

MEMORANDUM OF UNDERSTANDING
BETWEEN
BHARAT HEAVY ELECTRICALS LIMITED
AND

(Name of Licensor)

FOR EXECUTION OF
SRU PACKAGE
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 of2024 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 "**_____/SRU PACKAGE LICENSOR**") 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 SRU PACKAGE LICENSOR for providing **Basic Engineering Services 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. PY 54037 (here in after referred to as "Scope of Work"), in case the order is awarded to BHEL.

BHEL and _____ (SRU PACKAGE LICENSOR) 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 SRU PACKAGE LICENSOR (here in after referred to as "BHEL's Sub-Contract") in terms of this MOU for execution of the scope by SRU PACKAGE LICENSOR as specified in Doc. PY 54037

SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR shall be agreed only when accepted in writing by SRU PACKAGE LICENSOR. Bid validity shall be extended after mutual agreement between BHEL and SRU PACKAGE LICENSOR. If BHEL gets opportunity to revise the price while extending the validity, similar opportunity to be passed on to SRU PACKAGE LICENSOR.

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 SRU PACKAGE LICENSOR have decided to enter into this MOU with the purpose of Scope of work as specified in Doc.: PY 54037.

- 1.1 To co-operate with each other in terms of MOU in submitting detailed proposal to Customer in response to "Tender".
- 1.2 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.: PY 54037.
- 1.3 To determine the rights and obligations of the Parties in connection with the performance of the Customer Contract and internally amongst themselves subject to SRU PACKAGE LICENSOR's rights & obligations under this MOU.

2.0 PRINCIPLES OF CO-OPERATION:

- 2.1 BHEL and SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR.

- 2.2 BHEL will submit the proposal to BCGCL in its name with SRU PACKAGE LICENSOR 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 PY 54037. 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 SRU PACKAGE LICENSOR as per "Scope of Work" agreed between BHEL and SRU PACKAGE LICENSOR.
- 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 SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR. If there is a Scope issue between SRU PACKAGE LICENSOR 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 PY 54037 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of SRU PACKAGE LICENSOR bid)
 - B. Finalized agreed Priced bid of SRU PACKAGE LICENSOR "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.: PY 54037)
 - C. All technical data exchanged by SRU PACKAGE LICENSOR w.r.t. Doc.: PY 54037 Scope of Work, Miscellaneous literature and other details submitted by SRU PACKAGE LICENSOR 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.

2.5 This MOU is being in-principally agreed and initialled by both BHEL and SRU PACKAGE LICENSOR and shall be a formal agreement post approval of competent authority of BHEL and SRU PACKAGE LICENSOR. 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 SRU PACKAGE LICENSOR'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 SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR shall be executed prior to issuance of Customer Contract by BCGCL on BHEL. The BHEL's Sub-Contract between BHEL and SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR after which the BID bond of SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR.

2.6 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 SRU PACKAGE LICENSOR and BHEL during post issue of BHEL's NIT and before issue of Purchase Order by BHEL on SRU PACKAGE LICENSOR.
- D. This MOU along with PY 54037 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of SRU PACKAGE LICENSOR bid)
- E. Priced bid of SRU PACKAGE LICENSOR
- F. "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.: PY 54037)
- G. All technical data exchanged by SRU PACKAGE LICENSOR w.r.t. Doc.: PY 54037 Scope of Work, Miscellaneous literature and other details submitted by SRU PACKAGE LICENSOR along with techno-commercial offer
- H. BHEL PE&SD NIT

- 2.7 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 SRU PACKAGE LICENSOR which is solely attributable to BHEL, SRU PACKAGE LICENSOR shall be given proportionate time extension in project schedule.
- 2.8 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.
- 2.9 The Parties hereby mutually agree between each other the following for the sole and limited purpose of:
- 2.9.1 Co-operate in performing the Customer Contract by undertaking BHEL's Sub-Contract as per Scope of Work mentioned in Doc.: PY 54037.
- 2.9.2 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.
- 2.9.3 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 SRU PACKAGE LICENSOR shall be as per Doc: PY 54037, attached to this MOU which consists of the scope of work of BHEL and SRU PACKAGE LICENSOR 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 SRU package as per the respective scope of work mentioned in Doc.:PY 54037 to this MOU. If there is any addition in scope of services for safe & functional requirement of SRU package required to be full filled by respective parties (as per Doc.:PY 54037) 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, SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR, however in event of denial of change order/additional claim by BCGCL/PDIL shall have to be borne by SRU PACKAGE LICENSOR.

- 3.4 It will be the sole responsibility of SRU PACKAGE LICENSOR to submit the requisite details to BHEL in the SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR.

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 SRU PACKAGE LICENSOR in agreed time. SRU PACKAGE LICENSOR 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 PY 54037.

5.0 SECURING AND PERFORMING OF THE CONTRACT:

- 5.1 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.
- 5.2 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". SRU PACKAGE LICENSOR shall prepare and submit its bid to BHEL for submission of bid for the project to BCGCL by BHEL. SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR, pertaining to change in the Scope of Work mentioned in Doc.: PY 54037.
- 5.3 Each party's expenses associated with such work shall be borne by the respective parties.
- 5.4 In the event of order on BHEL, during execution SRU PACKAGE LICENSOR shall closely work with BHEL for obtaining approvals of any kind envisaged in the Customer contract which are relevant to SRU PACKAGE LICENSOR or /and BHEL. This approach would include (a) finalization of design basis of Customer Contract which shall be binding on SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR or / and BHEL, also joint participation of both BHEL and SRU PACKAGE LICENSOR is agreed.

6.0 CONFIDENTIALITY:

- 6.1 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.
- 6.2 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
- 6.3 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.)
- 6.4 In line with "Tender", the copy of this MOU shall be submitted by BHEL as part of their bidding document.
- 6.5 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 15 of the TCC PY 54037.

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: PY 54037) clause no.14.4.2

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:

13.1 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.

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

13.3 SRU PACKAGE LICENSOR should deposit the required amount of Security Deposit towards fulfilment of any obligations in terms of the provisions of the contract.

13.4 The total amount of Security Deposit will be 10% (Ten percent only) of the ~~respective~~ 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 SRU PACKAGE LICENSOR. However, during final negotiation with BCGCL, if any rebate is offered to BCGCL by BHEL for LSTK-2 package, corresponding reduction is acceptable to SRU PACKAGE LICENSOR up to 1% of the final agreed price by SRU PACKAGE LICENSOR 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 SRU PACKAGE LICENSOR, BHEL would hold prior consultation and obtain written consent of SRU PACKAGE LICENSOR for offering so agreed rebate to the quoted price.

15.0 Cost associated with preparation of Bids:

SRU PACKAGE LICENSOR 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:

- 16.1 Compliance to bid requirement as per format specified in the “Tender” shall be submitted by SRU PACKAGE LICENSOR.
- 16.2 SRU PACKAGE LICENSOR shall submit all bid formats, technical details, exceptions and deviations etc. in line with “Tender” requirement. SRU PACKAGE LICENSOR Shall also attend Post bid meetings to discuss and sort out clarification with end Customer.

17.0 MODIFICATIONS TO 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 SRU PACKAGE LICENSOR and BHEL subsequent receipt of award by BHEL from BCGCL. The definite contract agreement between BHEL and SRU PACKAGE LICENSOR 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.