

Consortium Agreement between BHEL and M/s. -----

THIS CONSORTIUM AGREEMENT entered into at Noida, India on this ----- day of -----, 2021 by BHARAT HEAVY ELECTRICALS LIMITED, a company incorporated under the Companies Act, 1956, and having its registered office at BHEL HOUSE, Sri Fort, New Delhi, India and inter alia an office at Transmission Business Group, Joy Tower, 10th Floor, C-20, 1/1A, C-Block, Phase-2, Industrial Area, Sector-62, Noida-201301 (Uttar Pradesh) (hereinafter referred to as "BHEL" which expression shall unless repugnant to the context or meaning hereof include its successors in interest, administrators, executors and permitted assigns) of the FIRST PART and M/s ----- incorporated under the Companies Act, 1956 and having its registered Office at ----- (hereinafter referred to as ----- which expression shall unless repugnant to the context or meaning hereof include its successors in interest, administrators, executors and permitted assigns).

BHEL and ----- are individually referred to as "Party" and jointly referred to as the "Parties"

WHEREAS the Parties mentioned herein above desire to submit a "Tender" in "Consortium" to RAJASTHAN RAJYA VIDYUT PRASARAN NIGAM LIMITED hereinafter referred to as "**RRVPNL**", for the contract designated as Relevant works (*Relevant works needs to be defined.....*) including but not limited to engineering, planning and design, supply of all equipment and materials (including spares), execution of civil works including foundations, installation and erection, testing and commissioning for establishment of Substations and Associated Transmission Lines and training to RRVPNL staff for the package (TENDER DETAILS TO BE INCORPORATED) and subsequent amendments.

AND WHEREAS to meet the requirements of the "**Tender**" documents issued by RRVPNL, Parties intend to form a consortium to jointly bid for the said Project (hereinafter defined).

AND WHEREAS BHEL shall be responsible for relevant works (relevant works may be elaborated) including but not limited to engineering, planning and design, supply of all equipment and materials (including spares), execution of civil works including foundations, installation and erection, testing and commissioning for establishment of Substations and training to RRVPNL staff for the package (*TENDER DETAILS.....*), M/s----- shall be responsible to relevant works (*Relevant works needs to be defined.....*) including but not limited to engineering, planning and design, supply of all equipment and materials (including spares), execution of civil works including foundations, installation and erection, testing and commissioning

including permissions and clearances as per customer's contract for establishment of Associated Transmission Lines and training to RRVPNL staff for the package (*TENDER DETAILS.....*) and as described under this Agreement.

AND WHEREAS Parties hereto wish to set out in this Consortium Agreement their respective duties, rights, responsibilities and obligations with respect to the Project and each other, for the fulfillment and Compliance of the terms of the "Contract".

AND THEREFORE THIS AGREEMENT WITNESSETH AS UNDER.

1. DEFINITIONS

- 1.1 By "**Project**" is meant Relevant works including but not limited to engineering, planning and design, supply of all equipment and materials (including spares), execution of civil works including foundations, installation and erection, testing and commissioning for establishment of Substations and Associated Transmission Lines (with end-bays) and training to RRVPNL staff for the package (*TENDER NAME.....*) (Tender No.----- and subsequent amendments) in the state of TELANGANA
- 1.2 By "**Customer**" is meant RRVPNL.
- 1.2.1 By "**Consulting Engineer/Consultant**" is meant any firm or person, duly appointed by the Customer from time to time.
- 1.2.2 By "Agreement" is meant this "Consortium Agreement".
- 1.3 By "**Consortium**" is meant both parties to this "**Agreement**".
- 1.4 By "**Tender**" is meant the Tender for the Project jointly prepared and submitted by the Consortium to the Customer.
- 1.5 By "**Consortium Leader**" is meant BHEL.
- 1.6 By "**Joint Bidder**" is meant M/s ----- (TL PARTNER DETAILS).
- 1.7 By "**Contract**" is meant the Implementation Agreement to be executed between the Customer and the Consortium relating to the Project as amended from time to time in accordance with the terms of the Contract including any and all documents forming part thereof, for the execution of the Project and this Agreement.
- 1.8 By "**Scope**" is meant all supplies and services which the "Consortium" has to perform in accordance with the Contract.
- 1.9 By "**Part of Scope**" is meant the supplies and services to be performed by any one Party under Contract Agreement with the Customer.
- 1.10 By "**Contract Value**" is meant the total amount including variations and escalation payable by the Customer to the Consortium in accordance with the Contract.
- 1.11 By "**Share of Scope**" is meant the ratio expressed as a percentage between the price for the Part of Scope of any one Party and the Contract Value.
- 1.12 By "**Cost**" is meant direct Cost plus overhead incurred by any Party and is thus exclusive of any profit.

