



PPX-EM DEPARTMENT
BHARAT HEAVY ELECTRICALS LIMITED
HEEP: HARDWAR-249 403 (Uttarakhand)
TEL: +91 1334 28 5266

DOMESTIC OPEN TENDER ENQUIRY
ENQUIRY NO. E/E243/2024/4277/Q/1
ENQUIRY DUE DATE: 24TH MAY 2025 (By 13:45 HRS IST)

Item: PRESSURE REGULATORS

The **Heavy Electrical Equipment Plant (HEEP)** located in Haridwar, is one of the major manufacturing plants of BHEL. The core business of HEEP includes design and manufacture of large size steam and gas turbines, turbo generators, heat exchangers, condensers and auxiliaries.

Bids are invited by HEEP Hardwar, from bidders for the supply of PRESSURE REGULATORS.

The documents listed below form a part of this tender enquiry. Bidders are advised to study all the tender documents carefully. Any submission of tender by the bidder shall be deemed to have been done after careful study and examination of the tender documents and with full understanding of the implications thereof.

SL.NO.	LIST OF DOCUMENTS
1.	TENDER ENQUIRY NO. <u>E/E243/2024/4277/Q/1</u>
2.	PRE-QUALIFICATION REQUIREMENT (ALL DOCUMENTS AS PER THE SAME TO BE
3.	INDIAN OT <u>E/E243/2024/4277/Q/1</u> - SPECIAL INSTRUCTIONS / T&C
4.	MAKE IN INDIA CERTIFICATE (FILLED FORMAT TO BE SUBMITTED WITH OFFER) / MII
5.	BHEL GISTC (GENERAL TERMS AND CONDITIONS)
6.	NON-DISCLOSURE AGREEMENT [TO BE SUBMITTED THROUGH E-MAIL FOR GETTING DRGS. /SPECIFICATION]

For any further details, you may feel free to contact the following persons:

Mr. Monu Verma Designation: Dy. Engineer (PPX/EM) 4 th Floor, Main Administrative Building HEEP, BHEL Hardwar- 249403 Uttarakhand, India Email ID: monu@bhel.in Tel: 01334 284080	Mr. Ashish Gupta Designation: Engineer (PPX/EM) 4 th Floor, Main Administrative Building HEEP, BHEL Hardwar- 249403 Uttarakhand, India Email ID: ashishg@bhel.in Tel: 01334 285021
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For and on behalf of BHEL, Hardwar

(Dushyant Kumar)
Manager (PPX-EM)

M/S. OPEN TENDER

DUEDATE

24-05-2025

BHEL

HARIDWAR249403

Vendor Code

00001

INDIA

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SL	MATERIAL CODE ITEM DESCRIPTION	QUANTITY	UNIT	LOTNO	LOT DELIVERY QTY SCHEDULE
1	W96414900494 PRESSURE REGULATOR VAR-01 SPEC: TG60129 REV: 04 - -	49	NO	1 2 3 4 5	6 31/03/26 9 31/07/26 11 29/01/27 11 31/05/27 12 30/11/27
2	W90414901053 PRESSURE REGULATOR VAR-02 SPEC: TG60129 REV: 04 - -	20	NO	1 2 3 4 5	2 31/03/26 4 31/07/26 4 29/01/27 5 31/05/27 5 30/11/27
3	W90414901193 PRESSURE REGULATOR VAR-03 SPEC: TG60129 REV: 04 - -	49	NO	1 2 3 4 5	6 31/03/26 9 31/07/26 11 29/01/27 11 31/05/27 12 30/11/27

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

Standard Instructions:

TEST CERTIFICATE REQUIRED.

GUARANTEE CERTIFICATE REQUIRED.

BASIC RATES, TAXES & DUTIES SEPERATELY

Special Instructions:

THIS IS A DOMESTIC OPEN TENDER FOR CLASS-I LOCAL BIDDERS/CLASS-II LOCAL BIDDERS.

=> FOR THIS PROCUREMENT, ONLY 'CLASS-I LOCAL SUPPLIER' (MINIMUM 50% LOCAL CONTENT) AND 'CLASS-II LOCAL SUPPLIER' (MINIMUM 20% LOCAL CONTENT) ARE ELIGIBLE

TO SUBMIT BID AGAINST THIS TENDER. 'LOCAL CONTENT' MEANS THE AMOUNT OF VALUE
ADDED IN INDIA, IN PERCENT. ITEM IS NON DIVISIBLE IN NATURE (MATERIAL CODE WISE)

=> 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 ALONGWITH SUCH OTHER ACTIONS AS MAY BE PERMISSIBLE UNDER LAW.

1) TESTING AND CERTIFICATION AS PER ORDERING DRAWING & SPECIFICATION.

[illegible][illegible]

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

MATERIAL CODE ITEM DESCRIPTION	QUANTITY	UNIT	LOTNO
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after issue of this NIT but before finalization of contract / PO / WP
against this NIT.

In the event of any Nodal Ministry prescribing higher or lower
percentage of purchase preference and/ or local content in respect
of this procurement, same shall be applicable.

Default purchase preference under Make in India order shall be 20% to suppliers
with default minimum local content of 50% for all items / works / services.

For further details, please refer latest version of GISTC.

Procurements where the Estimated value to be procured is less than Rs. 5 lakhs
shall be exempted from Public Procurement (Preference to Make in India),

Order 2017 dated 15.06.2017 & 28.05.2018

Kindly produce GeM seller Id with documentary proof along with your Bids/offers
for case Value more than 25 Lacs.

DUSHYANT KUMAR
MANAGER

PRE-QUALIFICATION REQUIREMENT FOR ITEM PRESSURE REGULATORS

22-April-25

Mandatory Pre-Qualification Requirements for Gas Pressure Regulator

Material code W90414901193, W96414900494; SPEC. TG60129

- 1.0 The Pressure Regulator is used in the Gas Unit, H2 distributor of turbo generators. It is utilized for regulating the pressure of H2 gas being supplied to turbo generator. It should be of very reliable and proven design to maintain the required H2 parameters under all conditions. Pressure regulators shall be equipped with pressure gauges and safety outlet connections.
- 2.0 The vendor should be a regular manufacturer/OEM authorized supplier of such items and should have manufactured/supplied Pressure Regulators during the last 3 years, with at least 10 nos. for each type i.e. for H2 gas, over last 3 years with minimum technical requirement indicated below
 - i. For H2 gas application, inlet pressure upto 250Kg/cm2 and outlet pressure below 10 kg/cm2
 - ii. The downstream side of pressure regulator should have provision of inbuilt Safety outlet which opens when the set pressure is exceeded due to certain abnormal conditions.
 - iii. Pressure regulator should be of **single stage type**.
- 3.0 Vendor shall furnish their credentials meeting technical requirement indicated in clause 2.0, as per the following format for past 3 years:

Sl. No.	Application	Name & address of customer	Purchase order Ref. no.	Purchase order issue date	Year of Supply	Brief technical details					Size of Inlet & outlet end connection
						Inlet Pressure (kg/cm2)	Outlet pressure (kg/cm2)	Inbuilt Safety outlet set value (kg/cm2)	Flow Rate (M3/Hr)	Body Material	
1.	H2 Gas Only										
2.											
3.											
4.											

- 4.0 In support of year of supply, vendor shall furnish copy of Purchase Order and dispatch details documents.
- 5.0 Test certificates for hydraulic/leakage/spring rate test/functional test as per relevant standard shall be submitted for any one of the PO's executed & indicated by vendor at point no. 3.0.
- 6.0 Acceptance certificate is required from one of the vendor's customer of Pressure regulator supplied to them (Original Certificate or through e-mail directly from the customer). Acceptance certificate should contain information like item details and its application and should also have correlation with PO reference no.
- 7.0 BHEL reserves the right to verify information submitted by vendor. In case the information is found to be false / incorrect, the offer shall be rejected.
- 8.0 Vendor to confirm specific compliance to clause 2.0, 3.0, 4.0, 5.0 and 6.0, else offer will not be considered.

Mandatory Pre-Qualification Requirements for Gas Pressure Regulator

22-April-25

Material code W90414901053; SPEC. TG60129

- 1.0 The Pressure Regulator is used in the N₂ distributor of turbo generators. It is utilized for regulating the pressure of N₂ gas being supplied to primary water tank. It should be of very reliable and proven design to maintain the required N₂ parameters under all conditions. Pressure regulators shall be equipped with pressure gauges and safety outlet connections.
- 2.0 The vendor should be a regular manufacturer/OEM authorized supplier of such items and should have manufactured/supplied Pressure Regulators during the last 3 years, with at least 5 nos. i.e. for N₂ gas, over last 3 years from the date of enquiry, with minimum technical requirement indicated below
 - i. For N₂ gas application, inlet pressure ≥ 100 Kg/cm² and outlet pressure range 0.1 to 5 kg/cm²
 - ii. The downstream side of pressure regulator should have provision of inbuilt Safety outlet which opens when the set pressure is exceeded due to certain abnormal conditions.
 - iii. Pressure regulator should be of **single stage type**.
- 3.0 Vendor shall furnish their credentials meeting technical requirement indicated in clause 2.0, as per the following format for past 3 years:

Sl. No.	Application	Name & address of customer	Purchase order Ref. no.	Purchase order issue date	Year of Supply	Brief technical details					Size of Inlet & outlet end connection
						Inlet Pressure (kg/cm ²)	Outlet pressure (kg/cm ²)	Inbuilt Safety outlet set value (kg/cm ²)	Flow Rate (M ³ /Hr)	Body Material	
1.	N ₂ Gas Only										
2.											
3.											
4.											

- 4.0 In support of year of supply, vendor shall furnish copy of Purchase Order and dispatch details documents.
- 5.0 Test certificates for hydraulic/ leakage/ spring rate test/ functional test as per relevant standard shall be submitted for any one of the PO's executed & indicated by vendor at point no. 3.0.
- 6.0 Acceptance certificate is required from one of the vendor's customer of Pressure regulator supplied to them (Original Certificate or through e-mail directly from the customer). Acceptance certificate should contain information like item details and its application and should also have correlation with PO reference no.
- 7.0 BHEL reserves the right to verify information submitted by vendor. In case the information is found to be false / incorrect, the offer shall be rejected.
- 8.0 Vendor to confirm specific compliance to clause 2.0, 3.0, 4.0, 5.0 and 6.0, else offer will not be considered.

INDIAN OT E/ E243/2024/4277/W1- SPECIAL INSTRUCTIONS / T&C

DOMESTIC OPEN TENDER:

"FOR THIS PROCUREMENT, THE LOCAL CONTENT TO CATEGORIZE A SUPPLIER AS A CLASS I LOCAL SUPPLIER/ CLASS II LOCAL SUPPLIER/ NON-LOCAL SUPPLIER AND PURCHASE PREFERENCE TO CLASS I LOCAL SUPPLIER, IS AS DEFINED IN PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA), ORDER 2017 DATED 19.07.2024 ISSUED BY DPIIT. IN CASE OF SUBSEQUENT ORDERS ISSUED BY THE NODAL MINISTRY, CHANGING THE DEFINITION OF LOCAL CONTENT FOR THE ITEMS OF THE NIT, THE SAME SHALL BE APPLICABLE EVEN IF ISSUED AFTER ISSUE OF THIS NIT, BUT BEFORE OPENING OF PART-II BIDS AGAINST THIS NIT".

=> BHEL GISTC AND SPECIAL INSTRUCTIONS / T&C ARE APPLICABLE IN THIS CASE. IF ANY DEVIATION TO BE CLEARLY MENTION IN OFFER. ELSE, SHALL BE CONSIDERED AS DEEMED ACCEPTED. BHEL RESERVE THE RIGHT TO NON-CONSIDER OF BIDS, IN CASE OF DEVIATION FROM BHEL GISTC AND SPECIAL INSTRUCTIONS / T&C.

Earnest Money Deposit (EMD)

EMD AMOUNT OF 'RS. 06 LAKHS' IS REQUIRED TO BE SUBMITTED ALONG WITH OFFER BY ALL THE PARTICIPATED BIDDERS (EXCEPT MICRO AND SMALL ENTERPRISES (MSES) OR STARTUPS AS RECOGNIZED BY DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT)). OFFER WITHOUT EMD WILL NOT BE ACCEPTED EXCEPT FOR "MSES VENDOR OR STARTUPS AS RECOGNIZED BY DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT)).

THE EMD MAY BE ACCEPTED ONLY IN THE FOLLOWING FORMS: (I) ELECTRONIC FUND TRANSFER CREDITED IN BHEL ACCOUNT (BEFORE TENDER OPENING) (II) BANKER'S CHEQUE/ PAY ORDER/ DEMAND DRAFT, IN FAVOUR OF BHEL (ALONG WITH OFFER) (III) FIXED DEPOSIT RECEIPT (FDR). (IV) BANK GUARANTEE FROM ANY OF THE SCHEDULED BANKS. (V) INSURANCE SURETY BONDS.

(NOTE: EMD SHALL NOT CARRY ANY INTEREST).

PERFORMANCE SECURITY

PERFORMANCE BANK GUARANTEE (PBG) OR SECURITY DEPOSIT (SD), HEREAFTER REFERRED AS PERFORMANCE SECURITY AS 10% OF CONTRACT VALUE IS REQUIRED TO BE SUBMITTED IN THIS TENDER FROM THE SUCCESSFUL BIDDER AWARDED THE PURCHASE ORDER/CONTRACT.

PERFORMANCE SECURITY IS TO BE FURNISHED AFTER 14 DAYS FROM PURCHASE ORDER DATE AND IT SHOULD REMAIN VALID FOR A PERIOD OF 60 (SIXTY) DAYS BEYOND THE DATE OF COMPLETION OF ALL CONTRACTUAL OBLIGATIONS OF THE SUPPLIER, INCLUDING WARRANTY OBLIGATIONS.

PERFORMANCE SECURITY MAY BE FURNISHED IN THE FOLLOWING FORMS: (I) LOCAL CHEQUES OF SCHEDULED BANKS (SUBJECT TO REALIZATION)/ PAY ORDER/ DEMAND DRAFT/ ELECTRONIC FUND TRANSFER IN FAVOR OF BHEL. (II) BANK GUARANTEE FROM SCHEDULED BANKS / PUBLIC FINANCIAL INSTITUTIONS AS DEFINED IN THE COMPANIES ACT. THE BANK GUARANTEE FORMAT SHOULD HAVE THE APPROVAL OF BHEL. (III) FIXED DEPOSIT RECEIPT ISSUED BY SCHEDULED BANKS / PUBLIC FINANCIAL INSTITUTIONS AS DEFINED IN THE COMPANIES ACT (FDR SHOULD BE IN THE NAME OF THE CONTRACTOR, A/C BHEL). (IV) SECURITIES AVAILABLE FROM INDIAN POST

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OFFICES SUCH AS NATIONAL SAVINGS CERTIFICATES, KISAN VIKAS PATRAS ETC. (HELD IN THE NAME OF CONTRACTOR FURNISHING THE SECURITY AND DULY ENDORSED/ HYPOTHECATED/ PLEDGED, AS APPLICABLE, IN FAVOUR OF BHEL). (V) INSURANCE SURETY BOND.

(NOTE: BHEL WILL NOT BE LIABLE OR RESPONSIBLE IN ANY MANNER FOR THE COLLECTION OF INTEREST OR RENEWAL OF THE DOCUMENTS OR IN ANY OTHER MATTER CONNECTED THEREWITH. THE PERFORMANCE SECURITY SHALL NOT CARRY ANY INTEREST).

THE **INTEGRITY PACT (IP)** IS ATTACHED WITH THIS TENDER, WHICH IS TO BE SUBMITTED (DULY SIGNED BY AUTHORIZED SIGNATORY ON EACH PAGE) ALONG WITH TECHNO COMMERCIAL BID. ONLY THOSE BIDDERS WHO HAVE ENTERED INTO SUCH AN IP WITH BHEL WILL BE CONSIDERED IN THIS TENDER.

For Indian Bidders: E-INVOICING UNDER GST IS IMPLEMENTED W.E.F. 01.08.2023 FOR ALL THE TAXABLE PERSONS HAVING TURNOVER MORE THAN Rs. 05 CR or AS APPLICABLE. IT HAS BEEN SPECIFIED BY THE GOVT. THAT IT IS MANDATORY TO MENTION A VALID UNIQUE INVOICE REFERENCE NO. (IRN) AND QR CODE AS GENERATED FROM GOVT. PORTAL ON A TAX INVOICE. BASED ON SUCH INFORMATION, GST ITC AS CLAIMED BY BHEL IN GST RETURNS SHALL BE MATCHED WITH THE CORRESPONDING DETAILS UPLOADED BY SUPPLIER IN E-INVOICING SYSTEM. IN CASE THE VENDOR / CONTRACTOR DELAYS OR FAILS TO PROVIDE ALL DOCUMENTS AS PER THE PURCHASE ORDER / WORK ORDER AT THE TIME OF SUBMITTING TAX INVOICE TO BHEL, ANY SUBSEQUENT FINANCIAL LOSS TO BHEL ON ACCOUNT OF VENDOR/CONTRACTOR SHALL BE TO VENDOR'S / CONTRACTOR'S ACCOUNT. BHEL HAS FURTHER RIGHT TO TAKE NECESSARY STEPS TO PROTECT ITS INTEREST AT THE TIME OF RELEASE OF PAYMENT. THIS FURTHER REQUIRES INCLUSION OF IRN AND QR CODE ON TAX INVOICE AS ANNOUNCED BY GOVT. OF INDIA W.E.F. 01.04.2021.

=> THE TENDER OFFER SHOULD BE SUBMITTED IN TWO PART (**PART-I:** TECHNO-COMMERCIAL BID & COMPLIANCE OF PQR, QUALITY REQUIREMENTS, MII, NDA & RESPECTIVE TENDER DOCUMENTS) AND (**PART- II-** PRICE BID). THE (PART-II) TO BE KEPT IN SEPARATE ENVELOPE / COVER. PART-I SHALL BE OPENED ON THE DUE DATE SPECIFIED IN TENDER. PART-II (PRICE BID) (OF PQR / QR & TECHNO- COMMERCIAL QUALIFIED BIDDERS ONLY) SHALL BE OPENED AT A LATER DATE.

=> BHEL GISC AND SPECIAL INSTRUCTIONS / T&C ARE APPLICABLE IN THIS CASE. IF ANY DEVIATION TO BE CLEARLY MENTION IN OFFER. ELSE, SHALL BE CONSIDERED AS DEEMED ACCEPTED. BHEL RESERVE THE RIGHT TO NON-CONSIDER OF BIDS, IN CASE OF DEVIATION FROM BHEL GISC AND SPECIAL INSTRUCTIONS / T&C.

=> THE TOTAL VALUE WISE EVALUATION CURRENCY FOR THIS TENDER SHALL BE INR (Rs.).

=> RESPECTIVE DRAWINGS & SPECIFICATIONS OF ENQUIRED ITEM SHALL BE MADE AVAILABLE TO UNREGISTRED VENDORS ONLY AGAINST DULY FILLED, SIGNED/STAMPED & WITNESSED COPY OF ATTACHED 'Non- Disclosure Agreement'.

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=> ONLY THOSE VENDORS WHO FULFILL THE ATTACHED 'PRE-QUALIFYING REQUIREMENTS' & 'QUALITY REQUIREMENTS' WILL BE CONSIDERED FOR FURTHER TECHNICAL EVALUATION / PROCESSING. KINDLY SUBMIT PQR CLAUSE WISE REQUIRED DOCUMENTS & QUALITY REQUIREMENTS DOCUMENTS ALONG WITH OFFER.

=> DEVIATION WITH REFERENCE TO BHEL SPECIFICATION/DRAWING, IF ANY, SHOULD BE CLEARLY INDICATED ON A SEPARATE SHEET IN TECHNO- COMMERCIAL OFFER.

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

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

"BHEL may load maximum penalty under LD clause, to the extent the same is not agreed by the vendor, for the purpose of price comparative statement. Where deliveries quoted by the vendors are not suiting, BHEL may also ignore the offer of the vendor ".

=> **PAYMENT LOADING** BHEL OPERATES VARIOUS PAYMENT TERMS FOR THE TENDERS FLOATED AND BIDDERS SHOULD ACCEPT THE PAYMENT TERMS SPECIFIED IN THE BHEL GISTC/NIT. LOADING OF ANY DEVIATION IN THE PAYMENT TERMS W.R.T. BHEL GISTC/NIT TERMS SHALL BE REFERENCED AS FOLLOWS: LOADING WILL BE DONE ON THE BASIC COST OF THE ITEM AS- $[\{\text{BASE RATE OF SBI (SBI PLR)} + 6\%\} \div 365 \text{ (PER ANNUM)}] \times \text{LOADING OF DAYS AGAINST QUOTED SPECIFIC PAYMENT TERM AS MENTIONED IN BHEL GISTC.}$

NOTE: THE BASE RATE OF SBI SHALL BE CONSIDERED AS APPLICABLE ON 31ST MARCH OF PRECEDING YEAR FROM TENDER DUE DATE.

=> BHEL will deal directly with the manufacturers / principal vendors and no correspondence with the agents will be entertained. The agents will not be permitted to visit / interact with BHEL on behalf of their principals. Subsequently also, no correspondence of any type will be made with any agent. (All individuals / companies - representing / Advisor / retainer ship basis or claimed to be part time employees for many OEMs / claiming to be channel or business partner for BHEL work / stockiest not registered specifically etc. are Agents). Communications with only those agents who have submitted agency agreement with their respective principal may be done. The suppliers or their authorized person may be allowed to attend the tender opening, if duly authorized by their principals, through a specific letter for a particular enquiry for specific price bid opening on that particular day. General authorization letter is not acceptable. However, in case of e-tender, vendor should see the tenders of others on the opening date only. Thereafter, the respective window will get closed.

FORCE MAJEURE:

"FORCE MAJEURE" SHALL MEAN CIRCUMSTANCE WHICH IS: A) BEYOND CONTROL OF EITHER OF THE PARTIES TO CONTRACT, B) EITHER OF THE PARTIES COULD NOT REASONABLY HAVE PROVIDED AGAINST THE EVENT BEFORE ENTERING INTO THE CONTRACT, C) HAVING ARISEN, EITHER OF THE PARTIES COULD NOT REASONABLY HAVE AVOIDED OR OVERCOME, AND D) IS NOT SUBSTANTIALLY ATTRIBUTABLE TO EITHER OF THE PARTIES AND PREVENTS THE PERFORMANCE OF THE CONTRACT, SUCH CIRCUMSTANCES INCLUDE BUT SHALL NOT BE LIMITED TO: I) WAR, HOSTILITIES , INVASION, ACT OF FOREIGN ENEMIES. II) REBELLION, TERRORISM, REVOLUTION, INSURRECTION, MILITARY OR USURPED POWER, OR CIVIL WAR. III) RIOT, COMMOTION OR DISORDER BY PERSONS OTHER THAN THE CONTRACTOR'S PERSONNEL AND OTHER EMPLOYEES OF THE CONTRACTOR AND SUB-CONTRACTORS. IV) STRIKE OR LOCKOUT NOT SOLELY INVOLVING THE CONTRACTOR'S PERSONNEL AND OTHER EMPLOYEES OF THE CONTRACTOR AND SUB-CONTRACTORS. V) ENCOUNTERING MUNITIONS OF WAR, EXPLOSIVE MATERIALS, IONIZING RADIATION OR CONTAMINATION BY RADIO-ACTIVITY, EXCEPT AS MAY BE ATTRIBUTABLE TO THE CONTRACTOR'S USE OF SUCH MUNITIONS, EXPLOSIVES, RADIATION OR RADIO- ACTIVITY. VI) NATURAL CATASTROPHES SUCH AS EARTHQUAKE, TSUNAMI, VOLCANIC ACTIVITY, HURRICANE OR TYPHOON, FLOOD, FIRE, CYCLONES ETC. VII) EPIDEMIC, PANDEMIC ETC.

THE FOLLOWING EVENTS ARE EXPLICITLY EXCLUDED FROM FORCE MAJEURE AND ARE SOLELY THE RESPONSIBILITIES OF THE NON-PERFORMING PARTY: A) ANY STRIKE, WORK-TO-RULE ACTION, GOSLOW OR SIMILAR LABOUR DIFFICULTY (B) LATE DELIVERY OF EQUIPMENT OR MATERIAL (UNLESS CAUSED BY FORCE MAJEURE EVENT) AND (C) ECONOMIC HARDSHIP.

IF EITHER PARTY IS PREVENTED, HINDERED OR DELAYED FROM OR IN PERFORMING ANY OF ITS OBLIGATIONS UNDER THE CONTRACT BY AN EVENT OF FORCE MAJEURE, THEN IT SHALL NOTIFY THE OTHER IN WRITING OF THE OCCURRENCE OF SUCH EVENT AND THE CIRCUMSTANCES THEREOF WITHIN 15 (FIFTEEN) DAYS AFTER THE OCCURRENCE OF SUCH EVENT.

THE PARTY WHO HAS GIVEN SUCH NOTICE SHALL BE EXCUSED FROM THE PERFORMANCE OR PUNCTUAL PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONTRACT FOR SO LONG AS THE RELEVANT EVENT OF FORCE MAJEURE CONTINUES AND TO THE EXTENT THAT SUCH PARTY'S PERFORMANCE IS PREVENTED, HINDERED OR DELAYED. THE TIME FOR COMPLETION SHALL BE EXTENDED BY A PERIOD OF TIME EQUAL TO PERIOD OF DELAY CAUSED DUE TO SUCH FORCE MAJEURE EVENT.

DELAY OR NON-PERFORMANCE BY EITHER PARTY HERETO CAUSED BY THE OCCURRENCE OF ANY EVENT OF FORCE MAJEURE SHALL NOT I) CONSTITUTE A DEFAULT OR BREACH OF THE CONTRACT. II) GIVE RISE TO ANY CLAIM FOR DAMAGES OR ADDITIONAL COST EXPENSE OCCASIONED THEREBY, IF AND TO THE EXTENT THAT SUCH DELAY OR NON-PERFORMANCE IS CAUSED BY THE OCCURRENCE OF AN EVENT OF FORCE MAJEURE.

BHEL AT ITS DISCRETION MAY CONSIDER SHORT CLOSURE OF CONTRACT AFTER 1 YEAR OF IMPOSITION OF FORCE MAJEURE IN LINE WITH EXTANT GUIDELINES. IN ANY CASE, SUPPLIER/VENDOR CANNOT CONSIDER DEEMED SHORT-CLOSURE AFTER 1 YEAR OF IMPOSITION OF FORCE MAJEURE.

Settlement of Dispute:

IF ANY DISPUTE OR DIFFERENCE OF ANY KIND WHATSOEVER SHALL ARISE BETWEEN BHEL AND THE SUPPLIER/VENDOR, ARISING OUT OF THE CONTRACT FOR THE PERFORMANCE OF THE WORK WHETHER DURING THE PROGRESS OF CONTRACT TERMINATION, ABANDONMENT OR BREACH OF THE CONTRACT, IT SHALL IN THE FIRST PLACE REFERRED TO DESIGNATED OFFICER / IEM FOR AMICABLE RESOLUTION BY THE PARTIES. DESIGNATED OFFICER / IEM WHO WITHIN 60 DAYS AFTER BEING REQUESTED SHALL GIVE WRITTEN NOTICE OF HIS DECISION TO THE CONTRACTOR. SAVE AS HEREINAFTER PROVIDED, SUCH DECISION IN RESPECT OF EVERY MATTER SO REFERRED SHALL FORTHWITH BE GIVEN EFFECT TO BY THE SUPPLIER/VENDOR WHO SHALL PROCEED WITH THE WORK WITH ALL DUE DILIGENCE, WHETHER HE OR BHEL DESIRES TO RESOLVE THE DISPUTE AS HEREINAFTER PROVIDED OR NOT. IF AFTER THE DESIGNATED ENGINEER HAS GIVEN WRITTEN NOTICE OF THIS DECISION TO THE PARTY AND NO INTENTION TO PURSUE THE DISPUTE HAS BEEN COMMUNICATED TO HIM BY THE AFFECTED PARTY WITHIN 30 DAYS FROM THE RECEIPT OF SUCH NOTICE, THE SAID DECISION SHALL BECOME FINAL AND BINDING ON THE PARTIES. IN THE EVENT THE SUPPLIER/VENDOR BEING DISSATISFIED WITH ANY SUCH DECISION OR IF AMICABLE SETTLEMENT CANNOT BE REACHED THEN ALL SUCH DISPUTED ISSUES SHALL BE RESOLVED THROUGH CONCILIATION IN TERMS OF THE BHEL CONCILIATION SCHEME 2018 AS PER 'CONCILIATION' CLAUSE.

CONCILIATION:

ANY DISPUTE, DIFFERENCE OR CONTROVERSY OF WHATEVER NATURE HOWSOEVER ARISING UNDER OR OUT OF OR IN RELATION TO THIS AGREEMENT (INCLUDING ITS INTERPRETATION) BETWEEN THE PARTIES, AND SO NOTIFIED IN WRITING BY EITHER PARTY TO THE OTHER PARTY (THE "DISPUTE") SHALL, IN THE FIRST INSTANCE, BE ATTEMPTED TO BE RESOLVED AMICABLY IN ACCORDANCE WITH THE CONCILIATION PROCEDURE AS PER BHEL CONCILIATION SCHEME 2018. THE PROCEEDINGS OF CONCILIATION SHALL BROADLY BE GOVERNED BY PART-III OF THE ARBITRATION AND CONCILIATION ACT 1996 OR ANY STATUTORY MODIFICATION THEREOF AND AS PROVIDED IN - "PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS" (AS AVAILABLE IN WWW.BHEL.COM).

NOTE: MINISTRY OF FINANCE HAS ISSUED OM REFERENCE NO. 1/2/24 DATED 03.06.2024 REGARDING "GUIDELINES FOR ARBITRATION AND MEDIATION IN CONTRACTS OF DOMESTIC PUBLIC PROCUREMENT. IN THE SAID OM IT HAS BEEN RECOMMENDED THAT GOVERNMENT DEPARTMENTS/ ENTITIES/AGENCIES ARE TO ENCOURAGE MEDIATION UNDER THE MEDIATION ACT. 2023. THE SAID ACT HAS NOT YET BEEN NOTIFIED BY THE GOVERNMENT. THEREFORE, THE CLAUSE "SETTLEMENT OF DISPUTES" SHALL BE MODIFIED ACCORDINGLY AS AND WHEN THE MEDIATION ACT 2023 GETS NOTIFIED.

ARBITRATION:

EXCEPT AS PROVIDED ELSEWHERE IN THIS CONTRACT, IN CASE PARTIES ARE UNABLE TO REACH AMICABLE SETTLEMENT (WHETHER BY CONCILIATION TO BE CONDUCTED AS PROVIDED HEREIN ABOVE OR OTHERWISE) 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

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ANY PROVISION OF THE CONTRACT; OR. IN ANY MANNER TOUCHING UPON THE CONTRACT (HEREINAFTER REFERRED TO AS THE 'DISPUTE'), THEN, EITHER PARTY MAY, REFER THE DISPUTES TO ARBITRAL INSTITUTION AND SUCH DISPUTE TO BE ADJUDICATED BY SOLE ARBITRATOR APPOINTED IN ACCORDANCE WITH THE RULES OF SAID ARBITRAL INSTITUTION. A PARTY WILLING TO COMMENCE ARBITRATION PROCEEDING SHALL INVOKE ARBITRATION CLAUSE BY GIVING NOTICE TO THE OTHER PARTY IN TERMS OF SECTION 21 OF THE ARBITRATION & CONCILIATION ACT, 1996 (HEREINAFTER REFERRED TO AS THE 'NOTICE') BEFORE REFERRING THE MATTER TO ARBITRAL INSTITUTION. THE NOTICE SHALL BE ADDRESSED TO THE HEAD OF THE REGION, POWER SECTOR/ UNIT, BHEL, EXECUTING THE CONTRACT AND SHALL CONTAIN THE PARTICULARS GTE E/E243/2024/4077/Q/1- SPECIAL INSTRUCTIONS / T&C OF ALL CLAIMS TO BE REFERRED TO ARBITRATION WITH SUFFICIENT DETAIL AND SHALL ALSO INDICATE THE MONETARY AMOUNT OF SUCH CLAIM INCLUDING INTEREST, IF ANY.

AFTER EXPIRY OF 30 DAYS FROM THE DATE OF RECEIPT OF AFORESAID NOTICE, THE PARTY INVOKING THE ARBITRATION SHALL SUBMIT THAT DISPUTE TO THE ARBITRAL INSTITUTIONS (HARIDWAR) AND THAT DISPUTE SHALL BE ADJUDICATED IN ACCORDANCE WITH THEIR RESPECTIVE ARBITRATION RULES. THE MATTER SHALL BE ADJUDICATED BY A SOLE ARBITRATOR WHO SHALL NECESSARILY BE A RETD JUDGE HAVING CONSIDERABLE EXPERIENCE IN COMMERCIAL MATTERS TO BE APPOINTED/NOMINATED BY THE RESPECTIVE INSTITUTION. THE COST/EXPENSES PERTAINING TO THE SAID ARBITRATION SHALL ALSO BE GOVERNED IN ACCORDANCE WITH THE RULES OF THE RESPECTIVE ARBITRAL INSTITUTION. THE DECISION OF THE PARTY INVOKING THE ARBITRATION FOR REFERENCE OF DISPUTE TO A SPECIFIC ARBITRAL INSTITUTION FOR ADJUDICATION OF THAT DISPUTE SHALL BE FINAL AND BINDING ON BOTH THE PARTIES AND SHALL NOT BE SUBJECT TO ANY CHANGE THEREAFTER. THE INSTITUTION ONCE SELECTED AT THE TIME OF INVOCATION OF DISPUTE SHALL REMAIN UNCHANGED. THE FEE AND EXPENSES SHALL BE BORNE BY THE PARTIES AS PER THE ARBITRAL INSTITUTIONAL RULES. THE ARBITRATION PROCEEDINGS SHALL BE IN ENGLISH LANGUAGE AND THE SEAT AND VENUE OF ARBITRATION SHALL BE AT THE COURT(S) OF HARIDWAR, INDIA. SUBJECT TO THE ABOVE, THE PROVISIONS OF ARBITRATION & CONCILIATION ACT 1996 AND ANY AMENDMENT THEREOF SHALL BE APPLICABLE.

ALL MATTERS RELATING TO THIS CONTRACT AND ARISING OUT OF INVOCATION OF ARBITRATION CLAUSE ARE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COURT(S) SITUATED AT HARIDWAR, INDIA, SHALL HAVE EXCLUSIVE JURISDICTION. NOTWITHSTANDING ANY REFERENCE TO THE DESIGNATED ENGINEER OR CONCILIATION OR ARBITRATION HEREIN, A. THE PARTIES SHALL CONTINUE TO PERFORM THEIR RESPECTIVE OBLIGATIONS UNDER THE CONTRACT UNLESS THEY OTHERWISE AGREE. SETTLEMENT OF DISPUTE CLAUSE CANNOT BE INVOKED BY THE CONTRACTOR, IF THE CONTRACT HAS BEEN MUTUALLY CLOSED OR 'NO DEMAND CERTIFICATE' HAS BEEN FURNISHED BY THE CONTRACTOR OR ANY SETTLEMENT AGREEMENT HAS BEEN SIGNED BETWEEN THE EMPLOYER AND THE CONTRACTOR. IT IS AGREED THAT MECHANISM OF RESOLUTION OF DISPUTES THROUGH ARBITRATION SHALL BE AVAILABLE ONLY IN THE CASES WHERE THE VALUE OF THE DISPUTE IS LESS THAN RS. 10 CRORES. IN CASE THE DISPUTED AMOUNT CLAIM, COUNTER CLAIM INCLUDING INTEREST IS RS. 10 CRORES AND ABOVE, THE PARTIES SHALL BE WITHIN THEIR RIGHTS TO TAKE RECOURSE TO REMEDIES OTHER THAN

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ARBITRATION, AS MAY BE AVAILABLE TO THEM UNDER THE APPLICABLE LAWS AFTER PRIOR INTIMATION TO THE OTHER PARTY. SUBJECT TO THE AFORESAID CONDITIONS, PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND ANY STATUTORY MODIFICATIONS OR RE-ENACTMENT THEREOF AS AMENDED FROM TIME TO TIME, SHALL APPLY TO THE ARBITRATION PROCEEDINGS UNDER THIS CLAUSE.

IN CASE, MULTIPLE ARBITRATIONS ARE INVOKED (WHETHER SUB-JUDICE OR ARBITRAL AWARD PASSED) BY ANY PARTY TO UNDER THIS CONTRACT, THEN THE CUMULATIVE VALUE OF CLAIMS (INCLUDING INTEREST CLAIMED OR AWARDED) IN ALL SUCH ARBITRATIONS SHALL BE TAKEN IN ACCOUNT WHILE ARRIVING AT THE TOTAL CLAIM IN DISPUTE FOR THE SUBJECT CONTRACT FOR THE PURPOSE OF CLAUSE MENTIONED ABOVE. DISPUTES HAVING CUMULATIVE VALUE OF LESS THAN 10 CRORES SHALL BE RESOLVED THROUGH ARBITRATION AND ANY ADDITIONAL DISPUTE SHALL BE ADJUDICATED BY THE COURT OF COMPETENT JURISDICTION.

NO INTEREST PAYABLE TO CONTRACTOR / VENDOR:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER DOCUMENT COMPRISING IN THE CONTRACT, NO INTEREST SHALL BE PAYABLE BY BHEL TO CONTRACTOR ON ANY MONEYS OR BALANCES INCLUDING BUT NOT LIMITED TO THE SECURITY DEPOSIT, EMD, RETENTION MONEY, RA BILLS OR THE FINAL BILL, OR ANY AMOUNT WITHHELD AND/OR APPROPRIATED BY BHEL ETC., WHICH BECOMES OR AS THE CASE MAY BE, IS ADJUDGED TO BE DUE FROM BHEL TO CONTRACTOR WHETHER UNDER THE CONTRACT OR OTHERWISE.

JURISDICTION:

THIS CONTRACT SHALL BE GOVERNED BY THE LAW FOR THE TIME BEING IN FORCE IN THE REPUBLIC OF INDIA. SUBJECT TO CLAUSE(S) MENTIONED ABOVE OF THIS CONTRACT, THE CIVIL COURT HAVING ORIGINAL CIVIL JURISDICTION AT HARIDWAR, INDIA FOR FOREIGN SUPPLIER AND HARIDWAR FOR INDIAN SUPPLIER, SHALL ALONE HAVE EXCLUSIVE JURISDICTION IN REGARD TO ALL MATTERS IN RESPECT OF THE CONTRACT.

BREACH OF CONTRACT, REMEDIES AND TERMINATION:

BREACH OF CONTRCAT: THE FOLLOWING SHALL AMOUNT TO BREACH OF CONTRACT:

I. NON-SUPPLY OF MATERIAL/ NON-COMPLETION OF WORK BY THE SUPPLIER/VENDOR WITHIN SCHEDULED DELIVERY/ COMPLETION PERIOD AS PER CONTRACT OR AS EXTENDED FROM TIME TO TIME. II. THE SUPPLIER/VENDOR FAILS TO PERFORM AS PER THE ACTIVITY SCHEDULE AND THERE ARE SUFFICIENT REASONS EVEN BEFORE EXPIRY OF THE DELIVERY/ COMPLETION PERIOD TO JUSTIFY THAT SUPPLIES SHALL BE INORDINATELY DELAYED BEYOND CONTRACTUAL DELIVERY/ COMPLETION PERIOD. III. THE SUPPLIER/VENDOR DELIVERS EQUIPMENT/ MATERIAL NOT OF THE CONTRACTED QUALITY. IV. THE SUPPLIER/VENDOR FAILS TO REPLACE THE DEFECTIVE EQUIPMENT/ MATERIAL/ COMPONENT AS PER GUARANTEE CLAUSE. V. WITHDRAWAL FROM OR ABANDONMENT OF THE WORK BY THE SUPPLIER/VENDOR BEFORE COMPLETION AS PER CONTRACT. VI. ASSIGNMENT, TRANSFER, SUBLETTING OF CONTRACT BY THE SUPPLIER/VENDOR WITHOUT BHEL'S WRITTEN PERMISSION RESULTING IN TERMINATION OF CONTRACT OR PART

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THEREOF BY BHEL. VII. NON-COMPLIANCE TO ANY CONTRACTUAL CONDITION OR ANY OTHER DEFAULT ATTRIBUTABLE TO SUPPLIER/VENDOR. VIII. ANY OTHER REASON(S) ATTRIBUTABLE TO VENDOR TOWARDS FAILURE OF PERFORMANCE OF CONTRACT. IN CASE OF BREACH OF CONTRACT, BHEL SHALL HAVE THE RIGHT TO TERMINATE THE PURCHASE ORDER/ CONTRACT EITHER IN WHOLE OR IN PART THEREOF WITHOUT ANY COMPENSATION TO THE SUPPLIER/VENDOR. IX. ANY OF THE DECLARATIONS FURNISHED BY THE CONTRACTOR AT THE TIME OF BIDDING AND/ OR ENTERING INTO THE CONTRACT FOR SUPPLY ARE FOUND UNTRUTHFUL AND SUCH DECLARATIONS WERE OF A NATURE THAT COULD HAVE RESULTED IN NON-AWARD OF CONTRACT TO THE CONTRACTOR OR COULD EXPOSE BHEL AND/ OR OWNER TO ADVERSE CONSEQUENCES, FINANCIAL OR OTHERWISE. X. SUPPLIER/VENDOR IS CONVICTED OF ANY OFFENCE INVOLVING CORRUPT BUSINESS PRACTICES, ANTINATIONAL ACTIVITIES OR ANY SUCH OFFENCE THAT COMPROMISES THE BUSINESS ETHICS OF BHEL, IN VIOLATION OF THE INTEGRITY PACT ENTERED INTO WITH BHEL HAS THE POTENTIAL TO HARM THE OVERALL BUSINESS OF BHEL/ OWNER.

NOTE- ONCE BHEL CONSIDERS THAT A BREACH OF CONTRACT HAS OCCURRED ON THE PART OF SUPPLIER/VENDOR, BHEL SHALL NOTIFY THE SUPPLIER/VENDOR BY WAY OF NOTICE IN THIS REGARD. CONTRACTOR SHALL BE GIVEN AN OPPORTUNITY TO RECTIFY THE REASONS CAUSING THE BREACH OF CONTRACT WITHIN A PERIOD OF 14 DAYS. IN CASE THE CONTRACTOR FAILS TO REMEDY THE BREACH, AS MENTIONED IN THE NOTICE, TO THE SATISFACTION OF BHEL, BHEL SHALL HAVE THE RIGHT TO TAKE RECOURSE TO ANY OF THE REMEDIAL ACTIONS AVAILABLE TO IT UNDER THE RELEVANT PROVISIONS OF CONTRACT.

