unit. In case inspection takes more than 20 mandays (for Jack-up / Platform Rigs)/ 25 man days (for floater rigs). the cost of inspection beyond 20 man days (for Jack-up / Platform Rigs) / 25 man days (for floater rigs) would be to the account of the Contractor. In case inspection team is to be mobilized subsequently, for compliance of deficiencies during the first inspection, then entire cost towards second or subsequent inspections shall be to the account of the**

Contractor. The charges for inspection for the period beyond 20 days (for Jack-up) / 25 days (for floater rigs) shall be paid directly by the Operator to the TPI Agency and will be recovered from the Contractor from his invoices upon commencement of contract.

**In case inspection is carried out in two stages then the cumulative cost of inspection of stages 1 & 2 upto 20 man days (for Jack-up / Platform Rigs)/ 25 man days (for floater rigs) on board the Drilling Unit shall be borne by Operator. However, all other expenses after stage -1 inspection shall be on Contractor's account. The charges for inspection for the cumulative period beyond 20 days (for Jack-up) / 25 days (for floater rigs) shall be paid directly by the Operator to the TPI Agency and will be recovered from the Contractor from his invoices upon commencement of contract.**

1.6.8 STAGE INSPECTION: Operator reserves the right to stage inspect the Drilling Unit during construction / modification of rig equipment, if any.

1.6.9 Contractor confirms that the Drilling Unit is equipped with all life saving equipment and fire-fighting equipment as per SOLAS and IMO regulations and agrees that valid certificates, from regulatory body where the Drilling Unit is located at the time of inspection, shall be made available to Operator / Operator's nominated inspection team.

1.6.10 Contractor shall maintain all the class certificates valid throughout the **operations** period.

1.6.11 Applicable for bidders offering new rigs under constructions

a) Contractor agrees to provide provisional classification certificates **during inspection by Operators nominated TPI Agency** and the copies of the original certificates within the validity of provisional certificates. Contractor confirms to ensure that at no time the Drilling Unit shall remain without valid class certificate.

b) Contractor confirms that the Drilling Unit will meet the class requirement at all the times, will comply with IMO codes (if applicable). Necessary certification to the above parameters authenticated by a reputed Third Party inspection agency (MODU SPEC, Oilfield Audit Services Inc., DNV, ABS) to be submitted by the Contractor 30 days prior to commencement of **operations**.

c) Contractor shall submit the copy of the Provisional Registry Certificate to Operator **during inspection by Operators nominated TPI Agency** and to provide the Permanent Registration Certificate within the validity of provisional certificate.

## **1.6 GROSS NEGLIGENCE**

"Gross Negligence" means; any act or failure to act (whether sole, joint or concurrent) by a person or entity which was intended to cause, or which was in 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; Gross negligence

shall not include any action taken in good faith for the safeguard of life or property.

## **1.7 WILFUL MISCONDUCT**

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

## **2.0 DEPTH**

### **2.1 GENERAL**

(a) Wells should be drilled to a depth specified pursuant to this Article 2, clause 2.2 subject always to the right of Operator to direct at any time a stoppage of work at a lesser depth.

(b) The Drilling Unit furnished by the Contractor hereunder, shall be fully equipped and adequate to drill wells in terms of agreed specifications and complete the same and carry out remedial operations thereto as specified by Operator. The Drilling Unit and all other equipment, materials, and supplies provided by Contractor, as specified or which Contractor is otherwise required to provide under the terms of this Agreement, shall be in good workable condition, and together with the personnel provided by the Contractor, as specified in Exhibit.....shall be furnished and maintained by Contractor at its sole cost for the rates set forth in Article 3 Contractor shall maintain the Drilling Unit in good operating and seaworthy condition throughout the duration of the Agreement or any extension thereof.

### **2.2 DEPTH**

Contractor confirms that the Drilling Unit shall be capable of drilling wells upto a maximum depth of.....Meters.

### **2.3 WELL DEPTH**

The depth of each well to be drilled, hereunder will be specified in Operator's Drilling and Completion Programme, which Operator may amend from time to time. The depth so specified is hereunder referred to as the 'well depth'.

## **3. COMPENSATION OF CONTRACTOR**

### **3.1 GENERAL**

Operator agrees to pay Contractor for work performed/ services rendered and material equipment supplied and personnel furnished by Contractor, a sum at the rates specified in this **Clause** which shall be computed from and to the nearest half hour. The rates contained in this **Clause** are based on Contractor's operations being conducted on a seven (7) days week and a twenty four (24) hours work day.

### 3.2 MOBILISATION FEE

For mobilization of the Drilling Unit, to the first Well location designated by Operator, Operator shall pay the Contractor a Mobilization fee of \_\_\_\_\_, within twenty one (21) calendar days from commencement date of operations as defined in Clause 1.1 above.

### 3.3 DEMOBILISATION FEE

Operator shall pay the Contractor within thirty (30) days of expiry date as defined in Article 1.2 or within 30 days of the receipt of invoice, whichever is later, a demobilisation fee amounting to ..... on submission of invoice by the Contractor..

### 3.4 DAY RATE

Under this Agreement Contractor will be entitled to an applicable day rate at all times from the time of commencement of operations (as per Clause 1.1) till the expiry of the charter hire period as per Clause 1.2, except where otherwise provided for in this Agreement

DAY

Shall mean a calendar day of twenty four (24) consecutive hours beginning at 0000 hours with reference to local time at the site.

#### 3.4.1 OPERATING DAY RATE

Contractor shall be paid an Operating Day Rate of..... payable from the commencement date and at all times during the term of the Agreement, except when specially otherwise provided for in this Agreement.

#### 3.4.2 NON-OPERATING DAY RATE

Applicable for Jack-up rigs

Contractor shall be paid a Non-operating day rate of \_\_\_\_\_ (\_\_\_\_\_ only) when the Drilling Unit is not operating and is either waiting for materials / orders / instructions / programme/ waiting on weather / waiting on cement to set or carrying out fishing operations (not due to Contractor's equipment and tools) / arrangement for rig move including jacking down and jacking up [subject to clause 9.1(d)] except where otherwise provided for in this Agreement.

**When the Drilling Unit is deployed on a Well, which includes a planned fishing operations, then the Contractor shall be paid at Operating Day Rate during such fishing operations.**

Applicable for floaters

Contractor shall be paid a Non-operating day rate of \_\_\_\_\_ (\_\_\_\_\_ only) when the Drilling Unit is not operating and is either waiting for materials / orders / instructions / programme/ waiting on weather / waiting on cement to set or carrying out fishing operations (not due to Contractor's equipment and tools) except where otherwise provided for in this Agreement.

**When the Drilling Unit is deployed on a Well, which includes a planned fishing operations, then the Contractor shall be paid at Operating Day Rate during such fishing operations.**

### **3.4.3 MOVING DAY RATE**

Applicable for jack up rigs

**Except where otherwise provided for in this Agreement,** Contractor shall be compensated at the Moving Day Rate of \_\_\_\_\_ (\_\_\_\_\_ ) during the time the Drilling Unit is in actual movement between locations, beginning when the Drilling Unit has actually started moving from previous location and ending when the Drilling unit is positioned over the next Well location.

Applicable for floaters

**Except where otherwise provided for in this Agreement,** Contractor shall be compensated at the Moving Day Rate of \_\_\_\_\_ (\_\_\_\_\_ ) during the time the Drilling Unit is in actual movement between locations, beginning from the start of de-anchoring operations at any location ending when the Drilling unit is positioned over the next Well location with all the anchors lowered on seabed, required tensioning done and rig positioning accepted by Operator.

### **3.4.4 BREAK-DOWN & BREAKDOWN DAY RATE**

During the term of the Agreement, if operations hereunder are suspended, due to break-down of or the need for repairs to Contractor's equipment, or due to the failure of Contractor to furnish any requirement for the operation, such as but not limited to, materials, supplies, equipments or services to which Contractor is obligated to furnish hereunder or due to failure of Drilling Unit or due to destabilisation of the Drilling Unit due to whatever reasons and if such failure / **destabilization** results in the operations being materially affected, Contractor shall be paid at the Equipment Break-Down Day Rate of \_\_\_\_\_ ( \_\_\_\_\_ only) upto a maximum of 32 (thirty two) hours as compensation per calendar month. Beyond the said 32 hours, daily compensation shall not be payable to Contractor **during such failure /breakdown / destabilization** until operations are recommenced **to the satisfaction of Operator** at which time the applicable rate shall again come into force.

Beyond the above mentioned permissible period, zero rate will be applicable for further period of breakdown.

Operator shall provide diesel, water and other services (except tug boats) at its cost for a maximum period of seven days during breakdown. Thereafter, the cost of diesel, water and other services shall be borne by Contractor.

### 3.4.5 BOARDING AND LODGING

Contractor agrees to have the provision for keeping 15(fifteen) Operator and/or its third party personnel on board the Drilling Unit and Operator would pay @US\$ 15 (United States Dollars Fifteen only) per day per person for boarding & lodging. In case a person does not stay overnight on Drilling Unit and takes only meal(s), then US\$ 6 (United States Dollars six only) shall be payable for individual meal

In case, the bidder quotes their rates in any other currency other than US Dollars, the Boarding and Lodging charges shall be converted to the currency quoted, at the closing B.C. Selling market Rate of exchange declared by SBI on the day prior to the opening of price bid/revised price bid, if any.

### 3.4.6 RENTAL FOR OPTIONAL H2S EQUIPMENT

Rental for H2S Safety Equipment as Per Exhibit-D (Annexure – I – Appendix – 14 ) shall be\_\_\_\_\_ per day including its mobilization and de-mobilization charges. The option to take these equipment shall be with the Operator and rental of above equipment shall be payable only during its period of use. In case of utilization of these equipments, Operator shall give the Contractor a notice period of 30 days.

### 3.5 HULL INSPECTION

Contractor shall be required to carry out repair of damaged or structural defects in the hull structure and/or to carry out required inspections, which prevent the hull structure from performing its normal intended functions. Contractor shall be required to effect said repairs, inspections or modifications required as a result of said inspection at its cost at zero rate and Operator shall provide diesel, water and other services (Air Logistics, Material transport & Standby boat for safety) at its cost for maximum period of 10 days provided the said inspection/repairs are carried out at old drilling location or enroute to new location **designated by Operator**, thereafter cost of diesel, water and other services (Air Logistics, Material transport & Standby boat for safety) shall be borne by Contractor. Contractor shall **arrange &** bear all costs towards diesel, water and other services (Air Logistics, Material transport & Standby boat for safety) in case the inspection/ repairs are carried out at location other than as specified above.

**The term 'Hull' for the purpose of this clause will include legs (and Mat incase of Mat supported rigs) and spud can.** applicable for Jack-up rigs only)

Zero rate shall commence from the time, when the Drilling Unit cannot perform its normal intended functions ending when the Drilling Unit is positioned over the next location and ready to commence **Well operations**, except that, if the Drilling Unit, after said inspections/ repairs, commences operations, as per Contract, at the next location designated by Operator, then Operator shall pay the amount to

cover distance from the previous location to next location, directly, as if it is movement between two locations, in accordance with Clause No. 3.4.3- " Moving Day Rate". However, in the event, Drilling Unit commences operations at the same location prior to moving the Drilling Unit for said inspections/ repairs, no rate whatsoever shall be payable to the Contractor.

For calculation of Moving Day Rate for positioning at new location in case of a situation mentioned above, the average speed of towing tug/Drilling Unit (if self propelled) during previous inter-location movement shall be considered. However, if there is no previous inter-location movement, then the average speed of towing tug (Drilling Unit) for movement of Drilling Unit from previous location to repair/ inspection site and back to location, as mentioned above, shall be considered.

If drilling operations at location are over and only hull inspection / repair etc. as mentioned above is carried out then the time in jacking down at the said location and the time taken in jacking up at the next location shall be allowed at Non Operating Day Rate.

Operator, if required, shall off-load/ load, from/ on Drilling Unit, Operator's or its third party's equipment, at mutually agreed place and time at the cost of Contractor without any financial liability to Operator including payment of any day rate. Primary term of this contract or any extension thereof shall be extended as per Clause 1.3(c) by a period equal to the time the Drilling Unit was off-duty. At the request of the Contractor, subject to availability Operator may provide boats for towing of Drilling Unit for hull inspection at Contractor's cost.

The Operator may provide Diving services essential for Drilling operations only. Search of Contractor's equipment will be at Contractor's cost. However, Operator shall provide diving services as may be available with the Operator, to the Contractor at the Contractor's cost subject to exigencies of operations

### **3.6 DEFICIENCIES**

(1) Contractor's equipment shall be maintained by Contractor in sound and efficient operating condition at **all** time. Should the performance of Contractor's drilling equipment becomes unsatisfactory or the general standard of performance of work hereunder be materially reduced because of defective drill pipe, drill collars, or other Contractor's furnished equipment or by reason of Contractor's incompetence or negligence, Operator shall give Contractor written notice specifying the causes of its dis-satisfaction to correct the specified deficiency within 15 days failing which Operator shall have the right to terminate this Agreement by giving thirty (30) days advance written notice to the Contractor, unless the specified deficiency is corrected within such thirty (30) days period. In this event no demob fees will be payable by the Operator. Notwithstanding the provision contained in the Contract, Operator shall recover the mobilisation charges, if any, paid in terms of clause 3.2 in case the deficiency occurs during pendency of the contract, on prorata basis for the period of performance, in addition to invoking of performance bond due to failure of the Contractor in not executing the contract faithfully.

(2) Should Contractor be denied access to the location of drilling

operations due to lack of compliance of any permits or licenses required by the Operator pursuant to Article 13.1 hereof, time lost as a result thereof shall be compensated at the non-operating Day Rate.

### **3.7. LOADING OF OPERATOR'S EQUIPMENT**

#### (Applicable for Jack-up)

Operator shall mobilise all of Operator's/Operator's third party equipment to the first drilling location nominated by Operator for loading on board the Drilling Unit.

In the event 'Drilling Unit' is specially brought or is retained at the harbour to load the Operator's/ Operator's third party equipment, before commencement of **operations**, Contractor shall be paid at the Non Operating **Day** Rate for the time the Drilling Unit is being jacked up at the harbour point the loading operations are being carried out and thereafter Drilling Unit is jacked down.

Moving Day Rate shall be paid during the period of towing of Drilling Unit from harbour to first drilling location.

For removing the Drilling Unit from harbour to first location, tow will be provided by Operator at its cost.

#### (Applicable for floaters)

Operator shall mobilise all of Operator's/ Operator's third party equipment to the first drilling location nominated by Operator for loading on board the Drilling Unit.

In the event 'Drilling Unit' is specially brought or is retained at the harbour to load the Operator's/Operator's third party equipment, before commencement of **operations**, Contractor shall be paid at the Non Operating **Day** Rate for the time when the anchors are being dropped, the loading operations are being carried out and thereafter when the last anchor is lifted.

Moving Day Rate shall be paid during the period of towing of Drilling Unit from harbour to first drilling location.

For removing the Drilling Unit from harbour to first location, tow will be provided by Operator at its cost.

### **3.8 PERSONNEL MOBILISATION**

For purpose of this Agreement, the Operating Area shall be anywhere in Offshore Indian Waters. In the event there is a change of location from West coast to East coast or vice versa and Contractor shifts its office to the new location, Operator shall pay all reasonable expenses thereby incurred in moving a maximum of four (4) of Contractor's shorebase personnel, personal belongings of the said personnel and the Contractor's onshore equipment, materials, supplies and related items located therein, from the original location to new location, such transportation being limited to surface/sea transportation charges only. Contractor shall be solely responsible for providing all other

requirements of its personnel including but not limited to, housing, transportation.

### **3.9 FIRM PRICE**

The rates payable under Article 3 hereinabove, shall be firm during Agreement period including the extension period under Clause 1.3 of the Agreement.

### **3.10 PERFORMANCE**

The Contractor undertakes to perform all its service under this Agreement with all reasonable skill, diligence and care in accordance with the terms and conditions of this Agreement and also sound industry practice to the satisfaction of the Operator and accepts full responsibility for the satisfactory quality of such services.

Operator shall give Contractor written notice specifying the causes of its dissatisfaction to correct the specified deficiency, within 15 days failing which Operator shall have the right to terminate this Agreement by giving thirty (30) days advance written notice to the Contractor, unless the specified deficiency is corrected within such thirty (30) days period.

In this event, no demobilization fees will be payable by the Operator. Notwithstanding provisions contained in the Agreement, Operator shall recover the mobilisation charges, if paid in terms of clause 3.2 on pro-rata basis for the period of performance, in addition to invoking of performance bond due to failure of the Contractor in not executing the Agreement faithfully and forfeit the same. If at any time during the term of this Agreement break down of Contractor's equipment results in Contractor being unable to perform its obligations hereunder for a period of 15 successive days (not including Force Majeure delay or break down of Contractor's equipment caused by a Well blow-out or all the consequences thereof), Operator, at its option, may terminate this Agreement, in its entirety without further right or obligation on the part of Operator except for the payment of money for the services rendered as per provisions of this Contract. No notice shall be served by the Operator under the condition stated above.

### **3.11 PERFORMANCE BOND (applicable for tenders upto Rs. 1 crore)**

The Contractor has furnished to the Operator an irrevocable and unconditional Performance Bank Guarantee bearing No. \_\_\_\_\_ dated \_\_\_\_ for \_\_\_\_\_ issued by \_\_\_\_\_ with validity of \_\_\_\_\_. The Contractor agrees to extend the validity of the Performance Bank Guarantee so as to be valid up to 120 days (for foreign bidders) / 60 days (for Indian bidders) beyond the last date of Primary Term of this Agreement or any extension thereof. In the event of the Contractor fails to honour any of the commitments entered into under this Agreement and/or in respect of any amount due from Contractor to the Operator, the Operator shall have the unconditional option under the guarantee to invoke the said guarantee with the bank and claim the amount from the bank. The bank shall be obliged to make the payment to the Operator upon demand. The Contractor further agrees to extend the period of this guarantee or to furnish a fresh guarantee if the Operator decides to extend the

period of this Agreement as stated in the Article 1.3(a), 1.3 (b) and 1.3 (c).

#### **PERFORMANCE BOND (applicable for tenders above Rs. 1 crore)**

The Contractor has furnished to the Operator an irrevocable and unconditional Performance Bank Guarantee bearing No. \_\_\_\_\_ dated \_\_\_\_ for \_\_\_\_\_ issued by \_\_\_\_\_ with validity of \_\_\_\_\_. The Contractor agrees to extend the validity of the Performance Bank Guarantee so as to be valid up to 120 days (for foreign bidders) / 60 days (for Indian bidders) beyond the last date of Primary Term of this Agreement or any extension thereof. In the event Contractor committing breach of any of the terms and conditions of this Agreement or fails to honour any of the commitments entered into under this agreement or in the event of termination of the contract under provisions of Integrity Pact and /or in respect of any amount due from Contractor to the Operator, the Operator shall have the unconditional option under the guarantee to invoke the said guarantee with the bank and claim the amount from the bank and forfeit the same. The bank shall be obliged to make the payment to the Operator upon demand. The Contractor further agrees to extend the period of this guarantee or to furnish a fresh guarantee if the Operator decides to extend the period of this Agreement as stated in the **Clause** 1.3(a), 1.3 (b) and 1.3 (c).

#### **4. MATERIAL, SUPPLIES, EQUIPMENT, SERVICES & PERSONNEL TO BE FURNISHED BY CONTRACTOR**

##### **4.1 MATERIAL, SUPPLIES, EQUIPMENT AND SERVICES**

(a) Contractor will furnish and maintain at its cost all items designated at Exhibit 'A' (Annexure–III of tender document) hereto under the heading 'Furnished by Contractor'.

(b) Any additional items of Contractor's equipment not specifically mentioned elsewhere in this Agreement and found necessary to the operation shall be provided as specified in Article 5.1(a) (ii) or on such other basis as is negotiated by the parties.

(c) Contractor at its cost shall have the drill strings inspected by a recognized inspection agency mutually acceptable by both parties prior to the first Well unless inspected within last six months in previous contract, and thereafter every six months or 50,000 feet of drilling, whichever occurs first. Operator, shall, at any other time, have the right to request the Contractor to have the drill pipe inspected by a recognized inspection agency at Operator's cost.

(d) In case Drilling Unit is deployed in an area where quality of water is not conducive for making of potable water by water makers installed on Drilling Unit, Operator will provide the potable water at Operator's cost subject to furnishing of a certificate from underwriter's surveyor M/s. Noble Denton & Associates (NDA) to this effect.

##### **4.2 PERSONNEL**

(a) Contractor will at all times at its sole expense and under its exclusive

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responsibility arrange supervisory, technical and other personnel to properly perform the work, in the numbers and categories as set forth at Exhibit – ‘B’ (i.e. Annexure – III – Appendix 5) hereof, Operator shall be responsible for securing work permits and security passes for Contractor's employees and personnel, if required.

All of Contractor's supervisory personnel including the Manager, Toolpusher and Driller shall be easily understandable in English language.

(b) Contractor may be required to deploy additional personnel for maintenance/ operations/ supervision/ training/inspection for which the request of Contractor will be considered on merit by the office of the Operator specifically authorised to accord such approval. Helicopter services for such personnel subject to two numbers at any one time will be provided by Operator at time of crew change at no extra cost to the Contractor and no special sorty shall be provided for such additional personnel. Any Person exceeding two numbers shall be transported by boats by Operator on chargeable basis to Contractor. However, NDA / Warranty/ Class surveyors (maximum two at a time) shall be provided transportation by Helicopter, by the Operator at no cost to the Contractor.

(c) In the event a member of crew as listed in Exhibit - B (Annexure – III – Appendix – 5 of tender document) is not deployed on duty then the daily rate will be reduced as detailed at Exhibit –C ( Annexure – III – Appendix 4 of tender document) to reflect reduction in costs of Contractor, for such short deployment. However, if such short deployment is on account of sickness/ accident on location or as per Operator's instructions due to disciplinary reasons, upto a maximum 7 days will be allowed for replacement without any reduction in the daily rate.

#### **4.3 TRANSIT PLACE AT SUPPLY BASE**

The Operator may provide Space at its Supply base for transit storage of materials required for carrying out drilling operations. It is agreed that the Contractor shall remove their materials (Non-Serviceable or Serviceable) at their cost within 30 days from the time of arrival of material from the space provided by the Operator at supply base.

Any material being stored by Contractor beyond 30 days, the Operator would charge a ground rent as per Mumbai Port Trust / Kolkatta Port Trust/ Chennai Port Trust / Kakinada Port Trust rate applicable on the day of removal of material and will be recovered from any amount due to the Contractor without giving any further notice. In case, material is stored due to variable load constraint, no ground rent shall be charged. Further, Contractor shall obtain all necessary clearances from Customs for storage and removal of materials from Stores.

#### **Note :**

1. When any material / equipment is offloaded due to variable load constraint no ground rent shall be charged to the rig Contractor.

2. However, Rig contractor to maintain the documentary evidence that the material have been offloaded due to variable load constraint having approval of Company man on board the Drilling Unit.

3. Any other material being stored beyond 30 days, the Operator would charge a ground rent as per existing provision of Clause No.4.3 of Contract.

Notwithstanding the above, all the materials have to be removed by the Contractor on or before the expiry of Contract and the Contractor agrees that final payment would be released upon receipt of "No Objection Certificate" (NOC) to this effect from the Operator's Logistics Department at supply base. Contractor shall apply for "No Objection Certificate" to In-charge, Logistics Department, ONGC, at Supply Base and the In-charge, Logistics Department shall issue NOC within 30 working days of clearance of all materials belonging to Contractor. Further any Penalty and fine being imposed by Customs department or any other statutory body on the material being stored at supply base whatsoever shall be to Contractor's account.

The copies of duly Customs cleared document pertaining to material being brought from Offshore or being taken to Offshore from transit storage would be submitted to the Operator's Logistics Department at supply base.

#### **4.4 DIESEL ( applicable for Floater rigs only)**

**Contractor has indicated consumption of diesel as \_\_\_\_ (\_\_\_\_\_) KL/day for the Drilling Unit, its equipments and tug boats. Operator's responsibility is to provide \_\_\_\_ KL/day of diesel multiplied by the number of days of the particular month or part thereof (where Drilling Unit had operated for part of the month and not full month) or as per actual consumption for the respective months, whichever is lower.**

For requirement of diesel in excess of the above monthly quantity, Operator is not responsible to provide diesel and Contractor agrees to arrange diesel themselves at Contractors cost. No carry forward will be permitted if actual consumption per month is less than that calculated based on indicated consumption above.

#### **5.0 MATERIALS, SUPPLIES, EQUIPMENT, SERVICES & PERSONNEL TO BE FURNISHED BY OPERATOR.**

##### **5.1 MATERIALS, SUPPLIES, EQUIPMENT, SERVICES & PERSONNEL**

(a) i) All items of equipments, materials, supplies, service personnel required for operations hereunder, other than items to be supplied by Contractor as set forth in Exhibit.....and Exhibit .....will be furnished by Operator at the well site, and Contractor would have no liability for any costs thereof.

(BL/03/39 dated 24.08.2017)

ii) All items of equipment, materials, supplies, services and service personnel required for operations hereunder, other than those items set forth in

Article 4 hereof or otherwise required to be replaced or furnished by Operator will be furnished by Operator, or at Operator's request, such items or any other items which Operator is required to furnish under this Agreement may be furnished by Contractor and billed to and be reimbursed by Operator at actual invoice cost provided that if the item is furnished out of Contractor's inventory the lowest quote from two reputable vendors/suppliers will establish the replacement cost less any cash discount obtained by Contractor, plus actual documented freight, packing and insurance costs of such items obtained outside the area of operations.

Further, if the operator on scrutiny finds quotation of some other reputable vendors to be lower, then Operator will have the discretion to pass the invoices based on the lower quotation. When such items are sent by air, at the specific request of Operator the entire cost thereof shall be for the account of Operator, including Air freight. In the event contractor is requested to furnish any single item of equipment, materials or supplies which, operator is required to furnish under this Agreement, Contractor's fee of 7.5% will be payable by Operator on F.O.B. value less discount if any, for each procurement costing US\$ 60,000 and 5% for each procurement costing more than US\$ 60,000 to cover total costs, to contractor on account of such procurement and actual cost of services against documents. In addition, customs duty paid if any, would be reimbursed at actuals against documentary evidence.

iii) For all services rendered or materials supplied to Contractor by Operator at Contractor's request which services or materials are the obligations of the Contractor, and which services or materials the Operator may agree to provide at its discretion the Operator shall charge the Contractor for actual costs as supported by vendor's invoice plus 7.5% service fee on FOB value for each procurement costing upto US dollars 60,000 and 5% for each procurement costing more than US dollars 60,000, thereon to cover costs on account of such procurement and cost for services. The Contractor shall make the payment to Operator as provided above without raising any objection or dispute about the same. The Contractor also agrees to pay the Operator, applicable GST or any other tax for providing the services or materials. It will be the sole discretion of the Operator to accept or refuse such request(s) of Contractor. In case such request (s) is refused by the Operator, no claim of any nature will be preferred by the Contractor against the refusal of such requests by the Operator.

(b) Any equipment, materials or supplies purchased by Contractor on account of Operator shall thereafter become the property of Operator upon payment by Operator.

## **5.2 OPERATOR'S INSTRUCTIONS**

Operator may from time to time through its authorised representative or representatives, issue written or oral (to be followed by writing) instructions to contractor concerning operations.

## **6.0 INSPECTION OF MATERIALS**

### **6.1 INSPECTION BY CONTRACTOR**

Contractor agrees to perform a visual inspection, using its personnel, of all materials and appliances furnished by Operator when delivered into Contractor's possession and shall notify Operator's representative of any apparent defects observed therein so that Operator may replace such defective materials or appliances. If Contractor fails to notify Operator of any apparent defects as provided above, it shall be conclusively presumed that such materials and appliances are free from such apparent defect. Contractor shall not be liable for any loss or damage resulting from the use of materials or appliances furnished by Operator containing latent defects. Upon the termination of this Agreement, Contractor shall return to Operator at the well site all machinery, equipment, tools, spare parts and supplies received by Contractor from Operator or purchased by Contractor for Operator's account and not used or consumed in the operations, in as good condition as when received by Contractor, normal wear & tear excepted. If damage to any Operator's equipment is caused due to sole negligence of the Contractor, same will be repaired or replaced at Contractor's cost. Contractor shall, if requested by Operator also maintain or repair, at its cost, any of Operator's items, on board the Drilling Unit which Contractor is qualified to and can maintain or repair with Contractor's normal complement of personnel and the equipment on board the Drilling Unit provided however that Operator shall at its cost provide all spare parts and materials required to maintain or repair operator's items. However, it shall remain the Operator's basic responsibility and liability to ensure that such items are always in good workable condition.

## **6.2 INSPECTION BY OPERATOR**

Operator shall have the right to inspect and reject for any valid cause any items furnished by Contractor and Contractor, shall replace or repair at its sole expense such items so rejected with items free of defects, to the satisfaction of Operator.

## **7.0 PAYMENT**

### **7.1 TIME OF PAYMENT**

**(BL/03/16 dated 13.01.2010)**

Operator shall make payment under this Agreement within 21 (twenty one) calendar days from the date of receipt of a clear (undisputed) invoice from Contractor, subject always to Operator's right to require Contractor to furnish it with satisfactory evidence of the validity and prior payment by Contractor of all labour and materials incurred by Contractor and charged to Operator.

Should Operator withhold any payment out of the invoice claim, it shall give reasons for withholding of such amount from the invoice.

The amount not in dispute is to be paid within the above 21 (twenty one)

calendar days period.

## 7.2 INVOICE PRESENTATION

(BL/03/39 dated 24.08.2017)

Invoice, accompanied by copies of the original vouchers, records, receipts or other supporting evidence for the work performed or the expenses incurred during each month, shall be presented to Operator's office on or before the tenth (10th) of each succeeding month or soon thereafter.

The original invoice should also accompany the following documents/details:

***(An indicative list of documents is given below. Tender Committee should deliberate on the same and select the appropriate documents as applicable for the respective case and incorporate the same suitably in the Bid document / Contract, after making necessary additions/deletions.)***

- 1) Along with first invoice:  
Following documents / details should be invariably furnished along with the first GST invoice raised under GST Law indicating GST Registration Number therein:
  - a) Copy of valid GST registration certificate under GST Legislation
  
- 2) Payment of Mobilization Charges:
  - a) Invoice (In accordance with the relevant GST rules).
  - b) Insurance policies (As applicable).
  - c) Inspection report (Pre-mob, as applicable).
  - d) Notification Certificate of Acceptance of Mob.
  - e) Certificate of 'Commencement of operation' under this contract.
  
- 3) Periodical / Monthly payment:
  - a. Invoice (i.e. Tax invoice as per relevant GST rules, in original and duplicate, clearly indicating Service Classification, Service Accounting Code, Rate and amount of GST shown separately).
  - b. Insurance policies and proof of payment of premium (As applicable)
  - c. Details of statutory payments like EPF and ESI (As per clause 7.2.2 below), etc. (As applicable)
  - d. Undertaking by the contractor regarding compliance of all statutes
  - e. Certificate by the contractor stating that labour have been paid not less than minimum wages. (As applicable)
  - f. Copy of Time sheet / Log Sheet /DPRs with summary showing non-operating period, operating period, Rig move period, idle period, breakdown of equipment, non deployment / short deployment etc (if any) and reasons thereof
  - g. Attendance Sheet (How many person on board) / Manpower deployment sheet [showing non deployment / short deployment etc (if any) and reasons thereof].

- h. Statement of persons travelled on chargeable basis (Recoverable), if applicable.
- i. Fuel charges (Daily consumption report of fuel) and statement of material/ consumption (incl. HSD, cement, mud chemicals, pot water, etc.) taken from ONGC on chargeable basis, if applicable.
- j. Catering Bill (Log Sheet).
- k. Telephone Bill (Log sheet).
- l. Any other document specifically mentioned in the Contract, or supporting documents in respect of other claims (if any), permissible under the Contract.
- m. - Deleted -

4) Lost In Hole Payment:

- a. Invoice.
- b. Bill of Entry.
- c. Dispatch convey note/ Manifest of ONGC.
- d. Certificate of Conformity.
- e. Report on Loss in hole.
- f. Proof of payment (towards the purchase of equipments).
- g. Certificate of 1<sup>st</sup> used.

5) Payment towards Indian Agent Commission (IAC):

- a. Invoice of IAC (stamped pre-receipted bill)
- b. Particulars required for making payments through 'Electronic Payment Mechanism', in accordance with the clause on 'MODE OF PAYMENT' appearing in Annexure-I (i.e. 'Instructions to bidders') of bid document.
- c. Payment advice (if applicable) against which IAC is claimed.
- d. e-mail ID.

(BL/03/28 dated 16.04.2014)

**7.2.1 Particulars required before releasing payments to (foreign CONTRACTOR (non-resident as per Income Tax Act, 1961):**

The particulars as per clause \_\_\_\_\_ (**work center to indicate the appropriate clause number**) of Annexure-I are invariably required before releasing payments to foreign CONTRACTOR, in accordance with the requirements for making remittances to non-residents as per Income Tax Act, 1961 (as amended from time to time).

In addition to the said particulars submitted alongwith the bid, the CONTRACTOR should also provide any other information as may be required for determining the taxability of the amount to be remitted to the non-resident. Further, the CONTRACTOR shall be liable to intimate the subsequent changes (if any) to the information submitted against any of the said particulars, alongwith full details.

CONTRACTOR should note that any delay in submission of information/documents as per clause \_\_\_\_\_ (**work center to indicate the appropriate clause number**) of Annexure-I within the specified time may lead to the Income Tax Department directing ONGC to deduct tax at a higher rate than

at which it may otherwise have directed. Such increased tax liability shall be recovered from the contractor.

### **7.2.2 Details of statutory payments like EPF and ESI etc.**

(BL/03/40 dated 05.04.2018)

The Contractor (including those engaging 'International Workers') shall have itself registered under Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948, inform the respective Code numbers and follow the relevant statutory provisions, including Schemes / Rules made thereunder, concerning contract labour deployed in ONGC operations. Before the commencement of work, the Contractor shall submit the following information / documents:

#### **(a) In connection with EPF Scheme:**

- (i) Details and number of workers to be deployed for execution of the contract with details of their UAN numbers/ photocopies of Form No. 2 and New Form No.11 submitted to EPFO in respect of such workers who shall be covered under the EPF Scheme.
- (ii) List of 'Excluded Employees', if any, not to be covered under the EPF scheme with certificate to that effect issued by the EPFO or list of excluded employees', if any, not to be covered under the EPF scheme self- certified by the contractor and certificate from the excluded employees to the effect that they are not covered under EPF Act, 1952 and/ or ESI Act, 1948 alongwith an undertaking/ confirmation that the contractor indemnifies ONGC for any liabilities for violation of the provisions of the EPF Act 1952 and ESI Act 1948 arising out of declarations made by the contractor.
- (iii) Copy of monthly return to be filed with the EPFO in Form 5 within 15 days of the close of every month.

#### **(b) In connection with ESI Scheme:**

- (i) Details and number of workers to be deployed for execution of the contract along with details of their UAN, ESI- IP number etc.
- (ii) Declaration Form No. 01 and Temporary identification certificate/ Insurance number in respect of each contract worker.
- (iii) Details of the contract workers who would not be covered under the said scheme due to their monthly wages exceeding the current monthly wage ceiling of Rs. 21000/- or as notified from time to time.

Change in manpower deployed from time to time should also be informed immediately by the Contractor to the PE.

In addition to the above, the Contractor shall also be required to submit each month the following documents/details to the Corporation:

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

(ii) (A) Copy of the online challan endorsed / stamped by the designated bank as proof of receipt of payment towards monthly remittance of ESI contribution.

(B) Copy of Return of contribution in respect of ESI for each contribution period of six months i.e., for the contribution period ended 30<sup>th</sup> Sept and the contribution period ended 31<sup>st</sup> March.

(iii) As an Annexure to each EPF-ECR and ESI Challan(s), Contractor shall also furnish the following Certificates:

- a. The furnished information is correct to the best of his knowledge.
- b. In case any discrepancies or irregularities is /are noticed in this undertaking, then ONGC is free to inform the EPFO/ESIC Authorities.
- c. Before the completion of contract, Contractor shall serve one month notice to all his contractual workers, informing that their services will be terminated.
- d. Within one month on completion/expiry of the contract, Contractor shall pay all the dues/ terminal dues such as leave with wages, bonus (if applicable), Gratuity (if applicable), to all his contractual workmen, failing which contractor's Bank Guarantee/ Security Deposit may be withheld by ONGC.

Corporation shall maintain these records and verify the deposit of statutory contribution made by the contractors with the EPFO/ESI authorities, where deemed necessary. However, before making payment of the last bill/invoice of the Contractor, the appropriate authority (i.e. Payment Making Authority) in the Corporation, shall verify the details/status of the payment towards EPF/ESI made by the Contractor from the authorities / official website of EPF/ESI (i.e. <http://www.epfindia.gov.in> and <http://www.esic.in>). In case the information furnished by the Contractor is found to be incorrect the Corporation shall take appropriate action against the Contractor.

**Note: Conditions for applicability of above provisions**

**Above clause w.r.t. submission of details on EPF and ESI payments shall not be applicable in following types of contracts:**

(a) In those Contracts wherein the services/jobs has been performed exclusively in the premises of the contractor. Certificate to the effect is to be submitted by the Contractor that services/jobs to be executed under the contract have been performed exclusively in his premises.

OR

**(b) In those contracts also wherein Contractor has employed only their full time regular employees for execution of the contract, certificate to the effect is to be submitted by the Contractor that for execution of the contract, no contractual labour has been employed and only full time regular employees of the Contractor have been employed.**

OR

**(c) Fulfilment of conditions at (i) on EPF and (ii) on ESI mentioned below:**

(i) Information sought in above clause pertaining to EPF shall not be required to be submitted in those contracts wherein the Contractor has employed only "Excluded Employees". A Certificate to the effect is to be submitted by the Contractor that employee deployed for execution of the contract, have been treated as "Excluded Employees".

'Excluded employee' means --

- i. An employee who, having been a member of the Fund, withdrew the full amount of his accumulation in the Fund on his retirement from service or for migration abroad from India or for taking employment abroad.
- ii. An employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds Rs 15000/- per month.
- iii. An apprentice.

**(ii) Information sought in above clause pertaining to only ESI shall not be required to be submitted in those contracts wherein the Contractor has employed only those contract labour whose pay exceeds ₹21000/- per month as in terms of the current provisions of the ESI Act, 1948 an employee whose monthly pay exceeds ₹21000/- is outside the purview of the ESI Act. Certificate to the effect is to be submitted by the Contractor that for execution of the contract, the monthly wages of all employees who have been employed, exceeds Rs. 21000/- per month. Further, ESI Act, 1948 is applicable only in areas where it has been made applicable by Gazette Notification in this regard. (ESI Act is currently applicable in all States except the NE States of Manipur and Arunachal Pradesh. Applicability in new areas of operation is to be verified from the office of the ESI Corporation concerned.)**

In case a Contractor falling under the provisions of the Note mentioned above does not submit the required details on EPF and ESI payments, then in that case, the Contractor shall be required to indemnify ONGC for any liabilities arising out of declarations made by him in future on violation of provisions of the EPF & MP Act 1952 and ESI Act 1948.

### 7.3 PLACE OF PAYMENT

Operator agrees to make all remittances under this Agreement into contractor's account at.....

### 7.4 OPERATOR'S RIGHT TO QUESTION THE AMOUNTS CLAIMED

(a) Payment of any invoice shall not prejudice the right of the Operator to question the allowability under this Agreement of any amounts claimed therein, provided Operator, within one year beyond the expiry of each contract year, delivers to Contractor, written notice identifying any item or items which it questions and specifying the reasons therefor. Should Operator so notify Contractor, such adjustment shall be made as the parties shall agree. These provisions shall be reciprocal for similar rights to the Contractor.

(b) The Contractor shall provide on demand a complete and correct set of records pertaining to all costs for which it claims reimbursement from Operator and as to any payment provided for hereunder, which is to be made on the basis of Contractor's costs.

(c) No interest shall be payable by the Operator on any delayed payment / disputed payment.

### 7.5 AGENT/ CONSULTANT/ REPRESENTATIVE/ RETAINER/ ASSOCIATE (Applicable for ICB tenders only)

#### **PAYMENT OF COMMISSION / FEE/ REMUNERATION OF INDIAN AGENT / CONSULTANT / REPRESENTATIVE / RETAINER/ ASSOCIATE OF FOREIGN PRINCIPAL**

Contractor have confirmed in their offer that M/s. \_\_\_\_\_ are their authorized Indian Agents in India and are entitled to receive a remuneration of \_\_\_\_\_ % of total amount payable to Contractor by Operator against the Agreement.

The Rates mentioned in Clause 3.0 hereinabove, includes the Indian Agent Commission as aforesaid.

The Permanent Income Tax Account No. of M/s. \_\_\_\_\_ is \_\_\_\_\_.

The Commission/ Fee/ remuneration of the Indian agent/ consultant/ associate/ representative/ retainer will be paid within 30 days of the payment of invoice made to the Contractor; **The amount of commission/ fee/ remuneration as a percentage of invoice value as per contract provisions will be deducted by**

Operator from the monthly-invoices of the Contractor and paid to the Indian agent/ consultant/ representative/ retainer/ associate.

Indian Agent Commission shall be paid to the Indian Agent by the Operator in non-convertible Indian Rupees at the exchange rate of 1 (foreign currency)= Rs. [closing B.C selling rate of exchange declared by SBI on (the working day prior to price bid opening date i.e. )].

The payment of Indian Agent Commission will be subject to the condition that the Indian Agent sends a stamped pre-receipted bill for the Commission/ fee/ remuneration.

Should it be established at any subsequent point of time that the above statement of the Contractor is not correct or that any other amount of remuneration/ commission either in India or abroad is being paid to any one (who is not an employee of the Contractor), the Contractor would be liable to be debarred from participating in the future tenders of Operator as per provisions of Clause No.22.8.1.

## **8.0 CASING AND MUD PROGRAMME**

### **8.1 CASING PROGRAMME**

The Casing programme to be followed in the drilling of wells under the Agreement shall be as specified by Operator.

### **8.2 MUD PROGRAMME**

Contractor shall make, maintain and use drilling mud with water loss, weight and viscosity in accordance with such mud programme as the Operator may decide as per good oilfield practices. At all times Contractor shall exercise due care and diligence in keeping the hole and all strings of casing and spaces between casing filled with drilling mud. Under the supervision of Operator's chemist, Contractor shall maintain and test drilling mud at least twice each hour for weight and viscosity. The Contractor shall record the result of such test and deliveries and use of mud and mud materials in its Daily Drilling reports.

## **9.0 PERFORMANCE OF THE WORK**

### **9.1 INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) Contractor, directly and through its employees, shall perform all work connected with the Drilling operations herein contemplated. In the performance of this work, Contractor is an independent Contractor and is completely responsible to control and execute the details of the work, Operator being interested in proper execution and results obtained. The work contemplated herein shall meet the approval of Operator and be subject to the general rights of directions and inspection. Neither Contractor's employees nor employees of its sub-contractors, shall be

considered employees of Operator.

b) Contractor shall at all times, have full responsibility for control, direction and supervision of operations being carried out under this Agreement except when and to the extent that the Operator assumes control and supervision of operation.

c) Contractor shall have complete responsibility regarding the safety of operations of all systems and all personnel on board the Drilling Unit. The extent of Contractor's responsibility shall include but not be limited to making final decision regarding:-

1 Sea and Wind or other conditions under which Drilling Unit may be safely moved to and between locations.

2 Sea and Wind or other conditions existing or impending under which the Drilling Unit shall be moved to sheltered waters during cyclones.

3 Evaluation of inspection and survey conducted by Operator of sea floor condition to determine whether or not the Drilling Unit can be positioned at the site of operations considering the conditions at the site or maintained in position on same during the operations.

4 Whether or not the Drilling Unit may be safely Jacked up (applicable for Jack-up rigs)// anchored on a location (applicable for Floater rigs).

5 Subject to Article 9.6, Well Control Measures, Actions and Procedures affecting the containment of existing or potential escape of pressures which could lead to blowouts, cratering, or similar catastrophe.

d) The Contractor shall however be totally responsible and liable for movement of the Drilling Unit between the locations and Operator will not be responsible other than the responsibilities mentioned in schedule of responsibilities for inter location movement.

Following provision shall be applicable for Jack-up rigs

If the Drilling Unit leg (s) is / are stuck up at a particular location due to whatever reasons for more than seven days, Contractor will be put on zero rate after seven days from the date of release of the Drilling Unit till the rig starts moving to next location. After seven days, Diesel, water and other services (Air Logistics, Material transport & Standby boat for safety) will be on chargeable basis.

## **9.2 OPERATOR'S AND CONTRACTOR'S REPRESENTATIVES**

(a) The actual performance and superintendence of all work hereunder shall be by Contractor.

(b) Operator shall designate in writing representative or representatives who shall at all times have complete access to the Drilling Unit for the purpose

of observing inspection or supervising the work performed by Contractor in order to judge whether in Operator's opinion, Contractor is complying with the provisions of this Agreement. Operator shall notify Contractor in writing of the name(s) and authority of its representative or representatives. Such representative or representatives shall be empowered to act for Operator in all matters relating to Contractor's performance of the work herein undertaken. Contractor agrees at all times to cooperate with and extend assistance to employees of Operator or employees of Operator's Contractors performing any function under this Agreement.

(c) Contractor shall designate an Area Manager in-charge of Contractor's Drilling Unit. Contractor shall notify Operator in writing of the name(s) and authority of its representative or representatives. Such representative or representatives shall be fully capable and empowered to act for Contractor in all matters relating to Contractor's performance of the work in accordance with this Agreement.

### **9.3 SAFETY AND LABOUR LAWS**

All safety and labour laws enforced by statutory agencies and by Operator shall be applicable in the performance of this Agreement and Contractor shall abide by these laws.

### **9.4 DEVIATION OF THE HOLE**

Contractor shall take all steps and precautions in accordance with good oilfield practices in the area of operations to drill a hole which will not deviate from the limits specified by Operator. Contractor shall run angle measuring devices acceptable to and at such intervals as may be directed by Operator.

### **9.5 DRILL PIPE MEASUREMENT**

Contractor shall measure the total length of drill pipe in service with a steel tape before setting casing or liner, before logging, after reaching final depth, and whenever requested by Operator and promptly enter all such measurements in the daily drilling report.

### **9.6 PREVENTION OF FIRE AND BLOWOUT**

- (a) Contractor shall use the Blowout Prevention Equipment specified in this Agreement, on all strings of casing unless otherwise directed by Operator. Contractor shall maintain Well Control Equipment in good condition at all times and shall take all reasonable and possible steps to control and prevent blowouts and fire and to protect the Well.
- (b) Contractor shall test the Blowout Prevention devices by making a pressure test at least once every seven (7) days or at such other times as instructed by Operator's representative. Contractor shall record the results of all such tests in Daily Drilling Report. Replacement of all blowout prevention rubber parts shall be on Contractor's account.
- (c) Contractor shall use all reasonable means to keep the hole and all strings

of casing filled with Drilling mud at all times.

- (d) Contractor shall use Kelly sub-protectors and, if directed by Operator, drill pipe casing protectors of an approved type.

## **9.7 DISCIPLINE**

Contractor shall carry out operations hereunder with due diligence and in a safe and workman like manner according to good international oilfield practice.

Contractor and Operator shall maintain strict discipline and good order among their respective employees, and their respective sub-contractor's employees, if any, and shall abide by and conform to all rules and instructions promulgated by Operator and Contractor governing the Drilling Operations. Should Operator feel for just cause, that the conduct of any of Contractor's or its sub-contractor's personnel is detrimental to Operator's interests, Operator shall notify Contractor in writing for removal of such personnel. Contractor shall remove immediately and replace such an employee/employees at Contractor's expense within seven (7) days. If no replacement has been provided within this time the Operator shall reduce the daily rate by the amount specified for this category in Exhibit "\_\_\_\_\_" until such replacement has been provided. The person so removed shall not be employed again without the prior written consent of the Operator. Contractor shall not permit any of its employees, representatives, agents or sub-contractors to engage in any activity which might reasonably be considered to be contrary or detrimental to the interest of the operator.

## **9.8 SAFETY**

Contractor shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. No smoking shall be permitted outside the living quarters, and welding jobs will be carried out with full safety precautions. Operator's employee also shall comply with safety procedures/policy.

## **10.0 COMPLETION OR ABANDONMENT**

Contractor agrees to perform all work necessary to drill, complete or abandon each well in the manner specified by operator.

## **11. SAMPLES, CORING AND CORES AND FORMATION TESTS**

### **11.1 SAMPLES**

Contractor shall have and preserve for Operator, samples of formation penetrated and properly prepare and label Operator's containers. The frequency at which samples are to be obtained, shall be designated by Operator.

### **11.2 CORING AND CORES**

Contractor shall core at such depths as Operator shall specify and shall deliver all cores as recovered, in Operator's containers, properly labeled, to Operator and shall not allow any third party access to said cores or samples or any date without Operator's prior written consent.

### **11.3 FORMATION TESTS**

If during the course of Drilling any well, Contractor encounters evidence of Oil or Gas, Contractor shall immediately notify Operator and, should Operator decide to carry out a test to determine the productivity of the formation so encountered Contractor shall carry out such test under existing conditions, as mutually agreed.

## **12.0 RECORDS TO BE FURNISHED BY CONTRACTOR**

### **12.1 WELL RECORDS**

Contractor shall keep an authentic log and history of each well on the daily drilling report prescribed by Operator and, upon completion or abandonment of the well, deliver to Operator the original history and log book, properly signed, and all other data and records of every nature relating to the drilling, casing and completion of the well. Such report shall include the depth drilled, formations encountered and penetrated, depth cored and footage of cores recovered and any other pertinent information relating to the well.

### **12.2 WAREHOUSE RECORDS**

Contractor shall deliver to Operator delivery receipts, boat manifests, and other warehouse records received by Contractor covering any material or supplies furnished by Operator. The quantity, description and apparent condition of materials and supplies so received shall be confirmed by Contractor.

## **13.0 PERMITS & LICENCES**

### **13.1 INGRESS AND EGRESS AT LOCATIONS**

Operator hereby agrees that it shall provide Contractor with all necessary rights of ingress/egress to and possession of the location where the well is to be located including any drilling permits or licenses required for the performance by Contractor of all works contemplated by this Agreement. In the event of any restrictions, conditions, or limitations in Operator's permit, which would affect the free right of ingress, egress and possession to be exercised by Contractor hereunder, its employees or its sub-contractors, Operator agrees promptly to advise Contractor in writing with respect to such restrictions, conditions or limitations and Contractor agrees to observe the same. Should Contractor be denied the access to or possession of the location for any reason, any time lost and other expenses incurred by Contractor as a result of such denial shall be paid in accordance with Article 3.

### **13.2 DRILLING UNIT LICENCES**

Contractor agrees that it shall secure permits and licences for operations of the Drilling Unit in Indian waters, if required and Contractor shall pay any expenses in this regard.

It is the responsibility of the Contractor to obtain Naval Defence Clearance of Drilling Unit prior to commencement of contract from Ministry of Defence through Ministry of Petroleum and Natural Gas (India), at his cost.

It is the responsibility of the Contractor to obtain all necessary permissions and clearances from the concerned statutory authorities, for operating the Drilling Unit in Indian waters, at his cost.

Contractor shall ensure that the Drilling Unit is classed and confirm that they would obtain permission / clearance of DG Shipping, wherever required for operating the Drilling Unit in Indian waters, at their cost.

However, for obtaining Naval Defence Clearance and other necessary permissions and clearances from the statutory authorities, Operator shall issue forwarding letter upon request from Contractor supported by all relevant valid documents.

## **14.0 INSURANCE AND INDEMNITY AGREEMENTS**

### **14.1 INSURANCE**

Contractor shall procure at Contractor's expense and maintain with respect to and for the duration of this Agreement the insurance policies described below preferably by Indian insurance companies and with policy limits indicated below.

**(BL/03/23 dated 26.04.2011)**

#### **14.1.1 WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**

Contractor shall ensure and provide all its personnel adequate insurance cover for compensation to be paid under Employees' Compensation Act, 1923 and Employer's Liability Act, 1938 and / or any other applicable law(s) in respect of accident or injury that may be caused to them in the course of their deployment in the area of operation under this Contract. Employer's Liability Insurance including appropriate maritime coverage shall be provided to all the personnel of the Contractor to meet the requirement of this clause or the applicable statute, whichever is greater.

#### **14.1.2. COMPREHENSIVE GENERAL LIABILITY INSURANCE**

Comprehensive General Liability Insurance shall cover premises, operations, independent Contractors and blanket contractual liability including but not limited to the insurable liabilities assumed under the indemnity Agreement in Article 14.6 :- Coverage shall indicate that Marine Operations are covered unless such operations are covered by insurance referred to as below:

Bodily injury/: Rs.10.00 crores  
property damage      Single limit per accident per occurrence.

This coverage shall be endorsed to waive all rights of subrogation against Operator to the extent Contractor has given indemnities under the contract. This policy also shall cover contingent and contractual liability.

#### **14.1.3 MARINE INSURANCE**

Marine Insurance Policy shall be All risk London standard Drilling Barge form and other comparable forms or coverages used in American and foreign markets on the Drilling Unit owned or chartered by Contractor and utilised in the performance of this Agreement with policy limits equal to the value of the equipment.

#### **14.1.4 COMPREHENSIVE GENERAL AUTOMOBILE LIABILITY.**

Comprehensive General Automobile Liability shall cover all owned, hired and non-owned vehicles.

Bodily injury : According to local laws.  
Property damage : According to local laws.

#### **14.1.5 PROTECTION AND INDEMNITY LIABILITY**

Protection and indemnity liability insurance policy if available in India, shall cover each occurrence of bodily injury including death and property damage payable in India.

(BL/03/36 dated 12.09.2016)

#### **14.1.6 Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY).**

Contractor shall, ensure that all his/ its personnel deployed under this contract have obtained additional insurance coverage under the Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) through the participating banks and submit the proof of such insurance coverage to the satisfaction of ONGC for defraying the cost of the insurance premium amount under the contract. The contractor shall also certify that the claim has not been preferred in the earlier contract of ONGC or otherwise.

ONGC after satisfying by verifying the required documents shall release the premium amount to contractor. In case a member is covered through more than one account, insurance cover will be restricted to one only.

#### **14.2 WAIVER OF SUBROGATION**

All insurance policies of the Contractor with respect to the operations conducted hereunder as set forth in Article 14 hereof, shall be endorsed by the underwriter in accordance with the following policy wording:-

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"The insurers hereby waive their rights of subrogation against any individual, Company, Affiliates or Assignees for whom or with whom the assured may be operating to the extent of the contractual indemnities undertaken by the Contractor."

The provisions of this paragraph do not apply to Subcontractors of Operator. Operator is to obtain a reciprocal endorsement in favour of Contractor on policies maintained by Operator.

#### **14.3 CERTIFICATE OF INSURANCE**

Before commencing performance of the Agreement, Contractor shall upon request, furnish Operator with certificates of insurance including (1) kinds and amounts of insurance as required herein, (2) Insurance Company or Companies carrying the aforesaid coverages, (3) effective and expiration dates of policies, (4) that Operator will be given thirty (30) days written advance notice for any material change in the policy, (5) waiver of subrogation endorsement has been attached to all policies, (6) the territorial limits of all policies. If any of the above policies expire or are cancelled during the term of this Agreement and Contractor fails for any reason to renew such policies, then Operator may replace same and charge the cost thereof to Contractor.

Should there be a lapse in any insurance required to be carried by Contractor under sub-article (1) through (5) of Article 14.1 (A) of this Agreement, for any reason whatsoever, losses resulting therefrom shall be for the sole account of Contractor.

#### **14.4 DEDUCTIBLE**

That portion of any loss not covered by insurance provided for in this Article 14 solely by reason of a deductible provision in such insurance policies shall be for the account of Contractor.

#### **14.5 SUBCONTRACTORS**

Contractor shall require all of its Sub-contractors to provide such of the fore-going insurance coverages as Contractor may consider necessary.

#### **14.6 INDEMNITY AGREEMENTS**

(a) Contractor agrees to protect, defend, indemnify and hold Operator its co-leases, its agents, if any, its other Contractor's and/or their employees harmless from and against all claims, suits, demands and causes of action, liabilities, expenses, costs, liens, rights in rem, and judgements of every kind and character, without limit, which may arise in favour of Contractor, Contractor's employees, agents, sub-contractor's or their employees, on account of bodily injury or death of Contractor's employees, agent, sub-contractor or sub-contractor's employee or damage to said employee's property as a result of the operations, contemplated hereby, regardless of whether said claims, demands, or causes of action arise out of negligence or otherwise, in whole or in part, unseaworthiness or other fault, including

pre-existing conditions of Operator, its contractor's other than the Contractor, sub-contractors, partners, Joint Ventures, their employees or Agents.

(b) Operator agrees to protect, defend indemnify and hold Contractor and its sub-contractors, its agent and its affiliates, its other contractors and / or their employees harmless from and against all claims, suits, demands and causes of action, liabilities, expenses, costs, liens, rights in rem and judgements of every kind and character, without limit, which may arise in favour of Operator, Operator's employees, Agents, invitees, contractors (other than Contractor) and sub-contractors or their employees, on account of bodily injury or death of Operator's employees, agents, invitees, contractors (other than Contractor) and sub-contractors or damage to said employees or its property (including any property of Operator) as a result of the operations contemplated hereby, regardless of whether or not said claims, demands or causes of action arise out of the negligence or otherwise in whole **or** in part, unseaworthiness or other faults, including pre-existing conditions of Contractor, its sub-contractors, partners, Joint Venturers, employees or agents.

(BL/03/24 dated 02.02.2012)

#### **14.7 POLLUTION AND CONTAMINATION**

Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between the Contractor and Operator that the responsibility for pollution or contamination shall be as follows:

(a) The Contractor shall assume all responsibility for cleaning up and controlling pollution or contamination which originates above the surface of the water from spills or fuels, lubricants, motor oils, normal water base drilling fluid and attendant cuttings, pipe dope, paints solvents, ballast, bilge and garbage wholly in Contractor's possession and control and directly associated with Contractor's equipment and facilities, provided, however, Contractor's liability shall be limited to US Dollars One Million (US\$ 1 Million) where after the Operator shall indemnify and hold harmless Contractor for amounts in excess.

(b) Except as otherwise provided in article 14.7(a), Operator shall assume all responsibility for (including control and removal of the pollutant involved) and shall protect, defend and save the Contractor harmless from and against all claims, demands, and causes of action of every kind and character arising from all pollution or contamination, other than that described in sub-clause (a) above, which may occur from any cause including negligence of Contractor but not limited to, that which may result from fire, blowout, cratering, seepage of any other uncontrolled flow of oils, gas, water or other substances, as well as the use or disposition of oil emulsion, oil base or chemically treated drilling fluids, contaminated cuttings or caving, lost circulation and fish recovery materials and fluids provided however, Contractor's sole liability under this sub-clause is to reimburse Operator US Dollars One Million (US\$ 1 Million) of cost paid/incurred by Operator in control of the pollutant, clean up costs, or damage to a third party, provided said pollution results from contractor's sole negligence.

In the event a third party commits an act or omission which results in pollution or contamination for which either the Contractor or Operator, for whom such party is performing work, is held to be legally liable the responsibility therefor shall be considered as between the Contractor and Operator, to be the same as if the party for whom the work was performed and all of the obligations respecting defense indemnity, holding harmless and limitation of responsibility and liability as set forth in (a) and (b) above, shall be specifically applied.”

14.8 Unless otherwise stated, all the indemnities and allocation of risk provisions contained in this Agreement shall apply without regard to fault or negligence.

For the purpose of this Agreement, "negligence" mean the reckless, willful or wanton disregard to the probable consequences of an act.

In the interpretation of this Agreement, indemnities provided herein shall take precedence over the remaining provisions hereof.

## **15.0 CLAIMS, TAXES, FEES AND ACCOUNTING**

### **15.1 CLAIMS**

Contractor agrees to pay all claims, taxes, and fees for equipment, labour, materials, services and supplies to be furnished by it hereunder and agrees to allow no lien or charge resulting from such claims to be fixed upon any well or other property of Operator, Operator may, if required by any competent authority after notifying Contractor pay and discharge any lawful lien or valid overdue charges for Contractor's equipment, labour, materials, services and supplies under this Agreement and may thereupon deduct the amount or amounts so paid by Operator from any sums due, or thereafter becoming due, to Contractor hereunder.

### **15.2 NOTICE OF CLAIMS**

Contractor or Operator, as the case may be, shall promptly give the other, notice in writing of any claims made or proceedings commenced for which that party is entitled to indemnification under this Agreement. Each party shall confer with the other concerning the defense of any such claim of proceedings and shall permit the other to be represented by Counsel defense thereof, and shall not effect settlement of or compromise any such claim or proceedings without the other's written consent.

### **15.3 WITHHOLDING, ACCOUNTING AND TAX REQUIREMENTS**

(Applicable both for Indian and foreign bidders)

Contractor agrees for withholding from wages and salaries of its agents, servants, or employees all sums required to be withheld by the laws of the Republic of India or any other agency having jurisdiction over the area where Contractor is conducting operations, and to pay the same promptly when due to the proper authority.

(Applicable for foreign parties)

Contractor further agrees to comply with all accounting and reporting requirements of any nation having jurisdiction over the subject matter hereof and to conform to such laws and regulations and to pay the cost of such compliance. If requested by Operator, Contractor will furnish to operator evidence of payment or applicable taxes in the host country, on contractors expatriate employees.

(BL/03/28 dated 16.04.2014)

#### **15.4 CORPORATE TAXES:**

**15.4.1** The CONTRACTOR shall bear all direct taxes, levied or imposed on the CONTRACTOR under the laws of India, as in force from time to time.

The CONTRACTOR shall also be responsible for ensuring compliance with all provisions of the direct tax laws of India including, but not limited to, the filing of appropriate Returns and shall promptly provide all information required by the CORPORATION for discharging any of its responsibilities under such laws in relation to or arising out of the CONTRACT.

