

भारत हेवी इलेक्ट्रिकल लिमिटेड
Bharat Heavy Electricals Limited



कॉर्पोरेट डिजिटल ट्रांसफॉर्मेशन
CORPORATE DIGITAL TRANSFORMATION (CDT)

**CDT Hall, 2nd Floor, HRD & ESI Complex, Plot No. 25,
Sector 16A, NOIDA, U.P.-201301**

Request for Proposal
FOR
Procurement of 03 nos. of SAP Business Suite Developer User Licenses



भारत हैवी इलेक्ट्रिकल लिमिटेड
BHARAT HEAVY ELECTRICALS LIMITED
कॉर्पोरेट डिजिटल ट्रांसफॉर्मेशन
Corporate Digital Transformation

Ref. No.: AA:CDT:SAP/Licenses
Date:28.06.2018

Dear Sir / Madam,

Sub: Procurement of 03 nos. of SAP Business Suite Developer User Licenses

Sealed bid is invited for the Procurement of 03 nos. of SAP Business Suite Developer User Licenses deployed at CDT, Noida as per the terms and conditions of RFP enclosed.

Any corrigendum / notifications issued by BHEL, related to this tender, shall be available / hosted on www.bhel.com and cpp portal. Hence bidder is expected to keep visiting www.bhel.com and cpp portal for any corrigendum / notification in their own interest.

The bidder is expected to examine all instructions, formats, terms, specifications, conditions and all other information in the bidding documents. Failure to furnish all information asked for or to submit a bid not substantially responsive to the bidding documents may result in rejection of the bid as decided by the BHEL. BHEL's decision shall be final and binding.

Please ensure that your response complete in all respect in requisite format with necessary enclosures is delivered on or before the due date & time i.e., **05.07.2018 at 1400 hrs.**

Bids shall be addressed to:

DGM (CDT)
Bharat Heavy Electricals Limited,
CDT-Hall, 2nd Floor, HRD & ESI Complex,
Plot no. 25, Sector-16a, Noida (UP) ढ 201301.

Thanking you,
Yours faithfully,
For and on behalf of BHEL

DGM (CDT)

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1. Objective:

Procurement of 03 nos. of SAP Business Suite Developer User Licenses.

2. Key Activities and Dates of tender:

S.No.	Key Activity	Date
1	Issuance of Request For Proposal (RFP)	28/06/2018
2	Last date of receiving queries	02/07/2018
4	Last date and time for submission of bids	05/07/2018 at 1400hrs at CDT Noida, UP
5	Bid opening	05/07/2018 at 1630hrs at CDT Asiad, New Delhi

3. Scope of Work:

The broad scope of work includes as following:

- Supply of 3 nos, of SAP Business Suite Developer User Licenses.
- The software licenses supplied to BHEL shall be of latest version on the date of download of the software.
- Enterprise Support from 01.08.2018 to 31.12.2018 for the supplied 3 nos, of SAP Business Suite Developer User Licenses.
- The software updates including product upgrades, maintenance releases and patches should be electronically downloadable from OEM website.
- Provide 24x7 web based product support for product-specific questions about installation, configuration, backup, recovery, performance, migration, upgrades and any security patching.
- Provide on-site support for any issues relating to software. (Including installation, configuration, backup, recovery, performance, migration, upgrades and any security patching).

All the softwares / licenses supplied under this contract shall be legal and licensed in the name of BHEL.

4. Special Terms and Conditions:

4.1. Delivery:

Software would be electronically downloaded directly by BHEL after SAP provides the necessary authorization to BHEL.

4.2. Payment Terms:

- Total charges for SAP Business Suite Developer User Licenses** – 100% payment will be made, subject to terms and conditions mentioned in clause 5.14 (Taxes & Duties), after successful delivery (to be certified by BHEL executive) and within 30 days of the submission of GST creditable invoices.

However, GST portion amount shall be withheld and the same shall be released only after confirmation from GST website/portal that such invoice has been declared in GSTR-1 return filed by contractor within the stipulated time for the relevant period and tax amount thereon has been paid by contractor to Govt. within the stipulated time period as per GST Law. Alternatively, the same shall be released on submission of BG equal to the amount

of GST portion plus notional interest thereon for 2 months period, valid till the end of the contract plus 3 months or 3 months from the date of submission of final bill, whichever is later. The bill along with supporting documents shall be accepted at the end of quarter and payment excluding GST & notional interest thereon, shall be made within 30 days from the date of submission of the bills, complete in all aspect after due verification subject to other terms & conditions mentioned in clause no. 5.14 (Taxes & Duties) and SLA reports for the quarter (certified by BHEL).

- ii) **Total charges for Enterprise Support Charges** – 100% payment will be made in advance within 30 days of the submission of GST creditable invoices, against submission of bank guarantee of amount equal to the amount raised in the invoice (including taxes). The bank guarantee shall have the validity till 31.03.2019. The purchaser shall have the right to invoke the bank guarantee and claim the amount there under in the event the vendor fails to provide the necessary support as per the scope of this tender enquiry.

5. General Terms and Conditions:

5.1. Ethical Standard:

Bidders are expected to observe the highest standard of ethics during the procurement and execution of this Contract. In pursuit of this policy, the Purchaser will reject a proposal for award if it finds out that the Bidder being considered for award has engaged in corrupt or fraudulent practices in competing for the Contract. For the purposes of this provision, the terms set forth below are defined as follows:

a) “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action in the procurement process or in Contract execution; and

b) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process including collusive practices designed to establish bid prices at artificial, non-competitive levels to deprive the Purchaser of the benefits of competition;

The Bidder along with its associate/ collaborators/ sub-contractors/ sub-vendors/ consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.

By signing the Bid Forwarding Letter, the Bidder represents that for the software it supplies, it is the owner of the Intellectual Property Rights in the software. Willful misrepresentation of these facts shall be considered a fraudulent practice without prejudice to other remedies that the Purchaser may take.

5.2. Non-Disclosure Agreement:

6.2.1. The successful bidder shall comply with the Information Security Management System of BHEL and work within the framework of ISMS as applicable in BHEL from time-to-time.

6.2.2. All the material / information sent to the successful bidder shall be treated as confidential and should not be disclosed in any matter to any unauthorized person under any circumstances. The successful bidder has to furnish a Non-Disclosure Agreement (NDA) as per **Annexure-IV** in line with the Owner's Information Security Management System (ISMS).

5.3. Cost of Bidding:

The Bidder shall bear all costs associated with the preparation and submission of its bid and the Purchaser will in no case be responsible or liable for those costs.



5.4. Procedure for Submission & Opening of Bids:

Bid shall be accepted by the official inviting the tender in two parts.

Part-I : Techno-Commercial Bid

Bid shall consists of the following:

- 5.4.1. Unpriced copy of PRICE BID as per format enclosed as **Annexure-I**.
- 5.4.2. No Deviation Certificate as per format enclosed as **Annexure-II**.
- 5.4.3. Declaration of GST benefits as per format enclosed as **Annexure-III**.
- 5.4.4. A copy of complete RFP along with corrigendum, if any, where each page is signed & stamped by the bidder.

Part-II : Price Bid

Price bid containing PRICES only is to be submitted (in the Price Schedule format enclosed as **Annexure-I** only). Prices shall be quoted in Indian Rupees only. Bidder shall give details of Direct Applicable Taxes (between Bidder & BHEL as asked in the Price Bid Format) clearly. Any changes in these Direct Applicable Tax rates during the complete contract period will only be payable as per actuals, subject to submission of documentary evidence. Any other taxes, duties, levies and charges assessed on the bidder by local, national or any statutory authorities will not be payable by BHEL.

Price Bid should not contain any technical details and/or Commercial Terms & Conditions as the same are supposed to be contained in PART-I only, so that the same can be evaluated before opening of Price Bid.

5.5. Marking On Envelope :

Part-I and Part-II offers shall be submitted in two separate sealed envelopes with bidder's distinctive SEAL and super-scribed as follows:

Part-I : 1. Tender Enquiry No. and Its Description

- 2. Due Date of Opening**
- 3. Techno-Commercial Bid**

Part-II : 1. Tender Enquiry No. and Its Description

- 2. Due Date of Opening**
- 3. "Price Bid" as per enclosed Format.**

Un-sealed envelopes or envelopes not super-scribed as above may not be accepted/considered.

5.6. Bid Submission :

- 5.6.1. Bids shall be addressed to the official inviting Bids by name and designation and sent at the following address:

DGM (CDT)
Bharat Heavy Electricals Limited,
CDT Hall, 2nd Floor, HRD & ESI Complex, Plot No. 25,
Sector – 16A, Noida (UP) 201301
Telephone no. : (0120) 2416496 / 2416462
Email : shivali@bhel.in/ajay.bagati@bhel.in

- 5.6.2. Bids can also be delivered in person to the official inviting Bids.



5.6.3. Bids submitted by post shall be sent by "REGISTERED POST" only and shall be posted with due allowance for any postal delay. Bids shall be submitted latest by 1400 Hrs. of the due date.

5.7. Bid Opening :

- 5.7.1. PART-I (Techno-commercial Bid) may be opened on the due date and time as specified in the Enquiry Letter, in the presence of bidder who may like to attend. Part-II (Price Bid) shall be opened subsequently. However, Purchaser/Lessee reserves the right to open both the parts simultaneously i.e. Part-I and Part-II together.
- 5.7.2. In case of public opening, date and time of Price Bid (Part-II) opening shall be intimated to the technically and commercially acceptable bidder.
- 5.7.3. Not more than two representatives from the bidder will be permitted to be present during tender opening.
- 5.7.4. No correspondence shall be entertained from the bidder after the opening of Price Bid.
- 5.7.5. Standard pre-printed conditions of the bidder attached to the offer will not be accepted and only those mentioned in the body of his offer will be considered.
- 5.7.6. Unsolicited bids shall not be entertained. Unsolicited revised Price Bid also, shall not be entertained at any stage of the tendering process and will lead to automatic disqualification of the party's bid.
- 5.7.7. No Literature, Pamphlets other than what is specified is to be enclosed. All such enclosures shall be considered as unread and also will not be considered as part of the quotation.
- 5.7.8. Manufacturer's name, trade Mark or Patent No., if any, should be specified.
- 5.7.9. Purchaser/Lessee reserves the right to negotiate the tender, if required.

5.8. Validity of Offer :

Offer shall be kept valid for FOUR months from the due date of tender opening (Part-I) for Purchaser/Lessee's acceptance.

5.9. Deviations :

Bids shall be submitted strictly in accordance with the requirements and terms & conditions of the Tender Enquiry. Vendors have to submit a "No Deviation Certificate" in Part-I of the offer as per **Annexure-II**.

Technical & Commercial - No deviation is acceptable.

5.10. Language of the Bid & Corrections:

- 5.10.1. The bidder shall quote the rates in Hindi/English language and international numerals only. The metric system of units shall be used, for the purpose of tender.
- 5.10.2. Bidder shall fill the tender documents as per formats enclosed in this tender enquiry. All entries and signatures in the bid shall be in **BLUE/BLACK INK** only. Each page of the bid shall be signed and stamped using official seal of the company by the bidder.



5.10.3. All entries shall be filled in neat and legible handwriting. No over-writings, erasures and corrections are permitted and may render such bids liable for rejection.

5.10.4. However, if any cancellations, corrections and insertions are in the bid, the same shall be duly attested by the bidder.

5.11. Rejection Of Bid and Other Conditions:

5.11.1. Any format not properly filled, partially filled or not filled will make the bid liable for rejection. Bidder is requested to note that all columns, rows and spaces provided to fill up the data must be filled with relevant data without fail. In case any bidder fails to do so or fills up irrelevant data, BHEL is not bound to seek clarifications on such items and will be free to reject the tender summarily.

5.11.2. No change in clauses of contract, Terms and Conditions, etc. shall be entertained by BHEL under any circumstances.

5.11.3. Canvassing in any way concerning this tender, wrong declaration, incorrect information, misleading or incorrect certifications, etc. shall make the Bidder debarred to participate in this tender and also for a further period of 3 years in any tender of any of the BHEL units.

5.11.4. The offer is liable to be rejected, if it is found after the Price Bid Opening that the Checklist of Price Bid submitted by the bidder, as a part of Part-I offer, is different from the actual Price Bid.

5.11.5. If the bidder deliberately gives wrong information in his bid, Purchaser/Lessee reserves the right to reject such a bid at any stage or to cancel the Order/Contract, if awarded and forfeit the EMD/ security deposit/ Performance Bank Guarantee, if any.

5.11.6. If the Prices/Rates of one or more of the enquired equipments/service/software have not been quoted, the offer is liable to be rejected.

5.11.7. Non-compliance with any of the requirements and instructions of the Tender Enquiry may result in the rejection of the bid.

5.12. Clarification on Bidding Documents:

The Bidder is expected to carefully go through this Tender Document and understand the functional requirements thoroughly before submitting their offer. All legitimate queries and clarifications regarding this tender must be submitted in writing to the official inviting tender by 02.07.2018.

5.13. Amendment of Bidding Documents:

The Purchaser may at its sole discretion amend the Bidding Documents at any time prior to the deadline for submission of bids. However, in case of such amendment, the bid submission date may be extended at the discretion of the purchaser.

Amendments made prior to submission of bid will be provided in the form of Addenda / Corrigendum to the Bidding Documents and will be posted on the BHEL website (<http://www.bhel.com>) and cpp portal in Tender Notification section under the original tender enquiry number.

5.14. Taxes & Duties:

5.14.1. Goods and Services Tax (GST) shall be extra and payable as per prevailing rates. Any change in applicable tax or imposition of any new applicable tax by GOI shall be borne by BHEL on submission of documentary proof by the vendor. However, in case of any decrease in applicable taxes benefit shall be passed on to BHEL.



- 5.14.2. The contractor has to submit their GST registration certificate to BHEL within 30 days from the acceptance of work order. GSTIN of BHEL will be provided to the contractor by respective office of BHEL within 30 days from the placement of work order.
- 5.14.3. Any statutory changes as and when made applicable by the Government shall become applicable against documentary evidence.
- 5.14.4. Payment to the vendor will be subjected to TDS as per rules in force from time to time. The Tax Deduction at Source (TDS) shall be done as per the provisions of Income Tax Act and GST as applicable, as amended from time to time and a certificate to this effect shall be provided to the contractor by BHEL.
- 5.14.5. To enable BHEL to avail GST Input tax credit, the vendor shall submit GST compliant Tax invoice containing all the particulars as stipulated under Invoice Rules of GST Law. Such invoice shall be submitted within 30 days of completion of work (the completion of work shall be vetted by BHEL representative) in the name of BHEL and must contain the address and GSTIN of BHEL.
- 5.14.6. Payment shall be made to the vendor only after submission of GST compliant Tax invoice as mentioned above and other relevant documents. However, to protect BHEL's interest for GST input tax credit, GST portion amount along with notional interest on GST credit for 2 months' period (presently rate of interest is @ 24%) shall be withheld and the same shall be released only after confirmation from GST website/portal that such invoice has been declared in GSTR-1 return filed by the vendor within the stipulated time for the relevant period and tax amount thereon has been paid by the vendor to Government within the stipulated time period as per GST Law. Alternatively, the same shall be released on submission of BG equal to the amount of GST portion plus notional interest thereon for 2 months period, valid till the end of the contract plus 3 months or 3 months from the date of submission of final bill, whichever is later
- 5.14.7. In case GST credit is delayed / denied to BHEL or subsequently recovered from BHEL due to non/delay in filing of GSTR-1 Return or delay in/non-payment of tax to Govt. by the vendor or for any other reasons not attributable to BHEL, in such case any financial implication on BHEL on account of delay/loss/recovery from BHEL of such GST Credit along with interest levied/leviable on BHEL till the time GST credit is available to BHEL, shall be recovered from the vendor's bill and/or adjusted against GST amount not paid as indicated under para 5.14.6 above.
- 5.14.8. Irrespective of refund of GST Credit and interest thereon to BHEL by GST portal upon subsequent declaration of such invoice by vendor in his GSTR-1 for any period after due date of such return and/or payment of GST thereon by the vendor on GST portal, the notional interest for delayed period of GST credit (i.e. delay for the period when GST credit is actually allowed and the period when GST credit should have been allowed had the vendor declared such invoice in his GSTR-1 and paid tax thereon in the relevant month as per GST law) shall be recovered from the vendor.
- 5.14.9. The vendor has to submit their GST registration certificate to the ordering BHEL location within 30 days from the acceptance of work order. GSTIN of BHEL will be provided to the vendor by respective office of BHEL within 30 days from the placement of work order.
- 5.15. Purchaser's Right to accept or Reject the Bid:**
The Purchaser reserves the full right to accept or reject any bid or to annul the bidding process and reject all bids at any time prior to Contract award, without thereby incurring any liability to the Bidders.
- 5.16. Exclusions:**



The Bidder shall clearly indicate the items under 'Exclusions' head, which are excluded from the scope of Bidder's work, if any.

5.17. Statutory Obligations:

All statutory obligations arising out of this contract (like Insurance, PF, etc. of man power deployed by the bidder) shall rest with the successful bidder.

5.18. Liabilities from the Contract

Any liabilities arising out of this contract (like injury, fatal/non-fatal, to the personnel of the successful bidder or any third party/contractor employed by the bidder) shall be to the successful bidder's account only. BHEL shall not be liable in any such eventuality.

Successful bidder's liability will be limited to the value of this contract only and will not be liable for any consequential damages.

5.19. Exemption:

MSMEs, registered with District Industries Centers or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, are entitled to avail the benefit of Public Procurement Policy for Micro and Small Enterprises (MSEs), dated 23.03.2012, subject to furnishing the documentary proof in support of claim along with their request letters and feasibility in terms of ordering and supply.

5.20. Indemnity:

Vendor/Lessor shall fully indemnify and keep indemnified the Purchaser/Lessee against all claims which may be made in respect of the use of System / Software / Item(s) / services supplied / rendered by the Vendor / Lessor, for infringement of any rights protected by patent, registration of designs or trademarks and legality of the Software. However the Vendor/ Lessor will have no obligation for any claim of infringement arising from third party products not supplied in the order, modifications and technical information/ instructions advised by purchaser and use of products prohibited by product manuals.

All such claims in this regard will be settled as per Indian Laws.

In the event of any such claims being made against the Purchaser/ Lessee, Purchaser/Lessee will inform in writing to the Vendor/Lessor who shall at his own risk and cost either settle any such dispute or conduct any litigation that may arise there from.

5.21. Risk Purchase:

Client reserves the right to purchase from elsewhere at the risk and cost of the Contractor, either the whole or part of

- a) The Systems/Equipment, which the Contractor has failed to deliver within the stipulated delivery period in the concerned Purchase Order or if the same were not available, the best and the nearest available substitute(s) thereof which is not technically inferior to the undelivered System/Goods.
- b) The warranty and support which the Contractor has failed to provide in respect of the supplied system/equipment suffering from not less than 1 month of downtime.

The Contractor shall compensate the Client for any loss or additional expense, which the Client may sustain by reason of such purchase. The Client may recover the amount from any money due to the Contractor in respect of this contract or any other contract which the Contractor has with Purchaser. This clause will be operated only after completion of delivery period including extended period with LD, if any.



Recovery on account of purchases made by Purchaser at the risk and cost of Seller/Contractor shall be worked out as follows:

- a) Excess of new purchase cost over old purchase cost, where the total value of new PO is more than total value of old PO.

And

- b) Additional 30% overheads as departmental charges on the ex-works value of new PO

5.22. Arbitration:

In all cases of disputes emanating from and in reference to this contract, the matter shall be referred to the arbitration. All disputes or differences between the parties will be resolved through arbitration governed by 'The Arbitration and Conciliation Act, 1996' as amended from time to time. The venue of arbitration shall be in New Delhi. However, till the time the decision of the arbitrator is not announced, the Bidder/Vendor shall continue to provide its services to BHEL as per the contract.

5.23. Force Majeure:

Vendor/Lessor shall not be responsible for delay in delivery resulting from acts/events beyond his control, provided notice of the happening of any such act/event is given by the Vendor/Lessor to the Purchaser/Lessee within 15 days from the date of its occurrence. Such acts/events shall include but not be limited to acts of God, war, floods, earthquakes, strikes, lockouts, epidemics, riots, fire or Governmental regulations superimposed after the date of order/contract.

5.24. Patent & Trademark:

Vendor/Lessor shall at all times indemnify the Purchaser/Lessee against all claims which may be made in respect of the Systems/goods/Software supplied by the Vendor/Lessor, for infringement of any right protected by patent, registration of designs or trademarks and legality of usage of Software. In the event of any such claims being made against the Purchaser/Lessee, Purchaser/Lessee will inform the Vendor/Lessor who shall at his own cost either settle any such dispute or conduct any litigation that may arise there from.

5.25. Merger & Acquisition:

In case of merger / acquisition of the bidder / OEM during the contract period, all commitments and liabilities with respect to this contract will pass on to the acquiring entity.

5.26. List of Annexures:

- 5.26.1. Annexure-I: Price Bid Format
- 5.26.2. Annexure-II: No-Deviation Certificate Format
- 5.26.3. Annexure-III: Declaration of GST benefits
- 5.26.4. Annexure-IV: Non-Disclosure Agreement Format



Price Bid format

S No.	Item Description	Qty.	Total amount for total quantities (INR) – Excluding taxes
1	SAP Business Suite Developer User Licenses (A)	3 nos.	
2	Enterprise Support Charges for S. no. 1 above from 01.08.2018 to 31.12.2018 (B)	3 nos.	
Total charges (A+B)			

Total offered price in words (Excl. taxes) (INR):

.....

S. No.	Applicable Taxes	%age

Note:

1. The rate should be quoted in Indian Rupees.
2. The total cost should be mentioned in this format. The prices should be fixed and should avoid use of vague terms as “Extra as applicable”

Seal & Signature of the Company



No Deviation Certificate

This is to certify that our offer is exactly in line with your tender enquiry no. **AA:CDT:SAP/Licenses dated 28.06.2018**. This is to expressly certify that our offer contains no deviation either Technical or Commercial in either direct or indirect form.

Signed By:**Name:** _____**Designation:** _____**Organization:** _____**Date & Place:** _____**Phone/Fax/Mobile:** _____**Email:** _____**Stamp & Seal:** _____

Declaration of GST Benefits

To Whom so ever it may concern, I hereby on behalf of my organization declare that I have quoted the rates considering the benefits of Goods and Service Tax (GST) including Input Tax Credit (ITC) in the Price Bid.

(Signature & seal of the bidder)

Place:

Date:



MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into as of the last date signed below (the “Effective Date”) by and between **Bharat Heavy Electricals Ltd.(BHEL)**, a Public Sector Organization having its principal place of business at BHEL House, Siri Fort, New Delhi - 110049 and _____, a _____ corporation, hereinafter called “The Bidder” whose principal mailing address is _____.

WHEREAS in order to pursue the mutual business purpose of this particular project as specified in Bid document for Procurement of 03 nos. SAP Business Suite Developer User Licenses, **BHEL** and the Bidder have an interest in participating in discussions wherein either Party might share information with the other that the disclosing Party considers to be proprietary and confidential to itself (“Confidential Information”); and

WHEREAS the Parties agree that Confidential Information of a Party might include, but not be limited to that Party’s:

1. business plans, methods, and practices;
2. personnel, customers, and suppliers;
3. inventions, processes, methods, products, patent applications, and other proprietary rights; or
4. specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information;

NOW, THEREFORE, the Parties agree as follows:

1. Either Party may disclose Confidential Information to the other Party in confidence provided that the disclosing Party identifies such information as proprietary and confidential either by marking it, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by e-mail or written correspondence, or via other means of communication as might be appropriate.
2. When informed of the proprietary and confidential nature of Confidential Information that has been disclosed by the other Party, the receiving Party (“Recipient”) shall, for a period of three (3) years from the date of disclosure, refrain from disclosing such Confidential Information to any contractor or other third party without prior, written approval from the disclosing Party and shall protect such Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, but in no case less than reasonable care. The Recipient shall ensure that each of its employees, officers, directors, or agents who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement. The Recipient of Confidential Information disclosed under this Agreement shall promptly notify the disclosing Party of any disclosure of such Confidential Information in violation of this Agreement or of any subpoena or other legal process requiring production or disclosure of said Confidential Information.



3. All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other Party. The Recipient shall honor any request from the disclosing Party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information. The Parties agree that the disclosing Party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing Party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.
4. The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The disclosing party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the Recipient from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.
5. Notwithstanding the above, the Parties agree that information shall not be deemed Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:
 - 5.1. Is already known to the Recipient, having been disclosed to the Recipient by a third party without such third party having an obligation of confidentiality to the disclosing Party; or
 - 5.2. Is or becomes publicly known through no wrongful act of the Recipient, its employees, officers, directors, or agents; or
 - 5.3. Is independently developed by the Recipient without reference to any Confidential Information disclosed hereunder; or
 - 5.4. Is approved for release (and only to the extent so approved) by the disclosing Party; or
 - 5.5. Is disclosed pursuant to the lawful requirement of a court or governmental agency or where required by operation of law.
6. Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture, or other similar relationship between the Parties.
7. Neither Party will, without prior approval of the other Party, make any public announcement of or otherwise disclose the existence or the terms of this Agreement.
8. This Agreement contains the entire agreement between the Parties and in no way creates an obligation for either Party to disclose information to the other Party or to enter into any other agreement.
9. This Agreement shall remain in effect for a period of two (2) years from the Effective Date unless otherwise terminated by either Party giving notice to the other of its desire to terminate this Agreement. The requirement to protect Confidential Information disclosed under this Agreement shall survive termination of this Agreement.



IN WITNESS WHEREOF:

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

BHARAT HEAVY ELECTRICALS LTD.

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

Witness

1.

2.

Witness

1.

2.

