**CONFIDENTIALITY AGREEMENT**

dated [………….] (“Effective Date”)

This Confidentiality Agreement (“**Agreement**”) is entered into between:

Bidder for LESC Package of LSTK-2 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and

Bharat Heavy Electrical Ltd. (BHEL) incorporated and registered with Registrar of Delhi with COI No. 4281 of 1964-65 whose registered office at ‘BHEL House’ Siri Fort, NEW DELHI-110049 (“PARTNER / COMPANY”), which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successor in interest, designates, and permitted assign, both hereinafter individually referred to as “Party” and collectively as “Parties”.

**WHEREAS,**

the Parties have entered into discussions regarding the LSTK-2 Package for Coal to Ammonium Nitrate at BCGCL, Odisha, India (herein “Project”). The Parties are in possession of certain confidential and valuable information and wish to exchange such information in connection with the Project and on the terms and conditions set out herein, to enable [Bidder to provide a proposal for proprietary technical data, information, and know-how including innovations and improvements relating to **syngas processing for the evaluation of the use of these proprietary technologies and proprietary supplies for syngas purification package of Coal to Ammonium Nitrate Project at Odish**a And Partner to share the Syngas composition and other tender documents for aforementioned proposal (“Purpose”).

ACCORDINGLY, the Parties agree as follows:

1. **Definitions**

The following terms shall have the meanings as specified in this clause.

1. “Affiliate” means any legal entity which controls, is controlled by, or is under common control with another legal entity; an entity is deemed to control another if it directly or indirectly owns 50% or more of such other entity or otherwise directs the affairs and management.
2. “Confidential Information” means all marketing, commercial, financial, design, manufacturing, technical and other information, all specifications, know-how and data, in any form or media,

whether delivered in written writing (or other tangible) form or verbally or by inspection, and irrespective of such information being a trade secret or not, disclosed by the Disclosing Party or by its Affiliate(s) under this Agreement,

and including, without limitation, all information

• regarding the Project, and

• relating to the engineering, procurement, and construction of industrial plants, and

• included in Bidder’s Confidential Information regarding technologies/processes/business information owned by Bidder or its Affiliate(s) or licensor(s) for plants/ unit as follows:

Rectisol process which shall mean a process for the purification of the gases by scrubbing at temperatures below 0 degree Celsius at pressures of at least 2 bar with preferably a polar organic solvent, substantially chemically non-reactive with the gas components and having a freezing point below 0 degree Celsius, said solvent being recycled for reuse after regeneration by flashing, stripping or re-boiling, and

the Sour shift process - Sour Shift Process which means an exothermic process of reducing Carbon Monoxide (CO) content of the syngas by catalytically converting it with steam to produce Hydrogen (H2) and Carbon Dioxide

Liquid Nitrogen wash unit for production of Ammonia Syngas

• included in PARTNER’s Confidential Information as follows: [: PARTNER Confidential Information], and

* any information disclosed by a Party which a reasonable person would recognize as confidential or proprietary.

1. “Confidentiality Period” means a period of 10 years from the Effective Date.
2. “Disclosing Party” means the Party disclosing Confidential Information.
3. “Effective Date” is defined on page 1.
4. “Permitted Recipient(s)” means:

• the Receiving Party’s officers, employees, external staff, agents, professional legal, accounting and financial advisers;

* the Receiving Party’s Affiliates for the Project (but expressly excluding any direct competitors of the Disclosing Party);
* the Receiving Party’s vendors or (sub-)contractors for the Project (but expressly excluding any direct competitors of the Disclosing Party);
* the Parties’ licensors, if applicable;

1. the following third party(ies): [\_\_\_\_\_\_\_\_\_\_\_\_]
2. “Project” is defined the Recitals.
3. “Purpose” is defined the Recitals.
4. “Receiving Party” means the Party receiving Confidential Information from the other Party or from such Party’s Affiliates.
5. “Sanctioned Party” means a person or company which is listed on the sanction lists of the EU or USA or of another relevant authority, or which is directly or indirectly majority-owned or controlled by a listed person or company.
6. **Confidentiality**

In consideration of the disclosure of Confidential Information, the Receiving Party shall during the Confidentiality Period

* 1. hold all Confidential Information in confidence and not disclose it to any third party except as stipulated herein, and
  2. use Confidential Information solely for the Purpose, and
  3. treat all Confidential Information received hereunder with the same degree of care as it affords to its own Confidential Information, which shall be at least a reasonable degree of care.

1. **Right to Use**

3.1 The Receiving Party may use Confidential Information for the Purpose under the following conditions:

3.1.1 The Disclosing Party makes no representation and assumes no responsibilities with respect to the completeness, fitness for use or accuracy of such information.

3.1.2 The Disclosing Party grants the Receiving Party no license under intellectual property rights nor any rights in respect of Confidential Information other than those set out herein.

3.1.3 The Receiving Party shall not decompose, disassemble, or reverse engineer documents, objects or software which embody Confidential Information, nor use any plans containing Confidential Information for such purpose, nor create any derivative work from Confidential Information.

1. **Disclosure**
   1. The Receiving Party may disclose Confidential Information to Permitted Recipients, under the following conditions:
      1. The Confidential Information is used only for the Purpose;
      2. The Permitted Recipients shall
2. have a reasonable need to know such information to carry out the Purpose,
3. have been informed of the confidential nature of the Confidential Information,
4. prior to any disclosure by the Receiving Party, have been bound by specific or general confidentiality obligations at least as restrictive as those contained in this Agreement,
5. not have the right to disclose Confidential Information to further recipients.
   * 1. The Receiving Party will be liable for the unauthorized use or disclosure by the Receiving Party or its Permitted Recipients.

4.2 If the Receiving Party is required by law, court order or government authority to disclose Confidential Information, it may make such disclosure, always provided that (a) Receiving Party shall, to the extent permitted by law, provide prior written notice of such disclosure to the Disclosing Party in order to allow the opportunity to seek protective order or other remedies and shall cooperate with such efforts, and (b) the Receiving Party takes all reasonable and legally permitted actions to avoid or minimise the extent of such disclosure.

1. **Exceptions**

The restrictions of this Agreement shall not apply to information that is, as shown by written or electronic evidence:

5.1. at the time of its disclosure hereunder already known to, or in the rightful possession of, the Receiving Party; or

5.2 public knowledge other than through violation of this Agreement; or

5.3 acquired independently on a non-confidential basis from a third party that represents that it has the right to disseminate such information at the time it is acquired by the Receiving Party; or

5.4 developed by the Receiving Party independently of and without any reference to the Confidential Information of the Disclosing Party.

1. **Return**

Upon the Disclosing Party’s written request, the Receiving Party and any Permitted Recipient shall promptly return or destroy any received Confidential Information and provide a written certificate thereof. The parties may keep (i) electronic copies generated automatically in IT routine back-up systems, and (ii) a copy retained for the purpose of administering Receiving Party´s obligations hereunder, provided that in each case any such retained Confidential Information shall remain subject to the restriction under this Agreement.

1. **Governing Law, Arbitration**

This Agreement shall be governed by the law of London / Singapore / Hyderabad.

Any dispute shall be resolved by arbitration by the International Chamber of Commerce (“ICC”). The arbitral tribunal shall be appointed in accordance with the ICC rules. The seat of the arbitration shall be in London / Singapore / Hyderabad, neutral venue for both the parties. The language of the arbitration shall be English. The arbitral award shall be final and binding on the Parties. Judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

The above notwithstanding, any Party may apply for a temporary or permanent injunction or other interim or conservatory measures in a court of competent jurisdiction to protect its rights hereunder.

1. **Miscellaneous**
   1. Each Party warrants and represents that is not a Sanctioned Party, and that it will not cause the other Party to directly or indirectly deal with a Sanctioned Party at any time and that no Confidential Information will be disclosed to a Sanctioned Party, even if such party should qualify as Permitted Recipients hereunder.
   2. This Agreement shall not be assigned without the other Party’s prior written consent, except that either Party may assign this Agreement to a successor or assignee of substantially the entire business to which the Confidential Information pertains.
   3. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, to the maximum extent possible. Should any term or provision of this Agreement prove to be invalid or ineffective, the validity of the other provisions of this Agreement shall not be affected thereby.
   4. Any fully executed copy of this Agreement scanned and exchanged by email shall be considered an original. This Agreement may be signed electronically.

Signed by duly authorized representatives of the Parties on the dates specified below:

For Bidder\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Date, Name, Signatures) For Partner\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Date, Name, Signatures)