

NON DISCLOSURE AGREEMENT

This agreement, made this ____ day of _____, 20____, at _____

BETWEEN

BSES Rajdhani Power Limited, a power utility Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at BSES Bhawan, behind DTC Bus Terminal, Nehru Place, New Delhi-110019(hereinafter referred to as "**BRPL**"), which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-business and assigns) and

AND

<Client Company Name>....., a Company incorporated under the provisions of the Companies Act, <Year>..... and having its registered office at <Client Company Address>

....., (hereinafter referred to as "<Vendor>"), which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-business and assigns) of the Other Part;

WHEREAS:

"BRPL" a power utility Company is engaged in the business of Distribution of Electricity

- A. "BRPL" requires the services of "<Client Company Name>....." for providing solutions which shall broadly focus on <purpose>..... (hereinafter referred to as the "**Purpose**")
- B. In the process of providing the services / proof of Concept for the purpose, BSES would provide and hand over to the "<Client Company Name>....." the personal, sensitive, confidential data, and Proprietary Information and Data relating to business operations of BSES, its customers and business associates and also technical and technological information and secrets belonging to BSES, its customers and business associates
- C. BRPL desires to protect the said confidential and proprietary information and data as the disclosure of confidential information of BRPL to the industry, general public, or third parties could seriously jeopardize the intellectual property rights/ any other rights of BRPL.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

- 1. The term "PERSONAL INFORMATION" and "SENSITIVE PERSONAL DATA" shall have the meaning as provided in The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 or as assigned in any other law in India and as amended from time to time.

2. The term "CONFIDENTIAL INFORMATION" shall include any confidential / proprietary / non-public information relating to the business of the respective parties, including but not limited to samples, formulae, manufacturing/development processes, specifications, drawings and schematics, however, the "Confidential Information" shall mean and include the technical and technological information and secrets relating to software, computer system, equipment, local area network and wide area network, network infrastructure and equipment, network designs/architecture, system passwords, login-ID's and commercial , marketing, financial and other information, data, ideas, programs, operations, processes and documents relating to the business or technology of (the "BRPL") or any of its affiliates which is disclosed either prior to or after the date of this Agreement by parties i) to each other ii) either of its affiliates or iii) a third party on or behalf of the BRPL or any of its affiliates, to the other party (the "Vendor") either in oral or written form, or through any other form of communication, and which was designated to be confidential and proprietary and shall include this Agreement as well as the intention of parties to explore the entering into of a business relationship with each other.

3. ACCEPTANCE TO BRPL INFORMATION SECURITY POLICY

- i. BRPL (BSES Rajdhani Power Limited) has legal ownership of the contents of all files created, processed, stored on its computers/ network systems as well as the data/ email/ messages transmitted in its network.
- ii. BRPL reserves the right to access the information given to the Vendor/ Consultant for processing without prior notice whenever there is a genuine need.
- iii. BRPL may in order to ensure cyber security/ protection of its data/ resources monitor, access, retrieve and read the information originating/ transmitted/ terminating in its network irrespective of user.
- iv. All the users accessing the network of BRPL are encouraged not to share their personal information on the computer/ network of BRPL computers, resources and removable disks. If Users choose to share such personal information, the information may be monitored at the risk of Users.
- v. All users/vendors/consultants must return or ensure secure destruction of BRPL information, storage media, documentation, and computer/networking equipment in a permissible manner, before they leave a particular assignment, either on transfer or on the end of the contract or resignation.
- vi. The undersigned has read the Information security policies and procedures and understand the policies and procedures of BRPL. The undersigned agreed to abide by the information security policies and procedures described therein as a condition of continued employment / contract. The Vendor undertakes to abide by all the rules and regulations applicable to Personal/ Sensitive/ Confidential Data under the Information Technology Act, 2000, or any other law as applicable from time to time and also the direction issued by the Regulator, Delhi Electricity Regulatory Commission.
- vii. The BRPL has all the rights to claim damages for any loss of Personal/ Sensitive/ Confidential data including any liability arising to the third party due to the default/ failure of the Vendor to protect such data in terms of present agreement. The liability arising out of such default shall include the litigation cost, liability payable to third party and also any loss of reputation/ goodwill caused to the BRPL.
- viii. That the Vendor agrees that the Non-compliance of the terms of this agreement and/or any of the policy of BRPL associated with the privacy policy, can result in disciplinary actions, revocation of systems privileges and includes termination of agreements/services, if any, claim of damages and such other actions as specified in other clauses of this agreement or the principle agreement.

4. EXCLUSIONS TO THE CONFIDENTIALITY AGREEMENT:

Notwithstanding anything contained herein, the obligation as to confidentiality herein shall not apply to the following, provided the VENDOR can establish the same with a competent proof, that:

- a) the CONFIDENTIAL INFORMATION was already in the knowledge of the VENDOR, before its disclosure by the BRPL;
- b) the CONFIDENTIAL INFORMATION, at the time of its disclosure by the BRPL to the VENDOR, was in public domain;
- c) the CONFIDENTIAL INFORMATION became a part of public domain, after its disclosure by the BRPL to the VENDOR, either by publication or otherwise, except through the breach of this Agreement.
- d) the CONFIDENTIAL INFORMATION was received by the VENDOR from a third party who was in possession of the same without violation of the obligation as to confidentiality;
- e) the CONFIDENTIAL INFORMATION was independently developed by the VENDOR, without the breach of this Agreement;
- f) the CONFIDENTIAL INFORMATION was required to be disclosed under the law;
The Information shall not be deemed to be in the public domain merely by the reason that it is known to a few members of the public to whom it might be of commercial interest. Further, a combination of two or more parts of the information shall not be deemed to be in the public domain merely by the reason of each separate part thereof being so available in public domain.

5. OBLIGATIONS OF THE VENDOR

- a. The VENDOR shall use the CONFIDENTIAL INFORMATION exclusively for its own purposes and shall not share the same otherwise to any third party, directly or indirectly, without the express consent of the BRPL (which consent may be withheld arbitrarily, and shall keep the same strictly confidential).
- b. The VENDOR shall ensure that the CONFIDENTIAL INFORMATION is not accessible to any one other than those who are required to have such access for the purpose of the EVALUATION.
- c. The VENDOR may disclose the CONFIDENTIAL INFORMATION to such of its employees or associates as are directly involved for the purpose of fulfilling the business association entered into between the parties on a need-to-know basis, provided that the VENDOR shall bind effectively such employees and / or such associates with a corresponding obligation. In any event, the VENDOR shall be responsible for any breach of this Agreement by any such employee or associate.
- d. The VENDOR shall notify the BRPL upon its becoming aware of the occurrence of any breach of this Agreement due to any unauthorised use of CONFIDENTIAL INFORMATION.
- e. The VENDOR shall not, without the written permission of the BRPL, make copies of the CONFIDENTIAL INFORMATION, or any part thereof.
- f. In the event the VENDOR becomes legally compelled to disclose any CONFIDENTIAL INFORMATION, it shall promptly notify the BRPL about the same, so as to enable the BRPL to obtain appropriate protective order, if any. The VENDOR will exercise its best efforts to obtain assurance that confidential treatment will be accorded to the CONFIDENTIAL INFORMATION so disclosed, and shall make best efforts to diminish losses to the BRPL arising out of such disclosure. In any event, the VENDOR shall disclose only such part of the CONFIDENTIAL INFORMATION, as is legally mandatory.
- g. The Vendor having access to Personal/ Sensitive/ Confidential data of BRPL shall apply security standards in a manner compatible to reasonable security standards as applied by the BRPL including ISO 27001 and other security policies and also in terms of Rule 8 of The Information Technology (Resonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules,

2011. The Vendors shall be responsible to ensure adherence to the security standards of all the access by their employees/ consultants etc

- h. The Vendor shall securely delete the Personal/ Sensitive/ Confidential data which comes into its possession by virtue of this agreement and also sanitize the digital media as per the Security Policy of the BRPL.
- i. The Vendor undertake to acquaint itself with the Information security policies and procedures and understand the policies and procedures therein which are published in the intranet. The undersigned agreed to abide by the information security policies and procedures described therein as a condition of continued engagement/ contract.

6. RETURN OF CONFIDENTIAL INFORMATION

Immediately upon the decision by the VENDOR to not to continue with any any arrangement/ agreement or immediately upon the request of the BRPL, the VENDOR shall promptly return and/or procure the return of the CONFIDENTIAL INFORMATION, and all copies (whether or not lawfully made or obtained) of the same or any part of thereof, as well as all analysis, computations, studies or other documents or information prepared, which is based upon, contains or refers to or to any part of, the CONFIDENTIAL INFORMATION, to the BRPL or to any party designated by the BRPL in this behalf, or destroy the same as may be advised by the BRPL, and shall confirm by way of a written certificate to that effect to the BRPL, and also further confirm that the VENDOR has not reproduced or retained any samples, originals or copies of any part of the CONFIDENTIAL INFORMATION; except that the VENDOR could keep a single copy of the CONFIDENTIAL INFORMATION solely for the purposes of determining compliance with obligations as to confidentiality hereunder.

7. TENURE OF THE AGREEMENT

The Agreement shall be valid for a period of _____ years from the date thereof, or till parties enter into definitive Agreement of business relationship arising out of the or any earlier determination of this Agreement effected by the BRPL by requisitioning the return of the CONFIDENTIAL INFORMATION, whichever is earlier. The Vendor shall continue to be liable for any breach of Personal/ Sensitive/ Confidential data given by the BRPL even after the termination of main agreement.

8. WARRANTY AS TO ACCURACY OR COMPLETENESS OF THE INFORMATION

The BRPL makes no representation or warranty as to the accuracy or completeness of the CONFIDENTIAL INFORMATION disclosed to the VENDOR, and accordingly no liability accrues to the BRPL for any damage, injury or loss resulting from the use of the CONFIDENTIAL INFORMATION.

9. RELATIONSHIP PRESUMPTIONS

- a. The VENDOR understands and acknowledges that nothing herein creates any presumptions about any proposed transaction or relationship with the BRPL.
- b. This Agreement does not grant to the VENDOR any proprietary rights to the CONFIDENTIAL INFORMATION or any licence under any patents, trade marks, copyrights or any other intellectual

property, and all right, title and interest in and to the CONFIDENTIAL INFORMATION shall remain the exclusive property of the BRPL.

- c. Nothing in this Agreement shall be construed by implication or otherwise, as establishing any relationship of principal and agent or employer and employee between the parties hereto, or creating or authorising any party to create any commitment on behalf of the other party or any charge on the other party.

10. INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE

The VENDOR understands and acknowledges that, due to the unique nature of the CONFIDENTIAL INFORMATION of the BRPL, any unauthorised disclosure of any portion thereof shall cause irreparable damage / injury to the interest of the BRPL and that monetary relief will not be adequate or complete remedy to compensate for such damage/injury. Accordingly, the VENDOR hereby acknowledges that the BRPL shall be entitled to injunctive relief and / or a remedy of specific performance in the event of any unauthorised disclosure by the VENDOR or by any of its said employees or the said associates, in addition to whatever remedies it might have in law or in equity.

11. ENTIRE AGREEMENT

This Agreement represents the intentions of the parties hereto, in entirety, on the subject matter hereof, and shall supersede anything outside this Agreement relating to the subject matter hereof.

12. SEVERABILITY

If any part of this Agreement becomes or is discovered to be unlawful and / or unenforceable, and if the remaining Agreement could be separated from such part, then the remaining Agreement shall be deemed to continue in such reduced form.

Non-assignment - Save as expressly agreed by the parties hereto in writing, no right or obligation under this Agreement can be assigned to any other party.

Waiver - No waiver or modification of this Agreement will be binding upon the parties unless made in writing and signed by a duly authorised representative of such parties. Further, failure or delay in enforcing any right under this Agreement shall not amount to a waiver of such right.

Modifications - This Agreement may not be modified except in writing, signed by the parties hereto, through their duly authorised representatives.

Jurisdiction & Arbitration - This Agreement shall be governed by and construed in accordance with the Laws of India (without reference to the rules relating to the conflict of laws), under the jurisdiction of the Courts at Delhi.

Any dispute or difference with respect to the construction or interpretation of any of the clauses hereof, or as to the meaning or effect thereof, which could not be resolved amicably between the parties hereto, shall be referred to arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996, as amended or re-enacted. Each party hereto shall appoint one arbitrator. Both these arbitrators shall jointly appoint a third arbitrator. The Venue of arbitration shall be Delhi. The fees of the arbitrators shall be shared equally.

Related Party Acts -

- a. Any act or omission which if it were an act or omission of the VENDOR would be a breach of this Agreement on its part, be deemed to be such an act or omission for which the VENDOR is responsible when done or omitted to be done by a third party, if –
 - i) such third party is controlled by or controls, the VENDOR, or
 - ii) both, such third party and the VENDOR, are under the common control of any other party

Two originals

This Agreement shall be executed in three copies, each of which shall constitute an original, and both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorised representatives, as on the date hereof.

<p>For _____</p> <p>_____</p> <p>(name & title)</p> <p>Witnesses:</p> <p>1.</p> <p>2.</p>	<p>For <Client _____ Company></p> <p>_____</p> <p>(name & title)</p> <p>Witnesses:</p> <p>1.</p> <p>2.</p>
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***** End of BRPL NDA (Services) *****