

Scope of Enquiry

Item Name: Bolted Support Steel Structure (Cable Tray)

Projects: North Karanpura Unit-2 & 3

E-bids on GeM are invited from bidders for the supply of **Bolted Support Structure (Cable Tray) for 3x660 MW North Karanpura Project Unit-2 & 3, Tandwa, Jharkhand** as per requirement mentioned below:

Sl. No.	Material Code & Item Description	Total Quantity (in Set)	Lot No.	Lot Quantity (in Set)	Date for Supply Completion
1	Material Code W97717001675 Support Structure As Per TDC No. HXE/SK/2312	02 Sets	1	1 Set	31.03.2023
			2	1 Set	30.05.2023

Buyers Specific Additional Terms & Conditions in addition to GTC**Item Name: Bolted Support Structure (Cable Tray)****Projects: North Karanpura Unit-2 & 3**

Sl. No.	Terms	Description	Your confirmation
1.	Confirmation to compliance of General terms and conditions on GeM 4.0 (Version 1.5)	In addition to the terms & conditions mentioned in below table, General terms and conditions on GeM 4.0 (Version 1.5) or subsequent rules/policies issued by GeM shall be applicable against this enquiry. Kindly confirm same is acceptable to you.	
2.	Documents Checklist:	<p>Kindly confirm that the following documents have been submitted along with your offer:</p> <ol style="list-style-type: none"> 1. Requisite EMD 2. Pre-Qualification Requirements (as defined in Annexure-1). 3. Any other document as specified in "Buyers Specific Terms & Conditions" <p>Please note that all details required in supplier registration form to be filled and submitted on online supplier registration portal on www.bhel.com along with complete documents.</p>	
3.	Pre-Qualification Requirements	The Pre-Qualification Requirements have been compiled and placed at ANNEXURE-1. All the bidders should ensure submission of complete details and documents as called for in these requirements. The Offers submitted by the bidders would be scrutinized with respect to Pre-Qualification Requirements first. Techno-Commercial offer of only those bidders shall be evaluated who meet the Pre-Qualification Requirements.	
4.	Special Instruction of Technical requirement	<ol style="list-style-type: none"> 1. Test certificates are required. 2. Vendor to refer Annexure-1 of TDC No. HXE/SK/2312 for drawings and its quantities. 3. Final paint to be done at site. 4. For any deviation from BHEL manufacturing drawings, Vendor to take approval from BHEL, Haridwar before manufacturing of items. 	
5.	Evaluation criteria	Evaluation shall be done based on total landed cost up to BHEL Project site.	
6.	Price basis	<p>Prices should be quoted on F.O.R. Destination basis including of freight, packing & forwarding charges, GST etc. Item to be supplied directly to 660 MW North Karanpura site.</p> <p>Bidder to Confirm that the prices will remain firm during the entire validity and execution of the Project.</p> <p>Please note that transit insurance of material shall be in BHEL scope only. Please quote your offer accordingly.</p>	
7.	GST Rate	Please mention here the applicable GST % rate included in the prices quoted by you.	
8.	BID TO RA	Opening of Price bid & RA shall be conducted for only those bidders who qualifies PQR and whose techno-commercial bid is acceptable to BHEL. RA will be done amongst 50% lowest priced technically qualified bidders as per GeM RA guidelines. Please accept.	

