**FORMAT A**

**EARNEST MONEY DEPOSIT – BANK GUARANTEE**

(*To be on non-judicial stamp paper of appropriate stamp duty value relevant to place of execution*)

To,

Mr. Sanjay Gupta

Liquidator- Topworth Pipes & Tubes Private Limited (In liquidation as Going Concern)

Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

Primus Insolvency Resolution & Valuation Pvt Ltd

C-4-E/135, Janak Puri, New Delhi-110058

and

[Insert Details of the Bank and Address]

WHEREAS

1. [*Insert name of the Bidder*] incorporated in [India]/ [*insert name of country where guarantor is incorporated*] under the [Companies Act, [1956/2013]]/ [*insert name of legislation under which the entity is incorporated*] with corporate identity number [*insert the corporate identity number of the entity*], whose registered office is at [*insert address*] (“**Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR 15.20 crores (Indian Rupees Fifteen Crores and Twenty lakhs Only) in accordance with the terms of the E- Auction Process Information Document dated October 13th, 2020 (“**E-Auction Process Information Document**”) issued by the Liquidator seeking submission of bids for the carrying out the sale of TPTPL under Liquidation as Going Concern.
2. This bank guarantee is required to be issued in favour of TPTPL(“**Beneficiary**”)*,* pursuant to the terms of the E-Auction Process Information Document.
3. We, [*insert name of the bank*] having our registered office at [*insert address*] (“**Bank**”) at the request of the Bidder do hereby undertake to pay to the Beneficiary at Mumbai an amount not exceeding to INR 15.20 crores (Indian Rupees Fifteen Crores and Twenty lakhs Only) to secure the obligations of the Bidder under the E-Auction Process Information Document on demand from the Beneficiary on terms and conditions herein contained.
4. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee (“**Guarantee**”) on behalf of the [*Insert name of the Bidder*] for an amount.
5. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of INR 15.20 crores (Indian Rupees Fifteen Crores and Twenty lakhs Only) [*Insert the amount of Earnest Money Deposit*].
6. This Guarantee shall be valid and binding on the Bank up to and including November \_\_\_\_\_\_\_\_ [*Insert date of validity of* the *Earnest Money Deposit*] with an additional claim period of 30 (thirty) days thereafter and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
7. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Beneficiary.
8. The Bank shall make payment hereunder notwithstanding any objection by [*Insert name of the Bidder*] and / or any other person or any dispute (s) raised by the [*insert name of the Bidder*] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank’s liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
9. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Mumbai shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
10. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
11. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.
12. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank’s consent and without affecting in any manner the Bank’s obligations under this Guarantee, from time to time:
	1. Vary and/or modify any of the terms of the E-Auction Process Information Document;
	2. Extend and/or postpone the time of performance of the obligations of the Bidder under the E-Auction Process Information Document; or
	3. Forbear or enforce any rights exercisable by the Beneficiary against the Bidder under the terms of the E-Auction Process Information Document.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

1. The Bank hereby agrees and acknowledges that the Beneficiary shall have a right to invoke this Guarantee either in part or in full, as it may deem fit.
2. Our liability under this Guarantee is restricted to INR 15.20 crores (Indian Rupees Fifteen Crores and Twenty lakhs Only) and it shall remain in force until November \_\_\_\_\_, 2020 [*Insert Earnest Deposit Validity Date*], with an additional claim period of 30 (thirty) days thereafter.
3. Failure to re-issue or extend this Guarantee in accordance with Clauses stated above shall entitle the Beneficiary to invoke this Guarantee.

In witness whereof the Bank, through its authorised officer, has set its hand and stamp on this day of at .

Signature of the Bank Official:

Name of the Bank Official:

Designation with Bank Stamp

**Witness**

1. Name and Address

2. Name and Address

Attorney as per power of attorney No.

For:

 [Insert Name of the Bank]

Banker’s Stamp and Full Address:

Dated this day of 2020

Notes:

The Stamp paper should be in the name of the Bank

**FORMAT B**

**EARNEST MONEY DEPOSIT PAYMENT BY AN ASSOCIATE COMPANY/ASSOCIATE**

*(on the letterhead of an Associate Company / Associate)*

To,

Mr. Sanjay Gupta

Liquidator- Topworth Pipes & Tubes Private Limited (In liquidation as Going Concern)

Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

Primus Insolvency Resolution & Valuation Pvt Ltd

C-4-E/135, Janak Puri, New Delhi-110058

[Copy to:]

[Insert name of the Bidder with address]

Dear Sir,

**Sub**: Payment of the amounts of EMD on behalf of the Bidder in relation to the E-Auction of TPTPL(“**Company**”) as a sale of Company on a going concern basis as per IBC and Liquidation Process Regulations.

In light of the Bid for TPTPL submitted by [Insert name of the Bidder with address] in accordance with and subject to the provisions of the E-Auction Process Information Document dated October 13th, 2020 in relation to the captioned transaction ("**E-Auction Process Information Document"**), issued by the Liquidator, [Insert name and address of the Associate/Associate Company and address of the head office] hereby declares and confirms it is [an/the] [Insert relationship of the Associate/Associate Company with the Bidder] of the Bidder ("**Associate**/**Associate Company**"), and the payment of the EMD vide [Insert mode of payment] ("**Payment**") is on behalf of the Bidder. The Associate Company acknowledges that such amounts paid as EMD shall be subject to the terms of the E-Auction Process Information Document and hereby waives any right to claim any refund or adjustment of the amounts of such payment except in accordance with the terms of the E-Auction Process Information Document.

The Associate/Associate Company hereby represents and warrants that payment of amounts on behalf of the Bidder is in compliance with Applicable Law.

Capitalized terms used but not defined in this letter shall have the meanings ascribed to such terms in the E-Auction Process Information Document.

Yours sincerely,

[Signature and name of the Authorised Officer of the Associate/ Associate Company] Rubber stamp/ seal of the Associate/Associate Company

**ACKNOWLEDGMENT**

We hereby acknowledge and confirm the statements set out above by the Associate/Associate Company.

Yours sincerely,

[Signature and name of the Authorised Officer of the Bidder] Rubber stamp/seal of the Bidder

# ANNEXURE-I: AFFIDAVIT AND UNDERTAKING

*(To be notarised on Rs 100/- stamp paper)*

Date:

To,

Mr. Sanjay Gupta

Liquidator- Topworth Pipes & Tubes Private Limited (In liquidation as Going Concern)

Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

Primus Insolvency Resolution & Valuation Pvt Ltd

C-4-E/135, Janak Puri, New Delhi-110058

**Sub**: Disclosure and Undertaking on eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016

Dear Sir,

1. I hereby submit this declaration under Section 29A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and further amendments thereto:

I have understood the provisions of Section 29A of IBC and confirm that I am eligible to submit my bid under section 29A of IBC. I confirm that in accordance with the provisions of section 29 A of IBC, inter-alia, neither [XYZ Limited nor any person acting jointly with XYZ Limited or any person who is a promoter or in the management or control of XYZ Limited or any person acting jointly with XYZ Limited:

1. Is an un-discharged insolvent;
2. Is a willful 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 Bid, 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 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;
4. Has been convicted for any offence punishable with imprisonment – (i) for two years or more under any Act specified under the Twelfth Schedule; 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 the Companies Act, 2013;
6. Is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
7. Has been a promoter or in the management or control of a corporate debtor 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 this IBC;
8. Has executed an enforceable guarantee in favour 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 IBC;
9. Has been subject to any disability, corresponding to clauses (a) to (h) of Section 29A, under any law in a jurisdiction outside India; or
10. Has a connected person (as defined in Explanation to Section 29A) who is ineligible under clauses (a) to (i) of Section 29A of IBC.

I, therefore, confirm that XYZ Limited is eligible under Section 29A of IBC submit its Bid for TPTPL– In Liquidation as Going concern.

1. I undertake on behalf of XYZ Limited, that during the Liquidation Process, no person who would be considered as Connected Person as is not eligible to submit resolution plan under Section 29A of Insolvency and Bankruptcy Code, 2016 and the regulation 38 of IBBI (Insolvency Resolution Process of Corporate Persons) regulations, 2016 shall be engaged in the management and control of the corporate debtor.
2. I declare and undertake that in case XYZ Limited becomes ineligible at any stage during the Liquidation Process, it would inform the Liquidator forthwith on becoming ineligible.
3. I also undertake that in case XYZ Limited becomes ineligible at any time after submission of EMD, then the EMD would be forfeited and the same would be deposited in the account of TPTPL– in liquidation.
4. I confirm that the said declaration and disclosure is true and correct and the undefined legal terms in this undertaking shall have the same meaning as ascribed to them under IBC and regulations thereunder.
5. I am duly authorized to submit this declaration by virtue of [*Insert the details of the corporate authorisations*]

(DEPONENT)

VERIFICATION

I, the deponent above, do hereby solemnly declare and affirm that the above statement given by me is true and correct to the best of my knowledge and belief and nothing stated above is false or misrepresentation or misleading.

(DEPONENT)

**ANNEXURE II**

**BID APPLICATION FORM**

*(Please fill up separate Bid application form)*

Date:

Mr. Sanjay Gupta

Liquidator- Topworth Pipes & Tubes Private Limited (In liquidation as Going Concern)

Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

Primus Insolvency Resolution & Valuation Pvt Ltd

C-4-E/135, Janak Puri, New Delhi-110058

Dear Sir,

I am desirous in participating in the E-Auction Process of TPTPL(under liquidation as going concern) announced by you on September 25, 2020 in newspaper(s) The Economic Times (All India Edition), Financial Express (All India Edition) and Jansatta (Mumbai Edition). The Details of the Company for the purposes of remittance of payment is as follows:

|  |  |
| --- | --- |
| **Account Number**  | 1232002100047770 |
| Guarantee Beneficiary Name  | Topworth Pipes & Tubes Pvt Ltd in Liquidation |
| Bank Name  | Punjab National Bank |
| Branch Address | Foreshore road, 102-105 1ST FLOOR, RAHEJA CHAMBERS, FREE PRESS MARG, NARIMAN POINT MUMBAI- 400021 |
| IFSC Code  | [**PUNB0123200**](https://banksifsccode.com/PUNB0123200/) |

The Details of the Bidder is as follows:

|  |  |
| --- | --- |
| Name |  |
| Constitution of the Bidder |  |
| Contact No. |  |
| Email ID |  |
| PAN No. |  |
| Address |  |
| Details against EMD |  |

I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and arrange with the auction portals for issue of an ID and password for us to enable us to take part in the E-Auction.

Place: On behalf of the Bidder

Date:

**Terms and Conditions of the E-Auction are as under:**

In addition to the E-Auction Process Information Document, following terms and conditions apply:

1. E-Auction is being held on “**AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS**” and will be conducted “Online”. The E-Auction will be conducted through the approved service provider, which shall be published on the website [www.primusresolution.in](http://www.primusresolution.in). E-Auction Process Information Document containing Bid Documents will be available at the website / link of the E-Auction Service Provider, which shall be published on the website www.primusresolutions.in. Interested bidders can register, bid and receive confirmation of their bid online. The requisition of additional information, if any, be sent to topworth@primusresolutions.in with a copy to sanjay@sgaindia.in disclosing the identity of the interested Bidder.
2. The Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/ affecting the assets of the Company and should conduct their own due diligence prior to submitting their Bid. The e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The Company is proposed to be sold on a going concern basis with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third- party claims/ rights/ dues.
3. The Bidders should submit the evidence for EMD deposit like UTR number along with the request letter for participation in E-Auction as follows:
	1. In case of individuals: (a) Proof of identification (KYC) viz. Voter ID card/ Driving License/ Passport etc., (b) Current Address-Proof for communication, (c) PAN card of Bidder, (d) Valid Email ID, (e) contact number (Mobile/Landline) (f) and all other relevant documentation in relation to the bidding process.
	2. In case the Bidder is a Company/Entity: (a) Copy of original authorization letter at company letter head, in the name of the individual authorized to collect Letter of Intent on behalf of the company; (b) Copy of ID Proof of the authorized representative like AADHAR/Passport etc; (c) Copy of PAN Card of the Company; (d) Copy of Memorandum and Articles of Association of the company; and (e) All relevant documentation related to the E-Auction Process to the office of the Liquidator by October 31st, 2020. Scanned copies of the original of these documents can also be submitted to the email of the Liquidator at topworth@primusresolutions.in
	3. At the time of delivery, the authorized person would have to show the original documents of: (i) Original authorization letter of the Company; (ii) Original ID Proof of the authorized representative/ Individual appearing like AADHAR/Passport etc and Original PAN Card of the Company/ Individual.
4. The Liquidator will provide User ID & Password after due verification of requisite documents submitted by the Interested Bidders as stated herein to the satisfaction of the Liquidator.
5. It should be the responsibility of the Prospective/Interested Bidders to inspect and satisfy themselves about the assets of the Company / Company before submission of the Bid.
6. Liquidator has right to demand any additional documents from the Bidder for the E- Auction Process. In case such additional documents are not provided by the Bidder, the Liquidator in his own discretion may disqualify the Bid.
7. The E-Auction of the Company would be conducted on November 2nd , 2020.
8. The EMD of unsuccessful bidders shall be refunded within seven days from the date of E- Auction. The EMD shall not bear any interest.
9. In case of the Successful Bidders, the EMD in cash may be adjusted towards the balance sale consideration. The EMD shall not bear any interest.
10. The Liquidator will intimate through mail to the Successful Bidder, detailing the total payable amount for consummating the sale of the Company and other terms and conditions. The Successful Bidder would have to pay the balance sale consideration amount less EMD for the sale of the Company within time stipulated in this E- Auction Process Information Document. Any default in payment of the bid amount by the Successful Bidder would entail forfeiture of EMD already deposited the Company shall be put to re-auction and the defaulting Bidder shall have no claim / right in respect of Company / amount paid whatsoever.
11. The Successful Bidder shall bear the applicable stamp duties/ additional stamp duty / transfer charges, fee, taxes, Good and Services Tax, etc. and also all the statutory/ non statutory dues, taxes, rates assessment charges fees etc. owning to anybody.
12. The Liquidator is not bound to accept the highest offer or and has the absolute right to accept or reject any or all offer(s) or adjourn / postpone/ cancel the E-Auction or withdraw from the e-auction proceedings at any stage without assigning any reason there for.
13. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder(s) only and will not be issued in any other name(s).
14. The sale of the Company as contemplated under this document shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016 read with amendments and rules/ regulations made thereunder.
15. The Bidder may submit his offer as per the process specified in the E-Auction Process Information Document.
16. The decision of the Liquidator on declaration of Successful Bidder shall be final and binding on all the Bidders.
17. The Bidders are required to keep themselves updated for any revisions in the terms and conditions of E-Auction by regularly visiting the links and website addresses of the Company as mentioned in this E-Auction Process Information Document.

 *-sd-*

Date: 13.10.2020 **Sanjay Gupta**

Place: New Delhi Liquidator-Topworth Pipes and Tubes Pvt Ltd

IBBI Regn. No: IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

**Communication Address & Email ID:**

Topworth Pipes and Tubes Pvt Ltd (in liquidation)

C-4-E/135 Janak Puri, New Delhi 110058

Email Id- topworth@primusresolutions.in

*(Mr. Sanjay Gupta is a Registered Insolvency Professional with Insolvency and Bankruptcy Board of India (“****IBBI****”). His Registration number is IBBI/IPA-002/IP-N00982-C01/2017-2018/10354*

*Mr. Sanjay Gupta has been appointed as a Liquidator of TPTPL by NCLT, Mumbai Bench, vide its order dated June 12th, 2020 published on June 15th, 2020 at NCLT website. The affairs, business and property of TPTPL(in Liquidation as Going Concern) are being managed by the Liquidator, Mr. Sanjay Gupta who acts as agent of TPTPL(in Liquidation as Going Concern) only and without personal liability.)*

**ANNEXURE III**

**BID DECLARATION FORM/ DECLARATION BY BIDDERS**

To,

Mr. Sanjay Gupta

Liquidator- Topworth Pipes & Tubes Private Limited (In liquidation as Going Concern)

Registration No. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354

Primus Insolvency Resolution & Valuation Pvt Ltd

C-4-E/135, Janak Puri, New Delhi-110058

Dear Sir,

1. I / We, the Bidder (s) aforesaid do hereby state that, I / We have read the entire terms and conditions for the sale of the Company as going concern basis as specified in the Public Advertisement and E-Auction Process Information Document and have understood them fully. I/We hereby unconditionally agree to confirm with and to be bound by the said terms and conditions of the Public Advertisement and E-Auction Process Information Document and agree to take part in the E-Auction Process.
2. I / We declare that the Earnest Money Deposit/EMD and documents submitted in relation to the Eligibility Criteria as specified in the E-Auction Process Information Document and that the particulars of remittance and all other information given by me/us in the form is true and correct.
3. I / We further understand and agree that if any of the statement / information revealed by me / us is found to be incorrect and / or untrue, the Bid submitted by me / us is liable to be cancelled and in such case, the EMD and / or any monies paid by me / us is liable to be forfeited by the Liquidator and the Seller will be at liberty to annul the offer made to me/us at any point of time.
4. I / We also agree that after my /our offer given in my /our Bid in relation to the sale of the Company as contemplated under the E-Auction Process Information Document, is accepted by the Liquidator and if, I / We, fail to accept or act upon the terms and conditions of the sale or am / are not able to complete the transaction within the time limit specified under the E-Auction Process Information Document or the Liquidation Process Regulations for any reason whatsoever and /or fail to fulfil any / all the terms and conditions of the E- Auction and letter of intent, the EMD and other monies paid by me / us along with the form and thereafter, are liable to be forfeited along with other deviations pertaining to forfeiture of EMD as specified in the E-Auction Process Information Document. The timeline for payment of final sale consideration may be extended by sole discretion of Liquidator and as per the Liquidation Process Regulations, to the extent permissible under the Applicable Law(s).

In case final sale consideration is not paid within timeline stated in the Liquidation Process Regulations, the Liquidator shall forfeit EMD.

1. I / We understand that the EMD of all Bidders shall be retained by the Liquidator and returned only after the successful conclusion of the sale of the Company. I / We, state that I / We, have fully understood the terms and conditions therein and agree to be bound by the same.
2. I / We confirm that our participation in the E-Auction Process, submission of Bid or the sale of the Company, pursuant to the provisions of the E-Auction Process Information Document will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any Applicable Law; or (iii) any authorization or approval of any government agency or body; or (iv) any judgement, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me / us; or (v) any agreement to which I am / we are a party or by which I am / We are bound.
3. I/ We understand that I/We shall be responsible for fully satisfying ourselves with the requirements of the IBC and the related regulations as well as all Applicable Law(s) that are relevant for the E-Auction Process and consummating the sale of the Company on going concern basis. I/We shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law(s) for consummation of sale of Company on going concern basis in accordance with the provisions of IBC and Liquidation Process Regulations.
4. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to us shall be binding on me/us.
5. I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement(s) on correction of and / or additions or deletions to the time of auction portal being offered for sale.
6. I/We confirm that the Liquidator and his employees, shall not be liable and responsible in any manner whatsoever for my/our failure to access and Bid on the E-Auction portal due to any unforeseen circumstances etc. before or during the E-Auction event.
7. I/We hereby confirm that I/we are eligible to submit our Bid in relation to sale of the Company as a going concern under Section 29A of the Insolvency and Bankruptcy Code, 2016 read with subsequent amendments thereto.
8. The capitalized terms not defined in this Bid Declaration Form and phrase “sale of the Company” shall have the same meaning as ascribed to it in the E-Auction Process Information Document.

(Signature with SEAL) Name:

Address:

Email:

**ANNEXURE IV**

**TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE**

1. Intending bidders shall have a valid e-mail ID, valid PAN Card and know your customer documents to register with the E - Auction Service Provider.
2. Bidders have to register themselves with the E-Auction Service Provider.
3. Only upon verification of the online form and confirmation of remittance of EMD will the Qualified Bidders be declared and thereafter, permitted to access the Platform for bidding for the Company.
4. The Bidder shall be solely responsible for all consequences arising out of the Bid submitted by him (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the agency/ the Liquidator. Hence, Bidders are cautioned to be careful to check their bid amount(s) and alter/rectify their Bid if required before confirming the Bid submitted.
5. Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone to safeguard its secrecy.
6. Bidders are advised to change the password immediately on receipt thereof.
7. The Affidavit and Undertaking and Bid Declaration Form by the Bidders as per the formats substantially provided in Annexure I and III respectively of the E- Auction Process Information Document be executed by the Bidders in accordance with Applicable Law(s) and it must be in issued in accordance with the constitutional documents of the Bidder, if applicable, after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the Bid Declaration Form by the Bidders. In case of Bidder being an individual, the declaration must be personally signed by the Bidder. In case the Bidder is not an individual, the declaration must be signed by a person who is in full time employment of the Bidder and duly authorized to sign the same.
8. All the aforementioned documents are required to be uploaded on the portal and the original physical copies thereof shall be provided by the Successful Bidder to the Liquidator in accordance with the E- Auction Process Information Document.
9. All Bid(s) placed are legally valid bids and are to be considered as bids from the Bidder himself. Once the Bid is placed, the Bidder cannot reduce or withdraw the Bid for whatever reason. If done so, the EMD deposited by the Bidder shall be forfeited.
10. The highest Bid on the E-Auction date shall supersede all the previous bids of the respective Bidders. The Bidder with the highest offer/ bid does not get any right to demand for acceptance of his Bid.
11. After the conclusion of the E-Auction of the Company, the Successful Bidder shall be informed through a message generated automatically by the portal, of the outcome of the E-Auction. A separate intimation shall also be sent to the Successful Bidder. The date of sending of the e-mail intimating the Successful Bidder shall be considered as the date of receipt of the Intimation i.e. date of intimation.
12. Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/ power failure at the Bidder's end. To avoid losing out on bidding because of above- mentioned reasons, it is advised not to wait for the last moment. The Bidders are required to keep themselves updated with any revised terms and conditions of E-Auction by regularly visiting the links of the auction portal and website of the Company as mentioned in this E- Auction Process Information Document.

#

# ANNEXURE V

# CONFIDENTIALITY UNDERTAKING

# *(on Rs 100/- stamp paper)*

This Confidentiality Undertaking has been signed by (**Name of potential Bidders**) having its office at acting through Mr. (**Name of person authorised by potential Bidder(s)**), the authorized signatory/authorized representative (“**Bidder**”), which expression shall, unless repugnant to the context, be deemed to include its successors, assigns or legal representative) in favour of Mr. Sanjay Gupta, an Insolvency Professional having registration no. IBBI/IPA-002/IP-N00982-C01/2017-2018/10354.

WHEREAS M/s TPTPL, a company registered under Companies, Act, 1956 (thereafter referred as the “**Company**”) is undergoing liquidation vide NCLT Mumbai Bench (“**NCLT**”) order dated June 12, 2020, published on June 15, 2020 at NCLT website. Vide the said NCLT Order Mr. Sanjay Gupta, a registered insolvency professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-002/IP-N00982-C01/2017-2018/10354 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of TPTPL(in liquidation as Going Concern) (“**Liquidator**”).

WHEREAS the Liquidator has invited prospective Bidders for the purpose of submission of Bid through E-Auction Process in respect of sale of the Company in accordance with the provisions of E-Auction Process Information Document and provisions of Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Process Regulations**”).

WHEREAS the Liquidator is required to share certain data, documents in relation to the Company for facilitating the prospective Bidder(s) in their due diligence after receiving an undertaking from each of the potential Bidder(s) to the effect that such member shall maintain confidentiality of the information received from the data room and during the course of due diligence and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under IBC and Liquidation Process Regulations.

**THEREFORE, the Bidder (s) hereby declare(s) and undertake(s) as follows:**

1. The Bidder(s) shall not divulge any part of the information contained accessed through the data room which shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company (“**Data Room**”) or any other data shared by the Liquidator, through oral or written communication or through any mode to anyone and the same shall constitute “**Confidential Information**”. Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall also be deemed as Confidential Information.
2. The Bidder (s) further unconditionally and irrevocably undertake and declare that:
	1. the Confidential Information shall be kept secret and confidential by the Bidder (s) and shall be used solely in accordance with the terms of the IBC;
	2. the Bidder(s) shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Company, Liquidator or any other person;
	3. the Bidder(s) shall comply with all provisions of Applicable Law(s) for the time being in force relating to confidentiality and insider trading;
	4. the Bidder (s) shall protect any intellectual property of the Company which it may have access to;
	5. the Confidential Information may only be disclosed to and shared with any employees or its advisors by the Bidder(s), in accordance with Applicable Law(s), including in relation to confidentiality and insider trading, and terms of this Confidentiality Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the liquidation process of the Company, provided that the Bidder binds such employees and third parties, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this Confidentiality Undertaking.
	6. the Bidder(s) shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, any theft or leakage;
	7. the Bidder(s) shall immediately destroy and permanently erase all Confidential Information upon the completion of sale of the Company as provided under E-Auction Process Information Document and the Liquidation Process Regulations;
	8. the Bidder(s) shall take all necessary steps to safeguard the privacy and confidentiality of the information received through the access of the Data Room and shall use its best endeavours to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Company, all information related to disputes by or against the Company and other matter pertaining to the Company; and
	9. the Bidder(s) shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any employee or advisor or agent or director of the Bidder) and shall indemnify the Liquidator for any loss, damages, expenses and costs incurred by the Liquidator due to such breach of such obligations by the Bidder (s) or any person acting on its behalf.
3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
	1. information which, at the time of disclosure to the Bidder(s) was already in the public domain without violation of any provisions of Applicable Law(s); or
	2. information which, after disclosure to the Bidder(s) becomes publicly available and accessible without violation of Applicable Law(s) or a breach of this Confidentiality Undertaking; or
	3. information which was, lawfully and without any breach of this Confidentiality Undertaking, in the possession of the Bidder (s) prior to its disclosure, as evidenced by the records of the Bidder(s).
4. The Bidder(s) hereby expressly agrees and acknowledges that the Liquidator makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness, authenticity or adequacy of the information (including but not limited to the Confidential Information) provided to the Bidder(s) in the E-Auction Process Information Document/ Data Room. The Bidder(s) further agrees and acknowledges that the Liquidator shall not be liable to the Bidder(s) for any damage arising in any way out of the use of the Confidential Information and further that the Bidder(s) shall not have any claim against the Liquidator or the Company in relation to any information provided.
5. The terms of this Confidentiality Undertaking may be modified or waived only by a separate instrument in writing signed by the Bidder(s) and the Liquidator that expressly modifies or waives any such term.
6. Damages may not be an adequate remedy for a breach of this Confidentiality Undertaking and either party may be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this Confidentiality Undertaking.
7. Nothing in this Confidentiality Undertaking shall have the effect of limiting or restricting the liability of the Bidder(s) arising as a result of its fraud or wilful default as defined under Applicable Law(s).
8. The undersigned hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this Confidentiality Undertaking.
9. This Confidentiality Undertaking and any dispute, claim or obligation arising out of or about it shall be governed by and construed in accordance with Indian laws and the courts and tribunal of Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.
10. Capitalised terms not defined under this Confidentiality Undertaking shall have the same meaning as provided in the E-Auction Process Information Document.

I further declare that I, the undersigned have full knowledge of the contents provided in this undertaking and have absolute authority to sign this undertaking on behalf of [*insert the name of the Bidder* (s)].

Signed on behalf of

(Name of Bidder(s))

by Mr. (Name and Designation) Authorised Signatory

Date:

Place:

*Note- In case of consortium, undertaking to be executed by each of the members*

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