



# NON – DISCLOSURE AGREEMENT

BETWEEN

BEML LIMITED  
BENGALURU

AND

## NON – DISCLOSURE AGREEMENT

This Non – Disclosure Agreement (hereinafter referred to as "**NDA**") is made and entered into between ;

**M/s BEML LIMITED**, a Central Public Sector Undertaking, coming under the administrative control of Ministry of Defence, and a Company incorporated under the Companies Act, 1956, having its Corporate Office at 'BEML SOUDHA', 23/1, 4<sup>th</sup> Main, SR Nagar, Bengaluru – 560 027, India (hereinafter referred to as "**BEML**" which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) of the One Part ,

And

M/s \_\_\_\_\_, a Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at

\_\_\_\_\_(hereinafter referred to as "\_\_\_\_\_" which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) Other Part.

Hereinafter, BEML and \_\_\_\_\_ are collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS, BEML is multi-technology heavy engineering industry engaged in the business of design, development, manufacture and marketing of a variety of equipment and spare parts and aggregates required for Mining & Construction, Rail and Metro Defence and Aerospace, etc.

Whereas \_\_\_\_\_ is engaged in the manufacture of

\_\_\_\_\_

Whereas the Parties herein wish to pursue discussions and interactions which could lead to potential industry institute relationship amongst the parties in the area of development and supply of 2 Nos. of ARV WZT-3 aggregates (Electrical Systems and Electrical Control of Hydraulic Systems) as per the design and drawings shared by BEML. (hereinafter referred to as "**the Purpose** ").

WHEREAS, it is the mutual desire of the Parties to disclose certain Information to each other, and the Parties recognise that careful protection and non-disclosure by the Party receiving the Confidential Information (hereinafter referred to as the "**Receiving Party**") from the Party disclosing such Confidential Information (hereinafter referred to as the "**Disclosing Party**") is of vital importance while executing the purpose.

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree to disclose and receive certain Confidential Information only under the following terms and conditions :

## 1. **SCOPE OF THE NDA**

- 1.1. The Parties recognise that there is a need to disclose to one another certain Confidential Information for the purpose. Confidential information is to be used only for the Purpose. The information provided by one Party (Disclosing Party) to the other (Receiving Party) shall be subject to the terms of this NDA. Accordingly, either Party under this NDA may be a Receiving Party and/or a Disclosing Party under the terms hereof.
- 1.2. The following terms and conditions shall apply when the Disclosing Party discloses Confidential Information to the Receiving Party. Nothing contained in this NDA shall be construed as granting rights by the Disclosing Party to the Receiving Party, by license or otherwise, to any of the Confidential Information under any patent, know-how or other rights till now or hereinafter held by the Disclosing Party except as specified in this NDA. The Disclosing Party will provide Confidential Information without warranties of any nature whatsoever.

## **2. CONFIDENTIAL INFORMATION**

The term "Confidential Information" shall mean and refer to all or any information and data of confidential or proprietary in nature which is disclosed by the Disclosing Party to the Receiving Party, including but not limited to, past, current and future customer information, proprietary, technical, financial, personnel, marketing, pricing, sales and/or commercial information with respect to the "Purpose" as well as ideas, concepts, designs, drawings and inventions, embedded hardware design, data and information, computer source and object code and computer programming techniques; and all record bearing media containing or disclosing such information and techniques which are disclosed pursuant to this NDA provided that;

- a) If disclosed by means of document, or other tangible form or media, such confidential information shall be clearly marked as "confidential" at the time of disclosure.
- b) If disclosed by means of oral explanation or other intangible form, confidential information shall be identified by the Disclosing Party as confidential at the time of disclosure and shall be provided in writing to the Receiving Party duly marked as "confidential" within fourteen (14 ) days of such disclosure.

If the Disclosing Party inadvertently fails to mark any information as 'Confidential Information' for which it desires confidential treatment, it shall so inform the Receiving Party.

## **3. EXCEPTIONS**

This NDA imposes no obligation upon the Receiving Party with respect to information that:

- a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;
- b) is hereafter rightfully furnished to the Receiving Party by a third party, without restrictions to use or disclosure;

- c) is disclosed with the prior written consent of the Disclosing Party; or
- d) is required to be disclosed in pursuant to law, order of the court or Government authority, and then only to the extent ordered by the court or governmental authority, provided that the Receiving Party shall give a notice as early as possible to enable the Disclosing Party to get a protective order.

#### **4. NON-DISCLOSURE**

All Confidential Information is and shall remain the property of the disclosing party. The Receiving Party shall use the Confidential Information solely for the Purpose. The Receiving Party agrees to hold the Confidential Information disclosed to it by the disclosing party in strict confidence and will not disclose the Confidential Information to any third party without the prior written consent of the Disclosing party.

#### **5. RECEIVING PARTY'S OBLIGATIONS:**

The Receiving Party undertakes :

- a) to use the same care and discretion to avoid disclosure, publication or dissemination of the Confidential Information as it uses with respect to its own Confidential Information, but no less than reasonable care;
- b) not to use the Confidential Information for any other purpose except for the purpose for which the information has been disclosed.
- c) to comply with any other reasonable security measures requested in writing by the Disclosing Party;
- d) not to, under any circumstances, copy, replicate, or reverse engineer any products or services of the Disclosing Party by unauthorised use of Confidential Information and shall not infringe the intellectual property rights law applicable to the Disclosing Party;
- e) not to, directly or indirectly, make or permit any oral or written communications to the public media regarding the Confidential Information of the Disclosing Party, its business or clients or use the

name of the Disclosing Party in any public announcements, promotional, marketing or sales materials or efforts, without the express prior approval of the Disclosing Party.

f) not to disclose Confidential Information to any third party without the prior consent of the Disclosing party.

g) to disclose the confidential information to its employees, on a 'need to know' basis for the purpose of this NDA.

## **6. REMEDIES**

The Parties recognise and acknowledge that Confidential Information is of a special, unique and extraordinary character to the Disclosing Party and that disclosure, misappropriation or unauthorized use of such Confidential Information by the Receiving Party cannot be fully compensated and that, further any such disclosure, misappropriation or unauthorized use of the Confidential Information shall cause irreparable injury to the Disclosing Party. The Receiving Party expressly agrees, therefore, that the Disclosing Party, in addition to any rights and remedies it may have under this NDA or at law or in equity, shall be entitled to seek injunctive and other equitable relief to prevent the breach, or the further breach, or any of the terms and provisions hereof. The Receiving Party agrees to reimburse the Disclosing Party for any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and court costs) incurred and sustained by the Disclosing Party as a result of any breach of this NDA.

## **7. TERM**

The term of this NDA shall be for ..... ( ....) years from the date of its signature and that the obligations of the Receiving Party to protect the Confidential Information under this NDA shall survive for a period of two (2) years from the date of its termination or expiry which occurs earlier.

## **8. TERMINATION**

This NDA shall, unless otherwise extended by mutual agreement of the Parties, terminate upon happening of any of the following events :

- (a) Termination by mutual consent.
- (b) Termination by either party due to breach of any of the covenants hereof by the other
- (c) by giving written notice in the event of the liquidation, bankruptcy, reorganization, dissolution or insolvency of the other Party resulting in that Party's inability to perform the obligations under this Agreement;

Notwithstanding the above, termination shall not prejudice any obligation that has arisen prior to the date of effective termination between the Parties and/or obligation of either Party to any other third party.

## **9. RETURN OF CONFIDENTIAL INFORMATION**

Upon the expiry or termination of this NDA or at the earlier request of the Disclosing Party, the Receiving Party shall return all Confidential Information to the Disclosing Party without retaining any copies of such Confidential Information or, if so desired by the Disclosing Party, confirm in writing that all such Confidential Information has been destroyed. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

## **10. DISPUTE SETTLEMENT & JURISDICTION :**

Disputes if any, arising between the Parties, in connection with this NDA or any other matters connected therewith, the same will be mutually discussed and amicably settled between the parties, failing which, the disputes shall be referred to Arbitration in accordance with the provisions of Arbitration and Conciliation

Act, 1996 and Rules framed thereunder from time-to-time. The place of Arbitration shall be at Bengaluru and the Arbitration proceedings shall be conducted in English language.

Courts at Bengaluru alone will have jurisdiction to entertain, try and adjudicate any matter connected with this Agreement, including Arbitration.

#### **11. NON-SOLICITATION**

No Party shall, either directly or indirectly, on its own behalf or on the behalf of others, solicit or hire for work any person(s) employed by the other Party, whether or not such employment is pursuant to a written contract or is at will, without the express written permission of such other Party, or until such employee has ceased his/her employment with such other Party for at least two (2) years. This clause shall survive for a period of two years even from the date of termination.

#### **12. AMENDMENT**

Any amendment or modification of this NDA shall be valid only if the same is in writing and signed by or on behalf of each of the Parties.

#### **13. MISCELLANEOUS**

13.1 Severability and Waiver. If any provision of this NDA is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The Parties shall replace any invalid provision with a valid provision, which must closely approximate the intent and economic effect of the invalid provision. The waiver by the Disclosing Party of a breach of any provision of this NDA shall not operate or be interpreted as a waiver of any other or subsequent breach.

13.2 Notices. All notices under this NDA must be in writing and must be either: faxed; mailed by registered or certified mail, postage prepaid and return receipt



requested; or delivered by hand to the party to whom such notice is required or permitted to be given at the address set out in the title of this NDA.

IN WITNESS WHEREOF, the Parties hereto have set their respective hands to this NDA on .....(Day) ..... (Month) ..... (Year) at ..... (Place) in the presence of the following witnesses.

for BEML LIMITED

for

Name :

Name :

Signature:

Signature :

WITNESSES :

WITNESSES :

1.

1.

2.

2.