



**4(2)/2017-DIPAM-I
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF INVESTMENT & PUBLIC ASSET MANAGEMENT**

**Engagement of an Advisor for Strategic Disinvestment in Bridge & Roof Co. (India) Ltd -
Request for Proposal**

1. INTRODUCTION

1.1 Bridge & Roof Co. (India) Ltd. [hereinafter referred to as “the Company”] is a CPSE under the administrative control of Department of Heavy Industry (DHI), Ministry of Heavy Industries and Public Enterprises, Government of India. The Company was incorporated on 16th January, 1920. The Company is an unlisted company and in which 99.35% shareholding is with Government of India and the balance 0.65% holding is with Balmer Lawrie & Co. Ltd.

1.2 The Company is a one-source multi-disciplinary engineering and construction Company. The ongoing business of the Company comprises of Construction, Erection and Commissioning. It has an integrated Work Shop at Howrah, West Bengal, which mainly manufactures Bailey Type Unit Bridges, which are supplied to Border Roads Organisation, Rural Development Department etc. The other products include railway bridge girders, railway wagons, porta-cabins etc.

1.3 The Corporate Office of the Company is located at Kolkata (West Bengal) with Zonal Offices at Delhi, Mumbai and Chennai. The Regional Offices are at Bhubaneswar, Vadodara and Kochi. The Project sites are spread over 137 locations all over the country.

1.4 There are 2225 employees in the company. The website of the company is at <http://www.bridgeroof.co.in>.

2. PROPOSAL

The Government of India (GoI) has ‘in-principle’ decided to disinvest its 99.35% equity in Bridge & Roof Co. (India) Ltd through strategic sale with transfer of management control. The GoI proposes to engage an Advisor from a reputed professional consulting firm, an investment banker or a merchant banker or a financial institution or a bank, for providing advisory services and managing the disinvestment process.

3. SCOPE OF WORK OF THE ADVISOR

3.1 The Advisor will be required to undertake tasks relating to all aspects of the proposed strategic disinvestment culminating into successful completion of the transaction and will, inter alia, include:

- (i) To render advice and assistance to GoI on modalities of disinvestment and the timing;
- (ii) To recommend the need for intermediaries required for the process of disinvestment;
- (iii) To help in identification and selection of the intermediaries with proper Terms of Reference, preparation of all documents like Preliminary Information Memorandum (PIM), Confidential Information Memorandum (CIM), Request for Proposal (RFP), Confidentiality Agreement etc.;
- (iv) To structure the transaction;
- (v) To suggest measures to fetch optimum value;
- (vi) Positioning of the strategic sale;
- (vii) Inviting and evaluating the bids;
- (viii) To assist and professionally guide during the negotiations with prospective buyers;
- (ix) Drawing up of the transaction agreements; and
- (x) To advise on post-sale matters on a continuous basis.

3.2 The Terms of Reference include the following:

- (i) To advise GoI on the modalities and the timing of the strategic disinvestment of B&R Ltd. and to prepare and submit a detailed operational scheme to successfully implement the strategic disinvestment process, indicating tentative timelines for each activity.
- (ii) To prepare the deal collateral for the transaction, including but not limited to:
 - (a) Preliminary Information Memorandum ("PIM") with intent to providing prospective buyers information about B&R Ltd and its business, to enable them to send in their Expression of Interest.
 - (b) Confidential Information Memorandum ("CIM") covering detailed information about B&R Ltd and its business.
- (iii) To advise and assist GoI in identifying and selecting specialized professional intermediaries required for the transaction to be appointed by GoI and coordinate their work.

- (iv) To facilitate execution of Non-Disclosure Agreements (“NDA”) and subsequent communication and providing the bidders with information on the assets and the transaction.
- (v) To finalize the process of strategic disinvestment through bidding/auction etc.
- (vi) To support the Company in setting up of the e-data room and assisting in the smooth conduct of the due diligence process.
- (vii) To position the divestment of GoI equity in the Company to generate interest among the prospective buyers/purchasers/investors.
- (viii) To manage a transparent process of bidding/interest solicitation from potential buyers including:
 - (a) Preparation and issuance of advertisement/RFP etc; and organizing pre-bid meeting(s) and site visit(s);
 - (b) Analysis of and framing/drafting replies to queries of prospective bidders and making necessary modifications, if required, in the bid documents;
 - (c) Invitation and evaluation of bids from prospective purchasers/investors and preparation of requisite documents leading to short listing of bidders for negotiations.
- (ix) To assist GOI in negotiations with shortlisted bidders.
- (x) To assist GoI in fixing the range of the fair reserve price considering the valuation of Bridge & Roof Co. (India) Ltd based on the discounted cash flow, relative valuation, and asset based methods of valuation and highlighting the pros and cons of various methods and also highlighting the fact that many variations of these three valuations exist. While assisting in fixing the reserve price, the report of the Asset Valuer will also be taken into consideration. The GoI will also have the option of getting valuation done from any other agency.
- (xi) Preparation and execution of requisite agreements (share purchase agreement, shareholders’ agreement etc) and all legal documentation required for execution of the transaction on behalf of GoI, on mutually acceptable terms with the successful bidder.
- (xii) To ensure compliance of applicable regulatory requirements including obtaining statutory approvals and clearances, wherever necessary, and coordinating and monitoring the progress of the transaction until its completion.

- (xiii) To assist in closure of the transaction.
- (xiv) To advise on post-sale matters, if any.
- (xv) To provide any other analytical and transactional support required by GoI for successful completion of the transaction.

The ToR mentioned above are indicative and non-restrictive in nature. There might be some other relevant services not expressly captured in the aforesaid Scope of Work, which upon being brought to the notice of the Advisor by GoI, will also form an integral and mandatory part of the ToR.

4. ELIGIBILITY

4.1 The bidder should be a reputed professional consulting firm or an investment banker or a merchant banker or a financial institution or a bank having experience of at least 5 years in providing advisory services for strategic disinvestment or strategic sale or Merger & Acquisition activities or private equity investment transactions.

4.2 Bidders should have advised, handled and successfully completed at least one transaction of strategic disinvestment or strategic sale or Merger & Acquisition activities or private equity investment transaction of the size of Rs. 230 crore (US 33 million dollar) or more during the period 1st January, 2014 to 31st December, 2016.

4.3. The interested parties are required to furnish an Affidavit-cum-Undertaking in the format as in **Annexure-1** regarding 'no conviction' and 'no conflict of interest'.

5. PRE-BID MEETING:

The interested parties are required to send in their queries by e-mail to the Officer authorized to receive the Bid as given in paragraph 6 below. A pre-bid meeting will be held at **3:30 PM on 10/02/2017** in the Conference Hall of DIPAM (Room No. 515, Block 14, CGO Complex, New Delhi). The interested parties may attend the pre-bid meeting, if they so desire.

6. SUBMISSION OF PROPOSAL

6.1 The Proposals are required to be submitted in 3 envelopes in sequence, as per the given directions as under. Each document is to be page numbered.

- (i) Envelope 1 will contain the following:
- (a) Covering letter on the Letter-head of Company/Firm submitting the Bid by enlisting the documents attached, indicating the page number, profile of the organization with full particulars of the constitution, ownership and business activities, together with unabridged Annual Reports or audited financial accounts for the last three years.
 - (b) An authority letter authorizing the person of the bidder to sign the proposal and other documents.
 - (c) A certificate, duly signed by the authorized signatory of the bidder, as per paragraph 4.3.
 - (d) A certificate, duly signed by the authorized signatory of the bidder certifying that in case of appointment, the agreement as per model attached at **Annexure-2** of this RFP would be signed by the bidder.
 - (e) A certificate to the effect that in case any of the members of the deal team indicated in EoI is not available for any reason like resignation, etc. a person of equal qualification and experience would be made available with the approval of DIPAM.
 - (f) A certificate to the effect that the team assigned for the transaction would have one expert each of strategic disinvestment; valuation and drafting of transaction documents. The format of the certificate is given at **Annexure-3**.
 - (g) The bank draft/pay order/digital payment (**to be credited to Govt. Account No. 3466304416, IFSC : SBIN0000625, SBI, Central Secretariat Branch, New Delhi by using Inter Bank RTGS Code R-42**) of Rs. 1,00,000 (Rupees One Lakh only) payable at New Delhi in favor of Pay & Accounts Officers, DIPAM, as non-refundable fee. In case of digital payment, a proof of the same may be attached.
 - (h) A certificate to the effect that the Performance Guarantee of Rs. 5,00,000 (Rupee Five lakh only) by way of bank guarantee which is valid for a period of 2 years from the date of the appointment letter would be provided.
 - (i) A certificate to the effect that the Performance Guarantee would be extended by one more year, if the transaction is not completed within the period of 2 years.

(ii) **Envelope 2 (sealed)** will contain the following:

- (a) The Technical bid alongwith all schedules, certificates and Annexures, duly filled in, page numbered and signed by the authorized signatory of Bidder.
- (b) A Certificate on unconditional bid in the format given at **Annexure-4**.

(iii) Envelope 3 will contain (**sealed**): the Financial bid, in the format at Annexure-5.

Note: Bids with any conditionality shall stand summarily rejected.

6.2 The Proposal should be sent by **1500 hours (IST) on 23rd February, 2017** to Shri Rajpal, Under Secretary, DIPAM, CGO Complex, Block No.11, Room No. 205, 2nd Floor, New

Delhi-110 003. The Proposal must be sent in hard copies only. The Proposals received after the appointed day and time will be summarily rejected. The Government will not be responsible for any postal/ courier delay. For any clarifications or details, the parties are advised to contact the above-mentioned officer on (Tel. 011 - 2436 8531, E-Mail: raj.pal13@nic.in).

6.3 The Government reserves the sole right to accept or reject any or all proposals thus received, without assigning any reasons thereof.

6.4 The Financial Bid will be opened only in respect of those parties, who qualify in the technical evaluation.

7. Format of the Technical Bid

7.1 The technical bid shall be in the following format

Section (A) Strategic Sale Experience in India including merger & acquisition (weightage 15/100)

- (i) Nature of the Transaction handled and which side was represented – buyer or seller.
- (ii) Was the transaction for Government or quasi- government or private sector.
- (iii) The role played in the transaction.
- (iv) Intricacies experienced in the transaction.
- (v) Innovative work done in the transaction.

Section (B) Strategic experience outside India of mergers & acquisitions (weightage 5/100)

- (i) Overall number of transactions handled.
- (ii) Experience of transaction in similar sector.

Section (C) Sector Expertise & understanding of the Company (weightage 15/100)

- (i) Indicate work done in the sector - like studies or research undertaken.
- (ii) Exhibit strength/expertise in the sector, if any.
- (iii) The understanding of the company.

Section (D) Capital Market Understanding (weightage 5/100)

- (i) Overall understanding of Indian capital market.
- (ii) The work done relating to capital market.
- (iii) Is capital market experience relevant in the present case. If yes, how the same is proposed to be handled.

Section (E) Local Presence (weightage 5/100)

- (i) Commitments in India, funds deployed, period of operations.
- (ii) Manpower.
- (iii) Office & other Infrastructure.
- (iv) Deal Team.
- (v) Details of the members of the Deal Team, who have experience of execution of transactions mentioned in 7.1 (A) above.

Section (F) Valuation Methodology (weightage 15/100)

- (i) Understanding of the Valuation Methodologies.
- (ii) To suggest which methodology is the most suitable for the present transaction, with reasons.

Section (G) Marketing Strength (weightage 10/100)

- (i) Exhibit marketing strength.
- (ii) How the marketing strength is going to help in the present case.
- (iii) Proposed strategy for the present case.

Section (H) Transaction Structure (weightage 15/100)

- (i) Proposed structure.
- (ii) The advantages of the proposed structure.
- (iii) The deliverables.
- (iv) The strength in the proposed structure.

Section (I) Deal Team and Manpower Commitment (weightage 15/100)

(i) Details of the core team that would work on the transaction.

(ii) Details of other professionals, who would provide back-up support.

7.2 An undertaking is to be given to the effect that if during the process, any of the core team members is not available due to resignation, leave of absence, etc., another person of the same qualification and experience would be made available with the concurrence of the Government.

8. BID EVALUATION

8.1 The short listed bidders would be required to demonstrate their credentials before an Inter-Ministerial Group (IMG) through a presentation, covering the areas/ criteria listed above, and to bring along 15 copies of the presentation, at the time of presentation. The date, time and venue for the presentation will be intimated in due course.

8.2 The IMG would evaluate the Bidders on the criteria mentioned in paragraph 7 above based on their presentation and Proposals received and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring pre-determined marks/score out of 100, which will be announced before presentation, will be technically short-listed.

8.3 After the short-listing of Bidders based on their presentations, the IMG would open the Financial Bids of only the short-listed Bidders. The short-listed bidders, if so desire, may remain present at the time of opening of the financial bids. The marks scored by the short-listed bidders will be announced before opening of the financial bids.

8.4 The marks scored by the short-listed bidders in the technical evaluation will then be given a weightage of 70. Similarly, the financial bids of the short-listed bidders will be given a weightage of 30. The combined score of technical and financial bids will determine the H1, H2, H3 and so on.

8.5 The party scoring the highest points/marks (H1) based on the above principles would be selected for the transaction.

8.6 Consortium bids will not be allowed.

8.7 Sub-contracting of the assignment will not be allowed. The appointed Advisor shall be solely responsible for all the required final deliverables.

9. **REQUIREMENT FOR FINANCIAL BIDS:**

9.1 The Bidders are required to quote Transaction Fee as a percentage of the disinvestment proceeds i.e. the amount to be received in Government bank account. The fee quoted should be restricted up to three decimal points. The fee quoted by the Bidder shall include all the applicable taxes, cess, duties etc. The fee will be payable in Indian rupees after successful completion of the transaction.

9.2 The Fee quoted by the bidder shall remain **FIRM** till successful completion of transaction.

9.3 The fee quoted should be unconditional. The travel related expenses and all the other expenses including those related to due diligence will have to be borne by the Advisor.

9.4 Expenditure on account of fees to legal/accounting or any other consultant, if appointed by GOI, will not be included in the financial bid. The travel related expenses of Government and B&R Ltd's employees will be borne by the GOI/the Company.

9.5 A drop-dead fee of Rs. 5,00,000 (Rupees five lakh only) would be payable to the appointed Advisor in case the transaction is called off. The payment of the drop-dead fee would be made as under:

- a) 10%, if the transaction is called off before issue of RFP for inviting EOIs from the prospective buyers.
- b) 50%, if the transaction is called off after the data room has been set up and the due diligence by the prospective buyers completed.
- c) 100%, if the transaction is called off after the documents based on which the financial bids are to be invited, have been frozen by the Government.

9.6 The Bidders will be liable to pay taxes/duties/cess etc. applicable as per prevailing law at their end.

10. **CONTRACT AGREEMENT:**

The successful Bidder shall be required to enter into a Contract Agreement with the DIPAM on Non-Judicial Stamp Paper as per norms on the model form of agreement enclosed at **Annexure-2**.

11. **DISCLAIMER:**

- a) The GoI reserves the sole right to accept or reject any or all proposals thus received without assigning any reason thereof.

- b) The Department will not be responsible for any delay on account of late submission of Bid.

12. DISPUTE:

In case of dispute, the decision of the Secretary, Department of Investment & Public Asset Management will be final.

13. JURISDICTION:

The jurisdiction of Court will be at New Delhi only.

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AFFIDAVIT CUM UNDERTAKING

We, the undersigned (“**Bidder**”) are submitting our bid in respect of the Request for Proposal No [●], Dated [●] (“**Bid**”) issued by the Department of Investment and Public Asset Management, Ministry of Finance, Government of India, (“**Government**”) in relation to [●] and in this connection we hereby solemnly affirm, declare and undertake as follows:

- (1) Details of the Bidder as disclosed in **Appendix-A** enclosed herewith are true and correct as on date.
- (2) There has been no conviction by any court of law or indictment or adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) or any of our promoters or directors or that of our Indian Sister Concern(s) during the last ten financial years.
- (3) No enquiry or investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) or any of our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency.
- (4) The details of enquiry or investigations for non-Grave Offences pending against us/our Indian Sister Concern(s)/ our or our Indian Sister Concern’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency are disclosed in **Appendix-B** enclosed herewith.
- (5) There is no Conflict of Interest with respect to the Proposed Transaction as on date.
- (6) During the tenure of our engagement for the Proposed Transaction, we shall keep the Government/Company informed, without delay, of any situations, circumstances, relationships, possible source or potential areas of Conflict of Interest in the format enclosed as **Appendix-C** herewith and we shall not take up work in relation to any such assignment without obtaining prior approval of the Government/ Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.
- (7) We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any advisory or consulting assignment or render any services on a similar transaction or any other transaction, which could have a direct Conflict of Interest, in any manner or capacity to a Competitor of the Company during the term of our engagement in respect of the Proposed Transaction without prior written approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.
- (8) We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable

manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the Government/Company, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.

(9) We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality, objectivity and have made provisions for identification, avoidance and resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.

(10) We understand that:

- (i) in cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, the Government/Company would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through restricting or modifying the work to be performed by us in respect of the Proposed Transaction. The Government/Company may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in the view of the Government/Company to avoid the appearance of a Conflict of Interest situation.
- (ii) The Government/Company would be entitled to terminate our appointment, if any, if the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.
- (iii) if at any time after our appointment as an Advisor, either we or any of our Indian Sister Concerns or the respective promoters/directors, is convicted by a court of law in India or any indictment/adverse order is passed by a regulatory authority in India for a Grave Offence, we shall stand disqualified from continuing as Advisor to the Government/Company and shall be bound to inform them without any delay and shall voluntarily withdraw from the Proposed Transaction, failing which the Government/Company may terminate our appointment after giving an opportunity of being heard.

Definitions

Unless otherwise defined in this Affidavit, the following capitalized terms used herein shall have the meanings set out below:

1. **Advisor** means the Bidder and includes bidder(s) who have been selected for the Proposed Transaction by the Government of India/Company in terms of the Bid.
2. **Conflict of Interest:** Conflict of Interest in relation to the Proposed Transaction shall, without limitation, be deemed to exist or have arisen, if:
 - (i) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in any activity or business which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company or any such activity/association would or may impair his ability to render fair, impartial, technically sound and objective assistance or advice, or unbiased services or may result in giving an unfair competitive advantage to any other person.
 - (ii) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in advising and/or have taken up engagement for advising/consulting any other Entity whether under a formal engagement or otherwise in relation to any transaction/matter (“**Third Party Transaction**”), which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company.
 - (iii) The Advisor has any business or financial interests in any other Entity that would impair, or give the appearance of impairing impartial decisions in relation to Proposed Transaction, in offering any advice recommendations or in providing technical assistance or other services to the Government/Company as part of Advisor’s engagement obligations/duties.
 - (iv) In relation to a strategic sale by the Government of India/Company, the Advisor has taken up engagement with buyer/potential buyer of such strategic sale or their Sister Concerns.
 - (v) Any other situation, possible source or potential areas of interests, which may impair Advisor’s ability to render fair, impartial, technically sound, and objective assistance or advice, or unbiased services or in conflict of their professional duties towards Government/Company in respect of the Proposed Transaction or result in giving an unfair competitive advantage to any other person.
3. **Company** means [●] the Company referred to in Para 1.1.
4. **Competitor** of the Company means an Entity in India that is engaged in the business substantially similar to the business of the Company. Business of an Entity shall be deemed to be substantially similar to the business of the Company, if turnover or profit of such Entity from the business activity (ies) in which the Company in engaged, exceeds 33% of the its total turnover or profit (in any of the last three years).

5. **Entity** shall mean and include an individual, proprietorship, HUF, an association of person/body of Individuals, a partnership firm, limited liability partnership, company or any other persons.
6. **Grave Offence** means offences of such nature that it materially affects the reputation, business or operations adversely, or outrages the moral sense of the community or such other offences which may be considered by the Government/Company as grave on a case to case basis, after considering the facts and relevant legal principles.
7. **Proposed Transaction** means the transaction to be undertaken by the Government/Company as described in bid no [●], issued by the Government.
8. **Senior Managerial Personnel** include the Managing Director, the Company Secretary, the Chief Executive Officer, the Chief Financial Officer or persons having equivalent positions and all such other employees of the Entity, who are members of its core management team excluding Board of Directors, and comprising all members of management one level below the executive directors and include the functional heads.
9. **Sister Concern** in relation to the Advisor, means any Entity in which the Advisor has a significant influence or which has "significant influence" over the Advisor.
10. **Significant influence** means holding of at least twenty percent or more of total voting rights or the power to participate in and influence the management, financial or operating policy decisions of that Entity, or of business decisions under an agreement or having twenty percent profit sharing in such Entity.

Appendix A, B and C hereto shall constitute and shall be deemed to form an integral part of this document.

Appendix-A

BIDDER DETAILS

Name of the Bidder	
Address: Registered Office: Corporate Office Tel: Email:	
Constitution	Company/Partnership/LLP/Others (If others, please provide the nature of constitution)
SEBI registration no, if registered with SEBI	
Details of registration with other professional statutory bodies	

Appendix-B

DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

S. No	Name of the Sister Concern(s)/concerned person(s) against whom the enquiry/investigation has been initiated	Relationship with the bidder	Name of the investigating agency	Nature of pending enquiry/investigation and law under which the enquiry has been initiated	Brief facts/interim orders /other relevant information in respect of the pending enquiry/investigation

Appendix-C

DETAILS OF PRESENT/POTENTIAL CONFLICTS/FACTS OR INTERESTS THAT MAY BE DEEMED AS POTENTIAL CONFLICT OF INTEREST

S. No	Name of the Entity, in which interests or Conflicts exist/ may arise	Relationship of the Bidder with the Entity	Nature/reason of conflict/potential conflict	Duration of the subsistence of conflict, if any	Such other information as may be relevant and material in deciding whether there is a conflict/potential conflict of interest

Agreement for Advisory Services

THIS AGREEMENT (hereinafter referred to as 'Agreement') is made at New Delhi on this ----- day of ----- BY AND BETWEEN THE PRESIDENT OF INDIA acting through the Joint Secretary, Department of Investment & Public Asset Management (DIPAM), Ministry of Finance, Government of India (hereinafter referred to as "GOI" which expression shall mean and include its successors and assigns) of the ONE PART AND ABC incorporated under the Companies Act, 1956/Companies Act, 2013 and having its registered office at ----- and having its offices at New Delhi (hereinafter referred to as "ABC" which expression shall mean and include its successors and permitted assigns) of the OTHER PART.

WHEREAS

- (I) XYZ (hereinafter referred to as "XYZ"), a Public Sector Enterprise, under the Ministry of ----- having its registered office at ----- engaged in -----.
- (II) GOI which presently holds -----% of the paid up equity of XYZ intends to disinvest ----- % of the share capital of XYZ through strategic sale/ESOP/other means, with transfer of management control to a strategic partner. Pursuant to the GoI advertisement in The Economic Times and on the official website of DIPAM or of XYZ inviting submission of Expression of Interest from reputed professional consulting firms, merchant bankers, investment bankers, financial institutions, banks etc. to act as Advisor; ABC submitted an Expression of Interest.
- (III) Further to the presentation made by ABC to the Inter-Ministerial Group on ----- and the financial bid submitted for the assignment, GoI appointed ABC as its Advisor for the proposed strategic disinvestment in XYZ vide letter No-----dated -----.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, THE DETAILED REQUEST FOR PROPOSAL CONTAINING THE TERMS AND CONDITIONS AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT ADEQUACY AND SUFFICIENCY OF WHICH HEREBY ACKNOWLEDGE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1, General Provisions

1.1 Definitions

- 1.1.1 Unless the context requires otherwise, the following terms, wherever used in this Agreement shall have the following meaning:

- a) 'Agreement' means this Agreement and any subsequent amendments hereto between GOI and ABC;
- b) 'Business Day' means a day other than one on which either the Central Government Offices, Banks or ABC's Offices are required to be closed in New Delhi;
- c) 'Effective Date' means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- d) 'Local Currency' means Indian Rupee or any other lawful currency of the Republic of India;
- e) 'Party or Parties' means GoI and ABC or both, as the case may be;
- f) 'Personnel' means persons hired by ABC as employees and assigned to the performance of the Services or any part of the Services;
- g) 'Services' mean the services to be performed by ABC as the Advisor for this transaction and as described in Clause 3.1.

1.2 Relationship between the Parties

- 1.2.1 This Agreement shall be construed as establishing a relationship of principal and advisor and not of principal and agent, between GoI on the one part and ABC on the other part.
- 1.2.2 This agreement shall be binding upon and shall inure to the benefit of GOI and ABC and their respective successors and permitted assignees. Neither GoI nor ABC shall assign this Agreement or their respective rights or obligations as the case may be under this Agreement without the consent of the other party.

1.3 Governing Law

- 1.3.1 This Agreement, its meaning and interpretation and the relation between the Parties shall in all respects, be governed by and construed in accordance with the laws of the Republic of India.
- 1.3.2 The parties irrevocably agree that the Indian Courts at New Delhi shall, subject to provisions of Clause 6, have jurisdiction to hear and determine any action or proceedings, and to settle any dispute, which may arise out of or in connection with this Agreement and, for such purpose irrevocably submit to the jurisdiction of such courts.
- 1.3.3 This Parties irrevocably waive any objection, which they might at any time have to the courts referred to above being nominated as the forum to hear and determine any action or proceedings, and to settle any dispute, which may arise out of or in connection with this Agreement and agree not to claim and any such court is not a convenient or appropriate forum.

1.4 Headings

- 1.4.1 The headings shall not limit, alter or affect the meaning of this Agreement.

1.5 Notices

1.5.1 Subject to the provisions of clause 1.5.5, any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be deemed to have been given or made when sent by registered mail or air courier or facsimile to such Party at the following address and facsimile numbers:

For GOI Department of Investment & Public Asset Management
Block No. 11 CGO Complex
Lodhi Road, New Delhi 110003

For ABC ABC

1.5.2 Notice will be deemed to be effective as follows:

- In case of registered mail or air courier, on delivery; and
- In case of facsimile, two Business Days following confirmed transmission.

1.5.3 Facsimile transmissions shall require to be re-transmitted in the event the Receiving Party communicates illegible transmission and notice in such an event will be deemed to be effective upon receipt of legible transmission.

1.5.4 A Party may change its address and facsimile numbers for notice under this Agreement by giving the other Party notice pursuant to this Clause.

1.5.5 Any action required and permitted to be taken, any document required or permitted to be executed under this Agreement may be taken or executed as follows:

On behalf of GOI by the Joint Secretary
Department of Investment & Public Asset Management
Block No. 11, CGO Complex,
Lodhi Road, New Delhi 110003

For ABC ABC

2. General Provisions

2.1 Effective date

2.1.1 This Agreement shall come into force and effect on the Effective Date being -----.

2.2 Entire Agreement

2.2.1 This agreement contains all covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either of the parties has authority to make and the parties shall not be bound by or liable for any statement, representation, promise or agreement made prior to the date hereof but not set forth in this Agreement.

2.3 Modification

2.3.1 Modification of the terms of the Agreement including any modification of the scope of the services may only be made by written agreement between the parties. Each party shall give due consideration, and not unreasonably delay a considered response to any proposal for modification made by a Party.

2.4 Force Majeure

Definition

2.4.1 For the purpose of this Agreement, 'Force Majeure' means an event or circumstance, which is beyond the reasonable control of the affected Party and which makes affected Party's performance of its obligation under this Agreement impossible or so impractical as reasonably to be considered impossible in the circumstance and includes but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, cyclone flood, drought or other adverse weather or other conditions and situations including breakage of equipment of facilities, structural collapse, air crash, shipwreck etc.

2.4.2 Force Majeure shall not include:

- a) Strikes, lockouts or other industrial action, confiscation or any other action in and/or by the parties or their employees;
- b) Any event which is caused by the negligence or willful action of a party;
- c) Any event which is in control of a party;
- d) Any event which a diligent party could reasonably have been expected both (a) to have taken into account on the Effective Date of this Agreement and/or thereafter during the terms of the Agreement and (b) to have avoided or overcome in the course of carrying out obligations under this agreement; and
- e) Insufficiency of funds or failure to make any payments.

No Breach of Agreement

2.4.3 The failure of a party to fulfill any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability

arises from an event of Force Majeure, provided the party affected by that event has complied with its obligations under para 2.4.4 in respect of such event.

Measure to be taken

- 2.4.4 A party affected by an event of Force Majeure shall take all reasonable measure to remove its inability to fulfill its obligations under this Agreement with a minimum of delay and shall notify the other Party in writing of the event concerned as soon as possible and in any event not later than ten days following the occurrence of the event concerned and shall similarly give notice of the restoration of normal conditions as soon as possible. Parties shall together take all reasonable measures to minimize the consequences of any event of Force Majeure.

Extension of time

- 2.4.5 Subject to the above provisions of the Clause 2.4, any period within which a Party is required, pursuant to this Agreement, to complete any action or task, shall be extended for a period equal to the time during which that Party was unable to perform such action as a result of Force Majeure.

Consultation

- 2.4.6 Not later than ten days after ABC has served a notice to GOI as per Paragraph 2.4.4 notifying its inability to perform a portion of the services as a result of an event of Force Majeure, the Parties shall consult between themselves with a view to agreeing on appropriate measure to be taken in the circumstances.

2.5 Earlier Termination

Termination by GoI

- 2.5.1 GOI, may, by not less than ten day's written notice of termination to ABC, terminate this agreement, if:
- a) ABC is in a breach of its obligations under this Agreement and the terms and conditions mentioned in the RFP dated----- and the Affidavit-cum-Undertaking submitted at RFP stage and has not remedied the same within thirty days (or such longer period as GOI may have subsequently approved in writing) following the receipt by ABC of notice from GOI specifying the breach. Provided that ABC shall not be held to be in breach of any obligation under this Agreement, if the breach arises as a result of failure on the part of GOI to meet GOI's obligations under this agreement;

- b) ABC fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 6;
- c) ABC is unable, as a result of Force Majeure, to perform a material portion of the services for a period of not less than sixty days;
- d) ABC becomes insolvent or bankrupt or goes into liquidation or receivership, whether compulsory or voluntary;
- e) GOI decided at any time to abandon the project;
- f) A suitable strategic partner willing to purchase 99.65% of GOI's holding in XYZ is not found and GOI wishes to appoint another advisor for the sale of GOI's holding in XYZ;
- g) ABC is found guilty of any criminal offence in any court of law or of violation of regulations of a statutory body that materially adversely affects its ability to carry out the engagement;
- h) In case an event of a conflict of interest take place during the engagement that materially adversely affects the ability of ABC to carry out the engagement and which is not remedied within 15 days of arising due to handling of the transaction by ABC as Advisor to the GOI for disinvestment in XYZ.

Termination by ABC

2.5.2 ABC may, by not less than ten day's written notice to GOI, terminate the Agreement, if:

- a) GOI fails to pay any money to ABC pursuant to this Agreement, which is not subject to dispute pursuant to Clause 6, within thirty days or any further extended period of time as may be agreed between the Parties after receiving written notice from ABC that the payment concerned is due/overdue;
- b) GOI, is in breach of its obligations under this Agreement and has not remedied the same within thirty days (or such period as ABC may have been subsequently approved in writing) following the receipt by GOI of ABC's written notice specifying the breach.

Provided that GOI shall not be held to be in breach of any obligation under this Agreement, if breach arises as a result of failure on the part of ABC to meet ABC's obligations under this agreement;

- c) GOI shall have failed to comply with any final decision reached as a result of arbitration pursuant to Clause 6.
- d) GOI is unable as a result of Force Majeure to perform its obligations for a period of not less than sixty days.

2.6 Cessation of Rights and Obligations

2.6.1 On termination pursuant to any part of Clause 2.5 and / or expiration of this Agreement, all rights and obligations of the Parties shall cease, except:-

- (i) rights and obligations that have accrued as on the date of termination or expiration;
- (ii) any right, which a Party have under law and
- (iii) the obligations in Clauses 3.2, 3.3 and 4.3.

2.7 Cessation of Services

2.7.1 On the termination of this Agreement by notice of either Party to the other, pursuant to Paragraphs 2.5.1 and 2.5.2, ABC will take all necessary steps to bring the services to a close within thirty days of the receipt of the notice of termination. Upon cessation of services, either on expiry of termination (including earlier termination) of the agreement hereunder, ABC shall hand over to GoI, such material documents and records prepared directly by ABC in connection with the services, whether in final or draft form, complete or in the process of being completed, on paper and if applicable, in compact diskettes together with material documents and records as provided by GoI to ABC, save the copies thereof, will be allowed to be retained by ABC for their files.

3. Obligations of ABC

3.1 Scope of Services

3.1.1 GoI proposes to divest/undertake strategic sale of a part of its shareholding in XYZ to a prospective strategic partner, and for that purpose have appointed ABC as advisor to advise and assist GoI in selection of the prospective strategic partner, to maximize realization from the sale of its shareholding.

3.1.2 ABC's scope of services as Advisor to GoI shall include the services as set out below to assist and advise GoI in identifying, negotiating and concluding the strategic sale with the most appropriate partner, keeping in view GoI's strategic objectives and evaluation criteria for the strategic partner. However, it is clarified that the decision whether to proceed with and consummate the transaction, lies solely with GoI and the work and findings of ABC shall not in any way constitute recommendation as to whether GoI should or should not consummate the transaction.

The ABC's service shall include the following:

Phase I: Transaction strategy

3.1.3 ABC, in consultation with GoI, shall evolve a transaction strategy covering modalities, timing of disinvestment and the timeline for various activities. ABC will assist GoI and will not associate in any manner, directly or indirectly, any other party or the buyer in the present transaction, in analyzing possible transaction strategies from the perspective of GoI and the strategic partner. ABC would analyze the positive and negative financial aspect of each of these alternative strategies.

3.1.4 ABC shall advise and assist GoI in identifying and selecting specialized professional intermediaries required for the transaction to be appointed by GoI and their work to be coordinated by the ABC.

Phase II: Partner log

3.1.5 Working closely with GOI, and drawing upon knowledge of ABC or of prospective strategic partners, ABC will develop a list of potential strategic partners with sufficient interest and apparent resources to enter into a transaction with XYZ/GoI. In doing so, ABC would:

- Use its international offices and network;
- Use its contracts and industry knowledge; and
- Include any other partners GoI would like to consider.

3.1.6 ABC will obtain and develop information on each of the potential strategic partners identified, so that together ABC & GoI can place in priority those strategic partners, which have the best potential for consummating the transaction with GOI. In doing so, ABC will use its global presence and long-standing relationships with potential strategic partners who may be ABC's global clients.

Phase III: Information Memorandum

3.1.7 The next phase is to incorporate the financial data and other relevant information of XYZ into an Preliminary Information Memorandum/Confidential Information Memorandum. The purpose of this Memorandum is to provide prospective strategic partners with information on the business and the unique selling points of XYZ so as to enable them to decide whether to provide initial indications of interest and initiate serious discussions.

3.1.8 This Memorandum would contain information relating to the following areas:

- Background of XYZ and key features that differentiate it from its competitors;
- Current activities;
- Rationale for divestment and inviting a strategic partner;
- Product profile;
- Manufacturing facilities;
- Financial performance;
- Management;
- Customers and suppliers;
- Contracts;
- Research and development activities;
- Details of surplus real estate assets; and
- Any other relevant details.

3.1.9 The Information Memorandum so prepared will be made available on a confidential basis to interested strategic partners. ABC will take approximately six weeks to prepare the Information Memorandum once ABC has been provided with all the necessary data.

Phase IV: Pricing Analysis

3.1.10 ABC will assist XYZ/GoI in performing a pricing analysis of the Company. In performing the pricing analysis, ABC proposes to use the 'discounted cash-flow' approach, the 'relative valuation' approach and the 'asset based valuation' approach to determine a range of fair values.

3.1.11 The pricing analysis will be based on illustrative profit projections and the information provided by XYZ to ABC. The projections would show a possible outcome based on the assumptions as per the business plan prepared by the management of XYZ ('the Management'). It is clarified ABC must emphasize that the realization of the projections would be dependent on the continuing validity of the assumptions on which they are based. ABC's review therefore shall not, and cannot be directed to providing any assurance about the achievability of the financial projections. Since the projections relate to the future, actual results are likely to be different from the projected results because events and circumstances do not occur as expected, and the differences may be material.

3.1.12 ABC will present its findings in the form of a Pricing Analysis within three weeks of completing the Information Memorandum and receipt of any additional information of that it may require for this purpose. This will allow GOI & ABC to discuss a range of supportable asking prices. ABC's findings will be subject to the following conditions and limitations:

- The findings can serve as only one input to the process of negotiating a price, the actual terms will be set through direct negotiations;
- The findings are solely for the internal use;
- Events subsequent to the date of ABC's analysis may materially alter our estimate; and
- The findings are based upon the information provided to ABC by XYZ/GOI.

Phase V: Partner Approach

3.1.13 ABC will initiate contacts with only prospective strategic partners on an agreed list. If the prospective strategic partner indicates a sufficient level of interest in the business, and if GOI instructs, ABC will forward the Information Memorandum to them upon receipt of a signed Confidentiality Agreement.

3.1.14 ABC will control the release of any further information based on the level of interest evinced by the potential strategic partner and after obtaining GOI's approval.

Phase VI: Negotiations and deal support

3.1.15 ABC will assist and provide inputs to GoI during the negotiation process will the prospective partner by:

- Discussing the pricing analysis;
- Negotiating the financial terms;
- Outlining preferable terms;
- Briefly describing the tax and accounting implications of each proposal;
- Suggesting counterproposal alternatives;
- Communicating with interested parties;
- Reporting potential problems to GoI;
- Evaluating alternative financial structures;
- Assisting in negotiating the terms and conditions of the shareholders agreement; and
- Assisting in negotiating sessions leading to a transaction.

3.1.16 ABC will be present at all meetings and handle all necessary arrangements during the negotiation process.

Phase VII: Facilitating due diligence review

3.1.17 ABC will assist XYZ in the smooth conduct of the due diligence process.

Phase VIII: Completion of the transaction

3.1.18 If Parties express continuing interest, ABC will assist GoI in concluding the transaction. In doing so, ABC will work alongside XYZ / GoI's legal counsel to incorporate the terms and conditions of the transaction into a joint venture agreement. However, on account of the peculiarities and complexities of this transaction, it will be crucial that the legal counsel take full responsibility of documentation and completion. The law firm will be appointed directly by XYZ / GoI and any fee payable to them will be paid directly by XYZ /GoI.

3.2 Confidentiality

3.2.1 During the term of this Agreement, and for a period of one year commencing from the date of termination or expiry of this Agreement, ABC and Personnel of ABC shall not disclose to any party other than GoI/XYZ or other concerned consultants, valuers or lawyers appointed by GoI/XYZ, any information (other than publicly available information) relating to the services, this agreement, XYZ's business or operations without the prior written consent of GoI, unless such disclosure is requested by any statutory or regulatory or judicial/ quasi – judicial authority constituted under the laws of India and having jurisdiction over a Party, or unless such disclosure is required in connection with any litigation affecting a party, or unless such disclosure is necessary to perform ABC's services or obligations under this Agreement or unless such information has entered the public domain other than by a breach of the Agreement.

3.2.2 Provided that no confidentiality is required to be maintained in respect of disclosure required and made on account of marketing strategy/ies agreed upon among the parties. External professionals appointed, if any, will also be bound by such requirements of confidentiality as may be stipulated by GoI.

3.3 Indemnification of GoI by ABC

3.3.1 ABC agrees to indemnify and hold harmless, GoI officers, employees and representatives of GoI (each, an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of the negligence or willful misconduct of ABC or its personnel in providing the services.

3.3.2 In the event that ABC disputes an indemnity claim of an Indemnified Person, any amounts to be paid by ABC will be finally decided by the Arbitration Tribunal or Courts of law. It is understood and agreed that an indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and or filing of appeals or revision from awards/orders/judgments/decrees, if the Indemnified Person has notice from ABC that legal action and /or appeal is intended.

3.3.3 GOI will have to be given notice of a dispute of the claim by ABC within fifteen days of the receipt of Notice of Claim.

3.4 Limitation of liability

3.4.1 In the particular circumstance of this case, GoI agree that the aggregate liability of ABC and directors, officers and employees and representatives of ABC (Whether direct or indirect, in contract or tort or otherwise) to GoI arising out of this Agreement, including any indemnity liability as per clause 3.3 above, shall be limited to the aggregate fees actually payable to ABC under this Agreement by GoI.

3.5 Documents Prepared by ABC

3.5.1 GoI and ABC agree that the analysis provided to GoI is for the use and information of GoI for the strategic sale/disinvestment of GoI's stake in XYZ. ABC shall own no responsibility to any action taken by any other person based on any advice given by ABC to GoI.

3.6 ABC's Personnel

3.6.1 For the services ABC shall deploy such personnel as are qualified and experienced in the opinion of ABC to carry out the services. Provided that in the event GoI, at any point of time while the services are being carried out, expressly communicates to ABC the opinion that any of the Personnel need to be substituted, ABC will take into account such opinion and will not unreasonably continue to deploy such personnel to carry out the services.

4. Obligation of GOI

4.1 Assistance

4.1.1 GoI/XYZ shall provide to ABC all relevant information and particulars in the possession of GoI for which they have legal authority and to provide all assistance required by ABC to enable ABC to perform its services.

4.1.2 Further, GoI shall issue to officials, agents and representatives of GoI/ XYZ such instructions as it is competent to issue, as may be specified by ABC as being necessary or appropriate for the prompt and effective rendering of the services.

4.1.3 In the event that any such information and particulars are not in the possession of GOI and XYZ or in the event that GOI and XYZ do not have the legal authority to provide information and particulars to ABC or in the event that assistance sought by ABC cannot be provided or in the event that instructions as specified by ABC cannot be issued, then GOI shall forthwith inform ABC of their inability.

4.1.4 GoI shall evolve a proper mechanism to take decisions and to communicate to ABC in writing regarding these decisions. GoI shall accept full responsibility for the contents of the documents or announcements that it may require and authorize ABC to issue, sign or execute.

4.2 Access to information and decision

4.2.1 GoI shall keep ABC informed of any material developments or facts of proposals in relation to the business or operations of XYZ and in particular, where these may have any effect on the agreement or in execution of ABC's services.

4.2.2 GOI shall not require/insist on ABC to issue or approve, or to arrange for the issue or distribution of a particular document or announcement, if at any time ABC becomes aware of information which, in the opinion of ABC, after due consultation with GoI, renders the document or announcement untrue, incomplete or misleading in any material respect.

4.3 indemnification of ABC by GOI

4.3.1 GoI agrees to indemnify and hold harmless ABC and directors, officers, employees and representatives of ABC (each an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of ABC's engagement hereunder and / or directly or indirectly arising as a consequence of any statement, data, representation or other information, whether included in any information memorandum or advertisement or otherwise given in the performance of the services, which had been provided and/ or approved by GoI.

Provided that the above mentioned indemnity to Indemnified Person(s) shall only be available in case of the liability or loss arising out of the negligence or willful misconduct of the GoI or its employees under this Agreement.

4.3.2 In the event that GoI disputes an indemnity claim of an Indemnified Person, any amounts to be paid by GOI will be as finally decided by the Arbitration Tribunal or by the Court of law, It is understood and agreed that an Indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and / or filing of appeals or revision from awards/ orders/ judgment/ decree, if the Indemnified Person has notice from GoI that legal action and / or appeal is intended.

4.3.3 ABC will have to be given notice of a dispute of the claim by GOI within fifteen days of the receipt of Notice of Claim.

4.3.4. In the particular circumstances of this case, ABC agrees that the aggregate liability of GoI and its officers, employees and representatives of GoI, whether direct or indirect, in contract, tort or otherwise to ABC, arising out of this Agreement, including any indemnity liability as per

clause 4.3 above, shall be limited to the aggregate fees actually payable by GoI to ABC under this Agreement.

4.3.5. The provisions of the clauses 3.3 and 4.3 above shall be operative in full force and effect regardless of any termination or expiration of this Agreement.

5. Payment of ABC

5.1 Currency of payment

5.1.1 Except as may be otherwise agreed in this agreement and/or other written agreement between the parties, all payments due to ABC under this agreement shall be made in Indian Rupees.

5.2 Payments

5.2.1 In consideration of the services performed by ABC under this agreement, GOI shall pay to ABC the following:

Success fee:

5.2.2 GoI shall pay ABC ----- percent (-----%) of the consideration paid by the strategic partner to GoI, as transferred to GoI account, for purchase of shares of XYZ, as success fee. The success fee -----% shall be payable on the completion of the services culminating in signing of SHA/SPA, receipt of disinvestment proceeds in Government account; transfer of management control to SP.

5.2.3 The Gross Consideration includes the consideration made available to XYZ or the GOI. The Gross consideration also covers any staged payments or payments/investment through equity as long as it is a payment in lieu of the GoI's stake in XYZ on the date of signing the shareholders' agreement.

Earlier Termination Fee

5.2.4 In the event that the agreement is terminated as per Paragraph 2.5.1 (e), GoI shall pay to ABC, a drop-dead fee as defined in the RFP. All payment to ABC shall be subject to deduction as per applicable laws in India.

5.3 Mode of Billing and Payment

5.3.1 As soon as practicable, after ABC is entitled to receive the amount under Clause 5.2 above, ABC shall send to GoI invoice for the amount due. The said fee/ payment shall be

payable by GoI to ABC within 30 days of the date of entitlement and /or date of submission of claim of ABC whichever is later.

5.4 Changes in Scope of Work

5.4.1 If GoI requests a change in the scope of work beyond the definition of 'Services', payment for the additional work will be determined based on the agreed scope of effort to be employed by ABC subject to the agreement of the parties on all issue involved,

5.5 Expenses of Parties

5.5.1 In performing its services, ABC shall bear the following expenses:

- (a) All fees and expenses related to external professionals appointed by ABC; and
- (b) All out of pocket, travelling/hotel and other cost, charges and expenses incurred by ABC or its officers, employees or agents in connection with performing any services, save and except Clause 5.5.2 which shall be borne by GoI.

5.5.2 GoI shall bear the following expenses:

- (a) Fees and expenses relating to external legal advisors for drafting and providing shareholders agreement and such other related agreements related to the strategic sale;
- (b) Fees and expenses relating to external professionals appointed by GoI and XYZ, including fees and expenses, if any related to XYZ's auditors and GoI's own legal advisors;
- (c) Travelling/hotel and other cost incurred in connection with domestic or international travel of GoI/ XYZ's personnel, officers and employees;
- (d) All advertisement and printing expenses relating to the services under this agreement; and
- (e) Restructuring costs, if any, as per clause 5.4 hereof.

5.5.3 The parties shall bear the cost of their respective telephone calls, facsimile transmission, couriers, dispatches and postage expenses.

6. Arbitration

6.1 Amicable Settlement

6.1.1 The Parties shall use their efforts to settle amicably all disputes/differences arising out of or in connection with this agreement or its interpretation.

6.2 Arbitration

6.2.1 Any dispute or difference between the Parties as to matters arising under this agreement, which cannot be settled amicably within thirty days after receipt by a Party of the party's request for amicable settlement, may be submitted by a Party for arbitration in accordance with the provisions of Paragraph 6.2.2.

6.2.2 Subject to Paragraph 6.2.1 of Clause 6.2, in the event of any dispute, controversy or claim arising between the Parties hereto out of or in connection with this agreement or interpretation of its terms, including without limitation, its validity, enforcement, breach, performance, termination or expiration, such dispute, controversy or claim shall be finally settled by arbitration. The arbitration shall be conducted at New Delhi in accordance with the rules framed thereunder.

- (a) The arbitration tribunal shall consist of three arbitrators to be selected and appointed by mutual agreement of the Parties. The language of the arbitration shall be English.
- (b) the arbitrators appointed under Paragraph 6.2.2, sub-clause (a) shall be legal and/or technical experts with extensive experience in relation to the matters in dispute.
- (c) Any arbitration tribunal established hereunder shall state the reasons for its decisions in writing and shall make such decisions entirely on the basis of the Governing law.

7. Representations

7.1 GoI represents and warranties of GoI

7.1.1 GoI represents and warrants that :

- (a) GoI has full power and authority to enter into this agreement and to execute, deliver and perform its obligations under this agreement, and to carry out the transaction contemplated hereby;
- (b) it has taken all necessary steps required for the authorization, execution, delivery and performance of this agreement;
- (c) This agreement constitutes legal, valid and binding obligations upon GOI enforceable against it in accordance with the terms hereof;
- (d) No representation or warranty by or information from it contained herein or in any other document furnished by it or on its behalf by XYZ to ABC contains or will contain any untrue statement of material fact or omit to state a material fact necessary to make such representation or warranty or information not misleading; and
- (e) The execution, delivery and performance of this agreement will not be in conflict with any covenant, agreement, understanding, decree or order to which it is a Party.

7.2 Representation and Warranties of ABC

7.2.1 ABC represents and warrants that:

- (a) ABC is duly organized, validly existing and in good standing under the laws of jurisdiction of its incorporation;
- (b) ABC has full power and authority to execute, deliver and perform its obligation under this agreement and to undertake the services contemplated herein;
- (c) ABC has taken all necessary corporate and other actions under relevant laws and its constitutional documents to authorize the execution, delivery and performance of this agreement;
- (d) This agreement constitutes legal, valid and binding obligations enforceable against ABC in accordance with the terms hereof;
- (e) ABC is subject to civil and commercial laws of India with respect to this agreement and it hereby expressly irrevocably waives any immunity in any jurisdiction in respect thereof;
- (f) ABC is not debarred from performing the services on account of any litigation;
- (g) The execution, delivery and performance of this agreement will not be in conflict with any of the terms of the ABC's memorandum and articles of association or any covenant, agreement, understanding, decree or order to which it is party or any ongoing assignment;
- (h) No representation or warranty by or information from it contained herein or in any other document furnished by it to GoI contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty or information not misleading.

8. Other Terms of Agreement

8.1 Fairness and Good Faith

Good Faith

8.1.1 The parties undertake to act in good faith with respect to one and others rights under the agreement and to adopt all reasonable measures to ensure the realization of the objectives of this agreement.

8.1.2 Integrity and Ethics

The parties undertake to avoid all forms of corruption by following a system that is fair, transparent and free from influence and prejudice, prior to, during or subsequent to the currency of the contract.

The ABC commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it.

The GoI undertakes that during the pre-contract stage, it shall treat all bidders alike and will provide to all bidders the same information and will not provide any such

information to any particular bidder which could afford advantage to any particular bidder in comparison to other bidders.

Any breach of aforesaid provisions by ABC or its employees or authorized representatives, shall entitle GoI to take all or any one of the following actions, wherever required:-

- (i) forfeiture of performance guarantee;
 - (ii) to immediately call-off the pre-contract negotiations without assigning any reason or providing any compensation to ABC;
 - (iii) to debar ABC from participating in any bidding process in future for a minimum period of 5 years.
 - (iv) to cancel all or any other contract signed with the ABC.
- The GoI will be entitled to initiate the criminal liabilities as well.

Operation of the Agreement

8.1.3 The Parties recognize that it is impractical in this agreement to provide for every contingency and possibility, which may arise during the life of the agreement (in respect of the services) and the Parties agree that it is their intention that this agreement shall operate fairly between them and without detriment to the interest of either of them and that if during the term of this agreement, a party believes that this agreement is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute to arbitration in accordance with Clause 6.

8.2 Publicity

8.2.1 The Parties shall consult each other on any publicity, press releases, advertisement and publications and public statements concerning the services and this agreement in advance, before release. If GoI completes the transaction, ABC reserves the right to publish an announcement of ABC's role. The text, if any, of such advertisement will be subject to GOI's approval, which will not be unreasonably withheld.

8.3 Waivers

8.3.1 No failure or delay of a Party hereto in exercising any right of remedy hereunder shall operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or future exercise, of any right and remedy. The right and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

8.4 Waiver of Sovereign Immunity

8.4.1 GoI hereby waives any immunity from jurisdiction of any court of arbitration proceeding of from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of judgment or otherwise) in respect of itself and/or any of its property, save and except for military property, military assets, present and future premises and assets of the missions/ consulates and the constitutional authorities and their offices and assets required for scientific and technological activities of GoI.

8.5 Liability to pay stamp duty

8.5.1 The stamp duty, if any, payable on this agreement and its counterparts shall be paid by GoI.

8.6 This agreement has been prepared and signed in two originals, one to be retained by each party.

IN WITNESS WHEREOF of Parties have caused this agreement to be signed as of the day and year first above written.

Annexure-3

FORMAT FOR THE DEAL TEAM

Certified that the deal team would comprise of the following:

S.No.	Name	Expert in the field of	Qualification	Experience	Remarks
1	Mr./ Ms	strategic disinvestment			
2	Mr./ Ms	valuation			
3	Mr./ Ms	documentation of strategic disinvestment			
4	Mr./ Ms				

Seal with Signature of the authorized signatory of the bidder

Annexure-4

FORMAT OF UNCONDITIONAL BID ON THE LETTERHEAD OF THE BIDDER

This is to certify that the fee quoted by us for engagement as Advisor for disinvestment through strategic sale of Bridge & Roof Co. (India) Ltd is in accordance with the terms and conditions laid down in the Request for Proposal displayed on the website of the Department of Investment & Public Asset Management and is unconditional.

Seal with signatures of authorized signatory of the Bidder

Format of Financial Bid on the Letterhead of the Bidder

Sl. No.	Description of work	Fee (all inclusive) in INR
1.	Fixed Lump-Sum Fee in Indian Rupees inclusive of all applicable taxes.	(In Numbers)
2.	All other expenses will be borne by _____ (Name of the bidder)	(In Words)

Note:

- 1) In case of mismatch in number and the figures quoted; the fee in words will be taken as correct for all purposes.
- 2) Since the bid is inclusive of all taxes, any additional liability of tax that may arise either on account of change in tax rate or additional taxes by the Central or State Governments, shall be the responsibility of the bidder.

Seal with signatures of authorized signatory of the Bidder