

BAP: IC: Network Upgradation

Dated: 20-07-2015

<b>Subject</b>	<b>Tender Change Notice (TCN) – 06</b>
<b>Job</b>	<b>Network Upgradation at BHEL Ranipet</b>
<b>Ref:</b>	<b>NIT-22638 dated 22/05/2015</b>

With reference to above, the revised tender submission date may please be noted and complied with, while submitting the offer

S.No	Tender Reference	Earlier Tender description	Revised Tender description
1		Tender Submission date <b>21-07-2015</b>	Tender submission date <b>31-07-2015</b>
2		<b><u>Clause 2. Eligibility Criteria</u></b>  8) At least one of these contracts (in a/b/c above) or any other contract with order value of not less than Rs. 2.0 Crores, shall be on lease rental basis. The lease rental contract should have been successfully completed or if continuing, should have completed at least 3 years.	<b><u>Clause 2. Eligibility Criteria</u></b>  8) At least one of these contract (in a/b/c above ) or any other contract should meet either of the following two conditions ,however contract should be on lease rental basis of value not less than 2.0 Crores-  i)The contract should have been successfully completed within last one year counting from the date of Technical Bid Opening ii)Those vendor who are having on going contract should furnish supporting documents with un priced PO Copies
3			TRIPARTITE Contract Agreement format attached as Annexure IX

All other terms and conditions of the tender shall remain unchanged.

Tenderer shall sign and stamp this page also and submit it along with the Technical offer as a token of acceptance of the above.

For clarifications, if any, contact

Phone: 04172-284383  
E-mail: [sksingh@bhelrpt.co.in](mailto:sksingh@bhelrpt.co.in) or  
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ANNEXURE IX

FINANCE LEASE CUM HIRE PURCHASE AGREEMENT (TRIPARTITE)

THIS FINANCE LEASE AGREEMENT executed on this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand \_\_\_\_\_ (\_dd / \_mm/yyyy) at [place].

**BETWEEN**

[Name of the Company], a Company incorporated under the Companies Act, 1956, having its Registered Office at [Address of the company] REPRESENTED by its **Financing Account Manager**, [Name of Finance Manager] herein after called "the **"LESSOR"**" (which expression shall, unless repugnant to the subject or context thereof include its successors and assigns) of the first part.

**AND**

**BHARAT HEAVY ELECTRICALS LIMITED** a Company incorporated under the Companies Act, 1956, having its Registered office at BHEL house, Siri Fort, New Delhi - 110049, through one of its units at [Boiler Auxiliaries Plant, Ranipet], represented by its competent authorities Sri. [Name and designation] hereafter called "**the LESSEE**" (which expression shall unless repugnant to the subject or context thereof include its successors and assigns) of the second part.

**AND**

[Name of the vendor] a Firm incorporated / a Company incorporated under the Indian Partnership Act 1932 / Companies Act, 1956 having its Principal Office at [address of the vendor] represented by its Managing Partner/The designation, Mr. (Name) hereinafter called "**the VENDOR**" (which expression shall unless repugnant to the subject or context thereof include its successors and assigns of the third part.

Whereas the **LESSEE** has placed a LOI. [LOI No.] dated [dd] / [mm] / [yyyy] on the **VENDOR** for supply, Installation and maintenance of Network Equipment described in Schedule- A to the said LOI for a period of 5 years on finance lease rental basis.

Whereas, the Lessor and the Vendor through this Agreement have impliedly entered into a business arrangement for leasing out the Equipment more fully described in Schedule A to the Lessee on certain terms and conditions mentioned in this Agreement.

And whereas the **LESSOR** has offered to purchase from the **VENDOR** the said equipment more fully described in **Schedule A** hereto (herein after referred to as the "Equipment") at the acquisition cost specified in **Schedule A** to this Agreement for leasing the same to **LESSEE** upon the terms and conditions contained herein and has released Advance Purchase Order dated [dd] / [mm] / [yyyy] on the **VENDOR**.

And whereas the **LESSEE** has offered to take on lease the Equipment so purchased by the **LESSOR**, and the **LESSOR** has agreed to lease out the Equipment to the **LESSEE** upon the terms and condition contained herein.

And whereas the **VENDOR** has agreed to supply the Equipment purchased by the Lessor vide

Advance Purchase Order No.....Dt....., install the Equipment in the premises of the Lessee at desired places and provide maintenance services to the **LESSEE** subject to the terms and conditions of this agreement.

## 1. DEFINITIONS

In this agreement, unless context otherwise so requires, the following expressions shall have the following meanings viz:

### 1.1 "Agreement"

Shall mean this Agreement.

### 1.2 "Clause"

Shall mean clause of this agreement and accordingly the word "Sub-Clause" shall mean Sub-Clause of a clause of this agreement.

### 1.3 "Commencement Date"

Shall mean the date of installation of this Equipment as mentioned in the LOI[LOI No] dated **[dd]/[mm]/[yyyy]** as confirmed by the Lessee to the Lessor by the Lessee signing an Acceptance Certificate in the form of **Schedule D** to this Agreement and inserting the "Acceptance Date".

### 1.4 "Equipment"

Shall mean all the articles and things described in **Schedule - A** to this Agreement purchased by the **LESSOR** from the **VENDOR** and leased to the **LESSEE** and includes any individual items contained in the Equipment and all alterations, replacements and / or additions to the Equipment or any item or part thereof during the period of this Agreement. Provided that where there is more than one item of Equipment, the lease hereunder shall be deemed to be of each such of Equipment individually and the provisions of this agreement shall be applicable independently to each such item of Equipment individually, whether or not such item of Equipment be of same or similar description or use, or is to be placed at the same location.

**1.5 "Force Majeure"** means any act of God or other event beyond the reasonable control of the parties to this Agreement, including (without limitation) natural disaster, economic recession, currency controls, riots, terrorism or military conflict.

### 1.6 "Lease Period"

Shall mean five years from the Acceptance Date specified in the Acceptance Certificate which is non-cancelable by the **LESSEE** or the **LESSOR** except as provided herein.

### 1.7 "Rentals"

Shall mean the lease rental to be paid by the **LESSEE** to the **LESSOR** as mentioned in **Schedule - B** of this Agreement.

### "Maintenance Fee"

Shall mean the maintenance fee payable by the Lessee to the Vendor as specified in **Schedule - C** of this Agreement.

### **1.8 "Schedule"**

Shall mean the schedule or schedules, which may now or from time to time be incorporated hereunder as an integral part of this agreement.

### **1.9 "Lease"**

Shall mean the lease of the Equipment by the **LESSOR** to the **LESSEE** on FINANCE LEASE basis (wherein all the risks and rewards incidental to the ownership of the leased assets is transferred to the **LESSEE** at the inception of the lease as per AS 19 (Accounting Standard 19) issued by the Institute of Chartered Accountants Of India) and the grammatical variations or cognate expressions of the term shall be construed accordingly.

### **1.10 "Commissioning"**

Installing the Core Switch, Distribution Switch, UTM, NMS, Server Farm Switch etc. as per scope of work mentioned in Tender document clause of Scope of work ( Clause 4 and its sub clauses) & Technical terms and conditions ( Clause 5.0 and its sub clauses) that form part of the LOI [LOI No.] dated [dd]/[mm]/[yyyy].

## **2. BASIC TERMS OF LEASE**

**2.1** The **LESSEE** will avail Income Tax Depreciation since all the risks and rewards incidental to ownership is transferred to the **LESSEE** as per AS 19 issued by ICAI.

The supply of the Equipment to the **LESSEE** is on the basis of finance lease rentals. The purchase orders issued by Lessor on the Vendor will be the effective purchase order for this transaction to establish the ownership of the Equipment and Lessor will be the sole and full owner of the Equipment. Lessee's only rights to the Equipment are as a lessee under this Agreement. Lessee shall hold the Equipment as lessee and shall not contest Lessor's sole and exclusive ownership of the Equipment. Lessee must not make any representation to any person which is inconsistent with Lessor's ownership of the Equipment. Lessee must not allow to be placed on any Equipment any markings which are inconsistent with Lessor's ownership of the Equipment. Lessee must not grant any person any right to the Equipment or any form of security over this Agreement or any of the Equipment without Lessor's prior written consent.

The Equipment remains Lessor's property whether or not it is fixed to any other property. The Equipment must not be attached to property without Lessor's prior written consent. If any Equipment does become attached to land, it does not become a fixture and may be removed at Lessee's cost in accordance with this Agreement. In any case, if the Equipment is attached to land owned by a third party, the written consent of that third party for the removal of the Equipment at any time must be obtained and a copy of the same provided to Lessor.

Equipment may not be moved to a location outside India. If Lessee wishes to move Equipment from the location specified in Schedule A to another of Lessee's business locations in India, Lessee must first give notice to Lessor. Lessor's prior consent to such a move is required but may not be unreasonably withheld, delayed or conditioned as long as the Equipment remains in Lessee's possession and control.

Notwithstanding the foregoing, Lessor agrees that Equipment may be temporarily moved from the Equipment Location for a period of no longer than 120 consecutive days, provided that such Equipment remains in the custody and control of one of Lessee's employees whose principal office is the Equipment Location specified in Schedule A.

So long as Lessee is not in default of this Agreement, Lessor will not disturb Lessee's quiet enjoyment of the Equipment during the term of this Agreement.

**2.2** If Lessor has not already done so, then upon execution of this Agreement, Lessor, agrees to release confirmed regular Purchase Order for the Network Equipment as defined in **Schedule A** in favor of the Vendor.

**2.3** After purchase of the Equipment by the Lessor, the **VENDOR** will ensure delivery, installation and commissioning of the Equipment at the **LESSEE's** premises located at [Place] as per the LOI [LOI No.] dated [dd]/[mm]/[yyyy] and the Lessor accepts to it.

**2.4** The entire risk, cost or any outgoing pertaining to the delivery and installation of the Equipment shall be borne by the Vendor. Lessor will have no obligation to pay the purchase price for the Equipment until the Lessee has confirmed the due delivery and installation of the Equipment by signing the Acceptance Certificate attached as Schedule D.

**2.5** The Lessor hereby gives on lease and the Lessee hereby takes on lease the Equipment for the Lease Period subject to the terms of this Agreement.

**2.6** All the terms and conditions mentioned in the NIT shall form an integral part of this Agreement. NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the mutual covenants and conditions hereafter set forth, the parties hereto agree as follows: -

### **3. LESSEE'S CONFIRMATION**

Upon receiving delivery, installation and commissioning of the Equipment from the Vendor, the **LESSEE** will certify that the Equipment are as per specifications provided by the **LESSEE** to the **VENDOR** by signing the Acceptance Certificate in the form of **Schedule D**.

The Lessor agrees to pay the Purchase Price for the Equipment to the Vendor immediately after the Lessee signs the Acceptance Certificate and gives it to the Vendor.

### **4. LESSOR'S RIGHT TO LEASE**

The **LESSOR** guarantees that upon paying the purchase price for the Equipment to the Vendor, the **LESSOR** has the right to lease the Equipment to the Lessee under this Agreement.

### **5. LESSOR'S COVENANTS**

The **LESSOR** hereby covenants that they undertake to comply with the terms and conditions stipulated in the LOI. [LOI No.] Dated [dd]/[mm]/[yyyy] placed by the **LESSEE on the Vendor**, which will form part

and parcel of this Agreement. For the avoidance of doubt, in the event of any conflict between the terms of this Agreement and the terms of the LOI [**LOI No.**], the LOI No.....dt..... shall prevail.

The **LESSOR** shall not after purchase or acquisition of the Equipment; divert the same for any other use. The **LESSOR** shall not disturb the possession of the equipment with the **LESSEE**, during the currency of the agreement subject to clauses 7, 18 and 19 of this Agreement.

## **6. LESSEE'S COVENANTS**

### **6.1 LESSEE NOT TO PART WITH POSSESSION**

**LESSEE** shall not part with possession of the Equipment or any part of it to any third party, without the prior written consent of the **LESSOR**, which the **LESSOR** may decline without assigning any reason.

### **6.2 LESSEE TO ALLOW AFFIXING OF NAME PLATE OF LESSOR**

**LESSEE** will allow affixing of nameplate or other perishable mark on the Equipment identifying the leased Equipment covered in **schedule A** and not to allow or permit the same to be removed or defaced during the currency of the Lease period.

### **6.3 LESSEE NOT TO CONVERT THE PROPERTY**

**LESSEE** shall not in any way impair the identifiability, ascertainability, severability and redeliverability of the Equipment during the currency of the Lease period.

### **6.4 LESSEE TO MAKE PROPER USE OF THE EQUIPMENT**

**LESSEE** shall use and operate the Equipment carefully in the same way as would have been the case with the **LESSEE'S** own Equipment. **LESSEE** must at all times operate and Vendor / Lessee shall maintain the Equipment in good working order, repair, condition and appearance, and in accordance with the manufacturer's and/or supplier's specifications and recommendations. Lessee must not do or omit to be done any act or thing that would result in the warranties and performance guarantees given by the supplier or manufacturer being invalidated or unenforceable, either wholly or in part (such act or omissions resulting in invalidation or unenforceability shall be in consonance with standard industry practices), and Lessee shall ensure that the Equipment is operated by suitably trained personnel for the purpose for which it is designed and manufactured.

## **7. INSPECTION BY THE LESSOR**

The **LESSEE** shall permit the **LESSOR** or any person authorized by the **LESSOR** at all reasonable times (immediately in case of an emergency) to inspect, view and examine the state and condition of the Equipment and for that purpose permit the Lessor or any person authorized by the Lessor to enter the premises where the Equipment is used or stored. The Lessor shall give One Week Notice for any such inspection / examination. Provided further, the Lessor hereby agrees that no such inspection or examination of the state and condition of the Equipment will be made within a period of less than three months from the date of the previous inspection / examination. The Lessor hereby permits immediate

inspections/examinations of the state and condition of the Equipment, in case of any emergency, only twice a year.

## **8. INSURANCE**

**8.1** The **VENDOR** shall keep the Equipment insured with an insurer acceptable to Lessor against all risks loss up to its full replacement value. The insurance required under this Agreement must (1) note Lessor's interest as owner of the Equipment and name Lessor as loss payee; and (2) not be capable of cancellation by the insurer unless 30 days prior written notice is given to Lessor. **VENDOR** must promptly produce evidence of current insurance policies and of payment of premiums whenever reasonably requested by Lessor. The Vendor shall also keep the Equipment insured against public liability for bodily injury or damage to property arising in connection with the Equipment in an amount not less than Rs. [Amount] total liability per occurrence (provided that Lessor acknowledges Vendor shall not be required to put in place separate public liability insurance specifically for this Agreement and shall comply with this clause provided Vendor's general public liability insurance meets the criteria specified above). Vendor must promptly produce evidence of current insurance policies and of payment of premiums whenever reasonably requested by Lessor.

**8.2** In the event of failure on the part of the **VENDOR** to maintain the insurance required under clause 8.1 or to pay the insurance premium as above, the Vendor agrees that the Lessor may purchase such insurance itself or pay the insurance premium as above and shall forthwith on receipt of a notice of demand from the Lessor reimburse all sums so paid by Lessor together with interest.

**8.3** An item of Equipment suffers a "Casualty Loss" if the Equipment is lost, destroyed, stolen or damaged beyond repair. If a Casualty Loss occurs Lessee must promptly notify Lessor within 30 days from the date of knowledge of occurrence of such Casualty Loss to the Lessee or on or by the next Rent payment date whichever is later In support of filing of insurance claim by the Lessor/vendor with respect to any casualty loss of the Equipment or part of the Equipment mentioned above, the following documents will be provided by the Lessee to the Lessor:

- a. Letter of the Lessee confirming happening of the Casualty Loss.
- b. Copy of the Complaint filed by Lessee before the Police Authorities regarding Casualty Loss.
- c. FIR Copy / Non-traceable Certificate issued by the respective Police Authorities in case of lost Equipment or stolen Equipment.
- d. Lessee's Panchanama copy in case of destruction of Equipment.

In the event of occurrence of any Casualty Loss, irrespective of the status of the insurance claim filed against such casualty loss, the Lessor / Vendor shall replace / substitute Equipment to the Lessee within\_ weeks from the date of occurrence of such Casualty Loss. During the above period, the "Substitute Equipment" means a substantially equivalent or better item of hardware or software having equal or greater capabilities and equal or greater fair market value manufactured or licensed by the same manufacturer or licensor as the item of hardware or software which it is to replace under this Agreement. Lessee acknowledges and agrees that Substitute Equipment is Lessor's property.

## 9. DISCLAIMER OF ANY WARRANTY

9.1 (1) The Lessor has not at any time made nor does it hereby make any representation or warranty whatsoever with respect to the merchantability, quality, conditions or durability of the Equipment;

(2) All Equipment will be used for business purposes only and for the purpose for which it is designed;

9.2 The Vendor hereby confirms that it makes and accepts all representation or warranty whatsoever with respect to the merchantability, quality, conditions or durability of the Equipment.

## 10. VENDOR'S CONVENANTS

The **VENDOR** hereby covenants that they undertake to comply with the terms and conditions stipulated in the LOI. [LOI No.] Dated [dd]/[mm]/[yyyy] issued by the **LESSEE** which form a part and parcel of this agreement.

### 11. Liability towards quality of the equipment:

Both the **LESSOR** and the **VENDOR** hereby accepts liabilities on any account pertaining to the quality of the Equipment to the **LESSEE**. The liability to the **LESSEE** is restricted to the value of the contract of the items supplied by the **VENDOR WITH THE SUPPORT OF LESSOR**.

## 12. MAINTENANCE

The **VENDOR** shall be responsible for the continuous and smooth operation of the Equipment for the entire lease period as mentioned below for a consideration, which is incorporated as a part of equipment as in **Schedule A** and the Maintenance Charges as in the **Schedule B** to be paid by **LESSEE** to the **VENDOR**.

12.1 Maintenance services shall cover services, repairs, and replacements necessary to keep the Equipment's in good working order on reasonable use of the Equipment by the **LESSEE**.

12.2 Maintenance services shall not cover services, repairs or replacements necessitated by gross misuse or willful damage or destruction, use of unauthorized media or supplies, repairs, alterations in the Equipment by anyone other than the maintenance personnel authorized by the **VENDOR** in writing in any of which events the **LESSEE** shall be liable to pay the **VENDOR** additional charges, for the services, repairs and replacements involved as determined by the **VENDOR**.

12.3 The **VENDOR** shall guarantee all systems consisting of Equipment for 99.5% uptime (on a monthly basis assuming a 24 hour working day) as specified hereunder subject to the following conditions. This figure has to be guaranteed and in the event of the system not performing to the guaranteed level, pro-rata reduction will be calculated based on the non availability of the individual items and will be deducted on that component's lease value for that month. In case of a major break down of any critical Equipment that results in a unscheduled outage of the solution, the pro rata cut will also apply to all other hardware and peripherals affected by the breakdown.

For the avoidance of doubt, the **VENDOR** acknowledges that in case of any deduction of lease rental due to this clause, **VENDOR** will promptly indemnify the **LESSOR**.

12.4 The **VENDOR** shall ensure the availability of three competent and certified resident engineers at the **LESSEE's** site at the **VENDOR's** own risk and cost during the lease period.

12.5 Downtime calculation will be as per tender document clause 7.

12.6 **LESSEE** shall be finally compensated for any short fall in the guaranteed uptime as specified hereunder:

a) The penalty amount so computed may be deducted from the payment towards the maintenance fee payable to the **VENDOR**. If it exceeds, it may be deducted from the lease rental payable to the **LESSOR**. **VENDOR** will promptly indemnify the **LESSOR** with respect to any deduction made by **LESSEE** under this clause.

b) For calculating uptime, the period will be one month consisting of twenty-four hours working for each day.

12.7 The **VENDOR's** maintenance service obligation shall be subject to force majeure.

### **13. IMPOSTS, TAXES AND OTHER CHARGES**

**LESSEE** agrees that the lease created under this Agreement is a net lease and that **LESSEE** will pay all tax costs connected with the lease, such as any taxes (e.g. VAT, stamp duty, sales tax, lease tax and services tax). Any fresh levies/ duties/taxes imposed by Govt. subsequent to the date of LOI shall be borne by the **LESSEE**.

If **LESSEE** is required by any law or regulation to make any deduction or withholding with respect to any amount payable under this Agreement, **LESSEE** shall, together with the relevant payment, pay such additional amount as will ensure that Lessor receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which Lessor would have received if no such deduction or withholding had been required. However, if Lessor is allowed to claim a refund from the relevant authority for any such deduction or withholding, **LESSEE** shall not be required to pay the additional amount provided **LESSEE** issues a certificate of such deduction or withholding in **LESSOR'S** favor.

Valid documents regarding changes in taxes and duties for availing CENVAT Credit / VAT Credit / Service Tax Credit if any should be furnished by the **VENDOR /LESSOR** to the Lessee. If any relevant documents are not furnished to the Lessee to avail CENVAT Credit / VAT Credit / Service tax Credit etc, the same will not be paid to the **LESSOR / VENDOR** as the case may be. Due to defaults of the **LESSOR / VENDOR**, if any imposts / penalty / incremental duty / interest are charged, it should not be passed on to the Lessee.

Without limitation, if VAT (or any like or similar tax) is or will be payable on a supply made by Lessor under this Agreement and the amount payable for that Supply does not include an amount in respect of VAT on the supply, Lessor may (1) increase the amount payable by Lessee for that supply otherwise provided for by the amount of that VAT or (2) otherwise charge that VAT to Lessee. For the purposes of

this clause "supply" means a taxable supply for the purposes of any applicable VAT or like tax legislation. Lessee must pay Lessor on demand any additional tax, interest, fine or penalty that is payable by Lessor because Lessee failed to comply with Lessee's obligations to Lessor under this Agreement. Lessee will promptly pay or reimburse Lessor for all taxes paid by Lessor, together with any penalties or interest which are imposed as a result of Lessee's act or omission. All sums payable by Lessee to Lessor under this Agreement are exclusive of any sale, lease or other tax on account thereof, which (where applicable) shall be paid by Lessee.

For the purposes of this clause "VAT" means any value added tax, any goods and services tax or any like tax (including any interest, fines and penalties) payable on the sale of goods or provision of services in India or in any state in India.

#### **14. CONSIDERATION FOR THE LEASE - LEASE RENTALS AND MAINTENANCE FEE**

The Lessee will pay the Rentals to the Lessor and the Maintenance Fee to the Vendor in accordance with Schedule B and C.

#### **15. OBLIGATION TO PAY LEASE RENTALS AND MAINTENANCE FEE**

Unless provided otherwise, the **LESSEE** shall pay the Lease Rentals regularly and punctually. The Vendor agrees that in the event:

- a) the Lessee exercises any of the Lessee's rights under this Agreement or LOI No. [LOI No.] to make deductions against or otherwise withhold payment of lease rentals or any amount due by the Lessee to the Lessor, or
- b) the Lessee otherwise ceases paying lease rentals or any other amount due by the Lessee to the Lessor under this Agreement as result of the Vendor failing to perform any of the Vendor's obligations under this Agreement;

the Vendor will immediately indemnify the Lessor for an amount equal to the difference between (i) the full amount of the relevant lease rental or other amount payable by the Lessee under this Agreement (including any applicable taxes) and (ii) the amount actually received by Lessor from Lessee.

#### **16. PAYMENTS OF RENTALS AND ARREARS IN RENTALS**

16.1 Rental and Maintenance Fee accounts are calculated quarterly in arrears. The Lessor will raise the bills on the Lessee on a quarterly basis on the Lease rental amount and the Vendor will raise the bills on the Lessee on a quarterly basis on the Maintenance Fee amount (as appropriate).

16.2. The amounts payable by the **LESSEE** under clause 16.1 with respect to each quarter during the Lease Period are specified in Schedules B and C respectively. The first such bill of the Site (as specified in the **Schedule B and C** ) will be raised on completion of first calendar quarter from the date of the certificate of acceptance for the site on pro rata basis. Subsequent bills will be raised on completion of each calendar quarter from the date of the first bill. The final bill will be on the pro rata basis on the left over days of the last calendar quarter.

16.3 Lessee reserves the right to retain/hire purchase the equipment at the end of the lease period by making a terminal payment of Re. 1/-. In case Lessee decides not to retain/ hire purchase the

Equipment, dismantling and removing the Equipment from the premises of the Lessee shall be at the Vendor's cost.

## **17. TERMINATION**

On the first occurrence of any events specified below, any Party to this Agreement shall be entitled without prejudice to any other right or remedy available terminate this Agreement, after providing three months notice to all the parties to this Agreement after the occurrence of such event except expiry of the lease period.

- a) Breach of terms and conditions of the Agreement by any party of this Agreement.
- b) Any Board resolution or Company Petition filed for winding up against **LESSEE**.
- c) By mutual consent.
- d) On expiry of the lease period.

The **LESSOR** and the **VENDOR** shall not be entitled to terminate this agreement on account of any material change in the financial or corporate position of **LESSOR / VENDOR** or any resolution or petition filed for winding up against **LESSOR / VENDOR**.

## **18. REDELIVERY OF THE EQUIPMENT BY THE LESSEE ON TERMINATION**

**18.1** Upon termination of this Agreement as defined herein above during the currency of this agreement, the **LESSEE** shall, on its own without demand forthwith deliver the Equipment to the **LESSOR**, at such time and place as may be directed by the **LESSOR** in "**as is where is**" condition. The cost for such delivery will be borne by the defaulting party.

**18.2** In the event of the **LESSEE** not so returning the Equipment within a period of thirty (30) days from the date of termination subject to force majeure condition and on account of circumstances beyond reasonable control, the **LESSEE** shall be deemed to be in unauthorized possession of the Equipment provided that the default is on the part of the **LESSEE**.

**18.3** In the event this Agreement is terminated due to reasons attributable to **LESSOR** or **VENDOR**, the **LESSOR** shall not have the right to demand the redelivery of the equipment by the **LESSEE** provided that **LESSEE** shall be required to pay **LESSOR** an amount equal to the sum of lease rentals and other amounts due and payable under this Agreement as of the termination date. In such case, BHEL shall be entitled to, without prejudice to its rights, deduct losses/ costs incurred on account of the aforesaid reasons attributable to the Vendor/ Lessor.

## **19.0 LESSOR'S RIGHTS AND LESSEE'S OBLIGATION ON TERMINATION**

On the termination of this Agreement pursuant to Clause 17 above, or as elsewhere provided in this Agreement.

## **19.1 RE-POSSESSION OF THE EQUIPMENT BY THE LESSOR AND HIS RIGHTS FOR THAT PURPOSE**

If LESSOR is entitled to repossess Equipment pursuant to Clause 17 of this Agreement and without prejudice to the rights of the LESSEE, the LESSOR shall, with the consent of the LESSEE, which shall not be unreasonably withheld, remove or repossess the Equipment and for that purpose by itself, its servants or agents, enter upon, with the consent of the LESSEE, which shall not be unreasonably withheld, any land, buildings or premises where the Equipment is situated or is reasonably believed by the LESSOR to be situated for the time being and for such entry. But this clause cannot be invoked if there is a default on the part of the VENDOR / LESSOR as per the terms and conditions of the contract

**19.2** In the event, if the Lessor and Vendor fails to remove or re-possess the Equipment within 30 days from the date of termination/date of intimation at their risk and own cost, then in such cases, the Lessor and Vendor shall pay to the Lessee 0.005 % of the contract value towards retention charges. If the Lessor and Vendor fails to remove or re-possess the Equipment within 60 days from the date of termination/date of intimation, the Equipment will be sold by the Lessee at the risk and cost of the Lessor and Vendor and the retention charges will be adjusted by the Lessee from out of the sale proceeds and remaining amount after adjusting all the dues will be returned to the Lessor and / or Vendor, if any. The Lessee shall not be liable for any claims over the Equipment for such Sale Proceeds after 60 days from the date of termination/date of intimation.

