

# **BID PROCESS DOCUMENT**

## **INVITATION TO SUBMIT EXPRESSION OF INTEREST FOR SUBSTITUTION OF CONCESSIONAIRE UNDERTAKING A DBFOT ANNUITY ROAD PROJECT IN THE STATE OF BIHAR**

### **ISSUED BY:**

**STATE BANK OF INDIA**

(AS LENDERS' REPRESENTATIVE ON BEHALF OF THE CONSORTIUM OF SENIOR  
LENDERS)

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Process Advisor:



*(Wholly owned subsidiary of Bank of Baroda)*

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**May 12, 2025**

## DISCLAIMER

*This Bid Process Document ("BPD") is issued by State Bank of India ("SBI" or the "Lenders' Agent" or "Lenders' Representative"), on behalf of consortium of lenders constituted by SBI, Indian Bank (e-Allahabad Bank), Punjab & Sindh Bank, Union Bank of India (e-Andhra Bank) and IndusInd Bank Lenders ("Senior Lenders" or "Lenders"). SBI, on behalf of Lenders, has mandated BOB Capital Markets Limited ("BOBCAPS" or "Process Advisor"), to act as a Process Advisor and assist them in identifying an entity for effectuating Substitution of Concessionaire of an DBFOT (Annuity) Road project (the "Project") with an eligible entity ("Eligible Entity" or "Selectee") for the residual period of the original concession in terms of the concession agreement executed between Concessionaire and National Highway Authority of India ("NHAI" or the "Authority") and Repayment of Outstanding Dues of Lenders.*

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## 1. BRIEF PROFILE OF CONCESSIONAIRE

- 1.1 Chhapra Hajipur Expressways Limited (“**CHEL**” or “**Borrower**” or “**Concessionaire**” or “**Company**”) is a Special Purpose Vehicle (“**SPV**”) and subsidiary of Madhucon Infra Limited for augmentation and maintenance of Four lanes of Chhapra Hajipur Section (KM 143.200 – KM 207.200) road project on NH-19 in state of Bihar on Design, Built, Finance, Operate and Transfer (DBFOT) Annuity Basis (“**Project**”) on concession period of 15 years under Concession Agreement dated July 28, 2010 (“**CA**”) with National Highways Authority of India (“**NHAI**”). Concession Agreement entitles the Company to receive a fixed sum of Annuity every Six months (“**Annuity**”), in arrears, starting from the date of the Commencement of Commercial Operations (“**COD**”).

### 1.2 **Project Details:**

Particulars	Details
Authority	National Highway Authority of India (NHAI)
Project	Four-Laning of Chhapra - Hajipur section of NH-19 from Km.143+200 to Km.207+200 in the State of Bihar under NHDP-III on (DBFOT) Annuity basis (“ <b>Project</b> ”).
NH No. (New/ Old)	New NH-31/ Old NH-19
Scheme/ Phase	NHDP-Phase-III
Mode of the Execution	DBFOT- Annuity
No. of Lanes/ Configuration	4 Lanes
Length of the Project (in Km)	~65
Lead Bank and Consortium Lenders	State Bank of India (Lead Bank), Indian Bank (e-Allahabad Bank), Punjab & Sindh Bank, Union Bank of India (e-Andhra Bank) and IndusInd Bank
Date of Award	13.05.2010
Appointed Date	27.01.2011
Concession Period	15 Years
Construction Period	910 Days from Appointed Date
Scheduled Date of Completion	24.07.2013
Original Project Cost	Rs. 812.50 Crore (Subsequently escalated to Rs. 1381.19 Crore in 2018)

- 1.3. The brief details of the Lenders’ Loan Exposure as on April 30, 2025, is as under:

(Rs. in Crore)

Name of the Lenders	Limit Sanctioned	Principal Outstanding	Accrued Interest	Total Dues
State Bank of India	383.11	336.04	267.45	603.49
Indian Bank	159.61	120.76	317.66	438.42
Union Bank of India	135.70	119.56	114.00	233.56
IndusInd Bank	127.70	116.70	155.74	272.44
Punjab & Sindh Bank	127.70	112.24	165.51	277.76
<b>Total</b>	<b>550.71</b>	<b>469.26</b>	<b>752.91</b>	<b>1222.18</b>

- 1.4 In addition to the aforementioned exposure of the Senior Lenders, details of NHAI's exposure as on March 31, 2025, is as under:

(Rs. in Crore)

Facility	Limit Sanctioned	Principal Outstanding	Accrued Interest	Total Dues
One Time Fund Infusion Scheme (OTFIS)	175.00	174.97	124.10	299.07

## 2. BID PROCESS

- 2.1 For implementation and operation of the Project, the Concessionaire has availed of credit facilities (the "Facilities") from the State Bank of India ("SBI" or the "Lenders' Agent" or "Lenders' Representative"), Indian Bank (e-Allahabad Bank), Punjab & Sindh Bank, Union Bank of India (e-Andhra Bank) and IndusInd Bank (collectively referred to as "Senior Lenders" or "Lenders").
- 2.2 Pursuant to the terms of the Concession Agreement and to secure the interest of the Lenders, SBI in its capacity as Lenders' Representative has executed a substitution agreement with the Concessionaire and NHAI dated March 15, 2011 ("**Substitution Agreement**"). By virtue of the Concession Agreement and the Substitution Agreement, the Lenders have the power to substitute the Concessionaire with the Nominated Company (as defined hereinafter).
- 2.3 The Concessionaire has failed to perform its obligations under the Concession Agreement, thereby constituting a Concessionaire Default (as defined in the Concession Agreement). Accordingly, in terms of the Concession Agreement and the relevant provisions of the Substitution Agreement, the Lenders have resolved to invoke their rights and to substitute the Concessionaire through a transparent Bid process to identify the Nominated Company. The Nominated Company, upon receipt of approval from the NHAI, shall enjoy all rights and be responsible for all obligations under the Concession Agreement as if it were the 'Concessionaire' (as defined under the Concession Agreement) (hereinafter referred to as the "**Proposed Transaction**").
- 2.4 The Lenders' Representative, on behalf of the Senior Lenders, has mandated BOB Capital Markets Limited ("**BOBCAPS**" or "**Process Advisor**") for assisting and advising the Lenders on the Bid Process.
- 2.5 **Eligible Entities are invited to submit a Bid for substituting the Concessionaire for the residual concession period by executing relevant documentation with NHAI and the Lenders as per the terms and conditions of the Concession Agreement and the Substitution Agreement along with a Bid to settle the outstanding dues to the Lenders under the financing documents. The Bid amount for the settlement of the outstanding dues shall be payable to the Lenders upon approval of NHAI.**
- 2.6 The overall bid process shall comprise of broadly the following steps –

**Step 1: Issuance of the Advertisement on May 12, 2025 in Financial Express (All India - English Edition), Jansatta (All India - Hindi Edition) and Mana Telangana (Telangana - Telugu Edition) inviting Expression of Interest ("EOI") from prospective Selectees/ Eligible**

**Entities for participation in the Substitution Process (“Bidders”)** having adequate capabilities as more particularly set out in Clause 4 (Eligibility Criteria/ Qualifications and Disqualifications) hereto to substitute the Concessionaire.

**Step 2: Submission of EOI by Eligible Entities along with necessary documents and Access to VDR**

- Eligible Entities desirous of participating in the Process shall be required to submit: (i) EOI (Annexure - I) alongwith other (ii) eligibility documents (Annexures as may be applicable) and (iii) NDA electronically (collectively referred to as “**EOI Documents**”) vide email to State Bank of India at [agm2others2.sarg@sbi.co.in](mailto:agm2others2.sarg@sbi.co.in) & BOBCAPS at [projectroad@bobcaps.in](mailto:projectroad@bobcaps.in) and also physically deliver the documents at K/A – Assistant General Manager, AMT II GM III (Sector), Stressed Assets Resolution Group (SARG) at State Bank of India, Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005 within 2 days of email.
- The documents submitted by the Bidder(s) shall be scrutinized by the Lenders and the Process Advisor. Any incomplete documents submitted by the Bidders shall be rejected by the Lenders at their sole discretion.
- Lenders / BOBCAPS reserve the right to direct the Eligible Entities to provide any further information/documents in relation to the EOI Documents/ its eligibility/ financial capacity or any such other information as Lenders/ BOBCAPS may require for/ in connection with verification of EOI Documents submitted, and the Bidder(s) shall provide such additional/further information/documents as may be required, without delay/ within prescribed timelines, if any, as applicable
- Bidder(s) fulfilling/ satisfying the Eligibility Criteria shall thereafter be granted access to relevant documents to enable them to undertake due diligence of the documents with respect to the Project.

**Step 3: Submission of Binding Bid (Protected PDF & Sealed Envelope)**

- The Bidder(s) shall submit the Binding Bid in the format specified in Annexure XI mandatorily in a password protected PDF file via email to State Bank of India at [agm2others2.sarg@sbi.co.in](mailto:agm2others2.sarg@sbi.co.in) & BOBCAPS at [projectroad@bobcaps.in](mailto:projectroad@bobcaps.in) on or before **May 30, 2025** by 2 PM IST or as extended at the sole discretion of the Lenders. Further, the Binding Bid in Physical form in a Sealed Envelope to be delivered to K/A – Assistant General Manager, AMT II GM III (Sector), Stressed Assets Resolution Group (SARG) at State Bank of India, Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005 on or before **June 2, 2025** by 2 PM IST or as extended at the sole discretion of the Lenders. In the event, the physical bid is not received or there is a discrepancy between the physical bid and password protected PDF, the password protected PDF shall prevail and would be considered final & binding.
- The Bidder(s) shall be solely responsible for submitting a binding bid in the manner and within the time period as detailed above. The Lenders’ Representative or BOBCAPS shall not be held liable for any delay or any other default by the Bidder(s) in submission of binding bids in timely manner in adherence to the form and manner prescribed herein, including for any

failure or technical issue during the bidding process. Timely submission of complete, accessible binding bids shall be entirely the responsibility of the Bidder(s).

- The Bidder(s) shall not be entitled to withdraw or cancel the Bid once submitted. All bids so submitted should have validity of a period of 90 (ninety) days from the date of submission or declaration of Successful Bidder, whichever is later, except in case of Successful Bidder whose bid shall have validity till execution of requisite documents necessary for the substitution process with NHAI and/or Lenders. The Lenders may seek extension of the validity for such period as may be necessary to complete the approvals and/or as determined by the management/ competent authority of the respective Lenders.
- Lenders / BOBCAPS reserve the right to direct the Eligible Entities to provide any further information/documents in relation to the Bidder(s) / Bid submitted/ its eligibility/ financial capacity or any such other information as Lenders/ BOBCAPS may require for/ in connection with assessment of the Bid submitted, and the Bidder(s) shall provide such additional/further information/documents as may be required, without delay/ within prescribed timelines, if any, as applicable.

**Step 4: Opening of Sealed Bid, Submission of EMD and Declaration of “Anchor Bidder”**

- The password protected PDF and sealed envelope containing the Bid shall be opened on the bid opening date i.e. on **June 2, 2025** at 5 PM IST or such extended date as may be determined by the Lenders, at their sole discretion, in presence of Bidder(s) who may wish to remain present. **Bidders shall share the password only at the time of opening of Bid and not at any time before the said opening date/time.**
- The Lenders’ Representative shall rely solely on the encryption/security attached to the Binding Bid and the passwords submitted by the Bidder(s). The Lenders’ Representative or BOBCAPS shall not be held liable in any manner whatsoever for any failure of the encryption or security methods or failure of passwords or any other technical glitches during the opening of binding bids.
- The Bids shall be evaluated on the basis of the eligibility criteria and the settlement of outstanding dues to Lenders. Basis the Bids received as per the EOI invite, the Lenders shall declare the highest bidder and the Lenders/ Lenders’ representative/ BOBCAPS (upon instructions), will notify the same to the highest bidder and thereupon the highest bidder will have to deposit a non-interest bearing refundable **earnest money deposit** equivalent to 20% of the Bid Value of the Binding Bid submitted by the highest bidder (“**Anchor Bidder - EMD**”) within 2 (Two) day of such declaration by way of RTGS to the account of the Lenders’ Agent maintained with State Bank of India, SAM Branch – II, Hyderabad (Account No.: 35754767051 | Account Name: SAM Branch – II | IFSC Code: SBIN0018359). The Anchor Bidder - EMD shall not be appropriated till the declaration of Successful Bidder (post the Swiss Challenge Process)/ approval from NHAI and shall be kept in trust in a safe custody of the Lenders.

- Subsequently, the highest bidder will be declared as the “**Anchor Bidder**” and the highest bid as the “**Anchor Bid**”, **subject to negotiations by and approval of the Lenders on the price**. For the avoidance of doubt, it is hereby clarified that selection of the Anchor Bidder by the Lenders shall be final and binding on all the Bidder/s. Further, in the event that the highest Bid Price is not acceptable to the Lenders (with/ without negotiations), the Lenders shall reserve the right to not declare the highest bidder to be “Anchor Bidder” and/or withdraw/discontinue further process. No Bidder shall protest in this regard and submission of each bid shall construe deemed acknowledgement and acceptance of such right of the Lenders.
- In the event, that no bids are received or the Bids are not to the satisfaction of the Lenders, the Lenders may at their sole discretion negotiate with the highest bidder or, annul/cancel/modify the Bid Process or modify the requirements thereof and/or undertake another bid process, as the case may be. No Bidder shall protest in this regard and submission of each bid shall construe deemed acknowledgement and acceptance of such right of the Lenders.

