

**Scope of Supply****Estimated Quantity for PT/DPT Rate contract**

<b>A. TOTAL QUANTITY OF PRESSURE/ DIFFERENTIAL PRESSURE TRANSMITTERS (Break up of Quantity as follows):</b>				<b>2000 Nos</b>
<b>S.No</b>	<b>Item</b>	<b>Spec No/ Rev no</b>	<b>Variant Table/ Material code</b>	<b>Estimated Quantity for FY-2022-23 &amp; 2023-24</b>
1	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 1A	<b>500</b>
2	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 1B	<b>50</b>
3	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 2A	<b>520</b>
4	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 2B	<b>50</b>
5	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 3A	<b>200</b>
6	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 3B	<b>20</b>
7	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 4A	<b>200</b>
8	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 4B	<b>20</b>
9	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 5A	<b>400</b>
10	WP Pressure/ Diff. Pressure Transmitters	TC65633-R00	Table 5B	<b>40</b>

**Scope of Supply**

<b>B.TOTAL QUANTITY OF MANIFOLDS (Break up of quantity as follows):</b>				<b>1000 Nos</b>
<b>S.No</b>	<b>Item</b>	<b>Spec No/ Rev no</b>	<b>Variant Table/ Material code</b>	<b>Estimated Quantity for FY-2022-23 &amp; 2023-24</b>
1	2 / 3/ 5Valve Manifolds	TC65070-R03	Table 1	<b>200</b>
2	2 / 3/ 5Valve Manifolds	TC65070-R03	Table 2	<b>600</b>
3	2 / 3/ 5Valve Manifolds	TC65070-R03	Table 3	<b>50</b>
4	2 / 3/ 5Valve Manifolds	TC65070-R03	Table 4	<b>150</b>

**Instructions to Bidders:**

- 1 Vendor to quote unit prices for all the material codes mentioned in above BHEL specifications.
- 2 Vendor to incorporate any minor requirements insisted by end customer during data sheet approval without any price implication.

**\*The quantities mentioned in the enquiry are indicative for the entire Rate Contract (RC) period**

**Item / System Name: PRESSURE TRANSMITTER**

**Pre-Qualification Requirements (PQR) of Bidders for above mentioned item/system shall be as follows:**

- 1.0** Bidder shall be Original Equipment Manufacturer or OEM's authorized distributor/channel partner of mentioned item/system having offices in India. All the technical requirements of the mentioned item/system shall be as per the BHEL specification furnished along with the purchase enquiry.
- 2.0** In case the OEM authorizes their distributor/channel partner for representing them in totality:
  - a. Authorized distributor/channel partner shall submit **authorization certificate from their OEM** to quote for complete job, for authorized distributor/channel partner the expiry date of validity of distributorship should be clearly indicated along with documentary evidences.
  - b. OEM shall declare that in the event of discontinuation of their partnership, at any point of time during the warranty period, **OEM will take the total responsibility** for meeting all the commitments made earlier by the authorized distributor/channel partner.
  - c. The responsibility of complete item to be supplied as per BHEL specification requirements including engineering and selection of its components shall be with OEM only. For this **OEM shall submit a letter in original complying BHEL specification.**
  - d. Authorized distributor/channel partner shall have **association with the OEM for the past five years** and should have supplied and commissioned with the OEM make of mentioned item/system in India.
- 3.0** Bidder to confirm that they will provide **spares and services support for the mentioned item/system for at least ten years** from the date of supply. In case of authorized distributor/channel partner, "After Sales Service" and availability of spares to be guaranteed by OEM for at least ten years.
- 4.0** Bidder shall have an established facility in India for engineering documentation, after sale service for the offered make and model of mentioned item/system.
- 5.0** OEM shall offer a proven model of mentioned item/system supplied for any power plant / refinery/ other industries. Bidder shall submit a **certificate of satisfactory performance of the offered model** from their clients in India (client details to be provided), working satisfactorily for a period of not less than one year, which has been supplied during the last five years.

