

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
BHARAT HEAVY ELECTRICALS LIMITED  
AND  
\_\_\_\_\_ (Name of LESC)

FOR EXECUTION OF  
LSTK 2 SYNGAS PURIFICATION UNIT  
OF  
COAL TO 2000 TPD AMMONIUM NITRATE PROJECT  
OF  
BCGCL, LAKHANPUR, ODISHA

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

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ('MOU') is entered into on ..... of .....2024 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

\_\_\_\_\_, a company registered in \_\_\_\_\_ and having its registered Office at \_\_\_\_\_ (hereinafter referred to as "**LESC**" which expression shall, unless repugnant or contrary to the context, be deemed to include its successors and permitted assigns

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

### WHEREAS,

M/s. Bharat Coal Gasification and Chemicals Limited (BCGCL) has issued NIT No: PNMM/PC288/E/001 for LSTK-2 PACKAGE OF SYNGAS PURIFICATION UNIT for setting up of Coal to Ammonium Nitrate Plant at Lakhampur area of Mahanadi Coalfields Limited, Jharsuguda District, Odisha (here in after referred to as the "**Tender**").

Tender document envisages that Bidder shall, along with the bid, also submit MOU/ Letter of Undertaking from process licensor/s for technology tie up for the proposed Gas cleaning, Purification & Ammonia Synthesis Gas (N<sub>2</sub>+3H<sub>2</sub>) Generation unit along with CO<sub>2</sub> generation.

Process Licensor/s should be capable of providing Process License and Basic Design Package for the proposed Gas Purification & Ammonia Synthesis Gas (N<sub>2</sub>+3H<sub>2</sub>) Generation along with CO<sub>2</sub>.

The Gas Purification & Ammonia Synthesis Gas (N<sub>2</sub>+3H<sub>2</sub>) (ASG) generation technology proposed by Licensor shall have reference of at least One single stream plant with single licensor OR with combination of different licensors in single plant/multiple plants for

processing syngas from either Coal gasifier OR syngas from any other source and generating minimum 63000 Nm<sup>3</sup>/Hr of Ammonia Synthesis gas with matching Carbon dioxide Gas production through Methanol Wash route.

For establishing that the Technology/ies to be adopted by the Licensor is a proven one, the Licensor shall provide details of at least one commercial plant with single licensor OR with combination of different licensors in single plant /multiple plants which has operated successfully for at least One Year in the last Fifteen (15) years reckoned from the date of issuance of the NIT/Bidding document. Licensor shall submit documentary proof for Licensor's plant/s, issued by plant OWNER / technology licensor's certificate/s regarding the same.

BHEL as Bidder intends to engage \_\_\_\_\_ as a LESC for providing Process License and Basic Design & Detailed Engineering Package for the proposed Gas Purification & Ammonia Synthesis Gas (N<sub>2</sub>+3H<sub>2</sub>) Generation along with CO<sub>2</sub> as defined in the Tender document referred here above and subsequent amendments issued by BCGCL, if any (here in after referred to as "Project") to Customer on EPC basis in line with responsibility matrix annexed hereto as Doc. PY54025 (here in after referred to as "Scope of Work"), in case the order is awarded to BHEL.

BHEL and \_\_\_\_\_ (LESC) shall synergize their strengths, potentials and capabilities agreed 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 and perform the Contract, as and when executed between BHEL and BCGCL, (here in after referred to as "Customer Contract"). On securing the order from BCGCL, contracts for Supply and Services shall be executed between BHEL and LESC (here in after referred to as "BHEL's Sub-Contract") in terms of this MOU for execution of the scope by LESC as specified in Doc. PY54025

LESC shall submit its offer to BHEL which is valid for 365 days 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 LESC shall be agreed only when accepted in writing by LESC. Bid validity shall be extended after mutual agreement between BHEL and LESC. If BHEL gets opportunity to revise the price while extending the validity, similar opportunity to be passed on to LESC.

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.

## **1.0 PURPOSE OF THE MOU**

BHEL and LESC have decided to enter into this MOU with the purpose of Scope of work as specified in Doc.:PY54025.

- 1.1 To co-operate with each other in terms of MOU in submitting detailed proposal to Customer in response to "Tender".

To co-operate with each other in terms of this MOU to discuss as and when called by BCGCL/PDIL 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 Doc.:PY54025.

- 1.2 To determine the rights and obligations of the Parties in connection with the performance of the Customer Contract and internally amongst themselves subject to LESC's rights & obligations under this MOU.

## **2.0 PRINCIPLES OF CO-OPERATION:**

- 2.1 BHEL and LESC will work on mutually basis for the above Project during tendering and post placement of order by BCGCL on BHEL within the frame work of this MOU and subsequent BHEL's Sub-Contract agreement between BHEL and LESC.
- 2.2 BHEL will submit the proposal to BCGCL in its name with LESC 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 **PY54025**. Both the parties shall perform their respective Scope of Work in an integrated manner. Accordingly, any facility given by BCGCL to BHEL for LSTK-2 package scope of work shall duly be passed on by BHEL to LESC as per "Scope of Work" agreed between BHEL and LESC.
- 2.3 The subcontractors or vendors shall be selected by LESC from approved list of "Tender". In the event LESC 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 BCGCL. LESC shall provide necessary supporting documents in this regard. Final accepting authority in any case shall be BCGCL/PDIL. LESC shall be responsible for the work performed by its sub-contractors/ vendors, however, BHEL may exercise their right to directly interact with LESC subcontractors/vendors after obtaining written consent of LESC, wherever required for speedy and effective execution of the project.

The quality plans of equipment's supplied and services offered by LESC/their vendors shall be approved by BCGCL/PDIL 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 BCGCL / PDIL for the required approval and LESC 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 PDIL/BCGCL post "Tender" issue stage shall be part of BHEL's Sub-Contract. The agreement with LESC 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 LESC. If there is a Scope issue between LESC and BHEL, the same shall be resolved mutually without involvement of BCGCL or PDIL. 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 PY54025 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of LESC bid)
- B. Finalized agreed Priced bid of LESC  
“Tender” specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.:PY54025)
- C. All technical data exchanged by LESC w.r.t. Doc.:PY54025 Scope of Work, Miscellaneous literature and other details submitted by LESC along with techno-commercial offer
- D. BHEL PE&SD NIT

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 LESC and shall be a formal agreement post approval of competent authority of BHEL and LESC. 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 LESC’s package, this MOU will be formally signed on non-judicial stamp paper followed by submission of bid bond @1% of final agreed price of BHEL’s sub-contract by LESC to BHEL within 30 days of signing of MOU or date of submission of BHEL bid to PDIL/ BCGCL, whichever is earlier. The initial validity of this bid bond shall be for 21 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 LESC and BHEL subsequent to finalisation of the Customer Contract between BHEL and BCGCL. On receipt of award from BCGCL, the definite BHEL’s Sub- Contract agreement between BHEL and LESC shall be executed prior to issuance of Customer Contract by BCGCL on BHEL. The BHEL’s Sub-Contract between BHEL and LESC shall be signed within 45 days from the date of Award from BCGCL on BHEL, subject to submission of 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 LESC after which the BID bond of LESC 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 LESC.

BHEL's sub-Contract shall comprise of following:

- A. Contract Agreement Form
- B. Purchase order for supply and separate work order for service covering all terms & conditions stipulated in this MOU
- C. All agreed deviation and alterations agreed between LESC and BHEL during post issue of BHEL's NIT and before issue of Purchase Order by BHEL on LESC.
- D. This MOU along with PY54025 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of LESC bid)
- E. Priced bid of LESC
- F. "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.:PY54025)
- G. All technical data exchanged by LESC w.r.t. Doc.:PY54025 Scope of Work, Miscellaneous literature and other details submitted by LESC along with techno-commercial offer
- H. BHEL PE&SD NIT

2.6 In case BHEL's proposal to BCGCL 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 LESC which is solely attributable to BHEL, LESC 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, Detailed Engineering, Procurement, Fabrication, Inspection, Supply, Erection & Commissioning, Civil works Performance Guarantee Test Run, Warranty and handing over of LSTK-2 Package to Customer on EPC basis as per Scope of Work mentioned in Doc.:PY54025.

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 LESC shall be as per Doc: PY54025, attached to this MOU which consists of the scope of work of BHEL and LESC for this Project, list of exclusions, terminal points and battery limits.

- 3.2 Each Party shall be responsible for and shall co-operate with each other in obtaining and maintaining respective permits, licenses and other authorizations required for the performance of its own Scope of Work, except those which are required to be obtained by BCGCL.
- 3.3 The Parties foresee that they shall be obliged to deliver a complete functioning of LSTK-2 package as per the respective scope of work mentioned in Doc.:PY54025 to this MOU. If there is any addition in scope of supply/ services for safe & functional requirement of LSTK-2 package required to be full filled by respective parties (as per Doc.:PY54025) 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 BCGCL / PDIL, 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, LESC shall submit all supporting documents to BHEL to enable BHEL submit the request for change order/ additional claim to BCGCL/PDIL. In case change order is accepted by BCGCL/PDIL, same shall be passed on to LESC, however in event of denial of change order/additional claim by BCGCL/PDIL shall have to be borne by LESC.
- 3.4 It will be the sole responsibility of LESC 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 BCGCL/PDIL during post bid stage so as to meet the qualifying requirement as an acceptable LESC.

#### **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 BCGCL, provided, all the obligations attributable BCGCL / BHEL are fulfilled within the prescribed time. LESC 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 BCGCL. For Scope of Work between BHEL and LESC, L1/L2 schedule for the Scope of Work between BHEL and LESC shall be in line with the overall L1/L2 network approved by BCGCL which shall be finalised jointly by BHEL and LESC.

The spares (Mandatory/ O&M/ commissioning spares) covered in LESC scope for as per the BHEL's Sub-Contract scope shall be supplied by LESC in a phased manner as per mutually agreed schedule to be finalized at the time of Signing of the BHEL's Sub-Contract and the delivery shall be completed by the respective dates for various categories of equipment as per the agreed network by BHEL and LESC.

Time schedule for Supply of Proprietary items 30 months from LOA/Contract signing.

- a) In case of any delay by LESC in achieving the mechanical completion schedule of 30 months for the reasons attributable to LESC, BHEL shall be entitled to a Price Reduction/ Price Adjustment by way of discount for the BHEL's sub- contract price 0.5% of the BHEL's Sub-Contract price for every week of delay or part thereof subject to a maximum (5%) of the total BHEL's Sub-Contract price.

## **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 LSTK-2 Package from BCGCL, 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". LESC shall prepare and submit its bid to BHEL for submission of bid for the project to BCGCL by BHEL. LESC 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 BCGCL wherever required. However, BHEL shall not take any final decision, without prior written consent of LESC, pertaining to change in the Scope of Work mentioned in Doc.:PY54025.

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

In the event of order on BHEL, during execution LESC shall closely work with BHEL for obtaining approvals of any kind envisaged in the Customer contract which are relevant to LESC or LESC and BHEL. This approach would include (a) finalization of design basis of Customer Contract which shall be binding on LESC on back to back basis, (b) attending technical/ progress review/ inspection related meetings with BCGCL/ PDIL, etc. Further with regard to approval of drawings/ documents specifically relevant to LESC or LESC and BHEL, also joint participation of both BHEL and LESC 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 LESC Scope of Work shall be in conformity with the terms of payment as per Customer Contract on back-to-back basis as per Annexure-A & 3\_Revised(Rev.02)PaymentTerm\_Clause14\_SCC\_LSTK-2\_09.12.2024. All payments shall be made by BHEL to LESC after receipt of payments from end customer on back to back basis except as follows:

1. The LESC shall be paid an **interest-bearing** recoverable Advance equivalent to 5% (Five percent) of the CONTRACT PRICE. The interest rate shall be repo rate + 4% prevailing as on the date of opening of Techno commercial bid.
2. Mobilization Advance shall be paid subject to fulfilment of the following conditions:
  - a) Unconditional Acceptance of Letter of Acceptance (LOA) by CONTRACTOR.
  - b) Submission of Bank Guarantee(s) for 110% value of sub contract with LESC, valid for 3 months beyond MECHANICAL COMPLETION from Nationalized bank. The LESC shall at the request of the BHEL suitably extend the validity of the Bank Guarantee (s) for such period or periods as may be *required to* fully recover the amount of the Advance Payment not recovered before the expiry of the validity of such Bank Guarantee, failing which, without prejudice to any other right or remedy available to the OWNER, the OWNER shall be entitled to encash the Bank Guarantee (s)."

**For AMC Payment terms:** Payment for AMC Charges will be paid in each year on annual basis at the end of the year. GST shall be paid extra, as applicable.

## 8.0 PRICES VARIATIONS DURING THE PERIOD OF CONTRACT: Refer Revised PRICE VARIATION CLAUSE, CLAUSE 12.0 OF SCC (Rev. 01) (issued as Corregendum-4\_Commercial\_LSTK-2\_19.09.2024 & enclosed)

## **9.0 INSURANCE:**

Insurance provision for imported items of LESC items upto Indian sea port (upto and including custom duty clearance) is in the scope of LESC. Inland Transport for imported items insurance is in the scope of BHEL. For items manufactured domestically, insurance is in the scope of BHEL. However during the offer submission, bidder to furnish the list of items being imported and sourcing domestically (within India).

## **10.0 TRANSFER OF TITLE:**

Transfer of title provision shall be discussed and mutually agreed in terms of Customer Contract.

## **11.0 TAXES & DUTIES**

All taxes, duties, fees levied excluding GST amount there on by the central or state governments or local authorities or statutory bodies for the Scope of Supply & Services shall be included in the Prices quoted by LESC. GST (which includes IGST and SGST) amount shall be reimbursed by BHEL to LESC extra at actuals subject to ceiling limit as per the % GST rate as per the GST ACT. The contract price shall also be exclusive of any statutory variations or imposition of new taxes, duties, and/or levies during the Contractual delivery date and same shall be paid **subject to** reimbursed by BCGCL to BHEL. In the event contractual delivery date is extended for the reasons solely attributable to BHEL then statutory variations in the rates of GST and / or imposition of new taxes, duties, levies shall be paid to LESC.

## **12.0 PENALTY :**

### **12.1.1 Penalty for shortfall in Guaranteed Performance:**

12.1.1.1 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 of this MOU. In case PR/ Penalty is levied by BCGCL for Shortfall in Guaranteed and Rated Performance (demonstrable) of Equipment/ packages, the same shall be borne in full (as per Customer Contract of this MOU as applicable) by the Party, whose scope of work such Equipment/ Package belongs to.

12.1.1.2 If Performance of LESC scope of works fail due to any reason, LESC has to make necessary adjustments and modifications and take all remedial measures at his own cost and demonstrate Performance Guarantee.

It is however agreed between BHEL and LESC that in case LESC is not able to meet performance guarantee for LESC scope shall be a ceiling limit of (5%) of BHEL's Sub-Contract value.

12.1.1.2 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 LESC 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 LESC would stand rejected and BHEL/ BCGCL will be free to obtain replacement at the risk and cost of LESC Or/ and (b) reduction in Price and/ or Penalty as imposed by PDIL/ BCGCL shall be borne in full by the party whose scope of work such Equipment/Package belongs to.

### **13.0 For Failing to Meet Works Cost Guarantee**

LESC shall guarantee overall consumption/Generation of Raw Material and Utilities so as to guarantee the works cost for all the facilities provided by the LESC/ BHEL as detailed in Part-II, Technical: Section-8.0 of tender document no. PC009/E/001P-II.

In the event works cost is more than 100% but up to 102.5% of the Guaranteed Works Cost then the LESC will pay OWNER MUTUALLY AGREED DAMAGES as specified hereunder:

For every 0.50% increase in Works cost above the guaranteed works cost or part thereof, LESC will pay MUTUALLY AGREED DAMAGES equal to 1.0% of the **TOTAL LESC contract PRICE**.

If the Guaranteed Works cost as demonstrated during the performance test is more than 102.5% of the Guaranteed Works Cost then LESC shall take corrective action irrespective of the cost involved. In case the Guaranteed Works Cost is more than 102.5% even after taking the corrective action, the same shall be considered as breach of Contract.

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

Price Reduction above for the Delay, works cost guarantee and against the shortfall in performance are mutually exclusive.

### **14.0 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 BCGCL 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 date of PRELIMINARY ACCEPTANCE/DEEMED ACCEPTANCE of the LSTK-2 plant.

In the event LESC 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 LESC and BHEL's readiness of overall mechanical completion shall be covered by mutually agreed price for defect liability

period extension by LESC as per BHEL's Sub-Contract. For the interim period between LESC readiness for mechanical completion to BHEL's readiness for mechanical completion BHEL shall pay LESC as per finally quoted add on price by LESC 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.

## **15.0 OVERALL LIMITATION OF LIABILITY:**

15.1 The aggregate liability of the LESC 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 **Thirty percent (30%)** of the BHEL's Sub Contract Price provided that no such limit shall apply in respect of:

- i. Any liability pursuant to LESC 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 LESC, 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 Doc: PY54025;
- iv. In the event of any claim or loss or damage arising out of infringement of Intellectual Property;
- v. For any damage to any third party, including death or injury of any third party caused by the LESC or any person or firm acting on behalf of the LESC in executing the Works
- vi. LESC's Liability for Process Guarantees (if any) or other Guarantees as mentioned in the Technical Part of "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 LESC pursuant to the provisions of the Customer Contract.

15.2 Neither Party shall be liable to the other or to BCGCL 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.

15.3 All other liabilities as provided in the Contracts with BCGCL will be discharged by the Parties, as applicable for their respective scope of work.

## **16.0 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:        Bharat Heavy Electricals Limited  
                                 **Attn:** \_\_\_\_\_

If sent to \_\_\_\_:        \_\_\_\_\_  
                                 **Attn:** \_\_\_\_\_

**17.0        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.

**18.0        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.

**19.0        OTHERS**

19.1        LESC will provide details of major subcontractors and organizational details such as project management, quality systems, financial systems etc.

- 19.2 The proposed organizational structure and set up to be at chief place of business office at LESC for execution of the project including engineering and project management will be submitted to BHEL within two Weeks of signing this MOU.

## **20.0 SECURITY DEPOSIT / CONTRACT PERFORMANCE BANK GUARANTEE**

In case of award of contract on BHEL by BCGCL/PDIL, 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 LESC 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 10% 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 LESC as per this MOU.

## **21.0 PRICE REDUCTION DURING NEGOTIATIONS WITH END CUSTOMER**

This MOU is based on present level of price offered by BHEL to BCGCL with the back-up offer from LESC. However, during final negotiation with BCGCL, if any rebate is offered to BCGCL by BHEL for LSTK-2 package, corresponding proportionate reduction shall be passed on to LESC of the final agreed price by LESC.

## **22.0 COST associated WITH PREPARATION OF BIDS:**

LESC 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.

## **23.0 OFFER SUBMISSION AND POST BID MEETING:**

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

## **24.0 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.

## **25.0 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.

LESC & 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 & LESC 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.

## **26.0 TERMS OF AGREEMENT**

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

26.1 MOU shall be superseded by a BHEL's Sub-Contract to be signed by LESC and BHEL subsequent receipt of award by BHEL from BCGCL. The definite contract agreement between BHEL and LESC shall be executed prior to issuance of Customer Contract by BCGCL 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

26.2 Offer of BHEL getting rejected by BCGCL.

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.

**For Bharat Heavy Electricals Limited**

Witness:

**By**.....

2.1 .....

**Name**.....

**Designation**.....

2.2 .....

**For .....**

**Witness:**

**By.....**

**1. ....**

**Name.....**

**Designation.....**

**2. ....**