



BHARAT HEAVY ELECTRICALS LIMITED
HEEP HARIDWAR INDIA-PIN 249403
PHONE NO: +91 1334-28-5021

Sub: GLOBAL OPEN TENDER (Differential Pressure Regulating Valve Type-A)

Dear Sir/Madam,

The Heavy Electricals Equipment Plant (HEEP) located at Haridwar, India is one of the major manufacturing plants of Bharat Heavy Electricals Ltd. The core business of HEEP includes design and manufacture of large steam and gas turbines, turbo generators.

Sealed tenders, with the Tender No. and Opening Date clearly super scribed on the cover are invited for the supply of the following items.

Sl. No.	Tender No.	Item Description	Qty. (nos.)	Last date to get documents from BHEL	Opening date & time
1.	NIT/E/E243/2021/1805Q1	MATERIAL CODE: W90414900510 Differential Pressure Regulating Valve Type-A NB=32 SPEC.: TG60162 REV: 02 PROJECT: KOTA	01 no	22/01/2022 (up to 13.45 Hrs.)	22/01/2022 (at 14: 00 Hrs.)

Tenders will be received up to 13:45 Hrs. (IST) on opening date and opened on the same day at 14:00 Hrs. (IST) in the Tender Room. This notification shall not be published in Indian as well as International Newspaper. **Please note that tender received after due date & time will not be opened.** BHEL will not be responsible for any type of postal / courier delay.

- The tender documents can be downloaded from our web site www.bhel.com or www.hwr.bhel.com. Tenderers can get relevant specifications & drawings of the above items prior to due date against copy of FCA in soft copy by email to saurabhv@bhel.in &/or puneet.krishna@bhel.in. However, original must be submitted with Part-I bid.
- FCA is required to be signed & stamped on every page after filling relevant details.
- BHEL may load maximum penalty under LD clause, to the extent the same is not agreed by the vendor, for the purpose of comparative statement. Where deliveries quoted by the vendor are not suiting, BHEL may also ignore the offer of the vendor.
- The bids shall be submitted in two parts, as described below, on or before the due date. Part-II (price bid) of qualified bidders, shall be opened at a later date.
 - Part I – Pre-qualification requirement (Annexure-A), EMD Fee of Rs. 40,000/-, tender fee Rs. 2,000/- (if hard copy of tender related documents is provided to bidder), FCA (Annexure-E), BHEL GISTC (Annexure F), Techno -Commercial Bid and replica of price-bid (without price).
 - Part II – Price Bid (mention unit price in figures & words). (Refer Annexure-C for bid composition and marking of envelope, bids not in line with this will not be considered)
- Offers of only those vendors who fulfill the Minimum/Pre Qualifying Requirements & Quality Requirements (as per Annexure-A) will be considered for further technical evaluation.
- Deviation with reference to specification/drawing, if any, should be clearly indicted on a separate sheet.
- Other cross referred documents can be obtained by email to saurabhv@bhel.in &/or puneet.krishna@bhel.in. Amendments/Corrigendum, if any, will be hosted on our web site only. Other terms and conditions will be as per tender documents.
- **The total quantity may undergo change at the time of ordering.** The details of each item with required deliveries are given in **ANNEXURE-D (Details of Items)**.

- Vendors must fulfill **Pre Qualifying Requirements (Annexure-A)** and **Quality requirement (Annexure-B)** as mention in NIT. Please confirm to submit clause wise compliance of PQR (annexure-A). Offers of those vendors who fails to provide documents/clarifications/fulfill the PQR, after part-1 opening shall be liable for rejection & informed thereupon.
- Prices are to be written in both figures & words. In case of any difference between the two, the figure written in words shall be considered for Evaluation. No over writing shall be applicable in that case.
- BHEL reserve the right to reject any or all the bids/Quotations without assigning any reason thereof. BHEL also reserve the right to increase or decrease the tender quantity. bidders should be prepared to accept order for reduced quantity without any Extra charges.
- Amendment/corrigendum, of any, will be hosted on our website only. Other terms and conditions shall be as per tender documents.
- Revision of rate is not acceptable unless asked by BHEL due to major change in drawing/specification/tender quantity.
- This requirement is in-divisible in nature material code wise, hence quantity distribution in any respect such as Make in India & MSE Vendors benefit shall not be applicable.
- Make in India Purchase preference shall be applicable in this case as tender value is more than Rs. 05.00 Lacs.
- Since case value is less than Rs.20 Lacs, EMD of Rs. 40,000/- shall be applicable for this case. EMD is to be collected in cash (as permissible under Income Tax Act) or Pay Order or Demand Draft only. EMD may be waived MSE Suppliers (as per Govt. Guidelines) and PMD vendors.

1. Indigenous Supplier:

Please quote your rates on FOR Door Delivery basis. However, the insurance will be arranged by BHEL. You can dispatch goods through any Indian Bank Association approved transporters having their branch at Haridwar/destination. For your convenience the names and addresses of transporters approved by IBA & BHEL are posted at our hwrnet website. If any bidder still quotes on other than FOR destination basis, then his offer will be loaded by the maximum freight, packing & forwarding charges quoted by any other bidder from the same or nearby station, against the enquiry/freight rate available with BHEL.

2. Foreign suppliers:

- (A) **SEA CONSIGNMENTS:** Please quote your rates with both the options (a) FOB / FAS dispatching port & (b) C&F Landing Port. However, the order shall be placed on C&F / CIF basis.
- (B) **AIR CONSIGNMENTS:** Please quote your rates with both the options (a) FCA dispatching Airport & (b) CPT Landing Airport.

• Treatment of offers submitted by agents in OT –

- 1. Either the agent could bid on behalf of the manufacturer/ supplier or the manufacturer/ supplier could bid directly but not both.
 - 2. In case bids are received from both the manufacturer/ supplier and the agent, bid received from the agent shall be ignored.
 - 3. The agent shall not be allowed to represent more than one manufacturer/ supplier in the same tender.
- The authorization letter from the manufacturer, clearly indicating contact details like Name, E-mail & address of manufacturer and relationship with agent and its validity to be submitted with bid. The authorization letter should be tender specific. In case order is to be placed and executed by the agent, the following aspects are to be ensured:
 - (a) The manufacturer should meet the PQR requirement as defined in the tender.
 - (b) In order to establish capability of agent to execute the order, the agent should have annual turnover of at least equal to the estimated value of the goods required under the subject tender during one Financial Year and the Net worth of the bidder(agent) should be positive.
 - (c) Manufacturer and bidder should Jointly confirm Guarantee for the Quality of product and timely delivery as stipulated in the NIT.

- BHEL will deal directly with the manufacturer and no correspondence with the agents will be entertained. The agents will not be permitted to visit/interact with BHEL on behalf of their principals. Subsequently also, no correspondence of any type will be made with any agents (all individuals/companies– representative/adviser/retainer ship basis or claimed to be part time employees for many OEMs / claiming to be channel or business partner for BHEL work/stockiest not registered specifically etc. are agents) The bidders (originals manufacturers) will have to submit ink-signed offer/bid in original directly to BHEL. In case the bid is submitted by fax / email, the bidders shall simultaneously ensure submission of ink-signed original bid to BHEL also in the manner prescribed in this tender. However, the suppliers or their authorized person may be allowed to attend the tender opening, if duly authorized by their principals, through a specific letter for a particular enquiry for specific price bid opening on that particular day. General authorization letter is not acceptable.
- All provisions of order no. F.no. 6/18/2019-PPD dated 23/07/2020 of department of expenditure (DoE) and subsequently office memorandum no. 18/37/2020-PPD dated 08/02/2021 shall be applicable for this tender enquiry (order copy is available at <https://doe.gov.in/procurment-policy-divisions>). Accordingly, any bidder from such a country which shares a land border with India will be eligible to bid for this procurement (being a finished item) only if the bidder is registered with the competent authority (registration committee constituted by DPIIT as per annex I of the Order).
- E-invoicing under GST is being implementing w.e.f. 01.04.2021 for all the taxable persons having turnover more than Rs 50 cr. It has been specified by the govt. That it is mandatory to mention a valid unique invoice reference no. (IRN) and QR code as generated from govt. Portal on a tax invoice. Based on such information, GST ITC as claimed by BHEL in GST returns shall be matched with the corresponding details uploaded by supplier in e-invoicing system.
- In case the vendor / contractor delays or fails to provide all documents as per the purchase order / work order at the time of submitting tax invoice to BHEL, any subsequent financial loss to BHEL on account of vendor/contractor shall be to vendor's / contractor's account. BHEL has further right to take necessary steps to protect its interest at the time of release of payment. This further requires inclusion of IRN and QR code on tax invoice as announced by govt. Of india w.e.f. 01.04.2021.
- In case of any deviation from GISTC, please clearly mention in your offer. BHEL reserve the right for non-consideration of offer in case of deviation from GISTC.
- The evaluation currency for this tender shall be INR.
- Revision of rates is not acceptable unless asked by BHEL due to major change in drawing / specification / tender quantity.
- MSE** Suppliers can avail the intended benefits only if they submit along with offer, attested copies of either EM II certificate having deemed validity (Five years from the date of issue of acknowledgement in EM II) or valid NSIC certificate or EM II certificate along with attested copy of CA certificate (Format enclosed as per Annexure - 3 where deemed validity of EM II certificate of five years has expired) applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two part bid). Non submission of such documents will lead to consideration of their bids at par with other bidders and MSE status of such suppliers shall be shifted to Non MSE supplier till the supplier submits these documents. If the tender is to be submitted through e-procurement portal, then the above stated documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted Officer.
- MSE benefits will be given only to those MSE Vendors who are manufacturers of offered items against the NIT. **No MSE benefits shall be provided to Agents / Stockists / Dealers / Traders etc. for the items offered but not manufactured by themselves.**

- Interested bidders must submit complete offer on or before due date at **Room No- 415, 4th floor, main Administrative Building, HEEP, BHEL-Haridwar-249403.**
- **Standard instructions-**
 1. Test certificate as per BHEL specification Required.
 2. Guarantee certificate as per BHEL specification required.
 3. Pre Inspection by BHEL nominated Inspection Agency 'BVIL' at your works Prior to dispatch.
 4. Basic rate, taxes & Duties separately.
 5. Operation/Maintenance Manual along with Equipment.
- **Documents with this tender attached are: -**
 1. Pre-Qualification requirement (Annexure-A).
 2. Quality Requirements (Annexure-B).
 3. Instruction to bidders for bid preparation (Annexure-C).
 4. Item Detail and delivery schedule (Annexure-D).
 5. Framework Confidentiality Agreement FCA (Annexure-E)
 6. General Term and condition (GISTC) applicable for this tender(Annexure-F)
- **All correspondence therefore, shall be addressed to the following persons:-**

Mr. Saurabh Verma Designation: Sr. Engr. (PPX-EM) 4 th Floor, Main Administrative Building HEEP, BHEL Hardwar- 249403 Uttarakhand, India Email ID: saurabhv@bhel.in Tel: +91 1334 28 5021 Mob- 8191004097	Mr. Puneet krishna Designation: Dy. Engr. (PPX-EM) 4 th Floor, Main Administrative Building HEEP, BHEL Hardwar- 249403 Uttarakhand, India Email ID: puneet.krishna@bhel.in Tel: +91 1334 28 4080 Mob- 9627355380
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For any further details please log on to www.bhel.com or www.etenders.gov.in or www.hwr.bhel.com

Annexure-A

29.12.2020

Mandatory Pre-Qualification requirements for Differential Pressure Regulator W90414900510 & W90414901444; TG60162

General Description

The DPR is used in the Seal oil skid for hydrogen cooled generators. DPR is utilized for regulating the seal oil pressure being supplied to shaft seals in relation to gas pressure in generator, keeping a constant differential pressure between seal oil and gas under all regimes of operation. It should be of very reliable and proven design to maintain the required seal parameters under all conditions, so that hydrogen gas cannot escape, which may otherwise lead to a major accident.

Mandatory requirement for Pre-Qualification

- 1.0** The Vendor should be a regular manufacturer or authorized dealer of such Differential pressure regulator. Vendor should have supplied at least Ten (10) nos. Differential pressure regulator in last Five (5) years (from the date of issuance of enquiry) with following technical details –

Si no.	Product features	Details
1.	Design Pressure	16 kg/cm ² & above
2.	Nominal Size	25NB & Above
3.	Differential pressure set range	0 - 3.5 kg/cm ² (Minimum)
4.	Flow medium	Turbine oil grade ISO VG46 only.

- 2.0** In support of above, vendor shall furnish their credential list, as per the following format for previous supplied Differential pressure regulator for the past Five (5) years from the date of issuance of enquiry.

Si. No.	Name & address of customer	Contact Details of the customer (email & phone number etc.)	Purchase order reference no.	Purchase order issue date	Design Pressure	Design Temperature	Flow coefficient Kvs	Differential pressure set range	Material of construction of Body, Flange, Trim (Plug, Seat & Stem)

- 3.0** In support of year of supply, vendor shall furnish copy of Purchase Orders (only the relevant PO's successfully executed & indicated by vendor in table at point no. 2.0 above and qualifies the criteria at point 1.0 above).
- 4.0** Vendor to furnish the test certificate for DPR as per DIN EN 12266/ANSI ISA 75.19.01/ANSI FCI 70-2 /EN 60534 for any one of the PO submitted against clause 2.0.
- 5.0** Vendor to furnish final acceptance certificate of DPR from End customer for any one of the PO's submitted & indicated in table at point 2.0 (which qualifies the criteria at point 1.0 above). Acceptance certificate should contain information like item details, Quantity accepted and should also have correlation with PO reference no.

Note - BHEL reserves the right to verify information submitted by vendor. In case the information is found to be false / incorrect, the offer shall be rejected.

Annexure-B

Quality requirement for Differential Pressure Regulating Valve Type - A

1. Testing & Certifications shall be done as per BHEL specification no. TG60162 Rev-02.
2. Vendor to submit detailed Test Certificates (TCs) and Guarantee Certificate (GC) as per BHEL specification no. TG60162 Rev-02 along with dispatch documents at the time of delivery.
3. Vendor to submit Dully filled PQR Sheet, GA drawing for the material code W90414900510 with mentioning complete bill of material and confirmation of above quality requirements along with their offer for faster processing of case.

Note: -

1. BHEL will consider only those bidders for technical scrutiny, who will qualify Pre- Qualification requirement.

Annexure-C

INSTRUCTIONS TO BIDDERS

DETAILS OF COMPOSITION OF PART-I (PQR and Technical Bid) & PART-II (PRICE BID)

Part-I – (Pre/Minimum Qualification requirement, NDA, EMD & Technical Bid) (to be submitted in separate envelope)

1. Confirmation to Pre/Minimum Qualification Requirement as per 'Annexure-A' along with supporting documents (for unregistered vendors in material category). Page reference in line to our PQR must be placed along with PQR.
2. **EMD:** - Since case value is less than Rs.20 Lacs, EMD of Rs. 40,000/- shall be applicable for this case. EMD is to be collected in cash (as permissible under Income Tax Act) or Pay Order or Demand Draft only. EMD may be waived MSE Suppliers (as per Govt. Guidelines) and PMD vendors.
3. **NDA** – Non-disclosure Agreement is required to be signed & stamped on every page after filling relevant details. **Only after acceptance of NDA/FCA, relevant drawings/Specification will be furnished.**
4. **Tender Fee-** Tenderer will have to pay non-refundable tender fee of Rs 2000/- in favor of BHEL, Haridwar for obtaining relevant specification and drawing in hardcopy. However, tenderer can get the relevant specification and drawing in soft copy by email to saurabhv@bhel.in &/or puneet.krishna@bhel.in along with copy of NDA/FCA, **in that case no tender fee is required.**

(Technical Bid) (to be submitted in separate envelope)

5. The SRF (as applicable) duly filled up will be assessed for manufacturing capability quality systems being followed, organizational soundness and financial worthiness. The same shall be submitted online by un-registered vendor only who are not registered with BHEL, Haridwar for tendered items in respective material category. Please visit for online registration at <https://supplier.bhel.in>. All credentials and/or documents duly signed and stamped related to registration has to be uploaded on the website. Application registration no should be mentioned in the techno commercial offer.
6. Complete technical offer as per specification, drawings, technical requirement along with un-priced bid giving FOB, C&F rate and delivery schedule.
7. Validity of offer to be indicated i.e. **Validly shall be 120 days from date of part-1 opening.**
8. Please confirm for LD clause in your offer and any deviation from this will be loaded accordingly i.e. BHEL shall load maximum penalty (i.e. 10 % of respective delayed supply) under late delivery clause if not agreed by the vendor for the purpose of comparative statement.
9. **Annexure- A & B** Point wise compliance sheet for technical/commercial terms and conditions. i.e. signed and stamped on each page.
10. **Part-I** – Techno-commercial bid must also contain replica of Price Bid (without Prices).
11. **Deviation with reference to specification/drawing, if any, should be clearly indicated on a separate sheet.**

PART –II (Price Bid) (to be submitted in separate envelope)

1. Price bid (Part-II) shall be opened at a later date of only those vendors who qualify Part-I bid.
2. Price bid with prices to be submitted as Part-II of the tender.
3. Prices should remain firm till the execution of the order.
4. In case of foreign vendors, prices to be quoted on FOB & C&F Mumbai (India) basis separately. In case of FOB, Loading port must be mentioned. Please note that Ex-Works price are not acceptable & offer may not be considered.
5. In case of Indigenous vendor, prices must be quoted on FOR- Destination- CPS-HEEP-BHEL basis.
6. Insurance – Marine in case of foreign vendor & inland in case of Indigenous vendor shall be taken care by BHEL.
7. Prices are to be written in both Figures & Words. In case of any difference between the two, the figure written in words shall be considered for evaluation. No over writing in this is acceptable.

MARKING OF ENVELOPE:

- Each envelope below is also to be super-scribed as “TENDER FOR (ITEM NAME) AGAINST TENDER NO.---- --DUE ON ---
- Drafts for EMD to be kept in one envelop marked Envelope –A. On the Top of the envelope, please write Draft No., Issuing Bank Details & Amount. and tender fee is required only if relevant drawings/specification is required by bidders in hard copy.
- PQR & NDA in Part-I to be kept in another Envelope-B & to be marked as “Pre-Qualification Requirement (PQR)”.
- Techno-commercial bid/Unpriced bid along with Annexure-D to be kept in Envelope-C and to be marked as “(Techno-Commercial Bid)”.
- Envelope –A, B & Envelope-C are to be kept in one envelope and to be marked as “PART-I (PQR & TENDER FEE)”
- Price Bid i.e. Part-II to be kept in another Envelope-D & to be marked as “PART-II (Price Bid)”.
- All Envelopes to be kept in one big envelope and to be marked (super-scribed) as “TENDER FOR (ITEM NAME) AGAINST TENDER NO. -----DUE ON --- (only Part-I will be opened on the date and time specified in the tender notice in the presence of those tenders who wish to attend).
- Envelops not marked as above are liable to be ignored and will not be opened.
- Refer check list below for Bid composition.

CHECK LIST FOR BID SUBMISSION					
ONE ENVELOPE MARKED AS “TENDER FOR (ITEM NAME) AGAINST TENDER NO.-----DUE ON ---“	PART-I ENVELOPE ‘A’ ENVELOPE ‘B’ ENVELOPE ‘C’	ENVELOPE ‘A’ Super scribed as “TENDER FEE”	TENDER FEE	Yes	No
		ENVELOPE ‘B’ Super scribed as “PQR”	PQR (ANNEXURE-A) FCA (ANNEXURE-E)		
		ENVELOPE ‘C’ Super scribed as “TECHNICAL BID”	TECHNICAL BID	Yes	No
			GISTC (ANNEXURE-F)	Yes	No
	PART-II ENVELOPE ‘D’	Super scribed as “PRICE BID”	PRICE BID	Yes	No

Annexure-D

Item Details and Delivery Schedule

Sl. No.	Tender No.	Item Description	Lot Qty (nos)	Delivery Schedule
1.	NIT/E/E243/2021/1805QQ1	MATERIAL CODE: W90414900510 Differential Pressure Regulating Valve Type - A SPEC.: TG60162 REV: 02 NB=32 PROJECT: KOTA RRVUNL	01	28/02/2022

NOTE:

1.THE QUANTITY INDICATED ABOVE CAN BE INCREASED/ DECREASED.

Annexure-E

Framework Confidentiality Agreement cum Undertaking

This Agreement made on this the day _____ of (month) _____ ("Effective Date") by and between M/s BHARAT HEAVY ELECTRICALS LIMITED, having registered office at "BHEL House", Siri Fort, New Delhi — 110049 (India), acting through its Unit _____ (hereinafter may be referred to as "BHEL" or "the Company").

And
M/s _____ (address) _____
represented by authorized representative _____ Sri (herein after referred to as the "Supplier").

The Supplier and the Company may, unless the context otherwise requires, hereinafter be collectively referred to as "Parties" or singly as the "Party".

RECITALS

Whereas, BHEL is engaged in the design, engineering, manufacturing, construction, testing, commissioning and servicing of a wide range of products, systems and services for the core sectors of the economy, viz. Power, Transmission, Industry, Transportation, Renewable energy, Oil & Gas and Defence and providing associated services to varied customers in relation to which BHEL/its affiliates own valuable information of a secret and confidential nature.

Whereas the Company may, in connection with Contract(s) (as defined hereunder) placed or to be placed upon the Supplier, or otherwise, from time to time, make available, Technical Information as is defined hereunder.

And Whereas BHEL is willing to provide such Technical Information to the Supplier from time to time and the Supplier understands and acknowledges that such Technical Information is valuable for the Company and as such is willing to protect confidentiality of such information, subject to the terms and conditions set out hereunder.

Now therefore, in view of the foregoing premises and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as under:

1. Definitions:

Unless the context so requires, in this Agreement, the following terms will bear the meaning ascribed to the said term in this clause.

- a) "Contract" means the Contract entered into with a Supplier and includes a Purchase Order, or a Work Order for procurement of any goods or for provision of any services.
- b) "Effective Date" means the date of this Agreement as mentioned in the preamble of this Agreement.
- c) "Supplier" includes a Contractor or a Vendor of the Company whether for supplying of goods or for providing any services under a Contract or both.
- d) "Technical Information" includes Drawings, and/or Product Standards and/or Specifications and/or Corporate / Plant Specifications and/or Technological Process Sheets and/or Technical Data Sheets and/or Jigs & Fixtures and/or Pattern & Dies and/or Special Gauges and/or Tools etc. belonging to or wherein the Company has acquired from a third party a right of user and includes any improvement thereto from time to time whether carried out by the Company or by the Supplier.
- e) "Intended Purpose" means the purpose for which the Technical Information is provided to the Supplier under or in connection with a Contract.
- f) "Improvement" includes any modification made to, or adaptation of, the Technical Information which enhances or is calculated to enhance the performance (whether in terms of effectiveness or in terms of efficiency or both) of the product and/or the service to be provided by the Supplier under a Contract.

2. This Agreement shall come into force/deemed to have come into force, as the case may be, on the Effective Date; or, on the first date when the Technical Information or any part thereof is provided by BHEL to the Supplier; whichever is earlier.
3. Agreement deemed to be incorporated in each Contract: Unless and to the extent otherwise stipulated in the Contract, the conditions of this Agreement are deemed to be incorporated in all Contracts which may be entered into between the Company and the Supplier. Further, unless otherwise stipulated, the obligations under this Agreement are and will be independent of the obligations under the Contracts and such obligations of the Supplier hereunder will remain of full effect and validity notwithstanding that the period of validity of the Contracts has expired by efflux of time stipulated therein; or, the contract has been discharged by performance or breach; or, the termination of the Contracts for any reason whatsoever.
4. Ownership:
 - 4.1 The Company may, from time to time, make available to the Supplier, Technical Information on a non-exclusive basis by way of loan.
 - 4.2 The Supplier acknowledges and agrees that all Technical Information and copies thereof that are or may be provided by the Company to the Supplier, are and shall remain the property of BHEL or that of the concerned entity from whom BHEL has obtained the Technical Information and such Technical Information are and shall constitute trade secrets of the BHEL. Nothing in this Agreement or in any disclosures made hereunder by or on behalf of the Company shall be construed as granting upon the Supplier any patent, copyright or design or any other intellectual property rights of whatsoever description that subsists or may hereinafter exist in the Technical Information. Furthermore, nothing in this Agreement or in any disclosures made hereunder by or on behalf of the Company shall be construed as granting upon the Supplier any license or rights of use of such patent, copyright or design or any other intellectual property rights of whatsoever description which may now or hereafter exist in the Technical Information except for use of the Technical Information strictly in accordance with this Agreement and the Contract and/or as directed in writing by the Company, solely for the Intended Purpose under the Contract.
 - 4.3 Neither Party is obligated by or under this Agreement to purchase from or provide to the other Party any service or product and that any such purchase/sale of any product and/or service by one Party to the other Party will be governed by the Contract if any, that may be entered into by and between the Company and the Supplier.
 - 4.4 The Supplier is/has been made well aware and acknowledges that the Technical Information being/which may be shared with it by the Company has been either generated by the Company by incurring huge investment and cost or obtained from foreign collaborators under Technical Collaboration Agreement (TCA) with stringent confidentiality conditions.
 - 4.5 The Supplier agrees and undertakes to adhere to confidentiality requirements as applicable to BHEL under a TCA and also ensure that the confidentiality requirements are adhered to by all its concerned employees or sub-contractors/suppliers (where permitted to be engaged by BHEL). Any damages, losses, expenses of any description whatsoever, arising out of or in connection with a breach of the confidentiality requirements under a TCA owing to any act or omission on the part of the Supplier or its employees or sub-contractors/suppliers that is claimed by a foreign collaborator from the Company shall be wholly borne by the Supplier and it shall keep BHEL fully indemnified in this behalf. The demand by the Company shall be conclusive upon the Supplier who shall thereupon forthwith pay to the Company without demur, dispute or delay the amount as demanded without demanding any further proof thereof.
 - 4.6 The Supplier agrees and undertakes that unless so decided and advised by the Company in writing all rights/title to any Improvement to the Technical Information shall vest in the Company. The Supplier undertakes and agrees to inform forthwith to the Company of any such Improvement made to the

Technical Information and transfer all drawings/documents or other materials connected with such Improvement to the Company and also agrees to fully cooperate with the Company for protecting the Company's interests in such Improvement in the Technical Information including but not limited to obtaining necessary protection for the intellectual property rights in such improvement, if so desired by the Company. If a question answers whether a modification amounts to Improvement to the Technical Information, the same shall be decided by the Company and such decision shall be final and binding upon the Supplier.

5. Use and Non-Disclosure:

5.1 Unless otherwise stipulated by the Company, all Technical Information made available to the Supplier, by the Company shall be treated as Confidential irrespective of whether the same is marked or otherwise denoted to be Confidential or not.

5.2 The Supplier undertakes and agrees that the Technical Information in its possession shall be held in strict confidence and will be used strictly in accordance with this Agreement and solely for the Intended Purpose under the Contract. Use of the Technical Information for any other purpose other than Intended Purpose is prohibited.

5.3 In particular, the Supplier shall not use Technical Information or any Improvement in its possession for the manufacture or procurement of the Product(s) or components or parts thereof or use the Technical Information or any portion thereof or any modification or adaptation thereof in any form to provide any product and/or service to any third party, without the prior written consent of the Company.

5.4 The Supplier shall not disclose any of such Technical Information to any third party without the prior written consent of the Company. The Supplier agrees that without prior written consent of the Company, the Supplier shall not disclose to a third party about the existence of this Agreement, or of the fact that it is/was in possession of or has experience in the use of any Technical Information nor shall the Supplier share in any manner whatsoever, with a third party, the name or details of any Contract(s) awarded by the Company to it or performed by the Supplier or the scope of work thereof or share any document or correspondence by and between the Company and the Supplier in or in connection with this Agreement or such Contract(s). Notwithstanding what is stated elsewhere, the overall responsibility of any breach of the confidentiality provisions under this Agreement shall rest with the Supplier.

5.5 The Supplier undertakes and agrees not to make copies or extracts of and not to disclose to others any or all of the Technical Information in its possession, except as follows:

- a) The Supplier may disclose the Technical Information to such of its officers and employees strictly to the extent as is necessary for such officer or employee for the Intended Purpose, provided that the Confidential Information (or copies thereof) disclosed shall be marked clearly as the confidential and proprietary information of Company and that such officers and employees shall similarly be bound by undertakings of confidence, restricted use and non-disclosure in respect of the Technical Information. The Supplier shall be responsible for any breach of such confidentiality provisions by such officers and employees.
- b) With the prior written consent of Company, the Supplier may disclose for the Intended Purpose such Technical Information as is provided for in such consent to such of its professional advisers: consultants, insurers and subcontractors who shall be similarly bound by undertakings of confidence, restricted use and nondisclosure in respect of such Technical Information.
- c) The Supplier shall not be prevented to make any disclosure required by (i) order of a court of competent jurisdiction or (ii) any competent regulatory authority or agency where such disclosure is required by law, provided that where the Supplier intends to make such disclosure, it shall first consult Company and take all reasonable steps requested by it to minimize the extent of the Technical Information disclosed and to make such disclosure in confidence and also shall cooperate with the Company in seeking any protective order or any other remedy from proper authority in this matter.

6. Exceptions:

The obligations of the Supplier pursuant to the provisions of this agreement shall not apply to any Confidential Information that:

- a) was/is known to, or in the possession of the Supplier prior to disclosure thereof by the Company;
- b) is or becomes publicly known, otherwise than as a result of a breach of this agreement by the Supplier.
- c) is developed independently of the Disclosing Party by the Supplier in circumstances that do not amount to a breach of the provisions of this Agreement or the Contract;
- d) is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

7. The obligation of maintaining confidentiality of the Technical Information on each occasion, shall subsist for the entire duration during which the Technical Information / equipment is in possession of the Supplier and shall thereafter subsist for a further period of ----years from the date when the complete Technical Information has been returned to the Company and if Technical Information has been returned in portions on different dates then, the period of ---- years will be reckoned from the date when the last portion of the Technical Information has been returned. Notwithstanding the expiry of the confidentiality obligation, the obligation of the Supplier under clause 5.4 shall continue to subsist for a further period of ----years.

8. Warranties & Undertakings:

- a) The Supplier undertakes to ensure the due observance of the undertakings of confidence, restricted use and non-disclosure by its persons to whom it discloses or releases copies or extracts of the Technical Information.
- b) The Supplier shall keep the Technical Information or improvement made therein properly segregated and not mix up the same with any other material/documents belonging to him/it or to any other third party.
- c) The Supplier further undertakes that he/it shall not hypothecate or give on lease or otherwise alienate or do away with any of the Technical Information and/or equipment of the Company, made available to him/it, and undertakes that he/it shall hold the same as a trustee, in capacity of custodian thereof and use/utilize the same solely for the purpose of executing the Contract awarded by the Company.
- d) The Supplier further undertakes that he/it shall return all the equipment and/or Technical Information as far as practicable in the same condition in which the same was made available to him/it by the Company together with any Improvement thereon and the documents connected with such Improvement, to the Company forthwith upon completion of the scope 2 of work or Contract for which such Technical Information was provided by the Company to it or as directed by the Company together with a confirmation by way of an affidavit or in such manner as directed by the Company that it has not retained any equipment and/or Technical Information/improvement thereof. In case any such equipment and/or Technical Information or Improvement thereof shall remain in his possession or is not capable of being returned, the retention and use of such Technical Information or Improvement thereto shall continue to be governed by this Agreement.
- e) The Supplier undertakes to indemnify the Company for all the direct, indirect and/or consequential losses, damages, expenses whatsoever including any consequential loss of business, profits suffered by the Company owing to breach by the Supplier of its obligations under this Agreement and/or the confidentiality requirements, if any, contained in the Contract and that the Supplier hereby agrees that the decision of the Company in all such or any such matter/s shall be final and binding on the Supplier. On mere written demand of the Company, the Supplier shall forthwith and without demur or delay pay to the Company any such sum as determined by the Company as the amount of loss or damage or expense which has been suffered by the Company. The Supplier agrees that the Company shall be entitled to withhold and appropriate any amount payable to the Supplier under any Contract then existing between the Company and the Supplier, in case the Supplier fails to make payment, in terms of the written demand, within 7 days thereof. Without prejudice to the foregoing actions, in respect to any breach of this Agreement, the Company shall be entitled to take any other action against the Supplier as per applicable laws, the Contract, Company's applicable policies, guidelines rules, procedures, etc.

9. Without prejudice to any other mode of recovery as may be available to the Company for recovery of the amount determined as due as per Clause 8(e) hereinabove, the Company shall have a right to withhold, recover and appropriate the amount due towards such losses, damages, expenses, from any amount due to the Supplier in respect of any other Contract (s) placed on lum/it by any department/office/Unit/Division of the said Company.

10. Arbitration & Conciliation:

- a) In case amicable settlement is not reached between the Parties, in respect of any dispute or difference or claim or controversy arising out of the formation, breach, termination, validity or execution of the Contract(or Agreement) or the respective rights and liabilities of the parties or in relation to interpretation of any provision of the Contract or in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference or controversy or claim, (except as to any matters, the decision of which is specifically provided for therein) to the sole arbitration by the arbitrator appointed by Head/In-Charge of the Unit/Division/Region.
- b) The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties to the dispute.
- c) Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India), or other statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be at -- (Insert the name of the city/town of the concerned BHEL Unit/Division).
- d) In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:
- e) In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.
- f) Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Supplier shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner.

II. Governing Law & Jurisdiction:

This Agreement shall be governed by and be construed as per applicable Indian Laws in force at the relevant time. Subject to clauses and hereinabove, all matters in connection with the subject agreement shall be subject to exclusive jurisdiction of Courts situated at — —(insert the name of the place where the BHEL Unit/Division is located)

SIGNATURE:

WITNESSES

1.

Name

Address:

2.

Name:

Address: