

FINANCIAL LEASE AGREEMENT (Bipartite)

THIS FINANCIAL LEASE AGREEMENT executed on this _____ day of _____,
Two Thousand- Nineteen (___/___/2019) at Tiruchirappalli;

BETWEEN

_____ a Company incorporated under the Companies Act, 1956, having its Principal Office at _____ by its _____, hereinafter called "**the LESSOR**" (which expression shall unless repugnant to the subject or context thereof include its successors and assigns of the first part.

AND

BHARAT HEAVY ELECTRICALS LIMITED a company incorporated under the Companies Act, 1956, having its Registered office at BHEL house, Siri Fort, New Delhi – 110049, through one of its units at Tiruchirappalli, Tamilnadu, represented by its competent authorities _____, hereafter called "**the LESSEE**" (which expression shall unless repugnant to the subject or context thereof include its successors and assigns) of the second part.

Whereas the **LESSEE** has placed a Purchase Order No. _____ dated _____ on the **LESSOR** for supply, Installation and maintenance of Business Server Hardware & Accessories up to a period of 5 years on lease rental basis described in Schedule – A of this agreement.

And whereas the **LESSEE** has offered to take on lease the Equipment purchased by the **LESSOR**, and the **LESSOR** has agreed to lease out the Equipment to the **LESSEE** upon the terms and condition contained herein.

And whereas the **LESSOR** has agreed to provide maintenance services to the **LESSEE** subject to the terms and conditions of this agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the mutual covenants and conditions hereafter set forth the parties hereto agree as follows: -

1. DEFINITIONS

In this agreement, unless context otherwise so requires, the following expressions shall have the following meanings viz

- 1.1 "Agreement"
Shall mean this Agreement.
- 1.2 "Clause"
Shall mean clause of this agreement and accordingly the word "Sub-Clause" shall mean Sub-Clause of a clause of this agreement.
- 1.3 "Commencement Date"
Shall mean the date of installation of this Equipment as mentioned in the Purchase Order No: _____ dated _____ **subject to acceptance certificate of the LESSEE.**
- 1.4 "Equipment"

Shall mean all the articles and things described in **Schedule -A** to this agreement purchased by the **LESSOR** and leased to the **LESSEE** and includes any

individual items contained in the Equipment and all alternations, replacements and or additions to the Equipment or any item or part thereof during the period of this agreement.

Provided that where there is more than one Equipment, the lease hereunder shall be deemed to be each of such Equipment individually and the provisions of this agreement shall be applicable independently to each such Equipment individually, whether or not such Equipment be of same or similar description or use, or to be placed at the same location.

1.5 "Lease Period"

Shall mean five years from the commencement date which is non-cancelable either for the **LESSEE** or the **LESSOR** except as provided herein.

1.6 "Rentals" & "Maintenance Fee"

Shall mean the lease rental and the maintenance fee payable by the **LESSEE** to the **LESSOR** as mentioned in **Schedule - B** of this agreement.

1.7 "Schedule"

Shall mean the schedule or schedules, which may now or from time to time be incorporated hereunder as an integral part of this agreement.

1.8 "Lease"

Shall mean **FINANCE LEASE** wherein all the risks and rewards incidental to the ownership of the leased assets is transferred to the **LESSEE** at the inception of the lease as per AS 19 (accounting Standard -19 issued by the Institute of Chartered Accountants Of India) and wherein the lease of the Equipment by the **LESSOR** to the **LESSEE** and the grammatical variations or cognate expressions of the term shall be construed accordingly.

1.9 "Commissioning"

Installing the Business Server Hardware & Accessories, that form part of the Purchase Order No _____ **dated** _____ and installation of the associated operating systems / software Shipped/procured along with the same.

2. BASIC TERMS OF LEASE

2.1 In terms of purchase order No. _____ **dated** _____ issued by the **LESSEE** to the **LESSOR** for the supply of the Equipment to the **LESSEE**, is on the basis of lease rentals and **LESSEE** will avail income Tax Depreciation. since all the risks and rewards incidental to ownership is transferred to the **LESSEE** as per AS 19.

2.2 The **LESSOR** will ensure delivery, installation and commissioning of the Equipment at the **LESSEE**'s premises located at Tiruchirappalli on or before _____ as per the Purchase No _____ **dated** _____

2.4 The entire risk, cost or any outgoing pertaining to the delivery of the Equipment shall be that of the **LESSOR**.

2.5 The **LESSOR** hereby gives on **LESSEE** and the **LESSEE** hereby takes on lease the Equipment for the lease period from the Commencement date subject to the terms & conditions as per the PO No: _____ **dated** _____ covenants and stipulations contained herein and in Schedule A hereunder written.

3. LESSEE'S CONFIRMATION

Upon receiving delivery, installation and commissioning of the Equipments, the **LESSEE** will certify that the Equipment are as per specifications provided by the **LESSEE** to the **LESSOR** by way of a certificate to be issued by the **LESSEE** in this regard upon delivery, installation and commissioning of the Equipment as per the PO NO: _____ **dated** _____.

4. LESSOR'S RIGHT TO LEASE

The **LESSOR** warrants that the **LESSOR** has the right to lease the Equipment to the **LESSEE** hereunder.

5. LESSOR'S COVENANTS

The **LESSOR** hereby covenants that they undertake to comply with the terms and conditions stipulated Purchase Order No. _____ and dated _____ issued by the **LESSEE**, which will form part and parcel of this Agreement.

The **LESSOR** shall not after purchase or acquisition of the Equipment; divert the same for any other use. The **LESSOR** shall not disturb the possession of the equipment with the **LESSEE**, during the currency of the agreement subject to clause 17 mentioned herein below.

6. LESSEE'S COVENANTS

6.1 LESSEE NOT TO PART WITH POSSESSION

LESSEE shall not part with possession of the Equipment or any part of it, without the prior written consent of the **LESSOR**, which the **LESSOR** may decline without assigning any reason.

6.2 LESSEE TO ALLOW AFFIXING OF NAME PLATE OF LESSOR

LESSEE will allow affixing of nameplate or other mark on the Equipment identifying the leased equipments covered in schedule and not allow or permit the same to be removed or defaced.

6.3 LESSEE NOT TO CONVERT THE PROPERTY

LESSEE shall not affix or causes to be affixed, permanently, the Equipment neither to any immovable property nor in any way impair the identifiably, ascertainability, severability and redeliverability of the Equipment.

6.4 LESSEE TO MAKE PROPER USE OF THE EQUIPMENT

LESSEE shall use and operate the Equipment carefully in the same way as would have been the case with the **LESSEE**'s own Equipment.

6.5 CONSENTS OBTAINED BY THE LESSEE

The **LESSEE** covenants that all consents and approvals required for the execution of this Agreement and the use and the operation of the Equipment by the **LESSEE** have been obtained.

7. INSPECTION BY THE LESSOR

The **LESSEE** shall permit the **LESSOR** or any person Authorised by the **LESSOR** at all reasonable times (immediately in case of an emergency) to inspect, view and examine the state and condition of the Equipment and for the purpose permit entry in the premises where the Equipment is used or stored.

8. INSURANCE

8.1 The **LESSOR** shall insure the Equipment, in the name of "the **LESSOR** A/c **LESSEE**" with the **LESSOR**'s name as the owner (for the limited purpose of insurance) and as the loss payee as per the instruction given for its full replacement value, against all such risk including third party risks as may be customary having regard to the Equipment or the nature of the **LESSEE**'s business and pay all insurance premium and renew the insurance policies, from time to time and hand over the original insurance policies and premium receipts to the **LESSEE**, on paying such premium as the case may be and maintain such insurance in full effect and not do or omit to do or to be done permit or suffer any act, deed or thing which might or could prejudicially vitiate or affect any such insurance.

- 8.2 The Lessor shall keep the Equipment insured in the name of "the Lessor/ A/c Lessee or Third Party Financier A/c Lessee" with the Lessor/ Third Party Financier's name as the owner and as the loss payee as per the instruction give) against all risks of loss up to its full replacement value against all such risk including third party risks as may be customary having regard to the equipment or the nature of the lessee's business.

9. DISCLAIMER OF ANY WARRANTY

The **LESSOR** hereby makes and accepts all representation or warranty whatsoever with respect to the merchantability, quality, conditions or durability of the Equipment.

10. DISCLAIMER OF ANY LIABILITY

The **LESSOR** hereby accepts liabilities on any account pertaining to the quality of the Equipment to the **LESSEE**.

This is restricted to the value of the contract of the items supplied by the **LESSOR**.

11. MAINTENANCE

- 11.1 The **LESSOR** shall be responsible for the continuous and smooth operation of the Equipment for the entire lease period as mentioned below for a consideration, which is incorporated as a part of equipment as in Schedule and the Rental & Maintenance Charges as in the Schedule B to be paid by **LESSEE** to the **LESSOR**.

- 11.2 Maintenance services shall cover services, repairs, and replacements necessary to keep the Equipments in good working order on reasonable use of the Equipments.

- 11.3 Maintenance services shall not cover services, repairs or replacements necessitated by gross misuse or willful damage or destruction, use of unauthorized media or supplies, repairs, alterations in the Equipment by any one other than the maintenance personnel authorized by the **LESSOR** in writing in any of which events the **LESSEE** shall be liable to pay the **LESSOR** charges, for the services, repairs and replacements involved as determined by the **LESSOR**.

- 11.4 The **LESSOR** shall carry out proper maintenance of the equipment, after the commissioning, so as to ensure and provide a minimum of 99% uptime of whole system consisting of main equipment and accessories on a monthly basis. In addition to breakdown during operating hours, preventive Maintenance and non-operation for want of spares are also counted as downtime.

Downtime will be calculated based on uptime on monthly basis. The monthly deductions will be made as per the following formula:

Deduction (D) = (downtime in minutes (d) X rental per minute (r) X multiplication factor (f))

Where Multiplication Factor is given below

For Uptime > 99.00 Multiplication Factor is 0.00

For Uptime between 98.00 and 99.00, Multiplication Factor is 2.00

For Uptime between 97.00 and 98.00, Multiplication Factor is 5.00

For Uptime between 96.00 and 97.00, Multiplication Factor is 8.00

For Uptime between 95.00 and 96.00, Multiplication Factor is 12.00

For Uptime below 95.00, Multiplication Factor is 15.00

The downtime will be recorded at BHEL Purchase order item level. Even in case of failure of a component in an item, the deduction will apply to the whole item. If the failure of an item results in major service outage or affects the services provided by other items also, then the deduction will apply to all items affected by the failure.

- 11.5 If the availability of the systems, or part thereof is below 95% on monthly basis continuously for 3 months, the LESSEE reserves the right to terminate the contract in full, without any cost implication.
- 11.6 The LESSOR shall ensure the availability of adequate number of competent resident maintenance personnel at the LESSEE's site at the LESSOR's own risk and cost during the lease period.
- 11.7 **LESSEE** shall be finally compensated for any short fall in the guaranteed uptime as specified hereunder:
- a) The amount so computed may be deducted from the payment towards the lease rental payable to the **LESSOR**.
- 11.8 The **LESSOR's** maintenance service obligation shall be subject to force majeure, which will include acts beyond their control.

12. IMPOSTS, TAXES AND OTHER CHARGES

The lease/ rental rates & Maintenance charges are exclusive of GST. The applicable GST at the time of billing shall be claimed in the tax invoice. Tax invoice in compliance with GST Act & Rules shall be submitted by the Lessor for getting the payment. GST amount claimed in the invoice shall necessarily be remitted to Government through applicable GST Returns & invoice details should be uploaded in GSTN portal by the Lessor with GSTIN of Lessee within stipulated/ notified date. Any loss in Input Tax credit to the Lessee due to the default of Lessor will be recovered from the Lessor.

As per the present provisions of GST Act, the Lessee will deduct GST TDS @ 2% on the taxable value (i.e. lease/ rental rates Maintenance charges) of the tax invoice for which GST TDS Certificate [generated from GSTN portal] will be issued by the Lessee.

Any fresh levies/ duties/taxes imposed by Govt. subsequent to the date of Purchase Order shall be borne by the Lessee. Any subsidies or concessions in taxes, duties/levies that may be introduced by Government shall also be passed on to the Lessee.

13. CONSIDERATION FOR THE LEASE-LEASE RENTALS.

The **LESSEE** shall make payment for certified bill amount as per Schedules B (as per the Purchase order issued to the LESSOR) of this lease agreement, in favour of **LESSOR** for Lease Rental and maintenance charges based on certification from end user.

14. OBLIGATION TO PAY LEASE RENTALS AND MAINTENANCE FEE

Unless provided otherwise, the **LESSEE** shall pay the Lease Rentals regularly and punctually, without any deduction or abatement, subject to clause 12 herein above, and the **LESSEE** agrees that this obligation shall remain absolute in all circumstances.

15. PAYMENTS OF RENTALS AND ARREARS IN RENTALS.

- 15.1 Rentals accounts are calculated quarterly in arrears. The **LESSOR** will raise the bills on the **LESSEE** on a quarterly basis of the lease rental amount and the Maintenance Charges.
- 15.2 The first such bill of the Site (as specified in the Schedule B) will be raised on completion of first calendar quarter from the date of successful installation / commissioning of Equipment for the site on pro rata basis. Subsequent bills will be raised on completion of each calendar quarter from the date of the first bill. The final bill will be on the pro rata basis on the left over days of the last calendar quarter.
- 15.3 **LESSEE** reserves the right to retain the equipment at the end of the lease period by making a terminal payment of Rs. 1/-. In case **LESSEE** decides not to retain the Equipment, dismantling and removing the Equipment from the premises of the **LESSEE** shall be at the **LESSOR**'s cost

16. TERMINATION

On the first occurrence of any events specified below any Party to this Agreement shall be entitled without prejudice to any other right or remedy available to terminate this lease, after providing three months notice to other all the parties to this Agreement after the occurrence of such event.

- a) Breach of terms and conditions of the Agreement by any party of this Agreement.
- b) Any resolution or petition filed for winding up against **LESSEE**
- c) Any material change in the financial or corporate position of **LESSEE**.
- d) By mutual consent.
- e) On expiry of the lease period

The **LESSOR** shall not be entitled to terminate this agreement on account of any material change in the financial or corporate position of **LESSOR** or any resolution or petition filed for winding up against **LESSOR**.

17. LESSOR'S RIGHTS AND LESSEE'S OBLIGATION ON TERMINATION.

On the termination of this Agreement pursuant to Clause 16 above, or as elsewhere provided in this Agreement.

17.1 RE-POSSESSION OF THE EQUIPMENT BY THE LESSOR AND HIS RIGHTS FOR THAT PURPOSE

The **LESSOR** shall with 30 days written notice to the **LESSEE**, be entitled to remove or repossess the Equipment and for that purpose by itself, its servants or agents, enter upon any land, buildings or premises where the Equipment is situated or is reasonably believed by the **LESSOR** to be situated for the time being and for such entry. But this clause cannot be invoked if there is a default on the part of the **LESSOR** as per the terms and conditions of the contract.

- 17.2 In the event this agreement is terminated due to reasons attributable to **LESSOR**, the **LESSOR** does not have the right of repossession of the equipments.

18. RECOVERY OF DELINQUENT AMOUNTS AND COSTS

- 18.1 In the event this agreement is terminated due to reasons attributable to the **LESSEE**,

Without prejudice to and in addition to the **LESSOR**'s rights provided hereunder, the **LESSOR** shall also be entitled to recover from the **LESSEE** and **LESSEE** shall be bound to pay to the **LESSOR** the following amounts, viz:

- a) The entire amount of the Lease rental already fallen due and in arrears.

- b) The entire amount of lease rentals for the unexpired period of lease discounted at the rate of 7.5% p.a on monthly rests, if the termination is due to any breach of conditions of the Agreement by the **LESSEE**.

18.2 In the event this agreement is terminated due to reasons attributable to **LESSOR** under clause 16 (a),) or due to an act or omission of the **LESSOR** under clause 11, then the **LESSOR** shall not be entitled for any further lease rental or maintenance charges.

19. ASSIGNMENT.

The **LESSOR** will hypothecate the Equipment leased out hereunder in favour Financial Institution as and by way of security for the financial assistance arranged thereof by the **LESSOR** for the acquisition of such Equipment without prejudice to possession and operation of the Equipment lying in the custody of the **LESSEE**, during the currency of this agreement as long as **LESSEE** discharges its obligations and without prejudice to the rights of the **LESSEE** as long as the **LESSOR** discharge(s) their obligations to the **LESSEE** as per terms and conditions of the contract.

20. ALL INDEMNITIES TO SURVIVE THE AGREEMENT

All indemnities and covenants as contained in Clause 4,5 and 6 under this agreement shall survive the termination of the Agreement or expiry of the lease as the case may be.

21. GENERAL CONDITIONS

21.1 Service of Notices

Any notice issued by the parties hereto shall be in writing and sent by Registered Post Acknowledgement Due to the other party to the address first above written.

21.2 Time to be Essence

Time shall be the essence of this Agreement for both the contracting parties in so far as it relates to the observance or performance of all or an of its obligations including payment of any sum hereunder.

21.3 Waiver or Remission not to have precedent value over Demands or Notices Waived.

The failure of the **LESSOR** to insist upon the punctual performance of any of the obligations of the **LESSEE** hereunder, or the failure of the **LESSOR** to exercise any right or remedy available to the **LESSOR**, under this Agreement or any failure of the **LESSOR** to require payment from or by the **LESSEE**, when due of any sum owing hereunder, or any extension of credit or any forbearance on the part of the **LESSOR** shall not constitute a waiver by the **LESSOR** of any subsequent or continuing default by the **LESSEE** hereunder nor shall the same prejudice affect or restrict the rights and powers of the **LESSOR** hereunder.

The failure of the **LESSEE** to insist up on the punctual performance of any of the obligations of the **LESSOR** hereunder or the failure of the **LESSEE** to exercise any right or remedy available to **LESSEE** under this agreement or any failure of the **LESSEE** to require any contractual obligations or any forbearance on the part of the **LESSEE** shall not constitute a waiver by the **LESSEE** nor shall the same prejudice or affect or restrict the rights and powers of the **LESSEE** hereunder.

21.4 Agreement to be sole and Exclusive

This Agreement along with Tender No.....and PO No.....represents the entire Agreement of Lease between the parties hereto and shall be capable of variation in writing by a Note of Amendment signed by and on behalf of , the **LESSOR** and the **LESSEE**.

21.5 Interpretation of Words

Words importing the plural shall, except where the context otherwise requires, include the singular and vice-versa. Clauses including shall not control the otherwise clear meaning of the text, but may be used to clarify the intention in case the same is not clear.

- 21.6** This lease transaction shall be considered as financial lease in terms of Accounting Standard -19 of ICAI.

22. ARBITRATION & CONCILIATION

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 other Party refer such dispute or difference to sole arbitration of an arbitrator appointed by Head of the BHEL Units/Region/Division issuing the Contract.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.

Subject as aforesaid, the provision of Arbitration & Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. The seat of arbitration shall be _____ (the place from which the Contract is issued)

The cost of arbitration shall be borne as per the award of the Arbitrator.

Subject to arbitration in terms of clause ----- above, the Courts at ----- (PI incorporate the name of the place where the Principle Civil Court having ordinary original civil jurisdiction to decide question forming subject matter of the arbitration is located) shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.

Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligation 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.

23 GENERAL

It is confirmed that the authorized signatories of both the parties are authorized by their respective competent authority to execute this Bi-Party lease agreement and affix the common seal, where applicable.

This Bi partite agreement is prepared in duplicate and each one of the documents will be retained by each contracting party for their records and reference.

IN WITNESS THEREOF the parties hereto have caused these presents to be executed in duplicate on the day, month and year first above written at Tiruchirappalli.

The **LESSEE** and the **LESSOR** hereby affix their respective Common Seals to this document in acceptance of the terms and conditions herein contained.

LESSOR

AUTHORISED SIGNATORIES

1 Name/s: -----
 Designation: -----
 Address: -----

LESSEE
AUTHORISED SIGNATORIES

1 Name/s: -----
 Designation -----
 Address -----

2. Name/s: -----
 Designation: -----
 Address: -----

WITNESSES

1 Name/s: -----
 Designation: -----
 Address -----

2. Name/s: -----
 Designation: -----
 Address: -----
