

Memorandum of understanding

Project: Coal Handling Plant for 4000 MW Krishnapatnam UMPP,

This Memorandum of Understanding made on exclusive basis on this 26 th June 2009 between M/s. BHARAT HEAVY ELECTRICALS LIMITED, an existing company registered under the Companies Act, 1956 and having its

registered office at BHEL House, Siri fort, New Delhi 110043 (hereinafter called “BHEL”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the ONE PART,

AND

M/s. **XXXX Private Limited**, an existing company having its registered office at **XXXX yyyyyy** (hereinafter referred to as “XXXX”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the OTHER PART,

1. WHEREAS, M/s zzzzzzzz, an existing company registered under the Companies Act, 1956 and having its registered office at bbbbbbbb (hereinafter referred to as ‘CUSTOMER’ to whom BHEL shall submit the bid for Design, Engineering, Manufacture / Supply of -----
----- (Hereinafter referred to as “Project”) against tender no.
2. AND WHEREAS pursuant to BHEL tender Ref Noyyyyyyyy dated ----- for pretender tie up for Design, Engineering, supply of-----
-----for the “**Project Name** as per Annexure I, XXXX became the successful bidder. In case of award of work to BHEL by CUSTOMER, XXXX has agreed to execute the above job upon quoted price on back to back basis and other terms and conditions and deviations as agreed with BHEL.
3. WHEREAS XXXX shall furnish all documents / technical details for bid preparation as per NIT requirements. On securing the Order, Bank Guarantee shall also be furnished by XXXX as per NIT conditions for pro-rata value to their scope of work.
4. WHEREAS the parties agree that in so far as applicable the rights and obligations of the Main Contract between the Employer and BHEL become part of the Agreement between BHEL and XXXX for agreed scope of work.

5. NOW THEREFORE, in consideration of the above, the following broad understanding is mutually agreed between the parties and their relationship for the project will be guided as follows:

Article 1 – Purpose of Agreement of Association

XXXX and BHEL will work jointly to execute the project. BHEL will be the prime Bidder and XXXX will be the Associate for the agreed Scope of work.

Article 2 – Responsibilities of XXXX and BHEL

- i. XXXX`s Scope of work will be limited to Design, Engineering,-----

-----, generally enumerated but not limited to the details as per Annexure I.
- ii The price quoted by XXXX will be discussed, negotiated and finalized with BHEL before their submission of BID to CUSTOMER.
- iii Any further price discounts, to be given to CUSTOMER by BHEL to secure the order, will be shared by BHEL and XXXX pro-rata for their scope of work after mutual discussions and consent.
- iv. In case of BHEL getting Order for the Project from CUSTOMER, BHEL will place order on XXXX for the respective Scope of work based on agreed price and terms and conditions.
- v. XXXX shall execute their scope of work to meet requirements of project completion schedule of BHEL/CUSTOMER. However, during

negotiations with CUSTOMER, if any, adjustment is required to be done, the same shall be mutually discussed and agreed.

- vi. The XXXX shall execute his scope of work, in line with L2 network, to be worked out during the detailed engineering and adhere to the project completion schedule.
- vii. Technical Specification shall be as per tender document and all the subsequent discussions with CUSTOMER, CONSULTANT & BHEL. These shall be consolidated and enclosed along with the Order on XXXX.
- viii. The Technical specification for design, engineering,----- shall be as per clause vii above, however depending on technical discussion with CUSTOMER during execution, XXXX shall agree to the specification as finally accepted by CUSTOMER within Tender scope of work and the performance guarantee parameters pertaining to works without any cost implications. Any requirement beyond Tender Scope of Work, which will have financial implications, will be discussed jointly with CUSTOMER and the resultant financial implication shall be discussed and mutually agreed upon.
- ix. BHEL along with XXXX will participate in the discussions with CUSTOMER, as required, to give all technical clarifications.
- x. All Commercial Terms and conditions (except payment terms) shall be as per tender Documents on back to back basis as per the Bidding Documents issued by CUSTOMER and the subsequent Minutes of Meeting and correspondence between BHEL and CUSTOMER.

- xi. XXXX shall confirm validity of their offer for one month beyond the date Contract is signed with CUSTOMER, in the event of BHEL getting the order.**
- xii. XXXX shall be fully responsible and liable for the complete execution of its SCOPE OF WORK according to the CONTRACT and shall bear all cost whatsoever connected therewith.**
- xiii. XXXX shall be responsible for the completion of project as per the agreed schedule for his scope of work as indicated in Annexure- 1. and any other item required for completion of his scope of work, shall be included and carried out without any commercial implication.**
- xiv. XXXX shall closely cooperate in order to obtain the award of the CONTRACT and to achieve a smooth and complete performance thereof.**
- xv. The XXXX shall prepare and submit in due time all data and information Necessary for the fulfillment of the SCOPE OF WORK.**
- xvi. In case of an order, XXXX and BHEL shall take respective leading role to get the design/ drawing approved by CUSTOMER for respective scope of work.**
- xvii. The XXXX is responsible for getting the approval from CUSTOMER for undertaking all works of their scope. BHEL will provide necessary support.**
- xviii. XXXX will take entire responsibility for correct design, engineering, & works in XXXX's scope.**

- xix. The XXXX shall be responsible for the performance guarantee parameters pertaining to works as per the contract.
- xx. All drawings documents design calculations operation and maintenance manual erection drawings, as-built drawings etc to the extent applicable shall be submitted by XXXX in requisite numbers. These shall be as per CUSTOMER requirement plus two copies for BHEL's use. XXXX will also furnish the reproducible and CD as per CUSTOMER's requirement plus(1) one set for BHEL's use.
- xxi. In case the CONTRACT will not be awarded to BHEL, any claim by the XXXX is excluded.

Article 3 – Exchange of Information & Completeness

The XXXX is obliged to execute the job on the basis of the CONTRACT and this MOU. Separate Purchase Order will be placed on XXXX by BHEL after signing of Contract between BHEL and CUSTOMER.

Each party shall exchange with the other party in a timely manner all necessary information required by the other party, so as to effect full and timely completion of work of the tender/contract.

Article 4 – Confidentiality

Each party shall be obliged to keep in strict confidence, and bind all of its employees / associates and subcontractors to keep in strict confidence all information received directly or indirectly from the other party under this agreement and shall not at any time, disclose such information to any third party without prior written consent of the other party.

Any such disclosure to a third party shall be limited to the extent required for the completion of this PROJECT and the third party shall be bound to the provisions of secrecy and restriction of use as expressed herein.

Press releases, prospectuses and official publications relating to the PROJECT will be agreed upon between the PARTIES beforehand.

Publications concerning only one PARTY's SCOPE OF WORK must contain a suitable reference to the type and scope of the other PARTY's SCOPE OF WORK.

This MOU shall not be disclosed by the XXXX to any third party unless agreed upon by BHEL.

Article 5 – Amendments

In case of any amendment to this agreement, it must be in writing and signed by the duly authorized representatives of both the parties. The provisions of the Article 5 shall survive till expiration or termination of this MOU.

Article 6 – Duration of MOU

This Agreement shall be valid from the date of signing, and continue to be in force, and terminate without prejudice to any antecedent liabilities upon the occurrence of any of the following, whichever is earliest:

- a) By mutual agreement**
- b) By substituting this Memorandum of Understanding with a detailed Purchase Order**
- c) If the contract is awarded by CUSTOMER on other Bidder.**

Article 7 – Force Majeure

Without prejudice and without antecedent liability, neither party shall be responsible for non-performance or non-fulfillment of any nor all their obligations under this agreement if such non-performance or non-fulfillment is due to “Force Majeure” as defined in the Tender Document of CUSTOMER

Article 8 – EMD/ Security Deposit/ Performance Guarantee/Payment

XXXX shall furnish a Bank Guarantee for 1% of the value of the XXXX’S scope as per MOU within 30 days of signing the MOU. This BG shall be valid till a formal Purchase Order is placed on the XXXX.

BHEL shall agree to furnish DD / Bank Guarantees for EMD for the entire Project, as applicable. XXXX shall furnish all BG for their respective scope of work to BHEL as per Tender/contract conditions agreed with CUSTOMER and BHEL.

Project financing shall be by the respective partners for execution of the project.

All invoicing of XXXX shall be to BHEL. Payment against Engineering work and services provided by the XXXX shall be made within 15 days from date of receipt of the payment from CUSTOMER by BHEL., wherever applicable.

This MOU will be amended with consideration of the development in the PRECONTRACT PHASE and of the final provisions of the CONTRACT.

The failure of any PARTY to enforce at any time any of the provisions of this MOU shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this MOU or any part hereof.

Should elements of this MOU be discovered to be ineffective, or contain omission's all remaining clauses of the MOU shall continue to be effective.

With regard to the ineffective or missing elements, the PARTIES shall agree upon a correction to these elements which corresponds to the spirit of this MOU as well as its economic purpose and sense, which in any case the PARTIES would have agreed upon, if the ineffective or missing elements would have been discovered before the signature of this MOU.

No. PARTY shall assign or in any way transfer its rights or obligations arising out of the present MOU without obtaining the prior written consent of the other PARTY hereto.

All notices to be given under this MOU shall be in writing and shall be deemed to have been properly given upon dispatch by registered or certified mail or e-mail or telefax to the PARTY's address as set forth below or to such other address as the PARTY may subsequently designate;

**BHARAT HEAVY ELECTRICALS LIMITED
INDUSTRIAL SYSTEMS GROUP,
PB NO 1249, PROF. CNR RAO CIRCLE,
MALLESWARAM
BENGALURU- B560012, INDIA
FAX NO: 080 2356 2713**

**M/s XXXX PRIVATE LIMITED
XXXX HOUSE,
ADRESS ROAD,
PLACE WITH PIN CODE 490 011, (CG)**

Article 9 Arbitration

Any dispute or question that may arise between the parties as to the meaning and or interpretation of any matter pertaining to or arising out of this agreement shall be settled according to Indian Arbitration and conciliation ACT 1996.

Article 10 Approval of Make

It shall be the responsibility of XXXX to get the any make of materials and works subcontract other than NIT approved makes, approved by CUSTOMER, if necessary. In the event of non-approval, XXXX shall supply and carryout as per the approved makes of NIT. BHEL shall offer necessary support to XXXX in the approval process.

In witness whereof BHEL and XXXX through their authorized representatives have executed these present and affixed common seal of their respective companies on the DAY, month and year first mentioned above.

The following Annexure form integral parts of this MOU:

Annex -1 SCOPE MATRIX BETWEEN BHEL AND XXXX

**For BHARAT HEAVY ELECTRICALS
LIMITED**

For XXXX Private Ltd.

Witnesses:

1)

2)