

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
BHARAT HEAVY ELECTRICALS LIMITED  
AND

\_\_\_\_\_ (Name of Gasifier Sub-Contractor)

FOR EXECUTION OF  
*proposed 1 TPD Green Hydrogen Plant from Plasma Enhanced  
Gasification of MSW-RDF/ Agri-Waste at NETRA*

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ("MOU") is entered into on ..... of .....2020 at .....,

BETWEEN

Bharat Heavy Electricals Limited, a company registered in India under the Indian 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 "**\_\_\_\_\_/GPS (Gasifier Package supplier** " 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 "a Party" and collectively as "the Parties".

### WHEREAS,

M/s. NTPC has issued Tender Ref. No: 2024\_NTPC\_86564\_1 for Plasma Gasification based 'Green Hydrogen' generation from MSW-RDF / Agri-waste at NETRA, NTPC Greater Noida (here in after referred to as the "**Tender**").

Tender document envisages that bidder as on the date of Techno- commercial bid opening, should have a Technology License Agreement / Agreement for the Right to Use the Technology with Technology Provider having technology for Plasma based radiant energy enhanced gasification of carbonaceous/carbon compound for syngas production of desired composition.

BHEL as Bidder intends to engage \_\_\_\_\_ as a *Technology Provider of "Plasma Induced Gasifier with Syngas cleaning module for MSW-RDF/Agri Waste to Syngas* for Basic Engineering, Detailed Engineering, Procurement, Fabrication, Inspection, Supply, Erection & Commissioning, Civil Works, Performance Guarantee Test Run, Warranty and handing over Gasifier Package as defined in the Tender document referred here above and subsequent amendments issued by NTPC, if any (here in after referred to as "**Project**") to Customer on EPC basis in line with responsibility matrix annexed hereto as Annexure –"A" (here in after referred to as "**Scope of Work**"), in case the order is awarded to BHEL.

BHEL and \_\_\_\_\_ to synergize their strengths, potentials and capabilities agreed to cooperate with each other to participate in the Project and co-operate with each other for the Project and perform the Contract, as and when executed between BHEL and \_\_\_\_\_, (here in after referred to as "**Project Contract**") for the execution of the Project as specified in Annexure- "A", in the event contract is awarded to BHEL by the Customer as per the said Tender (here in after referred to as "**Customer Contract**").

\_\_\_\_\_ shall submit its offer to BHEL which shall be valid for minimum 4 Months from the final Bid due date against Customer tender based on which BHEL shall submit the bid to the Customer for the aforesaid Tender. Any change to the technical and commercial offer submitted by \_\_\_\_\_ shall be agreed only when accepted in writing by \_\_\_\_\_. Bid validity shall be extended after mutual agreement between BHEL and \_\_\_\_\_. If BHEL gets opportunity to revise the price while extending the validity, similar opportunity to be passed on to \_\_\_\_\_.

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 \_\_\_\_\_ have decided to enter into this MOU with the purpose :

- 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 NTPC/EIL during post bid stage, cooperate BHEL to perform the said Customer Contract, if awarded to BHEL, in accordance with the terms and conditions agreed with the Customer and as per the Scope of Work specified in Annexure -A.
- 1.3 To determine the rights and obligations of the Parties in connection with the performance of the Customer Contract both internally amongst themselves, as well as with respect to Customer.

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

- 2.1 In case BHEL is successful in getting the Customer Contract, BHEL and \_\_\_\_\_ will work on mutually exclusive basis for the above project within the frame work of this MOU and subsequent contract agreement between BHEL and \_\_\_\_\_.
- 2.2 BHEL will submit the proposal to NTPC in its name with \_\_\_\_\_ 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-A. Both the parties shall perform their respective scope of work in an integrated manner. Accordingly, any facility given by NTPC to BHEL for Gasifier package scope of work

shall duly be passed on by BHEL to \_\_\_\_\_ as per "Scope of Work" agreed between BHEL and \_\_\_\_\_.

- 2.3 The subcontractors or vendors shall be selected by \_\_\_\_\_ from approved list of NTPC. In the event \_\_\_\_\_ preferred vendor or sub-contractor is not available in the approved list of NTPC, then BHEL will seek approval of such vendor or subcontractor from NTPC. \_\_\_\_\_ shall provide necessary supporting documents in this regard. Final accepting authority in any case shall be NTPC. \_\_\_\_\_ shall be responsible for the work performed by its sub-contractors/vendors, however, BHEL may exercise their right to directly interact with \_\_\_\_\_ subcontractors/vendors after obtaining written consent of \_\_\_\_\_, wherever required for speedy and effective execution of the project. The quality plans of equipment's supplied and services offered by \_\_\_\_\_/their vendors shall be approved by NTPC or their consultant/ BHEL according to the agreed quality assurance plan by both the parties and approved by Customer (as applicable).
- 2.4 The technical and commercial Specifications shall be considered as per end Customer tender to be read in conjunction with various Corrigenda /Amendments. The resulting contracts for the above Project shall be binding on both the parties to the extent of scope of work as per Annexure-A. Tender document along with various corrigendum/ amendments issued by NTPC post tender issue stage shall be part of Project Contract. The agreement with \_\_\_\_\_ will be on "Back to Back" basis vis-a-vis NTPC's tender specifications save to the extent specific agreements reached in writing between \_\_\_\_\_ and BHEL with regard to any change in scope of Work as per Annexure – A and terms and conditions modified to the extent of this MOU. If there is a Scope issue between \_\_\_\_\_ and BHEL, the same shall be resolved mutually without involvement of NTPC. 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 PY51997 R00 Document comprising scope of work, performance guarantees, agreed deviations (post submission of QEM bid)
  - B. Finalized agreed Priced bid of GPS
  - 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 PY51997 R00)
  - D. All technical data exchanged by GPS w.r.t. Annexure-1 to Technical Specification PY51997 R00 Scope of Work, Miscellaneous literature and other details submitted by GPS along with techno-commercial offer ref no. \_\_\_\_\_ dtd \_\_\_\_\_
- 2.5 **E** BHEL PE&SD Enquiry T7B1X57437 dtd 25.05.24 (rest of the documents other than this MoU)
- 2.6 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 shall form part of Project Contract to be signed between \_\_\_\_\_ and BHEL subsequent to finalisation of the Customer Contract between BHEL and NTPC. The definite contract agreement between BHEL and \_\_\_\_\_ shall be executed prior to issuance of purchase order by NTPC and this agreement must remain in force at least till the pendency of the Customer Contract. The purchase order shall be issued within 45 days from the date of award to Bidder. 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 of commitment between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the respective Scope of Work as per Annexure – A, of the Parties under this MOU.

- 2.7 In case BHEL's proposal to NTPC 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 which is solely attributable to BHEL, \_\_\_\_\_ shall be given proportionate time extension in project schedule.
- 2.8 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.
- 2.9 The Parties hereby mutually agree between each other the following for the sole and limited purpose of:
  - 2.9.1 Co-operate in performing the Customer Contract, including Basic Engineering, Detailed Engineering, Procurement, Fabrication, Inspection, Supply, Erection & Commissioning, Civil works Performance Guarantee Test Run, Warranty and handing over of Gasifier Package to Customer on EPC basis as per Scope of Work mentioned in Annexure – A.
  - 2.9.2 Defining the rights and obligations between the Parties in connection with the performance of the Customer Contract
  - 2.9.3 To closely cooperate in order to achieve a smooth and complete performance thereof.

### **3.0 SCOPE OF WORK**

- 3.1 The detailed Scope of Work to be performed by \_\_\_\_\_ shall be as per Annexure-A, attached to this MOU which consists of the scope of work of BHEL and \_\_\_\_\_ 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 NTPC.
- 3.3 The Parties foresee that they shall be obliged to deliver a complete and functioning of Gasifier package as per the scope of work mentioned in Annexure – A. If there is an additional scope of supply & services applicable due to the tender specifications within \_\_\_\_\_scope of work as per Annexure-A, request for additional claim/change order along with all supporting documents shall be submitted by \_\_\_\_\_ to BHEL. BHEL will submit the request for change order/ additional claim to NTPC/EIL. In case change order is accepted by NTPC/EIL, same shall be passed on to \_\_\_\_\_, however in event of denial of change order/additional claim by NTPC/EIL shall have to be borne by \_\_\_\_\_.
- 3.4 It will be the sole responsibility of \_\_\_\_\_ to submit the requisite details to BHEL in the prescribed format duly signed and authorised as per requirement of tender document and any clarification sought by NTPC/EIL during post bid stage so as to meet the qualifying requirement as an acceptable Gasifier OEM 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 NTPC. \_\_\_\_\_ have agreed to perform all activities such as design, engineering, procurement, fabrication, inspection, erection, civil works etc. as per the L1/ L2 schedule to be agreed by BHEL with NTPC. For Scope of Work between BHEL and \_\_\_\_\_, L1/L2 schedule for the Scope of Work between BHEL and \_\_\_\_\_ shall be in line with the overall L1/L2 network approved by NTPC which shall be finalised jointly by BHEL and \_\_\_\_\_.

The spares (Mandatory/ O&M) covered in \_\_\_\_\_ scope for operation & maintenance as per the scope specified in tender specifications shall be supplied by \_\_\_\_\_ in a phased manner as per mutually agreed schedule to be finalized at the time of Signing of the Project Contract and the delivery shall be completed by the respective dates for various categories of equipment as per the agreed network

#### **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 project execution from NTPC, 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. \_\_\_\_\_ shall prepare and submit its bid to BHEL for onward submission to NTPC by BHEL. \_\_\_\_\_ shall attend the meetings required in connection with the Tender and contracts either between the parties and/or between the parties and NTPC wherever required. However, BHEL shall not take any final decision, without prior written consent of \_\_\_\_\_, pertaining to change in the Scope of Work mentioned in Annexure – A, if required.

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

## **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. The obligations relating to non-disclosure in this Article shall survive for 5 (five) years after the expiry of termination 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 project 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.)

## **7.0 PAYMENTS**

The terms of payment for GPS Scope of Work shall be in conformity with the terms of payment as per Customer Contract on back-to- back basis except as mentioned below: .

1. Cl.No A1.(I)a of terms of payment of Terms and procedures of payment of Appendix 1 shall be read as below:

- a. \_\_\_\_\_ may opt for Five Percent (5%) of the total Ex-works price component as Initial Advance Payment on submission of Bank Guarantee equal to 110% of advance payment and interest rate shall be repo rate + 4% as on the date of claim of advance.
2. Cl.No A1.(I)b of terms of payment of Terms and procedures of payment of Appendix 1 **stands deleted.**
3. Cl.No A1.II b of terms of payment of Terms and procedures of payment of Appendix 1 shall have following additional clause:
  - a. II.b: Advance payment taken at Cl.no A1.Ia shall be adjusted along with accrued interest accordingly in the cl.No A1.II before making 50% payment and BG shall be returned back.
4. Cl.No A1.III of terms of payment of Terms and procedures of payment of Appendix 1 shall be read as below:
  - a. Twenty-five Percent (25%) of the Ex-works price component of the Contract Price for each identified equipment shall be paid progressively on pro- rata basis on receipt of equipment at site and physical verification and certification by the Project Manager of having the equipment received and stored at site.
5. Cl.No A1.IV of terms of payment of Terms and procedures of payment of Appendix 1 shall be read as below:
  - a. FIFTEEN Percent (15%) of the Ex-works price component of contract price will be made on successful commissioning of Plasma Induced Gasifier with Syngas cleaning module and on certification by the Project Manager.

All payments shall be made by BHEL to GPS after receipt of payments from end customer on back-to-back basis. Payment shall be received by BHEL from NTPC and shall be promptly released to GPS for their scope of work upon receipt of such payment from NTPC subject to the submission of vendor's invoice with necessary supporting documents as listed in the BHEL NIT, on back-to-back basis within 30 (Thirty) days after receipt of payment from NTPC. In case any ad-hoc or consolidated payment is received by BHEL from NTPC including any verified invoices pertaining to GPS without specifying any invoice reference then BHEL will release payment to GPS in proportion to their then verified invoices. Delay in payments from NTPC shall not entail GPS 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, GPS & 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 GPS may vary as provided in the contract between GPS and BHEL. Such change order shall be subject to acceptance by end Customer for which GPS will provide all details, documents to substantiate change orders claims.



## **9.0 INSURANCE:**

~~Insurance provision shall be applicable as agreed in the Project Contract on back-to-back basis between BHEL & NTPC. The MCE Insurance policy is in the scope of end Customer i.e. NTPC and shall be applicable for this project. Further insurance scope for the GPS items is in the scope of GPS vendor. Insurance shall be in the scope of BHEL.~~

## **10.0 TRANSFER OF TITLE:**

Transfer of title provision shall be discussed and mutually agreed in terms of Project 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 \_\_\_\_\_. GST amount shall be reimbursed by BHEL to \_\_\_\_\_ extra at actuals subject to the ceiling limit as per the provisions of GST Act/Rules. The contract price shall also be exclusive of any imposition of new taxes, duties, levies and/or statutory variations in the rates of GST during the Contractual delivery date.

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

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

## **12.0 PRICE REDUCTION (PR) and Warranty:**

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

12.2 All obligations and liabilities of BHEL under customer contract, pertaining to \_\_\_\_\_ scope of work shall be covered/ discharged by \_\_\_\_\_ on back-to-basis. The liabilities between the Parties shall be as follows:

12.3 **Price Reduction(PR)/ Price Adjustment(PA):**

12.3.1 **PR/PA for Delay:**

- PA/PR for delay in achieving intermediate major milestone, mechanical completion for the project for gasifier package Sub-contractor shall be on back to back basis as agreed between BHEL and NTPC.
- In case of delay in completion schedule, if PA/ PR is imposed by NTPC and such delay is solely attributable to one of the parties the Party responsible for the delay will bear the PA/PR subject to maximum 5% of total contract price corresponding to its scope of work and

In case the PR amount levied exceeds the above amount, then the excess amount will be Shared between the Parties in the proportion of their share of price in the Contracts with NTPC.

- In case the Parties are jointly responsible for causing the PR claim due to delay in completion Schedule or cause for delay cannot be assigned to any Party, then the resulting PR amount will be shared between the Parties in proportion to their share of price in the Contract in CPP Contract.
- Notwithstanding anything mentioned in this clause, the maximum PA/ PR on account of delay shall not exceed 5% of contract price of GPS Subcontractor.

#### **12.3.2 PR/Penalty for shortfall in Guaranteed Performance:**

Each Party shall be responsible for the guaranteed/ demonstrable performance of the Equipment supplied by it as per NTPCs specifications on back to back basis. In case PR is levied by NTPC for Shortfall in Guaranteed Performance of Equipment/ packages, the same shall be borne in full (as per Customer Contract) by the Party, whose scope of work such Equipment/ Package belongs to.

- 12.3.3 In the event PR is levied by NTPC and/or payments are withheld by NTPC on account of provisional PR, then BHEL shall recover \_\_\_\_\_share, if any, of PR amount from the payments due to\_\_\_\_\_. In case the payments due \_\_\_\_\_are not sufficient to cover \_\_\_\_\_share of PR, the same shall be paid by \_\_\_\_\_ to BHEL on demand.
- 12.3.4 Each Party shall indemnify and hold harmless the other party from any Third Party claim arising from the acts and/or omission of that Party. Parties will co-operate with each in defending their interests and settling claims, if any, by Third Party.
- 12.3.5 Neither Party shall be liable to the other or to NTPC for any exemplary, indirect and/or consequential damages including but not limited to loss of profit, loss of revenue, loss of interest, loss of production or loss of contract.
- 12.3.6 All other liabilities as provided in the Contracts with NTPC will be discharged by the Parties, as applicable for their respective scope of work in proportion to their respective share in the price in Contracts with NTPC.
- 12.3.7 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 as per Customer

Contract, then \_\_\_\_\_ 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 as per Customer Contract. In such eventuality, (a) the supplies of \_\_\_\_\_ would stand rejected and BHEL will be free to obtain replacement at the risk and cost of \_\_\_\_\_ Or/and (b) reduction in Price or Penalty shall be borne full by the party whose scope of work such Equipment/Package belongs to.

Both the Price Reduction above for the Delay and against the shortfall in performance are mutually Exclusive.

#### **12.4 Defect liability period/ Warranty Period**

Defect liability period for the project for Gasifier Package Sub-contractor shall be on back to back basis as agreed between BHEL and NTPC 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 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.

#### **13.0 NOTICE:**

All notices pursuant to this MoU shall except as otherwise provided be made in writing and delivered by hand or sent by 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:** \_\_\_\_\_

#### **14.0 DISPUTE RESOLUTION:**

14.1 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, failing which such dispute will be referred to Higher Management of Parties for resolution within the next 30(thirty) days.

14.2 If such dispute is not resolved as amicably, 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.

- 14.3 The place of the Arbitration shall be at Delhi in India, language of arbitration would be English and the procedural law to be adopted in such arbitration shall be that in India.

The arbitration Panel shall consist of 3 members; each party shall appoint 1 member & appointed member by each party shall appoint 3<sup>rd</sup> Member of the panel.

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

- 14.4 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 Project Contract and this Agreement and shall not exercise any other remedies.

## **15.0 GOVERNING LANGUAGE & LAW:**

- 15.1 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.
- 15.2 This Agreements between the Parties including this Agreement shall be governed by Laws of India.

## **16.0 Others**

- a. \_\_\_\_\_ will provide details of major subcontractors and organizational details such as project management, quality systems, financial systems etc.
- b. The proposed organizational structure and set up to be at corporate office at \_\_\_\_\_ for execution of the project including engineering and project management will be submitted to BHEL within two Weeks of signing this MOU.

## **17.0 PERFORMANCE GUARANTEE AND BID BOND**

- 17.1 In case of ordering of this contract on BHEL by NTPC, 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 \_\_\_\_\_ shall at its own expense, provide to BHEL those counter guarantees/bonds appertaining to its respective scope of Work, supplies and services as per Customer Contract/BHEL Purchase order. The value/ percentage and validity of such bank guarantees i.e. Contract Performance Bank Guarantee(CPBG), 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 \_\_\_\_\_.

- 17.2 Within 30 days of Signing of MOU, M/s \_\_\_\_\_ agrees to submit bank guarantee/ Security deposit for 1 % of MOU Value valid during validity period of MOU.

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

This MOU is based on present level of price offered by BHEL to NTPC with the back-up offer from \_\_\_\_\_. However, during final negotiation with NTPC, if any rebate is offered to NTPC by BHEL for total CPP package, BHEL would hold prior consultation and obtain written consent of \_\_\_\_\_ for offering so agreed rebate to the quoted price.

#### **19.0 COST ASSOCIATED WITH PREPARATION OF BIDS:**

\_\_\_\_\_ 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.

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

- 20.1 Compliance to bid requirement as per format specified in the tender of shall be submitted by \_\_\_\_\_.
- 20.2 \_\_\_\_\_ shall submit all bid formats, technical details, exceptions and deviations etc. in line with tender requirement. \_\_\_\_\_ shall also attend Post bid meetings to discuss and sort out clarification with end Customer.

#### **21.0 MODIFICATIONS IN THE MOU**

- 21.0 The terms and conditions of this MoU shall prevail over any other document, correspondence, negotiations and commitments previously entered into between the parties.
- 21.1 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.

#### **22.0 EXECUTION OF MOU**

The Parties are executing two originals of this MoU. Each Party shall retain one original.

#### **23.0 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.

\_\_\_\_\_ & 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 & \_\_\_\_\_ 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.

#### **24.0 TERMS OF AGREEMENT**

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

1) MOU is superseded by a Project Contract to be signed by\_\_\_\_\_and BHEL subsequent receipt of order by BHEL from NTPC. The definite contract agreement between BHEL and\_\_\_\_\_shall be executed prior to issuance of purchase order by NTPC and this agreement must remain in force at least till the pendency of the Customer Contract. The purchase order shall be issued within 45 days from the date of award to Bidder Or

2) Offer of BHEL getting rejected by NTPC.

All terms and conditions as agreed, minutes of meetings between BHEL, and \_\_\_\_\_shall also form part of the resulting contracts between BHEL and \_\_\_\_\_subsequent to finalisation of NTPC.

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. ....**