Cost shall not include any contribution to be paid by the parties in proportion to their respective shares of Scope.

1.13 By **"Components"** is meant equipment, material, necessary drawings /documentation for assembly wherever applicable to be delivered by either party, intended for usage of the same for execution of scope specified under the Agreement.

1.14 By **"Product"** is meant supplies to be manufactured and/or supplied or performed/ provided by BHEL and M/s ----- as a Consortium under the Contract with the Customer and specified in Appendix 1.

2. APPENDIX

2.1 The following Appendices are an integral part of this Agreement:

Schedules to be finalized after award of the contract:

Sl. No	Document	Appendix Number
I	Distribution of equipment scope and services between BHEL & -----	1
II	Internal Time Schedule	
a	Document from ----- to BHEL	2A
b	Document from BHEL to -----	2B
c	Components from ----- to BHEL	2C
d	Components from BHEL to -----	2D
e	Products & services for the projects from ----- to BHEL	2E
f	Products & services for the projects from BHEL to -----	2F
III	Organization of the project team and project directors	3
IV	Responsibilities for project team, project directors and site facilities Contract structure	4A 4B
V	Work distribution for engineering Additional assistance required by either 5B	5A 5B
VI	Training of Customer's personnel	6

2.2 If there is any deviation between the terms of this Agreement and any of its Appendices with regard to the interpretation of terms, then the provisions of Appendices I to VI relating to such variation shall have an overriding effect on the provisions of this Agreement.

2.3 The relevant Appendix hereto shall be kept up-to-date and amendments thereof

shall be executed by the parties as a result of agreed amendments to the Contract or agreed internal variations/modifications by way of supplemental agreements. These are to be recorded with updated revision numbers and date of amendments/ revision for particular Appendices.

3. PURPOSE

The Parties hereby agree that this Agreement has the sole and limited purpose of detailing the preparing and submitting of the Tender for the Project to the Customer and defining the rights, duties, responsibilities and obligations between the Parties in connection with the preparation of the Tender and the performance of the Contract after award.

4. JOINT EFFORTS

4.1 Each Party shall use all reasonable efforts to secure the award of the Contract. No Party shall, however, have a claim against any other Party arising out of a failure to secure a Contract for the Project except as a result of material breach of this Agreement.

4.2. Each Party shall advance the objectives of the Consortium in co-operation with the other Party and refrain from any and all contravening acts prejudicial to the objective of this Agreement.

5. EXCLUSIVENESS

The parties shall as long as the Agreement remains in force co-operate with each other on an exclusive basis. No Party shall during the validity hereof enter into a Contract with the Customer or any other Party for the Project, either alone or in collaboration with any other third Party, directly or indirectly.

6. LEGAL STATUS

This Agreement shall relate solely to the Project and shall not in any way be construed to constitute, create, give effect to or otherwise recognize a corporation, partnership, association of persons or formal business entity of any kind or as creating any type of sponsorship, agency, or any similar relationship between the Parties hereto. In addition the execution of this Agreement by the Parties shall not in any way be deemed to create a precedence for the establishment of any future, similar relationships between the Parties in respect of any future project(s) or contract(s) for projects not covered under this Agreement. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the respective scope of the Parties under this Agreement.

7. RELATIONSHIP TO THE CUSTOMER

- 7.1 Tender stipulates that the lead member shall be responsible for ensuring the completion of all the projects in the Package/sub package and the successful fulfillment of all the rights and performance of all the duties and obligations of such Consortium. However with respect to each other, the Parties shall be solely responsible for their Part of Scope and shall provide their supplies and services as if they had concluded a separate contract with the terms and conditions of the Contract with the Customer. However, all parties shall be jointly and severally responsible to the Customer towards fulfillment of the contract conditions/ obligations.
- 7.2 The rights and obligations of the Consortium towards the Customer are defined in the Contract which shall remain binding on the Parties hereto during the validity of this Agreement.

8. RELATIONSHIP BETWEEN THE PARTIES

- 8.1 The Agreement regulates the relationship between the Parties during its validity.
- 8.2 Except as otherwise provided in this Agreement, the Parties shall in their relationship enjoy equal rights.
- 8.3 No Party shall without explicit consent of the other Party in writing in each case create obligations, accept commitments or waive rights on behalf of the other Party.
- 8.4 Each Party shall comply with the terms of Contract and be responsible for the performance of its part of Scope and the related contractual duties and shall engage such personnel and perform such services as may be required therein.
- 8.5 Except as otherwise agreed, there shall be no common pool of goods, material, equipment or other resources.

9. SUBCONTRACTING BETWEEN PARTIES

- 9.1 If any of the Party hereto subcontracts certain goods or services pertaining to its part of Scope to another party, then the resulting terms between such Party and the subcontractor/sub-vendor shall be governed by a separate subcontract. The liabilities/responsibilities of the Parties inter se under this Agreement shall not in any way be affected thereby.
- 9.2 For Components, if mutually agreed, M/s ----- shall place separate order for Disc Insulators for Transmission Lines on BHEL. The payment terms shall be mutually agreed between the Parties hereto at the time of placing the order.

10. SHARES OF SCOPE AND PORTION OF CONTRACT VALUE

- 10.1 The final Share of Scope of each party shall be defined according to the billing Break-up of the Customer.

- 10.2 Additions or amendments to the Contract or this Agreement, which result in changes to the Contract value or the internal allocation of Scope, shall lead to a corresponding amendment of the shares of Scope and portions of Contract value.
- 10.3 For determining the share of liabilities, it shall be in proportion to each Party's Share of Scope. (as per clause 10.1).

11. COMPLETENESS

- 11.1 Having due regard to the character, objectives and scope of the Project, the Parties acknowledge that the Consortium is obliged to deliver a plant which is complete and functional irrespective of all necessary supplies and services being expressly set forth in the Contract.
- 11.2 Save as otherwise provided herein, should additional supplies or services be necessary to perform the Contract, the related Cost shall be assumed by the Party or Parties, to whose part(s) of Scope such supplies or services can be properly referred with no additional consideration unless agreed upon by the Customer.
- 11.3 In the event that such additional supplies or services cannot be reasonably attributed to any one Party's or Parties part of Scope, then the Cost thereof shall be borne by both parties in proportion to their shares of Scope.
- 11.4 Should the additional supplies or services be the result of unclear interface definitions between parties, both Parties shall be required to participate in the sharing of such Cost in proportion to their respective shares of Scope.

12. CONSORTIUM LEADER

- 12.1 The Consortium Leader shall act as leader of the contracting Parties towards the Customer.
- 12.2 The Consortium Leader shall with due diligence look after the interest of other Party.

12.3 The Consortium Leader shall not make any commitments or concessions to the Customer affecting the other Party without first having received the explicit written (including email) approval of such Party. The Leader shall keep the other Party informed currently and promptly at regular intervals and the approval of the parties shall not be unreasonably delayed. In the event of delay the provision set forth in Clause 28 shall apply.

12.4 Obligations of the Consortium Leader

The tasks of the Consortium Leader shall include the following functions which require coordination of the two Parties:

- To provide coordination of the parties in the bidding phase and during the performance of the Contract.
- To conduct negotiations with the Customer or any third party, including the necessary correspondence.

- To arrange for exchanging information between both Parties.
- To provide information relating to all important matters which the Consortium Leader becomes aware of, to the other Party without delay and provide the other Party with copies of all important correspondence in its possession, particularly those relating to each Party's Part of Scope.

12.5 Obligations of the Joint Bidder

The Joint Bidder is responsible for:

- All the coordination and follow up for securing approvals from the customer and relevant authorities covering total scope of the tender.
- To provide information relating to all important matters which the Joint Bidder becomes aware of, to the other Party without delay and provide the other Party with copies of all important correspondence in its possession, particularly those relating to each Party's Part of Scope.

13. LIABILITY OF THE PARTIES

The liability of the parties shall be primarily be restricted to its performance of the duties set out in clause 12 above.

14. PROJECT MANAGEMENT

- 14.1 The current and running management of the project shall be carried out by two Project Directors, one appointed by BHEL and the other one appointed by M/s ----- . The Project Directors shall endeavor to attain unanimity on all issues. The overall requirements of the Project in order to complete the Project as per specification and time shall be laid down by the project director nominated by the Consortium Leader.
- 14.2 Upon request by one of the Project Directors any issue of major importance shall be referred to a steering committee which shall be established by the Consortium. The steering committee shall consist of two members, one appointed by BHEL and other appointed by M/s ----- . The steering committee shall meet when it deems necessary. Meetings of the steering committee may be held in person or by telephone or video conference or by an exchange of correspondence. The decision of the Steering Committee shall be final and binding on the Parties hereto.
- 14.3 Any decision having an impact on any of the Consortium Parties must be unanimous.

14.4 Organization and Administration

14.4.1 General

The Project Teams of each Party are created for administration of the Project to be led by Project Directors. The organization of the project teams by each party requires that a team shall be assembled which will comprise, as the job develops, the key personnel engaged in the administration on the works within the Project. The Project Directors are responsible for coordinating the interfaces between each Party. Necessary co-ordination meetings shall be held at required intervals at a place agreed between both the Parties.

However, it shall also be recognized that each of the Parties to the Consortium is an autonomous entity with specific identifiable duties and responsibilities to perform to achieve the successful completion of the Project.

The responsibilities for provision and facilities for sites shall be as per Appendix-4A.

14.4.2 Function of the Project Team

The following administrative, commercial and engineering functions to be fulfilled by the project team under the management of the Project Directors shall include, but not be limited to:

- a, Consolidated planning, scheduling and auditing of time schedules
- b, Direct implementation of corrective actions with the Parties of the Consortium Overall quality assurance-direct implementation of corrective actions with the Parties to the Consortium
- c, Engineering - Coordination of the design work to be performed by each Party
- d, Site - Coordinate the site activities and communicate and coordinate with the customer at site.
- e, Interface - Coordinate the interfaces between the customer and the Consortium and also between the Parties of the Consortium
- f, Supervise deliveries and services from BHEL
- g, Supervise deliveries and services from M/s -----.
- h, Contract and finance administration-handling of all contractual & Financial matter with the customer.
- i, The Project Directors will act to minimize any interface problems of Project Team duties with those of the Parties of the Consortium and to secure an effective cooperation from all concerned in common efforts.
- j, Although the principal areas of interface lie in planning and quality assurance all activities of the Project involve constant cooperation among the Parties of the Consortium in order to achieve the successful completion of the Project.

14.4.3 Organization of the Project Team

The organization of the project team is shown in Appendix 4A and the Parties shall hold the respective position set out therein. The parties shall mutually agree upon which individuals shall be members of

the project team.

14.4.4 Information and Meetings

14.4.4.1 Each Party is obliged on request to submit the information needed by the other Party for the preparation of its individual tender as well as the performance of its Part of Scope and to participate in the planning meetings requested by a Party.

14.4.4.2 At the request of the Consortium Leader, the other Party shall participate in negotiations with the Customer or any third Party in respect of the Project.

14.4.4.3 Each Party shall have the right to participate in any meetings held with the Customer and shall be notified in writing (including e-mail and tele-fax) well in advance of such meetings.

14.4.4.4 Meetings of the Project Management may be held in person or by telephone or through video conference or by exchange of correspondence.

15. MINUTES OF MEETING

15.1 Minutes of Meeting shall be kept by the Consortium Leader of all meetings of the Project management or other meetings between the Parties and between Parties and Customer and copies of these minutes shall be promptly distributed to the Parties.

15.2 Such minutes shall be deemed approved by a Party unless written disagreement therewith stating the reasons therefore is notified by the Other Party within fourteen days (14 days) from receipt thereof.

16. BID PRICE

16.1 The consortium leader shall prepare the price for its portion of the scope (Switchyard) to be quoted to the customer.

16.2 The joint bidder shall provide the prices of Transmission Line scope to the consortium leader and shall be eligible to claim the prices as quoted to the Consortium leader.

17. COSTS

17.1 Except as otherwise expressly set forth, each Party shall bear all costs incurred by it in connection with this Agreement such as the costs of Tender preparation, submission, attending to bidding and follow up, participation in the Project management, Contract negotiations and performance hereunder.

17.2 If there are any common costs incurred (Viz. Tender fee), then the costs shall be equally borne by both the parties

18. FINANCE

Unless otherwise agreed upon between the Parties, each Party shall arrange all financing and when applicable which it deems necessary for its Part of Scope. Each Party shall bear itself all costs and risks in connection with such financing.

19. BONDS, GUARANTEES, SECURITY

19.1 At Bidding Stage for lodging the bids, the Consortium Leader shall furnish the bid guarantee as per the bid specification. For this, the other Party shall provide a counter guarantee before hand in favour of the Consortium Leader for a value in proportion to the value of its Share of Scope.

19.2 In case of award of Contract and contract split, each Party is responsible to furnish the required guarantees(VIZ. Performance security, Security deposit, Bond etc) of their respective Contracts, if acceptable to the Customer. If not then the Consortium Leader will furnish all such guarantees to Customer and other Party to furnish counter guarantees to the Consortium Leader prior to submission of guarantees to Customer.

19.3 If these bonds of guarantees are invoked by the Customer in terms of the provisions of the Contract, the parties shall be liable in accordance with clause 22 and 33, mentioned below.

19.4 The counter Guarantees will remain valid till the main guarantees stay valid with Customer or settlement of claims/ dues between Parties are carried out fully, whichever is later. The counter guarantees are to be extended by the Party as communicated by the Consortium Leader time to time failing which Consortium Leader will have full right to invoke the counter guarantees.

20. BILLING and PAYMENT

- The terms of payment for _____ Scope of Work shall be in conformity with the terms of payment as per end Customer NIT on back-to- back basis.
- All payments (as agreed between the parties) shall be made by BHEL to _____ after receipt of payments from end customer not later than 30 (Thirty) days after receipt of payment from M/s RRVPNL.
- In case any ad-hoc or consolidated payment is received by BHEL from M/s RRVPNL including any verified invoices pertaining to _____ without specifying any invoice reference then BHEL will release payment to _____ in proportion to their then verified invoices.
- Delay in payments shall not entail _____ to claim any compensation from BHEL.

21. TIME SCHEDULE

_____ have agreed to deliver the aforesaid work within a timeline of Eighteen (18) months from the date of Handing over of profiles by RRVPNL in line with tender specification requirement.

It is clearly understood and agreed that time is the essence of the resulting contracts with M/s RRVPNL

and strictly adhered to by _____. _____ have agreed to perform all activities as defined in the scope of work as per the L1/ L2 schedule to be agreed with M/s

22. LIABILITY — GENERAL PRINCIPLES

- 22.1 Each Party shall be liable for carrying out its Part of Scope under this Agreement as if it had concluded a separate contract with the Terms and Conditions of the Contract with the Customer. Save as otherwise expressly provided herein, each Party shall assume all technical, commercial, financial, fiscal and legal risks, including but not limited to the risk of destruction or deterioration as well as the risk of delayed payments or no payment in relation to its Part of Scope.
- 22.2 In the event there is a breach of the Contract by the Customer, no Party shall abandon or otherwise cause or delay performance of the Contract or this Agreement without the prior written Consent of the other Party which Consent shall not be unreasonably withheld.

23. LIABILITY FOR INFORMATION:

BHEL is the Consortium Leader of the Project. BHEL and m/s -----, however, shall be responsible for the design and services of their respective part of Scope as defined in the enclosed Appendices. In case there are any extra costs involved to make good any component, product/ services due to incorrect supply of information and /or component and products and services by a Party to another, the same shall be borne by the Party who supplied incorrect, information/component/ product/ services. The Parties are not liable towards each other for any consequential damages.

24. RESPONSIBILITY FOR PROJECT ENGINEERING

The project design performed by BHEL and m/s ----- for their respective share of scope must be strictly observed and changed only with the written consent of the Party that carries the responsibility of the study.

25. LIABILITY FOR DEFECTS

- 25.1 Each Party shall at its own cost remedy defects in its part of supply.
- 25.2 If the cause of a defect cannot properly be attributable to any Party, the cost to remedy defect shall be paid by the parties in proportion to their respective Share of Scope.
- 25.3 Any defect shall immediately be corrected by the Party in whose Part of Scope it is located or occurs. The costs shall be borne by that Party who caused the defect. These costs shall also include expenses for establishing the defect, for additional measures necessitated as a result of the defect, for changes in the Part of Scope of another Party necessitated by correction of such defect, and for repeat inspections or acceptance tests.
- 25.4 If performance guarantees specified in the Contract are not met, liability shall rest solely with the

Party responsible.

- 25.5 Any other claims of the Customer shall be borne by the Party responsible for the event giving rise to the claim

26. LIABILITY FOR DAMAGE TO PROPERTY OR PERSONAL INJURIES.

Each Party shall be liable for property damage (including costs and losses arising there from) to the equipment, material, supplies or other property of any other Party, or of the Customer or of third parties as well as for personal injuries or death (including costs and losses arising there from) , provided (i) such property damage or personal injury or death is caused by negligence of that Party, its personnel, its subcontractor or agents, or (ii) a mandatory law makes such Party liable for such property damage or personal injury or death.

27. LIMITATION OF LIABILITY

- 27.1 No claims for loss of revenue, loss of profit, production stoppage and loss of information and data, interest losses due to delayed or postponed payments from the Customer or any other indirect, or consequential damages shall be allowed between the parties.
- 27.2 Each Party shall be liable to the other Party for damages which it, its employees, agents or subcontractors cause to the other parties, including, damages caused through breach of its obligations. However, it is agreed that the total liability for each of the Parties for damages shall not exceed the Contract value for the Part of Scope of each Party.
- 27.3 Any limitation of liability provided for in this Agreement shall apply also to the liability of any one Party for damages caused by a third Party executing any obligation under this Agreement for such first mentioned Party and other Parties of the Agreement.
- 27.4 Notwithstanding anything contained in this Agreement in the event of gross negligence or intent of a Party including its employees, agents or subcontractors, the liability of the responsible Party shall be unlimited

28. DELAYS AND DISRUPTIONS

- 28.1 If the Consortium is liable to the Customer for payment of liquidated damages or like for delay and this is due to one of the Parties, such Party shall pay such damages or the like in accordance with the Contract terms & conditions up to 10% of the Contract Value for its Part of Scope and balance damages if any will be paid by both the parties including the defaulting Party in proportion to their respective Shares of Scope.
- 28.2 If the delay is due to both parties, liquidated damages or the like shall be paid by both parties in proportion to their contribution to the delay, duly identifiable.
- 28.3 If the responsibility for the delay cannot be properly referred to any of the Parties, claims for such liquidated damages or the like shall be paid by the Parties in proportion to their respective shares of

Scope.

