

DUEDATE

28-02-2022

SL	MATERIAL CODE ITEM DESCRIPTION	QUANTITY	UNIT	LOTNO	LOT DELIVERY QTY SCHEDULE
1	W96413900172 DRG: 41391601003 REV: 06 DOUBLE LAYER BRUSH (RIGHT)	70	NO	1	70 31/05/22
2	W96413900180 DRG: 41391601000 REV: 06 DOUBLE LAYER BRUSH (LEFT)	70	NO	1	70 31/05/22
3	W98414500030 DRG: 31450401004 REV: 06 TWO LAYER CONTACT BRUSH	16	NO	1	16 31/05/22
4	W98414300340 DRG: 31430501016 REV: 05 CARBON BRUSH	290	NO	1	290 31/05/22

\*\* IMPORTANT: This enquiry is 2 part tender. Techno-Commercial bid (Part-1) & Price Bids (Part-2) should be submitted in separate envelopes. These two envelopes should be submitted in a common sealed envelope. Techno-Commercial Bid shall contain detailed Technical Specification, Drawings Technical documents, Catalogues, taxes & duties, payment terms, delivery period, Validity of offer, Replica of Price Bid (Copy of price bid without price part) etc. The confirmation to the special terms & conditions must be submitted alongwith Techno-Commercial bid.

Standard Instructions:

TEST CERTIFICATE REQUIRED.

GUARANTEE CERTIFICATE REQUIRED.

Special Instructions:

For Indian Vendor :-

E-INVOICING UNDER GST IS IMPLEMENTED W.E.F. 01.01.2021 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

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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.

=> THE TENDER SHALL BE SUBMITTED IN TWO PART (PART-I: TECHNO-COMMERCIAL BID & COMPLIANCE OF PQR, FCA, & OTHER RESPECTIVE DOCUMENTS) AND (PART-II PRICE BID). PRICE BID (PART-II) TO BE KEPT IN SEPARATE ENVELOPE / COVER AS PER NIC TENDER. PART-I SHALL BE OPENED ON THE DUE DATE SPECIFIED IN TENDER. PART-II (PRICE BID) (OF PQR QUALIFIED BIDDERS ONLY) SHALL BE OPENED AT A LATER DATE.

=> BHEL GISTC (for Indian & Foreign vendors) IS APPLICABLE IN THIS CASE. IN CASE OF ANY DEVIATION FROM GISTC, PLEASE CLEARLY MENTION IN YOUR OFFER. BHEL RESERVE THE RIGHT NON-CONSIDER OF OFFER IN CASE OF DEVIATION FROM GISTC.

=> THE EVALUATION CURRENCY FOR THIS TENDER SHALL BE INR.

=> VENDOR MUST REMIT THE TENDER FEE OF RS. 2,000/- FOR AVAILING HARD COPY OF TENDER DOCUMENTS (IF REQUIRED). RELEVANT SPECIFICATIONS & DRAWINGS OF THE ITEMS WILL BE MADE AVAILABLE TO UNREGISTERED VENDORS ONLY AGAINST COPY OF FCA (ATTACHED) .

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=>ONLY THOSE VENDORS WHO FULFILL THE MINIMUM /PRE QUALIFYING REQUIREMENTS ANNEXURE, WILL BE CONSIDERED FOR FURTHER TECHNICAL EVALUATION. KINDLY SUBMIT PQR CLAUSE WISE DOCUMENTS.

=>DEVIATION WITH REFERENCE TO SPECIFICATION/DRAWING, IF ANY, SHOULD BE CLEARLY INDICATED ON A SEPARATE SHEET.

=>REVISION OF RATES IS NOT ACCEPTABLE UNLESS ASKED BY BHEL DUE TO MAJOR HANGE IN DRAWING / SPECIFICATION / TENDER QUANTITY.

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=> LD CLAUSE: PENALTY FOR LATE DELIVERIES SHAL BE APPLICABLE @0.5% PER WEEK OR PART THEREOF ON THE VALUE OF RESPECTIVE DELAYED SUPPLIES SUBJECT TO MAXIMUM OF 10% OF THE VALUE OF RESPECTIVE DELAYED SUPPLIES. VALUE OF DELAYED SUPPLIES WILL MEAN THE GROSS VALUE PAYABLE TO THE VENDOR (BEFORE LD) AGAINST SUCH SUPPLIES EXCLUDING TAXES & DUTIES.

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=> Quality Requirements are as follows:  
Pre-Inspection by BHEL nominated inspection agency BVIL as per BHEL approved Quality plan is required. Please arrnge to submit detailed QAP covering Raw Stage, Inprocess Checks & Final Inspection for BHEL approval (QP format enclosed)  
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MSE benefits as per MSME act (such as Price preference, Payment preference etc.), will be given only to those MSE Vendors who are manufacturers of offered items against this NIT.

No MSE benefits shall be provided to Agents / Stockists / Dealers / Traders etc for the items offered but not manufactured by themselves.

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For Any query regarding tender please contact following personals :

Advait Prakash , e-mail - advait@bhel.in, Contact no. - 01334285023

Monu Verma, e-mail - monu@bhel.in, Contact no. - 01334284080

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Both Indian as well as foreign vendors can be participated against the tender through NIC. Please go through the BOQ comments while quoting rates.

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**ADVAIT PRAKASH**  
**SR. ENGINEER**



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

## PRE-Qualification Requirements against the tender

### Pre-Qualification Requirements (Technical) for Double Layer Carbon-Brush

**Material Codes:** W96413900172 & W96413900180

**Material Description & Grade:** Double Layer (Silver / Graphite) Carbon Brush with flexible end-connections as per details below:

Silver layer grade ASG1 / Carbon layer grade HM100 of Ms. Assam Carbon  
or S13 / F19 grade of Ms. Schunk  
or AG20 / LFC554 of Ms. Carbon Lorraine (Mersen)  
or other equivalent grade of double-layer for referred application.

**Application:** Grounding stray charges, Rotor Earth Fault monitoring, etc. in shaft train of rotating electrical machines.

#### Mandatory Pre-Qualification Requirements:

1. Vendor should have experience of manufacturing & supplying at least 100 nos. of Double Layer Carbon Brush in last 7 years (on the date of enquiry) used for grounding stray charges or Rotor earth fault monitoring, etc. in shaft-train of rotating electrical machines.

- a. In support of above, vendor shall furnish their experience list as per the following format:

Sl. No	Name & Address of Customer	PO No.	Date of Supply	Size / Dimensions (mm)	Grade	Quantity

- b. Vendor must furnish copy of unpriced PO and corresponding test certificates from at least one of the above list. The test certificates must be accepted by end-user or certified by third party inspection agency. The above certificate should contain information like item details, dimensions, grade and properties.
2. Vendor to confirm in-house manufacturing facilities for Double Layer Carbon Brush. Details of manufacturing facilities to be furnished.
3. Vendor to confirm in-house facilities for carrying out the tests as mentioned in the respective drawings and provide details of test equipment available at their works. If the vendor plans to outsource any testing, particulars of the laboratory to be furnished. The testing facilities should be duly calibrated against national or international measurement standards.
4. Vendor to provide confirmation of specifications and drawings, as per tender-enquiry.

#### Notes:

- i. Vendor to confirm specific compliance of above requirements else offer will not be considered.
- ii. 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.
- iii. All the documents should be submitted in consolidated manner and in English language or duly-certified English translations.

**Pre-Qualification Requirements (Technical) for Double Layer Carbon-Brush (W98414500030)**

**Material Description & Grade:** Double Layer (Silver / Graphite) Carbon Brush with flexible end connections as per below detail:

- i. Silver layer grade ASG1 / Carbon layer grade HM100 of Ms. Assam Carbon or S13 / F19 grade of Ms. Schunk or AG20 / LFC554 of Ms. Carbon Lorraine (Mersen) or other equivalent grade of double-layer for referred application.

**Application:** Grounding stray charges, Rotor Earth Fault monitoring, etc. in shaft train of rotating electrical machines.

**Mandatory Pre-Qualification Requirements**

1. Vendor should have experience of manufacturing & supplying at least 20 nos. of Double Layer Carbon Brush in last 7 years (on the date of enquiry) used for grounding stray charges, Rotor earth fault monitoring, etc. in shaft-train of rotating electrical machines.
  - a. In support of above, vendor shall furnish their experience list as per the following format to BHEL.

Sl. No	Name & Address of Customer	PO No.	Date of Supply	Size / Dimensions (mm)	Grade	Quantity

- b. Vendor must furnish copy of unpriced PO and corresponding test certificates from at least one of the above list. The test certificates must be accepted by end-user or certified by third party inspection agency. The above certificate should contain information like item details, dimensions, grade and properties.
2. Vendor to confirm in-house manufacturing facilities for Double Layer Carbon Brush. Details of manufacturing facilities to be furnished.
3. Vendor to confirm in-house facilities for carrying out the tests as mentioned in the respective drawings and provide details (including make and model) of test equipment available at their works. If the vendor plans to outsource any testing, particulars of the laboratory to be furnished. The testing facilities should be duly calibrated against national or international measurement standards.
4. Vendor to provide confirmation of specifications and drawings, as per tender-enquiry.

**Notes:**

- i. Vendor to confirm specific compliance of above requirements else offer will not be considered.
- ii. All the documents should be submitted in consolidated manner and in English/Hindi language or duly-certified English translations.

**Mandatory Pre-Qualification Requirements-Technical for Carbon Brush (W98414300340)****Material Description & Grade:**

Carbon Brush with flexible end connection, used in Static Exciter. Requirement is as per below details:- Carbon Brush grade HM100 of M/s Assam Carbon or grade 634 of M/s Morgan or grade LFC554 of M/s Carbon Lorraine (Mersen) or other equivalent grades suitable for peripheral speed of minimum 55 meter/sec and current density of minimum 10 A/cm<sup>2</sup>.

**Mandatory Pre-Qualification Requirements:**

1. Vendor should have experience of manufacturing & supplying at least 20 nos. of Carbon Brushes in last 7 years (on the date of enquiry) as per the grades/parameters mentioned above in material description & grade. Vendor shall furnish technical datasheets of their supplied Carbon Brushes.
  - a) In support of the above Vendor shall furnish their experience list as per the following format:

Sl. No.	Name & Address of customer	Purchase Order no.	Size/Dimensions (mm)	Qty.	Date of Supply	Application

- b) Vendor must furnish copy of unpriced PO from above list and corresponding test certificates for at least one PO from the above list. The test certificates must be accepted by customer or certified by third party inspection agency. The above certificates should contain information like item dimensions, grade etc.
2. **MANUFACTURING FACILITIES:** Vendor shall confirm that they have manufacturing facilities suitable to produce Carbon Brushes used for current transfer in rotating electrical machine and furnish details of the manufacturing facilities available at their works.
3. **TESTING FACILITIES:** Details of in-house testing facilities as per the requirement of enquiry specification to be submitted with offer. In case of outsourcing of tests, vendor to agree for testing at Government/International agency's accredited labs only.
4. Vendor to confirm that material shall be supplied as per BHEL's enquiry specifications and drawing.

**Notes:**

1. The vendor must furnish all the documents in English language only. If the documents are not in English, then they must be accompanied by duly certified English translations of the same.

## Quality requirement for tender

1. Inspection by BHEL / BHEL nominated inspection agency BVIL as per BHEL approved QAP. Vendors to submit detail QAP covering raw material stage, in-process checks & final inspection for BHEL approval (QAP format attached below).

