

Annexure -II Non-Disclosure Agreement

Confidentiality Agreement

This **CONFIDENTIALITY AGREEMENT** (“**Agreement**”, which expression shall unless it be repugnant to the subject or context thereof, include all schedules and amendments thereof made from time to time) is made on the date set out in Schedule) hereof (the “ **Effective Date**”) between the person (s) named in Schedule hereof (the “ **Receiving Party**”) of the One Part.

And

BHEL LIMITED, a company incorporated under the companies Act, 1956 and a banking company within the meaning of the banking Regulation Act. 1949 and having its registered office at / its corporate office at BHEL Towers, ----- and the Zonal branch/branch office at _____ (“**BHEL**”, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) of the Other Parts.

The Receiving Party and BHEL are hereinafter collectively referred to as “Parties and individually as a “Party”,

PREAMBLE:

- (i) BHEL is considering a project involving ----- (Insert Company Name & brief description of Project), the Receiving Party (“ the Project”), as more particularly specified in detail in Schedule 2 of this agreement for which BHEL will divulge certain information to the Receiving Party which at present is confidential and not in the public domain.
- (ii) BHEL intends that the aforesaid information be kept confidential as between the Receiving Party and BHEL and the Receiving Party undertakes and declares that it shall not divulge, publish or reproduce the same before and person except in accordance with the terms of this Agreement.

THEREFORE, IN COSIDERATION OF BHEL making available such confidential information as aforesaid to the Receiving Party, the Parties agree as follow

(1) For the purpose of this Agreement, “AFFILIATE” of BHEL shall mean and include:

- (a) Any company which is holding company or subsidiary of BHEL, or
- (b) A person under the control of or under common control with BHEL, or
- (c) Any person, in more than 26% of the voting securities of which BHEL has a direct or beneficial interest.

For the purpose of this Affiliate and Agreement, “control” together with grammatical variations when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, Whether through the owner ship of the vote carrying Securities, by contract or

otherwise however; and "Person" means the company, corporation, a partnership, trust or any other entity or organization or other body Whatsoever.

- (2) The Receiving Party hereby agrees that all the confidential, proprietary or trade secret information relating to BHEL including without limitation, information regarding the business operations, financial information, customer information and marketing strategies of BHEL and any notes, compilations, studies, interpretations, presentations, correspondence or other writing made available to the receiving Party by BHEL whether in physical or electronic form, whether after the effective date or prior to the execution of this agreement, and in specifically marked "**CONFIDENTIAL**", INCLUDING any verbal indication that has been documented in writing and marked as "**Confidential Information**". The receiving Party agrees that all the confidential Information shall be treated as absolute secret and the receiving Party shall not disclose to any person such information otherwise than in accordance with the terms of this Agreement. The Receiving Party will impose a similar duty of confidentiality on any person to whom the Receiving Party is permitted to transfer such information in accordance with the terms hereof.
- (3) The receiving Party shall not, without the prior written consent of BHEL, display or disclose all or any part of the confidential Information, in any manner or circumstances whatsoever, to any person or any third party and all Confidential Information contained herein shall be used by the receiving Party, directly or indirectly solely for the purpose of considering, evaluating and effecting the Project. The receiving Party shall not use the Confidential Information in any way detrimental to BHEL.
- (4) The receiving Party hereby represents that any employee or any official of the Receiving Party who will be given access to the Confidential Information on behalf of the Receiving Party has executed/ shall execute appropriate non-disclosure contracts with the receiving Party for adequate protection of the confidential information belonging to BHEL and/or its Affiliates against disclosure or exploitation. The receiving Party shall forthwith make available a copy of such contracts as and when required BHEL.
- (5) The receiving party shall maintain a record of entities/persons to which the Confidential Information has been disclosed. This record shall be promptly made available to BHEL upon request.
- (6) Without limiting the above, the Receiving Party further undertakes:
 - (i) Not to disclose that the confidential Information is or has been or will be made available or that evaluation of the Confidential Information is being or has been or will be made.
 - (ii) Not to make copies of, or reproduce or display in any form and by any process, all or any of the Confidential Information, except in the form of notes or memoranda, whether in physical or electronic form, made by Receiving Party employees/ officials during their evaluation of the Confidential Information;
 - (iii) To limit the access to the Confidential Information solely to those of its directors, officials or employees who have reason to require access only on a "**need to know**" basis;
 - (iv) To ensure that each of such director, official or employee referred to in Clause 6 (iii) hereinabove, to whom the Confidential Information is disclosed, observes strictly, the restrictions as to use and disclosure contained herein;
 - (v) To return all Confidential Information to BHEL forthwith and within a period of 10 days upon request by BHEL or upon the Receiving Party or BHEL

deciding not to proceed with the Project. Should BHEL permit the destruction of such Confidential Information, the Receiving Party shall destroy the Confidential Information, within the period as may be specified by BHEL and shall provide BHEL with written notice that such destruction has been carried out.

- (vi) To use the Confidential Information solely for the purpose of considering, evaluating and effecting the Project as specified in Schedule 2 hereto and to take all steps necessary to protect the secrecy of the Confidential Information from falling into the public domain or into the possession of unauthorized persons.
 - (vii) To keep confidential the fact of existence of discussions between the Receiving Party and BHEL concerning the Project, unless otherwise required by law and not make any private or public announcement or statement concerning or relating to the Project.
7. The restriction on use and disclosure set out above shall not apply to any Confidential Information which at the date of its disclosure to the Receiving Party is public knowledge or which subsequently becomes public knowledge other than by way of a breach of the terms of this Confidentiality Agreement; Or was available to the Receiving Party prior to its disclosure to the Receiving Party by BHEL under the terms of this Agreement; Party by BHEL under the terms of the Agreement: or is required to be disclosed by way of a legal process regulation or Government order, decree, regulation or rule; Provided herein after that for the purposes of the above section, such circumstances as defined above shall be tangibly proved to the satisfaction of BHEL in order to qualify as an exception under this category.
8. The Receiving Party agrees that all Confidential Information shall remain the property of BHEL or its Affiliates and that BHEL may use such confidential information for many purposes without any obligation to the Receiving Party. Nothing contain herein shall be construed as granting or implying any transfer to rights (including license rights) to the Receiving Party in the Confidential Information.
9. The Receiving Party agrees and understands that by the furnishing or making available of the confidential information, neither BHEL nor any of its agents are making any representation or warranty express or implied as to the accuracy or completeness of the confidential information. BHEL shall not be liable to the Receiving Party or any other person to use of the confidential information.
10. The Receiving Party shall immediately notify BHEL of any known or suspected breaches of this Agreement and shall give BHEL Full Corporation in any search or security.
11. If either party decides that it does not wish to proceed with the Project, such party will promptly advice the other party shall forthwith return all confidential information to BHEL and shall not retain any copies of the same, in any form whatever. The receiving Party shall further certify compliance with this clause to BHEL forthwith in writing.
12. The Receiving Party hereby agrees to forth indemnify and hold harmless BHEL and its Affiliates from and against any claim and loss or damages, liability (including the legal fees) arising out of or in connection with any unauthorized or any other breach of

the terms and conditioning contained in this Agreement. This clause shall survive the termination or expiration of this Agreement.

13. The Receiving Party acknowledges that any breach of the terms and conditions of this agreement may cause BHEL irreparable damages for which recovery of money damages would be inadequate. Therefore, the Receiving Party agrees that BHEL or its nominee (in BHEL's sole discretion) shall be entitled, in addition to any other remedies available to it, to seek injunctive relief and/or from its employees/officials, or otherwise to protect its rights, under this Agreement.
14. in the event the Receiving Party is required to disclose Confidential Information upon an action, subpoena or order of a court of competent jurisdiction or of any requirement of legal process regulation or governmental order, decree, regulation or rule, the Receiving Party will immediately notify BHEL of its having received a request to so disclose (alongwith the terms and circumstances thereof), and consult with BHEL on action or steps to be taken in response to such request and shall finally execute any such request in accordance with the satisfaction of BHEL.
15. This Agreement shall be binding upon and shall inure for the benefit of the heirs (if applicable), successors and assigns of the Parties hereto.
16. This Agreement represents the entirety of the agreement of the Parties relating to the disclosure of the Confidential Information and shall not be waived, amended or assigned by either Party except by prior written consent of the other Party. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.
17. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
18. If any provision of this Agreement is determined to be unenforceable for any reason, then the remaining provisions hereof shall remain unaffected and in full force and effect.
19. This Agreement, the relationship between the Parties and all rights and obligations arising from any act done or required to be done under this Agreement and the terms herein shall be governed by and construed in accordance with the laws in India. The courts at Mumbai shall have the jurisdiction to try any matters arising out of or in connection herewith.
20. Nothing in this Agreement shall obligate either Party to consummate any transaction discussed as a result hereof.
21. This Agreement shall become binding on the Parties from the Effective Date and shall be in force such tenure as specified in Schedule I and shall remain in force for the entire term of the Project Notwithstanding anything contained herein, the obligations of Receiving Party Under this Agreement to retain secrecy of the Confidential Information shall however survive and be continuing until the Confidential information disclosed by BHEL is no longer confidential and is in public domain without any breach of the terms and conditions hereof by the Receiving Party.
22. Unless otherwise provided herein, all notices or other communications under or in connection with this Agreement shall be given in writing and may be sent by personal delivery or post or courier or facsimile at the address as specified in Schedule I hereto. Any such notice or other communication will be deemed to be effective if sent by personal delivery, when delivered, if sent by post, 4 (four) days after being deposited in the post and if sent by courier, one day after being deposited with the courier, and if sent by facsimile, when sent (on receipt of a confirmation to the correct facsimile number).

23. For the avoidance of the doubt, the owner hereby reserves the right at all times to file for / oblige for any applicable copyright / patent and / or any other licenses as applicable and to this effect the Receiving Party hereby undertake to ensure that there is no infringement of the owner's Intellectual Property Interest (IPR) at any time.

SCHEDULE I

1. **Effective Date:** _____ day of _____ (Month).20____ (year)

2. **The Receiving Party:**

_____, a company registered under the provisions of the Companies Act, 1956, and having its Registered Office at _____.

The expression "Receiving Party" shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns.

3. **Tenure:**---- Years

4. **Address for Notices:**

If to BHEL:

BHEL Limited,

BHEL Towers,

Siri Fort

New Delhi 110049

Facsimile Number:

Tel No.:

Attn:

If to the Receiving party:

[Address]

Facsimile Number:

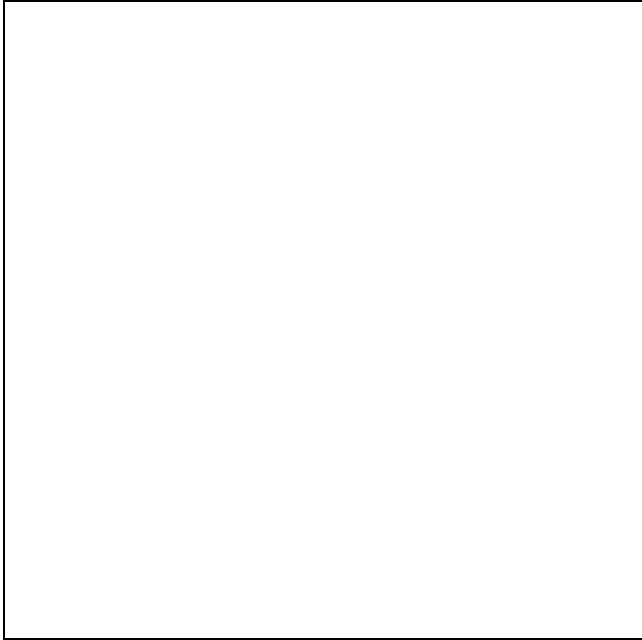
Tel No.:

Attn:

SCHEDULE 2

PROJECT

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in the manner hereinafter appearing.



In the presence of:

1)

2)

AND

Signed and Delivered by BHEL
LIMITED, the within named BHEL by the
Hand of _____, its
Authorized official in the presence of:

1) _____;

2) _____.