

**Part III: Conditions of Contract
(FOR CONSULTANCY & OTHER SERVICES CONTRACTS)**

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1. **DEFINITIONS**

In the Contract, as hereinafter defined, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- 1.1 **"Approved"** shall mean approval in writing including subsequent written confirmation of previous verbal approval.
- 1.2 **"Bill of Consultancy Services"** (BOCS) shall mean the bill of Consultancy Services included in the Contract(s) for the given scope of works.
- 1.3 **"Certificate of Completion"** shall mean the certificate(s) to be issued according to Article 26 hereof.
- 1.4 **"Equipment"** shall mean all appliances/equipment and things of whatsoever nature including all related spares or wearing parts in or about the execution, required for completion of the Contract.
- 1.5 **"Contract"** shall mean the Agreement between the Owner and the Consultant duly signed by the parties thereto, through their authorised representatives for the execution of the Consultancy services together with all the documents annexed/ attached therewith.
- 1.6 **"Contract Price"** shall mean the price to be paid for the performance of the Consultancy Services to the Consultant.
- 1.7 **"Consultant"** shall mean M/s _____ having its registered office at _____ and include its legal representatives, successors and permitted assigns.
- 1.8 **"Consultant's Work Programme"** shall mean the programme showing the order of sequence in which the Consultant intends to carry out the services within the Time for Completion stipulated in the Contract for completion of the services.
- 1.9 The word **"Cost"** shall be deemed to include overhead costs whether incurred on or off the site.
- 1.10 **"Day"** shall mean calendar day.
- 1.11 **"Drawings"** shall include maps, plans, sketches and tracings or prints thereto, as referred to and incorporated in the Contract for execution of works.
- 1.12 **"Effective Date" or "Date of commencement"** shall mean the date on which the Contract shall come into effect as provided in Article 12 hereof.
- 1.13 **"Engineer" or "Engineer-in-charge"** shall mean the Engineer Officer appointed by the Corporation or its duly authorised representatives to direct, supervise and be in charge of the services for the purpose of the Contract. For the purpose of this contract to be awarded through this NIB, the following Officials shall perform as Engineer-In-Charge during the period mentioned.

A. **Executive Director(C&P)**, NEEPCO, Shillong or his authorized representative(s) (for contracts awarded from Corporate C&P Department) and **HOP/HOD/Tendering Authority** or his authorized representative(s) (for contracts awarded from project sites/ other departments/ other Authorities) shall be the Engineer-In-Charge for tendering process till award including signing of Contract Agreement between the Owner and Contractor and acceptance of Performance Guarantee;

B. After award of Contract to the date of closure of contract or till fulfilment of any obligation under the Contract including arbitration, whichever is later:

Head of Design and Engineering Wing, NEEPCO Ltd., Guwahati

or his authorized representative(s) (for contracts awarded from Corporate C&P Department) and **Head of Design and Engineering Wing, NEEPCO Ltd., Guwahati/HOP / HOD of the respective Projects/ Plants/ Office Establishments or his authorized representative(s)** (for contracts awarded from project sites/ other departments/ other Authorities).

- 1.14 **"Representative of Engineer-in-charge"** shall mean the person(s) nominated from time to time by the Corporation/Engineer-in-Charge to perform such duties as may be assigned to him/them.
- 1.15 **"Expatriate"** shall mean any person who is not a resident of India but who is required in India for performance of this Contract with mutual consent in pursuance to the Contract.
- 1.16 **"Final Acceptance Certificate"** shall mean the certificate(s) to be issued according to Article 16 hereof.
- 1.17 **"Foreign Currency"** shall mean a Currency other than Indian Rupee.
- 1.18 **"INR"** means Indian Rupee.
- 1.19 **"Month"** shall mean Calendar month.
- 1.20 **"Off-shore Component"** shall mean the component of the Contract Price expressed and to be paid in foreign currency by the Owner for work done pursuant to the Consultancy Contract.
- 1.21 **"On-shore Component"** shall mean the component of the Contract Price expressed in Indian Rupees and to be paid in Indian Rupees by the Owner for work done pursuant to the Consultancy Contract.
- 1.22 **"Owner"** shall mean the North Eastern Electric Power Corporation Ltd. (NEEPCO) having its registered Office at Brookland Compound, Lower New Colony, Shillong-793 003, Meghalaya, India and shall include its successors and assigns.
- 1.23 **"Project"** shall mean the name of the Project as described in Project profile hereto for which the Consultants are required to provide the services.
- 1.11 **"Specifications"** shall mean more collectively all the terms and stipulations contained in the Contract Agreement, including, but not limited to, the General Terms and Conditions, Terms of Reference and Drawings and Tender Forms and Annexures, corrections and amendments thereto made in accordance with the Contract.
- 1.12 **"Week"** shall mean 7 (seven) consecutive days
- 1.13 **"Third Party"** means any person or entity other than the Government, the NEEPCO and the Consultant.

2. INTERPRETATION OF CONTRACT DOCUMENT

- 2.1 Special Conditions shall be read in conjunction with General Conditions.
- 2.2 In the Contract unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the Contract so requires. Words importing person shall include incorporated companies/registered association/body of individuals/firm of partnership as applicable in context thereof.
- 2.3 Where any provision of the General Conditions is repugnant to or at variance with any provision of the Special Conditions, then the provisions of the Special Conditions shall be deemed to override the provisions of the General Conditions and shall to the extent of such repugnancy or variation, prevail.
- 2.4 Wherever it is mentioned in the Contract that the Consultant shall perform certain work or provided certain facilities, it is understood that the Consultant shall do so at his own cost and the Contract Price shall be deemed to have

included the cost of such performances and provisions so mentioned.

2.5 Order of Precedence:

The several documents forming the Contract are to be taken as mutually explanatory of one another. However, in case of ambiguities or discrepancies, the same shall be explained and adjusted by the Engineer-in Charge who shall thereupon issue to the Consultant instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:

1. Contract Agreement
2. Contract Negotiation Agreement, if any
3. Terms of Reference (TOR) which includes Price Schedule & Payment Terms
4. Special Conditions of Contract
5. General Conditions of Contract
6. Instructions to Bidders and Forms & Data Sheets
7. Project Profile
8. Any other accepted document forming part of the contract.

3. ASSIGNMENT AND SUB-LETTING

3.1 Except as provided hereinafter, no part of the Contract or any share or interest therein shall in any manner or degree be transferred, assigned, or sub-let by the Consultant directly or indirectly to any person, firm or company whatsoever without the prior consent in writing of the Owner for which the Consultant shall give a written request to the Owner in advance of the proposed date of transfer, assignment or sub-letting. Such request for transfer, assignment or sub-letting shall contain:

- (a) its scope and estimated value in relation to the Contract Price;
- (b) experience of the transferee, assignee or sub-Consultant, in the related areas of work;
Within 2 (two) weeks of the date of the receipt of request for consent pursuant to this Article 3.1, the Owner, after evaluating the capability of the sub- Consultant, shall either give consent in writing thereof or communicate its refusal.
- (c) Notwithstanding anything to the contrary contained herein, the Consultant shall remain solely responsible for any transfer, sub-contract, sub-letting or assignment pursuant hereto.
- (d) Notwithstanding any transfer, assignment or sub-letting with the approval of the Owner as aforesaid, the Consultant shall be and shall remain solely responsible and liable to the Owner for the quality and observance of all the conditions of the Contract in all respects, as if such transfer, assignment or sub-letting has not taken place and as if the work so transferred, assigned or sublet has been done directly by the Consultant.
- (e) Any action taken by the Owner under this Article shall not relieve in any manner whatsoever the Consultant of any of his liabilities and obligations under the Contract including Time for Completion or give rise to any right to compensation/extension of time or otherwise.

4. LANGUAGE

4.1 The language of the Contract shall be English.

4.2 All further documents and also correspondence in respect of the Contract

- shall be in English.
- 4.3 The Owner's representative and the Consultant's representative shall be fluent in English.

5. GOVERNING LAW AND JURISDICTION

- 5.1 The Contract shall be construed and interpreted in accordance with and governed by the Laws of India.
- 5.2 Any action taken or proceedings initiated of any of the terms of this Agreement shall be only in the Court of Competent Jurisdiction under the Gauhati High, Guwahati, Assam.

6.0 SUFFICIENCY OF TENDER

- 6.1 The Consultant shall be deemed to have satisfied himself before signing of the Contract, as to the correctness and sufficiency of his tender for the Works and prices as stated in the Contract. The Contract Price (subject to the terms, conditions and assumptions set forth elsewhere in the Contract) shall, except in so far as is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper fulfillment of the Consultancy Services.

7.0 CONSULTANT'S REPRESENTATIVES

- 7.1 The Consultant shall appoint representatives with adequate power/authority to represent him/them and to participate on his/their behalf in periodical and other meetings at NEEPCO's office at ...(location of NEEPCO's premises/site to be specified)....., as and when required, at its own cost. The Consultant shall be bound by all the statements made /action taken by its representatives.

8 PATENT RIGHTS/ROYALTIES

- 8.1 The Consultant shall save harmless and indemnify the Owner at all times from and against all claims and proceedings for or on account of use of or infringement of any patent rights, design trademark or name or other protected rights in respect of the whole or any part of the Contract thereof and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 8.2 In the event of any claim being made or action brought against the Owner arising out of the matters referred to in this Article 8, the Consultant shall be promptly notified thereof and shall, within reasonable time thereafter, take over conduct and conclude all negotiations for the settlement of the same and in the event of any litigation that may arise therefrom, take over and conduct the same, failing which the Owner shall, at Consultant's expense, conduct the negotiations for the settlement of the same and any litigation that may arise therefrom. The Owner shall not, unless and until the Consultant shall have been notified and shall have failed to take over the conduct of the negotiations or litigations, make any admission, which might be prejudicial thereto. In the event of the Consultant taking over the conduct of any negotiations or litigations as aforesaid, the Owner shall have the right to be represented at such negotiations and litigations.
- 8.3 The Consultant shall, at his own cost, without prejudice to the provisions of this Article 8, have the right either to carry out such alterations or modifications of the designs or any part thereof which are necessary to avoid the infringement without affecting the efficient operation of the Consultancy

Services or to produce a right to permit the use of the infringing part of the Consultancy Services.

9 LABOUR AND COMPLIANCE WITH LABOUR / INDUSTRIAL AND OTHER LAWS

- 9.1 The Consultant shall, at its expense, ensure due compliance with all applicable and governing Indian laws including industrial and labour laws, rules and regulations and bye-laws both of the Central and the respective State Governments of India and all other local authorities and shall keep the Owner harmless and indemnified in respect thereof.
- 9.2 The Consultant shall ensure due compliance with the provisions of the relevant Minimum Wages Act, Payment of Wages Acts, Contract Labour (Regulation and Abolition) Act, Workmen's Compensation Act, E.P.F. Act, MP Act'52 and schemes thereunder and other labour / industrial laws in force. The Consultant will obtain a separate EPF Code No. and get registered with RPF.
- 9.3 Except as it may be otherwise expressly provided in the Contract, the Consultant shall indemnify the Owner including every member, Officer and employee of the Owner, and the Engineer-in-charge and his staff against all actions, proceedings, claims, demands, costs and expenses what-so-ever which may be made against all or any of them for or in respect of or arising out of any failure by the Consultant including its sub- Consultant in the performance of his obligations under the Contract. The Owner shall not be liable for or in respect of any damages or compensation payable by law or otherwise in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the Consultant or his sub-Consultant and the Consultant shall indemnify and keep indemnified at all times the Owner against all such damages and compensations and against all claims, damages, proceedings, costs, charges and expenses what-so-ever in respect thereof or in relation thereto.
If in respect of the aforesaid, any claim is made on the Owner, the Owner shall promptly notify the Consultant of the same and thereafter, the Consultant shall take over and be fully responsible for the defense or otherwise of such claim.
- 9.4 Should the Owner have to pay any money in respect of claims or demands as aforesaid, pursuant to an order of a court/tribunal or any Government or local Authority the amount so paid and the costs incurred by the Owner shall be charged to and be paid by the Consultant to the Owner and the Consultant shall not be at liberty to dispute or question the right of the Owner to make such payments. However, intimation of any such payments made by the Owner, shall be made to the Consultant.

10 WEIGHTS, MEASURES AND STANDARDS

- 10.1 All weights and measures, computations, computer programmes, plans, schedules, notes and drawings shall utilise the international metric system.
- 10.2 The standards which shall be used for structural calculations and materials, for shop drawings and for the determination of subsequent quantities, if any, shall be as specified in the Contract and if not specified, shall be the relevant best international engineering code/practice. Where such code/practice is not in the English language or is not readily available the Consultant shall at its cost furnish to the Owner 4 (four) copies thereof in English at least 1(one) month prior to the submission to the Owner of the relevant designs/drawings.

