

**BID DOCUMENT**

**FOR INVITING TENDER FOR**

**SALE OF NATURAL GAS**

**FROM CHAKLASI FIELD**

**TENDER NO. CH/01/2021-22**

**HERMES TECHNOLOGIES PRIVATE LIMITED**  
**B - 84, GIDC, Electronics Zone, Sector -25,**  
**Gandhinagar, Gujarat**  
**Tel: +91 9687695220**  
**Email: [info@acdriveindia.com](mailto:info@acdriveindia.com)**

Dated: July 24, 2021

## NOTICE INVITING TENDERS (NIT) FOR GAS SALE FROM CHAKLASI FIELD

HERMES TECHNOLOGIES PRIVATE LIMITED (Company) has acquired the rights to sell natural gas from Chaklasi field under the contract awarded by M/s Oil and Natural Gas Corporation Limited for Production Enhancement Operations in Marginal Nomination Fields.

HERMES TECHNOLOGIES invites bids under 'Two Bid System' from interested prospective Gas Consumers for sourcing gas available for allocation on fall-back and as is where is basis as per following details:

|                            |   |  |
|----------------------------|---|--|
| Tender Number              | : | CK/01/2021-22  |
| Type of Tender             | : | Single Stage (Two Bid System)  |
| Name of the Field          | : | Chaklasi   |
| Location                   | : | Village Mahorel, Taluka Nadiad, District Kheda, Gujarat  |
| Delivery Point             | : | Marketing Header at Chaklasi#11  |
| Quantity Available         | : | 6,250 SCMD   |
| Delivery Pressure          | : | Upto 2 kg/cm <sup>2</sup>  |
| Gross Calorific Value      | : | Around 8,900 Kcal/SCM  |
| Net Calorific Value        | : | Around 8,000 Kcal/SCM  |
| Bid Submission Date        | : | August 16, 2021; 17:00 hrs   |
| Bid Validity               | : | 180 Days from Bid Submission Date  |
| Address for bid submission | : | HERMES TECHNOLOGIES PRIVATE LIMITED<br>B - 84, GIDC, Electronics Zone, Sector -25,<br>Gandhinagar, Gujarat<br>Tel : + 91-9687695220<br>Email: <a href="mailto:info@acdriveindia.com">info@acdriveindia.com</a> |

- This tender comprises of and governed by:
  - Annexure - I: Instruction to Bidders
  - Annexure - II: Bid Evaluation Criteria
  - Annexure - III: Model Gas Supply Agreement
  - Annexure - IV: Integrity Pact
- The bids are invited on two-bid basis. The first bid, which is a techno-commercial bid, will be opened to assess the technical & commercial eligibility of bidders and, subsequently, the second bid, which is the price bid, will be opened only of techno-commercially qualified bidders.

3. The reserve price of gas under the tender is USD 1.79/MMBTU on GCV basis ex-ONGC installation.
4. Prospective bidders can download the tender document from web-site [www.hermesdrives.com](http://www.hermesdrives.com). There is no tender fee to be paid. Tender will be available to download upto Bid Submission Date.
5. Queries/ clarifications shall be forwarded to Email: [info@acdriveindia.com](mailto:info@acdriveindia.com).
6. Bidder is required to furnish all details/requirements as per tender documents and Bid Evaluation Criteria (BEC) along with their bid for evaluation.

Sincerely Yours,

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<digital sign here>

**ANNEXURE -I****INSTRUCTIONS TO THE BIDDERS****A: INTRODUCTION****1.0 ELIGIBLE BIDDERS:**

1.1 The bid should be from users of gas, existing as well as new industries. There is no 'Sectoral Priority' and bids from all existing as well as new industries will be treated at par.

1.2 The bidder shall be responsible for obtaining all the required statutory/ regulatory compliances prior to gas offtake. Company shall not be liable for failure of the bidders to obtain such statutory/ regulatory compliances.

2.0 **SITE CONDITIONS:** The bidder shall acquaint himself with the proposed site of gas availability, its approach roads, working space available, water and power utilities, the Site Conditions, etc. before submitting the bids. The bidder shall study carefully the conditions of the tender document, to fully appreciate the Scope of Bid and Terms of Gas Supply vis-à-vis gas availability before submitting the bid. Submission of bid by bidder shall mean that bidder has fully studied and acquainted himself with the site conditions and the tender conditions.

3.0 **COST OF BIDDING:** The Bidder shall bear all costs associated with the preparation and submission of its bid, and ONGC & Company will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

4.0 The bidder is expected to examine all instructions, forms, and Terms of model Gas Supply Agreement provided in the bidding documents. Failure to furnish all information required by the bidding documents entails rejection of bid by Company without seeking any clarifications. Bids not conforming to Bid Evaluation Criteria (BEC) will result in the rejection of bid without seeking any clarifications.

**5.0 AMENDMENT TO BIDDING DOCUMENTS**

5.1 At any time prior to the deadline for submission of bids, Company may, for any reason, whether at its own initiative or in response to clarification(s) requested by prospective bidder(s), modify the bidding documents by amendment(s).

5.2 Such amendments shall be uploaded on the website where tender is uploaded.

5.3 In order to allow prospective Bidders reasonable time to take the amendments into account in preparing their bids, Company may, at its sole discretion, extend the deadline for the submission of bids.

**C. PREPARATION OF BIDS****6.0 LANGUAGE AND SIGNING OF BID**

6.1 The bid prepared by the bidder and all correspondence and documents relating to the bid exchanged by the Bidder and Company shall be written in English language.

6.2 The bid including all attached documents shall be signed by duly authorized representative of the bidding company.

6.3 The bidder shall clearly indicate their legal constitution, like, 'Certificate of Incorporation' issued by Registrar of Companies (in case of Pvt. Ltd. and public

company), notarised partnership deed (in case of partnership firm), declaration on non-judicial stamp paper by the proprietor (in case of proprietorship firm), etc. and the person signing the bid shall state his capacity and also source of his ability to bind the Bidder.

- 6.4 The copy of power of attorney consisting of adequate proof of the ability of the signatory to bind the bidder, shall be submitted with the bid. Company may reject outright any bid not supported by the same.

## 7.0 CLARIFICATION IN RESPECT OF INCOMPLETE OFFERS

- 7.1 Company has to finalize its Gas Sales Agreement within a limited time schedule. Therefore, Company may not seek any clarifications in respect of incomplete offers.

## 8.0 DOCUMENTS COMPRISING THE BID

- 8.1 Part I (1 hardcopy + 1 digital copy in CD/DVD/Pen-drive): The Techno-commercial bid shall comprise the following components:

- a) Bid/Application format for natural gas allocation at Appendix 1 to Annexure - I along with the documents mentioned in Appendix 1.
- b) Technical Bid at Appendix 2 to Annexure - I.
- c) Undertaking at Appendix 4 to Annexure - I.
- d) Bid Security as per Appendix 5/ Appendix 6 of Annexure - I.
- e) Documentary evidence establishing that that the Bidder meets all the criteria prescribed in the Bid Evaluation Criteria at Annexure-II.
- f) Integrity Pact at Annexure - IV
- g) Original Power of Attorney (when the power of attorney is a special "Power of Attorney" relating to the specific tender)/ notarized true copy (when Power of Attorney is a general Power of Attorney).
- h) **Sales Tax/VAT Registration:** Bidders should submit copy of valid registration certificate under the VAT/Sales Tax Act/Rules.

Above mentioned scanned documents shall be submitted in CD/DVD/Pen-drive along with Techno-commercial bid. **Price shall not be disclosed in Part I "Techno-commercial bid".**

- 8.2 Part II: The Price bid shall comprise the following components:

- a) Price Bid at Appendix 3 to Annexure - I.

## 9.0 Security Deposit (SD):

- 9.1 The Security Deposit (SD) is required to protect ONGC & Company against the risk of Bidder's conduct, which would warrant the security's forfeiture in pursuance to clause 9.5.
- 9.2 Bidder to submit along with techno-commercial bid, Security Deposit (SD) for the gas they have bid for based on the reserve gas price/ quantity quoted with applicable taxes. Successful bidder shall revise the Security Deposit (SD) (including applicable taxes & duties) to the allocation level at the Contract Price (higher of quoted/ matched premium plus applicable domestic gas price notified by MoP&NG, Govt. of India) and RBI reference rate of the previous month of allocation. Submission of such revised SD shall be pre-condition for

signing of GSA.

- 9.3 All bidders, without relaxation of any kind whatsoever, will have to provide Security Deposit (SD) as per conditions contained in 'Model Gas Supply Agreement' provided in Annexure-III.
- 9.4 Techno-Commercial Bids submitted without Security Deposit (SD) will be **ignored**.
- 9.5 The Security Deposit (SD) submitted by bidders shall be forfeited by ONGC in the following events:
- Bidder withdraws the bid during validity period or any extension duly agreed by the bidder.
  - Bidder varies or modifies the bid in a manner not acceptable to ONGC during the validity period or any extension thereof duly agreed by the bidder.
  - Non-signing of Gas Supply Agreement within 60 (sixty) days from date of Notification of Award (NOA) to the Bidder,
  - Bidder is disqualified from the tender process prior to award of contract according to the provisions under Section 3 of Integrity Pact.
  - On the occurrence of any other event as stipulated in the bid document.
- 9.6 The Security Deposit shall be liable to be invoked for encashment on a weekly basis in the event of delay in utilization of gas (as per usage promised in the bid).
- 9.7 On finalisation of the bidding process, Security Deposit (SD) of unsuccessful Bidders will be returned without carrying any interest.

Note: The bid security received via NEFT/RTGS/Electronic fund transfer, shall be refunded/returned as per tender conditions, to the same account from which payment of bid security was made to ONGC

- 10.0 **TELEX/ TELEGRAPHIC/ TELEFAX/ XEROX/ PHOTOCOPY BIDS:** Telex/ Telegraphic/ Fax/ Xerox/ e-mail/ Photocopy bids and bids with scanned signature will not be considered.

#### **D. SUBMISSION AND OPENING OF BIDS**

##### **11.0 SEALING AND MARKING OF BIDS.**

- 11.1 Bids are to be submitted in "Two Bid System", viz., Techno-Commercial Bid and Price bid.
- 11.2 The techno-commercial bid comprising of documents as per Article 8.1 above shall be put in sealed envelope super scribed as "Part I: Techno-commercial bid against Tender Number CK/01/2021-22".
- The price bid comprising of documents as per Article 8.2 above shall be put in sealed envelope super scribed as "Part II: Price Bid against Tender Number CK/01/2021-22".
- 11.3 Both sealed envelopes of "Part I: Techno-commercial Bid" and "Part II: Price Bid" should be placed in a common sealed cover and shall be clearly marked as following:
- Private & Confidential - To be opened by the Addressee only
  - Common cover for Tender Number: CK/01/2021-22

- c. Tender document for sale of natural gas from Chaklasi field
- d. Name & address of the bidder

11.4 Sealed tender document should be submitted by the Closing Date and to the address mentioned in Notice Inviting Tender. Timely delivery of tender to correct address is responsibility of bidder. Delivery to the wrong address or postal delays shall not be an excuse for late delivery.

11.5 Bids received after Bid Submission Date will not be accepted and unopened bid will be returned to bidder.

#### **E. EVALUATION OF BIDS**

12.0 **EVALUATION AND COMPARISON OF BIDS:** Evaluation and comparison of bids will be done as per provisions of Bid Evaluation Criteria enclosed at Annexure-II and as per quotations made in Part I - Techno-commercial Bid and Part II - Price Bid.

#### **F. AWARD OF ALLOCATION**

13.0 **AWARD CRITERIA:**

13.1 Company will award the allocation to the successful bidder as per the provisions of Bid Evaluation Criteria (BEC).

13.2 Company reserves the right to reject, accept or prefer any bid and to annul the bidding process and/or reject all bids at any time prior to award of allocation, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the ground for Company's action.

14.0 **NOTIFICATION OF AWARD (NOA):**

14.1 Prior to the expiry of the bid validity period, Company will notify the successful bidder in writing by email to be confirmed in writing by letter that its bid has been accepted.

14.2 The Notification of Award (NoA) will constitute the formation of the contract.

15.0 **SUBMISSION OF PAYMENT SECURITY:** Successful bidder shall submit payment security as per provisions of Model Gas Supply Agreement, Article 13.12 within 10 (ten) days from the date of NOA, failing which Company reserves the right to cancel the NOA and award the contract to another bidder.

16.0 **SIGNING OF CONTRACT/Agreement:** The successful bidder is required to sign a formal Gas Supply Agreement (GSA), as per Annexure III of the bid document, with ONGC on non-judicial stamp paper of appropriate value applicable for the place where from gas is to be supplied, within a maximum period of 60 (sixty) days of date of Notification of Award (NOA). Until the Gas Supply Agreement is signed, the NOA shall remain binding between two parties.

## Appendix-1 of Annexure-I

**Bid/Application format for natural gas allocation from Chaklasi field.**

The bidder should furnish the following details and confirmations in the bid and enclose necessary documents (signature may be affixed on all pages and documents).

| Sr. No. | Description   | Details/Remarks |
|---------|---|-----------------|
| 1       | Name of the bidder:   |                 |
| 2       | Registered Address:   |                 |
| 3       | Address of the location of the plant where gas is required:<br>(For existing consumer & the new industries can indicate the tentative location)   |                 |
| 4       | Status of the Plant: Green field/ Brown field   |                 |
| 5       | Telephone/fax/e-mail of bidder  |                 |
| 6       | If bidder is a company, then bidder to provide Company's registration details - date of Registration, date of incorporation, Registration number, etc. Enclose copies of certificate of incorporation (As per Companies Act, 1956 issued by Registrar of Companies).                  |                 |
| 7       | If bidder is a Partnership Firm, then bidder to provide details of Partnership firm along with notarized deed document and along with copies of CST/VAT/SSI certification.  |                 |
| 8       | If bidder is a Proprietary firm, then bidder to provide details of Proprietary firm along with a self-declaration on non-judicial stamp paper and along with copies of CST/VAT/SSI certification.   |                 |
| 9       | If bidder is a company, then bidder to submit Memorandum and Articles of Association of Company duly certified by Company Secretary or a Notary Public.   |                 |
| 10      | Audited Annual Accounts of the Firm/Company for last two financial years indicating Turnover and net-worth. Bidder to enclose a 'Certificate of compliance.<br>(The latest audited annual account should not be older than 18 months from the bid closing/un-price bid opening date). |                 |
| 11      | Confirm whether bidder is newly formed company i.e. one which has been incorporated in the last 05 years from the date of bid opening or a subsidiary company. Please refer Article 2.6 and 2.7 under Commercial Criteria of Bid Evaluation Criteria (Annexure-III).                  |                 |
| 11.1    | If yes, confirmation regarding submission of audited annual accounts of parent or Promoter company  |                 |
| 11.2    | If yes, please confirm submission of Corporate  |                 |



|    |  |  |
|----|--|--|
|    | Guarantee on parent or promoter company's letter head.   |  |
| 12 | Gas Use (purpose): Indicate the purpose for which natural gas that is bid for shall be used.   |  |
| 13 | Status of No Objection Certificates from State Electricity Board, R&B Department, State Pollution Board and other necessary statutory clearances for existing or new proposed plant. |  |
| 14 | Please confirm that you have read the Integrity Pact provided in "Annexure-IV" and signed on each page.  |  |

### Declaration

I, the Authorized signatory to this bid/offer, do hereby agree to and accept all the terms and conditions contained in the bid document.

(Signature of Authorized Signatory)

Name:

Designation:

Seal of the Company/Firm

Place:

Date:

Appendix -2 to Annexure-I.TECHNICAL BID

| Sr. No. | Description  | Quote       |
|---------|--|-------------|
| I       | Name of field/location   | Chaklasi    |
| II      | Gross Calorific Value of Gas (KCAL/SCM)  | 8,900       |
| III     | Gas Quantity under tender from the field (in SCMD)   | 6,250       |
| IV      | Reserve Gas Price, USD/MMBTU on GCV basis (at present)   | 1.79        |
| V       | Gas Quantity to be quoted by bidder (in SCMD)  | In figures: |
|         |  | In words:   |
| VI      | Number of days required by buyer to be ready to off-take gas from NOA date (no of days).                                   | In figures: |
|         |  | In words:   |
| VII     | FBIL ref. rate (June'21 Average) (1 USD = Rs.)   | 73.56       |
| VIII    | Pressure requirement (kg/cm <sup>2</sup> )   |             |
| IX      | Amount of Security Deposit(s) in INR for twelve weeks on reserve price and quoted quantity.                                | 28,81,000   |
| X       | Details of Security Deposit(s) for twelve week gas supply (BG/LC Nos./NEFT, RTGS, Electronic Fund Transfer details & Date) | 1.          |
|         |  | 2.          |
|         |  | 3.          |
|         |  | 4.          |
|         |  | 5.          |
|         |  | 6.          |
|         |  | 7.          |
|         |  | 8.          |

|  |  |     |
|--|--|-----|
|  |  | 9.  |
|  |  | 10. |
|  |  | 11. |
|  |  | 12. |

Conditions related to the Schedule:

1. The bidder to quote the required gas quantity in Standard Cubic Meter per Day. The same is to be quoted both in figures and in words.
2. Prevailing domestic gas price on GCV basis as fixed by Govt. of India from time to time is taken as reserve gas price. The reserve gas price is exclusive of all applicable statutory taxes and duties on sale of gas.
3. The bidder to submit their bid at sl.no. V for the gas quantity maximum upto the gas quantity on offer for sale. The bid for part gas quantity shall be considered for evaluation based on Bid Evaluation Criteria. The bid for part quantity shall be for minimum 4,000 SCMD.
4. The gas quantity offered is indicative and it may vary on either side i.e. it may increase or it may decrease, normally with a range of  $\pm 10\%$  of the indicated profile. The gas price will be applicable for actual supply of gas.
5. Bidder to quote the number of days required to be ready to off-take gas from NOA date. This should be equal or less than 365 (Three Hundred and Sixty-Five) days.
6. The above quotes should be clearly specified and quotation written in words will prevail in all cases.

Name & signature of the Bidder

.....

Date:

Appendix -3 to Annexure-I.PRICE BID

| Sr. No. | Description  | Quote         |
|---------|--|---------------|
| I       | Tender No.   | CK/01/2021-22 |
| II      | Name of field/location   | Chaklasi      |
| IV      | Reserve Gas Price USD/MMBTU on GCV basis (at present)                                  | 1.79          |
| V       | Quoted premium over Reserve Gas Price, (non-zero and positive) USD/MMBTU on GCV basis) | In figures:   |
|         |  | In words:     |

**Conditions related to the Price Bid Schedule:**

1. Prevailing domestic gas price on GCV basis as fixed by Govt. of India from time to time is taken as reserve gas price. The reserve gas price is exclusive of all applicable statutory taxes and duties on sale of gas.
2. The bidder to quote the non-zero and positive premium over Reserve Gas Price in USD/MMBTU on GCV basis. The same is to be quoted in figures (up to two decimal points) as well as words.
3. The above quote should be clearly specified and quotation written in words will prevail in all cases.

Name &amp; signature of the Bidder

.....

Date:

Appendix -4 to Annexure-I.Undertaking

As part of submission of bid against Tender No. CK/01/2021-22 for Gas Sale from Chaklasi field, I/ We undertake and confirm that:

- a. our unconditional validity of the bid is 180 (one hundred eighty) days from bid submission date
- b. our bid is firm during the validity of our bid.
- c. I/ we will provide security deposit within 10 (ten) days from the date of Notification of Award
- d. I/ we will start gas offtake within 365 (three hundred and sixty-five) days from the date of Notification of Award
- e. I/ we will obtain all the necessary statutory/regulatory clearance for the proposed gas usage
- f. Neither the bidder themselves, nor any of its allied concerns, partners or associates or directors or proprietors involved in any capacity, are currently serving any banning orders issued by ONGC debarring them from carrying on business dealings with ONGC.

Name & signature of the Bidder

.....

Date:

## Appendix-5 of Annexure-I

(On non judicial stamp paper as per stamp duty applicable)  
PRO-FORMA OF BANK GUARANTEE towards SECURITY DEPOSIT(S)

Ref No.

Bank Guarantee No.

Dated

To,

The Asset Manager,  
ONGC, Cambay Asset,  
Khambhat, Dist.: Anand,  
Gujarat (State). Pin: 388630.

Dear Sir,

1. Whereas Oil and Natural Gas Corporation Ltd. Incorporated under the Companies Act, 1956, having its registered office at Deendayal Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj New Delhi 110070 and one of its offices at ONGC, Cambay Asset, Khambhat, Dist.: Anand, Gujarat (State) Pin - 388630 (hereinafter called ONGC' which expression shall unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees) has floated a Tender No. CK/01/2021-22 and M/s \_\_\_\_\_ having Head/Registered office at \_\_\_\_\_ (hereinafter called the 'Bidder' which expression shall unless repugnant to the context or meaning thereof mean and include all its successors, administrators, executors and permitted assignees) have submitted a bid Reference No \_\_\_\_\_ and Bidder having agreed to furnish as a condition precedent for participation in the said tender a Security Deposit with the said Application in the form of unconditional and irrevocable Bank Guarantee of Indian Rupees (in figures) \_\_\_\_\_ (Indian Rupees / (in words) \_\_\_\_\_ only) for the due performance of Bidder's obligations as contained in the terms of the Notice Inviting Offer (NIT) and other terms and conditions contained in the Bidding documents supplied by ONGC which amount is liable to be forfeited on the happening of any contingencies mentioned in said documents.
2. We \_\_\_\_\_ (Name of the Nationalized Bank) registered under the laws of \_\_\_\_\_ having head/registered office at \_\_\_\_\_ (herein after 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) guarantee and undertake to pay immediately on first demand by ONGC, the amount of Indian ₹ \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only) (in figures and in words) in aggregate at any time without any demur and recourse and without ONGC having to substantiate the demand. Any such demand made by ONGC shall be conclusive and binding on the Bank irrespective of any dispute or difference raised by the Bidder.
3. The Bank confirms that this guarantee has been issued with observance of appropriate laws of the country of issue.
4. The Bank also agrees that this guarantee shall be irrevocable and without recourse and governed and construed in accordance with Indian laws and subject to exclusive jurisdiction of Indian Courts of the place from where tenders have been invited.

5. This guarantee shall be irrevocable and without recourse and shall remain in force up to \_\_\_\_\_, and any demand in respect thereof should reach the Bank not later than the aforesaid date.
6. Notwithstanding anything contained herein above, our liability under this guarantee is limited to Indian ₹ \_\_\_\_\_ (Rupees \_\_\_\_\_ only) (in figures and in words) and our guarantee shall remain in force until \_\_\_\_\_ (indicate the date of expiry of Bank Guarantee).
7. Any claim under this Guarantee must be received by us before the expiry of this Bank guarantee. If no such claim has been received by us by the said date, all the rights of ONGC under this Guarantee will cease. However, if such a claim has been received by us by the said date, all the rights of ONGC under this Guarantee shall be valid and shall not cease until we have satisfied that claim.
8. In witness whereof, the bank, through its authorized officer, has set its hand and stamp on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

(Signature)

Full name, designation and  
Official address (in legible letter)

With Bank stamp.

(Attorney/Authorization No. of Signing  
Authority)

Date \_\_\_\_\_

WITNESS NO. 1

WITNESS NO. 2

(Signature)

Full name and official address

(In legible letters)

(Signature)

Full name and official address

(In legible letters)

**Note:**

- (i) This Bank Guarantee/ all further communications relating to the Bank Guarantee should be forwarded to the office of Manager (MM), \_\_\_\_\_Asset, Oil and Natural Gas Corporation Limited, <Address of concerned Asset>.
- (ii) Bank guarantee, duly executed as per the above format, is to enclosed with the offer.

**INSTRUCTIONS FOR FURNISHING BANK GUARANTEE TOWARDS SECURITY DEPOSIT (SD)**

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 where the tender has emanated. The non-judicial stamp paper/franking receipt should be either in name of the issuing Bank or the bidder.
2. The expiry date, as mentioned in clause 5 & 6 should be arrived at by adding 30 days to one year from bid opening date or for a period of 30 days plus six months beyond the promised date of gas utilization, whichever is later.
3. The Bank Guarantee by Indian bidders will be given from Nationalized/Scheduled Banks only.

Appendix-6 to Annexure-IPRO-FORMA FOR LETTER OF CREDIT (L/C) TOWARDS SECURITY DEPOSIT(S)UNCONDITIONAL IRREVOCABLE LETTER OF CREDIT. NO.BENEFICIARY:

OIL AND NATURAL GAS CORPORATION LTD,  
Cambay Asset, P.O. Kansari, Khambhat - 388630,  
Dist.: Anand, Gujarat.

AMOUNT OF LETTER OF CREDIT: ₹ \_\_\_\_\_.

EXPIRY DATE. \_\_\_\_\_.

We hereby established unconditional irrevocable Letter of Credit no. -----Dt. -----  
---in favour of Oil and Natural Gas Corporation Ltd., Cambay Asset, P.O Kansari,  
Khambhat, Dist.: Anand, Gujarat (State) Pin- 388630 for ₹ \_\_\_\_\_ as per following  
details:-

1. This is an unconditional IRREVOCABLE and without recourse LETTER OF CREDIT which allows multiple part encashment and is valid up to \_\_\_\_\_ for submission of documents for negotiation to the bank.
2. This Letter of Credit covers payment towards Security Deposit (SD) as a part of the bid to cover twelve weeks (eighty four days) Gas cost as per provision under Clause 13.17 of 'Model Gas Supply Agreement' (Annexure-III) of the tender document.
3. All bank charges including negotiation/ handling and interest charges will be borne by the opener of Letter of Credit i.e. Bidder/buyer.
4. If the payment to ONGC/ONGC banker is not made at sight of documents, interest @ SBI Base Rate plus 6 % (six percent) per annum compounded quarterly for each day payments are overdue until paid, shall be charged.
5. Payment against the Letter of Credit shall be released immediately on presentation of duly signed invoice/provisional invoices/ debit notes in duplicate by ONGC.
6. This unconditional irrevocable Letter of Credit is available for negotiation directly with the issuing Bank/Branch or through ONGC's bankers without recourse to the drawer. We hereby guarantee to protect the beneficiary from any consequences, which may arise in the event of non-acceptance or non-payment of, draft drawn in accordance with the terms of credit.

Yours faithfully

(Sign of authorized Officer of Bank)



**Annexure-II****Bid Evaluation Criteria (BEC)****A. VITAL CRITERIA FOR ACCEPTANCE OF BIDS: -**

During evaluation of bids, Company may ask the Bidder for Clarifications/ confirmations/ deficient documents of its bid. The request for clarification and the response shall be in writing and no change in the price or substance of the bid shall be sought or permitted.

**1.0 Technical Criteria:-**

- 1.1 The following vital technical clauses should be strictly complied with, failing which the bid will be rejected.
  - 1.1.1 Bid should be complete and covering the entire scope of gas supply and should conform to the terms and conditions of the gas supply indicated in the bid documents, duly supported with documents wherever required. In case of incomplete and non-confirming bids, Company reserves the right to reject the bid.
  - 1.1.2 Bidder as consumer of gas need to submit documentary proof - being certified copy of the Firm's Memorandum of Association (for a registered company), Partnership deed (for partnership firm) or declaration from Proprietor in case of a proprietary firm (as applicable depending on type of firm) detailing the nature of business the firm is engaged in.
- 1.2 Bidder to submit their project report indicating inter alia project details for evacuation and utilization of gas it has bid for. The project report should deliberate on gas evacuation & utilization in detail and establish round the clock requirement of fuel on continuous basis, for which bid is being made.
- 1.3 Gas Quantity for Bidding: Bidder may bid maximum for entire offered gas from the location/ field or may quote for part quantity based on their requirement subject to minimum of 4,000 SCMD.
- 1.4 The gas quantity offered is from small/isolated and Company shall make best endeavor to achieve the gas availability profile as projected and it is expected that the actual availability would normally vary with a range of +/- 10% of the indicated profile. The gas would be allocated on fall-back basis.
- 1.5 Bidder to submit Security Deposit (SD) for the quantity of gas they have bid for based on reserve gas price at the time of bid submission. This SD would be revised at contract price and quantity at the time of award and to be submitted prior to signing of GSA.
- 1.6 **Delivery Commencement Period:** Bidder to quote the number of days required to be ready to off-take gas from NOA date. This should be equal or less than 365 (Three Hundred and Sixty Five) days ((denominated "A") by the bidder in the Bid Schedule-Part-I (Technical Bid)). In case of delay in utilization of gas by the bidder, SD submitted by the bidder shall be realized on weekly basis.

**2.0 Commercial criteria**

- 2.1 Bid along with all appendices and copies of documents should be submitted in two-bid system before the scheduled date for the tender closing. Such documents submitted should be as per requirements of the tender, valid and legally operative as on the date of bid submission.

All the documents submitted shall be signed by the authorized signatory of the bidder.

The Techno-Commercial bid shall contain all details without indicating prices of the quoted items.

The Price bid shall contain the prices duly filled in the prescribed price format provided in bid document.

2.2 Turnover and Net-Worth of the bidder shall be considered for ascertaining commercial eligibility at their quoted price:

2.2.1 Average Turnover : 30% of annualised bid value or more.

2.2.2 Net-worth of Bidder : Positive (as per audited annual accounts for previous two Financial years)

2.3 For ascertaining parameter of Turnover of the bidder, average turnover of the bidder for the previous two financial years shall be considered. Average turnover of the bidder for the previous two financial years shall be calculated by dividing the total turnover of previous two (2) years by two (2), irrespective of the fact that quoted turnover for one particular year is for a period of less than 12 months or complete 12 months. Bidder to submit audited annual accounts of previous two financial years for ascertaining their turnover and net-worth. The date (i.e. the financial period closing date) of the immediate previous year's annual accounts should not be older than eighteen (18) months from the bid closing/un-priced bid opening date.

2.4 Commercial eligibility will be initially ascertained based on reserve gas price when techno-commercial bids are opened. The eligibility would be re-ascertained based on quoted price by the bidder on opening of price bid.

2.5 In case the bidder is a newly formed company (i.e. one which has been incorporated in last 5 years from the date of un-priced bid opening of the tender), who does not qualify financial criteria (i.e. Turnover for 30% annualized bid value) by itself and submits his bid based on the financial strength of his promoter company, then following documents need to be submitted:

2.5.1 Turnover of the promoter company should be more than '30%' of the annualized bid value.

2.5.2 Net worth of promoter should be positive.

2.5.3 Corporate Guarantee on the promoter company's Company letter head signed by an authorized official undertaking that they would financially support the newly formed company for executing the project/job in case the same is awarded to them, and

2.6 In case the bidder is a subsidiary company (should be a 100% subsidiary of the parent/ultimate parent/holding company) who does not meet the financial criteria (i.e. Turnover for 30% annualized bid value) by itself and submits his bid based on the financial strength of his parent/ultimate parent/holding company, then following documents need to be submitted:

2.6.1 Turnover of the parent/ultimate parent/holding company should be more than 30% of the annualized bid value,

2.6.2 Net worth of the parent/ultimate parent company should be positive.

- 2.6.3 Corporate Guarantee on parent/ultimate parent/holding company's letter head signed by an authorized official undertaking that they would financially support their 100% subsidiary company for executing the project/job in case gas is allocated to them.
- 2.6.4 The bidder shall submit documentary evidence that his company is a 100% subsidiary of the parent/ultimate parent/holding parent company.
- 2.7 **Offered gas price:** Bidder to quote gas price in USD/MMBTU (on GCV basis) (up to two decimal places) in the Price Bid format provided in the tender. The gas price shall be more than the Reserve Price mentioned in the tender. The Reserve Price shall be the domestic gas price as fixed by Govt. of India from time to time based on 'New Domestic Gas Price Guidelines, 2014'. Price indicated elsewhere in the bid document would lead to outright rejection of bid.
- 2.8 Bids of following kinds will be rejected (Rejection Criteria):
- 2.8.1 Bids made without Security Deposit (s).
- 2.8.2 Bids that do not conform to the unconditional validity of the offer for 180 days from the date of opening of un-priced bids.
- 2.8.3 Bids that quote gas off-take period beyond 365 (Three Hundred and Sixty-Five) days from NOA date in the technical bid.
- 2.8.4 Bids where price is disclosed in techno-commercial (un-priced) bid,
- 2.8.5 Bids who are not meeting commercial eligibility criteria under Para 2.2 above.
- 2.8.6 Bids which are liable for rejection under any of the grounds mentioned in any of the provisions of the bidding document.
- 2.8.7 (i) Non-submission of Integrity Pact along with the bid, duly signed by the same signatory who signs the bids even after giving an opportunity after opening of techno-commercial bids.
- (ii) Offers of the bidders violating the provisions of Integrity pact.
- 2.9 **Calculation of annualized bid Value:** The annualized bid value would be calculated based on gas quantity bid for, reserve gas price corrected to gross calorific value (GCV) given in the tender. Applicable VAT etc. shall be loaded in the calculations. The RBI reference rate on Bid Submission Date shall be considered for conversion. The sample calculation would be done as provided hereunder:

| Calculation of annualized Bid Value          | Typical Illustration   |             |
|--|--|-------------|
| Parameter                                    | Symbol/Formula   | Result      |
| Gas Quantity (SCMD)                          | Q  | 6,250       |
| 365 days gas quantity ( SCM)                 | $Q1=365 \times q$  | 22,81,250   |
| 365 days gas quantity ( MSCM)                | $Q2 = Q1/1000$   | 2,281       |
| Reserve Gas price, USD/MMBTU                 | P  | 1.79        |
| Gross Calorific Value (GCV)                  | Kcal/SCM   | 8900        |
| FBIL ref. rate (June'21 Average)             | Rs/USD   | 73.56       |
| Conversion Factor                            | CF   | 39.68254    |
| Gas price (Rs./MSCM)                         | $p=(P \times GCV \times \text{RBI ref rate} \times CF)/10,000$ | 4650.33480  |
| Gas value (in Rs.)                           | $V=p \times Q2$  | 1,06,08,576 |
| Applicable VAT (including additional VAT), % | VAT  | 15          |

|  |                      |                    |
|--|----------------------|--------------------|
| Applicable VAT (in Rs.)                      | VAT1                 | 15,91,286          |
| Value of gas cost (Incl. VAT) (in Rs.)       | <b>V1 = V + VAT1</b> | <b>1,21,99,863</b> |
| Annualized bid value, Rs.                    |                      | 1,21,99,863        |
| <b>Turnover= 30% of annualized bid value</b> |                      | <b>36,59,959</b>   |

3.0 **Necessary condition:** The bidders must confirm unconditional acceptance of 'Bid Evaluation Criteria' at Annexure-II, terms and conditions of 'Model Gas Supply Agreement' at Annexure-III and Instruction to Bidders at Annexure-I. Any deviation would result in rejection of the bid.

4.0 Evaluation of the bids would be done based on the following criteria:

4.1 First techno-Commercial bids of all the bidders would be opened and evaluated based on the technical evaluation criteria provided above.

4.2 The quotations filled in the 'Part-I: Technical Bid' only shall be considered for evaluation of technical bids. If there is any variation in the quotations in the bid elsewhere, then the quotations provided in the 'Part-I: Technical Bid' shall be final and binding.

4.3 The Price bids of only techno-commercially acceptable bidders shall be opened and evaluation of bids would be done as under:

4.4 Out of qualified bids received against the tender, the gas from the field would be first fully allocated to the bidder who has quoted the highest gas price in the Price Bid and its evaluated gas price is highest (H-1) on fall-back and as is where is basis.

4.5 In case, there are multiple bids for that field having same highest price quote (H-1), but different number of days for gas off-take, then

4.5.1 Gas would be first fully allocated to the bidder who has quoted the least number of days for off-take of gas.

4.5.2 If surplus gas is left after the allocation as provided in 4.5.1 above, then the balance gas available would be allocated to the bidder who has quoted next higher number of days for off-take of gas and this process shall be repeated until all available gas is exhausted for allocation.

4.6 In case, there are multiple bids from that field having same evaluated gas price and have quoted same number of days for off-take of gas, then the gas would be allocated to all such bidders on prorata basis in proportion to the gas quantity they have quoted in the Technical Bid vis-à-vis total gas available from the field under the tender.

4.7 If surplus gas is left after the allocation as provided in para 4.4, 4.5 and 4.6 above or gas is becoming surplus on surrender by bidders including H-1 bidder, then the remaining bidders would be considered for gas allocation and such bidders would be asked to match the highest quoted price for getting gas allocation and give the unconditional confirmation on the same. Such unconditional confirmation would be asked in sealed cover within five (5) working days and these covers would be opened in sequential order based on original ranking determined based on their quoted premium over reserve price (i.e., H-2, H-3, H-4, etc.). The gas allocation would be limited to the quantity for which the bidders qualify the commercial criteria of 30%

annual turnover determined at H-1 price. This process shall be repeated until all available gas is exhausted for allocation.

4.8 If some of the bidders who does not match the highest gas price or does not respond within the stipulated time, his bid will be rejected and no claim of the bidder would be entertained. The gas would be offered to the next eligible bidder who accepts unconditional matching of gas price with H-1 price.

4.8.1 Bidder to decide whether to accept the gas allocation which is less than their tendered/bid quantity. In case bidder is allocated quantity of gas less than their quotation, Bidder would be entitled to surrender entire/part of gas allocated. This would also be applicable to H-1 bidder. In case of surrender, Security Deposit would not be forfeited and surrendered gas would be allocated to other eligible bidders as per the process stipulated in the tender.

4.8.2 If bidder backs out if the allocated quantity is less than their quoted quantity after signing of the Gas Supply Agreement, then in such case their Security Deposit will be forfeited. In such scenario, surrendered Gas shall re-allocate/redistribute amongst other eligible allottees as stipulated in BEC.

4.8.3 In case bidder is allocated quantity of gas as per their quotation, Bidder is either to accept or to surrender the entire allocation made to him. In case of non-execution of GSA (after allocation) or surrender (even by H-1 bidder), entire Security Deposit would be forfeited and the gas would be allocated to other eligible bidders as per the process stipulated in the tender.

5.0 In case gas is left out (within tendered/advertised quantity) after the allocation as provided in para 4.4 to 4.8 (including sub-paras), then all the eligible bidders (bidders qualified under para 4.4 to 4.8) would be considered for total left out gas allocation and consent of the bidders would be sought for getting gas allocation at the H-1 price. The consent letters would need to be submitted by the bidders in sealed cover within five (5) working days and gas would be allocated as per demand indicated by the bidders.

In case, the total demand from all the bidders exceeds the total left out gas quantity, gas would be offered on pro-rata basis to all the interested bidders and their consent would be sought for such allocation. This would be done transparently to all irrespective of the fact that the bidder has indicated or not the requirement of additional gas in their bid. In case any gas is still left out, then such quantity would be tied-up through open bidding process.

However, the gas allocation would be limited to the quantity for which the bidders qualify under the commercial criteria of 30% annual turnover determined at H-1 price.

The bidders would be required to off-take such additional gas within maximum 90 (ninety) days from Date of allocation. Further, the bidder would be required to submit the payment security for such additional allocation for issuance of NOA.

6.0 Bidder to go through the Terms and Conditions provided in the model Gas Supply Agreement.

**General:**

7.0 In case the overall production from the small/isolated field and marginal field increases beyond 0.2 MMSCMD and the field gets connected to the grid at a later stage then the existing customers, shall be assured of the domestic gas supply only for a period of one year from such connection to the grid and thereafter the gas will be allocated as per the prevailing gas utilization policy of the Government of India, in

case there is unfulfilled gas demand from a higher priority customer on the grid at any point in time after connection to the grid.

- 8.0 In case the production increases to a higher level than initially expected/advertised as part of the buildup (but remains lesser than 0.2 MMSCMD) and is expected to remain so on a sustained basis, then additional gas up to maximum of 50% of initially advertised quantity can be offered to existing allottees on pro-rata basis of their initial allocation made through tendering process subject to their acceptance. On notification of such increase in production, the advertised quantity and allottees of the immediate previous tender from the field would only be considered for allocation. This would be done transparently to all connected allottees irrespective of the fact that the bidder has indicated or not the requirement of additional gas in their bid. In case, some of the consumer (s) does not accept the additional allocation, then the gas would be offered to other consumers, if any, on pro-rata basis subject to their acceptance. In case any gas is left out, then such quantity would be tied-up through open bidding process.
- 9.0 The bidders would be required to off-take such additional gas within maximum 90 (ninety) days from allocation. Further, the bidder would be required to submit the payment security for such additional allocation.
- 10.0 In case of decrease in production, cuts in gas supply will be made to all allottees on pro-rata basis.
- 11.0 The gas would be from the source/field indicated in the tender and Company shall endeavor to supply gas from such source uninterruptedly subject to availability. In case of reduction in availability of gas during the contract period due to reasons primarily attributable to the geological reservoir uncertainties & complexities, other complications in the fields/ wells or any reasons whatsoever, if gas supply cannot be provided, Company shall not be responsible nor it shall be an issue for arbitration or a matter of dispute in Court of Law. The bidder shall make all necessary provisions for creation and maintaining dual fuel capabilities in order to meet their fuel requirement by an alternative fuel/substitute to gas, as and when gas supplies are interrupted or discontinued for the reasons mentioned.
- 12.0 The Bids Evaluation Criteria over-rides all other similar clauses operating anywhere in the Bid Documents.

**Annexure-III****Model Gas Supply Agreement**

This AGREEMENT made on \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand Twenty One at \_\_\_\_\_ between OIL AND NATURAL GAS CORPORATION LTD., a company incorporated under the Companies Act 1956, having its Corporate Registered Office at Deendayal Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj New Delhi 110070, and one of its Asset Offices at \_\_\_\_\_ Asset, \_\_\_\_\_, (Name of State) hereinafter referred to as "SELLER" (which expression shall, where the context so requires or admits of, be deemed to include its successors or assignees) of the ONE PART and M/s. \_\_\_\_\_ (Name of consumer) {a Pvt. Ltd. company/a Ltd. company/ proprietary firm/partnership firm, etc. as the case may be}, having its office at \_\_\_\_\_ {address of the consumer}, hereinafter called "BUYER" (which expression where the context so requires or admits of, be deemed to include its successors or assignees) of the OTHER PART.

Whereas the BUYER desires to purchase and receive "NATURAL GAS" from the SELLER as per their Bid Response no. \_\_\_\_\_ and the SELLER agrees to sell and deliver to the BUYER Natural gas as produced in its natural state or after stripping of heavier components for other uses, obtained from Chaklasi field of SELLER delivered at ONGC Installation Chaklasi 11, Dist. Kheda, Gujarat as a fuel <for generation of power for feeding into Sate Grid/as a fuel in the factory/for LPG extraction, generation of power for captive purpose, etc.> in the facilities of the BUYER located near \_\_\_\_\_ Field in the state of Gujaraton the terms and conditions stated in the tender document for the \_\_\_\_\_ field and terms and conditions stated here under which have been mutually agreed upon between the SELLER and the BUYER.

**NOW THIS DEED WITNESSES AS FOLLOWS,****ARTICLE-1****DEFINITIONS AND INTERPRETATIONS**

The following words shall have the meaning assigned against each one of them respectively in the AGREEMENT, unless otherwise stated:-

- 1.01. "Time" shall be stated in "Hours" and shall mean `Indian Standard Time'.
- 1.02. "Day" means a period of twenty-four (24) consecutive hours beginning and ending at 0600 hours and reference date for any such day shall be the date on which such day starts at 0600 hours.
- 1.03. "Week" means a period of Seven (7) consecutive days beginning 0600 hours from a day.
- 1.04. "First Fortnight" means a period commencing at 0600 hours on first day of Month and ending on 0600 hours on sixteenth day of the Month and a "Second Fortnight" means a period commencing at 0600 hours on sixteenth day of the Month to 0600 hours on the first day of the succeeding calendar month.
- 1.05. "Month" means the period beginning at 0600 hrs. on the first day of a calendar month and ending at 0600 hrs. on the first day of the succeeding calendar month.

- 1.06. "Year" means period of 365 (Three hundred and sixty five) consecutive days or 366 (Three hundred sixty six) consecutive days when such period includes a twenty-ninth (29th) day of February.
- 1.07. "Financial Year" means year starting from 1st April of any calendar year to ending on 31st March of the next succeeding calendar year; In case the delivery of gas commences any time during the year, the first Financial Year will be considered from the date of delivery commencement to 31st March of the next succeeding year. In case the delivery of gas ends any time during the year (before 31st March), the last Financial Year will be considered from 1st April of a year to the last date of delivery.
- 1.08. "Year", "Month" and "Day" wherever used in this Agreement imply that of Gregorian Calendar.
- 1.09. "**Agreement**" means the term and conditions set out in this Agreement, Schedules A, B, C, and D; and Appendices.
- 1.10. "**AGA**" means American Gas Association.
- 1.11. "**ASTM**" means the American Society of Testing Materials and "**ANSI**" means American National Standard Institute;
- 1.12. "Annual Contract Quantity" has the meaning ascribed to it in Article 5.03 of this Agreement;
- 1.13. "Adjusted Annual Contract Quantity" has the meaning ascribed to it in Article 6 herein;
- 1.14. "**Cubic Metre**" or "Standard Cubic Metre " or "**SCM**" means the volume of GAS which occupies one (1) cubic metre of space when such GAS is at a temperature of 15 °C and at an absolute pressure of 1.0332 Kg/Cm<sup>2</sup> (1.01325 bar);
- 1.15. "**Delivery Point**" means the point at which the Parties agree deliveries of Seller's Gas shall be made under this Agreement as set forth in Article 4.01 and 4.06.
- 1.16. "**Delivery Commencement Date**" means the date for the commencement of deliveries of SELLER's Gas hereunder as set forth in Article 2.02 and Schedule A of this Agreement.
- 1.17. "**Contract Price**" means the price to be paid by the BUYER to the SELLER for one MMBTU of Sellers Gas delivered by the SELLER to the BUYER hereunder as set forth in **Error! Reference source not found.**;
- 1.18. "**Due Date**" has the meaning as ascribed to in Article 13.02 of this Agreement.
- 1.19. "**Expiry Date**" means the date on which the Term of this Agreement expires as set forth in Schedule A.
- 1.20. "**Daily Contracted Quantity**" (DCQ) has the meaning ascribed to it in Article 5
- 1.21. "**Outside Expert Committee**" has the meaning ascribed to it in Article 16 (A) (II) of this Agreement;



- 1.22. "Gas" means any dry gas, wet gas, all gaseous hydrocarbons or mixture of hydrocarbons and other gases like Nitrogen, carbon-di-oxide, and substances contained therein including sulphur, but excluding helium which are produced from oil, gas, gas condensate wells and also including residue gas remaining after fractionation or extraction of liquid hydrocarbons from gas at Standard Conditions;
- 1.23. "Gross Heating Value" or "Gross Calorific Value", ("GCV") of Gas per SCM means that quantity of heat in Kilocalories evolved by combustion at constant pressure of 1 SCM of Gas with air and temperature of gas, air and the products of combustion cooled to initial temperature and all water formed by combustion reaction remaining in liquid state;
- 1.24. Not used
- 1.25. "Invoice" means & includes a document containing calculations sent by SELLER to BUYER pursuant to Article 13.01, specifying the following:
- 1.25.1. The gas quantity for the applicable Billing Period,
  - 1.25.2. The details of the gross heating value (Gross Calorific Value) to derive SELLER's Gas sold during a Billing Period and,
  - 1.25.3. The details of the net heating value (Net Calorific Value) to derive Marketing Margin,
  - 1.25.4. Price of the Gas as set forth in the Agreement, applicable taxes, and levies, etc.
  - 1.25.5. Details of Short-lifted quantity and amount towards short lifted quantity, if any.
- 1.26. "Kilocalories" shall mean the amount of heat required to raise the temperature of one (1) kilogram of water from 14.5 degree Centigrade to 15.5 degree Centigrade at a pressure of 1 atmosphere at sea level.
- 1.27. "Laws, Regulations and Orders" means the Central, State and local laws of India and all orders, ordinances, rules, regulations, decrees, policies, judicial decisions, notifications or similar directives issued by any executive, legislative, judicial or administrative entity or authority or any person purporting to act in such capacity in accordance with which the Buyer and/or the Seller are accustomed and/or required to comply;
- 1.28. "MCF" means one thousand (1,000) SCF of Gas;
- 1.29. "MCM" means one thousand (1,000) SCM of Gas;
- 1.30. "Measurement Point" shall mean the point where the flanges connect Seller's sales measuring equipment to the Buyer's Pipeline;
- 1.31. "Million Kilo Calories" or "MKCal" means one million Kilo Calories;
- 1.32. "MMBTU" means one million (1,000,000) BTU;
- 1.33. "MMGO" has the meaning ascribed to it Article 6.01..
- 1.34. "MMSCF" means one million (1,000,000) Standard Cubic Feet of Gas;

- 1.35. **"MMSCM"** means million (1,000,000) standard cubic meter of Gas;
- 1.36. **"MPMS"** means Manual of Petroleum Measurement Standards published by the American Petroleum Institute;
- 1.37. **"Net Heating Value"** or Net Calorific Value of Gas per SCM means that the quantity of heat in Kilocalories evolved by complete combustion, at a constant pressure, of one (1) standard cubic metre of GAS with air and with the temperature of GAS, air and products of combustion at fifteen (15) degree Celsius and all the water formed by combustion reaction remaining in the vapour state.
- 1.38. **"Party"** means BUYER or SELLER and **"Parties"** means both BUYER and SELLER;
- 1.39. **"Price"** means the price to be paid by the BUYER to SELLER for one MMBTU of Sellers Gas delivered by SELLER to BUYER hereunder;
- 1.40. **'Producing Areas'** means those petroleum accumulation described in the Schedule A of this Agreement which Seller shall produce and supply and Buyer shall purchase Seller's Gas hereunder;
- 1.41. **"PSIA"** means a unit of pressure expressed in pounds per square inch absolute;
- 1.42. **"PSIG"** means a unit of pressure expressed in pounds per square inch gauge;
- 1.43. **"Quantity"** has the meaning ascribed to it in Article 5;
- 1.44. **"Quarter"** means the period of time commencing at 06:00 hours on January 1, April 1, July 1 and October 1 and expiring at 06:00 hours on the first day of the next succeeding calendar quarter;
- 1.45. **"SCF"** means standard cubic foot of Gas;
- 1.46. **"SCM"** means standard cubic meter of Gas;
- 1.47. **"Seller's Gas"** means Gas produced by Seller from the Producing Areas for delivery and sale to Buyer hereunder;
- 1.48. **"Seller Shortfall Gas"** has the meaning ascribed to it Article 6.03.
- 1.49. **"Specifications"** means the specifications for Seller's Gas set forth in Schedule B;
- 1.50. **"Supplementary Invoice"** means and includes a document containing calculations sent by SELLER to BUYER specifying:
  - i. the calculations of charges due from BUYER to SELLER under this Agreement for any previous Billing Period(s), and
  - ii. any other adjustment
- 1.51. **"Term"** has the meaning ascribed to it in Article 2.01;
- 1.52. All references herein to persons shall where the context admits be deemed to include bodies corporate, unincorporated associations and partnerships.
- 1.53. Unless the context requires otherwise, in this Agreement:

- (a) The headings are for convenience only and shall be ignored in construing this Agreement;
  - (b) The singular includes the plural and vice versa;
  - (c) References in Articles, Schedules and Annexures are, unless this context otherwise requires, references to Articles of, Schedules of, and Annexures to, this Agreement;
  - (d) In carrying out its obligations and duties and exercising its rights under this Agreement each Party shall have an implied obligation to act in good faith; and
  - (e) The word "including" means "including without limitation".
- 1.54. "Affiliate" has the meaning ascribed to it in Article 15.02.

## **ARTICLE- 2**

### **TERM**

- 2.01 This Agreement shall commence and be effective from \_\_\_\_\_ <Date of Notification of Award> and the term of this Agreement shall be initially for 5 (Five) years from Delivery Commencement Date, unless terminated earlier. The gas price would be as set forth in Article 12 of the Agreement.
- 2.02 BUYER shall make arrangement for receiving Gas from ONGC's installation to their factory/premises within 365 (Three Hundred and Sixty-Five) days (the delivery commencement period as promised in their bid) from the date of award, called the Delivery Commencement Date.

## **ARTICLE 3**

### **EXTENSION OF TERM OF AGREEMENT**

- 3.01 The Agreement will be valid till the Term of the Agreement as stipulated in Article 2.01 and will be extended further subject to availability of gas and ONGC's ability to supply. The Agreement will be reviewed before 06 months of expiry and shall be extended further subject to gas availability on same terms and conditions.

## **ARTICLE 4**

### **DELIVERY POINT AND PRESSURE OF GAS**

- 4.01 GAS shall be delivered to the BUYER at a Gas Metering Station located at SELLER's premises at Chaklasi 11 wellsite. Gas will be transported from the downstream flange of the pipeline at the outlet of the GAS metering station, hereinafter referred to as the "Delivery Point", by means of Pipeline to be provided and maintained by the BUYER.
- 4.02 The SELLER shall maintain the "Gas Metering Station" constructed by the SELLER.
- 4.03 The BUYER shall make all proper and adequate arrangement for receiving GAS at the outlet of Gas Metering Station at his own risk and cost. Should any defect in the BUYER's intake arrangement arise, the same shall be rectified by the BUYER. The SELLER shall have an option but no obligations to stop supply of GAS as soon as any defect is noticed in the BUYER's intake arrangements. The BUYER shall be liable to pay for Monthly Minimum Guaranteed Off-take of GAS as per provisions of

Article 6 hereinafter to the SELLER on account of defect in the BUYER's intake arrangement.

- 4.04 The Gas pipeline laid by the BUYER from the Delivery Point shall be owned and maintained by the BUYER at his own risk and cost, in accordance with the natural gas pipeline safety and statutory regulations in force. All the expenditure involved in these respects, including but not limited to crop compensation etc. shall be borne by the BUYER. The BUYER shall be exclusively responsible for obtaining Right of Use (ROU) and necessary approvals from State and Central Government, if any. For laying of dedicated natural gas pipelines, prior submission of application/proposal for laying of dedicated pipeline to PNGRB is required under the provisions of the Petroleum & Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008. The BUYER shall indemnify SELLER against any liabilities, causes, expenses, damages or losses as referred to in Article 23.01 herein. Provided further that the SELLER shall have no liability whatsoever for any claims/damage/loss arising out of any accident due to bursting/leakage/ any other damage to the BUYER's pipeline for whatever reason. BUYER is required to follow prevalent Standards applicable for laying of his transportation pipeline from ONGC's installation to BUYER's premises and shall submit a compliance report to SELLER before commencement of Gas supply. Prior to commencement to gas supply to Buyer, Buyer is required to submit the required statutory clearances.
- 4.05 For effecting delivery of GAS, the SELLER shall maintain at its own risk and cost, the piping control and regulation and metering equipment in the aforesaid Gas Metering Station located at Seller's premises at Chaklasi 11 wellsite . Prior to commencement to gas supply to Buyer, the GAS metering equipment is to be jointly calibrated by Seller & Buyer.
- 4.06 Title of "GAS" shall pass from the SELLER to the BUYER at the Delivery Point. The Delivery Point shall be at the downstream flange of the pipeline at the outlet of the Gas Metering station.
- 4.07 The SELLER shall, under the normal circumstances of supply of GAS and normal off-take by the BUYER and other consumers, make endeavour to maintain a gauge pressure as available at the Delivery Point as set forth in Schedule A attached.

## ARTICLE - 5

### DAILY CONTRACTED QUANTITY (DCQ) & NOMINATIONS

- 5.01 Subject always to availability of gas and SELLER's ability to supply gas to the BUYER, the SELLER agrees to sell and deliver the gas at the aforesaid Delivery Point to the BUYER, on fall back basis, as provided here under :
- 5.01.1 The gas quantity is \_\_\_\_\_ <to be inserted Field specific>.
- 5.02 There could be a maximum of 10% variation on either side on an hourly basis from the average hourly rate.
- 5.03 Deleted
- 5.04 Deleted
- 5.05 Deleted
- 5.06 Deleted

- 5.07 Seller shall prepare and provide to Buyer a firm monthly quantity of Seller's Gas at Delivery Point based on Seller's Production plan Prior to the 20<sup>th</sup> day of each month during the Term, Seller shall provide Buyer with a detailed schedule of Seller's daily nominations and deliveries of Seller's Gas for the following month ("Daily Contract Quantity") based on applicable Seller's Production Plan. Seller's daily nominations herein shall establish the 'Daily Contract Quantity', hereinafter called DCQ that Buyer must take or nevertheless pay for Monthly Minimum Guaranteed Off-take (MMGO) charges under Article 6 herein and such nominations shall be binding on the Buyer. The total quantity of Seller's nomination in the 12 Monthly Contract Quantities in Financial Year shall be the 'Annual Contract Quantity'
- 5.08 In the event of additional gas becoming available, Seller at its own discretion, may supply additional gas upto 50 % of contracted quantity (as per 5.01.1) on daily basis subject to acceptance by the Buyer and such additional quantity would be supplied on reasonable endeavor basis. However, such excess quantity supplied by Seller shall be on temporary basis as per availability of gas and Seller shall not be liable for supply of such quantity on sustainable basis. The Buyer shall only be entitled for such additional gas only after the nominated gas supply is taken/consumed and such additional gas quantity would not be considered for determination of Minimum Take or Pay Obligation.

## ARTICLE - 6

### MINIMUM TAKE OR PAY OBLIGATIONS

- 6.01 After commencement of actual gas off-take, BUYER shall pay to the SELLER the higher of the following:
- a. Price for the actual quantity of gas off-taken by BUYER or
  - b. An amount equal to 80% of the monthly quantity on the basis of the DCQ , i.e., the Monthly Minimum Guaranteed Off-take (MMGO) charges. (under provisions of Article 5)

In determining the adjusted Monthly Contract Quantity for any month, the following deductions shall be made from the Daily Contract Quantity (DCQ) for such month:

- i) Quantity not accepted due to Force Majeure as per the Article 11;
- ii) Quantity not taken due to Scheduled Outage pursuant to Article 8;
- iii) Quantity not taken due to gas not conforming to quality as per Article 7 and **Error! Reference source not found..**

Provided, however, that in case gas available with SELLER is less than MMGO and Buyer offtakes entire gas available, then BUYER shall pay only for the actual supply.

- 6.02 The Monthly Minimum Guaranteed Off-take (MMGO) charges would be adjusted on Financial Year basis and it would be 80% of the 'Adjusted Annual Contract Quantity' (AACQ). Adjustment of Annual shortlifted quantity (80% of AACQ less Actual supplies during the Financial Year), if any, shall be made based on weighted average price for that Financial Year.
- 6.03 In determining the Adjusted Annual Contract Quantity (AACQ) for any Financial Year, the following deductions shall be made from, the Annual Contract Quantity for such Financial Year:
- (i) Any quantity of Sellers Shortfall Gas (If in any Year the Seller fails to supply 80% of the Annual Contract Quantity the difference between the quantity of the Gas supplied by the Seller and 80% of the 'Annual Contract Quantity' shall be classified as "**Sellers Shortfall Gas**").

- (ii) Quantity not accepted due to Force Majeure;
  - (iii) Quantity not taken due to Scheduled Outage pursuant to Article 8;
  - (iv) Deleted
  - (v) Additional quantity of gas supplied to the Buyer (As per Article 5.08).
- 6.04 The gas supplies under this Agreement shall be from the source/field indicated. The SELLER shall endeavour to supply gas from such source uninterruptedly subject to availability. However, due to reasons primarily attributable to the geological reservoir uncertainties & complexities, other complications in the gas wells or any reasons whatsoever, if gas supply cannot be provided, the SELLER shall not be responsible nor it shall be an issue for arbitration or a matter of dispute in Court of Law. BUYER agrees and accepts that ONGC's statements regarding availability of gas shall be final and binding on BUYER. The BUYER shall make all necessary provisions for creation and maintaining dual fuel capabilities in order to meet BUYER's fuel requirement by an alternative fuel/ substitute to gas, as and when gas supplies are interrupted or discontinued for the reasons mentioned herein.
- 6.05 Further, the provisions relating to payment of Monthly Minimum Guaranteed Off take (MMGO) charges by the BUYER contained in Article 6.01 & 6.02 shall not apply during the Force Majeure period as stipulated in Article 11 hereof.
- 6.06 In case of delay by the BUYER for commencement of gas off-take, the BUYER shall pay to the SELLER the cost of gas for the delayed period from the Delivery Commencement Date on weekly basis either through bank transfer in Seller's account through NEFT/RTGS/Electronic Fund transfer or irrevocable Letter of Credit (L/C) or through Unconditional Irrevocable Bank Guarantees (BGs) {twelve separate BGs each covering 1 (one) week of cost of gas as quantity mentioned under Article 5.01 from the Nationalized/Scheduled banks only termed as 'Security Deposit (s)' hereunder.
- 6.07 The 'Security Deposit(s)' as mentioned under Article 6.06 above should be valid for at least one year plus thirty days from the date of opening of un-priced bids or for a period of six months plus thirty days beyond the promised date of utilization, whichever is later. The 'Security Deposit (s)' shall be regulated to the actual allocation level (in case of allocation lesser than that required by the Buyer) at the price as set forth in Schedule B of this agreement considering the RBI reference rate of the previous month of award of allocation. The Security Deposit shall be liable for invocation/encashment on a weekly basis in the event of delay in utilization of gas as per the gas usage promised by the Buyer in the bid document beyond the time of utilization promised (beyond the Delivery Commencement Date) in the bid by the Buyer as mentioned in Article 6.06 above. After retaining the pro-rata amount for the actual number of days delayed from the 'Security Deposit (s)' amount invoked/encashed for the last week of delay, the balance amount, if any, shall be refunded to the Buyer on actual commencement of the gas supply and submission of Payment Security in terms of Article 13.12 (Billing & Payment).
- 6.08 In case of delay in gas off-take by the Buyer beyond twelve weeks from Delivery Commencement Date, the allocation can be retained by the Buyer provided 'Security Deposit(s)' for a further period of twelve weeks is provided by the Buyer on the same terms and conditions. In case it is not provided within 7 (seven) days from the expiry of the first 12 (twelve) weeks period, the gas allocation made to the Buyer shall stand cancelled.
- 6.09 In case of delay by Buyer beyond first twenty four weeks (168 days) period, Seller may terminate the agreement without further notice.

- 6.10 In case there is any difficulty in invoking/encashing the 'Bank Guarantee/LC' towards 'Security Deposit (SD)' as envisaged in Article above, opportunity would be given to the Buyer to provide the equivalent amount due through a bank draft within 5 (five) working days, failing which the allocation will be liable to be cancelled forthwith without any further notice and that gas can be allotted to the next bidder in the queue from the previous bid or a new bid would be undertaken if no prior bids are available.
- 6.11 The twelve weeks cost of gas would be calculated on gas quantity provided in Article 5.01 and multiplied by the price as set forth in Schedule B of this agreement plus applicable taxes thereon.
- 6.12 The 'Security Deposit (s)' would be provided in Indian Rupee. For calculating the amount of twelve weeks gas cost, following methodology for conversion is to be considered:
- a. MMBTU to 1000 SCM conversion factor: 39.68254 for GCV of 10000 Kcal/SCM.
  - b. For the USD to INR conversion, the average RBI Reference Rate available on FBIL website for previous month prior to the month of publishing of bid is to be considered. The RBI reference exchange rate of the month would be calculated by taking the average of the RBI reference exchange rates for all the days of the month for which the rates are available on the FBIL website. The average RBI exchange rate so calculated shall be rounded off to two decimal places. The rates can be downloaded from FBIL website: <http://fbil.org.in>.
- 6.13 Seller shall not be liable to pay any bank charges, commission or interest on the amount of 'Security Deposit (s)'.
- 6.14 The above 'Security Deposit (s)' shall remain at the entire disposal of Seller as a security for the satisfactory completion of the obligations by the Buyer in accordance with the conditions of the Gas Supply Agreement.

## **ARTICLE 7**

### **QUALITY OF GAS**

- 7.01 The quality of the Seller's Gas delivered hereunder shall be the quality of such Seller's Gas as usually made available by Seller at the Delivery Point. Seller will endeavour to ensure the quality Specifications for the Seller's Gas at the Delivery Point as set forth in Schedule B (the "Specifications").
- 7.02 All Seller's Gas delivered and accepted by Buyer under this Agreement, constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Seller's Gas to be delivered and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of Laws, Regulations and Orders) all statutory or other conditions warranties, express or implied, with respect to the description or satisfactory quality of the Seller's Gas or its fitness for any particular purpose or otherwise are hereby excluded.
- 7.03 The quality of Seller's Gas at the Delivery Point shall be verified jointly as set forth in Schedule A.

## **ARTICLE 8**

### **SHUT DOWN AND STOPPAGE OF SUPPLY**

- 8.01 After commencement of actual gas off-take, BUYER and SELLER may shutdown its facilities for maintenance for maximum 3 times (scheduled outages) in a Financial

- Year. The total shutdown period will not be more than 20 days in aggregate per Financial Year (on pro-rata basis) for both Buyer and Seller with written information to the other Party.
- 8.02 BUYER and SELLER agree to make best endeavour to synchronize the Scheduled Outages in overall interest of both the parties.
- 8.03 The party availing Scheduled Outages shall give at least 7 (seven) days' advance notice in writing to the other party of the beginning date and the duration of the Scheduled Outage. During such shutdown the provision of Article 6.01 shall not be applied.
- 8.04 The BUYER shall inform the SELLER immediately about any accident and/or defects in pipeline, installation of the BUYER, calling for the complete or partial stoppage of supply of GAS. Provided that in all such cases, the BUYER shall undertake immediate steps to rectify the defects for commencing normal intake of GAS. Provided that in all such cases, the provisions relating to payment of Monthly Minimum Guaranteed Off take by the BUYER contained in Article 6.01 shall apply.
- 8.05 The SELLER shall, likewise, inform the BUYER immediately about any accident and/or defects in installations and/or gas pipelines of the SELLER calling for the complete or partial stoppage of supply of gas. Provided that in all such cases, the SELLER shall undertake immediate steps to rectify the defects for commencing normal supply of GAS. Provided that in all such cases, the provisions relating to Monthly Minimum Guaranteed Off-take by the BUYER contained in Article 6.01 shall not be applicable for the duration of stoppage of supply of GAS by SELLER during this period.

## ARTICLE 9

### MEASUREMENT AND CALIBRATION

- 9.01 The measurement of the quantity of the Seller's Gas and the testing of the quality shall be carried out at the Delivery Point in accordance with prevailing standard practice followed at the Delivery Point and the corresponding standards listed in Appendix A at the time of delivery. Seller may install new systems as required under AGA for improvement in measurements and testing practices at the Delivery Point. Both Parties shall be present for all measurements and all ticketing of deliveries shall be completed on a joint basis.
- 9.02 Gross and Net Calorific Value (GCV and NCV) shall be measured as per industry practice and frequency shall be at least once for each billing period or as agreed otherwise.
- 9.03 The certificates of quantity and quality (or such other equivalent documents as may be issued at the Delivery Point) of the Seller's Gas shall, except in cases of manifest error or fraud, be conclusive and binding on both Parties for Seller invoicing purposes and Buyer shall be obliged to pay the invoiced amount.
- 9.04 The Parties agree to joint calibration of the measurement and testing devices at Delivery point in the frequency set forth on Schedule A.
- 9.05 Deleted
- 9.06 If upon conducting a test of any measurement:
- (a) any measuring equipment is found to have a margin of error (as per recommendations of AGA), then the prior recorded measurements/results of such equipment shall be deemed correct for computing the Seller's Gas



deliveries, but the equipment shall be promptly adjusted to operate and record and/or test correctly.

- (b) any measuring system in the aggregate is found to have a margin of error which exceeds the value as per recommendations of AGA, then, for the period for which such device has been known or is mutually agreed to have been so inaccurately functioning, the recorded measurements/results of such equipment shall be corrected to zero (0) margin of error for such period. If, however, the period of such inaccurate functioning of the device is not known or is not mutually agreed upon, then, at least for the period equivalent to half the time elapsed since such device was last found to have a margin of error of less than the value as per AGA recommendations, the devices recorded measurements/ results shall be adjusted to a zero (0) margin of error.
- 9.07 Any claim as to shortage in quantity and/or defect in quality of the Seller's Gas shall be made by written notice to Seller immediately after such apparent shortage and/or defect is/are discovered at the Delivery Point, provided that such shortage and/or defect are greater than the value as per AGA recommendations, Such initial written notice shall be followed by a formal written claim within 15 days to Seller with all details necessary to evaluate the claim.
- 9.08 Either Party may challenge the calibration of a measurement device by advancing to the owner of such measurement device double the cost of retaining an Expert to test the calibration. If the recalibration test results confirm the measurement equipment is outside of acceptable parameters, the advance shall be returned by the owner and the owner shall pay the costs of the recalibration. If the recalibration test results confirm the measurement equipment is properly functioning, the owner shall be entitled to pay the costs of the recalibration from the advance and retain the balance of the advance.
- 9.09 In case any dispute between Seller and Buyer in relation to the quality or quantity of the Seller's Gas delivered hereunder cannot be resolved amicably through mutual consultation it shall be referred to an 'Outside Expert Committee' as per the provisions of Article 16 (Dispute Resolution).
- 9.10 The Parties agree to validation of the measurement and testing devices at Delivery Point every 2/3 Years by an accredited inspector in accordance with normal practices.
- 9.11 If any measurement device is out of service or is registering inaccurately, the quantity of the Seller's Gas purchased and sold under this Agreement shall be estimated by mutual agreement:
- a. by correcting the error, if the proportion of the error is ascertainable by calibration or test, or analytically in accordance with acceptable international gas industry practice; or in the absence thereof;
  - b. by using the readings of a check meter in the case of measurement, if installed and accurately registering; or in the absence thereof;
  - c. by estimating the quantity of the Seller's Gas delivered by comparison with past deliveries during a period of similar conditions when the device was registering accurately;
  - d. by using an alternate acceptable form of measurement and/or testing.

## **ARTICLE 10**

### **SAMPLING OF GAS**

- 10.01 Sampling of GAS will be done according to MPMS (Manual of Petroleum Measurements Standards) 14 of API (August'93) titled "Collecting and handling of Natural Gas Sample for custody transfer" as contained in Manual of Petroleum Measurements Standards and such modifications thereof as may be made in future reports published by this authority or any other procedure as may be mutually acceptable to the SELLER and the BUYER for collection of the representative sample.
- 10.02 The representative sample of GAS shall be collected from the pipeline near the gas Delivery Point at least once for each 6 month. BUYER will be intimated for sampling. The sample will be analyzed in SELLER's laboratory.
- 10.03 The certificate of quality (or such other equivalent documents) of the SELLER's Gas shall, except in cases of manifest error or fraud, be conclusive and binding on both the Parties for SELLER invoicing purposes and BUYER shall be obliged to pay the invoiced amount.
- 10.04 The quality of the Seller's Gas delivered shall be as indicated in Schedule B.

## ARTICLE 11

### FORCE MAJEURE, ETC.

- 11.01 Neither Seller nor Buyer shall be responsible for any failure or delay in fulfilling any terms of this Agreement, as a result of Force Majeure, except in relation to obligations of BUYER to make payments under the Agreement. The term "Force Majeure" shall mean unavoidable causes reasonably beyond the control and without the fault or negligence of either party including but not restricted to acts of God or sabotage, fires, floods, cyclones, typhoons, earthquakes, wars (declared or undeclared), hostilities, invasion, blockades, riots, epidemics, quarantine restrictions, nationwide strikes, freight embargos, civil commotion or any order of Government, local authority having jurisdiction or anybody or person purporting to be or to act for such authority directly affecting the performance of this Agreement. In case of Force Majeure, the Parties agree to provide forty-eight [48] hours' notice to be served by the affected Party.
- 11.02 If, by reason of any cause reasonably beyond the control of the SELLER, there is a curtailment of or interference with the availability of SELLER's Gas from the Producing Areas which:
- (a) delays or hinders the SELLER in, or prevents the SELLER from, supplying the contracted quantity of the SELLER's Gas deliverable hereunder; or
  - (b) results in insufficient SELLER's Gas being available to the SELLER on a regular and reliable basis to enable it to supply itself with its requirements;
- then, for so long as that situation continues, the SELLER shall be entitled to withhold, reduce or suspend delivery hereunder to such extent as the SELLER may deem appropriate keeping the situation in mind.
- 11.03 For the purposes of this Article, and without limitation to the generality of Article 11.02, a cause shall be treated as being reasonably beyond the control of the SELLER if it arises or results from:
- (a) any requirement by any Government or Government agency for SELLER's Gas deliverable hereunder to be delivered by way of royalty in kind or otherwise;

- (b) any reduction in availability of SELLER's Gas deliverable hereunder, including adverse reservoir behaviour in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable;
- 11.04 In the event of Force Majeure, the Party asserting the claim of Force Majeure shall provide notice promptly and in no case later than forty-eight [48] hours after the occurrence of event of Force Majeure, notifying the other Party with respect to the ongoing Force Majeure event, giving full particulars of the Force Majeure, the estimated duration thereof, the obligations affected and the reasons of its suspension and its ability to recommence performance of its obligations under the Agreement as soon as possible.
- 11.05 The Party asserting the claim of Force Majeure shall have the burden of proving the circumstances constitute valid grounds of Force Majeure under this Article and that such Party has taken all precautions/measures and exercised reasonable diligence and efforts to remedy the cause of any alleged Force Majeure.
- 11.06 For avoidance of doubts, it is clarified and expressly understood between the Parties that relation between Seller and Buyer is limited to the present Agreement and Seller is not a party between Buyer and its customers and a cause shall not be treated as being reasonably beyond the control of Buyer if it arises or results from non-availability of further customers of Buyer or non-drawl of gas by customers of Buyer for any reason whatsoever.
- 11.07 In the event of Force Majeure, the Parties agree to use best efforts to remedy the event of and mitigate the effect of Force Majeure.
- 11.08 Notwithstanding anything contained in Article 2 (Term), in the event Force Majeure condition continues and remains un-remedied for period of [90] days from the date of beginning, the SELLER shall have sole discretion to terminate the AGREEMENT without any liability on his part, on this account.
- 11.09 BUYER will make payment to the SELLER for actual quantity of GAS supplied prior to commencement of FORCE MAJEURE and during the period of FORCE MAJEURE.

## **ARTICLE 12**

### **PRICE OF NATURAL GAS**

- 12.01 The price of gas shall be in US Dollar per MMBTU:
- Prevailing domestic gas price on GCV basis as fixed by Govt. of India from time to time; plus
  - Premium of US Dollar \_\_\_\_ / MMBTU
- 12.02 The above gas price is ex-ONGC installation and is exclusive of Taxes, Duties, service tax, GST, education cess, sales tax/VAT, Octroi, and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on sale of GAS by SELLER to the BUYER and these shall be borne by the BUYER over and above the aforesaid GAS price.
- BUYER being in doubt, whether a particular tax or duty or any change is effective or imposed, as the case may be, the BUYER shall take up the matter directly with the Central or State Govt. or local authority or any such other body or bodies concerned without withholding the payments thereto due under this Agreement to SELLER and shall inform the SELLER regarding the decision of such authorities.

- 12.03 A factor of 1 MSCM = 39.68254 MMBTU will be used for invoicing purpose linked with Gross Calorific Value (GCV) of 10,000 Kcal/SCM. The Seller shall further determine the quantity (in MMBTU) of gas delivered at the Delivery Point based on the actual gross calorific value of Seller's Gas delivered during the Billing Period by multiplying with a factor of actual GCV and dividing by 10000.

### ARTICLE 13

#### BILLING AND PAYMENT

- 13.01 SELLER shall raise an invoice on BUYER in Indian Rupees, on fortnightly basis for the Gas delivered in SCM or MMBTU during the period, specifying the following:
- I. The gas quantity for the applicable Billing Period;
  - II. The details of the Gross Calorific Value (GCV) to derive SELLER's Gas sold during a Billing Period;
  - III. The details of the Net Calorific Value (NCV) of gas, if applicable;
  - IV. Price of the Gas and Marketing margin as set forth in **Error! Reference source not found.** of the Agreement;
  - V. Details of Short-lifted quantity and amount towards short lifted quantity, if any; and
  - VI. Applicable taxes, and levies on above.

The billing period means a period of consecutive days beginning at 06.00 hrs. from a day and ending at 06.00 hrs. on the first day of the immediately following Billing period as under:-

- (i.) "First Billing Period" means the 1<sup>st</sup> to 15<sup>th</sup> day of the Month;
- (ii.) "Second Billing Period" means the 16<sup>th</sup> to last day of the month;

The invoice or Supplementary Invoice shall be sent by facsimile or e-mail to the designated officer as set forth in Schedule A of this Agreement or to such other number or e-mail address as Buyer may from time to time designate by notice to Seller.

- 13.02 BUYER shall pay the price including duties and taxes to SELLER for all SELLER's Gas delivered during any Billing Period (the amount due on the Invoice for that Billing Period) and any amount due and reflected on the Supplementary Invoice for that Billing Period, by the following Due Dates:

| <u>Billing Period of Deliveries<br/>and Supplementary Invoice</u> | <u>Due Date</u> |
|---|-----------------|
|---|-----------------|

|                      |                                       |
|----------------------|---------------------------------------|
| First Billing Period | 22 <sup>nd</sup> of the current Month |
|----------------------|---------------------------------------|

|                       |  |
|-----------------------|--|
| Second Billing Period | 07 <sup>th</sup> of the succeeding Month |
|-----------------------|--|

MMGO shall be billed on monthly basis taking into account DCQ and it will be a part of the invoice for the second Billing Period for the month. Invoice of Annual shortlifted quantity, if any, shall be raised at the end of Financial year.

In addition to the payment dates above, the BUYER shall pay MMGO to the SELLER on a monthly basis in case the off-take during the month qualifies for such payment as per Article 6.01 before 7<sup>th</sup> of the succeeding month.

- 13.03 The Seller shall calculate the Price of gas delivered at the Delivery Point in accordance with Article 12.01 based on the gross calorific value of Seller's Gas

delivered during the Billing Period where appropriate real time measurement facilities are in place and functioning. In case of non-functioning of measurement facilities, the Seller shall calculate the Price based on the average gross calorific value of Seller's Gas in pervious Billing Period where the calorific value has been verified. Price shall be subsequently adjusted to reflect actual calorific value of Seller's Gas once actual calorific value is determined.

- 13.04 Interest on overdue payments shall accrue as of and including the Due Date for payment and ending on but excluding the date of payment. Delay in payment will attract interest @ State Bank of India (SBI) Base Rate plus 6% per annum compounded quarterly for each day payments are overdue until paid.
- 13.05 BUYER shall arrange remittance of the Amount Due and other amounts due on the Supplementary Invoices on or before the Due Date specified herein in immediately available funds via electronic transfer or telegraphic transfer to the bank(s) and account(s) designated from time to time by SELLER by notice to BUYER. BUYER shall provide (by facsimile transmission or by e-mail to a designated officer of SELLER) at the time of any such payment, details of BUYER's payment at the time of any such payment. The cost, if any, of such electronic transfers or telegraphic transfer shall be borne by the BUYER.
- 13.06 On the Due Date if BUYER's banks are closed but SELLER's banks are open, BUYER will arrange remittance before the Due Date.
- 13.07 If both BUYER's banks and SELLER's banks are closed on the Due Date the payment will be made on the succeeding day to the aforesaid Due Date.
- 13.08 If BUYER's banks and SELLER's banks are closed for two consecutive days or more, the payment would be made on the day preceding to the first holiday.
- 13.09 In case of unscheduled closure of both BUYER and SELLER's banks on the Due Date, the payment will be made on the following working day.
- 13.10 In case of non-receipt of payment within Due Date as per Sub-Article 13.02, Seller shall recover the same from the Payment Security provided to Seller as per provision of Article 13.12.
- 13.11 In the event of dispute regarding billing and payment, BUYER agrees that all payments due hereunder shall be paid in full, without any set off or deduction, and shall be subsequently adjusted if so agreed by the Parties or, failing agreement within [60] days, matter shall be resolved in accordance with Article 16.
- 13.12 **Security of payment against gas supply:** Prior to signing of Gas Supply Agreement, the BUYER shall submit irrevocable and without recourse Letter of Credit (hereinafter referred to as L/C) for ₹\_\_\_\_\_ from \_\_\_\_\_ Bank at \_\_\_\_\_ (name of Place) in favour of the SELLER as per Format provided in Schedule C. This L/C is the value equivalent of 60 days of gas supply calculated on DCQ (as specified in Article 5.01) and multiplied by price of the gas as specified in Article 12 of the Agreement considering the gross calorific value (GCV) of gas to be supplied by the Seller (marketing margin and all applicable taxes and duties etc. shall be added to the applicable price of gas). The L/C should be valid for one year period. Gas supply to the consumer shall not commence unless L/C towards payment security is furnished.
- If the L/C is en-cashed for three or more times in a Financial Year due to any reason attributable to the Buyer, then the Buyer shall maintain a L/C of 125% value of the original L/C amount to provide higher payment security.
- 13.13 During the term of the Agreement, the L/C amount shall be based on rolling average of the conversion rate of US\$ vis-à-vis INR for the preceding 6 (six) months

and based on average gas off-take quantity for the preceding 6 (six) months. As the Domestic Gas Price is being notified on six monthly basis by the Govt. of India (from April to September and October to March), L/C amount would be re-worked in synchronization with the publication of Domestic Gas Price by Govt. of India. L/C amount shall have to be revised if the amount so calculated varies by more than 10% on either side.

- 13.14 The BUYER shall ensure the validity of the L/C by getting extension duly issued by his Banker at least one month before the expiry of the existing L/C. Further, Buyer shall ensure that during the last year of Contract, validity of the LC submitted is at least till three months beyond the Term of Contract. In case of failure to extend the validity of L/C by the BUYER, SELLER shall have right to invoke the L/C for encashment and keep the amount as deposit till the L/C is renewed. Further, SELLER shall have the right to stop the supplies for not keeping the L/C valid without any prejudice to the rights of SELLER to recover for monthly minimum guaranteed off take (MMGO) as per Article 6.01 of the Agreement.
- 13.15 **Bank Transfer:** Though the preferred mode of Payment Security for ONGC is providing LC as above, as an alternate option, Buyer may choose to provide Payment Security by way of Bank Transfer of the same amount as determined at Article 13.12 above. However, such deposit will not be considered as advance payment and will not carry any interest.

ONGC Bank details:

Name: OIL AND NATURAL GAS CORPORATION LIMITED

A/c No.: 10681236016

IFSC: SBIN0010866

Address: PO-Kansari, Khambhat, Gujarat-388630

Payment Security shall be provided either in form of LC or Bank Transfer (through electronic transfer). However, combination of both would not be allowed. Buyer is also to provide relevant proof of submission of such cash deposit in ONGC account.

Other terms of the LC as provided at 13.12 to 13.14 above will also be applicable to Payment Security provided in the form of Bank Transfer. Such Payment Security shall be released by ONGC three months after the expiry of the contract after making adjustments towards outstanding amounts, if any.

- 13.16 The bank charges, commissions, etc. required to maintain the Payment Security as per above provisions shall be borne by the Buyer.

**13.17 SECURITY DEPOSIT (SD):**

- A. All bidders, without relaxation of any kind whatsoever, will have to provide Security Deposit (SD) as part of the bid to cover twelve weeks Gas cost as provided here under in any of the following forms:
- i) **Unconditional Irrevocable Bank Guarantees (BGs)** {twelve separate BGs each covering 1 (one) week of cost of gas quantity quoted} in the prescribed format as per **Appendix-5 of Annexure-I**. The bank guarantee by the bidder will have to be given from the Nationalized/Scheduled banks only, on non-judicial stamp paper/ franking receipt as per stamp duty applicable at the place from where the bid has emanated. The non-judicial stamp paper/ franking receipt should be either in the name of the issuing bank or the bidder.

or

**Irrevocable Letter of Credit (L/C)** with instructions which allow the

beneficiary multiple part encashment. The format for letter of credit for Security Deposit (SD) is as provided in **Appendix-6 of Annexure-I**. Such Security Deposit (SD) shall be issued by a scheduled/Nationalized bank.

A confirmation in this regard shall be obtained by ONGC from the issuing bank of the bidder/customer.

or

Bank Transfer for 12 weeks gas cost for the quoted gas quantity through NEFT/ RTGS or Electronic fund transfer in ONGC's account (as provided in NIT). ONGC shall not pay any interest on such amount deposited by the bidders against security deposit.

Bidders should note that acceptance of their offer is subject to remittance of Bid Security/EMD amount to designated account of ONGC on or before due date and time of Tender closing. If required, ONGC reserve right to obtain confirmation regarding date and time of credit of Bid Security/ EMD amount to its account from concerned bank. The decision of ONGC in this regard shall be final and binding on the bidder. In case amount has been credited to ONGC's designated account after tender closing, such amount shall be refunded back to bidder within 10 days.

In their own interest bidders submitting EMD/Bid Security via NEFT/RTGS/ Electronic fund transfer are advised to complete the transaction atleast 24 hours before bid closing date.

- ii) This Security Deposit(s) at the time of Bid Submission should be valid for at least one year plus thirty days from the date of Bid Submission.
- iii) The security deposit may be submitted either in the form of BG or L/C or in the form of bank transfer, however, combination of either or all is not allowed.
- iv) This Security Deposit of successful bidders would be revised/ modified to the allocation level at the awarded price at the time of award & RBI reference rate of the previous month of award of allocation. The validity of revised Security Deposit should be at least for a period of six months plus thirty days beyond the promised date of utilization or one year plus thirty days from the date of Bid Submission, whichever is later. The same would be notified in NOA and such bidders would be required to submit the shortfall in Security Deposit (SD), if any, within 60 days, i.e., prior to signing of Gas Supply Agreement.
- v) The Security Deposit shall be liable to be invoked for encashment on a weekly basis in the event of delay in utilization of gas (as per usage promised in the bid). The delay should be attributable to the delay on part of Buyer. After retaining the pro-rata amount for the actual number of days delayed from the Security Deposit amount invoked for encashment for the last week of delay, the balance amount shall be refunded to the customer on actual commencement of the gas supply and submission of Payment Security in terms of Article 13.12 of Agreement. In case of delay in gas off-take by the bidder beyond twelve weeks, the allocation can be retained by the bidder provided Security Deposit for a further period of twelve weeks is provided by the bidder on the same terms and conditions. In case it is not provided within 7 (seven) days from the expiry of the first 12 (twelve) weeks period, the gas allocation made to the bidder shall stand cancelled and gas would be allotted to the next bidder in the queue from the previous bid or a new bid would be undertaken if no prior valid bids are available.
- vi) The SD amount levied would be limited to maximum twenty four weeks (168

days) gas cost irrespective of reasons for delay.

- vii) In case of delay by Buyer beyond first twenty four weeks (168 days) period, ONGC may terminate the agreement without further notice.

**B. FAILURE AND TERMINATION CLAUSE/ LIQUIDATED DAMAGES CLAUSE**

Time and delivery commencement period in terms of number of days as promised by the bidder shall be the essence of the contract. If the bidder fails to off-take gas within the period fixed for such gas delivery in the schedule or any time repudiates the contract before the expiry of such period, ONGC may, without prejudice to any other right or remedy, available to ONGC to recover damages for breach of the contract:

- (a) Recover from the bidder as agreed liquidated damages and not by way of penalty, per week for such delay or part thereof (this is an agreed, genuine pre-estimate of damages duly agreed by the parties) which the bidder has failed to off-take gas within the period promised by the bidder for delivery in the schedule. or
- (b) Cancel the contract/ allocation order after completing the procedure contemplated in the bid document.
- (c) It may further be noted that clause (a) above provides for recovery of liquidated damages on the cost of contract for delayed gas off-take. Such liquidated damages for delay in gas off-take shall be recovered by ONGC from the Security Deposit (SD) available with ONGC in accordance with the terms of Gas Supply Agreement or otherwise.

**C. Liquidated Damages (LD):**

Bidder to indicate delivery commencement period in terms of number of days from NOA Date which should not be more than 365 (three hundred and sixty five) days. The delay of the bidder shall be reckoned from the number of days quoted/ promised by the bidder to off-take gas from the NOA date. If there is delay by ONGC in its readiness to commence the gas supply, no L/D will be recovered from the Security Deposit available with ONGC for the delay on the part of ONGC. L/D will be recovered from the Security Deposit available with ONGC if there is delay attributable to the Buyer beyond number of days quoted/ promised by the bidder from the NOA date. In case there is any difficulty in invoking the Bank Guarantee/ L/C towards Security Deposit (SD) for encashment as envisaged in Article 13.17 (A) above, opportunity would be given to the bidder to provide the equivalent Bank Guarantee/ L/C amount due through a bank draft within 5 (five) working days, failing which the allocation will be liable to be cancelled forthwith without any further notice.

- D. Further, in case of delay in providing Security Deposit (SD) as provided under 13.17 (A) (iv), if any payment due towards bidder for delay in gas off-take the same shall be recovered from the Payment Security available with ONGC provided by the bidder under Article 13.12.
- E. The initial twelve weeks cost of gas would be calculated on gas quantity quoted in the Bid Schedule and multiplied by reserve gas price applicable corrected for GCV provided in the tender document plus applicable taxes thereon.
- F. The Security Deposit (SD) (including applicable taxes and duties) should be provided in Indian Rupee. For calculating the amount of twelve weeks gas cost, following methodology for conversion is to be considered:
- a. MMBTU to 1000 SCM conversion factor: 39.68254 for GCV of 10000 Kcal/SCM.



- b. For the USD to INR conversion, the average RBI Reference Rate as provided in Appendix -1 to Annexure-II to be considered.
- c. Calculation of Security Deposit (Illustration only):

| <b>Calculation of SD amount for allocation of Gas</b> |  |           |
|---|--|-----------|
| Name of bidder  | Formula  | M/s_____. |
| Quoted Quantity (Q)                                   | Q, SCMD  | 6,250     |
| 84 days allocated quantity                            | $Q \times 84$ (SCM)  | 5,25,000  |
| 84 days allocated quantity( MSCM)                     | $Q2 = Q \times 84/1000$ (MSCM)   | 525       |
| Applicable domestic gas price (Reserve Price)         | USD/MMBTU  | 1.79      |
| Gross Calorific Value (GCV)                           | Kcal/SCM   | 8,900     |
| FBIL ref. rate (June'21 Average)                      | INR/USD  | 73.56     |
| Conversion factor                                     |  | 39.68254  |
| Gas price (Rs./MSCM)                                  | $P = \text{Reserve Price} \times \text{GCV} \times \text{conversion Factor} \times \text{FBIL ref. rate} / 10,000$ | 4,650.33  |
| Value of Gas cost                                     | $\text{Rs.} = Q2 \times P$   | 24,41,426 |
| Add: Applicable taxes and Duties (Presently 18% GST)  | Value of Gas cost x 18%  | 4,39,457  |
| Total value of Security Deposit                       | Value of gas cost + Taxes  | 28,80,882 |
| say, Rs.  | Rs.  | 28,81,000 |

- G. ONGC shall not be liable to pay any bank charges, commission or interest on the amount of Security Deposit (SD).
- H. Revision of Security Deposit (SD): Successful bidder shall be asked to revise Security Deposit (SD) to the allocation level at the Contract Price (higher of quoted/ matched price with applicable domestic gas price notified by MoP&NG) and RBI reference rate of the previous month of allocation. The same would be notified in NOA and submission of such revised SD shall be pre-condition for signing of GSA.

#### **ARTICLE 14**

#### **CHANGE IN LAW, RULES AND REGULATIONS**

Parties agree that if during the currency of this Agreement, there is any change, either by way of introduction of any new or amendment in the existing Laws, Rules, Regulations, Orders, directives, policies of the Government of India, the same shall be binding on both the parties and such change shall not be a ground for amending or avoiding the Agreement.

#### **ARTICLE 15**

#### **TRANSFER OF RIGHTS**

- 15.01 Neither Party shall assign any of its rights or transfer or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. In the event of an assignment in accordance with the terms of this Article, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Article shall be void.
- 15.02 Subject to Article 15.03, a Party may assign its rights and transfer its obligations under this Agreement to its Affiliate with the prior consent of the other Party, which shall not be unreasonably withheld. Provided that:
- 15.02.01 an entity shall qualify as an "Affiliate" of the Party if it, directly or indirectly, controls, is controlled by or is under common control of such Party; the term "control" meaning ownership of more than fifty percent (50%) of the equity share capital or voting rights of such Party;
- 15.02.02 such affiliate has the ability to perform all obligations of the Party under the Agreement; and
- 15.02.03 such affiliate expressly assumes such obligations;
- 15.03 Provided that such request of BUYER will only be considered if the proposed Assignee fulfills the techno-commercial criteria, prescribed in the Bid Document at the time of submission of such request.
- 15.04 If the BUYER intends to transfer or assign its rights and obligations under this Agreement, except the BUYER's obligation to pay the amounts due to ONGC under this Agreement, to an Affiliate, BUYER shall obtain prior permission of the SELLER for such transfer or assignment.
- 15.05 Acceptance of request for transfer/assignment shall be subject to approval of Government Rules/Regulations and guidelines.

## **ARTICLE 16**

### **DISPUTE RESOLUTION**

Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arise between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties are unable to settle mutually, the same shall be referred to Arbitration as provided hereunder:

#### **16.1 For Public Sector Undertaking:**

16.1.1. Parties hereby agree that any controversy, difference, disagreement or claim for damages, compensation or claims arising out of or in connection with any of the terms and conditions of this Agreement or concerning the interpretation or performance thereof or otherwise (hereinafter in this Article referred to as a "dispute") arising between the Parties, which cannot be settled amicably within [90] days after the dispute arises, may be submitted to conciliation or an arbitral tribunal for decision as hereinafter provided

16.1.2. In the event of dispute between the parties, except for the matters, if any, referred to a Conciliator, whose recommendations are accepted, shall be settled in accordance with guidelines issued on the subject by Government from time to time and as set forth below.

In the event of any disputes 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 and Organizations (excluding disputes concerning Railways, Income Tax , Customs and Excise Departments), such disputes 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.

16.1.3. Notwithstanding anything contained above, before any matter is referred for arbitration such matter shall be referred by either Party:

1. to the Chairman/appointed representatives of the Chairman of the Parties for resolution. Such senior representatives shall undertake to resolve such dispute in good faith within [30] days from the date of such reference.

## 16.2 For others: As stipulated under:

16.2.1 Resolution of disputes through conciliation by Outside Expert Committee (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 endeavors 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/Buyer and/or with any other person involved or connected or dealing with bid / contract / bidder / Contractor/Buyer.
  - 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/Buyer.

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:

**16.2.1.1 Proposal for OEC**

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

16.2.1.1.2 Claimant shall give notice for conciliation. In cases where the Contractor/Buyer 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.

**16.2.1.2. Constitution of OEC**

16.2.1.2.1. 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.

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

16.2.1.2.3. The OEC members shall give a declaration of independence and impartiality (in proper format) to both the parties before the commencement of the OEC proceedings.

**16.2.1.3. Proceedings before OEC**

16.2.1.3.1. 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 (in proper format).

16.2.1.3.2. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims.

16.2.1.3.3. 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.

- 16.2.1.3.4. OEC will commence its meetings only after completion of the pleadings.
- 16.2.1.3.5. 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.
- 16.2.1.3.6. 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/Buyer. However, ex-employees of parties may represent their respective organizations.
- 16.2.1.3.7. 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/Buyer or its representatives.
- 16.2.1.3.8. Parties agree to rely only upon documentary evidence in support of their claims and not to bring any oral evidence in the OEC proceedings.
- 16.2.1.3.9. OEC will give full opportunity of hearing to the parties before giving its recommendations.
- 16.2.1.3.10. 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.
- 16.2.1.3.11. OEC members will be paid fees and provided facilities (as detailed under clause 16.2.1.5) hereinafter, subject to revision by ONGC from time to time and subject to Government guidelines on austerity measures, if any.
- 16.2.1.3.12. 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.
- 16.2.1.3.13. 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.

16.2.1.3.14. 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.

#### 16.2.1.4. Actions after OEC Recommendations

16.2.1.4.1. 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.

16.2.1.4.2. The Contractor/Buyer shall give its response to ONGC within 7 days receiving OEC Recommendation.

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

16.2.1.4.4. 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.

16.2.1.4.5. The parties shall keep confidential all matters relating to the conciliation proceedings including minutes of OEC meetings 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 arbitration proceeding;
- 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.

16.2.1.4.6. 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.

16.2.1.4.7. 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.

#### 16.2.1.5. Fees and facility to the OEC Members

OEC members shall be entitled to 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/Buyer |
| ii.  | Fee for attending meeting to authenticate the settlement agreement | Rs. 10,000   | Contractor/Buyer |
| iii.   | Transportation in the city of meeting                              | Car as per entitlement of Rs. 2,000 per day.   | Contractor/Buyer |
| iv.  | Venue for meeting  | ONGC conference rooms/Hotels   | ONGC             |
| <b>Facilities to be provided to the out-stationed member</b> |  |  |                  |
| v.   | Travel from 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/Buyer |
| vi.  | Transport to and fro airport/railway station in the                | Car as per entitlement of Rs. 3,000 per day.   | Contractor/Buyer |

|       |                                  |  |                  |
|-------|----------------------------------|--|------------------|
|       | city of residence                |  |                  |
| vii.  | Stay for out-stationed members   | 5 Star hotels                                | ONGC             |
| viii. | Transport in the city of meeting | Car as per entitlement of Rs. 2,000 per day. | Contractor/Buyer |

#### **16.2.2. Resolution of disputes through ARBITRATION:**

**(Applicable in cases of Supply Orders/Contracts with firms, other than Public Sector Enterprises) (Not applicable in cases valuing less than Rs. 5 lakhs)**

16.2.2.1 There shall be no arbitration for disputes involving claims upto Rupees 25 lakhs and more than Rupees 100 crore. 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.

16.2.2.2 Arbitration can be invoked by giving Invocation Notice only after expiry of 60 days' period as per Dispute Notice stipulated in para above.

16.2.2.3 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.

16.2.2.4 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 jurist 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/Buyer. Such dispute shall be resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act, 1996.

16.2.2.5 For a dispute involving claims above Rs. 5 crores and upto Rs. 100 crores, the claimant shall appoint an Arbitrator and communicate to the other party in the Invocation Notice itself along with copy of disclosure made by nominated Arbitrator in the form specified in the Sixth Schedule of the Arbitration and Conciliation Act, 1996. For the purpose of Section 21, the Arbitration proceedings 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 fifteen days from the 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.



- 16.2.2.6 For the purpose of appointment of Arbitrator(s), claims amount shall be computed excluding claim for interest, if any.
- 16.2.2.7 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.
- 16.2.2.8 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 Arbitration and Conciliation Act, 1996. However, Arbitrator may fix their fees keeping the aforesaid schedule as guiding factor.
- 16.2.2.9 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:
- a. 20% of the fees if the claimant has not submitted statement of claim.
  - b. 40% of the fees if the pleadings are complete.
  - c. 60% of the fees if the hearing has commenced.
  - d. 80% of the fees if the hearing is concluded but the award is yet to be passed.
- 16.2.2.10 Each party shall be responsible to make arrangements for the travel and stay etc of the arbitrators appointed by it. Claimant shall also be responsible for making 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.
- 16.2.2.11 The seat of Arbitration shall be the place from where 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.
- 16.2.2.12 Parties agree that neither party may amend or supplement its claim during the course of arbitral proceedings.
- 16.2.2.13 The parties may, after invocation of dispute, agree for sharing the cost of Arbitration equally on 50:50 basis.
- 16.2.2.14 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.

## **ARTICLE 17**

### **TAXES AND DUTIES**

- 17.01 All applicable taxes and duties including VAT, Sale Tax, octroi, entry taxes, GST, service tax and excise payable in respect of any Seller's Gas delivered/ Minimum Guaranteed Offtake hereunder will be to the Buyer's account and the Buyer agrees to reimburse the Seller for such taxes and duties along with price of the gas.
- 17.02 The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Seller's Gas supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage after title and risk in such Seller's Gas has transferred to the Buyer shall be to the Buyer's account.
- 17.03 Wherever for the purpose of administrative convenience/ tax requirement or otherwise, Seller pays any tax, Buyer would reimburse the same to the Seller except any penalties, interest, etc. paid due to default of Seller. Buyer would extend full cooperation to the Seller in the matter of all the tax assessments.

## **ARTICLE 18**

### **TITLE AND RISK**

- 18.01 Title and risk in the Seller's Gas shall pass from Seller to Buyer at the Delivery Point i.e. at the downstream flange of the pipeline at the outlet of the Gas Metering Station. Upon delivery at the Delivery Point, Buyer shall be deemed to be in exclusive control and possession of Seller's Gas and shall be fully responsible for and shall indemnify Seller against any damages or injury resulting from the transportation, handling or use of the Seller's Gas.

## **ARTICLE 19**

### **LAWS GOVERNING THE AGREEMENT**

- 19.01 The Agreement shall be governed by Indian Laws, rules and regulations, notifications etc. issued under such Laws both procedural as well as substantive, as may be amended from time to time. Courts at Gandhinagar (Gujarat State) shall have exclusive jurisdiction on the matters arising under the Agreement.

## **ARTICLE 20**

### **RESTRICTIONS ON USE OF GAS**

- 20.01 The BUYER shall not be entitled to use the GAS for any other purpose other than those contemplated in the tender document unless permitted by the SELLER.
- 20.02 BUYER shall not misuse the gas or use it for any anti national activity/anti-social activity. If he does so ONGC will not be liable for their misuse or such activity and shall be entitled to stop the gas forthwith as soon as it comes to the notice of ONGC.

## **ARTICLE 21**

### **PREVIOUS CORRESPONDENCE.**

- 21.01 All discussions and meetings held and correspondences exchanged between the BUYER and the SELLER in respect of the AGREEMENT and any decisions arrived at therein in the past and before coming into force of this AGREEMENT are hereby superseded by this AGREEMENT and no reference of such discussions or meetings or past correspondence will be entertained by either the SELLER or the BUYER for interpreting the AGREEMENT or otherwise.

## **ARTICLE 22**

### **AMENDMENTS**

- 22.01 Subject to Article 14, any amendment to any of the clauses of the Agreement will be proposed and sent in writing to the other party proposing such amendment and if both the SELLER and the BUYER agree to such amendment then the same shall be incorporated in the Agreement and shall become binding on the parties as such from the date the agreement is reached, unless otherwise agreed to.

## **ARTICLE 23**

### **INDEMNITIES**

- 23.01 Any loss, damage, liability, cost and/or expense related to:

- (a) any injury to, ill health, disease or death of an employee or a contractor or subcontractor of a Party (or any employee of such contractor or sub-contractor); and/or
- (b) actual physical loss of or to Party's facilities;

which is caused by either Party's operations at or near the Delivery Point, shall be borne by the Party causing such loss, damage and cost of the Party which has engaged the relevant employee or contractor or sub-contractor, causing such loss or, damage and the Party causing such loss, damage, liability, cost and/or expense shall defend, indemnify, hold harmless and release the other Party in respect of such loss, damage, liability, cost and/or expense.

- 23.02 Whenever a Party (the "Indemnitee") becomes aware of a claim in respect of which it will or may be entitled to require the other Party (the "Indemnitor") to defend, indemnify, hold harmless and release it pursuant to Article 23.01 above, the Indemnitee shall promptly notify the Indemnitor and the Indemnitee shall take such action as the Indemnitor may reasonably request to avoid, dispute, resist, appeal, compromise or defend the relevant claim and any judgment in respect thereof, subject to the Indemnitee being indemnified and secured to its reasonable satisfaction by the Indemnitor against all losses, costs, damages and expenses relating to such claim including, without limitation, those thereby incurred or to be incurred. If the Indemnitor does not request the Indemnitee to take any appropriate action as aforesaid, or shall fail to indemnify and secure the Indemnitee to its reasonable satisfaction within twenty-eight (28) Days of the notice to the Indemnitor, the Indemnitee shall be free to pay or settle the relevant claim on such terms as it may in its absolute discretion think fit and thereafter recover from the Indemnitor pursuant to the Indemnitee's rights under this Article.

## **ARTICLE 24**

### **RIGHT TO STOPPAGE OF GAS/TERMINATION**

24.01 Seller may at its sole discretion, and in addition to any other legal remedies it may have, forthwith upon giving [30] days' notice to Buyer, suspend deliveries of the Seller's Gas or terminate the Agreement if:

- i) Buyer for any reason whatsoever fails to make any payment due to Seller under the Agreement by the due date, failure remains un-remedied at the expiry of the aforesaid notice period;
- ii) Buyer is in substantial breach of its material obligations under the Agreement and such breach or failure remains un-remedied at the expiry of the aforesaid notice period;
- iii) Buyer fails to take delivery of Seller's Gas it is obligated to under this Agreement and such failures are not excused by any other provision in the Agreement;
- iv) A Buyer event of Force Majeure continues for [90] days or more;
- v) A petition is filed with the court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation, or winding up of Buyer;
- vi) Buyer becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is in Seller's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due;
- vii) A receiver is appointed for the whole or significant part of the assets or undertaking of Buyer;
- viii) Buyer ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued upon or against any significant part of the property of Buyer and is not discharged until [90] days;
- ix) If Buyer is adjudged bankrupt or enters into an agreement with its creditors or takes advantage of any law for the benefit of debtors; or
- x) Buyer has passed a resolution to apply to a competent court for liquidation.
- xi) Any reduction in availability of SELLER's gas deliverable hereunder, including adverse reservoir behaviour in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable;

24.02 Buyer may at its sole discretion, and in addition to any other legal remedies it may have, forthwith upon giving [30] days' notice to Seller, terminate the Agreement if:

- i) A Seller event of Force Majeure continues for [90] days or more;
- ii) A petition is filed with the court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation, or winding up of Seller;

- iii) Seller becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is in Buyer's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due;
  - iv) A receiver is appointed for the whole or significant part of the assets or undertaking of Seller;
  - v) Seller ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued upon or against any significant part of the property of Seller and is not discharged until [90] days;
  - vi) If Seller is adjudged bankrupt or enters into an agreement with its creditors or takes advantage of any law for the benefit of debtors; or
  - vii) Seller has passed a resolution to apply to a competent court for liquidation.
- 24.03 Subject to any other specific rights of termination contained in this Agreement, this Agreement shall continue in force for the duration stipulated in Article 2.01.
- 24.04 In the event of Seller suspending deliveries of Seller's Gas in any of these circumstances referred to in Article 24.01, Seller may, so long as the event continues, and in addition to any other legal remedies it may have, forthwith upon giving the appropriate notice to Buyer, terminate the Agreement.
- 24.05 If pursuant to the provisions of Article 24.01, Seller withholds, reduces or suspends delivery of the Seller's Gas, then Seller shall be under no obligation to make up any quantity of the Seller's Gas which would have been delivered to Buyer but for such withholding, reduction, or suspension.
- 24.06 Any termination of the Agreement shall be without prejudice to the rights and obligations of SELLER as accrued up to the date of termination.
- 24.07 Suspension:
- Notwithstanding anything to the contrary express or implied elsewhere herein:
- Seller (without prejudice to its other rights) may at its sole discretion either terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if Buyer:
- i) Uses gas for activities which are anti-national or anti-social activity or against public interest.
  - ii) Any reduction in availability of SELLER's Gas deliverable hereunder, including adverse reservoir behaviour in the Producing Areas, which in the SELLER's opinion as a prudent operator was not reasonably foreseeable;

## **ARTICLE 25**

### **CONFIDENTIALITY**

- 25.01 Subject to the further provisions of this Article 25, each Party shall maintain confidentiality in accordance with the standards of care and diligence that it utilizes in maintaining its own confidential information with regards to the terms of this Agreement and any information supplied or obtained by a Party pursuant to the terms hereof ("Confidential Information").

- 25.02 Notwithstanding Article 25.01, either Party may disclose information that would otherwise be Confidential Information if and to the extent:
- i. Required by law;
  - ii. Required by any securities exchange or regulatory or governmental body to which such Party is subject or submits, wherever situated, whether or not such requirement for information has the force of law;
  - iii. Disclosed to the professional advisers, auditors, bankers of a Party provided that such Party procures that such persons protect such Confidential Information on the same terms as and agrees to be bound by as if it were a Party to this Article;
  - iv. The Confidential Information is already in the public domain through no fault of that Party;
  - v. The other Party has given prior written approval to the disclosure;
  - vi. It is disclosed to any potential assignees or transferees of such Party provided that such Party procures an undertaking in writing that the potential assignee or transferees protects such Confidential Information on the same terms and agrees to be bound by as if it were a party to this Agreement. Both the BUYER and the SELLER shall maintain confidentiality unless required under law to disclose.

#### **ARTICLE 26**

#### **NO AGENCY**

- 26.01 Neither Party shall, and each shall procure that its directors, officers and employees in that capacity, shall not, represent itself or otherwise hold itself out as an agent or other representative of the other Party or otherwise hold itself out as having any authority to bind the other of them unless such person is validly authorized to do so.

#### **ARTICLE 27**

#### **EFFECT OF ILLEGALITY, ETC.**

- 27.01 The invalidity, illegality or unenforceability of any of the terms of this Agreement in any respect for whatever reason under the law of any jurisdiction, shall not affect or impair the validity, legality or enforceability in that jurisdiction of any other provision of this Agreement, or under the law of any other jurisdiction of that or any other provision of this Agreement. The Parties shall make all reasonable endeavours to agree as far as possible that invalid terms shall be amended or replaced by valid terms with a similar effect in order to maintain the purpose and continuity of this Agreement and till the amendments are carried out, such invalid terms will be inoperative in relation to the rights and obligations of the Parties under this Agreement.

#### **ARTICLE 28**

#### **GOOD FAITH**

- 28.01 Each of the Parties shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at its own cost, so execute or perform all such further deeds, documents, assurances, acts and things as may reasonably be

required to perfect the transaction referred to herein, and to give effect to the terms of this Agreement.

## **ARTICLE 29**

### **WAIVER**

- 29.01 No delay or omission on the part of either Party in exercising any right, power or remedy provided by law or under this Agreement, nor any indulgence granted by any Party to any other Party, shall impair such right, power or remedy, or be constructed as a waiver thereof, nor shall the single or partial exercise of any right, power or remedy provided by law or under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 29.02 Any waiver shall relate only to the matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

## **ARTICLE 30**

### **CUMULATIVE REMEDIES**

- 30.01 Except as expressly provided herein, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

## **ARTICLE 31**

### **ENTIRE AGREEMENT**

- 31.01 Each of the Parties hereby acknowledges that, in entering into this Agreement it has not relied on any representation or warranty save as set out expressly herein or in any document referred to herein.

## **ARTICLE 32**

### **NO PARTNERSHIP**

- 32.01 Nothing in this Agreement shall constitute or be deemed to constitute the relationship of principal and agent or of a partnership between the Parties and neither of them shall have any opportunity to bind the other in that capacity.

## **ARTICLE 33**

### **PRIVITY**

- 33.01 This Agreement is intended solely for the benefit of the Parties and is not intended to confer any benefits on, or create any rights in favour of any other person.

## **ARTICLE 34**

### **APPROVALS**

- 34.01 Each Party shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.

## **ARTICLE 35**

### CONSEQUENTIAL LOSS, LIMITATION OF LIABILITY

- 35.01 Except as expressly provided for in this Agreement, neither BUYER nor SELLER shall be liable for consequential, indirect or special losses/damages or for loss of control, profit or product of any kind arising out of or in any way connected with the conclusion, the performance or non-performance of this Agreement, and whether arising in contract, tort including negligence or breach of duty, statutory, or otherwise.

### ARTICLE 36

#### REPRESENTATIONS

- 36.01 Without prejudice to any liability for any fraudulent misrepresentation, each of the Parties hereby acknowledge to the other Party that it has not entered into this Agreement in reliance upon any representations made by such other Party (other than any made fraudulently) and accordingly, neither Party shall have any remedy against the other Party in relation to misrepresentation.

### ARTICLE 37

#### NOTICES

- 37.01 Any notice or other communication required to be given pursuant to this Agreement shall be given by delivering the same by hand at, or by sending the same by registered/speed post (air mail if to an address outside the country of posting) to the address of the relevant Party set out in this Agreement or by fax, e-mail using the relevant number set out below or such other address as either Party may notify to the other from time to time. Any notice or other communication given as aforesaid shall be deemed to have been given at the time of delivery (if delivered by hand) or on transmission of the recipient's automatic answerback (if sent by fax) or when received (if sent by post):

For Seller: As set forth in the Schedule A as Seller's Address; and

For Buyer: As set forth in the Schedule A as Buyer's Address.

### ARTICLE 38

#### ADDRESSES OF PARTIES.

- 38.01 The address of the parties hereto unless changed by written notification to be given at least 15 days in advance by Registered letter prior to proposed date of change, will be as follows for the operation of the Agreement:

| <u>THE SELLER</u>   | <u>THE BUYER</u>   |
|---|--|
| <b>Asset Manager,</b><br><b>OIL AND NATURAL GAS CORPORATION LIMITED,</b><br>_____ Asset, _____,<br>_____ (India).<br>Phone No.:<br>Fax. Number: | _____<br>_____<br>_____<br>_____<br>Pin:- _____ (India). |



|         |   |
|---------|---|
| e-mail: | Phone Number: (STD Code)- (-----)<br>Fax. Number: (STD Code) - (-----)<br>e-mail: |
|---------|---|

IN WITNESS WHEREOF the parties hereto acting through their properly constituted representatives have set their hands to cause this Agreement signed and executed for and on their behalf.

|  |   |
|--|---|
| <p><b>FOR &amp; ON BEHALF OF THE SELLER</b></p> <hr style="border: 0.5px solid black;"/> <p style="text-align: center;">Asset Manager, _____ Asset</p><br><p><b><u>Witnesses</u></b></p> <p>1. _____</p> <p>2. _____</p> | <p><b>FOR &amp; ON BEHALF OF THE BUYER</b></p> <hr style="border: 0.5px solid black;"/><br><p><b><u>Witnesses</u></b></p> <p>1. _____</p> <p>2. _____</p> |
|--|---|

Attached as Schedule A of the Gas Supply Agreement dated ----- between Oil and Natural Gas Corporation and \_\_\_\_\_

\_\_\_\_\_ Region

Production Field (s)/Area (s): Chaklasi  
 Delivery Commencement Date: [On or before .....]  
 Expiry Date: [five] 5 years from Delivery Commencement Date.

| Location    | Delivery Point (Abbreviated name of Meter) | Metering Measurement System | Frequency of Measurement | Tolerance in Quantity Measurement | Frequency of Calibration | Frequency of Quality Testing | Typical Delivery Pressure, Kg/Cm <sup>2</sup> g |
|-------------|--|-----------------------------|--------------------------|-----------------------------------|--------------------------|------------------------------|---|
| Chaklasi 11 | Chaklasi 11,                               | Orifice                     | Daily                    | As per AGA 3 & 8 standards        | Half yearly              | Fortnightly                  | 1 to 2 Kg/Cm <sup>2</sup>                       |

**Seller's Address: Asset Manager,**  
**OIL AND NATURAL GAS CORPORATION LIMITED,**  
 \_\_\_\_\_ Asset, \_\_\_\_\_,  
 Phone No.: (\_\_\_\_\_) \_\_\_\_\_  
 Fax Number: (\_\_\_\_\_) \_\_\_\_\_  
 e-mail:

**Buyer' Address:** [.....]  
**Contact:** [.....]  
**Phone number:** [.....]  
**Fax number:** [.....]  
**e-mail:**

Attached as Schedule B to the Gas Supply Agreement dated \_\_\_\_\_ between Oil and Natural Gas Corporation Limited and \_\_\_\_\_.

Price:

- (a) The contract price of gas shall be in US\$ MMBTU as under:
  - i. Prevailing domestic gas price on GCV basis as fixed by Govt. of India from time to time, plus
  - ii. Premium of USD\_\_\_/MMBTU.
- (b) Provided further that the marketing margin of ₹ 200/MSCM would be charged in addition to the gas price indicated above. The marketing margin would be linked to calorific value of 10,000 Kcal/SCM on Net Calorific Value (NCV) basis. The rate of marketing margin is subject to revision from time to time and Buyer agrees to pay the same at the revised rate.
- (c) The above gas price is ex-ONGC installation and is exclusive of Taxes, Duties, service tax, GST, education cess, sales tax/VAT, Octroi, and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on sale of GAS by Seller to the BUYER and these shall be borne by the BUYER over and above the aforesaid GAS price.
- (d) A factor of 1 MSCM = 39.68254 MMBTU will be used for invoicing purpose linked with Gross Calorific Value (GCV) of 10,000 Kcal/SCM. The Seller shall further determine the quantity (in MMBTU) of gas delivered at the Delivery Point based on the actual gross calorific value of Seller's Gas delivered during the Billing Period by multiplying with a factor of actual GCV and dividing by 10000.
- (e) The above price would be converted to ₹./MMBTU on monthly basis at the RBI reference exchange rate of the month, previous to the month during which supply of gas is made. Price in ₹./ MMBTU shall be rounded off to two decimal places. The RBI reference exchange rate of the month would be calculated by taking the average of the RBI reference exchange rates for all the days in the relevant period/ month for which the rate is available on the RBI website. The monthly average RBI exchange rate so calculated shall be rounded off to two decimal places. The rates can be downloaded from FBIL website: <http://fbil.org.in>.
- (f) In the event of deregulation in the gas sector by the Government of India or its instrumentalities, or if public authorities discontinue fixing the Price of natural gas sold hereunder and/or cease making Gas allocation then the Gas price & the Marketing Margin would be linked to the market price on a mutually agreed formula. The Seller shall notify the Buyer of any such event. If the Parties do not agree upon new Price or terms satisfactory to both Parties within [60] days after the date of the Seller's notice, the Seller shall have the right to suspend the Agreement immediately at the end of such [60] day period. Any Gas delivered during such 60 days period shall be sold and purchased at the existing Price and on the terms applying under the Agreement without any adjustment in respect of the new or changed Laws, Regulations and Orders.

Attached as Schedule C of the Gas Supply Agreement dated \_\_\_\_\_ between Oil and Natural Gas Corporation and \_\_\_\_\_

**Specifications - Gas quality:**

| Typical Gas Composition*                | Volume (%)                   |
|---|------------------------------|
| 1. Combustible Hydrocarbon gases:       | [90%] minimum                |
| 2. Non-combustible gases other than HC: | [5%] maximum                 |
| 3. Gross Calorific Value (GCV):         | Not less than 8,800 Kcal/SCM |
| 4. Net Calorific Value (NCV):           | Not less than 7,900 Kcal/SCM |

**Attached as Schedule D to the Gas Supply Agreement dated \_\_\_\_\_  
between Oil and Natural Gas Corporation Limited and \_\_\_\_\_**

Profile of gas availability for Sale  
<To be inserted based on field by work centre>

| Period | Gas Quantity, SCMD |
|--------|--------------------|
|        |                    |
|        |                    |
|        |                    |
|        |                    |
|        |                    |
|        |                    |
|        |                    |

**Schedule E**

**To: [SELLER/ BENEFICIARY]  
[ADDRESS]**

**IRREVOCABLE STANDBY LETTER OF CREDIT. NO.:** \_\_\_\_\_

**Name of Beneficiary:** ONGC, <Details of ONGC Asset to be mentioned >

**Name of Applicant:** <Buyer Details to be mentioned>

**Amount of Letter of Credit:** ₹ \_\_\_\_\_. **Expiry Date:** \_\_\_\_\_.

At the request of the \_\_\_\_\_ <Name and Address> (“**Applicant**”), we, \_\_\_\_\_, <Name and Address> (“**Issuing Bank**”) hereby establish unconditional irrevocable standby Letter of Credit no. \_\_\_\_\_ Dt. \_\_\_\_\_ in favour of Oil and Natural Gas Corporation Ltd., <Details of ONGC Asset> (the “**Beneficiary**”) for Rs. \_\_\_\_\_ (the “**Face Value**”) as per following terms and conditions:-

1. This is an unconditional STANDBY IRREVOCABLE and without recourse Letter of Credit, valid up to \_\_\_\_\_ for submission of documents for negotiation and payment to the bank.
2. The face value of this Letter of Credit shall be equal to Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) (Equivalent to 60 days of natural gas supply).
3. This Letter of Credit is issued under \_\_\_\_\_ [Details of Tender/NOA/Contract/Agreement to be mentioned] dated \_\_\_\_\_ to cover payment for supply of natural gas by ONGC (Beneficiary) to the Buyer as per AGREEMENT executed between Buyer and Beneficiary and also interest on delayed payment including payment for Monthly Minimum Guaranteed off-take (MMGO) quantity. This Letter of Credit will be valid for any of the documents such as Invoices/Provisional invoices/Debit notes/Statement of claim/ Demand letter etc. raised under the aforesaid contracts/agreement, as well as supplementary agreements, Side Letters, Term Sheet, amendments etc. and other addenda thereof.
4. Notwithstanding the above provision, it is further provided that if gas Buyer continues to draw gas supplies from ONGC beyond validity period of the existing Agreement (without written extension prior to expiry of the Agreement validity for any reason whatsoever) payments due for such gas supplies and such period (including MMGO charges) shall be fully covered by this letter of credit within the validity of the letter of credit.
5. All bank charges including opening, negotiation, handling, amendment, renewal, interest charges, and any other charges related to this Letter of Credit will be borne by the Applicant. However, charges of the advising bank shall be borne by the Beneficiary.
6. Payment against the Letter of Credit shall be released immediately without demur on presentation of a copy of any of the documents such as duly signed Invoices/Provisional invoices/ Debit notes/ Statement of claim / Demand Letter etc. by ONGC.
7. If the payment to ONGC/ONGC banker is not made at sight of documents, interest @ \_\_\_\_\_ (rate as applicable on delayed payment under the relevant GSA) per annum compounded quarterly for each day payments are overdue until paid, shall be charged.
8. This Letter of Credit (L/C) shall also cover requests against partial payment and/or multiple drawings.
9. This unconditional Standby Irrevocable Letter of Credit is available for negotiation directly with the issuing Bank/Branch or through ONGC’s bankers without recourse to the Applicant.

10. The validity of Letter of Credit will be up to \_\_\_\_\_. The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, if at least one month (30 days) prior to the expiry of this Letter of Credit, Applicant fails to renew/ extend such Letter of Credit or replace it with another Letter of Credit as acceptable to the Beneficiary then, the issuing banker shall make full payment of the Letter of Credit face value upon receipt of Beneficiary letter/certificate that Applicant has failed to replace or renew the Letter of Credit. Such Amount received by the Beneficiary, would be treated as a deposit qua payments/receivables from the Applicant towards future Gas Supplies.
11. The Issuing Bank undertakes not to amend any of the terms and conditions of this letter of credit (L/C) without prior consent of Beneficiary during the validity of this Letter of Credit.
12. The issuing Bank certifies that the officer(s) signing this Letter of Credit is (are) authorized for this purpose and shall remain binding upon the issuing bank.
13. The Issuing Bank shall forward and submit this Letter of Credit to the Advising Bank for advising of this Letter of Credit to Beneficiary.

Yours faithfully

(Sign of authorized Officer of Bank)

## **Appendix A Testing and Measurement Standards**

|                                       |                                |
|---------------------------------------|--------------------------------|
| Sampling                              | MPMS-14 of API                 |
| Composition                           | ISO 6974 and ISO 6975          |
| H <sub>2</sub> S                      | ASTM D 4084-94 and ASTM-D 4810 |
| Specific Gravity and Calorific Value: | ISO 6976                       |

### **Measurement System**

|                  |                                   |
|------------------|-----------------------------------|
| Orifice Meter    | AGA-3 along with AGA8/MPMS of API |
| Turbine Meter    | AGA-7 along with AGA 8            |
| Ultrasonic Meter | AGA-9                             |



**Annexure-IV****PROFORMA OF INTEGRITY PACT, AS REVISED VIDE CIRCULAR NO.44/2016****(To be executed on plain paper and applicable for all tenders of value above Rs.1 crore)****INTEGRITY PACT**

Between

Oil and Natural Gas Corporation Ltd (ONGC) hereinafter referred to as “The Principal”,

and

..... hereinafter referred to as “The Bidder/ Contractor”

**Preamble**

The Principal intends to award, under laid down organizational procedures, contract/s for -----  
----- . The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder/s and Contractor/s.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organisation “Transparency International” (TI). Following TI’s national and international experience, the Principal will appoint an external independent Monitor who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

**Section 1  
Commitments of the Principal**

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

1.No employee of the Principal, personally or through family members, will in connection with the tender for , or the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.

2.The Principal will, during the tender process treat all Bidders with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential / additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.

3.The Principal will exclude from the process all known prejudiced persons.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

**Section 2  
Commitments of the Bidder/ contractor**

(1) The Bidder / Contractor commits itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

1. The Bidder / Contractor will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2. The Bidder / Contractor will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.

3. The Bidder / Contractor will not commit any offence under the relevant Anti-corruption Laws of India; further the Bidder / Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

4. The Bidder / Contractor will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

(2) The Bidder / Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### Section 3

#### Disqualification from tender process and exclusion from future contracts

If the Bidder, before contract award has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

i) If the Bidder / Contractor has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is entitled also to exclude the Bidder / Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.

ii) A transgression is considered to have occurred, if the Principal after due consideration of the available evidence, concludes that no reasonable doubt is possible.

iii) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

iv) If the Bidder / Contractor can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

#### **Section 4 Compensation for Damages**

- (1) If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from the Bidder liquidated damages equivalent to Earnest Money Deposit / Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to Security Deposit / Performance Bank Guarantee.
- (3) The bidder agrees and undertakes to pay the said amounts without protest or demur subject only to condition that if the Bidder / Contractor can prove and establish that the exclusion of the Bidder from the tender process or the termination of the contract after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder / Contractor shall compensate the Principal only to the extent of the damage in the amount proved.

#### **Section 5 Previous transgression**

- (1) The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the TI approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **Section 6 Equal treatment of all Bidders / Contractors / Subcontractors**

- (1) The Principal will enter into Pacts on identical terms with all bidders and contractors.
- (2) The Bidders(s) / Contractor(s) undertake(s) to procure from all the subcontractors a commitment in conformity with this Integrity Pact. The Bidder/Contractor shall be responsible for any violation(s) of the provisions laid down in this agreement/Pact by any of its sub-contractors / sub-vendors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

#### **Section 7 Criminal charges against violating Bidders/Contractors/Subcontractors**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

#### **Section 8 External Independent Monitor / Monitors (three in number depending on the size of the contract) (to be decided by the Chairperson of the Principal)**

- (1) The Principal appoints competent and credible external independent Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairperson of the Board of the Principal.
- (3) The Contractor accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder / Contractor / Subcontractor with confidentiality.
- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action. However, the Independent External Monitor shall give an opportunity to the bidder / contractor to present its case before making its recommendations to the Principal.
- (6) The Monitor will submit a written report to the Chairperson of the Board of the Principal within 8 to 10 weeks from the date of reference or intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) Monitor shall be entitled to compensation on the same terms as being extended to / provided to Outside Expert Committee members / Chairman as prevailing with Principal.
- (8) If the Monitor has reported to the Chairperson of the Board a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (9) The word 'Monitor' would include both singular and plural.

### **Section 9 Pact Duration**

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairperson of the Principal.

### **Section 10 Other provisions**

(1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi. The Arbitration clause provided in the main tender document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.

(2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

(3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

(4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

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For the Principal

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For the Bidder / Contractor

Place -----

Witness 1 : -----.

Date -----

Witness 2 : -----