

MEMORANDUM OF UNDERSTANDING for Pre bid.

This Memorandum of Understanding (hereinafter the "MoU") is entered into on thisday of2024 at New Delhi by and between:

ABC, a company incorporated under the laws of, having its registered office at and principle place of business at(hereinafter referred to as the "**ABC**");
and

BHARAT HEAVY ELECTRICALS LIMITED, a company registered under the laws of India, having its principal place of business and its registered office at BHEL House, Corporate Office, Siri Fort, New Delhi 110049, and represented by its (Name of Contracting Unit) Office at, Noida, UP- (hereinafter referred to as the "**BHEL**"),

ABC and BHEL are hereinafter also referred to individually as a "**Party**" and collectively as the "**Parties**". The term ABC and BHEL shall, unless repugnant to the context, mean and include their successors and permitted assigns.

WHEREAS:

ABC is a power technology company engaged in the activities of manufacturing amongst other products, HVDC power technology products and supplying them to various customers around the world.

BHEL is an Engineering and Manufacturing Company engaged in the business area of manufacturing and construction of inter-alia Power Plants, Transmission, Industry, Transportation, Renewable Energy, Oil & Gas and Defence.

The "Customer" is proposing to build stations inProject") by inviting Tender bids from potential EPC contractors. The Parties have an interest in potentially collaborating for the Project for design, engineering, manufacturing, supply and installation of

The Parties, after having deliberations on the technological aspects understand that for the reasons of technological know-how, resources, capacity and risk tolerance, full scope of power technology solutions that will be required for the Project cannot be catered or delivered competitively by any one of them individually. Therefore, the Parties together intend to enter into this Memorandum of Understanding for the purpose to bid and execute the Project by forming a Consortium ("Consortium"). The Parties have arrived at a common understanding to participate jointly in this forthcoming business opportunity in a meeting held on2024 at

The Parties have now agreed to enter into this MoU to regulate their relationship during the period up until the Parties have agreed upon and entered into the Consortium Agreement or until this MoU otherwise has terminated.

NOW IT IS THEREFORE HEREBY AGREED AS FOLLOWS:

1. The Tender Process

- 1.1 Upon receipt of the request for quotation or invitation to Tender ("RFQ") from CUSTOMER, the Parties shall follow the process of Tender bid preparation as below;
 - (a) The Parties shall undertake to do a self-assessment of the intended Consortium on the Project with respect to compliance with competition and public procurement laws;
 - (b) The Parties will proceed with the Tender discussion and bid preparation only after they have mutually agreed that their self-assessments support moving forward under applicable laws;
 - (c) All exchange of information between the Parties shall be restricted only to that which is strictly necessary for and directly related to, the Project. The exchange of information shall be on need to know basis and in accordance with this MoU;
 - (d) No Commercially Sensitive Information ("CSI") of whatever nature unrelated to the Project shall be discussed; and
 - (e) Safety measures would be introduced by each Party to avoid flow of any CSI to any persons of the respective Parties that have not been designated as recipients of CSI. The Parties will notify to the other Party the list of its designated recipients of CSI separately.
- 1.2 The Parties shall form a consortium and enter into a Consortium Agreement in the form as mutually agreed between the Parties before the Tender bid submission. The Parties shall negotiate in good faith the terms and conditions of the Consortium Agreement, based on the Tender requirements and the agreed Division of Work between parties as per Appendix-1 to this MoU.
- 1.3 The Parties agree to respond to the RFQ by way of a technical, commercial and contractual quotation, including the Parties deviations to the proposed contractual terms and conditions.
- 1.4 The Parties shall duly incorporate the relevant bids of each of the Parties to the proposed Tender bid to CUSTOMER.
- 1.5 The Parties agree to submit all components of their part of Tender Bid and the proposed Consortium shall submit the Tender bid to CUSTOMER on the Tender submission date.

2. Validity of this MoU

- 2.1 This MoU shall be binding and valid upon the date MoU has been duly signed by both Parties.
- 2.2 This MoU shall terminate on the earlier occurring of anyone of the following events:
- a) the Parties enter into the Consortium Agreement;
 - b) the Parties, having complied with their obligations to negotiate in good faith, fail to agree on the terms and conditions of the Consortium Agreement prior to the Tender bid submission;
 - c) the CUSTOMER cancels the Project;
 - d) the technical solution as required in the RFQ cannot be provided/or met by any of the Parties;
 - e) the Parties mutually agree to terminate this MoU.
- 2.3 In the event of termination of this MoU in accordance with Sub-clause 2.2 above, neither Party shall be responsible or liable to the other Party for any loss or damage caused to or suffered by itself, and each Party shall bear their own costs and risks as a result of such termination.

3. Exclusivity

The Parties agree to be exclusive to each other with respect to the Project and neither Party may thus during the validity of this MoU submit any tender or enter into any contract with any third party with regard to the Project. This shall not apply to sourcing arrangement from other vendors or sub-contractors for the purpose of submission of the Tender Bid.

4. Intellectual Property

The ownership of all rights of any kind whatsoever in any invention, copyright, trade secret, or any other form of intellectual property or proprietary information ("IP") shall remain the property of the respective Party. No rights or licence of any kind whatsoever in IP are granted or transferred under this MoU. Any IP to be exchanged pursuant to this MoU shall be governed by the terms of Consortium Agreement or a separate licensing agreement as required.

5. Confidentiality

- 5.1 In consideration of the disclosure of confidential information by a Party, the receiving Party hereby agrees to hold the confidential information in strict confidence and to take all reasonable precautions to protect such confidential information, limit disclosure of any confidential information to its directors, officers, employees, agents or representatives who have a need to know such confidential information in connection with the current or contemplated business relationship between the parties to which this MoU relates, and use such confidential information only for that purpose. The Parties shall keep all confidential information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information. Public announcements, if any, shall be made by a Party only on the terms mutually acceptable to both the Parties.
- 5.2 Any information that is available in the public domain or is within the knowledge of a Party before the disclosure or is independently generated by the receiving Party without use of the confidential information, or after the disclosure hereunder it becomes part of the public domain by publication, or it lawfully becomes available to the Receiving Party, without restriction respecting use or holding in confidence, from a third party; or prior to the time of disclosure hereunder it was known to and possessed by the receiving Party as shown by written records, shall not be deemed to be confidential information. Information that either Party qualifies as confidential information as per Clause 5.1 should be clearly marked "Confidential" by the disclosing Party. The Parties agree that any information which is not marked accordingly shall not be considered as confidential. Confidential information that is orally disclosed by either Party should be declared as "Confidential" upon disclosure and documented in writing in the minutes of any meeting as having been actually disclosed in the documented form.
- 5.3 The Parties acknowledge that the Confidential Information to be disclosed by a Party is business sensitive and 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 Parties hereby agree that a Party shall be entitled to injunctive or other interim or equitable relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available to a Party, whether at law or in equity.
- 5.4 Notwithstanding anything in the foregoing to the contrary, the recipient may disclose Confidential Information pursuant to any governmental, judicial, quasi judicial, statutory authority or administrative order, in which case the disclosing party shall duly notify the other Party of such disclosure.

- 5.5 Such obligation of confidentiality shall survive 5 years from the date of termination of the MoU.

6. Consequential loss

No Party shall be responsible or liable to the other Party for any special, indirect, incidental, exemplary, punitive, speculative or consequential loss of any type, no matter how characterized, including but not limited to; loss of use, loss of revenue, loss of production or product, loss of profits or anticipated profits (if any), loss of or interruption to business, facilities, loss of use of property or wasted overheads or increased cost of working, in each case whether direct or Indirect, relating to, in connection with or arising out of the performance or non-performance of this MoU, howsoever the same may arise, whether under contract, tort (including negligence), strict liability or otherwise at law, and whether or not foreseeable at the execution date of this MoU.

7. Assignment

- 7.1 Neither Party shall, without the prior written consent of the other Party, transfer, assign or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this MoU.
- 7.2 Notwithstanding what is stated in the preceding clause, Parties shall have the right to assign or delegate any of its right under this MoU to any of their group companies, as required. Group companies are those companies doing business in different markets and having administrative and financial control either by ABC or BHEL.

8. Relationships of the Parties

Nothing in this MoU shall be construed as creating or forming, or be deemed to create a Consortium. The Consortium shall come into effect after the Parties have executed the Consortium Agreement.

9. Severability

If any provision of this MoU is held by any court to be void or unenforceable in whole or in part, the other provisions of this MoU and the remainder of the affected provisions shall continue to be valid.

10. Counterparts

This MoU may be executed by the Parties in two copies (one to be retained by each Party), and each of such copy shall constitute an original.

11. Compliance and Ethics

- 11.1 The Parties agree to fully comply with all the applicable laws and regulations applying to the proposed Tender. The Parties shall strictly abide by the code of conduct and ethics policy of their respective organisation.
- 11.2 Each Party hereby warrants that it will not, directly or indirectly, and it has no knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of any Party or any other party in a manner contrary to applicable laws and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.
- 11.3 Nothing in this MoU shall render a Party liable to reimburse another Party for any such consideration given or promised.
- 11.4 A material violation by a Party of any of the obligations contained in clause 11.1 or 11.2 above may be considered by the other Party to be a material breach of this MoU and shall entitle the other Party to terminate this MoU with immediate effect and without prejudice to any further right or remedies on the part of such Party under this MoU or applicable law. The violating Party shall indemnify the other Party for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of this MoU.

12. Notices

Any notice or other communication related to the RFQ or the Tender or otherwise in relation to this MoU shall be in writing and shall be sent to the following addresses:

For ABC:

Name: ABC

Address:.....

Telephone: +.....

Attention:

Email:

For BHEL:

Name: Bharat Heavy Electricals Limited

Address:, Noida-201305, Uttar Pradesh, India

Telephone: +

Attention:

Email:.....

13. Waiver

Any waiver by either Party of a breach of any provision of this MoU shall not be considered as a waiver of any subsequent breach of the same or any other provision of this MoU.

14. Governing law and dispute resolution

14.1 This MoU shall be governed by and construed in accordance with the Laws of India.

14.2 All disputes and claims between the Parties which may arise out of or in connection with the MoU shall be settled amicably by good faith negotiation between the Parties.

14.3 In the event that no amicable settlement is arrived at, any unsettled dispute, controversy or claim arising out of or in connection with this MoU, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The dispute shall be referred to India International Arbitration Centre (IIAC) to appoint sole arbitrator to be appointed by IIAC. Arbitration proceeding shall be governed by the IIAC Rules. The seat of arbitration shall be at New Delhi. The language to be used in the arbitral proceedings shall be English. The Arbitral Tribunal shall give a reasoned Award.

14.4. All the disputes in relation to this MOU, Court at New Delhi shall have the exclusive jurisdiction.

15. Entire Agreement

This MoU shall contain the entire agreement between the Parties with respect to its subject matter, supersedes all previous agreements and understandings between the Parties, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

IN WITNESS WHEREOF this MoU was duly signed by both the Parties:

ABC

Bharat Heavy Electricals Limited

Signature

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Name:

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Designation:

Executive Director

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ABC

BHEL

Signature

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Name:

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Designation:

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ABC

BHEL