

Bharat Heavy Electricals Limited



INFORMATION TECHNOLOGY & SERVICES
Bhopal

**Annual Maintenance Contract for IBM P780 Server and
Associated Accessories
Installed at BHEL, Bhopal for Two Years**



Table of Contents		Page No.
A	Tender notice	3
1	Request for proposal	4
2	Instruction and guidelines to bidder	4
3	Technical Terms and conditions	8
4	Commercial Terms and Conditions	12
5	Annexure-I -Price Format	17
6	Annexure-II - No Deviations Certificate	18
7	Annexure-III - Non Disclosure Agreement	19
8	Annexure-IV – Authorization by OEM	20
9	Annexure-V –Ethical Compliance	21
10	Annexure VI-Annual Turnover Chart & copies of Audited Balance Sheets	22
11	Annexure VII- Participation in Reverse Auction	23
12	Annexure VIII- Annexure to Conciliation clause	24

Key Activities and Dates* of tender:

S. No.	Key Activity	Date
1	Issue of Tender	03.06.2020
2	Last date and time for submission of Tender	24.06.2020 11:00 AM
3	Technical Bid opening (PART-I)	24.06.2020 02:00 PM
4	Price Bid opening	Will be intimated later.

* Dates mentioned in this Draft NIT are tentative.

A. Tender Notice:

Ref. No.: BPL/DTG/AMC/2020/1
Date: 03rd Jun, 2020

Subject: Annual Maintenance Contract for IBM P780 server and associated accessories at BHEL, Bhopal for Two Years.

Quotation is invited through email for the above work as per scope of work detailed in this tender and Terms and Conditions as enclosed. Firm offer should be submitted in TWO parts as detailed in relevant sections. All the parts should be individually sealed and provided in pdf format.

Before preparing the bid, please see the details in various Annexures.

BHEL takes no responsibility for delay, loss or non-receipt of tender documents sent by post and also reserves the right to accept or reject any or part of the tender without assigning any reason thereof. Bids must be submitted through email on email ID mmtender.bpl@bhel.in and shall be posted with due allowance for any delay.

With regards
for **Bharat Heavy Electricals Ltd.**

Gaurav Sharma
Dy. Manager (DTG)
BHEL, Bhopal
Tel No.: (0755) 2505433
Email: gsharma@bhel.in

1. REQUEST FOR PROPOSAL

1.1 BRIEF SCOPE OF WORK

Bharat Heavy Electricals Ltd., Bhopal (A Govt. of India Undertaking) invites tender from bidder. The tender is invited in TWO PARTS (EMD, Tender Fee, Techno-Commercial, Annexures, No Deviation Certificate & Price Bid) for AMC of IBM P780 Server and associated accessories.

1.2 The Qualification criteria for the bidders are as follows:

Qualification Criteria:

S.No.	Description
1.	Bidder should provide authorization letter from M/S IBM Ltd.(OEM) Referencing this tender.
2.	Bidder shall have at least Rs.33.68 Lakhs of average annual turnover in three financial years ending with financial year 2018-19. A copy of the audited Balance Sheet & Profit & Loss Account (2016-17, 2017-18, 2018-19) shall be submitted as proof in this regard along with technical bid.
3.	Vendor should have a centralized Contact center wherein calls can be logged through toll free telephone no or mail. Vendor has to provide the escalation matrix for the same.
4.	Bidder must have executed at least one Annual Maintenance Contract (AMC) or Lease rental order(completion of supply) of IBM server in the last 7 years ending with 31.03.20.

2 INSTRUCTIONS AND GUIDELINES TO BIDDER

2.1 Introduction

Bharat Heavy Electricals Ltd., Bhopal (A Govt. of India Undertaking) invites tenders from bidders who qualify as per criteria listed below. The tender is invited for maintenance existing P780 server running oracle based database and applications. The hardware is installed in the primary site at Informatics Centre and at secondary site (Near DR) in Block-1 (~2 KM away from Primary Site).

Total Price shall be for the complete scope as per technical specifications, inclusive of comprehensive onsite maintenance including repair/replacement of parts during the entire period of two years, all taxes & duties, insurance, any other incidental charges, etc. AMC Period of two years shall start from the commencement date mentioned in the work order.

2.2 TENDERER TO INFORM HIMSELF FULLY:

- 2.2.1 The tenderer shall closely pursue all the clauses, specifications, requirements and drawings, etc., indicated in the tender documents, before quoting. Should the tenderer have any doubt about the meaning of any portion of the tender specifications or find discrepancies or omissions in the specifications or if the tender documents are found to be incomplete or require clarifications on any of the technical aspects, scope of work etc., he shall at once contact the official inviting the tender, for pre-bid discussions/ clarifications, before submission of the tender.
- 2.2.2 Tenderer is advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the

tender documents and with the full understanding of the implications thereof. The specifications and terms and conditions shall be deemed to have been accepted unless otherwise specifically commented upon by the tenderer in his offer.

2.3 PROCEDURE FOR SUBMISSION & OPENING OF BIDS

Bid shall be accepted by the official inviting the tender, **in TWO parts**, as described below, on or before the due date & time indicated in the Tender Notice.

PART-I: EMD, Tender Fee, Techno-Commercial BID & No Deviation Certificate

This part shall consist of the following:

1. A copy of Earnest money deposit slip (EMD) which is 4,50,000/- and a deposit slip of Tender Fee of Rs. 1000/-,(GST on Tender Fee shall be extra), which can be deposited on line through following link as mentioned below :
<https://bpl.bhel.com/qcins/iccs.htm>

EMD shall be accepted through

- (i) e-Mode (NEFT/RTGS/Net Banking/POS/SB Collect etc.).
- (ii) in the form of FDR issued by Scheduled Banks/Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)
- (iii) in the form of BG.

In the absence of submission of EMD, the offer will be summarily rejected.

2. Tender fee shall be accepted through e-Mode only (NEFT/RTGS/Net Banking/POS/SB Collect etc.). In the absence of submission of tender fee, the offer will be summarily rejected.
3. All Annexures filled with seal & sign and scanned for soft copy as mentioned as per the check list of documents without Price Bid.
4. Signed and scanned copy of the tender document.

No fees for SME vendors (EMD, Tender fee)

The bidder should offer only as per Specification. BHEL Bhopal reserves the right to accept or reject the technical offer. Price bid of only technically suitable Bidder will be opened. The un-priced copy of the Price bid format shall be the same as the Price bid but without the Prices.

PART-II: PRICE BID

Price Format (Annexure-I) containing PRICES only (to be furnished in the enclosed Price Schedule format only). Prices shall be quoted in Indian Rupees only.

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(s).

BHEL reserves the right to go for Reverse Auction (RA) (Guidelines as available on www.bhel.com) instead of opening the sealed price bid, submitted by the bidder. This will be decided after techno-commercial evaluation. Bidders to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA.

Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit 'Process compliance form' (to the designated service provider) as well as

‘Online sealed bid’ in the Reverse Auction. Non-submission of ‘Process compliance form’ or ‘Online sealed bid’ by the agreed bidder(s) will be considered as tampering of the tender process and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (available on www.bhel.com).

The bidders have to necessarily submit online sealed bid less than or equal to their envelope sealed price bid already submitted to BHEL along with the offer. The envelope sealed price bid of successful L1 bidder in RA, if conducted, shall also be opened after RA and the order will be placed on lower of the two bids (RA closing price /envelope-sealed price)

2.4 Subject and attachment of mail

Bid will be submitted through two separate mails (one for techno-commercial bid including all relevant documents and annexures and second for Price Bid) should be sent to email ID **mmtender.bpl@bhel.in** only. The e-mail subject shall be clearly mentioned as “Part 1 Bid for Enquiry No. **BPL/DTG/AMC/2020/1** for AMC for IBM P780 Server” for Techno Commercial Bid and “Part 2 Bid for Enquiry No. **BPL/DTG/AMC/2020/1** for AMC for IBM P780 Server” for Price Bid.

Mail for Techno Commercial Bid with subject “Part 1 Bid for Enquiry No. **BPL/DTG/AMC/2020/1** for AMC for IBM P780 Server” shall have following documents-

- PART-I:**
- 1. TENDER ENQUIRY NO. AND DESCRIPTION**
 - 2. DUE DATE OF OPENING**
 - 3. TENDER FEE DEPOSIT SLIP**
 - 4. EMD DEPOSIT SLIP**
 - 5. TECHNO-COMMERCIAL & UN-PRICE BID**
 - 6. NO DEVIATION CERTIFICATE**

Mail for Price Bid with subject “Part 2 Bid for Enquiry No. **BPL/DTG/AMC/2020/1** for AMC for IBM P780 Server” shall have following documents-

- PART II:**
- 1. TENDER ENQUIRY NO AND DESCRIPTION**
 - 2. DUE DATE OF OPENING**
 - 3. PRICE BID**

2.5 BID SUBMISSION

Bids must be submitted through email on email ID mmtender.bpl@bhel.in and shall be posted with due allowance for any delay. Bids shall be submitted latest by 11:00 Hrs. of the due date. Bids received after the Due Date and Time shall be rejected.

The price bid should not be submitted in Technical Bid e-mail. Mails with wrong subject will be liable to be rejected.

The online Bid shall be sent only to email ID mmtender.bpl@bhel.in only. It should not be sent on other e-mail ids (also shall not be sent on Cc/BCC to any other E- mails). The tender sent on other e-mail ids shall be rejected.

2.6 BID OPENING

- 2.6.1 PART-I (EMD, Tender Fee, Techno-Commercial Bid & No Deviation Certificate) mail is to be opened on the due date and time as specified in the NIT/RFQ, or extension thereof, in the presence of bidder who may like to attend. Part-II (Price Bid) shall be opened subsequently.

- 2.6.2 Date and time of Price Bid (Part-II) opening shall be intimated to the technically and commercially acceptable bidder only.
- 2.6.3 Not more than two representatives will be permitted to be present for the tender opening.
- 2.6.4 No correspondence shall be entertained from the bidder after the opening of Price bid(s).
- 2.6.5 Standard pre-printed conditions of the bidders attached to the offer will not be accepted and only those mentioned in the body of his offer will be considered.
- 2.6.6 Unsolicited bids shall not be entertained. Unsolicited revised Price Bids also, shall not be entertained at any stage of the tendering process.
- 2.6.7 No Literature, Pamphlets is to be enclosed. All such enclosures shall be considered as unread and also will not be considered as part of the quotation.
- 2.6.8 Bidder not submitting PART-I (EMD, Tender Fee, Techno-Commercial Bid & No Deviation Certificate), their offer's PART II will not be opened (Rejection of Bidder's Offer).

2.7 VALIDITY OF OFFER

Offer shall be kept valid for 4(four) months from the due date of part-I opening.

2.8 DEVIATIONS

Bids shall be submitted strictly in accordance with the scope of work and Terms & Conditions of the Tender Enquiry. **"No-Deviation Certificate" has to be submitted along with Part – I.**

2.9 LANGUAGE & CORRECTIONS

- 2.9.1 The bidder shall quote the rates in English language and international numerals only. The metric system of units shall be used, for the purpose of tender.
- 2.9.2 Bidder shall fill the ORIGINAL tender documents issued by BHEL. All entries and signatures in the bid shall be in **BLUE INK only**. Each page of the bid shall be signed and stamped using official seal of the company by the bidder.
- 2.9.3 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.
- 2.9.4 However, if any cancellations, corrections and insertions are in the bid, the bidder shall duly attest the same.

2.10 REJECTION OF BID AND OTHER CONDITIONS

- 2.10.1 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.
- 2.10.2 Bidder may visit the site at BHEL, Bhopal between 9AM to 4PM on working days before bid submission date.

- 2.10.3 Canvassing in any way concerning this tender, wrong declaration, incorrect information, misleading or incorrect certifications, etc. shall be viewed seriously and suitable action will be taken as per company norms.
- 2.10.4 The BHEL reserves to itself, full rights for the following without assigning any reasons, whatsoever:
- i. To reject any or all the bids.
 - ii. To increase or decrease the quantities.
- 2.10.5 The offer is liable to be rejected, if it is found after the Price Bid Opening that the Price Bid submitted by the bidder is different from the un-priced bid.
- 2.10.6 If the bidder deliberately gives wrong information in his bid, BHEL reserves the right to reject such a bid at any stage or to cancel the Order/Contract, if awarded and forfeit the security deposit/ Bank Guarantee.
- 2.10.7 If the Prices/Rates of one or more of the enquired items have not been quoted, the offer is liable to be rejected.

2.11 TENDER EVALUATION

- 2.11.1 Tender will be evaluated based on total of quarterly AMC charges including taxes which means total cost to company (basic +GST +Any other tax if applicable) less input credit applicable to BHEL (GST + Any other tax if applicable).

2.12 PRICE DISCREPANCY

Total/Gross Total of Prices should be indicated both in words as well as in figures. Following shall be considered for evaluation and ordering for non-conformities/errors/ discrepancies in price bid:

- a) If, in the price structure quoted for the required goods/ services/ works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of BHEL there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.

3.0 Technical Terms and conditions

3.1. Scope of Work

- 3.1.1. Maintenance of the hardware, software and other equipment throughout the AMC period as per the service level agreement.
- 3.1.2. Fail-over test of a partition or a Server.
- 3.1.3. Failover of clustered partitions and applications and their automatic restoration.

- 3.1.4. Maintenance of Clustering, High availability features.
- 3.1.5. Maintenance of Synchronous and asynchronous SAN based data replication between primary and secondary site.
- 3.1.6. Backup and Restore options.
- 3.1.7. Fail-over of a Server with multiple partitions.
- 3.1.8. Failure of each SAN switches and sustenance of service.
- 3.1.9. Fail-over of Storage.
- 3.1.10. Fail-over of Storage Controller.
- 3.1.11. Fail-over of entire Primary / secondary site.
- 3.1.12. Successful running of Oracle based system and sub-systems and applications in other partitions after installation of oracle software on respective servers with acceptable performance.
- 3.1.13. Installation of required OS level Patches, updates and file-sets as recommended by Oracle.
- 3.1.14. Creation of required file-systems.
- 3.1.15. OS level tuning for better performance.
- 3.1.16. Support during BCP testing.
- 3.1.17. Maintenance of Precision AC and UPS at DR Site.
- 3.1.18. Scope of work will also include any other item required for smooth working of server and its related components.

3.2 Service Level Agreement (SLA)

- 3.2.1 As the equipment will be used for running mission critical ORACLE database and applications, the vendor shall provide an uptime of 99% on all hardware & software products on monthly basis.
- 3.2.2 If the availability of the systems, or part thereof, is below 95% on monthly basis, continuously over a period of 3 months, BHEL reserves the right to terminate the contract in full, however BHEL will make payments to vendor till the date of termination as per SLA terms.

3.3 Penalty for SLA Non-Conformance:

At the end of each quarter, downtime will be calculated for all the hardware and software.
Downtime will be calculated based on uptime on monthly basis.
The deductions will be made as per the following formula:

Deduction (D) = (downtime in minutes (d) X Maintenance charge per minute I X multiplication factor (f))

Where Multiplication Factor is given below

For Uptime > 99.00 Multiplication Factor is 0.00
For Uptime between 98.00 and 99.00, Multiplication Factor is 2.00
For Uptime between 97.00 and 98.00, Multiplication Factor is 5.00
For Uptime between 96.00 and 97.00, Multiplication Factor is 8.00
For Uptime between 95.00 and 96.00, Multiplication Factor is 12.00
For Uptime below 95.00, Multiplication Factor is 15.00

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

3.4 Availability of Spares:

Sufficient stock of critical spares shall be maintained at the Primary and Secondary sites at all times to ensure the uptime.

3.5 Warranty & Support:

- 3.5.1 All the supplied equipment / systems (hardware/software excluding Oracle Products) shall be covered under a Comprehensive On-Site Warranty & service support for 2 (Two) years. The period shall start from the commencement date mentioned in the Work order. Warranty & Support shall be delivered directly by the OEM for Servers, Storage and Backup Systems. In case of authorized partner being the Vendor, certificate from OEM should be attached stating that the OEM will provide support directly during the AMC period, the posting of the OEM's Engineer, replacement of spares, etc. The warranty & support from OEM shall ensure the uptime requirement of 99% and above.
- 3.5.2 On-Site Engineers
- a) At least one qualified, trained and certified on-site engineer in the respective Server and Storage Management from OEM with at least 3 years of experience on such UNIX servers, storage and backup solutions shall be posted.
 - b) The OEM engineer shall do health monitoring, performance monitoring, capacity monitoring & critical parameter monitoring of the servers on daily basis. He shall also do diagnostics, fault checking, hardware & software troubleshooting, call logging, spares replacement and also carry out regular backup of the data and critical system files. He shall also be responsible for ensuring uptime of all other items installed like Precision AC, UPS, SAN, LAN switches etc.
 - c) The Vendor shall also post on-site operations engineers to run the Computer systems during round-the-clock 3-shift operations of both the Primary and the Secondary site. Two Engineers are required to support the two shift operations and on call (on requirement basis) for third shift. These engineers shall be at least Diploma holders in Computer Science/Communications with one year experience.
- 3.5.3 Vendor shall arrange for boarding, lodging and logistics of onsite OEM engineer and operations engineers.

3.5.4 If the OEM engineer posted goes on leave for more than a day with permission from BHEL, then another equivalent engineer shall be posted till he returns back.

3.5.5 If a change of On-site OEM Engineer is requested by BHEL, citing reasons, the vendor shall arrange a replacement the engineer within 02 (Two) weeks having the same or higher competence level.

3.5.6 **Warranty shall cover the following:**

- a) Repair / Replacement of faulty / defective Hardware and other supplied items inclusive of supply of all types of spare parts etc. (Including batteries)
- b) All Software Patches, Upgrades, updates, Service Packs, etc. of the Operating System and all other Software supplied by the OEM must be made available free of cost during the entire contract period (2 years).
- c) Installation / Re-Installation / Maintenance and update patches, upgrades, updates and fixes of OS, System software and other software supplied in the contract.
- d) Licenses are perpetual and should be made current whenever the license policy of the Software changes during AMC period..

3.5.7 **Support shall include the following**

- a) Monitoring, logging and reporting on Daily/ Weekly/ Monthly basis as required by BHEL in the specified formats the Performance and operations of the Servers, storages and the back-up system on 24x7x365 basis.
- b) Periodic health checks of the systems using diagnostic tools and implementing proactive rectification measures.
- c) Troubleshooting Servers, OS, SAN and backup related issues.
- d) Analyzing and reporting all system related issues.
- e) Managing users, roles and passwords of all the relevant subsystems of Servers, OS, Storage etc.
- f) Liaison with various vendors, OEMs, agencies and service providers for equipment maintenance & related work.
- g) All incidents must be documented and logged as per the format specified by BHEL.
- h) Any change in the IP Scheme, if required, limited to all the equipments installed at Primary site & Secondary site shall be done in consultation with BHEL's Network Manager.

3.5.8 All UPS batteries to be refreshed as and when they fail without any cost to BHEL.

3.6 Server Administration Functions include following activities for the ORACLE Environment in consultation with BHEL Personnel.

- a) Operating System tuning.
- b) OS and software Re-installation in the event of system crash/failures
- c) Configuring file systems, volumes and apportioning disk space.
- d) Ensure proper configuration of server parameters.
- e) Periodic System performance tuning for optimizing the Oracle performance.
- f) Addition, deletion, re-configuration of devices, additional users and printers etc.
- g) Implementing security patches on servers at all levels.
- h) Orderly start-up and shutdown of servers as per laid down procedures.
- i) Security management – Configuring account policy, access rights, password control as per BHEL's security policy.
- j) Scheduling and optimizing all critical services run on the hardware.
- k) Maintain lists of all system files, root directories and volumes.
- l) Resolving all server related problems.
- m) Escalating unresolved problems to ensure resolution as per the agreed SLA

3.7 Storage Administration

- a) Management of storage environment to maintain performance at optimum levels
- b) Regular backups of Storage software.
- c) Management of the storage solution including, but not limited to, management of space, volume, RAID configuration, configuration and management of disk array, SAN fabric / switches, tape library etc. as per mutually agreed storage management policy.

3.8 Backup and Restore

- a) 24x7x365 support for file and volume restoration requests.
- b) Must take regular Backup of operating system, database and application as per stipulated policies and time schedule.
- c) Must conduct periodic restore operations of backed up data.
- d) Regular maintenance of all the media and the backup / storage devices.

3.9 The offline support shall have:

- (a) 24x7 National telephonic support.
- (b) Access to raise technical assistance request at hardware vendors / supplier website

4 Commercial Terms and Conditions

4.1 GENERAL

The words incorporating singular shall include plural and vice-versa, in the words importing masculine gender shall include feminine and vice-versa and the words importing persons shall include bodies; corporate, limited liability companies, partnership and other legal entities.

4.2 Expectations from Bidder:

Bidder is required to give a total solution & services as per scope of Work of tender. The full working of all IT Equipment and Services is the responsibility of the Bidder. Bidder should have PF no. and ESI No./ Medical policy for executing the contract. Bidder should not have any ongoing legal proceeding against him for unethical business practices (compliance to be provided as per Annexure V).

4.3 Work Schedule:

Commencement date of contract will be mentioned in Work order. The duration of the contract will be two year from the start date.

4.4 RATES

Rates are to be quoted as per Price Bid Format. Details of prevailing rates of taxes should be indicated separately. Bidders, in their own interest, are requested to check up and indicate the applicable taxes (name & percentage). Taxes not mentioned by the bidder in their bid will not be entertained at later date. However, during the execution of the contract any increase or decrease in the above taxes/imposition of new taxes will be entertained against documentary proof.

4.5 PAYMENT TERMS

The payment will be made on quarterly basis within 60 days after completion of each quarter and submission of invoice(s) in triplicate. GST shall be payable extra. Any loss of tax credit or additional liability on BHEL due to the reason attributable to the vendor shall be recovered from them

along with interest. For SME vendors, payment shall be done in 45 days after completion of each quarter on submission of invoice. SME certificate to be submitted along with offer.

4.6 SECURITY DEPOSIT

Security Deposit shall be collected from the successful tenderer. The total amount of Security Deposit will be 5% of the contract value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.

The security Deposit of not less than 50% of the total security deposit shall be deposited before commencement of the work by the contractor.

The balance amount(50%) to make up the required Security Deposit of 5% of the contract value shall be deducted from the subsequent bills.

Modes of deposit:

The balance amount to make up the required Security Deposit of 5% of the contract value may be accepted in the following forms:

- i) through e-Mode (NEFT/RTGS/Net Banking/POS/SB Collect etc.)
- ii) Cash (as permissible under the extant Income Tax Act)
- iii) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL
- iv) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL
- v) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)
- vi) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL)

(Note: BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith)

4.7 BANK CHARGES

Unless otherwise specified, the Bank charges, if any, shall be to the account of Vendor.

4.8 Non-Disclosure Agreement:

Vendor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the Purchaser and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalized during the course of execution of the order/contract.

The vendor 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. The vendor shall sign a Non-Disclosure Agreement (NDA) as per BHEL format in compliance to Information Security Management System. The proforma for Non Disclosure Agreement is attached as

4.9 FORCE MAJEURE

Vendor 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 to the Purchaser 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.

4.10 RISK PURCHASE

Purchaser shall reserve the right to terminate the order/ contract and purchase from elsewhere at the risk and cost of the Vendor, either the whole or part of the Systems/ goods, which the Vendor has failed to deliver within the stipulated delivery period or if the same were not available, the best and the nearest available substitute(s) thereof. The Vendor would be liable to compensate the Purchaser for any loss, which the Purchaser may sustain by reason of such purchase. This clause will be operated only after completion of delivery period including extended period with penalty.

4.11 SUB-CONTRACTING

Order/contract or any part thereof shall not be sub-contracted, assigned or otherwise transferred without prior written consent of the Purchaser.

4.12 TERMINATION OF THE CONTRACT & ITS CONSEQUENCES

- a) Purchaser reserves the right to terminate the order/contract, either wholly or in part, upon situations arising due to non-compliance of stipulations of the Order/contract by the Vendor, or non-performance of the equipment/system below 95% continuously for more than 3 month, at the risk and cost of the Vendor.
- b) In case of the contract termination, Vendor will remove the equipment from Purchaser premises at his own risk and cost after due permission from BHEL.
- c) Vendor shall continue the performance of the order/contract under all circumstances, to the extent not cancelled.
- d) BHEL reserves the rights to cancel the contract in case the equipment and services are not found to be satisfactory.
- e) Consequences: As soon as the contract is cancelled / terminated by BHEL, no payment will be payable to the Vendor.

4.13 SETTLEMENT OF DISPUTES

- a) Except as otherwise specifically provided in the Order/Contract, all disputes concerning questions of the facts arising under the Order/Contract, shall be decided by the Purchaser, subject to written appeal by the Vendor to the Purchaser, whose decision shall be final to the parties hereto.
- b) Any disputes or differences shall be to the extent possible settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.
- c) However, the Vendor shall continue to perform the Order/Contract, pending settlement of dispute(s).

4.14 CONCILIATION

The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include 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 (delete whichever is inapplicable), which the Parties are unable to settle

mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

The 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 in **Annexure VIII** .

4.15 ARBITRATION

In all cases of disputes emanating from and in references to this agreement the matter shall be referred to the arbitration. All disputes or differences between the parties will be resolved through arbitration governed by Arbitration & Conciliation Act 1996 as amended from time to time. The venue of arbitration shall be Bhopal.

4.16 ACCEPTANCE OF ORDER

Letter of acceptance along with Security Deposit is to be submitted within one week of receipt of Letter of intent. Workorder shall be issued on receipt of acceptance.

4.17 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, BHEL will reject a proposal for award if it determines 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 benefits of competition to BHEL.

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

4.18 Limitation of Liability

The Vendor’s liability will be limited to the value of this contract only.

4.19 CONFIDENTIALITY

Vendor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the Purchaser and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalized during the course of execution of the order/contract.

4.20 CHECKLIST OF DOCUMENTS:

(TO BE ATTACHED WITH TECHNO-COMMERCIAL BID DULY FILLED BY THE BIDDER)

S No	Annexure to be attached	Format attached as Annexure	Attached (Yes / No)
1	Price Bid	Annexure-I	Yes / No
2	No Deviation Certificate	Annexure-II	Yes / No
3	Non- Disclosure Agreement (NDA)	Annexure-III	Yes / No
4	Authorization letter from OEM citing reference of this tender	Annexure-IV	Yes / No
5	Ethical compliance	Annexure-V	Yes / No
6	Annual Turnover Chart & copies of Audited Balance Sheets	Annexure-VI	Yes / No
7	Participation in Reverse Auction	Annexure-VII	Yes/No
8	Earnest Money Deposit slip		Yes / No
9	Tender fee of Rs.1000/-		Yes / No
10	Quoted for all items	Check	Yes / No
11	The Vendor should have PF and ESI/Medical Policy for persons deployed at BHEL Site.	PF/ESI Certificates	Yes / No
12	Signed copy of tender		Yes / No
13	Certificate of Incorporation		Yes / No

ANNEXURE I		Price Format for AMC of P780 Server and associated accessories						All prices are in INR		
Description	Qty DC	Sr No	Qty DR	Sr No	Total Qty	Maintenance Charges per Qtr. for Total Qty.(Excl taxes)	Applicable Taxes @ % (Name and % to be given)	Maintenance Charges per Qtr. for Total Qty.(incl taxes)	Annual Maintenance Cost for 2 yrs(excl taxes)	Annual Maintenance Cost for 2 yrs(incl taxes)
		Q		R		S		T=R+S	U= R*8	V= T*8
Server - 9179 Model MHC -P780	1	06ADF9R	1	06AE0CR	2					
4.1 / 3.9 GHz.0/8-16 TurboCore Card	1		1		2					
Software										
IBM PowerHA Standard Edition	1		1		2					
Hardware Console										
HMC 1 - DC:7042-CR6 Rack-mounted Hardw.Mgmt.Console	1	067951C	1	067956C	2					
Software -Per Processor Software	1		1		2					
X SERIES SERVERS										
x3650 M3, Xeon 6C E5645 80W 2.40GHz/1333MHz/12MB,	1	06DDPG6	1	06DDPE8	2					
1x4GB, O/Bay HS 2.5in SAS/SATA, SR M5014, 460W p/s, Rack	1		1		2					
Storage										
IBM Storwize V7000 Disk Control Enclosure (Make Model 2076/324)	1	78N1XTZ	1	78N1XV1	2					
300 GB 2.5-inch 15K RPM SAS HDD	24		24		48					
Software										
IBM Storwize V7000 Software V6.3.0	1		1		2					
IBM Storwize V7000 Disk Expansion Enclosure (Make Model 2076/224)	1	78N1V6T	1	78N1V7H	2					
300 GB 2.5-inch 15K RPM SAS HDD	24		24		48					
Enclosure(Make Model 2076/224)	1	78N1Z3G	1	78N1TFZ	2					
300 GB 2.5-inch 15K RPM SAS HDD	11		11		22					
1 TB 2.5-inch 7.2k HDD	13		13		26					
Tape Library										
TS3500 Tape Library (Make Model 3584-L53)	1	7826342	1	7826335	2					
TS1050 Ultrium 5 Tape Drive	4	8AC10C,78AC090,78AC091	4	78AC08E,78AC099,78AC09F,78AC080	8					
TS3500 Tape Library Expansion	1		1		2					
SAN Switch -Cisco MDS 9148 Fabric Switch (Make Model 2417-C48)	2	13FZ8V8,13F288W	2	13F2Z76,13F30ZX	4					
LAN Switch -Cisco C3750-X-48 port	2		2		4					
UPS - Emerson 2*20KVA PR online S420D	0		1		1					
Emerson 12V battery Bank 100Ah 60 min	0		1		1					
AC - EmersonNetwork pwer Liebert (10T with ICOM) (PEX135 Floor Mounted)	0		2		2					
Miscellaneous - Maintenance of Fiber Optic cable laid between sites in two routes(Distance between sites 1.5 km approx)	1									
Existing support for all running softwares and OS versions										
Manpower -OEM Onsite Engineer					1					
Onsite support engineer from SI (1 engineer per shift * 2 shift)					1*2					
Backup Software										
				Total						

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Annexure-II

**FORMAT FOR
“NO DEVIATION CERTIFICATE”**

Tender Enquiry No: BPL/DTG/AMC/2020/1 Dtd: 03.06.2020

This is to certify that our offer is exactly in line with your tender enquiry no. **BPL/DTG/AMC/2020/1 Dtd: 03.06.2020**. 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: _____

Place:
Date:

Signature with seal

Annexure-III

 BHEL - BHOPAL	THIRD PARTY NON-DISCLOSURE AGREEMENT	Doc. No. : ISMS-04/TP/011
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THIRD PARTY NON-DISCLOSURE AGREEMENT

I, _____, on behalf of the _____ (Name of Company)

acknowledge that the information received or generated, directly or indirectly, while working with BHEL, Bhopal on contract is confidential and that the nature of the business of the BHEL, Bhopal is such that the following conditions are reasonable, and therefore:

I warrant and agree as follows:

I, or any other personnel employed or engaged by our company, agree not to disclose, directly or indirectly, any information related to the BHEL, Bhopal Without restricting the generality of the foregoing, it is agreed that we will not disclose such information consisting but not necessarily limited to:

- ☐ Technical information: Methods, drawings, processes, formulae, compositions, systems, techniques, inventions, computer programs/data/configuration and research projects.
- ☐ Business information: Customer lists, project schedules, pricing data, estimates, financial or marketing data,

On conclusion of contract, I, or any other personnel employed or engaged by our company shall return to BHEL, Bhopal all documents and property of BHEL, Bhopal, including: drawings, blueprints, reports, manuals, computer programs/data/configuration, and all other materials and all copies thereof relating in any way to BHEL, Bhopal's business, or in any way obtained by me during the course of contract. I further agree that I, or any others employed or engaged by our company shall not retain copies, notes or abstracts of the foregoing.

This obligation of confidence shall continue after the conclusion of the contract also.

I acknowledge that the aforesaid restrictions are necessary and fundamental to the business of the BHEL, Bhopal and are reasonable given the nature of the business carried on by the BHEL, Bhopal I agree that this agreement shall be governed by and construed in accordance with the laws of country.

I enter into this agreement totally voluntarily, with full knowledge of its meaning, and without duress.

Dated at _____ this _____ day of _____, 20__.

Name

Company

Signature

AUTHORIZATION BY OEM

Date: _____

To,
Information Technology and Services Department
BHEL, BHOPAL

Subject: **Letter of Authority**

Tender Ref. No.: **BPL/DTG/AMC/2020/1** dated _____

Dear Sir,

We hereby authorize _____ who has all India presence and fulfills the requirements of the tender enquiry ref. no. **BPL/DTG/AMC/2020/1** dated _____ to quote/ negotiate and service the equipment as required in the above tender enquiry.

This authorization is valid only for the following equipment for which we are the OEM:

1. _____
2. _____
3. _____
4. _____
5. _____

The authorized agency would ensure reliable service during complete AMC period.

In case of any default we would do alternative arrangement on the same terms and conditions as negotiated and finalized in this tender enquiry.

(Authorized Signatory)

For _____

Note: This 'Letter of Authority' should be issued on the letterhead of OEM and enclosed in Part-I.

Annexure – V

Ethical Compliance

Date: _____

To,
Information Technology and Services Department
BHEL, BHOPAL

Subject: **Letter of Authority**

Tender Ref. No.: **BPL/DTG/AMC/2020/1 dated 03.06.2020**

Dear Sir,

We hereby declare that our firm is not having any ongoing legal proceeding against us for unethical business practices. Our firm is not prohibited from participating in any or all central government/central PSU/state PSU/state government Enquiries.

We ensure reliable service during complete AMC period.

In case of any default we would do alternative arrangement on the same terms and conditions as negotiated and finalized in this tender enquiry.

(Authorized Signatory)

For _____

Annexure-VI**Annual Turnover Of Bidder**

Sl. No.	Financial Year	Turnover (In Rs. Lakhs)
1	2018-2019	
2	2017-2018	
3	2016-2017	

Annexure-VII

**FORMAT FOR
“PARTICIPATION IN Reverse Auction”**

Tender Enquiry No: BPL/DTG/AMC/2020/1 Dtd: 03.06.2020

This is to certify that our offer is exactly in line with your tender enquiry no. **BPL/DTG/AMC/2020/1 Dtd: 03.06.2020** This is to specifically certify that we shall participate in Reverse auction

Signed By:

Name: _____

Designation: _____

Organization: _____

Date & Place: _____

Phone/Fax/Mobile/Email: _____

Stamp & Seal: _____

Place:
Date:

Signature with seal

Annexure to Conciliation clause
UNDER THE BHEL CONCILIATION SCHEME, 2018

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The 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:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not 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.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores Conciliation shall be carried out by 3 Conciliators nominated by BHEL.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. 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 and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months

with the consent of the Parties subject to cogent reasons being recorded in writing.

7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within within 1 month from the date of conclusion of the last hearing.
8. Response/modifications/suggestions of 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its 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.

14. 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.

15. 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.

16. 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. 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.

17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

SI No	Particulars	Amount
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. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)

SI No	Particulars	Amount
		In cases involving claim and/or

		<p>counter-claim of exceeding Rs 5 crores but less than Rs 10 crores.</p> <p>Rs 75,000 (per Conciliator)</p> <p>In cases involving claim and/or counter-claim of more than Rs 10 crores.</p> <p>Rs 1,00,000/- (per Conciliator)</p> <p>Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.</p>
3	Secretarial expenses	<p>Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.</p> <p>Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC</p>
4	<p>Travel and transportation and stay at outstation</p> <p>i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)</p>	<p>As per entitlement of the equivalent officer (pay scale wise) in BHEL.</p>
	Others	<p>As per the extant entitlement of whole time Functional Directors in BHEL.</p>

SI No	Particulars	Amount
		Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
5	Venue for meeting	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.

24. 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.
25. 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.
26. 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.

27. 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 22 hereinabove.
28. 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 23 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 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
29. 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.
30. 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.
31. 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.
32. 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.

33. 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.

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

Format 2 to BHEL Conciliation Scheme, 2018

**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 3 to BHEL Conciliation Scheme, 2018
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

Format 5 to BHEL Conciliation Scheme, 2018
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 Clam(s)/Counter Claim(s):

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

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.*