MANUFACTURER'S NAME AND ADDRESS		QUALITY PLAN					TO BE FILLED BY BHEL		TO BE FILLED BY BHEL			
BHEL	VENDOR'S NAME	ITEM	QP NO.		REV							
		DRG. NO.	AS PER PO									
		SPEC.	AS PER PO									
		REV										
SL. NO.	COMPONENT & OPERATIONS	CHARACTERISTICS	CLASS	TYPE OF CHECK	QUANTUM OF CHECK	REFERENCE DOCUMENT	ACCEPTANCE NORMS	FORMAT OF RECORDS	AGENCY			REMARKS
1	2	3	4	5	6	7	8	9	D	10		11

	<b>LEGEND:</b> ! RECORDS IDENTIFIED WITH 'TICK' SHALL BE ESSENTIALLY INCLUDED BY CONTRACTOR IN QA DOCUMENTATION. M: MANUFACTURER / SUBCONTRACTOR    B: BHEL / NOM. INSPECTION AGENCY N: CUSTOMER INDICATE 'P' PERFORM 'W' WITNESS AND 'V' VERIFICATION ALL 'W' INDICATED IN COLUMN 'N' SHALL BE 'CHP' OF CUSTOMER	FOR CUSTOMER USE	APPROVED BY
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**Note: -**

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

	<b>PART-II ENVELOPE 'D'</b>	Super scribed as "PRICE BID"	<b>PRICE BID</b>	Yes	No
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**COMPLIANCE SHEET FOR TECHNICAL/COMMERCIAL TERMS AND CONDITIONS as per GISTC**

Quotation against Enquiry No. \_\_\_\_\_ Dated: \_\_\_\_\_ Due on: \_\_\_\_\_

<b>BHEL Standard Terms</b>	<b>Vendor's Acceptance</b>
<p><b>1. Payment terms:</b></p> <p>a) Payment term should be <b>100% payment After Receipt &amp; Acceptance of Material.</b></p> <p>b) Bank Charges shall be Not Applicable.</p> <p><i>"Please note that in case of any deviation in the payment term, BHEL shall evaluate your offer after loading on account of deviation in payment term and loading factor shall be as per GISTC."</i></p>	
<p><b>2.TAXES :</b></p> <p><b>TAXES &amp; DUTIES:</b> Rate of GST must be indicated in your offer even if it is inclusive.</p>	
<b>i. Rate of GST</b>	
<b>ii. Input Tax Credit Shall be available</b>	
<b>iii. Any Other Duty:</b>	
<b>3. Packing Charges</b> shall be included in quoted basic rates.	
<b>4. Forwarding Charges</b> shall be included in quoted basic rates.	
<b>5. Delivery basis:</b> On "FOR BHEL Haridwar" Basis & Freight charges shall be inclusive in quoted basic rates.	
<b>6. Delivery Period:</b> Please quote your shortest time period required for supply of material.	
<b>7. Dispatch of Material:</b> Items should be dispatched through BHEL approved transporters, however Indian bank approved transporters having their branch at Hardwar (details available at <a href="http://www.bhelhwr.co.in">www.bhelhwr.co.in</a> ) may be considered for dispatch of material. However in case dispatch through IBA approved transporter demurrage/any other charges shall be borne by supplier. In case dispatch made through un-approved transporters payment shall be made after receipt & acceptance of material only and demurrage/any other charges shall be borne by supplier.	
<b>8.</b> Transit insurance will be arranged by BHEL for which immediate intimation of dispatch is required as indicated in purchase order.	
<p><b>9. Late delivery penalty Clause:</b></p> <p>Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on the value of respective delayed supplies subject to a maximum of 10% of the value of respective delayed</p>	

supplies. Value of delayed supplies will mean the Gross Value payable to the vendor (Before LD) against such supplies excluding taxes and duties..	
<p><b>10. Drawing / data approval: (If applicable)</b></p> <p>Any drawing / data approval required from BHEL after placement of order Shall be submitted within 15 days of ordering and BHEL will ensure to provide approval within 15 days. Any delay beyond this period will be liability of the party at which end delay occurred. Further no change is acceptable in drawing/data after finalization of the offer.</p>	
<p><b>11. Authorization for Pre-inspection:</b></p> <p>BHEL is authorized to get pre inspect the material at vendor's works by BHEL/BHEL nominated agency. inspection report.</p> <ul style="list-style-type: none"> <li>Pre dispatch inspection (PDI) call should be given at least 15 days in advance of schedule delivery. If supplier fails to give pre-inspection call with in stipulated time, this will not be a reason of penalty waiver or delivery extension.</li> </ul>	
<p><b>12. Offer Validity:</b></p> <p>Validity of the offer should be minimum 120 days from tender opening date.</p>	
<p><b>13.</b> Confirm that there is no deviation with respect to BHEL Specifications/drawings. However, deviations, if any, are to be listed as a separate attachment.</p> <p>The offers that do not meet the substantial requirements of our enquiry are liable to be ignored.</p>	
<p><b>14.</b> Please note that no revision in the prices or submission of supplementary price bid will be allowed during the validity of the offer. However if there is any change by BHEL w.r.t. original specifications/ requirement/ scope/terms and conditions, the bidders may be asked by BHEL to submit only the price impact bid for such changes only.</p>	
<p><b>15. Origin of Quotation:</b> The quotation should be from the principal/original supplier even if it is submitted through their authorized agents, failing which the quotation is liable to be ignored.</p> <p><b>Also the name of principal supplier should be indicated on envelop in addition to Enquiry no and due date.</b></p>	
<p><b>16. Pl.</b> Confirm that the prices will remain firm during the entire validity and execution of the Project.</p>	
<p><b>17.</b> Test Certificate as per BHEL Specification / drawing shall be provided along with dispatch documents.</p>	
<p><b>18.</b> Guarantee certificate as per BHEL Specification shall be provided along with dispatch documents.</p>	
<p><b>19. Quality Requirements: -</b></p> <p>Inspection by BHEL / BHEL nominated inspection agency BVIL as per BHEL approved QAP. Vendors to submit detail QAP covering raw material stage, in-process checks &amp; final inspection for BHEL approval (In BHEL format).</p>	

**20. Documents requirement confirmation:**

1. Kindly ensure to submit PQR clause wise documents as per Annexure-A.
2. Vendors to submit detail QAP covering raw material stage, in-process checks & final inspection for BHEL approval (QAP format attached).

**Note: Attach separate sheet for additional information if necessary. The above terms & condition supersedes the terms & conditions found contradictory written elsewhere in the tender enquiry and offer of bidder.**

Vendors are requested to comment on each applicable clause and write as "NA" if not applicable. Please attach this sheet with your techno-commercial offer.

**Signature with stamp**

**Item Details and Delivery Schedule**

Sl. No.	Tender No.	Item Description	Qty. (nos.)	Delivery Schedule
1.	<b><u>NIT/E/E211/21/2419/Y1</u></b>	MATERIAL CODE: W96413900172 DRG: 41391601003 REV: 06 DOUBLE LAYER BRUSH (Right)	70 nos.	31.05.22
2.		MATERIAL CODE: W96413900180 DRG: 41391601000 REV: 06 DOUBLE LAYER BRUSH (LEFT)	70 nos.	31.05.22
3.		MATERIAL CODE: W98414500030 DRG: 31450401004 REV: 06 TWO LAYER CONTACT BRUSH	16 nos.	31.05.22
4.		MATERIAL CODE: W98414300340 DRG: 31430501016 REV: 05 CARBON BRUSH	290 nos.	31.05.22

**NOTE:**

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

## **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/Diusion 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: