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Council of Scientific and Industrial Research
NATIONAL AEROSPACE LABORATORIES

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Date: 27-Nov-2020

CORRIGENDUM

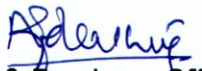
Tender No. NAL/PUR/NT/037/18-Z

Tender ID: 2020_CSIR_63138_1 Dated 27-Nov-2020

Sub: NDA Document

In continuation of CSIR-National Aerospace Laboratories Tender No.NAL/PUR/NT/037/18-Z Dated 26-Nov-2020 for "**Development, Supply, installation and Commissioning of Digital Wind Tunnel**". The Bidders has to submit the NDA document as per the format appended herewith.

Other clauses and terms of the bidding document remain unchanged.


Stores & Purchase Officer
For and behalf of CSIR

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (Hereinafter called "**Agreement**") is made and entered into on this.....day of**2020**, by and between **The Council of Scientific and Industrial Research**, a Society registered under the Societies Registration Act XXI of 1860, having its registered office at Anusandhan Bhavan, 2 Rafi Marg, New Delhi 110 001, represented by its **National Aerospace Laboratories**, located at P.B.No.1779, HAL Airport Road, Kodihalli, Bangalore 560017 (hereinafter called "**CSIR-NAL**", which expression shall include their representatives, successors and permitted assignees), on the first part; and,

M/s, a company established under the..... [Indian Companies Act, 1956] (pl give company registration no), having principle place of business at.....(hereinafter called "**OTHER PARTY**", which expression shall include their representatives, successors and permitted assignees), on the other part;

Hereinafter either of the Part is individually referred to as a "Party" or collectively as "Parties" to this Agreement

BACKGROUND

WHEREAS, the Parties wish to engage in discussions to pursue a potential relationship regarding **Development and Supply of Digital Wind Tunnel System for CSIR-NAL**.

WHEREAS, each of the Parties possesses, or may possess, certain Confidential Information related to the subject matter of their discussions that the other Party may find useful in connection with such potential relationship.

WHEREAS, the Parties recognize that the Confidential Information is a valuable asset of the disclosing Party, and that misuse or unauthorized disclosure will substantially impair the value of the Confidential Information.

NOW THEREFORE, the Parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree as follows:

1. DEFINITIONS

1.1 "**Confidential Information**" shall mean all information provided by Disclosing Party with respect to the purpose regardless of whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, human or machine readable documents. Any Confidential Information exchanged by the Parties and entitled to protection hereunder shall be identified as such by an appropriate stamp or marking on each document exchanged designating that the Information is "Confidential Information".

All **Confidential Information** disclosed under this Agreement:

- a. in intangible form (other than written form e.g., oral or visual) shall be

identified as being Confidential Information and puts the Receiving Party on notice at the time of disclosure, and shall be confirmed as such in writing to the Receiving Party within thirty (30) days after such disclosure;

- b. by electronic transmission (including, but not limited to, facsimile, electronic mail and the like) in either human readable or machine readable form shall be clearly identified at the time of disclosure as being Confidential Information by an appropriate and conspicuous electronic marking within the electronic transmission, such marking to be displayed in human readable form along with any display of the Confidential Information;
- c. by delivery of an electronic storage medium or memory device shall be clearly identified at the time of disclosure as being Confidential Information by an appropriate and conspicuous marking on the storage medium or memory device itself and by an appropriate and conspicuous electronic marking of the stored Confidential Information, such marking to be displayed in human readable form along with any display of the Confidential Information.

1.2 CONFIDENTIAL EXCLUSIONS

Information shall not be considered to be Confidential Information, and the Receiving Party shall not be liable for the use and disclosure thereof, if such information:

- A. was in the public domain at the time of disclosure, or thereafter comes into the public domain through no fault of the Receiving Party; or
- B. is otherwise available to the Receiving Party without restrictions on use and disclosure similar to those in this Agreement; or
- C. was in the possession of Receiving Party at the time of disclosure that may be demonstrated by business records of Receiving Party and was not acquired, directly or indirectly, from Disclosing Party; or
- D. is required to be disclosed pursuant to any applicable legal requirement or legal process issued by any court or any competent government authority or rules or regulations of any relevant regulatory body provided that receiving party will inform the Disclosing party of such order well in advance and provide assistance in contesting the disclosure thereof; or
- E. is acquired after the time of disclosure from a third party who did not require Receiving Party to hold the same in Confidence and who did not acquire such technical information from Disclosing Party; or.
- F. Independently developed by the Receiving Party as evidenced by written records.

1.3. **Disclosing Party**” shall mean the party disclosing the confidential information to Receiving Party.

- 1.4. **“Receiving Party”** shall mean the party receiving the confidential information from the Disclosing Party.

For the purpose of this agreement, CSIR-NAL is Disclosing Party and **(OTHER PARTY)** is Receiving Party.

2. **USE OF CONFIDENTIAL INFORMATION**

The Receiving Party agrees to:

- a. receive and maintain the Confidential Information in confidence;
- b. examine the Confidential Information at its own expense;
- c. not reproduce or reverse engineer the Confidential Information or any part thereof without the express written consent of Disclosing Party;
- d. not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of Disclosing Party;
- e. limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from the Disclosing Party to those officers and employees, if any, of the Receiving Party who have a need to know and an obligation to protect it;
- f. not use or utilize the Confidential Information without the express written consent of Disclosing Party except for the Purpose;
- g. not use the Confidential Information or any part thereof as a basis for the design or creation of any method, system, apparatus or device similar to any method, system, apparatus or device embodied in the Confidential Information unless expressly authorized in writing by Disclosing Party; and
- h. Utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like.
- i. indemnify the CSIR-NAL against any and all actions claims liability costs damages charges and expenses suffered or incurred in connection with or arising out of any breach by the Receiving Party of any of the provisions of this Agreement or by any unauthorized disclosure or use of Confidential Information by a third party or by any employee of Receiving Party to whom Confidential Information has been disclosed or who has been allowed access thereto. Nothing in this Clause shall be construed as a waiver by any Party of any of its rights including rights to damages or indemnity or other pecuniary remedy

3. **RETURN OF CONFIDENTIAL INFORMATION**

All information provided by the Disclosing Party shall remain the property of the Disclosing Party. Receiving Party agrees to return all Confidential Information to Disclosing Party within 15 days of written demand by Disclosing Party. When the Receiving Party has finished reviewing the information provided by the Disclosing Party and has made a decision as not to work with the Disclosing Party, Receiving Party shall return all information to the Disclosing Party without retaining any copies.

4. NON-ASSIGNABLE

This agreement shall be non-assignable by the Receiving Party unless prior written consent of the Disclosing Party is received except to wholly owned subsidiaries. If this Agreement is assigned or otherwise transferred, it shall be binding on all successors and assigns.

5. PROTECTION TERM AND PARTIES OBLIGATION

This Agreement shall expire **2 year(s)** after the date first written above (the "Disclosure Period") except that it may be terminated earlier by thirty (30) days prior written notification by either Party to the other or extended by mutual written agreement. The provisions of Sections 2, 3, 4, 5, 8, 10, 14 shall survive such expiration or termination.

The receiving Party shall hold each item of Confidential Information so received in confidence until **8** years after the termination or expiration of this Agreement (the "Proprietary Period").

After the expiry of confidential obligation period as stated above, the receiving Party is free to publish the results of comparison between his CFD predictions and measurements in CSIR-NAL facilities in any forum. However, in the publications, no dimensional details of the models or wind tunnel geometry shall ever be disclosed.

6. RELATIONSHIP BETWEEN THE PARTIES

- a. This Agreement does not create a teaming agreement, joint venture, partnership or other such arrangement; rather, the Parties expressly agree that this Agreement is solely for the purpose of disclosing and protecting Confidential Information.
- b. Neither Party promises to provide the other Party with Confidential Information. The decision to provide any Confidential Information is within the sole discretion of the Party originally possessing the Confidential Information.
- c. During the term of this Agreement, and for a period of one year immediately following the termination of this Agreement, neither **OTHER PARTY** nor CSIR-NAL shall knowingly make an offer of employment to any officer, partner or employee of the other who is involved with the efforts under this Agreement, without prior written approval of the other party. This shall not be applicable if the said officer or employee opts for employment at his/her own accord/will.
- d. Each Party agrees that it will not disclose any term or provision of this Agreement, or provide the original or any copy of this Agreement, to any third party, without the prior written approval of the other Party.
- e. Each Party acknowledges that the other Party may now sell, or have under development, products which are competitive with those of the other Party.

Disclosures of Confidential Information under this Agreement shall not impair the right of the receiving Party to independently develop, manufacture, use and sell products and services competitive with those offered by the disclosing Party.

- f. Except as provided, each Party shall bear its own costs and expenses incurred under or in connection with this Agreement.

7. POINTS OF CONTACTS

The Confidential Information to be disclosed under this Agreement relates to **Development and supply of Digital Wind Tunnel for CSIR-NAL.**

The following persons will, on behalf of the respective Parties, be the sole individuals authorized to receive and or transmit written Confidential Information:

CSIR-NAL	OTHER PARTY
<p>Name: Shri. G. Rajeev Address: Scientist, Head-NTAF, CSIR-NAL, PB 1779, Kodihalli, Bangalore 560017 Tel.: 0091 80 25051576 Fax: 0091 80 25003942 E-mail : rajeev@nal.res.in</p>	<p>Name: Address: Ph.No: FAX: E-mail</p>

Either Party may change the exclusive contact by written notice. Receipt of Confidential Information by any individual other than the designated receiver shall not affect the obligations of the Receiving Party

8. GOVERNING LAW

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the India.

9. NO LICENSE

Neither party does, by virtue of disclosure of the Confidential Information, grant, either expressly or by implication, estoppel or otherwise, any right or license to any patent, trade secret, invention, trademark, copyright, or other intellectual property right.

10. BINDING NATURE OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

11. PROVISIONS SEPARABLE

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

Should either Party fail to exercise or enforce any terms and conditions of this Agreement, or waiver any rights in respect thereto, such failure or waiver shall not be construed as constituting a continuing waiver or a waiver of any other right. No waiver of any of its terms shall be valid or enforceable unless it has been reduced to writing and signed by the party in the Agreement against whom such waiver is asserted.

12. ENTIRE AGREEMENT

This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

13. FORCE MAJEURE

Neither party shall be liable to the other for the delay or failure to perform any of its obligations under this Agreement resulting from any cause beyond its control including but not limited to fires, floods, explosions, accidents, strikes, lockouts, or acts of government, provided that the party claiming that force majeure has affected its performance shall give notice to the other party within ten (10) days of becoming aware of the first occurrence of force majeure giving full particulars of the cause of event and the date of first occurrence thereof. If the Force Majeure conditions continue beyond 3 (three) months, the Parties shall jointly decide about the future course of action.

14. DISPUTE SETTLEMENT

Parties will first try to settle any controversy or claim arising out of or relating to this Agreement, or the breach thereof amicably. Any unresolved controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by sole arbitrator in accordance with Indian Arbitration and Conciliation Act, 1996 and the rules thereof. Arbitrator shall be appointed on mutual consent of Parties. Arbitration proceedings will be conducted in English language and venue of arbitration shall be Bangalore, India. Any arbitration award shall be final and binding, and judgment upon the award rendered pursuant to such arbitration may be entered in any court of proper jurisdiction. Notwithstanding the foregoing, either party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any improper disclosure of the Confidential Information.

15. SEAL OF THE PARTIES

IN WITNESS WHEREOF, the Parties have entered into this Agreement executed through their authorized representatives as of the date first written above.

For and on-behalf of CSIR-NAL	For and on-behalf of <u>OTHER PARTY</u>
Signature: Name, Title and Seal: Dr J S Mathur, Head, KTMD.	Signature: Name, Title and Seal:
Witnesses (Name and Signature): 1. 2.	Witnesses (Name and Signature): 1. 2.