

DEED OF CONFIDENTIALITY UNDERTAKING

This **DEED OF CONFIDENTIALITY UNDERTAKING** is made on this _____ day of _____, 2007 BY _____, a company incorporated under the laws of _____, with its registered office at _____ (hereinafter referred to as the "**Lead Consortium Member**" in the case of a consortium bid or "**Bidder**" in the case of a single party bid) and

_____, a company incorporated under the laws of _____, with its registered office at _____; (hereinafter referred to as the "**Consortium Member**")

[In case of a consortium the term "**Bidder**" means collectively the Lead Consortium Member and the Consortium Members unless the context otherwise requires reference to only the Lead Consortium Member or the Consortium Member(s)]

IN FAVOUR OF:

The GOVERNOR of the State of Orissa, represented by and acting through the Deputy Secretary to the Government, Department of Public Enterprises ("the Government")

AND

-----(**Name of the Advisor**) with its office at -----

WHEREAS the Bidder has been registered for participation in the proposed sale by the Government of% shareholding in ----- ("**COMPANY NAME**") (such proposed transaction hereinafter referred to as the "**Transaction**");

AND WHEREAS in the context of the Bidder's interest in the Transaction, the Disclosing Party may disclose Confidential Information (as defined below) to the Receiving Party (as defined below) to enable the Bidder to evaluate the Transaction.

NOW THEREFORE in consideration for receiving the Confidential Information, the Bidder hereby executes this Undertaking and agrees to the terms and conditions contained herein:

1. In this Undertaking (including the recitals) the following words as defined hereunder shall have the respective meaning given to them below:

"Confidential Information" means and includes any and all information, whether written, oral or otherwise, concerning the business, operations, prospects, finances, or other affairs of ----- ("**COMPANY NAME**"), its affiliates, associates or subsidiaries (which includes, without limitation, documents delivered in connection with a due diligence investigation, product specifications, data, know-how, compositions, designs, sketches, photographs, graphs, drawings, past, current, and planned research and development, current and planned marketing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, computer software and programs, database technologies, systems, structures and architectures, historical financial statements, business plans, financial projections and budgets, historical and projected sales, capital spending budgets and plans, current or prospective financing sources, the names and backgrounds of personnel, personnel training techniques and materials), and any Confidential Information Memorandum, Bid Document, draft of share purchase agreement and share holders agreement or other documents and materials prepared in connection with the Transaction, however such information is documented, that has been or may hereafter be provided, made available or shown to the Receiving Party by the Disclosing Party or is otherwise obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party by the Receiving Party irrespective of the form of the communication or reproduction or storage, and also

includes all notes, analyses, compilations, studies, summaries, and other material prepared by the Receiving Party containing or based, in whole or in part, on any information included in the foregoing.

Notwithstanding the foregoing, the following information will not constitute "Confidential Information" for purposes of this Undertaking:

- (a) Information which the Bidder can prove was already in its possession and was available with the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Disclosing Party;
- (b) Information which is obtained by the Receiving Party from a third Person who, insofar as is known to the Receiving Party, is not prohibited from disclosing the information to the Receiving Party under a contractual, legal or fiduciary obligation to the Disclosing Party; and
- (c) Information which is or becomes generally available to the public otherwise than as a result of a breach of this Undertaking by the Receiving Party.

"Disclosing Party" means the Government of Orissa, other Governmental Authority of Orissa Government, (Name of the Advisor), "COMPANY NAME" and / or their respective Representatives.

"Governmental Authority" means any governmental or regulatory/statutory authority, any department of government of India or the State of Orissa or their respective Representatives.

"Receiving Party" means the Lead Consortium Member, Consortium Members, and/or Bidder and / or their respective Representatives.

"Representative(s)" of any Person includes the directors, officers, employees, agents, consultants, advisors, or other representatives, including legal counsel, accountants and financial advisors of such Person and also includes the Representatives of the Representatives of any Person

"Person" shall mean any individual, company, firm, association, trust, or any other organisation or entity, including any governmental or political subdivision, ministry, department, or agency thereof.

- 2. The Confidential Information divulged by the Disclosing Party to the Receiving Party, or acquired by the Receiving Party in the course of any studies conducted by the Receiving Party, will be received and treated by the Receiving Party as strictly confidential and the Receiving Party shall not, without the Government's, prior written consent or as expressly permitted herein, disclose to any other Person, or use or allow others to disclose or use, the Confidential Information.
- 3. The Receiving Party will use the Confidential Information only to evaluate the Transaction and to decide whether or not the Bidder wishes to proceed with the Transaction and the Receiving Party will not use the Confidential Information for any other purpose or in any way detrimental to the Disclosing Party.
- 4. (I) In consideration of the Disclosing Party providing the Receiving Party with Confidential Information, the Bidder by execution of this Undertaking agrees on behalf of the Receiving Party, that all of the Confidential Information shall be held and treated by the Receiving Party in confidence. The Bidder agrees:
 - (A) to disclose Confidential Information only to those of its Representatives who need to know the Confidential Information for the purposes of an evaluation of the Transaction

and each such Representative of the Bidder will be informed and advised by the Bidder of the confidential nature of such information and the obligations of this Undertaking and

- (B) the Bidder shall satisfy itself that each such Representatives of the Bidder will hold and treat the Confidential Information in confidence and act in accordance therewith. The Bidder agrees that the Confidential Information shall not, without the Government's prior written consent be disclosed by the Bidder or Representative of the Bidder, in any manner whatsoever, in whole or in part, to any third Person, and shall not be used by the Bidder or Representative of the Bidder other than in connection with an evaluation of the Transaction.
 - (II) At the Government's, or -----(Name of the Advisor) request, the Bidder shall procure from its Representatives a written confidentiality agreement or undertaking in the same form as this Undertaking with confidentiality and other obligations no less restrictive than those contained herein, and the Representative of the Bidder shall undertake to treat the Confidential Information in accordance with the terms of this Undertaking.
 - (III) Notwithstanding any such agreement or undertaking, the Bidder agrees that it shall continue to be responsible and liable for any breach of this Undertaking by any of its Representatives and shall indemnify and hold Government, ----- ("COMPANY NAME") and ----- (Name of the Advisor) harmless (including in accordance with clause 13 set forth below) from any breach of this Undertaking.
5. Except as permitted by clause 4 and except as expressly permitted by a definitive share purchase agreement and shareholders Agreement, entered into by the Bidder for the acquisition of shares of -----("COMPANY NAME"), the Receiving Party will not disclose to any Person (including another prospective purchaser who has been provided Confidential Information) the "company name" that the Confidential Information has been made available to the Receiving Party or that the Receiving Party have inspected any portion of the Confidential Information. Except with the prior written consent of the Government, and except as expressly permitted by a definitive share purchase agreement and shareholders agreement, if any, entered into by the Bidder for the acquisition of shares of ----- ("COMPANY NAME") the Receiving Party will not disclose to any Person the "company name" that any discussions or negotiations are taking place concerning the Transaction, including the status of such discussions or negotiations.
6. On acquiring the Confidential Information on the terms stated in this Undertaking or otherwise, the Receiving Party shall comply with all laws applicable to the transactions and the Bidder shall indemnify and hold Government, -----("COMPANY NAME") and -----(Name of the Advisor) harmless (including in accordance with clause 13 set forth below) against any consequences arising from any violation by the Receiving Party of such laws.
- 7.(I) If the Receiving Party is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory/statutory body to make any disclosure that is prohibited or otherwise constrained by this Undertaking, the Receiving Party will provide -----(Name of the Advisor) , Government, and -----("COMPANY NAME") with prompt written notice of such request so that ----- (Name of the Advisor), Government, and/or ----- ("COMPANY NAME") may seek an appropriate protective order or other appropriate remedy.
- (II) Subject to the foregoing, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of the Bidder's counsel reasonably

acceptable to (Name of the Advisor), Government, and -
----- ("COMPANY NAME"), the Bidder is legally compelled or is otherwise
required to disclose or else stand liable for contempt or suffer other material censure or
material penalty; provided that the Receiving Party shall use reasonable efforts to obtain
reliable assurance that confidential treatment will be accorded to any Confidential Information
so disclosed.

8. The confidentiality obligations contained in this Undertaking may be amended, modified or
superceded upon the Bidder executing a definitive share purchase agreement and shareholders
agreement for the acquisition of shares of ----- ("COMPANY NAME"), but shall
be without prejudice to any of (Name of the Advisor), the
Government's, and/or ----- ("COMPANY NAME")'s rights in respect of any
breach of this Undertaking which may have occurred prior to such amendment, modification or
supersession. In any other case, the confidentiality obligations herein shall remain in force for a
period of five years from the date hereof.

In case the Bidder or any Consortium member decides not to proceed with the Transaction or if
..... (Name of the Advisor), -----("COMPANY NAME") or
Government disqualify the Bidder from further participation in the Transaction, the provisions of
this Undertaking shall still survive for a period of five years from the date of execution of this
Undertaking.

9. The Government may elect at any time to terminate further access by the Receiving Party to any
Confidential Information required by the Bidder in connection with its evaluation of the
Transaction. The Bidder agrees that after any such termination by the Government or after the
decision not to proceed with the Transaction as specified in clause 8 above

- (i) the Bidder (a) will promptly deliver to the concerned Disclosing Party, all documents or other
materials furnished by such Disclosing Party to the Receiving Party constituting Confidential
Information, together with all copies, extracts and summaries thereof in the possession or
under the control of the Receiving Party, (b) will delete from the Receiving Party's computer
systems all files, data or programmes constituting Confidential Information and (c) will
destroy materials generated by the Receiving Party that include or refer to any part of the
Confidential Information, without retaining a copy of any such material; or
- (ii) alternatively, if (Name of the Advisor) , Government, or "COMPANY
NAME" request or give prior written consent to the Bidder's request, the Bidder will destroy
all documents or other matters (including deleting files, data or programmes from the
computer systems) constituting Confidential Information in the possession or under the
control of the Receiving Party.

Any such destruction pursuant to the foregoing must be confirmed by the Bidder in writing to
each of (Name of the Advisor), Government, and -----
-- ("COMPANY NAME") (such confirmation must include a list of the destroyed and deleted
materials). The Bidder acknowledges that the return of the Confidential Information and the
return or destruction of the Confidential Information shall not release the Receiving Party from its
obligations under this Undertaking.

10. The Receiving Party shall not deal (except in the ordinary course of the business) with any
officer, director or employee of the Government, and -----("COMPANY NAME")
regarding the business, operations, prospects or finances of ----- ("COMPANY
NAME"), without..... (Name of the Advisor) express written consent, unless
otherwise agreed to in an executed share purchase and shareholders agreement entered into in
connection with the Bidder's purchase of shares of -----("COMPANY NAME").
That (Name of the Advisor) will arrange for appropriate
contacts for due diligence purposes in connection with the Transaction. Unless otherwise
agreed to by (Name of the Advisor) in writing (i) all

communications regarding any possible transaction, (ii) any requests for additional information, (iii) any requests for management meetings, and (iv) any queries regarding the Transaction, will be directed exclusively to (Name of the Advisor). If the Receiving Party is called upon by the Government, or ----- (“COMPANY NAME”) for some discussion, the Receiving Party will meet the Government, and / or ----- (“COMPANY NAME”) as the case may be, only after duly informing (Name of the Advisor) in writing.

11. The Government reserves the right, in its sole discretion, to reject any and all proposals made by the Receiving Party with regard to the Transaction and to terminate the negotiations with the Receiving Party at any time. Without limiting the scope of the preceding covenants nothing in this Undertaking (i) requires either the Bidder or the Government to enter into the Transaction or to negotiate such transaction for any specified period of time or (ii) requires(Name of the Advisor), Government, and/or ----- (“COMPANY NAME”) to enter into an agreement or an understanding, or prohibits(Name of the Advisor), Government, and/or “COMPANY NAME” from entering into any agreement or understanding, for proceeding with the Transaction with any other Person.
12. The Bidder understands, acknowledges and agrees that the Government, and ----- (“COMPANY NAME”) retain the right to determine, in their sole discretion, the information, properties and personnel of ----- (“COMPANY NAME”), Government, and/or(Name of the Advisor) that they wish to make available to the Receiving Party and the Disclosing Party does not make any representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information and shall have no liability to the Receiving Party resulting from their use of the Confidential Information. The Bidder also agrees that if it determines to proceed with the Transaction, its determination will be based solely on the terms of a definitive share purchase agreement and shareholders agreement and on its own investigation, analysis, and assessment of its investment and the Transaction. Moreover, unless and until such a definitive written share purchase agreement and shareholders agreement are entered into, neither the Government, nor the Bidder will be under any legal obligation of any kind with respect to the Transaction except for the matters specifically agreed to in this Undertaking or in another written and duly executed agreement.
13. The Bidder agrees to indemnify and hold (Name of the Advisor), Government and ----- (“COMPANY NAME”) harmless from any damages, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by the Receiving Party of the Confidential Information or other violation of this Undertaking. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Undertaking by the Receiving Party and any such breach would cause the Disclosing Party irreparable loss, the Bidder also agrees that, in the event of any breach or threatened breach of this Undertaking,(Name of the Advisor), Government, and/or ----- (“COMPANY NAME”) will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Undertaking but will be in addition to all other remedies available at law or equity to (Name of the Advisor), Government, and/or ----- (“COMPANY NAME”).
14. The Bidder understands, acknowledges and agrees that each of the Government, ----- (“COMPANY NAME”) and(Name of the Advisor) are beneficiaries under this Undertaking. The Bidder further agrees that each of the Government, ----- (“COMPANY NAME”) and (Name of the Advisor) will be entitled to enforce, either individually or jointly, the obligations imposed on the Receiving Party under this Undertaking.

15. The terms of this Undertaking may be varied only with the Government's prior written consent. This Undertaking shall be effective as of the date first above given on the first page of this Undertaking.
16. This Undertaking shall be governed by and construed in accordance with the substantive laws of India without giving effect to its conflict of law principles.
17. All notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by registered airmail, postage prepaid, under certificate of posting or by telex, cable or facsimile as follows:

If the notice is to Government:

The Deputy Secretary
Department of Public Enterprises
Secretariat, BBSR- 751001
Phone; (0674) 2390303
Fax: (0674) 2393281

with a copy to :

**The Chief Executive
Concerned State PSU.**
(Address)

and

The Director
..... (Name of the Advisor)
With Address

If the notice is to (Name of the Advisor)

The Director
..... (Name of the Advisor)

With a copy to:

- 1) **The Deputy Secretary**
Department of Public Enterprises
- 2) **Chief Executive**
Concerned State PSU

If the notice is to -----("COMPANY NAME")

**Chief Executive
Concerned State PSU**

With a copy to:

**The Deputy Secretary to Government
Public Enterprises Department**

and

**The Director
..... (Name of the Advisor)**

Address

If the notice is to the Bidder:

(Name and Address)

(Fax: _____)

(Attn: _____)

Any of the Bidder, the Government, "COMPANY NAME" or (Name of the Advisor) may change its address by a notice given to the other in the manner set forth above. All notices and other communications shall be deemed to have been duly given (i) on the expiry of seven days after posting, if transmitted by registered airmail or (ii) on the date immediately after the date of transmission with confirmed answer back if transmitted by telex, cable or facsimile whichever shall first occur.

IN WITNESS WHEREOF this Undertaking has been executed by the duly authorised representative of the Bidder on the date and year first above written.

Signed by

(Name of Lead Consortium Member)

Name:

Title:

Witnessed by:

1. Name :

Address:

2. Name :

Address:

Signed by

(Name of Consortium Member)

Name:

Title:

Witnessed by:

1. Name :

Address:

2. Name :

Address:

