

FORMAT FOR NON-DISCLOSURE UNDERTAKING

[To be printed on the letter head of the Bidder]

February____, 2021

To,

1. Infrastructure Leasing & Financial Services Limited (“**IL&FS**”)
The IL&FS Financial Centre,
Plot C22, G Block,
Bandra Kurla Complex,
Bandra East,
Mumbai 400 051, India
2. IL&FS Maritime Infrastructure Company Limited (“**IMICL**”)
The IL&FS Financial Centre,
Plot C22, G Block,
Bandra Kurla Complex,
Bandra East,
Mumbai 400 051, India
3. IL&FS Prime Terminals FZC (“**IPTF**”)
29, First Floor,
P.O. Box 500037,
Trade Office Block “C”
Fujairah Free Zone Phase II,
Fujairah, United Arab Emirates
4. National Bank of Fujairah,
Facility Agent,
Bur Dubai, Dubai,
United Arab Emirates.

Sub: Acknowledgements, Confidentiality and Non-Disclosure Undertaking (“**Undertaking**”) from
[insert name of the Bidder] (“**Receiving Party**”)

Dear Sir/ Madam,

1. We refer to the public advertisement dated February 18, 2021 issued in *Gulf News* (“**Advertisement**”), inviting offers for potential acquisition of the majority equity shares of IPTF (“**Proposed Transaction**”), held by IMICL and other shareholders of IPTF. In terms of the Advertisement, we are interested in participating in the process being conducted (the “**Process**”) for the Proposed Transaction and wish to receive confidential and proprietary information in relation to IPTF and the detailed note on the Proposed Transaction and the Process (“**Process Note**”).
2. This Undertaking is being furnished by us in consideration of the premise as set forth above. Vide this Undertaking, we, the Receiving Party, hereby agree, undertake, acknowledge and confirm that:

- (a) The Receiving Party would be receiving Confidential Information (*as defined below*) in relation to the business of IPTF, the Proposed Transaction, and the Process, from IL&FS, IMICL, IPTF, and their shareholders, affiliates, directors, officers, employees, agents or advisors (individually referred to as “**Disclosing Party**”, and collectively referred to as “**Disclosing Parties**”);
 - (b) “Confidential Information” includes: (i) all information, discussions, progress and status with respect to the Process and /or the Proposed Transaction; (ii) all information, data, reports, analyses, advices, interpretations, studies, forecasts, records, documents and/or materials, whether made available in writing or electronically to the Receiving Party by the Disclosing Parties in relation to IPTF, or the Proposed Transaction or the intended parties to the Proposed Transaction or becoming available to the Representatives (as defined below) of the Receiving Party; (iii) any financial, technical, business, operational, assets and liabilities related information, any analysis that integrally incorporates and/or discloses any Confidential Information; and (iv) any information exchanged between parties to the Proposed Transaction in respect of any Disclosing Party(ies), or documents reflecting or generated from such information, and any information or document that the Disclosing Party considers confidential, but excluding information that:
 - (i) at the time of supply to the Receiving Party is in the public domain or otherwise lawfully known to the Receiving Party;
 - (ii) becomes lawfully available to the Receiving Party or its Representatives from a third party who to the best of the Receiving Party’s knowledge does not owe any party an obligation of confidence in relation to such information;
 - (iii) is independently developed by the Receiving Party or its Representatives without any reference to the Confidential Information, and without violating any obligations hereunder; or
 - (iv) is approved for disclosure in writing by the Disclosing Parties or a Disclosing Party;
 - (c) The Confidential Information shall be shared only with affiliates or partners who shall be potentially participating in equity or debt funding and the directors, partners, officers, agents, employees or advisors (such as financial advisors, attorneys, bankers, consultants and accountants) of the Receiving Party/their affiliates/partners who need to know such information for the purpose of evaluating the Proposed Transaction (collectively referred to as the “**Representatives**”), on a strictly “need to know” basis; provided, such Representatives are also similarly restricted by the confidential obligations and the conditions set forth in this Undertaking. The Receiving Party agrees that the Receiving Party will be responsible for any breach of the confidentiality and other terms of this Undertaking by any of the Receiving Party’s Representatives;
 - (d) The Receiving Party shall maintain a digital database of Representatives including the names of the individuals and entities with whom Confidential Information has been shared, and the Receiving Party undertakes to submit the digital database upon receipt of a written request from the Disclosing Party.
3. The Receiving Party agrees and undertakes that it shall, and it shall ensure that its Representatives shall:
- (a) keep confidential all Confidential Information provided to the Receiving Party, unless disclosure is required to satisfy the requirements of any law, legal process, court of competent jurisdiction or any governmental or regulatory agency having the authority to regulate any aspect of the Receiving Party’s business. Provided that the Receiving Party may disclose only such Confidential Information that is strictly required to be disclosed to comply with a regulatory requirement, and to the extent legally permissible, the Receiving Party shall notify the Disclosing Parties of such requirements promptly, in advance of the disclosure, so that the Disclosing Parties may seek protective order(s) or other appropriate remedy to protect the secrecy of the Confidential Information;

- (b) use Confidential Information solely for the purpose of evaluating, negotiating or, if selected as the ‘Successful Bidder’, carrying out the Proposed Transaction and ensure compliance with applicable laws while dealing with the Confidential Information;
- (c) not use the Confidential Information to cause an undue gain or undue loss to itself or any other person and without prejudice to anything that is stated herein, ensure that intellectual property rights of the Disclosing Party in any of the data furnished is protected and not misused;
- (d) not engage with or solicit or attempt to solicit, in any manner whatsoever, any client or customer of IPTF;
- (e) not, directly or indirectly:
 - (i) induce for employment, employ or engage as a consultant or independent contractor any employee of the Disclosing Party(ies) to leave his or her employment and/or terms of service with the applicable Disclosing Party, or in any way interfere with the relationship between the Disclosing Party and any such employee thereof;
 - (ii) induce or hire any person engaged by the Disclosing Party(ies), with whom the Receiving Party or any of its Representatives have been directly or indirectly introduced or otherwise had contact with in connection with the Proposed Transaction, so long as such persons are employed or engaged by the applicable Disclosing Party, or upon cessation of such employment or engagement with the applicable Disclosing Party, for a period of 6 months after such cessation, unless otherwise agreed by the applicable Disclosing Party in writing.

Provided that the aforesaid conditions do not prevent the Receiving Party from offering employment: (A) pursuant to a general solicitation or advertisement not specifically directed towards employees of the Disclosing Party(ies), in the news media of general circulation; (B) through a recruitment agency or other similar entities who have not been specifically instructed by the Receiving Party to solicit such employees of the Disclosing Party(ies); or (C) to persons who approach the Receiving Party on their own volition, without any solicitation by the Receiving Party or its Representatives.

4. Further, the Receiving Party acknowledges and agrees that:

- (a) the Confidential Information disclosed under this Undertaking is delivered “as is” and the Disclosing Parties do not make any representation or warranty as to the accuracy, timeliness or completeness of the Confidential Information or its suitability for any particular purpose. No Disclosing Party shall have any liability to the Receiving Party or its Representatives relating to or resulting from the use of the Confidential Information or any omissions or errors therein;
- (b) the opportunity to participate in the Process or grant of access to Confidential Information cannot be construed:
 - (i) to grant any rights over IPTF or the Confidential Information to the Receiving Party or any person; or
 - (ii) to be a commitment or agreement by the Disclosing Parties to undertake or consummate any or all the Proposed Transaction with the Receiving Party or any other party; or
 - (iii) to refrain the Disclosing Party from consummating the Proposed Transaction or any transaction pertaining thereto with any other party;
- (c) the Proposed Transaction will be entirely a cash transaction, no proposals for refinancing from existing lenders of IPTF will be acceptable, and the successful bidder should be ready to finance the Proposed Transaction on its own;
- (d) if selected as the ‘successful bidder’, it has to submit a performance guarantee of USD 5 million along with other documents and undertakings required to satisfy a compliance protocol in terms of the Process Note;

- (e) it shall not request for extension of bid due date for any reason including non-completion of due diligence or site visit, and extension of bid due dates shall be at the sole discretion of IMICL and secured lenders of IPTF.
5. The Receiving Party acknowledges and confirms that:
- (a) the Confidential Information is the property of the relevant Disclosing Party;
 - (b) in case of any actual or suspected loss, theft, unauthorized disclosure, use or access of Confidential Information in breach hereof or other non-compliance with this Undertaking, to notify the Disclosing Party in writing (including electronically) (along with relevant details), and shall provide all reasonable assistance to the Disclosing Party in connection with any proceedings which the Disclosing Party may institute to protect such Confidential Information;
 - (c) in the event the Disclosing Parties decide not to proceed with the Proposed Transaction either with the Receiving Party or at all, the Receiving Party shall promptly return (if requested by the Disclosing Party) or destroy (if no such request is made) all physical copies of Confidential Information (and delete or make inaccessible all electronic copies thereof). Provided, that the Receiving Party may retain Confidential Information that is required to be retained by: (i) law, regulation, legal or judicial process or any governmental or regulatory authority or document retention policy; and /or (ii) tax, audit or compliance purposes with a prior intimation to the Disclosing Party. The Receiving Party agrees that any Confidential Information retained in accordance with this sub-clause (c) will continue to be subject to the confidentiality restrictions set out in this Undertaking.
6. The Receiving Party understands and agrees that monetary damages would not be sufficient remedy for any actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives and that, in addition to all other remedies available at law and/or in equity, the Disclosing Parties shall be entitled to seek equitable relief, including both preliminary and permanent injunctions and specific performance, as a remedy for any such actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives.
7. The Receiving Party shall at all times hereafter indemnify and keep each Disclosing Party fully indemnified against all claims, demands, actions, proceedings, losses, damages, costs, charges, expenses, interests and disbursements of any nature whatsoever which such Disclosing Party may pay or incur or suffer or sustain or be liable to pay or incur or suffer or sustain as a result or consequence, direct or indirect, of any breach of the provisions of this Undertaking by the Receiving Party.
8. The Receiving Party hereby irrevocably agrees and warrants that it and its Representatives shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid or bypass the Disclosing Party or contact any other party with respect to the Proposed Transaction or Process, or obviate or interfere with the relationship of the Disclosing Party and its contacts for the purpose of gaining any benefit, whether such benefit is monetary or otherwise.
9. This Undertaking is governed by, and construed in accordance with, the laws of Dubai, and the federal laws of the UAE. Any dispute, difference, controversy or claim arising out of or in connection with this Undertaking, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre.
10. This Undertaking comes into effect upon execution and the obligations set forth herein shall remain irrevocable and binding upon the Receiving Party until superseded in the definitive agreement(s), if any, executed in respect of the Proposed Transaction. Provided, the obligations of the Receiving Party or its Representatives in terms of Clause 3 shall be valid (a) until the completion of the Process for the Proposed Transaction, or (b) till the expiry of 12 (twelve) months from the date of execution of this Undertaking, whichever is later.
11. In the event that any provision(s) of this Undertaking is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

12. Any notices and other communications provided for in this Undertaking shall be in writing, in English, and shall be first transmitted by e-mail and then confirmed by prepaid registered post or by a recognized courier service to the addresses provided by each of the parties.
13. This Undertaking is executed for the benefit of the Disclosing Parties. Any failure or delay in enforcing any provision of this Undertaking shall not constitute a waiver thereof or of any other provision, by a Disclosing Party.

For [*Bidder*]

Signature

Name: _____

Designation: _____