

## **NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement (hereinafter referred to as “the Agreement”) is made on this.....day of ..... (“Effective date”) by and between:

**BEML Limited**, a Govt. of India Undertaking under the administrative control of Ministry of Defence, Government of India and a company incorporated under the provisions of Companies Act 1956, having its registered & Corporate Office at BEML SOUDHA", 23/1, 4th Main, SR Nagar, Bengaluru-560 027, represented by its \_\_\_\_\_ ----- Mr./Ms. \_\_\_\_\_ (hereinafter referred to as “The Principal”/”BEML”, which expression shall mean and include its successors in interest and permitted assigns) on the First Part

AND

M/s ..... having its registered Office at ..... represented by its \_\_\_\_\_ Mr./Ms. \_\_\_\_\_ (hereinafter called as “The contractor”, which expression shall mean and include its successors in interest and permitted assigns) on the Other Part.

Hereinafter the Principal and the contractor shall be collectively referred as the “Parties” and individually referred to as a “Party” in reference to this agreement.

### **1.0 PURPOSE**

Ministry of Railways (hereinafter referred to as MOR), Government of India have decided to develop indigenous trainsets for speeds of 280/249 km/h on Standard Gauge through BEML (“Project”).

The purpose of this Agreement is to enable the contractor to properly manage and maintain the confidentiality of the information being provided or disclosed by The Principal for the development of the indigenous trainset compatible with the Project.

### **2.0 DEFINITIONS**

The following terms as used in this Agreement are defined as follows:

#### **2.1 “Confidential Information” shall mean:**

Confidential information as provided or shared by the Principal, in connection with or relating to the Project, to the contractor, any information related to the Project (such as, but not limited to technical documents and technical data, business documents, drawings and commercial data) including written information, and information contained in any form of media or device, that is clearly identified by The Principal as ‘confidential’/’Proprietary’ at the time of its disclosure.

#### **2.2 Notwithstanding anything else contained in this Agreement, the Confidential Information shall not include any information:**

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- (a) that is, at the time of its disclosure, possessed by the contractor without owing any confidentiality obligation;
- (b) with regard to the technology or knowledge that is independently developed by the contractor without use of or reference to any Confidential Information;
- (c) that is properly acquired by the contractor from a third party without owing any confidentiality obligation and such third party is not in breach of any confidentiality obligation relating to such information.
- (d) that the Principal, by prior written consent, permits the disclosure (however subject to terms and conditions of such consent from the Principal).
- (e) that is disclosed by the Principal to a third party without imposing any confidentiality obligation thereon; or
- (f) that subsequently becomes publicly known for a reason other than that attributable, directly or indirectly, to the contractor after its disclosure.

### **3.0 CONFIDENTIALITY**

- 3.1** The contractor shall be obligated to keep the Confidential Information in confidence with the reasonable care of a good manager and shall not disclose or divulge the Confidential Information to any third party. Upon discovery of any breach of this Agreement or improper disclosure or misuse of the Confidential Information, the contractor shall notify the Principal and shall take all necessary actions to prevent any further breach, improper disclosure or misuse, including by causing the persons to whom the contractor disclosed the Confidential Information to agree and adhere to non-disclosure terms similar to those set forth in this Agreement.
- 3.2** Notwithstanding Section 3.1 above, the contractor may disclose Confidential Information:
- (i) to the extent necessary, to (a) The contractor's officers and employees (hereinafter collectively referred to as the "Employees") who need to know such Confidential Information for purposes of the Project, (b) lawyers, advisors and other specialists owing confidentiality obligations under applicable laws, regulations or agreements and who are engaged by the contractor to render services in connection with the Project (c) potential subcontractors/manufacturers/suppliers of the contractor and (ii) in accordance with applicable laws, rules and regulations, and any mandatory order by a court with jurisdiction or other public agency with jurisdiction; provided, however, that, if, and legally permitted to do so, the contractor shall promptly notify the Principal and take reasonable steps to assist the Principal in contesting such order or otherwise in protecting the Principal's rights prior to disclosure, to minimize the Confidential Information which is disclosed to follow such order.
- 3.3** The contractor shall impose upon all of the employees who have or have had access to the confidential information, confidentiality obligations which continue after such Employee's retirement/resignation /leave from the contractor, equivalent to those of the contractor under this Agreement and shall ensure such Employees comply there with. The contractor shall be jointly and severally responsible with such Employees (including former Employees) for any breach of such confidentiality obligations by such Employees
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(including former Employees).

- 3.4** The contractor shall insert the relevant clause in their agreement/contract to impose the same obligation as stipulated in this Agreement to other members, consultants, subcontractors, attorneys, manufacturers, suppliers etc. as stated at Section 3.2 above.

Provided always that for breach of the confidentiality obligation by the consultants, subcontractors, attorneys, manufacturers, suppliers etc., the Contractor shall be held liable and responsible for its consequences.

#### **4.0 INTELLECTUAL PROPERTY RIGHTS**

The Parties have expressly understood and agreed that all rights, including but not limited to those rights for property and intellectual property rights (including but not limited to patent rights, design rights, copyrights, trade secret rights and all other intellectual and industrial property rights of any sort throughout the world, the same shall apply hereinafter), regarding the Confidential Information or any other information mutually shared among the Parties will remain the exclusive property rights of the Principal.

#### **5.0 NO WARRANTIES**

The contractor has expressly understood and agreed that the Principal only have obligation under or by virtue of this Agreement to enter into furnishing, trading, development, or technology licensing agreement, or any other agreement, any products, services, or any technologies with respect to the Project.

The Principal does not warranty on the accuracy or suitability of the Confidential /Proprietary Information being exchanged under this Agreement and all Confidential Information is provided on an "As Is" basis.

#### **6.0 EXPORT CONTROL**

Parties hereby confirm and agree to adhere to the Export Control laws and regulations and perform any necessary procedures, including obtaining export permits.

#### **7.0 DAMAGES**

The Contractor agrees to indemnify, save and hold harmless the Principal from and against any and all losses, liabilities, expenses (including, legal fees and costs), claims, liens, damages or the like (limited to common direct damages actually incurred) incurred by the Principal as a result of any breach of any provision of this Agreement.

#### **8.0 GOVERNING LAW**

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This Agreement shall be governed by and construed in accordance with the laws of the Republic of India.

## **9.0 JURISDICTION**

This NDA shall be subject to the exclusive Jurisdiction of courts at Bangalore.

## **10.0 DISPUTE RESOLUTION:**

The Parties shall endeavor to resolve all disputes arising out of this Agreement or relation thereto, amicably through mutual discussions through their authorized representatives or by negotiation, mediation, conciliation etc.

In case of disputes between CPSE's or a Government Department(s)/Organization(s)

Any unresolved disputes between the parties shall be settled

by referring the same to AMRCD forum of DPE, Government of India in terms of the DPE OM No. 05/0003/2019-FTS-10937 dated 14.12.2022 and DPE OM No : 05/0002/2023-AMRCD dated 25/07/2024 in case of Government agencies.

(In case of Private firms)

Any unresolved disputes shall be referred to and resolved by arbitration with the rules of Arbitration of the India International Arbitration Centre (IIAC), New Delhi. The Arbitration shall consist of a Sole Arbitrator to be appointed in accordance with the Rules of IIAC. The arbitration proceedings shall take place/seat of arbitration shall be New Delhi, and be conducted in the English Language. The Arbitration proceedings will be administered by the India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023 and all arbitration proceedings shall be conducted in English language. The award of the sole arbitrator shall be final and binding on all the parties

## **11.0 TERM**

11.1 The effective term of this Agreement shall be for a six (6) years period from the date hereof, and thereafter automatically extended for successive period of one (1) year each, unless each party shall have otherwise notified to the other parties in writing at least one (1) month prior to the expiry of this agreement or any extension thereof.

11.2 Notwithstanding the above, the obligations of the contractor in relation to the Confidential Information shall survive after the termination of this Agreement.

11.3 Upon the termination of this Agreement, or at any time prior thereto upon the written request of The Principal, The contractor shall cease all use of and shall promptly return to The Principal (at the expense of the contractor), or shall promptly destroy in accordance with the reasonable instructions of The Principal, all of the Confidential Information it received that is in tangible or electronic/digital form (including but not limited to originals, all summaries, copies and excerpts). In the event of its destroying, the contractor shall destroy such Confidential Information by the way of non-reusable.

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## 12.0 MISCELLANEOUS

12.1 This Agreement constitute the entire agreement between the Parties as to the subject matter hereof and supersedes any and all previous agreements or communication, whether oral or written, as to its subject matter. It may be modified only by the written agreement of the Parties.

12.2 Any confidential information disclosed to contractor by The Principal before execution of this Agreement shall be treated subject to this agreement.

12.3 If any provision or provisions of this Agreement declared invalid or unenforceable, such invalidity or unenforceability shall not render the entire agreement invalid. Rather, this Agreement shall be construed as if not containing the particular invalid or unenforceable provision, and the right and obligations of each Party shall be construed and enforced accordingly.

12.4 No failure or delay by each Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercises of any rights, powers or privileges hereunder.

12.5 This Agreement constitutes a non-disclosure agreement only and shall not be construed as a teaming, joint venture or other such arrangement. Nothing in this Agreement shall grant any Party the right to make commitments of any kind for or on behalf of the other Party without the prior written consent of the such other Party.

13 It is expressly understood and agreed by and between.....and BEML that BEML is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that BEML is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable Laws of India and general principles of Contract Law. .... expressly agrees, acknowledges and understands that BEML is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly,..... hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and covenants not to sue the Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement"

"Whereof, the parties hereto have caused this Agreement to be executed on the day, month and year specified below.

For & on behalf of **The Principal**

For and on behalf of **The contractor**

Signed by

Signed by

Name

Name

Position

Position

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Date

Company

Company Stamp

Date

Company

Company Stamp

WITNESSES:

1 Signed by

Name

Designation

2. Signed by

Name

Designation

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