

**Non-Disclosure Undertaking**  
**[ON THE LETTERHEAD OF THE APPLICANT]**

January 31<sup>st</sup>, 2025

To,  
Infrastructure Leasing & Financial Services Limited (“**IL&FS**”)  
The IL&FS Financial Centre,  
Plot C-22, G Block,  
Bandra Kurla Complex,  
Bandra East,  
Mumbai 400051

**Sub:** Acknowledgements, Confidentiality and Non-Disclosure (“**Undertaking**”)

Dear Sir/ Madam,

1. I/We refer to the advertisements issued in Economic Times and Sandesh each dated January 31<sup>st</sup> 2025, and the preliminary teaser available at [IL&FS - Asset Divestment](#) to participate in the process being conducted for the potential acquisition of the 100% equity shares of Avash Logistic Park Private Limited and 100% equity shares of Sealand Ports Private Limited owned/held by IL&FS and/or IL&FS Maritime Infrastructure Company Limited (“**IMICL**”) (together, the “**Sale Companies**”).
2. This Undertaking is being furnished by us/me in consideration of the premise as set forth above. Vide this Undertaking, we, [insert name of Applicant] (the “**Receiving Party**”), hereby agree, undertake, acknowledge and confirm that:
  - (a) In connection with the potential sale of 100% equity shares of the Sale Companies on an ‘as is where is’ and ‘as is what is’ basis (“**Potential Transaction**”), the Receiving Party would be receiving Confidential Information (*as defined below*) in relation to the Sale Companies, IL&FS and/or IMICL and their respective shareholders, affiliates, directors, officers, employees, agents or advisors (individually referred to as a “**Disclosing Party**”, and collectively referred to as the “**Disclosing Parties**”).
  - (b) “**Confidential Information**” includes: (i) all information, discussions, progress and status in relation to the Potential Transaction and/or the Sale Companies (or any part thereof); (ii) all information, data, reports, analyses, advices, interpretations, studies, forecasts, records, documents and/ or materials, whether made available in writing or electronically to the Receiving Party by any of the Disclosing Parties in relation to the Potential Transaction, the intended parties to the Potential Transaction and/or the Sale Companies, or becoming available to the Representatives (*as defined below*) of the Receiving Party; (iii) any financial, technical, business, operational, assets and liabilities related information and/or any analysis that integrally incorporates and/or discloses any Confidential Information; and (iv) any information exchanged between the potential parties to the Potential Transaction and any of the Disclosing Parties, any information in respect of any Disclosing Party(ies), and/or documents reflecting or

generated from such information; and (v) any information or document that the Disclosing Party considers confidential, but excluding information that:

- (i) at the time of supply to the Receiving Party is in the public domain or otherwise lawfully known to the Receiving Party;
  - (ii) becomes lawfully available to the Receiving Party or its Representatives (*as defined below*) from a third party who to the best of the Receiving Party's knowledge does not owe any party an obligation of confidence in relation to such information;
  - (iii) is independently developed by the Receiving Party or its Representatives without any reference to the Confidential Information, and without violating any obligations hereunder; or
  - (iv) is approved for disclosure in writing by the Disclosing Parties or a Disclosing Party.
- (c) The Confidential Information shall be shared only with Affiliates or partners of the Receiving Party, who shall be potentially participating in equity or debt funding and the directors, shareholders, partners, officers, agents, employees or advisors (such as financial advisors, attorneys, bankers, consultants and accountants) of the Receiving Party/ their Affiliates/ partners who need to know such information for the purpose of evaluating the Potential Transaction (collectively referred to as the "**Representatives**"), strictly on a "need to know" basis; provided, such Representatives are also similarly restricted by the confidential obligations and the conditions set forth in this Undertaking. The Receiving Party agrees that the Receiving Party will be responsible for any breach of the confidentiality and other terms of this Undertaking by any of the Receiving Party's Representatives.
- (d) The term "**Affiliate**" with respect to any Person, means any other Person, which, directly or indirectly: (i) Controls such Person; (ii) is Controlled by such Person; or (iii) is Controlled by the same Person who, directly or indirectly, Controls such Person. In case where any of the share capital of the Receiving Party is held, directly or indirectly, by an investment entity, in addition to the above, the term Affiliate shall also include:
- (A) any alternative investment or co-investment fund, entity or company (including without limitation, any investment trust, limited partnership or general partnership) Controlled or managed by such investing entity; (B) any successor investment fund, vehicle or company of the investing entity; and (C) any Person that, directly or indirectly Controls, is Controlled by or is under the common Control with any Person referred in (A) and (B) above. For the purposes of this definition, an investing entity shall include a foreign venture capital investor, alternate investment fund, non-banking financial company, a core investment company or any entity engaged solely in holding investments in other companies/ entities. It is clarified that where the Receiving Party is directly owned by an alternate investment fund, registered with the Securities Exchange Board of India (an "**AIF**"), then in such a case any other funds or Persons managed by or advised by the manager to such AIF shall not be considered as an Affiliate of the Receiving Party.
- (e) The term "**Control**" shall have the meaning given in the Companies Act, 2013 and terms "**Controlled**" or "**Controlling**" shall have the meaning accordingly.

- (f) The term “**Person**” includes any individual, firm (registered or otherwise), company, corporation, body corporate, government, state or agency of a state or any association, trust, joint venture, consortium, partnership (including limited liability partnership) or other entity (whether or not having separate legal personality).
3. The Receiving Party agrees and undertakes that it shall, and it shall ensure that its Representatives shall:
- (a) keep confidential all of the Confidential Information provided to the Receiving Party, unless disclosure from the Receiving Party is required to satisfy the requirements of any law, legal process, court of competent jurisdiction or any governmental or regulatory agency having the authority to regulate any aspect of the Receiving Party’s business. Provided that the Receiving Party may disclose only such Confidential Information that is strictly required to be disclosed to comply with a regulatory requirement, and to the extent permissible by applicable laws, the Receiving Party shall notify the Disclosing Parties of such requirements promptly, in advance of the disclosure, so that the Disclosing Parties may seek protective order(s) or other appropriate remedy to protect the secrecy of the Confidential Information;
  - (b) use Confidential Information solely for the purpose of evaluating, negotiating or, if selected as the preferred applicant, carrying out the Potential Transaction;
  - (c) not use the Confidential Information to cause an undue gain or undue loss to itself or any other person;
  - (d) comply with the principles stipulated under section 29(2) of the Indian Insolvency and Bankruptcy Code, 2016 (as amended from time to time);
  - (e) not to solicit or attempt to solicit, in any manner whatsoever, any client or customer of the Disclosing Party(ies);
  - (f) not, directly or indirectly:
    - (i) induce for employment, employ or engage as a consultant or independent contractor any employee of the Disclosing Party(ies) to leave his or her employment and/ or terms of service with the applicable Disclosing Party, or in any way interfere with the relationship between the Disclosing Party and any such employee thereof;
    - (ii) induce or hire any person engaged by the Disclosing Party(ies), with whom the Receiving Party or any of its Representatives have been directly or indirectly introduced or otherwise had contact with in connection with the Potential Transaction(s), so long as such persons are employed or engaged by the applicable Disclosing Party, or upon cessation of such employment or engagement with the applicable Disclosing Party, for a period of 6 (six) months after such cessation, unless otherwise agreed by the applicable Disclosing Party in writing,

Provided that the aforesaid conditions do not prevent the Receiving Party from offering employment: (A) pursuant to a general solicitation or advertisement not specifically directed towards employees of the Disclosing Party(ies), in the news media of general circulation; (B) through a recruitment agency or other similar entities who have not been specifically instructed by the Receiving Party to solicit such employees of the

Disclosing Party(ies); or (C) to persons who approach the Receiving Party on their own volition, without any solicitation by the Receiving Party or its Representatives.

4. Further, the Receiving Party acknowledges and agrees that:
  - (a) the Confidential Information disclosed under this Undertaking is delivered “as is” and the Disclosing Parties do not make any representation or warranty as to the accuracy, timeliness or completeness of the Confidential Information or its suitability for any particular purpose. The Disclosing Party shall not have any liability to the Receiving Party or its Representatives relating to or resulting from the use of the Confidential Information or any omissions or errors therein;
  - (b) the opportunity to participate in the Potential Transaction or the grant of access to Confidential Information cannot be construed:
    - (i) to grant any rights over the Sale Companies to the Receiving Party or any person; or
    - (ii) to be a commitment or agreement by the Disclosing Parties to undertake or consummate any or all the Potential Transaction with the Receiving Party or any other party; or
    - (iii) to refrain the Disclosing Party from exploring/consummating the Potential Transaction or any transaction pertaining thereto with any other party.
5. The Receiving Party acknowledges and confirms that:
  - (a) the Confidential Information is the property of the relevant Disclosing Party;
  - (b) in case of any actual or suspected loss, theft, unauthorized disclosure, use or access of Confidential Information in breach hereof or other non-compliance with this Undertaking, to notify the Disclosing Party in writing (including electronically) (along with relevant details), and shall provide all reasonable assistance to the Disclosing Party in connection with any proceedings which the Disclosing Party may institute to protect such Confidential Information;
  - (c) in the event the Disclosing Parties decide not to proceed with the Potential Transaction either with the Receiving Party or at all, the Receiving Party shall promptly return (if requested by the Disclosing Party) or destroy (if no such request is made) all physical copies of Confidential Information (and delete or make inaccessible all electronic copies thereof). Provided, that the Receiving Party may retain Confidential Information that is required to be retained by: (i) law, regulation, legal or judicial process or any governmental or regulatory authority or document retention policy; and /or (ii) tax, audit or compliance purposes with a prior intimation to the Disclosing Party.
6. The Receiving Party understands and agrees that monetary damages would not be sufficient remedy for any actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives and that, in addition to all other remedies available at law and/or in equity, the Disclosing Parties shall be entitled to seek equitable relief, including both preliminary and permanent injunctions and specific performance, as a remedy for any such actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives.
7. This Undertaking is governed by, and construed in accordance with, the laws of India and shall be subject to the exclusive jurisdiction of the courts of Mumbai, India.

8. This Undertaking comes into effect upon execution and the obligations set forth herein shall remain irrevocable and binding upon the Receiving Party or its Representatives until the earlier of:
- (a) The date on which the definitive agreement(s), if any, are executed in respect of the Potential Transaction; or
  - (b) 12 (twelve) months from the date of execution of this Undertaking.

[For and on behalf of *[insert name of Applicant]*]<sup>1</sup>:

Signature:

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**Name of Signatory:** *[insert details]*

**Designation:** *[insert details]*

**Contact No.:** *[insert details]*

**E-mail ID:** *[insert details]*

**Address:** *[insert details]*

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<sup>1</sup> Note to format: To be retained only if the NDU is being submitted for an on behalf of an entity and not an individual