(This Sub-Clause is contract specific)

11 SUSPENSION OF WORK

- 11.1 The Consultant shall, on the written order of the Owner, suspend the progress of the Works or any part thereof for such time or times and in such manner as the Owner may consider necessary, and shall, during such suspension, properly protect and secure the Works so far as is necessary in the opinion of the Owner. The extra cost, including that occasioned by the subsequent resumption of work, incurred by the Consultant in giving effect to the Owner's instructions under this Article 11.1 shall be borne and paid by the Owner unless such suspension is:
- a) otherwise provided for in the Contract, or
 - b) necessary by reason of any default on the part of the Consultant,
- Provided that the Consultant shall not be entitled to recover any such extra cost unless he gives written notice of his intention to claim to the Owner within 28(twenty-eight) days of the Owner's order, the Owner shall determine such extra payment, which shall in his opinion be fair and reasonable. The Owner shall also consider extension of time to be granted for the completion of the Works on account of such period of suspension, which shall in the opinion of the Owner, be fair and reasonable. However, the Consultant shall not be entitled to any extension of time under this Article on account of any suspension where such suspension is covered by paragraphs (a) and (b) above.
- 11.2 If the progress of the Consultancy Services or any part thereof is suspended pursuant to Article 11.1 above and if permission to resume Work is not given by the Owner within 15 (fifteen) days from the date of suspension, then, unless the suspension is due to events in paragraphs (a) and (b) of Article 11.1 above, the Consultant may serve notice in writing on the Owner requiring permission within 7 (seven) days from receipt thereof to proceed with the Works or that part thereof in regard to which progress is suspended and, if such permission is not granted within that time, the Consultant may, by a further notice in writing to the Owner, elect or treat the suspension where it affects only part of the Works as an omission of such part of the Work or, where the suspension affects the whole of the Works, as an abandonment of the Contract by the Owner.
- 11.3 In the event of election by the Consultant pursuant to Article 11.2 above to treat a suspension by the Owner as an omission of part of the Works or as an abandonment of the Contract, the provisions of Article 16 shall be applicable for payments.
- 11.4 Notwithstanding anything to the contrary contained in this Article 11, the Consultant shall not be entitled to any extra payment and/or extension of time, if any suspension is of not more than continuous 5 (five) days duration, provided the aggregate period of such suspensions is not more than 15 (fifteen) days during the Time for Completion.

12 EFFECTIVE DATE - DATE OF COMMENCEMENT

- 12.1 The Effective date or Date of Commencement of the work shall be from the date of issue of Letter of Intent (LOI), provided that the following condition has been fulfilled from the date of notification:
- delivery to the Owner of the Contract Performance Guarantee pursuant to Article 18.1 hereof.

13 TIME FOR COMPLETION

The time for completion of the Consultancy services, as contained in the Detailed Bid documents shall be (completion period to be specified)..... months from the date of award of contract. The Consultant shall so organize his resources and perform his work as to complete it not later than the date agreed to. As such, the Contract shall expire when, pursuant to the provisions of NIB, the services would be completed in all respects. The completion schedule shall be the prime consideration with regard to responsiveness of the bidders. Bids considered non-responsive in respect of time of completion run the risk of rejection at examination stage of the bids.

14 EXTENSION OF TIME

- 14.1 The Consultant shall be responsible for performance of his services in accordance with the Consultancy services programme accepted by the Owner.
- 14.2 However, if the Consultancy services are delayed on account of the following events and affect the Time for Completion of the Works; suitable extension in completion period shall be given.
- i) Force Majeure as defined in Article 23, or
 - ii) Failure of the Owner to fulfill any of his obligations under the Contract.

15 WORKING HOURS

- 15.1 Subject to Indian laws and regulations, the Consultant is authorized to work day and night, as well as on Sundays and/or festival days, provided that it makes payment of all sums due therefor to its labour and personnel.

16 FINAL ACCEPTANCE CERTIFICATE/ COMPLETION CERTIFICATE

- 16.1 Final Acceptance Certificate shall be issued by the Engineer-in-Charge to the Consultant after 15 (fifteen) days of successful completion of the Consultancy Services in all respect as defined in TOR.

17 EXTENSION OF GENERAL LIABILITY

- 17.1 Except as otherwise specifically provided in the Contract, neither party shall be liable to the other party for any indirect or consequential loss/damage, including damages for loss of profit or use of the Works, provided however, that the aforesaid shall not be construed so as to relieve either party from its obligations under the Contract and the Consultant from his liability for liquidated damages in accordance with the provisions of the Contract.
- 17.2 In all cases, the party establishing a breach of Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that he can do so without unreasonable inconvenience or cost.
- 17.3 In the event of any claim being made against the Owner or any liability arising on the part of the Owner in respect of which the Consultant may be liable under the Contract, the Consultant shall be promptly notified thereof, and he may, at his own expense, conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The holding by the Consultant of such negotiations or litigation shall be conditional upon him/them, having first given to the Owner such reasonable security as shall, from time to time, be required by the Owner to cover the amount ascertained or agreed or estimated as the case may be, of any compensation, damages, expenses and costs for which the Owner may become so liable. The Owner

shall, at the request of the Consultant, afford all available assistance for any such purpose and shall be repaid all reasonable costs incurred in so doing.

18 CONTRACT PERFORMANCE GUARANTEE

- 18.1 The Consultant shall, for due performance of the Contract, within a period of 21 (Twenty One) days from the date of issue of Letter of Intent (LOI), deliver to the Owner a Contract Performance Guarantee in the form of Bank Guarantee(s) for an amount equal to 10% (Ten percent) (The value has been reduced to 3% of the value of the contract till 31-03-2023 as per MOF, DOE O.M No. 9/4/2020-PPD Dtd. 12-11-2020 & 30-12-2021) of the Contract Price in the respective currencies in the form set out in **Appendix-CCI**. Bank Guarantee(s) for amounts expressed in Indian Rupees shall be issued by an Indian Nationalized / Scheduled bank or a foreign bank notified as a Scheduled bank under the provisions of the "Indian Banking Companies Regulation Act." through any of its branches in India. Bank Guarantee(s) in currencies other than Indian rupees shall be acceptable only if these are issued by a bank of international repute from its branches outside India or by an authorised dealer in India as per guidelines of the Reserve Bank of India from time to time.
- 18.2 The Contract Performance Guarantee shall be released to the consultant without interest, after he duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations including the warranty under the contract. The Bank Guarantee(s) shall remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the consultant, including warranty obligations. No interest shall be payable to the Consultant by the Corporation against the Contract Performance Guarantee.
- 18.3 Should the contract period, for whatever reason be extended, the consultant, shall at his own cost, get the validity period of Bank Guarantee in respect of Contract Performance Guarantee furnished by him extended and shall furnish the extended / revised Bank Guarantee to the Owner, 30 (thirty) days before the expiry date of the Bank Guarantee originally furnished.
- 18.4 The cost of complying with the requirements of this Clause shall be borne by the Consultant.

19 PAYMENT AND CERTIFICATES

- 19.1 Non-recoverable Down payment
The Consultant shall be entitled to a Non-recoverable down payment, equal to 10% (Ten percent) of the Contract Price, within 21 (Twenty One) days after receipt of request from the Consultant to the Owner (Engineer-in-Charge) alongwith Bank Guarantee(s) for the equivalent amount alongwith interest @ SBI MCLR 1 YR plus at least 5% (**Marginal Cost of Funds based Lending Rate**) in the respective currencies in the form set out in **Appendix-CCII**.
Bank Guarantee(s) for amounts expressed in **Indian Rupees (INR)** shall be issued by an Indian Nationalized Bank/Schedule bank or a foreign bank notified as a Scheduled bank under the provisions of the "Indian Banking Companies Regulation Act." through any of its branches in India. Bank Guarantee(s) in currencies other than Indian Rupees shall be acceptable only if these are issued by a bank of international repute from its branches outside India or by an authorised dealer in India as per guidelines of the

Reserve Bank of India from time to time.

19.2 Final Payment

19.2.1 Balance 90% (Ninety percent) of the payment shall be released to the Consultant as per Schedule of Payment stipulated under Terms of Reference (TOR) of Bid Document.

19.3 Deduction from Contract Price:

- a. Costs, charges, damages or expenses of any nature for which the Consultant is liable to the Owner under the Contract shall be deducted by the Owner from payments of the Contract Price or any amount due on any other account to the Consultant from the Owner and/or shall be recoverable by invoking/enforcing one or more of the Bank Guarantees furnished by the Consultant. Such deduction shall constitute a valid discharge of the obligation of the Consultant to make the payment to the Owner.
- b. Taxes as applicable as per the Central & State Govt. directive shall be deducted at source from the bill of the Consultant by the Owner. Claim for exemption if any, shall be supported by necessary exemption certificates by the Consultant well before time.

19.4 All payments for the Consultancy Contract shall be made by the Head of Finance of D&E Department, NEEPCO Ltd. Guwahati or respective Project / Plant / Office of NEEPCO Ltd., who shall release the payment based on certification by the Engineer-in-Charge.

19.5 All payments shall be released within 30 (thirty) days from the date of submission of the technically clear bill by the Consultant, subject to acceptance by the Engineer-in-Charge.

19.7 Mode of Payment: All payments due to the Consultant shall be disbursed under e-payment system. The Engineer-in-Charge or his authorised representatives will verify and certify the Consultant's bills, indicating payment instructions (full bank details) for disbursement. The successful Bidder shall have to furnish the following information for receiving payment against the Consultancy services through e-payment system:

1.	Name of Beneficiaries	2	Name of Bank
3.	Branch of Bank	4.	IFSC Code of the Branch
5.	Account Number	6.	City/Town
7.	Fax and Telephone Numbers	8.	E-mail address.

19.8 **Withholding Payments:** The Corporation may withhold the whole or part of any payment for the work claimed by the Consultant, which in the option of Corporation is necessary to protect itself from loss on account of:

- a. Defective work not remedied or guarantees not met;
- b. Failure by the Consultant to make due payments for materials or labour employed by him;
- c. Claims filed against the Consultant;
- d. Loss to another Consultant directly employed by the Corporation;
- e. Insufficient progress;
- f. Damage or loss of property or equipment of the Corporation;
- g. Non-return of materials/equipment supplied by the Corporation when the same is due; and

h. If legal case is instituted by the local/government for default of the Consultant.

When the grounds for withholding payments are removed, payments of the amount due to the Consultant shall be made by the Corporation without delay.

19.9 **EXTRA ADDITIONAL COST:** In case of any change of scope of work/ services during execution of Contract as may be deemed necessary, the Consultant shall be paid for extra/additional cost at mutually accepted rates to be derived from similar milestone payments.

20 PRICE ADJUSTMENT

The Contract price shall remain firm till 18 (eighteen) months reckoned from Zero date i.e. the date of placement of Letter of Award. No price adjustment shall be entertained by NEEPCO during this period. However, after the stipulated period of 18 (eighteen) months including the period of extension of time for reasons not attributable to the Consultant, the price adjustment shall be allowed as per the following formula:-

R	=	$R_0 (0.15 + 0.85I/I_0)$, where
R	=	Revised amount beyond 18 (eighteen) months
R_0	=	Amount of service beyond 18 (eighteen) months. This amount shall consist of a) On-shore components or b) Off-shore components.
I_0	=	a) Consumer Price Index (General) for Urban employees (All India) on the month ending 18 (eighteen) months, as published in monthly bulletin of Reserve Bank of India, for On-shore component. b) Consumer Price Index pertaining to wages and salaries of the Consultant's Industry, as prevailing in the Consultant's country of origin for Off-shore components (to be clearly stipulated by the bidders while submitting bids).
I	=	a) Consumer Price Index (General) for Urban employees (All India) as on the date prevailing on the month of work done for On-shore components. b) Consumer Price Index pertaining to wages and salaries of the Consultant's Industry, as prevailing in the Consultant's country of origin for Off-shore components (to be clearly stipulated by the bidders while submitting bids) on the date prevailing on the month of work done.

21 TAXES/DUTIES/LEVIES ETC.

21.1 The Consultant shall be responsible for payment of all Taxes/Duties/Levies etc. as applicable under prevailing laws, rules and guidelines of the Central Government and respective State Government of India. The Consultant's prices are deemed to be inclusive of all such taxes/duties/levies etc.

21.2 In addition to the liabilities to be borne by the Consultant pursuant to Articles 21.1, all taxes, duties, fees or levies of any kind, whatsoever, including income taxes and surcharge thereon on the income of expatriate personnel

of the Consultant, customs duty, excise duties, service tax, sales tax of any kind including sales tax on Works Contract, and octroi of any kind, whether payable in India or anywhere outside India, either by the Consultant or its expatriate personnel as a consequence of or incidental to the Consultant's performance of the Contract and/or on or in respect of all imported/locally procured supplies and equipment forming part of the Consultancy Services are included in the Contract Price and shall be borne by and be the liability of the Consultant and shall be paid directly by the Consultant to the relevant Authorities.

- 21.3 If direct payment of taxes, duties etc. which are the liability of and are to be borne by the Consultant as above, is not permitted by Indian law or regulations and/or if any deduction or withholding in respect of such taxes, duties etc. shall be required to be made, the Owner shall pay the sums due to the Consultant after making such deduction or withholding as may be required by the relevant law/regulations and the Consultant shall receive only the net sum available after such deduction/withholding. The sums so deducted/withheld shall be deposited by the Owner with the relevant Authorities on behalf of the Consultant, as per applicable law/regulation. Immediately thereafter, the Owner shall inform the Consultant of the detailed calculations of such deductions and shall provide the Consultant with the corresponding receipts from the tax authorities.
- 21.4 The Consultant and all its expatriate personnel shall be responsible for timely and prompt filing of all returns, documents, estimates, accounts, information and details complete and accurate in all respects as may be required under the applicable laws/regulations in India by the appropriate Authorities in India. In case the Consultant or any of its expatriate personnel do not comply with the above requirements, which results in any penalty, interest or other liability, the same shall be solely borne by the Consultant.
- 21.5 Each party hereby agrees to indemnify and keep indemnified and saved harmless at all times the other party against any loss, cost, expense or damage suffered or incurred by it by reason of the party which has failed to pay taxes, duties/levies etc. which it is obliged to pay pursuant to the provisions of this Article 21 and/or arising out of its failure to comply with its obligations under such provisions.

22 DEFAULT OF CONSULTANT

- 22.1 If the Consultant becomes bankrupt, or has a receiving order made against him or shall present his petition in bankruptcy, or shall make an arrangement with or assignment in favour of his creditors, or shall agree to carry out the Contract under a Committee of inspection of his creditors, or being a Corporation, shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or a petition for winding up is filed by or against the Consultant, or if the Consultant shall assign the Contract without the prior consent in writing of the Owner, or shall have an execution levied on his goods, or if the Engineer-in-Charge shall certify in writing to the Owner that, in his opinion, the Consultant has abandoned the Contract,
- Then the Owner may, after giving 8 (eight) days notice in writing to the Consultant, expel the Consultant therefrom without thereby voiding the Contract or releasing the Consultant from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Owner or the Engineer-in-Charge by the Contract, and may himself complete

the Works or may employ any other Consultant to complete the Works at the risk and cost of the Review Consultant.

22.2 If the Owner expels the Consultant under this Article 22, he will not be liable to pay to the Consultant any money on account of the Contract and thereafter until the costs of execution and maintenance, damages for delay in completion, if any, and all other expenses incurred by the Owner have been ascertained and the amount thereof has been received by the Owner. The Consultant shall then be entitled to receive only such sum or sums, if any, as the Engineer-in-Charge may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Consultant on due completion by him, then the Consultant shall, upon demand, pay to the Owner the amount of such excess and it shall be deemed a debt due by the Consultant to the Owner and shall be recoverable accordingly by the Owner from the amounts realised by en-cashing the Contract Performance Guarantee or other Guarantees or otherwise recovered from the Consultant, including from money due to the Consultant on any other account, whatsoever.

22.3 The Design and Consultant shall not neglect to execute the works with due diligence and expedition or shall not refuse or neglect to comply any reasonable orders given to him, in writing, by the Engineer-in-charge in connection with the works or shall not contravene the provisions of the Contract.

23 FORCE MAJEURE

23.1 In the event of either party being rendered unable by Force-Majeure to perform any obligation required to be performed by them under the Contract, 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 the effect of the force majeure event lasts. During the Force Majeure, the cost and loss sustained by either party shall be borne by the respective parties. Each party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

23.2 In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- iv) munitions of war, explosive materials, ionising radiation or

- contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- v) natural catastrophes such as earthquake, hurricane/ Cyclone, floods, lightning, typhoon or volcanic activity.
- 23.3. Upon the occurrence of any such cause, and upon its termination, the party alleging that it has been rendered unable, as aforesaid, shall notify the other party in writing immediately, but not later than 72 (seventy two) hours of the alleged beginning and ending thereof. Within 15 (fifteen) days after ending of such occurrence, a communication shall be given to the other party, giving full particulars and satisfactory evidence in support thereof.
- 23.4 Time for performance of the relative obligation suspended by the force majeure shall stand extended pursuant to Article 14 hereof to the extent the effect of such occurrence affects the overall completion schedule of the Consultancy services i.e. TIME FOR COMPLETION.

24 SETTLEMENT OF DISPUTES

- 24.1 If a dispute of any kind, whatsoever, arises between the Corporation and the Consultant in connection with, or arising out of, the Contract or the execution of the services under the said Contract, whether during the execution of the work or after completion thereof and whether before or after repudiation or otherwise termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer in-Charge, such reference shall state that it is made pursuant to this Clause. Not later than 60 (sixty) days after the day on which he receive such reference, the Engineer in-Charge shall give notice of his decision to the Consultant. Such decision shall state that it is made pursuant to this clause.

Unless the Contract has already been repudiated or terminated, the Consultant shall, in every case, continue to proceed with the services with all due diligence and the Consultant and the Corporation shall give effect forthwith to every such decision of the Engineer in-Charge, unless and until the same shall be revised, as hereinafter provided, or by amicable settlement or through a settlement agreement / an arbitral award.

If the Consultant is not satisfied with any decision of the Engineer in-Charge, or if the Engineer in-Charge fails to give notice of his decision on or before the 60th (sixtieth) day after the day on which he receives the reference, then the Consultant may, on or before the 45th (forty fifth) day after the day on which he receives notice of such decision or on or before the 45th (forty fifth) day after the day on which the said period of 60 (sixty) days expires, as the case may be, give notice to the Corporation of his intention to refer the matter in dispute to either Conciliation under Sub-clause 24.3 or Arbitration under Sub-clause 24.4 as hereinafter provided. Such notice shall establish the entitlement of the party giving the same to commence Conciliation / Arbitration, with regard to such dispute which is subject to Sub-clause 24.3 or 24.4, which stipulates that no Conciliation/ Arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer in-Charge has given notice of his decision with regard to a matter in dispute to the Consultant and no notice of intention to commence Conciliation / Arbitration with regard to such dispute has been given by the

Consultant on or before the 45th (forty fifth) day after the day on which the parties receive notice with regard to such decision from the Engineer in-Charge, the said decision shall become final and binding upon the Consultant. Thereafter, such issues shall not be subjected to either Conciliation or Arbitration.

24.2 Amicable Settlement:

In case a dispute remains unresolved following the decision of the Engineer in-Charge i.e. where notice of dissatisfaction has been given under Sub-Clause 24.1 above, the Parties shall attempt to settle the dispute amicably before the parties can take recourse to either Conciliation or Arbitration, as hereinafter provided. However, unless both Parties agree otherwise, Conciliation or Arbitration proceedings may be commenced on or after 30(thirty) days of the notice of dissatisfaction even if the dispute remains unresolved through amicable settlement.

24.3 Conciliation mechanism for dispute resolution:

(Applicability of this provision shall be guided by Corporate Policy of the Corporation as resolved in 273rd NEEPCO's BOD meeting dtd. 19-09-2022. Accordingly, this provision shall be applicable for the amount involved in the dispute / claim amount of more than or equal to Rs. 5 Crore, below which it would not go into the exercise of conciliation, based on Para 4.3 of SOP of MOP's O.M. No. 11/22/2021-Th.II dated 29-12-2021)

If amicable settlement has not been reached within the period stated in Sub-Clause 24.2 above, then the Parties may either resort to Conciliation Mechanism for resolution of dispute through Conciliation Committee of Independent Experts (CCIE) constituted by the Ministry Power, Government of India (MoP) or take recourse to Arbitration.

The dispute resolution by Conciliation process through Conciliation Committee of Independent Experts (CCIE) shall be proceeded as per the procedure, terms and conditions as included in the MOP's O.M. No. 11/22/2021-Th.II dated 29-12-2021. The Parties shall equally bear all expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc., as per said O.M. No. 11/22/2021-Th.II dated 29-12-2021 of MoP. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle and dispute(s) between the Parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism has been exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.

After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

24.4 Arbitration:

If amicable settlement has not been reached within the period stated in Sub-Clause 24.2 above and the Contractor opts for Arbitration instead of Conciliation, then the dispute shall be finally settled through Arbitration as below:

- (i) A dispute with an Indian Consultant shall be settled by Arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) and its subsequent amendments from time to time and any rules made there under and to such other order or orders, instructions issued by the Government of India from time to time in this connection. The Arbitration Tribunal shall consist of a Sole Arbitrator to be appointed by the Chairman and Managing Director of NEEPCO or by his duly authorised representative out of a Panel of names of three Arbitrators, proposed by him and selected by the Consultant. For the purposes of the Sub-clause, the term "Indian Consultant" means a Consultant who is registered in India and is a juristic person created under Indian law as well as Joint Venture between such a Consultant and a Foreign Consultant.
- (ii) The parties to the dispute, prior to referring the dispute to the Arbitrator/or Arbitrators as the parties may mutually decide, first drawn up the specific terms of reference/issues by way of a separate Joint Agreement, which shall be filed before the Arbitrator or Arbitrators for commencing the proceedings.
- (iii) The expenses of the arbitration, as determined by the Arbitral Tribunal, shall be shared equally by the Corporation and the Contractor. However, the expenses incurred by each Party in connection with the preparation, presentation etc. of its case prior to, during and after the arbitration proceedings shall be borne by each party itself.
- (iv) The reference to Arbitration may proceed notwithstanding that the services shall not then be or be alleged to be complete, provided always that the obligations of the Corporation and the Consultant shall not be altered by reason of the Arbitration being conducted during the progress of the services. Notwithstanding anything to the contrary contained herein, the work under the Contract shall continue during the pendency of any disputes or differences in arbitration proceedings and no payment due from the Owner shall be withheld on account of such proceedings, except to the extent which may be in dispute, and the Owner shall be entitled to make recoveries of amounts, if any, due from the Consultant, as per the provisions of the Contract.

- (v) Arbitration proceedings shall be held at Shillong / Guwahati and the language of the Arbitration proceedings and that of all documents and communications between the parties shall be English.
- (vi) In the event of dispute or differences arising between NEEPCO and a Government Department/Organisation or in between NEEPCO and another Central Public Sector Enterprise (CPSE), settlement of disputes through the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) shall be done as under:
"In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/ Organisations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018".
- (vii) The Arbitrator appointed shall have no power to award interest on any claim referred to the Arbitration. No claims for interest or damages on whatsoever count will be entertained by the Corporation with respect to any dispute, difference or misunderstanding between the Corporation and the Consultant.
- (viii) Issues/Disputes arising out of the same cause of action cannot in any case be referred to Arbitration more than once subject to agreement by all the parties including Arbitrator.

25. NOTICE

All certificates, notices or orders to be given by either party to the other shall be valid when given in writing by mail, first class postage pre-paid, or by Facsimile or delivery against receipt to the following address:

To:

... (the concerned Department)....

The NORTH EASTERN ELECTRIC POWER CORPORATION LIMITED,
Address-----

The Consultant:

or such other address(s) as either party may notify from time to time to the other.

26. SECRECY

- i) All information, data and drawings furnished/disclosed by the Owner to the Consultant and all drawings, calculations, models, technical information and the like supplied by the Consultant to the Owner, or the Owner's representative will be treated by the Consultant and its agents, sub-Consultant and servants as confidential, and shall not be used by any of them without the prior written consent of the Owner, except in connection

- with the execution, operation and maintenance of the Works.
- ii) The Consultant shall take necessary steps to ensure that all persons employed on the Consultancy services in connection with the Contract have noted that the Indian Official Secrets Act, 1923 (XIX of 1923) applies to them and shall continue so to apply even after the performance of such Consultancy services under the Contract.

27. WAIVER AND SEVERABILITY

- 27.1 Non-enforcement by either party of any of the provisions of this Contract shall not operate as or constitute a waiver of the provision itself or any subsequent breach thereof.
- 27.2 The validity of the Contract shall not be affected should one or more of its stipulations be or become legally invalid, as long as such stipulation is severable from and not fundamental to the obligations of either party to this Contract. In such case, the parties shall negotiate in good faith to replace the invalid Article/Clause by a stipulation which is in accordance with the applicable law and which shall be as close as possible to the parties' original intent.

28 GENERAL

- 28.1 Save and except as expressly provided elsewhere in this Contract, all costs, expenses, charges and liabilities for the completion of the Works in accordance with the Contract and/or for the due and faithful performance and/or the fulfillment of all of the Consultant's obligations under the Contract, including furnishing of Bank Guarantees to the Owner pursuant to the Contract shall be to the account of and be borne by the Consultant and shall be deemed to be included in the Contract Price and the Owner shall not be liable in any manner, whatsoever.
- 28.2 Whenever any claim whatsoever for the payment of a sum of money to the Owner arises out of or under this Contract against the Consultant, the same may be deducted by the Owner from any sum then due or which at any time thereafter may become due to the Consultant.
- 28.3 The Owner further reserves the right to enforce recovery of any overpayment when detected, notwithstanding the fact that the amount of the final bill may be included by one of the parties as an item of dispute before Conciliation Committee /Arbitrators appointed under Article 24 of this Contract and notwithstanding the fact that the amount of the final bill figures in the arbitration award.
- 28.4 The Consultant/Sub-Consultant shall identify environmental aspects, occupational and health hazard of its activities/operations which it can control and those that it can influence taking into account of significance. The Consultant/Sub-Consultant shall also plan those operations/activities that are associated with the identified significance and demonstrate with appropriate policy, objectives and operation control.
- 28.6 The Consultant/Sub-Consultant shall identify applicable legal and other requirements to which it subscribes and communicates to NEEPCO from time to time with respect to its compliance.

