



TENDER DOCUMENT

PART – A

VOLUME - II

1.	INSTRUCTION TO BIDDER
2.	EARNEST MONEY DEPOSIT (EMD): Not Applicable
3.	SECURITY DEPOSIT (SD) : Not Applicable
4.	NON DISCLOSURE AGREEMENT
5.	CONFIDENTIALITY
6.	PERIOD OF CONTRACT
7.	FAILURE TO COMPLY WITH CONTRACT
8.	SUB-CONTRACTING
9.	LAWS GOVERNING THE CONTRACT
10.	LEGAL JURISDICTION:
11.	ARBITRATION & CONCILIATION:
12.	COMPENSATION:
13.	REVERSE AUCTION- Terms and conditions
14.	PENALTY/ LD FOR DELAYED DELIVERY
15.	CONCILIATION CLAUSE – Annexure IA
16.	MAKE IN INDIA CLAUSE
17.	FORMATS



1.	INSTRUCTION TO BIDDER
1.1.	Tender is a two part bid system. The tender documents consist of Part - A and Part - B as detailed below: a. Part 'A': Techno-commercial Bid duly sealed and signed to be submitted in sealed cover enabling us to open on tender due date. b. Part 'B': Price Bid to be submitted in sealed cover as per Tender conditions.
1.2.	Envelope 1: Techno-Commercial Offer a. Documents to be uploaded in Envelope 1: Part 'A' Vol. I: i. Duly completed tender documents volume 1 sign and Sealed. ii. Each and every page of tender documents should be sealed signed. iii. Documents satisfying PQR/Eligibility Criteria as per relevant clause of NIT. iv. Any other documents as per Tender requirements. The tenderer shall not indicate the price or rate in the PART-A: Volume I, PQR. Part 'A' Vol. II i. Duly completed tender documents volume II sign and Sealed. ii. Each and every page of tender documents should be sealed & signed by the tenderer iii. Any other documents as per Tender requirements. b. The tenderer shall not indicate the price or rate in the PART-A Volume II: Techno-commercial bid. Envelope 2: Part 'B': Price-Bid. i. Envelope super-scribed with " Part B-Price Bid" with Tender name, Tender reference number and due date.
1.3.	The tenderer shall expressly accept all the terms and conditions of the Tender. The tender which does not comply with the BHEL's Terms & Conditions may be rejected as Non-responsive/non-conforming and non-acceptable.
1.4.	The techno-commercial offer will be opened on the due date. The tenders meeting our techno-commercial requirements will be considered for online initial sealed bid auction at a later date for which eligible vendors will be intimated in due course.
1.5.	The tender forms both Part 'A' & 'B' duly filled in all respects shall be signed on each page by the tenderer. Any alteration, erasing will render the tender invalid. Corrections, over writing, cutting(s) etc. are not permitted. All entries in the tender document should be in one ink. All the columns in the tender form should be filled without leaving any column blank in any page of the tender. In case any of the relevant columns are left blank, the tender can be rejected. However, alteration neatly carried out and duly attested over with the full signature of the tenderer is permitted.
1.6.	The tenderer should submit the tender documents intact without detaching any page or pages
1.7.	Before making the offer, the bidders are advised to carefully go through the terms and conditions, which form part of the Agreement.
1.8.	Tender documents consisting of Part 'A' Volume I & II , Part 'B' duly sealed and signed in another envelope super-scribed as "Tender name, tender reference number and Due date" and should be deposited in BHEL-SBD WEX TENDER BOX kept outside Tender room so as to reach on or before specified Tender opening date and time. The tender documents may also be sent either by registered post/speed post/courier so as to reach Navit Mahajan, Dy. Manager/Works contracts, BHEL-SBD, Prof. CNR Rao circle, IISC post, Malleshwaram and Bengaluru-560012 on or before said date and time. Part 'A' Volume I & II of tender form i.e. PQR and Techno-commercial Bid will be opened on specified Tender Due Date and Time in the presence of tenderers or their representatives who wish to be present for the tender opening. Bidders who qualify the PQR & Techno-commercial Bid will be intimated to attend Tender opening of Part 'B'- Price Bid at the date notified.
1.9.	BHEL reserves the right to assess the capacity and capability of the parties for pre-qualification. The company also reserves the right to accept or reject any or all the tenders or any part thereof at any stage of process without assigning any reason whatsoever. The company has no obligation to accept the lowest tender. Offer of the Tenderer if prima-facie found not comparable with the quantum of work envisaged and the bid is a desperate effort to be L1, then the offer is liable to be rejected. BHEL's decision in this regard shall be final and binding.
1.10.	PRICE BID – Tenderers are required to submit their quotation for all items listed in Price bid format given along with the



	tender documents. The price should be quoted for each activity after careful study of the actual job requirements so that, in case the contract is awarded, contractor should not express any difficulties in execution of the contract.
1.11.	Contractor to ensure payment of Minimum Wages payable as per statutory provisions of the Appropriate Govt., Apart from the Minimum Wages payable as per statutory provisions of the Appropriate Govt., the tenderer would be required to pay Additional Payments as decided and communicated by BHEL. Supervision of the workmen is in the scope of contractor and the cost of the same to be borne by contractor from the margin. BHEL will not make any payment for the supervisor.
1.12.	VALIDITY OF RATES: The rates quoted should be valid for 90 days initially from the date of opening of the Techno-Commercial bid. (Part-A)
1.13.	Rates should be quoted in Indian Rupees and Paisa only.
1.14.	BHEL reserves the right to reject any bid, which is technically unacceptable and unworkable. Further BHEL also reserves the right to reject any or all tenders without assigning any reasons thereof.
1.15.	BHEL reserves the right to cancel the contract at the initial stage or during the contract period without assigning any reason to the tenderer.
1.16.	Wherever prescribed formats are specified for the tenderers use, he shall use the same for making his Claims.
1.17.	Tender document should be complete in all respects.
1.18.	The Offers should be in full conformity with the terms and conditions of this tender. No contradictions are acceptable. Incorrect and incomplete tenders are liable for rejection.
1.19.	Tenders not submitted in the prescribed forms are liable for rejection.
1.20.	BHEL reserves the right to accept or reject any tender in part or full at their discretion without assigning any reason.
1.21.	If a tenderer deliberately gives wrong information in his tender or creates conditions favorable for the acceptance of his tender, then BHEL reserves the right to reject such tender at any stage.
1.22.	If the tenderer indulges in any unethical practice for securing the contract, the offer of such tenderer shall be rejected.
1.23.	Any written communication required to be sent to the contractor in writing shall be sent at the address mentioned on the tender form or to any other address subsequently intimated by contractor in writing to BHEL SBD for the contract purposes.
1.24.	Evaluation of Bids
1.25.	Techno-Commercial Bid & PQR: The techno-commercial bid & PQR will be evaluated based on the eligibility criteria and on acceptance of NIT terms and conditions of BHEL. Only qualified bidders will be eligible for Reverse auction.
1.26.	Evaluation of Price-Bids: ✱ Price evaluation will be done individually test wise, as per individual tests. ✱ In the event of two or more tenderers becoming L1, the said tenderers would be called for negotiation and will be instructed to submit fresh price bid offers. Further, in the event of two or more tenderers becoming L1, the selection of the tenderer for the purpose of awarding contract will be on the basis of LOTTERY to be held in presence of representatives of L1 tenderer
2.	EARNEST MONEY DEPOSIT (EMD): Not Applicable.
3.	SECURITY DEPOSIT (SD) : Not Applicable.
4.	NON DISCLOSURE AGREEMENT. The contractor shall sign a Non-Disclosure Agreement (NDA) as per BHEL format (Copy enclosed as per Format 18.20 in compliance to Information Security Management System).
5.	CONFIDENTIALITY: The contractor and his representatives shall, at all times, undertake to maintain and ensure complete confidentiality and integrity of all data, information, software, drawings & documents, etc. belonging to BHEL and also of the systems, procedures, reports, input documents, results and any other company documents discussed and/or finalized during the course of execution of the order/contract.
6.	PERIOD OF CONTRACT
6.1.	Duration of contract is as mentioned in the General Information of NIT
6.2.	The contract shall be, initially, for the period as mentioned in NIT – General Information from the date of award of



	contract. The parties, if mutually agreed upon, may extend the period of contract for a further period on the same terms and conditions-
6.3.	The parties are at liberty to terminate the Agreement by giving three calendar months' notice in writing and the loss if any caused to the other party due to termination of contract shall be compensated by the party terminating it.
7.	<u>FAILURE TO COMPLY WITH CONTRACT</u>
7.1.	Notwithstanding anything contained in any other clause, BHEL reserves the right to terminate the contract due to any failure on the part of the Tenderer in discharging his obligations under the contract or in the event of his becoming insolvent or going into liquidation. The decision of the BHEL about the failure on the part of the Tenderer shall be final and binding on the tenderer.
7.2.	In case of any damage to the existing building, structures, materials, tools, furniture and fixtures, machines etc., caused from contractor's end, the cost of its repairs or replacement will be recovered from the contractor. If there is any work stoppage in any area of the Plant due to the fault of the tenderer, the tenderer is liable to compensate the same.
7.3.	In the event of any failure on the part of the tenderer, BHEL shall have the right without prejudice to any other right or remedies, to get the work done through any other agency and the Tenderer shall be liable to compensate BHEL for any losses on this account. The additional cost, loss, if any incurred by BHEL will be recovered from the bills, security deposits, other dues as well as directly from the Tenderer.
8.	<u>SUB-CONTRACTING</u>
8.1.	The contractor shall not sub-contract or transfer or assign the contract in full or any part thereof to any other person or firm or company without the previous express written approval of BHEL.
9.	<u>LAWS GOVERNING THE CONTRACT</u>
9.1.	The contract will be governed by the Laws of India for the time being in force and as amended or made from time to time.
9.2.	All disputes shall be settled in accordance with the Laws of India for the time being in force and as amended from time to time.
9.3.	All disputes arising out of or in relation to this contract or Agreement shall be settled by mutual discussions and in the event of failure such disputes shall be referred to the Arbitrator.
10.	<u>LEGAL JURISDICTION:</u>
10.1.	In respect of all matters arising out of or pertaining to the contract, the cause of action thereof shall be deemed to have arisen only at Bengaluru, where BHEL - SBD is situated. All legal proceedings pertaining to the above matters or dispute shall be instituted only in courts having territorial jurisdiction over the place where BHEL-SBD is situated and no other court shall have the jurisdiction.
10.2.	<u>CARTEL FORMATION:</u> The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/ guidelines.
11.	<u>ARBITRATION & CONCILIATION:</u>
11.1.	Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Solar Business Division.
11.2.	The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties
11.3.	Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be Bengaluru.
11.4.	The cost of arbitration shall be borne as per the award of the Arbitrator.
11.5.	Subject to the arbitration in terms of 11, the Courts at Bengaluru shall have exclusive jurisdiction over any matter arising



	out of or in connection with this Contract.
11.6.	Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.
12.	COMPENSATION:
12.1.	“BHEL shall recover the amount of compensation paid to victim(s) by BHEL towards loss of life / permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees as detailed below. a) Victim: Any person who suffers permanent disablement or dies in an accident as defined below. b) Accident: Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious occurrence caused during the manufacturing/ operation and works incidental thereto at BHEL factories/ offices and precincts thereof, project execution, erection and commissioning, services, repairs and maintenance, trouble shooting, serving, overhaul, renovation and retrofitting, trial operation, performance guarantee testing undertaken by the company or during any works / during working at BHEL Units/ Offices/ townships and premises/ Project Sites. c) Compensation in respect of each of the victims: (i) In the event of death or permanent disability resulting from Loss of both limbs: ₹10,00,000/- (Rupees Ten Lakhs) (ii) In the event of other permanent disability: ₹7,00,000/- (Rupees Seven Lakhs) d) Permanent Disablement: A disablement that is classified as a permanent total disablement under the proviso to Section 2 (I) of the Employee’s Compensation Act, 1923.”
13.	REVERSE AUCTION- Terms and conditions “BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders. • Start price of RA to be L1 of sealed envelope Price bid. • Minimum 2 Techno-commercially qualified bidders are required to conduct RA. • Wherever 6 or more techno-commercially qualified bidders are available, RA would be conducted amongst the first 50% of bidders arranged in order of process from lowest to highest. However, there is no elimination of bidders who are MSE or qualifying under PPP-MII Order, 2017 Bidders have to submit ‘Process compliance form’ (to the designated service provider) in the Reverse Auction. Non-submission of ‘Process compliance form’ by the agreed bidder(s) will be considered as tampering of the tender process and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com). However, if the same bidder again defaults on this count in any subsequent tender in the unit, it will be considered as fraud and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com).” Start price in the REVERSE AUCTION shall be as per Clauses mentioned below. Business rule and event of auction will be furnished by our service provider. The terms and conditions specified herein are to be strictly adhered to for all the activities.
14.	PENALTY/ LD FOR DELAYED DELIVERY: 1. BHEL RESERVES THE RIGHT TO RECOVER FROM THE TESTING LAB. AS AGREED LIQUIDATED DAMAGES AND NOT BY WAY OF PENALTY, A SUM EQUIVALENT TO HALF (½) PERCENT PER WEEK OF THE INDIVIDUAL TEST COST, SUBJECT TO A MAXIMUM OF TEN (10) PERCENT OF THE INDIVIDUAL TEST COST EXCLUDING ELEMENTS OF TAXES, IF THE LAB. FAILS TO DELIVER THE REQUIRED TEST REPORT WITHIN THE STIPULATED TIME / PERIOD as mentioned in the Table below. 2. Test reports are required as per below schedule from the date of SPV Modules are sent from our factory to Lab, LD will be applicable for delayed period of report submission.



	Sl.No	IEC Std. no.	IEC Test Description	Report required for each BOM wise from the date of BHEL Clearance
	1.	62716 (latest)	Ammonia corrosion (NH3).	90 days
	3. Any break down occur of testing equipment at lab shall not be consider for project delay & LD will be applicable for delayed period for this reason.			
15.	CONCILIATION CLAUSE – Annexure IA			
16.	MAKE IN INDIA CLAUSE			
16.1.	i. For this procurement, Public Procurement (Preference to MAKE IN INDIA) Order 2017 Dated 15.06.2017, 28.05.2018, 29.05.2019, 04.06.2020 and subsequent orders issued by the respective Nodal Ministry shall be applicable. Even if issued after issue of this NIT but before finalization of contract WO against this NIT. ii. In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and/ or local content in respect of this procurement same shall be applicable .			
17.	FORMATS			
17.1.	Reverse Auction Details			
17.2.	Reverse Auction Form			
17.3.	Process Compliance Form for Reverse Auction			
17.4.	Agreement Format between BHEL & Contractor			
17.5.	Third Party Non-Disclosure Agreement (NDA) format			
17.6.	EFT Format			



17.1. Details related to Reverse Auction

LOG IN NAME & PASSWORD: Each Bidder is assigned a Unique User Name & Password by Service Provider. Bidders are requested to change the Password and edit the information in the Registration Page after the receipt of initial Password from Service Provider. All bids made from the Login ID given to the bidder will be deemed to have been made by the bidder.

BIDS PLACED BY BIDDER: The bid of the bidder will be taken to be an offer to sell. Bids once made by the bidder cannot be cancelled. The bidder is bound to sell the material as mentioned above at the price that they bid. Should any bidder back out and not make the supplies as per the rates quoted, BHEL and / or Service Provider shall take action as appropriate.

Auction Start price & Decremental Value: The Start Price shall be lower L1 of sealed envelope price bid & Decremental value applicable in the on line reverse auction will be decided by BHEL after evaluating the bids received from the vendors in the sealed envelope price bid and will be available to the vendors on the bidding screen of the online reverse auction.

LOWEST BID OF A BIDDER: In case the bidder submits more than one bid, the lowest bid will be considered as the bidder's final offer to sell. The bidders to note that the first appreciable bid that comes in the system must be equal to or less than the auction start price which the bidder can view at the start of reverse auction and subsequent bids shall conform to minimum decremented value or multiples of the decremented value.

AUCTION TYPE: English No Ties Reverse (Refer Bidder Manual)

VISIBILITY TO BIDDER: The Bidder shall be able to view the following on his screen along with the necessary fields:

- Rank of the bidder
- Lowest bid in the reverse auction
- Bid Placed by him

AUCTION WINNER: At the end of the Reverse Auction, BHEL will evaluate all the bids submitted and will decide upon the winner.

GENERAL TERMS & CONDITIONS: Bidders are required to read the "Terms and Conditions" section of the auctions site ----- using the Login ID and passwords given to them.

The Supplier / Bidder shall not involve himself or any of his representatives in Price manipulation of any kind directly or indirectly by communicating with other suppliers / bidders.

The Bidder shall not divulge either his Bids or any other exclusive details of BHEL to any other party.

BHEL's decision on award of Contract shall be final and binding on all the Bidders.

BHEL along with Service Provider can decide to extend, reschedule or cancel any Auction. Any changes made by BHEL and / or Service Provider after the first posting will have to be accepted if the Bidder continues to access the site after that time.

BHEL/Service Provider shall not have any liability to Bidders for any interruption or delay in access to the site for the reasons which include Power supply interruption, System failure, non-availability of WEB/Screen etc.

BHEL/Service Provider is not responsible for any damages, including damages that result from, but are not limited to negligence. BHEL / Service Provider will not be held responsible for consequential damages, including but not limited to systems problems, inability to use the system, loss of electronic information etc.

All the Bidders are required to submit the Agreement Form duly signed to Service Provider. After the receipt of the Agreement Form, Log in ID & Password shall be allotted to the suppliers (bidders).

After the completion of the Auction event, all the Bidders have to submit the Price Breakup immediately to Service Provider for further proceedings.



17.2. Reverse Auction Form

Event Information

The “BHEL” has contracted to conduct this online bidding event. Service Provider shall answer all questions relating to the bidding process and conduct of the Reverse Auction Event.

1. Scheduled Date & Time of the event:

WILL BE INTIMATED BY

Any change in the scheduled time will be duly informed to you in advance.

2. Contact Information

“BHEL-EPD”

A. General Contract related Queries

Name:

Designation:

Tel Nos.

E-mail ID:

Mobile No:

“Service Provider”

Software Related Queries/ Process related Queries

Name:

Designation:

Tel Nos.

E-mail ID:

TO BE INTIMATED LATER



17.3. Process Compliance Form

To
Service Provider,

-----.

Sub: Agreement to the Process related Terms and Conditions

Dear Sir,

This has reference to the Terms & Conditions for the Reverse Auction mentioned in the bid document for -----
--- (Items) against BHEL Tender No. dated

This letter is to confirm that:

- 1) The undersigned is authorized official of the company.
- 2) We have studied the Reverse Auction Terms & Conditions and the Business rules governing the Reverse Auction as mentioned in your letter and confirm our agreement to them.
- 3) We also confirm that we have taken the training on the auction tool and have understood the functionality of the same thoroughly.

We, hereby confirm that we will honor the Bids placed by us during the auction process.

With regards

Signature with company seal -

Name –

Company / Organization –

Designation within Company / Organization –

Address of Company / Organization



ANNEXURE IA:

**MODEL CONCILIATION CLAUSE FOR CONDUCT OF CONCILIATION UNDER THE BHEL CONCILIATION SCHEME,
2018.**

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in Format 7 hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in Format-8 hereto.
2. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
3. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores Conciliation shall be carried out by 3 Conciliators nominated by BHEL. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-9**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-5**.
4. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
5. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.
6. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
7. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of



receipt of the recommendations from the IEC.

8. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
9. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
10. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
11. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
12. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.
13. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
14. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
15. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
16. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
17. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
18. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.



19. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
20. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.
21. The proceedings of Conciliation under this Scheme may be terminated as follows:
- a. On the date of signing of the Settlement agreement by the Parties; or,
 - b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
 - c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.
22. The Conciliator(s) shall be entitled to following fees and facilities:

Sl No	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5 crores. Rs 50,000/- (Sole Conciliator) In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on the,Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC
4	Travel and transportation	As per entitlement of equivalent officer (pay scale wise) in BHEL



	Others	As per the extant entitlement of whole time Functional Directors in BHEL. Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class
5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

23. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
24. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
25. The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
26. Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
27. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 4 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
28. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
29. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:
- Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - admissions made by the other party in the course of the Conciliator proceedings;
 - proposals made by the Conciliator;
 - The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.



30. The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
31. None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
32. The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.
33. The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.



Format 5 to BHEL Conciliation Scheme, 2018
STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO THE
IEC BY BOTH THE PARTIES

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Clam(s)/Counter Claim(s):

Sl. No.	Description of claim(s)/Counter Claim	Amount (in INR)Or currency applicable in the contract	Relevant contract clause

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note– *The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.*



FORMAT-7

FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

M/s. (Stakeholder's name)

Subject: NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY BHEL

Ref: ContractNo/MoU/Agreement/LOI/LOA& date_____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you Yours
faithfully
Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



FORMAT-8 FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,
BHEL (Head of the Unit/Division/Region/Business Group)

Subject: NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY A STAKEHOLDER

Ref: Contract No/MoU/Agreement/LOI/LOA & date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above-referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/LOA. In terms of Clause ----- of Procedure i.e., Annexure ----- to the Contract/MoU/Agreement/LOI/LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/MoU/Agreement/LOI/LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully
Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



FORMAT-9

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC

Ref: Contract No/MoU/Agreement/LOI/LOA & date _____.

Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising in connection with the subject Contract No /MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure ---- to the subject Contract/MoU/Agreement/LOI/LOA, if possible. Name and contact

details of Conciliator(s)

- a)
- b)
- c)

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please. Encl: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



AGREEMENT BETWEEN CONTRACTOR AND BHEL- SBD

This Agreement made on this _____ day of _____ Two Thousand and Nine between M/s / Shri _____ aged about _____ years S/O of Shri _____, residing at _____, hereinafter called the "**Contractor**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the First part.

AND

BHARAT HEAVY ELECTRICALS LIMITED, SOLAR BUSINESS DIVISION, Prof. CNR Circle, P.B.1245, IISc Post, Malleswaram, BENGALURU-560012, a Company incorporated under the Companies Act 1956 and having its registered office at BHEL House, Siri Fort New Delhi - 110049, **hereinafter called " BHEL-SBD "** (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the second part.

Whereas

1. BHEL, SBD is desirous of entrusting to the said contractor to engage and carryout the contract job of more specifically mentioned in the Annexure (hereinafter called the Contract work) to this Agreement.
2. The Contractor who is a specialized agency in the type of contract work in different establishments has agreed to undertake the said contract work on job contract basis.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES:

The Terms and conditions of this agreement are as stipulated in:

- (i) Notice Inviting Tender
- (ii) Scope of Work
- (iii) Proforma for Offering Techno-Commercial Bid
- (iv) Special Terms & Conditions of the Contract
- (v) General Terms and Conditions
- (vi) Duties and Responsibilities of Contractor
- (vii) Price Bid Format
- (viii) Declaration By Contractor
- (ix) Any minutes of the meeting & written understanding between BHEL & Contractor
- (x) Work Orders and Work Instructions issued to the Contractor
- (xi) Agreement between Contractor and BHEL-SBD

Shall form part and parcel of this agreement.

IN WITNESS WHEREOF THE PARTIES HERETO through their authorized Representatives have signed these presents on the day, month and year mentioned above.

For and on behalf of M/s-----



[Authorized signatory]
Name & Designation

Witness : 1

Signature :

Designation :

Address :
For and on behalf of
Bharat Heavy Electricals Limited
Solar Business Division ,
Bengaluru 560012.

[Authorized signatory]
Name & Designation

Witness : 2

Signature :

Designation :

Address :



THIRD PARTY NON-DISCLOSURE AGREEMENT

I, _____ on behalf of the _____ (Name of Company),

acknowledge that the information received or generated, directly or indirectly, while working with BHEL on contract is confidential and that the nature of the business of the BHEL is such that the following conditions are reasonable, and therefore:

I warrant and agree as follows:

I, or any other personnel employed or engaged by our company, agree not to disclose, directly or indirectly, any information related to the BHEL. Without restricting the generality of the foregoing, it is agreed that we will not disclose such information consisting but not necessarily limited to:

- Technical information: Methods, drawings, processes, formulae, compositions, systems, techniques, inventions, computer programs/data/configuration and research projects.
- Business information: Customer lists, project schedules, pricing data, estimates, financial or marketing data,

On conclusion of contract, I, or any other personnel employed or engaged by our company shall return to BHEL all documents and property of BHEL, including but not necessarily limited to: drawings, blueprints, reports, manuals, computer programs/data/configuration, and all other materials and all copies thereof relating in any way to BHEL's business, or in any way obtained by me during the course of contract. I further agree that I, or any others employed or engaged by our company shall not retain copies, notes or abstracts of the foregoing.

This obligation of confidence shall continue after the conclusion of the contract also.

I acknowledge that the aforesaid restrictions are necessary and fundamental to the business of the BHEL, and are reasonable given the nature of the business carried on by the BHEL. I agree that this agreement shall be governed by and construed in accordance with the laws of country.

I enter into this agreement totally voluntarily, with full knowledge of its meaning, and without duress.

Dated at....., this.....day of20 ..

Name

Company

Signature

Format for E-payment

To:

AGM (Finance)

BHEL-SBD/ Bengaluru

Opp. Indian Institute of Science

Prof. CNR Rao Circle

Bengaluru – 560093

Subject: *E-payments vide RTGS/ NEFT.*

I/ We request and authorize you to effect E-payment vide any two modes to my/ our bank account as per the details given below:

Vendor Name :

Title/ Name of Account in the bank :

Account Type (Saving/ Current) :

Bank Account Number

[illegible]

•

Name and address of bank :

Bank/ Branch contact person name :

Bank. Branch phone numbers with STD code :

Bank Branch MICR code :

--	--	--	--	--	--	--	--	--

Bank Branch RTGS IFSC code :

[illegible]

Bank Branch NEFT IFSC code :

[illegible]

Your E-mail address :

Name of the Authorized Signatory :

Contact person Name :

I/ We confirm that information provided above is correct & any consequences due to any mistake in above will be borne by us.

Thanking you,

For

(Authorized Signatory)

We confirm that we are enabled for receiving RTGS/ NEFT credits and we further confirm that the account number of (please mention here the name of account holder) _____, the signature of the Authorized Signatory and MICR and IFSC codes of our branch mentioned above are correct.

Bank's Verification

(Manager's/ Officer's signature under bank stamp)

Note: Please attach cancelled original cheque leaf.