**Note:** If BHEL is unable to verify the PTR furnished, with end user contact details provided above, the offer will be rejected.
- 6.0 The** Bidder shall be **registered vendor for any one** of the following major Engineering consultants in India:
  - a. NTPC EOC Noida
  - b. Engineers India Limited (IOCL/HPCL/ONGC/BPCL)

Bidder must submit the documentary evidence/proof in support of vendor registration by submitting the valid vendor registration letter from the respective agency.

**Note:** Submitting PO copy of supply against particular project is not acceptable.
- 7.0** All correspondence, Documentation, catalogs and Manuals shall be in English language.
- 8.0** Bidder shall furnish the **necessary documentary evidence/proof** in support of claim for meeting the above Prequalification requirements, **failing which their offer will be liable for rejection.**

# BHARAT HEAVY ELECTRICALS LTD

TC PURCHASE – HPEP Hyderabad 502032

PRE-QUALIFICATION REQUIREMENTS - FINANCE	
PRODUCT:	Temperature Transmitters
CRITERIA FOR EVALUATION - FINANCIAL	
Average annual financial turnover during the last Three Financial Years	
<b>Notes:-</b>  <ol style="list-style-type: none"><li>1. The Average Annual Financial turnover during last 03 (three) years, ending of the previous financial year, should be at least Rs 217,00,000/- (Two Hundred Seventeen Lakhs only) and positive net worth as per latest balance sheet. The bidder has to submit financial accounts comprising of Audit report, Balance Sheet, Profit &amp; Loss A/c Statement and Notes/Schedules pertaining to Turnover/Sales/Revenue, certified by Chartered Accountant for the last three years as on tender due date to review the above criteria.</li><li>2. In case of final audited balance sheet / Profit &amp; Loss statement for the last year is not available, provisional statement for the same duly certified by Chartered Accountant must be submitted.</li><li>3. In case audited financial statements have not been submitted for any of three years as indicated above, then the applicable audited statements submitted by bidders against the requisite three years will be averaged for three years i.e total divided by three.</li><li>4. Other Income shall not be considered for arriving at Annual Turnover/Sales. For evaluation purpose, only revenue from operations shall be considered.</li><li>5. Foreign bidder is to submit a latest certificate from reputed third party business rating agency like Dun &amp; Bradstreet, Credit reform etc. in addition to the documents mentioned at point (a) above for review of above criteria. The certificate thus produced will explicitly mention the turnover in terms of equivalent Indian Rupees.</li></ol>	

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<b><u>CONFIRMATION TO THE TERMS &amp; CONDITIONS</u></b>	<b><u>VENDOR CONFIRMATION</u></b>
<b>a. Vendor Quotation Ref No and Date</b>	
<b>b. Rate Contract:</b> This is an enquiry for the finalization of a Rate Contract (RC) for a period as mentioned in 'Validity of offer' below The quantities mentioned in the enquiry are indicative for the entire RC period. <b>Purchase Orders will NOT be issued for the entire quantum in one lot, whereas POs will be released on a time to time basis during the RC period, based on actual requirement.</b>	
<b>c.</b> Vendor should give confirmation to BHEL's Technical Specification. Any deviations from the specification are to be furnished separately as "Schedule of Deviation". If there is no deviation vendor should indicate <b>"No Deviation"</b> .	
<b>d)</b> Offer needs to be submitted in Two Part Bid.  (i) Techno commercial bid  (ii) Price bid	<b>Non Deviatable</b>
<b>e.</b> Evaluation criteria for this enquiry is (i) Evaluation shall be done on overall basis for this enquiry. (ii) Reverse Auction shall be conducted for this Rate Contract. "BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among the techno commercially qualified bidders. Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered for RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking." (iii) Load distribution: 60% of the total quantity will be ordered on L1 and balance 40% will be ordered on L2, if L2 vendor accepts the L1 rate. If the same is not agreed by the L2 vendor, L1 rate will be counter offered to L3 and so on. If none of the other vendors agree to match L1 rate, rate contract will be considered for the total quantity on L1 vendor. (iv) In case any Class 1 / MSE bidder falling within the margin of 20% / 15%, Guidelines for MSE / MII purchase preferences issued by CMM dt 27.10.2021 will be followed for load distribution (Refer attachment) and it will supersede over the load distribution as mentioned above in clause(iii)	<b>Non Deviatable</b>
<b>f. Terms of Payment:</b> As per ITB Rev 10.	<b>Non Deviatable</b>

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<b>g. Liquidated Damage:</b> As Per ITB Rev 10.	<b>Non Deviatable</b>
<b>h. Delivery Terms:</b> Prices shall be quoted on “ <b>FIRM PRICE</b> ” basis only. <u>For Indigenous Supplies:</u> FOR DESTINATION. Destination shall be anywhere in India.	<b>Non Deviatable</b>
<b>i. Validity of Offer:</b> 2 years from the date of entering into rate contract.	
<b>j. Delivery period:</b> Please quote minimum possible delivery period from date of PO / manufacturing clearance.  Annexure 1 has to be duly filled and Signed Vendor to note that dispatch of goods shall be done only after obtaining Dispatch Clearance from BHEL, Hyderabad.	
<b>k. Risk Purchase:</b> As per ITB Rev 10	<b>Non Deviatable</b>
<b>l. Guarantee Clause:</b> 24 months from the date of supply or 18 months from the date of commissioning whichever is earlier.  Any warranty replacement during warranty period shall be supplied free of charge on FOR Site basis/destination specified by BHEL. <b>Non deviatable. Deviations to the above clause will lead to rejection of your offer.</b>	<b>Non Deviatable</b>
<b>m. Performance Bank Guarantee:</b> Performance Bank Guarantee is not applicable for this enquiry	
<b>n. Counter-offering</b> Counter-offering is not applicable for this enquiry	
<b>o. Integrity Pact</b> Integrity pact is applicable for this enquiry	
<b>P Inspection:</b> ITP and sampling plan are attached.  Deviation to the sampling plan will lead to rejection of your bid.	<b>Non Deviatable</b>

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Joint Inspection will be held with BHEL appointed TPI for all BHEL Orders. Wherever applicable, End Customer Appointed TPI will also participated in Inspection.	
<b>Following Duly Signed &amp; Stamped Documents has to submitted along with your Technical Offer</b> <b>1. Annexure 1 – Delivery Mile Stones agreement</b> <b>2. Annexure 2 – Integrity Pact</b> <b>3. Annexure 3 – Local Content</b> <b>4. Annexure 4 – Restriction of procurement from Countries sharing land with India</b>	<b>Non Deviatable</b>
<b>Contact Details:</b> <b>Mr. Sandeep, skaktan@bhel.in , 04023182437</b> <b>Ms. S V Satyaveni, satyaveni@bhel.in , 04023182765</b>	

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## **1. QUOTATIONS:**

- a. BID system:** The no. of bids to be submitted is mentioned in “Confirmation to the Terms and Conditions” attached.
  - i. Two part bid: The offers are invited in Two part bid system (Part I will be Techno-commercial bid and part II will be Price Bid). Techno-commercially suitable vendors alone will be intimated for price bid opening.
- b. Submission of offer:**
  - i. Offer called through e-Procurement mode: The bidder shall submit the bid online in BHEL e-Procurement portal at <https://eprocurebhel.co.in/>

The bidder would be required to register on the above e-procurement portal for submitting their bids. Offers through email and hardcopy are not acceptable.

- c. Regulations:** Offers should be free from correction and erasures. Corrections if any must be attested. All amounts shall be indicated both in words as well as figures. In case of a difference between the amount quoted in words and figures, the amount quoted in words shall prevail.
- d. PVC:** Price Variation clause not acceptable. Prices should be firm.
- e. Catalogue:** Manufacturer’s name, Trade Mark or Patent No. if any should be specified. Illustrative leaflets giving technical particulars are required along with quotation.
- f. GST Number:** GST registration number, HSN number (Item wise) with applicable taxes should be mentioned in the offer. If the vendor is not GST registered the offer is liable for rejection.
- g. Deviation.** Any deviations from the specification are to be furnished separately as “Schedule of Deviation”. If there is no deviation, vendor should indicate “No Deviation” in the offer.
- h. Confirmation:** Confirmation for compliance is to be given in the offer for all the techno commercial conditions specified in the tender.

## **2. COMMERCIAL TERMS & CONDITIONS:** As per ITB Rev 10

## **3. GENERAL CONDITIONS**

- a.** The manner of finalization will be as mentioned in the “Confirmation to the Terms and Conditions” attached. Separate orders will be released for each project and documents should be supplied for each order separately.
- b.** BHEL reserves the right to reduce the tender quantity and to NOT to order for some or all material based on the changes in project.
- c.** BHEL shall have the right to visit vendor works during the execution of contract along with end customer for verifying status, inspection and testing of the material.
- d.** BHEL reserves the right to negotiate or re-float the tender in case the quoted prices are not acceptable.
- e.** Supplier shall arrange packing to avoid lose or damages during Road Transport, Site handling & Storage.
- f.** BHEL reserves the right to reject the offer of a particular bidder due to unsatisfactory past performance in the execution of a contract at any of BHEL projects / units.
- g.** The Drawings and Technical documents given in this enquiry are the sole property of BHEL. This should not be misused in any form.
- h.** Purchase Order, PO Item serial number, Material code, Quantity should be clearly marked on the packing
- i.** Confirmation for compliance is to be given in the offer for all the conditions specified above and to the respective Purchase Specification.
- j.** The bidder along with its associate/collaborators/sub-contractors/sub-vendors/consultants/service providers shall strictly adhere to BHEL fraud prevention policy (refer [www.bhel.com](http://www.bhel.com)) and shall immediately bring to the notice of the BHEL management about any fraud or suspected fraud as soon as it comes to their notice.
- k.** For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017 & 28.05.2018 and subsequent orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract/PO/WO against this NIT. In the event of any Nodal Ministry prescribing higher or lower percentage of preference and/or local content in respect of this procurement, the same shall be applicable.



#### **4. TENDER EVALUATION:**

##### **a. Techno-commercial Bid.**

- i. All vendors should submit General arrangement drawing, datasheet and C&I diagram (if any) of the offered product
- ii. Point by point technical confirmation of all pages of our technical specifications and commercial conditions are required with your sign and seal along with techno commercial offer.
- iii. Offers from supplier not having technical capability or not agreed for commercial terms, will be rejected.

##### **b. Price Bid.**

- i. Bidders qualified for part I will be intimated for participating in priced bid opening.
- ii. L1 bidder will be decided based on landed cost for the equipment to BHEL.
- iii. This bid is finalized by Reverse auction.

##### **Note:**

All clarifications / issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below

Mr. SANDEEP , skaktan@bhel.in , 04023182437

Ms. S V Satyaveni, satyaveni@bhel.in , 04023182765

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		Annexure-I		
		Major Activity timelines shall be considered for indigenous purchases		
S No	Activity	Agency	Timeline	Acceptance / Remarks
1	PO acknowledgement	Vendor	04 days from the date of receipt of PO	
2	First submission of Drawings, Data sheets and QP Rev-00	Vendor	15 days from receipt of PO	
3	commented / approved drawings / data sheets and QP to vendor	BHEL/Customer	07 days from the receipt of Rev-00 submission.	
4	Subsequent submission of revised drawings / data sheets and QP	Vendor	07 days from the receipt of commented drawings / data sheets and QP	
5	Subsequent Approved /commented Drawings and QP to vendor	BHEL/Customer	07 days from the date of receipt of revised drawings / data sheets and QAP.	
6	Raising of Inspection Call	Vendor	07 days before the proposing inspection date. (BHEL will provide approved QP before raising inspection call)	
7	Inspection completion	BHEL TPI agency / Customer	07 days from inspection call date.	
8	Despatch Instructions	BHEL	07 days from the date of receipt of final approved inspection report to BHEL.	
9	Receipt of Material at BHEL stores/ site	Vendor	15 days from Despatch instructions	

Absence of this annexure in NIT will entail non processing of delivery extension cases in case of delay in supplies of goods owing to reason attributable to BHEL.

**Vendor's Signature**

(To be executed on Non- Judicial Stamp Paper for an appropriate value.  
To be stamped as an agreement)

(For Suppliers on Unit's / Division's PMD)

ANNEXURE-II

Framework Confidentiality Agreement Cum Undertaking

This Agreement made on this the \_\_\_\_\_ day of (month) \_\_\_\_\_ 20 \_\_\_\_  
("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 Suppliers.
  - 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 Contract 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 right 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 Improvements 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 arises 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 This Supplier undertakes and agrees not to make copies or extracts of and not to disclose to other 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 nondisclosure 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 non-disclosure 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 in portions on different dates, 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 / utilise 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 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 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 forgoing 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 9 (f) hereinabove, the Company shall have a right to withhold, recovery 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 him / it by any department / office / unit/ division of the said Company.

#### 10. Arbitration & Conciliation:

1. Except as provided elsewhere in this contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the contract; 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 to the sole arbitration of an arbitrator appointed by head of the BHEL unit issuing the contract. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or 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 Hyderabad. The cost of arbitration shall be borne as per the award of the Arbitrator. Subject to the arbitration in terms of clause 55, the courts at Sangareddy, Telangana State shall have exclusive jurisdiction over any matter arising out of or in connection with this contract. Notwithstanding the existence or any dispute or differences and / or reference for the arbitration, the contractor shall proceed with and continue without hindrance the performance of its obligations under this contract with due diligence and expedition in a professional manner except where the contract has been terminated by either party in terms of this contract.



In case of contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable: 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 by either party for arbitration to the sole arbitrator 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. The parties to the dispute will share equally the cost of arbitration as intimated by the arbitrator.

2. INTEREST CLAUSE: In order to bring uniformity in all the contracts / agreements entered between BHEL and its contractors / vendors / suppliers / service providers etc., it is hereby advised to incorporate the following clause in all tenders and agreements. "No interest shall be payable by BHEL on earnest money or security deposit or any money due to the contractor by BHEL."

#### 11. Governing Law & Jurisdiction:

This agreement shall be construed and interpreted in accordance with the laws of India and shall have exclusive jurisdiction of Sangareddy/Hyderabad courts, Telangana, India.

SIGNATURE

WITNESSES

1 Name:

Address:

2 Name:

Address:

### **Annexure - III**

#### **Proforma for self-certification by Supplier for minimum local content on their letter head for tender value less than Rs 10 Crore**

"We \_\_\_\_\_ (Name of Manufacturer) undertake that we meet the mandatory minimum Local Content (LC) requirement i.e. \_\_\_\_\_ (to be filled as notified in the policy) for claiming Purchase Preference linked with Local Contents under the Govt. policy against tender no. \_\_\_\_\_."

Note: As per GOI circular, the bidders offering Imported items falls under the category Non-Local Supplier. They can't claim as Class I Local Supplier/Class II Local Suppliers by claiming the services as transportation, Insurance, Installation, Commissioning & training and after sales service support like AMC/CMC etc as local value addition

**Auditor's certification with respect to minimum local content on the letter head of Statutory Auditor for tender value above Rs.10 crore**

"We \_\_\_\_\_ the statutory auditor of M/s \_\_\_\_\_ (name of the bidder) hereby certify that M/s \_\_\_\_\_ (name of manufacturer) meet the mandatory Local Content requirements of the Goods and/or Services i.e. \_\_\_\_\_ (to be filled as notified in the policy) quoted vide offer No. \_\_\_\_\_ dated \_\_\_\_\_ against BHEL's tender No. \_\_\_\_\_ by M/s \_\_\_\_\_ (Name of the bidder)."

Note: As per GOI circular, the bidders offering Imported items falls under the category Non-Local Supplier. They can't claim as Class I Local Supplier/Class II Local Suppliers by claiming the services as transportation, Insurance, Installation, Commissioning & training and after sales service support like AMC/CMC etc as local value addition

## **ANNEXURE IV**

### **Proforma for self-certification by Supplier for Compliance to below Clause**

**Clause:** Any Bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with competent authority. <https://www.mea.gov.in/> to be referred for latest details of competent authority and exemptions.

I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and I certify that M/s\_\_\_\_\_

**(Name of firm)**

(Tick the Appropriate)

☐ **Is not from such a country**

☐ **Is from such a country and has been duly registered with the Competent**

**authority.**

I hereby certify M/s \_\_\_\_\_ **(Name of firm)** fulfills all requirements in this regard and is eligible to be considered (where applicable, valid registration by the competent authority shall be attached.

