

**INVITATION FOR EXPRESSION OF INTEREST FOR SUBMISSION OF RESOLUTION PLAN FOR  
WAY 2 HEALTH DIAGNOSTICS PRIVATE LIMITED**

**[CIN: U85190MH2014PTC253002]**

**Registered Office:** Shop No 3 & 4 Ground Floor, Om Neelkanth CHS Plot No 31 Sector 42A, Seawoods  
Nerul, Navi Mumbai, Thane - 400706

**SNAPSHOT OF THE COMPANY**

<b>Name</b>	Way 2 Health Diagnostics Private Limited (“Way2Health”)
<b>ROC Code</b>	Registrar of Companies – Mumbai
<b>CIN</b>	U85190MH2014PTC253002
<b>Date of Incorporation</b>	10 <sup>th</sup> February, 2014
<b>Class of Company</b>	Private Limited
<b>Whether Listed or not</b>	Unlisted
<b>Industry</b>	Diagnostics Company
<b>Registered Office</b>	Shop No 3 & 4 Ground Floor, Om Neelkanth Chs Plot No 31 Sector 42a Seawoods Nerul Navi Mumbai Thane, 400706
<b>Details of Centres</b>	<b>Centre 1</b> - F1 A/2 Paradise Owner Association, Sector 3,, Nerul East, near Rangoli Hotel, Navi Mumbai, Maharashtra 400706  <b>Centre 2</b> - Shop No. 2, Ambe Shraddha Building,, Plot No. 4, Mansarovar, Kamothe, Navi Mumbai, Maharashtra 410206  <b>Centre 3</b> - Shop No.2, Plot No. 528, Balaji CHS, Sector 4, Ghansoli, Maharashtra 400701
<b>Authorized Capital</b>	INR. 3,00,00,000
<b>Paid-up Capital</b>	INR. 2,11,84,530

**Corporate Insolvency Resolution Process (“CIRP”):**

The Company is undergoing Corporate Insolvency Resolution Process (“CIRP”) under the Insolvency and Bankruptcy Code, 2016 (“Code”) , pursuant to an order dated December 20, 2019 by the Adjudicating Authority, under section 7 of the Code before the National Company Law Tribunal (“NCLT”), Mumbai Bench. The Hon’ble NCLT *vide* order dated December 20, 2019 admitted the application and appointed Mr. Kamal Kishor Gurnani (Reg No. IBBI/IPA-001/IP-P-01463/2018-19/12338) as Interim Resolution Professional (“IRP”). In the first meeting of Committee of Creditors held on 17<sup>th</sup> January 2020 the Committee of Creditors (“CoC”) having 53.26% of voting share voted against the agenda for appointment of the IRP as the RP of the Corporate Debtor. Further, as per Regulation 17(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 which states that *“Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.”* In view of the aforesaid in order to complete the CIRP process in a time bound manner, it is required to appoint a Resolution Professional to carry out the process henceforth. However, as per section 36A of the Code the Resolution Professional shall issue the EOI within Seventy- Five days from the Insolvency Commencement date i.e on or before 4<sup>th</sup> March 2020.

Therefore, the IRP hereby invites Expression of Interest (“EOI”) from Prospective Resolution Applicants for the purpose of submission of a Resolution Plan in accordance with Section 25 (2) (h) of IBC read with Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (CIRP Regulations). The eligibility criteria is determined with the approval of the Committee of Creditors (“CoC”) of Way2Health and may be amended or changed at any stage at the discretion of CoC. The RP / CoC reserves the right to cancel or modify the process and/or reject / disqualify any interested party/bid/offer at any stage of the CIRP without assigning any reason and without any liability whatsoever and no PRA shall have a vested right in the process.

This is not an offer document. PRA should regularly visit the Way2Health website [www.way2healthindia.com/](http://www.way2healthindia.com/) or contact or contact RP on [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in)/[kamalgurnaniip@gmail.com](mailto:kamalgurnaniip@gmail.com) to keep themselves updated regarding classifications, amendments or extensions of time, if any.

This is the detailed invitation for Expression of Interest referred in Regulation 36A (3) and (4) of the CIRP Regulations.

**1. Eligibility Criteria Under Section 25 (2)(h)**

To be eligible to submit EOI, the PRAs must satisfy the following eligibility criteria, as approved by the COC in accordance with Section 25 (2) (h) of the Code.

**A. For PRA'S that are Body Corporates/ Individuals/ Consortium of Investors whether incorporated in India or outside India**

Minimum Tangible Net worth ('TNW') of INR 1 Crore at the Individual Level or Group Level in the immediately preceding completed financial year OR Turnover of at least INR 1 crore at the Individual Level or Group Level in the immediately preceding completed financial year; and

**B. For PRA's that are Financial Institutions/Private Equity Funds, Asset Reconstruction Companies/ Non-Banking Finance Companies/ Other financial investors including consortium investors:**

- a) Minimum assets under management (AUM) of INR 10 Crore in the immediately completed preceding financial year or
- b) Committed funds available for deployment / investment of at least INR 15 Crore as on March 31 2019;

**2. Prospective Resolution Applicants to this invitation should satisfy the conditions as specified under Section 29A of IBC in order to be considered as PRA's**

Please note that a PRA will not be eligible to submit the EOI if he/she/it or any person acting jointly or in concert with him/her/it is disqualified under Section 29A of the Code (as amended from time to time, including extant law/ regulations prevailing at the time of evaluation of eligibility criteria or amendments thereafter). In case of a Consortium, each member of the Consortium should be eligible under Section 29A of the Code.

As on date, the disqualifications under Section 29A of the Code are set out in **Annexure 'A'**.

**3. Last Date of Submission Of EOI**

The last date for submission of EOI is 1 June 2020 ("**Last Date**").

Provided that the Resolution Professional may extend the Last Date, with approval of the COC (at its sole discretion).

Further, the Resolution Professional may (with COC approval) has the right to accept or reject any EOI submitted after the Last Date.

**4. Submission Of EOI**

The EOI submitted by PRA's should be unconditional and accompanied by all the relevant annexures, documents / information mentioned in this detailed invitation and / or as per the provisions of IBC.

- a. Expression of Interest (EOI) is invited in a sealed envelope superscripted as **<Expression of Interest for WAY 2 HEALTH DIAGNOSTICS PRIVATE LIMITED>**, in the format as set out in **Annexure B** hereto

- b. Applicants should meet the Eligibility Criteria as set out in point 1 above.
- c. An Undertaking in the format attached as **Annexure ‘C’**.
- d. A Confidentiality Undertaking in the format attached as **Annexure ‘D’**.
- e. Applicants shall submit the EOI along with the supporting documents and requisite details of the applicant as set out as **Annexure ‘E’**
- f. EOI shall be submitted in following manner:
  - i. Electronically at [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in) with copy to kamalgurnaniip@gmail.com

And

- ii. Hard Copy EOI shall be submitted to following address:  
Kamal Kishor Gurnani  
702, Janki Centre, Dattaji Salvi Road, Off Veera Desai Road, Andheri  
West, Mumbai -400053

## **5. Consortiums**

Where the EOI is being submitted by a consortium of joint bidders (“**Consortium**”), the EOI, along with all undertakings submitted shall be signed by each member of the Consortium. Please further note that:

- a. A Person cannot be part of more than 1 (one) consortium submitting the EOI for the Company. Further a Person shall submit only 1 (one) EOI, either individually as a PRA or as a constituent of a Consortium;
- b. The Consortium shall submit the copy of consortium agreement/MOU, if any, entered into between the Consortium members, setting out the respective obligations of the Consortium members;
- c. Each member of the Consortium shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the Consortium. Such Lead Partner shall be the single point of contact on behalf of the Consortium with the Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium;
- d. The members of the Consortium shall be jointly and severally liable in respect of obligations under the EOI/ undertakings given to the Resolution Professional;
- e. If any 1 (one) member of the Consortium is disqualified under Section 29A of the Code, then the entire Consortium; i.e., all the members of such Consortium shall stand disqualified;
- f. The EOI must detail the members of the Consortium, the Lead Member and the proposed percentage holding of each member;
- g. Lead Member of the Consortium shall be identified at the time of submission of EOI and shall hold at least 26%;
- h. No change of Lead Member or any member whose financials have been considered towards the eligibility criteria may be permitted post submission of EOI (except with approval of the COC).

## **6. Important Notices**

- a. COC has the right to cancel or modify or withdraw the process of invitation of EOI or Resolution Plans without assigning any reason and without any liability. This is not an offer document and is issued with no commitment.
- b. COC has the right to amend this Invitation of EOI or issue further supplements or require additional documents from the PRAs without assigning any reason and without any liability.
- c. The Resolution Professional (with the approval of COC) reserves the right to accept any EOI submitted after the Last Date or any EOI that deviates from the requirements set out herein, and no other PRA shall have the right to object to such acceptance.
- d. It may be noted that the eligibility criteria for PRAs has been evolved in accordance with the provisions of the Code and CIRP Regulations. EOIs of only those interested parties who meet the eligibility and other

criteria specified herein shall be considered. Resolution Professional/ COC reserve their right to reject the EOI of any PRA and not include them in the provisional or final list of eligible PRAs in case:

- I. The PRA does not meet the eligibility criteria set out herein;
  - II. If the EOI submitted by the PRA is incomplete or the PRA does not submit the documents as required under this Invitation to EOI or does not submit such further documents or information as requested by the Resolution Professional for conducting due diligence on the PRA;
  - III. If any information/record provided is false, incorrect, inaccurate or misleading;
  - IV. If in the opinion of the COC, the PRA is undesirable or not credible or if the PRA fails to provide information, if requested, to establish its credibility, eligibility or ability to implement a resolution plan.
- e. No oral conversations or agreements with the Resolution Professional or any official, agent or employee of the Resolution Professional, or any member of the COC, or any official, agent or employee of the Company shall affect or modify any terms of this Invitation for EOI.
  - f. Neither the PRA nor any of representatives of the PRA shall have any claims whatsoever against the Resolution Professional or its advisors or any member of the COC or any of their directors, officials, agents or employees arising out of or relating to this Invitation for EOI.
  - g. By submitting its EOI, each PRA shall be deemed to acknowledge that it has carefully read the entire Invitation for EOI and has fully informed itself as to all existing conditions and limitations. Ignorance of law/s will not be treated as any excuse.
  - h. The PRA acknowledges that the investment in the Company shall be made by the PRA on an “as in, where is” basis and the RP or the COC will not be providing any representations or warranties for the Company.
  - i. All the EOIs received will be reviewed by RP in consultation with its advisors and COC and a provisional list of eligible PRAs shall be shared in accordance with the Code and CIRP Regulations.
  - j. PRA to undertake that PRA or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past. If there is any such failure, statement declaring the same is given as supporting documents to EOI as required under point (i) in Annexure E.
  - k. For any clarifications on the process of submission of EOI, please contact on [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in) or [kamalgurnaniip@gmail.com](mailto:kamalgurnaniip@gmail.com)

**Issued by:**

**Kamal Kishor Gurnani**

(IP Registration No.: IBBI/IPA-001/IP-P-01463/2018-19/12338)

Address for Correspondence in this regard: 702, Janki Centre, Dattaji Salvi Road, Off Veera Desai Road, Andheri West, Mumbai -400053

**Email ID:** [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in)

**Registered email ID with IBBI:** [kamalgurnaniip@gmail.com](mailto:kamalgurnaniip@gmail.com)

## ANNEXURE 'A'

### SECTION 29A of IBC

A PRA will not be eligible to submit the EOI if he/she/it or any person acting jointly or in concert with him/her/it:

1. is an undischarged insolvent;
2. is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
3. at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under the Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under the Code;

4. has been convicted for any offence punishable with imprisonment –
  - I. for two years or more under any Act specified under the Twelfth Schedule of the Code; or
  - II. for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I.

5. Is disqualified to act as a director under Companies Act, 2013;  
Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I.
6. Is prohibited by the Securities Exchange Board of India from trading in securities or accessing the securities market;
7. Has been a promoter or in the management or control of the Company in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

8. has executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part
9. is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
10. has a connected person not eligible under clauses (a) to (i).

Explanation I — For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: —

- a) a scheduled bank;
- b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- f) such categories of persons as may be notified by the Central Government.

**ANNEXURE 'B'**

**FORMAT OF EXPRESSION OF INTEREST**

**[On the Letterhead of the Lead Member/Prospective Resolution Applicant Submitting the EOI]**

Date: [●]

To,

**Kamal Kishor Gurnani**

**Interim Resolution Professional – WAY 2 HEALTH DIAGNOSTICS PRIVATE LIMITED**

702, Janki Centre, Dattaji Salvi Road,

Off Veera Desai Road,

Andheri West, Mumbai -400053

((IP Registration No.: IBBI/IPA-001/IP-P-01463/2018-19/12338)

**Email ID:** [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in) and [kamalgurnaniip@gmail.com](mailto:kamalgurnaniip@gmail.com)

**Subject: Expression of Interest (“EOI”) for submitting Resolution Plan for Way 2 Health Diagnostics Private Limited (“Company”) undergoing Corporate Insolvency Resolution Process (“CIRP”).**

Dear Madam,

In response to the invitation for submission of expression of interest dated [Insert] inviting expression of interest (“EOI”) for submission of resolution plans (“Resolution Plan”) for the Company as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC”), we confirm that we have understood the eligibility and other criteria mentioned in the Invitation for EOI and meet the necessary threshold and criteria mentioned therein and are submitting our EOI for submission of a Resolution Plan for the Company.

We understand and confirm that

- (a) the EOI will be evaluated by the Resolution Professional of Way 2 Health Diagnostics Private Limited along with the COC, based on the information provided by us in this EOI and attached documents to determine whether we qualify to submit the Resolution Plan for the Company;
- (b) the RP/ COC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the Resolution Plan for the Company and may reject the EOI submitted by us and not include us in the provisional or final list of eligible prospective resolution applicants;
- (c) the RP/ the COC reserve the right to conduct due diligence on us and/or request for additional information or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to satisfy the queries of RP/ COC may lead to rejection of our EOI;
- (d) meeting the qualification criteria set out in Invitation for EOI alone does not automatically entitle us to participate in the next stage of the bid process;
- (e) along with our EOI, we have also enclosed information/documents as required in the Invitation for EOI.

For further information/ queries, please contact:

\_\_\_\_\_

**Sincerely yours,**

On behalf of the firm/company/organization:

**Signature:**

(Person signing the EOI and supporting documents should be an Authorized Signatory supported by necessary Board resolutions)

**Name of**

**signatory:**

**Designation:**

**Firm/company/organization: Seal/stamp**

**NOTE:** The person signing the EOI and other supporting documents should be authorized signatory supported by necessary board resolutions/authorization letter.



ANNEXURE 'C'

FORMAT OF UNDERTAKING

To,

**Kamal Kishor Gurnani**

**Resolution Professional – WAY 2 HEALTH DIAGNOSTICS PRIVATE LIMITED**

702, Janki Centre, Dattaji Salvi Road,

Off Veera Desai Road,

Andheri West, Mumbai -400053

((IP Registration No.: IBBI/IPA-001/IP-P-01463/2018-19/12338)

Email ID: [cirp.way2health@rirp.co.in](mailto:cirp.way2health@rirp.co.in) and [kamalgurnaniip@gmail.com](mailto:kamalgurnaniip@gmail.com)

**Subject: Undertaking in relation to submission of the EOI for Way 2 Health Diagnostics Private Limited (“Company”), currently undergoing Corporate Insolvency Resolution Process (“CIRP”)**

Dear Madam,

In respect of the expression of interest (“EOI”) submitted by us for submission of a resolution plan (“**Resolution Plan**”) for the Company, we hereby confirm, represent, warrant and undertake that:

- (a) We have understood the eligibility and other criteria mentioned in the Invitation for submission of EOI issued by the Resolution Professional of the Company on\_\_\_\_\_;
- (b) We meet the necessary threshold and criteria mentioned in the EOI;
- (c) We are not an ineligible/disqualified person in terms of provisions of Section 29A of the Code;
- (d) If, at any time after the submission of this EOI, we become ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the Resolution Professional and the COC;
- (e) All information and records provided by us to the Resolution Professional in EOI or otherwise are correct, accurate, complete and true and no such information, data or statement provided by us is inaccurate or misleading in any manner. We shall be solely responsible for any errors or omissions therein. Based on this information, we understand you would be able to evaluate our EOI in order to pre-qualify for the above-mentioned proposal. Further, we agree and acknowledge that:
- (f) We acknowledge that in case any information/record provided by interest is false, incorrect, inaccurate or misleading, we shall become ineligible to submit the Resolution Plan and we shall also attract penal action under the Code.
- (g) We confirm that we or any of our related parties have not failed to implement, neither contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

Yours Sincerely,

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

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

Name of Signatory:

Designation:

Company Seal/Stamp

**NOTE:**

- (a) The Undertaking should be stamped on a stamp paper of INR 100.
- (b) The person signing the Undertaking should be authorized signatory supported by necessary board resolutions/authorization letter.

## ANNEXURE 'D'

### FORMAT OF CONFIDENTIALITY UNDERTAKING

#### CONFIDENTIALITY AGREEMENT

**THIS CONFIDENTIALITY AGREEMENT (“Agreement”)** is made on this \_\_\_\_ day of \_\_\_\_\_ 2019 by and between:

Kamal Kishor Gurnani , being a registered insolvency professional with IP Registration No.: IBBI/IPA-001/IP-P-01463/2018-19/12338, appointed as a Resolution Professional (“**Disclosing Party/RP**”) of WAY 2 HEALTH DIAGNOSTICS PRIVATE LIMITED (“**Company**”), a company incorporated under the Companies Act, 1956 having its registered office Shop No 3 & 4 Ground Floor, Om Neelkanth Chs Plot No 31 Sector 42a Seawoods Nerul Navi Mumbai Thane, 400706, India which is undergoing corporate insolvency resolution process (“**CIRP**”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) and its applicable regulations, as amended from time to time, of the **FIRST PART**;

And

\_\_\_\_\_, a company incorporated in \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (the “**Recipient/Resolution Applicant**”), which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors, transferees and permitted assigns) of the **SECOND PART**.

(The Disclosing Party/RP and the Recipient/Resolution Applicant hereinafter also referred to individually as a “**Party**” and collectively as the “**Parties**”)

#### **WHEREAS:**

- A. Pursuant to an invitation for expressions of interest dated \_\_\_\_\_ published by the RP in \_\_\_\_\_ newspapers on \_\_\_\_\_, the RP had invited expressions of interest (“**EOI**”) from potential resolution applicants for the purpose of submission of resolution plans for the Company in accordance with the provisions of the Code. The Resolution Applicant, has accordingly, submitted its EOI to the RP on \_\_\_\_\_.
- B. The Resolution Applicant proposes to submit a resolution plan in respect of the Company (“**Resolution Plan**”) to the RP, in accordance with the Code. For the purpose of such preparation, submission and negotiation of the Resolution Plan (“**Purpose**”), the RP may provide the Resolution Applicant with access to relevant information in that respect, provided that the Resolution Applicant provides a confidentiality undertaking to the RP with respect to such information provided.
- C. In view of the above, the RP will be sharing the relevant information, comprising/ containing certain Confidential Information (*as defined in Clause 1 below*) with the Resolution Applicant and accordingly the Parties have agreed to enter into this Agreement and be bound by the terms and conditions hereinafter set forth governing, *inter-alia*, the disclosure, use and protection of such Confidential Information.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. “**Confidential Information**” shall mean all information, whether in written, oral, pictorial, electronic, visual or other form, including information in the virtual data room (“**VDR**”), relating, in any manner whatsoever, to the Company or to any group entity (including any holding, subsidiary, associate, joint venture or related entity) of the Company or in relation to the resolution plan process. Without prejudice to the generality of the foregoing, Confidential Information includes, without limitation:
  - (i) any information which relates to the business, sales and marketing, operations, pricing arrangements, suppliers, customers, network, finance, technology, corporate, organisation, management, strategic

- (ii) initiatives and plans, policies and reports, financial position of the Company;
- (ii) any drawing, calculation, specification, instruction, diagram, catalogue, manual, data, templates, models, prototypes, samples, presentations, proposals, quotations, computer programs, software, belonging to or vested in the Company or in which Company has an interest of any kind;
- (iii) any unpatented invention, formula, procedures, method, belonging to or vested in the Company or in which Company has an interest of any kind;
- (iv) any unregistered patent, design, copyright, trademark including any pending applications and any intellectual or industrial proprietary right, belonging to or vested in the Company or in which Company has an interest of any kind;
- (v) any information belonging to identified third parties with whom the Company has business dealings;
- (vi) any proposed business deals, contracts or agreements to which Company is party;
- (vii) the Information Memorandum in respect of the Company prepared under the provisions of the Code by the RP and information contained in VDR;
- (viii) contents of its Resolution Plan;
- (ix) particulars of any negotiations conducted with the Committee of Creditors on its Resolution Plan; and
- (x) financial terms or scores of any other resolution applicant (if disclosed to the Recipient) in the course of or as process of negotiation with the Recipient.

2. The Recipient shall at all times observe the following terms:

- (i) it shall hold in trust and in confidence the Confidential Information provided to the Recipient by the Disclosing Party;
- (ii) it shall not, directly or indirectly use the Confidential Information for any purpose other than for the Purpose or for causing an undue gain or undue loss to itself or any other person;
- (iii) it shall not disclose or reveal (or permit the disclosure or revelation of) any Confidential Information to any person or party whatsoever (save and except as provided below) without the prior consent of the Disclosing Party;
- (iv) it may disclose the Confidential Information to its employees, advisors, directors and/or its Affiliates (together the “**Representatives**”), strictly on a need to know basis and solely for the Purpose, provided always that, each of these Representatives shall, in the course of their duties be required to receive, observe and consider the confidentiality obligations set out hereunder when working towards the Purpose and shall be bound by confidentiality obligations that are at least as stringent as the obligations set out in this Agreement. The Recipient acknowledges that any agreement (written or otherwise) entered into between the Recipient and the Representatives would not discharge the Recipient from its confidentiality obligations under this Agreement. In any event, the Recipient shall remain liable and responsible for any confidentiality breaches by its Representatives and breach by any Representative of the Recipient shall be deemed as breach of this Agreement by the Recipient. For the purposes of this Agreement, the term “**Affiliate**” shall mean, with respect to the Recipient, any person or entity who is directly or indirectly Controlling, or is Controlled by, or is under the direct common Control of the Recipient and the term “**Control**” means a person who has the power to direct the management and policies of any person or entity, directly or indirectly, whether by ownership of voting securities, board control, by contract or otherwise. The terms “**Controlling**” and “**Controlled by**” or “**under common Control**” shall have corresponding meanings;
- (v) it shall use the same degree of care to protect the Confidential Information as the Recipient uses to protect its own confidential information but no less than a reasonable degree of care to prevent the unauthorised access, use, dissemination, copying, theft and/or republication of the Confidential Information;
- (vi) it shall at no time, discuss with any person, the Confidential Information or any other matter in connection with, or arising out of, the discussions or negotiations in relation to the Purpose (other than to the extent permitted hereunder);
- (vii) it shall immediately, upon the earlier of (a) the conclusion of the Purpose; or (b) termination of this Agreement as per Clause 10 below; or (c) a notification by the Disclosing Party, surrender and return to the Disclosing Party, all Confidential Information and any notes, memoranda or the like, including any copies or reproductions in its possession, or destroy the same in accordance with the directives of the Disclosing Party, in each case, except to the extent, retention of such Confidential Information is required under applicable law, provided that the Recipient in these cases, shall notify the Disclosing Party of the information that has been retained as a result of such applicable law along with the corresponding details of the applicable law which warranted such retention;

- (viii) it shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement or its proposal to prepare/ submit the Resolution Plan or contents of Resolution Plan in any manner nor advertise or publish the same in any medium, without the prior written consent of the Disclosing Party;
  - (ix) it shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorised third party provided that such notification shall not relieve the Recipient from any liability arising from its breach of this Agreement;
  - (x) it shall protect against any unauthorised disclosure or use, any Confidential Information of the Company that it may have access to in any manner.
3. The Recipient shall not be liable for disclosure or use of the Confidential Information in the event and to the extent that such Confidential Information:
- (i) is or becomes available to the public domain without breach of this Agreement by the Recipient; or
  - (ii) is disclosed with the prior written approval of the Disclosing Party; or
  - (iii) was in the possession of the Recipient prior to its disclosure to them under this Agreement from another source not under any obligation of confidentiality to the provider; or
  - (iv) is disclosed pursuant to any law or a court order or the stock exchange requirement provided that in the event the Recipient is required to make such disclosure pursuant to a court order / stock exchange announcement, then in that case the Recipient shall only disclose the Confidential Information to the extent required and to the extent permissible, promptly notify the Disclosing Party in advance, so that the Disclosing Party has the opportunity to object to such disclosure or discuss the extent of disclosure by the Recipient.
4. The Recipient agrees that the Disclosing Party, by the disclosure of the Confidential Information to the Recipient, does not grant, express or implied, any right or license to use the Confidential Information for any purpose other than the Purpose contemplated under this Agreement or vest any intellectual property rights or legal or beneficial interest in the Confidential Information so disclosed to the Recipient.
5. For the avoidance of doubt, nothing in this Agreement shall compel the Disclosing Party to disclose to the Recipient, any or all the Confidential Information requested by the Recipient and the Disclosing Party shall, at all times during the subsistence of this Agreement, reserve the right to determine, in its sole discretion, whether it shall disclose such Confidential Information (in whole or part).
6. The Disclosing Party makes no representation, warranty or inducement, whether express or implied, as to the accuracy or completeness of the Confidential Information and shall not be liable to the Recipient for any damage arising in any way out of the use of, or termination of the Recipient's right to use the Confidential Information. The Disclosing Party has not verified or audited the information and the information so provided is based on books and records available with the Company. The Disclosing Party does not take any responsibility for any decisions made by Recipient based on the information provided. The Recipient shall exercise its own diligence before making any conclusion or decision.
7. The Recipient acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Recipient further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.
8. The Recipient shall indemnify and hold harmless the Disclosing Party against all losses, damages and liabilities, including but not limited to all legal fees and expenses, arising from or connected with any breach of this Agreement, including but not limited to any gross negligence or willful misconduct in respect of the Confidential Information, by the Recipient and/or its Representatives.
9. The Recipient shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, where a conflict of interest exists with the Company or the Disclosing Party in relation to the corporate insolvency resolution process of the Company.

10. This Agreement shall be effective and shall stay in force for a period of three (3) years from the date first stated above. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 8 above) shall survive the termination of this Agreement.

11. All notices and other communications provided for hereunder shall be: (i) in writing; and (ii) hand - delivered, sent through an overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto or sent by electronic mail, at its address specified below or at such other address as is designated by such party in a written notice to the other parties hereto.

**For Disclosing Party/RP**

Postal Address : \_\_\_\_\_  
: \_\_\_\_\_  
Contact Person : \_\_\_\_\_  
Email : \_\_\_\_\_

**For Recipient/Resolution Applicant**

Postal Address : \_\_\_\_\_  
: \_\_\_\_\_  
Contact Person : \_\_\_\_\_  
Email : \_\_\_\_\_

All such notices and communications shall be effective: (i) if hand-delivered, when delivered; (ii) if sent by courier, (a) one (1) business day after its deposit with an overnight courier if for inland delivery; and (b) 5 (five) calendar days after it deposit with an international courier if for an overseas delivery; and (c) if sent by registered letter, when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not; and (iii) if sent by electronic mail, when actually received in readable form.

12. If any provision of this Agreement is invalid or illegal, then such provision shall be deemed automatically adjusted to conform to the requirements for validity or legality and as so adjusted, shall be deemed a provision of this Agreement as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been included, in either case, the remaining provisions of this Agreement shall remain in full force and effect.

13. No amendments, changes or modifications of any provision of this Agreement shall be valid unless made by a written instrument signed by a duly authorised representative of each of the Parties.

14. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder.

15. Neither Party may assign or transfer its rights or obligations contained in this Agreement or any interest therein without the prior written consent of the other Party.

16. This Agreement shall be governed by and construed in all respects according to the laws of the India and, the Parties hereto agree to submit to the exclusive jurisdiction of the courts of Mumbai.

17. This Agreement comprises the full and complete agreement of the Parties hereto as at the date hereof with respect to the disclosure of Confidential Information and supersedes and cancels all prior communications, understandings and agreements, if any, between the Parties hereto, whether written or oral, expressed or implied.

18. The Disclosing Party acknowledges that, in the ordinary course of business, the Recipient may be engaged

through separate platforms in the origination of loans (including the provision of debt financing for transactions similar to the transactions contemplated herein) and syndicated bank debt, and nothing in this Agreement shall restrict such activities of such other platforms, provided that none of the Confidential Information is used or disclosed in connection therewith and such transactions are not in contravention of the Code or with the corporate insolvency resolution process of the Company.

19. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorised representatives to set their hands the day and year first above written.

Signed by/  
for and on behalf of  
the Disclosing Party/RP

\_\_\_\_\_  
Name:  
Designation:

in the presence of

\_\_\_\_\_  
Name:  
Designation:

Signed by  
for and on behalf of  
the Recipient/Resolution Applicant

\_\_\_\_\_  
Name:  
Designation:

in the presence of

\_\_\_\_\_  
Name:  
Designation:

## ANNEXURE 'E'

### SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI

- (a) Profile of the Prospective Resolution Applicant (PRA) including subsidiary (wholly-owned subsidiary and partly-owned subsidiary if any), promoter and promoter group, parent company and ultimate parent company and key managerial personnel.
- (b) Supporting Documents: Provide documentary evidence in relation to the eligibility criteria including but not limited to the following: -
- copies of Certificate of Registration and Constitutional Documents of the Prospective Resolution Applicant ;
  - copy of GST registration and PAN of the entity(s); with their latest renewals where applicable;
  - For Tangible Net Worth: Immediately preceding 3 (three) years audited financial results of the Prospective Resolution Applicant and/or its promoter/promoter group or any other group company as per the qualification criteria. The latest audited financials shall not be older than 1 year from the date of the advertisement.
- (c) Please note that the applicant shall provide all relevant documents for its promoter/promoter group or any other group company, if required to meet the qualification criteria.
- (d) For all PRAs - Audited financial statements of the PRA for last 3 Financial Year 2016-2017, Financial Year 2017-2018 and Financial Year 2018-19 and most recently concluded Financial Year, and/or its promoter/promoter group or any other group company as per eligibility criteria
- (e) A list of connected persons of the PRAs (including each member of the Consortium), as defined under Section 29A of the Code.
- (f) In case of a Consortium, the relevant documents will need to be provided by each member of the Consortium.
- (g) Any additional document/information asked by Resolution Professional or CoC must be furnished by PRA
- (h) For all PRAs - A notarized declaration from the PRA in order to demonstrate that the promoter/promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that the PRA shall provide all relevant documents for its promoter/promoter group or any other group company, if required to meet the eligibility criteria.
- (i) Statement giving details if the PRA or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.