

## **CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT**

This **CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT** (hereinafter referred as “**Agreement**”) is made on this \_\_\_\_\_ day of June, 2019 (hereinafter referred as “**Effective Date**”)

amongst

1. **Tantia Constructions Limited**, a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at Block DD 30 Sector-1, Salt Lake City, Kolkata-700064, acting through **Mr. Kshitiz Chhawchharia, the Resolution Professional** appointed for the Company under the order of the National Company Law Tribunal, Kolkata Bench dated 13 March, 2019 or his authorized representatives of Grant Thornton (GT) (hereinafter referred to as “**TCL**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), of the **FIRST PART**;

**AND**

2. [*Insert name of Applicant*], [a company incorporated under the Companies Act, 1956 and existing under Companies Act, 2013/ a company to be incorporated under Companies Act, 2013/ a body corporate or corporation] [*Note to Applicant: Please retain/insert appropriate description*] having its registered office at \_\_\_\_\_ (hereinafter referred to as the “**Applicant**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**

(TCL shall hereinafter be referred to as the “**Disclosing Party**”, TCL and the Applicant shall hereinafter individually be referred to as "**Party**" and collectively as the "**Parties**").

### **WHEREAS:**

- A. TCL is engaged in the Engineering Procurement Construction (EPC) sector, a pioneer in creating infrastructures in Easter India. It caters to different sectors namely Railways, Road and highways, Urban development, etc. Pursuant to the order dated 13 March, 2019 (“**Order**”) of the Hon’ble National Company Law Tribunal, Kolkata bench (“**NCLT**”), TCL has been admitted into a corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Pursuant to the Order and the resolution dated 18 April, 2019 of the Committee of Creditors, Mr. Kshitiz Chhawchharia, an insolvency professional (bearing IP Registration number IBBI/IPA-001/IPP00358/2017-

[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]

18/10616) has been appointed as the resolution professional (“**RP**”) in respect of the Company. In accordance with section 23 (2) read with section 17(1)(b) of the IBC, the powers of the board of directors of TCL are vested with the RP.

- B. The RP has prepared an information memorandum in relation to TCL as per Section 29 (1) of the Insolvency and Bankruptcy Code, 2016 and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of TCL (“Information Memorandum”) The Applicant has submitted its expression of interest for participating in the resolution process for TCL.
- C. To enable the Applicant to prepare a resolution plan or bid and to evaluate the Transaction, TCL may (including through any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors), from time to time, disclose certain “Confidential Information” (*hereinafter defined*) to the Applicant, including such information as is specified in the Information Memorandum.
- D. The Applicant agrees to enter into this Agreement to, *inter alia*, keep confidential all Confidential Information that may be disclosed to it and/or its Representatives (*hereinafter defined*), in the manner set out hereinafter.

**NOW, THEREFORE**, in consideration for the mutual promises and covenants hereunder, TCL and the Applicant agree as follows:

## **1. DEFINITIONS**

- 1.1 “**Confidential Information**” means any and all information disclosed or submitted to the Receiving Party by or on behalf of Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a Disclosing Party) in written, representational, electronic, verbal or other form and includes (i) all data, materials, prices, debts, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information; (ii) all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, reports and other materials which contain, reflect or are based upon, in whole or in part, any of such information; (iii) information about the Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement, (iv) information and details regarding the terms, conditions and structure of, and other facts relating to, the Company and/or the Transaction, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

other third party on behalf of the Disclosing Party; and/or (v) all reports, analyses, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Receiving Party or its Representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i), (ii), (iii) and/or (iv) which is provided to the Receiving Party and/or its Representatives in connection with the Transaction.

- 1.2 **“Disclosing Party”** shall have the meaning scribed to it in the Title clause above.
- 1.3 **“Receiving Party”** shall mean the Applicant, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.
- 1.4 In relation to the Receiving Party, its **“Representative”** shall means any agent, officer, employee, director, legal or financial advisor, affiliate, investor, counsel, potential financing source who (i) needs to know such information for the sole purpose of the Transaction; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement; (iii) who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (vi) who has confirmed that it has no conflict with the Disclosing Party, and the term “Representatives” shall be construed accordingly. In relation to any Disclosing Party, its “Representative” shall mean any agent, officer, employee, director, consultant, legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

## **2. USE OF CONFIDENTIAL INFORMATION**

- 2.1 The Confidential Information divulged by (or on behalf of) the Disclosing Party to the Receiving Party and/or its Representatives will be received and treated by the Receiving Party and/or its Representatives as – (i) strictly confidential; (ii) in accordance with applicable law; and (iii) as required under Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Receiving Party and its Representatives shall not, without the prior written consent of the Disclosing Party or as expressly permitted herein, disclose, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use, the Confidential Information in any manner whatsoever other than for the sole purpose as described in Clause 2.2 below. Without prejudice to the above, the Receiving Party and its Representatives shall comply with all provisions of law applicable to confidential information and insider trading.
- 2.2 Notwithstanding the provisions of Clause 2.1 above, the Receiving Party may disclose the Confidential Information received under this Agreement to its Representatives (as defined in Clause 1.4 above) in accordance with applicable laws in relation to confidentiality and insider trading and on a strict "need-to-know" basis, and *solely* for the purpose of enabling assessment and evaluation of the Transaction (**“Purpose”**).

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

- 2.3 The Receiving Party and its Representatives shall exercise the same standard of care in respect of the security and safekeeping of the Confidential Information disclosed hereunder as the Receiving Party and its Representatives exercise in respect of its own confidential information.
- 2.4 In accordance with the provisions of section 29(2) of the IBC, the Receiving Party acknowledges that it is aware and that its Representatives have been advised that applicable securities laws prohibit any person having unpublished price sensitive information about a company from dealing with the securities of that company and the Receiving Party agrees to abide by and cause its Representatives to abide by the terms of such securities laws, including without limitation, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 as may be replaced, amended or supplemented from time to time and other applicable laws in relation to insider trading and the acquisition of securities and shall indemnify and hold the Disclosing Party and its Representatives, officers, directors, employees, agents and affiliates harmless against any consequences arising from any such violation by the Receiving Party, its Representatives or their affiliates.
- 2.5 The Receiving Party understands and acknowledges that pursuant to the order of the Kolkata bench of the NCLT dated 13 March 2019, the NCLT had commenced the CIRP of the Company and appointed the RP as the interim resolution professional who was subsequently appointed as the resolution professional by the committee of creditors. None of the Disclosing Party nor the RP makes any representation or warranty or inducement, expressed or implied, now or in the future, as to the accuracy, correctness, completeness, fairness or relevance of the Confidential Information. Neither the Receiving Party nor any of its Representatives shall be entitled to rely on the accuracy, correctness, completeness, fairness or relevance of the Confidential Information, whether for the purpose of formulation of the Transaction and/or otherwise in relation to the Company. Further, none of the Disclosing Party nor the RP shall, now or in future, have any liability to the Receiving Party or any other person resulting from Receiving Party's or its Representative's use of the Confidential Information.
- 2.6 Receiving Party shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses on a solicitor and client basis arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives. The Receiving Party further agrees and undertakes, at its sole cost and expense, to take any and all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from disclosing or using the Confidential Information in violation of this Agreement.

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

- 2.7 The Receiving Party acknowledges that it shall be responsible for any breach of this Agreement by the Receiving Party and/or any of its Representatives, employees or employees of its Representatives.
- 2.8 The Receiving Party shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, who are already engaged by the Disclosing Party in relation to the corporate insolvency resolution process of the Company
- 2.9 If the Receiving Party decides to not proceed with the Transaction, it will promptly notify the RP in writing of that decision. The Receiving Party shall immediately, upon the earlier of (a) the conclusion of the Transaction; or (b) termination of this Agreement as per Clause 12 below; or (c) a notification by the Disclosing Party, for any reason or for no reason, surrender and return to the relevant Disclosing Party, all Confidential Information in its possession, or destroy the same in accordance with the directives of the Disclosing Party.
- 2.10 The Receiving Party shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium; and
- 2.11 The Receiving Party shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorized third party provided that such notification shall not relieve the Receiving Party from any liability arising from its breach of this Agreement.
- 2.12 The Receiving Party shall protect any intellectual property of TCL which it may have access to which is provided or made available to by the Disclosing Party.
- 2.13 The Receiving Party shall not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with the provisions of Section 29(2) of the IBC and the rules and regulations prescribed thereunder.

### **3. EXCEPTIONS**

The Receiving Party's obligations hereunder, shall not apply to Confidential Information which:

- 3.1 at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain through no fault or wrongful act of the Receiving Party or its Representatives; or
- 3.2 was known to the receiving Party, as evidenced by written documentation, prior to its disclosure in connection with the Transaction provided that the source of such

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

information was not known by the Receiving Party or any of its Representatives, after reasonable inquiry and investigation, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect to such information; and

3.3 is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

#### **4. NON- DISCLOSURE OF TRANSACTION**

4.1 It is agreed that without the prior written consent of the Disclosing Party, the Receiving Party shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has been made available to it or its Representatives, (b) that discussions or negotiations are taking place concerning a possible Transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible Transaction, including the status thereof.

4.2 The Parties agree that unless and until a definitive agreement(s) regarding a Transaction between the Parties has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to a Transaction between the Parties and to terminate discussions and negotiations at any time. The Receiving Party further acknowledges that the resolution plan proposed by it may be rejected by the committee of creditors and/or the NCLT at any time.

#### **5. NOTICE**

The Receiving Party further agrees that all communications (both written and oral) regarding the Confidential Information and/or the Transaction, requests for additional information, and discussions or questions regarding procedures related to the Transaction, will be sent only to TCL through and/or authorized representatives of Grant Thornton (who are assisting RP in discharging his duties as an RP) as authorized by RP and not directly to any of the Company's affiliates or any of their respective directors, officers or employees.

All notices, statements or other communication required or permitted to be given or made under this Agreement shall be in writing in the English language and delivered by hand, or through a reputed international courier company or through speed post to the address set forth below, or by sending it by email (with delivery of a notification with return receipt requested) to the email address set forth below:

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

**Notice Details for TCL (RP):**

**Mr. Kshitiz Chhawchharia**

Resolution Professional

Tantia Constructions Limited

C/O B. Chhawchharia & Co

8A & 8B, Satyam Tower

3, Alipore Road, Kolkata - 700027

Email: [kshitiz@bccoinia.com](mailto:kshitiz@bccoinia.com)

**Notice Details for Applicant:**

*[to be inserted by the Applicant]*

**6. COMPELLED DISCLOSURE**

In the event that the Receiving Party or any of its Representatives are required by applicable law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the opinion of the counsel of the Receiving Party, the Receiving Party or its Representatives are nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then the Receiving Party may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the Receiving Party is compelled to disclose. The Receiving Party will not oppose any action by the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The Receiving Party and its Representatives will reasonably cooperate with the Disclosing Party in their efforts to obtain a protective order or other appropriate remedy that the Disclosing Party elects to seek to obtain, in their sole discretion.

**7. OWNERSHIP OF MATERIALS / NO WARRANTY**

- 7.1 Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements, modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Receiving Party agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Receiving Party covenants and agrees to sign any papers and do all acts necessary to secure for the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations,

including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.

**8. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

Within fifteen (15) days of completion of the Transaction, or upon termination of the negotiations in relation to the Transaction or being so requested in writing by the Disclosing Party, the Receiving Party shall promptly return or destroy the Confidential Information including all copies, or reproductions or other media containing such Confidential Information, save for such copies as may be required to be retained by law or for compliance with corporate governance requirements and internal policies and copies of electronically exchanged Confidential Information made as a matter of routine information technology backup. The Receiving Party shall provide a written certificate to the Disclosing Party regarding the destruction within 20 (twenty) days thereafter. Any Confidential Information that is not returned or destroyed shall remain subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder, which shall survive termination of this Agreement.

**9. INJUNCTIVE RELIEF**

The Receiving Party acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Receiving Party further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

**10. INDEMNITY**

The Receiving Party hereby agrees to indemnify and hold each of the Disclosing Party and their Representatives harmless, from and against all claims, demands, liabilities, losses, damages, costs and/or expenses (including all legal costs and expenses) suffered or incurred by such other Party or their Representatives due to a breach by the Receiving Party or its Representatives of the provisions of this Agreement.

**11. NO LICENSE**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. The Receiving Party and its



Representatives shall not use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

## **12. TERM**

This Agreement shall remain valid and binding on the Parties until 24 months from the Effective Date of this Agreement or such earlier date as may be mutually agreed by Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 10 above) shall survive the termination of this Agreement.

## **13. GOVERNING LAW**

13.1 This Agreement shall be governed by and construed in accordance with the laws of India.

13.2 With respect to any action, suit or proceeding relating to this Agreement, the Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts of Kolkata.

13.3 The Parties agree that Clause 13.2 is for the benefit of the Disclosing Party only, and the Disclosing Party shall not be prevented from taking any action, suit or proceeding relating to this Agreement in any other court or tribunal of competent jurisdiction, if and to the extent permitted under Applicable Laws.

## **14. MISCELLANEOUS**

14.1 This Agreement constitutes the entire agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement. This Agreement may not be amended except in writing signed by all the Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any rights hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied, except as required under statute.

14.2 This Agreement may not be amended or terminated except pursuant to a written agreement duly executed between the Parties.

14.3 If any term or provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

and enforce such term or provision in its reduced form for all purposes contemplated by this Agreement.

14.4 The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The Disclosing Party reserves the right to assign all of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to any person who enters into the Transaction contemplated by this Agreement. The Receiving Party shall not assign this Agreement.

14.5 Any breach of provisions of this Agreement by any Party hereto shall not affect the other Party's non-disclosure and non-use obligations under this Agreement.

14.6 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by, TCL and the Applicant on the date mentioned hereinabove as follows:

Accepted and agreed by ("**Receiving Party**") as of the date first written above:

- (1) We confirm that we and our Representatives will keep all Confidential Information confidential.
- (2) We confirm that we and our Representatives shall not use any Confidential Information to cause an undue gain or undue loss to the Disclosing Party or any other person.
- (3) We and our Representatives will comply with the requirements under section 29(2) of the IBC.
- (4) We and our Representatives will protect the intellectual property rights of the Company in relation all Confidential Information.
- (5) We and our Representatives will not share any Confidential Information with any third party including any Representatives, without first ensuring that our obligations under this Agreement are complied with.
- (6) We and our Representatives will comply with all the terms and conditions of the Agreement.

By:

Name:

Title:

Company: