

MEMORANDUM OF UNDERSTANDING
BETWEEN
BHARAT HEAVY ELECTRICALS LIMITED
AND
QUALIFIED ENGINE MANUFACTURER
FOR EXECUTION OF
ANDAMAN & NICOBAR GAS POWER PROJECT (50MW)
OF
NTPC VIDYUT VYAPAR NIGAM LIMITED
AT
HOPE TOWN, PORT BLAIR, ANDAMAN & NICOBAR ISLANDS

(to be executed on non-judicial stamp paper of appropriate value)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on ____ of ____ 2022 at _____,

BETWEEN

BHARAT HEAVY ELECTRICALS LIMITED, a company registered in India under the Companies Act, 1956 and having its registered office at BHEL House, Siri fort, New Delhi-110049 and inter-alia an office at Industry Sector, Integrated Office Complex, Lodhi Road, New Delhi – 110003, India (hereinafter referred to as "**BHEL/Bidder**") which expression unless repugnant to the context or meaning hereof shall mean and include its successors and permitted assigns)

AND

QUALIFIED ENGINE MANUFACTURER, a company registered in ____ under the ____ and having its registered Office at ____ & chief place of business at ____ (hereinafter referred to as "**QEM**" which expression shall, unless repugnant or contrary to the context, be deemed to include its successors and permitted assigns.

BHEL & QEM are herein after individually referred to as "Party" and collectively as "the Parties".

WHEREAS,

M/s NTPC Vidyut Vyapar Nigam Limited (NVVNL) (here in after referred to as "Customer") a wholly owned subsidiary of NTPC Ltd has issued NIT No. NVVN/C&M/RE-53/2020-21 and subsequent Corrigendum's/ Amendment's for ANDAMAN & NICOBAR GAS POWER PROJECT (50MW) at Hope Town, Port Blair, Andaman & Nicobar Islands (here in after referred to as the "Tender").

"Tender" document envisages that Bidder should be an Engine manufacturer who has designed, manufactured, supplied and commissioned/supervised commissioning of at least one (01) Gas Engine for power generation, having minimum rating as that of the offered Gas Engine, which should have logged a minimum of 4000 fired hours since commissioning and should have been in successful operation, for a period of at least one (01) year, prior to the date of techno-commercial bid opening. In case Bidder does not meets this criteria, the Bidder shall associate with an Engine Manufacturer meeting requirement above, who shall also be the supplier of the Gas Engines for this contract. In such an event, the Bidder along with its techno-commercial bid, shall furnish a letter of undertaking from above associate, which shall be valid up to Defect Liability Period, as per format enclosed in the bidding documents, for successful performance of Gas engines, execution and successful performance of Contract, failing which the bidder shall be disqualified and its bid shall be rejected.

QEM has confirmed that they are fully meeting the qualifying criteria for Gas Engine Package as per "Tender" specification, based on the same BHEL as Bidder intends to engage QEM for Basic Engineering, assisting in Detailed Engineering, making materials ready at his / his sub-vendor's works, Inspection, Supply, Transportation, Assistance in Erection, Commissioning, Performance Guarantee Test Run, Warranty and handing over and O&M of Gas Engine Package as defined in the "Tender" document referred here above and subsequent amendments issued by NVVNL, if any – for bidding to Andaman & Nicobar Gas Power Project (50 MW) on EPC basis (here in after referred to as "Project") in line with responsibility matrix which includes scope of work of supply, services and spares, warranties and guarantees, list of exclusions and terminal points and battery limits and Technical Specifications annexed hereto as Annexure-1 to Technical Specification PY51813 R00 (here in after referred to as "Scope of Work"), in case the order is awarded to BHEL.

BHEL and QEM shall synergize their strengths, potentials and capabilities and agree to cooperate with each other to participate in the Project. The parties shall co-operate with each other for securing the Project as per the technical and commercial Specifications of "Tender" to be read in conjunction with various Corrigenda /Amendments and perform the resulting Contract, as and when executed between BHEL and NVVNL, (here in after referred to as "**Customer Contract**"). On securing the order from NVVNL, contracts for Supply and Services shall be executed between BHEL and QEM (herein after referred to as "**BHEL's Sub-Contract**") in terms of this MOU for execution of the scope by QEM as specified in Annexure-1 to Technical Specification PY51813 R00.

QEM shall submit its offer to BHEL which is valid for 6 Months from the final Bid due date against "Tender" based on which BHEL shall submit the bid to the Customer for the aforesaid Project. Any change to the technical and commercial offer submitted by QEM shall be agreed only when accepted in writing by QEM. Bid validity shall be extended after mutual agreement between BHEL and QEM. If BHEL gets opportunity to revise the price while extending the validity, similar opportunity to be passed on to QEM.

The Parties have decided to enter into this MOU which sets forth their respective rights and obligations with respect to the Project and each other.

Validity period of MOU

Memorandum of understanding (MOU) between Bidder and QEM for executing the scope of work shall remain in force at least till the pendency of the Customer Contract i.e. the Contract between BHEL and NVVNL or the signing date of the BHEL's Sub-Contract, until the occurrence of any of the following:

- a. Contract is not awarded to BHEL
- b. Bankruptcy proceedings being initiated against either of the "Parties"
- c. Mutual agreement between the "Parties"
- d. Tender cancelling by the Customer

1.0 PURPOSE OF THE MOU

BHEL and QEM have decided to enter into this MOU with the purpose of:

- 1.1 To co-operate with each other in terms of MOU in submitting detailed proposal to Customer in response to "Tender".
- 1.2 To co-operate with each other in terms of this MOU to discuss as and when called by NVVNL during post bid stage, cooperate BHEL to perform the said Customer Contract, if awarded to BHEL, in accordance with the terms and conditions agreed in this MOU and as per the Scope of Work specified in Annexure-1 to Technical Specification PY51813 R00.
- 1.3 To determine the rights and obligations of the Parties in connection with the performance of the Customer Contract and internally amongst themselves subject to QEM's rights & obligations under this MOU.

2.0 PRINCIPLES OF CO-OPERATION:

- 2.1 BHEL and QEM will work for the above Project during tendering and post placement of order by NVVNL on BHEL, within the framework of this MOU and subsequent BHEL's Sub-Contract agreement between BHEL and QEM.
- 2.2 BHEL will submit the proposal to NVVNL in its name with QEM as a nominated sub-contractor to BHEL for the Project. BHEL shall be responsible for the overall co-ordination, Project Management and Execution of the Project. However, between the parties, each party shall be solely and exclusively responsible for execution and project management of its Scope of work as specified in Annexure-1 to Technical Specification PY51813 R00. Both the parties shall perform their respective Scope of Work in an integrated manner. Accordingly, any facility given by NVVNL to BHEL for Gas Engine Package scope of work shall duly be passed on by BHEL to QEM as per "Scope of Work" agreed between BHEL and QEM.
- 2.3 The subcontractors or vendors shall be selected by QEM from approved list of "Tender". In the event QEM proposed vendor or sub-contractor is not available in the approved list of "Tender", then BHEL will seek approval of such vendor or subcontractor from NVVNL. QEM shall provide necessary supporting documents in this regard. Final accepting authority in any case shall be NVVNL. QEM shall be responsible for the work performed by its sub-contractors/

vendors, however, BHEL may exercise their right to directly interact with QEM subcontractors/vendors after obtaining written consent of QEM, wherever required for speedy and effective execution of the project.

The quality plans of equipment's supplied and services offered by QEM/their vendors shall be approved by NVVNL or their consultant/ BHEL according to the agreed quality assurance plan by both the parties and approved by Customer (as applicable). BHEL shall coordinate with NVVNL for the required approval and QEM shall not be responsible or liable for the delays due to pending approval from BHEL.

- 2.4 The technical and commercial Specifications shall be considered as per "Tender" to be read in conjunction with various Corrigenda /Amendments. The resulting contract for the above Project i.e. Customer Contract and BHEL's Sub- Contract shall be binding on both the parties. "Tender" document along with various corrigendum/ amendments issued by NVVNL post "Tender" issue stage shall be part of BHEL's Sub-Contract. The agreement with QEM will be on "Back-to-back" basis vis-a-vis "Tender" specifications to the extent modified in this MOU and specific agreement reached in writing between BHEL and QEM. If there is a Scope issue between QEM and BHEL, the same shall be resolved mutually without involvement of NVVNL. In case of any discrepancy in the provisions among the documents the same shall be resolved considering following order of precedence:

- A. This MOU along with Annexure-1 to Technical Specification PY51813 R00 Document comprising scope of work, performance guarantees, agreed deviations (post submission of QEM bid)
- B. Finalized agreed Priced bid of QEM
- C. "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Annexure-1 to Technical Specification PY51813 R00)
- D. All technical data exchanged by QEM w.r.t. Annexure-1 to Technical Specification PY51813 R00 Scope of Work, Miscellaneous literature and other details submitted by QEM along with techno-commercial offer ref no. _____ dtd _____
- E. BHEL PE&SD **NIT No. 56466 dtd 02-JAN-2021** (rest of the documents other than this MoU)

- 2.5 Nothing contained in this MOU shall constitute or be deemed to constitute a partnership, or joint venture between the Parties hereto and neither of the Parties shall have any authority or power (and shall not represent themselves on having such authority or power) to contract, to represent in the name of other Party or to undertake any liability or obligation on behalf of the other Party, save in so far as expressly agreed to and provided in this MOU. There being no sharing of profit or losses, any profit arising to the parties hereto shall be taken credit by the Party causing the profit, any loss shall be borne by the Party causing the loss. In addition, the execution of this MOU by the Parties shall not in any way be deemed to create a precedent for the establishment of any future, similar relationships between the Parties in respect of any future project(s) or contract(s) for projects other than the Project as referred under this MOU. The Parties further acknowledge that no employment relationship shall be created or evidenced by this MOU, and that neither Party is permitted or authorized to act on behalf of the other Party in any event except as provided in this MOU. Further, nothing in this MOU shall be construed as either Party granting the other Party a license to sell, develop, exploit or further develop any product, technology, service or solution or any information or knowledge involved or related thereto.

This MOU is being in-principally agreed and initialled by both BHEL and QEM and shall be a formal agreement post approval of competent authority of BHEL and QEM. Based on this agreement on terms and conditions, price bid shall be opened and negotiated if required and based on final mutually agreed prices of QEM's package, **this MOU will be formally signed on non-judicial stamp paper followed by submission of bid bond in the form of bank guarantee or security deposit etc @1% of final agreed price of BHEL's sub-contract by QEM to BHEL within 30 days of signing of MOU or date of submission of BHEL bid to NVVNL, whichever is**

earlier. The initial validity of this bid bond shall be for 6 months from the date of MOU and shall be kept valid till the validity of this MOU. This MOU shall be converted into BHEL's Sub-Contract to be signed between QEM and BHEL subsequent to finalisation of the Customer Contract between BHEL and NVVNL. On receipt of award from NVVNL, the definite BHEL's Sub-Contract agreement between BHEL and QEM shall be executed prior to issuance of Customer Contract by NVVNL on BHEL. The BHEL's Sub-Contract between BHEL and QEM shall be signed within 45 days from the date of Award from NVVNL on BHEL, subject to submission of Performance Securities (CPBG/Security Deposit) @ 10% of the BHEL's Sub-Contract value within 30 days from the date of issue of LOI/ PO by BHEL on QEM after which the BID bond of QEM shall be returned discharged by BHEL. The relationship between the parties shall be on an arm's length basis and shall be strictly temporary and nothing contained herein is intended; nor shall it be construed as creating or requiring any other on-going or continuing relationship or commitment between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of BHEL's Sub-Contract between BHEL and QEM.

BHEL's sub-Contract shall comprise of following:

- A. Contract Agreement Form (Typical draft enclosed)
- B. Purchase order for supply and separate work order for services covering all terms & conditions stipulated in this MOU
- C. All agreed deviation and alterations agreed between QEM and BHEL during post issue of BHEL's NIT and before issue of Purchase Order, Work Order by BHEL on QEM.
- D. This MOU along with Annexure -1 to Technical Specification PY51813 R00 Document comprising scope of work, performance guarantees, agreed deviations (post submission of QEM bid)
- E. Priced bid of QEM
- F. "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Annexure-1 to Technical Specification PY51813 R00)
- G. All technical data exchanged by QEM w.r.t. Annexure-1 to Technical Specification PY51813 R00 Scope of Work, Miscellaneous literature and other details submitted by QEM along with techno-commercial offer ref no. ____ dtd ____
- H. BHEL **PE&SD NIT No. 56466 dtd 02-JAN-2021** (rest of the documents other than this MoU)

In the event of any conflict between requirement of any clause of this specification/ documents/drawings/ data sheets etc. or requirements of different codes/ standards specified, the same to be brought to the knowledge of BHEL in writing for clarification before due date of seeking clarification (as applicable), otherwise, more stringent requirement as may be interpreted by BHEL shall prevail and shall be binding on you. Any typing error/ missing pages/ other clerical errors in the tender documents, noticed by you must be pointed out before pre-bid meeting/ submission of offer, or else, BHEL's interpretation shall prevail and be binding on you.

- 2.6 In case BHEL's proposal to NVVNL is found, to be techno-economically acceptable and BHEL is evaluated L1, both the Parties agree to carry out advance engineering and pre-purchase activities on the basis of the agreed terms and conditions until firm order is awarded on BHEL to meet the tight project schedule. In case of any delay in order placement by BHEL on QEM which is solely attributable to BHEL, QEM shall be given proportionate time extension in project schedule.
- 2.7 BHEL shall act as the contracting party of the Customer and, in particular, be the signatory of the " Tender" and the Customer Contract with the Customer.
- 2.8 The Parties hereby mutually agree between each other the following for the sole and limited purpose of:
 - 2.8.1 Co-operate in performing the Customer Contract by undertaking BHEL's Sub-Contract, including Basic Engineering, assisting in Detailed Engineering, making ready of materials at his

/ his sub-vendors' works, Inspection, Supply, Transportation, Assistance in Erection, Commissioning of Gas Engines package, Performance Guarantee Test Run, Warranty and handing over of Gas Engine Package to Customer on EPC basis as per Scope of Work mentioned in Annexure -1 to Technical Specification PY51813 R00.

- 2.8.2 Defining the rights and obligations between the Parties in connection with the performance of the Customer Contract to the extent agreed under this MOU which will be converted into BHEL's Sub-Contract.
- 2.8.3 To closely cooperate in order to achieve a smooth and complete performance thereof as specified in MOU.

3.0 SCOPE OF WORK

- 3.1 The detailed Scope of Work to be performed by QEM shall be as per Annexure -1 to Technical Specification PY51813 R00, which consists of the scope of work of BHEL and QEM for this Project, list of exclusions, terminal points and battery limits.
- 3.2 All approvals / permits / authorisations will be the responsibility of BHEL wherever required, QEM to assist BHEL with the required information/documentation.
- 3.3 The Parties foresee that they shall be obliged to deliver a complete functioning of Gas Engine Package as per the respective scope of work mentioned in Annexure-1 to Technical Specification PY51813 R00. If there is any addition in scope of supply/ services for safe & functional requirement of Gas Engine Package required to be full filled by respective parties (as per Annexure-1 to Technical Specification PY51813 R00) the same shall be born respectively by the parties as per terms of the "Tender" specifications without any additional cost & time implication. Any additional scope of supply & services not covered under "Tender" specifications & required to be completed as per direction of NVVNL, the same shall be executed as per "Tender" specification under change order. With regard to additional claim / change order if applicable as per "Tender" specifications, QEM shall submit all supporting documents to BHEL to enable BHEL submit the request for change order/ additional claim to NVVNL. In case change order is accepted by NVVNL, same shall be passed on to QEM, however in event of denial of change order/additional claim by NVVNL shall have to be borne by QEM.
- 3.4 It will be the sole responsibility of QEM to submit the requisite details to BHEL in the prescribed format duly signed and authorised as per requirement of "Tender" document and to provide any clarification sought by NVVNL during post bid stage so as to meet the qualifying requirement as an acceptable QEM Subcontractor.

4.0 TIME SCHEDULE:

It is clearly understood and agreed that time is the essence of the contract to enable BHEL to undertake Customer Contract with NVVNL, provided, all the obligations attributable NVVNL / BHEL are fulfilled within the prescribed time. QEM have agreed to perform all activities such as design, engineering, procurement, inspection, erection, civil works etc. as per the L1/ L2 schedule to be agreed by BHEL with NVVNL. For Scope of Work between BHEL and QEM, L1/L2 schedule for the Scope of Work between BHEL and QEM shall be in line with the overall L1/L2 network approved by NVVNL which shall be finalised jointly by BHEL and QEM.

The maximum Supply Schedule for the gas Engine Package and Spares is 15 months from the date of placement of Purchase Order by Bidder on QEM till the material receipt at project site (or) 13 ½ months in case of CIF Chennai Port delivery.

Assistance in Erection shall be provided by QEM to Bidder timely and Testing & commissioning by QEM shall be completed within 24 months. This shall supersede time schedule as mentioned in the Tender.

5.0 SECURING AND PERFORMING OF THE CONTRACT:

It is agreed between the parties that they shall make best efforts to secure award of contracts for the Captive Power Plant Package from NVVNL, pooling their resources, experiences, Special expertise and capabilities available with them and compile technically and commercially optimum proposal, Subject to the terms of this MOU.

The parties shall provide each other promptly with all relevant technical and commercial information and assistance required for the purposes of the preparation of the detailed proposal by the due date and for the negotiation of the "Tender". QEM shall prepare and submit its bid to BHEL for submission of bid for the project to NVVNL by BHEL. QEM shall attend the meetings required in connection with its Scope of Work in the "Tender" and contracts either between the parties and/or between the parties and NVVNL wherever required. However, BHEL shall not take any final decision, without prior written consent of QEM, pertaining to change in the Scope of Work mentioned in Annexure -1 to Technical Specification PY51813 R00.

Each party's expenses associated with such work shall be borne by the respective parties.

In the event of order on BHEL, during execution QEM shall closely work with BHEL for obtaining approvals of any kind envisaged in the Customer contract which are relevant to QEM or QEM and BHEL. This approach would include (a) finalization of design basis of Customer Contract which shall be binding on QEM on back-to-back basis, (b) attending technical/ progress review/ inspection related meetings with NVVNL, etc. Further with regard to approval of drawings/ documents specifically relevant to QEM or QEM and BHEL, also joint participation of both BHEL and QEM is agreed.

6.0 CONFIDENTIALITY

Each party undertake to treat as confidential any information which it obtains from the other party in connection with the agreement, to use such information solely for the purpose of the proposal and any resulting contracts and to disclose such information only to the extent necessary in connection with this MOU.

Provided in order to treat any information as Confidential Information, the Disclosing Party, when sharing of such information in paper or electronic form, shall clearly mark such information as CONFIDENTIAL. When Confidential Information is shared orally, it shall be reduced in writing (in paper or electronic form) within one week of sharing of information, and shall be clearly marked as CONFIDENTIAL. Unless any information shared by Disclosing Party is marked as CONFIDENTIAL in the said manner, it shall not be treated as Confidential Information for the purpose of this Agreement

The Information shall not be reproduced in any form, sold, traded, published or otherwise disclosed to anyone in any manner, whatsoever except as required by one Party to the other Party in execution of the BHEL's Sub-Contract.

Notwithstanding the foregoing, the Parties may disclose the Information without the other Party's prior written consent only to the extent such Information:

- i. is already known to the Party as of the date of disclosure;
- ii. is already in possession of the public or becomes available to the public other than through the act or omission of the Party receiving the information
- iii. is independently developed by one of the Parties without reliance on the Information of the Party; or
- iv. Is required to be disclosed under applicable law or by a governmental order, decree, regulation or rule (provided that the requested Party shall give written notice to the other Party prior to such disclosure.)

In line with "Tender", the copy of this MOU shall be submitted by BHEL as part of their bidding document.

The obligations relating to confidentiality in this Article shall survive for 5 years after the expiry of termination of this MOU and subsequent BHEL's Sub-contract.

7.0 PAYMENTS

The terms of payment for QEM Scope of Work shall be in conformity with the terms of payment as per Customer Contract on back-to-back basis.

For Services portion of QEM, the payments terms mentioned in Schedule No. 4: Installation Services in Appendix-1 'TERMS AND PROCEDURES OF PAYMENT' in NVVNL's Tender will be applicable.

All payments shall be made by BHEL to QEM after receipt of payments from end customer on back-to-back basis. Payment shall be received by BHEL from NVVNL and shall be promptly released to QEM for their scope of work upon receipt of such payment from NVVNL subject to the submission of vendors invoice with necessary supporting documents as listed in the BHEL NIT, on back-to-back basis within 15 (Fifteen) days after receipt of payment from NVVNL. In case any ad-hoc or consolidated payment is received by BHEL from NVVNL including any verified invoices pertaining to QEM without specifying any invoice reference then BHEL will release payment to QEM in proportion to their then verified invoices. Delay in payments from NVVNL shall not entail QEM to claim any compensation from BHEL.

8.0 PRICES DURING THE PERIOD OF CONTRACT:

Price Variation Clause is applicable on back-to-back basis (subject to customer allowing to BHEL). Statutory variation on account of rates of GST and applicability of new taxes/ duties within the Contractual Schedule shall be as per Customer Contract on back-to-back basis.

In case of any additions, deletions and changes in scope of supplies and works initiated by end Customer, if any at a later stage, QEM & BHEL will mutually discuss with each other and mutually agree on price and time implication/ financial commitment and accordingly the value of BHEL's Sub-Contract with QEM may vary as provided in the contract between QEM and BHEL. Such change order shall be subject to acceptance by end Customer for which QEM will provide all details, documents to substantiate change orders claims.

9.0 INSURANCE:

MCE insurance is in the scope of Bidder. However, transit insurance up to Indian Seaport shall be in the scope of QEM. The insurance proceeds as received from insurer shall be passed on to QEM subject to QEM complying with the provisions for submission of the insurance claims as per the requirements of Insurer and admission of QEM's claim by Insurer. BHEL shall not have any liability to QEM on this aspect. Also all replacement/ repair of damages under insurance shall be made good by QEM as per provisions of Customer Contract. Apart from MCE policy, all other insurance covers as stipulated in the Customer Contract and applicable for BHEL as main contractor and QEM as BHEL's sub-contractor shall be taken by BHEL and QEM for their respective scope.

10.0 TRANSFER OF TITLE:

The title of Goods and Material and Plant imported by the Contractor or its Subcontractor for supply to NVVN for the execution of Works shall be transferred by the QEM in favour of NVVN by effecting appropriate sales through endorsement of the Bill of Lading or such other documents of title in relation to such imported Goods and Material and Plant before the same cross the customs frontiers of India on CIF (Cost, Insurance, Freight Basis) at the port of loading of the Goods and Material and Plant."

11.0 TAXES & DUTIES

All taxes including GST, duties, levies, Cess in India shall be borne by BHEL and all the taxes and duties applicable outside India will be borne by the QEM.

11.1 CUSTOM DUTY:

The customs duty shall be borne by NVVNL. The QEM shall be responsible for, and shall exercise due diligence in properly classifying the Goods and Material and Plant and complying with all Applicable Laws with respect to any import of the Goods and Material and Plant. In case BHEL is exposed to any penal action (interest and/ or penalties) by the customs Authorities for incorrect declaration and/ or valuation of the Goods and Material and Plant by the QEM, or otherwise on account of any breach of Applicable Laws in the course of the import of the Goods and Material and Plant, the QEM shall indemnify and hold harmless, BHEL for any and all costs, expenses or losses suffered or incurred by BHEL in this regard.

In case the QEM is a foreign entity, it is mandatory to furnish the QEM's Permanent Account Number (PAN), as per the Indian Income Tax requirements, failing which the QEM shall be responsible for any additional Tax deduction at source as per the provisions of the Indian Income Tax Act/Rules. The PAN number shall be furnished before release of any payment or within one month of award of work, whichever is earlier.

In case the QEM is a foreign entity & deploying their manpower for the contract execution for period more than 180 days, PE (Permanent Establishment) certification is mandatory to furnish, as per the Government of India Taxation requirements, failing which the Contractor shall be responsible for any additional Tax Deduction at Source as per the provisions of the Government of India's Acts/Rules. The PE shall be furnished before release of any payment.

11.2 Taxes, Duties and Levies in Foreign Countries:

The Contractor shall accept full and exclusive liability at his own Cost for the payment of any and all Taxes, duties, cesses and levies howsoever designated, as are payable to any government, local or statutory authority in any country other than India as are now in force or as are hereafter imposed, increased or modified and as are payable by Contractor, his agents, Sub-Contractors and its/their respective employees for or in relation to this performance of this contract. The Contractor shall be deemed to have been fully informed with respect to all such liabilities and considered and included the same in its bid and the quoted price shall not be varied in any way on this account.

11.3 GST (in case applicable):

The GST amount on gross value of each invoice shall be claimed by the bidders along with the payments mentioned in the NVVN contract document after submission of GST invoice in original.

The amount of GST shall be paid to the vendor only upon confirmation of the following:

- i. Receipt of original Tax Invoice strictly as per the format prescribed under the relevant applicable GST law.
- ii. Vendor/ contractor declaring such invoice in GSTR 1/GST-ANX-1 as per the relevant GST Act
- iii. The tax component charged by the vendor in the invoice should match with the details uploaded by vendor in GSTR 1/GST-ANX-2
- iv. Confirmation of payment of GST thereon by bidder on GSTN Portal
- v. Ensuring availability of input credit to BHEL

11.4 BUILDING & OTHER CONSTRUCTION WORKERS' WELFARE CESS (in case applicable):

Works to be carried out within the scope of BHEL's Sub-Contract involves execution through building or construction workers, and compliance to the above titled Acts shall

be ensured by the QEM and QEM or QEM Sub-Contractor shall obtain license and deposit the cess under the Act. In the circumstances it may be ensured as under: -

1. It shall be the sole responsibility of the QEM or QEM Sub-Contractor in the capacity of employer to forthwith (within a period of 15 days from the issue of Work Order) apply for a license to the Competent Authority under the BOCWW Act and obtain proper certificate thereof by specifying the scope of its work. It shall also be responsibility of the QEM to furnish a copy of such certificate of license / permission to BHEL within a period of one month from the date of issue of Work order.
2. It shall be the sole responsibility of the QEM as employer to ensure compliance of all the statutory obligations under these act and rules including that of payment / deposit of 1% cess on the extent of work involving building or construction workers engaged by the QEM within a period of one month from the receipt of payment.
3. It shall be the responsibility of the QEM to furnish the receipts / challans towards deposit of the cess together with the number, name and other details of beneficiaries (building workers) engaged by the QEM during the preceding month.

It shall be the absolute responsibility of the QEM to make payment of all statutory payments & compensations to its workers including that is provided under the Workmen's Compensation Act, 1923. With regard to deduction if any on account of BOCW by NVVNL to BHEL in terms of Customer Contract same shall be operated on back-to-back basis and this liability shall be treated as part of BHEL's Sub-Contract price.

12.0 LIQUIDATED DAMAGES (LD)

12.1 Each Party shall be responsible for timely completion of its Scope of Work to meet the contracted schedule with NVVNL and also the Project requirements.

12.2 All obligations and liabilities of BHEL under Customer Contract, pertaining to QEM scope of work shall be covered/ discharged by QEM on back-to-back basis as specified under the BHEL's sub-Contract as per MOU.

12.3 **The liabilities between the Parties shall be as follows:**

12.3.1 LD FOR DELAY:

- a) In case of any delay by QEM, in supplying the main equipment at site within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof, subject to a maximum 5% of the total BHEL's Sub-Contract price on QEM
- b) In case of any delay by QEM, in supplying the Spares at site within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof on the value of undelivered spares, subject to a maximum 5% of the total Ex-Works price of all spares quoted by QEM
- c) In case of any delay by QEM, in achieving the project completion schedule of 24 months for the reasons attributable to QEM, BHEL would levy an LD amount which is pro-rata of BHEL's Sub-Contract value to QEM in total order value from NVVNL to BHEL. LD amount to be levied by NVVNL on BHEL is @ INR 19,12,854/- for each day of delay in successful completion of facilities, subject to a maximum 5% of the total BHEL's Contract price with NVVNL.
- d) LD amount if withheld by NVVNL from BHEL bills, amount shall be withheld by BHEL from QEM bills on applicable LD rates based BHEL's Sub-Contract, pending final settlement of time extension. LD shall be settled between BHEL and NVVNL, in terms of the delay analysis w.r.t. agreed L1/ L2 network as applicable for final completion schedule.
- e) For overall completion schedule, LD shall be applicable subject to final settlement of this aspect between NVVNL and BHEL based on the following understanding:

- In case the LD amount is levied on BHEL due to delays solely attributable to BHEL the same shall be borne by BHEL.
- In case the Parties are jointly responsible for causing the LD claim due to delay in mechanical completion Schedule of Customer Contract or cause for delay cannot be assigned to any Party, then the resulting LD amount as levied by NVVNL on BHEL will be shared between BHEL and QEM in proportion of share of price in the Contract in Customer Contract. In such an eventuality the provision of Customer Contract shall be applicable on back-to-back basis including maximum applicable LD rate of 5% ~~of BHEL's Sub-Contract Price.~~
- The above methodology for withholding/ adjustment by way of discount of LD by BHEL on QEM w.r.t. BHEL's Sub-Contract shall be applicable progressively during execution of the Contract. However, at the time of final settlement of LD between NVVNL and BHEL, LD between BHEL and QEM shall be addressed with the understanding that for BHEL's Sub-Contract, LD for delay shall be finally applicable only if NVVNL withholds/ adjustment by way of discount LD on BHEL as part of Customer Contract for intermediate milestones as well as for overall Customer Contract mechanical completion schedule.

12.3.2 LD FOR SHORTFALL IN GUARANTEED PERFORMANCE:

- 12.3.2.1 Each Party shall be responsible for the guaranteed/ demonstrable performance of the Equipment supplied by it, as per the "Tender" specifications on back-to-back basis & Annexure -5 to Technical Specification PY51813 R00.
- 12.3.2.2 In case LD is levied by NVVNL for shortfall in Guaranteed Performance, the same shall be **borne in full by QEM**, as the entire performance of power plant is dependent on the Gas Engines.
- 12.3.2.3 The LD to be levied by NVVNL for shortfall in Performance is available at TECHNICAL SPECIFICATIONS SECTION VI, Part-A VOLUME-V 'GUARANTEES, PERFORMANCE TESTING & LIQUIDATED DAMAGES'

QEM's aggregate liability to pay liquidated damages for failure to attain the functional guarantee shall not exceed twenty five percent (25%) of the BHEL's Total Contract Price with NVVNL.

In the event LD on performance is levied by NVVNL and/or payments are withheld by NVVNL on account of LD on performance, then BHEL shall recover QEM share, if any, of LD amount from the payments due to QEM. In case the payments due QEM are not sufficient to cover QEM share of LD, the same shall be paid by QEM to BHEL on demand.

If the shortfall in performance parameter is more than specified % of the guaranteed figure or the output is less than specified % of the guaranteed figure, then QEM will make necessary rectification / modification / replacement at his own cost and through his own arrangement/ agency to improve the supplied components / equipment/ sub system/system to prove guaranteed parameters in the final performance guarantee test. In case the guaranteed parameters are not met after the rectification efforts, Customer may Reject the component / equipment /sub system/ system and recover the cost from the Contractor (i.e. Bidder) Or / and Accept the component / equipment /sub system/ system after imposing reduction in price and Penalty. In such eventuality, (a) the supplies of QEM would stand rejected and BHEL/ NVVNL will be free to obtain replacement at the risk and cost of QEM Or/ and (b) reduction in Price and/ or Penalty as imposed by NVVNL shall be borne in full by the party whose scope of work such Equipment/Package belongs to.

~~12.3.3 LD FOR SHORTFALL IN AVAILABILITY DURING O&M~~

~~Scope of Successful Bidder also includes Operation and Maintenance of Power Plant including spares and consumables for the period of 03 years after takeover of the plant, post successful~~

~~completion of initial /trial operations & Performance guarantees tests including Demonstration tests (whichever occurs later)~~

~~O&M period of the plant in the scope of successful bidder shall be 03 (three) years from the date of successful completion of initial/trial operation and successful completion of performance guarantee including demonstration tests (whichever occurs later) as mentioned in the Technical specifications. After the O&M contract period, employer may at its discretion decide to extend the existing O&M contract on mutually acceptable terms and conditions or undertake the O&M of the plant on its own.~~

~~Further During above O&M period, bidder shall ensure minimum 90% annual availability of engine & the entire plant. In case the annual availability of the engine goes below 90% then LD shall be applicable as specified in Section VI of the bidding documents. However, in any case bidder has to demonstrate annual availability of engine above 85% during the O&M period. In case availability falls below 85% in any year, then employer may have the right to terminate the O&M contract after recovering all the losses incurred by the Employer on account of shortfall in Availability.~~

~~Methodology for calculation of LD on shortfall in stipulated Availability is specified in Part A of Section VI of Tender.~~

~~In case of any LD is levied by NVVNL on BHEL for shortfall in availability, and the reasons for the same is solely / partly attributable to QEM, BHEL would levy an amount on back to back basis the amount levied by NVVNL on BHEL~~

~~All the LDs above for the Delay, shortfall in performance, shortfall in Availability are mutually exclusive.~~

13.0 DEFECT LIABILITY PERIOD/ WARRANTY PERIOD

Defect liability period for the BHEL's Sub-Contract shall be on back-to-back basis as agreed between BHEL and NVVNL including repair and replacement items. Within the agreed warranty period, any defect or damage to materials and equipment shall be promptly corrected by the Party under whose Scope of Work it falls. The costs of such correction shall be borne by the Party who caused such defect or damage. Such costs shall arise include expenses for determining the defect or damage, for any change in the scope of work of another part necessitated by the correction of such defect or damage and for repeat inspections and/ or acceptance tests, if any.

In terms of the Customer Contract, the Defect Liability Period is 12 months from the scheduled date of commercial operation of main equipment/ plant and if commercial operation is delayed beyond 12 months from the date of mechanical completion for a cause solely attributable to NVVNL, the Defect Liability Period from QEM shall be 18 months from the date of mechanical completion (readiness of all fuel firing in gas engines). In a scenario where there is no delay by either parties, this clause shall be operated on back-to-back basis.

In the event QEM is ready for mechanical completion but BHEL is not able to declare mechanical completion of overall Customer Contract due to reasons solely attributable to BHEL, the gap between readiness of mechanical completion by QEM and BHEL's readiness of overall mechanical completion shall be covered by mutually agreed price for defect liability period extension by QEM as per BHEL's Sub-Contract. For the interim period between QEM readiness for mechanical completion to BHEL's readiness for mechanical completion BHEL shall pay QEM as per finally quoted add on price by QEM for every 6 months of the extension of defect liability period, thereafter once the mechanical completion is achieved as per Customer Contract further defect liability shall be on back-to-back basis.

Other than above agreement, all other terms and conditions of Customer Contract in this regard shall be applicable on back-to-back basis.

14.0 OVERALL LIMITATION OF LIABILITY:

- 14.1 The aggregate liability of the QEM to the BHEL (whether based on contract or tort, including negligence and strict or absolute liability) arising out of or under BHEL's Sub Contract shall not exceed the total value of the BHEL's Sub Contract Price provided that no such limit shall apply in respect of:
- i. Any liability pursuant to QEM indemnity obligations under the Customer Contract; or
 - ii. any loss resulting from fraud, intentional or willful misconduct or illegal or unlawful acts or omissions of QEM, its affiliates or any sub-contractor or any supplier or any of its or their respective officers, directors, employees, servants or agents; or
 - iii. any liability to rectify, repair, restore or replace any materials and/or works or deficiencies therein in terms of the Customer Contract to the extent applicable as per Annexure -1 to Technical Specification PY51813 R00;
 - iv. any liability under GCC/SCC of "Tender"
 - v. In the event of any claim or loss or damage arising out of infringement of Intellectual Property;
 - vi. For any damage to any third party, including death or injury of any third party caused by the QEM or any person or firm acting on behalf of the QEM in executing the Works
 - vii. QEM's Liability for Process Guarantees (if any) or other Guarantees as mentioned in the "Tender" to the extent applicable as per MOU
- AND provided always that such limitation shall exclude any amounts recovered under any policy(ies) of insurance taken out and/or maintained by the QEM pursuant to the provisions of the Customer Contract.
- 14.2 Neither Party shall be liable to the other or to NVVNL for any kind of indirect or consequential loss or damage including, loss of use, loss of profit, loss of production or business interruption which is connected with any claim arising under the contract.
- 14.3 All other liabilities as provided in the Contracts with NVVNL will be discharged by the Parties, as applicable for their respective scope of work.

15.0 NOTICE:

All notices pursuant to this MOU shall except as otherwise provided be made in writing and delivered by hand or sent by Email after obtaining receipt in writing per return email/ pre-paid post, or such other addresses as either Party may from time to time notify to the other in accordance herewith:

If sent to BHEL:

Mr. M. Siva Prasad babu

Additional General Manager,

Purchase Department

Project Engineering and Systems Division,

Bharat Heavy Electricals Limited

Ramachandrapuram,

Hyderabad 502 032, INDIA

If sent to QEM:

16.0 DISPUTE RESOLUTION:

- 16.1 Any difference or dispute arising from this MOU or from the performance of the Scope of Work of the Parties (the dispute) shall be settled amicably by mutual discussions with in 30 (thirty) days after either Party has identified such dispute.
- 16.2 If such dispute is not resolved as per clause 16.1, either party may, thereafter, notify the other party in writing that such dispute shall be settled by arbitration pursuant to arbitration proceedings under Arbitration and Conciliation Act, 1996 and any amendments thereto as per the Rules under the said Act. Each party shall appoint one arbitrator and the said two arbitrators shall appoint Presiding Arbitrator and the three arbitrators Panel shall be formed.
- 16.3 The seat and venue of the Arbitration shall be at Hyderabad in India, language of arbitration would be **English** and the procedural law to be adopted in such arbitration shall be that in India.

The award rendered under arbitration shall be final and binding on the Parties and may be entered in any court of competent jurisdiction in India for its enforcement. The cost of Arbitration as determined by the arbitration Panel shall be borne by the Parties equally.

- 16.4 During the existence and pendency of dispute under this Agreement, each Party shall continue to perform its obligations in respect of its Scope of Work in terms of the BHEL's Sub-Contract and this Agreement and shall not exercise any other remedies.

17.0 GOVERNING LANGUAGE & LAW:

- 17.1 The governing language of the Agreement shall be English. Correspondence and technical and commercial documents as well as any other information relating to this Agreement Shall be written in the English language.
- 17.2 This Agreements between the Parties including this Agreement shall be governed by Laws of India.

18.0 OTHERS

- 18.1 QEM will provide details of major subcontractors and organizational details such as project management, quality systems, financial systems etc.
- 18.2 The proposed organizational structure and set up to be at chief place of business office at QEM for execution of the project including engineering and project management will be submitted to BHEL within two Weeks of signing this MOU.

19.0 SECURITY DEPOSIT / CONTRACT PERFORMANCE BANK GUARANTEE

In case of award of contract on BHEL by NVVNL, BHEL shall, separately and at its own expense, provide the overall guarantee/bond to the Customer as required and agreed with the Customer under the Customer Contract and QEM shall at its own expense, provide to BHEL guarantees/bonds appertaining to its respective scope of Work, supplies and services as per BHEL's Sub-Contract. The value/ percentage and validity of such bank guarantees i.e. Contract Performance Bank Guarantee (CPBG)/Security Deposit, Bank Guarantee for claiming advance towards tagged item payment etc. shall be in line with Customer Contract on back-to-back basis, however same shall be limited to the Scope of Work of QEM as per this MOU.

20.0 PRICE REDUCTION DURING NEGOTIATIONS WITH END CUSTOMER

This MOU is based on present level of price offered by BHEL to NVVNL with the back-up offer from QEM. However, during final negotiation with NVVNL, if any discount is offered to NVVNL by BHEL for total Power Plant package, corresponding reduction is acceptable to QEM subject to BHEL furnishing proof of corresponding reduction passed on by BHEL also to NVVNL.

21.0 COST ASSOCIATED WITH PREPARATION OF BIDS:

QEM shall bear all costs associated with the preparation and submission of its Bid, Site visits, clarifications meetings in or out of the End Customer offices and BHEL shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

22.0 OFFER SUBMISSION AND POST BID MEETING:

- 22.1 Compliance to bid requirement as per formats specified in the "Tender" of shall be submitted by QEM.
- 22.2 QEM shall submit all bid formats, technical details, exceptions and deviations etc. in line with "Tender" requirement. QEM Shall also attend Post bid meetings to discuss and sort out clarification with end Customer.

23.0 MODIFICATIONS IN THE MOU

The Parties shall have the option to modify/ amend any Article of this MOU on such terms & conditions as may be mutually agreed during the currency of this MOU. Any modification or amendment shall be valid only if made in writing and bearing signature of both the Parties.

24.0 ANTI-CORRUPTION LAW & INTEGRITY PACT

Both parties undertake to act solely within the scope of an applicable law in force, in particular, to comply with the rules of fair competition. Both parties explicitly undertake and guarantee that neither it nor its employees or any other parties it commissions will perform any unlawful acts or incite or aid and abet third parties to perform such acts. Unlawful acts include offering, granting, requesting or accepting illegal payments, benefits or other advantages on behalf of a third party.

QEM & BHEL both have their own Code of Conduct and government rule & regulations in place, adherence to which is mandatory according to their own company regulations.

BHEL & QEM undertake to observe and comply with the Integrity Pact signed between the Parties.

If either party contravenes these rules, the other party has the right to terminate this MOU for cause.

25.0 TERMS OF AGREEMENT

The present Memorandum of Understanding shall terminate on any of the following event occurring first:

MOU shall be superseded by a BHEL's Sub-Contract to be signed by QEM and BHEL subsequent receipt of award by BHEL from NVVNL. The definite contract agreement between BHEL and QEM shall be executed prior to issuance of Customer Contract by NVVNL and this agreement must remain in force at least till the pendency of the Customer Contract. The BHEL's Sub-Contract shall be signed shall be within 45 days from the date of award to Bidder (Or)

Offer of BHEL getting rejected by NVVNL.

Both parties hereby confirm their consent to an approval of the above terms and conditions evidenced by its signatures on its Memorandum.

IN WITNESS WHEREOF the Parties hereto have caused this MOU to be signed by the respective authorized representative as of the date, month and year herein above written.

[Type here]

For Bharat Heavy Electricals Limited
By.....
Name.....
Designation.....

Witness:
1.
2.

For QEM
By.....
Name.....
Designation.....

Witness:
1.
2.