



**2 X 660 MW IB BANHARPALLI TPP UNITS 3 & 4- GENERATOR CIRCUIT BREAKER**

REF NO. : PE/PG/OP1/E-4733/2015

DATE: 17.04.2015

**ADDENDUM-I**  
**SUBCONTRACTOR ACKNOWLEDGEMENT AND CONSNET- APPENDIX - KK**

**Tender Enquiry no.: PE/PG/OP1/E-4773/15 DTD. 15.04.15**  
**2 X 660 MW IB BANHARPALLI TPP UNITS 3 & 4**  
**GENERATOR CIRCUIT BREAKER**

The successful subcontractor against above cited enquiry will be required to sign the attached SUBCONTRACTOR ACKNOWLEDGEMENT AND CONSNET- APPENDIX – KK.

With Regards,  
For & on behalf of BHEL

Haseen Ahmed  
DY.MANAGER/PG-II-1

Please reply to:

**B L Bedi, DGM / Haseen Ahmed, Sr. Engineer**  
**PG-II-1**

Power Project Engineering Institute Building  
HRD & ESI Complex Plot No. 25, Sector -16 A,  
BHEL-PEM,Noida-201301 (U.P.)

Tel No. 0120-4368729/4368774, Fax: 0120-4329106

Supply

**APPENDIX KK**

**FORM OF SUBCONTRACTOR ACKNOWLEDGMENT AND CONSENT**

[Subcontractor's Letterhead]

[DATE]

**SUBCONTRACTOR ACKNOWLEDGMENT AND CONSENT**

BHARAT HEAVY ELECTRICALS LIMITED  
BHEL House,  
Siri Fort, New Delhi – 110 049

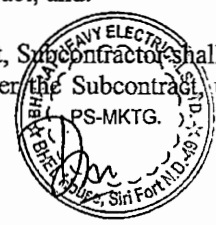
Attention: \_\_\_\_\_

Dear Sirs:

This Subcontractor Acknowledgment and Consent (this "Acknowledgment and Consent") is delivered pursuant to Section 2.27.3 of the Contract for the Supply of Equipment, dated [\_\_\_\_\_] 20\_\_ (as amended, supplemented or otherwise modified, the "Contract"), between Odisha Power Generation Corporation Limited ("Buyer") and Bharat Heavy Electricals Limited ("Seller"). Reference is also made to the subcontract, dated [\_\_\_\_\_] (as amended, supplemented or otherwise modified, the "Subcontract"), between Seller and [\_\_\_\_\_] ("Subcontractor") for the execution of certain supply in connection with the Main Plant. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Contract.

Subcontractor hereby acknowledges, consents and agrees that:

- (a) the Subcontract may be assigned by Seller to Buyer and the Financing Parties without the further consent of Subcontractor;
- (b) upon notification (the "Notice") to Subcontractor from Buyer or the Financing Parties that (i) the Contract has been terminated and/or Seller's right to proceed with the Supply of Equipment under the Contract has been terminated and (ii) Buyer or the Financing Parties will be assuming Seller's future obligations under the Subcontract, the Subcontract will be novated pursuant to a deed of novation in the form of Attachment 1 hereto, and Subcontractor agrees (A) to execute such deed of novation, (B) to perform Subcontractor's responsibilities under the Subcontract for the benefit of Buyer or the Financing Parties and (C) to recognize Buyer or the Financing Parties as being vested with all the rights (including, but not limited to, rights with respect to Subcontractor warranties and guarantees under the Subcontract) and responsibilities of Seller under the Subcontract; provided that Seller shall maintain all rights and claims against Subcontractor for the portion of supply previously performed;
- (c) notwithstanding the foregoing, it is specifically understood and agreed that Subcontractor shall have no right to look to Buyer or any Financing Party for the performance of Seller's obligations under the Subcontract unless and until Subcontractor has received the Notice and then only with respect to future obligations arising under the Subcontract; and.
- (d) upon the occurrence of a Seller event of default under the Subcontract, Subcontractor shall not cancel, suspend or terminate the performance of its obligations under the Subcontract until



the Buyer or the Financing Parties have exercised their right to step in and remedy such default at the cost and expense of the Seller.

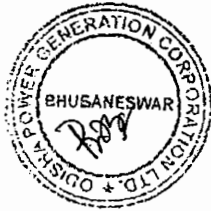
Yours faithfully,

**[SUBCONTRACTOR]**

By \_\_\_\_\_

Name:

Title:



**ATTACHMENT 1 TO THE SUBCONTRACTOR**

**ACKNOWLEDGMENT AND CONSENT**

**DEED OF NOVATION**

THIS DEED OF NOVATION is made and entered into on [\_\_\_\_], 20[\_\_\_\_] by and among:

- (1) [NAME OF SELLER], a \_\_\_\_\_ (“Transferor”);
- (2) [NAME OF SUBCONTRACTOR], a \_\_\_\_\_ (“Subcontractor”); and
- (3) [NAME OF BUYER/DESIGNEE], a \_\_\_\_\_ (“Transferee”),

together, the “Parties”, and each, a “Party”.

**RECITALS:**

**WHEREAS**, Transferor and Buyer are party to the Contract for the Supply of Equipment, dated [\_\_\_\_] 20 [\_\_\_\_] (as amended, supplemented or otherwise modified, the “Contract”);

**WHEREAS**, Subcontractor and Transferor are party to the [Name of Subcontract], dated as of [\_\_\_\_], 20 [\_\_\_\_] (as amended, supplemented or otherwise modified, the “Subcontract”);

**WHEREAS**, Subcontractor executed and delivered to Transferor the Subcontractor Acknowledgment and Consent, dated [\_\_\_\_], 20 [\_\_\_\_] (as amended, supplemented or otherwise modified, the “Subcontractor Acknowledgment and Consent”); and

**WHEREAS**, pursuant to Article [ ] of the Contract and the Subcontractor Acknowledgment and Consent, (a) Transferor may novate the Subcontract to Transferee and (b) in such case, the Parties shall execute and deliver a deed of novation in respect thereof;

It is hereby agreed as follows:

**1. DEFINITIONS; INTERPRETATION**

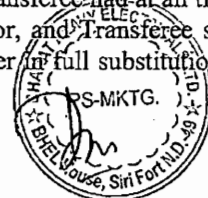
The provisions of Articles \_\_\_\_ and \_\_\_\_ of the Subcontract are incorporated herein by reference and shall apply hereto unless the context of this Deed of Novation otherwise requires.

**2. NOVATION OF THE SUBCONTRACT**

2.1. Novation. The Parties hereby agree that, with effect from the date first written above:

(a) Transferor shall cease to be a party to the Subcontract and Transferee is hereby substituted in place of Transferor as a party to the Subcontract;

(b) all of Transferor’s rights, title and interest in and to the Subcontract are hereby transferred to and vested in Transferee as if Transferee had at all times been a party to the Subcontract in place of Transferor, and Transferee shall enjoy and exercise all of Transferor’s rights thereunder in full substitution of Transferor;



- (c) Transferor's obligations under the Subcontract shall be transferred to and assumed by Transferee, which hereby assumes and undertakes to be bound by all the terms and conditions of the Subcontract, to perform all of Transferor's obligations under the Subcontract and to assume responsibility for all claims and liabilities under the Subcontract from the date first written above; and
- (d) Transferor is hereby released and forever discharged from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, controversies, promises, damages, judgments, executions, claims, liabilities and demands whatsoever in law, admiralty, and/or equity, whether known or unknown, that Subcontractor or its heirs, executors, administrators, successors, or assigns have against Transferor under the Subcontract, from the date of this Deed of Novation for, upon or by reason of any matter, cause or thing whatsoever, and Subcontractor shall have no further recourse to Transferor under the Subcontract after the date of this Deed, except for any liabilities, debts, dues, demands, claims etc, accrued or outstanding as on the date of the Deed of Novation; provided that, if the Transferee discharges any of the Transferor's accrued or pre-existing liabilities to the Subcontractor, then the Transferee will have a right of subrogation against the Transferor in respect of such accrued or pre-existing liabilities of the Transferor discharged by the Transferee.

3. MISCELLANEOUS

- 3.1. Effect on the Subcontract. Except as expressly provided in this Deed of Novation, all provisions of the Subcontract shall remain in full force and effect and binding on the parties thereto, insofar as the same are in force and effect and binding on such parties immediately prior to the date of this Deed of Novation.
- 3.2. Dispute Resolution. Any Dispute under or in connection with this Deed of Novation between or among any or all of the Parties shall be resolved in accordance with Article [ ] of the Contract; provided that for purposes of appointing the arbitrators under Article [ ] of the Contract, each Party shall appoint one Arbitrator.
- 3.3. Governing Law. The validity, construction and interpretation of this Deed of Novation shall be governed by the laws of India excluding any choice of law rules that would refer the validity, construction or interpretation of this Deed of Novation to the laws of another jurisdiction.
- 3.4. Not used.
- 3.5. Notices. Transferee's address for notices pursuant to the Subcontract shall be changed to the following:  
[Name of Transferee]  
[Address of Transferee]
- 3.6. Counterparts; Facsimile Delivery. This Deed of Novation may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Deed of Novation to produce or account for more than one counterpart. The delivery of an executed counterpart of this Deed of Novation by facsimile shall be deemed to be valid delivery thereof.



IN WITNESS WHEREOF, this Deed of Novation has been executed and delivered as a deed on behalf of the Parties by their duly authorized representatives the day and year first above written.

Signed as a deed by [\_\_\_\_\_]

By \_\_\_\_\_

Name:

Title:

In the presence of:

By \_\_\_\_\_

Name:

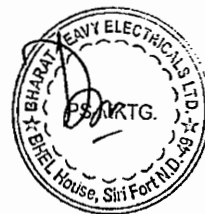
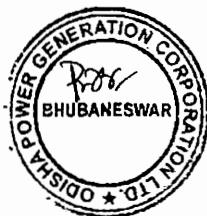
Signed as a deed by [\_\_\_\_\_]

By \_\_\_\_\_

Name:

Title:

In the presence of:



By \_\_\_\_\_

Name:

Signed as a deed by [ \_\_\_\_\_ ]

By \_\_\_\_\_

Name:

Title:

In the presence of:

By \_\_\_\_\_

Name:

