

AGREEMENT

between

RESOLUTION PROFESSIONAL AND RESOLUTION APPLICANT

**THIS AGREEMENT** is made and entered into on the \_\_\_ **Day of February, 2018 between;**

Mr. \_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_, a Resolution Professional registered with Insolvency and Bankruptcy Board of India, vide registration No. \_\_\_\_\_, having its principal place of business at E-10A, Kailash Colony, New Delhi-110048 (herein after referred to as "Resolution Professional"); and

\_\_\_\_\_. a Company incorporated under the Companies Act, 2013 having CIN No. \_\_\_\_\_ having its registered office at \_\_\_\_\_ and principal place of business at \_\_\_\_\_ represented through Mr. \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_ in his capacity as Managing Director \_\_\_\_\_ duly authorised by Board of Director of the Company vide Resolution passed in a duly convened meeting of Board of Directors held on \_\_\_\_\_ (hereinafter referred to as '\_\_\_\_\_ or 'Resolution Applicant').

WHEREAS Mr. \_\_\_\_\_ was appointed as Resolution Professional in the Corporate Insolvency Resolution Process (CIRP) of \_\_\_\_\_(Corporate Debtor). vide an order passed by Hon'ble National Company Law Tribunal, \_\_\_\_\_ Bench, dated \_\_\_\_\_.

AND WHEREAS the Corporate Insolvency Resolution Process of \_\_\_\_\_, having CIN No. \_\_\_\_\_ incorporated under the Companies Act, 2013 having its registered office \_\_\_\_\_ (hereinafter referred to as 'Corporate Debtor') was commenced on \_\_\_\_\_.

AND WHEREAS the Resolution Professional Invited Expression of Interest (EOI) for putting forward a resolution plan for the revival of \_\_\_\_\_. by way of public notice released in the \_\_\_\_\_ edition dated \_\_\_\_\_.

AND WHEREAS in response to the public notice, '\_\_\_\_\_' contacted the Resolution Professional and expressed its interest for becoming a Resolution Applicant in the CIRP process of \_\_\_\_\_. The Resolution Professional accepted '\_\_\_\_\_' as potential resolution applicant after conducting due diligence about its capacity and capability for revival of \_\_\_\_\_. All the documents submitted by '\_\_\_\_\_' as photocopies and submitted through electronic media was accepted by Resolution Professional on the representation of the Resolution Applicant. On the execution of this agreement, '\_\_\_\_\_' confirms that all the documents, information and facts submitted during this process are true and correct to the best of its knowledge.

AND WHEREAS the Resolution Professional conducted price exploration process for taking over \_\_\_\_\_ on as is where is basis in the supervision of committee of creditors as constituted under IBC, 2016 for conducting CIRP of \_\_\_\_\_. The Price Exploration process lead to bidding process and ‘ \_\_\_\_\_ ’ was declared as H1 in the bidding process in a meeting of committee of creditors held on \_\_\_\_\_.

AND WHEREAS the Resolution Professional will conduct the entire process of examination, verification, submission and approval of Resolution plan from committee of creditors and thereafter from Hon’ble National Company Law Tribunal, \_\_\_\_\_ Bench, as submitted by the Resolution Applicant (hereinafter referred to as “The Process”)

## **WITNESSETH**

WHEREAS, the parties hereto desire to execute an Agreement for conducting the entire process to more particularly provide for their respective rights, powers, duties and obligations as Parties to conduct the process of examination, verification, presentation and approval of resolution plan.

NOW, THEREFORE, the Parties by this Agreement set forth the process upon the following terms and conditions:

1. That the Resolution Applicant confirms that it has received all relevant information about the Corporate Debtor, its assets and liabilities and it has done its due diligence as regards viability of the revival plan. The Resolution Applicant also confirms that it has inspected the business locations, premises and other assets of the Corporate Debtor which are the subject matter of take over and revival plan.
2. That the Resolution Applicant confirms that it is putting forward a Resolution Plan for take over of the Corporate Debtor on as is where is basis.
3. That the Resolution Applicant confirms that the entire process of price exploration and bidding for the corporate debtor as designed by Resolution Professional in consultation with Committee of Creditors was explained to it and it has participated in the process after having full understanding of the process and has no dissatisfaction or concern over the process.
4. That the Resolution Applicant confirms that the eligibility criteria as prescribed under insolvency and bankruptcy code, 2016 and regulations made thereunder with more specific eligibility or disqualification criteria as mentioned under section 29A of IBC, 2016 was completely explained to it before the start of process and he has taken requisite legal help to understand the applicability of provisions of Section 29A on itself, its promoters and directors, its associate concerns and all other connected persons and related parties.

5. That the Resolution Applicant confirms that it has given a bid of Rs. \_\_\_\_\_ for take over of the Corporate Debtor and it will not challenge the appropriateness of this amount or the process under which such bid was given.
6. That the Resolution Applicant had prior knowledge of the requirement of an earnest money deposit of \_\_\_\_\_ for submission of binding bid and that the Resolution Applicant has given a deposit of Rs. \_\_\_\_\_ to the Resolution Professional vide bankers cheque no. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_ bank in favour of the Corporate Debtor.
7. That the Resolution Applicant will submit detailed Resolution Plan containing all facts, figures, proposals, terms, conditions and other matters as required under IBC, 2016 and regulations made there under.
8. That the Resolution Applicant shall provide all information to Resolution Professional relevant and requisite for the purpose of verification of eligibility of the Resolution Applicant as per the provisions of Section 29A of IBC, 2016 and Regulations made there under. In case the Resolution Applicant become ineligible under the provisions of IBC, 2016 for putting forward a Resolution plan, the Resolution Applicant shall not have any right to seek refund of earnest money deposit of Rs. \_\_\_\_\_.
9. That the Resolution Applicant shall not be entitled to withdraw the bid and the Resolution plan and will extend full co-operation and provide all information as required for the purpose of getting its approval from committee of creditors and Hon'ble NCLT, \_\_\_\_\_.
10. That in case the Resolution Applicant withdraw the bid or resolution plan or fails to provide requisite information, data and documents supporting the resolution plan which are required for obtaining approval of committee of creditors and NCLT, it will not be entitled to seek any refund of earnest money deposit.
11. That in case the Resolution Plan is approved by Committee of Creditors and NCLT, the earnest money deposit will be considered as part payment of bid amount and the Resolution Applicant would be liable to make payment of balance amount only.
12. That in case the Resolution plan is rejected or not approved by committee of creditors or NCLT, the Resolution Applicant shall be entitled to apply for refund of the entire amount of earnest money deposit. However, the earnest money deposit does not carry any interest and the resolution applicant would not be entitled to claim any interest on the amount of EMD.
13. That the Resolution Professional will be entitled to encash the bankers cheque of Rs. \_\_\_\_\_ by depositing in the bank account of \_\_\_\_\_(CD).
14. That the Resolution Applicant shall have no right on the earnest money deposit in the case of withdrawal of bid or resolution plan by it and no claim would be filed against the Corporate Debtor or the Resolution Professional or the Committee of Creditors.

15. That the Resolution Applicant is fully aware that the amount of earnest money deposit would be forfeited by the Resolution Professional in case of withdrawal of bid or Resolution plan or non-submission of necessary documents as required for approval of resolution plan. The amount of earnest money deposit if forfeited would become part of liquidation estate of the Corporate Debtor and would be appropriated for liquidation of debt owed to creditors.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set and subscribed their respective hands the day and year first hereinabove written.

Signed and delivered by the

\_\_\_\_\_  
Resolution Professional  
In the Case of CIRP of \_\_\_\_\_

WITNESS 1:

For \_\_\_\_\_

(\_\_\_\_\_)  
Managing Director  
Resolution Applicant

WITNESS 2: