**MEMORANDUM OF UNDERSTANDING (MOU)**

**THIS MOU IS MADE AT AHMEDABAD & EXECUTED ON \_\_\_\_\_\_ DECEMBER, 2018**

**BETWEEN**

**Mr. ………………………………………………….. (Liquidator)**, having its head office **at ………………………………………………………………..** (herein after called “**First Party**”/ **Liquidator**) which expression shall include its successors in office assigns on the one part.

**AND**

**M/s. Linkstar Infosys Pivate Limited,** a Company registered under the Companies Act, 1956 and having its Registered Office at 9/C, Vardan Exclusive, Near Vitthalbhai Patel Colony, Near Lakhudi Talavadi, Navrangpura Ahmedabad-380014, (Hereinafter called **“Second Party”**) which expression shall, unless otherwise repugnant to the context thereof, be deemed to include its successors and assigns) of the other part.

Whereas Second Party has agreed to provide and first party agreed to avail e-Auction services from the Service Provider, for hosting and managing Online Auction Events for disposal of assets under Insolvency and Bankruptcy Code,2016 and regulations made there under.

Whereas the First Party is facilitating an e- auction solution to sell the assets electronically and is also desirous of conducting such e Action under IBC Code, 2016 in order to get maximum value, increase transparency and efficiency in the auction process.

Whereas the Second Party is one of the company having expertise in the field of e-auction, and engaged in conducting efficient, transparent & secured e auction process.

**Now therefore both the above parties hereby mutually agree as follows-**

1. **Purpose**

* First Party intends to avail exclusive e-auction service offered by Second Party, who will provide all necessary assistance and logistics to the First Party including hosting & managing the online Auction events (auctions/bids) through the portal [**https://eauctions.co.in**](https://eauctions.co.in)
* “Second Party” shall be responsible for conducting E – Auctions by allocating the login passwords to the bidders, educating the bidders including training/dummy exercise, etc. and other jobs related to smooth conduct of the E – Auctions including coordinating the activities with the respective branches.

1. **Scope of Work / Service/Engagement**
   * The scope of the work/service/engagement of Second Party shall be in accordance with Annexure “A” & Terms & Conditions as detailed in Annexure “B”. Second Party does not have any role in payment/ finalization of sale, determining the terms of auction etc. Second Party will, however, remain responsible for maintaining adequate security and control at the hosting site as per the provisions of Information Technology Act, 2000 also at the network level so as to ensure confidentiality of the transactions, restriction of access only to the authorized users, maintenance of auditable/ verifiable logs of all bids etc. and their acceptance/ rejection in a transparent and orderly manner.
2. **Fees , Payment & other terms:**

**Fees Terms**

Fees for providing e-Auction platform for sale of assets will be such amount as agreed between First Party and Second Party.

* + GST will be extra, which will be paid by First Party.
  + If property is unsold because of Non Availability of buyers, NCLT/court stay order/ NPA settlement before auction or any other reason in that eventuality, first party will be aforesaid e-auction fees to service provider.

**Payment Terms**

* 100% of the fees will be payable by First Party to Service Provider on receipt of appropriate invoices raised from Service Provider, after successfully conducting an e auction event.
  + **If property is unsold because of Non Availability of buyers, NCLT/court stay order/ NPA settlement before auction or any other reason in that eventuality, first party will be aforesaid e-auction fees to second Party.**

1. **Time Schedule**

Second Party must ensure that dates chosen for conducting Online Sourcing Events and timing as communicated by First Party from time to time are strictly adhered to. In case of any change, the same has to be intimated to First Party and to all the identified buyers at least two working days in advance through e-mail.

1. **Penalty**

* First Party reserves the right to cancel the Job Order if Service Provider fails to prove its readiness for carrying out online auctions within the period stipulated by First Party. In the event of such cancellation of order, Service Provider shall not be entitled for any compensation.

1. **Delay in performance of the obligations**

* The Second Party shall strictly adhere to the schedule of e-Auctions planned and specified by First Party /Liquidator from time to time and communicated to the Second Party at least 7 days in advance.
* The right of First Party under this clause is in addition to its /their rights / remedies under any other clause of this Memorandum of Understanding including clause 5.

1. **Training**

* The Second Party shall give proper online training to officials of First Party including demo e-auction at the place chosen by Parties.
* The details of the training are to be provided by the Second Party and shall be subject to evaluation by First Party. The Second Party must ensure that all the various components of the system are covered in the training through website of Second Party “EAUCTIONS.CO.IN”
* No Charges will be payable by First Party for the training.

1. **Validity of Memorandum of Understanding**

* This engagement is exclusively valid for a period of **1 (One)** year.
* First Party and Second Party have the right to terminate this arrangement contemplated by this agreement/ engagement by giving one month’s notice.
* The First Party, however, reserves the right to renew the Memorandum of Understanding after the expiry of one year’s contract period on terms and conditions as mutually agreed by both of parties.

1. **Confidentiality**

* The First Party and the Second Party shall treat as confidential any or all information obtained from the other pursuant to this Memorandum of Understanding and shall not divulge such information to any person without the other party’s written consent, provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). Receiving Party shall execute / get executed appropriate written agreements with its employees and consultants to comply with the provisions of this engagement / letter agreement. The foregoing obligations as to confidentiality shall survive even after the termination of this Memorandum of Understanding.

1. **Limitation of Liability**

* The Second Party, in no way stands guarantee for realization of the EMD/Bid or e – Auction money.
* Neither party shall be liable for any third party claims, except to the extent and for those covered under paragraphs 6,7,12 and 13 of this agreement.
* Notwithstanding anything to the contrary elsewhere contained, the total liability of either party under this contract shall not, in any circumstances, exceed the total consideration (amount for number of successful auctions conducted) received / to be received under this contract, irrespective of the nature of the claim which results in such liability and whether based on contract or tort or any other theory of law. This, however, will not extend to claims detailed in paragraphs 6,7,12 and 13 of this agreement.
* Subject to provisions of this Memorandum of Understanding Service Provider, in no way stands guarantee for realization of the financial projections and/or other identified benefits out of the auction.
* All information, data, documents and records (hereinafter referred to as ‘the Information) of the First Party received from agreed and identifiable sources considered in the course of review and preparation of the deliverables under this Project will be assumed to be authentic, complete and accurate. The information furnished by First Party upon which all or part of the deliverables are based, is believed by Second Party to be reliable. The list of eligible and successful bidder and the records/logs of bid and record of all proceedings related to e-auction provided by the Second Party shall be presumed to be authenticated by First Party and in case of any dispute or action; Second Party shall be responsible for the consequences arising there from.

1. **Intellectual Property Rights**

* The intellectual property rights existing now or during the course of the e-Auction proceedings in each Party in all its presentation/ training materials, computer programs, documentation and other materials as well as in any method, invention, discovery, design, or concept to the extent solely conceived or developed by that Party shall belong to and be the absolute property of that Party. Except as stated herein, neither Party will have rights in any products, materials or methodologies proprietary to the other Party or a third party used by the other Party in performance of the project or proprietary materials or methodologies produced by the other Party which are not part of the deliverables. In case of any third party claims against First Party for violation of the patents, copyright, trademark, design or any other intellectual property right(s) of such third party/ parties by Second Party in connection with conducting the e-Auctions on behalf of First Party, will defend such claims and keep First Party fully indemnified at all times against any loss or consequences. This clause shall survive termination of the Memorandum of Understanding between the parties under this agreement.
* The foregoing obligations shall be subject to (I) First Party promptly notifying Second Party in writing about such action; (ii) First Party extending its full co-operation in the defense of such action or settlement/ compromise of such claim. In the event the Software Applications or any part thereof is proved and declared to be infringing in nature or in the event that Second Party is of the opinion that the Software Applications is likely to become the subject of a claim of infringement or misappropriation, Second Party may at its option (a) alter, amend, modify or replace the Software Applications or the infringing part thereof so as to make the same non-infringing and appropriate; or (ii) procure the right to use the Software Applications or the infringing part thereof. The foregoing states the entire liability of Second Party for infringement and misappropriation claims and actions.

1. **Indemnity**

* The Second Party shall indemnify and keep saved, harmless and indemnified against any claim which may be made against First Party or loss, which may be suffered by First Party on account of any negligence, wrongful action / inaction or breach of this Service Agreement by Second Party or on account of engaging Second Party or availing services from Second Party contemplated by this Memorandum of Understanding.

1. **Force Majeure**

* Neither party shall be liable for any loss, damage, injury or delay due to any cause beyond its control including (without prejudice to the generality of the foregoing expression) Acts of God, Acts of the State, Strikes, Lockouts, Fire, Lightning, accidents, explosions, riots, civil commotion, Acts of War, terrorist attack, flood etc.

1. **Assignment**

* This agreement shall insure to the benefit of each of the Parties and their respective successors and neither party shall otherwise assign the benefit or burden of this agreement to any others, without the previous written consent of the other Party.

1. **Arbitration**

* All disputes and differences of any kind whatsoever arising out of or in relation to the construction, meaning and operation or effect of this agreement or breach thereof shall be settled amicably. If, however, the parties are not able to resolve them amicably within a period of 30 days, the same shall be settled by arbitration. The dispute(s) shall be referred to a sole arbitrator to be appointed by the Export Import First Party of India Head Office the decision of the arbitrator(s) shall be final. Such arbitration will be governed by the up to date provisions of the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Ahmedabad. Any claim arising out of this agreement shall be subject to the exclusive territorial jurisdiction of courts at Ahmedabad.

1. **Representation**

* Either Party represents and warrants that it has all requisite power and authorization to enter into and perform this engagement/ letter agreement. The Parties to the agreement are the First Party and Second Party and all references to (name of EAUCTIONS.CO.IN portal) in all future correspondence shall mean Linkstar Infosys Private Limited.

**18. Governing Law**

## This Agreement shall be governed by and construed in accordance with the laws in force in India.

## 19. Severability

* If any provision of this Memorandum of Understanding is held to be illegal, invalid, or unenforceable under Applicable Law (a) such provision will be fully severable; (b) this Memorandum of Understanding will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of the Memorandum of Understanding will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

## 20. Notices

* All communication among the Parties or notices in connection herewith shall be in writing, hand delivered or sent by e-mail, facsimile transmission or registered post or courier, addressed at their respective addresses set forth hereinabove.

## 21. Entire Memorandum of Understanding

* This Memorandum of Understanding read in conjunction with the Attachments / Annexure therein shall constitute the entire Memorandum of Understanding and shall supersede all prior written or oral communication. Any amendment to this Memorandum of Understanding shall be done only in writing signed by authorized signatories of both the Parties.

IN WITNESS WHEREOF the parties hereto have executed these presents, on **…………, 2018** first above written.

Signed and delivered by,

**M/s Linkstar Infosys private Limited**

Through its authorized signatory,

Signed and delivered by,

**Mr. ……………………………….**

Through its authorized signatory,

**Annexure “A”**

**Scope of Work / Services**

**M/s. Linkstar Infosys Private Limited** shall conduct Online Auction Events for First Party; Properties to be auctioned will be decided by First Party and communicated to Second Party from time to time upon acceptance of order pursuant to this Service agreement. Second Party shall work closely with working team members from First Party. For preparation of guidelines for buyer(s), hosting, managing and smooth executions. Any type of newspaper and other notification will be the responsibility of First Party. As a part of this contract the following will be performed by Service Provider.

* FIRST PARTY send the Public Notice for sale of Assets with following information,
  + - Name and address of the Borrower/ Mortgager
    - Description and full particulars of the Property to be sold
    - Reserve Price below which property will not be sold
    - Total outstanding amount
    - Earnest Money Deposit
    - Letter of offer and other detailed terms & condition available from date\_\_\_\_\_\_, time\_\_\_\_\_ till date\_\_\_\_\_\_, Time\_\_\_\_\_\_\_\_\_\_\_
    - Website name & address to obtain and submit offers
    - Last date of submitting offer
    - Date of Inspection at site, available documents and up to date EC.
    - Nodal First Party Account number for online money transfer/ deposit.
    - General Terms & Conditions (Attached as Annexure B)
* Second Party publishes the tender in its e-Portal
* Prospective Bidder/s registers on the portal and creates login ID & Password. Before registration, identity of the bidders shall be verified by obtaining scanned copy of PAN cards of the bidders.
* Second Party can upload required documents & the offer price before due date & time and receive confirmation on payments made through RTGS/NEFT/ DD, etc.
* In case bidder wants to make payments in the form of DD, then bidder shall upload a scanned copy of the Demand Draft in the online portal, while submitting his bid electronically and shall deposit the original demand draft with the respective Liquidator /FIRST PARTY Authorized Officer before the auction date against acknowledgement to be eligible for participating in the auction.
* Only registered users having deposited EMD as stated above shall be allowed to participate in the online auction on the date and time prescribed.
* Helpline numbers are provided to get any assistance during the entire process.
* The e-tender will be opened by authorized officer of First Party., as the case may be on specified due date & time and the prospective buyers who have submitted bids higher than reserve price will be informed about the modus operandi of e-Auction.
* A dummy e-Auction will be made available for practice for the benefit of above bidders.
* These bidders need to log in few minutes before the e-Auction start time.
* No Offers/ bids below reserve price shall be entertained.
* A “Bid” button will be available on start of the e-Auction proceeding.
* Once he clicks the “bid” button, a page will open which will show information such as,
  + - e-Auction start time
    - e-Auction close time
    - Opening Bid/ Current Highest Bid amount
    - Minimum Bid increment
    - A Bid tab to fill in his own bid
* Bidder can enter his bid and wait for response on his bid.
* If the bid becomes highest bid, then his bid will be highlighted with a “Rank -1/ Green Band”
* This “Rank -1/ Green Band” icon will disappear if any new high bid is submitted by any other bidder.
* The bidder can place his new improved bid.
* This process will continue for the entire e-Auction period.
* E-Auction will close as per the closing time if no bid comes during last 5 minutes of the e-Auction closing time.
* In case bids are placed in last 5 minutes of the closing of e-Auction, the closing time automatically gets extended to 5 more minutes.
* This process continues till no bid comes for a period of 5 minutes and the e-Auction gets closed.
* The successful bidder gets an e mail confirmation indicating his highest bid and declared as the winner subject to the approval of First Party / Liquidator.
* The winning bidder now can make the required percentage of payment online or manually at the respective First Party/ Liquidator and gets a receipt of payment.
* Second Party submits e-Auction report to the respective officer of the First Party/Liquidator.
* Second Party shall modify and follow the procedure prescribed by Liquidator /First Party.

**Annexure ‘B’**

**General Terms & Conditions:**

1. No Offers/ bids below reserve price shall be entertained.
2. Interested parties may send/ submit their OFFER for purchasing the said properties online after registering and logging in to the website
3. Prices will be finalized through an e-Auction process online.
4. The bidders must pay EMD through RTGS / NEFT / DD etc. and remittance details must be clearly indicated in the bid form.
5. Upon Confirmation of the sale, the successful purchase shall pay initial Deposit being 25% of the of the sale price (including EMD amount already paid )immediately on the sale being confirmed in his favor and the balance 75% within 15 days failing which the First Party shall forfeit amounts already paid/deposited by the purchaser.
6. All payments shall be made by online in the e-Auction portal/ Demand Draft/ First Partyer’s Cheque drawn in favor of First Party.
7. The Liquidator/Authorized Officer of First Party has the absolute right to accept or reject any or all offer(s) or adjourn/postpone the sale without assigning any reason thereof.
8. If any market — leading bid (bid higher than the highest at the point in time) is received within the last five minutes of closing bid, the bidding time shall be extended automatically by five minutes.
9. EAUCTIONS.CO.IN/ Liquidator/Export-Import First Party of India shall send all intimations to the bidders / auction purchasers regarding payment of EMD / balance bid amount, rejection of bid, etc. as provided by the Liquidator /Authorized Officer, through e-mail.
10. Second Party shall strictly comply with the directions of the Liquidator /First Party Authorized Officers and shall also verify the KYC of bidders.
11. Second Party shall assign and intimate user id and password to bidders well in time.
12. Second Party shall also arrange for assignment of admin user id and password to Liquidator / Authorized Officers of First Party to facilitate opening and closure of e-auction.
13. Second Party shall immediately de-activate the user id and password assigned to a bidder on receipt of instructions from Liquidator / Authorized Officer.
14. Second Party shall provide a complete list of bidders with full address and contact telephone / mobile numbers, who have been allotted user id / password clearly indicating the date of submission of bids and remittance of EMD amount on completion of auction.
15. Second Party shall strictly comply with the provisions of the Insolvency and Bankruptcy Code, 2016.