- 28.4 If one Party causes disruptions resulting in delays including delay in the Part of Scope of another Party, the Party causing disruptions shall be liable for the extra Cost incurred by the other Party. Claims for such extra costs shall not be submitted continuously, but shall be deemed as a part of the accumulated balance of all such claims. The accumulated balance shall be settled at the time of Takeover of the Project.
- 28.5 In the event the Customer deducts liquidated damages from the non-defaulting Party for the breaches/defaults of the other party, the defaulting Party shall reimburse the non defaulting Party in line with above. Such reimbursements between parties will be settled within 3 months from the end of contract period of individual Customer contract.

29. TECHNICAL PERFORMANCE GUARANTEES

- 29.1 If the Customer claims Penalty or the like for non-compliance with technical performance guarantees, the Party responsible for the Part of Scope (Appendix 1) which has caused the non-compliance shall pay such liquidated damages or the like, specified in the Contract. If the non-compliance has been caused by the Parts of Scope of both parties, Penalty or the like shall be paid by such Parties in proportion to the non-compliance caused by their respective Parts of Scope.
- 29.2 Claims for liquidated damages or the like which cannot be properly referred to the Part of Scope of any of the Parties shall be paid by the Parties in proportion to their respective Shares of Scope.

30. INDEMNITY/JOINT LIABILITY

- 30.1 If any claim, for which one or more Parties is/are liable, is asserted against another Party then the liable Party promptly shall defend and hold harmless the affected Party and indemnify it in respect of such claims. The Party against whom the claim is initially asserted shall not make any admission or prejudicial statements or accept any liability thereof without the prior written (including email and tele-fax) consent of the defaulting Party.
- 30.2 Claims asserted against the Consortium or any Party for which no individual Party or Parties can be held liable under this Agreement shall be discharged jointly by all Parties in proportion to their respective Shares of Scope.
- 30.3 Such joint discharging shall also be applied if and to the extent that a limitation of liability (including a disclaimer for indirect and consequential damages/losses in the Contract) against the Customer cannot be enforced unless the unenforceability of the limitation of liability was due to gross negligence or intent of a Party in which case such Party shall indemnify the other Party for such claims.

31. PROVISIONAL SETTLEMENT

Should the Parties not come to an agreement regarding their respective responsibility for any claim from the Customer, such claim shall be provisionally settled jointly by both Parties in proportion to

their respective Shares of Scope until the Parties arrive at a settlement amicably or until the Arbitration Tribunal according to clause 42 has finally determined the matter.

32. DEFAULT

32.1 If any defect, delay or other default should occur which could lead to cancellation or termination of the Contract by the Customer or to other serious consequences and, upon written notice being served by the other Party on the Party responsible thereof, if such Party does not immediately initiate adequate remedial measures or does not succeed with such measures within the period set forth in the Contract or, if no period is set forth in the Contract, within a reasonable time, then the other Party after serving a further written notice, are entitled to carry out such necessary remedial measures and the defaulting Party shall indemnify the Party/Parties performing the remedial work for the extra Cost incurred thereby to the extent such Cost is reasonable and justifiable.

32.2 If one Party is in default of its obligations set forth in this Agreement and/or the Contract and such Party, due to its insolvency, is not in a position to discharge its liabilities, such liability shall be discharged by the other Party, provided, that nothing contained herein shall release the defaulting Party from its liabilities hereunder.

32.3 If any of the events mentioned in Clause 33.1 should occur or in case a Party should become insolvent, the other Party shall, upon notice to the Party concerned, (the "Defaulting Party") be entitled to take over and complete any Part of Scope of the Defaulting Party. In such case, the other Parties shall automatically have the right to receive any and all payments which would otherwise be due to the Defaulting Party and apply the proceeds thereof to cover all Cost incurred by the other Party in taking over and completing (by subcontracting or otherwise) the Defaulting Party's Part of Scope and to cover any and all outstanding warranties or other obligations of the Defaulting Party. In addition, the other Parties shall have the right of exclusive use and possession of all the Defaulting Party's equipment being utilized for the Project, temporary works, materials, drawings, designs and other intellectual property rights and all other items prepared or used for the Project and shall have a preferred lien on all of the foregoing in order to satisfy any cost incurred by the other Party in completing the Defaulting Party's Part of Scope

32.4 In the event of any party becomes bankrupt or declared as insolvent, the other party may at any time, terminate the contract by giving a written notice of 30 days to the party at default. In such case if any party is required to execute the work on behalf of the other party (Party at default) and sum incurred towards execution of such balance work exceeds the contract price, the party performing the work shall be entitled to recover such differential amount along with

the overheads from the party at default through legal remedies available under Law of India.

33. CANCELLATION OR TERMINATION FOR DEFAULT

- 33.1 In the event of a cancellation or termination of the Contract in whole or in part by the Customer because of a default by any of the Parties as stated in Article 32, the liable Party shall compensate the other Party affected towards the actual costs and losses incurred as a result thereof.
- 33.2 Any damages payable to the Customer due to such cancellation or termination shall be paid by the Party or Parties in default.
- 33.3 The provisions of this clause take priority over any other provisions of this Agreement in case of cancellation or termination of the Contract.

34. INSURANCE

The parties shall insure adequately all the risks as per Customer's Contract provisions and shall take insurance covers individually covering their respective scope of work.

35. CLAIMS AGAINST THE CUSTOMER

If any Party considers that it has a claim against the Customer, it shall, after consultation with the other Party, be entitled at its own Cost to assert the claim and take all actions necessary to reach a final settlement of the claim including arbitration, court proceedings and enforcement proceedings. If in connection therewith it should become necessary for the Party which has the claim to act both in its own name and in the name of the other Party, then the other Party shall authorize the first Party to act in its name to the limited extent set forth herein. The first Party shall indemnify and hold harmless the other Party from all claims which may be brought against them as well as from all damages, losses and expenses incurred by them as a result of such actions as aforesaid (except such claims, damages etc. for which one or more of the other Party is liable according to other provisions of this Agreement). The respective Party who is making such a claim shall bear all costs relating thereto.

36. TAXES

- 36.1 Each Party shall be responsible for paying all taxes, duties and similar charges ("Taxes" for the purpose of this clause) levied upon it in connection with the performance of its Part of Scope and carry out all necessary filings, registrations and fulfill all other obligations towards relevant fiscal authorities in relations thereto.
- 36.2 Should, however, the fiscal authorities in the country where the Scope has to be completed impose Taxes on the basis of the total Contract Value rather than on the individual Portions of contract Value,

then all Parties shall bear the burden of such taxes in proportion to their respective Shares of Scope. The Project management shall in such cases discuss and decide how and by whom all necessary filings, registrations and other required formalities for the Consortium are going to be handled as well as possible remuneration for the fulfillment of such task.

36.3 Nothing contained in this clause shall limit the responsibilities of each Party to keep proper accounts, documentation and to comply with the relevant tax regulations in the country where the Scope has to be completed.

36.4 Each Party shall be responsible for due payment of all Taxes in respect of its own personnel as well as the personnel of its subcontractors.

37. CONFIDENTIALITY

37.1 Each of the Parties agrees to keep confidential all Information received from the other Party in connection with the Contract. "Information" shall mean any information or data (including, without limitation, business and technical documents, drawings, specifications, data transferred by electronic form such as email, products, software) disclosed by either PARTY to the other PARTY pursuant to this Agreement, either in a tangible, oral or visual form, provided, however, that; (a) if the information or data is disclosed in a tangible form, it shall be clearly marked as being "confidential" and (b) if the information or data is disclosed orally or visually, it shall be identified as being confidential upon disclosure and shall be reduced to writing clearly being marked as "confidential" immediately within seven days after such oral or visual disclosure

37.2 Each of the Parties also agrees not to make use of such information for any Purpose(s) other than (i) to further the purpose of the Consortium and (ii) to perform its Part of Scope.

37.3 This undertaking shall be valid until 5 years after the expiration of this Agreement.

37.4 The above undertaking in this clause shall, however, not apply to information which through no fault of the receiving Party, is or becomes generally known through publication or otherwise, or is known as a matter of public record, or generally known and properly available to the receiving Party and/or to others in a reasonable integrated form or the receiving Party can establish in its possession, without any restrictions as to its disclosure, at the time of its receipt, or is subsequently lawfully acquired by the receiving Party independently of any other Party, or is developed independently by the receiving party and without reliance upon information disclosed hereunder, by enforcement of law, judicial or quasi-judicial order or a government order/ directive or a court order the receiving PARTY is required to disclose; or

37.5 If a Party in order to perform its Part of Scope needs to disclose to a subcontractor information received from another Party, then such first mentioned Party shall have the right to do so to extent needed for such purpose but shall first obtain from such subcontractor a confidentiality undertaking consistent with the provisions of this Clause.

38. INFRINGEMENT

It is specifically agreed upon by and between the Parties that the Designs, Drawings, Specifications and other intellectual material (herein after referred to as " IPR's") provided and disclosed by one Party to other in pursuance of and in the course of this agreement is a proprietary material of the Party who has provided & disclosed the same and shall always remain an absolute property of that Party ("the Proprietor"). Parties to the Agreement shall have no right whatsoever to retain, modify, alter, use and / or infringe the same without written permission of Proprietor during the course and /or anytime after completion/termination of this Agreement and Contract. It is further agreed that Party shall immediately return the IPRs to the Proprietor or destroy the copies of IPR's as per the instructions of the Proprietor after completion/termination of this Agreement and Contract. It is further agreed that the Party shall furnish an Undertaking to the Proprietor in a format provided by the Proprietor about non- retention and destruction of copies of the IPRs to the satisfaction of the Proprietor.

Each Party shall assume all liability under the Contract for infringement of patents or other industrial/intellectual property rights belonging to third parties and caused by its Part of Scope and shall indemnify and hold the other Party harmless from all such liability.

Publications of any kind referring to the work of another Party or of the Consortium shall require the prior approval of all Parties.

39. ENTIRE AGREEMENT AND CHANGES

- 39.1 This Agreement with all its appendices constitutes the entire agreement between the parties on the subject matter hereof and supersedes any and all prior understandings, correspondence or agreements (oral or written) between the parties and can only be modified or amended by written agreement between parties hereto.
- 39.2 If any provision of this agreement is or becomes invalid, such invalidity shall not affect the other provisions of this Agreement

40. ASSIGNMENT

Saving the appointment of the sub contractors/sub vendors in terms of this Agreement, the rights and obligations of a Party in accordance with this Agreement may only be assigned with the prior approval of the other Parties and the Customer in writing, which approval shall not unreasonably be withheld or delayed.

41. DURATION OF AGREEMENT

- 41.1 This Agreement shall become binding and enforceable upon execution thereof by all parties and shall

terminate or come to an end on the earliest occurrence of the following events (whichever is later);

- i. The Tender has not been submitted to the Customer within the time stipulated for tendering.
 - ii. Award of the Contract as contemplated by the Agreement to a Party or parties other than the Consortium
 - iii. Final rejection by the Customer of the Tender.
 - iv. Expiry of the period of validity of the Tender unless the Parties have jointly agreed to extend the validity of the Tender beyond such period, or,
 - v. Fulfillment · in case of award of the Contract to the Consortium · of all obligations by the Customer and the Parties in respect of the Project and fulfillment of all obligations by the Parties under this Agreement and final settlement of accounts between the parties including discharge of Bank Guarantees.
- 41.2 In the event that any one Party refuses to agree to extend the validity of the Tender beyond the validity period of the Tender as stated under 41.1.iv then the other Party shall be at liberty to extend the validity of the Bid and execute the Contract as sole Bidder without any Liability devolving on the other Party.
- 41.3 The Memorandum & Articles of Association / Constitution of both the parties authorizes them to enter into such agreement as an independent entity. Both the parties agrees that it would be obligatory on its part to comply with the provisions of all statutes, ordinance, rules and regulations applicable to the Products manufactured and supplied pursuant to this Agreement and from time to time.
- 41.4 All notices required to be given or served by either party hereto on the other Party shall be deemed to have been given or served if the same shall have been delivered to, left at or sent by registered post acknowledgment due by either party to the other at its registered office provided that either party shall have the right to inform the other of any other address at which such shall be received by it, and the same shall be deemed to have been duly given or served if the same shall have been delivered to, left at or sent by registered post acknowledgment due to such party at such other address/addresses notices including e-mail and tele-faxes. Both the parties shall be under obligations to inform each other change of postal address, e-mail, tele-faxes, if any. In case of failure, the notice served on the last known address shall be deemed to have been duly served upon the party.

42. DISPUTES AND APPLICABLE LAW

In case of disputes, the Parties hereto shall mutually endeavor to resolve any difference or dispute arising out of this Consortium Agreement amicably failing which all such disputes shall be referred to the Steering committee to be constituted in pursuance of this Agreement. In the event the differences still remain unresolved then the same shall be referred to sole arbitration in terms of the provisions of Indian Arbitration & Conciliation Act, 1996 of India and its subsequent amendments thereof, by appointing a sole arbitrator mutually agreed by both the parties. The arbitration proceedings shall be conducted in English language in accordance with the provisions of Arbitration and Conciliation Act. 1996 and its

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subsequent amendments. The decision of the arbitrators shall be final and binding upon the Parties.
The seat of arbitration shall be at Delhi.

This Agreement shall be governed by and interpreted in accordance with Laws of India.

With regard to the adjudication of disputes in relation to or arising out of this agreement, Courts at New Delhi shall have the exclusive jurisdiction for adjudication of the said disputes.

This Agreement has been executed in two (2) originals, each of which shall be deemed an original, and each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed in two originals by their duly authorised representatives on the day and year first above written:

For and on behalf of
Bharat Heavy Electricals Limited

For and on behalf of
M/s -----

WITNESS

1. Signature
Name
Address

2. Signature
Name
Address

1. Signature
Name
Address

2. Signature
Name
Address