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NON – DISCLOSURE AGREEMENT

BETWEEN

BEML LIMITED
BANGALORE

AND

.....
.....

Non – Disclosure Agreement

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

BEML LIMITED, Mini Rathna-1 Public Sector Company, coming under the administrative control of Ministry of Defence, Department of Defence Production, Government of India, incorporated and registered in terms of the laws of the Republic of India and with its registered office at 'BEML SOUDHA', 23/1, 4th Main, SR Nagar, Bangalore – 560027, India (hereinafter referred to as "**BEML**"),

And

M/s..... incorporated and registered in terms ofand with its registered Office at (hereinafter referred to as "XXXXXX")

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

WHEREAS, BEML is engaged in the business of design, development and manufacture of a variety of Earthmoving, Railways, Defence Equipments, Diesel Engines, Hydraulic & Power line aggregates and also providing services in the areas of engineering design & development and trading, etc. and

WHEREAS, XXXXXXXX is (incorporate the details of business of the party) etc. and

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 Design, Manufacturing, Supply, Installation, Commissioning and performance prove out of Engine test facilities for 1500 hp Engine Project of BEML Ltd., (hereinafter referred to as "**Joint Projects**").

WHEREAS, it is the mutual desire of the Parties to disclose certain Confidential Information (as defined later in Clause 2) to each other, and

WHEREAS, 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 Joint Projects.

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 In order to pursue the Joint Projects, both Parties recognise that there is a need to disclose to one another certain Confidential Information. Confidential Information is to be used only in the pursuit of the Joint Projects. The information provided by the Disclosing Party and the 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**

- 2.1 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 "Joint Projects" as well as ideas, concepts, designs 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. The terms and existence of this NDA, the fact that Confidential Information has been made available hereunder, that discussions or negotiations are taking place concerning a potential business relationship involving the Parties and all of the terms, conditions and other facts with respect thereto (including the status thereof) shall also be considered Confidential Information that is subject to the provisions of this NDA. Information available in the public domain, now or in the future or known to either Party prior to the execution of this NDA will not be considered Confidential Information.

2.2 The information disclosed as Confidential and which is marked as 'Confidential' by the Disclosing Party, shall be treated as Confidential Information by the Receiving Party and shall be disclosed either:

2.2.1 in writing; or

2.2.2 by delivery of items; or

2.2.3 by initiation of access to Information, such as may be in a data base; or

2.2.4 by oral or visual presentation.

2.3 Confidential Information must be marked with a restrictive legend by the Disclosing Party. If the Confidential Information is not marked with such legend or is disclosed orally or visually, the Confidential Information will not be identified as confidential at the time of such disclosure.

2.4 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. The Receiving Party thereupon shall return the unmarked information to the Disclosing Party and the Disclosing Party shall substitute properly marked information. In addition, if the Disclosing Party, at the time of disclosure inadvertently fails to identify as proprietary, confidential or private, oral or visual information for which it desires confidential treatment, it shall so inform

the recipient, provided that the Disclosing Party shall summarise the information in writing within ten (10) days thereafter. The Receiving Party's obligation hereunder shall commence upon notice from the Disclosing Party of the failure to properly mark or identify the information.

- 2.5 The Confidential Information shall be considered valuable trade secrets, owned by the Disclosing Party. The Disclosing Party retains all right, title, and interest in the Confidential Information.

3. NON-DISCLOSURE

- 3.1 The Receiving Party may only use the Confidential Information for the purposes stated above. The Receiving Party recognises that this NDA imposes an affirmative duty to hold such information in confidence and protect it from dissemination to and use by unauthorised persons. In the absence of the Disclosing Party's prior written consent, the Receiving Party shall neither reproduce nor disclose the Confidential Information to any third party.

4. RECEIVING PARTY'S OBLIGATIONS:

- 4.1 The Receiving Party undertakes:
- 4.1.1 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;
 - 4.1.2 not to use the Confidential Information for any other purpose except for the purpose for which the information has been disclosed.
 - 4.1.3 to comply with any other reasonable security measures requested in writing by the Disclosing Party;
 - 4.1.4 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;
 - 4.1.5 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.

4.2 The Receiving Party must not disclose any Confidential Information to any third party except that the Receiving Party may disclose the Confidential Information to:

4.2.1 its employees, consultants and agents including employees of any legal entity that it controls or controls it or with which it is under common control (the "**Representatives**"), on a 'need to know' basis for the purpose of this NDA.

4.2.2 Any other party with the Disclosing Party's prior written consent.

4.3 The Receiving Party must, prior to disclosing any Confidential Information, enter into a written agreement with the party to whom the information is being disclosed so as to ensure that such party treats the information as 'Confidential Information' in accordance with the terms of this NDA.

4.4 The Receiving Party may disclose the Confidential Information to the extent only it is required by law. However, the Receiving Party will give the Disclosing Party prompt notice to allow the Disclosing Party a reasonable opportunity to obtain a protective order.

5. **RETURN OF CONFIDENTIAL INFORMATION**

5.1 Following the request of the Disclosing Party, the Receiving Party will promptly deliver to the Disclosing Party, or certify in writing to the Disclosing Party as to the destruction of (without retaining any copy including the backup copies) all of Confidential Information (and copies and extracts thereof) furnished to, or created by or on behalf of, the Receiving Party. 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.

6. EXCEPTIONS

- 6.1 This NDA imposes no obligation upon the Receiving Party with respect to information that:
- 6.1.1 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;
 - 6.1.2 is hereafter rightfully furnished to the Receiving Party by a third party, without restrictions to use or disclosure;
 - 6.1.3 is disclosed with the prior written consent of the Disclosing Party; or
 - 6.1.4 is required to be disclosed pursuant to law, and then only to the extent ordered by the governmental authority or court of competent jurisdiction, provided the Receiving Party uses reasonable efforts to give the Disclosing Party notice of such disclosure as soon as practicable and cooperate with the Disclosing Party, at the Disclosing Party's expense, to minimise any such disclosure and shall only disclose that portion of the Confidential Information required by such authority or court.

7. NON-SOLICITATION

- 7.1 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.

8. REMEDIES

- 8.1 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.

9. TERM

The term of this NDA shall be for three (3) 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. Upon the expiry of the term 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.

10. 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, with three months' prior written notice to the defaulting Party.

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.

11. GOVERNING LAW & JURISDICTION

This NDA shall be governed by the laws of Republic of India. Any disputes arising out of or in connection with this NDA are subject to the exclusive jurisdiction of the competent courts at Bengaluru, India.

12. DISPUTE SETTLEMENT

Disputes or differences 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, such disputes or differences 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 Bangalore and the Arbitration proceedings shall be conducted in English language. Courts at Bangalore alone will have jurisdiction to entertain, try and adjudicate the award of the Arbitral Tribunal.

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.

13.3 Successors and Assigns. The Receiving Party shall have no right to assign its rights under this NDA, whether expressly or by operation of law, without the written consent of the Disclosing Party. This NDA and the Receiving Party's obligations hereunder shall be binding on the Representatives, permitted assigns and successors of the Receiving Party and shall inure to the benefit of the Representatives, assigns and successors of Disclosing Party.

13.4 Variation. No variation of this NDA shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

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 XXXXXXXXXXXX

Name:

Name:

Signature:

Signature:

WITNESS

WITNESS

1.

1.

2.

2.