

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
BHARAT HEAVY ELECTRICALS LIMITD  
AND  
\_\_\_\_\_  
(Name of Engineering Sub-Contractor (ESC))

FOR EXECUTION OF  
LSTK 2 SYNGAS PURIFICATION UNIT  
OF  
COAL TO 2000 TPD AMMONIUM NITRATE PROJECT  
OF  
BCGCL, LAKHANPUR, ODISHA

(to be executed on non-judicial stamp paper of appropriate value)

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ('MOU') is entered into on ..... of .....2024 at .....,

BETWEEN

Bharat Heavy Electricals Limited, a company registered in India under the Companies Act, 1956 and having its registered office at BHEL House, Siri fort, New Delhi-110049 and inter-alia an office at Industry Sector, Integrated Office Complex, Lodhi Road, New Delhi – 110003, India (hereinafter referred to as "**BHEL/Bidder**") which expression unless repugnant to the context or meaning hereof shall mean and include its successors and permitted assigns)

AND

\_\_\_\_\_, a company registered in \_\_\_\_\_ and having its registered Office at \_\_\_\_\_ (hereinafter referred to as "**\_\_\_\_\_ /ESC**") which expression shall, unless repugnant or contrary to the context, be deemed to include its successors and permitted assigns

BHEL & \_\_\_\_\_ are herein after individually referred to as "Party" and collectively as "the Parties".

### WHEREAS,

M/s. Bharat Coal Gasification and Chemicals Limited (BCGCL) has issued NIT No: PNMM/PC288/E/001 for LSTK-2 PACKAGE OF SYNGAS PURIFICATION UNIT for setting up of Coal to Ammonium Nitrate Plant at Lakhanpur area of Mahanadi Coalfields Limited, Jharsuguda District, Odisha (here in after referred to as the "**Tender**").

BHEL as Bidder intends to engage \_\_\_\_\_ as an ESC for providing Engineering Services for **Detailed Engineering during Post order stage (if BHEL bags the order as LSTK), scope** as defined in the Tender document referred here above and subsequent amendments issued by BCGCL, if any (here in after referred to as "Project") to Customer on EPC basis in line with responsibility matrix annexed hereto as Doc. PY54028 (here in after referred to as "Scope of Work"), in case the order is awarded to BHEL.

BHEL and \_\_\_\_\_ (ESC) shall synergize their strengths, potentials and capabilities agreed to cooperate with each other to participate in the Project. The parties shall co-operate

with each other for securing the Project as per the technical and commercial Specifications of "Tender" to be read in conjunction with various Corrigenda /Amendments and perform the resulting Contract, as and when executed between and perform the Contract, as and when executed between BHEL and BCGCL, (here in after referred to as "Customer Contract"). On securing the order from BCGCL, contracts for Services shall be executed between BHEL and ESC (here in after referred to as "BHEL's Sub-Contract") in terms of this MOU for execution of the scope by ESC as specified in Doc. PY54028

ESC shall submit its offer to BHEL which is valid for 365 days from the last date of opening of Unpriced Technical and Commercial bid by Customer (BCGCL) or date of signing of contract agreement post issue of work order in case BHEL gets the order from BCGCL. Any change to the technical and commercial offer submitted by ESC shall be agreed only when accepted in writing by ESC. Bid validity shall be extended after mutual agreement between BHEL and ESC. If BHEL gets opportunity to revise the price while extending the validity, similar opportunity to be passed on to ESC.

The Parties have decided to enter into this MOU which sets forth their respective rights and obligations with respect to the Project and each other.

## **1.0 PURPOSE OF THE MOU**

BHEL and ESC have decided to enter into this MOU with the purpose of Scope of work as specified in Doc.:PY54028.

1.0 To co-operate with each other in terms of MOU in submitting detailed proposal to Customer in response to "Tender".

To co-operate with each other in terms of this MOU to discuss as and when called by BCGCL/PDIL during post bid stage, cooperate BHEL to perform the said Customer Contract, if awarded to BHEL, in accordance with the terms and conditions agreed in this MOU and as per the Scope of Work specified in Doc.:PY54028.

1.1 To determine the rights and obligations of the Parties in connection with the performance of the Customer Contract and internally amongst themselves subject to ESC's rights & obligations under this MOU.

## **2.0 PRINCIPLES OF CO-OPERATION:**

2.1 BHEL and ESC will work on mutually basis for the above Project during tendering and post placement of order by BCGCL on BHEL within the frame work of this MOU and subsequent BHEL's Sub-Contract agreement between BHEL and ESC.

2.2 BHEL will submit the proposal to BCGCL in its name with ESC as a nominated sub-contractor to BHEL for the Project. BHEL shall be responsible for the overall co-ordination, Project Management and Execution of the Project. However, between the parties, each party shall be solely and exclusively responsible for execution and project management of its Scope of work as specified in **PY54028**. Both the parties shall perform their respective Scope of Work in an integrated manner. Accordingly, any

facility given by BCGCL to BHEL for LSTK-2 package scope of work shall duly be passed on by BHEL to ESC as per "Scope of Work" agreed between BHEL and ESC.

- 2.3 The technical and commercial specifications shall be considered as per "Tender" to be read in conjunction with various Corrigenda /Amendments. The resulting contract for the above Project i.e. Customer Contract and BHEL's Sub- Contract shall be binding on both the parties. "Tender" document along with various corrigendum/ amendments issued by PDIL/BCGCL post "Tender" issue stage shall be part of BHEL's Sub-Contract. The agreement with ESC will be on "Back to Back" basis vis-a-vis "Tender" specifications to the extent modified in this MOU and specific agreement reached in writing between BHEL and ESC. If there is a Scope issue between ESC and BHEL, the same shall be resolved mutually without involvement of BCGCL or PDIL. In case of any discrepancy in the provisions among the documents the same shall be resolved considering following order of precedence:
- A. This MOU along with PY54028 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of ESC bid)
  - B. Finalized agreed Priced bid of ESC  
"Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.:PY54028)
  - C. All technical data exchanged by ESC w.r.t. Doc.:PY54028 Scope of Work, Miscellaneous literature and other details submitted by ESC along with techno-commercial offer
  - D. BHEL PE&SD NIT
- 2.4 Nothing contained in this MOU shall constitute or be deemed to constitute a partnership, or joint venture between the Parties hereto and neither of the Parties shall have any authority or power (and shall not represent themselves on having such authority or power) to contract, to represent in the name of other Party or to undertake any liability or obligation on behalf of the other Party, save in so far as expressly agreed to and provided in this MOU. There being no sharing of profit or losses, any profit arising to the parties hereto shall be taken credit by the Party causing the profit, any loss shall be borne by the Party causing the loss. In addition, the execution of this MOU by the Parties shall not in any way be deemed to create a precedent for the establishment of any future, similar relationships between the Parties in respect of any future project(s) or contract(s) for projects other than the Project as referred under this MOU. The Parties further acknowledge that no employment relationship shall be created or evidenced by this MOU, and that neither Party is permitted or authorized to act on behalf of the other Party in any event except as provided in this MOU. Further, nothing in this MOU shall be construed as either Party granting the other Party a license to sell, develop, exploit or further develop any product, technology, service or solution or any information or knowledge involved or related thereto.

This MOU is being in-principally agreed and initialled by both BHEL and ESC and shall be a formal agreement post approval of competent authority of BHEL and ESC. Based on this agreement on terms and conditions, price bid shall be opened and negotiated if required and based on final mutually agreed prices of ESC's package, this MOU will be formally signed on non-judicial stamp paper followed by submission of bid bond

@1% of final agreed price of BHEL's sub-contract by ESC to BHEL within 30 days of signing of MOU or date of submission of BHEL bid to PDIL/ BCGCL, whichever is earlier. The initial validity of this bid bond/BG shall be for the period till signing the contract agreement for post order detailed engineering work order. This MOU shall be converted into BHEL's Sub-Contract to be signed between ESC and BHEL subsequent to finalisation of the Customer Contract between BHEL and BCGCL. On receipt of award from BCGCL, the definite BHEL's Sub- Contract agreement between BHEL and ESC shall be executed prior to issuance of Customer Contract by BCGCL on BHEL. The BHEL's Sub-Contract between BHEL and ESC shall be signed within 45 days from the date of Award from BCGCL on BHEL, subject to submission of CPBG/ Security Deposit @ 10% of the BHEL's Sub-Contract value within 30 days from the date of issue of LOI/ PO by BHEL on ESC after which the BID bond of ESC shall be returned discharged by BHEL. The relationship between the parties shall be on an arm's length basis and shall be strictly temporary and nothing contained herein is intended; nor shall it be construed as creating or requiring any other on-going or continuing relationship or commitment between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of BHEL's Sub-Contract between BHEL and ESC.

BHEL's sub-Contract shall comprise of following:

- A. Contract Agreement Form
  - B. Work order for Post Order Engineering services will also cover all terms & conditions stipulated in this MOU.
  - C. All agreed deviation and alterations agreed between ESC and BHEL during post issue of BHEL's NIT and before issue of Purchase Order by BHEL on ESC.
  - D. This MOU along with PY54028 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of ESC bid)
  - E. Priced bid of ESC
  - F. "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.:PY54028)
  - G. All technical data exchanged by ESC w.r.t. Doc.:PY54028 Scope of Work, Miscellaneous literature and other details submitted by ESC along with techno-commercial offer
  - H. BHEL PE&SD NIT
- 2.5 In case BHEL's proposal to BCGCL is found, to be techno-economically acceptable and BHEL is evaluated L1, both the Parties agree to carry out advance engineering and pre-purchase activities on the basis of the agreed terms and conditions until firm order is awarded on BHEL to meet the tight project schedule. In case of any delay in order placement by BHEL on ESC which is solely attributable to BHEL, ESC shall be given proportionate time extension in project schedule.
- 2.6 BHEL shall act as the contracting party of the Customer and, in particular, be the signatory of the " Tender" and the Customer Contract with the Customer.
- 2.7 The Parties hereby mutually agree between each other the following for the sole and limited purpose of:

- 2.7.1 Co-operate in performing the Customer Contract by undertaking BHEL's Sub-Contract as per Scope of Work mentioned in Doc.:PY54028.
- 2.7.2 Defining the rights and obligations between the Parties in connection with the performance of the Customer Contract to the extent agreed under this MOU which will be converted into BHEL's Sub-Contract.
- 2.7.3 To closely cooperate in order to achieve a smooth and complete performance thereof as specified in MOU.

### **3.0 SCOPE OF WORK**

- 3.1 The detailed Scope of Work to be performed by ESC shall be as per Doc: PY54028, attached to this MOU which consists of the scope of work of BHEL and ESC for this Project, list of exclusions, terminal points and battery limits.
- 3.2 Each Party shall be responsible for and shall co-operate with each other in obtaining and maintaining respective permits, licenses and other authorizations required for the performance of its own Scope of Work, except those which are required to be obtained by BCGCL.
- 3.3 The Parties foresee that they shall be obliged to deliver a complete functioning of LSTK-2 package as per the respective scope of work mentioned in Doc.:PY54028 to this MOU. If there is any addition in scope of services for safe & functional requirement of LSTK-2 package required to be full filled by respective parties (as per Doc.:PY54028) the same shall be born respectively by the parties as per terms of the "Tender" specifications without any additional cost & time implication. Any additional scope of services not covered under "Tender" specifications & required to be completed as per direction of BCGCL / PDIL, the same shall be executed as per "Tender" specification under change order. With regard to Additional claim / change order if applicable as per "Tender" specifications, ESC shall submit all supporting documents to BHEL to enable BHEL submit the request for change order/ additional claim to BCGCL/PDIL. In case change order is accepted by BCGCL/PDIL, same shall be passed on to ESC, however in event of denial of change order/additional claim by BCGCL/PDIL shall have to be borne by ESC.
- 3.4 It will be the sole responsibility of ESC to submit the requisite details to BHEL in the prescribed format duly signed and authorised as per requirement of" Tender" document and to provide any clarification sought by BCGCL/PDIL during post bid stage so as to meet the qualifying requirement as an acceptable ESC.

### **4.0 TIME SCHEDULE:**

It is clearly understood and agreed that time is the essence of the contract to enable BHEL to undertake Customer Contract with BCGCL, provided, all the obligations attributable BCGCL / BHEL are fulfilled within the prescribed time. ESC have agreed to perform all post order engineering activities as per overall L1/ L2 schedule to be agreed by BHEL with BCGCL. Other conditions shall be as per the Doc PY54028.

## **5.0 SECURING AND PERFORMING OF THE CONTRACT:**

It is agreed between the parties that they shall make best efforts to secure award of contracts for the LSTK-2 Package from BCGCL, pooling their resources, experiences, Special expertise and capabilities available with them and compile technically and commercially optimum proposal, Subject to the terms of this MOU.

The parties shall provide each other promptly with all relevant technical and commercial information and assistance required for the purposes of the preparation of the detailed proposal by the due date and for the negotiation of the "Tender". ESC shall prepare and submit its bid to BHEL for submission of bid for the project to BCGCL by BHEL. ESC shall attend the meetings required in connection with its Scope of Work in the "Tender" and contracts either between the parties and/or between the parties and BCGCL wherever required. However, BHEL shall not take any final decision, without prior written consent of ESC, pertaining to change in the Scope of Work mentioned in Doc.:PY54028.

Each party's expenses associated with such work shall be borne by the respective parties.

In the event of order on BHEL, during execution ESC shall closely work with BHEL for obtaining approvals of any kind envisaged in the Customer contract which are relevant to ESC or ESC and BHEL. This approach would include (a) finalization of design basis of Customer Contract which shall be binding on ESC on back to back basis, (b) attending technical/ progress review/ inspection related meetings with BCGCL/ PDIL, etc. Further with regard to approval of drawings/ documents specifically relevant to ESC or ESC and BHEL, also joint participation of both BHEL and ESC is agreed.

## **6.0 CONFIDENTIALITY**

Each party undertake to treat as confidential any information which it obtains from the other party in connection with the agreement, to use such information solely for the purpose of the proposal and any resulting contracts and to disclose such information only to the extent necessary in connection with this MOU.

Provided in order to treat any information as Confidential Information, the Disclosing Party, when sharing of such information in paper or electronic form, shall clearly mark such information as CONFIDENTIAL. When Confidential Information is shared orally, it shall be reduced in writing (in paper or electronic form) within one week of sharing of information, and shall be clearly marked as CONFIDENTIAL. Unless any information shared by Disclosing Party is marked as CONFIDENTIAL in the said manner, it shall not be treated as Confidential Information for the purpose of this Agreement

The Information shall not be reproduced in any form, sold, traded, published or otherwise disclosed to anyone in any manner, whatsoever except as required by one Party to the other Party in execution of the BHEL's Sub-Contract.

Notwithstanding the foregoing, the Parties may disclose the Information without the other Party's prior written consent only to the extent such Information:

- (i) is already known to the Party as of the date of disclosure;
- (ii) is already in possession of the public or becomes available to the public other than through the act or omission of the Party receiving the information;
- (iii) is independently developed by one of the Parties without reliance on the Information of the Party; or
- (iv) Is required to be disclosed under applicable law or by a governmental order, decree, regulation or rule (provided that the requested Party shall give written notice to the other Party prior to such disclosure.)

In line with “Tender”, the copy of this MOU shall be submitted by BHEL as part of their bidding document.

The obligations relating to confidentiality in this Article shall survive for 5 years after the expiry of termination of this MOU and subsequent BHEL’s Sub-contract.

#### **7.0 PAYMENTS**

Payments shall be as per the Clause 14 of the TCC PY54028.

#### **8.0 PRICES VARIATIONS DURING THE PERIOD OF CONTRACT AND OVERRUN COMPENSATION**

Not Applicable.

#### **9.0 TRANSFER OF TITLE:**

Transfer of title provision shall be discussed and mutually agreed in terms of Customer Contract.

#### **10.0 TAXES & DUTIES**

Taxes and duties shall be as per clause no. 3.0 of the Special condition of contract (SCC).

#### **11.0 LIQUIDATED DAMAGES/PENALTY:**

LIQUIDATED DAMAGES/PENALTY shall be as per clause no. 2.7.10 of GCC and TCC (Doc. No: PY54028) clause no.14.4.

#### **12.0 Dispute resolution:** Arbitration and Conciliation shall be as per clause no. 2.21 of GCC.

#### **13.0 SECURITY DEPOSIT / CONTRACT PERFORMANCE BANK GUARANTEE**

In case of award of contract on BHEL by BCGCL/PDIL, BHEL shall, separately and at its own expense, provide the overall guarantee/bond to the Customer as required and agreed with the Customer under the Customer Contract.



However, Security deposit by ESC shall be applicable on the “Post-order engineering contract order value” after placement of the respective Work order to the ESC as per the details provided in “General Conditions of the Contract(GCC)”

ESC should deposit the required amount of Security Deposit towards fulfilment of any obligations in terms of the provisions of the contract.

The total amount of Security Deposit will be 10% (Ten percent only) of the contract value.

#### **14.0 PRICE REDUCTION DURING NEGOTIATIONS WITH END CUSTOMER**

This MOU is based on present level of price offered by BHEL to BCGCL with the back-up offer from ESC. However, during final negotiation with BCGCL, if any rebate is offered to BCGCL by BHEL for LSTK-2 package, corresponding reduction is acceptable to ESC up to 1% of the final agreed price by ESC subject to BHEL furnishing proof of corresponding reduction passed on by BHEL to BCGCL. However, for any further reduction beyond 1% of final agreed price by ESC, BHEL would hold prior consultation and obtain written consent of ESC for offering so agreed rebate to the quoted price.

#### **15.0 COST associated WITH PREPARATION OF BIDS:**

ESC shall bear all costs associated with the preparation and submission of its Bid, Site visits, clarifications meetings in or out of the End Customer offices and BHEL shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

#### **16.0 OFFER SUBMISSION AND POST BID MEETING:**

Compliance to bid requirement as per format specified in the “Tender” shall be submitted by ESC.

ESC shall submit all bid formats, technical details, exceptions and deviations etc. in line with “Tender” requirement. ESC Shall also attend Post bid meetings to discuss and sort out clarification with end Customer.

#### **17.0 Modifications IN THE MOU**

The Parties shall have the option to modify/ amend any Article of this MOU on such terms & conditions as may be mutually agreed during the validity of this MOU. Any modification or amendment shall be valid only if made in writing and bearing signature of both the Parties.

#### **18.0 TERMS OF AGREEMENT**

The present Memorandum of Understanding shall terminate on any of the following event occurring first

- a) MOU shall be superseded by a BHEL's Sub-Contract to be signed by ESC and BHEL subsequent receipt of award by BHEL from BCGCL. The definite contract agreement between BHEL and ESC shall be executed prior to issuance of Customer Contract by BCGCL and this agreement must remain in force at least till the pendency of the Customer Contract. The BHEL's Sub-Contract shall be signed shall be within 45 days from the date of award to order to BHEL Or
- b) Offer of BHEL getting rejected/unsuccessful by BCGCL.

Both parties hereby confirm their consent to an approval of the above terms and conditions evidenced by its signatures on its Memorandum.

**IN WITNESS WHEREOF** the Parties hereto have caused this MOU to be signed by the respective authorized representative as of the date, month and year herein above written.

**For Bharat Heavy Electricals Limited**

Witness:

By.....

2.1 .....

Name.....

Designation.....

2.2 .....

For .....

Witness:

By.....

1. ....

Name.....

Designation.....

2. ....