29. DUTIES AND POWERS OF ENGINEER-IN-CHARGE AND HIS REPRESENTATIVES

- 29.1 The duties of the Representative of the Engineer-in-Charge are to watch and supervise the services and to examine any workmanship employed in connection with the Consultancy services.
- 29.2 The Engineer-in-Charge may, from time to time in writing delegate to his representative, any of the power and authority vested in the Engineer-in-Charge and appoint officers at site to assist his representative and shall furnish to the Consultant a copy of all such written delegation of power and authorities. Any written instruction or any written approval given by the Representative of the Engineer-in-Charge to the Consultant within the term of such delegation shall bind the Consultant and the Corporation as if it has been given by the Engineer-in-Charge.
- 29.3 If the Consultant is dissatisfied with any decision of the Representative of the Engineer-in-Charge, he will be entitled to refer the matter to the Engineer-in-Charge who shall there upon confirm, reverse or vary such decision and the decision of the Engineer-in-Charge in this regard shall be final and binding on the Consultant.
- 29.4 **TECHNICAL DATA AND INFORMATION:** Any technical data and information related to the Consultancy services, which may be available with the Owner and required for the work under the Consultancy Services shall be furnished to the Consultant. Any additional information available with the Owner, as may be required by the bidder during preparation of bids, may be obtained through written request to the Owner or on the other hand, NEEPCO shall endeavor to supply the same. However, it is the duty of the Consultant to check availability, quality and suitability of this information.

30. LIQUIDATED DAMAGES FOR DELAY

- 30.1 If, for reasons attributable to the Consultant, the Consultancy Services are not completed within the time for completion, NEEPCO shall be entitled to liquidated damages (which is a pre-estimate of the loss/damage NEEPCO would have suffered on account of delay) and the said damages shall be payable by the Consultant on demand without there being any proof from NEEPCO of the actual loss and damages caused by such delay and all sums payable by way of liquidated damages shall be considered a reasonable compensation without reference to the actual loss and damage which shall have been suffered by NEEPCO on account of such delay and not as a penalty.
- 30.2 The liquidated damages shall be payable for delay in completion of Services @ $1\frac{1}{2}$ % (Half percent) of the Contract Price per week of delay or part of week of delay, subject to a maximum of 10% of the Contract Price. Such Liquidated Damages shall be effected from the progress payment of work or any other payment due to the Consultant under this or any other contract with the Corporation.

31. FORECLOSURE OF CONTRACT

If, at any time, the NEEPCO decides to abandon or reduce the scope of Works for reason whatsoever and hence does not require the whole or any part of the Consultancy Services to be carried out, NEEPCO shall give notice in writing to that effect to the Consultant and the Consultant shall have no claim to any payment of compensation or otherwise, whatsoever, on account

of any profit or advantage which he might have derived from the performance of the Consultancy Services in full but which he could not in consequence of the foreclosure of the whole or part of the Services.

32. EFFECT OF CHANGES IN LAW

The Contract price specified in Price Schedule for the Consultancy Services, is based on the taxes, duties, levies and all other charges prevailing 28 (twenty eight) days prior to the latest date for submission of Techno-Commercial bids. If rates of any Taxes, duties, levies are increased or decreased, or if a new Tax is introduced in India only, or if an existing Tax is abolished, or any change in interpretation or application of any Tax resulting from a change or introduction in India only due to any National or State Statute, Ordinance, Decree or other law or any regulation or bye-law of any local or other duly constituted Authority in India only, occurs in the course of performance of the Contract, which was or will be assessed on the Consultant in connection with the performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be. These adjustments would be restricted to direct transactions between the Owner and the Consultant. However, no adjustment of the Contract price shall be made on account of variation in deemed export benefits, if any.

33 CONSULTANT'S WORK PROGRAMME

- 33.1 Within 15 (fifteen) days of the date of award of Contract, the Consultant shall submit to the Owner a Work Programme showing the order of procedure in which he proposes to carry out the Consultancy services for completing the Services as per Scope of Works within the specified time for completion for approval of the same by the Owner. This approved Programme shall form a part of the contract and shall be monitored closely. The Consultant would make himself available for any monitoring meeting that is convened by the Engineer-in-Charge.

34 CONSULTANT'S LIABILITY

- 34.1 The Consultant shall perform the Consultancy Services for which he was contracted in full, in due time and in agreement with acknowledged quality standards. In this regard, the Consultant shall be liable for any and all breaches of contract for which he is accountable.
- 34.2 The liability of the Consultant for negligence shall be limited to the Contract Sum. This shall not affect the liability for premeditation and gross negligence.
- 34.3 The Consultant's liability shall expire on the issue by the Owner of the Final Completion Certificate in accordance with Article 16 hereof.
- 34.4 The Consultant shall be responsible for performing the Scope of work as described in Terms of Reference (TOR) of the Bid Document.
- 34.5 The Consultant shall exercise all reasonable skill, care and diligence in execution of the work and shall carry out his responsibilities in accordance with recognised professional standards.

35 INSURANCE

The Consultant shall undertake the following minimum insurance during the period of the Contract:

- a) professional liability insurance

- b) personal liability insurance
- c) equipment insurance covering loss of or physical damage to all equipment acquired/used within the context of the Consultancy services.
- d) motor vehicle third party liability insurance and motor vehicle comprehensive insurance for the vehicles acquired in connection with the Consultancy services.

The insurances shall be undertaken by the Consultant at his expense.

36 EXPATRIATE PERSONNEL AND INTERNATIONAL EXPERTS

The Consultant shall be allowed to use expatriate personnel and International Experts as he deems necessary for execution of the Consultancy work. No extra charge would be entertained by the Owner on this account.

37 MONTHLY PROGRESS REPORT

The Consultant shall prepare a Monthly Progress Report to be provided to NEEPCO.

APPENDIX-CCI

PROFORMA FOR BANK GUARANTEE FOR CONTRACT PERFORMANCE

(To be stamped in accordance with stamp Act)

Ref:..... Bank Guarantee No.....

Date:.....

To,

The Executive Director (Contracts & Procurement),
North Eastern Electric Power Corporation Ltd.,
Brookland Compound,
Lower New Colony,
Shillong – 793 003
Meghalaya,
India

Dear Sirs,

In consideration of the North Eastern Electric Power Corporation Ltd., Shillong (hereinafter referred to as the 'Owner' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. _____ with its Registered / Head Office _____ (hereinafter referred to as the 'Consultant' which expression shall unless repugnant to the context or meaning thereof, includes its successors, administrators, or and assigns) a Contract by issue of Owner's Letter of Intent No. _____ Dated _____ valued at _____ for _____ (scope of Contract) and the Consultant having agreed to provide a Contract performance Guarantee for the faithful performance of the entire Contract equivalent to _____ (percent) of the said value of the Contract to the Purchaser.

We _____ (name & address of the bank) at _____ (hereinafter referred to as the "Bank", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors or and assigns) do hereby guarantee and undertake to pay the Owner, on demand any and all money payable by the Consultant to the extent of Rs. _____* _____ as aforesaid at any time upto _____** _____ without any demure reservation, contest, recourse or protest and/or without any reference to the Consultant. Any such demand made by the Owner on the bank shall be conclusive and binding notwithstanding any difference between the Owner and Consultant or any dispute pending before any court, Tribunal, Arbitrator or any other Authority. The bank undertakes not to revoke this guarantee during its currency without prior consent of the Owner and further agrees that the guarantee herein contained shall continue to be enforceable till the Owner discharges the guarantee.

The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to extend time for performance of the Contract by the Consultant. The Owner shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Consultant, and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants, contained or implied, in the Contract between the Owner and the Consultant or any other course or remedy or security available to the Purchaser. The bank shall not be released of its obligations under

these presents by any exercise by the Owner of its liberty with reference to the matter aforesaid or any of them or by reason or any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter of thing whatsoever which under law would, but for this provision, have the effect or relieving the bank.

The Bank, further agrees that the Owner 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 Consultant and notwithstanding any security or other guarantee that the Owner may have in relation to the Consultant's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to Rs. _____ (Rupees _____) only and it will remain in force upto and including _____ and shall be extended from time to time for such periods as may be advised by the Owner who is the beneficiary under this guarantee and in the event if the Consultant fails to comply such extension with the validity period, this shall be treated as a claim by the Owner on the bank.

The liability or obligation of the Bank under this guarantee bond shall not be affected or suspended by any dispute between the Owner and the Consultant and the payment under this guarantee bond need not wait till the dispute is decided by the competent court or tribunal or any other authority and that any payment made by the bank to the Owner under this guarantee bond shall be deemed to have been rightfully and lawfully made.

The Bank also assures that the guarantee bond will not be discharged due to the change in the constitution of the Bank or the Consultant.

WITNESSES:

Signature

(Signature)

Name: _____

(Official Address)

(Designation with bank stamp)
Authority as per
Power of Attorney No. _____
Dated: _____

Note:

- * This sum shall be 10% (Ten percent) (The value has been reduced to 3% of the value of the contract till 31-03-2023 as per MOF, DOE O.M No. 9/4/2020-PPD Dtd. 12-11-2020 & 30-12-2021) of Contract Price.
- ** The date will be 60 (sixty) days after the end of the warranty period or as specified in the Contract. The stamp papers of appropriate value shall be purchased in the name of the Bank issuing the Guarantee.

APPENDIX-CCII

PERFORMA FOR BANK GUARANTEE FOR NON-RECOVERABLE DOWN PAYMENT

(On bank's head with adhesive stamps)

Ref:.....

Date:.....

No.:.....

Bank Guarantee No.

Date:.....

To,

The Executive Director (Contracts & Procurement),
North Eastern Electric Power Corporation Ltd.,
Brookland Compound,
Lower New Colony
Shillong – 793 003
Meghalaya,
India

Dear Sirs,

In consideration of the North Eastern Electric Power Corporation Ltd., Shillong (hereinafter referred to as the 'Owner' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns, having awarded to M/s. _____ with its Registered / Head Office _____ (hereinafter referred to as the 'Consultant' which expression shall unless repugnant to the context or meaning thereof, includes its successors, administrators, or and assigns a Contract, hereinafter referred to as the "Consultant" for the furnishing and erection of equipment packages, on terms and conditions set out, inter-alia in the Owner's Contract No. _____ Dated _____ valued at _____ (in words and figures) and the Owner having agreed to make an advance payment for the performance of the above Contract, to the Consultant amounting to _____* _____ (in works and figures) as an advance, against Bank Guarantee to be furnished by the Consultant, the said advance to be adjusted against the works to be performed by the Consultant.

We _____ (Name) _____ (address) hereinafter referred to as the "Bank", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns do hereby guarantee and undertake to pay the Owner, on demand any and all money payable by the Consultant by reason of any breach by the said Consultant of any or the terms of conditions of the said Contract, to the extent of _____ (in works and figures) till the said advance is adjusted as aforesaid at any time upto _____. We agree that the guarantee herein contained shall continue to be enforceable till the sum due to the Owner on account of the said advance is adjusted as aforesaid or till the Owner discharges this guarantee.

The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time vary the advance or to extend the time for performance of the works by the Consultant. The Bank shall not be released from its liability under these presents by any exercise of the Owner of the liberty with reference to the matter aforesaid.

The Owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Consultant, and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants contained or implied in the Contract between the Owner and the Consultant or any other occurs or remedy or security

available to the Owner and the Bank shall not be released of its obligations under these presents by any exercise by the Owner of its liberty with reference to matters aforesaid or any of them or by reason of any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever, which under law would, but for this provision, have the effect of relieving this guarantee.

The Bank, further undertakes not to revoke this guarantee during its currency without previous consent of the Owner.

The bank also agrees that the Owner shall at its option be entitled to enforce this guarantee against the Bank as a principal debtor, in the first instance, notwithstanding any other security or guarantee that it may have in relation to the Consultant's liabilities of the said advance.

Not withstanding anything contained herein above, this guarantee shall be irrevocable and our liability under this guarantee is restricted to _____*_____ (Amount) _____ and it will remain in force upto and including _____**_____ (Date)_____ and shall be extended from time to time for such periods as may be desired by the Owner who is the beneficiary that this guarantee and in the event if the Consultant fails to comply such extension with the validity period, this shall be treated as a claim by the Owner on the bank.

The liability or obligation of the Bank under this guarantee bond shall not be affected or suspended by the dispute between the Owner and the Consultant and the payment under this guarantee bond need not wait till the dispute is decided by the competent court or tribunal or any other authority and that any payment made by the bank to the Owner under this guarantee bond shall be deemed to have been rightfully and lawfully made.

The Bank also assures that the guarantee bond will not be discharged due to the change in the constitution of the Bank or the Consultant.

Dated this _____ day of _____ 20..

(Signature)

(Signature)

(Bank's Rubber stamps)

(Name)

Designation with

Bank Stamp _____

Authority as per Power

Of Attorney No. _____

Date: _____

(Official Address)

Note:

- * This sum shall be 10% (Ten percent) of Contract Price along with interest @ SBI MCLR 1 YR plus at least 5%.
- ** The date will be 60 (sixty) days after the end of the warranty period or as specified in the Contract. The stamp papers of appropriate value shall be purchased in the name of the Bank issuing the guarantee.