REMEDIES IN CASE OF BREACH OF CONTRACT:

I. WHEREIN THE PERIOD AS STIPULATED IN THE NOTICE ISSUED UNDER CLAUSE MENTIONED ABOVE HAS EXPIRED AND SUPPLIER/VENDOR HAS FAILED TO REMEDY THE BREACH, BHEL WILL HAVE THE RIGHT TO TERMINATE THE CONTRACT ON THE GROUND OF "BREACH OF CONTRACT" WITHOUT ANY FURTHER NOTICE TO CONTRACTOR. II. UPON TERMINATION OF CONTRACT, BHEL SHALL BE ENTITLED TO RECOVER AN AMOUNT EQUIVALENT TO 10% OF THE CONTRACT VALUE FOR THE DAMAGES ON ACCOUNT OF BREACH OF CONTRACT COMMITTED BY THE SUPPLIER/VENDOR. THIS AMOUNT SHALL BE RECOVERED BY WAY OF ENCASHING THE SECURITY INSTRUMENTS LIKE PERFORMANCE BANK GUARANTEE ETC. AVAILABLE WITH BHEL AGAINST THE SAID CONTRACT. IN CASE THE VALUE OF THE SECURITY INSTRUMENTS AVAILABLE IS LESS THAN 10% OF THE CONTRACT VALUE, THE BALANCE AMOUNT SHALL BE RECOVERED FROM OTHER FINANCIAL REMEDIES (I.E. AVAILABLE BILLS OF THE SUPPLIER/VENDOR, RETENTION AMOUNT, FROM THE MONEY DUE TO THE SUPPLIER/VENDOR ETC. WITH BHEL) OR THE OTHER LEGAL REMEDIES SHALL BE PURSUED. III. WHEREVER THE VALUE OF SECURITY INSTRUMENTS LIKE PERFORMANCE BANK GUARANTEE AVAILABLE WITH BHEL AGAINST THE SAID CONTRACT IS 10% OF THE CONTRACT VALUE OR MORE, SUCH SECURITY INSTRUMENTS TO THE EXTENT OF 10% CONTRACT VALUE WILL BE ENCASHED. IN CASE NO SECURITY INSTRUMENTS ARE AVAILABLE OR THE VALUE OF THE SECURITY INSTRUMENTS AVAILABLE IS LESS THAN 10% OF THE CONTRACT VALUE, THE 10% OF THE CONTRACT VALUE OR THE BALANCE AMOUNT, AS THE CASE MAY BE, WILL BE RECOVERED IN ALL OR ANY OF THE FOLLOWING MANNERS: IV. IN CASE THE AMOUNT RECOVERED MENTIONED UNDER SUB CLAUSE (A) IS NOT SUFFICIENT TO FULFIL THE AMOUNT

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RECOVERABLE THEN; A DEMAND NOTICE TO DEPOSIT THE BALANCE AMOUNT WITHIN 30 DAYS SHALL BE ISSUED TO SUPPLIER/VENDOR. V. IF SUPPLIER/VENDOR FAILS TO DEPOSIT THE BALANCE AMOUNT WITHIN THE PERIOD AS PRESCRIBED IN DEMAND NOTICE, FOLLOWING ACTION SHALL BE TAKEN FOR RECOVERY OF THE BALANCE AMOUNT:

A. FROM DUES AVAILABLE IN THE FORM OF BILLS PAYABLE TO DEFAULTED SUPPLIER/VENDOR AGAINST THE SAME CONTRACT. B. IF IT IS NOT POSSIBLE TO RECOVER THE DUES AVAILABLE FROM THE SAME CONTRACT OR DUES ARE INSUFFICIENT TO MEET THE RECOVERABLE AMOUNT, BALANCE AMOUNT SHALL BE RECOVERED FROM ANY MONEY(S) PAYABLE TO SUPPLIER/VENDOR UNDER ANY CONTRACT WITH OTHER UNITS OF BHEL INCLUDING RECOVERY FROM SECURITY DEPOSITS OR ANY OTHER DEPOSIT AVAILABLE IN THE FORM OF SECURITY INSTRUMENTS OF ANY KIND AGAINST SECURITY DEPOSIT OR EMD. C. IN-CASE RECOVERIES ARE NOT POSSIBLE WITH ANY OF THE ABOVE AVAILABLE OPTIONS, LEGAL ACTION SHALL BE INITIATED FOR RECOVERY AGAINST DEFAULTED SUPPLIER/VENDOR.

VI. IT IS AN AGREED TERM OF CONTRACT THAT THIS AMOUNT SHALL BE A GENUINE PRE-ESTIMATE OF DAMAGES THAT BHEL WOULD INCUR IN COMPLETION OF BALANCE CONTRACTUAL OBLIGATION OF THE CONTRACT THROUGH ANY OTHER AGENCY AND BHEL WILL NOT BE REQUIRED TO FURNISH ANY OTHER EVIDENCE TO THE SUPPLIER/VENDOR FOR THE PURPOSE OF ESTIMATION OF DAMAGES. VII. IN ADDITION TO THE ABOVE, IMPOSITION OF LIQUIDATED DAMAGES, DEBARMENT, TERMINATION, DE-SCOPING, SHORT-CLOSURE, ETC., SHALL BE APPLIED AS PER PROVISIONS OF THE CONTRACT.

NOTE: 1) THE DEFAULTING SUPPLIER/VENDOR SHALL NOT BE ELIGIBLE FOR PARTICIPATION IN ANY OF THE FUTURE ENQUIRIES FLOATED BY BHEL TO COMPLETE THE BALANCE WORK. THE DEFAULTING CONTRACTOR SHALL MEAN AND INCLUDE: (A) IN CASE DEFAULTED SUPPLIER/VENDOR IS THE SOLE PROPRIETORSHIP FIRM, ANY SOLE PROPRIETORSHIP FIRM OWNED BY SAME SOLE PROPRIETOR. (B) IN CASE DEFAULTED SUPPLIER/VENDOR IS THE PARTNERSHIP FIRM, ANY FIRM COMPRISING OF SAME PARTNERS/ SOME OF THE SAME PARTNERS; OR SOLE PROPRIETORSHIP FIRM OWNED BY ANY PARTNER(S) AS A SOLE PROPRIETOR.

IN CASE OF NON-ACCEPTANCE OF BREACH OF CONTRACT CLAUSE BY SOME BIDDERS, THEY MAY BE REJECTED OR THE OFFERS OF SUCH BIDDERS SHALL BE LOADED BY 10% OF THE CONTRACT VALUE OR BY THE VALUE BY WHICH 10% RECOVERY CONDITION OF BREACH OF CONTRACT CLAUSE IS LESS ACCEPTED BY SUCH BIDDERS.

Action against Bidders / vendor / supplier / contractor in case of default: 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.

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

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BUSINESS DEALINGS WITH SUPPLIERS/ CONTRACTORS" AVAILABLE AT BHEL'S WEBSITE <https://www.bhel.com/guidelines-suspension-business-dealings-supplierscontractors>.

Conflict of interest: "A BIDDER SHALL NOT HAVE CONFLICT OF INTEREST WITH OTHER BIDDERS. SUCH CONFLICT OF INTEREST CAN LEAD TO ANTI-COMPETITIVE PRACTICES TO THE DETRIMENT OF PROCURING ENTITY'S INTERESTS. THE BIDDER FOUND TO HAVE A CONFLICT OF INTEREST SHALL BE DISQUALIFIED. A BIDDER MAY BE CONSIDERED TO HAVE A CONFLICT OF INTEREST WITH ONE OR MORE PARTIES IN THIS BIDDING PROCESS, IF:

A) THEY HAVE CONTROLLING PARTNER (S) IN COMMON; OR B) THEY RECEIVE OR HAVE RECEIVED ANY DIRECT OR INDIRECT SUBSIDY/ FINANCIAL STAKE FROM ANY OF THEM; OR C) THEY HAVE THE SAME LEGAL REPRESENTATIVE/AGENT FOR PURPOSES OF THIS BID; OR D) THEY HAVE RELATIONSHIP WITH EACH OTHER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS THEM IN A POSITION TO HAVE ACCESS TO INFORMATION ABOUT OR INFLUENCE ON THE BID OF ANOTHER BIDDER; OR E) BIDDER PARTICIPATES IN MORE THAN ONE BID IN THIS BIDDING PROCESS. PARTICIPATION BY A BIDDER IN MORE THAN ONE BID WILL RESULT IN THE DISQUALIFICATION OF ALL BIDS IN WHICH THE PARTIES ARE INVOLVED. HOWEVER, THIS DOES NOT LIMIT THE INCLUSION OF THE COMPONENTS/ SUB-ASSEMBLY/ASSEMBLIES FROM. ONE BIDDING MANUFACTURER IN MORE THAN ONE BID; OR F) IN CASES OF AGENTS QUOTING IN OFFSHORE PROCUREMENTS, ON BEHALF OF THEIR PRINCIPAL MANUFACTURERS, ONE AGENT CANNOT REPRESENT TWO MANUFACTURERS OR QUOTE ON THEIR BEHALF IN A PARTICULAR TENDER ENQUIRY. ONE MANUFACTURER CAN ALSO AUTHORISE ONLY ONE AGENT/DEALER. THERE CAN BE ONLY ONE BID FROM THE FOLLOWING: 1. THE PRINCIPAL MANUFACTURER DIRECTLY OR THROUGH ONE INDIAN AGENT ON HIS BEHALF; AND 2. INDIAN/FOREIGN AGENT ON BEHALF OF ONLY ONE PRINCIPAL; OR G) A BIDDER OR ANY OF ITS AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE CONTRACT THAT IS THE SUBJECT OF THE BID; OR

H) IN CASE OF A HOLDING COMPANY HAVING MORE THAN ONE INDEPENDENTLY MANUFACTURING UNITS, OR MORE THAN ONE UNIT HAVING COMMON BUSINESS OWNERSHIP/MANAGEMENT, ONLY ONE UNIT SHOULD QUOTE. SIMILAR RESTRICTIONS WOULD APPLY TO CLOSELY RELATED SISTER COMPANIES. BIDDERS MUST PROACTIVELY DECLARE SUCH SISTER/ COMMON BUSINESS/ MANAGEMENT UNITS IN SAME/SIMILAR LINE OF BUSINESS. "

OVER RUN CHARGES:

NO OVERRUN CHARGES ARE APPLICABLE.

ORDER OF PRECEDENCE:

THE PURCHASE ORDER ALONG WITH ITS ANNEXURES THE NIT, ITS AMENDMENTS / CORRIGENDUM'S SHALL ALL TOGETHER CONSTITUTE THE ENTIRE CONTRACT BETWEEN THE PARTIES AND SHALL BE COMPLEMENTARY TO ONE ANOTHER. IN CASE OF ANY CONTRADICTION, THE ORDER OF PRECEDENCE SHALL BE AS BELOW: A. PURCHASE ORDER ALONG WITH ITS ANNEXURES B. AMENDMENTS/CLARIFICATIONS/CORRIGENDA/ERRATA ETC. ISSUED IN RESPECT OF THE TENDER DOCUMENTS BY BHEL. C. NIT.

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OTHER POINTS:

VENDOR(S) SHALL HAVE TO OBSERVE ALL ITEM / WORK QUALITY, BHEL SPECIFICATION / DRAWING, GENERAL TECHNICAL GUIDE LINES AS STIPULATED IN RELEVANT CLAUSES TENDER SPECIFICATION.

VENDOR(S) SHOULD FOLLOW THE AGREED TENDER TERM (BID SHOULD BE FREE FROM CORRECTION, OVERWRITING, USING CORRECTIVE FLUID, ETC. ANY INTERLINEATION, CUTTING, ERASURE OR OVERWRITING SHALL BE VALID ONLY IF THEY ARE ATTESTED UNDER FULL SIGNATURE(S) OF PERSON(S) SIGNING THE BID ELSE BID SHALL BE LIABLE FOR REJECTION) STRICTLY:- “THE OFFERS OF THE BIDDERS WHO ARE ON THE BANNED LIST AS ALSO THE OFFER OF THE BIDDERS, WHO ENGAGE THE SERVICES OF THE BANNED FIRMS, SHALL BE REJECTED. THE LIST OF BANNED FIRMS IS AVAILABLE ON BHEL WEB SITE WWW.BHEL.COM”.

=> ALL OTHER TERMS & CONDITIONS NOT COVERED HERE SHALL BE AS PER THOSE SPECIFIED IN THE TENDER DOCUMENT (NIT) ALONG WITH TECHNICAL SPECIFICATION, SPECIFIC CONDITIONS OF BID/ CONTRACT & BHEL GISTC.

I. IN CASE OF NEGOTIATION, VALIDITY OF OFFER SHALL BE 60 DAYS FROM RECEIPT OF REVISED / NEGOTIATED FINAL PRICE OR 90 DAYS FROM PART-I OPENING, WHICHEVER IS LATER. II. OFFERS WITH SHORTER VALIDITY THAN ABOVE ARE LIABLE TO BE REJECTED.

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=> PROVISIONAL QUALITY REQUIREMENTS ARE AS FOLLOWS: -

PLEASE CONFIRM FOR PROVIDING TESTING AND CERTIFICATION AS PER ORDERING DRAWING & SPECIFICATION.

Price bid opening / Ordering shall be done on Customer approved vendors (if required).

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=> PLEASE SUBMIT YOUR IN-TIME OFFER / BID (PART-1 & PART- 2) THROUGH NIC PORTAL through following link: Government eProcurement System / <https://eprocurebhel.co.in/nicgep/app>

=> In the event of any Technical or Commercial queries, the same may please be addressed to the following BHEL concerned before Part I opening- for BHARAT HEAVY ELECTRICALS LTD.

1. Ashish Gupta / Sr. Engineer (PPX -EM) ; ashishg@bhel.in
2. DUSHYANT KUMAR - Manager/Purchase-EM Email id- monu@bhel.in Email id- dushyant@bhel.in
Ph. No. 01334-4080 Ph. No. 01334-285622

INTEGRITY PACT

Between

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for _____ (hereinafter referred to as "Contract"). The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint panel of Independent External Monitor(s) (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1- Commitments of the Principal

1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits himself to observe the following principles during participation in the tender process and during the contract execution.

2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and shall await their decision in the matter.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process, terminate the contract, if already awarded, exclude from future business dealings and/ or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

4.1 If the Principal has disqualified the Bidder (s) from the tender process before award / order acceptance according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.

4.2 If the Principal is entitled to terminate the Contract according to Section 3, or terminates the Contract in application of Section 3 above , the Bidder(s)/ Contractor (s) transgression through a violation of Section 2 above shall be construed breach of contract and the Principal shall be—entitled to demand and recover from the Contractor an amount equal to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee , whichever is higher, as damages, in addition to and without prejudice to its right to demand and recover compensation for any other loss or damages specified elsewhere in the contract.

Section 5 - Previous Transgression

5.1 The Bidder declares that no previous transgressions occurred in the last 3 (three) years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.

5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason or action can be taken as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 6 - Equal treatment of all Bidder (s)/ Contractor (s) / Sub-contractor (s)

6.1 The Principal will enter into Integrity Pacts with identical conditions as this Integrity Pact with all Bidders and Contractors.

6.2 In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor(s) and ensure that all Sub-contractors also sign the Integrity Pact.

6.3 The Principal will disqualify from the tender process all Bidders who do not sign this Integrity Pact or violate its provisions.

Section 7 - Criminal Charges against violating Bidders/ Contractors /Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 -Independent External Monitor(s)

8.1 The Principal appoints competent and credible panel of Independent External Monitor (s) (IEMs) for this Integrity Pact. The task of the IEMs is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Integrity Pact.

8.2 The IEMs are not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.

8.3 The IEMs shall be provided access to all documents/ records pertaining to the Contract, for which a complaint or issue is raised before them as and when warranted. However, the documents/records/information having National Security implications and those documents which have been classified as Secret/Top Secret are not to be disclosed.

8.4 The Principal will provide to the IEMs sufficient information about all meetings among the parties related to the Contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the IEMs the option to participate in such meetings.

8.5 The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEMs would not be legally binding and it is restricted to resolving issues raised by a Bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some Bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.

8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process or during execution of Contract, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.

8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to the CMD, BHEL at the earliest. They may also send their report directly to the CVO, in case of suspicion of serious irregularities requiring legal/ administrative action. Only in case of very serious issue having a specific, verifiable Vigilance angle, the matter should be reported directly to the Commission. IEMs will tender their advice on the complaints within 30 days.

8.8 The CMD, BHEL shall decide the compensation to be paid to the IEMs and its terms and conditions.

8.9 IEMs should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the Principal should be looked into by the CVO of the Principal.

8.10 If the IEMs have reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code / Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the IEMs may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

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- 8.11 After award of work, the IEMs shall look into any issue relating to execution of Contract, if specifically raised before them. As an illustrative example, if a Contractor who has been awarded the Contract, during the execution of Contract, raises issue of delayed payment etc. before the IEMs, the same shall be examined by the panel of IEMs. Issues like warranty/ guarantee etc. shall be outside the purview of IEMs.
- 8.12 However, the IEMs may suggest systemic improvements to the management of the Principal, if considered necessary, to bring about transparency, equity and fairness in the system of procurement.
- 8.13 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

9.1 This Integrity Pact shall be operative from the date this Integrity Pact is signed by both the parties till the final completion of contract for successful Bidder, and for all other Bidders 6 months after the Contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

9.2 If any claim is made/ lodged during currency of this Integrity Pact, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 - Other Provisions

- 10.1 This Integrity Pact is subject to Indian Laws and exclusive jurisdiction shall be of the competent Courts as indicated in the Tender or Contract, as the case may be.
- 10.2 Changes and supplements as well as termination notices need to be made in writing.
- 10.3 If the Bidder(s)/ Contractor (s) is a partnership or a consortium or a joint venture, this Integrity Pact shall be signed by all partners of the partnership or joint venture or all consortium members.
- 10.4 Should one or several provisions of this Integrity Pact turn out to be invalid, the remainder of this Integrity Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 10.5 Only those bidders / contractors who have entered into this Integrity Pact with the Principal would be competent to participate in the bidding. In other words, entering into this Integrity Pact would be a preliminary qualification.

For & On behalf of the Principal
(Office Seal)

Place _____

Date _____

Witness: _____

(Name & Address) _____

For & On behalf of the Bidder/ Contractor
(Office Seal)

Witness: _____

(Name & Address) _____

Clause on IP in the tender**Integrity Pact (IP)**

- (a) IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

SI	IEM	Email
1.	Shri Otem Dai, IAS (Retd.)	iem1@bhel.in
2.	Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in
3.	Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in

- (b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.
- (c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.

Note:

No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below:

Details of contact person(s):

(1)
Name: Monu Verma
Deptt: PPX-EM
Address: HEEP HARIDWAR
Phone: (Landline/ Mobile)
01334284080
Email: monu@bhel.in
Fax: -

(2)
Name: Dushyant Kumar
Deptt: PPX-EM (Manager)
Address: HEEP HARIDWAR
Phone: (Landline/ Mobile)
01334285622
Email: dushyant@bhel.in
Fax: NA

COMPLIANCE SHEET FOR TECHNICAL/COMMERCIAL TERMS AND CONDITIONS as per GISTC

Quotation against Enquiry No. _____ Dated: _____ Due on: _____

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

11. Offer Validity: Validity of the offer should be minimum 120 days from tender opening date.	
12. Confirm that there is no deviation with respect to BHEL Specifications/drawings. However, deviations, if any, are to be listed as a separate attachment. The offers that do not meet the substantial requirements of our enquiry are liable to be ignored.	
13. Please note that no revision in the prices or submission of supplementary price bid will be allowed during the validity of the offer. However if there is any change by BHEL w.r.t. original specifications/ requirement/ scope/terms and conditions, the bidders may be asked by BHEL to submit only the price impact bid for such changes only.	
14. Origin of Quotation: The quotation should be from the principal/original supplier even if it is submitted through their authorized agents, failing which the quotation is liable to be ignored. Also the name of principal supplier should be indicated on envelop in addition to Enquiry no and due date.	Not Applicable
15. Pl. Confirm that the prices will remain firm during the entire validity and execution of the Project.	
16. Test Certificate as per BHEL Specification / drawing shall be provided along with dispatch documents.	
17. Guarantee certificate as per BHEL Specification shall be provided along with dispatch documents.	
18. Drawing / Data Sheet Approval (if applicable): Any drawing / data approval required from BHEL after placement of PO shall be submitted within 15 days of ordering and BHEL will ensure to provide the approval within 15 days. Any delay beyond this period will be liability of the party at which end delay occurred. Further no change is acceptable in drawing/data after finalization of the offer.	NA
19. QUALITY REQUIREMENTS: PLEASE CONFIRM FOR PROVIDING TESTING AND CERTIFICATION AS PER ORDERING DRAWING & SPECIFICATION. <u>Price bid opening / Ordering shall be done on Customer approved vendors (if required).</u> Please arrange to submit fully filled endorsed MII certificate along with Offer.	1. 2.
20. All terms will be applicable as per BHEL GISTC ----- Vendors are requested to comment on each applicable clause and write as "NA" if not applicable. Please attach this sheet with your techno-commercial offer. Signature with stamp	-----



BHARAT HEAVY ELECTRICALS LIMITED

HEEP-HARIDWAR, UTTARAKHAND (249403)

General Instructions and Standard Terms & Conditions for bidding against Tender Enquiry (GISTC)

For Indian Bidders (Version May-2024, Rev: 07)

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1. GENERAL.

These general terms & conditions shall apply to all the Tender Enquiries, notice inviting tenders, request for quotations concerning the supply of goods and / or rendering of services to Bharat Heavy Electricals Ltd., HEEP, Haridwar (hereinafter referred to as BHEL or the Purchaser). In case of placement of order these conditions will become part of Purchase Order (P.O) until unless the deviations are specifically agreed by BHEL.

2. ORIGIN OF QUOTATION.

"A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. **The bidder found to have a conflict of interest shall be disqualified.** A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- they have controlling partner (s) in common; **or**
- they receive or have received any direct or indirect subsidy/ financial stake from any of them; **or**
- they have the same legal representative/agent for purposes of this bid; **or**
- they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; **or**
- Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid; **or**
- In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
 - The principal manufacturer directly or through one Indian agent on his behalf; and
 - Indian/foreign agent on behalf of only one principal;**or**
- A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; **or**
- In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/similar line of business. "

3. SUBMISSION OF TENDER.

- Bid / Quotation must be enclosed in sealed cover on which tender enquiry number and the due date MUST BE written and be invariably sent under REGISTERED POST / SPEED POST / COURIER / Dropped in the Tender Box: addressed as follows:

Quotation against Enquiry No. _____

Dated: _____

Due on: _____

To,

**THE HEAD OF MATERIALS MANAGEMENT,
Heavy Electrical Equipment Plant,
Bharat Heavy Electricals Limited,
HARIDWAR-249403 (Uttarakhand), INDIA.**

- TENDER ROOM is located at: Room No. - 415, 4th Floor, Main Admin. Building, BHEL-HEEP, Haridwar.



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- c) In case of Three / Two Part Bid, technical bid containing technical offer, duly signed and un-priced copy of the Price Bid should be kept in one envelope. Price Bid containing only the price should be kept in a separate envelope. All envelopes indicating Part-1 or Part-2 or Part-3 as the case may be to be put in a bigger envelope. Please note that un-priced bid should be the exact replica of price bid but without prices.
- d) The bid / quotation must be posted before due date, keeping allowance for postal transit time. Quotations sent by any mode but not received in time will be ignored. Tender received through authorized E-mail is also acceptable. However, in time submission of tender in tender box shall be the responsibility of the bidder, sent through any mode. Documents submitted with the offer / bid shall be signed and stamped in each page by authorized representative of the bidder.
- e) Any additional documents submitted by supplier / bidder, during processing of registration application / tender or after placement of order shall not be accepted unless it is submitted with forwarding letter and duly signed and stamped.
- f) The bids of the bidders who are on the banned list and also the bids of the bidders, who engage the services of the banned firms, shall be rejected. The cutting / overwriting in the bid / offer must be duly attested by the signatories to the bid. The list of firms banned by BHEL is available on BHEL web site www.bhel.com.
- g) Being PMD vendor, if you are not quoting against this tender enquiry, please send your regret letter positively for our reference with valid reasons for not participating in the tender enquiry. Repeated lack of response on the part of bidder may lead to deletion such PMD vendor from BHEL's approved vendor list.
- h) The bidders will submit Integrity Pact, duly signed by its authorized signatory, along with their bids wherever estimated tender value is Rs. 2 Crore or more.
- i) In case of open tender, technically qualified unregistered bidders may apply online for registration through <http://www.bhel.com/index.php/vender>.
- j) BHEL reserves the right to award tendered quantities among more than one bidder (after acceptance of L1 price by the other bidders). BHEL can also consider awarding of part of the tendered quantity to other than L-1 bidder at L1 counter offered rates, if the quantity offered by the L-1 bidder is less than the quantity tendered for.
- k) In case of e-Tendering (Online bidding through e-portal), offline bid submitted in hard copy or in any other form by the vendor / supplier will not be accepted and will be rejected out rightly. Only e-portal bid will be accepted.

4. TENDER OPENING.

Tender opening is scheduled to start in the Tender Room at 2:00 PM, on the due date. Therefore, bid / quotations must reach this office / tender Box latest by 1:45 PM on due date. Only participating bidders are allowed to attend tender opening. **TENDERS RECEIVED AFTER THE SPECIFIED TIME OF THEIR 'SUBMISSION' WILL BE TREATED AS LATE TENDERS AND SHALL NOT BE CONSIDERED UNDER ANY CIRCUMSTANCES.** The bidders or their authorized representatives may be allowed to attend tender opening if duly authorized by their principals, through a tender specific letter on that particular day. General authorization letter is not acceptable.

Note: - Foreign bidders willing to attend the bid opening has to provide the requisite documents to the concerned Purchase executives for arranging gate pass for them.

5. SPECIFICATION, DRAWINGS & STANDARD.

- a) Bidders must give their detailed specification in the quotation along with relevant technical literature / catalogue etc. against the tender enquiry.
- b) The Bid should be accompanied with relevant copies of catalogues, drawings or specification as per tender enquiry.



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If these documents are not furnished, the offer is liable to be rejected.

- c) Wherever national / international (N/IN) standards are referred, the latest N/IN standards are to be followed. Mention year & date of standard revision that shall be followed for the supply.
- d) All Drawings and Standards are proprietary of BHEL. It must not be used in anyway detrimental to the interest of BHEL or without permission of BHEL.

6. PRICE SCHEDULE.

- a) Kindly quote your prices in figures and words both. In case of any discrepancy in value, the prices quoted in words shall be considered for evaluation and establishing L1 status.
- b) Prices quoted should not be more than the prices quoted to any other BHEL units / offices / divisions. Vendor to submit copy of latest Purchase Order placed by any unit of BHEL for similar items in the technical bid. In case no order has been placed on such items, specific confirmation that no order has been placed on such items should be provided.
- c) Prices should be quoted on F.O.R. Destination basis. Transit insurance shall be arranged by BHEL and not to be included in the prices. The offers quoted on other than F.O.R destination basis may result in non-consideration of such bids.
- d) In case BHEL accepts the EX-Works prices, such offers will be loaded by 1.5% of EX-Works value towards freight or with actual freight charges as per BHEL freight rate contract whichever is higher.
- e) In case of Indigenous items covered by DGS & D Rate Contract, the bidders should submit latest valid copy of the rate contract along with bid / quotation
- f) Applicable **IGST / CGST / SGST** and any other statutory levy should be indicated separately and clearly in the bid / quotation.

- g) Bidders can dispatch goods through any Indian Bank Association approved transporters having their branch at HARIDWAR / destination. If material is dispatched through other than Indian Bank Association approved transporter, material to be delivered on door delivery BHEL Stores basis.
- h) In case of dispatch of material through any other unapproved transporter, payment shall be made only after receipt of material and any additional charges payable to the transporter shall be to the bidder's account.
- i) Any demurrage / godown rent payable to the transporter / or to godown's owner due to any delay attributed by the supplier shall be recovered from supplier's account.
- j) Currency of Evaluation shall be INR.

NB: Financial evaluation of L1, L2Status will be on the basis of Landed Cost to BHEL.

7. REVERSE AUCTION.

Wherever RA is declared in the special terms and conditions of tender enquiry, following shall be applicable and Bidders to confirm the same:

"BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders.

Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in 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."

8. DELIVERY TERMS.

- a) Goods shall be delivered on 'FOR Destination' basis to the named destination unless otherwise called for in the tender enquiry.
- b) Loading on account of 3rd party inspection charges in case of Indian bidders shall be 0.20%.



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9. LIQUIDATED DAMAGES (LD) FOR LATE DELIVERY.

a) Where items of Purchase Order are independently usable.

Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on the value of respective delayed supplies subject to a maximum of 10% of the value of respective delayed supplies. Value of delayed supplies will mean the Gross Value payable to the vendor (Before LD) against such supplies excluding taxes and duties.

b) Where the total items are required for a main equipment and items are interdependent.

Liquidated Damages (LD) for Late Deliveries shall be applicable @0.5% per week or part thereof on total value of Purchase Order subject to maximum of 10% of the total value of Purchase Order. Purchase Order value for this purpose shall be the Total Gross Value payable to the vendor (Before LD) excluding taxes and duties.

c) Bidders are requested to quote the best delivery meeting the delivery requirements. BHEL reserves the right to reject the offers not meeting BHEL's delivery requirement.

d) Commencement of delivery period shall be reckoned from the date of PO / LOI or any other agreed milestone.

e) Bidder shall deliver the goods in the manner and schedule agreed under the terms and conditions of Purchase order.

f) DELIVERY IN CASE OF REJECTION: In case the material is rejected, then date of replacement will be considered as the actual date of delivery.

g) DELIVERY AGAINST BANK DOCUMENTS: In case payment terms quoted by bidder are documents through bank, and the delivery terms being "FOR Haridwar / FOR Transporter Go-down" then date of delivery will be date of intimation by transporter / bidder of delivery of material at Haridwar for the LD purpose.

h) Where the payments are through bank, the documents may be presented for negotiation to BHEL authorized / nominated bank.

i) Payment of Liquidated Damages (LD) shall not in any way relieve the vendor from any of its obligations & liabilities under the contract.

10. PAYMENT TERMS.

a) BHEL's standard payment term is Payment after receipt and acceptance of materials / items at HEEP, BHEL-Store or at desired destination unless otherwise specified in Special Terms attached to the tender enquiry.

b) BHEL reserves the right to accept or reject the offer of the bidder who quotes the payment term other than BHEL's standard payment term.

c) Loading on account of deviation in payment terms shall be done as per extant rules of BHEL-Haridwar.

d) 100% payment along with taxes, freight & insurance will be made after receipt and acceptance of material and within 75 days from the date of invoice subject to submission of non-discrepant documents within 15 days of supply as per terms and conditions of Purchase Order. In case any discrepancy found in the documents, BHEL will notify the same to vendor within 7 days of receipt. Vendor has to clear all the discrepancies in one go within 7 days thereafter else the payment of vendor may get delayed.

e) For MSEs (covered under MSME Act) which are registered and periodically renewed with BHEL, the payment will be made within 45 days or as prescribed in the relevant act.

f) Adherence to the above time schedule of payment is contingent upon Vendor complying with GST Rules w.r.t availment of Input Tax Credit by BHEL.

g) In case GST credit is delayed / denied to BHEL, due to non / delayed receipt of goods and / or tax invoice or expiry of the timeline prescribed in GST Law for availing such ITC, or any other reason not attributable to BHEL, GST amount shall be recoverable from Vendor along with interest levied / leviable on BHEL.

h) The taxes and duties that are reimbursed would be the ones applicable as on the contractual Purchase order delivery date or the amount actually paid whichever is less.



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i) **The loading criteria for the different payment terms shall be as under:**

Payment Terms	Days of Loading
After Receipt & Acceptance of material within 75 days of supply.	No Loading
Against Delivery at BHEL-Stores Haridwar.	45
Against documents through bank (CAD):	45
Letter of Credit (LC)	120
Usance LC	No Loading if usance period is > 120 Days.
	Loading of days' difference i.e. difference between 120 days and usance period if the usance period is < 75 days.
Advance	Delivery Period + 120 Days - Advance Payment Days.

11. TAXES & DUTIES.

- a) The bidder to specify in their offer (part 1 bid) the category of their registration under GST like Registered, Unregistered and composite dealer.
- b) The provisional GST registration number of Bharat Heavy Electrical Ltd, Heavy Electricals Equipment Plant, Ranipur, Haridwar is "05AAACB4146P1ZL" with state Code as "05" and State Name as "Uttarakhand".
- c) Please quote our provisional GST registration number in all invoices raised for supply of goods and services under GST regime and also ensure filing of timely return and payment of tax and compliance of other applicable provisions on supplier under GST regime.
- d) No GST will be reimbursed to unregistered or composite dealer. In the event, any GST is quoted by composite dealer, the same shall be added to the cost of supply in evaluating the bid.
- e) Since, input credit of GST will be available to BHEL-Haridwar only after correct filing of return and payment of applicable GST by supplier, reimbursement of GST shall be made by

BHEL-Haridwar on matching of vendor inputs at GST portal, ensuring availability of input credit to BHEL Haridwar. Payment of GST will be made to vendor after matching of input credit and vendor to ensure submission of their invoices along with consent to accept payment of tax after such matching in all cases where bills are submitted directly to BHEL-Haridwar or through bank or under LC or through any other mode.

- f) In the event of any disallowance of input credit or applicability of interest or any other financial liability arises on BHEL-Haridwar due to any default of supplier under GST, such implication shall be to supplier's account.
- g) In the event of any change in the status of the vendor after the submission of the bid but before the supply, GST applicable at the time of supply or in the bid, based on the registration status of the vendor, whichever is lower shall be payable.
- h) Where ever applicable If PAN (Permanent Account Number) of the recipient is not available, income tax is deductible either at the normal rate or at the rate of 20 percent, whichever is higher as per Section 206AA of Indian Income Tax Act 1961.
- i) The bidder shall clearly indicate HSN (*Harmonised System Nomenclature*) / SAC (*Service Accounting Code*), its description and applicable rate of GST for each item in his techno-commercial bid.
- j) Statutory Variation in Taxes & duties as applicable at the time of supply shall be payable. However, in the event of no change in law but bidder quoting certain tax structure in bid document which is lower than the applicable one, such amount shall be the maximum amount of tax that can be claimed by bidder.
- k) **IMPORTED GOODS OFFERED BY INDIAN BIDDERS AGAINST DEALER INVOICE:** Wherever the material being offered is imported, the bidder must quote the prices inclusive of IGST. The rate and value of IGST as included in the price must be indicated separately. In case quantum of IGST is not mentioned by the bidder the same will not be considered for



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evaluation. However, bidder will have to pass on the benefit of IGST to BHEL at the time supply.

- l) In case of directly dispatchable items to Customer's Site, BHEL-Haridwar will inform the GST registration number of the respective customer which must be mentioned on the vendor's invoice. Vendor to ensure availability of such information from BHEL-Haridwar before dispatch of any material. However, while filing GSTN-1, BHEL Haridwar GSTN number to be quoted.

Note: - Vendors must ensure compliance of all the applicable rules and procedure as envisaged in the GST Regime. Any loss to BHEL-Haridwar due to fault / non-compliance by the vendor will be to the vendor's account.

12. BANK GUARANTEE.

In case the bank guarantees are required to be deposited towards security deposit/performance guarantee or for any other purpose as per the terms of this tender enquiry, such bank guarantees of the requisite value in the denominated currency of the purchase order should be from one of the Indian branch of BHEL consortium banks and the bank guarantee should be in the proforma as prescribed by BHEL. The proforma of bank guarantee and the list of consortium banks are displayed at BHEL website www.bhelhwr.co.in. However, in case the bank guarantee is not from BHEL consortium banks, then the bidder has to get the bank guarantee confirmed from one of the Indian branch of BHEL consortium banks and the bank charges for such confirmation will be borne by the bidder.

13. GUARANTEE / WARRANTY AND CORRESPONDING REPAIRS / REPLACEMENT OF GOODS.

Goods shall comply with the specifications for material, workmanship and performance. Unless otherwise specified, the warranty shall be for a period of 18 months from the date of receipt. If the delivery is found non-compliant during the warranty period, leading to rejection, the Seller shall arrange free replacement / repair of goods, within one month from the date of intimation or any mutually agreed period. The rejected goods shall be taken away by the Seller at his cost and

replaced on Delivered Duty Paid (DDP) (FOR - BHEL Stores / designated destination basis) within such period. In the event of the Seller's failure to comply, Purchaser may take action as appropriate, including Repair / Replenish rejected goods & disposal of rejections, at the risk & cost of the Seller. In case the defects attributable to Seller are detected during processing of the goods at BHEL or at our subcontractor's works, the Seller shall be responsible for free replacement / repair of the goods as required by BHEL.

- b) **RETURN OF REJECTED MATERIAL FOR REPLACEMENT:** The bidder shall have to pay 5% incidental charges while taking back supplied material if it is found rejected on receipt. The rejected material shall be sent back only after receipt of replacement / submission of BG / refund of amount paid.

14. QUALITY REQUIREMENT.

Your bid / quotation should have specific confirmation regarding meeting all our quality requirements such as. (i) Test Certificate (TC), (ii) Guarantee Certificate (GC) / Warranty Certificate (WC), (iii) Quality Plan (QP) (if applicable); and (iv) Pre-Dispatch Inspection at your works (if applicable).

15. VALIDITY.

The quotation should be valid for a minimum period of 90 days effective from the date of opening of tender, unless otherwise specified in the tender enquiry.

16. RIGHT OF ACCEPTANCE.

- a) **BHARAT HEAVY ELECTRICALS LIMITED HARIDWAR** reserves the right to reject any or all the bids / quotations without assigning any reason thereof. BHEL also reserves the right to increase or decrease the tendered quantities. Bidders should be prepared to accept order for reduced quantity without any extra charges.
- b) Any discount / revised offer / bids submitted by a bidder on its own shall be considered, provided it is received on or before the due date and time of offer / bid submission (Part-1). Conditional discounts shall not be considered for evaluation of tenders.



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- c) Unsolicited discounts / revised offers / bids given after Part-1 bid opening shall not be accepted. No change in price will be permitted within the validity period asked for in the tender enquiry.
- d) In case of changes in scope and / or technical specification and / or commercial terms & conditions having price implication, techno-commercially acceptable bidders shall be asked by BHEL to submit the impact of such changes on their price bids. In case a bidder opts to submit revised price bid instead of impact called for then the latest price bid shall prevail. However, in both situations, original price bid will be necessarily opened.
- e) The bidder whose bid is technically not accepted will be informed & EMD wherever submitted shall be returned after finalization of contract. EMD shall be forfeited in the event of bidder opting out after tender opening.
- f) BHEL reserves the right to short close the existing Purchase Order / Rate Contract / Work Order or any extension thereof at any stage.

17. TRANSIT INSURANCE.

- a) Transit Insurance will be covered by BHEL under its open Insurance Policy. Seller shall inform dispatch particulars (Purchase Order, RR /GR, Invoice value etc.) to "Finance department (Store bill Section), BHEL Ranipur, Haridwar (Uttarakhand-India) with value of consignment to the Purchaser within 07 days of dispatch for BHEL to arrange insurance coverage in its policy. Failure on the part of seller to inform dispatch particulars will make him liable to pay for any transit damages / losses suffered by the Purchaser.
- b) If Quoted Prices are inclusive of transit insurance, no weightage shall be given while evaluating the bids for Cost of Insurance, being in BHEL Scope.

18. RISK PURCHASE.

In case of abnormal delays (beyond the maximum late delivery period as per LD clause) in supplies / defective supplies or non-fulfillment 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.

19. FORCE MAJEURE CLAUSE.

Notwithstanding any other thing contained anywhere else in the contract or PO (Purchase Order), In case the discharge of obligation under the contract by either party is impeded or made unreasonably onerous, neither party shall be considered in breach of the contract to the extent that performance of their respective obligation is prevented by an event of Force Majeure that arises after the effective date (PO date).

In the above clause, Force Majeure means an event beyond the control of the parties to the contract which prevents a party from complying with any obligation of the contract including but not limited to:

- a) Act of God (Such as but not limited to earthquake, drought, tidal waves, floods etc.).
- b) War (whether war be declared or not), Hostilities Invasion, Act of foreign enemy etc.
- c) Rebellion, revolution, insurrection, civil war etc.
- d) Contamination of Radio Activity from any nuclear fuel or from any other nuclear waste or any other hazardous materials.
- e) Riots, commotions, strike unless restricted to the employees of supplier.
- f) Acts of terrorism.



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- g) Other unforeseeable circumstances beyond the control of the parties and which the affected party cannot avoid even by using its best efforts.
- h) Cancellation of contract by customer.
- i) Change in law / government. Regulation making the performance impossible.
- j) Pandemic or Epidemic.

The party claiming to be affected by force majeure shall notify the other party in writing immediately without delay on the intervention and on the cessation of such circumstances.

Irrespective of any extension of time, if an event of force majeure occurs and its effect continues for more than 180 days the affected party shall have right to cancel the contract.

As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, either Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.

The party shall, and shall ensure that its Subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with Good Operating Practices (but without incurring unreasonable additional costs) to:

- a) Prevent Force Majeure Events affecting the performance of the party's obligations under this Agreement.
- b) mitigate the effect of any Force Majeure Event and
- c) Comply with its obligations under this Agreement.

If the war like situation has developed in a country where a seller's works is located in this P.O. or there is political instability and Indian Embassy located in that country forbids or advises for not having any business dealing with the sellers located in such zone / region/ country, then BHEL reserves the right to cancel the order.

20. NON-DISCLOSURE AGREEMENT.

All Drawing and Technical Documents relating to the product or its manufacture submitted by one party to the other, prior or

subsequent to the formation of contract, shall remain property of the submitting party. Drawing, technical documents or other technical information received by one party, shall not without the consent of the other party, be used for any other purpose than that, for which they were provided. Such technical information shall not without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party. Patterns supplied by BHEL will remain BHEL's property which shall be returned by the bidder on demand to BHEL. Bidder shall in no way share or use such intellectual property of BHEL to promote his own business with others or to gain a commercial advantage. BHEL reserves the right to claim damages from the bidder, or take appropriate action as deemed fit against the bidder, for any infringement of the provisions contained herein as available under law or equity.

21. SETTLEMENT OF DISPUTES / ARBITRATION.

In case of any dispute arising out of as in connection with this contract, the same shall be referred to arbitration under Arbitration & Conciliation Act 1996 of a sole arbitrator who shall be appointed by mutual consent of the parties. The seat & venue of arbitration shall be Haridwar.

The proceedings shall be conducted in English. The Governing law of contract shall be the substantive law of India.

22. WHARFAGE / DEMURRAGE RESPONSIBILITY.

In the event of delay in receipt of documents by Manager (Stores-Shipping) BHEL-Haridwar and in case where dispatches are made through Unapproved Transporter the sole responsibility for wharfage / demurrage for such delay shall be that of supplier.

23. CONDITIONS FOR AVAILING MICRO & SMALL ENTERPRISES (MSE'S) BENEFITS.

- a) "MSE Suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate having deemed validity (**five years** from the date of issue of acknowledgement in EM II) or valid NSIC certificate or EM II certificate along with attested copy of a CA certificate



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(Format enclosed at annexure-1 where deemed validity of EM II certificate of five years has expired) applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two-part bid) or vendor has to give Udyog Adhar Memorandum (UAM). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above required documents is found or the requisite documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer. **UAM need not required to be notarized or attested.**

b) Any new supplier will be eligible for registration with BHEL as MSE supplier provided at least any one of the following documents are submitted along with application for registration: -

1. Udyog Adhar Memorandum (UAM).
2. Valid National Small Industries Commission (NSIC) Certificate.
3. Entrepreneurs Memorandum part II (EM II) certificate (valid based on deemed validity of 5 years) or
4. EM II certificate along with attested copy of CA Certificate (as per prescribed format at annexure-A) applicable for the relevant financial year (latest audited), where the deemed validity of EM II is over.
5. However, credentials of all MSE suppliers will be verified before advancing the intended benefits.
6. MSE bidders claiming SC/ST status will have to submit SC/ST certificate of the Proprietor from competent authority. Attested (notarized or attested by Gazetted officer) copy to be submitted along with the offer.
7. In case techno-commercial accepted bidders include MSE source and their prices (based on landed cost – considering quoted prices) are within the price band of 15% w.r.t. L-1 bidder, then BHEL can offer **25%** of quantity of respective item (rounded off to nearest number) to MSE bidders at L-1 price and in case, more than one MSE bidder is in 15 % band and the same is accepted by more than one MSE bidders then **25%** quantities of respective items will be considered for ordering on proportionate basis amongst MSE bidders.

8. There will be minimum of **3%** reservation for women owned MSEs within the above mentioned 25% reservation.
9. The reservation for MSEs owned by SC/ST will be **6.25%** { 25% out of target of 25% - refer para 4 of Public Procurement Policy for the Micro and Small Enterprises(MSEs)}.
10. The definition of MSEs owned by Women Entrepreneurs is clarified as under:
 - a) In case of proprietary MSE, proprietor shall be Woman.
 - b) In case of partnership MSE, the Woman partners shall be holding at least 51% of share in the unit.
 - c) In case of Private Limited companies, at least 51% share shall be held by Women promoters.
11. The definition of MSEs owned by SC/ST is clarified as under:
 - a) In case of proprietary MSE, proprietor(s) shall be SC/ST.
 - b) In case of partnership MSE, the SC/ST partners shall be holding at least 51% of shares in the unit.
 - c) In case of Private Limited companies, at least 51% share shall be held by SC/ST promoters.
12. While distributing the **25%** quantity amongst MSE bidders the decimal points in quantity shall be ignored for all the bidders except the L-1 amongst MSE bidders. Balance quantity after allocating the quantity to other MSE bidders ignoring the quantities in decimal, shall be given to L-1 (amongst MSE) bidder. However, if there are more than one MSE bidder at the same price level than preference for additional quantities due to ignoring off the decimal (as mentioned above) shall be given to the bidder offering favorable terms to BHEL and if the conditions offered are also same then preference will be given to the bidder having high SPR rating.
13. In case there are more than one MSE bidders (with different landed cost to BHEL) within 15% price band of lowest bidder and quantity to be offered is 1 no. only, then preference shall be given to the MSE bidder with lowest landed cost.
14. In case there are more than one MSE bidders (with same landed cost to BHEL) within 15% price band of lowest bidder and quantity to be offered is 1 no. only, then preference shall be given first, based on the favorable terms in the bid and in case terms are also same, the bidder with high SPR rating shall be given preference.
15. If L1 bidder is MSE bidder, entire quantity will be given to such MSE bidder only.



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16. Note: It may however be noted that MSE guidelines as on date (Date of Technical Bid Opening Part-1) shall prevail.

17. "As per the OM No. F.No. 1(2)(1)/2016-MA dtd. 09.02.2017 issued from the Office of Development Commissioner (Micro, Small & Medium Enterprises), "Traders and agents should not be allowed to avail the benefits extended under the PP Policy."

In view of this, it is clarified that benefits of MSE (such as EMD Waiver, Tender fee exemption, Price preference, Payment preference etc.) will be given only to those MSE Vendors who are manufacturers of offered items against the NIT. No MSE benefits shall be provided to Agents / Stockists / Dealers / Traders etc. for the items offered but not manufactured by themselves."

24. INFORMATION TO THE BIDDERS.

a) Purchase related information is available at our Business-to-Business (B2B) Portal available on our website <https://hwr.bhel.com>. The user ID & password can be obtained by sending a request to concerned purchase executives.

b) Intimate your change in mail address or communication address or changes, if any, by email to AGM (SDX/MM) giving your bidder Code.

c) Please resolve your rejections and unexecuted overdue purchase order immediately which are posted at our B2B Portal, which can be visited through our site <https://hwr.bhel.com>

d) Copy of this Tender Enquiry is being sent through the post.

e) The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

In case, the bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/guidelines.

f) Supplier must upload digitally signed e-Invoice on B2B portal for processing of Bills.

In other cases, inked signed hard copy of Invoice to be submitted for processing of Bills.

25. MAKE IN INDIA (GOVT-NOTIFICATION).

A. This tender enquiry shall be governed by notification no. P-45021/2/2017-PP (BE-II) dated 04.06.2020 of government of INDIA and subsequent circulars issued afterwards. Accordingly, the minimum local content, the margin of purchase preference and the procedure for preference to make in INDIA shall be adhered.

B. The margin of purchase preference shall be 20%.

- 'Class-I local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this order.
- 'Class-II local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this order.
- 'Non- local Supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this order.

C. Vendor to specifically confirm if they are Class-I or Class-II local supplier or not as per above mentioned notification.

Accordingly, the 'Class-I local supplier' / 'Class-II local Supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier' / 'Class-II local Supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.

D. In cases of Procurement for a Value in Excess of Rs. 10 Crores, the 'Class-I local supplier' / 'Class-II local Supplier' shall be required to provide a Certificate from the Statutory Auditor or Cost Auditor of the Company (in the case of companies) or from a practicing Cost Accountant or practicing Chartered Accountant (in respect of suppliers other than companies) giving the percentage of Local Content.



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E. Requirement of Purchase Preference:

Purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified hereunder -

- a. In the procurements of goods or works, which are covered by para 3(b) of mentioned Govt. circular and which are divisible in nature, the 'class-I local supplier' shall get purchase preference over 'Class-II supplier' as well as 'Non-local supplier', as per following procedure:
 - i. Among All qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local supplier, then such balance quantity may also be ordered on the L1 bidder".
- b. In the procurements of goods or works, which are covered by para 3(b) of mentioned Govt. circular and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'class-I local supplier' shall get purchase preference over 'Class-II supplier' as well as 'Non-local supplier', as per following procedure:
 - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 - ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling

within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

- iii. In case such lowest eligible 'Class-I local supplier', fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 prices, the contract may be awarded to the L1 bidder.

- c. 'Class-II local supplier' will not get purchase preference in any procurement, undertaken by procuring entities.

- F. For this procurement, the local content to categorize a supplier as a Class-I local supplier/ Class-II local supplier/ Non-local supplier and purchase preference to Class-I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT.

- G. Procurements where estimated value to be procured is less than Rs. 5 lakhs shall be exempted from GOI order No. P-45021/2/2017-PP (BE-II) dated 04.06.2020.

- H. For procurement of Goods & Services which are divisible in nature, following shall be operated for **MSE bidders** under Public procurement Policy for the Micro and Small Enterprises (MSEs) Amendment Order, 2019, Ref. No. AA: SSP: MSE: Amndt, dtd. 30.11.2018, Circular No. 44 of 2018-19;-

- a. If L1 bid is not from "Class-I local Supplier" and price quoted by MSE bidder falls within the margin of Purchase preference (L1+15% for MSEs), then 25 % of total order quantity of respective item (rounded off to nearest number) shall be awarded to MSE bidder, subject to MSE bidder matching the L1 Price. Out of Remaining 75% quantity, distribution shall be operated as per below sub-clause (2) –
- b. If "Class- I Local Supplier" (Next to L1, other than MSE) quoted price falling within the Margin of Purchase Preference, and "Class-I local supplier" matches the L1 price,



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then 50% of remaining Quantity (after allocation of 25% to MSE) i.e. 37.5% shall be awarded to local supplier and 37.5% shall be awarded to foreign bidder.

Note: L1 Price refers to lowest evaluated / landed cost to Company.

For Further details, please refer GOI order no. P-45021 / 2 / 2017 - PP (BE-II) dated 04.06.2020.

26. RESTRICTIONS UNDER RULE 144(XI) OF THE GENERAL FINANCIAL RULES (GFRs), 2017

All provisions of Order No. F.No.6/18/2019-PPD of Department of Expenditure (DoE) shall be applicable for this tender enquiry (Order copy is available at <https://doe.gov.in/procurement-policy-divisions>). Accordingly, any bidder from a country which shares a land border with India (except the countries to which the Govt. of India has extended lines of credit or in which the Govt. of India is engaged in development projects for which list is available at <https://www.mea.gov.in/>) will be eligible to bid in this tender only if the bidder is registered with the Competent Authority as specified in Annex I of the said Order of DoE.

Updated list of the countries to which lines of credit have been extended or in which development projects are undertaken are available on the Ministry of External affairs website (<https://www.mea.gov.in/>)

For the purpose of this order, definition of Bidder from a country which shares a land border with India shall be same as defined in the Annex III of the said order.

Registration with the competent authority as stipulated in the said order is responsibility of bidder. Bidder has to submit a certificate certifying following along with offer:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India;

I certify that bidder (.... Name of Bidder) is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that bidder (.....Name of bidder) fulfils all requirements in this regard and is eligible to be considered"

If the bidder is from such country which shares a land border with India evidence of valid registration by the Competent Authority shall also be attached along with offer."

27. NOTE.

- Special conditions of enquiry, if enclosed by BHEL, will supersede the respective standard / general terms of enquiry.
- Any other Standard terms and Conditions of the bidder attached / referred against the tender enquiry will be treated as null and void ab initio.
- In order to protect the commercial interests of BHEL, it becomes necessary to take action against suppliers / 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, indulged in malpractices, cheating, bribery, fraud or any other misconducts or formation of cartel so as to influence the bidding process or influence the price etc. Guidelines for Suspension of Business Dealings with Suppliers / Contractors shall prevail over which is available at BHEL website <http://www.bhel.com>
- The bidder along with its associate / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL-Management about any fraud or suspected fraud as soon as it comes to their notice.
- "BHEL shall recover the amount of compensation paid to victim(s) by BHEL towards loss of life / permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees as detailed below;
 - Victim:** Any person who suffers permanent disablement or dies in an accident as defined below.
 - Accident:** Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious



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occurrence caused during the manufacturing / operation and works incidental thereto at BHEL factories/ **offices and precincts** thereof , project execution , erection and commissioning, services, repairs and maintenance, trouble shooting, serving , overhaul, renovation and retrofitting , trial operation, performance guarantee testing undertaken by the company or during any works / during working at BHEL Units/ Offices/ townships and premises/ project sites.

3. Compensation in respect of each of the victims:

- (i) In the event of death or **permanent disability** resulting from **Loss of both limbs**: Rs. 10,00,000/-(Rs. Ten Lakh).
- (ii) In the event of **other permanent disability**: Rs. 7,00,000/- (Rs. Seven Lakh).

4. Permanent Disablement: A disablement that is classified as a permanent total disablement under the proviso to Section 2(l) of the Employees Compensation Act, 1923."

f) The bidder shall be in compliance with applicable laws, rules and regulations throughout the terms of the contract for conducting its business generally and to perform its obligations under this contract.

**DECLARATION REGARDING MINIMUM LOCAL CONTENT IN LINE WITH
REVISED 'PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA),
ORDER, 2017 ISSUED BY DPIIT VIDE OM NO. P-45021/2/2017-PP(BE-II) PART
(4) VOL. II DATED 19.07.2024 AND SUBSEQUENT ORDER(s)**

(To be typed and submitted in the Letter Head of the Entity/Firm providing certificate as applicable)

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Sub: Declaration reg. minimum local content in line with Revised 'Public Procurement (Preference to Make in India), Order, 2017 issued by DPIIT vide OM No. P-45021/2/2017-PP(BE-II) Part (4) Vol. II dated 19.07.2024 and subsequent order(s).

Ref: 1) Enquiry No:

2) All other pertinent issues till date

We hereby certify that the items/works/services offered by..... (specify the name of the organization here) has a local content of _____ % and this meets the local content requirement for '**Class-I local supplier**' / '**Class II local supplier**' ** as defined in Revised 'Public Procurement (Preference to Make in India), Order, 2017 issued by DPIIT vide OM No. P-45021/2/2017-PP(BE-II) Part (4) Vol. II dated 19.07.2024 and subsequent order(s).

The details of the location(s) at which the local value addition is made are as follows:

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |

Thanking you,
Yours faithfully,

(Signature, Date & Seal of Authorized Signatory of the Bidder)

** - Strike out whichever is not applicable.

Note:

1. Bidders to note that above format, duly filled & signed by authorized signatory, shall be submitted along with the techno-commercial offer.
2. In case the bidder's quoted value is in excess of Rs. 10 crores, the authorized signatory for this declaration shall necessarily be the statutory auditor or cost auditor of the company (in the case of companies) or a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies).
3. In the event of false declaration, actions as per the above order and as per BHEL Guidelines shall be initiated against the bidder.

ANNEXURE – 8**INTEGRITY PACT****Between**

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for

_____. The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitor(s), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1- Commitments of the Principal

1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

- 1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- 1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through

which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and will await their decision in the matter.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

4.1 If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent Earnest Money Deposit/ Bid Security.

4.2 If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee, whichever is higher.

Section 5 - Previous Transgression

5.1 The Bidder declares that no previous transgressions occurred in the last 3 years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.

5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section 6 - Equal treatment of all Bidders/ Contractors / Sub-contractors

6.1 The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors. In case of sub-contracting, the Principal contractor shall be responsible for the adoption of IP by his sub-contractors and shall continue to remain responsible for any default by his sub-contractors.

6.2 The Principal will disqualify from the tender process all bidders who do not sign this pact or violate its provisions.

Section 7 - Criminal Charges against violating Bidders/ Contractors /Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 -Independent External Monitor(s)

- 8.1 The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.
- 8.3 The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the Principal including that provided by the Bidder(s)/ Contractor(s). The Bidder(s)/ Contractor(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation. The same is applicable to Sub-contractor(s). The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Sub-contractor(s) with confidentiality in line with Non- disclosure agreement.
- 8.4 The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- 8.5 The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to CMD, BHEL, at the earliest. They may also send their report directly to the CVO and the Commission,

in case of suspicion of serious irregularities requiring legal/ administrative action. IEMs will tender their advice on the complaints within 10 days as far as possible.

8.8 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.

8.9 IEM should examine the process integrity; they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the organization should be looked into by the CVO of the concerned organisation.

8.10 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code/ Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

8.11 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.

8.12 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

9.1 This Pact shall be operative from the date IP is signed by both the parties till the final completion of contract for successful bidder and for all other bidders 6 months after the contract has been awarded. Issues like warranty / guarantee etc. should be outside the purview of IEMs.

9.2 If any claim is made/ lodged during currency of IP, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 - Other Provisions

10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.

10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

- 10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 10.5 Only those bidders / contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

For & On behalf of the Principal	For & On behalf of the Bidder/ Contractor
(Office Seal)	(Office Seal)
Place-----	
Date-----	
Witness:_____	Witness:_____
(Name & Address) _____	(Name & Address) _____
_____	_____

Clause on IP in the tender

Integrity Pact (IP)

- (a) IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

SI	IEM	Email
1.	Shri Otem Dai, IAS (Retd.)	iem1@bhel.in
2.	Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in
3.	Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in

- (b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.
- (c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.

Note:

No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below:

Details of contact person(s):

(1)
Name: Monu Verma
Deptt: PPX-EM
Address: HEEP Haridwar
Phone: (Landline/ Mobile)
01334284080
Email: monu@bhel.in
Fax: -

(2)
Name: Dushyant Kumar
Deptt: PPX-EM (Manager)
Address: HEEP HARIDWAR
Phone: (Landline/ Mobile)
01334285622
Email: dushyant@bhel.in
Fax: NA

Restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017.

I. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.*

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order means: -

- (a) An entity incorporated, established or registered in such a country; or
- (b) A subsidiary of an entity incorporated, established or registered in such a country; or
- (c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- (d) An entity whose beneficial owner is situated in such a country; or
- (e) An Indian (or other) agent of such an entity; or
- (f) A natural person who is a citizen of such a country; or
- (g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.

VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution

"A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. **The bidder found to have a conflict of interest shall be disqualified.** A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a)** they have controlling partner (s) in common; **or**
 - b)** they receive **or** have received any direct or indirect subsidy/ financial stake from any of them; **or**
 - c)** they have the same legal representative/agent for purposes of this bid; **or**
 - d)** they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; **or**
 - e)** Bidder participates in more than one bid in this bidding process.
- Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid; **or**

f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:

- 1.** The principal manufacturer directly or through one Indian agent on his behalf; and

- 2.** Indian/foreign agent on behalf of only one principal;

or

g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; **or**

h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business. "

ONE SIDED**NON DISCLOSURE AGREEMENT**

THIS NON DISCLOSURE AGREEMENT (this "**Agreement**") entered into on this day of June, 20.. (the "**Effective Date**")

By and Between

Bharat Heavy Electricals Limited (a Public Sector Undertaking of Government of India), a company incorporated under the Companies Act, 1956 and having its registered office at having its registered office at "BHEL House", Siri Fort, New Delhi - 110 049, India (hereinafter referred to as "**BHEL**" of which the expression shall unless repugnant to the context or the meaning thereof be deemed to include its successors and permitted assigns) (hereinafter referred to as "BHEL"),

And

ABC, a Company incorporated under the laws of and having its registered office at (hereinafter referred to as "ABC").

The party who is receiving information would be referred as Receiving Party and the party who is disclosing information would be referred as Disclosing Party, as the context requires.

WHEREAS

- (A) The Disclosing Party and The Receiving Party wish to explore and discuss the potential of certain mutually advantageous business relationships for _____, for the purpose ofproducts in India ('the Purpose');
- (B) The Disclosing Party, in furtherance of such business relationship, will disclose certain information, including but not limited to, scientific, development, financial, marketing, sales or other proprietary information;
- (C) The Receiving Party and the Disclosing Party wish to protect and preserve the confidentiality of such information provided by the Disclosing Party to the Receiving Party by preventing its unauthorized disclosure and use, in accordance with the terms of this Agreement; and
- (D) The Receiving Party agrees to hold such information in strict confidence and not to disclose or to use, directly or indirectly, for any purpose other than the performance of this Agreement

NOW, THEREFORE and in consideration of the promises made herein, their mutual and individual interests, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the Parties agree as follows:

1. **PURPOSE:** Purpose to ne mentioned here.
2. **DISCLOSING PARTY.** means a Party that discloses the confidential information to the other party under this agreement.
3. **RECEIVING PARTY** means a Party that receives the confidential information from the other party under this agreement.
4. **Confidential Information**
 - (a) Subject to the provisions of this Agreement, all information disclosed by the Disclosing Party to the Receiving Party, shall be deemed to be "Confidential Information" for the purposes of this Agreement.
 - (b)
 - (i) It is clarified that Confidential Information shall include, but is not limited to, any trade secret, technique, strategy, component, concept, program, report, study, memorandum, correspondence, documentation, information, manual, record, data, technology, product, plan, design, procedure, method, invention, sample, notes, summaries, analyses, compilations and other writings, producing any such sample, medium, test data relating to any research project, work in progress, future development, engineering, manufacturing, marketing, pricing, billing, servicing, financing, personnel matter, its present or future products, sales, suppliers, clients, customers, employees, investors, or any other information which the Disclosing Party provides to the Receiving Party whether in oral, written, graphic or electronic form and whether or not such information is identified as such by an appropriate stamp or marking. The Confidential Information shall also include all reports, notes or other material prepared by the Receiving Party based on the Confidential Information and/ or any discussion thereon.
 - (ii) Confidential Information includes information disclosed by the Disclosing Party or by any individual, firm or corporation controlled by, controlling, or under the common control of the Disclosing Party.
 - (c) Confidential Information shall not include any information which the Receiving Party can demonstrate to the Disclosing Party:
 - (1) is now, or has become, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;
 - (2) is known by the Receiving Party at the time of receiving such information as evidenced by its records;
 - (3) is discovered/independently developed by the Receiving Party independent of any disclosures by the Disclosing Party; or

- (4) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure.

- (d) Notwithstanding any other provision of this Agreement, the Receiving Party shall be permitted to disclose Confidential Information if such disclosure is in response to a valid order of a court or other governmental body, provided, however, that the Receiving Party shall be required to give prior notice in writing to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order including that the Confidential Information so disclosed be used only for the purposes for which the order was issued;

5. **Disclosure**

In consideration of the disclosure of Confidential Information by, the Recipient hereby agrees to:

- (a) Shall treat as confidential and safeguard all information disclosed and/or its Affiliates in connection
- (b) to hold the Confidential Information in strict confidence and to take all necessary precautions to protect such Confidential Information (including, without limitation, all precautions the Recipient employs with respect to its own confidential materials);
- (c) limit disclosure of any Confidential Information to its concerned directors, officers and employees, (collectively "Representatives") strictly only to who have a need to know such Confidential Information in connection with the Transaction between the parties to which this Agreement relates, and only for that purpose;
- (d) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth 2 in this Agreement and require in writing such Representatives to keep the Confidential Information confidential;
- (e) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information;
- (f) not disclose any Confidential Information received by it to any third party; and
- (g) not to copy or reverse engineer any such Confidential Information.
- (h) not to use the Confidential Information for any purpose other than the Transaction.
- (i) not use the information for any scientific research or any other research.
- (j) Confidential information does not include information:
 - a. Which is generally available to the public other than as a result of a breach of this Agreement; or
 - b. Which is already in the possession of Recipient without restriction prior to any disclosure hereunder; or

- c. Which is or has been lawfully disclosed to Recipient by someone who is free lawfully to disclose the same without confidentiality restrictions; or
 - d. Which is independently developed by Recipient or its Affiliates and no Confidential information disclosed hereunder has been used directly or indirectly in such development; or
 - e. Whose applicable period of confidentiality pursuant hereto, or such other period specifically agreed to in writing by the parties, has ended
- (k) This agreement is not intended to, and does not, oblige either party to enter into any further agreements or to proceed with the transaction, any possible relationship or other transaction. Recipient acknowledges that Discloser makes no representation or warranty whether express or implied, as to the accuracy or completeness of Confidential information, and Discloser disclaims any and all liability unless contained in any definitive agreement.

Each Party will comply with all applicable data protection laws and regulations. Where applicable in particular if one Party receives access to and processes personal data on behalf of the other party in connection with this Agreement and such processing agreement, the Parties will enter into any required data processing of other data protection agreement

6. Restriction on Use

- (a)** The Receiving Party and its Representatives shall hold the Confidential Information received from the Disclosing Party in confidence, and shall not, directly or indirectly:
 - (i) disclose the Confidential Information to any third party; or
 - (ii) use the Confidential Information for any purpose other than the permitted Purpose.
- (b)** The Receiving Party shall not use the Confidential Information for any purpose or in any manner, which would constitute a violation of any applicable laws or regulations, directly or indirectly.
- (c)** The Confidential Information shall be the property of the Disclosing Party. No rights, licenses or interests including, but not limited to, trademarks, inventions, copyrights or patents are implied, transferred or granted in relation to the Confidential Information provided by the Disclosing Party to the Receiving Party under this Agreement.
- (d)** The Receiving Party shall not reproduce the Confidential Information in any form except as needed for the Purpose of the Agreement as set out above or with the prior written consent of the Disclosing Party.

(e) All the title and rights in the Confidential Information shall be reserved with the respective Discloser and/or its licensors and no rights or obligations other than those expressly set out in this Agreement are granted or to be implied from this Agreement. In particular no license is granted to the Recipient, directly or indirectly, by this Agreement relating to any invention, discovery, patent, copyright or other industrial or intellectual property right now or in the future.

7. Protection of Confidential Information

- (a) The Receiving Party represents and warrants that it shall protect the Confidential Information received with utmost care and diligence.
- (b) All Confidential Information shall be promptly returned to the Disclosing Party after the Receiving Party's need for it has expired, or upon request of the Disclosing Party, and in any event, upon completion or termination of this Agreement.

8. No Further Warranties

The Confidential Information shall be disclosed on an "**as is**" basis only and without any warranties of any kind, including but not limited to, warranties of merchantability or fitness for a particular purpose.

9. No Further Business Arrangement

Nothing contained herein shall be construed to obligate either Party to enter into any further agreements with each other. This Agreement does not create any other business arrangement, including but not limited to any partnership, agency or joint venture, between the Parties.

10. Term

The term of this Agreement shall commence on the Effective Date and valid for the period of two (2) years. The Disclosing party shall have a right to terminate this Agreement by giving a written notice of 30 days to the Receiving Party. However, the Receiving Party obligation to protect and restrict the use of Confidential Information under this Agreement shall continue until such time as the Disclosing Party discloses it to the public or when it otherwise becomes part of the public domain through no action of the Receiving Party.

11. Injunctive remedy

The Recipient acknowledges that the Confidential Information to be disclosed hereunder is commercially sensitive of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages that would result from the unauthorized dissemination of the

Confidential Information would be impossible to calculate. Therefore, Recipient hereby agrees that the affected Discloser shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The affected Discloser shall be entitled to recover all its damages, costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

12. Return of Confidential Information

Recipient shall immediately return and redeliver to the respective Discloser all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) any breach of this agreement, in which case the party in breach shall also be liable towards the Disclosers under the law and this Agreement or (iv) at such time as the respective Discloser may so request; provided however that the Recipient may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Recipient, with the written consent of the respective Discloser may immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Recipient supervising the destruction).

13. Notice of Breach

Recipient shall notify the Disclosers immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Recipient or its Representatives, or any other breach of this Agreement by Recipient or its Representatives, and will cooperate with efforts by the Discloser regain possession of Confidential Information and prevent its further unauthorized use.

14. Survival

The provisions of Clauses 8, 9 & 10 of this Agreement, and the rights and obligations contained there under shall not terminate upon termination of this Agreement.

15. Governing Law & Dispute Resolution

The contract shall be governed by the Law for the time being in force in the Republic of India. Civil Court having original Civil Jurisdiction at (name of Place) shall alone have exclusive jurisdiction in regard to all matters in respect of this agreement.

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 arbitration. The arbitration shall be conducted by three arbitrators, one to be appointed by each of the Parties and a third arbitrator to be appointed by the mutual consent of the two arbitrators so appointed by the Parties.

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 _____(the place from where the contract is issued)

16. No Publication

Neither Party shall disclose, publicise or advertise in any manner the discussions or negotiations contemplated by the Agreement without the prior written consent of the other Party, except as may be required by law.

17. Miscellaneous

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.
- (b) Any failure by a Discloser to enforce the Recipient's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

- (c) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- (d) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, and (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch.
- (e) Parties shall not directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the Disclosers, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.
- (f) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

18. Notices

All notices, documents, consents, approvals or other communications (a 'Notice') to be given hereunder shall be in writing and shall be transmitted by first class registered or recorded delivery mail to the person at the address specified herein below, or by telex, facsimile or other electronic means in a form generating a record copy to the party being served at the relevant address for that party shown herein below. Any Notice sent by mail shall be deemed to have been duly served on receipt of delivery confirmation. Any Notice sent by telex facsimile or other electronic means shall be deemed to have been duly served at the time of transmission.

Notice if to:

BHEL, then to,

Phone :

Fax :

E-mail :

ABC, then to,

(Name)_____

(Designation)_____

Phone :

Fax :

E-mail :

19. Counterparts, Telefax Signatures

This Agreement may be signed in two counterparts, each of which is to be considered an original, and taken together as one and the same document.

IN WITNESS WHEREOF, of their Agreement to the terms and conditions contained herein, the undersigned have caused this Agreement to be executed by their duly authorized representatives:

For Bharat Heavy Electricals Limited	For ABC
Signature: Name: Designation:	Signature: Name: Designation:
Signature: Name: Designation:	Signature: Name: Designation:

BOTH SIDED