15.4.2 Tax shall be deducted at source by ONGC from all sums due to an Indian tax resident Contractor in accordance with the provisions of the Income Tax Act, 1961, as in force at the relevant point of time.

15.4.3 A non-resident Contractor i.e., a Contractor who is not an Indian tax resident according to the Indian Income Tax Act, 1961, has the option to obtain on its own either (A) a Certificate u/s. 195(3) of the Income Tax Act, 1961, or (B) a Certificate u/s. 197 of the Income Tax Act, 1961, and furnish the said Certificate u/s. 195(3) or the Certificate u/s.197, as the case may be, to ONGC along with each of its Invoices. In case the non resident Contractor wishes to exercise this option, it should convey the same in writing to ONGC at the time of signing the Contract and an option so exercised shall be final and cannot be changed during the currency of this Contract. In case an option is so exercised, ONGC shall deduct tax at source in accordance with the directions contained in the Certificate u/s. 195(3) or the Certificate u/s. 197, as the case may be, as in force at the point in time when tax is required to be deducted at source.

15.4.4 In case the non resident Contractor does not exercise the option in clause 15.4.3 above, an Order u/s. 195(2) of the Income Tax Act, 1961, for the purpose of deduction of tax at source will be obtained by ONGC from the Indian Income Tax Department and tax shall be deducted at source by ONGC as directed in the said Order u/s. 195(2).

The Corporation, at its discretion, may obtain a Certificate in Form 15CB from a practicing Chartered Accountant in lieu of obtaining an Order u/s 195(2) from Income Tax Department, and , in such case, TDS shall be regulated as per the said Certificate in Form 15CB

15.4.5 In case the non resident Contractor does not exercise the option in clause 15.4.3 above, it shall furnish a Tax Residency Certificate issued by the Government of country or specified territory to the effect that the person named

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therein is a resident of that country or specified territory and Form No. 10F Appendix-3).

15.4.6 If it is not possible for the non-resident to obtain & submit Tax Residency Certificate and Form No. 10F to ONGC within a reasonable time, he should furnish an undertaking to the effect that he is a tax resident of \_\_\_\_\_ (the specified country) and that he shall obtain and provide the TRC and Form No. 10F to ONGC before 30 days of submission of first Invoice by them or within 3 months from the date of entering into the contract whichever is earlier. Contractor should note that any delay in submission of TRC/PE information within the specified time may lead to the Income Tax Department directing ONGC to deduct tax at a higher rate than at which it may otherwise have directed. Such increased tax liability shall be recovered from the contractor.

15.4.7 As per the provisions of Section 206AA of Indian Income Tax Act, 1961, effective from 01.04.2010, any person entitled to receive any sum or income or amount, on which tax is deductible under the provisions of Act, is required to furnish his Permanent Account Number (PAN) to the person responsible for deducting tax at source. Therefore, in case the Contractor does not furnish its PAN, CORPORATION shall deduct tax at source as provided in the Income Tax Act, 1961, or in the relevant Finance Act, or as directed in the Certificates u/s 195(3) or 197 or Order u/s 195(2) or as per Certificate obtained in Form 15CB, as the case may be, or at such higher rate as may be required by Section 206AA of Indian Income Tax Act, 1961, from time to time.

15.4.8 The employees of such foreign companies/concerns/Joint Ventures, their SUB-CONTRACTOR and assignees are also required to comply with various Direct tax laws of India, as applicable.

15.4.9 For the lapses, if any, on the part of the CONTRACTOR and consequential penal action taken by the Income Tax department, the CORPORATION shall not take any responsibility whether financial or otherwise.

“Notes in respect of Tax Residency Certificate”

- (i) The Tax Residency Certificate (TRC) should be in original or a photocopy duly attested either from a notary public in India or from the Indian Embassy/High Commission/Consulate in the country whose authorities have issued such TRC.
- (ii) During the currency of the Contract / Purchase Order, for the income accrued in different financial years, the Contractor/Supplier should submit TRC(s) and Form No. 10F valid for the entire duration of the contract. In case the validity of a TRC and Form No. 10F expires during the currency of the contract, fresh valid TRC(s) and Form No. 10F should be submitted by the supplier/contractor for the remaining part of the currency of the contract.

(BL/03/39 dated 24.08.2017)

## **15.5 PAYMENT OF GST**

CONTRACTOR, unless specified otherwise in the Agreement, shall bear all tax liabilities, duties, Govt. levies etc. including GST and customs duty, Corporate and personnel taxes levied or imposed on the CONTRACTOR on account of payments received by it from the Operator for the work done under this Agreement. It shall be the responsibility of the CONTRACTOR to submit to the concerned Indian authorities, the returns and all other concerned documents required for this purpose and to comply in all respects with the requirements of the laws in this regard, in time.

CONTRACTOR shall provide all the necessary compliances/ invoice / documents for enabling Operator to avail Input tax credit benefits in respect of the payments of GST which are payable against the Agreement. The CONTRACTOR should provide tax invoice issued under GST legislations for the goods and Services (indicating GST). Payment towards the components of GST shall be released by OPERATOR only against appropriate documents ie: Tax Invoice.

The tax invoices as per above provisions should contain all the particulars as required under the invoicing rules under the GST legislations, including, but not limited to the following:

- (i) Name, Address and the GST Registration Number (under the relevant Tax Rules) of the Service Provider (Contractor)
- (ii) Name and Address and GST Registration Number of the Service Receiver (Address of Operator)
- (iii) Description, Classification and Value of taxable service / goods and the amount of applicable tax (CGST, SGST, IGST, UTGST and cess)
- (iv) In case of imported goods, contractor/supplier is required to provide original Bill of entry or copy of Bill of Entry duly attested by Custom authority.
- (v) The Contractor should mention the Place of supply in the invoice raised under GST Law.
- (vi) Operator would not accept any invoice without its GSTIN mentioned on the invoice

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

## GST LEGISLATIONS:

'GST legislations' means 'any or all of the following legislations as may be applicable to the Bidder/Contractor and Operator:

- i. the Central Goods & Services Tax Act, 2017;
- ii. the Integrated Goods & Services Act, 2017;
- iii. the Union Territory Goods & Services Tax Act, 2017;
- iv. the respective State Goods & Service Tax Acts'
- v. the Goods and Services (Compensation to States) Act, 2017
- vi. the Customs Act and the Customs Tariff Act.

15.5.1 – Deleted –

(BL/03/39 dated 24.08.2017)

## **15.6 CUSTOMS DUTY (BCD + IGST): -**

(applicable for Charter hire services using CONTRACTOR's capital equipment like rigs/equipments/tools/vessel etc and for petroleum operations, where concessional Customs duty is applicable as per the policy of Govt. of India in vogue).

**As per SI. No. 404 of Customs Notification No. 50/2017-Cus dated 30.06.2017, the goods required for petroleum operation for eligible areas, as mentioned in list 33 of said notification, would attract 5% Customs Duty (BCD Nil & IGST @ 5%) subject to submission of EC.**

All imports (rigs/equipments/vessel/tool/spares, consumables and accessories) and import clearance under the contract including payment of Customs Duty shall be the responsibility of the Contractor.

For import of rigs/equipments/vessel/tool/spares, consumables and accessories for execution of contract for petroleum operations, Operator will provide Recommendatory Letter (RL) to the contractor so that they can obtain Essentiality Certificate (EC) from DGH for availing concessional rate of Customs duty for import of rigs/equipments/vessel/tool/spares, consumables and accessories. Accordingly, only concessional rate of the Customs duty for rigs/equipments/vessel/tools, spares, consumables and accessories required for operation and maintenance of equipment/rigs and equipments is to be considered while quoting. As regards, re-export of rigs/equipments/vessel/tools (owned or on lease basis) brought by the contractor (whether Indian or foreign) for petroleum operation, as the rigs/equipments/vessel/tools would be imported by the contractor with payment of concessional rate of CUSTOMS DUTY; after expiry of the contract with Operator, the contractor would have to either re-export the rigs/equipments/vessel/tools or deploy the rigs/equipments/vessel/tools for petroleum operations in areas where concessional rate of Customs Duty is applicable after getting a fresh EC from DGH. The contractor shall also have to indemnify the Operator against any claim that may arise due to violation of the Customs Act or the Foreign Trade Policy by them. In case any rigs/equipments/vessel/tools are required to be replaced by the contractor during

the execution of the contract, the Operator shall issue a fresh RL so that contractor can obtain a fresh EC from the DGH and bring the rigs/equipments/vessel/tools on payment of concessional rate of Customs Duty.

All imports under the contract shall be done with Operator's prior approval only. The Contractor shall be responsible to carry out all the formalities. In case of any mis-declarations or offences committed under the Customs rules and regulations and also allied rules, fine, penalty or any other charges levied by the concerned authorities on Operator shall be borne by the Contractor including the element of interest on Operator's funds blocked under such circumstances. Operator shall be indemnified by the Contractor against all actions by Govt. or any other agency for acts of commission and omission.

Contractor shall be responsible to import the rigs/equipments/vessel/tools for execution of the contract. The contractor shall undertake to complete all the formalities as required under the Customs Act / Foreign Trade Policy (FTP) and indemnify OPERATOR from all the liabilities of Customs in this regard.

The rigs/equipments/vessel/tools imported by the Contractor for petroleum operations against the EC provided by DGH against RL issued by OPERATOR shall not be used / deployed by the Contractor for any purpose other than the jobs arising out of the contract awarded by Operator and in the event of the rigs/equipments/vessel/tools being misused or put to use other than specified use, the Contractor shall be liable to pay fine, penalty and other actions taken by the Customs department and other authorities for violation of the customs rules and regulations and other allied rules. Contractor should also compensate Operator for the duty element in such cases.

Similarly in case of deployment of equipment by a contractor on ownership basis under concessional rate of Customs Duty under SI. No. 404 of notification no. 50/2017-Cus for ONGC contracts, if after the expiry of contract such equipment are deployed for other licensee/contractor, then the contractor has to comply with condition of the said notification and indemnify OPERATOR against any claim arising out of non-compliance of the said notification.

The Contractor shall produce "No Due Certificate" from the Customs Department on completion of Agreement. In case Customs Department refuses to issue such a certificate to the Contractor, the Contractor shall submit an Indemnity / Undertaking to Operator as per proforma at Annexure – II (Appendix -2) of tender document.

CUSTOMS DUTY: - (applicable for Charter hire services using Contractor's capital equipment like rigs/equipments/tools etc. and for non-PEL/ML areas where Customs Duty is payable). **- Deleted -**

## **15.7 TAXES, DUTIES AND LEVIES**

Except under the provisions in the Clause 15.5 and 15.6 above, the Operator shall not be liable to pay or reimburse any taxes, duties and levies including but not limited to the taxes, duties and levies imposed on the income of the Contractor, its employees or any taxes, levies etc. on any purchases made by

the Contractor/its employees or sub-contractor.

(BL/03/39 dated 24.08.2017)

**15.8 CHANGE IN LAW:**

**15.8.1** 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 date of tender closing for this CONTRACT and which results in increase in rate of taxes and duties on the supply of services to OPERATOR under the CONTRACT (other than personnel and Corporate taxes), the CONTRACTOR shall be indemnified for any such increased taxes and duties by the OPERATOR subject to the production of documentary proof to the satisfaction of the OPERATOR 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 OPERATOR.

**15.8.2** 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 date of tender closing for this CONTRACT and which results in any decrease in the rate of taxes and duties on the supply of services to OPERATOR, (other than personnel and Corporate taxes), the CONTRACTOR shall pass on the benefits of such reduced cost, taxes or duties to the OPERATOR, to the extent which is directly attributable to such introduction of new legislation or change or amendment as mentioned above..

**15.8.3** All taxes & duties (except where otherwise expressly provided in the Contract) as may be levied / imposed in consequences of execution of the Services or in relation thereto or in connection therewith as per the Acts, Laws, Rules, Regulations in force on the date of tender closing, for the this CONTRACT shall be to CONTRACTOR's account. Any increase / decrease in the rate of such duties, taxes after the date of tender closing, but within the contractual completion / mobilization date as stipulated in the CONTRACT will be to the account of OPERATOR.

**15.8.4** Any increase in the rate of taxes & duties after the contractual completion / mobilization date during the extended period will be to the contractor's account, where delay in completion /mobilization period is attributable to the CONTRACTOR. However, any decrease in the rate of taxes and duties after the contractual completion / mobilization date will be to OPERATOR's account.

**15.8.5** The Contract Price and other prices given in the Schedule of Prices are based on the applicable tariff as indicated by the CONTRACTOR in the Schedule of Prices. In case this information subsequently proves to be wrong, incorrect or misleading, OPERATOR will have no liability to reimburse/pay to the CONTRACTOR the excess duties, taxes, fees, if any finally levied / imposed by the concerned authorities. However, in such an event, OPERATOR will have the right to recover the difference in case the rate of duty/tax finally assessed is on the lower side.

15.8.6 Notwithstanding the provision contained in clause 15.8.1 to 15.8.4 above, the OPERATOR shall not bear any liability in respect of :

- (i) Personal taxes on the personnel deployed by CONTRACTOR, his sub-contractor / sub-sub contractors and Agents etc.
- (ii) Corporate taxes and Fringe benefit tax in respect of contractor and all of their sub-contractors, agents etc.
- (iii) Other taxes & duties including Customs Duty, and GST in addition to new taxes etc. in respect of sub-contractors, vendors, agents etc. of the CONTRACTOR.

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

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

## **16.0 RESPONSIBILITY FOR LOSS OF OR DAMAGE TO THE EQUIPMENT OR THE HOLE.**

16.1 Except as otherwise specifically provided in this Agreement, any damage to or loss, of the Drilling Unit (which, for the purpose of this Article 16.1 shall be deemed to include all Contractor's and its sub-contractors equipment) and regardless of the cause or reason for said loss, shall be the loss of the Contractor its underwriters or insurers and Contractor agrees to protect, defend, indemnify and hold Operator, its co-licensees and its and their affiliate companies, agents, employees, invitees, servants, their underwriters or insurers (other than Contractor's) and their employees harmless against any claim whatsoever or responsibility for any damage to or loss of the Drilling Unit or any other equipment or property of Contractor or Contractor's sub-contractors furnished or intended for use in the operations herein undertaken.

16.2 If the Drilling Unit or any part thereof is lost or damaged beyond repair or becomes an actual or constructive compromised, arranged loss or obstruction to navigation or the operations of the Operator or is otherwise abandoned, the Contractor shall, if required by Operator or by the laws regulation or order of Governmental authorities or agency remove the Drilling Unit at Contractors own cost from Offshore area to the satisfaction of the Operator. If the Contractor unreasonably delays in removing the Drilling Unit or any part thereof, the Operator may remove it and the Contractor shall indemnify and reimburse Operator for all cost and expenses incurred by the Operator in connection therewith. Any expense incurred by the Operator in connection with or for locating the area/ price of such loss/ damage and/ or to ascertain whether such loss/ damage has resulted in any pollution or not, shall also be reimbursed by the Contractor to Operator.

(BL/03/39 dated 24.08.2017)

### **16.3 LOSS OR DAMAGE TO CONTRACTOR'S DOWN HOLE EQUIPMENT**

Operator shall reimburse Contractor for loss of or damage to Contractor's downhole equipment, as under, provided that such loss or damage is not occasioned by normal wear and tear or negligence on the part of the Contractor.

(a) In the case of Contractor's down-hole equipment being damaged, Operator will reimburse Contractor such repair cost, provided however, that Operator shall not be required to reimburse Contractor any amount greater than that which would have been due had such equipment been lost and, therefore, calculated under sub-section (b) herein below.

(b) In the case of Contractor's down hole equipment being lost, Operator will reimburse Contractor 75% of the replacement cost, FOB nearest port of the vendor.

Operator will provide Recommendatory Letter on request of the Contractor (for items applicable) for obtaining Essentiality Certificate from DGH for availing benefit of CONCESSIONAL RATE OF CUSTOMS DUTY/TAXES. The responsibility of obtaining EC from concerned authorities lies with Contractor and Operator will not be liable to the Contractor for whatsoever reasons.

### **16.4 LIABILITY FOR THE WELL**

Operator shall be liable for the cost of regaining control of any wild Well, as well as the cost of removal of debris and shall defend, indemnify and hold Contractor harmless, for any such cost, regardless of the cause thereof, including but not limited to the negligence of Contractor, its agents, employees or sub-contractors. Operator shall be responsible for and shall defend, indemnify and hold harmless Contractor from any claims in respect of loss or damage to the hole or Well. In the event the hole is lost or damaged because of the negligence of Contractor, Contractor's sole responsibility thereafter shall be the obligation to repair such damage within the limits of Contractor's normal complement of equipment and personnel or redrill the hole in the same Well or an alternate Well to the depth at which, such hole was lost at a rate equal to fifty (50) percent of the Operating Rate only by deploying the Drilling Unit and personnel provided however, that in the case of any relief Well, Operator shall be solely responsible for all other costs or damage with respect to such loss or damage, regardless of the cause of such loss or damage.

### **16.5 DAMAGE TO PIPELINE, PLATFORMS OR DRILLING RIGS**

Contractor shall be responsible and hold Operator harmless for any damages to pipeline, platforms, drilling rigs (other than Drilling Unit), vessels and damage or loss of materials or equipment of Operator and/or other third party materials or equipment in the area of operation for reasons attributed to the gross negligence of the Contractor, provided that Contractor's liability shall not exceed Rupees Twenty Lakhs per occurrence. The Operator shall be responsible for and shall indemnify and hold Contractor harmless for all amounts in excess thereof.

## **17.0 BLOWOUT OR CRATER**

### **17.1 COST OF CONTROL OF BLOWOUT**

(BL/03/24 dated 02.02.2012)

In the event any Well being drilled hereunder shall go out of control (Blowout) due to any causes, Contractor will bear the cost and expense of killing the Well or otherwise bringing the Well under control upto US Dollar One Million for each incident and in this regard Operator shall indemnify and hold Contractor harmless in excess of US Dollar One Million for each incident. This applies only to the cost of bringing the well under control and is not to be interpreted as an assumption by Operator of any liability for injuries, to Contractor's personnel and or damage to the Drilling Unit, caused by such blowout to the Contractor, except as otherwise provided under the terms and conditions of this Agreement.

### **17.2 USE OF CONTRACTOR'S EQUIPMENT.**

Subject to clause 9.1, Operator shall have the right to use the Drilling Unit and all of Contractor's equipment and personnel provided under this Agreement during such times as Operator or both Operator and Contractor are engaged in bringing a Well under control and Drilling Unit will perform all activities related to Well control.

## **18.0 UNDERGROUND DAMAGE**

18.1 Operator agrees to indemnify and hold Contractor harmless from any and all claims against Contractor based on any incidents arising out of or occurring during the term of this Agreement on account of injury to, destruction of or loss or impairment of any property rights in or to oil, gas or other mineral substance or water if at the time of the act or omission causing such injury, destruction, loss or impairment such substances had not been reduced to physical possession above the surface of the earth, and including any loss or damage to any formation strata or reservoir beneath the surface of the earth.

## **19.0 WAIVERS AND AMENDMENTS**

### **19.1 WAIVERS**

No term or condition shall be deemed waived/amended unless such waiver/amendment is mutually agreed to by both the parties and is executed in writing by the duly authorised agents or representatives of the parties.

### **19.2 AMENDMENTS OF DRILLING AND COMPLETION PROGRAMME**

It is agreed that Contractor shall carry out drilling, coring, testing, completions, abandonment and any and all other operations, in accordance with the Well drilling and completion programme to be furnished by Operator, which may be amended from time to time by modifications as Operator deems fit,

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subject, however within the capability of Drilling Unit, in accordance with good oilfield practices as envisaged under this Contract.

## **20.0 LOSS OF DRILLING UNIT**

If the Drilling Unit is declared to be a total loss and/or construed to be total loss, as determined by the applicable insurance coverage, this Contract shall terminate in respect of that drilling unit(s) as of the occurrence of the event causing such loss and each party shall thereupon be released of all further obligations hereunder in respect of that drilling unit(s), except for its payment of monies then due or liabilities to be discharged in respect of work already done under this Contract in respect of that drilling unit(s).

## **21.0 FORCE MAJEURE**

### **21.1 CONDITIONS FOR FORCE MAJEURE**

**(BL/03/38 dated 27.01.2017)**

In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under this Agreement, the relative obligation of the party affected by such Force Majeure shall, upon notification to the other party be suspended for the period during which such cause lasts.

The term "Force Majeure" as employed herein shall mean Act of God, floods, tempest, war, civil riot, fire and Acts, Rules and Regulations of respective government of the two parties namely ONGC and the Contractor, directly effecting the performance of the Contract.

Upon the occurrence of such cause and upon its termination, the party alleging that it has been rendered unable as aforesaid thereby, shall notify the other party in writing within seventy-two hours of the alleged beginning and ending thereof, giving full particulars and satisfactory evidence in support of its claim.

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

Such Force Majeure situations shall be paid at 2/3rd of Non-operating rate for a period of first fifteen days, and if such Force Majeure lasts for a further period, then for a further period of 15 days Contractor shall be paid at 1/3rd of the Non-operating rate in excess of first 15 days after which zero rate shall be payable to the Contractor and ONGC shall have the right to terminate this Agreement by giving 15 days notice unless otherwise mutually agreed.

### **21.2 WEATHER AND WAITING ON DAY LIGHT.**

The parties hereto agree that waiting on weather/waiting on day light shall not be considered as Force Majeure. Weather in this case means temporary conditions of wind, waves or tides, which make it unsafe or hazardous to conduct operations hereunder. The non-operating rate shall be

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applicable during these conditions.

## **22.0 TERMINATION**

### **22.1 TERMINATION ON EXPIRY OF THE TERM**

This Agreement shall be deemed to have been automatically terminated on the expiry of the Primary Term unless the Operator has exercised its option to extend this Agreement in accordance with the provision of this agreement.

### **22.2 TERMINATION ON ACCOUNT OF FORCE MAJEURE**

#### **(BL/03/38 dated 27.01.2017)**

Operator shall have the right to terminate this Agreement on account of Force Majeure, as set forth in Article 21 herein above.

### **22.3 TERMINATION DUE TO LOSS OF DRILLING UNIT**

Should the Drilling Unit be lost or be missing and presumed lost or if the Drilling Unit should become a total loss, (constructive arranged or compromised), this Agreement will be deemed to have been terminated without notice, in terms of Article 20.0. No payment whatsoever other than amount previously earned shall be due from the Operator to the Contractor as from that date.

### **22.4 TERMINATION ON ACCOUNT OF INSOLVENCY**

In the event the Contractor or its collaborator at any time during the term of this Agreement becomes insolvent or makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt, then the Operator shall, by a notice in Writing have the right to terminate this Agreement and all the Contractor's rights and privileges hereunder, shall stand terminated forthwith.

### **22.5 TERMINATION FOR UNSATISFACTORY PERFORMANCE**

If the Operator considers that the performance of the Contractor is unsatisfactory or, not upto the expected standard, the Operator shall notify the Contractor in writing and specify in detail the cause of such dissatisfaction. The Operator shall have the option to terminate this Agreement by giving 30 days notice in writing to the Contractor, if, Contractor fails to comply with the requisitions contained in the said written notice issued by the Operator, in accordance with Articles 3.6 and 3.10.

### **22.6 DUE TO CHANGE OF OWNERSHIP AND ASSIGNMENT**

In case the Contractor's rights and/or obligations under this Agreement and/or the Contractor's rights, title and interest to the Drilling Unit are transferred or *assigned* without the Operator's consent, the Operator may, at its absolute discretion, terminate this Agreement, as provided in Article 25.1 "Assignment

and change of ownership" hereunder.

**(BL/03/19 dated 09.07.2010)**

## **22.7 TERMINATION FOR DELAY IN MOBILISATION**

If the CONTRACTOR (successful bidder) fails to mobilize and deploy the Drilling Unit within the stipulated time, Operator shall have, without prejudice to any other clause of the CONTRACT, the right to terminate the contract.

## **22.8 CONSEQUENCES OF TERMINATION**

22.8.1 In all cases of termination herein set forth, the obligation of the Operator to pay the day rate and/or any other charges, shall be limited to the period upto the date of termination. In case of "Termination with Notice", the Non-operating Day Rate will be applicable during the notice period i.e. till the contract is terminated under the provision. Notwithstanding the termination of this Agreement, the parties shall continue to be bound by the provisions of this Agreement that reasonably require some action or forbearance after such termination.

In case of termination of Contract herein set forth, except under 22.1 and 22.2, 22.3, 22.8 and / or annulment of the contract due to non-submission of Performance Security (as per clause \_\_\_\_ of Annexure-I) [Work center to indicate relevant clause number], following actions shall be taken against the Contractor:

i. Operator shall conduct an inquiry against the Contractor and consequent to the conclusion of the inquiry, if it is found that the fault is on the part of the Contractor, then they shall be put on holiday [i.e neither any tender enquiry will be issued to such a Contractor by Operator against any type of tender nor their offer will be considered by Operator against any ongoing tender(s) where contract between Operator and that particular Contractor (as a bidder) has not been concluded] for a period of two years from the date the order for putting the Contractor on holiday is issued. However, the action taken by Operator for putting that Contractor on holiday shall not have any effect on other ongoing contract(s), if any with that Contractor which shall continue till expiry of their term(s).

ii. Pending completion of the enquiry process for putting the Contractor on holiday, Operator shall neither issue any tender enquiry to the defaulting Contractor nor shall consider their offer in any ongoing tender

**22.8.2** Upon termination of this Agreement, Contractor shall return to Operator all of Operator's equipment which are at that time in Contractor's possession except in case of loss of Drilling Unit as specified in Article 22.3.

## **22.9 FOREIGN COLLABORATION:**

It is a condition of this Agreement that the Contractor shall have and continue to have technical collaboration with \_\_\_\_\_ at Exhibit \_\_\_\_\_ during the period of this Agreement both Primary Term and extensions if any.

The obligations of the foreign collaboration on behalf of the Contractor for purpose of this Agreement shall be as specified in Exhibit.....of this Agreement. The foreign collaborator.....within fifteen days of entering into this Agreement shall confirm their obligations to the Operator.

In the event the Foreign Collaborator does not provide the services or FCA is terminated or ceases to exist for any reason whatsoever during the currency of this Agreement, the Operator shall have the right to terminate this Agreement after giving a notice of 90 days during which period the Contractor shall either resolve or enter into new FC duly approved by the Govt. of India, without any liability whatsoever on the part of the Operator.

## **22.10 SEVERABILITY**

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

## **23.0 INFORMATION - CONFIDENTIAL**

All information obtained by Contractor in the conduct of operations hereunder, including but not limited to depth, formation penetrated, the result of coring, testing and surveying, shall be considered as confidential and shall not be divulged by Contractor or its employees to any person, firm or corporation other than Operator's designated representative, without the written consent of the Operator.

## **24.0 PREFERENCE TO LOCAL COMPANIES**

Contractor agrees to give priority and preference to locally owned companies, when hiring Sub contractor, SUBJECT TO price, quality and delivery being equivalent.

### **24.1 UTILISATION OF AIR-INDIA SERVICES.**

Contractor agrees to give priority and preference to Air India Services, during its every crew change, subject to non-hampering of their schedules.

## **25.0 ASSIGNMENT OF AGREEMENT**

### **25.1 ASSIGNMENT BY CONTRACTOR**

Contractor agrees not to sublet or assign this agreement or interest or any part thereof to an Indian Joint Venture Co./ Indian Co. having approved technical back up without first obtaining the written consent of Operator, which shall not be unreasonably withheld and at such time that :

I. Adequate arrangements being made by Contractor in terms of expertise and experienced personnel to ensure due performance of said Agreement.

II. The Government of India has fully approved the joint venture

applications for formation of such joint venture Indian Company or has approved Technical Collaboration of an Indian Co. and

III. The ownership of the Drilling Unit has been transferred to such Indian Company or such Indian Co. has acquired the Drilling Unit on lease basis.

However, the assignment shall be on same rates, terms and conditions. Contractor shall remain fully liable and responsible to Operator for complete performance of all its obligation envisaged under this Agreement.

## **25.2 ASSIGNMENT BY OPERATOR**

Operator shall have the right, at any time, to assign all or any part of its rights hereunder, to an affiliated Company or a third party provided that Operator shall remain fully liable and responsible to Contractor to complete performance of all its obligations imposed by this Agreement.

(BL/03/30 dated 20.04.2014)

25.3 In case any part of the work is sub-contracted to a Micro or Small Enterprises as per contract conditions then the contractor shall provide complete details (i.e. name of the subcontractor, value of sub-contracted work, copy of valid MSE registration certificate etc) of the sub-contractor to ONGC.

## **26.0 WRITTEN NOTICES**

All notices / correspondence shall be in writing and may be delivered personally to any Officer or Manager at the addresses specified below, unless changed by Notice or may be sent by registered mail to said address, postage prepaid, or may be sent by fax, telegram or cable, charges prepaid confirmed by copy of such fax, telegram or cable sent by registered mail to said address. The addresses referred to are :

For Operator

For Contractor----

## **27 ARBITRATION**

(BL/03/37 dated 29.12.2016)

**27.1 ARBITRATION (Applicable in case of supply orders/Contracts with firms, other than Public Sector Enterprises) (Not applicable in cases valuing less than Rs 5 lakhs)**

1. There shall be no arbitration for disputes involving claims upto Rupees 25 lakhs and more than Rs. 100 crores. Disputes involving claims above Rs. 100 crores shall be adjudicated under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.
2. Arbitration can be invoked by giving Invocation Notice only after expiry of the 60 days' period as per Dispute Notice stipulated in the para above.

3. The party wishing to refer a Dispute to Arbitration shall give notice to the other party specifying all the points of Disputes with details of the amount or claim to be referred to arbitration ("**Invocation Notice**"). If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee also. The closing market rate in an exchange declared by SBI on the date prior to the date of notice should be adopted for conversion of foreign currency in Indian Rupees.
4. For a dispute involving claims above Rs 25 lacs and upto Rs 5 crores, in case other party is Claimant, ONGC will forward a list containing names of five jurists to the other party for selecting one from the list who will be appointed as sole arbitrator by ONGC. In case ONGC itself is the Claimant, it shall appoint the Sole Arbitrator by invoking the Arbitration clause and inform the Contractor. Such dispute shall be resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act, 1996.
5. For a dispute involving claims above Rs.5 crores and upto Rs. 100 crore, the claimant shall appoint an Arbitrator and communicate the same to the other Party in the Invocation Notice itself along with the copy of disclosure made by nominated Arbitrator in the form specified in Sixth Schedule of the Arbitration & Conciliation Act, 1996. For the purpose of Section 21, the Arbitration Proceeding shall commence only upon date of receipt of Invocation Notice complete in all respects mentioned above.

The other Party shall then appoint the second Arbitrator within 15 days from the date of receipt of written notice. The two Arbitrators appointed by the Parties shall appoint the third Arbitrator, within 30 days, who shall be the Presiding Arbitrator.

The parties agree that they shall appoint only those persons as arbitrators who accept the conditions of this arbitration clause. No person shall be appointed as arbitrator or presiding arbitrator who does not accept the conditions of this arbitration clause.

6. For the purpose of appointment of Arbitrator(s), claims amount shall be computed excluding claim for interest, if any.
7. Parties agree that neither party shall be entitled for any pre-reference or pendent-lite interest, i.e. date of cause of action till date of Award by Arbitral Tribunal. Parties agree that claim for any such interest shall not be considered and shall be void. The Arbitrator or Tribunal shall have no right to award pre-reference or pendent-lite interest in the matter.
8. The fees payable to each Arbitrator shall be as per rules framed by the High Court in whose territorial jurisdiction as per contract and seat of arbitration is situated. In case no rules have been framed, the fees prescribed may be as

- per Fourth Schedule of the Arbitration and Conciliation Act, 1996. However, Arbitrator may fix their fees keeping the aforesaid schedule as guiding factor.
9. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to conciliation, the arbitrators shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrators shall be determined as under:
    - (i) 20% of the fees if the claimant has not submitted statement of claim.
    - (ii) 40% of the fees if the pleadings are complete.
    - (i) 60% of the fees if the hearing has commenced.
    - (ii) 80% of the fees if the hearing is concluded but the award is yet to be passed.
  10. Each party shall be responsible to make arrangements for the travel and stay etc of the arbitrator appointed by it. Claimant shall also be responsible for making arrangements for travel / stay arrangements for the Presiding Arbitrator and the expenses incurred shall be shared equally by the parties. In case of sole arbitrator, ONGC shall make all necessary arrangements for his travel/ stay and the expenses incurred shall be shared equally by the parties.
  11. The seat of the arbitration shall be the place from where the LOA / NOA has been issued. For the sake of convenience, Parties may agree to hold the proceedings at any other venue. The arbitration shall be conducted in the English language. Insofar as practicable, the Parties shall continue to implement the terms of the Contract notwithstanding the initiation of Arbitration proceedings.
  12. Parties agree that neither party may amend or supplement its claim during the course of arbitral proceedings.
  13. The parties may, after invocation of dispute, agree for sharing the cost of Arbitration equally on 50:50 basis.
  14. Subject to the above, the provisions of the Arbitration and Conciliation Act, 1996 as amended and applicable from time to time shall apply to the arbitration proceedings under this Contract.

**27.2 Arbitration clause for settlement of commercial disputes between Public Sector Enterprises inter se and Public Sector Enterprise(s) and Government Department(s) through Permanent Machinery of Arbitrators (PMA) in the Department of Public Enterprises.**

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

**(BL/03/37 dated 29.12.2016)**

**27.3 Resolution of disputes through conciliation by OEC** (Not applicable in cases valuing less than Rs 10 lakhs):

Parties hereby agree as under:

If any difference or dispute (hereinafter referred as "Dispute") under the Contract arises, the party shall give a 60 days written notice ("Dispute Notice") to the identified officer of the other party mentioned in the Contract giving details of the Dispute. The Parties shall use all reasonable endeavours to resolve the Dispute mutually and amicably. All efforts by either party within these 60 days Dispute Notice Period shall be kept confidential by both the parties under Section 75 of the Arbitration and Conciliation Act, 1996. Parties shall not rely upon any views expressed or suggestions made by the other party, admissions made by the other party or the fact that the other party had indicated his willingness to enter into a settlement as evidence in any Forum / arbitration / court proceeding.

If Parties are unable to resolve the Dispute amicably within 60 days of receipt of the Dispute Notice, then after expiry of the 60 days' Dispute notice period, the aggrieved Party can refer the Dispute to conciliation and / or arbitration subject to terms and conditions contained herein below:

- 1) Parties further agree that following matters shall not be referred to conciliation or arbitration:
  - i) Any claim, difference or dispute relating to, connected with or arising out of ONGC's decision to initiate any proceedings for suspension or banning, or decision to suspend or to ban business dealings with the Bidder / Contractor

and/or with any other person involved or connected or dealing with bid / contract / bidder / contractor.

ii) Any claim, difference or dispute relating to, connected with or arising out of ONGC's decision under the provisions of Integrity Pact executed between ONGC and the Bidder / Contractor.

2) Conciliation: (Not applicable in cases valuing less than Rs 10 lakhs)

If any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same may first be referred to conciliation through Outside Expert Committee ("OEC") to be constituted by CMD, ONGC as provided hereunder:

### **Proposal for OEC**

1. Conciliation through OEC will be resorted in cases involving disputed amount upto Rs. 250 crores only. The disputed amount will be calculated by considering the amount of claim and counter-claim of the parties.

2. Claimant shall give notice for conciliation. In cases where the contractor is claimant then the notice shall be given to the concerned ONGC office as per the contract, clearly bringing out the points of dispute and the amount claimed with documents in support of the claim and the party concerned shall not raise any new issue thereafter.

### **Constitution of OEC**

3. CMD, ONGC will have the sole discretion to constitute OEC. OEC will be formed from the panel of experts maintained by ONGC and will normally comprise of three members, one member from each category i.e. Technical; Finance/Commercial; and Legal. However, there will be a single member OEC for disputes involving a claim and counter claim (if any) upto Rs 1 crore, CMD will have authority to reconstitute an OEC to fill any vacancy or if any OEC member is not available to attend the OEC Meetings.

4. Upon constitution of the OEC, Chief Legal Services, ONGC will issue the appointment letters to OEC members and the parties concerned.

5. The OEC members shall give a declaration of independence and impartiality (as per Appendix 4) to both the parties before the commencement of the OEC proceedings.

### **Proceedings before OEC**

6. The claimant shall submit its statement of claims to OEC members, and to the parties prescribed in the appointment letter within 30 days of the issue of the appointment letter (as per Appendix 4).
7. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims.
8. Parties may file their rejoinder/additional documents if any in support of their claim/counter claim within next 15 days. No documents shall be allowed thereafter, except with the permission of OEC
9. OEC will commence its meetings only after completion of the pleadings.
10. In case of 3 members OEC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary video conferencing may be arranged. However, OEC Recommendations will be signed by all Members. Further, efforts must be made for unanimous recommendations.
11. The parties shall be represented by their in-house employees/executives. No party shall bring any advocate or outside consultant/advisor/agent. Ex-officers of ONGC who have handled the matter in any capacity are not allowed to attend and present the case before OEC on behalf of Contractor. However, ex-employees of parties may represent their respective organizations.
12. Solicitation or any attempt to bring influence of any kind on either OEC Members or ONGC is completely prohibited in conciliation proceedings and ONGC reserves the absolute right to close the conciliation proceedings at its sole discretion if it apprehends any kind of such attempt made by the Contractor or its representatives.
13. Parties agree to rely only upon documentary evidence in support of their claims and not to bring any oral evidence in the OEC proceedings.
14. OEC will give full opportunity of hearing to the parties before giving its recommendations.
15. OEC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. OEC will give its recommendations to both the parties recommending possible terms of settlement CMD, ONGC may extend the time/ number of meetings, in exceptional cases, if OEC requests for the same with sufficient reasons.
16. OEC members will be paid fees and provided facilities (as detailed under point 27 of this clause) hereinafter, subject to revision by ONGC from time to time and subject to Government guidelines on austerity measures, if any.

17. Depending upon the location of the OEC members and the parties, the venue of the OEC meeting shall be either Delhi or Mumbai whichever is most economical from the point of view of travel and stay etc.

18. Parties shall not claim any interest on claims/counterclaims from the date of notice invoking conciliation till execution of settlement agreement, if so arrived at. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking conciliation till the date of OEC recommendations and 30 days thereafter in any further proceeding.

19. Legally, parties are under no obligation to refer a dispute to conciliation or continue with conciliation proceedings. Parties are free to terminate the conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act, 1996.

#### **Actions after OEC Recommendations**

20. The recommendations of OEC are non-binding and the parties may decide to accept or not to accept the same. Parties are at liberty to accept the OEC recommendation with any modification they may deem fit.

21. The contractor shall give its response to ONGC within 7 days receiving OEC Recommendation.

22. If the Recommendations are acceptable to the contractor partly or fully, ONGC will consider and take a decision on OEC recommendations. Key executive shall communicate the decision of ONGC to the contractor, If decision of ONGC is acceptable to the contractor, a settlement agreement under Section 73 of the Arbitration and Conciliation Act, 1996 will be signed within 15 days of contractor's acceptance and same shall be authenticated by all the OEC Members.

23. The timelines mentioned in the above guidelines are with an objective to achieve expeditious conclusion of OEC proceedings, However, it does not mean that any action beyond the timelines will be invalid. However, the party concerned will make all efforts to complete the actions within the stipulated time.

24. The parties shall keep confidential all matters relating to the conciliation proceedings including minutes of OEC meeting and Recommendations of OEC. Parties shall not rely upon them as evidence in any Forum / arbitration / court proceeding, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,

- a. views expressed or suggestions made by the other party in respect of a possible settlement of the dispute
- b. admissions made by the other party in the course of the OEC proceedings;

- c. proposals made by the OEC;
- d. the fact that the other party had indicated his willingness to accept a proposal for settlement made by the OEC.

25. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. This stipulation will not apply to disclosure made by ONGC to Govt, of India or its authorities, if required.

26. Subject to terms and conditions contained in the above paras, the provisions of the Part III of Arbitration and Conciliation Act, 1996 shall be applicable to the conciliation proceedings and the parties and the OEC members shall be bound by the same.

**27. Fees and facility to the OEC Members**

- 1. OEC members shall be entitled for the following fees and facilities (All the expenditure incurred in the OEC proceedings shall be shared by the parties in equal proportion. The parties shall maintain account of expenditure and present to the other for the purpose of sharing on conclusion of the OEC proceedings):

Sl. No.	Fees/ Facility	Entitlement	To be paid by
i.	Fees	Rs. 20,000 per meeting subject to maximum of Rs. 2,00,000 for the whole case. In addition, one OEC member chosen by OEC shall be paid an additional amount of Rs. 10,000 towards secretarial expenses in writing minutes / OEC Recommendations.	Contractor
ii	Fee for attending meeting to authenticate the settlement agreement	Rs. 10,000	Contractor
iii	Transportation in the city of the meeting	Car as per entitlement or Rs. 2,000 per day	Contractor
iv	Venue for meeting	ONGC conference rooms/Hotels	ONGC
<b>Facilities to be provided to the out -stationed member</b>			
v	Travel from the city of residence to the city of meeting	Business class air tickets/ first class train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.	Contractor
vi	Transport to	Car as per entitlement or Rs. 3,000	Contractor

	and fro airport / railway station in the city of residence		
vii	Stay for out stationed members	5 Star Hotel	ONGC
viii	Transport in the city of meeting	Car as per entitlement or Rs. 2000 per day	Contractor

\* Annexure C and D of the circular No. 3 of 2015 dated 29.07.2015 of Director (HR)- Work centre to give suitable Annexure No. for incorporating the same in contract conditions). However, incorporated as Appendix 4 & 5 of this Annexure.

## **28.0 JURISDICTION AND APPLICABLE LAW**

28.1 This Agreement including all matter connected with this Agreement, shall be governed by the laws of India (both substantive and procedural) for the time being in force and shall be subject to exclusive jurisdiction of the Indian Courts (the place where the contract is signed in India).

(BL/03/09 dated 07.06.2007)

## **29.0 INTEGRITY PACT** (applicable for tenders above Rs 1 Crores) :

The Integrity pact, duly signed by the authorized official of ONGC and the Contractor, will form part of this contract / supply order.

## **30.0 LIABILITY OF THE GOVERNMENT OF INDIA**

It is expressly understood and agreed by and between the Contractor and ONGC (the Indian PSU) that ONGC 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 Govt. of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that ONGC is an independent legal entity with power and authority to enter into Contract's solely in its behalf under the applicable laws of India and general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that ONGC is not an agent, representative or delegate of the Govt. of India. It is further understood and agreed that the Govt. of India is not and shall not be liable for any acts, omissions, and commission, breaches or other wrongs arising out of the Contract. Accordingly, Contractor hereby expressly waives, releases and forgoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Govt. of India arising out of this Contract and covenants not to the Govt. of India as to any manner, claim, cause of action or thing whatsoever arising of under this Contract.

## **31.0 EMPLOYMENT BY FIRMS TO OFFICIALS OF ONGC**

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Firms/ companies who have or had business relations with Operator are advised not to employ serving Operator employees without prior permission. It is also advised not to employ ex-personnel of Operator within the initial two years period after their retirement/ resignation/ severance from the service without specific permission of Operator. Operator may decide not to deal with such firm (s) who fails to comply with the above advice.

32.0 The Contractor is prohibited to offer any service / benefit of any manner to any employee of Operator and that the Contractor may suffer summary termination of Contract / disqualification in case of violation.

### **32 REGARDING ICE /SAP CONNECTIVITY**

Operator has adopted Enterprise wide ICE / SAP connectivity through out the organization and accordingly all chartered rigs should be integrated and hooked up to our infrastructure for working on Enterprisewide EPR Programme. Operator is in the process of hiring a service provider for Ku band VSAT data & voice connectivity (from Drilling Unit to 11 high office & vice-versa) for new rigs to be hired. The cost of providing Ku band VSAT facility has to be borne by Contractor of charter hired rigs and the cost is Rupees 2.73 Lakhs per annum per rig

### **33 REGARDING INMARSAT, FAX, MINI M TELEPHONE CHARGES**

Inmarsat, Fax, Mini M Telephone etc. should be available on board the Drilling Unit and in case Operator or Operator's sub-contractor utilises this facility, the same will be charged to Operator by Contractor, at actuals excluding service charges. However, for usage of this facility by Operator's sub-contractor, prior approval of Operator shall be obtained.

No payment shall be made by Operator to Contractor for usage of this facility by Contractor and Contractor's sub-contractors.

#### **33.0 LIMITATION OF LIABILITY**

(BL/03/39 dated 24.08.2017)

Notwithstanding any other provisions, except only in cases of willful misconduct and / or criminal acts,

- a) Neither the Contractor nor the Operator (ONGC) shall be liable to the other, whether in Contract, tort, or otherwise, for any consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided however that this exclusion shall not apply to any obligation of the Contractor to pay Liquidated Damages plus GST thereon to the Operator and
- b) Notwithstanding any provisions incorporated elsewhere in the Agreement, the aggregate liability of the Contractor in respect of this Agreement, whether under the Contract, in tort or otherwise, shall not exceed 50% of the annualized Agreement Price, provided however that this limitation shall not apply to the cost of repairing or replacing defective

equipment by the Contractor, or to any obligation of the Contractor to indemnify the Operator with respect to intellectual Property Rights.

c) Operator shall indemnify and keep indemnified Contractor harmless from and against any and all claims, costs, losses and liabilities in excess of the aggregate liability amount in terms of clause (b) above.

#### **34.0 SOURCING OF FUELS FROM MRPL**

Contractor shall source the fuels like petrol, diesel etc., if required for carrying out the works/services covered under this contract, from M/s Mangalore Refinery and Petrochemicals Limited (a subsidiary of ONGC), wherever feasible.

#### **35.0 VERIFICATION OF CHARACTER AND ANTECEDENTS OF CONTRACTUAL MANPOWER**

The Contractor shall submit the following documents to Operator prior to start of work: -

i. Undertaking from the Contractor that the character and antecedents of the persons(s) proposed to be deployed by them is / are impeccable.

ii. Undertaking from the Contractor that they have scrutinized the previous working of the person(s) proposed to be deployed by them and there is nothing adverse as regards his / her character and antecedent.

iii. Alongwith the above mentioned undertakings, the Contractor will provide certified photocopies of Police verification certificates for inspection by the authorized representative of Operator. The Contractor has to obtain Police verification report (signed by an officer equivalent to DSP rank or higher) from the area where the person(s) to be deployed has / have been residing since the last five years. In case the person concerned has not resided at a place for five years at a stretch, Police verification reports should be obtained from that area where the person(s) has / have stayed earlier.

(BL/03/30 dated 02.07.2014)

#### **35.1 Submission of forged documents:**

Bidders should note that ONGC may verify authenticity of all the documents/certificate/information submitted by the bidder(s) against the tender. In case at any stage of tendering process or Contract/PO execution etc., if it is established that bidder has submitted forged documents/certificates/information towards fulfilment of any of the tender/contract conditions, ONGC shall immediately reject the bid of such bidder(s) or cancel/terminate the contract and forfeit EMD/SD submitted by the bidder.

(BL/03/33 dated 15.04.2015)

#### **35.2. Consideration of representations on post contract issues submitted**

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**by the bidders to Independent External Monitors (IEMs)**

(Applicable for all tenders valuing above Rs. 1 Crore where IP is applicable.)

The bidders may raise disputes / complaints, if any, either with the designated Competent Purchase Authority (CPA) in ONGC or with concerned Director of ONGC or directly with the IEM c/o Chief Vigilance Officer, ONGC, Pandit Deen Dayal Upadhyaya Urja Bhawan, 5 Nelson Mendela Marg, Vasant Kunj, New Delhi - 110070.

However, Bidders should note that IEMs would consider only those representations on post contract issues wherein there is an alleged violation of provisions of IP. Hence, bidders should not refer those post contract issues to IEMs for resolution, for which dispute resolution mechanism has already been defined in the contract conditions. The post contract issues pertaining to alleged violation of provisions of IP, if any, should only be referred to IEMs

**36.0 ENTIRE AGREEMENT**

36.1 This Agreement supersedes all prior Agreements and commitments, whether oral or in writing between the parties concerning the subject matter thereof. The right of either party to require strict performances will not be affected by any previous waiver or course of dealing. Neither this Agreement nor any modification will be binding on a party unless signed by an authorised representative of Contractor and Operator.

36.2 It is not intended that there be any conflict between this Agreement and the Exhibits thereto, which are a part hereof for all purposes, but the Agreement shall take precedence in the event of any such conflict.

36.3 Notwithstanding the termination of this Agreement, the parties shall continue to be bound by the provisions of the Agreement that reasonably require some action or forbearance after the expiration of the term of this Agreement.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

For and on behalf of

For and on behalf of OIL AND NATURAL GAS CORPORATION LTD.

.....

(Contractor)

(Operator)

WITNESS:

WITNESS:

1.

1.

2.

2.

**Proforma of Bank Guarantee towards Performance Security.  
PERFORMANCE GUARANTEE**

Ref. No. \_\_\_\_\_ Bank Guarantee No \_\_\_\_\_  
Dated \_\_\_\_\_

To,

Oil & Natural Gas CORPORATION

\_\_\_\_\_  
\_\_\_\_\_  
India

Dear Sirs,

1. In consideration of Oil & Natural Gas CORPORATION Limited, incorporated under the Companies Act, 1956, having its Registered Office at Pandit Deen Dayal Upadhyaya Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070, India and one of its offices at \_\_\_\_\_ (hereinafter referred to as 'ONGC', which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and assignees) having entered into a CONTRACT No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called 'the CONTRACT' which expression shall include all the amendments thereto) with M/s \_\_\_\_\_ having its registered/head office at \_\_\_\_\_ (hereinafter referred to as the 'CONTRACTOR') which expression shall, unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees) and ONGC having agreed that the CONTRACTOR shall furnish to ONGC a performance guarantee for Indian Rupees/US\$ ..... for the faithful performance of the entire CONTRACT.

2. We (name of the bank) \_\_\_\_\_ registered under the laws of \_\_\_\_\_ having head/registered office at \_\_\_\_\_ (hereinafter referred to as "the Bank", which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and permitted assignees) do hereby guarantee and undertake to pay immediately on first demand in writing any /all moneys to the extent of Indian Rs./US\$ (in figures) \_\_\_\_\_ (Indian Rupees/US Dollars (in words) \_\_\_\_\_) without any demur, reservation, contest or protest and/or without any reference to the CONTRACTOR. Any such demand made by ONGC on the Bank by serving a written notice shall be conclusive and binding, without any proof, on the bank as regards the amount due and payable, notwithstanding any dispute(s) pending before any Court, Tribunal, Arbitrator or any other authority and/or any other matter or thing whatsoever, as liability under these presents being absolute and unequivocal. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable until it is discharged by ONGC in

writing. This guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the CONTRACTOR and shall remain valid, binding and operative against the bank.

3. The Bank also agrees that ONGC 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 ONGC may have in relation to the CONTRACTOR's liabilities.

4. The Bank further agrees that ONGC 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 exercise of any of the powers vested in ONGC against the said CONTRACTOR(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by 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 ONGC or any indulgence by ONGC to the said CONTRACTOR(s) or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

5. The Bank further agrees that the Guarantee herein contained shall remain in full force during the period that is taken for the performance of the CONTRACT and all dues of ONGC under or by virtue of this CONTRACT have been fully paid and its claim satisfied or discharged or till ONGC discharges this guarantee in writing, whichever is earlier.

6. This Guarantee shall not be discharged by any change in our constitution, in the constitution of ONGC or that of the CONTRACTOR.

7. The Bank confirms that this guarantee has been issued with observance of appropriate laws of the country of issue.

8. The Bank also agrees that this guarantee shall be governed and construed in accordance with Indian Laws and subject to the exclusive jurisdiction of Indian Courts of the place from where the purchase CONTRACT has been placed.

(Circular No. 52/2017 (Revised) dated 23.11.2017)

9. Notwithstanding anything contained hereinabove, our liability under this Guarantee is limited to Indian Rs./US\$ (in figures) \_\_\_\_\_ (Indian Rupees/US Dollars (in words) \_\_\_\_\_ only) and our guarantee shall remain in force until (indicate the date of expiry of bank guarantee) \_\_\_\_\_.

All Claims of ONGC (beneficiary) against this Bank Guarantee, shall be remitted by the .....(Bank's name to be inserted) to the following account of ONGC only through electronic transfer of funds, unless otherwise specifically communicated by ONGC:

**(Concerned Work Center to indicate following details, as applicable)**

Beneficiary Account Name : Oil and Natural Gas Corporation Limited  
Bank Name : State Bank of India  
Branch : .....(Work Center to indicate)  
Branch Code : .....(Work Center to indicate)  
Bank Account No. : .....(Work Center to indicate)  
IFSC Code : .....(Work Center to indicate)  
SWIFT Code : .....(Work Center to indicate)

For foreign currency Bank Guarantee, detail of Nostro Account as under to be indicated additionally for respective currency.

Through State Bank of India Nostro Account:

NAME OF BANKS	CURRENCY	A/C NUMBER	SWIFT BIC
SBI Frankfurt	EUR	52607101120001	SBINDEFF
SBI London	GBP	35601	SBINGB2L
SBI Tokyo	JPY	10177001220001	SBINJPJT
SBI New York	USD	77600125220002	SBINUS33

In witness whereof, the Bank, through its authorised officer, has set its hand and stamp on this ..... day of ..... at .....

WITNESS NO. 1

-----  
(Signature)  
Full name and official  
address (in legible letters)

-----  
(Signature)  
Full name, designation and  
address (in legible letters)  
with Bank stamp

Attorney as per power of  
Attorney No.....  
Dated .....

WITNESS NO. 2

-----  
(Signature)  
Full name and official  
address (in legible letters)

## INSTRUCTIONS FOR FURNISHING PERFORMANCE GUARANTEE

(Circular No. 12/2009 dated 06.03.2009)

1. The Bank Guarantee by Indian Bidders will be given on non-judicial stamp paper /franking receipt as per stamp duty applicable at the place from where the CONTRACT has been placed. The non-judicial stamp paper /franking receipt should be either in name of the issuing bank or the contractor.
2. Foreign parties are requested to execute bank guarantee as par law in their country.
3. Foreign bidders will give guarantee either in the currency of the offer or US \$ (US Dollar) i.e. Indian Rs/US \$ have been mentioned only for illustration. Therefore, in case where bank guarantee is being given in currency other than 'Rupees' or U.S.\$, indicate the relevant currency of the offer.
4. The expiry date as mentioned in clause 9 should be arrived at by adding 60 days to the CONTRACT completion date unless otherwise specified in the bidding documents.

(Circular no. 23/2013 dated 09.09.2013)

5. The bidders will give Bank Guarantee from any of the following categories of Banks:

(a) Any Scheduled Bank incorporated in India, Bank Guarantee issued by foreign branches / foreign offices of such Scheduled Banks be counter guaranteed by the Indian Branch of any Scheduled Bank incorporated in India.

OR

(b) Any Branch of an International Bank situated in India and registered with Reserve Bank of India as scheduled foreign bank.

OR

(c) Any foreign Bank which is not a Scheduled Bank in India provided the Bank Guarantee issued by such Bank is counter guaranteed by any Branch situated in India of any Scheduled Bank incorporated in India.

(BL/03/39 dated 24.08.2017)

ANNEXURE –II  
(APPENDIX – 2)

(Stamp paper of Rs 200)

### INDEMNITY & UNDERTAKING

1. Know all men by these presents that M/s\_\_\_\_\_ hereby hold and bind myself / our selves, executors, administrative assignees and legal representatives to Oil and Natural Gas Corporation Ltd. herein after called “ONGC” for payment of any amount being demanded / demand by Customs authorities against Contract no \_\_\_\_\_ dated \_\_\_\_\_ from ONGC for the reasons stated hereinafter.
  
2. The rig \_\_\_\_\_ was working in offshore India in PEL / ML blocks released / renewed after 1.4.99/**eligible areas for Petroleum operations** covered under relevant notification indicated in the contract, under a charter hire Contract No. \_\_\_\_\_ dated \_\_\_\_\_ by and between ONGC and M/s. \_\_\_\_\_, withpayment of concessional rate of Customs Duty under the Essentiality Certificate (EC) # \_\_\_\_\_ dated \_\_\_\_\_ issued by Directorate General of Hydrocarbons (“DGH”) against the said Contract.
  
3. The rig \_\_\_\_\_ was imported into Indian waters vide Bill of Entry # \_\_\_\_\_ dated \_\_\_\_\_
  
4. That M/s \_\_\_\_\_ hereby confirms that the spares and consumable imported against ECs issued by DGH based on the recommendatory letters of ONGC during the contract period have either been consumed on the rig \_\_\_\_\_ while deployed for operations in the PEL / ML areas/ **eligible areas for Petroleum operations** covered under relevant notification indicated in the contract or have been re-exported or have been transferred with the approval of DGH to new Contract awarded vide \_\_\_\_\_ dated \_\_\_\_\_ and all the conditions of Notification, under which exemption was availed by M/s \_\_\_\_\_ while importing the spares and consumable have been complied .
  
5. That M/s \_\_\_\_\_ confirms that, as on date, there is no demand from the Custom department in respect of the rig \_\_\_\_\_ hired against the Contract No. \_\_\_\_\_ dated \_\_\_\_\_
  
6. M/s \_\_\_\_\_ agrees to indemnify and hold ONGC harmless from any claim of Customs duty, fine or penalty that may become payable or against all action of Government or any other agency due to any act of commission or omission solely by M/s \_\_\_\_\_ whereby the

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provisions of the Customs Act with conditions of the Notification No.50/2017-customs dated 30<sup>th</sup> June2017/ relevant notification indicated in the contract are not complied with under which exemptions were availed by M/s \_\_\_\_\_while importing and re-exporting of the rig, rig equipment and spares and consumable etc.

7. M/s\_\_\_\_\_ undertake to forthwith make all payments enumerated in the foregoing paragraph in the event of any action by customs authorities against ONGC for violation of conditions, solely by M/s. \_\_\_\_\_ of Notification No.50/2017-customs dated 30<sup>th</sup>June, 2017/ relevant notification indicated in the contract, to the extent of its fault.

8. That I, \_\_\_\_\_ holding Indian Passport No. \_\_\_\_\_ and \_\_\_\_\_ an employee of M/s. \_\_\_\_\_, am authorized by \_\_\_\_\_ to sign, deliver and bind M/s. \_\_\_\_\_ regarding this indemnity & undertaking in favour of ONGC. .

(Authorized Signatory)

(Seal)

Witness:

1. \_\_\_\_\_

2. \_\_\_\_\_

(BL/03/39 dated 24.08.2017)

**Annexure** .

Proforma for Irrevocable Bank Guarantee to be submitted by the contractor in lieu of payment of Customs Duty made by ONGC, on behalf of Contractor, against Service Contracts/Charter Hire of Rigs

- Deleted -

(BL/03/28 dated 16.04.2014)

**Appendix -3**

FORM NO. 10F

**{See sub-rule (1) of rule 21 AB}**

Information to be provided under sub-section (5) of section 90 or  
Sub-section (5) of section 90A of the Income-tax Act, 1961

I.....\*son/daughter of Shri.....in the  
capacity of ..... (designation) do provide the  
following information relevant to the previous year.....\*in  
my case/in the case of .....for the purpose of sub-  
section(5) of \*section 90/section90A:-

Sl.No.	Nature of information	:	Details#
(i)	Status (individual, company, firm etc. of the assessee	:	
(ii)	Permanent Account Number (PAN) of the assessee if allotted	:	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	:	
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	:	
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	:	
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	:	

2. I have obtained a certificate referred to in sub-section (4) of section 90 or sub-section (4) of 90A from the Government of.....( name of country) or specified territory outside India )

Signature.....

ONGC/MM/03/(71)

Name.....

Address.....

No..... Permanent Account

**Verification**

I.....do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and is truly stated.

Verified today the .....day of.....

.....  
Signature of the person providing the information

Place.....

**Notes:**

1. \*Delete whichever is not applicable
2. # Write N.A. if the relevant information forms part of the certificate referred to in sub-section (4) of section 90 or subsection (4) of section 90A.

(BL/03/34 dated 22.09.2015)

**APPENDIX 4**

**Source: Annexure C (of Circular No. 3 of 2015 dated 29.07.2015 of Director(HR))**

**Declaration of independence and impartiality by OEC Member**

To,

1. ONGC .....

2. Contractor .....

**Subject: Declaration of independence and impartiality by OEC Member in the dispute between ONGC.....And.....under Contract No.....**

I, the undersigned, hereby accept to act as Member of the Expert Committee and conciliate in the disputes under reference between the parties above named.

I confirm that I am aware of the requirements of law particularly of the Arbitration and Conciliation Act, 1996, to act as a conciliator. I am able to act as conciliator and am available to act as Member of the Expert Committee.

I hereby declare that I am independent of each of the parties and have no ownership interest in any part of the contract under reference or any financial interest in the said contract. I have no interest in the outcome of the dispute or its settlement.

I hereby affirm that I shall act with honesty, integrity, diligence, and will remain independent and impartial while discharging my duties as conciliator/OEC Member. I will disclose any interest or relationship with the parties or the subject matter which might compromise in any manner my ability or capacity to remain impartial and independent in the matter.

The fees and other facilities offered to me and the terms and conditions contained in the appoint letter and guidelines issued by ONGC are acceptable to me. I will not demand for enhancement of the same.

(Signature)

Name:

Address:

Phone:

Email:

Date:

(BL/03/34 dated 22.09.2015)

**APPENDIX 5**

**Soruce: Annexure D (of Circular No. 3 of 2015 dated 29.07.2015 of Director(HR))**

**STATEMENT OF CLAIM(S)/COUNTER CLAIM(S)**

1. Chronology of the dispute
2. Brief of the contract
3. Brief history of the dispute:
4. Issues:
5. Details of Claim(s)/Counter Claim(s):

<b>SI no</b>	<b>Description of claim(s)/Counter Claim</b>	<b>Amount (in USD/INR)</b>	<b>Relevant contract Clause</b>

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

Statement of Claims may kindly be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of claims. The statement of claims is to be submitted to all OEC members, to other party and to the office of Chief Legal Services, by post as well as mail.