

Global Invitation for Request for Proposal

for

Disinvestment of Jammu and Kashmir Cements Limited

Tender Reference No. IC-JKCL/02/2023-01 dated 10.04.2023

Issued by



Government of Jammu and Kashmir
Industries and Commerce Department

April 2023

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The Administration of Union Territory of Jammu and Kashmir (“**UTJK**”) is proposing to disinvest Jammu and Kashmir Cement Limited (“**JKCL**” or the “**Company**”), a fully owned cement manufacturing company under UTJK through strategic sale along with transfer of management control (“**Proposed Transaction**”).

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The implementation of the Proposed Transaction referred to in this RFP is subject to, inter alia, approvals from various concerned authorities.

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PRELIMINARY INFORMATION MEMORANDUM

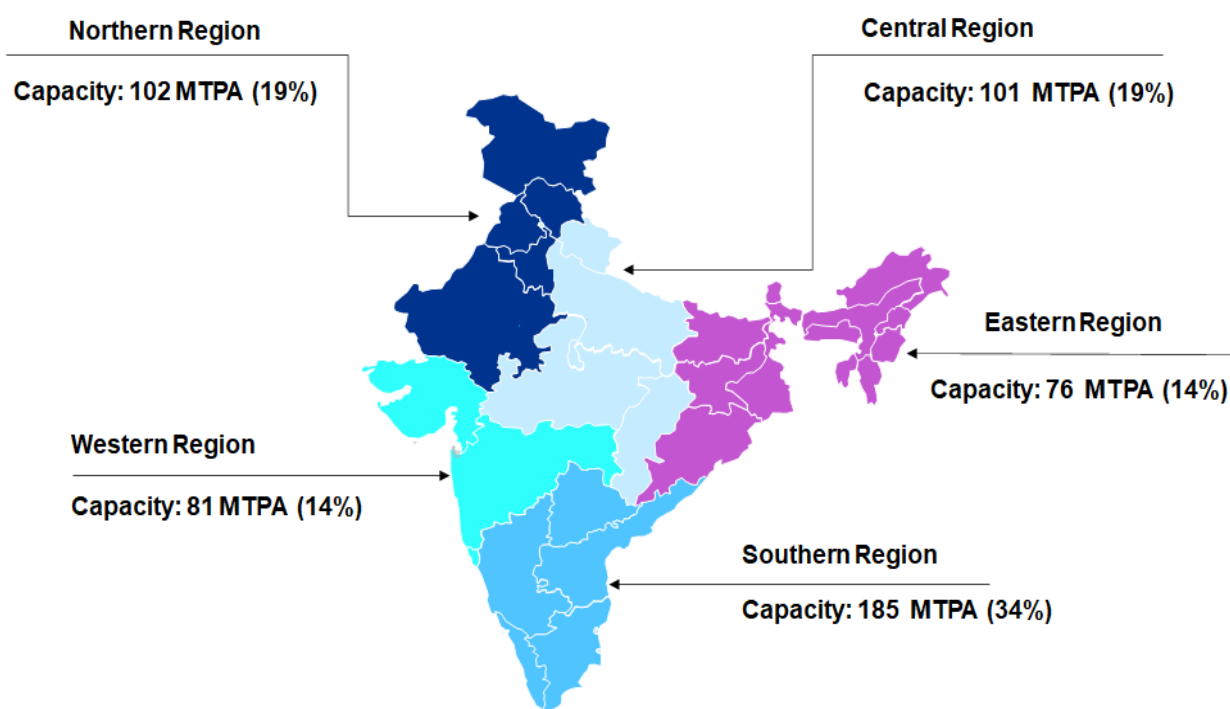
1. Introduction

1.1. India's Cement industry: an overview

1.1.1. India is the world's second largest cement market, in terms of both production and consumption, with its installed capacity translating to approximately 7% of global capacity. The country has an installed production ⁴ of ~ 545 million tonnes per annum (MTPA) and a capacity utilization of ~ 65% which translates to an estimated production of ~ 355 MTPA at end of FY 22 ². India's north and central regions together accounted for nearly 38% of installed capacity.

1.1.2. Limestone, a key raw material, is the single most important factor determining the location of cement plants in India. The cement industry comprises five distinct regions - North (19% capacity), South (34% capacity), West (14% capacity), and East (14% capacity) and Central (19% capacity).

Exhibit 1 Cement Production Capacity in India Region-Wise in FY 22



Source: Cement Manufacturer's Association

1.1.3. The Cement demand in Jammu and Kashmir is estimated at ~ 4.5 MTPA and has a production capacity is ~ 0.86 MTPA³. As reported by the Department of Promotion of Industry and Internal Trade (DPIIT), there are 10 cement plants in Kashmir. Given this local demand-supply gap, much of the cement demand of Jammu and Kashmir presently is met from Rajasthan and Himachal Pradesh.

1.1.4. Approximately, 98% of the installed capacity is within the private sector and the top 20 companies account for 70% of production. 210 large cement plants account for ~ 410 MTPA capacity; rest of

¹ Cement Manufacturers Association;

² ICRA cement sector analyst report 2022

³ Cement Manufacturer's Association

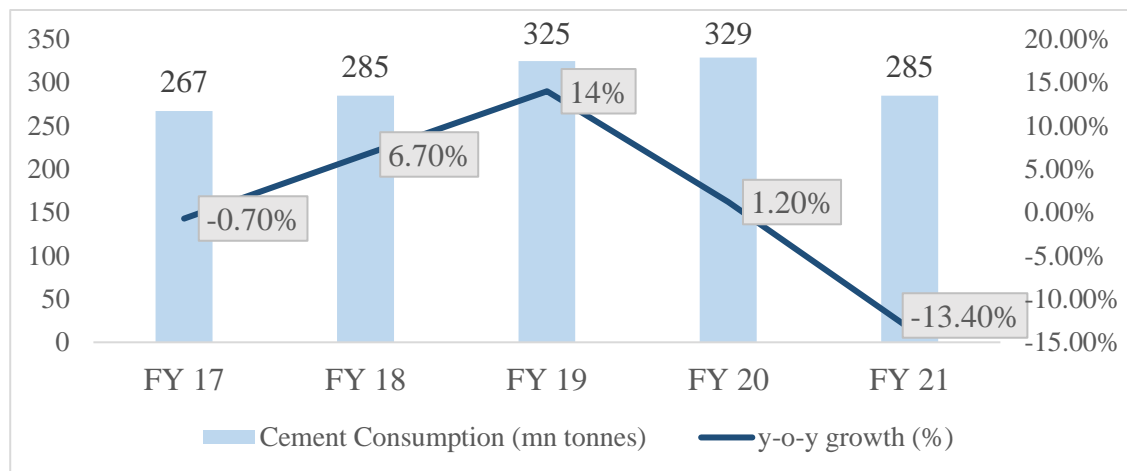
the capacity is distributed in over ~ 350 mini-cement plants. The cement industry in India is dominated by a few large players controlling substantial market share. Ultratech, Adani (after buyout of Holcim stake in ACC and Ambuja), Shree Cement and Dalmia Bharat are the leading players in terms of capacity.

- 1.1.5. A significant entry barrier for cement manufacturers in India is the access to limestone reserves. The entry barrier for new players remains quite high. There are no FDI restrictions⁴ on foreign players but given the high level of competitive intensity, the preferred mode of entry is through M&As. As per the information provided on the portal of Department for Promotion of Industry and Internal Trade (DPIIT), India is home to 154 cement companies. Some of the companies have a country-wide presence, but many are purely regional. The cement market in India is largely an oligopoly market where large players have partial pricing control.
- 1.1.6. The current environment provides good opportunity for the cement industry. This is because the cement industry primarily derives demand from the infrastructure and real estate sector activity. Both these sectors have been in the limelight due to their potential to drive economic growth. Housing and real estate account for nearly 65% of cement consumption followed by infrastructure (25%), with commercial & industrial development accounting for the rest. The government has launched several programmes such as Bharatmala, Sagarmala, and Smart Cities amongst others in a bid to strengthen the country's infrastructure and speed up development. Furthermore, affordable housing continues to be a key focus which will benefit the real estate sector. The focus of the cement industry has been on bringing down the operating costs especially in the environment of relentless rising of raw material cost such as coal, pert coke and freight cost. Also, the climate change activities have brought in significant developments in the sector to reduce the carbon footprint of cement companies and to limit.
- 1.1.7. India's per capita consumption of cement stood at 227 kg/year, which is significantly lower relative to global average of 500-550 kg/year, and to that of China at ~1,650-1,700 kg/year. There is sufficient headroom for consumption growth in the country⁵. Cement demand is slated to grow at 8.6% between FY 21-FY 24 on the back of robust infrastructure spending by government on account of National Infrastructure Pipeline (NIP) and due to impetus on Housing for All Scheme and recovery in real estate demand and overall pick up in economic growth. The cement industry is expected to add an incremental 80 MTPA by 2024⁶.

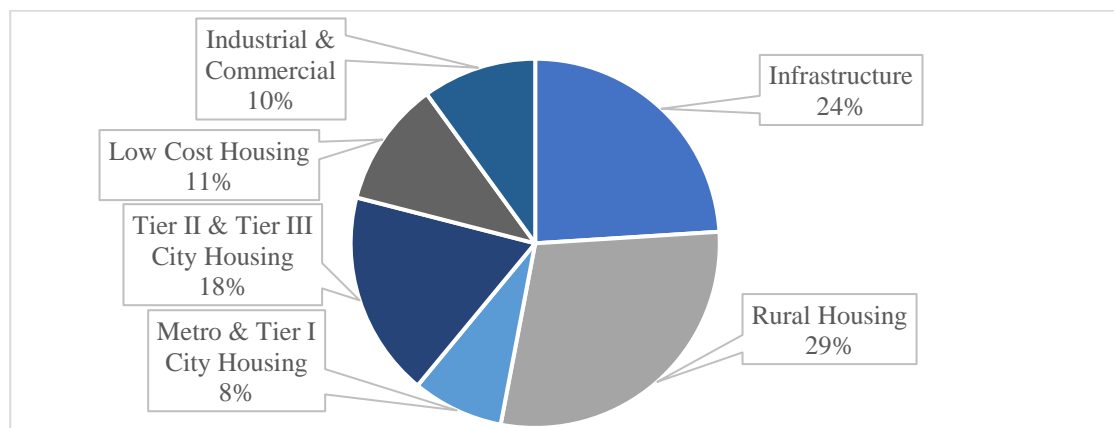
⁴ There are no FDI restrictions on foreign players in the cement sector as per DPIIT as per the Consolidated FDI Policy (Effective from October 15, 2020) - DPIIT File Number 5(2)/2020-FDI Policy Dated the October 15, 2020

⁵ EMIS India Cement Sector Report 2022/2023

⁶ EMIS India Cement Sector Report 2022/2023

Exhibit 2 Cement Consumption in India till FY 21

Source: EMIS India Cement Sector Report 2022/2023

Exhibit 3 Cement Consumption in India by Sector in FY 21

Source: EMIS India Cement Sector Report 2022/2023

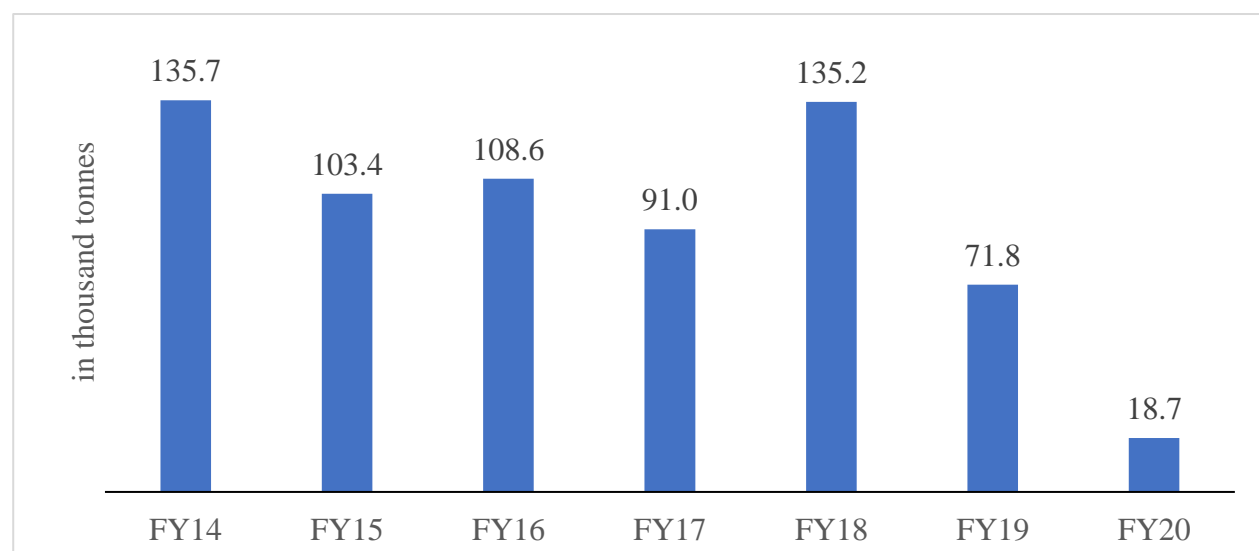
1.1.8. The Department for Promotion of Industry and Internal Trade (DPIIT) has been responsible for the promotion and development of the cement sector in the country. Its role encompasses facilitating investment in new and upcoming technology, foreign direct investment, and supporting the balanced development of industries. The National Council for Cement and Building Materials (NCB), also known as the Cement Research Institute of India, is under the administrative control of DPIIT and has been entrusted with promoting research and scientific work connected with the cement and building materials trade and industry. Currently, NCB is considered the key organization for administrative control of Ministry of Commerce and Industry for technological advancements, cement, and other building material industries. The Cement Manufacturers Association (CMA) is an apex body for all cement manufacturers in the country. CMA liaisons with the government and helps shape policies related to the cement industry. CMA also plays a key role in addressing issues related to cement manufacturing, which entail environment, taxation, logistics, waste management, recycling, and fuel supply amongst others.

2. Jammu & Kashmir Cement limited: an overview

2.1. Overview of Plant and facilities

- 2.1.1. The Jammu and Kashmir Cements Ltd (JKCL) was incorporated in the year 1975 under Companies Act, 1956 as a government owned company with an authorized capital of Rs 60.00 crore. The primary objective of the creation of JKCL was to reap benefits of the rich deposits of Limestone in the Khrew belt for manufacturing and sale of cement. The company started its operation with the commissioning of its first integrated plant at Khrew, Pulwama with a capacity of 600 TPD in 1982. Two new plants, one integrated plant at Khrew, Pulwama with a capacity of 600 TPD and one grinding unit at Samba, Jammu with a capacity of 300TPD were commissioned in 2010 and 2015 respectively.
- 2.1.2. The company has rights over a Limestone mine in Khrew spread over 88.1 hectares, with an estimated net mineable reserve of around 10.4 million tonnes. Over the years, JKCL's main source of revenue has been sale of cement to various Government departments and PSUs.
- 2.1.3. Exhibit 4 provides the year-wise trends of JKCL's cement production. After a peak production of 135,000 tonnes in FY 18, production has declined since and the plants are non-operational at present.

Exhibit 4 Year wise Cement Production by JKCL since FY 14



- 2.1.4. Location of the Plant: The integrated cement manufacturing plant of JKCL is located in Khrew in Pulwama district which is about 30 km South-East of Srinagar, and the grinding unit is located at the Samba plant which is about 35km South-East of Jammu. The map below indicates the location of the plant.

Exhibit 5 Location of the facilities of the JKCL

2.1.5. The connectivity and access details of the plant facility are as provided below:

- (a) **Road** - The Khrew plant site is well connected by National Highway (NH 44) and the Samba plant is well connected by National Highway (NH 44)
- (b) **Railway** - The nearest railway station from Khrew Plant is Pampore (15 km) and Udhampur (140 km) and the nearest railway station from Samba plant is Jammu Tawi (36 km)
- (c) **Airport** - The nearest airport is Srinagar airport which is about 25 km from the Khrew Plant and the nearest airport to Samba plant is Jammu which is about 36 km from the plant

2.1.6. The integrated cement plant is located at an accessible location and has following benefits –

- (a) The plant site is located within approved limestone industrial area of district Pulwama
- (b) The plant site is well connected with all-weather road network
- (c) The plant site is in proximity to the huge demand center for cement in the Valley
- (d) Availability of adequate skilled manpower for running a cement plant

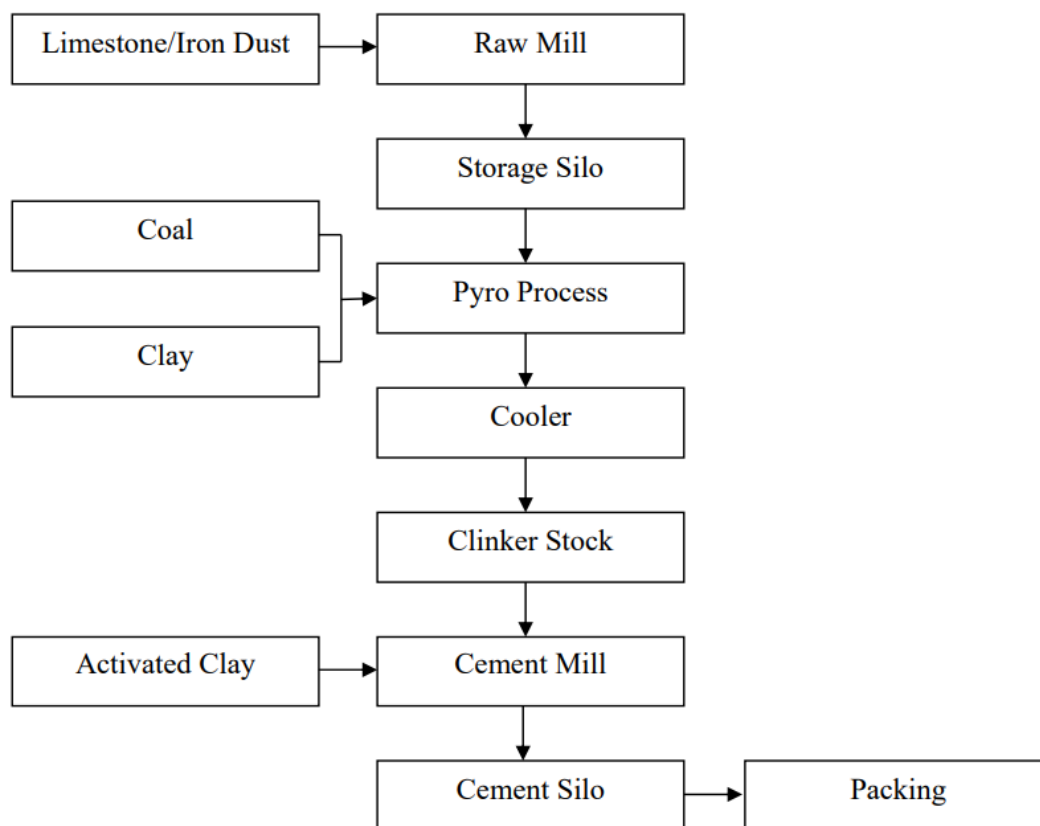
2.1.7. **Climatic Conditions/Wind/Rain Fall/ Seismic Zone** - The plant exists adjoining to the alpine and temperate region of the Jammu and Kashmir state. Temperature varies considerably from month to month. The minimum air temperature drops below 0°C, at times, it can go down to -5 to -7°C. Ground frost is a common phenomenon during mid-winter. The rise in temperature is gradual when the air has high moisture content with the sky remaining overcast; the rise is however steep when the sky is clear and there is less moisture content in the air. The maximum air temperature goes up to 32°C. The area receives an annual rainfall of 700-750 mm (snow bound) and the average altitude is 1600 m.

2.1.8.Demand for Cement: In Jammu and Kashmir, the cement industry is clustered around Srinagar and Pulwama district where raw material i.e. limestone is found in abundance and it is of the best quality required for the cement industry. The state has seen a phenomenal growth of cement industry in the area in the last decade. Cement, being a bulk commodity, is freight intensive and transporting cement over long distances can prove to be uneconomical. This has resulted in cement being a regional play. Moreover, the presence of raw material in abundance and incentives offered by the State Govt. has boosted the entrepreneurs of the region to come up with the state-of-the-art plants with the latest modern technologies to explore the field and make the cost of cement production competitive. In the state, the consumption of cement is much more than the local production. The cement thus has to be transported from outside the state for meeting the gap between supply and demand. The project thus enjoys an almost assured market.

2.1.9.Details of the Plant: The integrated manufacturing cement plant at Khrew has a legacy plant commissioned in 1982 which is 600 TPD (which has 2 units of 300 TPD each). The new plant which was commissioned in 2010 has a capacity of 600 TPD. The plant uses a conveyor belt to transport limestone from crushing zone to both the plants (the crushing zone is attached to the limestone mine). The calcinated clay is available from local and adjoining areas.

2.1.10. The simplified cement plant process has the following process steps namely - Crushing of Limestone, Prehomogenisation, Grinding of Raw Materials, Homogenisation, Pyroprocessing, Clinker, Formation, Cement Grinding, Cement Storage, Packing and Dispatch. The cement plant uses Rotary Kiln Technology. JKCL uses the 'dry method' for the production of clinker and cement. The different process steps involved in the production of cement are discussed as under:

- (a) **Crushing of Limestone** - The big boulders obtained from the mines are crushed into crushers. The crushing is carried out in double stages by using primary crusher and secondary crusher. Jaw crushers are employed for reduction of size of limestone boulders to a suitable feed size acceptable to the different types of grinding machines installed in the plant. The crushed limestone is transported to plant stockpile with the help of conveyor belt.
- (b) **Prehomogenisation** - The crushed limestone is transported to stacker reclaimer site with the help of conveyor belt installed at plant site. The crushed limestone is blended with the help of stacker and reclaimer systems. The crushed limestone travelling on the belt conveyors is stacked in layers with the help of stacker machine, which moves to and fro along the side of stacking yard. The stacked materials are then cut in slices with the help of a reclaiming machine which mixes the layers of stacked limestone thereby reducing the variation in quality of limestone as compared to the large variations obtained in the limestone obtained from mines.

Exhibit 6 Cement Manufacturing Flow in the JKCL Plant

- (c) **Grinding of Raw Materials** - The pre-blended limestone from stack pile is transported to raw mill hoppers. Raw mill hoppers are provided with continuous weighing machines known as weigh feeders in order to produce a suitable raw meal proportioned appropriately for production of desired good quality of cement clinker. Vertical Roller Mill and Tube Mill Grinding machines is used for production of pulverized raw meal.
- (d) **Homogenization** - The raw meal ground in the raw mill is thoroughly blended in vertically tall blending silos. The blending is performed pneumatically by introducing the compressed air in the bed of fine raw meal fed to the blending silo. The blended raw meal is taken out of the silo with the help of air slides and is fed in a central discharge bin, which is continuously aerated for accomplishing final blending of raw materials. The properly blended raw meal is now be ready for burning the same to produce cement clinker in the cement kiln.
- (e) **Pyroprocessing** - The pyroprocessing system comprises of three important sections namely preheating and precalcining, clinkerisation and cooling. The preheating section is a tall column and comprises of battery of cyclones arranged one over the other in series. The preheaters comprise of 5-6 stage of low-pressure cyclones. The riser ducts of top stage cyclones is connected with powerful induced draft fans also known as preheater fans, smoke gas fans etc. Precalcining of raw meal is carried out in separate vessel vertically held and placed in between preheating and clinkerisation section. The clinkerisation reaction is carried out in a rotary kiln

furnace. The rotary kiln is a long cylindrical shell provided with refractory bricks from inside which prevents the heat loss from the kiln and protects the steel shell from any damage due to persistent high temperature maintained inside the kiln. The dry and properly blended raw meal is lifted mechanically by bucket elevator from the bottom of raw meal blending/storage silo to the top of the preheater and fed at the top stage of cyclone inlet duct with the help of screw conveyor and rotary air lock. Raw meal weigh-feeders is installed for continuous weighment of raw meal for feeding the same to preheater at a constant rate.z

- (f) **Cement Grinding** - The clinker produced in rotary kiln would be usually stored for few days before it is ground in cement grinding mills along with appropriate quantity of gypsum and other additive materials for production of finely pulverized cement with desired fineness. The ball mills along with roller press is used for clinker grinding in cement plant.
- (g) **Cement Storage, Packing and Despatch** - The pulverized different types of cements is stored in different silos installed with different capacities. Depending upon the market requirements the cement is loaded in bulk or packed in 50 KG bags with the help of rotary packages, loaded onto trucks and finally dispatched to the required destinations

2.2. Limestone deposit assessment report Of Khrew mine

2.2.1. Topography: The limestone deposit in the mine forms a part of the Gunsgund Gupron block (G. G. Block). The deposit forms a part of the northern hill range of the shar-ondrus-kunyabal valley with general trend of the hill range being along N-S to NNW-SSE. The limestone deposit lies about 2 kms N-E of village Khrew in Taluka Pampore of district Pulwama. The ML area rises from a flat level of about 1700m RL to about 2020m RL. The cement plants based on this deposit is located at about 1700 m RL above MSL. The valley in which the plants are located is surrounded by steep limestone hills on three sides. Leaving it open from Southwest Side only. The highest level in this part of ML area is 2020 m above MSL and the lowest level is 1710 m above MSL.

2.2.2. Lease Area: Mining Lease was granted to M/S Jammu and Kashmir Cements Limited by the Govt. of J&K over an area of 88.10 hectares in the year 1977 at village Khrew in district Pulwama. The mining operations were commenced in the lease since 1981-82 and the said mining lease is renewed up to the year 2027 by the Government of J&K. The Department of Industries and Commerce, Government of J&K has already sought approvals from the Geology and Mining Department to renew the mining lease for at least another 20 years. Land use pattern is provided in table below

Land use Area	in ha
Forest	Nil
Agricultural	Nil
Grazing	Nil
Barren Govt. Land	88.10 ha

2.2.3. Geological Reserves: The G. G. Block covers an area of about 88.10 hectares and has been divided into 5 sub-blocks namely A, B, C, D and E for purposes of estimation of reserves and grade. The detailed exploration of the G. G block has been undertaken by Directorate of Geology & Mining in 1973 for M/S Jammu and Kashmir Cements Limited for establishment of their cement project at Khrew. The G. G block was subdivided into 5 sub blocks for purposes of estimation and geological investigations so as to:

- (a) Confirm existence of potential limestone horizon, suitable for cement manufacture
- (b) Formulate structural concept of the deposit
- (c) Delineate actual mining area

2.2.4. Due to magnesium nature of the limestone the sub blocks D & E have been left out of consideration. The assessment of potential reserves of limestone was done on the basis of geological cross sections prepared across the strike of the deposit by Department of Geology & Mining, Govt. of J&K. Sub blocks A, B, and C have thus been considered by the DGM, Govt of J&K for estimation of reserves. For the estimation purpose, the reserves calculated up to and above 1800 m RL have been taken as proved reserves and between 1750 m RL and 1800 m RL are taken as probable reserves. The reasons of such classification are:

- (a) Homogenous nature of the limestone horizons
- (b) Less of intercalations/cavities within limestone horizon, as observed in the mining excavations
- (c) Confirmation of the envisaged quality behavior of the limestone in course of mining

2.2.5. Estimated Geological Reserves of Limestone

Sub Block	Proved reserves	Probable reserves
A	6.418 million tonnes	2.267 million tonnes
B	3.934 million tonnes	2.240 million tonnes
C	1.736 million tonnes	1.239 million tonnes
Total	12.088 million tonnes	5.746 million tonnes

2.2.6. Mineable Reserves: By considering a total loss of 15% (standard norm adopted by the DGM towards estimation errors, core losses during drilling and mining losses etc.) the estimated mineable reserves of limestone are given below.

Sub Block	Proved reserves *	Probable reserves ^
A	5.455 million tonnes	1.927 million tonnes
B	3.344 million tonnes	1.904 million tonnes
C	1.476 million tonnes	1.053 million tonnes

Total	10.275 million tonnes	4.884 million tonnes
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* Reserves are considered up to and above 1800 m RL

^ Reserves are considered between 1750 m RL and 1800 m RL

The quantum of exploration carried out earlier by the department of Geology & Mining, Government of J&K is considered adequate for sustenance of the existing cement plant, besides due to continuity of the beds from top to bottom and absence of any major geological disturbance below 1750 m RL and based on experience, no adverse impact on the quality and continuity of the deposit is anticipated. Therefore, the probable reserves between 1750 m RL and 1800m RL can be treated on par with proved reserves.

The deposit has been under exploitation with adoption of semi mechanized Opencast method since 1981-82 and the reserves excavated by the JKCL till date have been to the tune of 4.8 million tonnes (approximately).

2.3. Land area available with JKCL

2.3.1. The total land area attached with the Khrew Integrated Cement Plant at Khrew Tehsil Pampore district, Pulwama is 998 kanals 23 marlas out of which 239 kanals 9 marlas is being carved out to be handed over to JK SIDCO for developing an industrial estate. Therefore, net land available for bidding process is 732 kanals 9 Marlas.

2.4. Financials of JKCL

2.4.1. The below table provides the financials and capacity utilization for JKCL over the last decade.

S No .	FY	Installed Capacity (MTs)	Clinker Production	Capacity Utilization (%)	Cement Production - Khrew Plant (MTs)	Cement Sale		Sales Turnover (In Rs Cr)	Profit / Loss (in Rs Cr)
						Khrew (MTs)	Samba (MTs)		
1	2008 - 09	200,000	106533	53.27	140470	142305	0	77.66	3.7
2	2009 - 10	200,000	142882	71.44	162598	163461	0	92.5	4.86
3	2010 - 11	400,000	115542	28.88	136976	137039	0	81.87	-0.57
4	2011 - 12	400,000	172280	43.07	177550	177693	0	120.5	4.35
5	2012 - 13	400,000	152164	38.04	167906	167906	0	116	2.53

S No .	FY	Installed Capacity (MTs)	Clinker Production	Capacity Utilization (%)	Cement Production - Khrew Plant (MTs)	Cement Sale		Sales Turnover (In Rs Cr)	Profit / Loss (in Rs Cr)
						Khrew (MTs)	Samba (MTs)		
6	2013 - 14	400,000	141588	35.39	135712	131313	0	93.29	-16.49
7	2014 - 15	400,000	95421	23.85	103382	103138	0	80.28	-30.01
8	2015 - 16	400,000	102510	25.62	108607	108607	6704	89.97	-26.88
9	2016 - 17	400,000	77502	19.37	91019	118182	19270	87.26	-41.25
10	2017 - 18	400,000	129224	32.3	135944	135195	8842	114.01	-23.30
11	2018 - 19	333,000	58426	17.54	69385	71825	2285	46.35	-60.31
12	2019 - 20	200,000	18808	18.8	18691	18251	6384	17.63	-62.08

The detailed accounts of JKCL are provided in the Virtual Data Room.

3. Policies of the UT Administration of Jammu and Kashmir

3.1. Industrial policy of Jammu and Kashmir 1995

3.1.1. Jammu & Kashmir announced its first Industrial policy in 1995 and substituted by another policy in 1998. However, the Comprehensive Industrial Policy was announced in the year 2004 and later in 2016. The Industrial Policy 2016 aimed to attract substantial Investment in Industry for production of Goods, Services and employment generation through optimal utilization of available resources including Human Resource. The Policy was more focused towards the traditional cottage . Industries namely Handicraft . and Handloom to ensure economic upliftment of the artisans, weavers and traders in this sector. Now, the Government has notified J&K Wool Processing, Handloom and Handicraft Policy 2020 which focuses on requirements of Handloom and Handicraft sector.

3.2. Government of India incentive packages

3.2.1. The Government of India through Department for Promotion of Industry and Internal Trade (DPIIT) has been offering incentives under different packages such as Special Package I in 2002, Special Package II in 2012 and IDS 2017. Further various incentives have been offered under recently launched 'New Central Sector Scheme for Industrial development of Jammu & Kashmir' vide Government of India notification F. No. 1(1)/ 2020-SSS, dated 19th Feb 2021.

3.2.2. Department of Industries and Commerce, Government of Jammu & Kashmir is responsible for all round industrial development of the Union Territory (UT). It acts as a catalyst to modernize and strengthen the industrial units to make them globally competitive. The industrial landscape of the UT is dominated by MSME, and it plays a crucial role in propelling industrial growth and economy in. UT as they contribute around 8% to the GSDP and employ the largest number of people in the manufacturing and services sectors. Approx. 25,000 MSMEs that are operational in the UT contribute almost 60% of the total investment and 90% of total employment in industrial sector in the UT. It is thus imperative that MSME sector be further supported through policy interventions.

3.3. Jammu and Kashmir Industrial Policy 2021

3.3.1. Jammu and Kashmir Industrial Policy 2021 aims to address the challenges faced by industry and to create a Sustainable, Balanced, Progressive and Competitive ecosystem in the UT. The Jammu and Kashmir Industrial Policy 2021 is aimed at creating a conducive ecosystem for industry, which attracts investments in focus sectors leading to sustainable, equitable, environment friendly and balanced industrial development thereby creating employment opportunities for the youth, income generation and overall development of the region.

3.3.2. In order to attract investments, the UT provides ample opportunities for reduction in cost of production and raising profitability, production, revenue and employment generation through readily available and accessible infrastructure. UTJK has been providing adequate power supply to industries at one of the lowest power tariffs with duty exemptions.

4. Transaction structure and features

4.1. Transaction structure

4.1.1. The Administrative Council of UT administration of Jammu and Kashmir (UTJK) in its meeting dated 19th October 2021 provided an in-principle approval for the complete sale of Jammu and Kashmir Cements Limited, by way of disinvestment of its 100% equity shareholding in the Jammu and Kashmir Cements Limited (JKCL). As part of this disinvestment exercise, the management and control of the JKCL i.e., control of the entire business (along with the mining rights) would be transferred to the successful bidder.

4.2. Transaction features

4.2.1. The Industries and Commerce Department, UTJK is adopting a single stage bid process for inviting offers from the Bidders. The Bidder would need to qualify as per the eligibility criteria mentioned in the RFP. Once the Bidder is qualified, the financial bid offer submitted by the Bidder would be opened.

4.2.2. The disinvestment of JKCL would be undertaken through an outright share-purchase transaction, involving sale of 100% ownership in JKCL through a transfer of shares in favor of a private player selected as the preferred Bidder following a transparent and competitive bidding process.

4.2.3. The overall process of the transaction involves –

- (a) Due Diligence by Bidders
- (b) Submission of Financial and Technical Bid by the Bidders
- (c) Opening of the Technical Bid and Qualification of the Bidders
- (d) Opening of the Financial Bid
- (e) Forward auction process among shortlisted bidders
- (f) Approval and Selection of the Successful Bidder
- (g) Signing of the Definitive Agreements

4.2.4. All assets of JKCL on an as-is where is basis, along with approvals and licenses (including mining license) will be transferred as part of the Proposed Transaction to the Successful Bidder.

REQUEST FOR PROPOSAL

Notice Inviting Bid

**Government of Jammu and Kashmir
Department of Industries and Commerce,
Civil Secretariat, Jammu, 180001
Notice Inviting Bid**

Dated 10.04.2023

Tender Reference No.: IC-JKCL/02/2023-01 dated 10.04.2023

Subject: Request for Proposal (RFP) for disinvestment of 100% (one hundred percent) equity stake of UT administration of Jammu and Kashmir in the Jammu and Kashmir Cements Limited

The UT administration of Jammu and Kashmir (UTJK) intends for complete sale of Jammu and Kashmir Cements Limited, by way of strategic disinvestment of the equity shareholding of UTJK (100% (one hundred percent)) in its undertaking the Jammu and Kashmir Cements Limited (JKCL), along with full management control.

The Preliminary Information Memorandum can be viewed / downloaded by Bidders, along with the RFP, from the website of JK-tender at jktenders.gov.in from 10.04.2023 to 22.05.2023 (up to 17:00 Hrs. IST).

The Bidders downloading the tender document are required to submit a non-refundable tender fee of amount INR10,00,000 (Rupees Ten Lakh) plus GST, as applicable (“**Tender Fee**”) through NEFT and sign a confidentiality agreement for access to data room. The Bidder needs to make the payment of the fees to UTJK through NEFT in favor of following account:

Bank and Branch Name: Jammu and Kashmir Bank, Moving Secretariat, Srinagar

A/c No.: 0110010100000121

IFSC: JAKA0MOVING

MICR Code: 190051062

The Bidder will need to submit the bids – online as mentioned in detail in the RFP document. The last date for submission of bid is 22.05.2023 (17:00 hrs.)

Sd/-

**Additional Secretary, Industries & Commerce Department
UT of Jammu & Kashmir**

Definitions

Capitalized terms defined herein shall bear the meaning ascribed thereto in this RFP. Additionally, in this RFP, unless there is anything repugnant to the subject or context thereof, the expressions listed below shall have the following meanings:

Expression	Definition
Act	means the Companies Act, 2013, as presently enacted or as the same may be amended, restated, re-enacted or replaced, from time to time.
Advisors	shall refer to Transaction Advisor, Legal Advisor and asset valuer.
Agreed Form Definitive Agreements	shall have the meaning assigned to such term in Clause 1.5.7 of this RFP.
AIF	shall mean SEBI Registered Alternative Investment Funds.
Annexures	shall mean the annexures of the RFP.
Applicable Law or Law	means applicable provisions of the laws of India or any other jurisdiction as applicable to any of the Bidders hereto, including any statute, law, regulation, ordinance, rule, judgment, notification, note, clarification or other form of delegated legislation binding upon the Parties, rule of common law, order, decree, bye-law, government approval, directive, guideline, requirement or other governmental restriction, or any similar form of decision of, or determination by, or any interpretation, policy or administration, having the force of law of any of the foregoing, by any authority having jurisdiction over the matter in question, whether in effect as of the date of this RFP or thereafter. For the avoidance of doubt, under no circumstances shall UTJK or any Governmental Authority or Person associated with UTJK be regarded as subject to Laws other than those of India, for the purposes hereof.
Approvals	means the authorizations, consents, permits, permissions, waivers, and approvals of any and all Governmental Authorities required under Applicable Law for the consummation of the Transaction.
Assets under Management or AUM	shall have the meaning ascribed to such term under Clause 3.1.1 (B) of this RFP.
Associate Company	shall have the same meaning as defined under the Companies Act, 2013, as amended.
Bid	shall mean the Technical Bid and the Financial Bid submitted by the Bidder in respect of the Transaction pursuant to this RFP.
Bid Due Date	shall have the same meaning as defined in Clause 1.2.2 of this RFP.
Bid Validity Period	shall have the same meaning as defined in Clause 2.4.7 of this RFP.
Bidder	shall mean an Eligible Entity, submitting the Bid, either independently or collectively as a Consortium. For avoidance of doubt, the term Bidder will also include collectively all Consortium Members.
Bidding Process	shall mean the entire process envisaged under this RFP for submission of the Bid for the execution of the Transaction by the Successful Bidder.
Bid Security	shall mean an amount of INR 5,00,00,000 (Indian Rupees Five Crore Only) in the form of a bank guarantee in the format as prescribed in <i>Annexure I-K</i> .

Expression	Definition
CPSEs	shall have the meaning assigned to such term in Clause 3.1.1 (A) (c) of this RFP.
Commercial Operations Date or COD	shall mean the period from the signing of the Definitive Agreement till the date of the achievement of the milestone of 600 (six hundred) TPD at the Plant and has utilized a minimum of 60% (sixty percent) of the capacity of the Plant on a continuing basis for 3 (three) full months.
Company/JKCL	shall mean Jammu and Kashmir Cements Limited.
Combined Net Worth	shall have the meaning assigned to such term in Clause 3.1.1 (B)(e) of this RFP.
Confidentiality Undertaking	shall be as per the format provided in <i>Annexure I-G</i> of this RFP.
Conflict of Interest	shall have the meaning as ascribed to it under Clause 4.10 of the RFP.
Consortium	shall refer to a group of maximum 4 (four) Eligible Entities that have collectively submitted Bid in accordance with the provisions of this RFP and pursuant to a Consortium Agreement entered into amongst them.
Consortium Agreement	shall be as per the format provided in <i>Annexure I-F</i> of this RFP.
Consortium Member(s)	means an Eligible Entity participating in the Transaction as part of a Consortium.
Control	shall have the same meaning as assigned to it in Section 2 (27) of the Companies Act, 2013, as amended.
Data Room/ VDR	shall mean the physical/ virtual data room established/ pen drive provided by JKCL/TA in relation to this Transaction to facilitate the due diligence exercise (DDE) by Bidders.
Definitive Agreements	shall mean the share purchase agreement and/or any other document that the Successful Bidder and/or Parent (in case of a Sole Bidder / Consortium member who is utilizing the financial capacity of such Parent to meet the Eligibility Criteria), and Consortium Members, as the case may be, will have to enter into for successful closure of the Transaction.
DIPAM	shall mean Department of Investment and Public Asset Management.
DPIIT	shall mean Department for Promotion of Industry and Internal Trade.
Due Diligence Exercise or DDE	shall mean a due diligence conducted by the Bidders on JKCL which shall include a physical/ virtual Data Room and may also include, at the sole discretion of UTJK and JKCL, physical inspection.
Eligibility Criteria	shall mean the eligibility criteria prescribed in Clause 3.1 of this RFP.
Eligible Entity	shall mean the following domestic or international entity(ies), eligible to participate in this Bidding Process and submit Bid in response to and in accordance with this RFP: <ol style="list-style-type: none"> 1. A company incorporated in India under the Companies Act, 1956, or Companies Act, 2013, as the case may be, excluding Government Company/ies (as is defined under the Companies Act 2013); 2. A company incorporated outside India which is permitted to invest under the laws of India (subject to such parties obtaining all statutory approvals from GOI/Foreign Investment Facilitation Portal/RBI etc.); 3. SEBI Registered Alternative Investment Funds (“AIF”)

Expression	Definition
	4. Funds incorporated outside India, which is eligible to invest in India under the laws of India (subject to such parties obtaining all statutory approvals from GoI/Foreign Investment Facilitation Portal/RBI etc. by themselves).
Execution Date	shall mean means the date of the execution of the Definitive Agreement (viz, the share purchase agreement).
FBIL	shall mean Financial Benchmarks India Limited.
FDI Policy	shall have the meaning assigned to such term in Clause 3.1.1 (A)(d) of this RFP.
Financial Bid	shall have the meaning assigned to such term in Clause 1.2.1 and the format for financial bid is provided in <i>Annexure II</i> of this RFP.
Financial Criteria	shall mean the financial criteria prescribed in Clause 3.1.1 (B) of this RFP.
Governmental Authority	shall mean any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.
GOI	shall mean the Government of India.
Highest Bidder	shall have the meaning as ascribed in Clause 1.2.9 of this RFP.
Indian Rupees, Rupees, or INR	shall mean the lawful currency and legal tender of India.
Key Management Personnel	shall mean the key management persons defined under the Companies Act, 2013 or similar statutes under the applicable foreign laws (as applicable to foreign bidders only).
Lead Member	shall mean such Consortium Member holding at least fifty one percent (51%) equity shareholding on a fully diluted basis (i.e., holding at least 51% of in the equity shareholding on a fully diluted basis of the SPV) and is designated as lead member as per the Consortium Agreement executed among all the Consortium Members.
Legal Advisor	shall mean DSK Legal.
Letter of Award/ LOA	shall have the meaning assigned to such term in Clause 2.4.10 (g) of this RFP.
Net Worth	shall have the meaning assigned to such term in Clause 3.1.1 (B) (a)(i) of this RFP.
Technical Bid	shall have the meaning assigned to such term in Clause 1.2.1 of this RFP.
Non-negotiable Definitive Agreements	shall have the meaning assigned to such term in Clause 1.5.7 of this RFP.
Overseas Corporate Body(ies)	shall have the meaning assigned to such term in Clause 4.2.19 of this RFP.
Parent	means the entity into which the accounts of the Bidder are consolidated.
Performance Security	shall have the meaning assigned to such term in Clause 1.2.7 of this RFP.
Person	means any individual, company, firm, association, trust, or any other organization or entity (whether or not having a separate legal personality and irrespective of the

Expression	Definition
	jurisdiction in or under the law of which it was incorporated or exists), including the Government and any governmental or administrative subdivision.
Place of Effective Management	means the place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made., etc.
Plant	shall mean the cement plant at the Site.
Promoter	shall have the same meaning as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended.
Promoter Group	shall have the same meaning as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended.
PSU	shall mean public sector units of India.
Quarterly Limited Review	shall mean limited review report submitted by listed Bidders to stock exchanges as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and attended procedures as per latest applicable amendment.
RBI	shall mean the Reserve Bank of India
Request for Proposal (RFP)	means this request for proposal dated [●] together with the annexures, clarification, addendums and any corrigenda/addenda/responses to queries to this RFP.
Reserve Price	Shall mean the price fixed through independent advisor(s) appointed by UTJK
Sale Consideration	shall mean the aggregate purchase consideration payable by the Successful Bidder for the purchase of the Sale Shares.
Sale Shares	shall mean the 100% (one hundred percent) shares of JKCL.
Share Purchase Agreement or SPA	shall mean the share sale and purchase agreement which shall be entered into between UTJK and the Successful Bidder in respect of the Successful Bidder's purchase of the Sale Shares held by UTJK in JKCL.
Site	shall mean and include the plant belonging to JKCL, its allied facilities and limestone mines at Khrew, Pulwama and Samba, Jammu.
Sole Bidder	shall refer to an independent Bidder who has submitted Bid in accordance with the provisions of this RFP.
SPV	shall mean a special purpose vehicle wholly owned and controlled by the Successful Bidder, as permitted to be incorporated in terms of this RFP and the Companies Act, 2013.
Subsidiary company or Subsidiary (ies)	shall have the same meaning as assigned to it in Section 2(87) of the Companies Act 2013 as amended.
Successful Bidder	shall mean the Bidder that is finally selected in accordance with the terms of the RFP to enter into Definitive Agreements.
Transaction	shall mean disinvestment of 100% (one hundred percent) stake of UT administration of J&K in JKCL along with the transfer of management and Control.
Transaction Advisor or TA	shall mean KPMG India.
Tender Fee	shall have the meaning as ascribed to it in Clause 1.2.1 of the RFP to be submitted in the form prescribed in Clause 1.2.3.
TPD	shall mean tonnes per day.
Undertaking by Parent	shall mean the format prescribed in <i>Annexure I-J</i> of this RFP.

Expression	Definition
Undertaking for Ultimate Beneficial Ownership	shall mean the format prescribed in <i>Annexure I-B</i> of this RFP.
UTJK	shall mean UT administration of Jammu & Kashmir acting through its Department of Commerce and Industry.
Wilful Defaulters	shall have the meaning ascribed to such term in Clause 4.2.17 of this RFP.

1. Brief description of the Transaction

1.1. Transaction background and salient features

- 1.1.1. Jammu and Kashmir Cements Limited (“JKCL” or “**the Company**”), was incorporated in 1975 under the Companies Act, 1956 as a government owned company with an authorized capital of Rs 60,00,00,000 (Rupees Sixty Crore). The primary objective of the creation of JKCL was to reap benefits of the rich deposits of limestone in the Khrew belt for manufacturing and sale of cement. The Company started its operation with the commissioning of its first plant at Khrew, Pulwama, with a capacity of 600 (six hundred) TPD in 1982. Two new plants, one at Khrew, Pulwama with a capacity of 600 (six hundred) TPD and one grinding unit at Samba, Jammu with a capacity of 300 (three hundred) TPD were commissioned in 2010 and 2015 respectively. The Company has rights over a Limestone mine in Khrew spread over 88.1 (eighty-eight point one) hectares, with an estimated net mineable reserve of around 10.4 (ten point four) million tonne. Over the years, JKCL’s main source of revenue has been sale of cement to various Government departments and PSUs.
- 1.1.2. The Administrative Council of UT administration of Jammu and Kashmir has in its meeting dated 19th October 2021 has provided an in-principle approval for the complete sale of JKCL, by way of strategic disinvestment of the equity shareholding of UTJK (100% (one hundred percent)) in its undertaking the JKCL.
- 1.1.3. As part of the disinvestment exercise, the management, and control of JKCL will be transferred to the Successful Bidder through a transaction structure which includes purchase of shares of JKCL. By way of control of JKCL, the control of entire business of JKCL (including mining rights and land currently with JKCL) will also stand transferred. UTJK will also provide the necessary forest clearances from the Jammu and Kashmir State Forest Department, Ministry of Environment, Forest and Climate Change Government of India.
- 1.1.4. The Bidders would be required to submit ***the best price offer for buying out 100% (one hundred percent) share of JKCL*** which would be payable at the time of the closing of the Definitive Agreements.
- 1.1.5. This RFP is provided by UTJK and shall remain the property of UTJK. By receiving this RFP, the Bidders agree and acknowledge that the documents submitted by the Bidders will not be returned to the Bidders.
- 1.1.6. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Definitive Agreements shall have an overriding effect (in case of any inconsistency between the RFP and the Definitive Agreements); provided, however, that any conditions or obligations imposed on the Bidder hereunder (and which are not inconsistent with the Definitive Agreements) shall continue to have effect in addition to its obligations under the Definitive Agreements.

1.2. Transaction Process

- 1.2.1. UTJK has adopted a single-stage two envelope system in the Bidding Process for inviting Bidders, to make an offer for the purchase of Sale Shares along with the transfer of management control of JKCL

by submitting their Bid. Under the Bidding Process, the Bid shall be invited in single stage bidding and two envelope system using two electronic envelopes. Prior to the Bid, the Bidder shall pay to UTJK a sum of Rs. 10,00,000 (Rupees Ten Lakh) plus GST as applicable as non-refundable tender fee (“**Tender Fee**”). ***The transaction receipt for the Tender Fee shall be mandatorily submitted by the Bidder as a part of its submissions under the RFP.*** The eligibility and qualification of the Bidder will be first examined based on the details submitted under technical bid (“**Technical Bid**”) with respect to eligibility and qualifications criteria prescribed in this RFP. The financial bid (“**Financial Bid**”) shall be opened of only of those Bidders whose Technical Bid is responsive to eligibility and qualifications requirements as per this RFP.

1.2.2. Bidders are being called upon to submit their Bid in accordance with the terms specified in this RFP. The Bid shall be valid for a period of 180 (one hundred eighty) days from the date specified in Clause 1.3.1 for submission of Bid (the “**Bid Due Date**”).

1.2.3. The Bidder shall pay the Tender Fee to UTJK through NEFT in favor of following account:

Bank and Branch Name: Jammu and Kashmir Bank, Moving Secretariat, Srinagar

A/c No.: 0110010100000121

IFSC: JAKA0MOVING

MICR Code: 190051062

1.2.4. Bidders that submit the Tender Fee would be provided access to the Data Room and allowed to participate in the Bidding Process and to conduct Due Diligence Exercise.

1.2.5. Bidders will be required to sign a Confidentiality Undertaking after paying the Tender Fee to UTJK, post which they would be provided access to physical/ VDR (pen drive) and draft SPA.

1.2.6. A Bidder is required to deposit, along with its Bid, a Bid Security amount of Rs.5,00,00,000 (Rupees Five Crore only), refundable not earlier than 180 (one hundred eighty) days from the Bid Due Date (unless extended), except in the case of the Successful Bidder whose Bid Security shall be retained till the expiry of 15 (fifteen) days from the date of payment of the Performance Security by the Bidder to UTJK.

1.2.7. The Successful Bidder shall pay an amount equivalent to 10% (ten percent) of the Sale Consideration (“**Performance Security**”) within [15 (fifteen)] days from the date of issuance of the Letter of Award.

1.2.8. The Bidding Process for the Proposed Transaction can be broadly categorized as follows:

- a) Due Diligence Exercise by Bidders;
- b) Bid process which includes:
 - (i) Submission of Bid; (Technical Bid and Financial Bid)
 - (ii) Opening of Technical Bid
 - (iii) Opening of Financial Bid
 - (iv) Forward auction process among shortlisted Bidders

- c) Approval and selection of the Successful Bidder;
- d) Execution of the Definitive Agreements;
- e) Completion/ closure of the Transaction.

1.2.9. The term “**Highest Bidder**” shall mean the Bidder who is quoting the highest Sale Consideration for the Sale Shares (i.e., 100% (one hundred percent) shares) of JKCL. If the Highest Bidder withdraws or is not selected for any reason in the first instance, UTJK reserves the right to take the appropriate course of action including inviting the Bidder with the second highest quote after the Highest Bidder, to match the quote of the Highest Bidder or re-tender or issue short notice tender or take any such measure as maybe deemed fit in the sole discretion of UTJK.

1.3. Transaction Timelines

1.3.1. The Transaction Timelines shall be as follows:

Table 1: Tentative Process

Sl. No.	Activity	Date
1.	Issuance of revised RFP	10.04.2023
2.	Access to physical/ VDR commences	11.04.2023
3.	Initiation of Due Diligence Exercise and Site visit (On working days between 10 AM – 5 PM)	11.04.2023
4.	Last date for submission of Bids – Bid Due Date	22.05.2023 17:00 hours

Note: The above dates are tentative and may be changed at the discretion of UTJK during the Bidding Process. Such changes in dates/schedule for subsequent activities shall be duly notified.

Note: All the dates mentioned in the Advertisement, Notice Inviting Tender, will be superseded by information provided in this RFP document or by any later written information on the same subject made available by UTJK

1.3.2. The Bidders will need to provide prior intimation to Industries & Commerce Department, UTJK at suggestjkindcom@gmail.com and MD, JKCL at mdjkcl@gmail.com on the schedule and timings for the Site visit.

1.3.3. The Bidders need to pay the Tender Fee and would have to collect the pen drive (for access to Data Room / VDR) upon showcasing the proof of payment of Tender Fee and post signing of the Confidentiality Undertaking (as per *Annexure I-G*) from “**Additional Secretary to the Government, Industries & Commerce Department, Room No. 2/6, Mini-Block, Civil Secretariat, Jammu 180001**”.

1.3.4. The Bidders have to submit their Bid in the form and manner as specified in the RFP. The Bid shall be addressed to the authorized representative, and it shall be received no later than 17.00 hours on 22.05.2023 in the manner specified in this RFP.

1.4. Content of RFP

1.4.1. An advertisement has been issued in the newspapers inviting Bidders to submit their RFP to participate in the Transaction.

1.4.2. This RFP contains the following:

- (a) Brief description of the Transaction
- (b) Instructions to Bidders
- (c) Qualification requirements and Eligibility Criteria
- (d) Disqualification;
- (e) Fraud and Corrupt Practices;
- (f) Pre-Bid Conference and Miscellaneous
- (g) Annexure I-A - Covering Letter for Technical Bid
- (h) Annexure I-B – Undertaking in relation to Ultimate Beneficial Ownership
- (i) Annexure I-C - Form A and Form B
- (j) Annexure I-D - Format of General Power of Attorney
- (k) Annexure I-E - Format of Power of Attorney in favor of Lead Member
- (l) Annexure I-F - Format for Consortium Agreement
- (m) Annexure I-G - Confidentiality Undertaking
- (n) Annexure I-H - Format of Affidavit
- (o) Annexure I-I - Format of declaration with respect to Statement of Legal Proceedings
- (p) Annexure I-J – Format for undertaking by Parent
- (q) Annexure I-K - Format of Bid Security in the form of Bank Guarantee
- (r) Annexure I-L - Format for Statutory Auditor or independent chartered accountant's certificate for Financial Capacity
- (s) Annexure I-M – Proforma for application for Security Clearance of Bidders for Strategic Disinvestment
- (t) Annexure II – Format for Financial Bid
- (u) Annexure III-A – Department of Investment and Public Asset Management (“DIPAM”) Guidelines
- (v) Annexure III-B – Instructions for online submission of Bids

1.4.3. This RFP along with Annexures have been uploaded on jktenders.gov.in. Following receipt of RFP, Bidders are required to respond in the format as detailed in this RFP.

1.5. Clarification

1.5.1. If the Bidder(s) needs any clarification/additional information in respect of this RFP, then the same shall be submitted in writing (in the format as per Table 2 prescribed hereunder) by email to the representative of UTJK as per the details mentioned below. The requests should be sent before the date specified in the time schedule given in Clause 1.3.1 of the RFP. UTJK shall not respond to any request for clarification received beyond the date so specified and intimated to the Bidders:

Email ID: suggestjkind@gmail.com

1.5.2. All communications shall clearly be mentioned in the subject line: **“Queries/ Request for Clarification related to RFP for Disinvestment of JKCL”**.

1.5.3. All queries or request for clarification / additional information should be sent in the following format:

Table 2: Format for queries/ request for clarification related to draft RFP/ Definitive Agreements for Disinvestment of JKCL

No.	Page number and section reference	Bidder's queries/Request for additional information/ Request for Clarification	Bidder's suggestions if any	Bidder(s)' comments if any, including rationale and/or justification for the proposed suggestion.
1.				
2.				

1.5.4. The Bidders shall strictly comply with the above format for providing suggestions and comments. UTJK reserves the right to accept or reject in part or full any of the requests/ comments/clarifications/ suggestions, as it deems fit.

1.5.5. Bidders should note that all correspondence, enquiries, requests for additional information and clarifications in relation to the Transaction should be routed and addressed only to UTJK at the above email address. Under no circumstances, the Bidders or their officers, employees, agents and professional advisors shall make contact with the DIPAM or UTJK or JKCL. Neither DIPAM nor UTJK nor JKCL shall be responsible in any manner to reply to any communication directly to the Bidders or to respond to any communication sent directly to them by the Bidders.

1.5.6. The responses to the Bidder's queries shall be uploaded on <http://jkindustriescommerce.nic.in/> / jktenders.gov.in. Further, UTJK, JKCL and TA, reserve the right not to respond to queries or clarifications sought and not to provide information in addition to the information provided herein.

1.5.7. A revised draft of the RFP and/ or Definitive Agreements will be circulated to all the Bidders for their perusal post incorporation of the comments/suggestions as may be deemed fit by UTJK. The revised draft of the RFP and/ or Definitive Agreements will not be negotiable any further (**“Non-negotiable Definitive Agreements”**). The Bidders who agree with the drafts of the Non-negotiable Definitive Agreements and choose to proceed with submitting their Bid will then have to initial the Non-negotiable Definitive Agreements (such initialed draft of Non-negotiable Definitive Agreements being the **“Agreed Form Definitive Agreements”**) and submit the same as part of their Bid.

1.5.8. Nothing mentioned in this section shall be taken or read as compelling or requiring UTJK to respond to any questions or provide any clarifications. No extension of any time and date referred to in this RFP shall be granted on the basis or grounds that UTJK has not responded to any questions or provided any clarifications.

2. Instructions to Bidders

2.1. General conditions

- 2.1.1. This RFP along with Annexures is available for downloading from jktenders.gov.in.
- 2.1.2. The documents including RFP and draft Definitive Agreements, and all attached documents are and shall remain or become the property of UTJK and are transmitted to Bidders solely for the purpose of preparation and submission of Bid in accordance herewith. Bidders are to keep all data and information of JKCL (shared as part of the Transaction process) strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid.
- 2.1.3. The Bidders shall bear all costs associated with the preparation and submission of the Bid and all costs associated with conducting the due diligence. UTJK or the Company shall not, under any circumstances, be responsible or liable for any such costs, whether direct, incidental, or consequential and no cost incurred by the Bidders in this regard shall be borne by UTJK or the Company.
- 2.1.4. The Bidders are expected to carry out their own investigations and other examination in relation to the Transaction before submitting their Bid.
- 2.1.5. Bids are liable to be rejected by UTJK if Bidders fail to meet the qualifying Eligibility Criteria as specified in section titled 'Eligibility Criteria' and/or are disqualified in accordance with the conditions specified in section titled 'Disqualifications' in this RFP or for any other reason deemed fit, or even without assigning any reason whatsoever.
- 2.1.6. UTJK reserves the right to modify/postpone/cancel or call off the Transaction without communicating any reasons whatsoever. In such an event no financial obligation whatsoever shall accrue to UTJK, the Company, or any of their respective officers, employees, advisors or agents.
- 2.1.7. UTJK, JKCL, their Advisors, and their respective officers, employees and agents or advisors shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bidding Process, including any error or mistake therein or in any information or data given by UTJK.
- 2.1.8. UTJK and JKCL reserve the right not to respond to questions raised or provide clarifications sought, at their sole discretion if considered inappropriate or prejudicial to do so or even otherwise. Nothing contained in this document shall be taken or read as or construed or deemed as compelling or requiring UTJK/ JKCL to respond to any question or to provide any clarification to the Bidders.
- 2.1.9. Notwithstanding anything contained in this RFP, UTJK and JKCL reserves the right to reject any or all Bids on the grounds of national interest, national security, public interest, or any other grounds without communicating any reasons thereof and without any liability or any obligation for such rejection.

2.2. Amendment to the RFP

- 2.2.1. At any time prior to the Bid Due Date for submission of Bid, UTJK may, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder, modify this RFP by the issuance of an addendum. Any addendum/clarification issued shall be uploaded on jktenders.gov.in and/or <http://jkindustriescommerce.nic.in/>
- 2.2.2. To afford Bidders a reasonable time to take any addendum or subsequent clarifications into account, or for any other reason, UTJK may, at its sole discretion, extend Bid Due Date for submission of the Bid.

2.3. Submission of Bid

- 2.3.1. **Online submission of Bid:** The Bid, conforming to the conditions of this RFP shall be only submitted in electronic form via jktenders.gov.in with all the requisite documents in pdf format on or before the Bid Due Date and time prescribed at Clause 1.3.1. The process of online submission has been provided at <https://statics.teams.cdn.office.net/evergreen-assets/safelinks/1/atp-safelinks.html>. Bidders are requested to follow the same.
- 2.3.2. All the documents submitted in electronic form may either be scanned version of documents with physical signatures or signed digitally using a valid ‘digital signature certificate’.
- Note:** For avoidance of any doubt, it is clarified that the documents mentioned in Clause 2.3.6 cannot be digitally signed, even if Bid is submitted in an electronic form. Such documents must be physically signed, witnessed, notarized and legalized/apostilled (as required) as per the procedure specified in the respective Annexures and the RFP. Such signed documents may then be scanned and submitted electronically as well as submitted physically in accordance with Clause 2.3.6.
- 2.3.3. Bid shall be submitted during the working hours (Monday to Friday 10:00 a.m. to 5:00 p.m.) on or before the Bid Due Date as stipulated in Clause 1.3.1. The Bids received after the Bid Due Date shall be rejected. Late bids shall also be rejected.
- 2.3.4. The completed forms, “Annexures” of the bid shall be considered a part of the Definitive Agreements in the case of Successful Bidder.
- 2.3.5. **Documents to be submitted online as part of Technical Bid:** The Bidder shall submit the Bid online and submit the following documents as per the following directions:
- (a) **Covering Letter** for Technical Bid (as per *Annexure I-A*)
 - (b) Undertaking in relation to the Ultimate Beneficial Ownership (as per *Annexure I-B*)
 - (c) Duly filled-in **Form A** by Bidder/ each Consortium Member/ Parent of Sole Bidder or Consortium Member in the event such Sole Bidder / Consortium Member fulfils the Net Worth criteria through its Parent (as per *Annexure I-C*), along with **following supporting documents:**

- (i) **Executive summary** providing brief description for the Bidder and (where applicable) for each Consortium Member, Parent whose Net Worth has been relied upon by the Bidder containing details like ownership structure, identity of the natural persons who are the ultimate beneficial owners of the Bidder (including each Consortium Member), the Place of Effective Management of business of the Bidder (including each Consortium Member) / Parent of the Bidder, write up on business history and growth, business areas / activities, respective revenue details etc. It shall include a brief commentary on the capability of the Bidder (including each Consortium Member) / Parent of the Bidder, as demonstrated, inter alia, in its past track record, to run its own business.
- (ii) **Contact information** of the Bidder (including each Consortium Member) / Parent of the Bidder including full name, address, telephone and facsimile numbers, e-mail address and the names and the titles of the persons who are the principal points of contact for each member and identifying Lead and Consortium Members. Details of the website of the Bidder (including each Consortium Member) / Parent of the Bidder are also to be provided.
- (iii) **Basic information** pertaining to incorporation and commencement of business for Bidder (including each Consortium Member) / Parent of the Bidder.
- (iv) Certified true copies of the following documents to be submitted:
- Memorandum of Association
 - Articles of Association
 - Certificate of Incorporation
 - Certificate of Commencement of Business
 - Charter Documents
 - Registration Certificate for AIFs
- (v) A certificate for **list of Board of Directors, principal shareholders and Key Management Personnel** duly signed by the respective company secretary or any officer in charge of secretarial/legal affairs of Bidder (including each Consortium Member) / Parent of the Bidder and also counter signed by its authorized signatory.
- (vi) A certificate by an independent chartered accountant/statutory auditor/company secretary or any other officer in-charge of secretarial/ legal affairs, for the **shareholding pattern** of the Bidder (including each Consortium Member) / Parent of the Bidder.
- (vii) A certificate duly signed by company secretary or any other officer in charge of secretarial/legal affairs, for **eligibility to participate in the Transaction**.

- (viii) An independent chartered accountant/ statutory auditor certificate **certifying the fulfillment of Financial Criteria** as specified in the Eligibility Criteria section.
- (ix) Audited Financial Statements (on standalone and consolidated basis)/Annual Reports for the previous three financial years.
- Provided that, in the event Bidder (including each Consortium Member) / Parent of the Bidder is an unlisted entity, and does not have the audited financial statements of immediately preceding financial year, the latest available unaudited/ provisional financial statements may be given as certified by its statutory auditor; in case such entity is a listed entity, and its audited financial statements are not available for the immediately preceding financial year, the information contained in latest Quarterly Limited Review report is to be submitted. However, the audited financial statements of such Bidder (including each Consortium Member) / Parent of the Bidder shall be submitted, as and when prepared as per the statutory requirements and timelines of the relevant countries where it is incorporated.
 - All financial statements/ annual reports/ Net Worth certificate submitted should be certified by authorized signatory.
 - In case the Bidder (including each Consortium Member) / Parent of the Bidder cannot submit the consolidated financial statements as mentioned above, it shall specify reasons for the same.
- (x) Documents such as a **board or shareholders' resolution in favor of the person executing the Power of Attorney** for the delegation of power on behalf of the Bidder / Consortium Member. (The date of execution of board or shareholders' resolution should be prior to the date of execution of the Power of Attorney).
- (xi) **Management Organization:** An overview of Bidder's (including each Consortium Member) / Parent of the Bidder's, senior management and organization structure certified by the Company Secretary or any other officer in charge of secretarial/legal affairs of the Bidder / each Consortium Member.
- (xii) **International Operations/ Joint Venture/Alliances:** Brief note of Bidder's (including each Consortium Member) / Parent of the Bidder's international operations, joint ventures, alliances (whether international or domestic, which the Bidder considers as being material (directly or indirectly) to its business and/ or the Transaction), including incorporation details, registered office, nature and size of such operations, equity ownership/ effective management and control (as applicable).

- (xiii) **Details of those companies and professional firms**, if any, who are (or will be) advising the Bidder (including each Consortium Member) / Parent of the Bidder for the Transaction, together with the names of the principal individual advisors at those companies and firms.
Note: This information can be provided at a later stage, if not available at this stage.
- (xiv) **Details of contingent liabilities and outstanding litigations**, which if materialized, would have or would reasonably be expected to have a material adverse effect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Bidder (including each Consortium Member) / Parent of the Bidder, or other similar business combination or sale.
- (xv) If the Bidder /any Consortium Member is a foreign entity/ Overseas Corporate Body, specify list of statutory approvals from the GoI/ the RBI/ Department for Promotion of Industry and Internal Trade/ relevant ministry/ any other Government Authority, specifying whether the same is applied for/ to be obtained/ awaited.
- (xvi) The undertaking provided in **Form B** by Bidder/ each Consortium in respect of the Press Note 3 dated April 17, 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (DPIIT).
- (d) Appropriately executed **General Power of Attorney** authorizing the signatory of the Bid to commit the Bidder / each Consortium Member (as per *Annexure I-D*).
- (e) Appropriately executed **Power of Attorney authorizing the Lead Member** to do all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Transaction (as per *Annexure I-E*).
- (f) In case of a Consortium, a **Consortium Agreement** duly executed amongst each of the Consortium Members (as per *Annexure I-F*).
- (g) Duly executed **Confidentiality Undertaking** (as per *Annexure I-G*).
- (h) Duly executed **Affidavit** by Bidder/ Lead Member of Consortium / Parent of Sole Bidder or Consortium Member (as per *Annexure I-H*).
- (i) A declaration in relation to **statement of legal proceedings** (as per *Annexure I-I*).
- (j) An **Undertaking by Parent** (as per *Annexure I-J*), as applicable.

- (k) Appropriately executed **Bid Security in the form of Bank Guarantee** (as per *Annexure I-K*).
- (l) Duly signed statutory auditor or independent chartered accountant's **certificate for Financial Capacity** (as per *Annexure I-L*).
- (m) The proforma for security clearance as per the format provided under *Annexure I-M*.
- (n) Initialed Agreed Form Definitive Agreement.

2.3.6. Documents pertaining to Technical Bid to be submitted in physical form:

- (a) Bidders shall be required to submit the hard copies of the following documents within 3 (three) days from the Bid Due Date:
 - (i) Power of Attorney (as per *Annexures I-D and I-E*),
 - (ii) Consortium Agreement (as per *Annexure I-F* if applicable),
 - (iii) Affidavit (as per *Annexure I-H*)
 - (iv) Bid Security in the form of Bank Guarantee (as per *Annexure I-K*),
 - (v) True copies of board resolutions
- (b) The physical copies of the above-mentioned documents shall be submitted to the following representative and at the below mentioned address:

Name of authorized representative: Smt. Mamta Devi

Designation: Additional Secretary to the Government, Industries & Commerce Department

Address: Room No. 2/6, Mini-Block, Civil Secretariat, Jammu 180001

Email: suggestjkindcom@gmail.com

- 2.3.7. Submission of Financial Bid online:** The **Financial Bid** should contain only the Financial Bid Form, as per format provided in *Annexure II*. Please note the Financial Bid shall be further subjected to a forward auction process as mentioned under *Annexure III - B* of the RFP.

2.3.8. Forward Auction

All Bidders who qualify the Eligibility Criteria as laid out in the RFP and submit a responsive Bid shall be shortlisted for the opening of the Financial Bid submitted online. The H1 price discovered from the online Financial Bid, or the Reserve Price computed, whichever is higher would be used as the base price for the forward auction. The forward auction will be conducted among the top technically qualified Bidders, from the online Financial Bids received up to a maximum of (n-1) Bidders, subject to a minimum of 3 (three) Bidders. The Reserve Price will only be declared after the completion of the forward auction process. If the forward auction leads to a price below the Reserve Price, the same shall be rejected and the bids re-invited. The process of forward auction

has been elaborated in Annexure III - B of the RFP. Please note that the Annexure III - B is only for reference purposes for the forward auction process.

- 2.3.9. Unless otherwise specified, a copy of any document that is not the original, shall be a certified true copy (duly verified by a notary) for submission. Documents executed and issued overseas will also have to be apostilled/ consularised using the procedure as per Applicable Law.
- 2.3.10. The Bid and its copy shall be typed and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.
- 2.3.11. The Bid and all related correspondence and documents in relation to the Bid shall be in English language. Any documents that are not in the English language shall be accompanied by an official translation duly notarized and apostilled/ consularised by the Indian mission of the home country.
- 2.3.12. UTJK shall bear no responsibility for non-receipt of documents sent by post/courier/any other means. Bids submitted physically will be rejected.
- 2.3.13. Any additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by UTJK, shall be disregarded.
- 2.3.14. Bids shall be opened only after the due date and time of submission of Bids.

2.4. **General Conditions of the Bidding Process**

2.4.1. Bids submitted should be:

- (a) In the form specified in this RFP;
- (b) Unconditional and as per the terms and conditions of this RFP. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection;
- (c) Made on the basis of the terms of the Non-negotiable Definitive Agreements and UTJK shall not consider any further amendments proposed by Bidders after the timeline as specified under the RFP; and
- (d) Submitted to UTJK as per the timelines specified in this RFP, or as amended by UTJK.

2.4.2. **Bidder Warranty:** It would be deemed that by submitting the Bids, the Bidders have:

- (a) Conducted due diligence related to the Transaction to its complete satisfaction;
- (b) Made a complete and careful examination of the RFP, Non-negotiable Definitive Agreements, Data Room, and other documents shared with the Bidders;
- (c) Received all relevant information requested from JKCL/ UTJK;
- (d) Satisfied itself about all matters, things and information necessary and required for submitting an informed Bid; and
- (e) By accessing this RFP, the Bidder agrees and releases UTJK , JKCL and Advisors, its employees, agents and advisors, irrevocably, unconditionally and fully from any and all liabilities for claim, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder,

pursuant hereto and/or in connection herewith and waives any and all rights and/or claim it may have in this respect, whether actual or contingent, present or future.

- 2.4.3. **Cost of Bid:** The Bidders shall be responsible for all the costs associated with the preparation of their Bid and their participation in the Bidding Process. UTJK/JKCL/Advisors will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 2.4.4. **Cost of Consummation of Transaction:** The Successful Bidder shall pay appropriate stamp duty in respect of the Definitive Agreements. All costs, charges, taxes, and expenses incidental to and in relation to the Transaction including the cost of and incidental to the execution of Definitive Agreements and other writings, if required to be made in pursuance thereof, registration fee, other governmental / third party charges, fees, etc., including for obtaining any approvals shall be borne and paid by the Successful Bidder alone. Bidders to satisfy themselves on their own regarding all associated costs of consummation of the Transaction during the due diligence process and UTJK/JKCL/ Advisors would not be liable for any such cost estimations.
- 2.4.5. **Language:** The Bid and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Bidder(s) with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language duly authenticated and certified by the Bidder(s). Supporting materials which are not translated into English, may not be considered by UTJK. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.4.6. **Currency:** The currencies for the purpose of submission of the Financial Bid shall be the Indian Rupee (Rs. /INR).
- 2.4.7. **Validity/ Extension of Validity of Bids:** Bids shall be valid for a period of 180 (one hundred and eighty) days from the Bid Due Date (the “**Bid Validity Period**”). The validity may be extended on intimation of the same to the Bidder and all documents submitted by the Bidder in connection with the Transaction, along with all enclosures, undertakings and information contained therein, shall continue to remain valid and binding till such date.
- 2.4.8. **Modification / Amendment of the Bid:** The Bid cannot be modified, substituted or withdrawn by the Bidder after the Bid Due Date. On or before the Bid Due Date, the Bidders may modify or withdraw their Bid. Any alteration/ modification in the Bids or additional information supplied subsequent to the Bid Due Date shall be disregarded, unless the same has been expressly sought for by UTJK.
- 2.4.9. **Bid Security:** At the time of submission of the Technical Bid, the Bidders shall be liable to pay a Bid Security of Rs. 5,00,00,000 (Rupees Five Crore only) in the form of a bank guarantee as per *Annexure I-K* or in the form of a demand draft or NEFT (details provided below) or insurance bonds. Bid Security, if provided in the form a bank guarantee, shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date, unless the Bid

Due Date is otherwise extended by UTJK at its sole discretion. The Bid Security will be refunded to the unsuccessful Bidders without any interest post execution of the Definitive Agreements and to the Successful Bidder upon receipt of the Performance Security.

Bank and Branch Name: Jammu and Kashmir Bank, Moving Secretariat, Srinagar

A/c No.: 0110010100000121

IFSC: JAKA0MOVING

MICR Code: 190051062

2.4.10. The Bid Security, as applicable, shall be forfeited without prejudice to any other right or remedy that may be available to UTJK under the RFP or Definitive Agreements or otherwise, under the following conditions:

- (a) If a Bidder submits a non-responsive (i.e., an incomplete, non-compliant with the formats or conditional) Technical Bid;
- (b) If the Technical Bid continues to remain non-responsive despite the Bidder providing additional information/clarification/documents as requested by UTJK for evaluation of its Technical Bid and UTJK, in its sole discretion, is not satisfied with such additional information/clarification/documents provided and may proceed to evaluate such non-responsive Bid by construing the particulars requiring clarification to the best of its understanding and the Bidder shall be barred from subsequently questioning such interpretation of UTJK;
- (c) If a Bidder submits a non-responsive (i.e., an incomplete, non-compliant with the formats or conditional) Financial Bid;
- (d) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 6 of this RFP;
- (e) If at any time, a material misrepresentation is made or uncovered or it is discovered that materially incorrect or wrong information was provided at any stage;
- (f) If a Bidder withdraws its Bid during the Bid Validity Period as specified in this RFP and the Bid Validity Period is subsequently extended by mutual consent of the respective Bidder(s) and UTJK;
- (g) In the case of Successful Bidder, if it fails within the specified time limit as mentioned in Clause 2.6.1 of the RFP:
 - to sign and return the duplicate copy of letter of acceptance (“LOA”) ;
 - to furnish the Performance Security within the period prescribed thereof in the RFP;
 - to sign the Definitive Agreement as per the prescribed timeline in the RFP.

2.5. Evaluation of Bid

2.5.1. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

- 2.5.2. UTJK reserves the right to call for any additional document (s)/ information / physical copies of any document from the Bidders, which may be considered necessary, without any liability to the Company.
- 2.5.3. UTJK or its Advisors may seek clarifications and information as it deems appropriate and if required from any or all the Bidders during the course of bid evaluation. The Bidders shall be required provide the same within the timelines as may be specified by UTJK.
- 2.5.4. UTJK reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP, or the Bidding Process and the Bidder shall, when so required by UTJK, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by UTJK does not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of UTJK thereunder.

2.6. **Selection Process**

- 2.6.1. Selection and follow-on procedure for Successful Bidder shall be as follows:

- (a) The Successful Bidder will be issued a LOA by UTJK and will be invited to complete the formalities under the Definitive Agreements.
- (b) The Successful Bidder shall within [15 (fifteen)] days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement along-with the Performance Security (in the form of bank guarantee as per the format specified in the SPA), to UTJK.
 - (i) The amount of Performance Security shall be equal to 10% (ten percent) of the Sale Consideration.
 - (ii) The Performance Security shall be valid until such date as provided in the Definitive Agreements.
 - (iii) Further, it may be noted that in case of Successful Bidder being a Consortium and forming a SPV, Performance Security shall be given by the Lead Member.
 - (iv) The Performance Security related terms and provisions will be governed as per the Agreed Form Definitive Agreements.
- (c) Within [45 (forty five)] days of the issue of the LOA, the Successful Bidder shall execute the Agreed Form Definitive Agreements without any further changes, modifications or amendments and shall comply with all the terms as mentioned in the Agreed Form Definitive Agreements. The Transaction will be consummated within such period and based on such terms as may be specified in the Definitive Agreements.
- (d) If the Successful Bidder fails or refuses to sign the Definitive Agreements or does not provide the Performance Security, such failure or refusal on the part of the Successful Bidder shall constitute sufficient grounds for cancellation of the LOA. In such cases, UTJK, at its sole discretion, shall be entitled to invoke the Bid Security and/or Performance Security of such Successful Bidder.
- (e) The Bidders agree and acknowledge that a submission of the Bid constitutes an "offer" to UTJK for acquisition of the Sale Shares and management control of JKCL, and on acceptance of Bid by

UTJK (by issuance of LOA), the same shall become binding on the relevant Bidder, with the agreed terms of acquisition being set out in the Agreed Form Definitive Agreements shared with the Bidders prior to the submission of the Bid. The Bidders further agree and acknowledge that once a Bid is submitted by them, it cannot be modified, amended or altered in any manner (other than as provided in this RFP).

(f) Completion/Closure of Transaction

- (i) **Approvals:** The Successful Bidder shall be responsible for obtaining all the Approvals to complete the Transaction. For the purpose of this Transaction, the Successful Bidder shall ascertain the applicability and implication of all Applicable Laws pertaining to the Transaction and shall ensure compliance with all the Applicable Laws.
- (ii) **Fulfilment of other conditions precedent:** In addition to the conditions mentioned herein, the Parties will have to fulfil the other conditions precedent as laid out in the Definitive Agreements.
- (iii) **Completion/closure:** This shall be as mentioned in the Definitive Agreements.
- (iv) **Payment of Sale Consideration:** It is to be noted that the modalities of payment of the Sale Consideration by the Selected Bidder shall be in accordance with the terms of the Definitive Agreements.
- (v) **Successful Bidder's undertakings:** The Successful Bidder would also be required to undertake obligations as specified in the Definitive Agreement.

2.7. Governing Law and Jurisdiction

This RFP and all matters incidentals hereto shall be governed by and construed in accordance with the laws of India. All disputes arising out of and in connection herewith shall be subject to the exclusive jurisdiction of the High Court of Jammu & Kashmir.

3. Qualification requirements and Eligibility Criteria

3.1. Eligibility Criteria

3.1.1. The Eligibility Criteria for the Bidders would be as follows:

A. Technical Criteria:

- a) Any Eligible Entity (**Sole Bidder** or a **Consortium**) which is permitted to invest under the laws of India (subject to such entity obtaining all statutory approvals by themselves from GoI, DPIIT, RBI, relevant ministry etc. as applicable including but not limited to the security clearance, approval / clearance under this sub-Clauses (d), (e) and (f) hereinbelow) can submit a Bid either independently or as a Consortium. The closing of the Proposed Transaction (as per the RFP) shall be subject to receipt of all necessary approvals including security clearance as per terms provided in RFP.
- b) The significant beneficial owner (as defined in the Companies (Significant Beneficial Ownership) Amendment Rules, 2019 (Amendment Rules) for any Bidder should not be the same as that of any other Bidder or of any Consortium Member. In case of a Consortium, the ultimate beneficial owner of any member of the Consortium should not be the same as that of any member of any other Consortium or that of any Sole Bidder. In this regard, the Bidder/Consortium Member shall submit an undertaking in form of **Annexure I-B**. In case of any Bidders who are funds (including AIFs), ultimate beneficial owner would mean the investment management entity which manages the investments of the fund and not the investors who have invested in the fund.
- c) It is clarified that Government Company/ies as such term is defined under the Companies Act, 2013, are not eligible to participate in the Transaction, in accordance with OM issued by Ministry of Disinvestment vide letter No. 4(32)/2002-MoDI dated September 18, 2002. In such context, Government's ownership means direct holding of the Central Government or of other Central Public Sector Enterprises ("CPSEs").
- d) A Bidder will be considered as eligible, only if it meets Government of India's extant Foreign Direct Investment Policy ("**FDI Policy**") as prescribed under the consolidated FDI Policy, 2020 (published by DPIIT), including the Press Note No. 3 (2020 Series) and any of its modifications hereafter. Accordingly, the Bidder shall also submit the undertaking mentioned under Annexure I-C Form B.
- e) The Bidder shall be eligible to participate under the extant laws including but not limited to applicable orders issued by the Central Government (including Order No. F/No.6/18/2019-PPD and Order No. P- 45021/112/2020-PP (BE-II) (E-43780) by Ministry of Finance, Ministry of Commerce and Industry, Department of Expenditure, Public Procurement Division dated 23rd July, 2020 and 24th August, 2020 and as per amendments from time to time). The Bidders, who have beneficial ownership in countries which share land border with India and intend to participate in public procurement in India have to get registered with the competent authority.

- f) The Bidder (in case of Consortium – all Consortium Member) will be required to apply for security clearance process in accordance with the terms of the RFP. The execution of the Definitive Agreements and the completion of the Proposed Transaction shall be subject to the security clearance process.

B. Financial Criteria

- (a) The Bidder shall satisfy the following Financial Criteria:

- (i) **Net Worth:** The Bidder should have a Minimum Net-worth of Rs.250,00,00,000 (Rupees Two Hundred and Fifty Crore) or USD 30,500,000 (US Dollars Thirty Million and Five Hundred Thousand) (Rs./\$ conversion of 81.9536 as per FBIL <https://www.fbil.org.in/#/home> as on 02.02.2023).

Note: Net Worth shall mean

- ***In case of a company*** - “Net Worth” shall be calculated as the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure, intangible assets, redemption reserves, reserves made for any specific purpose, miscellaneous expenditure not written off as per the latest audited balance sheet which shall not be as of a date earlier than 31st December 2021, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. Further, the cross holding of investments amongst the Consortium Members is also to be deducted where the Bidder is a Consortium. In case of consolidated financials, non-controlling interest shall be included in the aforesaid definition of “Net Worth” for determining consolidated net worth based on the consolidated financial statements. However, to the extent the non-controlling interest includes any reserves created out of revaluation of assets, write back of depreciation and amalgamation, the same shall be excluded.
 - ***In case of AIF*** - In case of AIF, Net worth shall be considered as 100% (one hundred percent) of committed capital or 0.25 (zero point two five) times of Assets Under Management (“AUM”). The AIF should have committed capital of at least Rs 250,00,00,000 (Rupees Two Hundred and Fifty Crore) or AUM of at least Rs 1,000,00,00,000 (Rupees One Thousand Crore).
- (ii) **Profitability:** The Bidder (other than AIF) should have a net positive Profit after Tax (PAT) in at least 3 (three) out of the immediately preceding last 5 (five) financial years.
- (b) Financial Criteria shall be assessed on the basis of the following:
- **In case of entities, other than AIF:** Audited financial statement of a Bidder (on consolidated basis), of which the latest audited financial statement shall not be as of a date earlier than 31st December 2021.

If the audited financial statements are not available for the immediately preceding financial year, unaudited/provisional numbers as certified by the statutory auditors (in case of an

unlisted company) or information contained in Quarterly Limited Review Report (in case of a listed company) shall be considered. The Financial Criteria should be certified by a statutory auditor (in case of a company) or an independent chartered accountant (in case of other Eligible Entities).

- **In case of AIF:** A certificate from statutory auditor or an independent chartered accountant certifying assets under management or committed capital shall be submitted. Certificate should not be older than 3 (three) months from the date of RFP.
- (c) Where the financial statements are expressed in a currency other than the Indian Rupee, the eligible amount as described above shall be computed by taking the equivalent amount at the exchange rates prevailing on the dates of such financial statement as stipulated by RBI/ FBIL. All financial information required for satisfying the Eligibility Criteria shall be represented in Indian Rupees.
- (d) The Net Worth criteria may be satisfied either by the Bidder or its Parent (in case of Sole Bidder / Consortium Member). It is clarified that in addition to the eligibility requirement on ultimate beneficial ownership, two or more Bidders cannot use financial strength of the same Parent.
- (e) The combined / cumulative Net Worth of the Consortium should meet the minimum Net Worth criteria mentioned, calculated as follows:

*Net Worth of the Consortium = [(Net Worth of Lead Member) + (Net Worth of member 2) + (Net Worth of member 3) + (Net Worth of member 4)] (“**Combined Net Worth**”).*

Please note that the Combined Net Worth for Consortium will be considered on a pro rata basis to the equity contribution of each member in the Consortium.

3.1.2. **Conditions for bidding by Consortium:**

Eligible Entities are permitted to form a Consortium to participate in the Transaction. The maximum number of members, including Lead Member, in a consortium can be 4 (four). A member of a Consortium cannot participate simultaneously as a part of another Consortium or as a Sole Bidder.

- (a) **Lead Member:** The Consortium shall have only 1 (one) Lead Member.
- (b) **Minimum stake requirement:**
 - (i) Lead Member shall hold at-least 51% (fifty one percent) equity shareholding on a fully diluted basis in the SPV until the 3rd (third) anniversary of the Execution Date or 2 (two) years from the COD, whichever is later.
 - (ii) Each Consortium Member shall hold at least 10% (ten percent) equity shareholding on a fully diluted basis in the SPV until the 3rd (third) anniversary of the Execution Date or 2 (two) years from the COD, whichever is later.
- (c) **Formation of SPV:** The Successful Bidder, who is a Consortium, shall incorporate a 100% (one

hundred percent) owned and controlled SPV for purposes of undertaking the Transaction. The SPV can be formed within [30 (thirty)] days from issuance of the LOA. Both the Successful Bidder (i.e., the Lead Member and Consortium Members) and the SPV will have to sign the Definitive Agreements. The shareholding of the SPV shall be as stated above in Clause 3.1.2(b).

- (d) In case the Successful Bidder is a Consortium, each member of the Consortium along with the SPV will have to sign the Definitive Agreements.
- (e) The Successful Bidder which has submitted the Bid cannot be replaced later by another subsidiary of its Parent or an SPV created by its Parent at any stage of the Transaction.
- (f) The Successful Bidder shall ensure that it has and continues to maintain Control over the Company until at least the 3rd (third) anniversary of the Closing Date or 2 (two) years from the COD, whichever is later, and shall not directly or indirectly dilute its shareholding in the Company below 51% (fifty one percent) calculated on a fully diluted basis; and shall continue the business of the Company as a going concern by following the best business practices.
- (g) The Successful Bidder (Sole Bidder or Consortium) shall not directly or indirectly transfer any of the Sale Shares in the Company until the 1st (first) anniversary of the Closing Date.
- (h) Further, where the Successful Bidder has relied on the Parent for qualifying the Eligibility Criteria or where the Successful Bidder is a Consortium, the Parent or the Consortium Members, as the case may be, shall not directly or indirectly transfer any of its shares in the SPV until the 3rd (third) anniversary of the Execution Date or 2 (two) years from the COD, whichever is later. The Parent or the Consortium Member, as the case may be, shall also continue to have Control over the Successful Bidder during this period. The transfer restrictions stated herein shall be incorporated in the constitutional documents of the Successful Bidder / SPV. The Successful Bidder shall deliver its constitutional documents to UTJK and the Company within 7 (Seven) business days of the Execution Date.
- (i) Restrictions on change in composition of Consortium:
 - (i) **Prior to Bid Due Date:** The Bidder is permitted to change Consortium Members prior to the Bid Due Date by withdrawing the Bid and submitting a fresh Bid before the Bid Due Date.
 - (ii) **After the Bid Due Date till selection of the Successful Bidder:** No change, either by way of withdrawal/substitution/addition of any Consortium Member or any change affecting the composition of the Consortium will be permitted until the 3rd (third) anniversary of the

Execution Date or 2 (two) years from the COD, whichever is later, without prior written approval of UTJK.

- 3.1.3. A Bidder can submit only one Bid i.e., either as a Sole Bidder or as a member of one Consortium. In case, more than one Bid is submitted by a Bidder, all such Bids shall be disqualified.
- 3.1.4. Bidder (including Consortium Member) /Parent of Sole Bidder or Consortium Member should not have been convicted by a court of law or indicted/ have any adverse order passed against them by any other regulatory authority in any matter involving a grave offence and/ or which casts a doubt on its ability to participate in the Transaction. Further, the Bidder, its directors, Promoters / Promoter Group members/Subsidiaries/Associate Company, any Consortium Member, its directors, Promoters / Promoter Group members/Subsidiaries/Associate Company, that have been charge-sheeted or convicted on matters relating to national security or integrity under the provision of the Indian Penal Code, 1860 or Official Secrets Act, 1923 or other relevant legislation, shall not be eligible. The mere fact that an appeal against any such order mentioned above is pending in any court of law or any regulatory authority will not dilute the disqualification.
- 3.1.5. Additionally, the Bidder (including Consortium Member) /Parent of Sole Bidder or Consortium Member or any of their Subsidiary or Associate Company should not be party to any existing disputes or legal proceedings by or against JKCL, which proceeding may be prejudiced by the participation of the Bidder (including Consortium Member) in the Bidding Process or the Transaction.
- 3.1.6. **Other Terms and Conditions**
- (a) The Bidder must meet the Eligibility Criteria as stated in Clause 3.1 of this RFP, on the date of submission of the Bid and must continue to be eligible throughout the Transaction until its completion. Bidder shall have the obligation to immediately notify UTJK on its becoming ineligible any time during the Transaction. In the event of any Bidder getting disqualified or not meeting the Eligibility Criteria, such Bidder shall not be permitted to continue to participate in the Transaction.
 - (b) All the Bid(s) shall be valid till the Successful Bidder is declared, or such other time as may be notified to the Bidders.
 - (c) No Bidder shall submit more than one Bid. A Bidder submitting a Bid independently or as a Consortium Member shall not be entitled to submit another Bid either independently or as a member of any other Consortium, as the case may be.
 - (d) All financial statements or data to be derived therefrom for the evaluation of Financial Criteria referred herein shall be on a consolidated basis.
 - (e) The Sole Bidder, who is selected as the Successful Bidder, would be required to lock-in at least 51% (fifty one percent) of its shareholding for a minimum period of 3 (three) years from Execution Date or for a minimum period of 2 (two) years from the COD, whichever is later. In case of a Consortium, the Lead Member shall continue to hold at least 51% (fifty-one percent) equity shareholding in the SPV for a minimum period of 3 (three) years from the date of signing

under the Definitive Agreements or for a minimum period of 2 (two) years from the COD, whichever is later.

- (f) In case the Bidder is a Consortium, it agrees that its liability shall be joint and several with each of the Consortium Members.
- (g) Requisite approvals: The Bidder shall be required to obtain all necessary Approvals under Applicable Laws from relevant Governmental Authorities, as may be required to enable the Bidder to enter into the Definitive Agreements before completing the Transaction. It may be noted that key Approvals that may be required for the Transaction are for transfer of limestone mine lease, transfer of land (currently being assessed by JKCL) and non-objection certificate from lenders. However, routine and other Approvals, may also be required depending on the Transaction structure.
- (h) Where the Bidder/ Consortium Member is a foreign entity, it shall ensure that it meets extant Foreign Direct Investment norms and regulations. A Bidder will be considered as eligible, only if it meets Government of India's extant FDI Policy as prescribed under the consolidated FDI Policy, 2020, including the Press Note No. 3 (2020 Series) and any of its modification's hereafter.
- (i) Only Bidders which are permitted under Applicable Laws to participate (to the extent of their proposed participation) shall be permitted to submit the Bid.
- (j) UTJK reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without communicating any reasons. The fact that UTJK may entertain Bids by entities from a jurisdiction outside of India should not be construed as approval from GOI on any tax issues relating to foreign investments in India that may arise in relation to the Transaction. The Bidder has to comply with relevant tax laws and procedure under Applicable Laws.

4. Disqualification

- 4.1. Any Bid which has been found to be incomplete in content or attachments or authenticity may be rejected. UTJK shall reserve the right to seek clarifications/ pending documents in order to enable omissions to be dealt with during evaluation process.
- 4.2. Without prejudice to any other rights or remedies available to UTJK, UTJK reserves the right to disqualify any Bidder or Consortium Member and exclude its Bid from further consideration for any of the reasons, including without limitation listed below:
 - 4.2.1. Any misrepresentation/ false statement made by a Bidder / any Consortium Member at any stage of the Transaction, whether in the Technical Bid, the Financial Bid, supporting documentation or otherwise and whether written or oral.
 - 4.2.2. If the Bid submitted by the Bidder is in any respect inconsistent with, or demonstrates any failure to comply with, the provisions of the RFP.
 - 4.2.3. If any condition or qualification or any other stipulation is inserted by the Bidder / any Consortium Member, in the Bid submitted by them.
 - 4.2.4. Failure by Bidder / any Consortium Member to provide the necessary and sufficient information required to be provided in the Bid in accordance with this RFP.
 - 4.2.5. Failure by Bidder / any Consortium Member to provide, within the time specified by UTJK, the supplemental information sought by UTJK for evaluation of the Bid.
 - 4.2.6. Submission of more than 1 (one) Bid by any Bidder either as Sole Bidder or as Consortium Member in which case, all such Bids or where the ultimate beneficial owner of any Bidder / Consortium Member is the same as that of any other Bidder / member of any other Consortium, shall be rejected.
 - 4.2.7. The Bidder not satisfying the eligibility and requisite qualification criteria specified in the RFP and hence not being eligible.
 - 4.2.8. Failure by Bidder / any Consortium Member to comply with any other condition or requirement as listed in the RFP.
 - 4.2.9. In case the Bidder / any Consortium Member is a Government Company/ies as such term is defined under the Companies Act, 2013.
 - 4.2.10. Failure to comply with any reasonable request of UTJK in relation to the Transaction.
 - 4.2.11. If at any time it is discovered that the Bidder / Consortium Member or its respective Promoter are subjected to winding up/insolvency/ bankruptcy proceedings or other proceedings of a similar nature.
 - 4.2.12. Any of the outstanding indebtedness of the Bidder / any Consortium Member or its respective Parent (in case of reliance on Parent Net Worth) availed from either banks or financial institutions being classified as 'non-performing asset' or any equivalent classification in their respective jurisdiction for period of 12 (twelve) months prior to the Bid Due Date.

- 4.2.13. Any information regarding or in connection with the Bidder / Consortium Member, their directors, their Associate Company, Subsidiary, Promoter or Promoter Group which becomes known that is detrimental to the national security and/or national interest and/or public interest and/or the Transaction and/or the interests of the Company.
- 4.2.14. If at any stage of the Transaction, the Bidder/ Consortium Member and/ or its directors/ CEO or the concern in which Bidder/ Consortium Member and/ or its directors/ have substantial interest are denied security clearance or their security clearance is revoked by the GoI.
- 4.2.15. Initiation or existence of any legal proceedings, by or against the Bidder/ Consortium Member, their subsidiary or Associate Company, in respect by or against JKCL, which proceeding may be prejudiced by the participation of the Bidder / Consortium Member in the selection process or the Transaction.
- 4.2.16. Bidder / Consortium Member or its Promoters or Promoter Groups or directors of Bidder /Consortium Member is debarred from accessing or operating in the capital markets or restrained from buying, selling, or dealing in securities by any Governmental Authority.
- 4.2.17. Bidder / Consortium Member or its Promoters or Promoter Groups or directors of Bidder /Consortium Member are appearing in the RBI list of Wilful Defaulters or any such list by a competent authority in their respective jurisdiction. For the purpose of this clause, “Wilful Defaulter” means an issuer who is categorized as a Wilful Defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on Wilful Defaulters issued by the RBI and includes an issuer whose director or Promoter is categorized as such.
- 4.2.18. Bidder/ Consortium Member is an erstwhile Overseas Corporate Bodies (OCB) (defined below) which is incorporated outside India and are under the adverse notice of RBI.
- 4.2.19. For the purpose of this clause, “Overseas Corporate Body(ies)” mean a company, and other corporate body owned directly or indirectly to the extent of at least sixty per cent by Non-Resident Indians and includes overseas trust in which not less than sixty per cent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably, which was in existence as on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs) Regulations, 2003) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under Foreign Exchange Management Regulation Act, 1999.
- 4.2.20. Bidder / Consortium Member is prohibited or restricted from investing in JKCL under Foreign Exchange Management Regulation Act, 1999, or any rules or regulations made there under. It being clarified that sectors where government approval is required will not be considered as ‘restricted’ from investing.
- 4.2.21. If it is discovered at any stage of the Transaction that the Bidder / Consortium Member does not possess requisite corporate authorizations to participate in the Transaction.
- 4.2.22. The closing of the Proposed Transaction (as per the RFP) shall be subject to receipt of all necessary approvals including security clearance as per terms provided in RFP.

- 4.2.23. Where Bidder is a Consortium, if any of the Consortium Members are disqualified, the Consortium shall automatically stand disqualified.
- 4.2.24. Breach of Undertaking executed by the Bidder (as provided in *Annexure I-B*).
- 4.3. In regard to matters relating to the national security and national integrity, any charge-sheet by any Governmental Authority / conviction by a court of law including under the provisions of the Indian Penal Code, 1860 or Official Secrets Act, 1932, or any other relevant legislation for an offence committed by the Bidder /Consortium Member, their directors or any of its Promoter/Promoter Group/Subsidiary/Associate Company would result in disqualification. The mere fact that an appeal against any such order mentioned above is pending in any court of law or any regulatory authority will not dilute the disqualification.
- 4.4. The Bidder/ any Consortium Member who is not qualified to participate in the Transaction pursuant to the Government of India office memorandum No. 3/9/2016-DoD-II-B dated September 28, 2017, as amended from time to time. (as provided in *Annexure III-A*)
- 4.5. If the Bidder/ any Consortium Member does not satisfy any of the requirements as may be issued by UTJK by way of notifications/ guidelines / circulars or such similar notifications from time to time, including any conditions for qualification, the Bid submitted by the Bidder shall be disqualified.
- 4.6. If a Bidder /any Consortium Member is found involved in corrupt practices, unfair means or illegal activities during any stage of the Transaction or during the Bidding Process and during the negotiation and execution of the Definitive Agreements, the Bidder shall be disqualified, at the sole discretion of UTJK.
- 4.7. If any default, as above, becomes known after the Bidder has been shortlisted that would have entitled UTJK to reject or disqualify the Bidder, UTJK reserves the right to reject or disqualify the Bidder at the time such information becomes known to UTJK.
- 4.8. UTJK determination that one or more of the events specified in this Clause 4 has occurred shall be final and conclusive.
- 4.9. The above circumstances for disqualifications, at the discretion of UTJK shall also be applicable to Parent, where any Sole Bidder or Consortium Member, who fulfils the Net Worth criteria through its Parent.
- 4.10. Bidders shall not have any conflict of interest (“**Conflict of Interest**”) that affects the Bid Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Bidders shall be deemed to have a Conflict of Interest affecting the Bid Process, if:
- (i) The Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their respective Associate Companies and any other Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners

(in case Bidder or Parent) or their respective Associate Companies have common controlling shareholders or any other controlling interest (controlling shareholding for the purposes of this clause shall be the shareholder(s) having a shareholding (direct or indirect) of more than [20% (twenty percent)] of the paid up and subscribed equity share capital of such Bidder, or its Associate Company or its controlling shareholder(s)/partners (in case Bidder or Associate Company) or their respective Associate Companies as the case may be);

Provided that this disqualification shall not apply in cases where the ownership is by a bank, insurance company, pension fund or a public financial institution as defined in section 2(72) of the Companies Act, 2013.

Computation of indirect shareholding or participative interest – For the purposes of this clause, indirect shareholding or participative interest held through one or more intermediate persons shall be computed as follows:

- (1) Where any intermediary (for example 'Entity B') is Controlled by a person (for example 'Entity A') through management control or otherwise, the entire shareholding or participative interest held by such controlled intermediary i.e. 'Entity B' in any other person for example 'Entity C' shall be taken into account for computing the shareholding or participative interest of such controlling person i.e. 'Entity A' in 'Entity C'; and
 - (2) Where a person i.e. 'Entity A' does not exercise Control over an intermediary i.e. 'Entity B', which has shareholding or participative interest in another entity i.e. 'Entity C', the computation of indirect shareholding of such person in 'Entity B' shall be undertaken on a proportionate basis; provided, however, that no such shareholding or participative interest shall be reckoned under this sub-clause, if the shareholding or participative interest of such person in the intermediary, i.e. 'Entity B', is less than [20% (twenty percent)] of the subscribed and paid up equity shareholding of such intermediary or equivalent interest; or
- (ii) A constituent of such Bidder is also a constituent of another Bidder; or
 - (iii) Such Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their respective Associate Companies receives or has received/provided any direct or indirect subsidy, grant or concessional loan from/to any other Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their respective Associate Companies; or
 - (iv) Such Bidder has the same authorised signatory for purposes of the RFP as any other Bidder; or
 - (v) Such Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their

respective Associate Companies has a relationship with another Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their respective Associate Companies, directly or through third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the RFP of either or each other; or

- (vi) Such Bidder (Sole Bidder or any member of the Consortium, as applicable) or Parent (only in case Bidder is taking benefit of financial strength of such Parent) or with respect to such Bidder/Parent, its Controlling shareholder(s)/partners (in case Bidder or Parent) or their respective Associate Companies has/have participated as a consultant or advisor to UTJK for the Proposed Transaction. Provided that the provisions set out in clauses 4.1.10 (i), 4.1.10 (iii) and 4.1.10 (v) shall not apply to Bidders which are government entities.

- 4.11. If any information or disqualification is discovered or becomes known after the Bidder has been qualified to receive the information in the Data Room, which information/ disqualification would have entitled UTJK to reject the RFP of the relevant Bidder, UTJK reserve the right to reject the Bidder at the time such information/ disqualification becomes known to/ discovered by UTJK. Where such party is member of a Consortium, UTJK, may disqualify the entire Consortium, even if the information/disqualification pertained/applied to only one member of the Consortium.
- 4.12. UTJK's determination that one or more of the events specified in above clauses has occurred shall be final and conclusive. In addition to the eligibility of the Bidder, being a Sole Bidder, each of the members of Consortium and the Consortium as a whole must be eligible, as per criteria mentioned in this RFP, on the date of submission of the Bid and must continue to be eligible at and prior to the closing of the Transaction. The Bidder shall be required to provide a declaration to certify its continuous eligibility as per the terms of the RFP and/or Definitive Agreements.

5. Fraud and Corrupt Practices

- 5.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, UTJK shall be entitled to reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 5.2. Without prejudice to the rights of UTJK under clause 5.1 hereinabove, if a Bidder is found by UTJK to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by the GoI/ UTJK during a period of 3 (three) years from the date such Bidder is found by UTJK /GoI to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 5.3. For the purposes of this clause, the following terms shall have the meaning hereinafter respectively assigned to them:
- a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of UTJK/ JKCL who is or has been associated in any manner, directly or indirectly with the Bidding Process or has dealt with matters concerning the Transaction or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of UTJK, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or till the execution of the Transaction, any person who at any time has been or is a legal, financial or technical adviser of UTJK in relation to any matter concerning the Transaction unless otherwise permitted under this RFP by UTJK;
 - b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by UTJK with the objective of canvassing, lobbying or in any manner

influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest;

- e) “**restrictive practice**” means forming an illegal cartel or arriving at any understanding or arrangement among Bidder(s) with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

6. Pre-Bid Conference and Miscellaneous

6.1. Pre-Bid Conference

- 6.1.1. Pre-Bid conference of the Bidders shall be convened at the designated date, time and place as mentioned under Clause 6 of the RFP. A maximum of four representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 6.1.2. During the course of pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of UTJK. UTJK shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6.2. Indemnity

- 6.2.1. The Bidder hereby undertakes that all information submitted or to be submitted by the Bidder to UTJK at any stage of the transaction or Bidding Process including under their respective Bids or pursuant to any additional requests made by UTJK is and shall be true and correct as of the date such information was/ will be provided. At any stage of the Bid Process, in case it is found that the Bidder has made any misrepresentation or submitted incorrect or false information or has not responded to any queries/further information requested by UTJK, the Bidder shall be liable to indemnify UTJK for any loss caused to them or for any claim made against them in respect of the Transaction.

6.3. Confidentiality

- 6.3.1. Information relating to the examination, clarification, evaluation and recommendation in relation to the Bidder(s) shall not be disclosed to any person not officially concerned with the process or is not a retained professional advisor by UTJK for the Transaction, in relation to, or matters arising out of, or concerning the Bidding Process. UTJK will treat all information submitted as part of the Bid in confidence and would require all those who have access to such material to treat the same in confidence. UTJK and TA will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure or to enforce or assert any right or privilege of such authority. UTJK and JKCL reserve the right to make public disclosure of the names of any of the Bidder(s).

6.4. Right to Accept and Reject any or all Bids

- 6.4.1. Notwithstanding anything contained in this RFP, UTJK reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons thereof. In the event UTJK rejects or annuls the Bids, it may in its sole discretion, invite all the eligible Bidder(s) to submit fresh bids hereunder.

7. Annexures

7.1. Annexure I-A: Covering Letter for Technical Bid

(To be typed on the letterhead of the Bidder/ Lead Member submitting the Bid)

Reference No. _____ Date _____

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu – 180001

Sub: BID FOR DISINVESTMENT OF JAMMU AND KASHMIR CEMENTS LIMITED (“JKCL”)

Dear Sir/ Madam,

This is with reference to the advertisement dated [●] (“**Advertisement**”) inviting Bid for disinvestment of 100% (one hundred percent) equity share capital of UT administration of Jammu and Kashmir in Jammu and Kashmir Cements Limited (“**JKCL**” or “**the Company**”) along with transfer of management control (“**the Disinvestment**”).

This communication has been issued by the [Bidder (as defined below) OR Lead Member (as defined below)] for and on behalf of the Consortium (as defined below).]⁷

We have read, reviewed and fully understood the contents of the Advertisement, the RFP dated [●], including all of the qualification requirements and information provided therein and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof. We have also completed the entire process of Due Diligence Exercise, including Site visits to the plants of JKCL to our satisfaction. We have also on occasions raised queries and sought clarifications in the said matter and have been satisfactorily answered. We are now eager to proceed with the next steps of the Transaction and in this regard hereby wish to state, undertake, and confirm as follows:

1. We are interested in bidding for the Disinvestment of 100% (one hundred percent) equity share capital of UT administration of Jammu and Kashmir in the Company.
2. We are submitting this Bid as [●] [insert name of Bidder] having its registered office at [●]

OR

2. We have formed a consortium comprising [●] members (“**Consortium**”) as follows:

⁷ Strike out, whichever is not applicable

- i. [●] holding [●] % stake in the Consortium i.e. holding [●] % of the equity share capital of the SPV, on a fully diluted basis, and is designated as Lead Member as per the Consortium Agreement executed among all the Consortium Members (“**Lead Member**”);
 - ii. [●] holding [●] % stake in the Consortium i.e. holding [●] % of the equity share capital of the SPV, on a fully diluted basis;
 - iii. [●] holding [●] % stake in the Consortium i.e. holding [●] % of the equity share capital of the SPV, on a fully diluted basis; and
 - iv. [●] holding [●]- % stake in the Consortium i.e. holding [●] % of the equity share capital of the SPV, on a fully diluted basis
3. We confirm and represent that we have the requisite corporate authorization to submit the Bid and that the undersigned is an authorized representative of the Bidder.
4. We confirm that we are not affected by any of the disqualifications set out in the RFP. In the event we are attracted by any of the disqualifications in terms of the RFP during the pendency of the Bidding Process, owing to change in facts or circumstances, we would intimate UTJK of the same immediately
5. [We agree to form a special purpose vehicle (“**SPV**”), in India/under the laws of India, once finally selected to enter into the Definitive Agreements. (*applicable for the case of Consortium*) (*Please strike out if not applicable*)]
6. We undertake that in the event we are selected as the Successful Bidder and make the investment through a SPV then each Consortium Member, shall be jointly liable for obligations of the SPV and shall also be a party to the Definitive Agreements along with the SPV. The Lead Member shall, additionally, be responsible for ensuring the individual and collective commitment of each of the Consortium Members in discharging all of their respective obligations in connection with the Bid. (*applicable for the case of Consortium*) (*Please strike out if not applicable*)
7. We acknowledge that UTJK will have rights of enforcement as against the SPV under the parent guarantee for breach of undertakings and representations made to UTJK under the RFP. (*Please strike out if not applicable*).
8. We agree that if, at any stage of the Bidding Process, it is found that we have made any misrepresentation or submitted incorrect or false information or have not responded to any queries/further information requested by UTJK, we shall indemnify UTJK, and the Advisors, for any loss caused to them or for any claim made against them in respect of the Transaction.
9. We certify that neither have we or our Parent (in case net worth of Parent is being relied on) been convicted by any court of law, indicted, nor has any adverse order been passed against us by a regulatory authority, which would cast a doubt on our ability to manage the public sector unit when it is disinvested or which related to a grave offence that outrages the moral sense of the community.
10. We further certify that in regard to matters relating to security and integrity of the country, no charge sheet has been filed by any agency of the Government of India or any other relevant Government where the Bidder belongs nor have we been convicted by a court of law, including under the provisions of the

Indian Penal Code, 1860 or Official Secrets Act, 1923 or such other relevant statutes for any offence committed by us, our directors or any of our respective Subsidiaries, or against any of our Associate Companies or any of our Promoters, Promoter Group.

11. We further certify that no investigation by a regulatory authority is pending either against us or our Parent (in case net worth of Parent is being relied on).
12. We represent that we are not disqualified to enter into or perform our obligations in relation to the Transaction (including acting as Promoter of the company) pursuant to the Applicable Laws including regulations, guidelines, orders, directions or instructions of any regulatory authority (including SEBI or RBI), administrative authority or department or ministry of central or state government or any court in India.
13. We represent that we or our Promoters or Promoter Groups or our directors are not debarred from accessing or operating in the capital markets.
14. We represent that we or our Promoters or Promoter Groups or our directors are not appearing in the RBI list of wilful defaulters or any such competent authority in their respective jurisdiction.
15. We hereby state and confirm the following:
 - a) Our Bid is unconditional and unqualified and is true and correct to the best of our knowledge and understanding.
 - b) The Bid Security paid by us vide bank guarantee [provide details of bank guarantee as applicable] equivalent to INR 5,00,00,000 (Indian Rupees Five Crore) (enclosed herein), shall get encashed /invoked on the occurrence of any of the events of default mentioned in the RFP for the purpose.
 - c) Our Bid is complete in content and attachments and is strictly as per the requirements stipulated in the RFP. Our Bid does not demonstrate any failure to comply with any provision of the RFP or that the Bid is being conditional in any respect.
 - d) Any error or omission in our Bid is entirely and solely our responsibility.
 - e) Our Bid is based on the representation, warranty, undertaking and covenant that all information provided in the Bid is true, accurate and complete as of the date hereof.
 - f) In the event of our being declared as the Successful Bidder, we agree to enter into Definitive Agreement in accordance with the Agreed Form Definitive Agreements (a duly authenticated copy of which is duly submitted with bid) prior to the Bid Due Date. We agree not to seek any changes in the aforesaid drafts and agree to abide by the same.
 - g) We acknowledge that UTJK will be relying on the information provided in the Bid for selection of the strategic Successful Bidder, and we certify that all information provided in the Bid are true and correct, nothing has been omitted which renders such information misleading, and all documents accompanying the Bid are true copies of their respective originals.
 - h) We hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge any information/document, that may come to our notice subsequently and may have affected the

Financial Bid had such information/document came to our notice before submitting the Financial Bid.

- i) We confirm that we accept all the terms and conditions laid down in the RFP and Definitive Agreements and all the other documents provided to us during the Transaction.
- j) We agree and confirm that we will be solely responsible for complying with the obligations/compliances as may be required to be made/undertaken under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 and other Approvals (as defined in RFP), as may be amended from time to time.
- k) The Financial Bid is unconditional and has been quoted by us after taking into consideration and acceptance of all the terms and conditions stated in the RFP, Agreed Form Definitive Agreements and our own estimates of costs and after a careful assessment of the Company being disinvested.
- l) We understand that the Financial Bid is exclusive of any costs, charges and expenses and payment of fees and duties (including the adjudication, stamp duty and registration fee and other similar levy payable and whether payable in one or more states or jurisdictions), statutory and otherwise in relation to completion of all statutory, regulatory, and other compliances for the said Transaction.
- m) We acknowledge the right of UTJK to reject our Financial Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
- n) We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP which may need to be further extended on intimation to the Bidder and all documents submitted by us in connection with the Transaction, along with all enclosures, undertakings and information contained therein, shall continue to remain valid and binding till such date.
- o) We agree and acknowledge that we may be disqualified at any stage of the process, if we are denied security clearance or security clearance is revoked by the GOI.
- p) We further understand that the information and data received by us for this Transaction is confidential and has not been divulged or disclosed or reproduced or disseminated, in whole or part, to any person or entity except to our directors, officers, employees and professional advisers who need to know the information for the purpose of evaluating the Transaction. We have used the confidential information only for the purpose of the Transaction. We agree and undertake to abide by all the terms and conditions of the RFP document.
- q) We submit this Bid under and in accordance with the terms of the RFP.

Note: Capitalized terms not defined shall have the same meaning ascribed to them in the RFP.

Thank you.

Yours sincerely,

For and on behalf of: [name of the Bidder/ Lead Member]

Signature: (authorized representative and signatory)

Name of the Person: [●]

Designation: [●]

Enclosures:

- (a) Payment proof / Receipt (of NEFT payment) of Tender Fee
- (b) Form A
- (c) General Power of Attorney
- (d) Power of Attorney in favor of Lead Member [submitted by each Consortium Member]⁸
- (e) [Certified true Copy of the Consortium Agreement between the Consortium Members]⁹
- (f) Confidentiality Undertaking
- (g) Affidavit
- (h) Declaration on Statement of legal proceedings [submitted by each Consortium Member]¹⁰
- (i) Undertaking by Parent¹¹

⁸ Delete if not applicable

⁹ Delete if not applicable

¹⁰ Delete if not applicable

¹¹ Delete if not applicable

7.2. Annexure I-B: Undertaking in Relation to Ultimate Beneficial Ownership

(On the letterhead of the Bidder/ each Consortium Member)

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu – 180001

Sub: UNDERTAKING IN RESPECT OF BID FOR DISINVESTMENT OF JAMMU AND KASHMIR CEMENTS LIMITED (“JKCL”)

Dear Sir,

We hereby represent and undertake that we do not have the same ultimate beneficial owner(s) as of any other Bidder or Consortium Member participating in the Transaction and we have not submitted more than 1 (one) Bid, either as a Sole Bidder or as a Consortium Member.

Note: Capitalized terms not defined shall have the same meaning ascribed to them in the RFP.

Yours sincerely,

For and on behalf of: [name of the Bidder/ Consortium Member]

Signature: (authorized representative and signatory)

Name of the Person: [●]

Designation: [●]

7.3. **Annexure I-C: Form A**

(To be submitted on letterhead (unless otherwise mentioned) of Bidder/each Consortium Member/ Parent (in case of a Sole Bidder / Consortium Member who is utilizing the financial capacity of such Parent to meet the Eligibility Criteria))

1. Name of the Bidder/Consortium Member: _____
2. Executive Summary and Management Organization: providing brief description of the Bidder and (where appropriate) Consortium Member / Parent on whose Net Worth has been relied on by the Sole Bidder or Consortium Member, containing details like ownership structure, identity of the natural persons who are the ultimate beneficial owners, the Place of Effective Management of business of the Bidder/ Parent of Sole Bidder /Consortium Member (“**Place of Effective Management**” means the place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made), (as per Central Board of Direct Taxes Guideline F. No. 142/11/2015-TPL dated January 24, 2017) etc. write up on business history and growth, business areas / activities, respective revenue details, the Place of Effective Management of business of the Bidder/ Parent of Sole Bidder /Consortium Member etc. It shall include a brief commentary on the capability of the Bidder/ Parent of Sole Bidder /Consortium Member, as demonstrated, inter alia, in its past track record, to run its own business.
3. Also, an overview of Bidder’s / Parent of Sole Bidder /Consortium Member’s senior management and organization structure certified by the Company Secretary/ any other officer in charge of secretarial/legal affairs.
4. Contact Information of the Bidder / Parent of Sole Bidder /Consortium Member:
 - i. Following details of Bidder / Parent of Sole Bidder /Consortium Member including phone number and facsimile number
 - a. Registered Office – Address, phone number, facsimile number
 - b. Head Office – Address, phone number, facsimile number
 - ii. If Consortium, name of the Lead Member:
 - iii. Address for correspondence along with email address of Bidder / Parent of Sole Bidder / Consortium Member.
 - iv. Contact Person(s):
 - a. Name:
 - b. Designation:
 - c. Phone No.:
 - d. Mobile No.:
 - e. Fax No.:
 - f. Email:

- v. Website details of Bidder / Parent of Sole Bidder / Consortium Member.

5. Basic Information:

- i. Constitution (Tick, wherever applicable)
 - a. Public Limited Company
 - b. Private Limited Company
 - c. Others, if any (Please specify)
- ii. Date and Place of incorporation of Bidder / Parent of Sole Bidder / Consortium Member
- iii. Date of commencement of business of Bidder / Parent of Sole Bidder / Consortium Member
- iv. Role/ Interest of each Member in the Consortium (if applicable).
- v. Nature of business carried out/ products dealt with by the Bidder / Parent of Sole Bidder / Consortium Member and a profile containing information on the Bidder's / Parent of Sole Bidder / Consortium Member's operations.
- vi. Certified true copies of the following documents to be submitted. However, if the Bidder / Parent of Sole Bidder / Consortium Member cannot submit any of the following documents, it shall state reasons for the same as per the format below:

Documents	Submitted (Yes/ No)	If not submitted, please state reasons for the same
Certificate of Incorporation		
Memorandum of Association		
Articles of Association		
Certificate of Commencement of Business		
Charter Documents		
Registration Certificate for AIFs		

- vii. A certificate for list of board of directors and Key Management Personnel duly signed by the respective company secretary or any other officer in-charge of secretarial/legal affairs of Bidder / Parent of Sole Bidder / Consortium Member and also counter signed by its authorized signatory.
- viii. A certificate by an independent chartered accountant/statutory auditor/company secretary or any other officer in-charge of secretarial/legal affairs for the shareholding pattern of the Bidder/ Parent of Sole Bidder / Consortium Member.

ix. Basis of eligibility for participation in the process (Please mention details of your eligibility) as under:

- a. A certificate duly signed by our company secretary/ any other officer in charge of secretarial/legal affairs, stating that we are eligible to participate in the proposed disinvestment in terms of Clause _____ (specific reference to the said provision may be drawn) of our Memorandum and Articles of Association/_____ (insert name of constitution document, etc. as may be applicable).
- b. Audited financial statements (on standalone and consolidated basis)/annual reports for the previous three financial years (including profit and loss statement, balance sheet and cash flow statement) (Kindly also include most recent, not older than 31st December 2021, audited financial statements/annual report on standalone and consolidated basis).

Provided that, in the event such Bidder / Parent of Sole Bidder / any Consortium Member is an unlisted entity, and does not have the audited financial statements of immediately preceding financial year, the latest available unaudited/ provisional financial statements may be given as certified by its statutory auditor; in case such entity is a listed entity, and its audited financial statements are not available for the immediately preceding financial year, the information contained in latest Quarterly Limited Review report is to be submitted. However, the audited financial statements of such entities shall be submitted, as and when prepared as per the statutory requirements and timelines of the relevant countries where it is incorporated.

All financial statements/ annual reports/Net Worth certificates submitted should be certified by authorized signatory.

In case the Bidder / Parent of Sole Bidder /any Consortium Member cannot submit the consolidated financial statements as mentioned above, it shall specify reasons for the same.

- c. **Certificate for fulfilment of Financial Criteria:** Please provide an independent chartered accountant/statutory auditor certificate certifying Net worth for Bidder/ Parent of Sole Bidder /Consortium Member as specified in the Eligibility Criteria section of the RFP.

The certificate for fulfilment of Financial Criteria should clearly mention the following:

- The date of Net worth calculation for which Net Worth details have been submitted.
- That the Net Worth calculation has been done in accordance with the stipulations under the Eligibility Criteria section of the RFP.
- In case the Bidder / Parent of Sole Bidder /Consortium Member are not required to prepare consolidated financial statements as a part of statutory requirements, the same should be mentioned in the certificate (in such a case, the standalone financial statements are to be used for assessment. However, the same would be accepted only if the certificate for fulfilment of Financial Criteria clearly mentions the non-requirement for preparation of consolidated financial statements).

- The certificate should clearly mention that the issuing authority is statutory auditor or independent chartered accountant (as applicable), for the Bidder /Consortium Member.
- It should clearly specify the cross holdings among Consortium Members, if any.
- The financial statements on the basis of which the Financial Criteria have been assessed correspond to accounting periods completed (each of not less than 12 (twelve) months duration) and are not based on partial periods.
- Provide documents such as a board or shareholders' resolution in favor of the person executing the Power of Attorney for the delegation of power on behalf of the Bidder / Consortium Member.

Note: The date of execution of board or shareholders' resolution should be prior to the date of execution of the Power of Attorney.

6. International Operations/ Joint Ventures/ Alliances:

- i. Brief note of Bidder's / Parent of Sole Bidder's / Consortium Member's/ international operations, joint ventures, alliances, (whether international or domestic), including incorporation details, registered office, nature and size of such operations, equity ownership/ effective management and control (as applicable). Such details shall be provided for only those operations which the Bidder considers as being material (directly or indirectly) to its business and/ or the Transaction.

7. Professional Advisors:

- i. Bidder / Consortium Member to provide names and addresses of those companies and professional firms, if any, who are (or will be) advising the Bidder / Parent of Sole Bidder /Consortium/Consortium Member for the Transaction, together with the names of the principal individual advisors at those companies and firms.

8. Outstanding Litigation/ Contingent Liability:

- i. Bidder / Parent of Sole Bidder/ Consortium Member must provide with the Bid, a statement of those pending litigations that, if decided against the Bidder / Parent of Sole Bidder/ Consortium Member, shall disqualify the Bidder /Consortium Member in terms of the prescribed Eligibility Criteria and extant Government of India instructions on disinvestment.
- ii. Bidder / Parent of Sole Bidder/ Consortium Member to provide details of all contingent liabilities that, if materialized, that have or would reasonably be expected to have a material adverse effect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Bidder / Parent of Sole Bidder/ Consortium Member, or other similar business combination or sale.

9. Foreign Direct Investment (FDI) Restrictions

- i. If the Bidder / any Consortium Member is a foreign entity/ Overseas Corporate Body, specify list of statutory approvals from the Government of India/ the Reserve Bank of India/ Department for

Promotion of Industry and Internal Trade/ relevant ministry/ any other Government agency, specifying whether the same is applied for/ to be obtained/ awaited.

Yours sincerely,

For and on behalf of: (name of the Bidder/ Parent of Sole Bidder /Consortium Member)

Signature: (authorized representative and signatory)

Name of the Person: [●]

Designation: [●]

Place:

Date:

Important Note:

- i. Please follow the order adopted in the Format provided, while submitting the details.
- ii. If the Bidder / Parent of Sole Bidder /any Consortium Member are unable to respond to a particular question/request or submit any document as per stated requirement, the relevant question/request or request for submission of document, must nonetheless be set out as per the Format, with the words “No response given” mentioned against it, stating reasons for the same.
- iii. The Annexure should also be counter signed by legalized signatory of Lead Member, in case of Consortium.
- iv. Capitalized terms not defined shall have the same meaning ascribed to them in the RFP.

Form B: Undertaking in relation to Press Note 3 dated April 17, 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (DPIIT)

(On the letterhead of the Bidder/ each Consortium Member)

Date: [●]

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu – 180001

Sub: UNDERTAKING IN RESPECT OF BID FOR DISINVESTMENT OF JAMMU AND KASHMIR CEMENTS LIMITED (“JKCL”)

In context of our response to RFP dated [●] submitted (“**Bid**”) pursuant to the [Request for Proposal for sale of 100% of equity of Jammu & Kashmir Cements Limited], as amended from time to time (“**Transaction**”), we solemnly declare and undertake that neither we, nor our affiliates or our Ultimate Beneficial Owners would fall within the entities required to obtain requisite approval(s) under Press Note 3 dated April 17, 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (DPIIT), including clarifications and notifications issued thereto as on date hereof.

All the terms used in capitals in this Undertaking, but not defined herein, shall have the meaning as ascribed thereto under the RFP.

[●]

(Signature, name, designation, and address)

7.4. **Annexure I-D: General Power of Attorney**

(To be appropriately stamped on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution and to be notarized and submitted by the Bidder / each Consortium Member submitting the Bid)

General Power of Attorney

To all to whom these presents shall come, We..... [name of the Bidder] having our registered office/principal office at _____ [address of the registered office/principal office] do hereby exclusively, unconditionally and irrevocably constitute, nominate, appoint and authorize Mr./Ms. (name),.....son/daughter/wife of and presently residing at, who is presently employed with [us/ the Lead Member of our Consortium]¹² and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, to do, execute, and perform all such acts, agreements, deeds, matters and things as are necessary or required in connection with or incidental to submission of our response to Request For Proposal for the proposed disinvestment of 100% (one hundred percent) equity stake of UT administration of J&K in Jammu and Kashmir Cements Limited dated [●] (as amended) (hereinafter referred to as “**RFP**”)

AND we hereby authorize our Attorney for generally dealing with UTJK in all matters concerning the proposed strategic disinvestment of 100% (one hundred percent) equity stake in Jammu and Kashmir Cements Limited including but not limited to the signing and submission of all Bid documents including Technical Bid and Financial Bid, providing information/ responses to UTJK, and generally dealing with UTJK in all matters in connection with or relating to or arising out of our response to RFP for the said Transaction.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our Attorney pursuant to and in exercise of the powers conferred by this power of attorney (“**Power of Attorney**”) and that all acts, deeds and things done by the Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us concerning or touching these presents as fully and effectually as if we were present and had done, performed or executed the same itself.

We confirm and declare that we have not executed any other power of attorney in favor of any other person(s) in relation to the subject matter of this power of attorney and this power of attorney is irrevocable.

All the terms used herein but not defined shall have the meaning ascribed to such terms in the RFP dated [●].

IN WITNESS WHEREOF WE..... THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF

For

.....

(Signature, name, designation and address)

¹² Strike out whichever is not applicable

In the presence of:

Accepted

(Signature, Name, Designation and Address of the Attorney)

[To be duly notarized]

[To affix common seal, if applicable]

Notes:

- i. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney shall be appropriately stamped and notarized.
- ii. Wherever required, the Bidder should submit for verification, the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- iii. The date of execution of the Power of Attorney shall be before the date of execution of other documents as part of RFP.
- iv. In case of a consortium, all the Consortium Members are required to submit the Power of Attorney.
- v. Affixation of common seal to be done basis the appropriate board resolution authorizing affixation of common seal and signatures against the same unless the same is not required as per the Bidder's constitutional documents and/or Applicable Laws and as explained by the Bidder to UTJK. The said board resolution to be submitted along with the Power of Attorney.
- vi. For a Power of Attorney executed and issued overseas, the document will also have to be 71egalized by the Indian Embassy and 71egalized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be 71egalized by the Indian Embassy if it carries a conforming apostille certificate.
- vii. Capitalized terms not defined shall have the same meaning ascribed to them in the RFP.

7.5. Annexure I-E: Power of Attorney in favor of Lead Member

(To be appropriately stamped on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution and notarized)

Whereas the UT Administration of J&K has invited Bids from Bidders for the disinvestment of 100% of the equity share capital of UT administration of J&K in Jammu and Kashmir Cements Limited (the “**Transaction**”).

Whereas, _____ (Lead Member/Member-1), _____ (Member-2), _____ (Member-3) and _____ (Member-4) (collectively the “**Consortium**”) being Consortium Members are in bidding for the Transaction in accordance with the terms and conditions of the Request For Proposal for the proposed disinvestment of 100% (one hundred percent) equity stake of UT administration of J&K in Jammu and Kashmir Cements Limited dated [●] (as amended) and other connected documents in respect of the Transaction, and

Whereas the members to record their understanding to participate in the bidding with have entered into the Consortium Agreement dated _____, and Whereas, it is necessary for the Consortium Members to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid (“**Technical Bid and Financial Bid**”) for the Transaction and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We (hereinafter collectively referred to as the “Principals”),

- a. M/s _____, having our registered office/principal office at _____;
- b. M/s _____, having our registered office/principal office at _____;
- c. M/s _____, having our registered office/principal office at _____;
- d. M/s _____, having our registered office/principal office at _____;

, do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S _____, being one of the Consortium Members, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorize the Attorney (with power to sub-delegate):

1. To conduct all business for and on behalf of the Consortium and any one of us, during the process of this Transaction;
2. In the event the Consortium is selected as Successful Bidder, during the execution of the Transaction and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium and submission of its Bid for the Transaction;
3. Further, do any of such acts, deeds or things on our behalf including but not limited to signing and submission of Bid in response to RFP and other documents and writings, participate in pre-bid and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium; and

4. Generally, to represent the Consortium in all its dealings with UTJK, JKCL and/ or any other UTJK agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Transaction and/or upon award thereof till the completion of the Transaction.

AND hereby agree to ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

All the terms used herein but not defined shall have the meaning ascribed to such terms in the RFP and Definitive Agreements.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____, DAY OF [●], 20[●],

Executants:

For _____, (Signature) _____,

(Name & Title)

For _____, (Signature) _____,

(Name & Title)

For _____, (Signature) _____,

(Name & Title)

Witnesses:

1

2

(Notarized)

Important Instructions:

- i. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney shall be duly notarized and stamped.
- ii. Affixation of common seal to be done basis the appropriate board resolution authorizing affixation of common seal and signatures against the same unless the same is not required as per the Bidder's constitutional documents and/or Applicable Laws and as explained by the Bidder to UTJK. The said board resolution to be submitted along with Power of Attorney.

- iii. For a Power of Attorney executed and issued overseas, the document will also have to be 74egalized by the Indian Embassy and 74egalized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be 74egalized by the Indian Embassy if it carries a conforming apostille certificate.
- iv. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- v. The date of execution of Power of Attorney for Lead Member shall be subsequent to the date of execution of General Power of Attorney (*Annexure I-D*) by the Consortium members.
- vi. Capitalized terms not defined shall have the same meaning ascribed to them in the RFP.

7.6. **Annexure I-F: Format for Consortium Agreement (In case Bidder is a Consortium)**

(To be appropriately stamped and notarized on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution and notarized (or apostilled, as relevant))

(To be submitted by the Lead Member on behalf of itself and the Consortium members submitting the Bid)

THIS Consortium Agreement (“**Agreement**”) is executed on this _____ day of _____ Two thousand _____ between

1. M/s [insert name of Lead Member] _____ [a company] incorporated under the laws of _____ and having its [Registered Office OR Principal Place of Business] at _____, having CIN / registration/incorporation number (if applicable) _____ (hereinafter called the “**Member-1**”, which expression shall include its successors, executors and permitted assigns);
2. M/s _____ [a company] incorporated under the laws of _____ and having its [Registered Office OR Principal Place of Business] at _____, having CIN / registration/incorporation number (if applicable) _____ (hereinafter called the “**Member-2**”, which expression shall include its successors, executors and permitted assigns);
3. M/s _____ [a company] incorporated under the laws of _____ and having its [Registered Office OR Principal Place of Business] at _____, having CIN / registration/incorporation number (if applicable) _____ (hereinafter called the “**Member-3**”, which expression shall include its successors, executors and permitted assigns);
4. M/s _____ [a company] incorporated under the laws of _____ and having its [Registered Office OR Principal Place of Business] at _____, having CIN / registration/incorporation number (if applicable) _____ (hereinafter called the “**Member-4**”, which expression shall include its successors, executors and permitted assigns); and

for the purpose of submitting response to Advertisement dated [●] inviting Bids for disinvestment of 100% equity stake of UT administration of J&K (“UTJK”) in Jammu and Kashmir Cements Limited (“**JKCL**” or “**Company**”) along with transfer of management control.

WHEREAS, each Member individually shall be referred to as the “**Member**” and all of the Members shall be collectively referred to as the “**Members**” in this Agreement.

WHEREAS the instructions for submitting Bid as per RFP stipulates that in case Bid is being submitted by a Consortium of Bidders, the Consortium Members will have to submit a legally enforceable Consortium Agreement in a format as specified by UTJK.

Capitalized terms used in this Agreement but not defined herein shall have the meaning as per the RFP.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the Members in this Consortium do hereby mutually agree as follows:

1. We, the Consortium Members and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s _____), holding at least 51% (fifty one percent) shareholding (i.e. equity share capital and shareholding on a fully diluted basis) shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of Member-2, _____, Member-3, _____, and Member-4, _____ and to submit the Bid;
2. We have formed Consortium comprising ____ members as follows:
 - i. _____(Insert name)/%stake in the Consortium i.e. holding [●]%of the equity share capital of the SPV, on a fully diluted basis;
 - ii. _____(Insert name)/%stake in the Consortium i.e. holding [●]%of the equity share capital of the SPV, on a fully diluted basis;
 - iii. _____(Insert name)/%stake in the Consortium i.e. holding [●]%of the equity share capital of the SPV, on a fully diluted basis;
3. We undertake that after the submission of the Bid, the composition of the Consortium shall not be changed prior to 3rd (third) anniversary of the Execution Date or 2 (two) years from the COD, whichever is later, without prior written approval of UTJK, if it is selected as the Successful Bidder. We, further, agree that such approval for change in the composition of a Consortium shall be at the sole discretion of UTJK and must be approved by UTJK in writing.
4. The Lead Member is hereby authorized by the Consortium Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.
5. The Lead Member shall hold at least 51% (fifty one percent) equity shareholding on a fully diluted basis in the special purpose vehicle (“SPV”) for a minimum period of 3 (three) years from date of signing of Definitive Agreements or for a minimum period of 2 (two) years from the COD, whichever is later. In case of a Consortium, the Lead Member shall continue to hold at least 51% (fifty-one percent) equity shareholding in the SPV for a minimum period of 3 (three) years from the date of signing under the Definitive Agreements or for a minimum period of 2 (two) years from the COD, whichever is later.
6. We agree that the Consortium Members shall ensure that it has and continues to maintain Control over the Company until at least the 3rd (third) anniversary of the Closing Date or 2 (two) years from the COD, whichever is later, and shall not directly or indirectly dilute its shareholding in the Company below 51% (fifty one percent) calculated on a fully diluted basis; and shall continue the business of the Company as a going concern by following the best business practices.

7. We agree that the Consortium Members shall not directly or indirectly transfer any of the Sale Shares in the Company until the 1st (first) anniversary of the Closing Date in contravention to the RFP and Definitive Agreements.
8. We understand and acknowledge that if the Consortium is the Successful Bidder it will have to do the acquisition of the UT administration of J&K stake in the disinvestment through the SPV. We undertake to incorporate the SPV after the submission of our Bid and prior to entering into the Definitive Agreements, including the Share Purchase Agreement, in connection therewith.
9. The Members of the Consortium shall be jointly responsible and liable for the Consortium to fulfil all of its obligations relating to the Bid including inter alia the RFP and Definitive Agreement(s) entered into by the SPV. The Lead Member shall, irrespective of its financial commitment to the Consortium, additionally be severally responsible for ensuring the individual and collective commitment of each of the members of the Consortium in discharging all of their respective obligations in connection with the Bid, Definitive Agreement(s) and Lead Member shall be liable for consequences of breach of the aforesaid documents by the members of Consortium.
10. The Lead Member, on behalf of the Consortium, shall inter alia be responsible for liaising with any authority or persons as required and to do all acts necessary for and on behalf of the Consortium.
11. Except as specified in the Agreement, it is agreed that the sharing of responsibilities as aforesaid shall not in any way be a limitation of responsibility of the Consortium Members under this Agreement.
12. This Agreement shall come into effect on the day first above written and shall remain valid until the Consortium has any unfulfilled obligation. In the event however the Consortium is the Successful Bidder and the SPV signs the Definitive Agreement(s) this Agreement will be valid for so long as the SPV has any unfulfilled obligations under such agreements.
13. This Agreement shall be construed and interpreted in accordance with the laws of India and courts at Srinagar alone shall have the exclusive jurisdiction in all matters relating thereto and arising thereunder.
14. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the Bid.
15. It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under the Bid except with prior written consent of UTJK.
16. We acknowledge that we have read and understood the RFP and Definitive Agreements and will abide by all the terms and conditions mentioned therein.
17. This Agreement:

- i. has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
- ii. sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and
- iii. may not be amended or modified except in writing signed by each of the Members and with prior written consent of UT administration of J&K.

IN WITNESS WHEREOF, the Members have, through their authorized representatives, executed these present on the Day, Month and Year first mentioned above.

Witnessed by: Signature: Name: Address:	FOR [Insert name of Member-1] _____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)
Witnessed by: Signature: Name: Address:	FOR [Insert name of Member-2] _____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)
Witnessed by: Signature: Name: Address:	FOR [Insert name of Member-3] _____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)

[Signature and stamp of Notary of the place of execution]

[To affix common seal, if applicable]

Important Instructions:

For a Consortium Agreement executed and issued overseas, the document will also have to be legalized using a different procedure as per applicable law. The document shall also be duly stamped and notarized.

7.7. Annexure I-G: Confidentiality Undertaking

(To be appropriately stamped and notarized and submitted by the Bidder/ each Consortium Member seeking VDR access and / or submitting the Bid)

DEED OF CONFIDENTIALITY UNDERTAKING

This DEED OF CONFIDENTIALITY UNDERTAKING ("**Undertaking**") is made on this day of, 2022.

BY

M/s _____ [insert name of Bidder/ Lead Member] a company] incorporated under the laws of _____ [insert name of the country] and having its [Registered Office OR Principal Place of Business] at _____ (hereinafter called the [**"Bidder"** OR "**Lead Member**"]¹³, which expression shall include its successors, executors and permitted assigns);

[AND]

M/s _____ [insert name of Consortium Member] [a company] incorporated under the laws of _____ [insert name of the country] and having its [Registered Office OR Principal Place of Business] at (hereinafter called "**Member-2**", which expression shall include its successors, executors and permitted assigns);

AND

M/s _____ [insert name of Consortium Member] [a company] incorporated under the laws of _____ [insert name of the country] and having its [Registered Office OR Principal Place of Business] at (hereinafter called "**Member-3**", which expression shall include its successors, executors and permitted assigns);

AND

M/s _____ [insert name of Consortium Member] [a company] incorporated under the laws of _____ [insert name of the country] and having its [Registered Office OR Principal Place of Business] at (hereinafter called "**Member-4**", which expression shall include its successors, executors and permitted assigns);

¹³ Delete whichever is not applicable

The Lead Member, Member-2, Member-3 and Member-4 shall be collectively referred to as Bidder]¹⁴

IN FAVOUR OF:

Industries & Commerce Department, UT Administration of Jammu & Kashmir (“**UTJK**”) (the “**Administrative Ministry**”);

AND

Jammu and Kashmir Cements Limited, a company incorporated under the Companies Act, 1956, bearing corporate identification number (CIN) U26959JK1974SGC000397, having its registered office at NAWAI -I- SUBH BUILDING ZEROBRIDGE, SRINAGAR JAMMU AND KASHMIR Srinagar JK 190001 (“**JKCL**” or the “**Company**”), which expression shall include its successors and permitted assigns.

WHEREAS:

- A. The Bidder (along with its Consortium Members) has submitted a Bid for participation in the disinvestment of 100% (one hundred percent) equity stake of Administrative Ministry in JKCL along with the transfer of management and Control (the “**Transaction**”).
- B. In the context of the Bidder’s interest in the Transaction, the Disclosing Party (as defined hereinafter) may disclose Confidential Information (as defined hereinafter) to the Receiving Party (as defined hereinafter) to enable the Bidder to evaluate the Transaction.

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

1. Capitalized terms and expressions used but not defined in this Undertaking shall have the same meaning ascribed thereto in the RFP. The following capitalized expressions used in this Undertaking (including the recitals) shall have the meaning assigned to them hereunder:
 - 1.1. “**Confidential Information**” means and includes any and all facts, knowledge, investigation, information, documents and materials whether written or otherwise, concerning the business, operations, prospects, finances, or other affairs of the Company, its Associate Company, associates or subsidiaries (which includes, without limitation, documents delivered in connection with due diligence, investigation, information relating to the existing business of the Company and new businesses (if any) proposed to be undertaken by the Company, market and company-specific data, agreements related to its business including know-how and technology agreements, agreements relating to license to use intellectual property rights, graphs, drawing, past, current,

¹⁴ Delete if Bidder is not a Consortium

and planned research and development, current and planned marketing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists and other end-user pricing related information, market studies, computer software and programs, database technologies, systems, structures and architectures, historical financial statements, activities, products, specifications, data, know-how, compositions, designs, sketches, photographs, business plans, financial projections and budgets, historical and projected sales, capital spending budgets and plans, current or prospective financing sources, the names and backgrounds of personnel, personnel training techniques and materials, reports relating to the Company's operations prepared by external consultants which are proprietary to the Company or the Administrative Ministry, and any information memorandum or draft/ final offer document, request for proposal, drafts of shareholders and share purchase agreements or other materials prepared in connection with the Transaction, howsoever documented, that has been or may hereafter be provided or shown to the Receiving Party by the Disclosing Party or is otherwise obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party by the Receiving Party irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries, and other material prepared by the Receiving Party containing or based, in whole or in part, on any information included in the foregoing.

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

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

The decision of the Government and/or the Company on whether any information qualifies within the exceptions in (a), (b) and (c) above shall be final, conclusive and binding.

- 1.2. "**Consortium**" means the Bidder, whether already incorporated or to be incorporated in the future, and all other Consortium Members acting in concert with the Bidder intending to directly or indirectly participate in the Transaction.
- 1.3. "**Consortium Members**" means the members of any existing or future Consortium, formed by the Bidder for purposes of the Transaction.
- 1.4. "**Disclosing Party**" means the Company, the Administrative Ministry, other Governmental Authority and/or their respective Representatives, whether jointly or severally.
- 1.5. "**Governmental Authority**" means any governmental or regulatory authority, government ministry or department in India or other rule or regulation making entity having jurisdiction or acting on behalf of the Republic of India or any political subdivision thereof.

- 1.6. **"Person"** means any individual, company (including the Company and the Advisors), firm, association, trust, or any other organization or entity (including the Government and any governmental or political subdivision, ministry, department or agency thereof).
- 1.7. **"Receiving Party"** means the Bidder and its/ their Representatives, whether jointly or severally.
- 1.8. **"Representative(s)"** of any Person includes the directors, officers, employees, agents, consultants, advisors, lenders for financing of this Transaction or other representatives, including legal counsel, accountants and financial advisors of such Person and also includes the Representatives of the Representatives of any Person.
2. The Confidential Information disclosed by the Disclosing Party or any other person in connection with the Transaction to the Receiving Party, or acquired by the Receiving Party in the course of any studies conducted by the Receiving Party, will be received and treated by the Receiving Party as strictly confidential, subject to its obligations contained herein, and the Receiving Party shall not, without the Company's as well as the Government's prior written consent issued by its authorized personnel, or as expressly permitted herein, directly or indirectly disclose to any other Person, or use or allow others to disclose or use, the Confidential Information.
3. The Receiving Party will use the Confidential Information only to evaluate the Transaction and to decide whether or not it wishes to proceed with the Transaction and not for any purpose other than the Transaction. The Receiving Party will not directly or indirectly use the Confidential Information for any other purpose or in any way detrimental to the Disclosing Party.
4. In consideration of the Disclosing Party providing the Receiving Party with Confidential Information, by the Bidder's execution of this Undertaking, the Bidder, for itself and on behalf of all other Receiving Party, agrees that all of the Confidential Information shall be held and treated by the Receiving Party in strict confidence. The Bidder agrees (a) to disclose Confidential Information only to Consortium Members and/or those of its Representatives who need to know the Confidential Information for the purposes of an evaluation of the Transaction and each such Bidder or Representative of the Bidder will be informed and advised in writing by the Bidder of the confidential nature of such information and the contents of and the obligations under this Undertaking and (b) to satisfy itself that each such Consortium Member and/or Representative of the Bidder will hold and treat the Confidential Information in confidence and act in accordance therewith. The Bidder agrees that the Confidential Information shall not, without the Company's as well as the Government's prior written consent, be disclosed by the Bidder and/or its/ their Representatives in any manner whatsoever, in whole or in part, to any third Person, and shall not be used by the Bidder or its Representative other than in connection with an evaluation of the Transaction. The Lead Member will be responsible for disclosure of the Confidential Information by its Representative (who has it on a need to know basis) in violation of this Undertaking. For the avoidance of doubt, Lead Member shall cause the Consortium to fulfil their obligations. The Lead Member therefore shall be liable for any failure or breach by the Consortium.
5. The Bidder recognizes and acknowledges the competitive value and confidential nature of the Confidential Information and the possible resultant impact to the Company and the Government if the Confidential Information is disclosed or allowed to be disclosed to an unauthorized party or used

for any purpose other than evaluating the Transaction. The Bidder acknowledges and agrees that it is imperative that all Confidential Information remains confidential.

6. The Bidder, before disclosing any of the Confidential Information to any shareholder/ member/ partner/ Representative of the Bidder, or any shareholder/ member/ partner/ Representative of a Consortium Member(s), as the case may be, shall ensure that such shareholder/member/ partner/ Representative of the Bidder or Consortium Member(s), as the case may be, has already executed and furnished to UTJK, a written undertaking identical in form and content as this Undertaking in favor of UTJK, the Company and the Advisors within 7 (seven) days of it becoming a Consortium Member.

Notwithstanding any agreement or undertaking, the Bidder agrees that it shall continue to be responsible and liable for any breach of this Undertaking even though the same is caused by any act or omission of any of the shareholders/ members/ partners/ Representative of the Bidder and shareholder/ members/ partners/ Representative of a Consortium Member(s), as the case may be, and shall indemnify and hold UTJK, the Company, and the Advisors harmless (including provisions of Clause 6 and 15 set forth herein) from any breach of this Undertaking or consequences and claims arising therefrom.

[In case the Bidder is a Consortium, it agrees that for the purpose of this Undertaking, its liability shall be joint and several with each of the Consortium Members.]¹⁵

7. Except as permitted by Clause 4 herein and except as expressly permitted by the Definitive Agreements, entered into by the Bidder (including the Consortium Members), and/or any company formed and promoted by them for the acquisition of JKCL, the Receiving Party will not directly or indirectly disclose to any Person (including another prospective purchaser who has been provided Confidential Information) the fact that the Confidential Information has been made available to the Receiving Party or that the Receiving Party has inspected any portion of the Confidential Information, or that the Receiving Party had discussion or negotiation in relation to the Transaction. Except with the prior written consent of the Company and the Government, and except as expressly permitted by such definitive share purchase agreement, the Receiving Party will not directly or indirectly disclose to any Person the fact that any discussions or negotiations are taking place concerning the Transaction, including the status and content of such discussions or negotiations.
8. On acquiring the Confidential Information on the terms stated in this Undertaking or otherwise, the Receiving Party shall comply with all Applicable Law, and the Bidder hereby jointly and severally indemnifies and agrees to hold UTJK, the Company and the Advisors indemnified and harmless (without prejudice to Clause 15 set forth below) against all and any consequences arising from any violation by the Receiving Party of such applicable laws.
9. If the Receiving Party is requested or becomes legally compelled (by oral questions, summons, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a Governmental Authority and/or regulatory body (including any self-regulated organization in India or overseas) to make any disclosure that is prohibited or otherwise constrained by this Undertaking or any similar undertaking or agreement,

¹⁵ Delete, if Bidder is not a Consortium

the Receiving Party will provide, UTJK, the Company and the Advisors with prompt written notice of such request so that the Advisors, UTJK or the Company may seek an appropriate injunction, protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of the Bidder's legal counsel (reasonably acceptable to UTJK, the Company and the Advisors), the Receiving Party is legally compelled or is otherwise legally required to disclose or else stand liable for contempt or suffer other material censure or material penalty; provided, however, that the Receiving Party must use best efforts to obtain reliable assurance that confidential treatment will be accorded to any Confidential Information so disclosed.

10. The confidentiality obligations contained in this Undertaking may, at the discretion of UTJK, the Company and the Advisors, be amended, modified or superseded upon the Bidder and/or any company formed and promoted by them for executing Definitive Agreements, but shall be without prejudice to any of the Advisors', UTJK's or the Company's rights in respect of any breach of this Undertaking which may have occurred prior to such amendment, modification or supersession.

The Bidder agrees that the Government reserves the right, in its sole discretion to modify the process of the Transaction in any part and/or to vary any terms at any time without prior notice to the Bidder and/or to reject any or all proposals made by the Bidder with regard to the Transaction.

11. The Government and/or the Company may elect at any time to terminate further access by the Receiving Party to any Confidential Information required by the Bidder in connection with its evaluation of the Transaction. After any such termination by the Government and/or the Company as specified above, or after the decision of the Bidder to not proceed with the Transaction, the Bidder:
- a. will promptly deliver to the concerned Disclosing Party, all Confidential Information including all documents or other materials furnished by such Disclosing Party to the Receiving Party, together with all copies and summaries thereof in the possession or under the control of the Receiving Party, and
 - b. will destroy materials generated by the Receiving Party that include or refer to any part of the Confidential Information, without retaining a copy of any such material.

Any such destruction pursuant to the foregoing must be confirmed by the Bidder in writing to each of the Advisors, UTJK and the Company (such confirmation must include a list of the destroyed materials). The Bidder acknowledges that the return of the Confidential Information and the return or destruction of the Confidential Information pursuant to termination or otherwise shall not release the Receiving Party from its obligations under this Undertaking.

12. The Receiving Party shall not deal or communicate (except in the ordinary course of its business) with any officer, director or employee of UTJK or the Company regarding the business, operations, prospects or finances of the Company or the Plant, without UTJK's prior written consent. It is understood that the Advisors will arrange for appropriate contacts for due diligence purposes in connection with the Transaction. Unless otherwise agreed to by UTJK in writing (i) all communications regarding any possible transaction, (ii) any requests for additional information, (iii) any requests for management meetings, and (iv) any queries regarding the Transaction, will be directed exclusively to UTJK. However, if the Receiving Party is called upon by UTJK and/or the

Company for any discussions, the Receiving Party will do so or meet UTJK and/or the Company only after duly informing the Advisors in writing.

13. UTJK and/or the Company reserves the right, in its sole discretion, to reject any and all proposals made by the Receiving Party with regard to the Transaction and to terminate discussions and negotiations with the Receiving Party at any time. Without limiting the preceding sentence, nothing in this Undertaking (i) requires either the Bidder or UTJK to enter into the Transaction or to negotiate such Transaction for any specified period of time or (ii) requires UTJK or the Company to enter into an agreement or an understanding, or prohibits UTJK or the Company from entering into any agreement or understanding, for proceeding with the Transaction with any other Person.
14. In the event that the Receiving Party is not declared as the Successful Bidder, it shall not, directly or indirectly, solicit for employment or hire any employee of the Company for a period of one (1) year from the date of this Undertaking or till six (6) months from the completion of the Transaction, whichever is later.
15. The Bidder understands, acknowledges and agrees that UTJK, the Company and the Advisors retain the right to determine, in their sole discretion, the information that they wish to make available to the Receiving Party and the personnel through whom the same will be made available. Further, nothing in this Undertaking shall amount to or be construed as the Disclosing Party making any representations or warranties, express or implied, as to the accuracy and/or completeness of the Confidential Information and the Disclosing Party shall have no liability whatsoever to the Receiving Party resulting from the Bidder's use of the Confidential Information. The Bidder also agrees that if it determines to proceed with the Transaction, its determination will be solely based on the terms of the Definitive Agreements as well as on its own investigation, analysis and assessment of its investment. Moreover, unless and until such agreements are entered into, neither UTJK nor the Bidder will be under any legal obligation of any kind with respect to the Transaction except for the matters specifically agreed to in this Undertaking or in another written and duly executed Definitive Agreements.
16. The Bidder hereby indemnifies and agrees to hold UTJK, the Company and the Advisors indemnified and harmless from all and any damages, losses, costs, or liabilities (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by any Receiving Party of the Confidential Information or other violation of this Undertaking (notwithstanding that a Receiving Party may not be party to this Undertaking) or of any similar undertaking or agreement. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Undertaking or any similar undertaking or agreement by the Receiving Party and any such breach would cause the Disclosing Party irreparable harm, the Bidder also agrees that, in the event of any breach or threatened breach of this Undertaking or such similar undertaking or agreement, UTJK, the Company or the Advisors will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Undertaking but will be in addition to all other remedies available at law or equity to UTJK, the Company, and/or the Advisors.
17. The Bidder understands, acknowledges, confirms and agrees that each of the Government, the Company and the Advisors are beneficiaries under this Undertaking. The Bidder further agrees and

confirms that each of UTJK, the Company and the Advisors, will be entitled to and may enforce, either individually or jointly, the obligations imposed on the Receiving Party under this Undertaking.

18. The Receiving Party agrees that in case the Bidder or any Consortium Member decides not to proceed with the Transaction or if UTJK/ Advisors notify the Bidder or any Consortium Member that UTJK does not wish the Bidder or any such Consortium Member to consider the Transaction any further, the terms of the Undertaking shall survive on even subsequent to the date of receipt of notification of such decision by UTJK.
19. The Bidder agrees that no failure or delay by UTJK / the Company/ the Advisors in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereto.
20. The terms of this Undertaking may be varied only with the Company's and the Government's prior written agreement. This Undertaking shall be effective as of the date first above given on the first page of this Undertaking.
21. This Undertaking shall be governed by and construed in accordance with the substantive laws of India without giving effect to its conflict of law principles.
22. All notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by registered airmail, postage prepaid, or by cable or facsimiles as follows.

If the notice is to the Bidder:

Bidder/ Lead Member	[Member-2	Member-3]¹⁶
[•]	[•]	[•]

Any of the Bidder, UTJK, the Company or the Advisors may change its address by a notice given to the other in the manner set forth above. All notices and other communications shall be deemed to have been duly given (i) on the expiry of 7 (seven) days after posting, if transmitted by registered airmail or (ii) on the date immediately after the date of transmission with confirmed answer back if transmitted by cable or facsimile whichever shall first occur.

¹⁶ Delete if not applicable

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

Witnessed by:	FOR [Insert name of the Bidder/Lead Member]
Signature:	_____ (Signature, Name & Designation of
Name:	the person authorized vide board resolution dated
Address:	[●]/any similar authorization)
Witnessed by:	FOR [Insert name of Member-2]17
Signature:	_____ (Signature, Name & Designation of
Name:	the person authorized vide board resolution dated
Address:	[●]/any similar authorization)
Witnessed by:	FOR [Insert name of Member-3]18
Signature:	_____ (Signature, Name & Designation of
Name:	the person authorized vide board resolution dated
Address:	[●]/any similar authorization)
Witnessed by:	FOR [Insert name of Member-4]19
Signature:	_____ (Signature, Name & Designation of
Name:	the person authorized vide board resolution dated
Address:	[●]/any similar authorization)

Important Instructions:

- i. For a Confidentiality Undertaking executed and issued overseas, the document will also have to be legalized using a different procedure as per Applicable Law.

¹⁷ Delete if not applicable

¹⁸ Delete if not applicable

¹⁹ Delete if not applicable

7.8. Annexure I-H: Format of Affidavit

(To be duly executed and adequate stamp duty to be paid by the Bidder/ Parent of Sole Bidder /Lead Member with respect to this document.)

AFFIDAVIT

I, [name] aged [age] years, resident of [address] working as [designation] an authorised signatory on behalf of [name of the Bidder/ Parent of Sole Bidder /Lead Member] hereby state as under:

1. I am the [designation of the deponent] of the [name of the Bidder/ Parent of Sole Bidder or Consortium Member /Lead Member]. I am conversant with the facts and circumstances surrounding the subject of this affidavit [and have been authorized to depose to the same pursuant to the power of attorney dated [date] issued pursuant to [particulars of corporate approval]]. I am filing this affidavit to place on record verification of facts and documents in connection with the bidding process concerning disinvestment of 100% (one hundred percent) equity stake in Jammu and Kashmir Cements Limited (JKCL).
2. I state that I have reviewed the contents of the RFP and the requirements of each of them in relation to the disinvestment of JKCL and also the terms and conditions thereof.
3. I state that all documents and information submitted with the RFP of [insert name of the Bidder] has been personally verified and has also been verified by the concerned authority within [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member].
4. [Insert separate paragraphs for each information/ document physically submitted to UTJK, in a chronological sequence].
5. I state that each of the documents submitted is true, correct and complete in all respects and that nothing has been concealed in the information submitted as mentioned above.
6. I understand that in case of any untrue, incomplete or incorrect information is submitted, the Bid submitted by [insert name of the Bidder] shall be liable to be disqualified.
7. I state that, in the event [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member] are attracted by any of the disqualifications or any other factor which makes us ineligible in terms of the RFP during the pendency of the process of disinvestment, we the [insert name of the Bidder/ Lead Member] shall immediately notify the UTJK along with the copy of all the relevant documents.
8. I state that, in the event of any change in the information or documents submitted by [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member], we the [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member] shall immediately notify UTJK along with the copy of all the relevant documents.

9. This affidavit has been provided by me and on behalf of [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member] for the purpose of confirming the correctness, completeness and validity of all documents and information submitted by [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member] in relation to disinvestment of JKCL.

Solemnly affirmed and verified on this [day] day of [month][year] at [place].

(Signature)

Name, Designation & Address

VERIFICATION

I, [name], [the [designation of the deponent] of] the [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member] above named, having my office at [address], do hereby solemnly declare that what is stated above is on the basis of the books and records of the [insert name of the Bidder/ Parent of Sole Bidder /Consortium Member], and verify that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at [day] day of [month] [year] at [place].

Deponent

(Signature)

[particulars of notarization]

Name, Designation & Address

7.9. Annexure I-I: Declaration in relation to Statement of Legal Proceedings

(To be forwarded on the letterhead of the Bidder /each Consortium Member submitting the Bid)

DECLARATION

1. We solemnly declare that neither we or our Parent (in the event net worth of the Parent is relied upon) are convicted by any court of law or are indicted or have received any adverse order from regulatory authority relating to a grave offence with regard to matters other than the security and integrity of the country. Neither have we been convicted by any court of law, indicted, nor has any adverse order been passed against us by a regulatory authority which would cast a doubt on our ability to manage the public sector unit when it is disinvested, or which related to a grave offence that outrages the moral sense of the community.

The term “Grave Offence” shall have the same meaning as set forth in the Office Memorandum dated September 28, 2017 on “Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment”.

2. We further declare that in regard to matters relating to security and integrity of the country, no charge sheet has been filed against us, our directors, or respective subsidiaries, Associate Companies or any of our Promoters, Promoter Group by any agency of the Government of India or convicted by a court of law.
3. We further declare that no investigation by a regulatory authority is pending either against us or our Parent (in case of reliance on net worth of the Parent).
4. We further declare that no legal proceedings by or against the Bidder/ Parent of Sole Bidder (in case of a Sole Bidder / Consortium Member who is utilizing the financial capacity of such Parent to meet the Eligibility Criteria) /Consortium Member / their respective subsidiary and Associate Companies thereof by or against JKCL or its directors in capacity as directors of JKCL, have been initiated or is in existence, which proceeding may be prejudiced by the participation of the Bidder in the Bidding Process or the Transaction.
5. We declare that complete information as required is provided in the Bid and Statement of Legal Capacity.
6. We comply with the Office Memorandum No. 3/9/2016-DD-II-B Dated: 28th September, 2017, (refer Annexure [III-A]), as amended from time to time.

Yours sincerely,

For and on behalf of: [name of the Bidder/ Consortium Member]

Signature: (Authorized Representative and Signatory)

Name of the Person: [●]

Designation: [●]

Note: In case any Bidder is unable to give above undertaking in view of any conviction, indictment, adverse order or investigation as above, full details of the same shall be provided including names of persons involved including names of the subsidiary/group company/entity or associate company promoter company or promoter group member/ director, persons involved, designation, charge/offence, ordering/investigating agency, status/outcome etc. with supporting/relevant documents to the satisfaction of UTJK. Any entity which is disqualified from participating in the Transaction, shall not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

Capitalized terms and expressions used but not defined in this Declaration shall have the same meaning ascribed thereto in the RFP

7.10. Annexure I-J: Undertaking by Parent

(To be executed in the event Sole Bidder / Consortium Member meets Financial Criteria through Parent)

(On the letterhead of the Bidder/ Consortium Member)

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu - 180001

Sub: UNDERTAKING BY PARENT OF SOLE BIDDER / CONSORTIUM MEMBER IN RESPECT OF BID FOR DISINVESTMENT OF JAMMU AND KASHMIR CEMENTS LIMITED (“JKCL”)

Dear Sir,

This is with reference to the advertisement dated [●] (“**Advertisement**”) inviting Request for Proposal for sale of 100% (one hundred percent) equity share capital of Jammu and Kashmir Cements Limited (“**JKCL**”), owned by UT Administration of Jammu & Kashmir (“**UTJK**”) (“**Transaction**”).

In continuation of the RFP dated [●] (“**RFP**”) having Reference No. [●] submitted by [●] (hereinafter referred to as “**Bidder**”), the undersigned being the duly authorised to represent and act on behalf of [insert name of the Parent entity] (hereinafter referred to as the “**Parent**”), and having fully understood the qualification requirements and information and undertakings provided by the Bidder pursuant to the submission of RFP, hereby confirm and undertake that:

1. We have read and understood the contents of the Advertisement and the Request for Proposal dated [●] (“**RFP**”) and the undertaking and documents submitted by the Bidder pursuant to the RFP.
2. We confirm that we are the Parent of [●] [insert name of Sole Bidder / Consortium member]] who is interested in bidding for the strategic disinvestment of 100% (one hundred percent) of equity shares of UTJK in JKCL and proposes to use our Net Worth to meet the Financial Criteria stipulated in the RFP dated [●].
3. We shall be jointly and severally liable along with the Bidder for any obligation of the Bidder (Sole Bidder / Consortium member) under the Definitive Agreements or any document and undertaking executed by the Bidder (Sole Bidder / Consortium member) pursuant to the Bid and Transaction or completion thereof. We will also sign / be parties to all Definitive Agreements as required.

4. All conditions prescribed in the RFP and the undertaking provided by the Bidder (Sole Bidder / Consortium member), including the criteria for qualification and disqualification shall be applicable to [Insert name of Parent] and we undertake to comply with all such conditions.
5. All the terms used herein but not defined shall have the meaning ascribed to such terms in the RFP and Definitive Agreements.

Yours sincerely,

For and on behalf of the Bidder:

Signature: (Authorized Representative and Signatory)

Name of the Person: [●]

Designation: [●]

Note: Capitalized terms and expressions used but not defined in this Undertaking shall have the same meaning ascribed thereto in the RFP

7.11. Annexure I-K: Bid Security in the form of Bank Guarantee

(Irrevocable and unconditional Bank Guarantee to be submitted by Bidder/ Lead Member of the Consortium)

B.G. No.

Dated:

Designated officer, _____ [UTJK]

UT administration of Jammu and Kashmir (hereinafter referred to as the “**UTJK**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) issued the Global Invitation for Request for Proposal for disinvestment of Jammu and Kashmir Cements Limited (“hereinafter referred to as “**JKCL**”) dated Month XX, 20XX (as amended) (hereinafter referred to as “**RFP**”) for accepting bids in relation to strategic disinvestment of 100% (one hundred percent) equity share capital of JKCL along with transfer of management control (hereinafter referred to as “**Transaction**”). Pursuant to the RFP and other related documents UTJK agreed to receive the Bid of.....[name of the Bidder / Lead Member], having its registered office at (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns).

We [Name of the Bank] having our registered office at..... and one of its branches at(hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of paragraph [•] Bid Security of the RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFP by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to UTJK an amount of INR 5,00,00,000 (Indian Rupees Five Crore) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said RFP as notified by UTJK through a written demand for invocation of the Guarantee.

Any such written demand made by UTJK stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the RFP shall be final, conclusive and binding on the Bank.

We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of UTJK is disputed by the Bidder or not, merely on the demand from UTJK stating that the amount claimed is due to UTJK by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFP including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said RFP and the decision of UTJK that the Bidder is in default as aforesaid shall be final and binding on us,

notwithstanding any differences between GOI and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.

This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date or may need to be extended upon immediate intimation of the same to Bidder (“**Expiry Date**”) and shall be agreed to by the Bank and shall continue to be enforceable till all amounts under this Guarantee have been paid.

We, the Bank, further agree that UTJK shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFP including, inter alia, the failure of the Bidder to keep its Bid open during the Bid Validity Period set forth in the said RFP.

The Guarantee shall not be affected by any change in the constitution or winding up or insolvency or bankruptcy of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

In order to give full effect to this Guarantee, UTJK shall be entitled to treat the Bank as the principal debtor. UTJK shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the RFP or to extend time for submission of the Bids or the Bid Validity Period or the period for conveying acceptance of LOA to the Successful Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the RFP by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the RFP or the securities available to UTJK, and the Bank shall not be released from its liability under these presents by any exercise by UTJK of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of UTJK or any indulgence by UTJK to the said Bidder or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

We undertake to make the payment immediately on receipt of UTJK notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.

It shall not be necessary for UTJK to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Government may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of UTJK in writing.

The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR 5,00,00,000 (Indian Rupees Five Crores only).

The Bank is liable to pay the Guaranteed Amount or any part thereof under this bank guarantee only and only if UTJK serves upon the Bank a written claim or demand on or before the Expiry Date. [(Indicate date falling 180 (one hundred and eighty) days from the Bid Due Date)], unless extended in terms of this Guarantee.

All terms used in capital letters but not defined herein shall have meaning ascribed to them in RFP.

Signed and Delivered byBank

By the hand of Mr./Ms, itsand authorized official. (Signature of the Authorized Signatory)

Note:

- i. *Stamp Paper should be purchased in the name of Issuing Bank*
- ii. *Value of Stamp Paper shall be as per applicable norms*
- iii. *Capitalized terms and expressions used but not defined in this Guarantee shall have the same meaning ascribed thereto in the RFP*

7.12. Annexure I-L: Statutory Auditor or independent chartered accountant's certificate for Financial Capacity

Certifying that Net Worth, as defined in Eligibility Criteria, along with a detailed calculation of the Net Worth. In case the latest audited annual accounts of Bidder are not available then the Bidder shall submit a certificate from its statutory auditor certifying the Net Worth along with the methodology used for calculating such Net Worth as applicable.)

(On the Letterhead of the statutory auditor or independent chartered accountant (as applicable))

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu - 180001

Sub: UNDERTAKING IN RESPECT OF BID FOR DISINVESTMENT OF JAMMU AND KASHMIR CEMENTS LIMITED ("JKCL")

Dear Sir,

This is with reference to the request for proposal dated [●] ("RFP") inviting bids for the strategic disinvestment of JKCL by way of the transfer of management control and sale of 100% (one hundred percent) equity share capital of JKCL held by UTJK ("Proposed Transaction").

We certify that we have Net Worth of INR [●]. The certificate(s) of the auditor for this purpose is provided as annexure to this letter.

Or

We certify that we have AUM of INR [●]. The certificate(s) of auditor for this purpose is provided as annexure to this letter.

Or

We certify that our Parent has the Net Worth of INR [●]. The certificate(s) of statutory auditor of the Parent or in the event that the Parent does not have a statutory auditor, the person who has undertaken an audit of the Parent in the immediately preceding financial year for this purpose is provided as annexure to this letter.

For Sole Bidder

We certify the information in the following table. The certificate(s) of the auditor for this purpose is provided as annexure to this letter:

Name of Sole Bidder	Net Worth /AUM of Sole Bidder as per auditor's certificate (INR)	Name of Parent (of Sole Bidder)	Net Worth /AUM of Parent of Sole Bidder as per auditor's certificate (INR)	Total Net Worth /AUM of Parent of Sole Bidder and Parent (a+b)

For Consortium

We certify the information in the following table. The certificate(s) of the auditor for this purpose is provided as annexure to this letter:

Name of Member	Net Worth /AUM of Member as per auditor's certificate (INR)	Name of Parent (of Member, where the Member relies of the financial capability of the Parent)	Net Worth /AUM of Parent of such member as per auditor's certificate (INR)	Total Net Worth /AUM of Parent of member and Parent (a+b)
Lead Member				
Member 1				
Member 2				
Member 3				
Member 4				

Yours sincerely,

For and on behalf of: [name of the Sole Bidder/ Consortium Member]

Signature: (Authorized Representative and Signatory)

Name of the Person: [●]

Designation: [●]

Instructions:

The certificate for fulfilment of Financial Criteria should clearly mention the following:

- The date of Net worth calculation for which Net worth details have been submitted.
- That the Net worth calculation has been done in accordance with the stipulations under the Eligibility Criteria section of the RFP.
- In case the Bidder / Parent of Sole Bidder /Consortium Member are not required to prepare consolidated financial statements as a part of statutory requirements, the same should be mentioned in the certificate (in such a case, the standalone financial statements are to be used for assessment. However, the same would be accepted only if the certificate for fulfilment of Financial Criteria clearly mentions the non-requirement for preparation of consolidated financial statements).
- The certificate should clearly mention that the issuing authority is statutory auditor or independent chartered accountant (as applicable), for the Bidder /Consortium Member.
- It should clearly specify the cross holdings among Consortium Members, if any.
- The financial statements on the basis of which the Financial Criteria have been assessed correspond to accounting periods completed (each of not less than 12 (twelve) months' duration) and are not based on partial periods.
- The format should also clearly provide details on the PAT of the Bidder / Parent of Sole Bidder /Consortium Member for the preceding five years as provided in the Eligibility Criteria section of the RFP.

Note: **Net Worth** shall mean

- ***In case of a company*** - "Net Worth" shall be calculated as the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure, intangible assets, redemption reserves, reserves made for any specific purpose, miscellaneous expenditure not written off as per the latest audited balance sheet which shall not be as of a date earlier than 31st December 2021, but does not

include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. Further, the cross holding of investments amongst the Consortium Members is also to be deducted where the Bidder is a Consortium. In case of consolidated financials, non-controlling interest shall be included in the aforesaid definition of “Net Worth” for determining consolidated net worth based on the consolidated financial statements. However, to the extent the non-controlling interest includes any reserves created out of revaluation of assets, write back of depreciation and amalgamation, the same shall be excluded.

- ***In case of AIF*** - In case of AIF, Net worth shall be considered as 100% (one hundred percent) of committed capital or 0.25 (zero point two five) times of Assets Under Management (“**AUM**”). The AIF should have committed capital of at least INR 250,00,00,000 (Indian Rupees Two Hundred and Fifty Crore) or AUM of at least INR 1,000,00,00,000 (Indian Rupees One Thousand Crore).

7.13. Annexure I-M: Proforma for application for Security Clearance of Bidders for Strategic Disinvestment

Proforma for application for Security Clearance of Bidders for Strategic Disinvestment

Part-A. To be filled in by a Qualified Interested Party (QIP), being a Sole bidder

(a) Details of the Qualified Interested Party (QIP) (Indian/Foreign)

Table-1

Name of the QIP	Nature of the QIP (whether Company, LLP, partnership firm, funds, etc.)	Country (or jurisdiction) where registered	Registration Number & Date of Registration	Address of Registered Office, Regional Offices and address for correspondence with telephone numbers	Previous name(s), if any (since incorporation, if applicable)	Ultimate beneficial ownership *

** Please enclose a chart depicting the link between the QIP and the ultimate beneficial owners/ companies/ organizations alongwith their details as in Table-2 and Table-3 below.*

Note:

On Significant Beneficial Owners:

1. The terms “significant influence”, “majority stake” and “significant beneficial owner” shall have the same meaning as defined in the Companies (Significant Beneficial Owners) Rules, 2018 (as amended).
2. The term “control” shall have the same meaning as defined in the Companies Act, 2013 (as amended).
3. The term “body corporate”, in case of a company, shall have the same meaning as defined in the Companies Act, 2013, (as amended), and that, in case of a limited liability partnership company shall have the same meaning as defined in the Limited Liability Partnership Act, 2008 (as amended).

(b) Details of the Directors / Partners / Designated Partners of QIP**Table-2**

Sl .N	Full name of the Director/ <u>Partners</u> / <u>Designate</u> <u>d</u> <u>Partner</u>	Present positio nwith date (since when)	Date of birt h	Parentag e(full nameof father/ mother)	Present address & Permanen t Address and telephone numbers.	Nationality (If holding multiple nationalitie smention all)	Unique ID number of the country of residenc e	Passpor t Nos. anddate & place of issue (any other evidence of date ofbirth, in other cases)
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(c) Details of the shareholders/interest-holders/ members of QIP (All companies/ entities/ firms/individuals holding more than 10% share/10% voting right /receiving more than 10% of the distributable dividend/ otherwise exercise significant influence)

Table-3

Sl. No.	Full name	% of shares / interest held in the QIP	Present position held, if any, in the QIP	Unique ID Number of each country of residence and citizenship, in case of individual, or Registration no. & date of registration in case of company, LLP, fund, etc.	Address -Present and Permanent Address (in case of individuals), and -Registered address & address for correspondence (in case of company, LLP, fund etc.) with telephone No.	In case of a company, LLP, partnership firm, funds, etc., Country (or jurisdiction) of registration	In case of individuals		
							Parent age (name of father/mother),	Nationality (If holding multiple nationalities, all must be mentioned)	Passport No. and place and date of issue (any other evidence of date of birth, in other cases)

(d) If the QIP intends to form a Special Purpose Vehicle (SPV) after the Financial Bid

- (i) details of **Jurisdiction** in which the SPV is planned to be formed
- (ii) details of the likely **Directors** of such a SPV [in the same format as in **Table-2** above].

(e) Self-declaration regarding the nature and extent of presence/ operation of QIP in China & Pakistan, if any.**(f) Details of criminal cases, if any, against the QIP/ its director(s)/ Promoters as per ANNEXURE. The status of criminal case(s), pending or decided (if yes, the copy of Order/ Judgement may be provided)*****Notes:**

1. **Where EOI is filed by a QIP**, which itself satisfies eligibility criteria; above details have to be submitted in relation to QIP only (In **Table-1, Table-2 & Table-3** and details of **SPV**, if any).
2. **Where EOI is filed by a QIP, which satisfies Net Worth Eligibility Criteria on the strength of its Parent Company**, above details have to be submitted for the QIP (In **Table-1, Table-2 & Table-3** and details of **SPV**, if any) as well as for the Parent Company (In **Table-1, Table-2 & Table-3**).
3. **Where the QIP is a fund**, above details have to be submitted for such **fund** as well as for **all persons**, who are in control of such fund, including the trustees and sponsors.
4. **If the QIP forms a SPV prior to submission of the Financial Bid**, above details are to be submitted for such SPV also (In **Table-1, Table-2 & Table-3**).
5. **Where the QIP is an LLP**, above details to be also submitted for all persons exercising significant influence and/ or control over the affairs of LLP or holding majority stake in the LLP or who are significant beneficial owners of the LLP (In **Table-1, Table-2 & Table-3**).

Part-B. To be filled in by a Qualified Interested Party (QIP), being a Consortium**(a) Details of the Consortium****Table-4**

Sl. No.	Full names of the members of the Consortium	% of shares/ interest held in the QIP	Whether Lead member (yes/no)	Registration number & Date of Registration in case of a company, LLP, partnership firms, fund, etc.	Address -registered address & address for correspondence (in case of company, LLP, partnership firm, fund etc.) with telephone numbers.	In case of individuals		
						Parentage (name of father/ mother),	Nationality (If holding multiple nationality, all must be mentioned	Passport No. and place and date of issue (any other evidence of date of birth, in other cases)

(b) Details in respect of all consortium members to be submitted (in the format as in Tables 1, 2 3 and (e) & (f) of Part-A).

(c) If the Consortium QIP intends to form a Special Purpose Vehicle (SPV) after the Financial Bid

- (i) details of **jurisdiction** in which the SPV is planned to be formed
- (ii) details of the likely **directors** of such a SPV [in the form of **Table-2** above].

Note:

1. **Where a member of a consortium is a fund**, above details has to be submitted for the fund as well as for all persons who are in control of the fund, including the trustees and sponsors.
2. **If the QIP formed the SPV prior to submission of Financial Bid**, above details has to be submitted for the SPV also (In Table-1, Table-2 & Table-3).
3. **Where a member of a consortium is an LLP**, above details to be also submitted for all persons exercising significant influence and/ or control over the affairs of LLP or holding majority stake in the LLP or who are significant beneficial owners of the LLP (In Table-1, Table-2 & Table-3).
4. In the case of 'Employee Bid', the employees are exempted from security clearance. However, the other consortium partners in the 'Employee Bid' have to obtain security clearance.

ANNEXURE**Self-declaration for OIP and its director(s) and shareholders holding more than 10% shares/10% voting right /receiving more than 10% of the distributable dividend/ otherwise exercise significant influence**

- a) Name and address and registration number of the company/LLP/partnership firm/ fund etc.
- b) Name and address of shareholders (holding more than 10% (ten percent) shares)/ directors of the company or LLP or firm or fund/ significant beneficial owners etc.
 - 1.
 - 2.
 - 3.
 - 4.
- c) Are the shareholders (holding more than 10% shares) / directors listed above, the subject of any:
 - 1. Preventive detention proceedings under Public Safety Act / National Security Act, etc:
Yes/No
 - 2. Criminal investigation in which charge sheet has been filed: **Yes/ No**
 - 3. Status of criminal prosecution.
- d) If, Yes, please provide following details
 - 1. Case/ FIR number
 - 2. Detention / warrant number, if any,
 - 3. Police station / district / agency
 - 4. Sections of law under which case(s) has/ have been filed
 - 5. Name and place of the court.
 - 6. Latest status of the court cases.

7. Status of criminal investigation/ trial (if any)
8. Status of criminal appeal (if any)

e) The above-mentioned details are in respect of both India and any other foreign country.

Note:

1. The above self-declaration is required to be filled and signed by the **authorized signatory** of the company/LLP/firm/fund etc.
2. **In case of LLP**, the above details have to be submitted for LLP and all persons exercising significant influence and control over the affairs of LLP or holding majority stake in the LLP or who are significant beneficial owners of the LLP (including all its partners and designated partners).
3. **In case of fund**, the above details have to be submitted for the fund and all persons in control of the fund (including the trustees and sponsors).

7.14. Annexure II: Format for Financial Bid

(To be typed on the letterhead of the Bidder/ Lead Member submitting the Bid)

Reference No. _____ Date _____

To,

Additional Secretary to the Government, Industries & Commerce Department

UT of Jammu and Kashmir

Civil Secretariat, Jammu - 180001

Sub: Financial Bid in relation to the Strategic Disinvestment of Entire Equity Stake of UTJK in Jammu and Kashmir Cements Limited (“JKCL”)

Dear Sir/ Madam,

This Financial Bid is submitted by _____ (Name of the Bidder/Lead Member) for the purchase of 100% (one hundred percent) equity shareholding of UT administration of Jammu and Kashmir in Jammu and Kashmir Cements Limited, pursuant to the RFP dated

Financial Bid/Financial Bid: Our offer for the purchase of 100% (one hundred percent) Equity Shareholding of UT administration of Jammu and Kashmir in Jammu and Kashmir Cements Limited is INR _____ (<< in words >>).

The Financial Bid is an unconditional and irrevocable offer that will be kept valid in accordance with the provisions of the RFP.

We agree that this offer shall remain valid for a period of 180 (one hundred and eighty) days from the Bid Due Date or such further period as may be specified by UTJK.

Note:

- i. *All payments shall be made in Indian Rupees without any deductions. All payments shall be grossed up to account for any deductions whatsoever including for taxes (including withholding taxes), charges, fees, etc, if any*
- ii. *In the event of any difference between figures and words, the higher of the amounts indicated prevail.*
- iii. *The price quoted in this Financial Bid shall be exclusive of stamp duty, registration fee, taxes and any other governmental / third party costs, fees, or charges, etc. in relation to the Transaction and all such cost shall be borne by Bidder over and above the Financial Bid.*
- iv. *No commercial or technical conditions or clarification of any sort shall be indicated by the Bidder in this Financial Bid. In case of any change in the format of Financial Bid, the same may be summarily rejected by UTJK, without assigning any reason thereof.*

Thanking you,

Yours sincerely

FOR AND BEHALF OF [Insert name of Bidder/ Lead Member]

_____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)

FOR AND BEHALF OF [Insert name of Member-2]

_____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)

FOR AND BEHALF OF [Insert name of Member-3]

_____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)

FOR AND BEHALF OF [Insert name of Member-4]

_____(Signature, Name & Designation of the person authorized vide board resolution dated [●]/any similar authorization)

7.15. Annexure III-A: Department of Investment and Public Asset Management (DIPAM) Guidelines

Part A: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

No. 6/4/2001-DD-II
Government of India
Department of Investment and Public Asset Management
Block 14, CGO Complex
New Delhi.

Dated 28th September 2017.

OFFICE MEMORANDUM

Sub: Guidelines for the qualification of Bidders seeking to acquire stakes in Public Sector Enterprises (PSE) through the process of disinvestment

The Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- In regard to matters other than the security and integrity of the country, any conviction by a court of law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case-to-case basis after considering the facts of the case and relevant legal principles, by the Government, 'Grave Offence' would include the below noted cases:
- Only those orders of SEBI are to be treated as coming under the category of 'Grave Offences' which directly relate to 'fraud' as defined in the SEBI Act and/or regulations.
- Only those orders of SEBI that cast a doubt on the ability of the bidder to manage the public-sector unit, when it is disinvested, are to be treated as adverse.
- Any conviction by court of law;

- In cases in which SEBI also passes a prosecution order, disqualification of the bidder should arise only on conviction by the court of law.
- In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government / conviction by a court of law for an offence committed by the bidding party or its Associate Company as defined in Companies Act, 2013 would result in disqualification. The decision in regard to the relationship inter-se between the concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- Before disqualifying a bidder, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- These criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority, which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EoI, is pending against them. In case any investigation is pending in case which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above on the eligibility criteria prescribed in EoI against the bidder other concern in which the bidder has substantial interest or against its CEO or any of its Directors/ Managers, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be filed along with EOI.

sd/-

(Aseem Kumar Jha)

Under Secretary to the Government of India

Part B: Participation of Central Public Sector Undertakings (PSUs)/Cooperative Societies controlled by the Government in disinvestment of other PSUs.

No. 4(32)/2002-MoDI
Government of India
Ministry of Disinvestment

Block No. 14, CGO Complex,
Lodi Road, New Delhi -110003.
Dated 18th September 2002

OFFICE MEMORANDUM**Sub: Participation of Central Public Sector Undertakings (PSUs)/Cooperative Societies controlled by the Government in disinvestment of other PSUs.**

1. The undersigned is directed to say that the issue of participation of Central Public Sector Undertakings (PSUs) and Central Government owned Cooperative Societies in the disinvestment of other PSUs has been engaging the attention of the Government for the past some time. Government has examined this issue in the light of policy of the Government on disinvestment.
2. After careful examination of the various issues, the Government of India has now decided that henceforth, as a general policy, Central Public Sector Undertakings and Central Government owned Cooperative Societies (i.e. where Government's ownership is 51% (fifty one percent) or more), should not be permitted to participate in the disinvestment of other PSUs as bidders. If in some specific case, any deviation from these restrictions is considered desirable in public interest, the Ministry/Department concerned may bring up an appropriate proposal for consideration of the Core Group of Secretaries on Disinvestment.
3. The Ministries/Department are requested to communicate the above decision of the Government to all the PSUs and the Cooperative Societies under their administrative control.

(T.S. Krishnamachari)

Deputy Secretary to the Government of India

Phone no. 436 8523

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7.16. Annexure III-B: Instructions for Forward Auction process

Shared as separate attachment with the RFP on the tender portal