#### **Step 5: Public Announcement of Swiss Challenge Process**

- Upon declaration of the Anchor Bidder and receipt of Anchor Bidder - EMD from the Anchor Bidder, the Lenders & BOBCAPS will, subsequently issue a public announcement regarding initiation of Swiss Challenge Process/Mechanism (“SCP” or “SCM”) for procuring counter bids against the Anchor Bid. As per the timelines provided in the public announcement, the eligible counter bidders (“**Prospective Counter Bidders**”), shall provide their intention to participate in the Bid Process for Swiss challenge (“**BPSC**”) by submitting expression of interest (“**SCP EOI**”) as per Annexure XII and Non – Disclosure Agreement (“**SCP – NDA**”) as per Annexure XIII to this Bid Process Document.
- Any incomplete documents submitted by the Prospective Counter Bidders shall be rejected by the Lenders at their sole discretion.
- The Prospective Counter Bidders shall be eligible to bid under the BPSC only if they qualify as per the eligibility criteria provided under Clause 4 of this Bid Process Document.
- The E-Auction/ SCM rules, if any shall be communicated/ published/ uploaded in due course.

#### **Step 6: Due Diligence by Eligible Entities and Access to VDR**

- The SCP EOI documents shall be scrutinized by the Lenders & BOBCAPS and the eligible counter bidders (“**Counter Bidders**”) shall thereafter be granted access to relevant documents to enable them to undertake due diligence of the documents with respect to the Project.
- Any other Bidder(s) who did not submit EOI Documents and intends to participate in the SCM and conduct due diligence has to submit EOI Documents in the format as annexed hereof. However, Bidder(s) who have already submitted the said documents pursuant to advertisement dated May 12, 2025, may not submit the said documents again for conducting



the due diligence and participating in the SCM except the SCP EOI and the SCP NDA contained in Annexure XII and Annexure XIII respectively.

- Further details with respect to VDR shall be provided in due course.

#### **Step 7: Swiss Challenge via E-Auction Platform**

- Upon completion of Due Diligence, the Counter Bidders who wish to participate in the SCP shall communicate with the Lenders/ BOBCAPS within Two (2) days from the last day of due diligence.
- The Counter Bidders who have shown their intention to participate in the E-Auction Process shall be provided with the login id and password on the E-Auction Platform. The timelines of the E-Auction shall be provided to the Counter Bidders in due course. The Counter Bidders shall login on the said date and time for participating in the E-Auction.
- The terms of bidding in the E-Auction shall be as follows:-
  - The minimum mark-up for the first bid shall be 5% of the Anchor Bid.
  - The Reserve Price for counter bidding shall be the Anchor Bid plus the minimum mark-up mentioned above. This along with the date & time of the auction shall be declared in due course.
  - The Counter Bidders will be allowed to improve their bid by minimum of INR 2 Crore (Rupees Two Crores only) and in multiples thereof ("**Incremental Bid**") over the previous bid.
  - However, if any Counter Bidder bids in the last 10 (ten) minutes of the auction time, the auction time shall be extended for another 10 (ten) minutes, until the counter bids are concluded. In case, there is no counter bid received within the last 10 minutes of the E-Auction, the SCP shall conclude.
  - The highest bidder shall be declared as the H1 Bidder and the highest bid shall be concluded as H1 Bid. In case there are no counter bids received, the bid providing minimum mark-up over the Anchor Bid shall be considered as H1 Bid.
- The H1 Bidder shall submit non-interest bearing refundable earnest money deposit equivalent to 20% of the Bid Value of the Binding Bid submitted by the H1 bidder within 2 (two) days of such declaration by way of RTGS to the account of the Lenders' Agent maintained with State Bank of India, SAM Branch – II, Hyderabad (Account No.: 35754767051 | Account Name: SAM Branch – II | IFSC Code: SBIN0018359) ("**H1 EMD**") The H1 EMD shall not be appropriated till the declaration of Successful Bidder (post the Swiss Challenge Process)/ approval from NHAI and shall be kept in trust in a safe custody of the Lenders.
- If no bid under the SCM crosses the minimum mark-up specified in this document or no bid is received under the SCP, the 'Anchor Bidder' would become the Successful Bidder.

#### **Step 8: Right of First Refusal & Declaration of Successful Bidder**

- In terms of the rules of SCP, the Anchor Bidder shall have the right of first refusal ("**ROFR**").
- The Lenders shall communicate the H1 Bid to the Anchor Bidder and give a ROFR to the Anchor Bidder.

- The Anchor Bidder may exercise ROFR and match or bid higher than the H1 bid, and emerge as the winning bidder and submit the incremental amount so as to meet the requirement of EMD of 20% of the Bid Value within 2 (two) days. Should the Anchor Bidder opt to not exercise the ROFR, the H1 Bidder shall become the winning bidder. The Anchor Bidder/ H1 Bidder, as the case may be, shall be declared as the Successful Bidder subject to the internal approvals of the Lenders (“**Successful Bidder**”).
- The bid amount offered by the Successful Bidder and accepted by the Lenders shall be the consideration price for the Transaction (“**Consideration Price**”).
- Anchor Bidder EMD or H1 EMD as the case maybe shall be returned without any interest, within a period of 15 (fifteen) working days from the date of declaration of Successful Bidder to the Anchor Bidder or the H1 Bidder as the case maybe.
- In case of the Successful Bidder, the earnest money deposit amount shall be set-off against or used as part of the consideration offered by the Successful Bidder to the Lenders, unless otherwise agreed to by the Lenders.
- A Letter of Approval (“**LOA**”) or such other communication as the Lenders/BOBCAPS deem fit in the circumstances will be issued to the Successful Bidder. The Successful Bidder shall communicate its acceptance of the LOA by returning LOA with endorsement of “Accepted Unconditionally” on the face of the LOA, under the signature of the duly authorized signatory within Three (3) days of declaration as Successful Bidder.
- Upon identification of the Successful Bidder in the terms of the Bid Document, the Successful Bidder shall enter into (i) subject to the approval of NHAI, a concession agreement with the NHAI, if required by NHAI; (ii) such other agreement as may be required by the NHAI; and (iii) definitive agreements in the form and manner prescribed by the Lenders (the “Definitive Agreements”), to give effect to the Proposed Transaction.
- Upon receipt of NHAI approval, the Successful Bidder shall within Seven (7) days or as may be mutually decided by the Lenders and the Successful Bidder, pay the Consideration Prices after set-off of EMD by way of RTGS to the account of the Lenders’ Agent maintained with State Bank of India, SAM Branch – II, Hyderabad (Account No.: 35754767051 | Account Name: SAM Branch – II | IFSC Code: SBIN0018359). In the event the Successful Bidder failing to pay the bid amount within the stipulated time, the Lenders shall have the right to take such appropriate action as they may deem fit including but not limited to forfeiture of EMD etc. However, in the event NHAI rejects nomination of the Successful Bidder, the Lenders shall refund the EMD within Fifteen (15) days of receipt of communication from NHAI refusing the approval.

**Bidder(s) may note that:**

- The Binding Bid shall be on 100% Upfront Cash basis only and the Bid amount shall be towards the settlement of outstanding dues of the Lenders only. The Proposed Transaction is on “as is where is”, “as is what is”, “as is how is”, “whatever there is” and “without recourse” basis. Successful Bidder shall Liaison with NHAI for necessary approvals and

execution of documents without any responsibility or onus on the Lenders'. However, Lenders shall provide necessary support/cooperation for successful closure of the transaction.

- If any of the Bidder namely the Anchor Bidder and/or H1 Bidder fails to submit the stipulated EMD within the timeframe, the Lenders shall have the right to approach the **next highest bidder** or the right to cancel / modify / alter any terms of the Bid Process Document, as it may deem appropriate. Any bidder who has defaulted as per the Bid Process Document shall be dealt appropriately by the Lenders at its sole discretion including but not limited to forfeiture of EMD/ disallowance for re-entering the Process.

2.7 The tentative time schedule for completion of the Substitution Process is given below, which may be taken note of and adhered to:

No.	Particulars	Tentative Timeline*
1	Date of Public Notice Inviting Expression of Interest ("EOI")	May 12, 2025
2	Submission of EOI Documents by Eligible Entities by email at <a href="mailto:agm2others2.sarg@sbi.co.in">agm2others2.sarg@sbi.co.in</a> and <a href="mailto:projectroad@bobcaps.in">projectroad@bobcaps.in</a> and a physical copy.	May 17, 2025
3	Sharing of information via VDR and Due Diligence by Bidders [Note: Bidders may submit EOI Documents post May 17, 2025, however, access to VDR will only be made available post submission/verification of the same]	May 27, 2025
4	Bid Submission date (on or before) via email	May 30, 2025
5	Bid Submission date (on or before) via sealed envelope	June 2, 2025
6	Bid Opening Date	June 2, 2025
7	Negotiation with Highest Bidder, Evaluation of Bids by lenders, Earnest Money Deposit ('EMD') by the Highest Bidder	June 9, 2025
8	Declaration of Anchor Bidder ( <i>subject to internal approval of the Lenders</i> )	June 10, 2025
9	Paper publication for Swiss Challenge Method	June 11, 2025
10	Submission of EOI Documents by Eligible Entities and Due Diligence thereafter	June 21, 2025
11	Communication by Counter bidders for Participation in SCM	June 23, 2025
12	Swiss Challenge Method (E-auction)	June 24, 2025
13	Declaration of the H1 Bidder	June 25, 2025
14	Submission of EMD by the H1 Bidder	June 27, 2025
14	Exercise of Right of First Refusal ('ROFR') by the Anchor Bidder	June 28, 2025
15	Submission of EMD by the Anchor Bidder, where ROFR is exercised	June 30, 2025
16	Declaration of the 'Successful Bidder' and Unconditional acceptance to Letter of Approval by the Successful Bidder	July 15, 2025
17	Intimation of Nominated Company to NHAI	July 18, 2025

*\*Note: The Process Advisor and/or the Lenders reserve the right to modify the time schedule and/or not to go ahead with the proposed Process at any stage without assigning any reason at their sole discretion.*

*The decision of the Lead Bank, Lenders and BOBCAPS in this regard shall be final, conclusive and binding on all the participants. Please note that time is of essence for all the above events.*

### **3. DEFINITIONS**

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In this document:

**“Affiliate”** shall mean a company that, directly or indirectly:

- (a) Controls; or
- (b) is Controlled by; or
- (c) is under the common Control with; the Concessionaire or the Bidder,

**“Applicable Law”** shall mean all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto made from time to time and in force and effect, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the Companies Act, 1956 / 2013 (as applicable), and Competition Act, 2002 and relevant Reserve Bank of India notifications as applicable, each as amended from time to time.

**“Associate”** shall have the meaning as ascribed to the term in the Companies Act, 2013, as amended from time to time.

**“Authorized Representative”** or **“BOBCAPS”** or **“Process Advisor”** shall mean BOB Capital Markets Limited, a body corporate with registered office at Office Unit no – 1704, B Wing, Parinee Crescenzo, G Block, Bandra Kurla Complex, Bandra East, Mumbai 400051, in the State of Maharashtra, India, authorized by the Lenders to conduct the Bid Process and assist the Lenders in identifying the Nominated Company to effect the Proposed Transaction.

**“Bid Document”** or **“Bid Process Document”** shall mean the bid document issued collectively by the Lead Bank and the Authorized Representative, for an on behalf of the Lenders, the EOI Document, including, all the chapters, annexures and appendices forming part of the EOI Document and the Bid Document, along-with the Advertisement, all supplements, modifications, amendments, alterations, corrigendum or clarifications issued in respect thereof, requesting for Bids / proposals for the Proposed Transaction from Eligible Entity.

**“Business Day”** shall mean the day which is a working day for the Lead Bank in Mumbai, India.

**“Coercive Practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid Process.

**“Concessionaire”** shall have the meaning given to such term in Clause 1.1.

**“Concession Agreement”** shall have the meaning given to such term in Clause 1.1.

**“Conflict of Interest”** shall mean -

- (a) The Bidder, its member or an Associate (or any constituent thereof) and any other Bidder, its member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; *provided that* this disqualification shall not apply in cases where the director in direct shareholding of a Bidder, its member or an associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five percent) of the paid up and subscribed capital of such Bidder, member or Associate, as the case may be) in the other Bidder, its member or Associate, is not more than 25% (twenty five percent) of the subscribed and paid up equity share capital thereof; *provided further that* this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956/2013.; for the purposes of this definition, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the **“Subject Person”**) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or
- (b) a constituent of such Bidder is also a constituent of another Bidder; or
- (c) such Bidder, its member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any Associate thereof; or
- (d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (e) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s’ information about, or to influence the Bid of either or each other; or
- (f) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (g) such Bidder or any Associate thereof has appointed any official of the Authority, Ministry of Road Transport & Highways, technical advisors of Authority for the Project, legal advisors of Authority for the Project, financial advisors of Authority for the Project, dealing with the Project, within a period of 1 years from the date of award of the Project to that Bidder.

**“Consortium”** shall mean the persons, to a maximum of 6 (six) persons, who collectively submit an EOI as per the terms of this Bid Process Document.

**“Control”** shall have the meaning ascribed to such term in the Companies Act, 2013, as amended from time to time, except where a specific meaning is provided for in this document

**“Corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of

anything of value to influence the actions of any person connected with the Bid Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authorized Representative, Lead Bank or the Lenders who is or has been associated in any manner, directly or indirectly, with the Bid Process or has dealt with matters concerning the Project or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authorized Representative, Lead Bank or the Lenders, shall be deemed to constitute influencing the actions of a person connected with the Bid Process) or engaging in any manner whatsoever, whether during the Bid Process or after the issue of the Letter Of Intent or after the execution of the Definitive Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Intent or the Definitive Agreement, who at any time has been or is a legal, financial or technical adviser of the Authorized Representative, Lead Bank or the Lenders in relation to any matter concerning the Project;

**“Eligible Project(s)”** shall have the meaning ascribed to the term in Clause 4 of this Bid Process Document.

**“Facilities”** shall have the meaning ascribed to such term in paragraph 1.3 hereto.

**“Fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid Process.

**“Group Company(s)”** of any company shall mean and include (i) a company which, directly or indirectly, holds 26% (twenty six per cent) or more of the share capital of the said company or (ii) a company in which the said company, directly or indirectly, holds 26% (twenty six per cent) or more of the share capital or (iii) a company in which the said company, directly or indirectly, has the power to direct or cause to be directed the management and policies of such company whether through the ownership of securities or agreement or any other arrangement or otherwise or (iv) a company which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the said company whether through the ownership of securities or agreement or any other arrangement or otherwise or (v) a company which is under common control with the said company, and control shall mean the ownership of at least 26% (twenty six per cent) of the share capital of a company or power to direct or cause to be directed the management and policies of such company whether through the ownership of securities or agreement or any other arrangement or otherwise.

**“Lead Bank”** shall mean the State Bank of India, a body corporate constituted under the State Bank of India Act, 1955, with its Registered Office at State Bank Bhavan, Madame Cama Road, Mumbai 400 021

**“Lead Partner”** shall mean the person nominated as a ‘lead member’ by the members of the Consortium and shall hold at least 26% (twenty-six per cent) equity in the Consortium and undertake all acts on behalf of the Consortium, unless specified otherwise.

**“Lenders”** shall mean the banks and financial institutions from whom the Concessionaire has availed the loans for development of the Project.

**“Lenders’ Representative”** shall mean State Bank of India.

**“Member”** shall mean a Member of a Consortium.

**“Net Worth”** in relation to a Bidder shall mean the sum of subscribed and paid-up equity and

reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

**“Nominated Company”** shall mean a company, incorporated under the provisions of the Companies Act, 1956 and/or Companies Act, 2013 (as applicable), including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of the Lenders, and proposed to NHAI for assignment/transfer of the Concession as provided in the Substitution Agreement.

**“Project”** shall have the meaning ascribed to the term in Clause 1.1

**“Proposed Transaction”** shall have the meaning ascribed to the term in Clause 2.3.

**“Qualification Criteria”** shall have the meaning ascribed to such term in Clause 4.

**“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid Process.

**“RBI”** shall mean Reserve Bank of India.

**“Scheduled Commercial Banks”** shall mean banks mentioned in the Second Schedule of Reserve Bank of India Act, 1934 excluding Co-operative Banks.

**“Substitution Agreement”** shall have the meaning ascribed to the term in Clause 2.2

**“Successful Bidder”** shall mean such Eligible Entity who has been selected by the Lenders as the Nominated Company and has received approval from the NHAI post submission and evaluation of the Bid.

**“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid Process; or (ii) having a Conflict of Interest.

#### **4. ELIGIBILITY CRITERIA / QUALIFICATIONS AND DISQUALIFICATIONS**

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The eligibility criteria/qualifications and disqualifications for prospective Selectees/ Eligible Entities/Bidders, in line with the Request for Quotation floated by NHAI in November, 2009 in respect of this Project, is as follows:

##### **4.1 QUALIFICATIONS AND DISQUALIFICATIONS**

##### **4.1.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:**

- (a) The Bidder for pre-qualification may be a single entity or a group of entities (the **“Consortium”**), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, or any combination of them with a formal intent

to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 4.1.6 below.

- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- 4.1.1.1 the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than twenty five per cent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, as the case may be, is not more than twenty five per cent of the paid up and subscribed share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 4.1.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- 4.1.1.2 a constituent of such Bidder is also a constituent of another Bidder; or
- 4.1.1.3 such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- 4.1.1.4 such Bidder has the same legal representative for purposes of this Application as any other Bidder; or
- 4.1.1.5 such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Application of either or each other; or
- 4.1.1.6 such Bidder, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

- (d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was



engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this Bid Process Document. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used in this Clause 4.1.1, shall include each Member of such Consortium.

(e) Deleted

**4.1.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfil the following conditions of eligibility:**

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 5 (five) financial years preceding the EOI Submission Date, have:

- (i) paid for, or received payments for, construction of Eligible Project(s); and/ or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 4.2.1; and/ or
- (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 4.2.1, such that the sum total of the above, such that the sum total of the above, as adjusted in accordance with clause 4.2.6, is more than Rs. 691.00 Crore (Rs. Six Hundred and Ninety-One Crore) (the “**Threshold Technical Capability**”)

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 4.2.1.

(B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. 172.75 Crore (Rs. One Hundred Seventy-Two Crore and Seventy Five Lakhs ) at the close of the preceding financial year.

In case of a Consortium, the combined technical capability and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement <sup>1</sup>.

4.1.3 **O&M Experience:** The Bidder shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the project in conformity with the provisions of the concession agreement.

4.1.4 The Bidders shall enclose with its EOI, to be submitted as per the format at Annexure-I,

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<sup>1</sup> The Lenders and/or NHAI may, in its discretion, impose further obligations in the Concession Agreement, but such obligations should provide sufficient mobility for partial divestment of equity without compromising the interests of the Project.

complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors<sup>2</sup> or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in Clause 4.1.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
  - (ii) certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 4.1.4 (ii). For the purposes of this Bid Process Document, net worth (the **“Net Worth”**) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.
- 4.1.5 The Bidder should submit a Power of Attorney as per the format at Annexure - VI, authorising the signatory of the EOI to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Annexure - VII.
- 4.1.6 Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act 2013 (the **“SPV”**), to execute the Concession/Substitution Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the EOI may be restricted to 4 (four) members in the order of their equity contribution;
  - (b) subject to the provisions of Clause (a) above, the Application should contain the information required for each member of the Consortium;
  - (c) members of the Consortium shall nominate one member as the lead member (the **“Lead Member”**), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Annexure - VII, signed by all the other members of the Consortium;
  - (d) the EOI should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
  - (e) an individual Bidder cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for pre-qualification;

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<sup>2</sup> In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 4.1.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this Bid Process Document.

- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Annexure VIII (the “**Jt. Bidding Agreement**”), for the purpose of making the EOI and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the EOI, shall, *inter alia*:
  - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this Bid Process Document, which would enter into the Concession/ Substitution Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession/ substitution to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member;
  - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this EOI, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than:
    - (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and
    - (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
  - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
  - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this Bid Process Document, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Lenders.

4.1.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of submission of EOI, would not be eligible to submit an EOI, either individually or as member of a Consortium.

4.1.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the

Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate .

- 4.1.9 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 4.1.2, 4.1.4 and 4.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this Bid Process Document, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be

- 4.1.10 The following conditions shall be adhered to while submitting an Application:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Bidders whose identity and/ or constitution is identical to that at pre-qualification;
- (c) in responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 4.2 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

- 4.1.11 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of submission of EOI, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of submission of EOI, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

- 4.1.12 Notwithstanding anything to the contrary contained herein, in the event that the date of submission of EOI falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an EOI hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

## 4.2 CRITERIA FOR EVALUATION

Only those Bidders who meet the eligibility criteria specified in Clause 4.1 above shall qualify for evaluation under this Section EOI of firms/ consortia who do not meet these criteria shall be rejected.

The Bidder's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity

### 4.2.1 Technical Capacity for purposes of evaluation

- 4.2.1.1 Subject to the provisions of Clause 4.1, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 4.2.3 and 4.2.4 (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 4.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 4.2.3

Category 3: Construction experience on Eligible Projects in highways sector that qualify under Clause 4.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 4.2.4

For the purpose of this BPD:

- (i) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) core sector would be deemed to include power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.<sup>§</sup>

4.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

4.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than Rs. 69.10 Crore (Rs. Sixty Nine Crore and Ten Lakhs Crore); and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the date of submission of EOI, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products telecommunications or fare/freight revenues and other incomes of the company owning the Project.

4.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the date of submission of EOI, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than Rs. 69.10 Crore (Rs. Sixty Nine Crore and Ten Lakhs Crore) shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

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<sup>\$</sup> Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Bidder.

- 4.2.5 The Bidder shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 4.2.6 Bidder's experience shall be measured and stated in terms of a score (the **"Experience Score"**). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 4.1.2 (A), divided by one crore and then multiplied by the applicable factor in Table below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

**Table: Factors for Experience across categories**

	Factor
Category 1	1.45
Category 2	0.85
Category 3	0.85
Category 4	0.45

- 4.2.7 The Experience Score determined in accordance with above Clause & table in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- 4.2.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

#### 4.3 DETAILS OF EXPERIENCE

- 4.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the date of submission of EOI/Bid.
- 4.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format as Annexed.
- 4.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure III.

#### 4.4 FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION

- 4.4.1 The EOI must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the EOI is made.
- 4.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 4.4.3 The Bidder must establish the minimum Net Worth specified in Clause 4.1.2 (B), and provide details as

per format at Annexure IV.

#### 4.5 PRE-QUALIFICATION OF BIDDERS

The credentials of eligible Bidders shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Bidder. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium. All Bidders who fulfil the conditions of eligibility specified in Clause 4.1.2 and meet the other conditions specified in this BPD shall be pre-qualified.

### 5. OTHER TERMS & CONDITIONS

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- 5.1 The submission of a Bid by the Bidders and Counter Bidder/s shall be deemed to constitute unconditional acceptance of all the terms and conditions of this BPD by the Bidder and Counter Bidder.
- 5.2 Any discussions or any clarification, information sought or divulged with respect to the offer will not constitute an invitation or commitment by the Process Advisor to enter into any intent, motive, agreement, undertaking or covenant with the Bidder and Counter Bidder; nor shall the Process Advisor be liable to consummate deal with any Bidder and Counter Bidder on the basis of such discussion, negotiation or information.
- 5.3 Bidders and Counter Bidder/s are expected to submit their Bid with an independent study and assessment and value thereof, before submitting their Bids. By virtue of submission of the Bid, it shall be deemed that the Bidders and Counter Bidder/s have conducted their own independent due diligence, at their own costs and expense, including but not limited to verifying various legal proceedings (concluded/ ongoing, as applicable), as well as ascertaining the known and unknown liabilities, encumbrances and any other dues from concerned authorities or stakeholders to their satisfaction before submitting the Bid. The Process is on **"as is where is", "as is what is", "as is how is", "whatever there is"** and **"without recourse"** basis to the Lenders and/or BOBCAPS.
- 5.4 While the Lenders will make available the information to the intending Bidders and Counter Bidder/s, it assumes no responsibility either on the part of the Lenders / BOBCAPS or its officers/ agents/ consultants/ representatives, if found later that the information on record with the Lenders is not updated with reference to loan documents / outstanding balance / mortgage / security / legal proceedings / ROC charge creation etc. and the lack of it or inadequacy of it lead to realizing of lower value or facing litigations in the course of realization in the borrower account.
- 5.5 All costs, expenses, taxes, stamp duties and liabilities incurred by each Bidders and Counter Bidder/s in connection with the transaction, including (without limitation) in connection with due diligence, preparation and/or submission of the Bid, including fees of its own advisors, if any, shall be borne and paid by such Bidders and Counter Bidder/s without any recourse to the Lenders/BOBCAPS, whether its Bid is accepted or rejected for any reason and the Lenders / BOBCAPS does not assume any liability whatsoever in this connection.
- 5.6 The Lenders / BOBCAPS (on instructions of Lenders) reserves the right to cancel / modify / alter any terms of the BPD, as it may deem appropriate at any given time.
- 5.7 The Lenders reserves the right not to go ahead with or cancel, annul and/or postpone/extend the deadline of the proposed process at any stage, without assigning any reason whatsoever and without being liable or without incurring any obligations. The decision of the Lenders in this regard shall be final, conclusive and binding on all the participants.
- 5.8 The Substitution Process is on 100% Upfront Cash basis only and is on **"as is where is", "as is what is",**



**“as is how is”, “whatever there is” and “without recourse”** basis. Successful Bidder shall Liaison with NHAI for necessary approvals and execution of documents without any responsibility or onus on the Lenders’. However, Lenders shall provide necessary support/cooperation for successful closure of the transaction.

- 5.9 The format of the Substitution Agreement shall be as per the Concession Agreement and shall be shared with the Bidders and Counter Bidder(s) during Due Diligence.
- 5.10 The Lenders shall have the right to issue addendum to the BPD / other documents to clarify, amend, modify, supplement or delete any of the conditions clauses or items stated therein. Each addendum so issued shall form a part of original BPD. Such amendments and/or modifications can be made by way of publication/notification on website or any other mode as the Lenders may deem fit. The Bidders and Counter Bidder/s are requested to visit the website on regular basis for the updates. Bidders and Counter Bidders shall be bound by such Corrigendum(s)/ Addendum(s). To allow Bidders and Counter Bidder(s) a reasonable time for taking the Corrigendum/ Addendum into account while preparing their Bids, or for any other reason, the Lead Bank may, at its sole discretion, extend the Dates, with prior notice to the Bidders and Counter Bidder(s).
- 5.11 The Bidding Process/ BPSC and the Substitution process in respect of the Project is on **“as is where is,” “as is what is,” “as is how is”, “whatever there is” and “without recourse”** basis to the Lenders/ BOBCAPS. The Lenders/BOBCAPS shall not be held responsible for any delay or liability arising out of disputes, litigations, arbitrations or legal proceedings of like nature from any authority, third-party or concessionaire at anytime during the Bidding Process or BPSC. The Lenders/ BOBCAPS shall not at any point of time, be liable to indemnify whether monetarily or otherwise, any party, for any loss/ costs/ claims by whatever name called, arising due to the foregoing reasons or factors.
- 5.12 Any un-devolved LCs/BGs yet to be invoked, which are not yet due, if any, till the date of execution of Substitution Agreement, the Lenders will retain pari-passu charge on the securities relating to un-crystallized non-funded facilities. In case of crystallization of non-funded facilities after the date of execution of Substitution Agreement, that portion (converted into funded after adjusting margin) will also form part of this transaction. The purchase consideration would be at the same rate as a percentage of devolved LC/BG as the successful bidder has offered for the Lenders Exposure. It is to be noted, the un-devolved LC and uninvoked BG limits backed by 100% margin by way of FDs will not be offered in this process.
- 5.13 Bidders and Counter Bidder/s shall follow all the extant guidelines/ notification issued by NHAI/ SEBI/RBI/IBA/ other regulators from time to time pertaining to the substitution of Concessionaire.
- 5.14 The information provided under this BPD and at the VDR is provided bona fide and in good faith and as available in the records of the Lenders. The opinion, if any, of the Lenders / BOBCAPS and its officials regarding the accuracy, adequacy and sufficiency of the data has been formed on the basis of records as a person of ordinary prudence and does not represent an opinion of an expert. Lenders / BOBCAPS does not give any warranty of the accuracy or correctness and or adequateness of the information/ data and or documents. The Bidder/s are urged to conduct their own due diligence, investigation and analysis to arrive at their decisions regarding the above.
- 5.15 The bid of the Anchor Bidder / H1 Bidder shall be subject to approval of competent Authorities of the Lenders.
- 5.16 In case of any doubt regarding the terms and conditions and process of the Bid Process Document, the decision of the Lenders shall be final, conclusive and binding on the participants
- 5.17 The EOI and all related correspondence and documents in relation to the EOI shall be in English Language.
- 5.18 It is clarified that State Bank of India / Lenders/ BOBCAPS shall bear no responsibility for non-receipt of EOI/ any other correspondence sent by post/email/courier/fax by the permitted entities or for non-

receipt of documents sent by post/courier.

- 5.19 Bidders and Counter Bidders shall be under their own obligation to follow, adhere, and ensure compliance of all the extant guidelines/notification issued by SEBI/RBI/IBA/other regulators from time to time pertaining to transfer of the stressed loan exposure, to the extent and if applicable.
- 5.20 Bidder and Counter Bidder should not have any direct or indirect link/connections/interest/relationship with the promoter group/joint venture partner, if any/ technical collaborator/ guarantors or other security providers of CHEL and/or any of their related parties. Bidder and Counter Bidder should not take any consideration directly or indirectly from the promoters/company/guarantors or other security providers of CHEL and/or any of their related parties.
- 5.21 Bidders and Counter Bidders are expected to carry out their own investigations and other assessments, analysis, and examination in relation to this Proposed Transaction before submitting the EOI/ Bid.
- 5.22 Consortium Lenders, individual Lenders and/or BOBCAPS reserves the right to examine the EOIs/ Bids and accept or reject any or all or some of them at their sole discretion, and neither this notification nor delivery of an EOI/ Bid nor the consideration thereof by consortium of Lenders, individual Lenders or by BOBCAPS shall be construed as creating any kind of right or interest in any interested party to be considered any further in the process or entitle them to any recourse against the consortium of Lenders, individual Lenders or BOBCAPS.
- 5.23 BOBCAPS reserves the right to restrict access to VDR in respect of the Bidders and Counter Bidders in the event it is found that the documents furnished are incomplete or not satisfactory to meet the requirements as stipulated in this BPD. In the event such Bidder and Counter Bidder rectifies the defect in the documents/information, the time consumed for such rectification shall be treated as part of the overall time provided for due diligence and no further extension shall be permitted therefor.
- 5.24 This BPD does not constitute and will not be deemed to constitute an offer from or on behalf of the Lenders or any commitment on the part of the BOBCAPS/ Lenders. The BOBCAPS/ Lenders reserve the right to withdraw/suspend/ modify the bid process or any part thereof, to accept or reject any/all offer(s)/ Bids at any stage of the bid process or to vary any terms without assigning any reasons and without any liability. This is not an offer document.
- 5.25 Nothing herein, including the annulment of the bid process would affect the right of the Lenders to accept the Base Bid/ anchor bid of the Anchor Bidder.
- 5.26 If by the terms of this Process, any act would be required to be performed on or within a period ending on a day, which is not a Business Day, then it shall be performed, on or by the immediately succeeding Business Day.
- 5.27 In the event of any dispute and/or difference on the point of meaning or definition of any particular word used in this document or, in respect of interpretation of any clause of this BPD as a whole or, in respect of sequence of events mentioned therein, decision of the State Bank of India (acting on behalf of the Lenders) shall be final, conclusive, and binding on all the parties concerned.
- 5.28 No interested party or any representatives will have any contact with CHEL / the Company or owner or operator of any security for the CHEL in connection with any inspection or otherwise.
- 5.29 All documents executed by CHEL / the Company/ its promoters in favour of SBI and Lenders shall continue to be held by SBI /Lenders till the entire Consideration Price has been paid.
- 5.30 The offer/Bid submitted by the Bidder shall become the property of the Lenders and the Lenders shall have no liability and or obligation to return the same to the Counter Bidder. However, the EMD, as applicable of the Anchor/H1 Bidder shall be returned in accordance with the provisions of this BPD.
- 5.31 Each Bidder and Counter Bidder agrees to the terms of the Bid Process set out in this BPD and shall not

contest and or challenge the same before any court of law. Neither the Counter Bidder nor any of its representatives shall have any claims whatsoever against BOBCAPS or any of the Lenders and their employees/representatives arising out of or relating to this BPD or otherwise.

- 5.32 Indemnity: Bidder(s) and Counter Bidder(s) shall indemnify and hold harmless the Authorized Representative and the Lenders, including all their directors, employees, agents, advisors and consultants, in the event of any claims or actions which may arise against the Authorized Representative and/or the Lenders, on account of breach of any obligation by the Bidder(s) and Counter Bidder(s) set out in this BPD and/or the NDA.
- 5.33 Fraud and Corrupt Practices: Bidder and Counter Bidder and their respective officers, employees, agents, advisors and consultants shall observe highest standard of ethics during the Bid Process. Notwithstanding anything to the contrary contained herein, the Authorized Representative may reject an EOI without being liable in any manner whatsoever to the Bidder and Counter Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the Bid Process.
- 5.34 Clarifications: The information provided in this BPD, has been prepared and provided in good faith and the Authorized Representative and/or the Lenders shall not accept any responsibility or liability whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of information in this BPD and shall incur no liability as to the accuracy, correctness, reliability and completeness of this BPD, even if any loss or damage is caused to any of the Bidder(s) and Counter Bidder(s) by any act or omission on their part.
- 5.35 The Authorized Representative may also on its own or acting on the advice of the Lead Bank/Lenders, if deemed necessary, issue interpretations and clarifications to the Bidder(s) and Counter Bidder(s). All clarifications and interpretations issued by the Authorized Representative shall be deemed to be part of the EOI Document. Verbal clarifications and information given by the Lead Bank and/or Authorized Representative or its employees or representatives shall not in any way or manner be binding on the Lead Bank or the Authorized Representative. However, it is expected that the Bidder(s) and Counter Bidder(s) has undertaken an independent due-diligence for participating in the Bid Process and does not rely solely on information provided by the Authorized Representative.
- 5.36 No extension of any time and date referred to in the BPD shall be granted on the basis or grounds that the Lenders/ Authorized Representative have not responded to any queries/provided any clarification to the Bidder.
- 5.37 It is clarified that in the entire process detailed in this BPD, time is of essence.
- 5.38 Counter Bidders are advised not to wait till last minute or last few seconds to submit their Bid/ offer to avoid complications related to internet connectivity, network problems, system crash down, power failure, etc. Lenders/ BOBCAPS/ e-Auction Agency (if applicable) will not be responsible for any unforeseen circumstances.
- 5.39 A Counter Bidder may bid multiple times during the E-Auction process and the latest bid would be considered for evaluation purpose.
- 5.40 The bid submitted in E-Auction on submission is irrevocable, unconditional and binding on the Counter Bidder/s.
- 5.41 Notwithstanding anything contained herein, the validity of Bid of Successful Bidder shall be till execution of requisite documents necessary for the substitution process with NHAI and/or Lenders.
- 5.42 The platform will reflect the highest bid ("H1 Bid") and the last bid placed by the Counter Bidder itself. H1 Bid as reflected on platform would be the last highest bid amongst all Entities in absolute value. The H1 Bid reflected by platform shall be subject to approval by the Lenders internal competent authority and communicated accordingly.

- 5.43 Auction Agency will be giving online training for the E-Auction process, if required. All the eligible Bidder/s are requested to provide their Authorized Signatory's mail ID and other information as may be required and obtain user ID & Password for participating / bidding in the ensuing E-Auction. E-Auction rules will be mentioned in VDR in due course and at appropriate time.
- 5.44 The Successful Bidder shall be solely and absolutely responsible for completion of all statutory, regulatory and other compliances for the said Transaction including incurring of any costs, charges and expenses and payment of fees and duties (including the adjudication, stamp duty and registration fee and other similar levy payable and whether payable in one or more states or jurisdictions), statutory and otherwise.
- 5.45 The process to the eligible entities will be strictly on “**as is where is**”, “**as is what is**”, “**as is how is**”, “**whatever there is**” and on a “**without recourse basis**”, i.e. with the risk such credit risk, operational risk, legal or any other type of risks associated with the Project being transferred to the Successful Bidder and shall not be liable to be revoked for any breach including antecedent breach of any representation and warranty. In the event of non-realization of any amount out of Project/assets/securities, the Lenders are not liable to refund anything in part or full.
- 5.46 Please note that any future taxes that may be arising out of the Proposed Transaction shall be payable by the Successful Bidder.
- 5.47 The Lenders reserve the right to negotiate with the Successful Bidder for improvement in the bid amount as may deem fit and seek the revised bid.
- 5.48 Further, a stamped affidavit is to be furnished by the Successful Bidder that they are eligible as per section 29A and other provisions of Insolvency and Bankruptcy Code, 2016 (IBC, 2016).
- 5.49 In the event that the Successful Bidder withdraws from the Bid Process at any time without prior written approval of the Lenders or otherwise defaults in the implementation of the successful bid or in terms of the BPD, the EMD/Consideration provided by it shall be forfeited. The amount received pursuant to the forfeiture of the EMD/Consideration shall be to the benefit of the Lenders and used as per their sole discretion.
- 5.50 For any further clarifications, please contact the below officials of BOBCAPS.

Contact Person	Telephone No.	Email-ID
Mr. Vinay Tibrewal	+91 9820146186	<a href="mailto:projectroad@bobcaps.in">projectroad@bobcaps.in</a>
Ms. Maitri Sheth	+91 9867939303	

The Authorized Representative reserves the right not to respond to any question or provide any clarification, at its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authorized Representative to respond to any question or to provide any clarification.

- 5.51 Notwithstanding anything contained hereinabove, Lenders reserve the right to examine the EOI and accept or reject any or all or some of the EOIs at their sole discretion, and neither this BPD nor delivery of an EOI nor the consideration thereof by Lenders shall be construed as creating any kind of right or interest in any interested party to be considered any further in the process or entitle them to any recourse against the Lenders.

## ANNEXURE – I: EXPRESSION OF INTEREST (EOI)

(On the Letter Head of the Eligible Entity/Lead Member of Consortium)

Date: \_\_\_\_\_

To,  
Assistant General Manager, AMT II GM III (Sector),  
Stressed Assets Resolution Group (SARG),  
State Bank of India

Address: Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005

**Subject:** Expression of Interest for Substitution of the Concessionaire for a Project based in Bihar

Dear Sir,

1. In response to the advertisement in *[Insert the names of the newspaper ]* dated *[Insert date of advertisement]* inviting expressions of interest as captioned above (“**Advertisement**”), we hereby submit an EOI for substitution of Concessionaire. This EOI is unconditional and unqualified.
2. This EOI is made for the express purpose of qualifying as a Bidder for the substitution of concessionaire of the aforesaid Project.
3. We are members of a Consortium – *[insert name of each of the member of the Consortium]* (constitution of which has been described in the Expression of Interest), which jointly satisfies the Eligibility Criteria as detailed in the Bid Process Document. We have agreed that *(insert member’s name)* will act as the lead member of our Consortium. A copy of letter authorizing \_\_\_\_\_ to act as lead member and for and on behalf of the consortium, duly executed by all members, is annexed hereto as Annexure \_\_\_\_\_. ***[only applicable to Consortium. Delete otherwise.]***
4. The information furnished by us in this EOI is true, correct, complete, accurate to the best of our knowledge and duly authorized for submission. Based on this information we understand you would be able to evaluate our eligibility.
5. We shall make available to the Lenders and/or NHAI any additional information/document it may find necessary or require to supplement or authenticate the EOI.
6. We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. We declare that:
  - (a) We have examined and have no reservations to the Bid Process Document, including any Addendum if any issued by the Lenders.
  - (b) We do not have any conflict of interest in accordance with Clauses 4.1.1(c) and 4.4.1(d) of the Bid Process Document; and
  - (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 5.33 of the Bid Process Document, in respect of any tender or request for proposal issued by or any agreement entered into with NHAI or any other public sector enterprise or any government, Central or State; and
  - (d) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 5.33 of the Bid Process Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any EOI that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2 of the Bid Process Document.
9. We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the Bid Process Document and are/ is qualified to submit an EOI.
10. We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
11. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process.
15. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Bid Process Document, we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annexure V of the Bid Process Document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Annexure VI and Annexure VII respectively of the Bid Process Document, are also enclosed.
17. We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of requisite documents necessary for the substitution process with NHAI and/or Lenders.
18. We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 4.1.3.
19. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Lenders and/or NHAI in connection with the selection of the Bidders or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. We agree and undertake to abide by all the terms and conditions of the Bid Process Document.
21. We certify that in terms of the Bid Process Document, my/our Networth is Rs. .... (Rs. in words) and Experience Score is .....(number in words).

22. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement.
23. Capitalised terms used but not defined herein shall have the meanings set out in the Bid Process Document/ and documents referred to therein.
24. We however, understand that Lenders reserve the right to decide whether or not to pre-qualify our proposal without disclosing the reason whatsoever, or to cancel the process, without any liability.
25. We have also set out the following in the formats prescribed by you (*submit as applicable*):
- (a) information in relation to Bidder in the format prescribed in Annexure II;
  - (b) the statement of technical capacity, financial capacity and legal capacity for the Bidder/the Consortium in the format prescribed in Annexure III, IV and V, respectively;
  - (c) the Power of Attorney in the format prescribe in Annexure VI/VII as the case may be;
  - (d) the Joint Bidding Agreement in the format prescribed in Annexure VIII; and
  - (e) the undertaking and representation by the Bidder as prescribed in Annexure IX

Sincerely yours,

On behalf of [*Insert the name of the entity/Consortium submitting the EOI*]

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Signature:  
Name of Signatory:  
Designation:  
Common Seal/Stamp

Note: The person signing the EOI and other supporting documents should be an authorized signatory. The authorized signatory should be supported by necessary board resolutions and corporate authorizations. Please strike out paragraph which is not applicable

## ANNEXURE – II (A): DETAILS OF SINGLE ENTITY BIDDER

<b>1.</b>	<b>Name and Address</b> Name of the Bidder:  Address: Telephone No: Fax: Email:	
<b>2.</b>	Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:	
<b>3.</b>	Contact Person/Authorized Signatory: Name: Designation:  Telephone No:  Email:  Note: In case contact person is other than Authorized Signatory, provide authorization letter	
<b>4.</b>	<b>CIN/GST No./PAN or equivalent details of Bidder with supporting documents:</b>  CIN No:  GST No:  PAN No:  In case the Qualified Bidder is a foreign entity, applicable registration/ incorporation information and documents may be submitted as per the applicable law of the jurisdiction to which the foreign entity is subject to.	
<b>5.</b>	<b>Date of establishment of Bidder/promoter group:</b>	
<b>6.</b>	<b>Core area of expertise of the Bidder:</b>	
<b>7.</b>	<b>Experience in infrastructure sector / road or bridge sector/ sector related to the Concessionaire</b> <i>(Along with value and time of completion/award):</i>	
<b>8.</b>	<b>Any history of the Company/ affiliate being declared “wilful defaulter”/“non- cooperative borrower”:</b>	

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder



## ANNEXURE – II (B): DETAILS OF THE CONSORTIUM BIDDER

Consortium of Bidders - Provide details of					
<b>1.</b>	<b>Consortium Leader Details</b>  Name of the Company: Name & Designation of the contact person: Corporate/ Registered Address: Telephone No: Fax: Email:				
<b>2.</b>	<b>Other Consortium Member's Details</b>  Name of the Company: Name & Designation of the contact person: Corporate/ Registered Address: Telephone No: Fax: Email:				
<b>3.</b>	<b>Profile of the Consortium/including leader</b>  Date of incorporation: CIN: GSTIN: PAN: Shareholding Pattern: <i>(or similar documents along with the supporting documents)</i>				
<b>4.</b>	<b>Date of establishment of Consortium member companies/Promoter Group:</b>				
<b>5.</b>	<b>Information regarding the role of each Member</b>	<b>Sl. No.</b>	<b>Name of Member</b>	<b>Role*</b> {Refer Clause 4.1.6}	<b>Percentage of equity in the Consortium</b> {Refer Clause 4.1.6}
		1.			
		2.			
		3.			
		4.			
<b>6.</b>	<b>Core area of expertise of the Consortium members:</b>  <i>(include other, if from related industry)</i>				
<b>7.</b>	<b>Experience in infrastructure sector / road or bridge sector / sector related to the Concessionaire</b> <i>(Along with value and time of completion/award):</i>				

8.	Any history of the Company/ affiliate being declared “wilful defaulter”/ “non-cooperative borrower”:	
<p><b>Supporting Documents:</b> Further, following details/documents shall be incorporated for respective Bidder/ Consortium members where ever applicable -</p> <p>A. For Existence/Incorporation: Relevant constitutional document(s) to confirm existence as on March 31, 2025.</p> <p>B. If the Bidder/Consortium is a foreign company/ overseas corporate body, specify list of statutory approvals from Gol/RBI applied for/obtained/awaited.</p> <p>C. Technical credentials required as per Bid Process Document/ EOI Document shall be self-certified by the Bidder.</p> <p>D. Certificate from statutory auditor / independent chartered accountant in relation to the financial qualifying criteria.</p>		
<p><b>Legal Documents:</b></p> <p>Provide copy of the legal registration, CIN, VAT and PAN registration certificates of the firm, with their latest renewals, wherever applicable</p>		

Yours faithfully

Authorized Signatory  
For and on behalf of the [Bidder/Consortium]

**Note:** Please follow the order adopted in the format provided. If the Bidder is unable to respond to a particular question/ request, the relevant number must be nonetheless be set out with the words “No response given” against it.

### ANNEXURE - III: STATEMENT OF TECHNICAL CAPACITY

Key operations/ Financial parameters of last seven years	Particulars	Details					
<i>(Tentative – Investors to fill in the relevant parameters as applicable;</i>  <i>Financial parameters to be submitted on Standalone as well as consolidated)</i>	Total length (in km) being maintained / operated						
	Total length (in km) constructed						
	Project Name						
	Nature of Project						
	Entity Name						
	Relationship to Bidder						
	Category (As indicated under Eligibility Criteria)	1 / 2 / 3 / 4					
	Location						
	Authority / Agency for which the Project was constructed / operated	<Name & Address to be specified>					
	Project Cost						
	Equity shareholding (with period during which equity was held) <sup>\$</sup>						
	Date of Commencement of Project / Contract						
	Date of Completion / Commissioning <sup>#</sup>						
	<b>Particulars</b>	<b>FY20 [●]</b>	<b>FY20 [●]</b>	<b>FY20 [●]</b>	<b>FY20 [●]</b>	<b>FY20 [●]</b>	<b>FY20 [●]</b>
	<b>Experience<sup>^</sup></b>						
	Payments made / received for construction of Eligible Projects in Categories 3 and 4*						
Payments made for development of Eligible Projects in Categories 1 and 2*							

	Revenues appropriated from Eligible Projects in Categories 1 and 2*						
<p><i>Note: Separate table should be filled for each Eligible Project along with certificate from Statutory Auditor/Company Secretary/Client as maybe applicable (Refer formats below)</i></p> <p><i>*Relevant parameters may be included in case bidder is from other industry</i></p> <p><i>Investors may incorporate other suitably relevant parameters supporting technical expertise/financial strength.</i></p>							

<sup>\$</sup> For Categories 1 & 2, the equity shareholding of the Bidder, in the company owning Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Eligibility Criteria)

<sup>#</sup> For Categories 1 & 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 & 4, date of completion of construction should be indicated.

<sup>^</sup> In case of projects in Categories 1 and 2, expenditure on development of a project shall not include the cost of land. In case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract / EPC

#### **Formats for Certificates:**

- ❖ ***If the Bidder is claiming experience under Categories 1 & 2, it should provide a certificate from its statutory auditor in the format below:***

Certificate from the Statutory Auditor regarding PPP projects
<p>Based on its books of accounts and other published information authenticated by it, this is to certify that .....(name of the Bidder/Member/Associate) is/ was an equity shareholder in ..... (title of the project company) and holds/ held Rs. .... cr. (Rupees crore) of equity (which constitutes .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to ..... (date)*. The project was/is likely to be commissioned on .....(date of commissioning of the project).</p> <p>We further certify that the total estimated capital cost of the project is Rs. ....cr. (Rupees .....crore), of which Rs. .... cr. (Rupees .....crore) of capital expenditure was incurred during the past five financial years as per year- wise details noted below:</p> <p>.....</p> <p>.....</p> <p>We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 4.2.1 and 4.2.3 (d) of the BPD during the past five financial years were Rs ..... cr. as per year-wise details noted below:</p> <p>.....</p> <p>..... Name of the audit firm:</p> <p>Seal of the audit firm: (Signature, name and designation of the authorised signatory)</p> <p>Date:</p>

- ❖ **If the Bidder is claiming experience under Category 3 & 4, it should provide a certificate from its statutory auditors or the client in the format below:**

<p align="center"><b>Certificate from the Statutory Auditor/ Client regarding construction works</b></p> <p>Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... (name of the Bidder/Member/Associate) was engaged by ..... (title of the project company) to execute ..... (name of project) for (nature of project)}. The construction of the project commenced on ..... (date) and the project was/ is likely to be commissioned on ..... (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid Rs. .... cr. (Rupees..... crore) by way of payment for the aforesaid construction works.</p> <p>We further certify that the total estimated capital cost of the project is Rs.....cr. (Rupees .....crore), of which the Bidder/Member/Associate received/paid Rs. .... cr. (Rupees ..... crore), in terms of Clauses 4.2.1 and 4.2.4 of the BPD, during the past five financial years as per year- wise details noted below:</p> <p>.....</p> <p>.....</p> <p>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}®</p> <p>Name of the audit firm:</p> <p>Seal of the audit firm:</p> <p>(Signature, name and designation of the authorised signatory).</p> <p>Date:</p>
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- ❖ **In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 4.1.9, the Applicant should also provide a certificate in the format below:**

<p align="center"><b>Certificate from Statutory Auditor/ Company Secretary regarding Associate</b></p> <p>Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Associate) is held, directly or indirectly, by ..... (name of Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 4.2.9 of the RFQ.</p> <p>A brief description of the said equity held, directly or indirectly, is given below:</p> <p>{Describe the share-holding of the Bidder/ Consortium Member in the Associate}</p> <p>Name of the audit firm:</p> <p>Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).</p>
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**ANNEXURE - IV: FINANCIAL CAPACITY OF THE BIDDER**  
(Refer to Clauses 4.1.2(B), 4.1.4 (ii) and 4.4 of the Bid Process Document)

(In Rs. crore)

Bidder type <sup>\$</sup>	Member Code <sup>£</sup>	Net Cash Accruals					Net Worth <sup>€</sup>
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

**Name & address of Bidder's Bankers:**

<sup>\$</sup> An Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

<sup>£</sup>Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

<sup>€</sup>The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 4.1.9.

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the EOI Submission Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 4.1.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 4.1.6 (g) of the Bid Process Document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 4.1.4 (ii) of the Bid Process Document.

## ANNEXURE - V: STATEMENT OF LEGAL CAPACITY FOR BIDDER

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Reference No.

Date

To,  
Assistant General Manager, AMT II GM III (Sector),  
Stressed Assets Resolution Group (SARG),  
State Bank of India

Address: Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005

**Subject:** Expression of Interest (“**EOI**”) for substitution of the Concessionaire undertaking a road project in Bihar

Dear Sir,

In response to the advertisement in *[Insert the names of the newspaper]* dated *[Insert date of advertisement]* inviting expressions of interest as captioned above (“**Advertisement**”), we hereby submit an EOI for substitution of the Concessionaire.

We have read and understood the contents of the Bid Process Document and the Advertisement and pursuant to this hereby confirm that:

We satisfy the Eligibility Criteria laid out in the Bid Process Document and the Advertisement.

We agree that \_\_\_\_\_ *[insert individual’s name and designation]* will act as our representative on our behalf and has been duly authorized to submit the EOI. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

We are members of a Consortium – *[insert name of each of the members of the Consortium]* (constitution of which has been described in the Expression of Interest), which jointly satisfies the Eligibility Criteria as detailed in the Bid Process Document. A copy of letter authorizing \_\_\_\_\_ to act as lead member and for and on behalf of the consortium, duly executed by all members, is annexed hereto as Annexure \_\_\_\_\_.

We have agreed that \_\_\_\_\_ *[insert member’s name]* will act as the lead member of our Consortium.

We have agreed that \_\_\_\_\_ *[insert the name of the individual and designation]* be chosen as representative of our Consortium and on our behalf and has been duly authorized to submit the EOI. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Capitalised terms used but not define herein shall have the meaning ascribed to such terms.

Yours faithfully

Authorized Signatory  
For and on behalf of the Bidder

*\*Please strike out whichever is not applicable.*



## ANNEXURE – VI: POWER OF ATTORNEY FOR SIGNING OF EXPRESSION OF INTEREST

(Refer Clause 4.1.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Expression of Interest (EoI) for substitution of concessionaire for the Road Project of Four Laning of Chhapra-Hazipur Section of NH-19 (From Km 143.200 To Km 208.214) in the State of Bihar under NHDP phase III on Design, Build, Finance, Operate and Transfer (Annuity) Basis Project proposed or being developed by the National Highways Authority of India (the “Authority”) and submission of bid towards lenders outstanding dues including but not limited to signing and submission of all EoI, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement, requisite documents necessary for the substitution process with NHAI and/or Lenders and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement and requisite documents necessary for the substitution process with NHAI and/or Lenders.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

Witnesses 1.

2.

Accepted

..... (Signature)For  
.....

(Signature, name, designation and address)

(Notarised)

(Name, Title and Address of the Attorney)

**Notes:**

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

## ANNEXURE – VII: POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

*(Refer Clause 4.1.5)*

Whereas State Bank of India on behalf of the Lenders have invited Expression of Interest from interested parties for the Substitution of Concessionaire for the Road Project for the Four Laning of Chhapra-Hazipur Section of NH-19 (From Km 143.200 To Km 208.214) in the State of Bihar under NHDP phase III on Design, Build, Finance, Operate and Transfer (Annuity) Basis Project (the "Project").

Whereas, ....., ....., ..... and ..... (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Bid Process Document and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ....., M/s. .... having our registered office at ....., M/s. .... having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Concession Agreement and requisite documents necessary for the substitution process with NHAI and/or Lenders.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER

OF ATTORNEY ON THIS..... DAY OF

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## ANNEXURE – VIII: JOINT BIDDING AGREEMENT

(Refer Clause 4.1.6(g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at ..... (hereinafter referred to as the **“First Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at ..... (hereinafter referred to as the **“Second Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at ..... (hereinafter referred to as the **“Third Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at ..... (hereinafter referred to as the **“Fourth Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the **“Parties”** and each is individually referred to as a **“Party”**

WHEREAS,

Chhapra Hajipur Expressways Limited (“CHEL” or “Borrower” or “Concessionaire” or “Company”) is a Special Purpose Vehicle (“SPV”) and subsidiary of Madhucon Infra Limited for execution and maintenance of Four Lanes of Chhapra Hajipur Section (KM 143.200 – KM 207.200) road project on NH-19 in state of Bihar on Design, Built, Finance, Operate and Transfer (DFBOT) Annuity Basis (“Project”) on concession period of 15 years under Concession Agreement (“CA”) with National Highways Authority of India (“NHAI”). Concession Agreement entitles the Company to receive a fixed sum of Annuity every Six months, in arrears, starting from the date of the Commencement of Commercial Operations (“COD”).

For implementation and operation of the Project, the Concessionaire has availed of credit facilities (the “Facilities”) from the State Bank of India (“SBI” or the “Lenders’ Agent” or “Lenders’ Representative”), Indian Bank (e-Allahabad Bank), Punjab & Sindh Bank, Union Bank of India (e-Andhra Bank) and Indusind Bank (“Senior Lenders” or “Lenders”).

To secure the interest of the Lenders extending the Facilities for the Project, the NHAI, pursuant to the substitution agreement dated March 15, 2011 entered into with the Concessionaire and the Lenders’

Representative, acting for and on behalf of the Lenders (“Substitution Agreement”), has empowered the Lenders to substitute the Concessionaire with the Nominated Concessionaire/Company (as defined hereinafter) pursuant to the terms set out under the Concession Agreement and the Substitution Agreement.

The Concessionaire has since not been able to perform its obligations under the Concession Agreement, thereby constituting a Concessionaire Default (as defined in the Concession Agreement). Accordingly, in terms of the Concession Agreement and the relevant provisions of the Substitution Agreement, the Lenders have decided to undertake a transparent Bid process to select the Nominated Company to substitute the Concessionaire.

Whereas State Bank of India on behalf of the Lenders have invited Expression of Interest from interested parties for the Substitution of Concessionaire

- (A) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Bid Process Document and other bid documents in respect of the Project, and
- (B) It is a necessary condition under the Bid Process Document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Bid Process Document.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act 1956/2013 for entering into a Concession Agreement and requisite documents necessary for the substitution process with NHAI and/or Lenders and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and thereafter;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

#### 5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Bid Process Document and the Concession Agreement.

#### 6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and network have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the Bid Process Document.
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.
- 6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Concession Agreement.}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.



9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FOURTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FIFTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
SIX PART

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

**Notes:**

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

## ANNEXURE – IX: FORMAT FOR UNDERTAKINGS AND REPRESENTATIONS

(To be duly stamped as per [●] Stamp Act, 19[●])

Reference No.

Date

To,  
Assistant General Manager, AMT II GM III (Sector),  
Stressed Assets Resolution Group (SARG),  
State Bank of India

Address: Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005

**Subject:** Expression of Interest for substitution of the Concessionaire undertaking a road project in Bihar

Dear Sir,

In response to the advertisement in *[Insert the names of the newspaper and website]* dated *[Insert date of advertisement]* inviting expressions of interest as captioned above (the “**Advertisement**”), we hereby submit an EOI for substitution of Concessionaire.

We have read and understood the contents of the Bid Process Document and the Advertisement and pursuant to this hereby irrevocably and unconditionally assure, declare and confirm that:

- (a) the EOI submitted by us is in accordance with the Bid Process Document;
- (b) the Lenders reserve the right to evaluate and determine whether or not we qualify for the submission of the Bid and may reject the EOI submitted by us without assigning any reason whatsoever and without any liability to the Lenders or Authorized Representative;
- (c) the Lenders reserve the right to request for additional information from us for the purpose of evaluation of the EOI;
- (d) meeting the Eligibility criteria set out in Bid Process Document herein alone does not automatically entitle us to participate in the next stage of the Bid Process.
- (e) we will continue to meet the Eligibility Criteria throughout the Bid Process, any change in Consortium or any material adverse change affecting the Bidder’s ability to perform shall be intimated within 3 (three) Business Days to Lenders immediately by emailing to [agm2others2.sarg@sbi.co.in](mailto:agm2others2.sarg@sbi.co.in) and [projectroad@bobcaps.in](mailto:projectroad@bobcaps.in);
- (f) in the event that either the financial or technical partner in the Consortium or technical partner in the fund withdraws from the Bid Process (the “**Exiting Partner**”) on or before the date of submission of the Bid, the Exiting Partner may only be substituted with a partner fulfilling the criteria of the Exiting Partner with either an equal or higher qualification, subject to the Lenders concurring with the suitability of the same through the Lenders, *provided that* the Exiting Partner is not a Lead Partner;
- (g) we shall engage an operation and maintenance (“**O&M**”) contractor / form a JV with an O&M contractor and shall enter into such agreement(s), as may be required to be submitted at the time of submission of the bid, in accordance with the terms of the Bid Document. we have not submitted an EOI either independently or as a member of another Consortium which has already submitted an EOI Document;
- (h) we are not subject matter of any winding up/insolvency/liquidation proceedings or the like and/ or have taken any step to apply for it or any analogous proceedings;
- (i) neither any execution or distress is levied on us, nor any receiver is appointed in respect of any of our material assets;
- (j) we are ‘fit and proper’ person and are not under any legal disability to be a promoter under applicable

law including listing agreements and regulations issued by SEBI and guidelines issued by RBI as may be relevant and under Applicable Law; and

- (k) we the Bidder, or our promoter or our guarantor have not defaulted in terms of any of our payment obligations as on the date of submission of this EOI.

Capitalised terms used but not defined herein shall have the meanings set out in the Bid Process Document referred to therein.

Sincerely yours,

For [insert name of the Bidder or the Lead Partner on behalf of the Consortium]

Signature: \_\_\_\_\_

Name of Signatory:

Designation:

Common Seal/Stamp

## ANNEXURE - X: NON-DISCLOSURE AGREEMENT

(To be executed on stamp paper with such value as applicable in the relevant state of execution)

This Agreement is made and entered at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 2025;

**BY**

\_\_\_\_\_, a \_\_\_\_\_ [constitution] incorporated under the provisions of \_\_\_\_\_ [Name of the Act], with \_\_\_\_\_ [Registration Number/ CIN/ LLPIN] and having its registered office at [●] (hereinafter referred to as “**Receiving Party**”, which expression shall unless repugnant to the context include its successors and permitted assigns) of the FIRST PART;

**IN FAVOUR OF**

**State Bank of India**, a banking corporation incorporated and registered under the State Bank of India Act, 1955, having its registered office at State Bank Bhavan, Corporate Centre, Madame Cama Road, Mumbai, Maharashtra, 400021 and one of its Stressed Asset Resolution Group located at Corporate Centre 21st Floor, E Wing, Maker Tower Cuffe Parade Mumbai 400 005, Maharashtra, India (hereinafter referred to as “**Disclosing Party**” which expression unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the SECOND PART;

The Party disclosing certain proprietary and/or Confidential Information under this Agreement shall be hereinafter referred to as the “**Disclosing Party**” and the Party receiving such proprietary and/or Confidential Information shall be hereinafter referred to as the “**Receiving Party**”.

The Disclosing Party and the Receiving Party may hereinafter be referred to collectively as “**Parties**” and individually as a “**Party**”.

**WHEREAS:**

- I. Chhapra Hajipur Expressways Limited (“**CHEL**” or “**Company**”) was appointed as the Concessionaire (“**Concessionaire**”) vide concession agreement dated July 28, 2010 (“**Concession Agreement**”), executed *inter alios*, the Concessionaire and National Highway Authority of India (“**NHAI**”), for augmentation and maintenance of Four Lanes of Chhapra Hajipur Section (KM 143.200 – KM 207.200) road project on NH-19 in state of Bihar on Design, Built, Finance, Operate and Transfer (DFBOT) Annuity Basis (“**Project**”) on the terms and conditions of the Concession Agreement.
- II. Pursuant to the aforesaid, CHEL had availed certain credit facilities from a consortium of Lenders including State Bank of India, Union Bank of India, Indian Bank, Punjab & Sindh Bank and Indusind Bank (hereinafter collectively referred to as the “**Lenders**” or “**Consortium of Lenders**”) and NHAI, for the purposes of/ in connection with the Project.
- III. Subsequently, CHEL has defaulted in fulfilling its obligations under the Concession Agreement and respective financing documents, executed with the Lenders and NHAI.
- IV. Accordingly, the Lenders have deliberated and decided to substitute the Concessionaire, in accordance with the provisions of the Concession Agreement and the Substitution Agreement dated March, 15, 2011 (“**Substitution Agreement**”).
- V. BOBCAPS has been mandated by the Lenders to assist and advise the Lenders on the bid process and all matters incidental thereto in connection with the Substitution Process.

- VI. Disclosing Party (on behalf of the Lenders) vide advertisement dated \_\_\_\_\_, 2025 invited expression of interest from prospective eligible Entities for price discovery.
- VII. The Receiving Party is desirous of participating in the process and is accordingly, executing this Agreement in favour of Disclosing Party (on behalf of the Lenders) on the terms as set out herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows.

1. **Confidential Information:** “Confidential Information” means any material, records, application, or information in whatever form, mode or media that is provided or disclosed to the Receiving Party in the course of the business relationship with the Purpose. Confidential Information shall include any copy, abstract, data, extract, sample, or module thereof or documents or statements. Confidential Information will also include the following categories of information whether disclosed orally or not marked specifically as confidential. All the material, data in any format, whether secured or not financial and information, matters relating to the operation of the business, including information relating to actual or potential customers and customer lists, database of customer, all incidental and ancillary matters relating to database of customer, customer usage or requirements, business, business policies and customer usage forecasts and projections, accounting, finance or tax information, pricing information, and any information relating to the corporate and/or operational structure of customer, their respective affiliates, software, deliverables, and all information and materials relating to third party vendors, systems integrators, or consultants of customer that have provided or that may provide in the future any part of customer’s information or communications infrastructure to customer. The Receiving Party will exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential that it exercises with respect to its own confidential information of like nature and in any event, at least diligent and prudent care.
2. **Use:** Receiving Party shall not use any Confidential Information for any reason or purpose other than as necessary in regard to the Purpose. Receiving Party agrees to make no other use of the Confidential Information or to incorporate any Confidential Information into any work or product. Receiving Party shall not modify or erase the logos, trademarks etc., of Disclosing Party or any third-party present on the Confidential Information. Neither Party shall use or display the logos, trademarks etc., of the other Party in any advertisement, press etc., without the prior written consent of the other Party. The Receiving Party may use the Confidential Information solely for and in connection with the business relation Purpose.

Notwithstanding the foregoing, “**Confidential Information**” shall not include any information which the Receiving Party can show: (a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, or (d) was developed by or for the Receiving Party independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence.

3. **Non-disclosure:** The Receiving Party shall not commercially use or disclose any Confidential Information or any materials derived there from to any other person or entity other than the directors, officers, employees, partners, affiliates of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the Purpose authorized above (collectively referred to as “**Representatives**”). Provided however that the Receiving Party may disclose Confidential Information to any third party solely for the Purpose authorized above if it has executed a Non-disclosure Agreement with such third party that contains terms and

conditions that are no less restrictive than these, with prior approval of the Disclosing Party. The Receiving Party shall take appropriate measures by instruction and written agreement prior to disclosure to such Representatives and third parties to assure against unauthorized use or disclosure. The Receiving Party agrees to notify the Disclosing Party immediately if it learns of any use or disclosure of the Disclosing Party's Confidential Information in violation of the terms of this Agreement. Further, any breach of non-disclosure obligations by such Representatives shall be deemed to be a breach of this Agreement by the Receiving Party and the Receiving Party shall be accordingly liable there for.

Provided that the Receiving Party may disclose Confidential information to a court or governmental agency pursuant to an order of such court or governmental agency as so required by such order, provided that the Receiving Party shall, unless prohibited by law or regulation or practically impossible, provide prompt notice to the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek appropriate protective order relating to such disclosure.

4. **Publications:** The Receiving Party shall not make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents / provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement should not be disclosed, without the prior written approval of the Disclosing Party.
5. **Term:** This Agreement shall be effective from the date hereof till its termination by written agreement between the Parties. Upon termination as contemplated herein the Receiving Party shall immediately cease any and all disclosures or uses of Confidential Information; and at the request of the Disclosing Party, the Receiving Party shall promptly return the documents or statements or destroy all written, graphic or other tangible forms of the Confidential Information and all copies, abstracts, extracts, samples, notes or modules thereof save as set out in clause 6 below. And shall provide a certificate to the Bank of having removed all such data/information and documents or statements and any disclosures and that it is not in possession of any such disclosure belonging to the Bank.

The obligations of the Receiving Party respecting disclosure and confidentiality shall continue to be binding and applicable until termination of this Agreement or until such information enters the public domain.

6. **Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such Party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not conceal, alter, obliterate, mutilate, deface or modify otherwise interfere with any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall reproduce any such mark or notice on all copies of such Confidential Information. Likewise, the Receiving Party shall not add or emboss its own or any other and mark, symbol or logo on such Confidential Information.
7. **Return of Confidential Information:** Upon written demand of the Disclosing Party, the Receiving Party shall (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, documents, statements, abstract, extracts, samples, notes or modules thereof to the Disclosing Party within seven (7) days after receipt of notice, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.
8. **Dispute Resolution Mechanism:** In the event of any controversy or dispute regarding the interpretation of any

matter connected with, arising out of, or incidental to the arrangement incorporated in this agreement, parties make all attempts to resolve the differences howsoever arising out of or in connection with this Agreement by discussion failing which, by arbitration in accordance with provisions of the Arbitration & Conciliation Act, 1996. The Parties agree that the discussions shall be held in the spirit of resolution of the issues that have arisen between them with the intention of resolving the issues amicably at the earliest. If the Bidder is not satisfied with the outcome of the discussions, within fifteen

(15) days from the receipt of the response, the matter shall be referred to an sole arbitrator appointed by mutual consent by both the parties and the decision of the arbitrator shall be final and binding on both the parties.

9. **Entire Agreement, Amendment, Assignment:** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the parties. This Agreement may be amended or modified only with the mutual written consent of the parties. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable. If any clauses remain to be added in the present agreement, the additions to be made by way of an addendum to the present agreement.
10. **Governing Law and Jurisdiction:** Any dispute between the Parties arising out of or in relation to this Agreement (the "Dispute"), shall be resolved by final and binding arbitration held in Mumbai in accordance with the provision of the Arbitration and Conciliation Act, 1996, as amended. The language used in the arbitral proceedings shall be English.
11. **General:** The Receiving Party shall not reverse-engineer, decompile, disassemble or otherwise interfere with any software disclosed hereunder. All Confidential Information is provided "as it is". In no event shall the Disclosing Party be liable for the inaccuracy or incompleteness of the Confidential Information. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the fitness of such Confidential Information for any particular purpose or infringement of trademarks, patents, copyrights or any right of third persons.
12. **Remedies:** Receiving Party acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this agreement by Receiving Party and that any such breach would cause Disclosing Party irreparable harm. Accordingly, Receiving Party also agrees that, in the event of any breach or threatened breach of this Agreement, Disclosing Party, in addition to any other remedies at law or in equity it may have, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief or specific performance.
13. **Severability:** If any provision becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions of this agreement shall not be affected or impaired.
14. **Amendments:** This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded or cancelled in whole or in part, except by written instrument signed by both the Parties hereto which makes specific reference to this Agreement and which specifies that this Agreement is being modified, amended, rescinded or cancelled.
15. **Representations and Warranties:** Each party hereby represents and warrants to the other that: -
  - (a) it (and, if applicable, any person on whose behalf it may act as agent or in a representative capacity) has and will continue to have full capacity and authority to enter in to this agreement and to carry out the transactions contemplated herein, and has taken and will continue to take all action (including obtaining of all necessary corporate approvals and government consents, if any) to authorize the execution, delivery and performance of this agreement; and



- (b) the terms of this agreement do not constitute a breach of any obligations by which it is bound whether arising by its constitutional documents, any contract or operation of law. Each party further agrees to execute/deliver such documents as mutually agreed as the other party may reasonably require in relation to this Agreement.

16. Notices:

- (a) Any notice or request or permitted to be given or made under this agreement shall be in writing.
- (b) Except as otherwise provided in this agreement, any notice, demand, letter or communication may be sent by the parties by registered post, speed post, courier, electronic mode, or by hand delivery. Such notice or request shall be deemed to have been duly given or made when it shall be taken to be sufficient service thereof. If notice is sent by, email, electronic mode, a copy of the same shall also be sent by registered post acknowledgement due / speed post acknowledgement due / hand delivery to the address mentioned hereunder and it shall be taken to be sufficient service thereof. if notice is sent by, electronic mode, a copy of the same shall also be sent by registered post acknowledgement due / speed post acknowledgement due / hand delivery.
- (c) Any notice, demand, letter or communication to the parties shall be effective only when received by the relevant Party.
- (d) Any notice, demand, letter or communication may be sent by one party to the other at the address and numbers set out hereinabove or such address and numbers as one party may inform the other in writing.

17. Termination of Agreement:

Either party can terminate this Agreement by issuing 7 (seven) days prior notice with valid reason of termination of agreement and serve the same to the party of the other part as stated in point No.16(b) hereinabove.

**IN WITNESS WHEREOF**, the Parties hereto have executed these presents the day, month and year first hereinabove written.

For and on behalf of

Name of Authorised signatory:

Designation:

For and on behalf of

Name of Authorised signatory:

Designation:

## ANNEXURE - XI: FORMAT OF LETTER COMPRISING THE FINANCIAL BID

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Reference No.

Date

To,  
Assistant General Manager, AMT II GM III (Sector),  
Stressed Assets Resolution Group (SARG),  
State Bank of India

Address: Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005

**Subject:** BID for Substitution of Concessionaire in Road Project "Four-laning of Chhapra- Hajipur section of NH- 19 (New-31) from Km. 143+200 to Km. 207+200 in the State of Bihar under NHDP - III on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity Basis" and Settlement of Outstanding Dues of Lenders'

**Ref :** Bid Process Document dated May 12, 2025

Dear Sir,

1. With reference to your Bid Process Document dated May 12, 2025 ("BPD"), I/We, having examined the said document alongwith other agreement/ documents executed between and amongst Concessionaire, Lenders & NHAI and understood their contents, hereby submit my/our BID for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Lenders and Authority will be relying on the information provided in the EOI, Annexures and other documents accompanying the EOI for selection of the Nominated Company for the aforesaid Project, and we certify that all information provided in and alongwith the EOI are true and correct; nothing has been omitted which renders such information misleading; and all documents/annexures accompanying the EOI are true copies of their respective originals.
3. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the BPD and other agreements/documents executed between and amongst Concessionaire, Lenders & NHAI, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project. Further, the Bid Price quoted below is only towards settlement of outstanding dues of Lenders and I/We undertake to settle the outstanding dues of NHAI and/or any other authorities separately.
4. I/ We acknowledge the right of the Lenders and Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event I/We being declared as the Successful Bidder, I/we agree to enter into required Agreement/s with Lenders and NHAI in accordance with the BPD and other agreement/ documents executed between and amongst Concessionaire, Lenders & NHAI. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/ We shall keep this offer valid for a period of 90 (ninety) days from the date of submission or declaration of Successful Bidder, whichever is later, except in case where I/We are declared as Successful Bidder, then the BID shall have validity till execution of requisite documents with NHAI and/or Lenders.
7. I/ We hereby submit our BID of Rs. \_\_\_\_\_ Crore (Rupees \_\_\_\_\_) towards the outstanding dues of the Lenders and thereby undertake to get ourself substituted in the aforesaid Project in accordance with the BPD and other agreement/ documents executed between and amongst Concessionaire, Lenders and NHAI.

Date:

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Place:

Name & seal of Bidder/Lead Member

## ANNEXURE - XII: FORMAT OF EOI - SCP

(On the Letter Head of the Eligible Entity/Lead Member of Consortium)

Date: \_\_\_\_\_

To,  
Assistant General Manager, AMT II GM III (Sector),  
Stressed Assets Resolution Group (SARG),  
State Bank of India

Address: Corporate Centre, 21st Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005

**Subject:** Expression of Interest for Swiss Challenge Process in respect of Substitution of the Concessionaire for a Project based in Bihar

Dear Sir,

1. In response to the advertisement in *[Insert the names of the newspaper and website]* dated *[Insert date of advertisement]* inviting expressions of interest as captioned above (“**Advertisement**”), we hereby submit an EOI for Swiss Challenge Process in the substitution of Concessionaire. This EOI is unconditional and unqualified.
2. This EOI is made for the express purpose of qualifying as a Counter Bidder for the Swiss Challenge Process in respect of the substitution of concessionaire of the aforesaid Project.
3. We are members of a Consortium – *[insert name of each of the member of the Consortium]* (constitution of which has been described in the Expression of Interest), which jointly satisfies the Qualification Criteria as detailed in the EOI Document. We have agreed that *(insert member’s name)* will act as the lead member of our Consortium. A copy of letter authorizing \_\_\_\_\_ to act as lead member and for and on behalf of the consortium, duly executed by all members, is annexed hereto as Annexure \_\_\_\_\_. ***[only applicable to Consortium. Delete otherwise.]***
4. *We have submitted an EOI dated \_\_\_\_\_ for the Bidding Process for substitution of Concessionaire under the Bid Process Document (BPD). We request you to consider the documents/ annexures/ declarations submitted with the EOI dated \_\_\_\_\_, for this EOI. We hereby confirm and undertake unconditionally that the information submitted in the documents/ annexures/ declarations submitted with the EOI dated \_\_\_\_\_, remains true, correct and unchanged as on the date hereof and the same can be relied upon by the Lenders/ BOBCAPS for the purposes of the Swiss Challenge Bid Process. In addition to the documents submitted, we hereby provide our declaration and consent to participate in the Swiss Challenge Bidding Process under the Bid Process Document. [Only applicable to Bidders who have already submitted the EOI documents in the earlier process. Otherwise to be deleted.]*
5. The information furnished by us in this EOI is true, correct, complete, accurate to the best of our knowledge and duly authorized for submission. Based on this information we understand you would be able to evaluate our preliminary proposal.
6. We shall make available to the Lenders and/or NHAI any additional information it may find necessary or require to supplement or authenticate the EOI.
7. We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
8. We declare that:
  - (e) We have examined and have no reservations to the Bid Process Document, including any Addendum if any issued by the Lenders.
  - (f) We do not have any conflict of interest in accordance with Clauses 4.1.1(c) and 4.4.1(d) of the Bid Process Document; and

- (g) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 5.33 of the Bid Process Document, in respect of any tender or request for proposal issued by or any agreement entered into with NHAI or any other public sector enterprise or any government, Central or State; and
  - (h) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 5.33 of the Bid Process Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
9. We understand that you may cancel the Swiss Challenge Bidding Process at any time and that you are neither bound to accept any EOI that you may receive nor to invite the Counter Bidders to provide their counter bids on the Anchor Bid, without incurring any liability to the Counter Bidders, in accordance with Clause 2 of the Bid Process Document.
  10. We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the Bid Process Document and are/ is qualified to submit an EOI.
  11. We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
  12. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  13. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
  14. We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
  15. We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process.
  16. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Bid Process Document, we shall intimate the Authority of the same immediately.
  17. The Statement of Legal Capacity as per format provided at Annexure V of the Bid Process Document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Annexure VI and Annexure VII respectively of the Bid Process Document, are also enclosed.
  18. We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
  19. We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 4.1.3.
  20. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Lenders and/or NHAI in connection

with the selection of Counter Bidders, selection of the Counter Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

21. We agree and undertake to abide by all the terms and conditions of the Bid Process Document.
22. We certify that in terms of the Bid Process Document, my/our Networth is Rs. .... (Rs. in words) and Experience Score is ..... (number in words).
23. {We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
24. Capitalised terms used but not defined herein shall have the meanings set out in the Bid Process Document/ EOI Document and documents referred to therein.
25. We however, understand that Lenders reserve the right to decide whether or not to pre-qualify our proposal without disclosing the reason whatsoever, or to cancel the process, without any liability.
26. We have also set out the following in the formats prescribed by you (*submit as applicable*):
  - (a) information in relation to Bidder in the format prescribed in Annexure II;
  - (b) the statement of technical capacity, financial capacity and legal capacity for the Bidder/the Consortium in the format prescribed in Annexure III /IV/ V, as the case may be;
  - (c) the Power of Attorney in the format prescribe in Annexure VI/VII as the case may be;
  - (d) the Joint Bidding Agreement in the format prescribed in Annexure VIII; and
  - (e) the undertaking and representation by the Bidder as prescribed in Annexure IX.

Sincerely yours,

On behalf of [*Insert the name of the entity/Consortium submitting the EOI*]

\_\_\_\_\_  
Signature:

Name of Signatory:

Designation:

Common Seal/Stamp

Note: The person signing the EOI and other supporting documents should be an authorized signatory. The authorized signatory should be supported by necessary board resolutions and corporate authorizations.

## ANNEXURE - XIII: FORMAT OF NDA - SCP

(To be executed on stamp paper with such value as applicable in the relevant state of execution)

This Agreement is made and entered at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 2025;

### BY

\_\_\_\_\_, a \_\_\_\_\_ [constitution] incorporated under the provisions of \_\_\_\_\_ [Name of the Act], with \_\_\_\_\_ [Registration Number/ CIN/ LLPIN] and having its registered office at [●] (hereinafter referred to as “**Receiving Party**”, which expression shall unless repugnant to the context include its successors and permitted assigns) of the FIRST PART;

### IN FAVOUR OF

**State Bank of India**, a banking corporation incorporated and registered under the State Bank of India Act, 1955, having its registered office at State Bank Bhavan, Corporate Centre, Madame Cama Road, Mumbai, Maharashtra, 400021 and one of its Stressed Asset Resolution Group located at Corporate Centre 21st Floor, E Wing, Maker Tower Cuffe Parade Mumbai 400 005, Maharashtra, India (hereinafter referred to as “**Disclosing Party**” which expression unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the SECOND PART;

The Party disclosing certain proprietary and/or Confidential Information under this Agreement shall be hereinafter referred to as the “**Disclosing Party**” and the Party receiving such proprietary and/or Confidential Information shall be hereinafter referred to as the “**Receiving Party**”.

The Disclosing Party and the Receiving Party may hereinafter be referred to collectively as “**Parties**” and individually as a “**Party**”.

### WHEREAS:

- I. Chhapra Hajipur Expressways Limited (“**CHEL**” or “**Company**”) was appointed as the Concessionaire (“**Concessionaire**”) vide concession agreement dated July 28, 2010 (“**Concession Agreement**”), executed *inter alios*, the Concessionaire and National Highway Authority of India (“**NHAI**”), for augmentation and maintenance of Four Lanes of Chhapra Hajipur Section (KM 143.200 – KM 207.200) road project on NH-19 in state of Bihar on Design, Built, Finance, Operate and Transfer (DFBOT) Annuity Basis (“**Project**”) on the terms and conditions of the Concession Agreement.
- II. Pursuant to the aforesaid, CHEL had availed certain credit facilities from a consortium of Lenders including State Bank of India, Union Bank of India, Indian Bank, Punjab & Sindh Bank and Indusind Bank (hereinafter collectively referred to as the “**Lenders**” or “**Consortium of Lenders**”) and NHAI, for the purposes of/ in connection with the Project.
- III. Subsequently, CHEL has defaulted in fulfilling its obligations under the Concession Agreement and respective financing documents, executed with the Lenders and NHAI.
- IV. Accordingly, the Lenders decided to substitute the Concessionaire, in accordance with the provisions of the Concession Agreement and the Substitution Agreement dated March, 15, 2011 (“**Substitution Agreement**”). The Lenders have identified a bidder (“**Anchor Bidder**”) who has submitted a bid (“**Anchor Bid**”) for the purpose of substitution of the Concessionaire.
- V. The Lenders have resolved to conduct a Swiss Challenge Process on the Anchor Bid, to procure counter bids  
*BPD for Substitution of Concessionaire in the Road Project of Four Laning of Chhapra - Hajipur section of NH-19 on DBFOT Annuity Basis*

and for the purpose of price discovery.

- VI. BOBCAPS has been mandated by the Lenders to assist and advise the Lenders on the bid process and all matters incidental thereto in connection with the Substitution Process.
- VII. Disclosing Party (on behalf of the Lenders) vide advertisement dated \_\_\_\_\_, 2025 invited expression of interest from prospective Counter Bidders for price discovery.
- VIII. The Receiving Party is desirous of participating in the Swiss Challenge Process and is accordingly, executing this Agreement in favour of Disclosing Party (on behalf of the Lenders) on the terms as set out herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows.

1. **Confidential Information:** “Confidential Information” means any material, records, application, or information in whatever form, mode or media that is provided or disclosed to the Receiving Party in the course of the business relationship with the Purpose. Confidential Information shall include any copy, abstract, data, extract, sample, or module thereof or documents or statements. Confidential Information will also include the following categories of information whether disclosed orally or not marked specifically as confidential. All the material, data in any format, whether secured or not financial and information, matters relating to the operation of the business, including information relating to actual or potential customers and customer lists, database of customer, all incidental and ancillary matters relating to database of customer, customer usage or requirements, business, business policies and customer usage forecasts and projections, accounting, finance or tax information, pricing information, and any information relating to the corporate and/or operational structure of customer, their respective affiliates, software, deliverables, and all information and materials relating to third party vendors, systems integrators, or consultants of customer that have provided or that may provide in the future any part of customer’s information or communications infrastructure to customer. The Receiving Party will exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential that it exercises with respect to its own confidential information of like nature and in any event, at least diligent and prudent care.
2. **Use:** Receiving Party shall not use any Confidential Information for any reason or purpose other than as necessary in regard to the Purpose. Receiving Party agrees to make no other use of the Confidential Information or to incorporate any Confidential Information into any work or product. Receiving Party shall not modify or erase the logos, trademarks etc., of Disclosing Party or any third-party present on the Confidential Information. Neither Party shall use or display the logos, trademarks etc., of the other Party in any advertisement, press etc., without the prior written consent of the other Party. The Receiving Party may use the Confidential Information solely for and in connection with the business relation Purpose.

Notwithstanding the foregoing, “**Confidential Information**” shall not include any information which the Receiving Party can show: (a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, or (d) was developed by or for the Receiving Party independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence.

3. **Non-disclosure:** The Receiving Party shall not commercially use or disclose any Confidential Information or any materials derived there from to any other person or entity other than the directors, officers, employees, partners,

affiliates of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the Purpose authorized above (collectively referred to as “**Representatives**”). Provided however that the Receiving Party may disclose Confidential Information to any third party solely for the Purpose authorized above if it has executed a Non-disclosure Agreement with such third party that contains terms and conditions that are no less restrictive than these, with prior approval of the Disclosing Party. The Receiving Party shall take appropriate measures by instruction and written agreement prior to disclosure to such Representatives and third parties to assure against unauthorized use or disclosure. The Receiving Party agrees to notify the Disclosing Party immediately if it learns of any use or disclosure of the Disclosing Party’s Confidential Information in violation of the terms of this Agreement. Further, any breach of non-disclosure obligations by such Representatives shall be deemed to be a breach of this Agreement by the Receiving Party and the Receiving Party shall be accordingly liable therefor.

Provided that the Receiving Party may disclose Confidential information to a court or governmental agency pursuant to an order of such court or governmental agency as so required by such order, provided that the Receiving Party shall, unless prohibited by law or regulation or practically impossible, provide prompt notice to the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek appropriate protective order relating to such disclosure.

4. **Publications:** The Receiving Party shall not make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents / provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement should not be disclosed, without the prior written approval of the Disclosing Party.
5. **Term:** This Agreement shall be effective from the date hereof till its termination by written agreement between the Parties. Upon termination as contemplated herein the Receiving Party shall immediately cease any and all disclosures or uses of Confidential Information; and at the request of the Disclosing Party, the Receiving Party shall promptly return the documents or statements or destroy all written, graphic or other tangible forms of the Confidential Information and all copies, abstracts, extracts, samples, notes or modules thereof save as set out in clause 6 below. And shall provide a certificate to the Bank of having removed all such data/information and documents or statements and any disclosures and that it is not in possession of any such disclosure belonging to the Bank.

The obligations of the Receiving Party respecting disclosure and confidentiality shall continue to be binding and applicable until termination of this Agreement or until such information enters the public domain.

6. **Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such Party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not conceal, alter, obliterate, mutilate, deface or modify otherwise interfere with any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall reproduce any such mark or notice on all copies of such Confidential Information. Likewise, the Receiving Party shall not add or emboss its own or any other and mark, symbol or logo on such Confidential Information.
7. **Return of Confidential Information:** Upon written demand of the Disclosing Party, the Receiving Party shall (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, documents, statements, abstract, extracts, samples, notes or modules thereof to the Disclosing Party within seven



(7) days after receipt of notice, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

8. **Dispute Resolution Mechanism:** In the event of any controversy or dispute regarding the interpretation of any matter connected with, arising out of, or incidental to the arrangement incorporated in this agreement, parties make all attempts to resolve the differences howsoever arising out of or in connection with this Agreement by discussion failing which, by arbitration in accordance with provisions of the Arbitration & Conciliation Act, 1996. The Parties agree that the discussions shall be held in the spirit of resolution of the issues that have arisen between them with the intention of resolving the issues amicably at the earliest. If the Bidder is not satisfied with the outcome of the discussions, within fifteen (15) days from the receipt of the response, the matter shall be referred to an sole arbitrator appointed by mutual consent by both the parties and the decision of the arbitrator shall be final and binding on both the parties.
9. **Entire Agreement, Amendment, Assignment:** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the parties. This Agreement may be amended or modified only with the mutual written consent of the parties. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable. If any clauses remain to be added in the present agreement, the additions to be made by way of an addendum to the present agreement.
10. **Governing Law and Jurisdiction:** Any dispute between the Parties arising out of or in relation to this Agreement (the "Dispute"), shall be resolved by final and binding arbitration held in Mumbai in accordance with the provision of the Arbitration and Conciliation Act, 1996, as amended. The language used in the arbitral proceedings shall be English.
11. **General:** The Receiving Party shall not reverse-engineer, decompile, disassemble or otherwise interfere with any software disclosed hereunder. All Confidential Information is provided "as it is". In no event shall the Disclosing Party be liable for the inaccuracy or incompleteness of the Confidential Information. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the fitness of such Confidential Information for any particular purpose or infringement of trademarks, patents, copyrights or any right of third persons.
12. **Remedies:** Receiving Party acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this agreement by Receiving Party and that any such breach would cause Disclosing Party irreparable harm. Accordingly, Receiving Party also agrees that, in the event of any breach or threatened breach of this Agreement, Disclosing Party, in addition to any other remedies at law or in equity it may have, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief or specific performance.
13. **Severability:** If any provision becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions of this agreement shall not be affected or impaired.
14. **Amendments:** This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded or cancelled in whole or in part, except by written instrument signed by both the Parties hereto which makes specific reference to this Agreement and which specifies that this Agreement is being modified, amended, rescinded or cancelled.
15. **Representations and Warranties:** Each party hereby represents and warrants to the other that: -

- (a) it (and, if applicable, any person on whose behalf it may act as agent or in a representative capacity) has and will continue to have full capacity and authority to enter in to this agreement and to carry out the transactions contemplated herein, and has taken and will continue to take all action (including obtaining of all necessary corporate approvals and government consents, if any) to authorize the execution, delivery and performance of this agreement; and
- (b) the terms of this agreement do not constitute a breach of any obligations by which it is bound whether arising by its constitutional documents, any contract or operation of law. Each party further agrees to execute/deliver such documents as mutually agreed as the other party may reasonably require in relation to this Agreement.

16. Notices:

- (a) Any notice or request or permitted to be given or made under this agreement shall be in writing.
- (b) Except as otherwise provided in this agreement, any notice, demand, letter or communication may be sent by the parties by registered post, speed post, courier, electronic mode, or by hand delivery. Such notice or request shall be deemed to have been duly given or made when it shall be taken to be sufficient service thereof. If notice is sent by, email, electronic mode, a copy of the same shall also be sent by registered post acknowledgement due / speed post acknowledgement due / hand delivery to the address mentioned hereunder and it shall be taken to be sufficient service thereof. if notice is sent by, electronic mode, a copy of the same shall also be sent by registered post acknowledgement due / speed post acknowledgement due / hand delivery.
- (c) Any notice, demand, letter or communication to the parties shall be effective only when received by the relevant Party.
- (d) Any notice, demand, letter or communication may be sent by one party to the other at the address and numbers set out hereinabove or such address and numbers as one party may inform the other in writing.

17. Termination of Agreement:

Either party can terminate this Agreement by issuing 7 (seven) days prior notice with valid reason of termination of agreement and serve the same to the party of the other part as stated in point No.16(b) hereinabove.

**IN WITNESS WHEREOF**, the Parties hereto have executed these presents the day, month and year first hereinabove written.

For and on behalf of

Name of Authorised signatory:

Designation:

For and on behalf of

Name of Authorised signatory:

Designation: