

**JSC Georgian Oil and Gas Corporation (GOGC)**



## **Tender Documentation**

**State Procurement of Construction Works for 45 km Kobuleti Branch (DN500) of the East-West Main Gas Pipeline**

**CPV 45231220**

### **1. Procurement Object**

1.1. State procurement of construction works for the 45 km Kobuleti branch (DN500) of the East-West Main Gas Pipeline (hereinafter referred to as "Works"), in accordance with the Annex #2 (Project Documentation).

### **2. Documentation confirming the qualification requirements of the Bidder**

2.1. Documentation to be presented by the Bidder in accordance with the written request of the Purchaser uploaded in the electronic system:

2.1.1. Extract from the Registry of Entrepreneurial and Non-entrepreneurial (Non-commercial) Legal Entities on absence of liquidation/reorganization/insolvency proceedings against the Bidder;

2.1.2. Certificate issued by the respective authorized body on absence of restrictions on the Bidder's property under public law;

2.1.3. Certificate issued by the respective authorized body on absence of any debts against the budget.

#### **Note:**

- In case the Bidder is a Joint Venture, documents requested by clause 2.1.3 shall be submitted for Joint Venture, as well as, for all members comprising the Joint Venture; and documents requested by clauses 2.1.1. and 2.1.2. shall only be submitted for each member of the Joint Venture;
- Non-resident entities shall submit documents confirming qualification requirements issued by authorized body/bodies of their countries complying with the content of the documents required by clauses 2.1.1, 2.1.2 and 2.1.3 Document(s) submitted shall be attached with notarized Georgian translation;
- Documents confirming qualification requirements shall be issued after the start of bids acceptance in this electronic tender; documents confirming qualification requirements for non-resident entities may be issued no later than 30 days before the start of bids acceptance in the electronic tender;
- In case a Bidder fails to submit documents confirming qualification requirements and/or a Bidder submits non-compliant document(s) confirming qualification requirements, the tender committee shall disqualify the Bidder.

### **3. Terms and place of the Work**

3.1. The Supplier shall complete the Works no later than 610 (six hundred and ten) calendar days after signing the contract; In addition, installation of the River Rioni underwater crossing using horizontal directional drilling method shall be completed no later than 244 (two hundred and forty four) days after signing the contract;

3.2. After signing the Contract the Supplier is obliged to submit construction organization plan to the Purchaser for further agreement;

3.3. The Purchaser shall obtain permits for the development of this construction project. The Purchaser shall take responsibility to deliver to the Supplier construction permit within 30 (thirty) calendar days after signing the contract. In case the Purchaser fails to deliver permit for the development of the construction project, the time for performance of construction works specified in the Contract shall be extended for a period proportional to the time lost.

3.4. In order to install the River Rioni underwater crossing using horizontal directional drilling method the Bidder is entitled to, at its own costs, conduct additional engineering-exploration research in order to define more precisely hydrological and geological data or/and other necessary data specified in the Contract. In case of conducting additional engineering-exploration research, the Purchaser shall not consider additional timeframe.

3.5. The location of construction works: The territory specified by Annex №2 (Project Documentation) of the Tender documentation.

### **4. Estimated cost of the procurement object, bid price and terms of payment**

4.1. Estimated cost of the procurement object shall be 10 483 799 (Ten million four hundred eighty three thousand seven hundred ninety-nine) GEL, excluding VAT;

4.2. In the Unified Electronic Procurement System (hereinafter referred to as "System") the price of the bid shall be indicated in national currency (GEL) including all required expenses and taxes considered by Georgian Legislation, excluding VAT;

4.3. The price indicated by the Bidder in the respective field of the System shall be considered as the bid price;

4.4. In case the final price specified by the lowest bid price Bidder in the system is lower than the estimated cost of the object of procurement by 20% or more, within the reasonable term defined by the Purchaser (not more than 10 (ten) business days), the Bidder shall be obliged to justify the adequacy of pricing (the bidder shall submit respective conclusion issued by either LEPL "Levan Samkharauli National Forensics Bureau" or other accredited body (a copy of the document certifying the accreditation of the body that issued the conclusion shall also be submitted)), which confirms the possibility of performance of undertaken contractual obligations at the price specified by the Bidder.

- In case the Bidder fails to submit a justification or the submitted justification is not considered satisfactory by the Purchaser, the Bidder shall be disqualified;

- Justification of adequacy of pricing submitted by the Bidder shall not be subject to clarification.

- 4.5. Expenses not considered in the bid price by the Bidder shall not be reimbursed;
- 4.6. The Purchaser shall include the amount of VAT corresponding to the bid price in the cost of the Contract, if the Bidder by the moment of signing the Contract is VAT payer in accordance with the requirements of the Georgian legislation (after signing the Agreement, VAT shall not be included in the Agreement);
- 4.7. Clerical errors made by the Bidder, such as reference to a wrong sum or multiplications, differences between verbal and digital expressions, can be adjusted by purchaser with the principle of unit price prevalence, provided it does not increase the respective bid price indicated in the System;
- 4.8. The currency of the Contract signed with the awarded Bidder shall be GEL;
- 4.9. Following the signature of the Contract, by the end of each month the Supplier shall submit to the Purchaser detailed information on performed Works (with consideration of clause 4.9.1), as well as detailed bill of quantities (cost estimate; form №2) and the Acceptance Certificate to be processed. Except the cases when the Purchaser has comments, Acceptance Certificate shall be signed within 10 (ten) business days after submission. Comments, if any, shall be sent to the Supplier in writing within 10 (ten) business days, otherwise, the Works shall be deemed to be accepted by Purchaser;
- 4.9.1 The acceptance/payment for the installation works of the River Rioni underwater crossing using horizontal directional drilling method shall not be made in stages. The aforesaid works shall be deemed as completed and corresponding Acceptance Certificate shall be signed only after the construction works are finalized and results of hydro testing and the usage of caliper plate under relevant procedures are positive.
- 4.10. The Acceptance Certificate is signed by Purchaser and the Supplier's authorized representative on the basis of the report of the Inspection Team;
- 4.11. The Supplier, at its own cost ensures the correction of the defect or shortcoming detected by the Purchaser as a result of final inspection and/or when accepting the Works (or its part);
- 4.12. Payment for the performed Works shall be made in non-cash payment form, not earlier 8 (eight) and not later 10 (ten) business days after the submission to and confirmation by the Purchaser of the detailed bill of quantities (cost estimate; form №2), Acceptance Act and Invoice;
- 4.13. Upon Supplier's request advance payment may be effected as follows: the Purchaser shall transfer advance payment in an amount not exceeding 20% of total contractual value based on unconditional and irrevocable bank guarantee issued by banking institution on the amount similar to the advance payment amount to be transferred to the Supplier. Guarantee shall be issued by a bank qualified B+ or higher Fitch international rating or equivalent. JSC "Georgian Oil and Gas Corporation" shall be indicated as Beneficiary in bank guarantee and its validity shall exceed Works completion deadline defined in the contract for at least 30 (thirty) calendar days. Bank Guarantee shall be submitted with consideration of substantial conditions defined in Annex #7 (Advance Payment bank Guarantee/draft).
- 4.14. When making payments to the Supplier, the Purchaser shall deduct 25% (twenty five percent) indicated in the invoice amount from the amount paid in advance unless total amount of advance payment is exhausted. After the advance payment is fully exhausted under the method mentioned above, the Purchaser shall fully compensate the amount indicated in the invoice for performed Works;

## **5. Contract Performance Bank Guarantee:**

- 5.1. In case, the total price (Including VAT) of the contract equals to or exceeds 200 000.00 (two hundred thousand) GEL, the winning Bidder shall submit unconditional and irrevocable bank guarantee in an amount of 5% of Contract price issued by banking institution for the purpose of contract performance securing. The validity of the bank guarantee shall exceed Works completion deadline defined in the contract for at least 13 months. The bank guarantee issued by a commercial bank operating in Georgia must be submitted and in case the bank issuing the guarantee is not a commercial bank operating in Georgia, the bank issuing the guarantee should have the minimum rate "B+" of Fitch Rating or other equivalent international rating agency. Bank Guarantee shall be submitted with consideration of substantial conditions defined in Annex #8 (Contract Performance Bank Guarantee /draft);
- 5.2. In case, the final price specified in the system by the Bidder declared as the winner as a result of electronic tender is less than the estimated cost of the object of procurement by more than 20%, the winning Bidder shall submit an unconditional and irrevocable bank guarantee issued by a banking institution in the amount of 10% of the contractual price for the purpose of ensuring performance of the contract, with consideration of the requirements defined by clause 5.1 of the tender documentation.

## **6. General provisions**

- 6.1. The Bidder shall not be entitled to submit alternative proposal;
- 6.2. Each document/information created by the Bidder and uploaded in the System shall be stamped (if applicable) and signed by the authorized person (if applicable, authorization confirmation document shall be uploaded along with);

- 6.3. The State Procurement contract draft is provided in the Tender documentation (Annex #6). The terms and conditions may be adjusted in accordance of the bid by the time of signing the Contract;
- 6.4. In the Tender documentation and in its annexes, where a certain trademark, model, source of origin or manufacturer (if any) are indicated, it is meant "similar", "analogous", or "equivalent";
- 6.5. All the document(s) requested by tender documentation to be uploaded in the Unified Electronic System shall be submitted in Georgian; In case the documents are submitted in a foreign language, it shall be accompanied by a notarially confirmed Georgian translation;
- 6.6. Tender Documentation is completed in two copies in Georgian and English languages. In case of discrepancy between the Georgian and English versions, version in Georgian language shall prevail;
- 6.7. In case of Joint Venture, the Bidder shall be obliged to act according to Clause 10<sup>1</sup> of the Order №9 dated April 7, 2011 of the Chairman of the Procurement Agency on "Approval of rule for simplified electronic tender and electronic tender procedure".

## **7. Information for Bidders**

- 7.1. The purchasing organization shall be obliged to make respective clarification/explanation in connection with the Bidding Proposal and Documentation in a manner established by legislation, by means of Q/A module of the unified electronic system, upon the request of the Bidder;
- 7.2. Any correspondence/notifications between the purchasing organization and the Bidder are sent by means of a respective module of the system and correspondence/notifications without using the system are not mandatory. Correspondence/notifications shall be considered received upon their upload in the system;
- 7.3. The Bidder shall get explanations with respect to Tender documentation in the apparatus of tender committee: 21, Kakheti Highway, second floor, room 205, Tbilisi, Georgia, contact person: Mr. George Chigvinadze (tel.+995 (32) 224-40-40 (extension – 216).

## **8. Requirements imposed on Bidders or its subcontractor (if any)**

- 8.1. The Bidder or its subcontractor (if any) must have experience in performance of the following construction works:
  - 8.1.1 The Bidder (without a subcontractor) must have constructed at least 10 km or longer main oil/gas steel pipeline within the framework of one project from January 1, 2010 to the date of the announcement of the Tender (Construction of main gas/oil pipeline implies construction in accordance with the statutory documents applicable in this field. The construction must include the main stages necessary for the full cycle of construction of the main gas pipeline, including: preparation of the right-of-way, welding of pipelines, inspection of welded joints, insulation works, trench processing, placement of the pipeline in the trench and filling with soil, pipeline testing on integrity and on hermeticity).
  - 8.1.2 The Bidder or its subcontractor (if any) must have installed at least one 500 meter long DN 500 underground crossing using horizontal directional drilling method within the framework of one crossing from January 1, 2010 until the date of the tender announcement;
- 8.2. The Bidder (without a subcontractor), by the date of the submission of the document(s) within the frames of this tender, shall have adequate working capital (company shall have the amount of its bank account) not less than 30% of the final bid price (specified as a result of electronic bidding) and/or a line of credit and/or statement certifying the possibility of access to line of credit for the period defined for the execution of the Work (The document(s) to be submitted under this clause shall be issued by the banking institution);
- 8.3. The Bidder for the execution of the Works defined in the tender documentation shall either own or have access (Leased, borrowed, rented, etc.) to the machineries/appliances stipulated under clause 7 of the Annex #2 (Project Documentation) of the tender documentation;
  - 8.3.1. For the machineries/appliances owned, a Bidder shall submit registration certificates and/or any other document(s) certifying that the equipment presently is owned by the bidder (the document(s) to be submitted shall provide clear identification of the machineries/appliances);
  - 8.3.2. For the machineries/appliances owned by a third party, a Bidder shall submit signed (by both parties) lease, loan, rent (etc.) agreement(s) providing the clear identification of the machineries/appliances, as well as, indicating the validity period of the service (which shall not be less the timeframe of the execution of the Works defined in this tender);
- 8.4. During the execution of the Works, the Bidder shall have employed at least 12 welders with relevant qualifications in this area having certificates issued by authorized agencies (to be valid by the end of bids submission deadline of this tender);
  - 8.4.1 During the execution of the Works, the Bidder or its sub-contractor (if any) shall have employed at least one engineer and operator specialized in horizontal directional drilling having respective experience (construction of at least 500-meter-long underwater crossing using DN 500 steel pipe and horizontal directional method). To confirm the

aforementioned the Bidders shall submit resumes (CV) of the offered employees and documents confirming their experience (service record and/or work contract, or any other document confirming the employment).

**9. Technical Documentation/Information to be Uploaded in the System by the Bidder**

- 9.1. Form of Requisites – according to Annex #1;
- 9.2. Cost Estimate - according to paragraph# 6 (Bill of Quantities, please see separately attached MS Excel file) of the Annex #2 (Project Documentation);
- 9.3. Warrantee Terms and conditions – according to Annex #3;
- 9.4. The documents confirming the experience: contract(s) and document(s) of final acceptance of performance of the agreement and/or reference to NAT/CMR/SPA tender numbers.  
The documents confirming delivery-acceptance for the contract shall stipulate:
  - In case of main gas/oil pipeline, the list of stages of construction;
  - In case horizontal directional drilling, a instruction underlying that the project envisages installation of 500 meter long underwater crossing with DN 500 steel pipes using horizontal directional drilling method within one crossing.If these requirements are not envisaged in the Acceptance certificate of any of the Contracts submitted by the Bidder, then the Bidder is obliged to submit additional clarification of the organization purchasing/ordering the construction with the full description of performed works (paragraph 8.1);
- 9.5. The document(s) confirming the adequate working capital and/or access to line of credit and/or statement certifying the possibility of access to line of credit (paragraph 8.2);
- 9.6. Information on the machineries/appliances required for the execution of Works defined in the tender. Information shall be submitted according to Annex #5 including documents certifying the ownership or whether the equipment is used with the right of use (clause 8.3);
- 9.7. Schedule of the works (shall be submitted indicating general timeframes (e.g. Month I, Month II, etc.)
- 9.8. The welders certificates (shall be valid by the end of bids submission deadline of this tender) issued by respective authorized body and confirmation of participation of these persons/welders in the process of implementation of works (confirmation must be made by signatures of the person/welder) (paragraph 8.4);
- 9.9. Resume and documents confirming the employment of a horizontal directional drilling engineer and operator paragraph 8.4.1;
- 9.10. In case of sub-contractor, Bidder shall submit document(s) confirming legal relations (Contract, agreement and other similar document showing the willingness of the entity to participate in the construction work to be purchased under the Tender);
- 9.11. Information about desired payment conditions (paragraphs 4.12 and 4.13).

**Annex #1 - Form of Requisites:**

Legal form and name of Applicant:

Name and Surname of manager:

Legal and/or actual address of Applicant:

Identification code:

Applicant's telephone number:

E-mail address:

Service bank Name:

Bank Code:

Account Number:

**Signature, Stamp -----**

## **Annex #2: Project Documentation**

**The paragraphs set forth below are integral part of project documentation.**

See separate files attached

1. Scope of Work
2. Quality assurance/quality control specifications
3. Health care and safety
4. Environmental protection
5. Drawings;
6. Bill of quantities (see the attached MS EXCEL file);
7. List of Required Equipment;

**Annex #3: Warrantee Terms and Conditions**

1	2
Provision	Covers the Work fulfilled by Us
State Procurement of the Construction Works for the 45 km Kobuleti Branch (DN500) of the East - West Main Gas Pipeline	-- year Warrantee

**Note:**

- The Supplier shall provide minimum 12 (twelve) month Warrantee on the performed Work. The guarantee shall imply that the works performed by the Supplier shall not have defect if the operational norms are followed, otherwise the Supplier shall eliminate the defect on its own expenses.
- The Supplier shall fill the column #2.

**Signature, Stamp** -----



**Annex #4 – Specifications and list of the Materials to be provided by the Purchaser**

See the attached file.

**Note:**

- The Purchaser shall provide the materials listed in the Annex #4 to the Supplier to the addresses defined in the paragraph# 6 (Bill of Quantities) of the Annex #2 (Project Documentation);

**Annex #5 - Information about ownership or whether the equipment (machineries/appliances required for the execution of Works defined in the tender) is used with the right of use (lease, loan, rent, etc).**

Information on the machineries/appliances required for the execution of Works defined in the tender			
1	2	3	4
N	machineries/appliances and State registration number	Description / Model	ownership or whether the equipment is used with the right of use (Owned / leased / rented, etc.)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
...			

Signature -----

## **Annex #6- Draft State Procurement Contract**

(The terms and conditions of the State Procurement Contract may be adjusted by the time of signing the contract, based on the negotiations between parties)

**Tbilisi**

\_\_\_\_\_ **2016**

The Contract is signed on -----2016 by and between

JSC “Georgian Oil and Gas Corporation” (hereinafter referred to as “Purchaser”) represented by its -----Director -----, on the one hand, and

----- (hereinafter referred to as “Supplier”) on the other hand represented by its -----Director -----,

Whereas, the Supplier is announced to be the successful bidder with the price of GEL ----- in the tender for the Construction Works of ----- announced by the Purchaser for the year --- in accordance with 1.“p” paragraph of article 3 of the Law of Georgia on “State Procurement”,

Considering tender documentation, the supplier’s BID and applicable law and signing the Contract agree on the following:

### **1. Definitions**

The words, terms and expressions used in the Contract shall have the following meaning:

1. “Work Schedule” means a schedule prepared by the supplier, indicating terms of particular works, which represent the integral part of the contract – Annex #;
2. “Supervisory (inspection) Team” means a team of persons appointed by the Purchaser who shall control the work process and performance of contractual terms on site;
3. “Acceptance Certificate” means the document signed by the authorized representatives of the parties which confirms the volume of performed works. The Acceptance Certificate is based on the findings produced by the Supervisory (inspection) Team;
4. “Horizontal Directional Drilling” means using horizontal directional drilling method for the installation of the River Rioni underwater crossing;
5. “Completion Date” means the date of finalizing the entire volume of works, which shall be no more then -----;
6. “Horizontal Directional Drilling Completion Date” means the date of finalizing the entire volume of works for installation of the River Rioni underwater crossing using horizontal directional drilling method;
7. “Contractual Terms” means terms which are provided in the present Contract and its annexes;
8. “Contract” means the present document, its annexes and amendments and modifications thereof;
9. “Contract Annexes” means documents, which are provided in clause ----- including their amendments and modifications;
10. “The supplier’s Representative” means an authorized representative appointed by the supplier;
11. “Contract Value” is ----- GEL, and includes all relevant taxes and payables considered by the Georgian legislation
12. “Supplier” for the purposes of this contract means -----;
13. “Day” means calendar day;
14. “Defect” means nonperformance or undue performance of any works or part of works, which are envisaged by the contract, project documents and/or bidding documents;
15. “Defect Correction Act” means the document signed by the authorized representatives of the contract parties, which verifies the fact of Defect correction by the supplier;
16. “Guarantee Period” means 12 month period, from the moment of signing the Acceptance Certificate confirming the completion of the total volume of works;
17. “Drawings” mean graphic depictions, which are the integral part of the design documents;
18. “Effective date of the Contract-the date of entry into the force” means the date of signing the contract by authorized representatives of the parties;
19. “Materials to be provided by the Purchaser” means materials which the purchaser provides to the Supplier for the work purposes in the volumes outlined in Annex N of the Contract;
20. “Machinery” means the Supplier’s equipment, machines, mechanisms and facilities which are positioned and or used at the construction site to perform works;
21. “Materials” mean all materials and among them expenditure materials, used by the Supplier in the process of work;

22. "Supervisory (inspection) Team Leader" means representative appointed by the Purchaser who on behalf of the Purchaser is authorized to act for the purposes of the Contract and give respective instructions and/or recommendations to the Supplier in course of works performed;
23. Sub-contractor means any natural person and/or legal entity, which took responsibility to the Supplier to perform part of works under the Contract;
24. "Works" mean activities determined by the Contract which in details are described in the design documents and regulated by construction rules, norms and standards applicable in Georgia and include but are not limited to earth and concrete works, installation of pipes and fittings, welding, insulation, all kinds of testing and examinations, also conducting the same or similar works when eliminating the identified defects;
25. "Third party" means any natural person and/or legal entity that has or may have legal rights and obligations to the Contract parties in connection to the relations defined by the Contract.
26. "Construction Stage" means the construction work (removal of the fertile layer, welding and others) prescribed under the work schedule;

## **2. The Scope of the Contract and Parties obligations**

1. The scope of the Contract is the procurement of Construction Works (hereinafter referred to as "works" - CPV-45231220);
2. The Supplier undertakes the obligation to ----- according to project documents, BIDs (the tender proposals rendered by the Supplier among them) and terms of the Contract as well as to eliminate all revealed defects.
3. The Purchaser undertakes the obligation to reimburse the Supplier for the works performed in accordance with the terms of the Contract.

## **3. Interpretation of the Contract**

1. The titles do not make any significance when interpreting the terms of the Contract. The words in the Contract clauses have their ordinary meanings when interpreting the terms of the Contract. Only the Purchaser is entitled to issue definitions with regard to the Contract terms;
2. The Contract comprises of the following documents each of which shall be read and considered as the integral part of the Contract:

**Annex #1-** Cost Estimate;

**Annex #2-** Project Documents (e-version on CD-R);

**Annex #3-** Warrantee Terms and Conditions;

**Annex #4-** Specifications and list of the Materials;

**Annex #5-** Work Schedule;

**Annex #6** Contract Performance Bank Guarantee;

**Annex #7** List of Plots of Land.

3. The originals of the design documents are stored with the Purchaser;
4. The Purchaser is authorized to periodically give the Supplier additional design documents and instructions, which may become necessary for due and adequate performance of Works as well as to correct Defects. The Supplier shall ensure performance of works in accordance with the additional design documentation and instructions.

## **4. Contract Language**

1. The Contract is completed in two copies in Georgian language.

## **5. Supervisory (Inspection) Team**

1. In order to ensure duly and timely performance of the obligations undertaken by the supplier, the Purchaser establishes the Supervisory (inspection) Team, guided by its leader. The team leader is entitled to issue relevant instructions and guidelines to the supplier and/or give the notice to the supplier to correct the defects, which may become necessary for due and timely performance of Works and/or to suspend any part of works, in the case the construction standard requirements defined under

project documentation and applicable in the country and/or Contract terms are disregarded and request the supplier to exercise without incurring additional expenses to the Purchaser. Performance of the instructions given in the notice on improvement of shortcomings is obligatory for the supplier;

2. The Supervisory Team is obligated to check the work flow, the quality and terms of Work performance, as well as its consistency with the project;

3. The Acceptance Certificate of works (or their parts) shall be signed only on the basis of the affirmative report of the Supervisory Team.

## **6. Notifications**

1. The notifications between the parties shall be sent in writing or in the electronic format. The notification shall be effective only if they are made in the language the party understands and is delivered to the other Contract party. In case of the Supplier, the notifications can also be given to its representative; therefore, it will be considered that the notice given to the representative is given to the Supplier.

## **7. Assignment of Rights**

1. The Supplier shall not, without preliminary consent of the Purchaser, assign the contractual right or part of the right or any benefit or the interest envisaged under this Contract to the third party. Infringement of the norms set forth in this clause shall unconditionally be deemed as a breach of the Contract and any contract, agreement or similar document executed with the third parties shall be deemed as void.

## **8. Subcontracting**

1. Unless the Purchaser is preliminary informed in writing and the respective written confirmation/acceptance is received from the Purchaser, the Supplier is not entitled to subcontract the construction Work or its part. Such approval does not release the Supplier from performance of its contractual obligations, and the Supplier is liable for any actions conducted by its sub-contractor and service personnel as well as any defects in the performed work. The Supplier shall ensure that the Subcontractor adheres to the Contract terms.

## **9. Personnel**

1. The Supplier shall hire personnel, qualified to perform assigned Works. In addition, the Supplier shall ensure that the assigned works are performed with full involvement of the offered /certified welders and horizontal directional drilling engineer and operator;

2. For the purposes to perform and finalize Works as well as to correct Defects the Supplier shall hire only qualified personnel experienced in respective field and shall hire supervisors capable to establish respective supervision over the Works.

3. In the event the Supervisory (inspection) Team Leader addresses the Supplier to correct the shortcomings, which may also include the request, based on respective argumentation, to limit the Suppliers team member's performance, the Supplier shall ensure that the said person immediately leaves the construction site and will no longer work on contractual tasks;

4. The Supplier shall ensure its employees with residence, compensation, catering and transportation;

5. For the entire work period the Supplier shall ensure provision of safety regulations in accordance with the Georgian legislation and International standards defined under the project.

## **10. Representative of the Supplier**

1. On behalf of the Supplier the Supplier's representative is entitled to accept, all directives and instructions issued by the Supervisory (inspection) Team within a scope of the project documentation with regard to Work performance;

2. The Supplier shall not change its representative without the Purchaser prior consent. Such consent does not exempt the Supplier

from the contractual obligations.

## **11. Supplier s Risks**

1. From the day of commencement of Works until final Acceptance Certificate (on total volumes of works) is signed, the Supplier shall bear responsibility for the risks associated with physical injury or death of its personnel, risks for property (including works, appliances, materials, equipment, materials provided by the Purchaser) damage or loss as well as risks associated with environment pollution and Third Parties and shall fully compensate the damage in accordance with the Georgian legislation, incurred from such risks.

## **12. Guarantee Period**

1. The Supplier guarantees that within ---- month from the signature of final acceptance certificate, no defects/omissions will be revealed and in case such defects/omission are detected, the Supplier shall at its own expenses and responsibility eradicate them within a reasonable period assigned by the Purchaser (except for the cases when defect/shortcoming is originated/conditioned by the qualitative inconsistency of the materials provided by the Purchaser to the quality certificate issued by the manufacturer factory of materials and/or factory defect).

## **13. Correction of Defects and Compensate for Damages**

1. The Supplier assumes full responsibility for any damage (direct or indirect) or loss, incurred to the Purchaser within a scope of this Contract from the date of the entry into the force of the Contract to the guarantee period.

2. The Supplier, at its own cost, is obliged to correct any defect/omission so that the performed Work is in accordance with the Contract requirements.

3. All works related to improvement of the defects by the Supplier shall be performed in compliance with the project documentation and contractual terms, so that Supplier keeps the Purchaser immune from all claims, damages and expenses. .

4. The Supplier is also responsible to reimburse all damages, which it might cause to any Third Party while correcting any defects.

5. Any defect, for whatsoever reason, caused to intermediate works or their parts shall be corrected by the Supplier before final acceptance act is signed.

6. If, during the period of responsibility of the Supplier, the damage is incurred to the materials supplied by the Purchaser, the Supplier, at own expenses shall rectify the shortcomings and compensate the damage.

7. The Supplier shall not be responsible/liable under the paragraphs 1, 2 and 4 of this article, if defect/shortcoming/omission/loss is originated/conditioned by the qualitative inconsistency of the materials provided by the Purchaser to the quality certificate issued by the manufacturer factory of materials and/or factory defect.

## **14. Performance of Works by the Supplier**

1. The Supplier, shall take all efforts to plan (in the scope of the Contract), perform and finalize Works, also improve any shortcoming related to these Works (except for the cases when defect/shortcoming is originated/conditioned by the qualitative inconsistency of the materials provided by the Purchaser to the quality certificate issued by the manufacturer factory of materials and/or factory defect).

2. The Supplier shall ensure overall supervision of Works, employment of workforce, provision of necessary materials and equipment, as well as provision of all other either temporary or permanent works, necessary for performance of contractual obligations;

3. The Supplier shall carry out construction Works consistent with the project documents. the Supplier shall immediately but no later than in two days, notify the Purchaser of any mistake, shortcoming, defect identified in the project documents;

4. The Supplier assumes full responsibility for stability and safety and consistency of the Works to be performed, as well as for

adherence to the construction rules, norms and standards as defined under the project documentation and construction organization;

5. The Supplier shall adhere to and follow instructions regarding any issues related to the construction, issued by the Supervisory (inspection) Team. the Supplier is obliged to follow instructions issued by the Purchaser (or its authorized representative);
6. The Supplier takes full responsibility to install the River Rioni underwater crossing using horizontal directional drilling method. The works shall be deemed as completed after the results of hydro testing and inspection with the usage of caliper plate are satisfactory. Works shall be performed with full and strict adherence to provisions of Annex #----.

#### **15. Effective Term of Works**

1. The Supplier shall ensure completion of works during term set forth in the Work Schedule (annex #5);
2. While making the Work Schedule (Annex #5) the Supplier should take into the consideration that the date of the completion of the construction Works should be no more than ---- , and the date of the completion of the installation of the River Rioni underwater crossing using horizontal directional drilling method should be no more than -----

#### **16. Health and Safety Issues**

1. The Supplier is responsible for the safety of Works at the construction site and health security consistent with the legislation in force and project documentation provided in the Annex #2. of the Contract.

#### **17. Environmental, Cultural Heritage and Social Impact Issues**

1. The Supplier, consistent with the effective Georgian legislation, is responsible for all possible negative impacts which the current Works may incur on environment, social environment and historical/cultural heritage;
2. The Supplier and Subcontractor, (if any) are obliged to follow requirements of respective laws and provisions, with regard to environmental, social environment and historical/cultural heritage impact issues (which, without limitation includes prevention of environment pollution, protection of historical/cultural heritage and other urgent measures);
3. For the entire period of Works and as of the moment of their completion, also during the period of improvement of shortcomings, the Supplier shall apply all due measures to protect the adjacent area, social environment and historical/cultural heritage from the negative impact and particular persons from disturbance and damage of their property, which is related to environment pollution and other reasons.

#### **18. Environment Pollution**

1. After completion of Work, the Supplier shall ensure removal of construction waste generated during the construction process. the Supplier is obliged to follow the requirements of the Purchaser which envisages conduct of cleanup measures during the work process;
2. After completion of works the Supplier must remove immediately the equipment, materials and temporary constructions and similar facilities belonging to the Supplier and sub-contractor, if any;
3. The Supplier assumes obligation to keep the soil and water secure from pollution, which is caused by spilling, penetration, or fuel, engine oil materials, paints, grounding materials, spilling of dilatants, waste and other materials, which is owned or controlled by the Supplier or sub-contractor, and assumes obligation to displace and also to keep the Purchaser secure ("the party secure from damage") against claims, requests, expenses, court litigation, loss and other expenses incurred as a result of negligence of the Supplier or when violating the rights of third parties.
4. The Supplier is obliged to ensure separated collection (hazardous and non-hazardous) of waste generated as a result of works, record them, temporarily keep them secure and assign for neutralization-processing purposes, to the

relevant body having the due license.

5. When conducting construction works, any damage or loss, incurred to the property of the third party, shall be immediately restored by the Supplier to its primary condition and replaced with the item of identical value or the better one, or shall be duly compensated. This condition is subject to negotiation bet the Supplier ractor and affected third party (parties).
6. After restoration of the affected land plots, the Supplier must draw up relevant acceptance certificate with the land owner, which shall be signed by the third party as well as the authorized representative of the Supplier.
7. During performing installation works of the River Rioni underwater crossing using horizontal drilling method, the Supplier is obliged to strictly adhere to environmental and safety requirements. The protective measures shall comply with Georgian Legislation and meet modern standards/requirements.

## **19. Materials to be provided by the Purchaser**

1. The Purchaser shall provide materials to the Supplier according the list and location provided in annex №4.
2. The Acceptance Certificate, which includes the title, quantities, technical specifications and conditions of the materials provided, is drawn up when delivering materials to the Supplier.
3. The Supplier, at its own expense and responsibility, shall ensure transportation of materials envisaged in article 19.1. to the construction site, as well as their upload, download, processing, storage and security.
4. All risks, related to security, storage and sufficient usage of the materials provided to the Supplier is assumed by the Supplier, from the moment of signature of the acceptance certificate.
5. The Supplier is obliged to store materials according to the required storage terms;
6. The Supplier is accountable to the Purchaser with regard to the materials provided and in case of request shall submit relevant document on their usage, as well as on their location. In case inconsistency between the quality and quantity of received materials with the actually existing ones is detected, which has to be supported by relevant act, the Supplier is obliged to improve the shortcoming and/or inconsistency at its own expenses, by means of supplying analogous materials having the same quality or upon agreement of the parties – by compensating the cost of relevant materials.
7. From materials provided to the Supplier, later at own expenses and responsibility shall ensure full return of unused and remaining materials to the Purchaser Given materials shall be transported and warehoused to the Purchaser s Lilo Pipe yard: #9 Chirnakhuli St., Tbilisi;
8. The Supplier shall, at its own costs, purchase all materials and equipment which are envisaged under the project and are not transferred to the Supplier under the Annex #4.

## **20. Licenses and Permits**

1. The Purchaser shall forward to the Supplier the construction licenses obtained by it from the state bodies as well as assign the rights (servitude right and right of necessary road) to use the land;
2. The Supplier, at its own risk and costs shall obtain permits and licenses necessary for carrying out works other than those provided under abovementioned paragraph;
3. The Supplier shall at its own costs obtain the right to use additional land required temporarily for the implementation of construction activities. The necessity of additional land usage is determined solely by the Supplier. The Supplier is responsible for any loss or damage caused to the land owner, user or any other party.



4. The Supplier, at its own cost, is obliged to obtain temporary permit for additional land plot usage for the performance of Works. The Supplier specifies the necessity for the usage of the additional land plots. The Supplier is responsible for the damage, or loss inflicted to the proprietor, user, owner or any other person by the Supplier on the additional land plot.

## **21. Schedule of Works**

1. Control over the work performance is exercised based on work schedule (Annex #5 of this Contract).
2. The Purchaser reserves the right to request suspension of any construction activity before the Supplier ensures completion of the previous or next construction activity according to the schedule given in Annex #-.
3. In case of necessity, in order to install the River Rioni underwater crossing using horizontal directional drilling method the Bidder is entitled to, at its own costs, conduct additional engineering-exploration research in order to refine hydrological and geological data or/and other necessary data specified in the Contract. In the event of conducting the aforementioned studies, the Purchaser shall not envisage additional terms in the Contract.

## **22. Timely Notice**

1. The Supplier shall send timely notice to the Purchaser for the anticipated events and circumstances which may negatively affect the Work process.

## **23. Work Quality and Inspection**

1. Quality of work shall correspond to the quality considered under the Contract and requirements of the project documentation. Work quality will periodically be inspected by the Purchaser at construction sites or other territories. the Supplier shall ensure all equipment, technique and means necessary for testing and also issue advance notice (no later than 48 hours before holding testing) which shall allow the Purchaser to attend any inspection or testing;
2. All Works shall be systematically inspected and quality checked in accordance to the project documentation. The Supplier shall provide the Purchaser the daily completed Works reports and as needed carry out measures to eradicate problems. Documents and reports on defects, among them on environmental and safety issues shall be given to the Purchaser;
3. The Supervisory (inspection) Team Leader should be immediately, no later than 24 hours from the defect identification, be informed on all defects identified on the basis of quality control, and the instruction regarding improvement measures should be issued by him/her. In the event the shortcoming is identified in the activities of the Supplier, the latter shall make improvement within the reasonable term indicated in the notice of the Supervisory (inspection) Team Leader;
4. If the Supervisory (inspection) Team or invited quality evaluator (if any) identifies breaches, the parties have to be informed immediately;
5. Neither construction Work nor its part shall be performed without control, inspection and relevant act of the Purchaser. The Supplier is required to notify the Purchaser on its readiness to commence any Work.
6. The Supplier, according to the instructions of the Purchaser, shall make inspections of work available. the Supplier s shall ensure performance of any part of works consistent with the Purchaser requirements and project documentation;
7. The Purchaser and other authorized persons, consistent with the requirements of the Contract, resolution and regulatory framework, for the purpose to evaluate consistency with the contract and work process, have the right at any reasonable time to conduct site inspections. the Supplier shall ensure provision of respective, safe and reliable facilities;
8. The Supplier, using its own sources, shall immediately commence rectification of the defects identified by the Purchaser. The Acceptance Certificate of works between the parties shall not be drawn up unless improvement is made. In the event the

Supplier fails to make improvements, this will be considered as a breach of the contractual terms.

## **24. Testing**

1. Unless otherwise formulated in the project documents, the Supplier, within the course of Works and without additional compensation, shall conduct all inspections envisaged by the Contract. The Purchaser shall 48 hours prior to such testing to be conducted by the Supplier or its Sub-contractor receive notice, so that the Purchaser can attend it. Attendance or absence of the Purchaser at testing does not exempt the Supplier from the responsibility for defective Works or Materials;
2. Once the notice is received, the Purchaser shall confirm that works are in the phase that testing is possible and if needed shall make arrangements for attendance of appropriate persons. The results of tests held without confirmation of the Purchaser shall not be taken into account by the Purchaser. Making records on the results of the tests shall be made in acceptable for the Purchaser form and shall be signed to confirm that both parties, Suppliers and the Purchaser acknowledge the authenticity of this record;
3. the Supplier at own expenses shall ensure delivery of all necessary samples;
4. All tests envisaged in the present Contract should be conducted at the expense of the Supplier. If the testing reveals that the quality of works or materials does not correspond with the contractual terms the cost of additional testing, requested by the Purchaser, should be covered by the Supplier;
5. The Purchaser has the right to request performance of unexpected testing under the Contract at the expenses of the Supplier to make sure that Work, Materials or Equipment are in accordance with the Contract requirements.
6. If the results of testing of any Materials (except for the materials provided by the Purchaser) turn out to be unsatisfactory, the Supplier shall ensure restoration of the Material or its substitution. The Supplier must at own expenses and consistent with the procedures indicated in clause 24.1 and 24.2 repeat testing.
7. If during hydro testing per procedure provided in the annex of the given Contract, a caliper plate has identified defects, the Supplier shall furnish and run a caliper/geometry inspection tool with instrumentation having defect location capabilities at own costs.
8. The Purchaser is entitled to request testing outside the premises of the facility, which is not determined by the Contract, in order to make sure that Works, Materials or Equipment are consistent with the Contract terms. The Purchaser should the Supplier in advance notify on such requirement so that later can hold such testing and at the same time not defer other requirements of the Contract. The Supplier shall conduct testing at its own costs.
9. Testing of the River Rioni underwater crossing shall be conducted under strict adherence to the requirement of the Annex of the Contract.

## **25. Improvement of Shortcomings**

1. After completion of contracted Works, before the works guarantee period expire, the Purchaser shall send to the Supplier the notification on eradication/improvement of shortcoming/defect except for the cases when defect/shortcoming is originated/conditioned by the qualitative inconsistency of the materials provided by the Purchaser to the quality certificate issued by the manufacturer factory of materials and/or factory defect.;
2. On each notification, the Supplier shall make appropriate improvements during the term indicated in the notification. Breach of such term is the substantial breach of the Contract. If the Supplier does not make appropriate improvements of the shortcoming during the terms fixed, the Purchaser shall be entitled to correct the shortcoming itself and request the Supplier to reimburse the expenses associated with the improvement of the shortcoming (and other expenses related to that), In case the Supplier fails to reimburse the Purchaser within the terms fixed, the Purchaser shall receive the reimbursement from the contract performance bank guarantee.

3. The construction stage where shortcoming is revealed will not be reimbursed. Unless shortcoming is corrected, there will be no reimbursement of shortcoming as well as entire construction stage performed.

## **26. Amendments**

1. Only the Purchaser has the right to make amendments regarding the Work volumes, among them on draft amendments initiated by the Supplier. Such amendments may include addition, reduction, cancelation, substitution or other changes to the scope of works. The Supplier is obliged to comply with the Purchaser's request to amend the volume of Works.
2. The Supplier, according to the amendments requested by the Purchaser, shall ensure preparation of bill of quantities (cost estimate), also other annexes of the Contract, which should be based on unit cost.
3. The amendments made in the Contract enter into the force after they are signed by the parties.

## **27. Acceptance of Works**

1. Work or its part shall be deemed as accepted only after the Acceptance Certificate on performed works is signed by both parties. The date of acceptance of works shall be the date stated in Acceptance Certificate.
2. Following the signature of the Contract, by the end of each month the Supplier shall submit the Purchaser detailed information on performed Works as well as detailed bill of quantities (cost estimate; form #2) and the Acceptance Certificate to be processed. Except the Purchaser have some comments, Acceptance Certificate shall be signed within 10 (ten) days after submission. Comments, if any, shall be sent to the Supplier in writing within 10 (ten) business days.
3. The acceptance/payment of the installation of the River Rioni underwater crossing using horizontal directional drilling method shall not be implemented in stages. The aforesaid works shall be deemed as completed and corresponding Acceptance Certificate shall be signed only after the construction works are finalized and results of hydro testing and the usage of caliper plate conducted under the procedures are positive.
4. The Supplier, at its own costs, ensures correction of the defect or shortcoming detected by the Purchaser as a result of final inspection and/or when accepting the Works, except for the cases when defect/shortcoming is originated/conditioned by the qualitative inconsistency of the materials provided by the Purchaser to the quality certificate issued by the manufacturer factory of materials and/or factory defect.
4. The Acceptance Certificate is signed by the Purchaser and the Supplier's authorized respective on the basis of the report of the Inspection Team.

## **28. Payment**

1. In case of the written request of the Supplier, within 5 business days after relevant bank guarantee indicated in Article 35 is submitted the Purchaser shall pay to the Supplier 20% of the Contract Value as an advance payment;
2. Payment for the performed Works shall be made in non-cash payment form, not earlier 8 and not later 10 business days after the submission to and confirmation by the Purchaser of the detailed bill of quantities (cost estimate; form #2), Acceptance Act and Invoice;
3. When making payments to the Supplier, the Purchaser shall deduct 25% (twenty five percent) indicated in the invoice amount from the amount paid in advance unless total amount of advance payment is exhausted. After the advance payment is fully exhausted under the method mentioned above, the Purchaser shall fully compensate the amount indicated in the invoice for performed Works;

4. The Supplier's requisites: -----

## **29. Taxes**

1. The Supplier is responsible to pay all taxes, payables and fees envisaged by effective legislation.

## **30. Payment Currency Envisaged by the Contract**

1. All payments envisaged by the Contract are exercised in GEL.

## **31. Responsibility of the Supplier**

1. In case the Supplier fails to perform contracted volume of Works fully and fails to process relevant Acceptance Certificate with the Purchaser, before the Completion Date occurs, which represents the violation of the Contract term, the Supplier shall pay to the Purchaser the penalty in the amount of 0.1% (point one percent) from the value of undelivered Works for each delayed day. The Purchaser is entitled to deduct penalty amount from the amount payable to the Supplier;

1.1 If the Purchaser fails to complete the installation of the River Rioni underwater crossing using horizontal directional drilling method by the date of the completion of horizontal directional drilling, the Supplier shall pay to the Purchaser penalty in the amount of 0.1% (point one percent) from the value of installation of underwater crossing using horizontal directional drilling for each delayed day. The Purchaser is entitled to deduct penalty amount from the amount payable to the Supplier;

2. In case the Supplier terminates the contract/refuses to provide the service, the Supplier shall be obliged to pay the penalty in the amount of 5% of the total Contract Value.

3. If the Supplier breaches the Contract, the Purchaser, consistent with article 34 is entitled to terminate the Contract and apply the Contract performance bank guarantee submitted by the Supplier as well as the advance payment bank guarantee (the latter shall be used by the Purchaser if as of the moment of Contract termination, the total amount of advance payment has not been fully deducted out of the amounts paid to the Supplier for performed works).

## **32. Performance of Work**

1. Works shall be considered as completed after the Acceptance Certificate on full volumes of Works is signed.
2. The installation works for the River Rioni underwater crossing using horizontal directional drilling method shall be deemed as completed and corresponding Acceptance Certificate shall be signed only after the construction works are finalized and results of hydro testing and the usage of caliper plate conducted under the procedures are positive

## **33. Operation and Technical Service Manuals**

1. Prior to processing Acceptance Certificate on full volumes of Works, the Supplier shall in accordance to the project documentation, ensure submission of construction drawings and other technical documents to the Purchaser
2. If the Supplier fails to submit construction drawings and other technical documents to the Purchaser prior to signature of Acceptance Certificate on full volumes of works in accordance to the explanatory note (Annex #-), the Purchaser retains the right to suspend processing of the Acceptance Certificate for the full volume of Works.

## **34. Grounds to Terminate the Contract**

1. The Supplier is entitled to terminate the Contract in accordance to the Georgian Legislation if the Purchaser does not fulfill obligations assumed under the present Contract;
2. The Purchaser is entitled to terminate the Contract if the Supplier does not fulfill (breaches) obligations undertaken, among

them:

2.1. The Supplier does not or cannot, fulfill the requirements indicated in the notice of improvements, within a time indicated in the notice;

2.2. The works conducted by the Supplier are in violation of project document terms;

2.3. The amount of penalty to be paid by the Supplier exceeds 5% of Contract Value;

2.4. The Supplier fails to ensure extension of the bank guarantee term, which shall coincide with the guarantee term of performed Works. In addition, if the Supplier fails to provide a new advance payment bank guarantee in cases specified in clause 35.1.

2.5. The Supplier fails to mobilize in stages and/or use the required quantity of equipment with the relevant specifications during the performance of Works;

2.6. The Supplier fails to mobilize the necessary number of personnel with the relevant qualification during the performance of Works.

2.7. If it becomes known that the documents re qualification and experience submitted by the Supplier are forged;

2.8. In case of the bankruptcy or insolvency proceedings initiated against the Supplier;

2.9. the Supplier twice or more failed to follow the Works Schedule given in Annex #5;

2.10. The Supplier, failed to submit the Works to be provided under Annex #5, within the timeframe given in the notice of the Purchaser.

3. Purchaser reserves right to terminate this Contract at any stage of its implementation;

4. The Purchaser and the Supplier can bilaterally terminate present Contract at any stage upon mutual agreement;

5. In the case of termination, the Supplier immediately stops activities, ensures safety of the site and within reasonable terms agreed between the Supplier and the Purchaser leaves the site. The Supplier shall also list the Materials provided by the Purchaser and ensure their delivery to the Purchaser to the location and within the timeframe specified by the Purchaser.

6. In the event of termination of the Contract by the Purchaser for the nonperformance or undue performance, the Supplier shall be responsible to reimburse all losses and damages suffered by the Purchaser within one month following the termination of the Contract as well as indemnify the Purchaser from the legal claims of Third Parties.

### **35. Advance Payment Bank Guarantee to be Submitted to the Purchaser**

1. The Purchaser shall transfer advance payment in an amount not exceeding 20% of total contractual value based on unconditional and irrevocable bank guarantee (in national currency GEL) and its validity shall exceed Works completion deadline defined in the contract for at least 30 (thirty) calendar days. Guarantee shall be issued by a bank qualified B+ or higher Fitch international rating or equivalent. JSC "Georgian Oil and Gas Corporation" shall be indicated as Beneficiary in bank guarantee. If bank guarantee paid by the Purchaser is not fully deducted from the cost of the performed works while the guarantee is still valid, the Supplier shall be obliged to submit a new advance payment bank guarantee in the amount of 100% of the unrealized advance one month prior the expiration of the existing guarantee. The date for the new advance payment bank guarantee shall be agreed either by additional agreement, or it must be valid by the end of the Completion date ("completion date" is the date of completion of specific stage of works, based on which the Purchaser defines specific timeframe for the new advance payment bank guarantee).

2. Bank guarantee specified in paragraph 35.1 shall consider bank's unconditional and irrevocable liability to reimburse complete amount of bank guarantee or part thereof upon Purchaser's first request.
3. Advance payment bank guarantee shall be returned to the Supplier within 15 calendar days after total advance payment amount is deducted from the amounts payable to the Supplier for performed works.
4. In case of Contract termination the Purchaser shall be entitled to reimburse unrealized advance from advance payment bank guarantee.

### **36. Performance Security Bank Guarantee**

1. The Supplier before signing the Contract shall submit to the Purchaser unconditional and irrevocable bank guarantee in an amount of 5% of Contract value, the validity of the bank guarantee shall exceed Works completion deadline defined in the contract for at least 13 months and JSC "Georgian Oil and Gas Corporation" shall be indicated as Beneficiary in bank guarantee. The bank guarantee issued by a commercial bank operating in Georgia must be submitted and in case the bank issuing the guarantee is not a commercial bank operating in Georgia, the bank issuing the guarantee should have the minimum rate "B+" of Fitch Rating or other equivalent international rating agency (in GEL).
2. A bank guarantee indicated in clause 36.1. of the contract envisages unconditional and irrevocable obligation of the bank to pay full amount to the Purchaser. The Purchaser may use Contract performance bank guarantee to reimburse any damage/loss/penalty inflicted to the Purchaser/imposed on the Supplier, in case of nonfulfillment or undue fulfillment of the obligations set forth in the present Contract;
3. Payment of the bank guarantee does not exempt the Supplier from the obligation to compensate the Purchaser for the damages incurred as a result of failure to perform Contract and not covered by the bank guarantee;
4. In the event the Supplier fails to finalize full volume of works prior to Completion Date, the Supplier within 5 calendar days after written instructions of the Purchaser is received, is obliged to extend the effective term of the bank guarantee by way of fulfilling the period indicated in clause 36.1;
5. In case of nonfulfillment or undue fulfillment of the obligations set forth by the present Contract, the Purchaser has the authority to fully use the performance security guarantee and request the sum of the given guarantee, notwithstanding whether present Contract is terminated or not.

### **37. Force Majeure**

1. On the basis of the Contract, neither party is responsible for nonperformance of its contractual obligations against the other party, if the nonperformance is caused by the Force Majeure circumstances - insurmountable power existence of which does not depend and could not have been predicted by the parties to the present Contract as of the moment of signing the Contract.
2. The Force Majeure means (but is not limited to) the existence of the following circumstances:
  - (a) natural disasters (fire, flood, earthquake) among them hard meteorological conditions, under which conduct of works may endanger life and health of the work force, mobilized equipment and machinery, materials delivered by the Purchaser;
  - (b) declared or undeclared war, civil unrest, any military actions, occupation, annexation, declaration of the extraordinary state in the construction site or in its vicinity;
  - (c) epidemics;
  - (d) decision of the competent state bodies and issuance of such normative acts which affects performance of obligations by the parties and changes, revokes or suspends contract terms and provisions;
  - (e) existence of the circumstances which made impossible to conduct construction operations in accordance with the construction rules and regulations;
3. The party shall immediately notify the other party on occurrence of force majeure by existing communication means (telephone, post, fax, email, courier etc.) and no later than the second day of its origin send letter signed by the authorized person for representation;

4. Presence of force majeure does not automatically cause cancellation of the Contract. The parties are obliged to determine adjustment of the Contract to force majeure conditions; The Party to whom force majeure applies is, to the extent possible, responsible to find alternative ways in order to fulfill its obligations;
5. Upon termination of force majeure conditions, the parties immediately resume contractual obligations performance;
6. In case of force majeure, the obligations performance period shall be suspended for the span during which such circumstances occurred unless otherwise agreed by the parties.
7. Facts specified in written notification shall be certified by competent authority. Such certification shall not be necessary if facts are publicly known.

### **38. Applicable Law, Settlement of the Disputes**

1. The Contract is governed by the Georgian Legislation and any dispute arising out of or in relation to it shall be decided according the Georgian Law.
2. Any dispute between the parties shall be decided through the negotiations. If parties cannot reach the settlement, then the dispute shall be referred to and decided by the Georgian Court.

### **39. Entering into Force and Term**

1. Contract shall become effective upon parties signing thereon and shall be valid till -----201---.
2. Relevant provisions of the Contract shall remain valid until complete fulfillment of responsibilities undertaken by the parties.

### **40. Final Provisions**

1. If any article, clause and/or provisions of this Contract are deemed invalid and/or void, this shall not affect validity of the remainder articles, clauses and/or provisions of the Contract;
2. Any communication between the parties required under the Contract shall be performed in writing and/or through e-mail (Purchaser - [public@gogc.ge](mailto:public@gogc.ge); Supplier - XXX );
3. Any annex and/or amendment and/or addition to this Contract represent integral part thereto.

### **41. Details and Signatures**

#### **The Purchaser**

JSC Georgian Oil and Gas Corporation  
N 21 Kakheti Highway, Tbilisi, Georgia

#### **The Supplier**

## Annex # 7 - Advance Payment bank Guarantee/draft

### Unconditional and Irrevocable Bank Guarantee

Guarantor: name of Bank

Principal: the Supplier

Beneficiary: JSC Georgian Oil and Gas Corporation

We were informed that an Agreement *(number of date of Agreement)* (hereafter "Agreement") was executed between the Principal and the Beneficiary, whereunder the Principal shall deliver/perform *(name of object of procurement)*. The terms and conditions of the above Agreement provide for advance payment in the amount of \_\_\_\_\_ % of the entire cost of the Agreement in case the Principal submits to the Beneficiary a Bank Guarantee for the amount equivalent to the requested advance payment, i.e. *(amount in numbers and words)* GEL.

Considering all the above, please be informed that in case the Principal fails to fulfill its obligations under the terms and conditions of the Agreement, the Guarantor undertakes to reimburse to the Beneficiary any amount or amounts, but not more than the equivalent of *(amount in numbers and words)* GEL without any refusal and appeal within 5 business days upon receipt of the first written request from the Beneficiary. The amount (in national currency) to be reimbursed by the Guarantor shall in no case be less than the advance amount deposited by the Beneficiary in national currency into the Principal's bank account specified in this Guarantee on the basis of this Bank Guarantee *(in case, principal is Georgian resident)*.

This Bank Guarantee shall become valid immediately upon after the advance amount – *(amount in numbers and words)* GEL is fully deposited by the Beneficiary into the Principal's account *(account number)* in *(name of Bank/Branch)*.

\*Validity period of the Guarantee: *(specific date)*. Accordingly, this Guarantee shall be effective until the above date (inclusive). Any requests or claims proceeding from the above shall be received by the Guarantor prior to expiration of the validity period of the Bank Guarantee at the following address: *(name of Bank/Branch, address)*.

Reimbursement request submitted by the Beneficiary shall be signed by the authorized person and sealed in writing, specifying the requested amount in numbers and words.

The guarantee amount shall be reduced: a) on the basis of written notification of the Guarantor by the Beneficiary, specifying the amount to be reduced under the Guarantee; b) by the amount paid by the Guarantor under the Guarantee.

The Bank Guarantee shall be automatically revoked

- when the validity period of the Bank Guarantee expires;
- in case of written waiver of the rights under the Guarantee by the Beneficiary and return of the original copy of the Bank Guarantee to the Guarantor.

Signature of Guarantors and Seal

**\* Validity period of this Guarantee shall exceed Works completion deadline defined in the contract for at least 30 (thirty) calendar days.**



**Annex # 8 - Contract Performance Bank Guarantee /draft**

**Unconditional and Irrevocable Bank Guarantee**

Guarantor: .....  
(Name of issuer Bank)

Principal: .....  
(Supplier)

Beneficiary: JSC Georgian Oil and Gas Corporation (Purchaser)

Tender Registration Number (SPA) -----

*Bank* has been informed that ..... in accordance with the bid for the tender N ..... undertook the responsibility to submit Performance Guarantee in *Purchaser's* favour, amounting up to ..... in order to cover the due fulfillment of *Supplier's* consequent contractual obligations.

In consideration of the aforesaid, we hereby guarantee and undertake at the first request of the Purchaser, the *Bank*, hereby irrevocably and unconditionally, waiving all rights of objection, without the need to obtain a court sentence or *Supplier's* consent, to pay the *Purchaser* the amount not exceeding ....., in 5 calendar days upon receipt of *Purchaser's* duly signed and stamped first written demand indicating the amount to be paid in numbers and words stating that the *Supplier* is in breach of its contractual obligations without the need the *Purchaser* to prove or show the grounds for the demand.

*Bank's* liability (insert the name of the bank) under this guarantee is valid until ....., consequently, any demand for the payment under this guarantee must be received by the *Bank (insert the Address)* on before abovementioned date after which this guarantee will automatically become null and void.

The bank guarantee is automatically terminated:

- After the expiration date of this guarantee;
- If the beneficiary refuses to use the rights under this guarantee and submits the written notification to the guarantor about refusal and returns the original Guarantee.

Signature and stamp of the guarantors'

**\* Validity period of this Guarantee shall exceed Works completion deadline defined in the contract for at least 13 (thirteen) months.**