



**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS**

**SPECIAL COMMERCIAL CONDITIONS
FOR
DEVELOPMENT OF ELECTRONIC UNIT INJECTOR (EUI) FUEL SYSTEM
FOR
DLW BUILT 16-CYLINDER 4500 HP EMD 710 G3B LOCOMOTIVES**

**Specification No. TS/ED/2012/65
(Revision 1)
June-2014**

**Engine Development Directorate
Research Designs and Standards Organisation
Manak Nagar, Lucknow-226011**

1. WARRANTY

The supplier shall provide a warranty for the satisfactory performance for a period of 2 years for all the components of the Electronic Unit Injection (EUI) system from the date of commissioning on locomotive. Any damage or unsatisfactory performance due to design or manufacturing inadequacies noticed during the above period shall be rectified or component/equipment replaced by the supplier free of cost. The replaced component/equipment shall also be covered under warranty for the balance period of warranty of the original EUI system.

2. PAYMENT TERMS

- (i) **Payment to foreign supplier:** Payment against foreign supplies shall be made through letter of credit. All charges, including the confirmation charges of L.C. levied by foreign banks, shall be born by the supplier. The standard payment terms subject to recoveries if any, under the liquidated damage clause and general condition of contract will be as under-
 - (a) 80 % of the payment shall be released as applicable in FOB contract against irrevocable L.C. on proof of inspection certificate and shipping documents within 30 days of receipt of shipping documents as specified.
 - (b) Balance 20% payment within 90 days after successful installation and commissioning of EUI system on prototype locomotive and successful completion of field trial and submission of WBG following warranty performance.
- (ii) **Payment against indigenous supply:** The standard payment terms subject to recoveries if any, under the liquidated damage clause and general condition of contract will be as under-
 - (a) 80% of the payment on proof of inspection certificate and rail/road challan to be made within 30 days of receipt of documents as specified.
 - (b) Balance 20% payment within 90 days successful installation and commissioning of EUI system on prototype locomotive and successful completion of field trial and submission of WBG following warranty performance.

3. CONFIDENTIALITY OF DEVELOPMENT AND INTELLECTUAL PROPERTY RIGHTS

- 3.1 No Transfer of technology is involved in this project. All intellectual property generated while undertaking this project becomes the sole property of Indian Railways. The information pertaining to components of EUI supplied by the successful bidder shall not be disclosed by IR without prior approval of the bidder. Information pertaining to components supplied by IR shall not be disclosed to the Third Parties by the successful bidder without preliminary authorization in a written permission of Engine Development Directorate, Research Designs & Standards Organisation.
- 3.2 Successful bidder shall give an undertaking for non-infringement of intellectual property rights of Indian Railways for all specification, drawings issued by RDSO.

3.3 Indian Railways shall not be responsible for any infringement of patent rights arising due to similarity in design, manufacturing process, use of similar components in design & development and any other factor not mentioned herewith. In case of disputes on account of infringement of patent rights, entire responsibility and liability to settle any such dispute/ matters shall lie with the successful bidder.

4. INFORMATION NEEDED FROM INDIAN RAILWAYS

RDSO shall share necessary documents and drawings with the successful bidder after signing of the non-disclosure agreement (NDA) as per Annexure 'A'.

5. DELIVERY PERIOD

This will be a FOB contract. Delivery period for delivery of material shall be one year from the date of opening of LC which shall be opened within 2 months of issue of purchase order. The time period required for installation and commissioning of EUI system on prototype locomotive (including successful performance testing on Engine test bed at ED Dte./RDSO) shall be 18 months from the date of receipt of material in RDSO.

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is made on of this day of **2014** between the President of India acting through Research Designs and Standards Organisation (hereinafter referred to as “**RDSO**”), an Office of the Ministry of Railways, Government of India and having its Head Office at Manak Nagar, Lucknow-226011 and,

M/s **XX** a Company incorporated under the Companies Act, 1956 and having its Registered Office at(hereinafter referred to as “**XX**”)

*(Each reference to “**XX** ” in this Agreement shall be deemed to include its respective subsidiaries, affiliates and sister companies or any other organization in which **XX** has an ownership stake or over which **XX** can exert control, each of which/such party shall cause to observe the requirements of this Agreement with respect to the information disclosed by **RDSO** to **XX** under this Agreement.)*

The parties wish to (**PLEASE MENTION THE PURPOSE**) of mutual interest and in connection with this opportunity, each party may disclose to the other party certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.

Now, therefore, in consideration for the premises and obligations set forth herein, it is hereby agreed that :

Definition of Confidential Information

1. For purposes of this Agreement, “**Confidential Information**” shall mean any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to (1) any scientific or technical information, relating to the invention, design, process, procedure, formula, improvement, technology, method for operation and manufacture of products (2) manufacturing drawing and all information referred to in such manufacturing drawings (3) all type of data collected either from either parties to this agreement or any existing, potential, past customer of either parties to this agreement during interview, survey or through telephonic conversation, letters or any other means while and during carrying out the assignment mentioned above (4) costs, margins and pricing (5) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets (6) marketing studies, strategies, or projections, operations, business plans and performance results relating to the past,; (7) information, documents and materials relating to the financial management and other business conditions, prospects, plans, procedures and affairs which either parties to this agreement holds confidential or considers proprietary and has not publicly disclosed and (8) names of developmental programs, sales or marketing plans, or references to next generation products and new product introductions, which is transmitted or communicated by RDSO to the party of the other part of this agreement.

Provided that information disclosed orally or by observation will be treated as **Proprietary Information**, only if the same is confirmed as confidential in writing within a period of three (3) days from its disclosure;

Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.

TERMS AND CONDITIONS

2. Confidentiality Obligations :

- a. All Proprietary Information and confidential information which is transmitted or communicated by Disclosing Parties shall in all cases be held in confidence by Receiving Parties and it shall not directly or indirectly, in any way, reveal, report, publish and disclose or transfer to any third party unless written consent of the Disclosing Parties is first obtained. Except that, Receiving Parties has the right to disclose such information to its own employees, consultants and representatives who are bound by an obligation of confidentiality and who need to know such information for the purpose specified hereinabove.
- b. Receiving Parties shall advise each of the persons to whom it provides access to any of the Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information, and, upon Request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons.
- c. Receiving Parties agrees to use the Confidential Information solely in connection with the current or contemplated relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.
- d. Receiving Parties agrees to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; For the purpose of protecting Proprietary Information received from Disclosing Parties hereunder, Receiving Parties will use efforts commensurate with those it employs for the protection of corresponding information of its own, including as a minimum, alerting its employees of the confidential and sensitive nature of the Proprietary Information of Disclosing Parties, and will make disclosure to its employees only on a need-to-know basis and using appropriate safe-keeping procedures for Proprietary Information.

- e. Receiving Parties agrees not to use any Confidential Information to unfairly compete or obtain unfair advantage vis-a-vis Disclosing Parties
- f. Receiving Parties agrees to comply with any other reasonable security measures requested in writing by the Disclosing Parties
- g. Receiving Parties agrees to refrain from directly contacting or communicating by whatsoever means to the Source(s) of Information without written consent of the Disclosing Party
- h. Receiving Parties agrees to undertake not to disclose any names and their particulars to third parties without the written consent by the Disclosing Parties

3. Exceptions:

Notwithstanding the provisions of Paragraph 2 of this Agreement Receiving Parties shall not be required to maintain confidentiality or be restricted in its use of any Proprietary Information which:

- i. was in the public domain at the date of disclosure to Receiving Parties;
- ii. becomes public knowledge during the term of this Agreement without breach of this Agreement;
- iii. Receiving Parties can show that it was in its possession with the full right to disclose prior to its receipt from or disclosure by Disclosing Parties;
- iv. disclosure of which is required by law or by order of a court of competent jurisdiction;

However, it is expressly agreed that the data information collected during carrying the assignment by RECEIVING PARTIES shall form part of the confidential information and shall be governed by this agreement.

4. Compelled Disclosure of Confidential Information.

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

6. Term:

This Agreement shall be effective from the date of execution of this agreement and shall remain in force for a period of 5 (five) years from the date of the said execution.

7. Termination:

Either party hereto, upon written notice to the other, may terminate this Agreement. Such termination shall be effective thirty (30) days after receipt of such notice. All obligations arising under this Agreement shall survive any termination or expiration of this Agreement and any confidentiality obligations will remain in effect for a period of five (5) years from date of first disclosure hereunder. Upon termination or expiration of this Agreement, any **Proprietary Information** received by Receiving Parties pursuant to this Agreement shall be returned, together with all copies thereof.

8. Notice of Breach.

Receiving Parties shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Parties or its Representatives, or any other breach of this Agreement by Receiving Parties or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. Return of Confidential Information.

Receiving Parties shall immediately return any **Proprietary Information** received in pursuance to this Agreement and redeliver to the other, all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

10. Rights, Remedies and Restrictions.

Both parties acknowledge that the Confidential Information to be disclosed hereunder, is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, Receiving Parties acknowledges that :

- (a) Disclosing Parties possesses and will continue to possess proprietary information that has been created, discovered or developed by or on behalf of disclosing parties by third parties, which information has commercial value and is not in the public domain;
- (b) Unauthorized use or disclosure of Proprietary Information is likely to cause irreparable injury not readily measurable in monetary damages;
- (c) In the event of an unauthorized use or disclosure, Disclosing Parties shall be entitled to, without waiving any other rights, recourses or remedies to which it may be entitled under this Agreement, at law or in equity, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction ;
- (d) Disclosing Parties and its licensors retain all right, title and interest in and to the Proprietary Information including without limiting the generality of the foregoing, title to all materials whether provided by or on behalf of Disclosing Parties.
- (e) Any authorized use or disclosure by the proprietor, agents representatives, advisors, directors, officers or employees of receiving parties shall be deemed to be an unauthorized use or disclosure by receiving parties and that receiving parties shall indemnify and hold harmless Disclosing Parties from and against any and all damages, losses, costs, expenses and attorneys' fees incurred as a result of such breach.
- (f) This agreement shall remain in force notwithstanding any change in the ownership, management, constitution, merger and amalgamation etc. of Receiving Parties.
- (g) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

11. Severability of Provisions:

Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect as if the invalid portion was never a part of this Agreement when it was executed. As it is, the parties' intent that this Agreement be enforced to the fullest extent permitted by law, such invalidated section shall be deemed amended so as to avoid the reasons for its invalidity. Should the severance or amendment of any such part of this Agreement materially affect any other rights and obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

12. Non-Assignability:

Neither party hereto shall, directly or indirectly, assign or purport to assign this Agreement or any of its rights and obligations in whole or part to any third party without the prior written consent of the other party.

13. Warranty.

Each Party to this agreement warrants that it has the right to make the disclosures under this Agreement. **no warranties are made by either party under this agreement Whatsoever.** Each party to this agreement acknowledges that although they shall endeavor to include in the Confidential Information all information that they believe relevant for the purpose, however no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, Disclosing Party is not under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose.

14. Amendment:

Subject to Paragraph 9 above, this Agreement shall not be amended, modified or altered, except in writing, duly accepted and executed by both parties.

15. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of India. Any dispute arising out of this Agreement or interpretation of any provision of this agreement or arising out of execution of this agreement shall be referred to the arbitrator nominated by the **RDSO** in accordance with Indian Law. The disputes shall be subject to the jurisdiction of the Courts at Lucknow, India only.

16. Entire Agreement :

This Agreement constitutes the entire agreement and understanding of the parties hereto, and no representations or promises have been made that are not fully set forth herein.

17. Notices:

Any notices or communications required or permitted to be given hereunder, from either party to the other will be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other and may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case. All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

If to **RDSO** :

Attention : **Sri, Jt. Director**

**Engine Development Directorate,
Research Designs and Standards Organisation (RDSO)
Manak Nagar, Lucknow – 226011**

If to:xx

Attention : **Sri**.....

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IN WITNESS WHEREOF, the parties hereby or authorized agents thereof, have executed this Agreement, as of the date first above written i.e.which shall be binding upon them and their respective successors and assigns, as of the day and year first above written.

For RDSO	For XX
Name : Shri	Name :
Designation : Jt. Director	Designation :
Witness :	Witness :