9.	Delivery	Bidders are requested to offer their best possible Lot wise delivery in number of weeks/ months from the date of Purchase Order/documents approval. BHEL reserve right to reject offer of the bidders not meeting BHEL's delivery requirement.	
10.	MDCC clause	Material shall be dispatched only after issue of material dispatch clearance certificate (MDCC) by BHEL. All test certificates and relevant documents are to be sent to BHEL before dispatch of material for issue of MDCC, which will be issued after review of test certificates etc. MDCC will be issued within 07 days of receipt of these documents once found complete in all respects. In case of any delay on account of BHEL in issuing MDCC, delivery shall be extended by no. of days in excess of 7 days taken by BHEL in issuing MDCC and delays shall be dealt on merit basis. Material is to dispatched within 07 days of receipt of MDCC from BHEL without waiting for PO amendment.	
11.	Quality Requirements	Vendor to confirm for Inspection by BHEL/BHEL TPIA, M/s Intratek, as per BHEL Approved Quality Plan. Vendor to submit Quality Plan for BHEL approval. Please Confirm.	
		Vendor to confirm to follow terms and conditions as per finally BHEL Agreed Quality Plan after placement of Purchase Order. Please Confirm.	
12.	Guarantee	Kindly confirm that Guarantee would be provided for a period of "24 months from the supply end date" . Supplier shall be responsible for free replacement of defective equipment / material at our site.	
		Please note that offers with guarantee period lesser than above mentioned guarantee period may result in rejection of the offer.	
13.	Manufacturing clearance and sequence of supply	In case of ordering, vendor has to take manufacturing clearance from BHEL before starting manufacturing of material. No manufacturing is to be started without getting clearance from BHEL. Vendor to supply material as per priority/sequence provided by BHEL after placement of PO. Kindly confirm.	
14.	Sharing of Drawings	bidders shall submit endorsed copy of attached FCA to get soft copy of drawings @ manojy@bhel.in and sagargupta@bhel.in and rkrahi@bhel.in	
15.	Make in India & MSE Purchase Preference guidelines:	Make in India circular Ref. No. P-45021/2/2017-PP (BE-II) dtd. 04/06/2020 and subsequent orders shall be applicable for this procurement and only Class-I local supplier & Class-II local suppliers shall be eligible to bid in procurement. Purchase preference shall be given as per applicable Make in India guidelines and as per functionalities enabled on GeM portal.	
16.	Packing	Each item must be tagged with same description & Qty. as in Vendor Packing List. Kindly confirm.	
		Please ensure proper and sturdy packing suitable for handling at site or during transportation up to site in healthy condition.	

17.	Sharing Original LR and Original Packing list after dispatch of material	Bidder to confirm that original LR/GR consignee copy (non- receipted copy) and original Packing List to be couriered (immediately after dispatch) to BHEL-Haridwar at the address provided by Purchase immediately after billing of material ensuring receiving of documents within 01 week. Kindly confirm.									
18.	Penalty / LD Clause	LD shall be as per clause no. 15 (iii) of General terms and conditions on GeM 4.0 (Version 1.5). The date of LR (Lorry Receipt) would be treated as the date of delivery for penalty purposes.									
19.	Payment Terms	<p>The payment term shall be done after issue of consignee receipt-cum acceptance certificate (CRAC) as per the below details:</p> <table border="1" data-bbox="493 485 1360 674"> <thead> <tr> <th data-bbox="493 485 915 527">Type of Bidder</th> <th data-bbox="915 485 1360 527">Payment Terms (Number of Days)</th> </tr> </thead> <tbody> <tr> <td data-bbox="493 527 915 579">Micro & Small Enterprises (MSEs)</td> <td data-bbox="915 527 1360 579">45 days</td> </tr> <tr> <td data-bbox="493 579 915 632">Medium Enterprises</td> <td data-bbox="915 579 1360 632">60 days</td> </tr> <tr> <td data-bbox="493 632 915 674">Non MSME</td> <td data-bbox="915 632 1360 674">90 days</td> </tr> </tbody> </table> <p>Subject to submission of 08 Sets of non-discrepant documents along with original MDCC & LR as per terms & conditions of GEM contract.</p>	Type of Bidder	Payment Terms (Number of Days)	Micro & Small Enterprises (MSEs)	45 days	Medium Enterprises	60 days	Non MSME	90 days	
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Micro & Small Enterprises (MSEs)	45 days										
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Non MSME	90 days										
20.	Quantity Variation	<p>BHEL reserves the right to cancel tender or reject any or all the quotations without assigning any reasons thereof.</p> <p>BHEL also reserves the right to increase or decrease the tendered quantities or quantity of individual material code may be dropped as a whole also.</p> <p>Vendors should be prepared to accept order for reduced Quantity without any extra charges. Vendor should also be prepared for giving discount in case of Increase in Quantity.</p> <p>Vendor has to take manufacturing clearance from BHEL before starting manufacturing of material. In case ordered quantity is reduced at the time of manufacturing clearance, then payment shall be made accordingly as per decreased quantity. Kindly confirm.</p>									
21.	Risk Purchase	<p>In case of abnormal delays (beyond the maximum late delivery period as per LD clause) in supplies / defective supplies or non-fulfilment of any other terms and conditions given in Purchase Order, BHEL may cancel the Purchase Order in full or part thereof, and may also make the purchase of such material from elsewhere / alternative source at the risk and cost of the supplier. BHEL will take all reasonable steps to get the material from alternate source at optimum cost. If bidder does not agree to the above Risk Purchase Clause, BHEL reserves the right to reject the offer. In case for compelling reasons BHEL accepts the offer without acceptance of this clause by the bidder and in the eventuality of Risk Purchase, appropriate action will be taken as per BHEL extant rules. This will be without prejudice to any other right of BHEL under the contract or under General Law. Kindly confirm.</p>									

22.	Action against Bidders / vendor / supplier / contractor in case of default	<p>In order to protect the commercial interests of BHEL, BHEL shall take action against supplies / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business/ money/ reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding process or influence the price etc.</p> <p>Suspension of Business Dealings could be in the form of “Hold” or “Banning” a supplier/ contractor or a bidder and shall be as per “Guidelines for Suspension of Business Dealings with Suppliers/ Contractors” available at BHEL’s website “https://www.bhel.com/guidelines-suspension-business-dealings-supplierscontractors”</p>	
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SPECIAL NOTE FOR BIDDERS:

Following documents are an integral part of this tender enquiry and endorsed copies of these documents (duly signed and stamped on each page, as a token of acceptance) are to be uploaded along with offer on GeM procurement portal.

1. Please submit signed & Stamped copy (each page) of duly filled of confirmation column of “Buyers Specific Terms & Conditions (Annexure-B)” and its clause wise supporting documents where required.
2. Please submit signed & stamped copy (each page) of PQR documents with proper filled information and related supporting documents as mentioned in PQR.
3. Please submit signed & stamped copy (each page) of FCA documents for obtaining BHEL drawing from BHEL for subject NIT with proper filled information and related supporting documents as mentioned in FCA.
4. Signed & Stamped copy (each page) of Standard Quality Plan (SQP) from bidder.

Pre-Qualification Requirements

S. No.	Requirement description	Vendor's confirmation
1.	Bidder/Vendor should have successfully fabricated and supplied Cable tray items.	
	Following condition to be fulfilled for the above: i) Minimum 13.5 MT in not more than two orders in one financial year.	
	ii) Date of supply for each order should not be earlier to 7 years from the enquiry date.	
2.	In support of the above Clause no. 1, Bidder/Vendor to submit following documents:	
	i) Un-priced copy of Purchase Order.	
	ii) Inspection documents or dispatch documents duly signed and stamped.	
	iii) Any Drawing /Documents clearly stating the item details, weight and quantity.	

Note:

1. Against vendor's replies, BHEL reserves the right to ask for more information / documents/clarifications.
2. Vendor's offer shall not be considered if vendor fails to furnish the document / information / clarifications as mentioned above or vendor doesn't meet the acceptance criteria (mentioned above).
3. In case of information/data furnished by the vendor found false/incorrect, BHEL reserves the right to reject their offer for the above item.

PRE QUALIFICATION REQUIREMENTS FOR CABLE TRAY OF ACC, NORTH KARANPURA

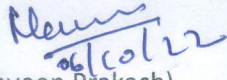
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Following conditions to be fulfilled for the above:

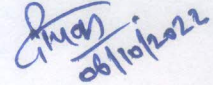
- i) Minimum 13.5 MT in not more than two orders in one financial year.
- ii) Date of supply for each order should not be earlier to 7 years from the enquiry date.

2. In support of the above Clause 1, Bidder/Vendor to submit following documents:

- i) Un-priced copy of Purchase Order.
- ii) Inspection documents or dispatch documents duly signed and stamped.
- iii) Any Drawing /Documents clearly stating the item details, weight and quantity.


(Naveen Prakash)
AGM/ HXE

On leave
(Deepak Kumar Yadav)
MANAGER/ HXE


(Deepak Kumar)
MANAGER/ HXE



HARDWAR

Technical Delivery Condition for procurement of Bolted Steel Structure Assembly (cable tray)

HXE/SK/2312
Rev. No. 00

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SUPERSEDES INVENTORY

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Bolted Steel Structure material shall be fabricated with vendor material and supplied in assembled condition along with its components as per drawing. Bolted Steel Structure shall be dispatched after being duly tested and securely packaged.

Following condition of delivery may be noted:

1. Bidder shall supply pre-fabricated (shop fabricated) bolted structural steel materials for ready to erect condition. Only bolted connection and final painting shall be performed at the site.
2. Quantity of each assembly has been indicated in annexure-1.
3. During erection stage of the bolted steel structure, any manufacturing error shall be rectified by vendor at site without any cost implications.
4. Fasteners are not in vendor's scope.
5. Surface Preparation- Shot blasting to SA 2½ (Surface profile 40-60 micron) ISO 8501-1, Wire brush/ hand tool cleaning for inaccessible area.
6. Painting shall be done in each assembly as specified :
Primer - Epoxy based Zinc phosphate – DFT 50 µm
Intermediate - Epoxy intermediate coat – DFT 50 µm
Final painting shall be done at site.
7. Holes of the connecting plate on top of trusses with holes made in mating component of trusses are to be made with same template.
8. List of documents required to be submitted by bidder at the time of dispatch:
 - i. Test certificate of materials
 - ii. NDT certificate of welds
 - iii. Dimensional report

As per customer approved QP
9. **Material: Mild steel –**
 - (a) Rolled sections shall be of grade designation E250, **Quality A**, Semi-killed/ killed conforming to IS 2062.
 - (b) All steel plates shall be of Grade designation E250, **Quality BR** (fully killed), conforming to IS 2062 and shall pass the impact test value at room temperature. Plates beyond 12 mm thickness and upto 40 mm thickness shall be normalized rolled. Plates beyond 40 mm thickness shall be vacuum degassed and furnace normalized and shall also be 100% ultrasonically tested as per ASTM-A578 level B-S2.
10. **Material: Medium and High tensile steel –**
 - (a) Rolled sections and plates shall be of grade designation E350 or higher, **Quality B0**, (Fully killed) conforming to IS 2062. All steel plates beyond 12 mm thickness and upto 40 mm thickness shall be controlled rolling. Plates beyond 12 mm thickness and upto 40 mm thickness shall be normalized rolled. Plates beyond 40 mm thickness shall be vacuum degassed and furnace normalized and shall also be 100% ultrasonically tested as per ASTM-A578 level B-S2.

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**Technical Delivery Condition for
procurement of Bolted Steel Structure
Assembly**

HXE/SK/2312
Rev. No. 00

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INVENTORY

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RECORDS OF CHANGES

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WORKED BY

DEEPAK KUMAR

TkkapdrkZ
CHECKED BY

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Sample Format for Certification under preference to Make in India order

(To be provided from the Statutory Auditor or Cost Auditor of the Company (in case of companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of suppliers other than companies))

Certificate

In line with Government Public Procurement Order No. P-45021/2/2017-PP (BE-II) dated 04.06.2020, we hereby certify that we M/s _____ (supplier name) are local supplier. The percentage of local content in the items _____ offered by us against Enquiry No. _____ is _____% (percentage).

Details of location at which local value addition will be made is as follows:

We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

Authorised Signatory.

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 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 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 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 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 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/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 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 him/it by any department/office/Unit/Division of the said Company.

10. Arbitration & Conciliation:

a) In case amicable settlement is not reached between the Parties, in respect of any dispute
or

difference or claim or controversy arising out of the formation, breach, termination, validity or execution of the Contract(or Agreement) or the respective rights and liabilities of the parties or in relation to interpretation of any provision of the Contract or in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference or controversy or claim, (except as to any matters, the decision of which is specifically provided for therein) to the sole arbitration by the arbitrator appointed by Head/In-Charge of the Unit/Division/Region.

b) The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties to the dispute.

c) Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India), or other statutory modifications or re enactments thereof and the rules made thereunder and for

the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be at ----- **(Insert the name of the city/town of the concerned BHEL Unit/Division).**

d) In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

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.

e) 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.

11. 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 10(a) and 10(d) 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: