

Stressed Assets Stabilization Fund (SASF)

Non-Disclosure Agreement

For

Sale of Non- Performing Assets

**Issued by SASF
(Date)**

Non-Disclosure Agreement

This agreement made and entered into at Mumbai this _____.

BY AND BETWEEN

_____, a company incorporated under the Companies Act, 1956 having its registered office at _____ which expression unless repugnant to the context or meaning thereof be deemed to include its permitted successors) of the ONE PART;

AND

Stressed Assets Stabilization Fund (SASF), a trust formed by Government of India under Indian Trust Act, 1882 having its Principal office at 3rd Floor, IDBI Tower, Cuffe Parade, WTC Complex, Colaba, Mumbai-400005 (hereinafter referred to as "SASF" which expression unless repugnant to the context or meaning thereof be deemed to include its successors) of the OTHER PART

_____ and SASF are hereinafter collectively referred to as "the Parties" and individually as "the Party"

WHEREAS:

1. Industrial Development Bank of India (IDBI) had sanctioned an amount of Rs.2080 lakh to M/s. Asian Alloys Limited (AAL) which was duly secured by mortgage of factory land of AAL located at Village Sihi, Sikanderpur, Dist. Gurgaon, Haryana. The Central Government set up a Special Purpose Vehicle in the form of Trust by the name 'Stressed Assets Stabilisation Fund (SASF) vide Trust Deed dated September 24, 2004, with the object of acquiring the Stressed Assets of IDBI for the purpose of recovering the amounts due there under. Further, Central Government by notification

dated September 29, 2004 has also notified SASF as Financial Institution under Section 2(h) (ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

2. SASF and _____ intend to engage in discussions and negotiations for the assignment of M/s Asian Alloys Limited a NPA of SASF and in the course of such discussions and negotiations, it is anticipated that SASF or any of its officers, employees, officials, representatives or agents may disclose, or deliver, to some Confidential Information (as hereinafter defined), to enable to evaluate the proposal for purchase of the said asset of M/s Asian Alloys Limited and to carry out Legal, Financial and other due diligence of the NPA (hereinafter referred to as " the Purpose").
3. SASF is duty bound to ensure that information in respect of its constituents is not disclosed to any third parties and has agreed to disclose such Confidential Information to _____, upon _____ executing an agreement, being these presents, to safeguard and protect such Confidential Information as it may receive from SASF or its officers/employees etc. for the Purpose.

NOW, THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Confidential Information**: "Confidential Information" means all information disclosed/furnished by SASF to _____ whether orally, in writing or in electronic, magnetic or other form for the limited purpose of enabling _____ to evaluate and carry out the due diligence of the M/s Asian Allys Limited proposed to be sold by SASF, and shall mean and include data, documents and information or any copy, abstract, extract, sample, note or module thereof, explicitly designated as "Confidential"; Provided the oral information is set forth in writing and marked "Confidential" within seven (7) days of such oral disclosure).

_____ may use the Confidential Information solely for and in connection with the Purpose and shall not use the Confidential Information or any part thereof for any reason other than the Purpose stated above.

Notwithstanding the foregoing, "Confidential Information" shall not include any information which _____ can prove:

- (a) is or subsequently becomes legally and publicly available without breach of this Agreement by _____ ,
- (b) was rightfully in the possession of _____ without any obligation of confidentiality prior to receiving it from SASF,
- (c) was rightfully obtained by _____ from a source other than SASF without any obligation of confidentiality,
- (d) was developed by or for _____ independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence, or
- (e) is/was disclosed pursuant to an order of a court or governmental agency as so required by such order, provided that _____ shall, unless prohibited by law or regulation, promptly notify SASF of such order and afford SASF the opportunity to seek appropriate protective order relating to such disclosure.

2. **Non-Disclosure:** _____ shall not commercially use or disclose any Confidential Information or any materials derived therefrom to any other person or entity other than persons in the direct employment of _____ who have a need to have access to and knowledge of the Confidential Information solely for the Purpose authorized above. _____ shall take appropriate measures by instruction and written agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. _____ may disclose Confidential Information to

consultants only if the consultant has executed a Non- Disclosure Agreement with _____ that contains terms and conditions that are no less restrictive than these presents and _____ agrees to notify SASF immediately if it learns of any use or disclosure of the Confidential Information in violation of terms of this Agreement.

Notwithstanding the marking and identification requirements above, the following categories of information shall be treated as Confidential Information under this Agreement irrespective of whether it is marked or identified as confidential:

- a) information regarding SASF and any of its Affiliates, customers and their accounts (“Customer Information”). For purposes of this Agreement, Affiliate means a business entity now or hereafter controlled by, controlling or under common control. Control exists when an entity owns or controls more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity; or
 - b) any aspect of SASF's business that is protected by patent, copyright, trademark, trade secret or other similar intellectual property right; or
 - c) business processes and procedures; or
 - d) current and future business plans; or
 - e) personnel information; or
 - f) financial information.
3. **Publications:** _____ shall not make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents / provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information

or other matter of this Agreement, without the prior written approval of SASF.

4. **Term:** This Agreement shall be effective from the date hereof and shall continue till expiration of the Purpose or termination of this Agreement by SASF, whichever is earlier. _____ hereby agrees and undertakes to SASF that immediately on termination of this Agreement it would forthwith cease using the Confidential Information and further promptly return or destroy, under information to SASF, all information received by it from SASF for the Purpose, whether marked Confidential or otherwise, and whether in written, graphic or other tangible form and all copies, abstracts, extracts, samples, notes or modules thereof. _____ further agree and undertake to SASF to certify in writing upon request of SASF that the obligations set forth in this Agreement have been complied with.

Any provisions of this Agreement which by their nature extend beyond its termination shall continue to be binding and applicable without limit in point in time except and until such information enters the public domain

5. **Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by SASF to _____, the title and all intellectual property and proprietary rights in the Confidential Information shall remain with SASF.
6. **Remedies:** _____ acknowledges the confidential nature of Confidential Information and that damage could result to SASF if _____ breaches any provision of this Agreement and agrees that, if it or any of its directors, officers or employees should engage or cause or permit any other person to engage in any act in violation of any provision hereof, SASF may suffer immediate irreparable loss for which monetary compensation may not be adequate. SASF shall be entitled, in addition to other remedies for damages & relief as may be available to it, to an injunction or similar

relief prohibiting _____, its directors, officers etc from engaging in any such act which constitutes or results in breach of any of the covenants of this Agreement. Any claim for relief to SASF shall include SASF's costs and expenses of enforcement (including the attorney's fees).

7. **Entire Agreement, Amendment, Assignment:** This Agreement constitutes the entire agreement between the Parties relating to the matters discussed herein and supersedes any and all prior oral discussions and / or written correspondence or agreements between the Parties. This Agreement may be amended or modified only with the mutual written consent of the Parties. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable.
8. **Governing Law:** The provisions of this Agreement shall be governed by the laws of India and the competent court at Mumbai shall have exclusive jurisdiction in relation thereto.
9. **Indemnity:** _____ shall defend, indemnify and hold harmless SASF, its affiliates, subsidiaries, successors, assigns, officers, directors and employees, at all times, from and against any and all claims, demands, damages, assertions of liability whether civil, criminal, tortuous or of any nature whatsoever, arising out of or pertaining to or resulting from any breach of representations and warranties made by _____ and/or breach of any provisions of this Agreement, including but not limited to any claim from third party pursuant to any act or omission of information by IDBI.
10. **General:** _____ shall not reverse - engineer, decompile, disassemble or otherwise interfere with any software disclosed hereunder. All Confidential Information is provided "as is". In no event shall the SASF be liable for the inaccuracy or incompleteness of the Confidential Information. None of the Confidential Information

disclosed by SASF constitutes any representation, warranty, assurance, guarantee or inducement with respect to the fitness of such Confidential Information for any particular purpose.

SASF discloses the Confidential Information without any representation or warranty, whether express, implied or otherwise, on truthfulness, accuracy, completeness, lawfulness, merchantability, fitness for a particular purpose, title, non-infringement, or anything else.

- 11. **Expenses:** _____ is and shall be solely and absolutely responsible for all statutory, regulatory and other compliances for the said purpose including incurring of any costs, charges and expenses and payment of fees and duties (including the stamp duty and registration fee and any other similar levy payable), statutory and otherwise in connection with this agreement.
- 12. **Waiver:** A waiver (whether express or implied) by SASF of any of the provisions of this Agreement, or of any breach or default by _____ in performing any of the provisions hereof, shall not constitute a continuing waiver and such waiver shall not prevent SASF from subsequently enforcing any of the subsequent breach or default by _____ under any of the provisions of this Agreement.

In witness whereof, the Parties hereto have executed these presents the day, month and year first herein above written.

For and on behalf of Prospective Buyer (_____) (Designation)	For and on behalf of Stressed Assets Stabilization Fund (SASF). (_____) (Designation)
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