

Memorandum Of Understanding

for Multi Effect Evaporator (Zero Liquid Discharge) Package
in Multi Effect Evaporator Tender on LSTK basis for
IOCL-Panipat

**** This is between BHEL & ZLDS – Not for submission to Customer****

This Memorandum of Understanding (MoU) is made on _____ at Hyderabad by and

between **Bharat Heavy Electricals Limited** of one part, a company registered under the Indian Companies Act 1956, with its Registered and Corporate Office at **BHEL House, Siri fort, New Delhi 110043** (hereinafter referred to as "BHEL/First Party" which expression shall mean and include its legal heirs, administrators and permitted assigns),

AND

Zero Liquid Discharge Package Supplier _____ having its registered office at _____ (hereinafter referred to as "**ZLDS/Second Party**" which expression shall mean and include its legal heirs, administrators and permitted assigns).

(referred to herein as "Parties" or individually as "Party")

WHEREAS

A. **BHEL**, a Government of India Undertaking under the Ministry of Heavy Industries, is a leading company in Capital Goods Sector and is equipped with required expertise, manpower, equipment and other resources to undertake and perform activities as LSTK Contractor.

B. ZLDS _____ is, inter alia, engaged in _____.

On behalf of **IOCL, Panipat** (The 'Customer'), **M/s M.N.DASTUR & COMPANY PVT. LTD. (MND)** as CONSULTANT invited Bids (vide Bidding Document Reference: **ROME-PR-WTS-001** on 01.06.2021, for Multi Effect Evaporator Plant at Panipat on LSTK basis from competent contractors fulfilling the Qualification Criteria as stated in the Tender document (herein after referred to as "**Tender**"). The supply and services which are subject matter of the tender are herein after referred to as "**Project**" and will include any revised or amended tender or clarifications or corrigenda to the tender which may be issued by the Customer for the above referred Project.

BHEL is participating in the said tender floated by the Customer and accordingly has floated a Notice Inviting Pre-Bid Tie-up Offer vide Notice No.: _____ for **Pre-Bid Tie-up for Zero Liquid Discharge Package** (herein after referred to as **Notice**). In response to the notice, the ZLDS has submitted his technical and commercial offer for the scope of work of the Project.

C. The parties having read and understood the terms of the tender and the notice, have agreed to cooperate with each other and work together as a team for the submission of bid proposal

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against the above mentioned tender with **BHEL** as the **Prime Bidder** and _____ as **ZLDS**. The Parties hereby agree to perform Contract, if any awarded, by diligently executing their respective Scope of Work, on the terms and conditions agreed to in this Agreement.

- D. The ZLDS has proposed to offer their services as the Engineering Sub-Contractor for Residual Process Engineering and Detailed Engineering as per the requirements of **Tender**.
- E. **The MoU shall be valid till completion of the Defect Liability Period of Operation and Maintenance contract (i.e 12 months from the completion date of O&M contract). MoU shall be converted into a Contract on BHEL receiving the order from its customer.**
- F. The parties have therefore mutually decided to enter into this Agreement on the terms and conditions as mentioned herein after.

NOW, THEREFORE, “BHEL” and “ZLDS” hereby agree as follows:

1. **BHEL** will submit the Proposal to the Customer, participate in the negotiations with the Customer, and if awarded, conclude the Contract against this Tender. “BHEL” and “ZLDS” shall use commercially best efforts to assist each other with respect to scope of activities related to each party as defined in the tender while preparing and submitting the Bid.
2. **Scope of Work:** The scope of work of the Parties shall be as per the Technical Specification enclosed in “Notice” and subsequent agreements till order placement on ZLDS. Any modifications/changes in the Scope of work of ZLDS as a result of any change in the Project scope of work, as per Customer request or change in any requirements shall be binding upon the ZLDS.
3. In case the BHEL/ ZLDS ceases to exist on account of merger/acquisition, the new entity so formed shall be responsible for all obligations in terms of providing engineering services as contracted (as the initial BHEL/ZLDS) with regards to this Project.
4. Both parties agree to submit an irrevocable undertaking in non-judicial stamp paper of appropriate value duly signed by them stating that both of them i.e. the bidder (BHEL) and their Engineering Partner shall be liable for due performance of the contract jointly and severally in accordance with the terms & conditions of the Tender.
5. In the event of price reduction during negotiation by BHEL with TFL, corresponding reduction will be passed on to the ZLDS.
6. The successful ZLDS on whom LOI will be placed for Post-Order Engg Work, shall deposit to BHEL within 30 days of signing the MOU, 1% of Final agreed Price of Post-Order Engineering Work, towards Bid Bond (in the form of Bank Guarantee or Security Deposit etc, for continued commitment during the validity period of MOU

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7. **Performance Bank Guarantee:** The ZLDS shall submit to BHEL at the time of award of Work Order (WO), a Contract Performance Bank Guarantee (CPBG) of 5 % of the PO value valid for up to WO delivery date + 3 months in the prescribed format, which shall also cover the performance obligation regarding the contract during warranty period. The CPBG will be discharged by BHEL after completion of OEM/vendor performance obligations including any warranty obligations under the contract.
8. **Communication:** It is agreed between the Parties that BHEL shall be the prime point of contact with the Customer concerning the Proposal. BHEL will coordinate the involvement and participation of ZLDS in all activities emanating from this Agreement. BHEL will involve the ZLDS in all deliberations with the customer wherein mutual interest of both the parties is involved.
9. On award of contract work by the Customer, a detailed agreement (inclusive of but not limited to the following – Scope of Work, Responsibilities & Duties, Communication, Relationship, Sub-Contracting, Exclusivity, Confidentiality, IPRs, Representations, Costs, Liabilities, Indemnities, Payment Terms, Delivery Terms, Liquidated Damages, SLA Conditions, Quality of Works, Insurance, Fall Clause, Force Majeure, Termination, Arbitration, Set Off, Performance Security, etc.) shall be entered into between BHEL and “ZLDS” based on this MoU.
10. All technical, financial and commercial terms and conditions of the tender, except, pricing, risk purchase, advance payment, LD/Penalty and termination will apply on back-to-back basis between BHEL and ZLDS for their respective part/scope of work as that in Project.
11. However, if the ZLDS fails to fulfil its part of the work to the satisfaction of BHEL, then BHEL shall have the right to terminate the contract with the ZLDS and get the same executed departmentally or by other agencies at the risk and cost of ZLDS.
12. **Payment Terms:** BHEL will release payments to ZLDS only after release of corresponding payment from Customer.
13. **Integrity Pact:** ZLDS shall sign an Integrity Pact with BHEL at the time of award of contract award.
14. **Confidentiality:** BHEL and “ZLDS” agree to keep confidential all the information shared with each other and disclose to third party only after taking prior written consent of each other. This clause excludes information available in public domain. The confidentiality provisions of this Agreement shall remain in full force and effect during the term of this Agreement and 12 months thereafter.
15. **Term and Termination:** This Agreement will become effective on the date of signing and will remain in effect till 60 calendar months from the date of award of work or till the successful completion of the project whichever is later; until the occurrence of any of the following:
 - a. Contract is not awarded to BHEL.
 - b. Bankruptcy proceedings being initiated against either of the Parties
 - c. Mutual agreement between the “Parties”

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- d. Tender got cancelled by the Customer
- e. In case ZLDS is not performing as per project requirement

16. Correspondence: Notices and other communications under this Agreement shall be in writing in English language and communicated through post, courier, fax, email or any other recognized mode of such communication. All such notices and communications shall be directed to the address as mentioned in the Agreement.

17. Governing Law and Jurisdiction: This MoU shall be construed and governed by the laws of India and the parties hereby submit to the exclusive jurisdiction of Hyderabad Courts of Law.

18. Arbitration: All disputes or differences whatsoever arising among the parties under and/or in connection with and/or in respect of this MoU shall be referred to and decided by a sole arbitrator, who shall be appointed by CMD, BHEL. The arbitration shall be conducted in accordance with Arbitration & Conciliation Act of 1996 and the venue shall be Hyderabad.

19. Any sum of money (including Bank Guarantees) due and payable to the ZLDS, under this contract or any other contract entered into between the parties herein, whether continuing or completed may be appropriated by BHEL and set off against any claim of BHEL of any nature whatsoever, arising under this contract or any other contract entered into between the parties herein, whether continuing or completed.

20. Any matter, which is not stipulated in the Agreement, shall be settled in good faith by discussion among the parties in the spirit of understanding and cooperation.

21. By signing this MoU, the "Parties" acknowledge that it correctly records the understanding they have reached with regard to the Project.

IN WITNESS WHEREOF, the parties hereto has caused this MoU to be executed in duplicate to be effective as of effective date by its duly authorized representatives.

(For: Bharat Heavy Electricals Limited)

(For: _____)

Signature:

Signature:

Name:

Name:

Designation:

Designation:

Address:

Address:

Witness

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