

**MMTC LIMITED**  
**Core 1, Scope Complex, 7 Institutional Area, Lodi Road, New Delhi 110003.**

**INVITES**  
**EXPRESSION OF INTEREST (EOI)**

**For Empanelment of Suppliers for supply of Rock Phosphate/DAP/ Phosphoric Acid for One Year**

No. MMTC/Fertilizer/Rock Phosphate/2016-17/01 dated 23.12.2016

Website: [www.mmtclimited.com](http://www.mmtclimited.com)

Phone No: 011-24365807/24381517/24381515/24381390/1392

E Mails: [asingh@mmtclimited.com](mailto:asingh@mmtclimited.com), [cuk@mmtclimited.com](mailto:cuk@mmtclimited.com), [bhawna@mmtclimited.com](mailto:bhawna@mmtclimited.com)  
[pankajk@mmtclimited.com](mailto:pankajk@mmtclimited.com), [gmitra@mmtclimited.com](mailto:gmitra@mmtclimited.com), [manojk@mmtclimited.com](mailto:manojk@mmtclimited.com)

**Invitation for Expression of Interest**

MMTC invites application for Expression of Interest of suppliers for Rock Phosphate, DAP and Phosphoric Acid sale in India.

**About MMTC**

MMTC is a Government of India enterprise and is one of the largest international companies of India. MMTC is engaged in international trading of large number of commodities including Minerals, Metals, Precious Metals, Fertilizers, Coal and Hydrocarbons, Agricultural Commodities, etc.

MMTC is one of the largest importers of fertilizers in India. MMTC is also one of the State Trading Enterprises (STE) for import of urea on Government account. Apart from Urea, MMTC is engaged in import of Muriate of Potash (MOP), Technical Grade Urea, Sulphur, Rock Phosphate, etc.

**Scope of work**

MMTC wishes to empanel reputed suppliers for Rock Phosphate, DAP and Phosphoric Acid with substantial experience in supplying these fertilizers to the Indian market. Following information may be submitted along with the application:

- (i) Quantity of various grades of Rock Phosphate supplied to the Indian market during the last three years.
- (ii) Quantity of various grades of Phosphoric Acid supplied to the Indian market during the last three years.
- (iii) Quantity of DAP supplied to the Indian market during the last three years.
- (iv) Detailed specification of the product to be supplied.
- (v) Latest quality certificates from independent reputed surveyors at load port to be enclosed with the application.
- (vi) Latest quality certificate from independent reputed agencies/surveyors at discharge port in India.

**Procurement Plan**

MMTC wishes to procure Rock Phosphate, DAP and Phosphoric Acid from reputed suppliers for supply to various customers in India. MMTC wishes to appoint such a supplier who will act as an assured source of supply for MMTC.

Terms and conditions of supply shall be discussed and mutually agreed through a Memorandum of Understanding or a Contract between MMTC and the supplier.

It is expressly understood and agreed by the prospective suppliers that MMTC shall be entering into an MOU or Contract with the supplier for supply to various customers spread across India. Terms of supply shall be as required by these customers and shall be finalized on shipment basis.

### **Pre-qualification Criteria**

- (i) The prospective supplier should be a producer/ mine owner or have long term supply arrangement with large producer / mine owner of repute. Documentary evidences/Undertaking to this effect have to be submitted along with the EOI.
- (ii) The prospective supplier(s) should not have been blacklisted/ banned from supplying to India by Government of India, State Government(s) or any PSU in India.

### **Submission of Expression of Interest**

- (i) Prospective supplier(s) may down-load the Expression of Interest document from the website of MMTC [www.mmtclimited.com](http://www.mmtclimited.com). Formal application in the prescribed format, along with full EOI document duly signed by the applicant should be submitted.
- (ii) Authorized representative of the Company should sign the documents.
- (iii) Suppliers should submit their supporting documents such as Company Brochure, Last three years Balance Sheet, details of production capacity or off-take arrangements with the mines, ISO or other accreditation certificates (if any), registration certificates with various tax authorities or Government Departments, credit rating agency report from any of Dun & Bradstreet or Standard & Poor or Moody's and Bankers reference letter are to be submitted in the Tender Box placed at Fertilizer Division, 2<sup>nd</sup> floor, MMTC Limited, SCOPE Complex, Lodi Road, New Delhi-110017
- (iv) Last day of submission of EOI 1100 Hrs IST on 23.01.2017. EOI shall be valid for 30 days from the date of opening.

### **Validity of the EOI**

The EOI is to be kept valid for acceptance for a period of 30 days from the date of submission of the EOI or such other extended period as mutually agreed.

### **General Terms and Conditions**

- (i) MMTC reserves the right to accept or reject any offer of EOI without assigning any reasons whatsoever.
- (ii) Final selection of supplier(s) from among the panel of participants will be done at the discretion of MMTC and decision of MMTC shall be final and binding on all the empanelled suppliers.
- (iii) Supplier(s) may clearly note that terms and conditions enumerated in this EOI are only illustrative and not exhaustive. The chosen supplier(s) from the panel will have to enter into transaction contract as devised by MMTC.
- (iv) Prospective supplier(s) can also be asked to furnish additional information.
- (v) The prospective supplier(s) shall ensure compliance of all Government regulations/conventions/policies/guidelines/orders, in force in India.

(vi) Suppliers are required to furnish credit rating report from either D&B or Moodys or Standard and Poor and also from their bankers.

(vii) On award of the contract, supplier shall establish a performance guarantee bond in the format prescribed by MMTC of certain percentage of contract value, which will solely be decided by MMTC.

### **No Contractual Obligation**

MMTC is not bound contractually or in any way to any of the bidders to this EOI. MMTC is not liable for any costs or compensation in relation to the consideration of this EOI incurred by the bidders.

### **Disclaimer**

Mere applying against this EOI does not in any way commit or otherwise obliges MMTC to proceed with all or any part of the EOI process. MMTC at its absolute discretion elect to abandon the EOI either in part or in whole without giving prior notice to the prospective suppliers.

### **EOI FOR SUPPLY OF ROCK PHOSPHATE/DAP/ Phosphoric Acid**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Details</b>
1	Name of the Vendor alongwith complete address, phone numbers, fax numbers, e mail addresses	
2	Details of Ownership/Constitution	
	Whether Government/ Semi Government/ PSU/ Private Limited/ Public Limited Company/Partnership	
3	Details of Manufacturing Facilities	
4	Details of Off-take arrangement with the Mine Owners	
5	Exportable Quantity	
6	Name of the major buyers in India	
7	Details of Quantity supplied to India during the last three years for each grade of Rock Phosphate/DAP/Phosphoric Acid	
8	Balance Sheet for the last three years	
9	Has the company been black listed/banned by the Government of India or any State Government or any PSU in India and if yes, details thereof	
10	Declaration (to be given in the Company's letter head)	
11	Credit rating of minimum satisfactory or equivalent which is less than one year old as	

	evaluated by any of the following three agencies: <ul style="list-style-type: none"> <li>▪ Dun &amp; Bradstreet</li> <li>▪ Standard &amp; Poor</li> <li>▪ Moody's</li> </ul>	
12	Reference Letter from Bank	

In case the vendors have any representative in India, they shall submit a copy of the agreement with the Indian representative giving details of their relationship with the Indian representative.

In case photo copies are submitted, they should be duly certified as true copies with the company seal.

**DECLARATION**

**(To be given in Company Letter Head)**

MMTC Limited  
New Delhi.

We, \_\_\_\_\_, declare that none of our sister concerns/associates belong to our group is participating/submitting the EOI.

That the applicant has not been blacklisted/banned/de-listed or put on holiday by the Government of India, any of the State Governments or any PSU in India in the last five years.

Signature with Seal

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**MMTC LTD**

**AND**

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THIS MEMORANDUM OF UNDERSTANDING (MOU) IS MADE AND ENTERED INTO THIS \_\_\_\_ OF 2017 BY AND BETWEEN:

\_\_\_\_\_ (FULL ADDRESS) HEREIN AFTER REFERRED TO AS "FIRST PARTY" REPRESENTED BY

AND

MMTC LTD, CORE 1, "SCOPE COMPLEX", 7 INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI-110003, HEREINAFTER REFERRED TO AS "SECOND PARTY" REPRESENTED BY \_\_\_\_\_

WHEREAS

FIRST PARTY IS TRADING COMPANY ENGAGED IN INTERNATIONAL TRADING OF VARIOUS COMMODITIES WITH OFF-TAKE ARRANGEMENT WITH \_\_\_\_\_ MINES OF \_\_\_\_\_ FOR SOURCING -----(FERTILIZER NAME)

AND

MMTC IS A GOVERNMENT OF INDIA ENTERPRISE ENGAGED IN INTERNATIONAL TRADING OF VARIOUS COMMODITIES FOR MORE THAN FIVE DECADES.

NOW THEREFORE BOTH FIRST PARTY AND SECOND PARTY AGREE AS UNDER:

**1. OBJECTIVE AND SCOPE**

- 1.1 THE MAIN OBJECTIVE OF THIS MOU IS TO DEFINE THE POSSIBILITY OF ENTERING INTO A LONG-TERM SUPPLY ARRANGEMENT FOR -----(FERTILIZER NAME)
- 1.2 SECOND PARTY SHALL KEEP FIRST PARTY UPDATED ON THE REQUIREMENTS OF THE PROSPECTIVE CUSTOMERS OF ----- (FERTILIZER NAME) IN INDIA TO ENABLE FIRST PARTY PLAN SHIPMENTS.
- 1.3 BOTH SECOND PARTY AND FIRST PARTY SHALL EXTEND ASSISTANCE TO EACH OTHER FOR THE PROMOTION OF \_\_\_\_\_ (FERTILIZER NAME) OF \_\_\_\_ MINES IN THE INDIAN MARKET.
- 1.4 FIRST PARTY SHALL OFFER \_\_\_\_\_ (FERTILIZER NAME) TO SECOND PARTY BASED ON THE REQUIREMENT INDICATED BY SECOND PARTY FROM TIME TO TIME.
- 1.5 \_\_\_\_\_ (FERTILIZER NAME) SHALL BE OFFERED BY FIRST PARTY TO SECOND PARTY ON CFR/CIF BASIS.
- 1.6 FIRST PARTY SHALL OFFER PRICE WITH 30 DAYS VALIDITY SO THAT PROBABLE CUSTOMERS COULD BE CONTACTED AND DEAL FINALIZED.
- 1.7 FIRST PARTY SHALL OFFER RATE ON SIGHT PAYMENT BASIS/AN INTEREST FREE CREDIT OF 30/90/180 DAYS BASIS FROM THE DATE OF SHIPMENT.
- 1.8 SECOND PARTY AND FIRST PARTY SHALL FINALIZE CONTRACT BEFORE EVERY SHIPMENT INDICATING THE PRICE AND SHIPMENT SCHEDULE FOR THAT PARTICULAR SHIPMENT.
- 1.9 SECOND PARTY SHALL BE OFFERED A TRADE MARGIN ON PER TONNE BASIS FOR EVERY TONNE OF \_\_\_\_\_ (FERTILIZER NAME) SOLD TO CUSTOMERS IN INDIA/NEIGHBORING COUNTRIES BY SECOND PARTY. THIS SHALL BE MUTUALLY DISCUSSED AND AGREED BEFORE COMMENCEMENT OF SUPPLIES.
- 1.10 PAYMENT TERMS SHALL BE MUTUALLY DISCUSSED AND AGREED BEFORE COMMENCEMENT OF SUPPLIES. INTENTION IS TO SAVE ON COST AND HENCE AGREE FOR SUPPLY ON CAD BASIS.

**2. CONFIDENTIALITY**

- 2.1 BOTH SECOND PARTY AND FIRST PARTY UNDERTAKE AND DECLARE THAT BOTH THE PARTIES SHALL KEEP THE TERMS OF THIS MOU STRICTLY CONFIDENTIAL AND PRIVILEGED.
- 2.2 NEITHER PARTY SHALL ASSIGN THIS MOU OR ANY PART THEREOF TO A THIRD PARTY NOR SHALL ANY PARTY TRANSFER ANY PART OR ALL OF ITS RIGHT HEREIN WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY.

**3. TERMINATION**

- 3.1 EITHER PARTY MAY TERMINATE THIS MOU BY GIVING 30 DAYS WRITTEN NOTICE WITHOUT ASSIGNING ANY REASONS TO THE OTHER PARTY. UPON TERMINATION OF THIS MOU, NO PARTY SHALL HAVE ANY CONTINUING OBLIGATION OR LIABILITY TOWARDS THE OTHER PARTY WITH RESPECT TO THIS MOU. HOWEVER, TERMINATION OF MOU WILL NOT AFFECT ANY OBLIGATION OF EITHER PARTY UNDER ALREADY CONCLUDED CONTRACT(S) BETWEEN PARTIES UNDER THIS MOU.

**4. CONSTRUAL**

4.1 THIS MOU SHALL NOT BE CONSTRUED TO CREATE A PARTNERSHIP FOR ANY PURPOSE NOR SHALL ANY PARTY HERETO SHALL ACT AS AN AGENT OF OR BIND ANY OTHER PARTY. ACCORDINGLY, NEITHER PARTY MAY INCUR EXPENSES OR OBLIGATIONS ON BEHALF OF THE OTHER, EXCEPT WITH ADVANCE WRITTEN CONSENT, RESPECTING THE PROJECT. BOTH PARTIES AGREE THAT THEY WILL REFRAIN FROM ACTING BEYOND THE SCOPE OF WHAT IS INTENDED, AS MENTIONED IN CLAUSE 1, UNDER THIS MOU.

**5. NOTICES**

5.1 ALL NOTICES, REQUESTS OR OTHER COMMUNICATIONS HEREUNDER SHALL BE GIVEN IN WRITING IN THE ENGLISH LANGUAGE BY MAIL, COURIER, FACSIMILE OR E-MAIL AND SHALL BE DEEMED RECEIVED IF SENT AT THE FOLLOWING ADDRESSES OR AT SUCH OTHER ADDRESS AS NOTIFIED IN ACCORDANCE HERETO:

**6. ADDRESSES FOR COMMUNICATION**

**CORE 1, SCOPE COMPLEX, 7 INSTITUTIONAL AREA, LODI ROAD, NEW DELHI 110003.**

Website: [www.mmtclimited.com](http://www.mmtclimited.com)

No: 011-24365807/24381517/24381515/24381390/1392

E Mails: [asingh@mmtclimited.com](mailto:asingh@mmtclimited.com), [cuk@mmtclimited.com](mailto:cuk@mmtclimited.com),  
[bhawna@mmtclimited.com](mailto:bhawna@mmtclimited.com), [pankajk@mmtclimited.com](mailto:pankajk@mmtclimited.com), [gmitra@mmtclimited.com](mailto:gmitra@mmtclimited.com),  
[manojk@mmtclimited.com](mailto:manojk@mmtclimited.com)

**7. NON-BINDING EFFECT**

7.1 THE TERMS AND CONDITIONS SET FORTH IN THIS MOU SHALL NOT BE LEGALLY BINDING UPON THE PARTIES HERETO UNLESS A DEFINITIVE AGREEMENT INCORPORATING TERMS AND CONDITIONS AGREED AFTER FURTHER DISCUSSIONS IS EXECUTED BY THE PARTIES HERETO. PROVISIONS OF THE CONTRACT ENTERED INTO BETWEEN BOTH FIRST PARTY AND SECOND PARTY SHALL PREVAIL OVER THE MOU.

**8. EFFECTIVE DATE AND DURATION**

8.1 THIS MOU WILL BE EFFECTIVE AS OF THE DATE OF ITS EXECUTION AND SHALL BE VALID FOR THE TERM OF ONE YEAR THEREAFTER UNLESS EXTENDED BY MUTUAL CONSENT OF THE PARTIES IN WRITING.

SIGNED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017

FOR MPMC

FOR \_\_\_\_\_



AUTHORISED SIGNATORIES

SEAL

WITNESSES

1

2

AUTHORISED SIGNATORIES

SEAL

WITNESSES

1

2

**INTEGRITY PACT**

BETWEEN

MMTC LIMITED HEREINAFTER, REFERRED TO AS “MMTC”,

AND ..... HEREINAFTER REFERRED TO AS “THE BUYER/VENDOR/BIDDER”

**PREAMBLE**

WHEREAS, MMTC IS AN INTERNATIONAL TRADING COMPANY DEALING IN EXPORT/IMPORT/SALE/PURCHASE OF VARIOUS COMMODITIES;

WHEREAS, MMTC VALUES FULL COMPLIANCE WITH ALL RELEVANT LAWS OF THE LAND, RULES, REGULATIONS AND THE PRINCIPLES OF ECONOMIC USE OF RESOURCES AND OF FAIRNESS / TRANSPARENCY IN ITS RELATION WITH ITS BUYER/VENDOR/BIDDER. IN PURSUANCE, THERETO, THE FOLLOWING CLAUSES OF THE INTEGRITY PACT WILL BE APPLICABLE AND THIS DOCUMENT SHALL DEEM TO BE AN INTEGRAL PART OF THE AGREEMENT/ CONTRACT BETWEEN US.

IN ORDER TO ACHIEVE THE GOALS, MMTC MAY APPOINT AN INDEPENDENT EXTERNAL MONITOR (IEM), WHO WILL MONITOR THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS AND THE EXECUTION OF THE CONTRACT FOR COMPLIANCE WITH THE PRINCIPLES MENTIONED ABOVE.

**SECTION 1 – COMMITMENTS OF MMTC**

1. MMTC COMMITS ITSELF TO TAKE ALL NECESSARY MEASURES TO PREVENT CORRUPTION AND TO OBSERVE THE FOLLOWING PRINCIPLES:

A) NO EMPLOYEE OF MMTC, PERSONALLY OR THROUGH FAMILY MEMBERS, WILL IN CONNECTION WITH THE TENDER FOR, OR THE EXECUTION OF A CONTRACT, DEMAND, TAKE A PROMISE FOR OR ACCEPT, FOR HIMSELF/HERSELF OR THIRD PERSON, ANY MATERIAL OR NON-MATERIAL BENEFIT WHICH HE/SHE IS NOT LEGALLY ENTITLED TO.

B) MMTC WILL, DURING THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS, PROVIDE TO ALL BUYER(S)/VENDOR(S)/BIDDER(S) THE SAME INFORMATION AND WILL NOT PROVIDE TO ANY BUYER/VENDOR/BIDDER ANY CONFIDENTIAL/ADDITIONAL INFORMATION THROUGH WHICH THE BUYER/VENDOR/BIDDER COULD OBTAIN AN ADVANTAGE IN RELATION TO THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS OR THE CONTRACT EXECUTION.

C) MMTC WILL EXCLUDE FROM THE PROCESS ALL KNOWN PREJUDICED PERSONS.

2. IF MMTC OBTAINS INFORMATION ON THE CONDUCT OF ANY OF ITS EMPLOYEES WHICH IS A CRIMINAL OFFENCE UNDER THE RELEVANT ANTI-CORRUPTION LAWS OF INDIA, OR IF THERE BE A SUBSTANTIVE SUSPICION IN THIS REGARD, MMTC WILL INFORM ITS CHIEF VIGILANCE OFFICER AND IN ADDITION CAN INITIATE DISCIPLINARY ACTION.

**SECTION 2 – COMMITMENTS OF THE BUYER(S)/VENDOR(S)/BIDDER(S)**

1. THE BUYER(S)/VENDOR(S)/BIDDER(S) COMMITS HIMSELF TO TAKE ALL MEASURED NECESSARY TO PREVENT CORRUPTION. HE COMMITS HIMSELF TO OBSERVE THE FOLLOWING PRINCIPLES DURING HIS PARTICIPATION IN THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS AND DURING THE CONTRACT EXECUTION.

- A) THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL NOT, DIRECTLY OR THROUGH ANY OTHER PERSON OR FIRM, OFFER, PROMISE OR GIVE TO ANY OF MMTC'S EMPLOYEES INVOLVED IN THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS OR THE EXECUTION OF THE CONTRACT OR TO ANY THIRD PERSON ANY MATERIAL OR NON-MATERIAL BENEFIT WHICH HE/SHE IS NOT LEGALLY ENTITLED TO, IN ORDER TO OBTAIN IN EXCHANGE ANY ADVANTAGE OF ANY KIND WHATSOEVER DURING THE TENDER PROCESS OR DURING THE EXECUTION OF THE CONTRACT.
- B) THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL NOT ENTER WITH OTHER BUYER(S) INTO ANY ILLEGAL AGREEMENT OR UNDERSTANDING, WHETHER FORMAL OR INFORMAL. THIS APPLIES IN PARTICULAR TO PRICES, SPECIFICATIONS, CERTIFICATIONS, SUBSIDIARY CONTRACTS, SUBMISSION OR NON-SUBMISSION OF BIDS OR ANY OTHER ACTIONS TO RESTRICT COMPETITIVENESS OR TO INTRODUCE CARTELIZATION IN THE BIDDING PROCESS.
- C) THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL NOT COMMIT ANY CRIMINAL OFFENCE UNDER THE RELEVANT ANTI-CORRUPTION LAWS OF INDIA; FURTHER THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL NOT USE IMPROPERLY, FOR PURPOSES OF COMPETITION OR PERSONAL GAIN, OR PASS ON TO OTHERS, ANY INFORMATION OR DOCUMENT PROVIDED BY MMTC AS PART OF THE BUSINESS RELATIONSHIP REGARDING PROPOSALS, PLANS, BUSINESS DETAILS INCLUDING INFORMATION CONTAINED OR TRANSMITTED ELECTRONICALLY.
- D) THE BUYER(S)/VENDOR(S)/BIDDER(S) OF FOREIGN ORIGIN SHALL DISCLOSE THE NAME AND ADDRESS OF THE AGENTS/REPRESENTATIVES IN INDIA, IF ANY. SIMILARLY THE BUYER(S)/VENDOR(S)/BIDDER(S) OF INDIAN NATIONALITY SHALL FURNISH THE NAME AND ADDRESS OF THE FOREIGN PRINCIPALS, IF ANY. FURTHER, ALL THE PAYMENTS MADE TO THE INDIAN AGENTS/REPRESENTATIVE HAVE TO BE IN INDIAN RUPEES ONLY.
- E) THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL, WHEN PRESENTING HIS BID, DISCLOSE ANY AND ALL PAYMENTS HE HAS MADE, IS COMMITTED TO OR INTENDS TO MAKE TO AGENTS, BROKERS OR ANY OTHER INTERMEDIARIES IN CONNECTION WITH THE AWARD OF THE CONTRACT.

2. THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL NOT INSTIGATE THIRD PERSONS TO COMMIT OFFENCES OUTLINED ABOVE OR BE NECESSARY TO SUCH OFFENCES.

### **SECTION 3 – DISQUALIFICATION FROM TENDER PROCESS AND EXCLUSION FROM FUTURE CONTRACTS.**

IF THE BUYER(S)/VENDOR(S)/BIDDER(S), BEFORE AWARD OF CONTRACT, HAS COMMITTED A SERIOUS TRANSGRESSION THROUGH A VIOLATION OF SECTION 2 ABOVE OR IN ANY OTHER FORM SUCH AS TO PUT HIS RELIABILITY OR CREDIBILITY AS BUYER/VENDOR/BIDDER INTO QUESTION, MMTC IS ENTITLED TO DISQUALIFY THE BUYER(S)/VENDOR(S)/BIDDER(S) FROM THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS OR TO TERMINATE THE CONTRACT, IF ALREADY SIGNED, FOR SUCH REASON.

- A) IF THE BUYER(S)/VENDOR(S)/BIDDER(S) HAS COMMITTED A SERIOUS TRANSGRESSION THROUGH A VIOLATION OF SECTION 2 ABOVE OR IN ANY OTHER FORM SUCH AS TO PUT HIS RELIABILITY OR CREDIBILITY AS BUYER/VENDOR/BIDDER INTO QUESTION, MMTC IS

ENTITLED TO ALSO EXCLUDE THE BUYER(S)/VENDOR(S)/BIDDER(S) FROM THE FUTURE CONTRACT AWARD PROCESSES. THE IMPOSITION AND DURATION OF THE EXCLUSION WILL BE DETERMINED BY THE SEVERITY OF THE TRANSGRESSION. THE SEVERITY WILL BE DETERMINED BY THE CIRCUMSTANCES OF THE CASE, IN PARTICULAR THE NUMBER OF TRANSGRESSION, THE POSITION OF THE TRANSGRESSORS WITHIN THE COMPANY, HIERARCHY OF THE BUYER AND THE AMOUNT OF THE DAMAGE. THE EXCLUSION WILL BE IMPOSED FOR A MINIMUM OF 6 MONTHS AND MAXIMUM OF 3 YEARS.

- B) IF THE BUYER(S) /VENDOR(S)/BIDDER(S) CAN PROVE THAT HE HAS RESTORED/RECOUPED THE DAMAGE CAUSED BY HIM AND HAS INSTALLED A SUITABLE CORRUPTION PREVENTION SYSTEM, MMTC MAY AT ITS SOLE DISCRETION REVOKE THE EXCLUSION PREMATURELY.
- C) A TRANSGRESSION IS CONSIDERED TO HAVE OCCURRED IF IN LIGHT OF AVAILABLE EVIDENCE NO REASONABLE DOUBT IS POSSIBLE.

#### **SECTION 4 – COMPENSATION FOR DAMAGES**

1. IF MMTC HAS DISQUALIFIED THE BUYER(S) FROM THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS PRIOR TO THE AWARD ACCORDING TO SECTION 3, MMTC IS ENTITLED TO DEMAND AND RECOVER THE DAMAGES EQUIVALENT TO EARNEST MONEY DEPOSIT/BID SECURITY.

2. IF MMTC HAS TERMINATED THE CONTRACT ACCORDING TO SECTION 3, OR IF MMTC IS ENTITLED TO TERMINATE THE CONTRACT ACCORDING TO SECTION 3, MMTC SHALL BE ENTITLED TO DEMAND AND RECOVER FORM THE VENDOR LIQUIDATED DAMAGES EQUIVALENT TO 5% OF THE CONTRACT VALUE OR THE AMOUNT EQUIVALENT TO PERFORMANCE BANK GUARANTEE WHICHEVER IS HIGHER.

3. IF THE BUYER(S) /VENDOR(S)/BIDDER(S) CAN PROVE THAT THE EXCLUSION OF THE BUYER(S) /VENDOR(S)/BIDDER(S) FROM THE TENDER/AUCTION/E-AUCTION/E-SALE/SALE/PURCHASE PROCESS OR THE TERMINATION OF THE CONTRACT AFTER THE CONTRACT AWARD HAS CAUSED NO DAMAGE OR LESS DAMAGE THAN THE AMOUNT OF LIQUIDATED DAMAGES, THE BUYER(S) /VENDOR(S)/BIDDER(S) MAY COMPENSATE ONLY THE DAMAGE IN THE AMOUNT PROVED. IF MMTC CAN PROVE THAT THE AMOUNT OF THE DAMAGE CAUSED BY THE DISQUALIFICATION OF THE BUYER(S)/VENDOR(S)/BIDDER(S) BEFORE CONTRACT AWARD OR THE TERMINATION OF THE CONTRACT AFTER THE CONTRACT AWARD IS HIGHER THAN THE AMOUNT OF THE LIQUIDATED DAMAGES, IT IS ENTITLED TO CLAIM COMPENSATION FOR THE HIGHER AMOUNT OF THE DAMAGES.

#### **SECTION 5 – PREVIOUS TRANSGRESSION**

1. THE BUYER(S)/VENDOR(S)/BIDDER(S) TO DECLARE THAT NO PREVIOUS TRANSGRESSIONS OCCURRED IN THE LAST 3 YEARS WITH ANY OTHER COMPANY IN ANY COUNTRY CONFORMING TO THE ANTI CORRUPTION APPROACH OR WITH ANY OTHER PUBLIC SECTOR ENTERPRISE IN INDIA THAT COULD JUSTIFY HIS EXCLUSION FROM THE TENDER PROCESS.

2. IF THE BIDDER MAKES INCORRECT STATEMENT ON THIS SUBJECT, HE CAN BE DISQUALIFIED FROM THE TENDER PROCESS OR THE CONTRACT, IF ALREADY AWARDED AND CAN BE TERMINATED FOR SUCH REASON.

#### **SECTION 6 – EQUAL TREATMENT OF ALL BUYER(S) /VENDOR(S)/BIDDER(S)**

1. MMTC WILL ENTER INTO AGREEMENTS WITH IDENTICAL CONDITIONS AS THIS ONE WITH ALL BUYER(S) /VENDOR(S)/BIDDER(S) WITHOUT ANY EXCEPTION.

2. MMTC WILL DISQUALIFY FROM THE TENDER PROCESS ALL BUYER(S)/VENDOR(S)/BIDDER(S) WHO DO NOT SIGN THIS PACT OR VIOLATE ITS PROVISIONS.

#### **SECTION 7 – CRIMINAL CHARGES AGAINST VIOLATING BUYER(S)/VENDOR(S)/BIDDER(S)**

IF MMTC OBTAINS KNOWLEDGE OF CONDUCT OF BUYER(S)/VENDOR(S)/BIDDER(S) OR OF AN EMPLOYEE OR A REPRESENTATIVE OR AN ASSOCIATE OF BUYER(S)/VENDOR(S)/BIDDER(S), WHICH CONSTITUTES CORRUPTION, OR IF MMTC HAS SUBSTANTIVE SUSPICION IN THIS REGARD, MMTC WILL INFORM THE SAME TO ITS CHIEF VIGILANCE OFFICER AND/OR APPROPRIATE GOVT. AUTHORITIES SUCH AS CBI.

#### **SECTION 8 – INDEPENDENT EXTERNAL MONITOR(S)**

1. MMTC APPOINTS COMPETENT AND CREDIBLE INDEPENDENT EXTERNAL MONITOR (IEM) FOR THIS PACT. THE TASK OF THE IEM IS TO REVIEW INDEPENDENTLY AND OBJECTIVELY, WHETHER AND TO WHAT EXTENT THE PARTIES COMPLY WITH THE OBLIGATIONS UNDER THIS AGREEMENT.

2. THE IEM IS NOT SUBJECT TO INSTRUCTIONS BY THE REPRESENTATIVES OF THE PARTIES AND PERFORMS HIS FUNCTIONS NEUTRALLY AND INDEPENDENTLY. HE REPORTS TO THE CMD, MMTC.

3. THE IEM HAS THE RIGHT TO ACCESS WITHOUT RESTRICTION TO ALL TRADE/PROJECT RELATED DOCUMENTATION OF MMTC. THE BUYER(S)/VENDOR(S)/BIDDER(S) WILL ALSO GRANT THE IEM, UPON HIS REQUEST AND DEMONSTRATION OF A VALID INTEREST, UNRESTRICTED AND UNCONDITIONAL ACCESS TO HIS TRADE/PROJECT DOCUMENTATION. THE IEM IS UNDER CONTRACTUAL OBLIGATION TO TREAT THE INFORMATION AND DOCUMENTS OF THE BUYER(S)/VENDOR(S)/BIDDER(S) WITH CONFIDENTIALITY.

4. MMTC WILL PROVIDE THE IEM SUFFICIENT INFORMATION ABOUT ALL MEETINGS AMONG THE PARTIES RELATED TO THE PROJECT/CONTRACT PROVIDED AS MEETINGS COULD HAVE AN IMPACT ON THE CONTRACTUAL RELATIONS BETWEEN MMTC AND THE VENDOR. THE PARTIES OFFER TO THE IEM THE OPTION TO PARTICIPATE IN SUCH MEETINGS.

5. AS SOON AS THE IEM NOTICES, OR BELIEVES TO NOTICE, A VIOLATION OF THIS AGREEMENT, HE WILL SO INFORM THE MANAGEMENT OF MMTC AND REQUEST THE MANAGEMENT TO DISCONTINUE OR TAKE CORRECTIVE ACTION, OR TO TAKE OTHER RELEVANT ACTION. THE IEM CAN IN THIS REGARD SUBMIT NON-BINDING RECOMMENDATIONS. BEYOND THIS, THE IEM HAS NOT RIGHT TO DEMAND FROM THE PARTIES THAT THEY ACT IN A SPECIFIC MANNER, REFRAIN FROM ACTION OR TOLERATE ACTION.

6. THE IEM WILL SUBMIT A WRITTEN REPORT TO THE CMD, MMTC WITHIN 4 TO 6 WEEKS FROM THE DATE OF REFERENCE OR INTIMATION TO HIM BY MMTC AND, SHOULD THE OCCASION ARISE, SUBMIT PROPOSALS FOR CORRECTING PROBLEMATIC SITUATIONS.

7. IF THE IEM HAS REPORTED TO THE CMD, MMTC, A SUBSTANTIATED SUSPICION OF AN OFFENCE UNDER RELEVANT ANTI CORRUPTION LAWS OF INDIA, AND THE CMD, MMTC, HAS NOT, WITHIN THE REASONABLE TIME TAKEN VISIBLE ACTION TO PROCEED AGAINST SUCH OFFENCE OR REPORTED IT TO ITS CHIEF VIGILANCE OFFICER, THE IEM MAY ALSO TRANSMIT THIS INFORMATION DIRECTLY TO THE CENTRAL VIGILANCE COMMISSIONER, GOVT. OF INDIA.

8. THE WORD “IEM” WOULD INCLUDE BOTH SINGULAR AND PLURAL.

#### **SECTION 9 – PACT DURATION**

1. THIS PACT BEGINS WHEN BOTH PARTIES HAVE LEGALLY SIGNED IT. IT EXPIRES FOR THE VENDOR 12 MONTHS AFTER THE LAST PAYMENT UNDER THE CONTRACT, AND FOR ALL OTHER BIDDERS, 6 MONTHS AFTER THE CONTRACT HAS BEEN AWARDED.

2. IF ANY CLAIM IS MADE/LODGED DURING THIS TIME, THE SAME SHALL BE BINDING AND CONTINUE TO BE VALID DESPITE THE LAPSE OF THIS PACT AS SPECIFIED ABOVE, UNLESS IT IS DISCHARGED/DETERMINED BY CMD, MMTC.

**SECTION 10 – OTHER PROVISIONS**

1. THIS AGREEMENT IS SUBJECT TO INDIAN LAW, PLACE OF PERFORMANCE AND JURISDICTION IS THE REGISTERED OFFICE OF MMTC, I.E. NEW DELHI.

2. CHANGES AND SUPPLEMENTS AS WELL AS TERMINATION NOTICES NEED TO BE MADE IN WRITING. SIDE AGREEMENTS HAVE NOT BEEN MADE.

3. IF THE VENDOR IS A PARTNERSHIP OR A CONSORTIUM, THIS AGREEMENT MUST BE SIGNED BY ALL PARTNERS OR CONSORTIUM MEMBERS.

4. SHOULD ONE OR SEVERAL PROVISIONS OF THIS AGREEMENT TURN OUT TO BE INVALID, THE REMAINDER OF THIS AGREEMENT REMAINS VALID. IN THIS CASE, THE PARTIES WILL STRIVE TO COME TO AN AGREEMENT TO THEIR ORIGINAL INTENTIONS.

.....  
(FOR & ON BEHALF OF MMTC)  
(OFFICE SEAL)

.....  
(FOR & ON BEHALF OF BUYER/VENDOR/BIDDER)  
(OFFICE SEAL)

PLACE : .....

DATE : .....

WITNESS 1 : .....

NAME :

ADDRESS :

WITNESS 2 : .....

NAME :

ADDRESS :

**ANNEXURE – III**

**PERFORMANCE BANK GUARANTEE PROFORMA**

BANK GUARANTEE NO. \_\_\_\_\_ DATED \_\_\_\_\_

(ON A STAMP PAPER OF APPLICABLE AMOUNT TO BE EXECUTED BY A DELHI / NEW DELHI BRANCH OF A SCHEDULED BANK OTHER THAN GRAMIN BANK OR COOPERATIVE BANK)

TO  
M/S MPMC LIMITED  
CORE 1, SCOPE COMPLEX  
7 INSTITUTIONAL AREA  
LODHI ROAD  
NEW DELHI 110003 (INDIA)

DEAR SIRs,

WHEREAS, MPMC LIMITED, HAVING ITS REGISTERED OFFICE AT CORE-1, SCOPE COMPLEX, 7, INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI -110 003 INDIA AND ONE OF ITS OFFICE AT \_\_\_\_\_ (HEREINAFTER CALLED "THE MPMC) HAVE ENTERED INTO CONTRACT NO. \_\_\_\_\_ DATED \_\_\_\_\_ (HEREINAFTER CALLED 'THE CONTRACT') FOR \_\_\_\_\_ WITH M/S. \_\_\_\_\_ (NAME) ADDRESS \_\_\_\_\_, (HEREINAFTER CALLED THE 'XX')

AND WHEREAS THE 'XX' UNDER THE CONTRACT IS REQUIRED TO FURNISH A SECURITY FOR THE PERFORMANCE OF THE CONTRACT AND MPMC HAS AGREED TO ACCEPT THE BANK GUARANTEE IN LIEU OF SECURITY DEPOSIT OF THE SAID SUM OF US DOLLARS \_\_\_\_\_.

AND WHEREAS AT THE REQUEST OF THE 'XX', WE \_\_\_\_\_ BANK, \_\_\_\_\_ (ADDRESS), HEREBY IRREVOCABLY AND UNCONDITIONALLY GUARANTEE AND UNDERTAKE TO PAYMENT TO THE MPMC, IMMEDIATELY ON DEMAND UP TO AND NOT EXCEEDING THE SUM OF US DOLLARS \_\_\_\_\_ PAYABLE BY THE 'XX' IN THE EVENT OF FAILING TO PERFORM ANY OR ALL THEIR OBLIGATIONS UNDER THE CONTRACT. THE DECISION OF THE MPMC THAT THE 'XX' HAS FAILED TO PERFORM ALL OR ANY OF ITS OBLIGATIONS UNDER THE CONTRACT SHALL BE CONCLUSIVE, FINAL AND BINDING ON US.

WE, \_\_\_\_\_ BANK, UNDERTAKE TO PAY THE AMOUNT DEMANDED BY THE MPMC NOT EXCEEDING THE SUM OF US DOLLARS \_\_\_\_\_ ONLY WITHOUT ANY DEMUR, DELAY, PROTEST AND WITHOUT ANY REFERENCE OR RECOURSE TO THE 'XX' NOTWITHSTANDING ANY DISPUTE RAISED BY 'XX' IN ANY SUIT PROCEEDINGS RELATING THERE TO PENDING BEFORE ANY COURT OR TRIBUNAL OUR LIABILITY UNDER THESE PRESENTS BEING

ABSOLUTE AND UNEQUIVOCAL. THE PAYMENT SHALL BE MADE TO THE MMTc ACROSS THE COUNTER OF THE BANK ON THE SAME DAY OF RECEIPT OF INVOCATION OF THIS PERFORMANCE BANK GUARANTEE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREINABOVE, LIABILITY UNDER THE GUARANTEE IS RESTRICTED TO US DOLLARS\_\_\_\_\_. OUR GUARANTEE SHALL REMAIN IN FORCE UNTIL \_\_\_\_\_ (DATE).

ALL YOUR RIGHTS UNDER THE GUARANTEE SHALL BE FORFEITED AND WE SHALL BE RELIEVED AND DISCHARGED FROM ALL LIABILITY THEREUNDER UNLESS A CLAIM UNDER THE GUARANTEE IS MADE ON OUR BANK IN WRITING ON OR BEFORE\_\_\_\_\_ (EXPIRY DATE).

YOUR LETTER OF DEMAND IN WRITING MAY BE PRESENTED TO THE BANK BY REGISTERED POST OR IN PERSON AND THE SAME SHALL BE BINDING ON US.

THIS GUARANTEE COMES INTO FORCE FORTHWITH.

WE FURTHER AGREE THAT MMTc SHALL HAVE THE FULLEST LIBERTY WITHOUT OUR CONSENT AND WITHOUT EFFECTING IN ANY MANNER, OUR OBLIGATIONS HEREUNDER TO VARY ANY OF THE TERMS AND CONDITIONS OF THE DELIVERY OR EXTEND TIME OF PERFORMANCE BY THE SAID "XX" FROM TIME TO TIME OR TO POSTPONE FOR ANY TIME OR FROM TIME TO TIME, ANY OF THE POWERS EXERCISABLE BY MMTc AGAINST THE SAID "XX" AND TO FORBEAR OR ENFORCE ANY PART OF THE TERMS AND CONDITIONS RELATING TO THE SAID CONTRACT AND WE SHALL NOT BE RELIEVED FROM OUR LIABILITY BY REASON OF ANY SUCH VARIATION OR EXTENSION BEING GRANTED TO THE SAID M/S 'XX'.

THE LIABILITY OF THE BANK UNDER THIS GUARANTEE SHALL BE DISCHARGED ON RECEIPT OF US DOLLARS \_\_\_\_\_ ONLY BY MMTc.

WE \_\_\_\_\_ (BANK) LASTLY UNDERTAKE NOT TO REVOKE THIS GUARANTEE DURING ITS CURRENCY EXCEPT WITH THE PREVIOUS CONSENT OF MMTc LIMITED IN WRITING.

THIS GUARANTEE WILL NOT BE DISCHARGED DUE TO CHANGE IN THE CONSTITUTION OF THE BANK OR THE SAID 'XX'.

WE HAVE THE POWER TO ISSUE THIS GUARANTEE IN YOUR FAVOUR UNDER THE CHARTER OF OUR BANK AND THE UNDERSIGNED HAVE FULL POWER TO EXECUTE THIS GUARANTEE UNDER THE POWER OF ATTORNEY GRANTED TO US BY THE BANK.

SIGNED AND DELIVERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014

YOURS FAITHFULLY

FOR AND ON BEHALF OF BANK  
(ADDRESS)  
(BANKERS SEAL)



**FRAUD PREVENTION POLICY**

- (1) **COMMITMENTS OF THE BIDDER(S) / CONTRACTOR(S) / BUYER(S) / VENDER(S):** THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) SHALL BE BOUND TO TAKE ALL MEASURES NECESSARY TO PREVENT FRAUD AND CORRUPTION WHILE DEALING WITH MMTC. THEY AGREE AND UNDERTAKE TO OBSERVE THE PRINCIPLES/PROVISIONS AS LAID DOWN IN “FRAUD PREVENTION POLICY” OF MMTC (FULL TEXT OF WHICH IS AVAILABLE ON MMTC’S WEBSITE AT <http://mmtclimited.gov.in> DURING THEIR PARTICIPATION IN THE TENDER PROCESS, DURING THE EXECUTION OF CONTRACT AND IN ANY OTHER TRANSACTION WITH MMTC.
- a. THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) SHALL NOT, DIRECTLY OR THROUGH ANY OTHER PERSON OR FIRM OFFER, PROMISE OR GIVE OR OTHERWISE ALLOW ANY OF MMTC’S EMPLOYEE(S) ANY MATERIAL OR OTHER BENEFIT WHICH HE/SHE IS NOT LEGALLY ENTITLED TO, IN ORDER TO OBTAIN IN EXCHANGE ANY ADVANTAGE OF ANY KIND, WHATSOEVER, DURING THE TENDER PROCESS OR DURING THE EXECUTION OF THE CONTRACT.
  - b. THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) SHALL NOT ENTER WITH OTHER BIDDERS INTO ANY UNDISCLOSED AGREEMENT OR UNDERSTANDING, WHETHER FORMAL OR INFORMAL. THIS APPLIES IN PARTICULAR TO PRICES, SPECIFICATIONS, CERTIFICATIONS, SUBSIDIARY CONTRACTS, SUBMISSION OR NON-SUBMISSION OF BIDS OR ANY OTHER ACTIONS TO RESTRICT COMPETITIVENESS OR TO INTRODUCE CARTELIZATION IN THE BIDDING PROCESS.
  - c. THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) SHALL NOT COMMIT OR ALLOW ANY EMPLOYEE OF MMTC TO COMMIT ANY OFFENCE UNDER THE RELEVANT PROVISIONS OF IPC/PREVENTION OF CORRUPTION ACT; FURTHER THE BIDDER(S)/CONTRACTOR(S) / BUYER(S)/VENDER(S) WILL NOT USE IMPROPERLY OR ALLOW ANY EMPLOYEE OF MMTC, FOR PURPOSE OF COMPETITION OR PERSONAL GAIN OR PASS ON TO OTHERS ANY INFORMATION OR DOCUMENT PROVIDED BY MMTC AS PART OF THE BUSINESS RELATIONSHIP, INCLUDING INFORMATION CONTAINED OR TRANSMITTED ELECTRONICALLY.
  - d. THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) SHALL NOT INSTIGATE THIRD PERSON TO COMMIT OFFENCES/ACTIVITIES OUTLINED IN FRAUD PREVENTION POLICY OR BE AN ACCESSORY TO SUCH OFFENCES.
  - e. THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) IF IN POSSESSION OF ANY INFORMATION REGARDING FRAUD/SUSPECTED FRAUD, HEREBY AGREE AND UNDERTAKE TO INFORM MMTC OF SAME WITHOUT ANY DELAY.
- (2) **DISQUALIFICATION FROM TENDER PROCESS AND EXCLUSION FROM FUTURE CONTRACTS:** IF THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S), BEFORE AWARD OR DURING EXECUTION HAS COMMITTED A TRANSGRESSION THROUGH A VIOLATION OF “FRAUD PREVENTION POLICY” OF MMTC IN ANY OTHER FORM SUCH AS TO PUT THEIR RELIABILITY OR CREDIBILITY, IN QUESTION, MMTC, OTHER THAN TAKING RECOURSE AVAILABLE UNDER LAW, SHALL BE ENTITLED TO DISQUALIFY THE

BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) FROM UNDERTAKING ANY TRANSACTION WITH MMTC AND/OR DECLARE THE BIDDER(S)/CONTRACTOR(S)/BUYER(S)/VENDER(S) INELIGIBLE TO BE AWARDED A CONTRACT EITHER INDEFINITELY OR FOR A STATED PERIOD OF TIME.

- (3) **DAMAGES:** IF MMTC HAS DISQUALIFIED THE BIDDER(S) FROM THE TENDER PROCESS PRIOR TO THE AWARD OR DURING EXECUTION ACCORDING TO CLAUSE (2), MMTC SHALL BE ENTITLED TO DEMAND AND RECOVER FROM THE CONTRACTOR LIQUIDATED DAMAGES OF THE CONTRACT VALUE OF THE AMOUNT EQUIVALENT PERFORMANCE BANK GUARANTEE.