

## **AMC OF VIDEO CONFERENCING (VC) SYSTEM IN BOARD ROOM & CONFERENCE**

(A) **SCOPE OF WORK and TECHNICAL SPECIFICATIONS:** are indicated in the **buyer added bid specific additional scope of work** attached with the bid.

Firm needs to start the work within 4 weeks from PO placement (Mobilization period).

(B) **REJECTION CRITERIA:**

i. **CATEGORICAL REJECTION CRITERIA:** The following conditions / deviations are non-negotiable and therefore any bid falling under these conditions / deviations shall be summarily rejected. Bidders to note that they shall not be provided any opportunity to rectify these conditions / deviations post bid opening:

(a) Bids received other than through GeM-portal.

(b) Bidders who are debarred under PPP MII order 2017, GeM, CPPP including Tender holiday issued by MDL.

(c) Bids received without EMD (other than those who are exempted from payment of EMD).

ii. **LIABLE REJECTION CRITERIA:**

(a) Bidders are required to submit all documents sought in the tender failing which their bids will be liable for rejection.

(C) **PRE-QUALIFICATION CRITERIA:**

(a) **Technical PQC :**

(i) The bidder should be OEM (of the VC system) or the Authorized partner of the OEM. MAF to be provided by the bidder for the current requirement.

(ii) Bidder's experience of having executed/completed similar services (Experience in conducting VC system) during last 7 years ending till the original tender closing date should be either of the following:

(aa) Three contracts/orders of similar completed services each of not less than **Rs. 30 Lakhs.**

OR

(ab) Two contracts/orders of similar completed services each of not less than **Rs. 37.5 Lakhs.**

OR

(ac) One contract/order of similar completed services of not less than **Rs 60 Lakhs**

(b) **Commercial PQC**

- (i) The average annual financial turnover of 'The bidder' during the last three years, ending 31st March of the previous financial year excluding the calendar year of tendering should be at least **Rs 7.5 Lakhs** as per the annual report (audited balance sheet and profit and loss account) of the relevant period, duly authenticated by a Chartered Accountant/Cost Accountant.
- (ii) Bidders Shop and establishment registration certificate or registration certificate from registrar of firms or certificate of incorporation from Registrar of Companies or any other valid document that confirms the firm's status. However, this is not required for permanent registered vendors with MDL. Bidders registered with Mazagon Dock Shipbuilders Limited should upload a scanned image of valid registration certificate, duly authorized.

#### 4. MSEs:

MSEs and Start ups shall be given relaxation of prior turnover and experience criteria, subject to meeting of quality and technical specifications.

- 5. The work executed by the contractors for their in-house or capital use need not be considered for the purpose of bidders' experience of completion of similar works.
- 6. Bidders need to upload / submit supporting documentary evidence in support of the Pre-Qualification Criteria Viz. Work / Purchase Order, Work Completion Certificate/ Proof of payment with Tax Invoice / Store Receipt and Acceptance Report or any other evidence that confirms that the work is completed which is issued by the party for whom the work is done. MDL has a right to verify / cause verification of authenticity of the said documents whenever felt necessary.

**\*NOTE: -1.** Sellers are requested to download all the Annexures attached in the buyer uploaded ATC documents. It is necessary to submit all the Annexures duly filled & signed along with the Bid.

**\*Note: 2.** Bidders are requested to strictly adhere to formats (all types of Bank Guarantees, Non-Disclosure Agreement) attached in the buyer uploaded ATC documents.

#### **(D) EMD EXEMPTION CLAUSE:**

Bidders shall have to make payment towards EMD Amount of Rs 1,50,000/- (**Rupees One Lakh Fifty Thousand Only**) through NEFT / Demand Draft / Pay order / Bank Guarantee in GeM format / Insurance Security Bond / e-Bank Guarantee in favor of Mazagon Dock Shipbuilders Limited, Mumbai from the list of Banks approved by SBI / Canara Bank published on MDL website well before Tender closing date and time. Crossed DD / Pay Order issued by Co-operative banks however may be considered to be accepted and the bid would be considered accordingly. The Bank details are given below.

Beneficiary's Name	Mazagon Dock Shipbuilders Limited
Name of Bank	State Bank of India
Branch	Mazagon Br.
Branch Code	9054
Bank Address	Mazagon Branch, Mazagon, Mumbai - 400 010.
Telephone No. of Bank	23752802
Account No.	10005255246
Account Type	Current Account

IFSC Code	SBIN0009054
RTGS Code	SBIN0009054
NEFT Code	SBIN0009054
MICR / NECS Code	400002120
Income Tax PAN No.	AAACM8029J
GST No.	27AAACM8029J1ZA

The bidder seeking EMD exemption, must submit the valid supporting document for the relevant category as per GeM GTC with the bid. Following categories of Sellers shall be exempted from furnishing EMD:

- i. Micro and Small Enterprises (MSEs) who are holding valid Udyam Registration and are manufacturer of the **OFFERED** Product or Service (Primary Product / Service - in case of bunch bid with total value wise evaluation) and give specific confirmation to this effect at the time of bid submission and claim EMD exemption and whose credentials are validated online through Udyam Registration website of Ministry of MSME and also through supporting document uploaded during bidding process and validated by the Buyer.
- ii. Start-ups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT), holding valid Startup Recognition Certificate which is to be uploaded while bidding and claiming EMD exemption and to be validated by the Buyer. Bidder to ensure that turnover for any of the financial years has not exceeded beyond limits prescribed in the certificate / Start Up scheme of DPIIT.
- iii. KVIC, ACASH, WDO, Coir Board, TRIFED and Kendriya Bhandar.
- iv. Sellers who have got their credentials verified through the process of Vendor Assessment by Vendor Assessment Agencies for the Primary Product / Primary Service 510000000000000959 (video conferencing) for which Bid / RA has been invited and holding valid Vendor Assessment or Vendor Assessment Exemption Report / confirmation (Seller to upload VA report / VAE confirmation to be validated by the Buyer).
- v. Sellers / Service Provider having annual turnover of INR 500 Crore or more, at least in one of the past three completed financial year(s)
- vi. Sellers / Service Providers holding valid BIS License for the Primary Product Category 510000000000000959 (video conferencing) whose credentials are validated through BIS database and through uploaded supporting documents to be validated by the buyer.
- vii. Central / State PSUs.
- viii. Bidders registered with Mazagon Dock Shipbuilders Limited for the **MDL Material Group – 0058414 (Application Software )** are exempted from submission of EMD. However, to qualify for EMD exemption, such bidders shall have to upload scanned copy of valid registration certificate issued by MDL in Part-I offer/bid. Bidders in process of obtaining MDL registration will not be considered for EMD exemption.

**(E) Performance Security (Performance Bank Guarantee cum Security Deposit)**

i. Performance security may be furnished in the form of NEFT / Demand Draft / Pay order / Bank Guarantee / Insurance Security Bond / e-Bank Guarantee in favour of Mazagon Dock Shipbuilders Limited, Mumbai from the list of Banks approved by SBI / Canara Bank published on MDL website.

ii. In cases where the supplier / contractor has not submitted the Performance Security and already commenced supply / services, interest is to be recovered for the period starting from 16th day of transmission / notification of order/contract by any mode and amount involved at the rate of SBI BPLR plus 2%. This should invariably be stated in tender.

iii. Performance Security is to be furnished within 15 days after notification of the award of contract and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

iv. The performance security will be forfeited and credited to MDL's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract.

v. Where the duration of contract is very long and banks are unwilling to issue BGs for long duration, rolling bank guarantee towards performance security can be obtained where it will be valid for at least one year with claim period of three months within which the same can be extended for further period by amendment. Performance security on reducing balance can also be accepted when the contract period extends beyond one year. This will be effective on completion of one year and thereafter on yearly basis.

vi. No exemption can be granted to any unit including MSME, SSI units and MDL Registered suppliers.

vii. In case of failure to submit performance security by the supplier within 15 days of transmission / notification of order by any mode, EMD will be forfeited and MDL reserves the right to cancel the order and invoke the risk purchase clause.

viii. In the event of defects due to poor workmanship leading to non-performance of the Equipment/Item and bidder failure to attend the Guarantee/Warranty defects within 45 days from date of intimation or as agreed during TNC the performance security shall be forfeited.

ix. If it is established that the contractor has failed to comply with the Guarantee/warranty obligations, the Performance Security Bank Guarantee will be encashed by MDL. MDL's decision in this regard shall be final and binding on the supplier / contractor.

**(F) NON-DISCLOSURE AGREEMENT (NDA):**

i) Initially the participating bidders shall have to submit NDA along with their offer without any deviations on Company's Letterhead by authorized Signatory from vendor side as per prescribed format at Annexure-1 (refer buyer uploaded ATC document) while submission on due date.

ii) After placement of order, successful bidder shall have to submit mutually accepted/agreed NDA on Non-Judicial stamp paper of value Rs.500/- in originals. Agreement will be executed by authorized representatives from Vendor Side & Mazagon Dock Shipbuilders Ltd.

**(G) BREACH OF OBLIGATION CLAUSE WITH RESPECT TO BID SUBMITTED:**

In case of breach of any obligation mentioned under, the bidder shall be disqualified / debarred from the bidding process for a period of one year from the date of notification

(i) Bidder has withdrawn / modified / amended / impaired / derogated from the tender during the period of bid validity.

(ii) Bidder fails or refuses to execute the contract upon notification of acceptance of bid by MDL during the period of bid validity.

**(H) MDL DISCLAIMER POLICY:**

If any document/agreement is to be signed by MDL, it should be clearly mentioned/indicated in Tech bid Part1 and bidders are requested to submit the draft document/agreement along with Tech bid Part-1. MDL reserves the right to consider placement of Order / Contract in part or in full against the tendered quantity or reject any or all tender without assigning any reason.

MDL shall not be bound by any printed conditions or provisions in the seller's bid forms or acknowledgement of contract, invoices and any other documents which purport to impose any conditions at variance with the tender terms/final negotiated & accepted terms.

**(I) INTEGRITY PACT: (Not applicable)**

**(J) PAYMENT TERMS:**

i. No advance payment will be made.

ii. 100 % Payment, as reduced by any deductibles such as liquidated damages if any, will be made within 15 Days after receipt of e-Invoice, PBG from Seller & Work Completion Certificate duly certified by authorized personnel (MDL's Chief Manager & Above) from User Dept.

iii. Invoice become payable only after receipt of WCC (Work Completion Certificate) from user department. MDL shall not be responsible for delay in payment because of errors in invoice with regard to HSN number, missing/incorrect PO no and its line item number or Incorrect Item Description etc. Vendors are advised to ensure correctness of invoices in line with the PO. Each invoice shall have reference of MDL PO No. & GeM Contract Number and respective PO line item.

iv. Payment shall be made on quarterly basis.

Note:

**A. E Invoice:** Bidder, whose aggregate turnover in any preceding financial year from FY 2017-18 onwards, exceeds INR 5 crore as per GST Act or as applicable from time to time, will have to submit an e- Invoice with a Quick Response (QR) code and Invoice Registration No.(IRN). Wherever GST is applicable, payment will be released against e-Invoice, or Invoice accompanied with Vendor's Self Declaration that " We do not fall under the category of registered persons notified under Rule 48(4) of the Central GST Rules, 2017 and we are not required to comply with e-Invoicing provisions under GST Act, as our aggregate turnover in any preceding financial year from 2017-18 onwards has not exceeded Rs. 5 Crores as per GST act”.

**B. Alternate MSME vendor payment through TReDS:**

- i) In order to address the financial needs of MSME firms, GoI has introduced a platform for facilitating the financing of trade receivables of MSMEs from buyers, through multiple financiers which is termed as Trade Receivables Discounting System (TReDS). At TReDS, auctioning of invoices at competitive & transparent environment is done by financiers based on Buyer's credit profile.
- ii) MDL is registered on the "Invoicemart" TReDS platform and M1xchange of M/s Mynd Solutions Pvt. Ltd.
- iii) MSME bidders desirous to receive payments through TReDS platform may avail the facility if they are already registered on a) "Invoicemart" TReDS platform or by registering on it. Contact details at "Invoicemart" TReDS platform are as below: 022 6235 7373 and a new mail id service@invoicemart.com. b) "M1xchange" TReDS platform or by registering on it. Contact details at "M1xchange" TReDS platform are as below: +919920455374 Ms Ashwathi Jayandran email id: ashwathi.jayandran@m1xchange.com +91 8839915724 Ms Priyanka Shah email id prinyaka.shah@m1xchange.com

**(K) LIQUIDATED DAMAGES: As per Gem GT & C**

**(L) PENALTY:**

- i. Any hardware issue to be resolved within 48 hrs beyond which a penalty of Rs. 7500 per day shall be levied.
- ii. If the onsite personnel is absent a replacement to be provided. If no replacement is provided penalty @ Rs. 2500 per day shall be levied.

Note: Support Escalation Matrix should be provided along with the offer.

**(M) SUBCONTRACT & RIGHT OF PURCHASER:**

The Bidder / Supplier / Contractor under no circumstances undertake or subcontract any work / contract from or to any other Sub-contractor without prior written approval of the Competent Authority of Purchaser. In the

event it is found that such practice has been indulged in, the contract is liable to be terminated without notice and the Bidder / Supplier / Contractor is debarred all from future tender enquiries / work orders. However, in no circumstances a contractor is permitted to subcontract any part of the contract to the bidders who had quoted for the concerned tender.

**(N) BANNED OR DE-LISTED CONTRACTORS / SUPPLIERS:**

The Bidder / Supplier / Contractor declares that they being Proprietors / Directors / Partners have not been any time individually or collectively blacklisted or banned or de-listed by any Government or quasi Government agencies or PSUs. If a bidder's entities as stated above have been blacklisted or banned or de-listed by any Government or quasi Government agencies or PSUs.

**(O) DUTY OF PERSONNEL OF SUPPLIER/SUPPLIER.**

MDL being a Defence Public Sector Undertaking, Bidder / Supplier / Contractor undertakes that their personnel deployed inside MDL in connection with the entrusted work will not indulge in any activities other than the duties assigned to them.

**(P) CLAIMS BY FIRMS**

No claims by the firms will be entertained after 03 years from date of execution/completion of order.

**(Q) Workmen Safety and Insurance:**

The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the MDL, insurance against the risks, and for the coverage, as shall be specified in the TEF; and (b) at the MDL's request, shall provide evidence to the MDL showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out works. MDL shall not be liable for any compensation in case of any fatal injury/death caused to or by any man power while performing/discharging their duties / for inspection or otherwise.

**(R)** If a firm quotes NIL charges/ consideration against the tender, the bid shall be treated as unresponsive and will not be considered”

**(S)** Bidders are requested to ensure that only relevant documents complete in all respect as indicated in the tender should be attached with their offer. The first page of every uploaded set of scanned document shall be an index of its contents. In case the offers received against this tender are more than 20, no

opportunity will be extended for submission of deficient documents after opening of bids. The evaluation of the offers will be carried out and bidders will be qualified based on the documents received along with their offer.”

MDL reserves the right to seek clarification / deficient documents from all the bidders quoted against the tender in case if number of the techno-commercially qualified bids are less than 6.

**(T) CONFIDENTIALITY, SECRECY AND IPR RIGHTS**

**(a) IPR Rights**

All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of MDL and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without MDL’s prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to MDL, together with a detailed inventory thereof. The contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

**(b) Confidentiality**

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of MDL to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of MDL and shall not, without the prior written consent of MDL neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by MDL, all copies of all such information in original shall be returned on completion of the contractor’s performance and obligations under this contract.

**(c) Secrecy**

If the Contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the contract is marked as “Secret”, the contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed thereunder.

**(d) Obligations of the contractor**

(i) Without MDL’s prior written consent, the contractor shall not use the information mentioned above except for the sole purpose of performing this contract.



(ii) The contractor shall treat and mark all information as confidential (or Secret – as the case may) and shall not, without the written consent of MDL, divulge to any person other than the person(s) employed by the contractor in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.

(i) Notwithstanding the above, the contractor may furnish to its holding company or its Subcontractor(s) such documents, data, and other information it receives from MDL to the extent required for performing the contract. In this event, the contractor shall obtain from such holding company/ Subcontractor(s) an undertaking of confidentiality (or secrecy – as the case may be) similar to that imposed on the contractor under the above clauses.

(ii) The obligation of the contractor under sub-clauses above, however, shall not apply to information that:

(aa) The contractor needs to share with the institution(s) participating in the financing of the contract;

(ab) now or hereafter is or enters the public domain through no fault of Contractor;

(ac) can be proven to have been possessed by the contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from MDL; or

(ad) otherwise lawfully becomes available to the contractor from a third party that has no obligation of confidentiality.

(iii) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the contractor before the date of the contract in respect of the contract/ the Tender Document or any part thereof.

(iv) The provisions of this clause shall survive completion or termination for whatever reason of the contract.

#### **(U) PERMITS, APPROVALS AND LICENSES**

Whenever the supply of Goods and incidental Services requires that the contractor obtain permits, approvals, and licenses from local public authorities, it shall be the contractor's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to export licence or environmental clearance if required. If requested by the contractor, MDL shall make its best effort to assist the contractor in complying with such requirements in a timely and expeditious manner, without any dilution of the Contractor's responsibility in this regard.

**(V) Conflict of Interest among Bidders/ Agents:** A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of MDL's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

(i) they have controlling partner (s) in common; or

(ii) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or

(iii) they have the same legal representative/agent for purposes of this bid; or

(iv) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or

(v) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.

(vii) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.

**Note: The bidders shall submit the undertaking for above para (Conflict of Interest among Bidders/ Agents) along with technical bid.**

**(W) Cartel Formation/Pool Rates:** It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

**(X) INSPECTION AGENCY:** MDL is inspection agency for tendered items.

**(Y) ADDITIONAL TENDER CLAUSES:**

(a) No contract of any kind whatsoever shall be placed by MDL to debarred firm including its allied firms after the issue of a debarment order by MDL/DoE. Bids from only such firms shall be considered for

placement of contract, which are neither debarred on the date of opening of tender nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

(b) If case, any debarred firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), the price quoted by the debarred firm shall be ignored. Next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

(c) Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

(d) The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

(e) Debarment in any manner does not impact any other contractual or other legal rights of MDL.

(f) The period of debarment shall start from the date of issue of debarment order.

(g) The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.

(h) Ordinarily, the period of debarment should not be less than six months.

(i) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly.

(j) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected.

(k) If there is a discrepancy between words and figures, the amount in words shall prevail.

Note:

In case of any query request to contact Mr. Bharat Rautela, DM(M-IT-PUR), Email ID: brautela@mazdock.com, Telephone no. 022-23762142/2149.

**Note: The Terms and Conditions stipulated in ATC will supersede those in GTC in case of any conflicting provisions.**

## **ANNEXURES/ENCLOSURES**

ANNEXURE-1	:	Non-Disclosure Agreement (NDA)
ANNEXURE-2	:	Proforma of Performance Bank Guarantee
ANNEXURE-3	:	MDL Bank Details
ANNEXURE-4	:	Undertaking regarding conflict of interest
ANNEXURE-5	:	Official Secret act 1923

### **Annexure I**

#### **NON DISCLOSURE AGREEMENT (NDA)**

THIS NON DISCLOSURE Agreement made at Mumbai, India on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 between Mazagon Dock Shipbuilders Limited a company registered under the Companies Act, 1956 and having its registered office at Dockyard Road, Mumbai-400 010 (hereinafter referred to as “MDL”) and \_\_\_\_\_ a company registered under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”). MDL and \_\_\_\_\_ shall hereinafter be collectively referred to as “the Parties” and individually as “a Party”.

#### **WHEREAS**

A\*. MDL has floated a tender and is required to provide certain information to (name of the bidder) to prepare his bid and/or

AA\*\*. The Parties are considering to enter into a \_\_\_\_\_ for which each Party shall provide information (“Disclosing Party”) to the other Party (“Receiving Party”) which at present is confidential and not in the public domain.

B. The Parties intend that the aforesaid information be kept confidential as between the Parties. The Parties undertake and declare that they shall not divulge, publish or reproduce the same before any party or person except in accordance with the terms of this Agreement.

NOW THEREFORE the Parties agree as follows:

1. As used in this Agreement (hereinafter referred to as the “Agreement”) the term “Confidential Information” shall mean any technical, confidential, proprietary or trade secret information or data disclosed by the Disclosing Party in connection with the \_\_\_\_\_ to the Receiving Party including without limitation any written or printed documents, specifications for the vessel, plans, general arrangement plans, production schedules, drawings, samples, models, information regarding business operations, financial information, marketing strategies, either in writing or orally or any means of disclosing such Confidential Information that the Disclosing Party may elect to use prior to the execution or during the validity of this Agreement. The Receiving Party agrees that all Confidential Information shall be treated as absolute confidential and the Receiving Party shall not disclose to any person such information otherwise than in terms of this Agreement. The Receiving Party will impose as Similar duty of confidentiality on any person to whom the Receiving Party is permitted to transfer such information in accordance with the terms hereof. For the purposes of this Agreement, the term “Receiving Party” shall mean and include its officers, employees, directors, agents, contractors, representatives, affiliated companies, successors and assigns.
2. Nothing in this Agreement may be construed as compelling the Disclosing Party to disclose any Confidential Information to the Receiving Party or to enter into any contractual relationships with the Receiving Party.
3. Any information or data in whatever form disclosed by the Disclosing Party to the Receiving Party and which (i) is clearly identified as Confidential Information by an appropriate and conspicuous marking or (ii) has been identified as Confidential Information at the time of disclosure shall be subject to the relevant terms and conditions of this Agreement. The Disclosing Party’s decision whether any information disclosed by it under this Agreement is confidential or not shall be final and binding on the Receiving Party.
4. The Receiving Party hereby covenants that the Confidential Information received from the Disclosing Party shall:
  - (a) Be safely kept by the Receiving Party; the Receiving Party shall protect the Confidential Information with the same degree of care as the Receiving Party uses with its own confidential information in order to prevent its disclosure, copy and / or its use (but in no event less than reasonable care) for purposes other than the Proposal.
  - (b) Be only disclosed to, and used by, those employees or directors who have a need to know.
  - (c) Not be disclosed to a third party except those with a need to know provided they receive such information subject to the same restrictions as are contained in this Agreement.

- (d) Be used by the Receiving Party directly or indirectly, solely for the purpose of considering, evaluating and effecting the tender/bid/contract.
5. The Receiving Party shall promptly upon requests by the Disclosing Party at any time return all copies of the Confidential Information communicated to it hereunder together with all copies and extracts made thereof and shall not retain any copies of the same, in any form whatsoever.
6. The Receiving Party shall have no obligations or restrictions with respect to:
- (a) Information publicly known through no wrongful act of the Receiving Party.
  - (b) Information rightfully disclosed by a third party without breach of this Agreement by the Receiving Party and which can be communicated without restriction.
  - (c) Information which was already known or which was independently developed by the Receiving Party (provided that the Receiving Party can demonstrate the same).
  - (d) Information, the disclosure of which the Disclosing Party authorizes in writing.
7. Nothing in this Agreement shall be construed as granting to the Receiving Party any patent, copyright or design license, or rights of use under similar intellectual property rights in respect of the Confidential Information.
8. The Receiving Party shall not without prior written consent of the Disclosing Party:
- (a) Disclose to any person, directly or indirectly:
    - i) The fact that the Confidential Information has been made available to the Receiving Party by the Disclosing Party or that the Receiving Party has inspected any portion of the Confidential Information; or
    - ii) The fact that any discussion or negotiation is taking place concerning the Proposal; or iii) Any of the terms, conditions or other facts with respect to the Proposal, including the status thereof; or
  - (b) Make any private or public announcement or statement concerning or relating to the Proposal.
9. The Disclosing Party represents and warrants that save as otherwise notified in writing to the Receiving Party:
- a) Disclosure of information by it to the Receiving Party does not infringe the rights of any third party nor is it under any restriction with regard to the disclosure of any information, and that where applicable, it has obtained all licenses and consents necessary to enable the lawful disclosure of information by it to the Recipient; and
  - b) It is not aware of any restriction on the use of such information by the Receiving Party, save as provided in this Agreement.

c) To the effect that the foregoing representations and warranties shall be deemed to be given at the date of this Agreement and after that date upon and in respect of each disclosure.

The Disclosing Party makes no warranty or representation whatsoever as to the accuracy, completeness, suitability or adequacy of any information or as to the results obtained from it and assumes no responsibility in respect of the use of the information by the Receiving Party.

10. The Receiving Party shall indemnify and hold harmless the Disclosing Party from and against any action, claim or proceeding and any loss, damage, costs, expenses or liabilities arising out of any such action, claim or proceeding, brought by any third party pursuant to any unauthorized disclosure or use of any information by the Receiving Party, or by any person for whom the Receiving Party is responsible under this Agreement, or pursuant to any breach of any undertaking, warranty or representation contained in this Agreement.
11. For the purposes of this Agreement 'Classified Information' shall mean information, documents and material of any kind which the respective Government i.e. Indian Government has given or caused to be given a security classification irrespective of whether the same is transmitted orally, electronically, in writing or by hand. Notwithstanding any other provision of this Agreement:
  - a) Each Party hereto undertakes to follow security procedures prescribed for military purposes with respect to disclosure, receipt, production, use and handling of Classified Information.
  - b) Any Classified Information, disclosed by one Party hereto shall be, whatever the method of disclosure be, identified by the Disclosing Party as Classified Information at the time of disclosure.
  - c) The provisions of this Clause are to remain in full force and effect notwithstanding any termination by expiration or otherwise of this Agreement.
12. In the event the Receiving Party is required to disclose Confidential Information under any provision of law or upon an action, subpoena or order of a court of competent jurisdiction or of any requirement of legal process regulation or governmental order, decree, regulation or rule, the Receiving Party will immediately notify the Disclosing Party of its having received a request to so disclose (along with the terms and circumstances thereof), unless otherwise prohibited by law and consult with the Disclosing Party on action or steps to be taken in response to such request.
13. This Agreement represents the entirety of the agreement of the Parties relating to the disclosure of the Confidential Information and shall not be waived, amended or assigned by the Receiving Party except by prior written consent of the Disclosing Party. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

14. This Agreement shall be valid for a period of \_\_\_\_\_(\_\_\_\_\_) years from the date of its execution between the parties. Notwithstanding the aforesaid, the obligations of Parties in connection with confidentiality under this Agreement shall survive in perpetuity.
15. The foregoing constitutes the entire Agreement between the Parties with respect to the subject matter here of and supersedes and cancels any prior representation, understanding and commitment (whether oral and written) made between the Parties with respect to or in connection with any of the matter of things to which this Agreement applies.
16. This Agreement shall be governed by and shall be interpreted in accordance with the laws of India.
17. Any dispute arising in connection with or out of the validity, performance or the interpretation of this Agreement shall be finally settled by the competent jurisdiction in Mumbai.
18. The Receiving Party acknowledges that any breach of the terms and conditions of this Agreement may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. Therefore, the Receiving Party agrees that the Disclosing Party shall be entitled, in addition to any other remedies available to it, to seek injunctive relief and/or other equitable relief to prevent or restrain any breach by the Receiving Party or its employees/officials, or otherwise to protect its rights, under this Agreement.
19. Unless otherwise provided herein, all notices or other communications under or in connection with this Agreement shall be given in writing and may be sent by personal delivery or post or courier or facsimile at the address as specified herein below:

To MDL Address:

Phone No.:

Fax:

E-mail: To \_\_\_\_\_ Address:

Phone No.:

Fax No. :

E-mail:

Any such notice or other communication will be deemed to be effective if sent by personal delivery, when delivered, if sent by post, 4 (four) days after being deposited in the post and if sent by courier, one day after being deposited with the courier, and if sent by facsimile, when sent (on receipt of a confirmation to the correct facsimile number).

IN WITNESS WHEREOF, this Agreement is executed by authorized representatives of both the Parties in two (2) originals.

Signed by the within named Signed by the within named MDL



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In the presence of

In the presence of

Note: The above Agreement is to be drawn up by the contractor on non-judicial stamped paper of value Rs.500/-, if it executed in Maharashtra. However, for other places stamp duty is to be levied as per Stamp Act of respective States. The value of stamp paper to be confirmed from Legal Department, MDL.

\* - A: Pre-submission of Bid    \*\* - AA: Post Entering of Contract

**Annexure-II**

**PROFORMA BANK GUARANTEE FOR PERFORMANCE**

**(On Non-Judicial stamp paper of value Rs. 500.)**

IN CONSIDERATION OF MAZAGON DOCK SHIPBUILDERS LIMITED, a company incorporated under the Companies Act 1956 and having its registered office at Dockyard Road, Mumbai 400010 (hereinafter referred to as the "the Purchaser" which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its successors and assigns) having placed an order on Messers..... a partnership firm/sole proprietor business/a company registered under the Companies Act, 1956 having its Registered office at ..... (hereinafter called the Contractor/ Supplier which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its successors and assigns) vide order No..... dated ..... (hereinafter called "the order" which expression shall include any amendments/alterations to "the order" issued by "the Purchaser") for the supply , delivery at site, installation and commissioning of certain equipment, item/services/civil works etc. as stated in the said Order and the Purchaser having agreed that the Contractor / Supplier shall furnish a security for the performance of the Contractor's / Supplier's obligations and/or discharge of the Contractor's / Supplier's liability in connection with the said order and the Purchaser having agreed with the Contractor/Supplier to accept a performance guarantee, We, ..... Bank having office at ..... (hereinafter referred to as "the Bank" which expression shall include its successors and assigns) hereby agree to pay to the Purchaser without any demur on first demand an amount not exceeding Rs..... Rupees ..... only) being 10% of the order value against any loss or damage, costs, charges and expenses caused to or suffered by the Purchaser by reason of non-performance and non-fulfilment or for any breach on the part of the Contractor / Supplier of any of the terms and conditions of the said order.

2. We, ..... Bank further agree that the Purchaser shall be sole judge whether the said Contractor/Supplier has failed to perform or fulfil the said order in terms thereof or committed breach of any terms and conditions of the order and the extent of loss, damage, cost, charges and expenses suffered or incurred or would be suffered or incurred by the Purchaser on account thereof and we waive in the favour of the Purchaser all the rights and defences to which we as guarantors may be entitled to.

3. We, ..... Bank further agree that the amount demanded by the Purchaser as such shall be final and binding on the Bank as to the Bank's liability to pay and the amount demanded and the Bank undertake to pay the Purchaser the amount so demanded on first demand and without any demur notwithstanding any dispute raised by the Contractor/Supplier or any suit or other legal proceedings including arbitration pending before any court, tribunal or arbitrator relating thereto, our liability under this guarantee being absolute and unconditional.

4. We, ..... Bank further agree with the Purchaser that the Purchaser shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said order or to extend time of performance by the Supplier from time to time or to postpone for any time to time any of the powers exercisable by the Purchaser against the Contractor / Supplier and to forbear to enforce any of the terms and conditions relating to the order and we shall not be relieved from our liability by reason of any such variation or extension being granted to the Contractor/Supplier or for any forbearance, act or omission on the part of the Purchaser or any indulgence by the Purchaser to the Contractor/Supplier or by any such matter or things whatsoever which under the law relating to sureties would have the effect of relieving us.

5. We, ..... Bank further undertake not to revoke this guarantee during its currency except with the previous consent of the Purchaser in writing.

6. We, ..... Bank also agree that the Bank's liability under this guarantee shall not be affected by any change in the constitution of the Contractor / Supplier or dissolution .....

7. Notwithstanding anything contained herein above:

i) Our liability under this guarantee shall not exceed Rs.....

ii) This Bank Guarantee shall be valid upto and including .....; and

iii) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before ..... (validity + ---weeks from the date of expiry of this guarantee).

8. This Guarantee shall be governed by Indian laws and the Courts at Mumbai, India shall have the exclusive jurisdiction.

IN WITNESS WHEREOF the Bank has executed this document on this..... day of .....

For ..... Bank (by its constituted attorney)

(Signature of a person authorized to sign on behalf of "the Bank")

NOTE: -

1. Indigenous supplier or Foreign Supplier through Indian Bank to submit BG.

2. If BG is not received directly from Bank then MDL shall get the Bank Guarantee verified and only on confirmation of verification the Bank Guarantee shall be considered as submitted. Expenses for BG verification shall be borne by MDL.

### Annexure-III

#### **Electronic Payment Mandate Form**

**(MDL Bank details)**

Name of the Company/Firm	Mazagon Dock Shipbuilders Limited
Address with Phone no.	Dockyard Road, Mumbai – 400010
E-Mail ID	
Phone No.	+91 22 23745310

Fax No.	
<b>Particulars of Bank Account</b>	
Name of the Bank	State Bank of India
Name of the Branch	Mazagon Dock Mumbai Branch
Branch Code	9054
Bank IFSC / NEFT Code	SBIN0009054
Bank Address	MBPT Workshop building, N.V Nakhwa Road, Mazagon - 400010
City Name	Mumbai
Telephone No. of Bank	+91 22 23752802
9 digit code no. of bank & branch appearing on the MICR cheque issued by your bank	400002120
Type of Account	Current Account
Account No.	10005255246
Income Tax PAN No.	AAACM8029J

**Annexure-IV**

**Undertaking regarding conflict of interest**

We do not have any conflict of interest with other bidders. We agree for the following compliance;

1. The bidder found to have a conflict of interest shall be disqualified.
2. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
  - i. they have controlling partner (s) in common; or
  - ii. they receive or have received any direct or indirect subsidy/ financial stake from any of them; or
  - iii. they have the same legal representative/agent for purposes of this bid; or
  - iv. they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
  - v. Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.
  - vi. In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
    - a) The principal manufacturer directly or through one Indian agent on his behalf; and
    - b) Indian/foreign agent on behalf of only one principal.
  - vii. Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid
  - viii. In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

Seal / Stamp

of Bidder

**Annexure-V**

## EXTRACT OF PROVISIONS OF THE OFFICIAL SECRETS ACT, 1923

SECTION 2(B) ; “PROHIBITED PLACE” It is defined as the place of any work of Defence Dockyard and other so belonging or occupied and used for the purpose of building, repairing, making or storing any ammunitions of war. For the purpose of the above definition, sketch includes any photograph or other mode of representing any place or thing.

SECTION 3 : “PENALTIES FOR SPYING” If any per unlawfully –

- a) approaches, inspects, passes over or is in the vicinity of any clear place; or
- b) make any sketches intended to be directly or indirectly useful to an enemy ;
- or c) obtains, collects, records or communicates to any other person any secret official code. Shall be liable for imprisonment of 14 years in case of Defence Installation.

SECTION 4 : “COMMUNICATION WITH FOREIGN AGENTS” If Any person has been in communication with or attempted to communicate with foreign agents regarding the vital information of any “PROHIBITED PLACE” would be guilty of violating the provisions of this Act.

SECTION 5 : “WRONGFUL COMMUNICATION OF INFORMATION” If any person having in his possession or control any official document;

- a) Willfully communicates to any person, other than a person, who is authorised to communicate it.
- b) Used the information in his possession for the benefit of any foreign power.
- c) Retain in his possession when he has no power to retain it
- d) Fails to take reasonable care of it. Shall be guilty of an offence under this Act.

SECTION 6 : “UNAUTHORISED USE OF UNIFORMS” If any person for the purpose of gaining admission or of assisting any other person to gain admission to a “PROHIBITED PLACE” wears uniforms without lawful authority shall be guilty of offence under this Section.

SECTION 7 : “INTERFERING WITH OFFICERS OF POLICE” No person in the vicinity of any “PROHIBITED PLACE” shall abstract any Police Officer engaged on guard, sentry or similar duty. If any person move in the provisions of this section, shall be punishable with imprisonment, which may extend up to 3 years.

SECTION 8 : “DUTY OF GIVING INFORMATION” It shall be duty of every person to give on demand to a superintendent of Police or any other Police Officer not below the rank of Inspector, any information in his

power relating to an offence under this Act. If any person fails to give such information, shall be punishable with imprisonment to 3 years or fine or with both.

SECTION 9 : “INCITEMENT” Any person who attempts to commit or debate the commission of an offence under this Act shall be punishable with the same punishment and be liable to be proceeded against in the same manner as if he had committed such offence.

SECTION 10 : “PENALTY FOR HARBOURING SPIES” If any person whom he knows or has reasonable grounds for supposing to be person who is about to commit or who has committed offence under this Act shall be guilty of offence under this Section.

SECTION 11 : “SEARCH WARRANTS” If a presidency Magistrate, Magistrate First Class or Sub-Divisional magistrate is satisfied with the information that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant search warrant to any Police Officer to enter at any time any premises to force to search premises or the places.