

Ref. No. BEML/O-RINGS/2023

Date : 20.09.2023

## BEML Limited

(Schedule 'A' Company under Ministry of Defence, Government of India)

**INVITATION FOR EXPRESSION OF INTEREST (EOI) FOR SUPPLY OF O-RINGS BY  
OEM FIRMS FOR MINING AND CONSTRUCTION EQUIPMENTS.**



Eoi Reference	Ref. No. BEML/O-RINGS/2023 dt 20.09.2023
Eoi closing date	20.10.2023
Eoi response mail Id	<a href="mailto:bemleoi@beml.co.in">bemleoi@beml.co.in</a>
Contact for technical clarifications	Name: Mr. B.H. Madhusudhan – DGM (R&D) email: gh@beml.co.in Contact No.: +91 7406897591
Please mention Eoi Reference number in e-mail subject.	



**BEML LIMITED**

BEML Soudha,

BEML Nagar Post,

Sampangiramanagar,

Bengaluru, Karnataka – 560002,

INDIA.

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## **Expression of Interest (EoI) for supply of O-Rings by OEM firms for Mining and Construction Equipments.**

### **1.0 Background:**

BEML Limited is a leading multi-technology and multi-location company under the Ministry of Defence. BEML is operating its business in three verticals viz., Defence & Aerospace, Mining & Construction and Rail & Metro. It offers high-quality products for diverse sectors of economy, such as coal, steel, limestone, power, irrigation, mining, construction, road building, aviation, defence, metro and railways. It has emerged as the forerunner of heavy engineering industry with a track record of growth and revenues for over five decades.

The company has state-of-the-art manufacturing facilities at Kolar Gold Fields, Mysuru, Bengaluru and Palakkad, all possessing ISO 9001-2015 and ISO 14001-2015 certifications. BEML has its own world-class R&D establishment for Design & Development of products.

The Company has a nationwide Marketing Network and an International Business Division for Exports activity.

Details of BEML Ltd are available at [www.bemlindia.in](http://www.bemlindia.in)

### **2.0 Overview of BEML Capabilities:**

BEML Limited, a Central Public Sector Enterprise coming under the Ministry of Defence was incorporated in 1964. Subsequently it became a listed company and is engaged in the design, development and manufacturing in the areas of Mining & Construction, Defence & Aerospace and Rail & Metro equipments.

#### **2.1 Mining & Construction:**

BEML Ltd is engaged in the business of Hydraulic Excavators, Bulldozers, Wheel Loaders, Wheel Dozers, Dump Trucks, Motor Graders, Pipe Layers, Tyre Handlers, Water Sprinklers and Backhoe Loaders to customers in the Mining & Construction segments.

BEML has also developed Mining Dump trucks of 150 Ton and 200 Ton class and Excavators of both Hydraulic and Electrical of 180 Ton capacity.

## **2.2 Defence & Aerospace:**

BEML Ltd is engaged in the business of High Mobility vehicle for all terrain operations, Heavy Recovery Vehicle, Pontoon Mainstream Bridge Systems, Crash Fire Tenders, Mobile Mast Vehicle, Engineering Mine Ploughs, Tank Transportation Trailers, Weapon Loading equipment, Armoured Recovery Vehicle, Milrail Coaches and Wagons, ground support vehicles and other products to the Indian and other Armed Forces.

## **2.3 Rail & Metro:**

BEML Ltd is engaged in the business of Integral Rail Coaches, Overhead Inspection Cars, AC/DC Electrical Multiple Units, Stainless steel EMUs, Utility vehicles, Track Laying Equipment, Broad-gauge Rail bus, Treasury Vans, Spoil disposal Units to the Indian and other Railways.

BEML Ltd has also successfully diversified into manufacturing state-of-the-art technology stainless steel Metro Cars for various urban Metro Corporations and enjoys a dominant market share in this segment.

## **2.4 Research & Development:**

BEML Ltd has R&D establishment for Design & Development of high tech engineering products for its three verticals. It employs over 300 professionals with high experience and skills spanning a wide range of technology areas.

The R&D establishment has CAD Centre, Fluid-power, Powerline, Structural Engineering & Material Science laboratories and is continuously engaged in New Product Development and upgradation of existing products to meet customer requirements. More than 65% of Company's Sales Turnover is through in-house developed R&D products. The R&D expenditure is around 2 ~ 3% of its turnover.

## **2.5 International Business Division:**

BEML has a sizeable market share in export markets with exports to 68 countries across the globe. Over the years this division has exported over 1500 machines covering all the three verticals.

## **3.0 KGF Complex Requirements:**

BEML is seeking for suppliers for O-Rings required for BEML's Mining & Construction Equipment from reputed OEM firms, who are having manufacturing technology, R&D capability, adequate quality control equipment and test facilities and regularly supplying to various other OEM's of Mining & Construction for minimum of 5 years. **The approx. annual procurement value of O-rings works out to Rs. 311 Lakhs.**

**3.1 The supplier shall abide by the following:**

1. Willingness to offer the O-Rings as per BEML Drawing/Standard, IS or International standard and BEML QAP (Quality Assurance Plan) requirement. The final acceptance rests solely at the discretion of BEML.
2. The supplier shall have track record of supplying O-Rings to other Mining & Construction equipment's application for minimum of 5 years.
3. All necessary technical / quality documents including 2D drawings to be provided to BEML.
4. Shall submit test certificate for material and dimensional parameters as per BEML quality assurance plan, technical delivery condition and BEML Drawing / standards.
5. The supplier shall extend technical support during engineering and performance evaluation.
6. The supplier should be willing to supply the developed items for next 10 years based on BEML requirements.

**3.2 Qualification criteria:**

1. The supplier shall be *preferably* in the business of supply of O-Rings for Mining & Construction equipment application for a minimum of 5 years and shall provide documentary evidence for the same. The supplier brand should be approved by atleast one Reputed Mining Equipment Manufacturer.
2. In case the supplier is not in the Approved Vendor list of BEML, vendor assessment and quality system followed will be audited by BEML Team.
3. Along with O-Rings sample supply, the supplier should provide test slab (200mm x 200mm x 3mm Thickness) and test button (Ø 30mm x 6mm Thickness) - 4 nos. each for material category wise (as per ASTM D 395 standard / BEML Quality Assurance Plan). Acceptance of the test samples shall be followed by material aspects check, dimensional check, assembly fitment and performance fitment trials. The performance trials will be for a duration as decided by BEML on case-to-case basis and application requirement.

4. The supplier should not have been debarred / blacklisted by Government of India / any State Government in India / Central or State Government undertaking and shall submit an undertaking signed by authorized signatory of the supplier.
5. The supplier should possess certified quality systems such as ISO 9001, ISO 14001, ISO 17025 (NABL) or any other relevant system and shall submit the valid Quality Certificates for the same.
6. Supplier should have adequate quality system, equipment and R&D capabilities to ensure consistency in the quality of inputs, process and packing to ensure to meet the specifications at all times in their product.
7. The supplier shall submit the *latest* test certificates for their products tested at any NABL / Govt. certified laboratory (Third party agency) including dimension check sheets for every batch of supply.
8. The firm should indicate the details of Warranty, Guarantee for their products. Also indicate Shelf life of their product from the date of manufacturing.
9. Each item shall be identified by part number, part name, quantity, vendor code / name and date of manufacturing on the packing.
10. The supplier should furnish the Information on qualification criteria as per the enclosed Format A.

#### **4.0 General Instructions:**

##### **4.1 Prospective supplier should also consider the following while submitting the response:**

1. Prospective supplier may also be required to enter into a *Long-Term Supply Agreement* for O-Rings etc. and meet the expected delivery requirements and other Terms & Conditions of RFP / Tender to be issued by BEML.
2. Prospective supplier shall provide firm and irrevocable commitment to provide product support for a minimum period of 10 years.
3. Those who have complied with “**YES**” for all the criteria indicated in the respective format-**A**, against each point *will be considered for qualification*.
4. Preference will be given to the supplier who responds to minimum one complete family of O-Ring classified in the list.

**QUALIFICATION MATRIX**

<b>S. No</b>	<b>BEML Parameter for O-ring</b>	<b>Compliance</b>
1	Firm / Company must be registered in India. Firm should submit Company registration certificate, brief company profile and core capability.	Yes / NO
2	Firm shall have in-house Manufacturing capability for O-rings.	Yes / NO
3	Firm should submit list of machineries and manufacturing facilities with specifications, brochures etc	Yes / NO
4	The firm should be registered in GeM Portal and provide GeM Id.	Yes / NO
5	Firm to comply to MII (Make In India) under Class-I (≥ 50% of local content) or Class-II (≥ 20% of local content) category.	Yes / NO
6	The supplier brand should be approved by atleast one Reputed Equipment Manufacturers.	Yes / NO
7	Willingness to offer O-Rings as per BEML Drawing/Standard, IS or International standard requirement and BEML QAP (Quality Assurance Plan).	Yes / NO
8	The supplier shall share all necessary technical / quality documents including 2D drawings with material details to BEML.	Yes / NO
9	The Supplier should provide test button and test slab / test certificate along with the supplies.	Yes / NO
10	The supplier shall extend technical support during engineering and performance evaluation.	Yes / NO
11	The supplier should be willing to supply the developed items for <u>next 10 years</u> based on BEML requirements.	Yes / NO
12	The supplier should be possessing certified quality systems such as ISO 9001 or any other relevant system.	Yes / NO
13	The supplier should execute NDA, NCA agreements on a Rs. 200 e-stamp paper with BEML (Formats enclosed at Annexures) and submit the same along with this EOI.	Yes / NO

**Authorised Signatory**

## EOI RESPONDENT - EVALUATION MATRIX

DIMENSION	BEML Parameter	CRITERIA
Technical requirements of EOI	Manufacturer of O-rings	Yes/No
	Manufacturer of Dies / Mould for O-rings	Yes/No
	The firm should have adequate testing facility.	Yes/No
	The supplier brand should be approved by atleast one Reputed Mining Equipment Manufacturers.	Yes/No
	The firm should provide the details of Raw material supplier.	Yes/No
	The firm should be registered in GeM Portal and provide GeM Id.	Yes/No
	Firm to comply to MII (Make In India) under Class-I ( $\geq 50\%$ of local content) or Class-II ( $\geq 20\%$ of local content) category.	Yes/No
	Willingness to offer O-Rings as per BEML Drawing/Standard, IS or International standard requirement and BEML QAP (Quality Assurance Plan).	Yes/No
	The supplier shall share all necessary technical / quality documents including 2D drawings with material details to BEML.	Yes/No
	The supplier shall extend technical support during engineering and performance evaluation.	Yes/No
	The supplier should be willing to supply the developed items for <u>next 10 years</u> based on BEML requirements.	Agreed / Not Agreed
	The supplier should execute NDA, NCA agreements on a Rs. 200 e-stamp paper with BEML (Formats enclosed at Annexures) and submit the same along with this EOI.	Agreed / Not Agreed
	The Supplier should provide test button and test slab / test certificate along with the supplies.	Agreed / Not Agreed
	The supplier should be possessing certified quality systems such as ISO 9001 or any other relevant system.	Agreed / Not Agreed
Financial health and performance	Historical health (leverage and capital structure ratios).	Capital structure ratio (D/E)
	Revenue and growth in last 3 years.	FY20-23 Revenue CAGR
R&D Capability	R&D facilities.	Ratio of R&D manpower to Total manpower
		Patent granted - Yes/No
	R&D Investment.	Minimum 3% of the turnover (Score 2 for $\geq 3\%$ , Score Zero for $<3\%$ )
Partnership mindset & Credibility	Global Presence (i.e., exports).	Yes/No
	Track record of previous partnerships (JVs/MoUs)	Yes/No

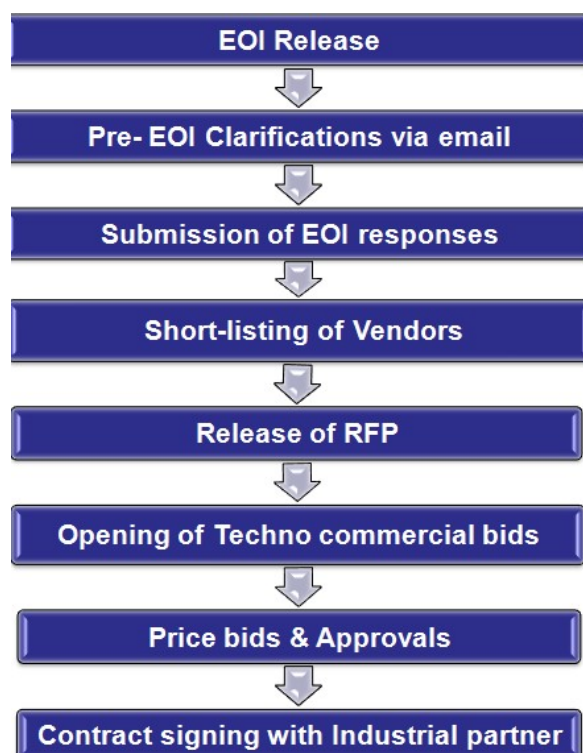
Authorised Signatory



## 5.0 Major highlights:

1. The scope of the present Eol is for development and supply of O-Rings through “Indian industry partner/consortia”.
2. BEML is releasing the Eol to invite responses from potential OE Supplier / Suppliers who would end-to-end realize the scope and develop the O-Rings. The approx. annual procurement value of O-rings works out to Rs. 311 Lakhs.
3. The interested suppliers should submit Eol queries (if any) on or before closing date to gh@beml.co.in for clarifications. The Pre-Eol clarifications on Expression of Interest will be responded through e-mail.
4. Suppliers should execute NDA, NCA agreements on a Rs. 200 e-stamp paper with BEML (Formats enclosed at Annexure) and submit the same along with this EOI.
5. Eol documents will be scrutinized by BEML committee to shortlist the Supplier / Suppliers.
6. RFP (Request For Proposal for procurement) documents will be issued only to shortlisted Supplier / Suppliers.
7. Shortlisted Supplier / Suppliers will be permitted to visit BEML Ltd. on prior appointment to see the prototype and understand the criticality of operations, which would enable them to submit the offer against RFP.
8. After evaluation of RFP, order will be placed on Supplier / Suppliers.

## 6.0 Stages for Development of O-ring:



## **7.0 General Terms & Conditions:**

1. This EoI document for "Development and supply of O-rings" by the selected Supplier does not have any relation with respect to the previous EoI / RFP floated for similar activities.
2. This EoI document is not an offer and is issued with no commitment. BEML reserves the right to withdraw the EoI or change or vary any part thereof at any stage.
3. BEML also reserves the sole right and discretion to disqualify any Supplier, if necessary at any stage. This is a fundamental condition of this EoI document and must be well understood and accepted by the Suppliers before participating in the Pre- EoI Conference.
4. Timeline and sequence of events resulting from this EoI shall ultimately be determined by BEML.
5. By submitting an EoI, each Supplier shall be deemed to acknowledge that it has carefully read all chapters of this EoI document, and has fully informed himself / herself as to all existing terms and conditions.
6. The Supplier shall compulsorily fill up the Response format and compliance matrix with all supporting documents as per Annexure-1 to this EoI document.
7. The EoI and all correspondence and documents shall be written in English.
8. The terms and conditions as stated in this EoI document are not exhaustive and BEML reserves the right to add or delete or modify any terms and condition in the RFP to be issued to the short listed suppliers.
9. Supplier / suppliers can refer BEML Purchase Manual from website ([www.bemlindia.in](http://www.bemlindia.in)) for BEML GENERAL PROCUREMENT TERMS & CONDITIONS.

**EoI RESPONSE FORMAT**

{With Cover Letter on Company letterhead}'

To,

Vendor Development Cell  
 BEML Limited,  
 SR Nagar, Bangalore - 560027

Dear Sir,

Ref.: Expression of Interest for “Development and supply of O-rings” by Indian Industry”

Having examined the Expression of Interest (EoI) document dated \_\_\_\_\_,  
 downloaded from the BEML website, i.e. [www.bemlindia.in](http://www.bemlindia.in), we, the undersigned, intend to submit an EoI  
 in response to the aforesaid EoI document.

We attach here to the EoI and response as required by you, which constitutes our EoI.

Primary and Secondary contacts for our company are:

	<b>Primary Contact</b>	<b>Secondary Contact</b>
Company Name:		
Name:		
Title:		
Address:		
Phone :		
Mobile:		
Fax :		
E – mail :		

We confirm that the information contained in this response or any part thereof, including its exhibits, and other documents and instruments delivered or to be delivered to BEML are true, accurate, verifiable and complete. This response includes all information necessary to ensure that the statements therein do not in whole or in part mislead BEML in its short-listing process.

We fully understand and agree to comply that on verification, if any of the information provided here is found to be misleading the short listing process, we are liable to be dismissed from the selection process or termination of the contract after the execution of the contract.

We agree to the unconditional acceptance of all the terms and conditions set out in the EoI document.

It is hereby confirmed that I / We are entitled to act on behalf of our company/ corporation/ firm / organization and empowered to sign this document as well as such other documents, which may be required in this connection.

Dated this (Signature)

(In the capacity of) (Name)

Duly authorized to sign the EoI Response for and on behalf of: (Name and Address of Company) Seal / Stamp  
 of Party

Witness Signature, Name &amp; Address:

**CERTIFICATE AS TO AUTHORIZED SIGNATORIES**

I, ....., the Company Secretary of  
....., certify that  
..... who signed the above EoI for "Development and supply of O-rings" is authorized to do so and bind the company by authority of its board / governing body.

(Company Seal)

Date:

Signature:

**EoI Submission :**

*EoI to be submitted online through email- [bemleoi@beml.co.in](mailto:bemleoi@beml.co.in) stating compliance to each points, along with the enclosures, super scribing IN THE E MAIL SUBJECT "[EoI for O-RINGS](#)*

**CLOSING DATE : 20.10.2023, Time : 17 : 00 HRS**

**Annexure – 2**

**NON-COMPETITION AGREEMENT**

(To be executed on Stamp paper of value of Rs. 200/-)

**THIS NON COMPETITION AGREEMENT** is made and executed on this the.....day of .....at Bangalore **BETWEEN** M/s. BEML Ltd, a Government of India undertaking, having its Registered office at No.23/1, “BEML SOUDHA”, 4th Main Road, Sampangiram Nagar, Bangalore – 560 027 (hereinafter called “**BEML**”) and manufacturing units at Kolar Gold Fields, Mysore and Bangalore, which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc. of the **FIRST PART**.

AND

M/s.....Company, with its Registered Office at.....and manufacturing unit at.....represented by their Shri..... a lawful Attorney, residing at.....(hereinafter called “**VENDOR**”) which expression shall unless repugnant to the subject or context thereof mean and include its representatives, administrators, successors and assigns etc of the **SECONDPART**.

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

Whereas, BEML will place Purchase Order No.....Dated.....on the **VENDOR** for supply of .....which products are exclusively manufactured to the designs and specifications of BEML.

In pursuance of the placement of the above Purchase Order on M/s.....or M/s.....or any other Authorized Dealer / Distributor of or any person authorized by .....the **VENDOR** hereby agree and undertake not to quote or supply.....to any other parties in India and as such the **VENDOR** is prohibited to quote or supply the products specified in the instant Agreement. In contravention of this term, The **VENDOR** or any other Authorized Dealer / Distributor / Agent of or

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any person authorized by the VENDOR were to quote and supply.....to any other parties in India and / or abroad, BEML would, **after giving a reasonable opportunity to explain such quote and supply** be entitled to levy a penalty to the extent of loss occasioned to BEML.

This Non-Competition Agreement will be valid for a period of five years from the date of placement of Purchase Order by BEML on the VENDOR and for all Government / Quasi-Government companies in India and all non-Government Companies in India and abroad.

Disputes if any, arising between the parties in connection with this Non-Competition Agreement or any other matters connected therewith, the same will be mutually discussed and settled, failing which, the disputes shall be referred to a Sole Arbitrator to be appointed by BEML. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules framed there under. The place of Arbitration shall be at Bangalore and all Arbitration proceedings shall be conducted in English language and governed by the above said Act and Rules framed there under. Courts at Bangalore shall alone have sole jurisdiction to decide any issue arising out of the Arbitration or this Non-Competition Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR RESPECTIVE HANDS AND SEALS ON THE DAY, MONTH, AND YEAR FIRST ABOVE WRITTEN.

**M/s. BEML LIMITED.**

**M/s.**

**WITNESSES :**

**1)**

**2)**

**WITNESSES :**

**1)**

**2)**

**Annexure – 3**

**CONFIDENTIALITY AGREEMENT**  
(To be typed in Rs.100 value document)

This Confidentiality Agreement is made and entered into between M/s BEML Limited,(hereinafter referred to as BEML), a Govt. of India Undertaking under Ministry of Defence, having its Registered Office at BEML Soudha, No.23/1, 4th Main, Sampangirama Nagar, Bangalore – 560 027 and M/s ----- (hereinafter referred as XXXX) having its Registered Office at..... . M/s. BEML, has been patronizing XXXX for components /spares listed in Annexure hereto. A need has been felt to revitalize the business relationship for mutual advantage.

1. It is mutually, therefore, agreed that the following shall form part of the terms and conditions for continued business :
  - a) The supplier shall not divulge to anyone else except under the authority and for the purposed of BEML, all information such as technical data, specifications, drawings, models of specimens furnished / supplied by BEML for the purpose of manufacture or in connection with developmental activities, constitute the property of BEML and the supplier shall keep them in strict confidence. This has been explicitly stated in all the details to the supplier through Purchase Order / Drawings etc., released.
  - b) The supplier shall not supply the components / spares exclusively manufactured for BEML Limited with the Technical Data / Specifications /assistance furnished by BEML and shall not disclose my initiations, development of adaptations thereof to anyone else except with the written consent of BEML.
  - c) BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach. It is hereby mutually agreed that for breach of this agreement the Vendor shall pay, without actual proof of damages, a liquidated amount of Rs. 1.00 Crore (Rupees One Crore only).
  - d) ARBITRATION: In the event of any question or disputes arising under these conditions or any other terms and conditions of contract or in connection with this contract (except as

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to any matters the decision of which is specially provided for by these conditions) the same shall be referred to an award of a Sole to be appointed by BEML with the consent of the Contractor / Vendor Supplier and the Arbitration proceedings of Arbitration and Conciliation Act 1996. The Courts in Bangalore alone shall have jurisdiction to deal and decide any legal matter or dispute whatsoever arising out of this Contract.

2. BEML shall be entitled to prevent breach of the above and to claim damages in case of any breach.
3. the Signatories hereto declare that they have the sanction and power to execute and deliver this binding agreement.

IN WITNESS WHEREOF, the parties hereto have set their respective hands to this Confidentiality Agreement on ..... written in the presence of Witness.

For **BEML Limited**

For M/s.

WITNESS :

- 1.
- 2.

WITNESS :

- 1.
- 2.

List of Items:



**Annexure – 4**

**NON – DISCLOSURE AGREEMENT**

(To be executed on a non judicial stamp paper of requisite value according to State Stamp Laws)

This Non – Disclosure Agreement (hereinafter referred to as "Agreement/NDA") is made and entered into on this.....day of .....20\_\_\_ at ..... by and between; M/s BEML LIMITED, a Govt. of India Undertaking, coming under the administrative control of Ministry of Defence, Department of Defence Production, Government of India, incorporated and registered under the Companies Act 1956/2013 with its Corporate Office at 'BEML SOUDHA', 23/1, 4th Main, SR Nagar, Bangalore – 560027, India and Defence Business at \_\_\_\_\_ Unity Buildings, Bengaluru 560 002, represented by its ..... Mr. .... (hereinafter referred to as "BEML" which expression shall include its successors and permitted assigns) of the FIRST PART;

And

M/s ..... incorporated and registered under ..... with its registered Office/principle place of business at ..... represented by its ..... Mr. .... (hereinafter referred to as "XXXXXX/Industrial Partner" which expression shall include its successors and permitted assigns) of the SECOND PART

Hereinafter, BEML and the Industrial Partner are collectively referred to as "Parties" and individually as "Party".

WHEREAS, BEML is engaged in the business of design, development and manufacture of a variety of Earthmoving, Railways, Defence Equipments, Diesel Engines, Hydraulic & Power line aggregates and also providing services in the areas of engineering, design & development and trading, etc. and WHEREAS, Industrial Partner is engaged in the business of ..... (incorporate the details of business of the party) etc. and

WHEREAS, BEML had submitted Techno-commercial offer for 50T Trailer- Qty 208 Nos. and the Order is expected from Ministry of Defence and BEML proposes to execute this order on a Turn Key basis with an Industrial partner (the Project). In this regard, BEML floated Expression of Interest (EOI) to identify the Industrial partners.

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WHEREAS, the Industrial Partner has agreed to perform its scope of work relating to the Project, in accordance with the EOI. As per EOI the Industrial partner is required to execute NDA to obtain Specific technical information and drawings related to 50T Trailer , which is proprietary of BEML.

WHEREAS, the Parties recognise that careful protection and non-disclosure by the Party receiving the Confidential Information (hereinafter referred to as the "Receiving Party") from the Party disclosing such Confidential Information (hereinafter referred to as the "Disclosing Party") is of vital importance while executing the Projects..

**NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree to disclose and receive certain Confidential Information only under the following terms and conditions:**

**1. SCOPE OF THE NDA**

1.1 In order to pursue the Project, both Parties recognize that there is a need to disclose to one another certain Confidential Information. Confidential information is to be used only in the pursuit of the Projects. The information provided by the Disclosing Party and the Receiving Party shall be subject to the terms of this NDA. Accordingly, either Party under this NDA may be a Receiving Party and/or a Disclosing Party under the terms hereof.

1.2 The following terms and conditions shall apply when the Disclosing Party discloses Confidential Information to the Receiving Party. Nothing contained in this NDA shall be construed as granting rights by the Disclosing Party to the Receiving Party, by license or otherwise, to any of the Confidential Information under any patent, know-how or other rights till now or hereinafter held by the Disclosing Party except as specified in this NDA. The Disclosing Party will provide Confidential Information without warranties of any nature whatsoever.

**2. CONFIDENTIAL INFORMATION**

2.1 The term "Confidential Information" shall mean and refer to all or any information and data of confidential or proprietary in nature which is disclosed by the Disclosing Party to the Receiving Party, including but not limited to, past, current and future customer information, proprietary, technical, financial, personnel, marketing, pricing, sales and/or commercial information with respect to the " Project" as well as ideas, concepts, drawings, designs and

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inventions, embedded hardware design, data and information, computer source and object code and computer programming techniques; and all record bearing media containing or disclosing such information and techniques which are disclosed pursuant to this NDA. The terms and existence of this NDA, the fact that Confidential Information has been made available hereunder, that discussions or negotiations are taking place concerning the Purpose and all of the terms, conditions and other facts with respect thereto (including the status thereof) shall also be considered Confidential Information that is subject to the provisions of this NDA.

2.2 The information disclosed as Confidential and which is marked as 'Confidential' by the Disclosing Party, shall be treated as Confidential Information by the Receiving Party and shall be disclosed either:

2.2.1 in writing; or

2.2.2 by delivery of items; or

2.2.3 by initiation of access to Information, such as may be in a data base; or

2.2.4 by oral or visual presentation.

2.3 If the Confidential information is disclosed by means of oral explanation or other intangible form, confidential information shall be identified by the Disclosing Party as confidential at the time of disclosure and shall be provided in writing to the Receiving Party duly marked as "confidential" within fourteen (14 ) days of such disclosure.

2.4 If the Disclosing Party inadvertently fails to mark any information as 'Confidential Information' for which it desires confidential treatment, it shall so inform the Receiving Party. The Receiving Party thereupon shall return the unmarked information to the Disclosing Party and the Disclosing Party shall substitute properly marked information. In addition, if the Disclosing Party, at the time of disclosure inadvertently fails to identify as proprietary, confidential or private, oral or visual information for which it desires confidential treatment, it shall so inform the recipient, provided that the Disclosing Party shall summarise the information in writing within ten (10) days thereafter. The Receiving Party's obligation hereunder shall commence upon notice from the Disclosing Party of the failure to properly mark or identify the information.

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2.5 The Confidential Information shall be considered valuable trade secrets, owned by the Disclosing Party. The Disclosing Party retains all right, title, and interest in the Confidential Information.

**3. NON-DISCLOSURE**

3.1 The Receiving Party may only use the Confidential Information for the purposes stated above. The Receiving Party recognises that this NDA imposes an affirmative duty to hold such information in confidence and protect it from dissemination to and use by unauthorised persons. In the absence of the Disclosing Party's prior written consent, the Receiving Party shall neither reproduce nor disclose the Confidential Information to any third party.

**4. RECEIVING PARTY'S OBLIGATIONS:**

4.1 The Receiving Party undertakes:

4.1.1 to use the same care and discretion to avoid disclosure, publication or dissemination of the Confidential Information as it uses with respect to its own Confidential Information, but no less than reasonable care;

4.1.2 not to use the Confidential Information for any other purpose except for the purpose for which the information has been disclosed.

4.1.3 to comply with any other reasonable security measures requested in writing by the Disclosing Party;

4.1.4 not to, under any circumstances, copy, replicate, or reverse engineer any products or services of the Disclosing Party by unauthorised use of Confidential Information and shall not infringe the intellectual property rights law applicable to the Disclosing Party;

4.1.5 not to, directly or indirectly, make or permit any oral or written communications to the public media regarding the Confidential Information of the Disclosing Party, its business or clients or use the name of the Disclosing Party in any public announcements, promotional, marketing or sales materials or efforts, without the express prior approval of the Disclosing Party.

4.1.6 The Receiving Party must not disclose any Confidential Information to any third party except that the Receiving Party may disclose the Confidential Information to:

4.1.7 its employees, consultants and agents including employees of any legal entity that it controls or controls it or with which it is under common control (the "Representatives"), on a 'need to know' basis for the purpose of this NDA.

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4.1.8 Any other party with the Disclosing Party's prior written consent.

4.1.9 The Receiving Party must, prior to disclosing any Confidential Information, enter into a written agreement with the party to whom the information is being disclosed so as to ensure that such party treats the information as 'Confidential Information' in accordance with the terms of this NDA.

4.2 The Receiving Party may disclose the Confidential Information to the extent only it is required by law. However, the Receiving Party will give the Disclosing Party prompt notice to allow the Disclosing Party a reasonable opportunity to obtain a protective order.

## **5. RETURN OF CONFIDENTIAL INFORMATION**

5.1 Following the request of the Disclosing Party, the Receiving Party will promptly deliver to the Disclosing Party, or certify in writing to the Disclosing Party as to the destruction of (without retaining any copy including the backup copies) all of Confidential Information (and copies and extracts thereof) furnished to, or created by or on behalf of, the Receiving Party.

Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

## **6. EXCEPTIONS**

6.1 This NDA imposes no obligation upon the Receiving Party with respect to information that:

6.1.1 is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;

6.1.2 is hereafter rightfully furnished to the Receiving Party by a third party, without restrictions to use or disclosure;

6.1.3 is disclosed with the prior written consent of the Disclosing Party; or

6.1.4 is required to be disclosed pursuant to law, and then only to the extent ordered by the governmental authority or court of competent jurisdiction, provided the Receiving Party uses reasonable efforts to give the Disclosing Party notice of such disclosure as soon as practicable and cooperate with the Disclosing Party, at the Disclosing Party's expense, to minimize any such disclosure and shall only disclose that portion of the Confidential Information required by such authority or court.

## **7. REMEDIES**

7.1 The Parties recognise and acknowledge that Confidential Information is of a special, unique and extraordinary character to the Disclosing Party and that disclosure, misappropriation or unauthorized use of such Confidential Information by the Receiving Party cannot be fully compensated and that, further any such disclosure, misappropriation or unauthorized use of the Confidential Information shall cause irreparable injury to the Disclosing Party. The Receiving Party expressly agrees, therefore, that the Disclosing Party, in addition to any rights and remedies it may have under this NDA or at law or in equity, shall be entitled to seek injunctive and other equitable relief to prevent the breach, or the further breach, or any of the terms and provisions hereof. The Receiving Party agrees to reimburse the Disclosing Party for any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and court costs) incurred and sustained by the Disclosing Party as a result of any breach of this NDA.

## **8. TERM**

8.1 The term of this NDA shall be for Two (02) years from the date of its signature and that the obligations of the Receiving Party to protect the Confidential Information under this NDA shall survive for a period of Two (2) years from the date of its termination. Upon the expiry of the term of this NDA or at the earlier request of the Disclosing Party, the Receiving Party shall return all Confidential Information to the Disclosing Party without retaining any copies of such Confidential Information or if so desired by the Disclosing Party, confirm in writing that all such Confidential Information has been destroyed.

## **9. TERMINATION**

9.1 This NDA shall, unless otherwise extended by mutual agreement of the Parties, terminate upon happening of any of the following events :

- (a) Termination by mutual consent;
- (b) Termination by either party due to breach of any of the covenants hereof by the other by giving three months prior notice in writing to the defaulting Party and the defaulting party fails to rectify the breach within the notice period;
- (c) by giving written notice of 30 days in the event of the liquidation, bankruptcy, reorganization, dissolution or insolvency of the other Party resulting in that Party's inability to perform the obligations

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under this NDA;

(d) by either party by giving 90 days written notice to the other with or without attributing reasons.

(e) if a Party is Blacklisted by any Govt., Statutory Authorities, body corporate, which make the performance of this Agreement by that Party impossible. In such case that party shall give appropriate notice to the other informing the incidence of blacklisting and also the impossibility in performing the obligations under this Agreement. Notwithstanding the above, termination shall not prejudice any rights and obligations of the Parties that has arisen prior to the effective date of termination.



## **10. GOVERNING LAW**

10.1 This NDA shall be governed by the laws of Republic of India

## **11. DISPUTE SETTLEMENT AND JURISDICTION**

11.1 Disputes if any, arising between the Parties, in connection with this NDA or any other matters connected therewith, the same will be mutually discussed and amicably settled between the parties, failing which, the disputes shall be referred to a Sole Arbitrator to be appointed by BEML. The Arbitration proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules, if any, framed thereunder from time-to-time. The place of Arbitration shall be at Bengaluru and the Arbitration proceedings shall be conducted in English language.

11.2 Courts at Bengaluru alone will have jurisdiction to entertain, try and adjudicate all disputes arising out of this agreement including the Award of the Arbitral Tribunal.

## **12. MISCELLANEOUS**

12.1 SEVERABILITY AND WAIVER: If any provision of this NDA is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The Parties shall replace any invalid provision with a valid provision, which must closely approximate the intent and economic effect of the invalid provision.

The waiver by the Disclosing Party of a breach of any provision of this NDA shall not operate or be interpreted as a waiver of any other or subsequent breach.

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12.2 NON-SOLICITATION: No Party shall, either directly or indirectly, on its own behalf or on the behalf of others, solicit or hire for work any person(s) employed by the other Party, whether or not such employment is pursuant to a written contract or is at will, without the express written permission of such other Party, or until such employee has ceased his/her employment with such other Party for at least two (2) years. This clause shall survive for a period of two years even from the date of termination.

12.3 NOTICES: All notices under this NDA must be in writing and must be either: faxed; mailed by registered or certified mail, postage prepaid and return receipt requested; or delivered by hand to the party to whom such notice is required or permitted to be given at the address set out in the title of this NDA.

12.4 SUCCESSORS AND ASSIGNS: The Receiving Party shall have no right to assign its rights under this NDA, whether expressly or by operation of law, without the written consent of the Disclosing Party. This NDA and the Receiving Party's obligations hereunder shall be binding on the Representatives, permitted assigns and successors of the Receiving Party and shall inure to the benefit of the Representatives, assigns and successors of Disclosing Party.

12.5 VARIATION: No variation of this NDA shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

12.6 FINAL PROVISION: This NDA is solely between BEML and ..... and Government of India is not a party and shall cast any obligation on it. (This clause is mandatory if the Industrial partner is a foreign entity)

IN WITNESS WHEREOF, the Parties hereto have set their respective hands to this NDA on the Day, Month and Year First written above at ..... (Place) in the presence of the following witnesses.

For **BEML Limited**

For M/s.

WITNESS :

- 1.
- 2.

WITNESS :

- 1.
- 2.