

## **CONFIDENTIALITY CUM NON-DISCLOSURE AGREEMENT**

(To be duly stamped and executed)

This Agreement is made on the \_\_\_\_ \_\_\_\_ day of \_\_\_\_\_

### **Between**

\_\_\_\_\_ a Registered Insolvency Professional under Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016, with IP Registration No. \_\_\_\_\_, having its registered office at \_\_\_\_\_ (herein after referred to as a "Regd. Insolvency Professional" or "Receiving Party", which expression unless repugnant to the context or meaning there of will include its successors, permitted assigns, and legal heirs) of the One Part.

### **And**

**PEC Limited** (A Government of India enterprise under the Ministry of Commerce) incorporated and registered as a company under the provisions of the Companies Act, 1956, having its registered office at: Hansalaya, 15, Barakhamba Road, New Delhi-110 001, hereinafter called the "PEC Ltd." or "Disclosing Party", which expression will include its successors and permitted assigns of the Other Part.

### **WHEREAS**

PEC Ltd. has proposed to initiate proceedings under Insolvency and Bankruptcy Code 2016 against some of its defaulting Associates and/or has invited Expression of Interest from eligible registered Resolution Professionals to act as an IRPs/RPs.

That the Receiving Party is submitting its expression of interest and is contemplating to submit the bid in pursuance of PEC Ltd. notification.

### **NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. **Confidential Information:** "Confidential information" means all information disclosed/ furnished by the PEC Ltd. to the Receiving Party and/ or to its representatives in connection with the purpose stated in the aforesaid notification. The confidential information shall include any copy, abstract, extract, sample, note, or module in hard/soft copies thereof and shall also include data, documents and/or material information thereof.

The Receiving Party may use the confidential information solely for and in connection with the Purpose of evaluation in connection with receiving party's business discussions with the PEC Ltd..

- A. Notwithstanding the foregoing, the Confidential information shall not include the following information:
  - i. That which is now or subsequently becomes publicly available without breach of this Agreement by the Receiving party;

- ii. That which was rightfully in the possession of the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party;
  - iii. That which was rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality;
  - iv. That which 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 or is disclosed pursuant to an order of the Court/Governmental/Regulatory Agency as so required by such Order, provided that the receiving party shall, unless prohibited by Law/Regulation, promptly notify the disclosing party of such order and afford the disclosing party the opportunity to seek appropriate protective Order relating to such disclosure;
2. **Non-disclosure:** The Receiving Party shall not use or disclose in any manner whatsoever any confidential information or any material derived therefrom to any other person or entity other than persons in the direct employment of the Receiving Party who have a need to access to and knowledge of the Confidential Information solely for the purposes authorized above. The Receiving Party may disclose the Confidential information to its Consultants only if the Consultant(s) have executed a Non-disclosure Agreement with the Receiving Party that contains Terms and Conditions that are no less restrictive than this Agreement. The Receiving Party shall take appropriate measures to assure against unauthorized use/disclosure prior to disclosure to such employees. The Receiving Party agrees to notify the disclosing party as soon as reasonably practicable if it comes to know of any use or disclosure of the Disclosing Party's Confidential information in violation of terms of this Agreement.

The Receiving Party agrees:

- a. to protect Information received from the PEC Ltd. with at least the same degree of care as it normally exercises to protect its own proprietary information of similar nature.
  - b. to ensure that their employees will not disclose any information so received even after they cease to be employees of the recipient. The Receiving Party shall ensure this by own internal arrangements.
  - c. that the Receiving Party shall indemnify the PEC Ltd. and keep indemnified against any loss or damage that the PEC Ltd. may sustain on account of any violation of intellectual property, confidentiality, privacy, patents, trademark etc., by the Receiving Party in respect of any Intellectual Property, practices, hardware, software, systems, process, technologies, etc in whatever manner described.
  - d. Protect the Confidential Information belonging to PEC Ltd. and/or its affiliates against disclosure/misuse/exploitation.
3. **Publications:** Neither party shall 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 stated purpose, the Confidential

information or other matters of this Agreement, except as per the provisions of the IBC 2016.

4. **Term:**

This Agreement shall be effective from the date hereof and shall terminate upon the completion of any transaction in relation to the underlying transaction or otherwise as determined by the parties; however, the obligations of Receiving Party respecting disclosure and confidentiality shall continue to be binding and applicable without limit in time except and until such information enters the public domain save and except the clause [1A] herein.

Upon expiration of purpose stated herein the Receiving Party shall immediately cease the use of Confidential Information and any/all permissible disclosures referred above and shall promptly return or destroy all written, graphic or other tangible/intangible forms of the Confidential Information and all copies, abstracts, extracts, samples notes or modules without retaining any copy thereof.

5. **Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by the PEC Ltd. (Disclosing party) to the Receiving Party, the Disclosing party shall retain title and all intellectual property and proprietary rights in the Confidential Information. Wherever applicable 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 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 as the case may be. Likewise, the Receiving party shall not add or emboss its own or any other any mark, symbol or logo on such Confidential Information.

6. **Remedies:** The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate, irreparable harm for which monetary damage may not be adequate. The Receiving Party agrees and acknowledges that in addition to all other remedies available at Law or in equity, the Disclosing Party shall be entitled to injunctive relief hereunder.

Receiving party shall defend, indemnify and hold harmless to the Disclosing Party, its affiliates, subsidiaries, successors, assigns, officers, directors and employees, at all times, from and against any and all claims, demands, damages, assertions of liability whether civil, criminal, tortuous or of any nature whatsoever, arising out of or pertaining to or resulting from any breach of representations and warranties made by Receiving Party and/or breach of any provisions of this Agreement, but not limited to any claim from third party pursuant to any act or omission of Receiving Party in the course of discharge of its obligations under this Agreement.

7. **Entire Agreement, Amendment, and Assignment:** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supercedes 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 to the Receiving Party shall be assignable or otherwise transferable.
8. **Governing Law and Jurisdiction:** The provisions of this Agreement shall be governed by the laws of India. The disputes, if any, arising out of this Agreement shall be submitted to the exclusive jurisdiction of the courts in Delhi.
9. **General:** This Agreement shall not constitute any relationship either employer/employee, joint venture, principal/agent, partnership/associate or any other relationship of like nature between parties hereto or between either party and the employees, agents and the representatives of the receiving party. All Confidential Information are 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 constitutes any representation, warranty, assurance, guarantee or inducement by the Disclosing Party to the Receiving Party with respect to the fitness of such Confidential Information for any particular purpose other than for the stated purpose or infringement of trademarks, patents, copyrights or any right of their persons.

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

**For and on behalf of**

(\_\_\_\_\_)

Regd. Insolvency Professional/ Receiving Party

**For and on behalf of**

(\_\_\_\_\_)

PEC Limited