

MEMORANDUM OF UNDERSTANDING

BETWEEN

BHARAT HEAVY ELECTRICALS LIMITED

AND

(Name of Electrolyser Manufacturer/ Channel Partner)

FOR EXECUTION OF

Micro-grid Project

OF

Power Grid Corporation of India Limited (POWERGRID)

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

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ('MOU') is entered into on of2024 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

M/s., registered under the Indian Companies Act of 1956 or 2013, as the case may be, and having its Registered Office at hereinafter called the **ORIGINAL EQUIPMENT MANUFACTURER (OEM) OF ELECTROLYSER/ ITS CHANNEL PARTNER** which expression shall include its successors, administrators, executors and permitted assigns, in favour of (*insert names of the Employer*), a Company incorporated under the Indian Companies Act of 1956 having its registered office at (*insert registered address of the Employer*) (hereinafter called the "Employer" which expression shall include its successors, executors and permitted assigns).

WHEREAS,

M/s. Power Grid Corporation of India Limited (POWERGRID) has issued NIT No: CC/NT/W-MISC/DOM/A10/24/15669 for T&D-Pilot Package GH2-01 for Establishment of Solar PV Powered Green Hydrogen Plant and Fuel Cell based Microgrid system Pilot Project at 400/220 kV Neemrana Sub-station, Rajasthan along with O&M for 10 years. (here in after referred to as the "**Tender**").

AND

BHEL and **OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER** are executing an irrevocable Deed of Joint Undertaking that they shall be held jointly and severally liable and bound unto the Employer for successful Supply, performance and warranty obligations of the Electrolyser portion of the Contract fully meeting the stipulated technical requirements, guaranteed parameters and characteristics as per bidding documents, in the event the Bid submitted by the Bidder is accepted by the Employer resulting in a Contract.

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 **OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER** have decided to enter into this MOU with the purpose of scope of work as specified in Doc.: PY54050.

- 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 Powergrid 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.: PY54050.

- 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 Electrolyser Manufacturer/ Channel Partner’s rights & obligations under this MOU.

2.0 PRINCIPLES OF CO-OPERATION:

- 2.1 BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER will work on mutually basis for the above Project during tendering and post placement of order by POWERGRID on BHEL within the frame work of this MOU and subsequent BHEL’s Sub-Contract agreement between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER .
- 2.2 BHEL will submit the proposal to POWERGRID in its name with OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 PY54050. Both the parties shall perform their respective Scope of Work in an integrated manner. Accordingly, any facility given by POWERGRID to BHEL for MICROGRID package scope of work shall duly be passed on by BHEL to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER as per “Scope of Work” agreed between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.
- 2.3 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall provide necessary supporting documents to satisfy qualification requirement of the tender. Final accepting authority in any case shall be POWERGRID.

- 2.4 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be responsible for the work performed by its sub-contractors/ vendors, however, BHEL may exercise their right to directly interact with OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER subcontractors/vendors after obtaining written consent of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER, wherever required for speedy and effective execution of the project.

The quality plans of equipment's supplied and services offered by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER /their vendors shall be approved by POWERGRID 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 POWERGRID for the required approval and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall not be responsible or liable for the delays due to pending approval from BHEL.

- 2.5 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 POWERGRID post "Tender" issue stage shall be part of BHEL's Sub-Contract. The agreement with OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER. If there is a Scope issue between OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL, the same shall be resolved mutually without involvement of POWERGRID. 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 PY54050 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER bid)
- B. Finalized agreed Priced bid of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.: PY54050).
- C. All technical data exchanged by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER w.r.t. Doc.: PY54050 Scope of Work, Miscellaneous literature and other details submitted by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER along with techno-commercial offer.
- D. BHEL PE&SD NIT.

This MOU is being in-principally agreed and initialled by both BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and shall be a formal agreement post approval of competent authority of BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER '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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER to BHEL within 30 days of signing of MOU or date of submission of BHEL bid to POWERGRID, whichever is earlier. The initial validity of this bid bond shall be for 12 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL subsequent to finalisation of the Customer Contract between BHEL and POWERGRID. On receipt of award from POWERGRID, the definite BHEL's Sub-Contract agreement between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be executed prior to issuance of Customer Contract by POWERGRID on BHEL. The BHEL's Sub-Contract between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be signed within 45 days from the date of Award from POWERGRID on BHEL, subject to submission of CPBG/ Security Deposit @ 10% of the BHEL's Sub-Contract value within 28 days from the date of issue of LOI/ PO by BHEL on OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER after which the BID bond of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL during post issue of BHEL's NIT and before issue of Purchase Order by BHEL on OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.
- d) This MOU along with PY54050 Document Part comprising scope of work, terminal points, exclusions, performance guarantees, agreed deviations (post submission of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER bid)
- e) Priced bid of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER
- f) "Tender" specification along with all corrigendum/ amendments issued till submission of the bid by BHEL (clauses to be referred relevant to Doc.: PY54050)
- g) All technical data exchanged by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER w.r.t. Doc.: PY54050 Scope of Work, Miscellaneous literature and other details submitted by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER along with techno-commercial offer
- h) BHEL PE&SD NIT

- 2.6 In case BHEL's proposal to POWERGRID is found, to be techno-economically acceptable and BHEL is evaluated L1, both the Parties agree to carry out advance engineering 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER which is solely attributable to BHEL, OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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:
- 2.9 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 Electrolyser Package to Customer on EPC basis as per Scope of Work mentioned in Doc.:PY54050.
- 2.10 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.
- 2.11 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be as per Doc: PY54050, attached to this MOU which consists of the scope of work of BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 POWERGRID.
- 3.3 The Parties foresee that they shall be obliged to deliver a complete functioning of Electrolyser package and its AMC as per the respective scope of work mentioned in Doc.: PY54050 to this MOU. If there is any addition in scope of supply/ services for safe & functional requirement of MICROGRID package required to be full filled by respective parties (as per Doc.: PY54050) 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 POWERGRID, 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, OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall submit all supporting documents to BHEL to enable BHEL submit the request for change order/ additional claim to POWERGRID. In case change order is accepted by POWERGRID, same shall be passed on to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER, however in event of denial of change order/additional claim by POWERGRID shall have to be borne by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

- 3.4 It will be the sole responsibility of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 POWERGRID during post bid stage so as to meet the qualifying requirement as an acceptable OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

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 POWERGRID, provided, all the obligations attributable POWERGRID / BHEL are fulfilled within the prescribed time. OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER have agreed to perform all activities such as design, engineering, procurement, inspection, erection works etc. as per the L1/ L2 schedule to be agreed by BHEL with POWERGRID. For Scope of Work between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER, L1/L2 schedule for the Scope of Work between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be in line with the overall L1/L2 network approved by POWERGRID which shall be finalised jointly by BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

The spares (Mandatory/ O&M/ commissioning spares) covered in OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER scope for as per the BHEL's Sub-Contract scope shall be supplied by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER .

The maximum Supply Schedule for the Electrolyser Package and Spares is 09 months from the date of placement of Purchase Order and E&C schedule shall be of 02 Months. The maximum engineering exchange of information before submission of bid to end-customer from date of MoU shall be 3 weeks.

The tentative time period breakup considered for delivery of 09 months as follows:

Sr. No	Activity	Period
1	Submission of Engineering & QAP	14 Days from P.O
2	Review of Engineering & QAP by BHEL	14 Days
3	Review of Engineering & QAP by Customer	14 Days
4	Subsequent review of Engineering & QAP by BHEL Or Customer, if required	3 Days for each revision
5	Time period form inspection call to Inspection	7 Days
6	IRN to MDCC	3 Days
7	MDCC to Receipt at site	15 Days

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 MICROGRID Package from POWERGRID, 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". OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall prepare and submit its bid to BHEL for submission of bid for the project to POWERGRID by BHEL. OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 POWERGRID wherever required. However, BHEL shall not take any final decision, without prior written consent of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER, pertaining to change in the Scope of Work mentioned in Doc.: PY54050.

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

In the event of order on BHEL, during execution OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall closely work with BHEL for obtaining approvals of any kind envisaged in the Customer contract which are relevant to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER or OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL. This approach would include (a) finalization of design basis of Customer Contract which shall be binding on OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER on back to back basis, (b) attending technical/ progress review/ inspection related meetings with POWERGRID, etc. Further with regard to approval of drawings/ documents specifically relevant to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER or OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL, also joint participation of both BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER Scope of Work shall be made in the following manners and following times. All payments under the Contract shall be made in Indian Rupees. The Contractor may make applications for payment in respect of part deliveries as work proceeds. All payments shall be made by BHEL to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER after receipt of payments from end customer on back to back basis except for the terms listed below. Payment shall be received by BHEL from POWERGRID and shall be promptly released to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER for their scope of work upon receipt of such payment from POWERGRID, on back to back basis, within 30(Thirty) days after receipt of payment from POWERGRID. In case any ad-hoc or consolidated payment is received by BHEL from POWERGRID including any verified invoices pertaining to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER without specifying any invoice reference then BHEL will release payment to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER in proportion to their then verified invoices. Delay in payments from POWERGRID shall not entail OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER to claim any compensation from BHEL.

Terms of Payment

7.1 Interest Bearing Initial Advance (Optional*): Five percent (5%) of the Ex-works price component of Main Equipment/Materials (including Mandatory Spares) shall be paid as an

interest bearing initial advance after signing the Contract Agreement and on submission of (a) Proforma invoice(s), (b) Advance Bank Guarantee for 110% (One Hundred Ten Percent) of the amount of Advance, in line with GCC Clause 9.2, (c) Performance Securities in line with GCC Clause 9.3 and (d) Detailed PERT Network/Bar chart and its approval by the Employer.

Provided further that the Proforma Invoice(s) for advance payment along with all supporting documents is submitted by the Contractor to the Employer within 3 months from the date of Notification of Award. In case the Contractor does not submit the requisite documents including applicable Bank Guarantee(s)/Security(ies) within the aforesaid period, the advance shall not be payable. The Contractor shall, within 7 days from the date of receipt of Advance, furnish an Advance Receipt Voucher to the Employer, as prescribed under the GST Law.

Note: * This payment is an optional payment. The Contractor has the option of taking the interest bearing initial advance or otherwise.

7.2 Sixty five Percent (65%)[^] (Sr. No. 1.1 of Price bid) of the Ex-Works price component of Main Equipment/Materials (including Mandatory Spares) shall be paid progressively on submission of documents indicated hereinunder: (a) Evidence of dispatch {Consignment Note (R/R or L/R)} (b) Contractor's GST invoice, claim & packing list identifying contents of each shipment. (c) Insurance policy/certificate (d) Manufacturer's/Contractor's guarantee certificate of Quality. (e) Material Inspection Clearance Certificate (MICC) for despatch issued by the Employer's representative. (f) Test certificate (g) Submission of CPGs, if any, as per Technical Specifications (h) the details of items, components, raw materials, services etc. procured/availed from MSEs, if any, for the preceding 6 months, in respect of all the contracts in the respective executing Region of POWERGRID as per format enclosed at Section VI, Forms, Volume-I of the bidding documents. (i) Submission of (i) Authorization certificate issued by domestic manufacturer for selling Domestically Manufactured Iron & Steel Products, if applicable; and (ii) Affidavit of Self certification regarding Domestic Value Addition in Iron & Steel Products; in line with GCC Clause 5.7. (J) Value- addition certificate on half-yearly basis (Sep 30 and Mar 31), duly certified by the Statutory Auditors of the Domestic Manufacturer, that the claims of value-addition made for the product during the preceding 6 months are in accordance with the 'Policy for providing preference to Domestically Manufactured Iron & Steel Products in Government Procurement'.

[^] In case, the Contractor opts not to take interest bearing initial advance {or has opted to take interest bearing initial advance but the advance payment has become inadmissible for the reason specified in 1.1 (I) A1 above} and interest-bearing engineering advance then this payment shall be 70% instead of 65%.

7.3 Fifteen Percent (15%) (Sr. no.1.1 of Price bid) of the Ex-works price of Main Equipment/materials shall be paid on receipt and storage at site and on physical verification and furnishing of necessary certificate by Employer's representative.

However, for Mandatory Spares, balance Thirty Percent (30%) payment of the Ex-works price component shall be released on receipt & storage of the same at site, physical verification and taking over by the Employer's representative

7.4 Ten Percent (10%)(Sr. No. 1.1 of Price bid) of the Ex-works price component of Main Equipment/materials shall be paid on commissioning, successful Trial run and completion of Performance Guarantee test.

7.5 Balance Five Percent (5%) (Sr. No. 1.1 of Price bid) of the Ex-works price component of Main Equipment/materials shall be paid on proof of submission of required number of reproducibles, O&M Manuals, approved drawings, data sheets, test report, pamphlets and manuals of mandatory spares, maintenance & testing equipment and on issuance of Taking Over Certificate. However, in case of delay in testing and commissioning & issuance of taking over certificate by Employer beyond six (6) months from the date of receipt of equipment at site, the last 15% (Fifteen Percent) of Ex-Works price of respective equipment shall be paid after issuance of a certificate by Employer's representative that the equipment have been received in good condition and on submission of a bank guarantee of equivalent amount, which shall be kept valid initially for a period of twelve (12) months or until three (3) months after the expected date of commissioning (in case it is possible to anticipate the same), whichever is earlier, provided all other conditions as per above are complied with by the Contractor. If the commissioning does not take place within the validity period of BG, the validity of BG shall be extended from time to time. The bank guarantee shall, however, be released within one month of successful commissioning of the respective equipment by the Employer.

8.0 PRICES DURING THE PERIOD OF CONTRACT:

The Prices will remain firm, for the period of BHEL's Sub-Contract for the entire duration of Contract except change in the Scope of Work (Subject to change order). 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, OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER & 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER may vary as provided in the contract between OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL. Such change order shall be subject to acceptance by end Customer for which OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER will provide all details, documents to substantiate change orders claims.

9.0 INSURANCE:

Insurance provision for imported items of vendor items up to Indian sea port (up to and including custom duty clearance) is in the scope of vendor. Insurance for Inland Transport of imported items 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).

The insurance proceeds as applicable shall be passed on to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER on back to back basis subject to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER complying with the provisions for submission of the insurance claims as per Customer Contract and admission of OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 's claim by Underwriter/ POWERGRID.

BHEL shall not have any liability to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER on this aspect. Also all replacement/ repair of damages under insurance shall be made good by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER as per provisions of Customer Contract. Further apart from MCE policy all other insurance covers as stipulated in the Customer Contract and applicable for BHEL as main contractor and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER as BHEL's sub-contractor shall be taken by BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER for their respective scope.

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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER. GST (which includes IGST and SGST) amount shall be reimbursed by BHEL to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER extra at actuals subject to ceiling limit as per the % GST rate declared in the BHEL's Sub-Contract. The contract price shall also be exclusive of any statutory variations or imposition of new taxes, duties, levies and/ or in the rates of GST during the Contractual delivery date and same shall be paid as reimbursed by POWERGRID 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

12.0 Defect liability period/ Warranty Period

Electrolyser Manufacturer or its channel partner shall give Comprehensive Annual Maintenance Contract (AMC) for 9 years after defect liability period of 12 months from date of commissioning of Electrolyser and handing over to customer.

Defect liability period for the BHEL's Sub-Contract shall be on back to back basis as agreed between BHEL and POWERGRID 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.

In terms of the Customer Contract the defect liability period is twelve (12) months from the date of Taking Over /Completion of Facilities (or any part thereof).

All other terms and conditions of Customer Contract in this regard shall be applicable on back to back basis.

13.0 OVERALL LIMITATION OF LIABILITY:

Except in cases of gross negligence or willful misconduct, (a) the Contractor and the Employer shall not be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

- a) Neither Party shall be liable to the other or to POWERGRID 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.
- b) All other liabilities as provided in the Contracts with POWERGRID will be discharged by the Parties, as applicable for their respective scope of work.

14.0 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: _____

15.0 DISPUTE RESOLUTION:

- a) 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 within 30(thirty) days after either Party has identified such dispute.
- b) If such dispute is not resolved as per clause 18.1, 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.
- c) 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.

- d) 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.

16.0 GOVERNING LANGUAGE & LAW:

- 19.1. 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.
- 19.2. This Agreement between the Parties including this Agreement shall be governed by Laws of India.

17.0 Others

- a) OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 chief place of business office at OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER for execution of the

project including engineering and project management will be submitted to BHEL within two Weeks of signing this MOU.

18.0 Security Guarantee/ CONTRACT PERFORMANCE BANK GUARANTEE

In case of award of contract on BHEL by POWERGRID, 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER as per this MOU.

Electrolyser Manufacturer/Channel Partner shall furnish performance bank guarantee **(PBG)** for an amount of ten (10) % of ex-works price of electrolyser valid up to 10 years from commissioning. This performance bank guarantee shall be in addition to the Contract Performance security to be submitted by the Bidder.

19.0 PRICE REDUCTION DURING NEGOTIATIONS WITH END CUSTOMER

This MOU is based on present level of price offered by BHEL to Powergrid with the back-up offer from OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER. However, during final negotiation with Powergrid, if any rebate is offered to BHEL by Powergrid for Microgrid project, corresponding proportionate reduction shall be passed on to OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER of the final agreed price by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

20.0 Cost associated WITH PREPARATION OF BIDS:

OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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.

21.0 Offer SUBMISSION AND POST BID MEETING:

- a) Compliance to bid requirement as per format specified in the "Tender" of shall be submitted by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER.

- b) OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall submit all bid formats, technical details, exceptions and deviations etc. in line with “Tender” requirement. OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER Shall also attend Post bid meetings to discuss and sort out clarification with end Customer.

22.0 Warranty

Refer Clause 12 above

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.

OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER & 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 & OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER 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 Intellectual Property

a) Copy Right

- i) The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Bidder herein shall remain vested in the Bidder or, if they are furnished to the Employer directly or through the Bidder by any third party, including supplies of materials, the copyright in such materials shall remain vested in such third party.
The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

- ii) The copyright in all drawings, documents and other materials containing data and information furnished to the Bidder by the Employer herein shall remain vested in the Employer.

b) Confidential Information

- i) The Employer and the bidder shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Bidder may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Bidder shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this PGCIL Section IV: GCC Clause 12.
- ii) The Employer shall not use such documents, data and other information received from the Bidder for any purpose other than the operation and maintenance of the Facilities. Similarly, the Bidder shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.
- iii) The obligation of a party under PGCIL Section IV: GCC Sub-Clauses b(i) and b(ii) above, however, shall not apply to that information which
 - now or hereafter enters the public domain through no fault of that party
 - can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
 - otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- iv) The provisions of PGCIL Section IV: GCC Clause 12 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- v) The provisions of PGCIL Section IV: GCC Clause 12 shall survive termination, for whatever reason, of the Contract.

26.0 LIQUIDATED DAMAGES:

If the Contractor fails to comply with the Time for Completion in accordance with Clause GCC 21 for the whole of the facilities, (or a part for which a separate time for completion is agreed) then the Contractor shall pay to the Employer a sum equivalent to 0.05% (zero point zero five percent) of the Contract Price for the whole of the facilities, (or a part for which a separate time for completion is agreed) as liquidated damages for such default and not as a penalty, without prejudice to the Employer's other remedies under the Contract, for each day which shall elapse between the relevant Time for Completion and the date stated in Taking Over

Certificate of the whole of the Works (or a part for which a separate time for completion is agreed) subject to the limit of five percent (5%) of Contract Price for the whole of the facilities, (or a part for which a separate time for completion is agreed).

The parties agree that the sum specified above is not a penalty but a genuine pre-estimate of the loss/damage which will be suffered by the Employer for default on the part of the Contractor and said amount will be payable without proof of actual loss or damage caused by such default.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract

27.0 EQUIPMENT PERFORMANCE GUARANTEE:

The Bidder guarantees that the Equipments, named in the Section-Iv, SCC (customer contract document), shall attain the rating and performance requirements specified in Appendix – 8 (Guarantees, Liquidated Damages for Non – Performance) to the Contract Agreement, subject to and upon the conditions therein specified.

If the guarantees specified in Appendix – 8 (Guarantees, Liquidated Damages for Non – Performance) to the Contract Agreement are not established, then the BHEL/ Employer shall, at the Employer's discretion either

- a) reject the equipment, or
- b) accept the equipment after assessing liquidated damages in accordance with the provision in the **SCC** against the Contractor and such amounts shall be deducted from the Contract Price or otherwise recovered from the Contractor.

In case the Employer exercises its option to reject the equipment, the Bidder shall at its cost and expense make such changes, modifications and/or additions to the equipment or any part thereof as may be necessary to meet the specified guarantees. The Bidder shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Test until the level of the specified guarantee has been met.

Whenever the Employer exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause, upto the limitation of liability specified in the SCC, shall completely satisfy the Bidder's guarantees under GCC Sub-Clause, and the Bidder shall have no further liability whatsoever to the Employer in respect thereof.

28.0 TERMS OF AGREEMENT

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

- a) MOU shall be superseded by a BHEL's Sub-Contract to be signed by OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER and BHEL subsequent receipt of award by BHEL from POWERGRID. The definite contract agreement between BHEL and OEM OF ELECTROLYSER/ ITS CHANNEL PARTNER shall be executed prior to issuance of Customer Contract by POWERGRID 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

b) Offer of BHEL getting rejected by POWERGRID.

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	1.
Name	
Designation	2.

For	Witness:
By	1.
Name	
Designation	2.