File No. 3/18/2019-DIPAM-V
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF INVESTMENT & PUBLIC ASSET MANAGEMENT

Engagement of Transaction Advisor for Partial Disinvestment of the Government of India's equity shareholding in a CPSE under the administrative control of Ministry of Railways along with transfer of management control - Request for Proposal

1. INTRODUCTION

In Budget speech of 2018-19 Finance Minister, inter-alia, made the announcement of Strategic Disinvestment of CPSEs.

2. PROPOSAL

The GoI proposes to engage one Advisor from reputed professional consulting firms/ investment bankers/ merchant bankers/ financial institutions/ banks, for facilitating/assisting DIPAM in the process for Partial Disinvestment of the Government of India's equity shareholding in a CPSE under the administrative control of Ministry of Railways **along with transfer of management control**, till completion of the transactions, unless called off by GoI. The GoI proposes to engage one Transaction Advisor from a reputed professional consulting firm, investment bankers, merchant bankers, financial institutions, banks, etc. 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 related to all aspects of the proposed strategic disinvestment culminating into successful completion of the transaction and would, inter alia include but not limited to advising and assisting GOI on modalities of disinvestment and the timing; recommend the need for other intermediaries required for the process of sale/disinvestment and also help identification and selection of the same 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.; structuring the transaction; organizing roadshows, suggesting measures to fetch optimum value; positioning of the strategic sale, inviting and evaluating the bids, assisting and professionally guiding during the negotiations with prospective buyers, drawing up the sale/other agreements and advising on post-sale matters on a continuous basis. The Terms of Reference (ToR) would include:
(i) Advising GoI on the modalities and the timing of the strategic disinvestment of TARGET COMPANY. and preparing and submitting a detailed operational scheme to

successfully implement the strategic disinvestment process, indicating tentative timelines for each activity.

(ii) Preparing the deal collateral for the transaction including but not limited to:

(a) Preliminary Information Memorandum ("PIM") with intent to providing prospective buyers information about TARGET COMPANY. and its business to enable them to send in their Expression of Interest.

(b) Confidential Information Memorandum ("CIM") covering detailed information about TARGET COMPANY. and its business.

(iii) 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 Advisor.

(iv) Facilitating execution of Non-Disclosure Agreements ("NDA") and subsequent communication and providing the bidders with information on the asset and the transaction.

(v) Finalizing the process of strategic disinvestment (through bidding/ auction etc).

(vi) Supporting TARGET COMPANY. in setting up of the e-data room and assisting in the smooth conduct of the due diligence process.

(vii) Positioning the divestment of GoI equity in TARGET COMPANY. to organize roadshows and to generate interest among the prospective buyers/ purchasers/ investors.
(viii) Managing 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) Assisting in negotiations with shortlisted bidders.

(x) Assist GoI in fixing the range of the fair reserve price considering the valuation of TARGET COMPANY. based on the methods like discounted cash flow; relative valuation; and Asset based 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 reserve price, the report of the Asset Valuer will also be

taken into considered. The GoI will have the option of 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) Ensuring 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) Assist in closure of the transaction.

(xiv) Assist in the process of Strategic Sale.

(xv) Advising on post-sale matters, if any.

(xvi) Providing any other analytical and transactional support required by GoI for successful completion of the transaction.

3.2 The ToR mentioned above are indicative and non-restrictive in nature. There may be some services relevant but 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 Bidder should be a reputed professional consulting firm/investment banker/ merchant banker/financial institution/bank having experience of at least 5 years for providing advisory services for strategic disinvestment/strategic sale/M&A activities/ private equity investment transaction.

4.2 Bidders should have advised, handled and successfully completed at least one transaction of strategic disinvestment/strategic sale/M&A activities/private equity investment transaction in India of the size of Rs. 4000 crore or more during the period from 1st October, 2016 to 30th September, 2019.

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:

A pre-bid meeting will be held at 3:00 PM on 23rd October, 2019 in the Conference Hall of DIPAM (Room no. 421, Block 14, CGO Complex, New Delhi). The interested parties may attend the pre-bid meeting, if they so desire. The interested bidders are required to send in their queries, if any, by e-mail to the Officer authorized to receive the application as given in paragraph 6.2 below, latest by EOD on 21st October, 2019.

6. SUBMISSION OF PROPOSAL

6.1 Proposals have to be submitted by mentioning the page number on each document and to be submitted in sequence as per the following directions:

(i) **Envelope 1**:

(a) Covering letter on the Letter Head of Company/Firm for Bid submission by the Bidder enlisting documents attached indicating the page number; Profile of the organization with full particulars of the constitution, ownership and business activities; as well as CA audited financial accounts for the last three years to be furnished.

(b) Authority letter authorizing the person of the bidder to sign the proposal and other documents.

(c) Certificate, duly signed by the authorized signatory of the bidder, as per paragraph 4.3.

(d) 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) Certificate 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 that the team assigned for the transaction would have one expert in strategic disinvestment; one expert in valuation and one expert in drafting of transaction documents. The format of the certificate is at **Annexure-3.**

(g) The bank draft/pay order of Rs.1,00,000/- (Rs One lakh only) payable at New Delhi in favour of Pay & Accounts Officer, DIPAM, as refundable fee.

(h) A certificate that Performance Guarantee of Rs.1,00,00,000 (Rupees One Crore only) valid for a period of 1 year from the date of the appointment letter shall be submitted at the time of appointment as a transaction advisor .

(i) A certificate, that the Performance Guarantee would be extended by one more year if the transaction is not completed within a period of one year.

(j) Certificate on unconditional bid in the format at **Annexure-4**.

(ii) **Envelope 2 (sealed):**

(i) Technical bid along with all schedules, certificates & Annexure, duly filled in, page numbered and signed by authorized signatory of Bidder.

(iii) **Envelope3 (sealed):**

The Financial bid should be submitted in the format as per **Annexure-5**

Bids with any conditionality shall stand summarily rejected.
Note: Financial Bid shall be opened only of those parties, who qualify in the technical evaluation.

6.2 The Expression of Interest (EoI) should be sent by **1500 hours (IST) on 4th November, 2019** to **Smt. Babita Saxena, Under Secretary, DIPAM, CGO Complex, Block No.14, Room No. 219, New Delhi-110003**. The EoI must be sent in hard copies only. The EoIs received after the appointed day and time will be summarily rejected. For any clarifications or details, the parties are advised to contact the above-mentioned officer on (Tel.24368039, E-Mail: saxena.babita@gov.in)

6.3 The Proposals will be opened by the Tender Opening Committee in the presence of the bidders on 4th November, 2019 at 1515 hours (IST) in the Committee Room of the Department of Investment and Public Asset Management (DIPAM) (Room No. 421, 4th Floor, Block 14, CGO Complex, Lodhi Road, New Delhi- 110003).

7. Format of the Technical Bid:

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

- Nature of the Transaction handled & which side was represented – buyer or seller
- Was the transaction for Government or quasi Government or private sector.
- The role played in the transaction.
- Intricacies experienced in the transactions
- Innovative work done on the transactions.

Section (B) Strategic Sale Experience outside India including merger & acquisition (weightage 5/100)

- Overall transaction handled.
- Transaction in similar sector.

Section (C) Sector Expertise & Understanding of the Co.(weightage 15/100)

- Indicate work done in the relevant sector - like studies or research undertaken.
- Exhibit strength/expertise in the sector, if any.

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

- Overall understanding of Indian capital market
- The work done related to capital market
- Is capital market experience relevant in the present case. If yes, specify how. Also indicate how the issue related to capital market shall be addressed.

Section (E) Local Presence(weightage 10/100)

- Commitment to India; fund deployed; period of operations
- Manpower
- Office & other Infrastructure
- Deal Team
- Who in the Deal Team has executed transactions mentioned in section 'A' above?

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

- Understanding of the Valuation Methodologies
- Which one is most suitable for the present case and why

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

- Exhibit marketing strength
- How does the strength help in the present case
- Proposed strategy for the present case.

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

- Proposed structure
- The advantages of the proposed structure
- The deliverables
- The strength in the proposed structure

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

- Details of core team that would work on the transaction.
- Details of other professionals who would provide back up support

Note: An undertaking, to be given by the bidder, 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 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 10 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, on the basis of their presentation and Proposals received and would shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring 70 marks /score out of 100, 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 desired, 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 appointed 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. In case of a tie in marking, the bidder who has the highest technical score will be selected.

9. REQUIREMENT FOR FINANCIAL BIDS:

9.1 The Bidder is required to quote a Transaction fee as a percentage of the disinvestment proceeds i.e. the amount received in Government bank account. The fee quoted should be restricted up to six decimal points . The fee quoted by the Bidder should 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 expenses including those related to due diligence would 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 should not be included in the financial bid. The travel related expenses of Government and TARGET COMPANY's employees will be borne by the GOI/TARGET COMPANY.

9.5 A drop-dead fee of Rs.10,00,000 (Rupees ten 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:

(i). 10%, if the transaction is called off after approval of IM and finalization of Methodologies of business valuation.

(ii). 50%, if the transaction is called off after signing of Agreement of Sale.

(iii). 100%, if transaction is called of after approval of SPA and Terms and Condition by the GoI.

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

10. CONTRACT AGREEMENT:

The 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. PERFORMANCE GUARANTEE

11.1 In case the selected bidder fails to submit performance guarantee within the time stipulated, DIPAM at its discretion may cancel the assignment to the selected bidder without giving any notice. DIPAM shall invoke the performance guarantee only in case the selected bidder fails to discharge their contractual obligations during the period or in case DIPAM incurs any loss due to selected bidder's negligence in carrying out the assignment as per the agreed terms & conditions.

11.2 If the transaction falls through on account of the non-deliverance of the TA (as per the Scope of work and Terms of Reference) then the complete Performance Guarantee would be confiscated.

12. 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 due to online submission. Late receipt of Bid will not be considered.

13. DISPUTE:

In case of dispute, the decision of the Secretary, Department of Disinvestment will be final.

14. JURISDICTION:

The jurisdiction of Court will be at New Delhi only.

15. For any further clarification, please contact Smt Babita Saxena, Under Secretary, DIPAM, CGO Complex, Block No.11, Room No. 219, 2nd Floor, New Delhi- 110003 Telephone No. : 011- 24366086, e-mail: saxena.babita@gov.in;

Annexure-1

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/adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) in India or any of our promoters or directors or that of our Indian Sister Concern(s) in India during the last ten years.

(3) No enquiry/investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) in India or any of our or our Indian Sister Concern's directors, managers and/or other Senior Managerial Personnel in India by any regulatory authority and/or government agency.

(4) The details of enquiry/investigations for non-Grave Offenses 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 are 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 or by restricting or modifying the work to be performed by us in respect of the Proposed Transaction. Government/Company may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in view of the Government/Company to avoid the appearance of a Conflict of Interest.

(ii) The Government/Company would be entitled to terminate our appointment if any of 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 Concern 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 meaning as 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 is 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 it being given 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 on in conflict of their professional duties towards Government/Company in respect of the Proposed Transaction or result in it being given an unfair competitive advantage to any other person.

3. Company means TARGET COMPANY

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 and such other offences which may be considered by the Government/Company as grave on 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's means managing director, company secretary, chief executive officer, 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 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 and includes a group and a joint venture company. "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 has 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 selected others, please provide the nature of constitution)
SEBI registration no, if registered with SEBI	
Details of registration with other professional statutory bodies	

Seal with signatures of authorized signatory of the Bidder

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

Seal with signatures of authorized signatory of the Bidder

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 Conflicts of interests exit/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

Seal with signatures of authorized signatory of the Bidder

Annexure-2

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 Under 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) TARGET COMPANY (hereinafter referred to as "TARGET COMPANY"), 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 TARGET COMPANY intends to disinvest -------% of the share capital of TARGET COMPANY through strategic sale/ESOP/other means, with transfer of management control to a_____. Pursuant to the GoI advertisement in in Financial Dailies and on the official website of DIPAM or of TARGET COMPANY 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 TARGET COMPANY 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

1.1.1Unless 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

1.2.1This 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.

1.2.2This 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

1.3.1This 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.

1.3.2The 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 The 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

1.4.1The 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 or email 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 ----------

1.5.2Notice will be deemed to be effective as follows:

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

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

1.5.4 A Party may change its address and facsimile numbers or email id 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

Under Secretary

Department of Investment & Public Asset Management

Block No. 11, CGO Complex,

Lodhi Road, New Delhi 110003

For ABC

ABC

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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 wilful 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 (i) to have taken into account on the Effective Date of this Agreement and/or thereafter during the terms of the Agreement and (ii) 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 fulfil 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 fulfil 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 ACQUIRER willing to purchase ____% of GOI's holding in TARGET COMPANY is not found and GOI wishes to appoint another advisor for the sale of GOI's holding in TARGET COMPANY ;

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 TARGET COMPANY .

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 through notice by either of the 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 -----% of its shareholding in TARGET COMPANY to a prospective ACQUIRER, and for that purpose have appointed ABC as advisor to advise and assist GoI in selection of the prospective ACQUIRER, 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 negotiating and concluding the strategic sale with the ACQUIRER, keeping in view GoI's strategic objectives and evaluation criteria for the ACQUIRER. 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 ACQUIRER in the present transaction, in analyzing possible transaction strategies from the perspective of GoI and ACQUIRER. 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-24

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 ACQUIRER, ie. ACQUIRER with information on the business and the unique selling points of TARGET COMPANY.

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 ACQUIRER;
- ✦ 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 ABC will support the company in setting up of the e-data and/or physical data room and assist in the smooth conduct of the due diligence process. ABC will facilitate execution of Non-Disclosure Agreements ("NDA") and subsequent communication and providing the bidders with information on the asset and the transaction. The Information Memorandum so prepared will be made available on a confidential basis to potential investors.

Phase IV: Pricing Analysis

3.1.10 ABC will assist GoI in performing a pricing/ valuation analysis of the company. In performing the valuation analysis ABC proposes to use including but not limited to the 'discounted cash-flow' approach, the 'relative valuation' approach, replacement cost approach and the 'asset based valuation' approach to determine a range of fair values. In performing the analysis will be based on illustrative profit projections and the information provided by the company to ABC. The projections would show a possible outcome based on the assumptions as per the business plan prepared by the management of the company ('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.

3.1.11 ABC will assist GoI in fixing the reserve price considering the valuation of the company based on the methods including but not limited to discounted cash flow; relative valuation; and asset-based 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 reserve price, the report of the Asset Valuer(s) will also be considered. The GoI will have the option of getting the valuation done from any other agency.

3.1.12 ABC will present its findings in the form of a Pricing/Valuation Analysis after completing the Information Memorandum and receipt of any additional information of that it may require for this purpose. ABCs 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 or biddings or auctions;
- The findings are solely for the internal use;
- Events subsequent to the date of ABC's analysis may materially alter the valuation estimate; and
- The findings are based upon the information provided to ABC by the company/GOI.

Phase V: Approaching the Strategic Investor(s)

3.1.13 ABC will assist in managing 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) Conducting roadshows in India and abroad.

(c) Analysis of and framing/drafting replies to queries of prospective bidders and making necessary modifications, if required in the bid documents;

(d) Invitation and evaluation of bids from prospective purchasers/ investors and preparation of requisite documents leading to short listing of bidders;

3.1.14 ABC will help in positioning the disinvestment of GoI equity in the company to generate interest among prospective buyers/purchasers/investors. 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 businesses, and if GOI instructs, ABC will forward the Information Memorandum to them upon receipt of a signed Confidentiality Agreement. 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. Expression of Interest (EOI) for bidders to be issued by DIPAM.

Phase VI: Facilitating due diligence review

3.1.15 ABC will assist the company in the smooth conduct of the due diligence process.

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 ACQUIRER ;
- 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: Negotiations and deal support

3.1.16 ABC will assist and provide inputs to GoI during the negotiation process with the prospective partner(s) by:

- Discussing the valuation analysis;
- Negotiating the financial terms;
- Outlining preferable terms;
- 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;
- Assist in finalizing the process of strategic disinvestment
- Assisting in negotiating sessions leading to a transaction.

3.1.17 ABC will be present at all meetings and handle all necessary arrangements during the negotiation or bidding or auction 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 The company / GoI's legal counsel to incorporate the terms and conditions of the transaction into a shareholders agreement(s) and share purchase agreement(s) and all such legal documentation required for execution of the transaction. On account of the peculiarities and complexities of this transaction, it will be crucial that the ABC and legal firm take full responsibility of documentation and completion of the transaction(s).

3.1.19 ABC will 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 and assist in closure of the transaction.

3.1.20 ABC will advise on post-sale matters, if any, for a period of up to 12 months. Documents relating to the transaction be digitised and catalogued and handed over to Ministry of Railways and DIPAM. Advisor will also assist the departments in analysing these records as and when required.

3.1.21 ABC will provide any other analytical and transactional support required by GoI for successful completion of the transaction.

3.1.22 The Scope of Services mentioned in Para 3.1 are indicative and non-restrictive in nature. There may be some services relevant but not expressly captured in the

aforesaid Scope of Services, which upon being brought to the notice of the Advisor by GoI will also form an integral and mandatory part of the Scope of Services.

3.2 Confidentiality

3.2.1 ABC and Personnel of ABC shall not disclose to any party other than GoI/the company , other concerned consultants, valuers, lawyers any information (other than publicly available information) relating to its services, this agreement, the company 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 requirement/s of confidentiality as may be stipulated by GoI.

3.3 **3.3 Indemnification of GOI by ABC**

3.3.1 ABC agrees to indemnify and hold harmless GoI/the company officers, employees and representatives (each, an "Indemnified Person") from and against any claim, loss or liability 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 Indemnifies Person, any amounts to be paid by ABC will be finally decided by the Arbitration Tribunal or courts of law. It is understood and agree 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/judgements/decree, 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.

3.3.4In the event that the agreement is terminated as per Para 2.5.1 (except under sub-clauses (c) and (e)), ABC's Performance Guarantee (as defined in the RFP) will be invoked.

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, 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 the company. 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 in time while the services are being carried out, expressly communicates to ABC the opinion that any of the Personnel need to be substituted for 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/The company shall provide to ABC all relevant information and particulars in the possession of GoI and which they have legal authority provide and all assistance required by ABC to enable ABC to perform it services.

4.1.2 Further, GoI shall issue to officials, agents and representatives of GoI/The company 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 The company or in the event that GOI and The company 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/The company 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 document/s or announcement/s that it may require and authorise 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 The company 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 or 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 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/The company. 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/The company 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/ judgement/ 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, 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 gross consideration to be paid by the strategic partner to GoI/The company for purchase of its shares in The company and/ or allotment of new shares, if any, 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 strategic partner(s).

5.2.3 The Gross Consideration includes the consideration made available to The company 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 The company on the date of signing the shareholders' agreement.

Drop dead 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 related to external legal advisors appointed by GoI for drafting and providing shareholders agreement and such other related agreements related to the strategic sale;

(b) Fees and expenses related to external professionals appointed by GoI and the company, including fees and expenses, if any related to the company auditors and GoI's own legal advisors;

(c) Travelling/hotel and other cost incurred in connection with domestic or international travel of GoI/the company personnel, officers and employee;

(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, computer related hardware/software, couriers, dispatches and postage.

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 other party's request for amicable settlement may be submitted by a Party to arbitration in accordance with the provisions of Paragraph 6.2.2.

6.2.2 Subject to Paragraph 6.2.1 of this 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 time and 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 authorisation, 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 the company 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;

(e) The execution, delivery and performance of this agreement will not 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 action 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 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

8.1.2.1 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.

8.1.2.2 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.

8.1.2.3 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.

8.1.2.4 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 (as defined in the RFP);
(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.
(v) The GoI will be entitled to initiate the criminal liabilities as well.

8.1.3 Operation of the Agreement

The Parties recognise 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 failure to agree on any action pursuant to this Clause shall not 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 such advertisement will be subject to GOI's approval, which will not be unreasonably withheld.

8.3 Waivers

8.3.1 No failure of delay of a Party hereto in exercising any right of remedy hereunder shall operate as a waiver thereof nor will any single of 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 judgement 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		Strategic disinvestment			
2		Valuation			
3		Documentation of strategic disinvestment			
4					

Seal with signatures of 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 strategic disinvestment of TARGET COMPANY. is in accordance with the terms and conditions laid down in the Request for Proposals displayed on the website of the Department of Investment & Public Asset Management and is unconditional.

Seal with signatures of authorized signatory of the Bidder

Annexure-5

Format of Financial Bid on the Letterhead of the Bidder

Sl. No.	Description of work **(Railway COMPANY)**	Fee quoted (in percentage)
1.	Fee as percentage of disinvestment proceeds that are transferred into Government bank account	(Rs. In Figures) (Rs. In Words)

Note:

1) In case of any, mismatch in fee quoted in the figures and the fee quoted in words, then fee quoted 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