

**BHARAT HEAVY ELECTRICALS LIMITED**  
**CONCILIATION SCHEME, 2018**

**Table of contents**

<b>Section/SI No.</b>	<b>Particulars</b>	<b>Page No.</b>
<b>1</b>	Table of contents	<b>1</b>
<b>2</b>	Preamble	<b>2</b>
<b>3</b>	<b>Section – A:</b> Applicability	<b>2</b>
<b>4</b>	<b>Section – B</b> Procedure of Invocation	<b>3</b>
<b>5</b>	<b>Section – C</b> Empanelment/Enlistment of Conciliators	<b>5</b>
<b>6</b>	<b>Section – D</b> Procedure for Conciliation	<b>7</b>
<b>7</b>	<b>Section– E</b> Fees and Facilities for Empaneled Conciliator(s)	<b>12</b>
<b>8</b>	<b>Section – F</b> General Provisions	<b>15</b>
<b>9</b>	<b>Annexure – 1:</b> Delegation of Powers	<b>18</b>
<b>10</b>	<b>Appendix</b>	
<b>Format 1:</b>	Declaration of acceptance and independence by Members of Independent Expert Committee (IEC)	<b>20</b>
<b>Format 2:</b>	Format for seeking consent for referring the disputes to Conciliation through IEC	<b>21</b>
<b>Format 3:</b>	Format for giving consent by Contractor for referring dispute to Conciliation through IEC	<b>22</b>
<b>Format 4:</b>	Brief summary to be submitted to Head of Unit/Division/Region for referring the disputes to IEC	<b>23</b>
<b>Format 5:</b>	Statement of Claim/Counter-Claim to be submitted to the IEC by both the parties	<b>24</b>
<b>Format 6:</b>	Declaration to be submitted by persons proposed to be empaneled on BHEL Panel of Conciliators	<b>25</b>
<b>11</b>	Process Flow-chart for BHEL Conciliation Scheme, 2018	<b>26</b>

## **BHEL CONCILIATION SCHEME, 2018**

### **PREAMBLE**

1. Disputes can arise inter-se Parties involved in a commercial/contractual relationship. BHEL, however, emphasizes on long lasting commercial relationship with its vendor(s), customer(s), collaborator(s), Consortium partner(s) etc. and believes that amicable resolution of Disputes is in the interest of all concerned Parties.
2. The conventional methods of dispute resolution are often time consuming and costly.
3. In contrast, Conciliation provides an easy and efficient method of dispute resolution inter-se Parties especially in commercial/ contractual relationship to arrive at an amicable settlement of Disputes. Conciliation is cost effective, time bound and results in a win - win situation for both the parties. Further, no appeal lies against a Conciliation settlement arrived between the parties.
4. In furtherance of the objective of amicable resolution of Disputes inter-se Parties in a commercial/contractual relationship, the present BHEL Conciliation Scheme, 2018 aims to outline the approach to Conciliation that can be adopted in appropriate cases.
5. The Scheme shall become effective from the 46<sup>th</sup> day of the date of approval of the Scheme by the Board of BHEL (Effective Date).

### **SECTION A** **APPLICABILITY**

- A1.** This scheme shall apply to any Disputes arising out of or relating to a contractual or defined legal relationship in the form of a contract or otherwise involving BHEL as a party and where settlement is possible between BHEL on one side and including but not limited to the - contractor(s), vendor(s), or customer(s) or collaborator(s) or Consortium partners etc. of BHEL on the other side where parties seeking an amicable settlement of their Disputes have agreed that BHEL Conciliation Scheme shall apply.

- A2.**For the purposes of this scheme “Disputes” means and includes any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding, which the Parties are unable to settle mutually.
- A3.**The scope of Conciliation under this Scheme shall cover both domestic and international Disputes whenever a settlement is possible.
- A4.**A suitable clause concerning Conciliation in terms of this Scheme will be incorporated in the General Conditions of Contracts for vendors/supplier/sub-contractors by all the Units/Divisions/Regions/Business Group. For Contracts where specific clause for Conciliation is not provided, this Scheme may also be made applicable with the approval of the concerned Head of Unit/Division/Region/Business Group, subject to the agreement of the other party.
- A5.**Units/Divisions/Regions/Business Groups shall also endeavor to incorporate the clause in the Contracts/MOUs with Customers Collaborators, Consortium Partners etc. For Contracts where specific clause for Conciliation is not provided, this Scheme may also be made applicable with the approval of the concerned Head of Unit/Division/Region/Business Group, subject to the agreement of the other party.

## **SECTION B**

### **PROCEDURE OF INVOCATION**

- B1.**At any stage, whether before or during or after the arbitration or judicial proceedings, the party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate under this scheme specifying all points of Disputes with details of the amount claimed. The party concerned shall not be permitted to 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.
- B2.**In case the party receiving the invitation/notice does not agree, then, no Conciliation proceedings shall be held in such matter.

The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation under this Scheme along with its counter-claims, if any. If no reply in writing is received within the said period, the party invoking Conciliation may treat this as a rejection of the invitation to conciliate.

The Conciliation shall commence on the date of acceptance of the invitation to conciliate by the concerned party. However, the time limit for concluding hearings shall be from the date of first hearing/meeting of the IEC ("Independent Experts Committee" as hereinafter defined) as stipulated in para D3 herein below.

**B3.** Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, the Head of the BHEL Unit/Division/Region/Business Group having the power of Executive Director shall approve assignment of the Disputes to conciliation and nominate the Conciliator(s). In the event Unit/Division/Region/Business Group is headed by a person not having the powers of Executive Director but the Head of Unit/Division/Region/Business Group is reporting to an Executive Director, then nomination shall be made by such Executive Director. In case of Units/Divisions/Regions/Business Groups headed by a person not having powers of Executive Director reporting directly to either (a) to a Functional Director; or, to (b) Chairman & Managing Director, then, the nomination shall be made by such Head of Unit/Division/Region/Business Group with the approval of (a) the Concerned Functional Director or (b) Director (HR) respectively. 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.

**B4.** The Conciliation shall be carried out by sole Conciliator or 3 Conciliators nominated by BHEL as given in para B3. A matter involving claim/counter-claim not more than Rs 5 crores shall be referred to Conciliation by a Sole Conciliator. A matter involving claim/counter-claim of more than Rs 5 crores shall be referred to conciliation by three Conciliators. For the purposes of determining the strength of the IEC ("Independent Experts Committee" as hereinafter defined) (whether sole or three conciliators), the

value of the claim or counter-claim (if available) whichever is higher, will be considered.

The claims/counter claims forming the subject matter of Conciliation should be the claims/counter claims substantiated by documents, evidence etc. and such claims should have formed part of earlier discussions/deliberations between the parties relating to the execution of the contract.

**B5.** In case of Conciliation by three Conciliators, the Conciliators shall, as a general rule, act jointly. The Conciliator(s) who is/are assigned a case for Conciliation shall hereinafter be referred to as the Independent Experts Committee (IEC).

**B6.** In exceptional cases if nomination of Conciliator(s) from outside the panel is to be made, the person(s) to be nominated should, as far as practicable, conform to the criteria mentioned in para C2 & C3 of Section C herein below. For nomination of any person from outside the panel, the Unit/Region/Division/Business Group shall forward the proposal with his recommendation for obtaining prior approval of Director (HR) for the nomination.

For the purposes of this Clause, a case would be considered to be falling within the category of exceptional case in the event of one or more of the following, amongst other conditions arising:

- a) If the panel of Conciliators is exhausted; or,
- b) When the Head of Unit/Division/Region/Business Group considers for reasons to be recorded in writing that the person from outside the panel should be appointed as Conciliator(s) in the case.
- c) Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties.

## **SECTION C**

### **EMPANELMENT/ENLISTMENT OF CONCILIATORS**

**C1.** A panel of Conciliators shall be finalised and maintained by Corporate Law (till the Alternative Dispute Resolution Group is constituted) at Corporate Office.

**C2.** The persons to be empaneled as Conciliators should be from commercial/technical/engineering/financial/legal/administrative fields etc.

**C3.** The Panel/List, may include following:

- a) Retired Senior Officers of Central/State Governments (Not lesser than the rank of Joint Secretary to Government of India);
- b) Former Functional or Independent Directors of other Public Sector Undertakings.
- c) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL),
- d) Other suitable persons having experience of not less than 25 years in relevant fields viz., commercial / technical /engineering / financial / legal / administrative fields.

**Note:** No serving or a retired employee of BHEL/Administrative Ministry of BHEL should be included in the Panel of Conciliators.

**C4.** The Panel shall be for the entire Company. The empaneled persons should be persons of unquestionable integrity and good public standing. A declaration would be taken from the persons to be considered for empanelment as Conciliators stating that during their service no penalty had been imposed on them in any disciplinary proceedings against them or no criminal proceedings involving moral turpitude are either pending or decided against them. The empaneled persons would be obliged to forthwith intimate to BHEL initiation of any such case and/or imposition of penalty against them during the period of continuance of their empanelment.

**C5.** Upon approval of the Scheme, the criteria and conditions mentioned in clauses C2, C3, C4, C6, C7, C8, C9 and C10 shall be notified in the official website of the Company.

**C6.** The List/Panel shall be updated from time to time based on request for empanelment received from eligible persons in writing. Mere fulfillment of the criteria for empanelment as aforesaid and submission

of request for empanelment shall not entitle any person to any right to be empaneled.

The empanelment of Conciliators on BHEL's panel of Conciliators shall be done with approval of a Committee comprising of 3 Functional Directors [viz. Director (Finance), Director (E,R&D) and Director (HR)] headed by Director (HR).

- C7.** The panel shall be drawn giving details of the age, qualifications, professional and technical experiences in different fields etc. of the Conciliators.
- C8.** Empanelment by itself will not entitle any person to claim either any fees, or privilege or benefit of any kind whatsoever or for being selected as an IEC or member of IEC in any case or at all.
- C9.** The aforementioned Committee of 3 Functional Directors comprising of Director (Finance), Director (E,R&D) and Director (HR) headed by Director (HR) may add to or delete the name of any Conciliator from the Panel from time to time.
- C10.** Director (HR) may also review the performance of the Conciliator (s) on the panel of conciliators, if required, after every three years.
- C11.** Deletion of name of a person from BHEL Panel of Conciliators pursuant to Clause C9 hereinabove, will not however affect any ongoing case(s) assigned to the concerned Conciliator and the relevant case(s) can continue to be handled by such person till their completion on same terms and conditions as to fees etc. as applicable.

#### **SECTION D**

#### **PROCEDURE FOR CONCILIATION**

- D1.** 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.
- D2.** The concerned Unit / Division / Region/Business Group shall be responsible for the coordination / facilitation of the proceedings including presentation of the case on behalf of BHEL after the IEC has been appointed.

The Unit/Division/Region/Business Group shall have an internal committee of 3 officers as follows:

**A. For Claims up to 5 crores -**

The internal committee shall consist of 3 officers of E-5 level or above from 3 disciplines viz., Finance and Technical (as permanent members for all conciliation cases pertaining to the Unit/Division/Region/Business Group) and 1 member co-opted from the concerned group/department of the case (total 3 members), who shall be the single point coordination agency for the proceedings and representing on behalf of BHEL before the IEC and also to submit response/suggestions/modifications on the recommendations of the IEC. The Member from the concerned group/department of the case shall be the Convener of the Committee.

**B. For Claims more than 5 crores:**

The internal committee shall consist of 3 officers of E-7 level or above from 3 disciplines viz., Finance and Technical Department (as permanent members for all Conciliation cases pertaining to the Unit/Division/Region/Business Group) and 1 member co-opted from the concerned group/department of the case (total 3 members), who shall be the single point coordination agency for the proceedings and representing on behalf of BHEL before the IEC and also to submit response/suggestions/modifications on the recommendations of the IEC. The Member from the concerned group/department of the case shall be the Convener of the Committee.

**C.** For Units/Regions/Divisions/Business Group where officers of E-5 or E-7 level or above of the relevant functions, as the case may be, are not available, the Head of the said Unit/Regions/Division/Business Group after recording reasons in writing may nominate any other suitable officer (s) from the relevant function as member of the Internal Committee.

**D.** The Parties shall be represented by only their duly authorized in-house executives/officers. Neither Party shall be represented by a Lawyer. However, if the IEC desires that some issue of legal nature which is in dispute needs to be clarified/interpreted by a lawyer, then, the IEC, with



the consent of the parties, may take such opinion on the relevant issue from a suitable lawyer.

**D3.** 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. In exceptional cases, where the Parties have otherwise expressed willingness to settle the matter or, in the opinion of the IEC there exists possibility of settlement in the matter, the IEC with the consent of the Parties may extend the proceedings for maximum of two (2) more months (subject to cogent reasons being recorded in writing. Unless the Conciliation proceedings are terminated in terms of para D9 (b), (c) or (d), the IEC shall forward his 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.

**D4.** 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.

**D5.       PROCEDURE FOR CONDUCTING CONCILIATION PROCEEDINGS**

- a) The IEC shall afford adequate opportunities to the Parties to present their cases and evidence. 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.
- b) Recommendations of the IEC shall not be binding on the Parties & it shall also be open to the Parties to accept the recommendations with any modifications they may deem fit.

- c) Response/modifications/suggestions of both 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.

**D6. PROCEDURE FOR SUBMITTING THE DRAFT SETTLEMENT AGREEMENT FOR APPROVAL.**

- a) 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. The Competent Authority in BHEL to accept/reject the proposed Draft Settlement Agreement shall be as per Delegation of Powers - Annexure 1 to BHEL Conciliation Scheme, 2018.
- b) 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.

- c) The Head of the Unit/Division/Region/Business Group shall initiate the requisite Board memorandum containing the Draft Settlement Agreement which shall be routed through Corporate Law Department (till the Alternative Dispute Resolution Group is constituted) for submitting to the Competent Authority for approval as per the extant procedure/practice for submission of the Memorandums for meetings of Board Level Committees. However, there shall be no recommendations on the Draft Settlement Agreement being put up to the Competent Authority for approval by the Unit/Division/Region/Business Group or by Corporate Law Department (or, as applicable the Alternative Dispute Resolution Group).
  - d) 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.
  - e) In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
  - f) For obtaining the decision of the BHEL's competent authority as regards the Settlement Agreement the Unit/Division/Region/Business Group shall submit the Board Memorandum as early as possible but not later than 15 days from the date of receipt of the concurrence of the other party's competent authority to the draft Settlement Agreement in line with para D6(b) hereinabove. Efforts shall be made that decision of the Competent Authority is obtained at the next succeeding meeting of the abovementioned Board Level Committee.
- D7.** 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.

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.

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.

**D8.** 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.

**D9.** 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.
- e) On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

## **SECTION E**

## **FEES AND FACILITIES FOR EMPANELLED CONCILIATOR(S)**

**E1.** The Conciliator(s) shall be entitled to following fees and facilities:

<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
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. E5 herein below.
2	Towards drafting of settlement agreement	<p>In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)</p> <p>In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator)</p> <p>In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator)</p> <p>Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on</p> <p>a. Signing of the Settlement Agreement after approval of the Competent Authority or</p> <p>b. Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.</p>
3	Secretarial expenses	<p>a) Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.</p> <p>b) Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC</p>
4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector	As per entitlement of the equivalent officer (pay scale wise) in BHEL.

<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
	Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	
	ii) Others	<p>As per the extant entitlement of whole time Functional Directors in BHEL.</p> <p>Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class. However, the Head of Unit / Division / Region / Business Group may approve travel by air by Business Class for reasons recorded in writing.</p>
5	Venue for meeting	<p>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.</p> <p>Notwithstanding anything contained hereinabove, for Conciliation wherein the other party involved is a foreign entity and where the IEC, with the consent of the Parties intends to hold the meeting (s) for conciliation outside India, before giving any such consent on</p>

<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
		behalf of BHEL, the necessary approval of CMD would have to be obtained.

**E2.** 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.

**E3.** 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.

**E4.** 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.

**E5.** 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 D9 hereinabove.

**E6.** The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 3 of the Table at para E1 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 E1 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.

**E7.** Revision of fee and expenses of Conciliators shall be done with the approval of the CMD.

## **SECTION F**

### **GENERAL PROVISIONS**

**F1.** 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.

**F2.** 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:

- a) Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
- b) admissions made by the other party in the course of the Conciliator proceedings;
- c) proposals made by the Conciliator;
- d) The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

**F3.** 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.

**F4.** 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.

**F5.** 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.

**F6.** The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.



**F7.** Director (HR) will have power to interpret this Scheme and issue clarifications from time to time.

**F8.** Any deviation from this Scheme will require approval of a Committee comprising of 3 Functional Directors [viz. Director (Finance), Director (E,R&D) and Director (HR)] headed by Director (HR) on a case to case basis and such deviation will not tantamount to an amendment of the relevant provision of the Scheme.

**F9.** The proposals under para F7 or F8 above shall be initiated by the Department/Group within the Unit/Division/Region/Business Group concerned and routed through the Law Department, if any, Head of Finance and Head of Unit/Division/Region/Business Group and forwarded to Corporate Law Department (till the Alternative Dispute Resolution Group is constituted). Corporate Law Department (or, as the case may be, the Alternative Dispute Resolution Group) shall submit the proposal to the concerned competent authority through the concerned Functional Director for obtaining approval thereof.

**F10.** Proposals under provisions of this Scheme, emanating from Manufacturing Units/Divisions/Regions/Business Groups reporting to Chairman & Managing Director, shall be routed through Director (HR).

-----X-----

**ANNEXURE-1 to BHEL Conciliation Scheme, 2018**

**BHEL Conciliation Scheme, 2018**

**Delegation of Powers**

<b>1. Power to add or delete members in the Panel of Conciliators</b>	
<b>Power</b>	<b>Competent Authority</b>
Full Powers	Committee of 3 Functional Directors comprising of Director (Finance), Director (E,R&D) and Director (HR) headed Director (HR)

<b>2. Power to nominate conciliator (s)/IEC members</b>	
<b>Power</b>	<b>Competent Authority</b>
Full Powers	Head of Unit/Division/Region/Business Group having powers of Executive Director or in absence thereof, as per Section B-3 or B-6 of the Scheme, as the case may be.

<b>3. Settlement of disputed claims based on the recommendations of IEC/Conciliator (s)</b>	
<b>Power</b>	<b>Competent Authority</b>
Full Powers to accept/reject a draft settlement agreement.	<p>The Board Level Committee on Alternative Dispute Resolution (BLCADR) of BHEL's Board. The said Committee shall consist of the following members:</p> <ul style="list-style-type: none"> <li>i. Independent Director (Chairperson)</li> <li>ii. Director (Finance)</li> <li>iii. Director (E, R &amp; D)</li> <li>iv. Co-Opt Concerned Functional Director as an additional member, whenever required.</li> </ul>

**APPENDIX TO BHEL CONCILIATION SCHEME, 2018**  
**DECLARATION OF ACCEPTANCE AND INDEPENDENCE BY MEMBERS OF**  
**INDEPENDENT EXPERT COMMITTEE (IEC)**

To

1. BHEL\_\_\_\_\_
2. Contractor/Vendor/Customer/Collaborator/Consortium Partners\_\_\_\_\_

Subject: Declaration of Independence and Impartiality by IEC member in disputes between BHEL\_\_\_ and \_\_\_ under Contract/MoU/Agreement/LOI/LOA No.\_\_\_\_\_ and Acceptance to be a part of the IEC.

I, -----, do hereby agree to serve as a member of the Independent Expert Committee (IEC) to conciliate in the Disputes between the Parties as above-named and hereby make the following declarations:

- i. I am familiar with requirements of law, particularly the Arbitration and Conciliation Act of 1996 and BHEL Conciliation Scheme, 2018.
- ii. I am available to serve as a Member of the Independent Expert Committee and I am independent of any of the Parties involved in the instant Conciliation proceeding and have no interest – financial or otherwise - in any part of the Contract /MoU/Agreement/LOI/LOA under reference or subject matter of the Conciliation proceeding.
- iv. I have not dealt earlier with the Contract/MoU/Agreement/LOI/LOA under reference or the subject matter of the conciliation proceeding in any manner or capacity, which could compromise my ability/independence to impartially Conciliate into the dispute(s).
- v. The fees and other facilities for Conciliation, the terms and conditions of BHEL Conciliation Scheme, offered to me and accepted by me, will remain fixed and under no circumstances will there be any demand from me for any alteration/change therein.
- vi. I shall maintain the confidentiality regarding all matters relating to the conciliation proceedings including the settlement agreement except where its disclosure is necessary for the purpose of implementation and enforcement.

**(Signature)**

**Name:**

**Address:**

**Date:**

**FORMAT FOR SEEKING CONSENT FOR REFERRING THE DISPUTES TO  
CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

**Sub: Resolution of the Disputes through conciliation by Independent Expert Committee (IEC).**

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

Sir,

With reference to above referred Contract/MoU/Agreement/LOI/LOA, you have raised certain Disputes/claims. Vide your letter dated\_\_\_\_\_ you have requested BHEL to refer the Disputes/claims to IEC for Conciliation.

We are enclosing herewith Format (3) for giving consent and the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. You are requested to give your unconditional consent to the said terms and conditions of the Scheme by returning the same duly sealed and signed on each page. On receipt of your consent, matter will be put to the Competent Authority for consideration and decision.

Please note that BHEL has also certain claims against you (if applicable). BHEL reserves its right to agree or not to agree conciliation of the said disputes through BHEL and this letter is being issued without prejudice to BHEL's rights and contentions available under the contract and law.

Yours faithfully,

**Representative of BHEL**

**FORMAT FOR GIVING CONSENT BY  
CONTRACTOR/VENDOR/CUSTOMER/COLLABORATOR/CONSORTIUM  
PARTNERS FOR REFERRING THE DISPUTES TO CONCILIATION  
THROUGH IEC**

To,

BHEL

.....

**Sub: Resolution of Disputes through Conciliation by Independent Expert Committee (IEC).**

Ref: Contract/MoU/Agreement/LOI/LOA No                      & date\_\_\_\_

With reference to above referred contract, our following bills/invoices/claims submitted to BHEL are still unpaid giving rise to Disputes:

SL. no.	Claim Description	Bill submitted to BHEL (no. and date)	Amount of the bill/claim	Amount received from BHEL	Outstanding Amount

Accordingly, we request you to kindly refer the Disputes in respect of above claims to IEC for Conciliation.

We hereby agree and give our unconditional consent to the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. We have signed the same on each page and enclosed it for your consideration.

Yours faithfully,

**(Signature with stamp)**

**Authorized Representative of Contractor  
Name, with designation  
Date**

**Brief Summary to be submitted to Head of Unit/Division/Region for  
referring the Disputes to IEC.**

1. Brief of the Contract
2. History of the Disputes
3. Current Status of the Disputes (whether in Litigation or Arbitration, if any)
4. Claims of the Contractor/Vendor/Customer/Collaborator/Consortium Partners
5. Present stand of BHEL on Contractor's/Vendor's/Customer's/Collaborator's/Consortium Partner's claim
6. Counterclaim of BHEL, if any
7. Final decision of the Unit/Region/Division/Business Group.

**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 Claim(s)/Counter Claim(s):

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

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.*



**DECLARATION TO BE SUBMITTED BY PERSONS PROPOSED TO BE  
EMPANELLED ON BHEL PANEL OF CONCILIATORS.**

I, (Name, Fathers Name, Age, Resident of, Occupation) \_\_\_\_\_ hereby declare and affirm that during my service period no penalty had been imposed on me in any disciplinary proceedings against me or no criminal proceedings involving moral turpitude are either pending or decided against me.

Further, I undertake to intimate to BHEL forthwith regarding initiation of any such case and/or imposition of penalty against me during the period of continuance of my empanelment as Conciliator on BHEL Panel of Conciliators.

## **PROCESS FLOWCHART FOR BHEL CONCILIATION SCHEME, 2018.**

