

NON-DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT (“**Agreement**”) is made and executed on thisday of, 2023,

BY AND BETWEEN

Bharat Heavy Electricals Limited, a company incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, New Delhi, 110-049, India and inter alia its office at Transformer Plant, Jhansi, 284120 U.P.(hereinafter referred to as “**BHEL**” which expression shall, unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns

AND

XYZ Ltd., a company incorporated under the provisions of the Companies Act, 1956, and having its registered office at XXXX – (hereinafter referred to as “**XYZ**” which expression shall, unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns supplier of required tender item.

*(Each reference to “**XYZ**” in this Agreement shall be deemed to include its respective subsidiaries, affiliates and sister companies or any other organization in which **XYZ** has an ownership stake or over which **XYZ** can exert control, each of which/such party shall cause to observe the requirements of this Agreement with respect to the information disclosed by **BHEL** to **XYZ** under this Agreement)*

The BHEL and the XYZ are hereinafter collectively referred to as the “Parties” and individually as the “Party”.

WHEREAS

- (i) BHEL has floated a tender no.- xxxx for procurement of xxxxx (hereinafter referred as “**PROJECT/ TENDER**”)
- (ii) AND WHEREAS BHEL (Disclosing Party) needs to share CONFIDENTIAL INFORMATION with XYZ (Receiving Party), as per **PROJECT / TENDER** Requirements.
- (iii) NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter, the parties hereto have agreed and do hereby agree as follows.

Definition of Confidential Information

1. For purposes of this Agreement, “**Confidential Information**” shall mean any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to (1) any scientific or technical information, relating to the invention, design, process, procedure, formula, improvement, technology, method for operation and manufacture of products (2) manufacturing drawing and all information referred to in such manufacturing drawings (3) all type of data collected either from either parties to this agreement or any existing, potential, past customer of either parties to this agreement during

interview, survey or through telephonic conversation, letters or any other means while and during carrying out the assignment mentioned above (4) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets (5) marketing studies, strategies, or projections, operations, business plans and performance results relating to the past,; (6) information, documents and materials relating to the financial management and other business conditions, prospects, plans, procedures and affairs which either parties to this agreement holds confidential or considers proprietary and has not publicly disclosed and (7) names of developmental programs, sales or marketing plans, or references to next generation products and new product introductions, which is transmitted or communicated by ICF to the party of the other part of this agreement.

Provided that information disclosed orally or by observation will be treated as **Proprietary Information**, only if the same is confirmed as confidential in writing within a period of three (3) days from its disclosure;

Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.

TERMS AND CONDITIONS

2. Confidentiality Obligations:

- a. All Proprietary Information and confidential information which is transmitted or communicated by Disclosing Party shall in all cases be held in confidence by Receiving Party and it shall not directly or indirectly, in any way, reveal, report, publish and disclose or transfer to any third party unless written consent of the Disclosing Party is first obtained. Except that, Receiving Party has the absolute right to disclose such information to its own employees, consultants and representatives who are bound by an obligation of confidentiality and who need to know such information for the PROJECT/ TENDER specified hereinabove.
- b. Receiving Party shall advise each of the persons to whom it provides access to any of the Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information, and, upon Request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons.
- c. Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or

implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

- d. Receiving Party agrees to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; For the purpose of protecting Proprietary Information received from Disclosing Party hereunder, Receiving Party will use efforts commensurate with those it employs for the protection of corresponding information of its own, including as a minimum, alerting its employees of the confidential and sensitive nature of the Proprietary Information of Disclosing Party, and will make disclosure to its employees only on a need-to-know basis and using appropriate safe-keeping procedures for Proprietary Information.
- e. Receiving Party agrees not to use any Confidential Information to unfairly compete or obtain unfair advantage vis-a-vis Disclosing Party.
- f. Receiving Party agrees to comply with any other reasonable security measures requested in writing by the Disclosing Party.
- g. Receiving Party agrees to refrain from directly contacting or communicating by whatsoever means to the Source(s) of Information without written consent of the Disclosing Party
- h. Receiving Party agrees to undertake not to disclose any names and their particulars to third party/ies without the written consent by the Disclosing Party.

3. **Exceptions:**

Notwithstanding the provisions of Paragraph 2 of this Agreement Receiving Party shall not be required to maintain confidentiality or be restricted in its use of any Proprietary Information which:

- i. was in the public domain at the date of disclosure to Receiving Party;
- ii. becomes public knowledge during the term of this Agreement without breach of this Agreement;
- iii. Receiving Party can show that it was in its possession with the full right to disclose prior to its receipt from or disclosure by Disclosing Party;
- iv. disclosure of which is required by law or by order of a court of competent jurisdiction;

However, it is expressly agreed that the data/information collected during carrying the assignment by Receiving Party shall form part of the confidential information and shall be governed by this agreement.

4. **Compelled Disclosure of Confidential Information.**

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party gives (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

6. **Term:**

This Agreement shall be effective from the date of execution of this agreement and shall remain in force upto the date of completion of the PROJECT/ TENDER.

7. **Termination:**

Either party hereto, upon written notice to the other, may terminate this Agreement. Such termination shall be effective thirty (30) days after receipt of such notice. All obligations arising under this Agreement shall survive any termination or expiration of this Agreement and any confidentiality obligations will remain in effect for a period of five (5) years from date of first disclosure hereunder. Upon termination or expiration of this Agreement, any **Proprietary Information** received by Receiving Party pursuant to this Agreement shall be returned, together with all copies thereof.

8. **Notice of Breach.**

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its representatives, or any other breach of this Agreement by Receiving Party or its representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. Return of Confidential Information.

Receiving Party shall immediately return any Proprietary Information received in pursuance to this Agreement and redeliver to the other, all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

10. Rights, Remedies and Restrictions.

Both parties acknowledge that the Confidential Information to be disclosed hereunder, is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, Receiving Party acknowledges that:

- (a) Disclosing Party possesses and will continue to possess proprietary information that has been created, discovered or developed by or on behalf of disclosing party by third parties, which information has commercial value and is not in the public domain;
- (b) Unauthorized use or disclosure of Proprietary Information is likely to cause irreparable injury not readily measurable in monetary damages;
- (c) In the event of an unauthorized use or disclosure, Disclosing Party shall be entitled to, without waiving any other rights, recourses or remedies to which it may be entitled under this Agreement, at law or in equity, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction;
- (d) Disclosing Party and its licensors retain all right, title and interest in and to the Proprietary Information including without limiting the generality of the foregoing, title to all materials whether provided by or on behalf of Disclosing Party.
- (e) Any authorized use or disclosure by the proprietor, agents, representatives, advisors, directors, officers or employees of receiving party shall be deemed to be an unauthorized

use or disclosure by Receiving Party and that Receiving Party shall indemnify and hold harmless Disclosing Party from and against any and all damages, losses, costs, expenses and attorneys' fees incurred as a result of such breach.

- (f) This agreement shall remain in force notwithstanding any change in the ownership, management, constitution, merger and amalgamation etc. of Receiving Party.
- (g) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

11. Severability of Provisions:

Should any part of this Agreement be declared invalid or voidable by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect as if the invalid or voidable portion was never a part of this Agreement when it was executed. As it is, the parties' intent that this Agreement be enforced to the fullest extent permitted by law, such invalidated section shall be deemed amended so as to avoid the reasons for its invalidity. Should the severance or amendment of any such part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

12. Non-Assignability:

Neither party hereto shall, directly or indirectly, assign or purport to assign this Agreement or any of its rights and obligations in whole or part to any third party without the prior written consent of the other party.

13. Warranty.

Each Party to this agreement warrants that it has the absolute right to make the disclosures under this Agreement. **No warranties are made by either party under this agreement whatsoever.** Each party to this agreement acknowledges that although they shall endeavor to include in the Confidential Information all information that they believe relevant for the PROJECT/ TENDER, however no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, Disclosing Party is not under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose.

14. Amendment:

Subject to Paragraph 9 above, this Agreement shall not be amended, modified or altered, except in writing, duly accepted and executed by both parties.

15. Governing Law:

Governing law and Jurisdiction shall have meaning as defined in the PROJECT/ TENDER.

16. Precedence:

In case of any contradiction in the terms and conditions of this agreement and the PROJECT/ TENDER, then the PROJECT shall have precedence over this agreement.

17. Notices:

Any notices or communications required or permitted to be given hereunder, from either party to the other will be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other and may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case. All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

If to BHEL

Attention: AGM (LME & LFE)

If to XYZ

Attention:

IN WITNESS WHEREOF, the parties hereby thereof, have executed this Agreement, as of the date first above written i.e. which shall be binding upon them and their respective successors and assigns, as of the day and year first above written.

For BHEL	For XYZ
Name:	Name:
Designation:	Designation:
Witness:	Witness: