
CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is effective as of _____ the “Effective Date”, and sets forth the mutual understanding, intent and agreement of:

1. **Bharat Heavy Electricals Limited, incorporated under the Indian Companies Act 1956, having its registered office at BHEL House, Siri Fort, New Delhi 110049, India (“BHEL/ Discloser”).**

And

2. _____ (“ESC / Recipient”)

BHEL and _____ are each a “Party,” and, collectively the “Parties” under this Agreement.

NOW THEREFORE, each Party agrees as follows:

1. PURPOSE AND DEFINITIONS

1.1 Agreement Purpose. In pursuance of Engineering and License Agreement entered between Indian Oil Corporation Limited (IOCL) and Black & Veatch Corporation (B&V) in January 2008 for the Sulphur recovery unit, Paradip Refinery Project, B&V has shared technical and proprietary information (“Confidential Information”) to IOCL. IOCL shared the said information with BHEL on signing a Confidentiality Agreement with B&V. BHEL now intends to share the said information to _____ (the “Recipient”) for Bidding and Subsequent delivery of services as Engineering Sub-contractor (ESC) of third SRU with common TGTU at Paradip Refinery (the “Purpose”), upon signing this Back-to-back Confidentiality Agreement.

1.2 Confidential Information. Subject to the exclusions set forth in this Agreement, Confidential Information means all technical & proprietary information business, financial, technical or other information or data which is marked as required by the following sentence, including without limitation, software and source code, trade secrets, techniques, processes, strategies, plans, schedules, forecasts, lists, designs, specifications, costs, prices, and know-how of a Discloser or its Affiliates, or of a third party to whom the Discloser has an obligation of confidentiality. Confidential Information may be marked with a conspicuous legend reasonably indicating it is “Confidential Information”; provided that, if information is delivered without such marking and the Discloser subsequently desires such information to be covered by this Agreement, or if information is disclosed orally or by inspection, the obligations of this Agreement shall

not become effective as to such information until Discloser notifies Recipient in writing, that such information is deemed by Discloser to be Confidential Information.

- 1.3 Exclusions to Confidential Information. Information will not be, or will cease being, Confidential Information (i) from the date such information enters the public domain other than by breach of this Agreement by the Recipient; (ii) if it is rightfully known to the Recipient without obligation of confidentiality to any third party; (iii) from the date such information is independently developed by personnel of Recipient or a third party who have not had access to such information of the Discloser; and (iv) from the date that it is generally made available to third parties by the Discloser without obligation of confidentiality.
- 1.4 Affiliate. "Affiliate" means with reference to a Party any other entity that controls, is controlled by, or is under common control with the specified Party.
- 1.5 Representatives. "Representatives" means, with respect to a Recipient and its Affiliates, the employees, directors, officers, partners, advisors, consultants, financing sources (both equity and debt), potential subcontractors, and agents of the Recipient or its Affiliate.

2. SCOPE AND APPLICATION

- 2.1 Non-Disclosure. The Confidential Information shall be held as confidential by the Recipient and will be disclosed only to its Representatives who, in furtherance of the Purpose, have a need to know such Confidential Information and agree to hold such information in confidence in accordance with this Agreement and who have in addition, prior to receiving Confidential Information, executed a written agreement imposing confidentiality obligations with respect to the Confidential Information not less stringent than the obligations imposed on the Recipient by this Agreement.
- 2.2 Use. The Recipient agrees that it will not use any Confidential Information received pursuant to this Agreement, except as reasonably related to the Purpose without the express written consent of the Discloser.
- 2.3 Legally Required Disclosure. The Recipient may disclose Confidential Information in response to a subpoena, court order, or other legal process, or as may be legally compelled by any tribunal, governmental or regulatory authority requiring such disclosure; provided that, prior to such disclosure, the Discloser is given reasonable notice of the required disclosure so that the Discloser may take

whatever action it deems appropriate, including intervention in any proceeding and the seeking of a protective order.

2.4 Application. This Agreement shall not: (i) create any exclusive arrangement between the Parties; or, (ii) limit or deprive any Party of its rights to participate in any projects or work, alone or with others, or for itself or others, whether or not such projects or work involve the project, work or Purpose contemplated by this Agreement. This Agreement does not constitute any commitment or obligation on the part of any Party to enter into any specific transaction or contractual arrangement of any nature whatsoever other than this Agreement.

3. AGREEMENT TERM

Provisions of this Agreement shall be valid for the period of fifteen (15) years from the date of disclosure of the Confidential Information' to _____ by BHEL.

4. RIGHTS AND REMEDIES

Without prejudice to the rights and remedies otherwise available to it, the Discloser shall be entitled to seek an injunction or other equitable relief, without the obligation to post a bond or other security in connection with such relief, to prevent unauthorized use or disclosure of Confidential Information. The prevailing Party in any dispute under this Agreement shall be entitled to recover its reasonable attorneys' fees, experts' fees and court costs.

5. GOVERNING LAW

The Agreement will be governed as per the laws of India. The appropriate Courts of Hyderabad shall have exclusive jurisdiction to settle any and all disputes, differences or questions between the Parties with respect to any matter arising out of or relating to or in connection with this Agreement.

6. RETURN

The Discloser may, within ninety (90) days after termination or expiration of this Agreement, request in writing from the Recipient at its/their discretion either return or destroy all Confidential Information in its/their possession and/or in possession of its/their Permitted Recipients, including Confidential Information stored electronically and/or on record-bearing media as well as any copies thereof. The receiving Party/Parties shall confirm in writing such destruction or return the Confidential Information as well as any copies thereof to the disclosing Party within fourteen (14) days after receipt of the disclosing Party's request.

These provisions shall not apply to (i) copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the receiving Party/Parties or Permitted Recipients according to provisions of mandatory law, and (ii) originals and copies of this Agreement, provided that such Confidential Information or copies thereof shall be subject to the confidentiality obligation according to the terms and conditions set forth herein until returned and/or destroyed.

7. ASSIGNMENT

Neither this Agreement nor any rights and obligations under this Agreement shall be assigned or delegated by the Recipient without the prior written consent of the Discloser. However, Recipient may, without the consent of the Discloser, while remaining entitled and obligated under this Agreement, provide any Confidential Information received under this Agreement to a successor or an acquirer of all or a substantial part of the business to which the Confidential Information pertains (whether by way of a share deal, asset deal or otherwise) provided such successor or acquirer is bound by a prior written agreement imposing on such successor or acquirer confidentiality obligations in respect of the Confidential Information not less stringent than the obligations imposed on the Recipient under this Agreement.

8. EXPORT REGULATIONS

Notwithstanding anything to the contrary within this Agreement, for all Confidential Information disclosed hereunder the Recipient shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations").

9. INTEGRATED AGREEMENT

This Agreement contains the entire, integrated Agreement of the Parties with respect to the subject matter hereof and may not be amended except in writing signed by all of the Parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

10. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

CONFIDENTIALITY AGREEMENT

IN WITNESS WHEREOF, the duly authorized representative of each Party has executed this Agreement.

BHARAT HEAVY ELECTRICAL LIMITED

By _____
(Signature)

Title _____

By _____
(Signature)

Title _____