## **20. ALL INDEMNITIES TO SURVIVE THE AGREEMENT**

All indemnities and covenants as contained in Clause 4, 5 and 6 under this agreement shall survive the termination of the Agreement or expiry of the lease as the case may be.

## **21. GENERAL CONDITIONS**

### **21.1 Service of Notices**

Any notice issued by the parties hereto shall be in writing and sent by Registered Post Acknowledgement Due to the other party to the address first above written.

### **21.2 Time to be Essence of this Agreement:**

Time shall be the essence of this Agreement for all the three contracting parties in so far as it relates to the observance or performance of all or any of its obligations including payment of any sum hereunder.

### **21.3 Waiver or Remission not to have precedent value over Demands or Notices Waived.**

The failure of the LESSOR to insist upon the punctual performance of any of the obligations of the LESSEE hereunder, or the failure of the LESSOR to exercise any right or remedy available to the LESSOR, under this Agreement or any failure of the LESSOR to require payment from or by the LESSEE, when due of any sum owing hereunder, or any extension of credit or any forbearance on the part of the LESSOR shall not constitute a waiver by the LESSOR of any subsequent or continuing default by the LESSEE under this Agreement nor shall the same prejudice affect or restrict the rights and powers of the LESSOR hereunder.

#### **21.4 Agreement to be sole and Exclusive**

This Agreement represents the entire Agreement between the parties hereto and shall be capable of variation in writing by a Note of Amendment signed by and on behalf of the **LESSOR**, the **VENDOR** and the **LESSEE**.

If any provision of this Agreement is prohibited by or invalid under any law, that provision will be ineffective only to the extent of the prohibition or invalidity. The remainder of the affected provision and all other provisions of this Agreement are unaffected by the invalidity and the parties shall continue with the obligations entered in this Agreement unless and otherwise the invalid provision affects the whole object of this Agreement.

#### **21.5 Interpretation of Words**

Words importing the plural shall, except where the context otherwise requires, include the singular and vice-versa. Clauses including headings shall not control the otherwise clear meaning of the text within the relevant clause, but such heading may be used to clarify the intention in case the same is not clear.

**21.6** This lease transaction shall be considered as finance lease in terms of Accounting Standard -19 of ICAI.

#### **22. ARBITRATION.**

In all cases of disputes emanating from and in reference to this Agreement and all questions, disputes or differences of any kind what-so ever arising out of or relating to this agreement the matter of such dispute shall be referred to a Sole Arbitrator to be appointed by the Lessee's Head of the Unit.

The language of the Arbitral Tribunal shall be in English only. The proceedings of the arbitration shall be conducted under THE ARBITRATION AND CONCILIATION ACT OF 1996 and the rules there under. The arbitral proceedings shall be held at Ranipet and any dispute under this agreement shall be subject to the jurisdiction of Courts situated at Ranipet only.

The applicable Law is Indian Law .

The Arbitrator shall have the discretion to hold the proceedings at any other place at his convenience.

The Award of the arbitrator shall be final and binding on the parties to this agreement.

#### **23. GENERAL**

It is confirmed that the authorized signatories of all the three body corporate are authorized by their respective competent authority to execute this tripartite lease agreement and affix the common seal, where applicable.

This tri partite agreement is prepared in triplicate and each contracting party will retain one original for their records and reference.

#### **24. Limitation of Liability**

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

## **25. RISK PURCHASE**

The Lessee shall reserve the right to terminate the order/contract and purchase from elsewhere at the risk and cost of the Lessor and Vendor, either the whole or part of the Systems/goods, which the Lessor and Vendor have failed to deliver within the stipulated delivery period or if the same were not available, the best and the nearest available substitute(s) thereof which is no technically inferior to the undelivered System/Goods. The Lessor and the Vendor would be liable to compensate the Lessee for any loss, which the Lessee may sustain by reason of such Lease. This clause will be operated only after completion of delivery period including extended period with penalty.

## **26. Indemnification**

Lessor and Vendor shall defend, indemnify and hold harmless Lessee from and against any and all Third Party claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Equipment supplied, installed and Leased to Lessee, when used within the scope of this Agreement, infringes, violates or misappropriates a valid third party patent, copyright or other proprietary right, Civil, Criminal or any other action.

**Infringement Claim.** The term "Infringement Claim" means any claim that the manufacture, use, offer to sell, sale, Lease or other exploitation of any Product infringes, misappropriates or otherwise violates any patent right, copyright, trademark right, trade dress right or other intellectual property right of any Third Party in any jurisdiction worldwide, use by Lessee of the Product in connection with or in combination with any hardware, software, network system, network protocol, products, equipment, material, content, information or data not supplied, installed by the by lessor and vendor.

**Indemnification - Demand to Defend.** If Lessee makes a demand for Lessor and / or Vendor to defend an Infringement Claim made against Lessee, Lessor and / or Vendor shall indemnify, defend and hold harmless Lessee from, against and in respect of any and all Losses arising out of or relating to such Infringement Claim and, in the case of Losses that involve obligations in the nature of an injunction, shall secure for Lessee the right to continue exploiting the applicable Product or shall provide non-infringing specifications for a new Product and secure the right to continue to exploit any remaining inventory of the existing Product. Once Lessee makes a demand for Lessor and / or Vendor to defend an Infringement Claim, Lessee may defend against the Infringement Claim in any manner it reasonably may deem appropriate unless and until Lessor and / or Vendor assumes control of such defense. If Lessor and / or Vendor assumes the defense of the Infringement Claim, Lessor and / or Vendor must do so using counsel that is reasonably acceptable to Lessee. Lessee shall reasonably cooperate with Lessor and / or Vendor, at Lessor and / or Vendor expense, in the defense or settlement of any such Infringement Claim and shall provide access to its records and personnel as reasonably requested by Lessor and / or Vendor for the purpose thereof. If Lessor and / or Vendor refuses or fails to assume or maintain control of any such Infringement Claim, Lessee's right to indemnification pursuant to this Section shall not be adversely affected by virtue of Lessee assuming or continuing the defense thereof.

**27. Further Assurances**

The parties agree to promptly execute and deliver to each other such further documents and take such further action as any party to this Agreement reasonably requires in order to more effectively carry out the intent and purpose of this Agreement.

**28. Export Compliance**

The Equipment subject to this Agreement may be subject to Indian export control laws and regulations. The parties each undertake to comply with all such laws and regulations.

IN WITNESS THEREOF the parties hereto have caused these presents to be executed in triplicate on the day, month and year first above written at [Place].

The LESSEE, LESSOR and the VENDOR hereby affix their respective Common Seals to this document in acceptance of the terms and conditions herein contained.

**LESSOR**

**AUTHORISED SIGNATORIES**

1 Name/s: -----

Designation: -----

Address: -----

2. Name/s: -----

Designation: -----

Address: -----

**LESSEE**

**AUTHORISED SIGNATORIES**

1 Name/s: -----

Designation: -----

Address -----

2. Name/s: -----

Designation: -----

Address: -----

**VENDOR**

**AUTHORISED SIGNATORIES**

1 Name/s: — Designation: Address —

**WITNESSES**

1 Name/s:

Designation: Address

2. Name/s: — Designation: Address: ----

**SCHEDULE - A (EQUIPMENT DETAILS)**

<b>S No</b>	<b>Hardware Description</b>	<b>Quantity</b>	<b>Acquisition Cost without tax</b>

**SCHEDULE B - LEASE RENTAL PAYMENTS**

Pricing Expiration Date: [specify]

Lessor is not obliged to purchase the Equipment if the Acceptance Date occurs on or after the Pricing Expiration Date. Rental Due Dates:

Rentals will be payable on a quarterly in arrears basis with a single Rental installment payable per quarter.

Sl.No	Rental Period		Invoice Date	Quarterly Rental Charges
	From	To		
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				

**SCHEDULE C - MAINTENANCE CHARGE PAYMENTS Maintenance fee Due Dates:**

Maintenance fee will be payable on a quarterly in arrears basis with a single maintenance fee payable per quarter.

SI.No	Rental Period		Invoice Date	Quarterly Maintenance Charges
	From	To		
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				

## **SCHEDULE D: ACCEPTANCE CERTIFICATE**

[Name] ("Lessor") and Bharat Heavy Electricals Limited ("Lessee") are parties to this Agreement.

All capitalized terms used in this Acceptance Certificate without definition have the meanings given to them in the Agreement.

### **1 Lease Acceptance**

Lessee acknowledges that the Equipment described in Schedule A has been:

- (a) delivered to the Equipment Location specified in Schedule A, inspected by Lessee and found to be in good operating order and condition, and has been unconditionally accepted by Lessee under the lease created under this Agreement on the acceptance Date specified below; and
- (b) the Commissioning of the Equipment by the Vendor has been completed to Lessee's satisfaction as per the Acceptance test procedure mentioned in Tender clause 8.0 on the Acceptance Date specified below.

### **2 Acceptance Date**

The Acceptance Date is . \_

You:

Signed for and on behalf of Lessee

by: