2nd Edition



Practical Guide to

Drafting Commercial Contracts

Bhumesh Verma

Forewords by

Sarosh Zaiwalla
Senior Partner, Zaiwalla & Co.

Giampaolo Salsi
Managing Partner (Milan), K&L Gates

OakBridge

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First Edition 2018
Second Edition **2020**

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Published by
OakBridge Publishing Pvt. Ltd.
M 35, 1st Floor, Old DLF, Gurugram, 122001, Haryana, India
Tel.: +91 124 4305970, E-mail: info@oakbridge.in
www.oakbridge.in

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ISBN: 978-93-89176-47-6

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Foreword to the Second Edition

"The heights of great men reached and kept, were not attained by sudden flight, but they, whilst their companions slept, were toiling upward in the night".

These words of the American poet Henry Longfellow very aptly apply to Bhumesh Verma. For Bhumesh, with his busy legal practice, to have published 400 articles and written the book you are now holding, he no doubt will have toiled into the night to share his knowledge and experience.

When I started my law firm in London in the early eighties, our principal work was handling maritime arbitration disputes. In those days, shipbrokers met daily at the Baltic Exchange to agree charter party contracts orally for their principals, who were vessel owners or charterers. They operated on the Baltic Exchange's principle that "*my word is my bond*". Subsequently, if a dispute arose as to the meaning or true construction of a term in the charter party contract, the parties would ask the shipbrokers to submit the point to a senior shipbroker at the Baltic Exchange to give his decision, which would be honoured.

But the world economy has now changed, and with that change has also come a new breed of both businessmen and lawyers all over the world ready to exploit a contractual ambiguity to obtain a commercially advantageous outcome. This modern approach ignores the maxim "*Law is for justice and not justice for law*", a principle which was historically applicable particularly to commercial cases. As a result, disputes arising from commercial contracts today can be long drawn out and expensive undertakings, whether the parties seek to resolve them before a court or by arbitration.

As Bhumesh rightly points out in his preface, in the modern connected world the lay client now has plenty, if not perhaps too much, information freely available on the internet to download, 'cut and paste', edit or draft a commercial contract. However, this can be no substitute for the application of the experienced drafter's skill and expertise. A slip of the pen, or even a missing or misplaced comma, can cost a party very dearly indeed. These times therefore call more than ever for a book like the one Bhumesh has written, to guide those who draft contracts, and the parties who agree to them, how best to achieve validly enforceable contracts that will be performed according to the parties' mutual intention.

It is easy to lose sight of the many considerations that go into making a valid contract, quite apart from the basic terms. There are, of course, essential requirements for an enforceable contract such as offer and acceptance, consent, consideration, and the like. Even the most carefully drafted bargain can be undone through inattention to those details. An example of how a contract can be rendered ineffective is the case of *PEC Limited* v *Asia Golden Rice Company Limited* [2014] EWHC 1583 (Comm). In this case PEC, a Delhi based Indian Government company, had entered into a contract with a Thai company, Asia Golden Rice. The contract which was signed on

Indian soil provided for disputes to be settled by a Grain and Feed Trade Association (GAFTA) arbitration Tribunal in London, with English law to apply. Asia Golden had a substantial claim against PEC which it referred to the GAFTA arbitration Tribunal. Under GAFTA Rules, lawyers are not permitted to appear for a party. After hearing both parties' submissions, the GAFTA Tribunal both in the first instance and then before the GAFTA appeal board decided the Claim in favour of Asia Golden. PEC successfully challenged the validity of the award in the English Court on the ground that the underlying sale of goods contract was invalid and non-existent because, as an Indian Government company, the requisite requirements of the rules had not been complied with, and PEC had therefore neither entered into the contract, nor made a valid arbitration agreement related to it.

From the perspective of a commercial litigator, it is easy to appreciate the importance of the work that goes into drafting a contract. In the common law, when contract disputes throw up ambiguities and rival interpretations, the court seeks to determine the objective meaning of the language that the parties have used to express their agreement. As Lord Hodge explained in his judgment in the House of Lords in *Wood* v *Capita Insurance Services Ltd* [2017] UKSC 24, the approach is not purely textual: "*… the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning*."

On the shoulders of the drafter rests the burden of fairly recording what the parties have agreed. In some instances, this may be complicated by the fact that the parties will have arrived at a particular contract term only through negotiation and compromise, resulting in a term that may not fully suit either of them. Successive drafts may have passed backwards and forwards with additions and deletions. However, ultimately the contract drafter's duty remains the same, whether the contract has been freely negotiated from scratch, or is an adaptation of a template, an industry standard form, or forms part of a complex suite of agreements in a large multi-jurisdictional or multi-party transaction. As the law reports bear witness, even the most sophisticated contracts are not immune from disputes. The more care and attention that is paid to the drafting process, the greater the prospect of an easy resolution to subsequent differences of interpretation.

Bhumesh's new book on contract drafting skill explains in a very lucid manner the essential skills which need to be adopted to draft a commercial contract. It would be a good essential guide not only for in-house counsel and transactional lawyers, but also for commercial businessmen.

I can confidently say that anyone who deals with contracts in any capacity will benefit from the practical guidance compendiously included in this book.

Sarosh Zaiwalla
Senior Partner, Zaiwalla & Co.
London, United Kingdom

Foreword to the Second Edition

"— Hey, wait, wait. What does this say here, this thing here?

— Oh, that? Oh, that's the usual clause that's in every contract. That just says, uh, it says, if any of the parties participating in this contract are shown not to be in their right mind, the entire agreement is automatically nullified.

— Well, I don't know...

— It's all right. That's in every contract. That's what they call a sanity clause.

— Ha-ha-ha-ha-ha! You can't fool me. There ain't no Sanity Clause!"

(dialogue from "A Night at the Opera", 1935, a Marx Brothers' film, directed by Sam Wood).

Oftentimes, over the course of my career as a commercial lawyer, it occurred to me that I could use a "sanity clause".

Inconsequential provisions, grammatical errors, obscure recitals, legal and logical loopholes. And - when it comes to international contracts - poor or even extravagant translations into another language, of concepts privy to a specific legal tradition.

As a civil lawyer, I can resort to the Civil Code's safety net, to cover for forgetfulness or fill out inadvertent gaps, and simplify the document's structure. Or, at least, I can do so in purely domestic deals.

But in international transactions - where the use of English as a "service" language is almost mandatory - you also need to adopt an adequate drafting style, which is customary to common law lawyers, and hence switch from a "synthetic" to an "analytic" mode.

The agreement needs to provide in detail for all possible occurrences of the relationship that it is predicated to govern. From its birth, throughout its life and up to its death. The drafter must, therefore, obey an overarching requirement for comprehensiveness, while not foregoing clarity.

Alas, drafting is hardly a scholastic subject. Law schools and academic treatises focus on the teaching of important, yet mainly theoretical aspects, drawing from scholarly interpretations and judicial precedents. Equally important fundamentals of the practice of law are often neglected and left to professional experience.

Mastering the techniques of good legal writing, and especially so, contract writing, is an invaluable instrument of a lawyer's toolbox. Practical experience is king, but a didactic framework can only improve the outcome, and, ideally, spare self-taught mannerisms and mistakes.

And here comes the importance of works such as Bhumesh's volume, which brings order into chaos, and provides a fundamental pilot book to those who adventure into the sea of contract drafting.

So, rather than a "sanity clause", Bhumesh's "Practical Guide to Drafting Commercial Contracts" is a prophylaxis for sanity, one that every commercial lawyer should strictly adhere to, for the benefit of his clients and for the sake of the legal profession.

My very best wishes,

Giampaolo Salsi
Managing Partner (Milan), K&L Gates

Praise for the Book

"Bhumesh Verma's *Practical Guide to Drafting Commercial Contracts* is indeed a brilliant piece of work to understand the basics of drafting. The book provides a bird's eye view of the wide range of prerequisites and trends in drafting of commercial contracts; encompassing both the traditional as well as the nascent issues in the field. This book comes at an opportune time and provides the reader the much-needed comprehensive understanding in regard to the drafting skills. My good wishes for his current work and upcoming projects."

Prof. (Dr) Vivek Khare
Registrar & Dean, Jagran Lakecity University

"This wonderful outline on drafting of the commercial contracts written by Bhumesh is a supreme work in its class. A book that showcases and covers all the minute details and has been written in a format well suited to all the audiences ranging from students to the professionals. This book surely is a must prescribed work for the new entrants in the legal field. The book has covered all the basic concepts and has clarified the concept in a very simple yet exhaustive manner. I wish Mr. Verma all the best in his endeavour and pretty sure that this book is going to be a huge success and will receive wide accolades across the legal and financial platforms."

Prof. (Dr) Mona Purohit
Head of the Department, Department of Legal Studies & Research
Barkatullah University

"This excellent book by Bhumesh covers nearly all aspects of drafting commercial agreements - everything from spell check and grammar check to page numbering and headings, to more technical matters about dispute resolution and limitation of liability."

Nick Gould
Partner, Gunnercooke LLP, London

"Drafting is an art and that every artist has her own way of doing it. This book gives law students and practitioners the tools to make their drafting an actual piece of art. The world has changed and written agreements are part of everybody's life. This book is written in a very simple and plain language that makes a pleasure reading it and it could have been written only by an experienced practitioner like Bhumesh. I recommend every lawyer (whether experienced or not) to read this book which gives suggestions and tips also to the most experienced practitioners. Example clauses are extremely useful and helpful to draft an agreement in plain and simple words."

Giuseppe Broccoli
Partner, Mora & Associati Studio Legale, Milan

"Bhumesh Verma's book on Drafting Commercial Agreements is a little gem. In simple language, his book teaches you the nuances of drafting agreements. This book will help you master the "craft of the draft". I recommend this book to all involved with drafting, vetting or litigating contracts."

Hasit Seth
Counsel, High Court of Bombay

"In today's world, every commercial transaction needs to be backed by an agreement. This book teaches valuable fundamentals to enable you to independently draft and negotiate agreements of all complexity. It is certainly a precious possession in the hands of students and young professionals. Highly recommended for law, finance and management professionals."

Dinesh Jotwani
Co Managing Partner, Jotwani Associates

Preface to the Second Edition

The primary objective of this book is to make the reader (you) understand what is drafting, why is it needed in today's business world and what are the basic points to be kept in mind while drafting a commercial agreement.

You may or may not be a lawyer. However, today even non-lawyers (who could be senior officials in corporate houses) have to negotiate, peruse or review commercial agreements. This book is written with the perspective of its usefulness for lawyers as well as non-lawyers. Therefore, you would find very few references to legal provisions.

For lawyers, this book attempts to supplement the theoretical knowledge attained in law colleges with practical knowledge of the author.

The book does not intend to provide legal opinion on any issue, just practical guidance for drafting. Therefore, nothing in the book should be read as legal opinion. Specific legal advice should be sought on an issue, whenever in doubt.

Although the book features some sample clauses and agreements, every draft is far from perfect. Examples are just, you know, examples. You have to modify it to suit the circumstances of the assignment in hand and draft as per the guidelines provided in the book.

The first edition of this book received amazing response from academicians, students and professionals alike from India and abroad. This book now adorns most of the premier law and management institutes in India and even abroad. I have also been inundated with numerous requests from educational institutions, corporates and professional organisations to conduct workshops on the subject. Even the National Productivity Council (Govt. of India) has invited us to provide practical training on the subject to students and professionals to enhance their productivity.

I wish to thank the fraternity for their response and suggestions for the second edition of the book. Based on these suggestions, we have added new chapters on Damages, E-contracts, Negotiation and Intellectual Property Rights.

Special thanks to my research team - Baswanth Mohan and Shayonee Dasgupta in particular. Many young entrepreneurs from online legal education platforms in India have provided good suggestions for the book, be it, Ashwin Madhavan, Abhyuday Aggarwal, Tanuj Kalia or Ramanuj Mukherjee.

Some of my best friends and contemporary legends of corporate practice have been kind enough to write the Foreword to this book - Sarosh Zaiwalla and Giampaolo Salsi, for this edition, and Anand Desai, for the first edition of the book. I would like to share that I have always interacted with Anand on the opposite side of corporate transactions and negotiating contracts, but we share immense mutual

respect. Review comments received from friends have been published on the back cover - their inputs are no less important. I also thank Massimo Zamorani, Nick Gould and Giuseppe Broccoli for being encouraging and supportive of my writing endeavours through the years. The list is endless, actually, I could go on …

Vikesh Dhyani, Shreesh Chandra and Priyanka Srivastava from Oakbridge team deserve kudos for their continuous engagement and support in bringing out this reader friendly book. Priyanka in particular has been chasing me for the last 6 months, coming up with new ideas and suggestions every now and then.

No goal is achievable without family support. My family has been very encouraging in all my efforts, be it practice, writing, workshops and so on; always allowing me time and space to pursue some of my passions, even if it were to reduce family time sometimes. Love you all - parents, Alka, Harshita and Parth.

Happy reading!

Bhumesh Verma
New Delhi

Foreword to the First Edition

The pen is mightier than the sword… confusion in an agreement can be confounding… and result in unforeseeable consequences… surely that cannot be the intent while drafting a commercial agreement!

Legal drafting is an art, and not a mere skill. Effective legal drafting entails understanding how the transaction will actually work, familiarity with applicable laws and their implications on the transaction and the commercial agreements, knowledge and command over language, application of common sense, and the ability to concisely articulate these in a document, or a set of documents. Ideally, the draftsman should also be able to take into account how the applicable laws have evolved, and may continue to evolve during the life of the commercial arrangements.

Agreements must reflect the intent of the parties as clearly as possible, including the implications of delay in performance or non-performance by any party to the transaction. They must also reflect the possibility and consequences of any change in law or circumstances beyond the control of the parties to the transaction. Thus, commercial agreements need to be drafted in a disciplined manner, and care needs to be taken that repetitive or contradictory provisions are avoided. The draft should be as precise, and comprehensive, as the draftsman can make it. In the course of negotiation, the implications of any change in any part of the agreement must be thought through, and any other provision of the agreement that needs to be correspondingly changed must also be addressed. Agreements should also provide for the consequential rights and responsibilities of parties if the contractual relationship breaks down or when the contractual term expires.

With the advent of computers, the tendency to "*cut copy paste*" clauses without examining their applicability and effect upon the agreement has become too common. Using precedents from a time prior to changes in law and regulation is again something one sees too often. An example in documentation and structuring an FDI transaction could be that the draftsman is not aware that optionally convertible debt instruments, or securities issued with a fixed return assured to the non-resident subscriber by a resident of India are currently not permitted.

Contradictory provisions in an agreement or in a set of agreements that comprise the "transaction" have resulted in much litigation and case law, delay in performance, pain and expense for the parties. For example, using the word "*notwithstanding any other provision*" would mean that the clause containing such expression would override other provisions in the agreement.

Provisions such as "*good faith*" and those which are popularly known as "*boilerplate clauses*" also need to be appropriately drafted and not forgotten about, since usually these are only discussed and finalised at the end of protracted negotiations. These are largely legal matters, and clients are unlikely to provide much input on these. That increases the responsibility of the lawyer while drafting these provisions.

Finally, a good draftsman is one who is able to anticipate how an agreement is likely to be interpreted by a Court, and try and ensure that the Court will decide as per the clear intent of the parties which must be easily found in the agreement.

Bhumesh has captured the essential requirements for drafting a commercial agreement in a lucid and reader-friendly style. Applying his extensive experience, he has covered a wide range of relevant aspects that go into making an effective agreement. I am sure readers will find this book very interesting and useful.

With best wishes,

Anand Desai
Managing Partner
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About the Author



Professional Qualification:

1. Bachelor of Laws (LL.B.) 1994: Campus Law Centre, Delhi University.
2. British Chevening Scholarship Program for Young Indian Corporate & Commercial Lawyers, 2000 at College of Law, York, UK.

Professional Memberships:

1. Bar Council of Delhi
2. Delhi Bar Association
3. Association of British Scholars
4. Chevening Alumni India

Bhumesh Verma is the Managing Partner of Corp Comm Legal, an independent Indian law firm headquartered in New Delhi. He is also the convenor of Global Business Lawyers' League and The Indian Lawyers' League.

Having started his career at Ajay Bahl & Co. (now part of AZB & Partners), Bhumesh went on to become partner at some of the leading Indian law firms in India. He received the coveted Chevening Scholarship by the UK Government in 2000 whereunder he studied in College of Law, York and was a visiting lawyer with Ashursts' London office.

With over 25 years' experience, Bhumesh is one of the leading Indian senior corporate practitioners ranked in the 'A List' of the Top 100 Indian Lawyers by India Business Law Journal for years, most admirable lawyers by Insights Success, among others. He regularly advises Indian and foreign clients on inbound and outbound mergers and acquisitions (M&A) transactions, private equity, venture capital, joint ventures, technology transfer, external commercial borrowings, corporate structuring, strategic advice, regulatory approvals, corporate advisory, due diligence and related fields.

Despite his hectic schedule, Bhumesh finds time to share knowledge and experience with the fraternity. An avid reader, a sought-after speaker and prolific writer, he has contributed to in-house journals of many international law firms on Indian laws and published more than 400 articles so far. These articles are very keenly followed and appreciated by global professionals, students and academia alike. Bhumesh is also a guest faculty with some of the most premier law and management institutes and is regularly invited to conduct workshops for students and professionals on contract drafting and corporate laws. He lives in New Delhi with his wife and 2 children and can be contacted at bhumesh.verma@gmail.com.

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PART 1
WHAT

CHAPTER 1

DRAFTING—THE DESIRED TRAITS OF A DRAFTSMAN

"To me, a lawyer is basically the person that knows the rules of the country. We're all throwing the dice, playing the game, moving our pieces around the board, but if there is a problem the lawyer is the only person who has read the inside of the top of the box."

—Jerry Seinfeld

To put it in simple words, drafting skill is one's ability to express one's thought process in writing.

No other profession in the world probably demands this ability more than the legal profession. A good lawyer is one who can express his client's case most effectively by way of spoken or written words. Legal knowledge and acumen to translate that knowledge into words are a lawyer's greatest assets.

Metaphorically speaking, every case or a transaction is like a new canvas for a lawyer. A lawyer is supposed to paint his client's case on the canvas. The painter must be clear in his thoughts, artistic and the meaning of the painting must be conveyed to those who see it.

On a practical note, the language and tone of every commercial agreement must be clear and unambiguous. As a draftsman, one should bear in mind that an agreement is never drafted for the academic pleasure of its author. An agreement is a living thing (almost)—it has to live and face the scrutiny of several interested parties (the client, other party, other party's lawyers, adjudicating authorities, etc.). Therefore, it has to be carefully crafted so as to protect your client's interest to the utmost, be legally compliant and legible to all who come across the document.

A lawyer must choose his words relating to his work with great care, be it drafting a legal document, simply writing a response to an inquiry, sending a legal notice or anything else. A lawyer must write in a clear and concise manner.

A lawyer has to be an excellent wordsmith and storyteller. My friend, Avinash Ganatra, a seasoned lawyer in New York, sums it up very well—"Every word should deserve its place in your sentence." Not a word more, not a word less.

If a lawyer's writing is loose, incorrect, ambiguous or vague, it can lead to multiple interpretations, which is a kind of self-goal for his client. I remember a petition ending with "The Petitioner undertakes to avoid any orders issued by this Hon'ble Court." "Avoid" was used instead of "abide by"!

The difference for the client due to such an error could be as drastic as jail or bail.

Writing skills play a major role in the drafting of commercial agreements—negotiating skills are no less important but if you can articulate and draft well, it leaves little scope for the other party to come up with any objections or anything to counter your position. Nothing should be taken lightly as the contents of an agreement are legally binding between the parties.

Apart from the significant monetary aspect, commercial agreements may even affect the business and reputation of the parties. For these and other cogent reasons, people prefer to engage experienced lawyers to draft high stake agreements. A lot of time, money and energy goes into negotiating and then drafting or the other way round. Therefore, a draftsman carries a big burden of work as well as expectations from the client.

However, drafting a document is not only about precise and correct language or formatting and sequencing skills. A draftsman also needs, *inter alia*:

(i) Legal knowledge;

(ii) Knowledge about the client;

(iii) Knowledge about the client's business;

(iv) Client's expectations from the proposed transaction;

(v) Business acumen;

(vi) Analytical skills;

(vii) Eye for details;

(viii) Ability to read between the lines;

(ix) Improvisation skills;

(x) Reasonableness;

(xi) Ability to put himself in any party's shoes and think accordingly; and

(xii) Foresightedness.

In legal language, we can say, the above list is only indicative and not exhaustive!

Rome was not built in a day. Drafting is something which can be learnt, cultivated and improved with practice. Like sportspersons or other artisans, your drafting skills can also improve with time and experience.

Once you have experience of drafting or negotiating different kinds of transactions, you can avoid a lot of undesirable flaws / lacunae at the drafting stage itself and create a mutually acceptable and beneficial agreement. However, experience takes time. Till then, keep working on it.

Someone has said for lawyers: "You win some and you lose some, but you get paid for all of them." However, it is not moneymaking alone that makes a lawyer successful, reputation is as important.

PART 2

WHY

CHAPTER 1

BENEFITS OF WRITTEN AGREEMENTS

"A lawyer is a person who writes a 10,000-word document and calls it a "brief."

—Franz Kafka

Before getting into the drafting mode, one needs to understand the need of such an exercise.

A small legal angle here - all contracts are agreements but not all agreements are contracts. An offer from a party which is accepted by the other party is an agreement. However, when such an agreement is in accordance with law (and not opposed to public policy and couple of other legal considerations), it becomes a contract.

Throughout this book, we shall use the word "agreement" instead of a contract because we assume that the parties entering into a commercial agreement intend to be legally bound by it. We confine our discussion to legally enforceable agreements (*i.e.*, contracts) only.

All of us would have read in text books about the good old times. Many would have learnt from their elders about the good value system then.We learn that there used to be a time when people and their lives were very simple. Things (all or most of them) didn't have a price tag on them. Since there was no fixed price for anything, there was no money to be paid or exchanged. There was barter system—people used to exchange their respective goods and services. Apart from the barter system, people were mostly honest and innocent.

It goes to the extent that it is said (metaphorically, I suppose) that the Indian society was so just and fair that even a lion and a goat could have water from the same pool. People were not scared or apprehensive of each other generally, nor were there any apprehensions of being cheated or taken advantage of.

People did not lock their drawers, almirahs and doors, as there were not many tangible assets, nor thieves. Sounds far- fetched? Well, I can vouch for some of it. We were not used to locking the outermost door of our house in my New Delhi locality till about 40 years back. A mere latch would suffice as nothing untoward happened.

Similarly, in business circles, there was a time when business deals could be struck with a simple handshake or over a cup of coffee or a mug of beer (depending on the choice of beverage and the time or setting of the meeting). One used to get what one was promised.

'A gentleman's promise' was an oft-quoted cliché. One was not sold counterfeit goods. One would honour one's word—even if it was cumbersome, financially or otherwise. Indian scriptures are full of incidents wherein the hero (including Gods) would undergo innumerable hardships but never ever budge on a promise.

"Raghukul reeti sada chali aayi …", remember? However, all good things come to an end at some point of time.

The world is not the same world any more,neither socially nor business-wise.

There is an ever-rising risk in the society and in business deals.

Now people lock their drawers, almirahs, doors, laptops, mobile phones, vehicles, all valuables, install security cameras at their homes, near their cars, etc. Security, privacy, lack of commitment or fairness : apprehensions galore. Even the government and police who are responsible for public safety and security, ask us to be safe by adopting these measures. Therefore, one cannot depend entirely on the government or the police to secure / defend us nor on the goodness of the people one is doing business with.

Business deals are now being documented by and large.

Why?

The reasons are too many, actually.

Times change, memories fade, rules of the game change, people change, people lie; all sorts of reasonsare there.

Unless you document an understanding between two or more parties, it's your word vs my word, if there is a dispute. Whom should the people or the court believe, if approached in such a case to mediate or adjudicate?

The first thing a lawyer asks a potential litigant is, "Do you have anything in writing?"

But why do disputes arise in the first place? Let us examine few reasons.

People change. The change has two dimensions—change of people or change in people.

Change of people. Professionals working on a commercial relationship change with lapse of time. A professional's average tenure with an employer has come to about 3-5 years at the most. Their successors do not know nor bother to understand what was the original understanding or reason behind it or whether there was an understanding at all and so on. They do not know what bargaining chips were used and why a seemingly unfair deal to their organisation was entered into. They go only by what is apparent to them and don't care about past commitments and understandings. Sometimes, the party which is at receiving end of such treatment feels cheated and disputes ensue.

Change in people. Even if same people continue to work on an assignment and project, over a long period, their nature, mindset, pressure from within their own organisation or new owners, or other internal and external circumstances may change expectations and requirements from the other party. This may disturb the equilibrium between the parties, which may have been a result of lengthy discussions and negotiations.

Times change. Changes in the society cause people's behaviour to change. Sometimes, people stop caring about their reputation or commitments, become short-sighted and immediate monetary or material benefit is more attractive. If there is a likelihood of making a kill in one deal by ditching an old collaborator, many would not care about the prospect of losing out on a time-tested, reliable, reasonably remunerative arrangement.

Law changes—what was legal yesterday may not be legal any more. New laws are enacted, ordinances are issued, old laws are getting amended and repealed more than ever before. So the business model or economic understanding between the parties may not be in accordance with new laws.

Economic scenarios, costs and benefits also change.

Memory fades. What was mutually agreed between the original parties may not be remembered or understood by their respective successors, assignees, transferees, etc. Successive generations tend to be more practical, business-minded and materialistic. As and when the old guard passes into oblivion, the new generation recalibrates its working style, business modeland restructures lots of things.

Relationships change. Relationships between individuals, companies, groups, States, countries, regional blocks change over time. Therefore, no relationship can be eternal. There are commercial and political reasons behind change in parties' stand on various issues.

To top it all, the promoters or stakeholders, while negotiating a deal, may not know, understand or care for the implications, nitty gritty, sequence and timing of their business deal. They are only interested in striking a deal on a macro level. If there are 50 fundamental issues that need to be discussed and taken care of in respect of a deal, the promoters may not have the knowledge or time to discuss, let alone finalise even 10% of them.

Often, over a cup of coffee, they discuss the business scenario and the proposed deal in its barest shell form, shake hands and say, "we have a deal on our hands". Thereafter, all the legwork, detailed negotiations and finalisation of agreements is left to their colleagues and / or consultants. While they only agree to enter into an agreement with a handshake, the real burden is on their professional teams!

Mostly, the parties to a business deal engage lawyers and / or accountants to help them out with due diligence, negotiation from a micro standpoint, drafting and finalising a deal. It is the job of the professionals to discuss and finalise the finer details of the deal and flag any unfavourable issues and bring them to the notice of their clients.

Since the professionals examine the many aspects of a deal from sensivity, commercial and legal enforceability angles, they may take time to mull over their clients' interests, so the professionals are sometimes seen as obstructionists to a deal. However, they are the facilitators. Interestingly, sometimes there is more intense discussion and bargaining on the professional's fees than on the business deal.

For an example, the marketing people in any company are driven by their periodic targets and want the deal they are after to be clinched at the earliest. The accounting / legal / compliance teams (if there are any within the company or outside consultants engaged for this purpose) query them on the various aspects of the deal. The marketing team complains of other teams' obstructionist nature and blames them for losing out on time or sometimes for losing out on the deal itself.

The point which the marketing team is missing here is that it is better to have no deal than having a deal which has the potential of causing considerable financial or reputational damage to the company. The professional advisers have to take a holistic view keeping in mind the compliance, legalities, risk assessment and other such factors.

Indeed, if the parties draft and discuss a commercial agreement with the help of professionals, they are bound to take longer to close their discussion and get on with the proposed business. However, while negotiating an agreement, they will understand the same thing in the same spirit, which may be missing in a simple handshake or moving ahead with a transaction without contemplating the pitfalls involved.

So, how does a written agreement help?

Although an agreement does not necessarily have to be in writing, oral contracts are very difficult to enforce because there is no clear evidence of the respective understanding of the parties, the offer, acceptance, consideration and so on. Whose version of understanding or events should the adjudicating authorities believe in such cases:it becomes 'his words against mine'.

The idea underlying a written document is to strike a balance between different parties' rights and obligations and to ensure an efficient enforcement thereof, if need be, before an appropriate redressal forum.

This reduces the scope for gaps in each party's respective understanding on the important issues that are not contemplated or discussed in a simple handshake or broad discussions. The professionals review every deal from a micro level and their inputs also bring in certain new elements for discussion, which the parties even in their wildest imagination, may not have bothered about or contemplated.

Besides having a document to support one's claim during litigation, there are many other reasons to have a written contract. A written contract ensures that all of the terms of the agreement are documented. If a disagreement arises, then there will be a document that the parties can refer to in order to get their contractual relationship back on track. In short, a solid written contract can save money and strengthen a business relationship by avoiding litigation altogether.

For a contract to serve the above-mentioned purposes, it must contain sufficient details covering all possible points of dispute which may arise at a later stage. For example, the respective rights and obligations of each party should be clearly demarcated, leaving no scope for ambiguity or diverse interpretations. Similarly, details such as the timelines for parties' performance, terms and timing of payments under the contemplated transaction, termination or remedial rights, rights of the non-defaulting parties upon default by the other party, etc, should also be clearly stipulated.

Incorporating detailed, clear and specific terms in an agreement serves two purposes— firstly, they help guide performance and secondly, they limit ambiguity in the event of a dispute. In fact, whether a deal which can be documented is reached can be ascertained during the negotiations itself.. The questions that oral contracts often leave unanswered may sometimes result in a situation, wherein the parties begin performance under an "agreement" and after having spent a considerable amount of time and resources, discover that there exist major areas of disagreement between them. Negotiation over the terms of the contract would have unearthed these issues in time without wastage of resources. In other words "the devil is in the details".

Some agreements involve multiple parties and complex relationships among them. Owing to the presence of many parties in the agreement and competition in the market, each party is under immense pressure to extract maximum value and at the same time provide most services for least consideration. In such circumstances, it is very important that each party understands its respective role and responsibilities under the agreement. The primary function of a contract is to record these understandings.

The negotiation and drafting process involves discussion on the scope of the goods / services to be delivered under an agreement, compensation, schedule and terms and conditions whereunder the parties would operate and this requires the parties to communicate their respective views on such issues.

It is important for each party to understand the other parties' intentions and motives. The process of contract drafting and negotiation provides an opportunity to assess the other parties and to decide if it is worthwhile to work with them. Sometimes, the true colours of a party are out during negotiations itself. The process affords each party a chance to assess whether other parties are reasonable, business-like, experienced and honest. The parties should exercise due diligence in selecting their business partners; this is the best way to prevent loss. Better understandings promote a better relationship.

Many potential commercial relationships break down during the course of negotiations itself, as the most critical issues, deal breakers or roadblocks are identified during this process. It is aptly said that if you cannot survive negotiations, your business relationship isn't likely to sustain the pressures of working together. The earlier such a relationship terminates, the better it is.

The parties can set rules and regulations to suit and govern their relationship under the agreement. In the absence of any written rules in this regard, in the event of any dispute between them either party can seek court intervention through litigation. However, parties cannot stipulate anything in the agreement that is illegal or against public policy.

Contact drafting process also provides an opportunity to the parties to discuss the risk involved in the contemplated transaction. Well-informed parties are more likely to arrive at a reasonable allocation of liabilities among themselves.

Sometimes, parties continue to engage with each other on the basis of a handshake. Some service providers hesitate in insisting on a written contract with a good or sizeable client for the fear of losing them. They feel that asking for a contract will offend the client and undermine their long-standing relationship.

On the contrary, parties with good and old relations should not shy away from taking steps to safeguard their own interests and also defining the rights and duties of all parties. In the event differences or disputes arise between the parties it is much easier to just refer to the document, locate the remedy and resolve the matter simply, expeditiously and professionally, without any hassle or cost of litigation.

A party without a written agreement in hand and relying only on a handshake is at risk. In such a case, the party is left with little choice but to depend on the memory, sincerity, honesty and integrity of its counterparties. Some parties execute written agreements only when the stakes are high. They would rather avoid the cost in respect of relatively smaller transactions or projects where the return is small. However, the cost and effort involved in a written agreement may be very small compared to the liability that may arise if it is taking more than it can handle commercially (for example a prospect of unlimited liability), and something goes wrong under the informal arrangement. It is the party's reputation which is at stake and there is a huge risk which it is undertakes in the absence of a written agreement.

Frequently, we come to know of disputes between co-promoters of companies and startups. Many ventures start small, mostly among friends or family members, who do not feel the need to execute a formal arrangement or agreement. In fact, in the initial stages of their venture, even a suggestion to formalise their relationship sounds quite offensive to them. This is simply due to the reason that they cannot fathom how big (or ugly) things can get if not taken into account from the initial stage.

With one big order or one big client or one big funding round, the whole scenario can change overnight beyond anyone's wildest imagination. Disagreements or power struggles may emerge and if the business is doing well everyone wants his pound of flesh (or more) but when the business is goes down then everyone wants to disown it. Every day, we come across close friends or siblings or even parents / children fighting ugly courtroom battles, sometimes despite having agreements. The plight of those without formal written agreements isn't hard to imagine in similar situations. A negotiated and well-crafted agreement may come to the rescue of parties in such events.

To make the enforceability stronger and to avoid ambiguity, many statutes make it mandatory for an agreement to be in writing. However, even if not legally required, the parties are well advised to execute all commercial agreements in writing. A good corporate house makes it a matter of practice to enter into well drafted written agreements with all parties it wants to do business with, be it customers, vendors, sub-contractors and so on.

Drafting and negotiating alone do not make a contract enforceable. It is important to engage a person who is well versed with this craft so that a balanced draft is in place and no party has a feeling of having given up its fair share of the deal. All parties should come out happy after negotiating and executing an agreement.

All in all, shaking hands in agreement is good, but not enough. However, shaking hands and announcing, 'We have a deal' should be supplemented by 'Get it in writing'.

PART 3

WHERE

CHAPTER 1

AVENUES FOR LEARNING DRAFTING SKILLS IN INDIA

"The minute you read something that you can't understand, you can almost be sure that it was drawn up by a lawyer."

—Will Rogers

Mostly, only academic and theoretical knowledge is imparted at Indian law colleges. Students are left to fend for themselves as far as practical skills are concerned and are expected to learn drafting and other practical skills on the job itself. Many, or should I say most, law colleges in India still do not have a specific module / credit / paper for teaching drafting skills. My discussions with today's faculty and students indicate that the situation has not improved during the last 3 decades and may last a few more!

Students who are lucky and get internship with good litigation or corporate professionals learn basic drafting skills during internships. Some students learn these skills from their parents or close relatives who are lawyers. However, students who are first generation lawyers or those who do not get such internship opportunity, have to learn it on the job only. It is like a chicken and egg story. You do not possess a skill; you do not get your desired job. If you get a job but not the skills to fulfil your employer's / client's expectations, you cannot succeed.

In India, till about mid - 1990s, before the telecom and internet revolutions, there were not many computers in Indian law offices. Drafting took place by means of handwritten notes or shorthand dictation. All law offices had steno / secretaries. Even the stand-alone typists outside every court premises used to have fair amount of court pleadings and agreements.

So, how the whole process worked was - stenos / junior lawyers would first take dictation from the senior partner and then type it (in case of stenos) or get it typewritten by typists in the court premises / office. The draft was then proof-read, re-read and re-typed several times. The corrections / mark-ups took place on actual paper copies.

Several rounds of reading of such drafts used to result in considerable on-the-job legal education as well as development of drafting skills for law trainees and freshly qualified lawyers. They learnt virtually everything from their seniors' drafts—applications, complaints, pleadings, agreements and so on.

Even while recycling the used papers for printing or working on the other side, sometimes you came across interesting drafting (sometime unrelated to your present work) on the earlier used side. It used to be so much fun to learn from these nuggets of wisdom.

Once an agreement was executed, a copy thereof was kept in the office as a treasure to be taken out as and when there was a need to draft a new agreement on same / similar lines. The whole agreement was re-written / typewritten again with changing the names, particulars and some conditions of the agreement.

This process was indeed very tiring, taxing and cumbersome. The worst part was, if there was no precedent readily available, one would need to refer to a drafting book and / or dictate a new agreement afresh.

This system used to workwell. Almost every young lawyer of that era learnt basic drafting skills the hard way, on the job and the clients could easily distinguish good lawyers from the average ones.

Then, in late 1990s came the telecom revolution in India. As with many other professions, access to computers, internet, database and precedents came as a boon. Lawyers lapped up the new facilities and information flow —be it litigation lawyers or those on the corporate advisory side. A lawyer's life became simple, when it came to drafting. The need to work on anything from scratch or reinvent the wheel diminished drastically.

Bit by bit. It started with one computer in each lawyer's office. First few petitions, documents and agreements needed to be typed down. Thereafter, one would copy the text of an older document to work on new documents. Floppy disks were used to copy data from one computer to another.

It gradually increased to one computer for each professional in the office and then extended even to secretarial and support staff.

And, as they say, the rest is history. The legal world and drafting process was never the same again.

Somewhere in the world, someone or the other must have worked on a draft of a document similar to the one you are supposed to draft. Using search engine or database you could find such a draft agreement and start working on it. A good percentage of Indian lawyers are now getting education at foreign law colleges, interning or working with foreign law firms and thus have access to the drafting techniques used worldwide. Further, Indian lawyers and law firms have also learnt from their interaction with foreign law firms on international transactions.

One also has access to the work which office colleagues have already done. So, if a precedent is available within your office, you could go ahead and start filling in. Else, one could s ask friends working in other offices or firms for a draft..

Today the norm (rather than exceptions) is - just pick up any draft from anywhere, cut and paste, substitute the dates, place, parties' names and particulars, and one thinks the job is done. One believes it to be good because it is quick, easily accessible and supposedly reliable. Since the draft has already been executed (with no idea, how and where), it's efficacy or enforceability is unfortunately not doubted or questioned.

There have been instances where I have had colleagues quoting legal position as per foreign laws on a query pertaining to Indian law, or coming up with multiple definitions of the same person/party within one agreement, or with various definitions in a draft which are not used anywhere in the agreement, or non-existent annexures or exhibits quoted here and there. The list of such errors is very long and the reason is that these errors are a result of "cut and paste" jobs. Therefore, it is necessary to draft each agreement with careful application of mind.

Each older generation is heard saying that their generation was better than the new generation. I am not too old as of now - at least I think so, being in the middle of my active practicing career. However, even I feel the process of learning drafting skills was much better in earlier years than today. In earlier times, seniors in the office sometimes actually had the time and inclination to talk to the juniors and impart some drafting skills on a one-to-one basis.

Today, no one in the college or in your office has the time, energy or inclination to guide you and impart basic knowledge or skills. It is assumed that you have learnt that much in law college and internships that you are job ready and from day one you are expected to churn out agreements with the help of precedents, if any. Even firms which do not have any similar agreement in their own database expect you to draft on your own. On the other hand, your college thinks that having provided you enough academic knowledge, you should learn practical skills at your workplace.

Practical skills, therefore, are nobody's baby. Neither your college nor your office have the time and resources to teach you this elementary and one of the most important aspect of your professional skillset.

I understand and acknowledge that with the advancement in technology and a considerable wealth of experience (in terms of precedents) readily available with us, we should not have to go back in time and start from scratch.

We should use the existing precedents, databases and whatever other information and tools are available to us. However, all this should enable us to come out with a better product and not a poor cut-and-paste job.

We must try to cut time and costs from all our professional endeavours, not cut corners. Quality of your work should actually get better because technology has made your job much easier and expeditious. You've got so much at the click of the mouse. With all this support at your disposal, your drafting should be world class. Technology and gadgets should be enablers and not part of the problem or the problem itself.

However, experience of most professionals' clients is to the contrary. They often complain of poor drafting standards due to oversight, poor cut-and-paste output and various other issues.

Today's students expect their institutions to ensure good internships, campus recruitment and generally make them more employable in highly competitive job market. Lack of good drafting skills seriously affects the employability and growth prospects of law students.

Taking this aspect into consideration, lately some Indian educational institutions are waking up to the ground reality and taking drafting skills of their students seriously. Some of them have started to collaborate with senior practicing professionals and inviting them to impart fundamental practical knowledge to their students, make them aware of pitfalls and suggest practical measures to improve their drafting skills.

Interaction with industry experts not only gives the students insights into drafting skills from a practical perspective but is useful from many other aspects as well.

Another new phenomenon is online legal education. I consider it to be a boon for the students and professionals alike. In today's e-age, you can learn certain professional skills in addition to your regular law course in the privacy of your home or hostel at any convenient time. The process of continued legal education ('CLE')—learning, unlearning and relearning should continue throughout one's professional life, else you couldr become outdated.

You may be interested in a particular course, particular institution or a particular coach. However, sometimes it may not be possible to pursue certain things due to lack of time, unsuitable timing, accessibility, finances and distance and many other reasons. In online education model, participants can even attend live classes at a distant place or institution or with their preferred faculty.

The online education courses not only enhance your knowledge, but certificates and accreditations awarded thereunder also help you in demonstrating your skills before existing and prospective employers.

Online courses may have some limitations for students who prefer live and on the spot interaction with the guide or coach so that any doubts are cleared straightaway in an interactive way. Technology may be an enabler or a supplement; however, I believe it cannot be a replacement for traditional classroom teaching in the near future. Though technological advancement is beginning to make remote interaction also possible now.

All said and done, the proof lies in the taste of the pudding. There are too many fake institutions, universities, degrees, diplomas, certificates floating in the world. Therefore, it is not the number of qualifications and certificates (genuine or fake) that you accumulate, but the knowledge and skills you possess which is more important. The accumulation of credentials may help you temporarily in standing out in a crowd and getting an internship or a job. However, in the long run, your

knowledge, application and confidence will keep you in good stead. These are the qualities that differentiate between good and mediocre professionals.

There is a senior physiotherapist I have been visiting for few years for treatment of family members and friends. He prescribes some medicines and exercises to his patients like all other doctors. However, he has something to add. He says—Do it as a favour to yourself and take these medicines and exercises seriously, bearing in mind it's your body and your health. You aren't doing a favour to me or anyone else.

Even the best doctor cannot heal you, unless you follow his prescription and advice. You have to take it up as your own cause. Similarly, reading this book will not make you or your drafting skills any better. This is not a reading book—this is a to-do, practical book. Unless you put the guidance into practice and start drafting or reviewing keeping the tips provided herein in your mind, this book or none of the other self-help books or any number of online courses or certificationswill benefit you.

In the next chapters, we will discuss steps for better drafting.

PART 4

BEFORE YOU DRAFT

CHAPTER 1

NEGOTIATION

Negotiation is one of the most important, yet sometimes ignored, aspects of drafting any agreement. The genesis of the word Negotiation seems to be the two Latin terms, "*negare otium*", which literally translates into "to deny leisure". In French and Spanish, deny leisure means "business". In simple words, we may understand negotiation as communication between the parties with the intention to reach a mutually agreed common position.

Negotiation may also be viewed as a dialogue between parties for resolution of disputes and bargain for individual or collective advantage. Examples include using negotiation techniques to resolve crisis such as hostage situations, barricading, kidnapping etc. Negotiation may also be resorted to for settling matters, as an alternative dispute resolution mechanism through Lok Adalats, etc.

The need to find a common position in a contractual relationship occurs because of divergent expectations of the parties to a contract – most parties intend different outcomes (extremely different at times) in terms of consideration, timelines, performance standards, and so on. By engaging in the negotiation process, they try to reach a commonly agreed position so that each party is satisfied.

To this effect, we negotiate all the time in our lives. In fact, Indians take it to extreme points sometimes! We bargain with our vegetable vendor, in electronic showrooms, with banks (for reduced interest rates or waiving processing fee on loans), with prospective employers for better remuneration and working conditions and so on.

Importance of negotiation

Negotiation is an essential skill required to becoming a successful commercial lawyer. A lawyer with effective negotiation skills can turn around a loss into a beneficial compromise. One can overcome the challenges faced by your clients during a transaction by implementing appropriate negotiation skills, which includes a variety of other ancillary skills such as confidence, soft and hard skills, general knowledge, market research and ability to understand the position of the other party.

The significance of negotiation skills cannot be exaggerated. Having said that, a draftsman should approach negotiation not as a competition, but as a compromise in which everyone leaves the table feeling happy, respected and satisfied.

Elements of negotiation

Negotiation needs clarity of thought and presence of mind, at all times. While it is almost impossible to enumerate all the skills needed to be a good negotiator, the Harvard Negotiation project lists seven major elements of negotiation which are as follows:

Interests – A skilled negotiator must be able to extract the common and individual interests out of any fact-situation. Understanding the fundamental needs of the parties and prioritizing them is an important skill for a negotiator.

Legitimacy – A negotiator cannot exploit the other parties involved in the process to benefit his or her client. A good negotiator follows a fair approach to address the concerns of all interested parties and in the process, obtains the best outcome for his client. The result should be driven by legitimate consensus and not by bulldozing the other party to accept the demands.

Relationships – It is important to manage and maintain a healthy relationship with the opposite party, irrespective of it being a successful negotiation or not. No bridges should be broken ever.

BATNA – BATNA is the abbreviated form of Best Alternative to a Negotiated Agreement. Before negotiation commences, a good negotiator must know his BATNA. This enables him or her to know when to walk away and when to stay. A skilled negotiator anticipates the situations where an alternative may be required to obtain consensus. Therefore, the ability to objectively think through BATNA helps a negotiator to carry on a transparent negotiation with all parties.

Options - In a commercial transaction, each party involved has negotiable and non-negotiable demands. The job of the negotiator is to identify such demands, prioritize them in the order of importance. A good negotiator also needs to think of options or choices (at times out of the box solutions) that the parties should consider satisfying their demands.

Commitments – This assumes significance at the concluding stage of the negotiation when the interested parties commit to observe and adhere to the result of the negotiation process. A negotiated position is reduced to writing through a contract.

Communication – The art of communication determines the success of negotiation. A boisterous and rude lawyer cannot be a good negotiator. A confident and dexterous negotiator will communicate in a manner that makes the other party more comfortable. This means that the other party will be more willing to bend to the demands of the negotiator and ultimately lead to a win-win situation for all the parties.

Possible outcomes of negotiation

The possible outcomes of negotiation are "win/win", "win/lose", and "lose/lose". Any negotiation can result in any of these outcomes. The outcome also depends on the negotiation styles followed by the parties.

Win/Win Outcome

A win/win outcome occurs when both / all the parties arrive at a satisfactory result of the negotiation fulfilling their individual goals and expectations. Negotiations targeted towards this aspect lay greater emphasis on the development of a mutually beneficial agreement. A simplistic example would be awarding of a contract at a fair and reasonable price is in the best interest of both the contractor and the party awarding such contracts.

Win/Lose Outcome

A win/lose outcome generally occurs when one party is perceived as faring significantly better at the expense of the other. Such outcomes are due to negotiators failing to anticipate situations beyond the initial transaction. A lack of motivation for the party perceiving itself to be losing out in the negotiation process to foster a long-term relationship can also result in this outcome. To illustrate, you may buy a second-hand sports bike at a very low price after negotiating hard with the seller. You realize it later that you will have to spend a fortune for its service and maintenance without any recourse to the seller.

Lose/Lose Outcome

A lose/lose outcome is the result of a deadlock between the negotiating parties. Such an outcome generally occurs when both the parties fail to reach a conclusion or mutually agree to the terms and conditions. To illustrate this, in a transaction involving equity infusion in a company, the investor wants to appoint two directors on the board of the company to exercise more control while the investee company is willing to allow the appointment of only one director. Ultimately, the transaction falls through - the investor loses the opportunity to gain financial returns and the investee loses the opportunity to receive a much-needed infusion of capital in the company. No one gains out of such an outcome and this is certainly an avoidable outcome.

Negotiation of commercial contracts

The most negotiated elements of a commercial contract are: (i) representation and warranties, and (ii) indemnities.

If due diligence is conducted to facilitate a commercial transaction, some key issues / concern areas emerging out of the due diligence are listed. The party subjected to the diligence or its promoters are confronted with these issues and the party carrying out the due diligence seeks adequate representations and warranties as

well as general and specific indemnities to address its concerns. Thereafter, the parties agree on the scope of representations and warranties and indemnities.

The negotiation strategy adopted depends on the kind of coverage provided by the indemnity, the type of indemnity and the bargaining power of the negotiating parties. Similarly, the strategy to negotiate the representations and warranties also depend on the bargaining power of the parties and findings of the due diligence.

It may be tough to lay down an exhaustive list of factors to bear in mind while negotiating a commercial contract. However, here are some pointers:

Use of language – As mentioned at multiple places in this book, you must always use business language while drafting a contract. Avoid unnecessary jargons and Latin terms. Using simple to comprehend language also allows the parties to fully understand the implications of any provision. Only if you understand a provision comprehensively, can you negotiate to reach the desirable position.

Use facts, not feelings - Negotiation is an emotionally draining process. Having said that, it is important to dissociate your feelings from the facts. A successful negotiator avoids letting an unpleasant personality drag down the negotiations. It is also important to view negotiation as a means to achieve common goals and not a warfare technique.

Use an 'offer-concession' strategy - You need to negotiate in a manner that leaves the other party feeling that they have made a good deal. Do not start negotiations by revealing your BATNA. When you make the other party feel that they have won something, it is much easier to reach your desired outcome.

Prioritize - A contract may have innumerable aspects that could be subject to negotiation. However, such an approach does not work in reality. It is important to identify the key asks of your client and negotiate accordingly. There is no point to lose sleep over minor points which do not substantially change your position. Keep your eye on the prize - the absolute non-negotiables and better forget minor issues.

Industry standards are easy to negotiate - If you are negotiating an agreement and you have considerable industry knowledge / experience, it is much easier for you to justify your position pointing out that these are in line with the market practice. It shifts the burden on the other party to convince you as to why an exception should be made in the present case. Therefore, you must know your position and your audience before you decide on the negotiation strategy.

Commonly negotiated clauses in some of the key agreements

Set out below are the commonly negotiated clauses in some of the key commercial agreements that you may come across.

Share Purchase Agreement

- Payment of consideration - whether to be paid upfront or in tranches
- Escrow mechanisms - whether the consideration should be in escrow during the time certain obligations are fulfilled by either party
- Representations and warranties provided by the seller
- Covenants
- Indemnity
- Pre-conditions to reach the Closing Stage (government approval, lenders' approval, SEBI approval, lifting of some lien on subject shares, etc.)
- Post-closing obligations

Loan agreement

- Conditions precedent to disbursement
- Positive and negative covenants
- Representations and warranties
- Conditions subsequent
- Penalties for non-compliance by the borrower

Employment agreement

- Remuneration
- Service conditions
- Perquisites
- Termination of employment
- Non-compete
- Confidentiality

Non-disclosure agreement

- Confidential information - inclusions and exclusions
- Permitted use and disclosure
- Duration of confidentiality - whether only during the subsistence of agreement or even thereafter
- Penalties for violation

Service agreement

- Scope of services
- Sub-contractors
- Assignment
- Payment terms
- Termination
- Warranties

CHAPTER 2

STARTING UP

Before one enters into an agreement, the parties to a proposed transaction must decide who will draft the agreement. Usually, parties avoid this discussion. It is assumed that the party having a bigger stake or upper hand or simply, the bigger party (older and more established) will issue the first draft and the other(s) will provide their inputs or suggestions, if any.

If your client has an upper hand and leverage in the transaction, you will be asked to draft the agreement. Customs and practice also play a role in such matters. Often, the party which has the financial muscle power or whose money, property, technology, etc. are at stake would like to keep the control over the draft of the agreement and let the other party/parties only make comments on the draft.

For example, you may have noticed that:

(i) the employer always issues the employment letter / agreement;

(ii) the bankers always provide a draft of the loan agreement;

(iii) in a technology license agreement, the licensor will provide the draft;

(iv) all the software licence agreements are drafted by the service providers;

(v) the landlord invariably sends a draft lease agreement;

(vi) the acquirer sends a draft acquisition agreement to the target company;

(vii) online shopping websites draft the agreements for letting sellers sell on their website.

The above are only a few examples. The rationale given in most of the above cases is that one party has more experience of such deals than the other and has a template used in earlier transactions and it would save time and cost.

If, however, there is an option for your client to take responsibility for drafting an agreement, you should advise your client to take it. If drafted and negotiated properly, your client is likely to get the first mover advantage.

This way, your client not only gets a clean slate or a big canvas to incorporate the provisions which have already been discussed and agreed, but also incorporate issues that are important but may not have been discussed so far. You could keep your clients' concerns and interest in mind and draft the terms in a way that brings advantages to your client without changing the basic terms of the 'handshake' deal.

As said earlier, you have a clean slate, so you can include such terms and conditions that are more favourable for your client.

If you have drafted comprehensively, incorporating all the points in the interest of your client, the other party or their lawyer may or may not question all of them. For the ones where questions are raised, the other party has to give a reason for their objections and negotiate deletion or dilution thereof. Even if negotiation results in some deletions or dilutions, your client would be in a good position.

Compare this with the other scenario. If the other party sends you a draft, you have to discuss it with you client, find gaps or issues which are missing and negotiate addition of such issues which are in the interest of your client.

Out of the two, which situation is better?

A great cricket legend once said, "If you do not know the ground conditions, how the pitch will behave, etc. and you win the toss, always opt for batting." It is the same with drafting. Given an option, you should draft, rather than vet the other party's draft.

You must make a laundry list of the information that is absolutely necessary for you to know to draft an agreement. This should, *inter alia*, include:

(i) Particulars of parties;
(ii) Description of the transaction;
(iii) Reason why the parties are entering the transaction;
(iii) Consideration—Money and Services involved;
(iv) Duration of the Agreement, Renewal or Extension;
(v) Termination situations and consequences;
(vi) Exit options for parties;
(vii) Most critical time lines; and
(viii) Dispute Resolution process, if things go wrong.

You should ask your client to provide you basic information regarding the above as soon as you are approached to draft a particular agreement.

Before processing the information, you should understand the fact that your first and foremost focal point has to be your client. An agreement is never created in vacuum—it has to be formulated around the client, his requirements and expectations.

Therefore, you should first make the client comfortable enough to share all that is necessary for you to know and his own insights and expectations—else you will bake something on half-truths or incomplete information.

You must try to assess the following:

(i) what are the client's goals and standards of expectation from the transaction;

(ii) how critical is the transaction for the client—is it a one-off project, one of several projects the client is undertaking or is it the most ambitious project the client has envisaged so far;

(iii) what are the absolute deal breakers for the client;

(iv) what tolerance limits the client can live with.

Additionally, an agreement does not affect only your client, but the other party as well as third party beneficiaries (sometimes even general public as consumer of certain products / services) in some cases. You must, therefore, be cognizant of their concerns as well.

It is good to visualize yourself in the other parties' shoes. You will be able to draft much better with this approach and avoid inclusion of terms that will clearly not be acceptable to other stakeholders.

If the parties have executed any document, be it Heads of Agreement, Memorandum of Understanding ("MOU"), Letter of Intent ("LOI"), Non-Disclosure Agreement ("NDA"), etc. (let us say a preliminary document for ease of reference here), ask for a copy thereof.

The final version of the agreement must incorporate all substantial and relevant provisions of any preliminary document. The preliminary documents are generally non-binding till execution of a definitive agreement, barring exclusivity, confidentiality, governing law, etc. and there is always scope for negotiation and discussion.

If the parties wish to deviate from any understanding in the preliminary document, they have to inform you regarding the change. You should not assume or incorporate any changes without instructions from your client.. However, you can suggest changes if something incorporated in the preliminary document is not legal, feasible, practical or has become redundant.

Sometimes, the legal or business position undergoes a change due to changed circumstances between execution of a preliminary document and the definitive agreement. e.g:

(i) a legislation is repealed or amended;

(ii) a party's business is restructured into different entities;

(iii) due diligence brings certain new aspects to the fore.

You should weigh the implications, apprise the clients of such changes, and suggest suitable alteration in the agreed position of the parties on the subject matter.

When you start incorporating this information in the draft, many questions would arise in your mind about the parties' expectations and viewpoint on certain items not discussed so far between them as well. Enlist them and seek clarity / information / confirmation from your client.

Ideally, you should try not to bother your client for supplementary information more than twice or thrice before sending the first draft. Some professionals send multiple queries to the client while working on the draft or as and when they have a thought in their mind. You have to appreciate that the client may have other considerable business as well to take care of and may feel irritated with frequent messages in this regard. Keeping track of your queries and the client's response may also become a challenge in case of excess requests for information.

Draft a first cut (whether afresh or using a precedent) on the basis of preliminary information provided by the client. In case any information is not provided by the client in the first instance or which comes to your mind while drafting the agreement, draft suitable clauses and leave blanks indicating therelevantparties to fill in.

The first cut itself should be drafted with a view that this agreement should be an efficient mechanism to work properly during its term and dynamic enough to be fairly amended or terminated, if need be, as and when required to take care of the changed facts and circumstances without any leaving scope for allegations of foul play.

You may also fill in any missing information on the basis of legal requirements, market practice or your experience on similar agreements by suggesting the same and specifically highlight such suggestions and ask the client for approval in this regard. The final decision in this regard should be of the client, unless it is illegal or impractical!

CHAPTER 3

LEGALITY OF THE OBJECT

To start with, while drafting an agreement, you must check whether the objective (purpose) of the agreement is lawful. After all, you can legally enforce only legal things, right?

To be legally enforceable, an agreement has to be in compliance with the law of the land and public policy.

In case the parties are entering into an agreement for an unlawful objective, the agreement will be void *ab initio* under Section 23 of the Indian Contract Act, 1872.

For example, A and B enter into an agreement where under A agrees to pay a certain sum to B for kidnapping or murdering C. Since the objective of the agreement is to perform a criminal act (illegal), the agreement is bad in law and not enforceable.

For commercial agreements too, you should see whether the transaction the parties wish to undertake is legally viable. For example, any agreement for facilitating insider trading or passing on official secrets of the government or a corporate house would be illegal and thus, not legally enforceable by any of the parties.

Similarly, accepting deposits from general public and offering them very high (seemingly impossible) returns is another example—there are strict provisions under Company law to prevent such illegal activity. The Government and the Reserve Bank of India have separate regimes and mechanisms to supervise and control such businesses. You need to check whether the proposed activities / transactions pass the muster on these parameters.

You should also bear in mind that if an agreement is to be enforced by a party in India, such enforcement of the agreement (even partial) will not be possible in case the agreement or its object is in violation of any statutory provision in India. The invoking party may try to rely on a guarantee, indemnity, undertaking or the like provided in the agreement or related documents. However, any such action isn't likely to succeed if the purpose of the agreement violates any applicable statue. The simple reason is that a party cannot consent to an agreement which is against the law. Therefore, in case any Indian law is violated, any such guarantee, indemnity and undertaking will not be a ground for any action or defence, for any action in India, available to the party claiming relief.

If the transaction is questionable in your opinion, you must examine the legal position very carefully (even without being asked to) and apprise the parties regarding the legality of the object. More often than not, when caught with irregularities or illegal operations, the parties to these questionable deals and transactions say—'we were being advised by best of lawyers' and try to put the blame on their advisors.

You should not knowingly become a conduit in facilitating an unlawful transaction and put a blot on your credibility. It will not be taken into account that the client insisted on an illegal transaction despite advice to the contrary by the lawyers; everyone looking at the draft would squarely put the blame on the latter, saying—what did the lawyers check/how could the lawyers approve an unlawful transaction? Be vigilant.

CHAPTER 4

COMPETENCE OF THE PARTIES

After checking the legality of purpose, you should check if the parties are competent to enter into a valid agreement. If they are, only then can they commit and be held responsible to fulfil their obligations under the agreement.

By competent parties, one means those persons (real persons or legal entities) who are legally and mentally capable of entering into agreements that are enforceable by law. Certain categories of persons, such as minors, undischarged insolvents, mentally ill persons or persons under the influence of alcohol or drugs may not be competent to execute a binding agreement.

Confirm the status of the parties before drafting an agreement and check whether the person briefing you on the transaction has the legal capacity to negotiate and / or execute the proposed agreement.

As per Section 11 of the Indian Contract Act, every person is competent to contract who is (i) of age of majority according to the law to which he is subject; and (ii) of sound mind; and (iii) not disqualified from entering a contract by any law to which he is subject

Let us discuss these issues briefly.

Minority

As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years.

The age should be 21 years, in case of a minor of whose person or property or both, a guardian has been appointed under the Guardian and Wards Act, 1890

or

Whose property is under the superintendence of any court of wards till he attains the age of 18 years.

Some aspects of an agreement with a minor and effects thereof are listed hereunder.

(i) An agreement with a minor is void *ab-initio.*

(ii) A minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable for an agreement on the ground that earlier he had portrayed or claimed that he had attained majority.

(iii) Doctrine of Restitution does not apply against a minor *i.e.*, obligation of person enjoying benefit of non-gratuitous act does not apply in case of a minor.

(iv) A minor cannot ratify (confirm) an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

(v) A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

(vi) A minor can be appointed an agent, but he is not personally liable for any of his acts.

Sound Mind

Under Section 12 of the Indian Contract Act, 1872, a person is said to be of sound mind for the purposes of entering into a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

It, thus appears that legally, a person is of a sound mind if he:

(i) is capable of understanding the contract; and

(ii) is capable of forming a rational judgment about the effects of such contract on his interest.

A person not satisfying any of these two conditions shall not be treated as a person of sound mind.

Other Disqualified Persons

There are categories of persons who are disqualified from entering into a contract due to certain other reasons such as their legal status, political status or corporate status. Some such categories of persons are:

Alien Enemy: An agreement with an Alien Enemy is void.

Convict: A convict cannot enter into a contract while he is undergoing imprisonment.

Foreign Sovereign and Ambassadors: Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India.

Insolvents: A person who is unable to discharge his liabilities and therefore has applied for being declared insolvent by the court or such proceedings have been initiated by any of his creditors cannot enter into any contract relating to his property.

Company or Statutory bodies: A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its powers enlisted in its Memorandum of Association (*intra vires*).

Individuals / entities expressly barred by Securities & Exchange Board of India ('SEBI') for violating any SEBI regulations.

CHAPTER 5

CONSIDERATION

According to Section 2(d) of the Indian Contract Act,1872, consideration is defined as: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise".

In simple words, consideration means something in return of a promise which may either be benefit gained by one party or something lost by the other. In contract law, consideration is meant to be the exchange of one thing of value for another. It is one of the important elements that must be present for a contract to be legally enforceable.

Section 10 of the Contract Act mandates (I am sure the situation would be the same in other countries too) a lawful consideration among other requirements to constitute a valid contract.

It broadly means what the parties are doing or not doing on their part under an agreement. For anything done by a party under the agreement, there is a corresponding benefit to the other party.

The agreement must clearly demarcate why the parties are getting into an agreement—which party is going to give / receive what benefit under the agreement.

Without the element of consideration flowing from each party, an agreement is void.

It is also necessary to mention consideration to calculate the stamp duty payable on an agreement under Indian Stamp Act, 1899. Section 27 of this Act mandates that the consideration should be fully and truly stated in an agreement.

For example, it is not sufficient to say that A is leasing or selling his property to B. It is mandatory to mention at what rent / sale price A is leasing / selling the property. This enables revenue authorities to calculate the amount of consideration and levy stamp duty thereon.

In India, we have had the malaise of under-reporting the consideration, particularly for property related agreements. The primary reason for this practice is to evade payment of stamp duty and registration fees and the unreported portion of consideration was paid in unaccounted cash. This constituted the so called 'black

money'. At some point of time, the black money was estimated to be half of the official money supply in India. The fraction has come down significantly in recent years.

However, all this resulted in catastrophic consequences for the parties in cases of dispute. A party could not claim the actual consideration in the event of default by the other party. The government's tax collections were appallingly short.

With the Government of India's emphasis on better compliance, these practices are being reduced if not completely eliminated. Under tax laws, it is now mandatory to make big payments only through cheques or digital modes. The stamp duty and registration charges are being reduced. The tax authorities can also question any suspected undervalued deals.

Further, not only should a consideration be there, but the consideration should be valid under law. An Illegal or immoral consideration or one that is against established public policy may not be enforceable.

An agreement can contain the acknowledgement of receipt by way of a separate receipt in an annexure or in the body of the agreement itself.

PART 5

DRAFTING AN AGREEMENT

CHAPTER 1

COVER PAGE

Nowadays, there is a growing trend to add a cover page to the agreement.

This page should include the following:

(i) title of the Agreement;

(ii) date of the Agreement; and

(iii) full official names of the parties.

Title page need not have definition or address of the parties. Else, the purpose of brevity and neatness may be lost.

Keep in mind that the cover page should be one page only. If, however, there are too many parties to an agreement and they cannot be accommodated in one page, then you may either do away with the cover page altogether, or write just the name of the Agreement on the cover page. Some law firms put their firm name and logo on the cover page as well. Suit yourself and adopt your firm style.

An example of a cover page is as follows.

Joint Venture Agreement

Dated _____

Between

ABC Limited

MNP & Co., LLP

Mr. Chandra Prakash

Mrs. Aruna Gupta

And

Mr. Arvind Chopra

CHAPTER 2

TITLE OF THE AGREEMENT

The title of the agreement should clearly state the nature of business / transaction(s) the parties intend to undertake under the agreement.

Merely mentioning "Agreement" doesn't help a reader understand as to what the agreement is about. The reader in such a case will have to go through the agreement to understand the nature of the transaction(s) contemplated under the agreement and relationship of the parties.

For example, you may have observed that the term "partnership" is construed very loosely in India. People call any commercial arrangement, be it agency, license, distributorship, franchise or anything—to be a partnership. If left to the clients (the so-called partners), the title of every agreement would be a partnership agreement.

However, you have to examine the contemplated transaction(s) and exact relationship between the parties and be sure whether the so-called partnership is actually an agency, licensing, collaboration, joint venture, franchising, leasing or something else and provide a suitable title to their agreement.

You should go through the essence of the transaction(s) contemplated under an agreement and then give an appropriate title to the agreement. If there are several transactions under the same agreement, you could include two most important aspects in the title of the agreement.

For example, if the parties are entering into a joint venture and enlist their rights and obligations as shareholders of the joint venture vehicle, you could name the agreement as "Joint Venture and Shareholders' Agreement". Similarly, an agreement could be "Share Purchase and Shareholders' Agreement" and so on.

Please note that while interpreting an agreement, a court or other enforcement agency may not strictly go only by the title of the agreement, but the essence or content thereof. Therefore, if the title of an agreement is a misnomer, it does not vary the nature of the agreement nor does it have an impression in the eyes of a court or enforcement agency that cannot change upon detailed study of the Agreement.

CHAPTER 3

DESCRIBE DRAFT VERSION OF THE AGREEMENT

A draft normally undergoes review by different parties and their professionals and several changes are suggested or made by these people. As a result, there are different versions of the draft with professionals.

To discuss and move further on a draft, it is advisable to keep marking the drafts appropriately so that the parties are discussing the same version of the draft at a time.

Therefore, whenever you circulate or amend a draft, mark it on the top of first page (if not header of all pages) appropriately.

First draft could be marked as under:

"Preliminary draft for discussion

10 March, 2017 / ABC Associates"

After the client's further inputs, the second draft could be marked as under:

"Revised draft

12 March, 2017 /ABC Associates"

If there are several rounds of discussion and the draft is being amended very frequently (sometimes, different versions floating on the same day), you could mark the drafts as under:

"Revised draft

10 March, 2017 / ABC Associates

Version 7"

CHAPTER 4

PREAMBLE

The first sentence of an agreement is its preamble.

The preamble *inter alia*, states the following:

(i) name (title) of the agreement;

(ii) abbreviation of the title of the agreement, if any;

(iii) date of execution; and

(iv) place of execution.

Example:

This Master Service Agreement ("MSA") is executed on this 11th day of September 2017 at New Delhi.

There could be some variations in the above clause, as discussed in next chapters.

CHAPTER 5

EXECUTION PLACE

Invariably, after the title of an agreement is mentioned, the preamble reads as under:

This Agreement is executed on this ___ day of _____ (month and year) at _____ (place) by:

Unless all the parties are executing an agreement at the same place or are located in the same city, the place of execution may be different for different parties.

If this is the case, you should delete the word "at _____" from the above quoted text.

Example:

This Partnership Agreement is executed on this ___ day of _____ (month and year) by and between:

Now, how do you indicate as to the place of execution of the agreement?

If the parties are executing the agreement separately and at different places, each party should indicate the place of their respective execution at the signing page.

Example:

(On execution page)

_____

Signature
Name:
Designation:
Place:

CHAPTER 6

EXECUTION DATE

As mentioned previously, the preamble of an agreement typically reads as under:

This Agreement is executed on this ___ day of _____ (month and year) at _____ (place) by and between:

It is very important to mention the date of execution of any agreement and the date from which is becomes operative (we shall cover the latter part in the "Effective Date" section). Mentioning the date of execution assists in binding the parties to their respective obligations under the agreement or assert a party's rights thereunder.

No party can take refuge under any excuse after executing an agreement from a specific date, once the effective date has been identified.

The date of execution is also important from the perspective of registration of any document which is compulsorily registrable under the Registration Act, 1908. Section 23 of this Act prescribes a maximum period of 4 (four) months from the date of execution for registration of a document.

The date of an agreement is the date on which it is executed by the parties. It is very easy to determine such date when all the parties are executing the agreement simultaneously and at one place itself. If all the parties are executing the agreement on the same date although at different places (by facsimile or executing different copies of the same agreement), even then determination of this date is not an issue.

However, if different parties to an agreement execute it on different dates, the question arises as to which date should be presumed to be the date of execution.

The normal practice in such a case is to consider the date on which the last party executes the agreement as the date of execution of the agreement. However, this may not hold good in all the cases. Under some agreements, some parties execute the agreement for the sake of formality, just to take note of the contents thereof as confirming parties—in such cases, agreement may be valid and operative in the absence of their execution as well. Therefore, in a case like this, the date(s) on which confirming party(ies) execute the agreement may not be taken into account.

In the absence of anything to the contrary, implicitly or explicitly, the date of an agreement or effective date thereof is the date of execution.

If different parties are executing the agreement separately and / or on different dates, there need not be any mention of date in the opening line and the parties may indicate the date of their respective execution at the signing page.

Further, to avoid any mistake, forgery or manipulation in date, the date may be written in words and numbers (as in case of numbers, explained later).

Examples:

1. When the parties are signing the agreement on same date:

   This Technical License Agreement is executed on this **Seventh** (**7th**) day of **October, 2016** (**Two thousand sixteen**) between:

2. When the parties are executing the agreement on different dates (but at the same place), you may use the following template:

   This Joint Venture Agreement ("**JVA**") is executed at _____ (place) by and among:

   Each party shall put its respective date of execution in the appropriate column on the signature page.

Example:

(On execution page)

_____

Signature
Name:
Designation:
Date:

3. When the parties are executing the agreement on different dates and different places, you could use the following phrase:

   This Agency Agreement is executed by and between:

   If the place and date of execution are not the same for all parties, each party can indicate its respective place and date of signing on the signature page.

Example:

(On execution page)
For _____ (party name)

_____

Signature
Name:
Designation:
Date:

Place:

Another standpoint

A mismatch in the date of execution must be avoided at all costs as it can leave a scope for allegations of fraud, mischief, misrepresentation, etc.. For example, if a particular date is mentioned in the preamble of an agreement as the execution date

without specifying the exact date of execution by parties signing on different dates, a party may give an alibi that it wasn't available for signature on the purported day of execution, etc.

Therefore, a day of execution may also be mentioned in the signature column to avoid any confusion even if the preamble clause specifies the date.

CHAPTER 7

DESCRIPTION AND AUTHENTICATION OF PARTIES

Once you have given a title to the agreement and incorporated the date and place of execution, now comes the part where you list the parties to the agreement.

The cover page and / or the first page of the agreement should provide the title and date of the agreement as well as the parties to the agreement, so that the reader knows what is the subject matter of the agreement and who are the parties concerned.

In this regard, the parties' description should provide adequate details of the parties, so that each party's status is clear, and their identification is not an issue. This is very important, particularly when the parties get into a dispute related to an agreement, it could become difficult to identify / trace the parties.

A party may change its name, shift from the address provided in the agreement (particularly so, if it is a leased space), remarry, undergo a sex change or there could be other circumstances due to which many identification details provided in description of a party may not remain the same after a while.

In some cases, once disputes arise between the parties, a party which may have dishonest intentions fails to perform its obligations under the agreement and / or is otherwise untraceable. In such case, requisite notices under the agreement or Court summons are required to be served on such party and it becomes difficult to serve notices and bring the party to discussion or proceedings, as the case may be.

Therefore, it is important to obtain true and verified identity and address details about the parties as far as possible and incorporate the same in the description of the parties under the agreement.

Indian registration authorities have dealt with the problem of impersonation of parties for a long time. Anyone could execute any document pretending to be someone else. The supposed signatory was not even aware of such execution and would then deny any liability on account of the document being fake.

This impersonation could have multiple objectives—to make a killing by deceiving one or more parties to the transaction. Consequently, sometimes it resulted in a loss to the person in whose name the execution was done and he would challenge the authenticity of the transaction upon becoming aware of it. On the

other hand, the beneficiary was always at risk of a challenge by the intended original party, if the transaction was entered to deceive both the beneficiary and the original party.

Now, all registration and other government authorities insist on photographs of the signatories to the agreements and thumb impressions to be taken on the spot and not rely on the stock photographs supplied by such parties. This process puts a check on the practice of impersonation or purported execution of documents on behalf of someone who might even be unaware of the transaction.

It is also useful to retain self-certified copies of the identification documents of parties involved in any transaction for future verification / insistence / enforcement purposes.

What are the details to be obtained-

In case of individuals

Complete name matching with official identification documents (no abbreviations or nicknames)

Father's name (for males)

Father's or spouse name (for females)

Postal Address (with some proof): Passport / Utility Bills / Election Commission card / Aadhar card

Permanent Account Number (PAN) / Goods & Services Tax (GST) registration / Passport / Aadhar Card

Directors Identification Number (DIN)

Bank Account Number (for processing any payments under the agreement) in the operative clauses.

Out of the above, Passport number undergoes a change on renewal. However, one cannot change a PAN, Aadhar or DIN. With these details, the individual should be largely identifiable and traceable.

If a party to the agreement is a minor, and acting through a natural guardian or guardian appointed by a Will or other an instrument or appointed or declared by the court, such fact must be reflected in the description of such party.

Examples:

1. ABC, a minor, acting through XYZ who is her father and natural guardian.
2. The Seller is a minor and therefore, acting through XYZ who is her guardian vide an order number _____, dated _____ (description) of the District Judge of _____.

Similarly, if trustees are entering into an agreement on behalf of a trust, the fact should be mentioned as under:

Example:

A, B and C, trustees of _____, a trust formed under _____ (the enactment) and (provide other details)

If a Power-of-Attorney (POA) holder is entering into an agreement on behalf of a principal, one must insist on copy of the POA document whereunder the Attorney claims to derive the rights to execute the agreement.

Partner of a partnership firm may enter into commercial agreements on behalf of the partnership firm in ordinary course of business under the implied authority on any partner under Section 19 of the Partnership Act, 1932. However, if the other parties insist, either all the partners should execute the agreement or a specific POA should be provided in favour of the signatory.

In case of company / LLP / Firm / other entities

Complete Name

Registered Office / Corporate Office Postal Address (with some proof)

Email id

Bank Account Number (for processing any payments under the agreement) in the operative clauses

Permanent Account Number (PAN)

Corporate Identification Number (CIN - for companies and LLPs)

Registration Number (Firms)

GST registration number

A corporate entity may change its name or registered office, but it cannot tinker with the PAN, CIN or tax registration numbers.

CHAPTER 8

NUMBERING OF PARTIES

An agreement would require at least two parties to the agreement.

If there are only two parties to an agreement, you may mention the parties as under:

1. Mr. ABC, son of Mr. XYZ, residing at No. __, Cunningham Road, Bangalore 560052, having Permanent Account Number _____ and Aadhar number _____, (hereinafter referred to as the "**Lessor**" which term shall where the context so admits be deemed to include his heirs, successors and assigns); and
2. Alpha Beta Gama India Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at XYZ Building, Nariman Point, Mumbai-400021, CIN _____ and Permanent Account Number _____ (hereinafter referred to as the "**Lessee**" which expression shall, unless repugnant to the context, mean and include its successors and permitted assigns).

While defining a party by its status under the agreement, you can either define a party by its status simply, as "Lessor" or "Lessee" or add "the" before it, "the Lessor" or "the Lessee". Some draftsmen discard use of "the" before definition of the parties altogether. Whatever nomenclature you select, with or without "the", you should be consistent with it throughout the agreement.

If there are more than two parties to an agreement, you may have to put a number before their respective names, to give an idea to the reader as to how many parties are there in total and how many in different capacities. For example, there may be (i) two Lessors (joint owners) and one Lessee in a Lease Agreement; or (ii) 5 Shareholders and 1 Target company in an Investment Agreement; or (iii) 1 Company and 3 Employees in a Settlement Agreement.

Earlier, it was customary to define the parties in the sequence of their appearance in the parties list. Please see the following example,

This agreement is executed between:

Mr. ABC, _____ (party of the First part);

Ms. DEF, _____ (party of the Second part);

GHI Global Network Services Private Limited, _____ (party of the Third part)

and so on ….

In case of two parties, it is also customary to describe the first party as "Party of one part" and the second one as "Party of the other part".

If these defined terms are to be used throughout the agreement, it is cumbersome and against brevity. The reader cannot be reasonably expected to remember who is the party of which part. Mid-way through the agreement, if he reads an obligation of Party of the fifth part, he may have to go back to the parties' description clause to recall who the concerned party is. He may have to do it multiple times, if different parties have different rights and obligations under the agreement (which is very much expected!). Every time there is a reference to party of __th part, he will have to look up to the first page of the agreement to recollect which party is the agreement referring to.

Another problem of identifying parties by a number could be as under.

What if there are 15 parties to an original agreement and parties number 6, 8 and 11 cease to be parties to the agreement after some time? Will the other parties' definition undergo a change to reflect the new numbers allotted to them respectively? On the other hand, if the parties' numbering continues to be the same, it would be misleading in terms of actual number of parties left to continue with the agreement (there would be only 12 parties remaining in the agreement, so why reference to parties number 13, 14 and 15?)!

In the alternative, should the parties have to execute a fresh agreement or amend the agreement whenever there is an addition or deletion of a party to the agreement to reflect the new number scheme?

Isn't it better to avoid this confusion?

A simple and straightforward solution which comes to mind is that in all agreements, the parties should either be defined by their name (or abbreviated name) or by their status / role under the agreement (*e.g.*, Lessor, Lessee, Licensor, Licensee, Principal, Agent, Employer, Employee, etc.). In the above example, the 3 parties may be defined as ABC, DEF and GHI respectively.

Apart from a partnership or cooperation agreement or a membership agreement (where the status, rights and obligations of all parties may be same in some cases), the status, rights and obligations of the parties are different from each other in the agreement. Therefore, the parties should be defined by their respective positions or status under the agreement (for example, seller, buyer, distributor, agent, employer, employee, franchisor, franchisee, service provider, licensor, licensee, contractor, service provider, consultant, etc.).

In the above example, if the first and second parties agree to have a joint venture in the form of the third party, the first two parties may be defined by their respective names individually and the third party may be defined as the Joint Venture Company or JVC.

If more than one parties to an agreement have the same status, *e.g.*, investors, buyers, sellers, franchisees, licensees, members, etc., they should be individually defined with their respective names or status (*e.g.*, Investor 1) and collectively as the respective status holders (*e.g.*, Investors).

If we are defining parties by names or titles, it is preferable to assign each party an abbreviated name or title, else it becomes difficult to remember its full name and description throughout the agreement. Once such name or title is assigned, the concerned party should be addressed with it throughout the agreement.

While defining a party in the description section itself, you may simply put the party definition in parenthesis after the party's name without using terms like "Hereinafter referred to as _____". These words actually do not add any value to the context.

1. **Mr. ABC**, son of Mr. XYZ, residing at No. __, Cunningham Road Bangalore 560052, having Permanent Account Number _____ and Aadhar number _____ ("**the Lessor**"); and
2. **Alpha Beta Gama India Private Limited,** a company incorporated under the Companies Act, 1956 and having its registered office at XYZ Building, Nariman Point, Mumbai-400021, CIN _____ and Permanent Account Number _____ ("**the Lessee**").

The addition of those who can act on behalf of the party like heirs, successors, permitted assignees, etc. are only a matter of practice. Such mention is not strictly required to be added in the definition.

The fact that the defined term includes heirs, successors, assigns, etc. can be clarified or included later in the agreement, if need be. For example, if no assignment is allowed to one or more parties under the agreement, the question of a permitted assignee does not arise in relation to such party / parties.

CHAPTER 9

WHEREAS CLAUSES / RECITALS

Every agreement has a **story** behind it. While explaining the nature of recitals, my favourite quote is:

"Recitals are

The story so far."

It rhymes well, doesn't it? Besides explaining the subject, that is. Recitals play the role of a narrator of an agreement.

The story played out in the recital clause is about introduction of the parties to each other, their contemplating a commercial relationship, the subsequent discussions between them, any interim understandings and documents executed and the parties ultimately arriving at an understanding to do business with each other.

Recitation of this story in an agreement is carried out through what are called the Whereas / Introduction / Background / Recital clauses.

After the title of the agreement and parties' description / definition, invariably there are the introduction clauses.

Recitals are broadly of two kinds:

(i) Narrative; and

(ii) Introductory.

The narrative recitals capture the history of the parties, their businesses and their previous discussions. The introductory recitals explain the reason for the present agreement. These two kind of recitals are so entwined at times that you may not be able to separate the two.

Recitals are an important part of any agreement, in the sense that they provide the background and summary of the story till the execution of the agreement. It is like a narrator giving you the background before the actual movie starts.

Only after reading the recitals can a reader make sense of a long, detailed and complicated agreement. Sometimes, the operative part of an agreement only narrates the transaction and not the intent behind it. In the absence of recitals, an agreement would appear to be very mechanical and difficult to comprehend.

These clauses, among other things:

(i) Introduce the parties;

(ii) Mention their respective businesses;

(iii) Mention the subject matter of the agreement;

(iv) Highlight offer and acceptance, *i.e.*, which party has offered what to the other and if / how the recipient party has accepted such offer;

(v) Mention the crux of their discussion so far and any previous document executed by the parties (MOU, NDA, LOI, etc.); and

(vi) Mention the parties' intention to incorporate their understanding in the form of the present agreement.

Thus these clauses are a handy tool for a reader to capture as to who the parties are and how have they reached the stage of execution of this Agreement. The recitals also explain as to what is the parties' common goal.

For example, in a Sale Deed, it is necessary to mention as to how the Seller has derived the title to a property, *e.g.*, by purchase, grant, inheritance, partition and so on. If the Seller is not the first or sole owner, the recitals should narrate as to how has he derived the extent of his title in the subject property. If the person executing the Sale deed is acting under a Power of Attorney or acting as guardian of a minor, the facts and circumstances pertaining to his powers must be explained.

Similarly, in a Joint Venture Agreement, the recitals should describe the parties, their respective businesses, their intention to join hands to pursue a new venture and the fact of an MOU executed between them in this regard.

There should be a good narrative in the successive recitals and the reader should be able to understand as to who the parties are and how have they reached an understanding to pursue the contemplated business transaction.

If there are a considerably high number of recitals, they should flow in chronological order so that the reader can understand sequentially.

The recitals need not incorporate the detailed terms and conditions of the agreement, they should describe the journey till the parties come to the understanding narrated in the operative clauses.

The draftsman should let the operative part of the agreement narrate how the parties intend to achieve the proposed objective.

While drafting these clauses, the draftsman should bear in her mind that he has the entire agreement to explain the transaction, the consideration, timelines, closing requirements and all other terms of the agreement.

The mistake some people commit is to incorporate too much information in whereas clauses, including the representations and warranties (I reviewed such a draft agreement from one of the biggest Indian e-platform companies recently). You

need not put all information in whereas clauses since the reader has to go through the entire agreement. It is advisable to avoid repetition and reduce the chances of inconsistency.

One should be very careful while incorporating recitals. Unless used judiciously, recitals may control or conflict with the operative part of an agreement. Recitals are handy tools in determining state of things and understanding between the parties and therefore, should be clear and unambiguous. They may be used as admissions under the Indian Evidence Act, 1872. However, if the operative part of an agreement is clear and unambiguous on an issue, nothing contained in the recitals may be able to limit or control it.

Therefore, the draftsman should avoid going overboard with recitals and incorporating unnecessary details therein. The recitals should be correct, relevant and brief.

There are multiple forms of writing recitals.

Under the first form, "Whereas" is written in the first clause and subsequent clauses begin with "And Whereas".

An alternative way is to write "Whereas" once, follow it with ":" and begin the clauses down numbered numerically or alphabetically.

Another way is to write "Information" or "Background" or "Introduction" and thereafter, provide the background information in clauses numbered numerically or alphabetically.

If you are numbering the Whereas clauses, it is easy to identify and mention in any correspondence or reference. In the absence of number or alphabets to identify, you may have to read all the recital clauses to understand which clause is being referred to, particularly if there are numerous recitals.

Examples:

Whereas:

A. ABC has experience in the business of manufacturing, distributing and selling in Europe and South America.

B. XYZ is engaged in the business of _____ in India.

C. The Parties are desirous of establishing a joint venture company in India ("JVC") with equal shareholding for carrying out the Business (as defined hereinafter).

D. The Parties have agreed to execute this Agreement to record their understanding as to how affairs and management of the JVC shall be conducted and to grant to each other certain rights and obligations in relation to the ownership and operations of the JVC.

Or

Whereas ABC has experience in the business of manufacturing, distributing and selling _____ in Europe and South America;

And Whereas XYZ is engaged in the business of _____ in India;

And Whereas the Parties are desirous of establishing a joint venture company in India ("JVC") with equal shareholding for carrying out the Business (as defined hereinafter);

And Whereas the Parties have agreed to execute this Agreement to record their understanding as to how affairs and management of the JVC shall be conducted and to grant to each other certain rights and obligations in relation to the ownership and operations of the JVC.

No recitals

However, certain agreements may not need recital clauses. For example, in a Loan Agreement, the parties are defined as Lender and Borrower and after description of the parties, the operative clauses can start mentioning the amount, purpose, tenure and terms of the loan being granted to the Borrower. If one party is a Bank or a Financial Institution and the other party is a company, it is understood that the latter is obtaining loans/ facilities from the former and operative clauses can begin straightaway.

Similarly, in case of agreements executed in form of letters, there may be no recital clauses and the operative clauses may start straightaway.

Example of an Appointment Letter:

Dear Ms. _____,

Subject: Appointment as a Field Officer

Further to your successful interview with us for the above position, we are pleased to appoint you on the following terms and conditions:

Even the term "Whereas" is not mandatory. The recital clause can be named as Introduction or Background and appear as follows:

1. ABC has experience in the business of manufacturing, distributing and selling _____in Europe and South America.
2. XYZ is engaged in the business of _____ in India.
3. The Parties are desirous of establishing a joint venture company in India ("JVC") with equal shareholding for carrying out the Business (as defined hereinafter).
4. The Parties have agreed to enter into this Agreement to record their understanding as to how affairs and management of the JVC shall be conducted and to grant to each other certain rights and obligations in relation to the ownership and operations of the JVC.

CHAPTER 10

EFFECTIVE DATE

The agreement must clearly indicate as to when the agreement comes into effect.

An agreement may come into effect:

(i) simultaneously with execution;

(ii) with retrospective effect; or

(iii) from a date later than the execution date.

In the absence of a definition of Effective Date of the agreement, the agreement would be assumed to be effective from the execution date.

Under the contract law, it is not mandatory to have a written agreement for a commercial relationship to exist. Therefore, sometimes, the parties may have a commercial relationship even prior to execution of any definitive documents (while they are undergoing the negotiation process).

This hurry to get on with business may be due to their comfort with each other or in cases of commercial urgency, so as to not lose out on good business opportunities (sometimes urgent or seasonal) for the duration of the negotiation and drafting process. In such a case, once they agree on final details of their relationship, they can execute the agreement and provide an earlier date as the effective date.

On the other hand, an employment agreement may be executed and may provide the effective date of the provisions thereof to be the date when the employee joins the organisation.

A Joint Venture Agreement may be effective from the date of capital infusion by the parties in the joint venture entity. If there is no capital infusion, the relationship between the purported joint venture partners does not get consummated.

An Acquisition Agreement may be effective only from the date of Closing when the subject asset is transferred to the Purchaser.

Sometimes all the provisions of an agreement may not be effective from the same date. For example, an employment agreement may provide for a probation period before confirmation. In such a case, the notice period and many applicable

conditions would be different under the probation period and after confirmation. The concerned provisions would be applicable at the different stages.

Examples:

1. This Agreement shall come into force on April 1, 2017.
2. This Agreement shall become effective on the date this Agreement is executed by the authorised representative of the last signing Party ("Effective Date").
3. This Agreement shall become effective on the date this Agreement is executed by the last signing Party ("Effective Date"). However, this Agreement shall become null and void if the Agreement is not executed on behalf of all the Parties within 15 (fifteen) days of execution by a Party.
4. The effective date of this Agreement ("Effective Date") shall be the date first written above. The term of the Agent's engagement with the Company under this Agreement shall begin on the Effective Date and shall continue till it is terminated in accordance with the provisions of this Agreement.

CHAPTER 11

NOMENCLATURE OF OPERATIVE PROVISIONS - ARTICLE, CLAUSE OR SECTION

Different nomenclature is used for referring to the operative provision of an agreement - Article, Clause or Section. The choice is more of style than substance. Different professionals and firms within the same country or from different countries use different terminologies.

A draftsman has to be clear and consistent as to what he wishes to call the operative provisions of the agreement.

According to me, the British prefer "Clause", the Americans prefer "Article" and "Section" is somewhere in between.

However, there may be an overlap of terms if your agreement refers to bye-laws of an Indian company, which are termed as the Articles of Association ('AOA'). Invariably, AOA too are called Articles in general use and reference to a specific Article of AOA may be referred to as Article in the agreement. To overcome such an eventuality (if there are many references to AOA of a company), you may refer to provisions of the agreement as Clauses and AOA as Articles. Alternatively, use Articles for provisions of the agreement and whenever referring to AOA mention 'Article __ of AOA', wherever the need arises.

Similarly, the provisions of the Indian Constitution are termed "Articles". The operative clauses of most international treaties are also terms as "Articles". Therefore, it appears that an Article refers to a term which is very important.

A section on the other hand, is a provision of a legislative enactment. For example, Section 10 of the Companies Act, 2013 and so on.

This may cause confusion, unless a distinction is made out clearly. Therefore, in the definitions or interpretation section, clarify whether a Clause, Article or Section refers to a Clause, Article or Section of the same agreement or that of some other.

Whichever nomenclature you choose in your agreement, be consistent with it throughout the agreement. Once you have decided on a particular name, you could split it further into sub-_____ or mention the entire provision as _____.

Example: (i) Sub-section 2 of Section 2; or (ii) Section 2(2) or Section 2.2.

There is no particular recommendation nor a set rule on such different terms used interchangeably.

CHAPTER 12

PROPER HEADING OF SUBSTANTIVE PROVISIONS

The headings clause in contracts has a legitimate purpose. When interpreting or arguing over the meaning of a clause or provision in a contract, a party will often use the heading title as an argument for their particular interpretation of the terms of agreement within the contract.

The heading could be placed on the left-hand side or in the centre. Be consistent with the style you pick throughout the agreement.

Mostly, the title to articles and headings/sub-headings are used only for convenience of reference and do not serve any other substantial purpose in interpretation of an agreement.

Even if the title/headings/sub-heading serves this limited purpose, do make it a point to make such headings relevant and proper. This will enable your reader to find a section / provision he is seeking out, whether in the index or at the right place in the agreement.

Once you have given a heading, include provisions related to that heading only under it.

Other provisions for which you are unable to coin any heading or unsure about where they should be placed, add a clause called “Miscellaneous” or “Miscellaneous Provisions”.

CHAPTER 13

NUMBER SCHEME FOR PROVISIONS

How would it appear that in a clause, you are using sub-clauses (a), (b) onwards, in the next clause, the sub-clauses are numbered (i), (ii) onwards and in the next clause, sub-clauses are number (1), (2) onwards and sometimes you use (A), (B) onwards as well. Be particular and consistent about clause numbering.

Referring to sub-clauses in alphabetical terms can be tricky if the sub-clauses are exhausted by sub-clause (z) representing 26th sub-clause. Similarly, sub-clauses (i), (v) or (x) could be alphabets or Roman numerals. You are never too sure.

It is much better to number Articles or Clauses in Numbers 1, 2 onwards.

Sub-Articles or Clauses as 1.1, 1.2 …, 2.1, 2.2..

Going further, you can do the sub-numbering as 1.1.1, 1.2.1 …

This way the sequencing of sub-clauses will always be clear to you, not confusing whether (i), (v) or (x) are alphabets or Roman numbers.

The number scheme should be consistent throughout the agreement.

CHAPTER 14

DEFINITION OF TERMS USED IN THE AGREEMENT

There could be several terms which are used many times throughout an agreement. When such term is introduced in the agreement it is usual to define it once.

A definition serves multiple purposes.

It starts from the parties to the agreement itself. For example, instead of mentioning Mr. Muralikrishnan Ramaswamy Balasundaram Mahalingam Narayanan (By the way, I have no idea if there is a gentleman with this name. If there is, no offence, it is just an example.) or XYZ Steel Manufacturing Corporation Limited or LMN International Trading Services India Private Limited, you could merely use MRBMN, XYZ or LMN. Brevity makes it much easier to read, understand and correlate.

A definition can also expand or restrict the simple, commonly known or dictionary meaning of any word or term to cater to a particular agreement. This means a definition may be specific to a particular transaction or agreement.

A Dollar may signify different currency to different people—US Dollar, Singapore Dollar, Canadian Dollar, Australian Dollar, etc. While using the term "Dollar" in an agreement, you need to specify as to which currency you are referring to and be consistent throughout with the usage.

A definition may not only refer to a single person, event or a document but can also serve as a collective / common reference to many persons, events, documents, etc.

Examples:

"Buyers" can include multiple parties.

"Documents" can include multiple documents.

"Transactions" can include several transactions.

"Events" can include several past or future events.

Therefore, it is quite common to define parties, authorities, conditions, name of documents, business terms, mechanical processes, etc. in agreements—whatever term is long or includes multiple parties, documents, transactions, events, etc. and needs brevity and ease of reference.

Similarly, definitions tend to make interpretation and reading of an agreement simpler and concise and reduce ambiguity. A defined term used anywhere in the agreement refers to the defined person, document, transaction, event, entity or process.

Definitions provide consistency of reference throughout the agreement. The reader is sure of the meaning of a defined term, once he understands it.

For example, if XYZ Steel Manufacturing Corporation Limited is defined as "the Company" in the definition clause, wherever the term "the Company" is used, it refers to XYZ Steel Manufacturing Corporation Limited and no other company. Similarly, a person, condition or process could also be defined.

If, however, the defined term is used carelessly in the agreement, it confuses the reader and defeats the very purpose for which the term was defined. For example, if the term "Company" is defined and at several places the terms Company and the company are used, the reader cannot decipher as to which references are to the defined entity and which are not. The objective of defining the term is defeated in such a case.

Let us discuss some useful aspects / tips in respect of definitions:

Define a term only if you are using it in the agreement

Do not define a term unless you use it in the agreement.

It is a familiar sight (if you ever notice) that an agreement's definition clause is flooded with too many definitions only to find that many of them are not used anywhere in the agreement.

This can happen when you take the text from a template and use it without ensuring that it has a connect with the subject of the agreement. All agreements have different subject matter and the definitions in it should be specific to that particular agreement. This can also be a result of using multiple templates and assembling their definitions—and not all the clauses or defined terms are used in your draft.

This can also happen if an agreement goes several rounds of negotiation and certain clauses (which may have contained the defined term) are deleted by the end of it.

Therefore, while finalising an agreement, do take care to check whether all the defined terms are used in the agreement and whether all such definitions are required in the Definitions clause. If a term is not used anywhere, delete the definition.

Define only if you use the term more than once

Do not define a term unless it appears more than once in the agreement. Unless the term is being used time and again, there is no point defining it or assigning an acronym to it. The reader will understand the term in the relevant clause if it appears only once and will not be required to recall it elsewhere in the agreement.

Don't define simple terms

Do not define terms which are commonly understood. Else, you will have to define each word in the agreement!

Capitalise first letter

Unless there is a strong reason for not doing so, first letter of a defined term should be capital. For example, Company, Investor, Partner, Director, Target, Licensee, Landlord, Supplier, Distributor, Principal, Employer, Franchisor, Contractor and so on.

Capitalise all words, if several words

If the definition/acronym consists of several words, all words should be capitalised except sometimes for joining words (or, and, on, in, of, for, by, with, as, at, but, except, under, over, beside, etc.). Some examples could be: Articles of Association (AoA or AOA), Terms of Engagement (ToE or TOE), Power of Attorney (PoA or POA), Terms and Conditions (T&Cs), Managing Director (MD), Return on Investment (RoI or ROI), Annual General Meeting (AGM), Government of India (GoI or GOI).

Do not define in capital letters, unless you are defining something in abbreviated form

No definition should be in all capital letters.

Capital letters, by and large, mean YOU ARE SHOUTING.

How would it feel to see terms like BHUMESH, COMPANY, DIRECTOR, EMPLOYEE, DISTRIBUTOR, LICENSEE, STOREKEEPER and the like appear in the body of an agreement with other words in lowercase? It is not a pleasant sight, isn't it?

However, where the defined term is in abbreviation of, say the name of an individual (Bhumesh Verma defined as BV), a company (XYZ India Private Limited defined as XIPL), institution (All India Institute of Medical Sciences defined as AIIMS), authority (Government of India defined as GoI), a currency (United States Dollars defined as USD) or a term (Statement of Purpose defined as SoP, Letter of Intent defined as LoI), a business term (Turn Around Time as TAT, Net Asset Value as NAV), capital letters may be used in a definition.

Don't define something as "means and includes"

Means and includes cannot be the same.

If a term means something, its meaning is restricted to that alone.

If it includes something it means it includes other things in addition to the "included" thing.

Thus, using both "means" and "includes" together is confusing and wrong. You should use either means or includes, depending on whether the definition is restrictive or inclusive.

Other references

As a general rule and practice, any reference to Article, Clause, Section, Exhibit, Annexure, etc. in the agreement refers to the respective article, section, exhibit, annexure, etc. of that agreement only. Therefore, if a reference is to be made to an article, clause, annexure, etc. of any other document, it should be referred to with a term starting with a small letter and not a capital letter.

Alternatively, specific reference to the other document should be made along with the term. For example:

1. Article 35 of the Articles of Association.
2. Clause 7 of the Technology Transfer Agreement.

Define the terms at one place

In an agreement, we tend to define the terms at various places:

1. Introduction sentence
2. Description of the parties
3. Recitals
4. Definition clause
5. Operative clauses
6. Annexures

In such a scenario, the reader has to make an effort to capture and recapture all the definitions in the agreement. Various new definitions are introduced at different places in the agreement which causes inconvenience to the reader.

It is better to provide all definitions in an agreement at one place.

If a defined term is to be used multiple times in one clause, an exception can be made to define that term in the concerned clause, so that the reader doesn't have to refer to the definition section.

Use a defined term only after definition

A defined term should preferably not be used before its definition, as much as possible. Instead of saying "the Company as defined in Article _____ ", first a definition of the Company should be introduced in the agreement. This gives the reader an idea of the defined term before he reaches the operative clauses where the term has been used.

Else, the reader has to refer to the Article defining the term, and it may so happen that the referred article may have been renumbered or deleted during several rounds of negotiations.

Stay with the definition

Once you have defined a term, stick to it throughout the agreement.

For example, you have defined the Board to be the Board of Directors of XYZ India Private Limited and XYZ India Private Limited has been defined as the Company.

Now, wherever in the agreement, you are referring to the Board of Directors of XYZ India Private Limited, just write "Board". Do not write "Board of Directors", "Board of Directors of the Company" or "Board of Directors of XYZ India Private Limited". Use of multiple terms for the same person, entity or term creates confusion and irritation.

Definitions in a Series of documents or from another source

If several transactional documents are linked to each other and are to be read together, many terms would have the same meaning in all such documents. In such a scenario, you need not define these terms separately in each agreement.

Define the terms in one major agreement and the other agreement may have a statement to the effect that the defined terms will have the same meaning as in the aforesaid major agreement.

Similarly, a defined term in an agreement may take its colour from a definition provided in a Statute. For example, a "Subsidiary" as defined in the Companies Act, 2013 or "Industrial Dispute" defined in the Industrial Disputes Act, 1947. This definition would be dynamic and undergo a change, if or when there is a legislative change.

However, sometimes, it means that the agreement is not a stand-alone agreement and a reader has to refer to another document or Statute, making it difficult for the reader to understand the implications.

Defining another document

If your draft refers to another agreement at several places, you should define such agreement, providing adequate details regarding the full name, execution date and parties relating to such agreement.

Example:

1. "SSPA" means the Share Subscription and Purchase Agreement dated 7th July, 2017 among ABC Limited, XYZ Limited and Mr. Anuj Chopra.

If the parties to the referred agreement are exactly the same as the parties to your present agreement, you may define as under:

"SSPA" means the Share Subscription and Purchase Agreement dated 7th July, 2017 among the Parties.

Define alphabetically

If you incorporate a definition clause, the terms should appear in their alphabetical order, so that it is easy to locate a particular definition. You need not number the definitions. Otherwise, if there are additions and deletions of definitions pursuant to frequent amendments in the draft or even after the execution of the agreement, the numbering will be disturbed.

Keep your client in mind

In addition to other considerations, the client's interest should be kept in mind while defining terms. For example, while defining "Confidential Information", take into account whether your client would be the disclosing party or the recipient party and decide whether you want a limited or expanded definition. Similarly, while defining default events, consider whether your client is more likely to be the defaulting party and define in such a manner that it is in the best interest of your client.

Define well and define only once

Your definitions should be very clear and it should be easy for the parties and readers to quickly understand what a defined word means without having to go to the definitions portion time and again.

Further, you should try to define a person / entity / term only once in an agreement. Having multiple definitions for same person / entity will confuse the parties.

A simple example.

Ms. A is the majority shareholder of the Company XYZ Private Limited. Ms. A is also the Managing Director and Chief Executive Officer of the said company. She is the authorised signatory in respect of the bank accounts of the company and represents the company before all statutory authorities.

Ms. A agrees to sell her entire shareholding in XYZ Private Limited to Mr. B.

To carry out this transaction, the parties will execute a Share Purchase Agreement. The parties also agree that along with the sale of her shares in the

company X, Ms. A will also resign as a director of the company. Once she resigns from directorship, she will cease to be a Managing Director. She will also resign from the Chief Executive Officer position. Ms. A will also cease to be authorised signatory on behalf of the company.

While drafting the Share Purchase Agreement and in order to incorporate the above terms, an over-zealous draftsman may define Ms. A as the Seller, the Old / Outgoing Director, the Old / Outgoing Managing Director, the Old authorised Signatory and Mr. B as the Buyer, New / Incoming Director, the New / Incoming Managing Director, the New / Incoming Authorised Signatory, and so on. (I have actually seen this happen in some of the drafts) This must be avoided.

The parties should be defined by their names (or abbreviations thereof) if they are wearing multiple hats in an agreement, as in the case cited above.

It is simple and easy to understand for reader.

CHAPTER 15

USE CAPITALISED TERMS JUDICIOUSLY

Normally, if a term is used in an agreement with a capital letter in the beginning, we tend to correlate it with a specific term or item. Unless the term itself is too clear or is the name of a party itself, we expect it to be defined in the agreement.

Once you have defined a term in the agreement, say "Company", "Target", "Party", then use it judiciously throughout the agreement keeping in mind the defined meaning and not otherwise.

For example, if you have defined "the Company" to mean ABC Private Limited in the agreement, wherever you write the words "the Company", it should mean and imply only ABC Private Limited and no other entity. Therefore, throughout the agreement, the term "the Company" or "The Company" should not be used to indicate any entity other than ABC Private Limited.

Similarly, reference to a "Party" in the agreement should be restricted either to any party which is a signatory to the agreement or any particular party amongst the signatories, as may be defined under the agreement. Reference to any third party should be as "party" and not as "Party".

CHAPTER 16

INTERPRETATION

This clause is a bit different from the definition clause and it explains the general rules of construction of various references in the agreement. This need not necessarily refer to interpretation of the defined terms.

Example:

In this Agreement, unless the context requires otherwise,

(i) clause and chapter headings are inserted for convenience of reference only and shall not have any legal effect;

(ii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(iii) reference to a gender shall include all genders;

(iv) references to this Agreement or any other document shall be construed as references to this Agreement or that document as in force for the time being and as amended, varied, substituted, supplemented, restated or novated in accordance with the terms thereof;

(v) a reference to a document includes all amendments or supplements to, or replacements or novation of, that document;

(vi) a reference to a party includes that party's successors and permitted substitutes (including persons taking by novation) and assigns;

(vii) words importing the singular shall include the plural and vice versa;

(viii) references to clauses, articles, sections, exhibits and schedules are to be construed as references to respective clauses, articles, sections of and exhibits and schedules to, this Agreement;

(ix) reference to this Agreement shall include its annexures, exhibits and schedules;

(x) a deed, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(xi) references to a person shall be construed as including references to an individual, partnership firm, a limited liability partnership, consortium, company, corporation, incorporated or unincorporated body of persons or any State or any agency thereof;

(xii) reference to a day shall mean a calendar day;

(xiii) the meaning of terms is not limited by specific examples introduced by expressions "including" or "for example", or similar expressions; and

(xiv) references to any legal provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time.

You should clarify by way of an interpretation clause that reference to a provision or document or a position should be construed as the original provision, document or position respectively as well as a change therein. Otherwise, you have to repeat such averments at many places in the agreement and if you miss it somewhere, it may not be construed in the same spirit and argued that wherever you wanted the changes to be included, you had specifically indicated it. To avoid such a situation, an interpretation clause like the one above helps.

PART 6

OPERATIVE CLAUSES

CHAPTER 1

DO NOT FORGET TO MENTION THE TRANSACTION

An agreement is about a transaction between the parties. Isn't it?

Should the transaction be mentioned in the agreement? Yes, why not?

A few months back, I came across a Conveyance Deed drafted by a senior partner of one of the top Indian law firms, in respect of sale of a property. The consideration was worth a few million dollars, the draft had hundreds of covenants, terms and conditions, undertakings, representations and warranties.

However, there was no mention of the words "Sale" or "Purchase" in the agreement except the description of the property in the recitals. Even the parties were not defined as Seller and Purchaser (remember first party, second party?). There was no operative clause mentioning that the parties were selling and buying the subject matter of the agreement i.e. the property.

This happens with us sometimes in other spheres of life as well. You may have observed that sometimes in quiz shows or an interview for cookery, for example, when one is asked to list ingredients for 'Dal Makhani' or 'Chicken Biryani', one may get so engrossed in listing the maximum number of and most exotic ingredients for the recipe that one may miss out lentils or chicken! I have seen it happening to contestants many times.

While embellishing an agreement with multiple provisions, safeguards and clauses, sometimes we either forget to put the basic aim and objective of the agreement or put it mildly or at an insignificant place, making it difficult for the reader to understand or locate it.

The purpose or objective of the agreement or the essence of the transaction, by whatever name it may be called, must be mentioned at the first instance.

The nature of the agreement should be mentioned in the 'Whereas Clauses' and thereafter, as early as possible in the 'First Article (or Clause)'.The intention of the parties to the agreement must be clearly explained.

Further, if you have already explained the nature of the transaction at one place, repetition or half-hearted mention elsewhere in the agreement, should be avoided.

Sometimes, some exhibits, annexures or side letters to the main agreement may require detailed description of the transaction. In such a case, try to be precise and concise in the operative clause and refer the reader's attention to the related attachments.

Examples:

1. The Parties hereby agree to join hands as joint venture partners to be carried by a joint venture company to manufacture steering wheels of automobiles.
2. The Seller agrees to sell the Demised Property to the Buyer and the Buyer agrees to purchase the Demised Property on the terms and conditions stipulated under this Agreement.
3. The Company hereby appoints Mr. ABC Sharma as its Chief Executive Officer and Mr. ABC Sharma accepts the said appointment.
4. XYZ Limited hereby appoints Alpha Beta Gama Private Limited as its sole selling agent in India and Alpha Beta Gama Private Limited accepts such appointment on such terms and conditions as appear hereinafter.
5. The Licensor hereby grants an exclusive license to the Licensee for manufacturing the Products in India for domestic sales as well as exports to SAARC countries.

CHAPTER 2

RIGHTS AND OBLIGATIONS OF THE PARTIES

A commercial agreement is a set of promises between the parties—such promises are intended to be binding in law. These promises made by the parties define the respective rights and obligations of the parties under an agreement which are either enforced or fulfilled respectively. A contract is like a private law of the parties which allows the parties to define their relationship by demarcating the boundaries of acceptable conduct.

If there is no fulfilment of obligations by a party or a party's right is violated, the parties have to approach appropriate courts for enforcement. The courts may compel the defaulting parties to perform their respective obligations under the agreement and / or award damages for breach thereof.

Contractual rights are the set of rights guaranteed to each other when parties enter into a commercial relationship. These rights invariably relate to business matters, including the provision of products and services.

Few examples of contractual rights:

(i) Rights to be sold products or service;
(ii) Right of first refusal;
(iii) Right to appoint majority directors;
(iv) Right to repair and maintenance;
(v) Rights to receive timely payment;
(vi) Right to receive notice of any intended change in terms of the agreement;
(vii) Rights to exclusivity;
(viii) Right to seek compensation for non-performance;
(ix) Right to terminate the agreement.

These contractual rights can either be express or implied. In addition to the rights expressly incorporated in an agreement, there could also be certain implied rights, which are based on the law of contract and other legal provisions (example-consumer laws). There may not be a legal requirement to incorporate such rights in each agreement explicitly, as they are implied by specific laws on the respective subjects. These include:

Good faith: Each party should act in good faith, must not act deceptively and should disclose all relevant information regarding the transaction.

Free will, No duress: Contracts should only be formed out of the free will and informed decision of each party. A contract that is formed under duress (*i.e.*, forcing one party to sign) is invalid.

No misrepresentation: The parties have a right to be free from misrepresentation of information and fraudulent transaction.

If a party's contractual rights are violated, it can enforce such rights or take legal action for damages caused by the breach. The aggrieved party may also be entitled to multiple remedies, for example:

(1) claim damages;

(2) specific performance of the contract;

(3) termination of the agreement;

(4) restitution for any benefit to the breaching party.

An obligation lies at the other end in the matrix of rights and obligations. One party's right is invariably the other's party's obligation.

The difference between rights and obligations under a contract is that the former is a benefit you derive from a contract; the other is a duty or responsibility that is cast upon a party or what a party promises to perform under the contract. Contractual obligations are those duties which a party is accountable for and responsible to perform under an agreement.

These obligations can be in terms of payments, performance of certain services, supply of goods, adherence to timelines or quality standards, cooperation in pursuing some common objective or any other promise made to the other party. If any party fails to perform its obligations under an agreement, it is deemed a breach of contract on its part and the non-breaching party can take action against such breach.

An agreement must clearly describe the respective rights and responsibilities of the parties. It should describe the activities supposed to be performed by a party towards fulfilment of its obligations, timeframes for fulfilment of the obligations, etc. The agreement should also incorporate terms confirming whether the assignment of any obligations of a party is permitted or not. It is better to incorporate the obligations as much as possible in detail so as to set acceptable standards of fulfilment of obligations.

Once the parties enter into an agreement, each party is expected to perform its obligations. Each party needs to fulfil its contractual obligations with regard to its performance for a valid discharge of the agreement. If a party fails in its obligations, the other party has multiple options to assert its rights under the contract. However, the reasons and circumstances for the failure of the defaulting party may be taken

into consideration. Sometimes, if an agreement has been substantially performed, then payment for any completed work done may be made with a deduction for the uncompleted work. This is the simplest way to deal with such a situation.

To sum up, the provisions defining the duties and obligations are a detailed description of the duties and obligations of the parties and the deadlines for performance. The rights and obligations of the parties are determined by the terms of an agreement, subject to limits imposed by the relevant statutes.

Therefore, the parties must judiciously incorporate respective rights and obligations of each party in clear and detailed terms to avoid any confusion between themselves.

The process and procedure to adhere to and enforce these rights and obligations should also be clearly mentioned. The agreement should provide as to how a party will exercise its rights or seek fulfilment of the other party's obligations within the framework of the agreement.

The enforcement mechanism could either lie with the parties or a party may have to seek outside support (industry body, court, mediators, arbitration, etc.).

CHAPTER 3

COVENANTS

Covenant means a formal agreement (written, signed and sealed) that is legally binding. In other words, it is a promise or undertaking by a party in an agreement that certain activities will or will not be carried out. Covenants often relate to terms in a financial contract, such as a loan agreement stating the limits on end use of the loan amount and limiting the amount which the borrower can further lend to its subsidiaries. Under such covenants, a covenantor makes a promise to a covenantee.

A loan covenant is a conditional clause in a commercial loan or bond agreement. Such a clause mandates that the borrower shall fulfil certain conditions, or forbids the borrower to do certain acts, or restricts certain activities to circumstances when other conditions are met.

Banks / financial institutions / VC investors include covenants in their agreements to preserve their position and to impose restrictions on the borrower / target company / promoters to improve the likelihood that a loan will be paid back by the business owner/borrower on time, in full, and in accordance with the loan's terms and conditions and the target company shall be run efficiently.

A positive covenant is a promise to do something. A negative covenant is a promise not to do something.

Loan Covenants spell out in detail what the promoter of a borrowing company agrees to do with respect to the business and capital structure of the company during the term of the loan or business line of credit.

Examples of affirmative loan covenants:

- pay all taxes in time;
- maintain insurance policies for the business;
- keep the company in good standing.

Examples of negative loan covenants:

- adhering to a specified debt/equity ratio;
- restriction on dividends;
- restriction on merger/acquisition/reorganisation.

The parties to an agreement must be careful while incorporating and negotiating such covenants. In most of the cases, some or the other deviation from the covenants is bound to surface if the covenants are too many or too strict. To take care of such irregularities, steps for sound enforcement and resolution mechanism should also be provided in case the covenants are not complied with.

CHAPTER 4

CONDITIONS PRECEDENT

The term 'conditions precedent' refers to something that must happen, or a circumstance that must exist, before something else will happen.

Many a times, in our day to day life, a party commits to perform its duties under the contract only after the other party has performed its part. For example, you go to buy a new TV set. The store salesman will talk to you very sweetly, show you 30 different models, offer you best deal on each one and so on.

However, he will not despatch a TV set till you make the full payment (including the insurance and cartage).

In this case, payment is the condition precedent for despatch of the TV set to your home / office.

A condition precedent is an event or a series of events, all of which must occur, or a state of affairs that must exist, before something else will occur. In agreements which incorporate conditions precedent, a party is not obliged to fulfil its obligations under the agreement, unless the stipulated conditions are met.

In contract law, a condition precedent is an event which must occur, unless its non-occurrence is excused, before performance under a contract becomes due, *i.e.*, before any contractual duty exists.

On the other hand, a condition subsequent is an event or state of affairs that brings an end to something else. A condition subsequent is often used in a legal context as a marker bringing an end to one's legal rights or duties.

In simple words, if something is to happen before another thing, it is a condition precedent. On the other hand, if something is to happen after another, it is a condition subsequent.

For example, in an acquisition agreement, the conditions precedent for closure could be:

(i) Satisfactory financial and legal due diligence of the target company;

(ii) Valuation report by merchant bankers;

(iii) Approval by the board of acquiring company and the target company;

(iv) Approval by shareholders, bankers, lenders of the target company;

(v) Approval from any government authorities required for the proposed acquisition; and

(vi) Delivery of audited financial results of the target company till the cut-off date.

Only once the aforesaid fall in place, the transaction goes through.

It should be noted that the obligation to fulfil different components of conditions precedent may be cast on different parties. In the above example, some obligations can be cast on the investee company, some on the investor, and some jointly on the investee company and its shareholders.

Sometimes, such obligation for satisfying a condition precedent could be shared by multiple parties. For example, in a case where a foreign investor is desirous of investment in an Indian company operating in the Insurance sector where, *inter alia*, the approval of the Insurance Regulatory and Development Authority of India is required for any foreign investment, the obligation of obtaining the said approval is cast jointly on all parties (investors, Indian joint venture partner and Indian Insurance company) because each party's cooperation is required for seeking and obtaining this approval.

While drafting a condition precedent clause, you must take care to identify the party on whom the obligation to fulfil a particular condition is imposed. This is vital as each party is responsible to fulfil its own obligations in relation to the conditions precedent. In M&A transactions, usually certain obligations on the target company are also cast upon its existing shareholders/promoters, as they are in control of the operations and management of the target company before the acquisition and they alone have the power to represent the target company before third parties or authorities.

Another important aspect which a draftsman needs to consider is whether any of the conditions precedent can be waived. Invariably, the non-obligated party wants all conditions precedent to be met by the obligated party. However, we do not live in an ideal world where all our expectations are met. Sometimes, some conditions are not fulfilled, fully or partially.

The reasons for such non-fulfilment could be tight timelines, process, bureaucracy and others. In such situations, the parties should have the discretion and flexibility to move on and go ahead with the transaction if the conditions which are not met are not legal requirements or are not substantially material. The idea behind a party's ability to waive any condition is to facilitate the transaction and not hold it up over small issues or delays if the parties are in sync with each other. Alternatively, the parties may extend the deadline for meeting the conditions.

However, this right to waive any preconditions should be incorporated while drafting the conditions precedent provision.

The draftsman has to tread very cautiously in granting this right to a party. The right to grant a waiver should lie with the non-obligated party and not on the obligated party. Otherwise, an obligated party may not be diligent in even trying to

fulfil its obligations to secure the condition precedent. A party not providing sufficient support or shying away from its responsibility for moving towards closure should not have the benefit of waiving any precondition.

Conditions precedent are private arrangements of the parties and their contractual rights. Therefore, the parties to an agreement may discuss and decide whether they would like to waive the conditions in part or in full. You must analyse from a legal perspective whether any such waiver is permissible and then consult your client regarding inclusion of the waiver clause.

Timeframe for meeting conditions precedent

A draftsman should always mention a date by which all the conditions precedent must be met, *i.e.*, the 'long stop date'. The idea is to ensure that the parties are aware of the deadline to fulfil the conditions and there is no delay in their performance to meeting the conditions by this date. While drafting this clause however, one must always include the following or similar words:

> *"Each of the Conditions Precedent mentioned in this Clause must be satisfied by _____, or any later date as may be mutually agreed by the Parties."*

A clause on the above lines gives the parties flexibility to mutually discuss, agree and extend the time for the fulfilment of the conditions. The most likely reason for a delay in fulfilment of conditions precedent is non-receipt of a government approval. If a government approval, which happens to be a condition precedent for a particular transaction is expected to take longer than originally expected by the parties, they should have the right and flexibility to extend the Closing date if they all feel the need to do so. In the absence of such a provision, if conditions precedent are not satisfied, the agreement will stand terminated and the transaction will fall through.

A 'conditions precedent' clause should obligate the parties to 'use all reasonable efforts' within their control to fulfil all conditions which are their obligations. The parties must recognise that time is of the essence and the efficacy of any transaction depends on proper intent, attention and adherence to time schedules provided in the agreement. If a party is not serious enough to make efforts in respect of its obligations to fulfil the conditions precedent, its seriousness and commitment after closing will be doubtful if the party is to continue in relationship with other parties (as a partner, service provider, etc.).

Examples:

1. This Agreement shall be effective only after the Board of Directors of the Company approves this Agreement in its entirety. This Agreement shall be null and void and shall be of no force and effect if the Board does not give its approval for this Agreement for any reason whatsoever.
2. This Agreement shall not be effective until the shareholders of both the parties endorse the contents of this Agreement by way of a special

resolution. This Agreement shall be null and void and shall be of no force and effect if the Parties fail to obtain such approvals from their respective shareholders.

3. As a condition precedent to the resignation or removal of the CEO, the Company shall pay all outstanding dues payable by the Company to the CEO pursuant to the terms of this Agreement till the effective date of resignation or removal.
4. This Agreement shall become effective as of the date first written above (the "Effective Date") upon the satisfaction of the following conditions precedent:
   (a)
   (b)
   (c) ….

5. This Amendment Agreement shall be effective subject to the following conditions:

(i) approval hereof from the Boards of all the parties;

(ii) confirmation from State Bank of India, _____ branch;

(iii) approval from the Ministry of Telecommunications to the proposed amendments; and

(ii) the execution of this Agreement by authorised representatives of all the parties.

6. The Service Provider shall be required to perform its obligations under this Agreement only if all the outstanding dues payable to it are cleared by 30 August, 2017.

CHAPTER 5

CLOSING DELIVERABLES

The closing provision should specify what actions, formalities and steps would be taken up at the closing. Usually a closing meeting is held to consummate a commercial transaction particularly in investment transactions.

The parties should discuss the modalities and incorporate suitable provisions. For example, in an agreement dealing with transfer / issue of shares, the parties should, *inter alia*, incorporate the following in the closing clause:

(i) the date for closing;

(ii) the venue for closing;

(iii) requirement of presence of parties' nominees;

(iv) documents to be submitted at closing;

(v) documents to be executed;

(vi) payments to be made;

(vii) resignation of seller's nominees from the board;

(viii) appointment of the buyer's nominees on the board;

(ix) holding of board / shareholders' meeting;

(x) agenda for board / shareholders meeting;

(xi) amendment of Memorandum / Articles of Association;

(xii) entrusting the buyer's nominees with authorities;

(xiii) revocation of authorities to seller's nominees;

(xiv) any records to be updated;

(xv) issue / endorsement of share certificates in the name of buyer.

The above can be further split into separate action items to be undertaken by different / all parties.

As discussed earlier in case of conditions precedent, the parties should have the leverage to extend the Closing date by mutual agreement or waive any closing formalities, if need be.

CHAPTER 6

POST-CLOSING FORMALITIES

Post-closing literally means after closing.

It is a term for acts, deeds and things that are to take place after the closing of the agreement has taken place and the transaction is through.

After the contemplated closing under the agreement, the transaction or the relationship is initiated. However, there could be certain documentation, recording, filings, intimations that are required.

For example, in a share acquisition agreement, the following may be post-closing activities:

(i) Issue / Allotment / Transfer of Shares;
(ii) Making entries in statutory records of the target company;
(iii) Intimation to bankers, creditors, shareholders, government authorities regarding change in authorised signatories;
(iv) Getting registration of any definitive agreements; and
(v) Filings with Ministry of Corporate Affairs in respect of change in the board of directors and other such matters.

The Post-Closing formalities clause should fix the responsibility of the party(/ies) on which the onus of completing respective activities lies.

Examples:

1. The Parties undertake to diligently complete each of the post-closing obligations and/or deliver to the Chief Executive Officer of the Company all documents, instruments, agreements and information listed in Clause 7.5, on or before 31st May, 2017.
2. As a material inducement to Agent and Lenders entering into and performing their respective obligations under this Agreement, Borrower hereby agrees to complete delivery and/or performance of each item set forth in Schedule 4.15 hereto on or prior to the date indicated with respect thereto in Schedule 4.15.
3. The Target shall complete, and shall cause other Parties to complete, each of the post-closing obligations and/or deliver each of the documents, instruments, agreements and information listed in Annexure 4 (the Post-Closing Obligations), on or before the date set forth for each such item thereon (as may be extended by the intended recipient in its sole discretion), each of which shall be completed or provided in form and substance satisfactory to the concerned recipient.

CHAPTER 7

PAYMENTS UNDER THE AGREEMENT

Commercial agreements invariably include an element of money as consideration to be paid by one party to the other.

It is a question of who, whom, when, where, how, in what currency, etc.

The agreement should provide the frequency, timing, mode and currency for any payments, penalties, etc. to be made under the agreement. Any penal liability for delay of payment should also be quantified (in terms of interest rate or amount).

The agreement should indicate whether the payments / amounts specified under the agreement are inclusive of taxes or not. If any applicable taxes, duties, out of pocket expenses, etc. are to be charged over and above the consideration mentioned in the agreement, there should be a clear indication in this regard.

Adequate scope should be kept for deduction of applicable taxes, as the responsibility of paying the taxes falls on the paying party under most tax laws. If there is a failure to withhold and / or deposit tax, the party responsible for it will be in deep trouble.

The responsibility of withholding and depositing tax amounts with concerned government authorities should be fixed on the party responsible to do so.. Such party is also required under law to issue a certificate regarding deposit of tax to the other party.

The circumstances under which a party shall be entitled to deduct or withhold a part of the amount payable to the other party should be mentioned.

Examples:

1. The Advisor shall submit a monthly invoice by 7th day of each month for his services rendered during the preceding month to the Company. The Company shall make payment in United States Dollars within 7 (seven) days of receipt of such invoice by way of an account payee cheque in favour of the Advisor.

   All the payments made under this Agreement shall be subject to deduction of tax at source under applicable tax laws. The Company shall provide the certificate of such deduction and deposit of tax with the authorities within the timelines stipulated under relevant laws.

Any delayed payment shall attract a penal interest at the rate of 12% p.a. (twelve percent per annum) for the period of delay.

2. Any payments to the Licensor under this Agreement shall be made through proper banking channels within 14 (fourteen) days of every calendar month. Such payments shall be subject to withholding of applicable taxes as required under Indian laws.

   The Licensee shall ensure that such withheld amount is deposited with appropriate authorities at the earliest.

   The Licensee shall provide documentary evidence of the withholding and deposit of the subject amount with appropriate authorities within 30 (thirty) days of withholding.

3. All payments to be made under this Agreement shall be made through wire transfer in a designated bank account of the Payee in Indian Rupees. If any payment required to be made on a day that is not a Business Day, shall be made on the next succeeding Business Day.

4. The Service Provider shall submit his monthly invoice for the Services to the Company along with description of services, billing period, volume and rate for different components of Services. The Company shall pay the amount within 15 (fifteen) days of receipt of the invoice, unless it raises a dispute within such period, in a bank account designated by the Service Provider in his invoice.

5. The Agent shall send his invoices on a calendar quarter basis and the Principal shall pay within 15 (fifteen) days of receipt thereof. Any late payments shall bear interest of 9% (nine percent) per annum for the period of delay.

CHAPTER 8

LOCK-IN

Lock-in period means to be unable to change or modify the conditions of an agreement and be bound by the terms for a certain period.

When the parties agree for a term prescribing a time period within which one or more parties cannot terminate the agreement, such arrangement is called the lock-in clause.

If a party terminates the agreement during the agreed lock-in period, it is required to pay compensation for the remaining duration of lock-in period irrespective of the termination and non-usage of benefits of the agreement.

Any presumptive loss incurred by the non-breaching party due to premature termination gets compensated by the payment clause in this agreement. Therefore, it cannot claim any more damages or costs from the breaching party.

The underlying idea behind a lock-in clause is to ensure that a party is not irrevocably bound by the clause provided it compensates the non-breaching party.

Common examples of lock-in are found in lease agreements and service agreements. Even in share acquisition or joint venture agreements, one or more parties may be required not to sell their holding for a particular period of time.

You may also have observed that you have to pay a penalty for pre-closure of any loan provided by a bank or financial institution.

A lock-in could be for the entire duration of an agreement or only a part of it. This period actually depends on the respective bargaining powers of the parties. The party with better bargaining powers usually imposes its conditions on the other party.

Further, the lock-in may operate against one party or some or all the parties, depending on the nature of the agreement and negotiation among the parties.

A lock-in clause, *inter alia*, stipulates the duration of the lock-in period as well as the remedy in case of breach of the lock-in commitment.

Examples:

1. (a) The Parties agree that the Tenant cannot terminate the lease during the first 3 (three) years of the lease term ("the Lock-in Term"), except in case of a material breach on part of the Landlord or a force majeure event.

(b) The Tenant shall have the right to terminate the lease at any time for a material breach or force majeure event with a prior written notice of 30 (thirty) days to the Landlord, notwithstanding the Lock-in Term agreed above.

(c) However, if the Tenant terminates the lease during the Lock-in Term for a reason other than a material breach or force majeure event and citing no reason, he shall pay the rent for the remaining portion of the Lock-in term.

(d) after the expiry of the Lock-in Term, either Party shall be entitled to terminate the lease without assigning any reason with a 30 (thirty) days prior written notice to the other Party.

2. The Employee undertakes not to sell or transfer any shares of the company issued to him under the Employee Stock Option Scheme ("ESOP") for a period of 3 (years) of such issue.

3. The Parties agree not to sell, hypothecate, pledge, transfer or otherwise dispose of any shares or other security of the Joint Venture Company to a third party for a period of 2 (two) years from the date of issue thereof except Permitted Transfers under Article 7.1 of this Agreement.

CHAPTER 9

REMEDIAL ACTIONS, IF PERMITTED

The parties to an agreement are supposed to fulfil their respective obligations under the agreement. This is the basic premise behind every agreement, written or otherwise.

However, if a party fails to do so, it amounts to a breach (or a material breach, if so defined under the agreement) and may give a right to the non-breaching party to terminate the agreement with or without serving a notice period.

The agreement should clarify whether the right of the non-breaching party to terminate the agreement is absolute or is it possible:

(i) for the breaching party to seek time to cure any defect, shortfall or failure, if possible; or

(ii) the non-breaching party to insist on removing or rectifying the aforesaid defect, shortfall or failure.

The provision should also indicate if the non-breaching party shall be entitled to reduce the consideration in view of the breach or delay in performance of the breaching party's performance.

Example:

1. Any time during the term of the lease, if there is any release or discharge of any hazardous materials due to Lessee's manufacturing activities at the Demised Premises which is in violation of any environmental laws, the Lessee shall be solely responsible for the legal consequences.
2. The Lessee agrees to investigate, clean up, remove or take remedial action in respect of such hazardous materials in accordance with the requirements of:
    (a) applicable environmental laws; and
    (b) State Pollution Control Board and / or any other authority in charge of or dealing with environmental laws.

CHAPTER 10

CONFIDENTIALITY

Parties to an agreement share a lot of information with each other during negotiation and thereafter while drafting of the agreement.

Sometimes, this disclosure is one-sided, *i.e.*, only one party shares its information. For example, a Target company will be sharing a lot of information with potential suitors in a Share Acquisition transaction.

On the other hand, there could be situations where both or all the parties share their respective information with each other. An example could be a potential joint venture transaction.

This information sharing could potentially encompass highly sensitive information about the parties' respective business, employees, revenue streams, clients, pricing, technical knowhow, processes, business plans, contemplated ventures, intellectual property rights, market sensitive information, existing and potential bids, etc. Such information is not usually available to third parties.

Each party has its own respective history, strengths, strategies, business projections, etc. Many a times, parties bind their employees, contractors, consultants, etc. for protection of such information by executing a non-disclosure agreement with such parties.

It is therefore, imperative that disclosure of such information to a third party is not in the usual course of business for the disclosing party.

The disclosing party is always worried about misuse of confidential information by the receiving party and / or making unauthorised disclosures to any third parties as well.

In fact, invariably, when parties start negotiating a commercial agreement which involves a high level of sensitive information sharing between the parties, first of all they execute a Non-Disclosure Agreement. Once their negotiations reach a logical conclusion, they execute the commercial agreement.

A confidentiality or non-disclosure clause in an agreement binds the receiving party to ensure that information marked or defined as confidential information should remain confidential, secret and not disseminated in a manner otherwise than that agreed to in the agreement.

In this regard, a basic standard of care is expected from the receiving party - to be as careful with the confidential information as the receiving party is about its own confidential information.

The commercial agreement should provide for tight non-disclosure norms. The idea is to protect accidental as well as intentional disclosure of sensitive information.

There could even be a stand-alone Non-Disclosure Agreement, subject to mutual discussion and comfort level of the parties.

The Confidentiality clause should, *inter alia*, contain the following:

(i) Definition of Confidential information;

(ii) Duration of non-disclosure (during and / or after the expiry / termination of the agreement);

(iii) Permitted exclusions;

(iv) Process of discussion with the disclosing party, if disclosure is a compulsion for the receiving party, under a legal process or otherwise;

(v) Remedies for breach.

Most of the times, where the information disclosed is very sensitive and important, the disclosing party wants to impose a very heavy cost for any breach of the confidentiality provisions on the receiving party to make it a disincentive for the receiving party. Therefore, provisions relating to (i) availability of cumulative remedies to the disclosing party; and (ii) exemplary, punitive and liquidated damages imposed on the breaching party are incorporated in the agreement.

You should gauge the nature, importance and sensitivity of the confidential information being exchanged in the current context and advise parties of suitable clauses in this regard accordingly.

Example:

Confidential Information

(a) *Exposure*. The Agent acknowledges that in the ordinary course of his engagement with the Company, he will be exposed to Confidential Information about the business of the Company and that of its employees, suppliers, and customers which amounts to a trade secret, is confidential or is commercially sensitive and which may not be readily and legally available to any third parties engaged in a similar business to that of the Company or to the general public and/or which, if disclosed, would be liable to cause significant harm to the Company.

(b) *Definition*. In this Agreement, the term "Confidential Information" shall mean and include all information and data relating to the purpose which is obtained, whether in writing, pictorially, in machine readable form, on compact disc, electronic mail, postal mail or orally in connection with or

during the course of the agency engagement (including but without limitation, financial information, schematics, trade secrets, technology, customer lists (potential or actual), Intellectual Property and other customer-related information, supplier information, sales statistics, market intelligence, marketing and other business strategies and other commercial information of a confidential or proprietary nature.

Provided that Confidential Information shall not include any information which falls under one or more categories below:

(i) is in or comes into the public domain without breach of this Agreement by the Agent;

(ii) was in the possession of the Agent prior to receipt from the Company and was not acquired by the Agent from the Company under an obligation of confidentiality or non-use;

(iii) is acquired by the Agent from a third party not under an obligation of confidentiality or non-use to the Company;

(iv) is approved for release or use by written authorisation from the Company;

(v) is required to be disclosed by the Agent at the request of or at the express direction of any authorised Governmental or Judicial Agency.

However, the burden of proving that the Confidential Information, which is disclosed is covered within one of the exceptions set forth in this clause, shall be on the Agent.

In the event of a dispute between the Parties regarding the applicability of one of the exceptions set forth above, the Agent shall maintain the confidentiality of the Confidential Information until a final and non-appealable arbitration award and/or a final, non-appealable court judgment is granted.

(c) Non-Disclosure and Non-Use. Unless otherwise agreed to in advance and in writing by the Company, the Agent shall not, except as required by law or a court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services under this Agreement or disclose the Confidential Information to any third party.

The Agent shall also keep secret and not at any time either during his engagement with the Company, and 2 (two) years after its termination or expiry (as the case may be), for whatever reason, use, communicate or reveal to any person for his own or another's benefit, any Confidential Information. The Agent shall also use his best endeavours to prevent the publication or disclosure of any such information.

The Agent shall not carry / take out any Confidential Information with him outside the offices of the Company, except for *bona fide* official purposes, with prior intimation to the Company.

(d) Protection of Confidential Information. In case the Agent comes to know of any misuse or wrongful disclosure of any Confidential Information, he shall provide the Company with prompt written notice thereof so that the Company may seek (with the cooperation and reasonable efforts of the Agent) a protective order, injunctive relief, confidential treatment or other appropriate remedy.

(e) Return of Confidential Information. At any time during the validity of the Agreement or on expiration or termination of this Agreement, the Company may require the Agent to return all Confidential Information disclosed to him. Immediately upon the request of Company, the Agent shall:

(i) Return all Confidential Information including, but not limited to, all originals, copies, reproductions and summaries of Confidential Information; and

(ii) Destroy all copies of Confidential Information in his possession, power or control, which are present on magnetic media, optical disk or other storage device, in a manner that ensures that the Confidential Information is rendered unrecoverable.

The Agent shall certify to the Company that he has returned or destroyed such Confidential Information within two (2) days of such a request being made by the Company.

CHAPTER 11

EXCLUSIVITY / RESTRICTIONS

In many service and commercial agreements, a party may give the other an exclusive right to deal with its products / services.

On the other end of the spectrum, a party may like to restrict the other from operating in same / allied field with other parties (particularly in employment agreements / joint ventures, etc.).

While drafting such a clause, you should particularly check the applicability or enforceability of such a provision *vis a vis* Competition law or contract law issues.

Examples:

1. During the term of this Agreement is in effect, the Licensor shall not operate itself nor license any other party to operate a business that competes with the Licensee's business in the Territory. However, nothing herein shall preclude or limit the Licensor from using for itself and licensing other products or services that are not covered under Products as defined in this Agreement. The Licensor shall also continue to operate itself and through other licensees outside the Territory.
2. In exchange for good and valuable data generated at its costs as a result of this Agreement, during the Term of this Agreement, the Developer requests and the Company hereby agrees not to engage in business discussions with other parties interested in the Technology in India.
3. The Parties confirm that neither of them is currently party to any other agreement which contains terms and provisions that might impede or limit their performance of any obligation under this Agreement. They also confirm that during the term of this Agreement, they waive the right to negotiate with and enter into commercial agreements or agreements of any kind with any third parties in the same or similar line of Business as contemplated under this Agreement.

CHAPTER 12

NON-COMPETE

A non-compete clause is an understanding between parties to an agreement. Under this provision, a party agrees not to compete with the other party in the same / allied field of business.

When two or more parties engage in a commercial understanding, they want a commitment from each other that they will put all their energies and efforts into their venture and not elsewhere.

This clause is relevant if parties are working together on a project and one of the parties gets involved in another project (either on its own or in collaboration with others) which results in a situation that the two projects are competitive, it will jeopardise the commercial viability of the former project.

It is very common for an employer to insist on inclusion of this clause in employment agreements or engagement of very senior consultants / professionals on confidential or sensitive projects.

Depending on the negotiation and requirement of the parties, the non-compete clause may be effective during the validity of an agreement or even for a stipulated period thereafter.

For example, if a company hires a software engineer for developing a particular software. The company would like the engineer to concentrate his/her efforts solely towards developing the software during the term of her engagement with the company and not take up a competitive assignment with another entity or start developing a similar software on his/her own. If he/she engages with another competitor for a similar project, his/her value for the company dilutes as the company may not get the desired commercial value from the software.

These clauses are more common in agreements related to employment, agency, distributorship, franchise, joint venture or technical collaborations in particular. In case of some relationships, the non-compete obligation could apply to both or all the parties, whereas in the others only one party may be subjected to it.

Any agreement in restraint of trade is void under the Indian Contract Act, 1872. However, reasonable restrictions can be imposed to safeguard the interest of the parties. The stipulations in a non-compete clause, therefore, will have to stand up to the scrutiny of the courts, if need be.

A non-compete clause can be a pre-condition in many commercial agreements, being the most critical element in certain business deals.

The parties may even execute an independent and separate non-compete agreement instead of a non-compete clause in a definitive commercial agreement, if the exclusivity of the service provider is of foremost importance.

Examples:

1. During the course of his employment with the Company, the Employee shall not, without the prior written consent of the Company, serve as a partner, employee, consultant, officer, agent, associate, investor or otherwise with any business in competition with or otherwise similar to the Company's business.
2. During the course of his employment with the Company and for a period of 2 (two) years thereafter, the Employee shall not, directly or indirectly, advice, manage or render services to any person or entity engaged in a business activity which is competitive to that of the Company.
3. The Advisor undertakes that at any time during the subsistence of the engagement with the Company and 1 (one) year thereafter, he shall not and shall cause his affiliates and representatives not to, carry on or engage in, directly or indirectly, whether as principal or director or through partnership or as a shareholder, joint venture partner, collaborator, consultant or agent or in any other manner whatsoever, whether for profit or otherwise, any business which competes directly or indirectly with the whole or any part of the business carried on by the Company or any activity related to the business carried on by the Company, whether by using the confidential information of the Company or otherwise.
4. The Designer undertakes that at any time during his engagement with the Company and for 3 (three) months thereafter, he shall not provide the same services to a competitor of the Company whether by using the confidential information of the Company or otherwise.
5. For the duration of this Agreement and for 3 (three) months after the termination or expiry thereof, for any reason, the Marketing Agent shall not work as an employee, partner, adviser, agent or in any capacity with any competitor of the Company in India.

CHAPTER 13

NON-SOLICITATION

Solicitation of business means to seek business from new or potential clients. Normally, a business does this by advertising and making the world aware of its products and services. However, by solicitation, a client's attention is sought by directly asking clients to buy goods or services.

This model is mostly adopted by freelance professionals and independent businesses. They engage in approaching the potential clients directly and ask them for business. Certain professions, like legal profession in India, are barred from approaching the clients and seeking business by soliciting.

Solicitation can also happen in respect of poaching employees of an organisation, if one gets access to them. Such employees can provide useful inputs to their new employer about the pricing, clients, resources, leads, business model, technical information, etc. of the old employer. Employees having access to confidential information of a successful organisation are in much demand for these reasons. The loss due to such unethical practices is immeasurable for the affected entity.

To avoid losing business from their existing or potential clients or losing their employees to competition, many organisations insist on non-solicitation clause in their commercial agreements. By such a clause, they bind the other party (employee, business associate, joint venture partner) not to solicit business from their clients or entice their employees to join another entity.

A company is always at risk in respect of losing its clients or star employees to an ex-employee who has access to these people. Such ex-employee may, on his own or upon an incentive by his new employer, divert the old employer's clients or employees to the new employer.

Therefore, it is quite common for a company to ask its employee to undertake that after his employment with the company comes to an end, he shall:

(i) not solicit the company's clients, for his own benefit or for a competitor's benefit; and

(ii) not engage with any other employee of the company in any capacity.

Examples:

1. During the term of this Agreement and for a period of 6 (six) months after the expiry or termination of this Agreement for any reason, the Employee agrees not to, directly or indirectly:

(i) induce any customers of the Company to bring their business to the Employee or his new employer or any competitor of the Company;

(ii) advise or request any customer of the Company to cease, withdraw or cancel its business with the Company;

(iii) induce any employees, agents, business associates to leave their employment or business relationship, as the case may be, with the Company;

(iv) hire or engage the persons cited in (iii) above in any capacity;

(v) make statements which are disparaging to the reputation of the Company, its shareholders, officers, employees, agents, etc.

2. During the validity of this Agreement, the Contractor shall not, either directly or indirectly, solicit, recruit, induce, encourage or attempt to solicit, recruit, induce or encourage any employee of the Company or its Affiliates who work, or at any time within 6 (six) months prior to the termination or expiry of this Agreement, worked on matters involving the Project to terminate his employment relationship with the Company or its Affiliates, as the case may be, and become employed by the Contractor or his Affiliates. However, the restriction contained herein shall not apply if such an employee is hired in usual course of the Contractor's business in response to an advertisement or general solicitation disseminated by the Contractor.

3. From and after the Effective Date of this Agreement until one (1) year after termination or expiration of this Agreement for any reason whatsoever, neither Party shall, and shall cause each of its Affiliates not to, directly or indirectly, without the other Party's prior written consent, solicit the employment of any employee (or former employee bound by a non-competition obligation) of the other Party or its Affiliates with whom it has come in contact during the course of implementation of or in conducting activities under this Agreement. However, such restriction shall not apply to:

(i) a general advertisement in normal course of business or a solicitation program that is not specifically targeted at such persons; and

(ii) the solicitation of any such employee after a lapse of 6 (six) months after such employee's employment has been terminated by the other Party or its Affiliate for any reason whatsoever.

4. The Seller shall not, without the prior written approval of the Buyer, for the period from the Effective Date through and including the third anniversary of the Closing Date, directly or indirectly, solicit for employment or employ (whether as an employee, agent, or an independent consultant) (a) any Key Management Professional or any

other employee or independent contractor of the Buyer, who (i) is employed or engaged by the Buyer or (ii) was employed or engaged by the Buyer within 3 (three) months prior to the Closing.

5. Without the prior written consent of the Seller, neither the Buyer nor any of its Affiliates shall, for a period of two years following the Closing, take any action to solicit any sales representative or person performing a similar function who is a Transferred Employee and who is employed by the Business (whether as an employee or independent contractor) to terminate his or her employment with the Business or to seek or accept employment with the Buyer or any of its Affiliates.

CHAPTER 14

DAMAGES

Contracts stipulate respective rights and obligations of the contracting parties. These rights and obligations go hand in hand – i.e., obligation of a party is the corresponding right of the other party.

Very often, we observe that unknowingly or deliberately, one or more parties to a contract do not fulfil their part of the bargain and do not fulfill the contractual terms in letter and spirit. Such breach results in violation of the rights of the non-defaulting party and, consequently, causes monetary loss.

There must be some deterrent against the breach of contractual terms. This is captured in the form of penalty clause in the agreement in form of monetary compensation payable by the defaulting party. This remedy is called Damages. The intent is to compensate the non-defaulting party for the loss suffered on account of the breach of the terms of the agreement.

Typically, the following variants of damages are awarded in case of breach of contract:

(i) Compensatory damages
(ii) Restitution
(iii) Liquidated damages
(iv) Nominal damages
(v) Quantum Meruit
(vi) Remedies in Equity
(vii) Punitive Damages

Generally, damages may be classified into two categories, namely compensatory and punitive. Invariably, we understand both compensatory as well punitive damages under the broad head of 'damages.' However, when we refer to compensatory damages, we could also refer to it as 'actual damages.' These 'actual damages' may be subject to proof and would not include any punitive component.

Compensatory damages seek to merely compensate the affected party for actual loss or injury, rather than punishing the defaulting party. Punitive damages on the other hand are used as a punishment for the defaulting party and the idea is to provide a deterrent. Sometimes, the amount of damages could be quantified in

terms of a multiple of a factor e.g., double rent after expiry / termination of lease, thrice the consultancy fee for any material breach, etc.

Generally, damages are compensatory in nature unless the breach is established to be deliberate and wilful.

It may also differ from case to case, whether monetary penalty is adequate to compensate the affected party and put it in a condition which it would have been, had the default not taken place or whether specific performance should be insisted.

We will see various methods of providing remedies to an affected party in the next few chapters.

CHAPTER 15

LIQUIDATED DAMAGES

Non-compliance or breach of an obligation by a party causes loss to the non-breaching party. In order to encourage parties to be compliant and disincentivise any breaches, sometimes the parties pre-determine the amount of damages required to be paid in case of a default, non-compliance, breach and the like.

Liquidated damages (sometimes also referred to as liquidated and ascertained damages) are damages whose amount the parties stipulate during the negotiation of an agreement for the non-breaching or injured party to collect as compensation upon a specific breach (*e.g.*, failure to perform or delayed performance).

The underlying idea behind a liquidated damages clause is not to punish the defaulting party, but simply to have a disincentive for non-compliance. The sum agreed under this clause may not be astronomical or catastrophic for the breaching party, but high enough to make it see sense in complying. The underlying intention is more towards making the parties compliant, rather than penalising them for non-compliance.

A liquidated damages clause can be a useful tool in a contract to reduce uncertainty on important issues and the time and resources spent on potential disputes. Liquidated damages clauses specify the amount of damages to be paid by the breaching party in the event of certain types of breach as defined in the contract by the parties. The amount of liquidated damages represents the contracting parties' best estimate as to the amount of anticipated or actual damages that would be incurred by the non-breaching party in the event of a specified breach of the contract by the other party.

There are steps you can take to determine the amount of the liquidated damages and draft your agreement in such a manner that the courts uphold the liquidated damages provision.

Contracting parties typically agree to liquidated damages where the damages would otherwise be uncertain or difficult to prove or calculate. Courts will generally uphold a liquidated damages clause that is reasonable in the context of the case and will consider several factors in determining whether such clause is reasonable, including the following:

- Whether the damages in question are difficult to calculate at the time of contracting due to indefiniteness or uncertainty, or are difficult to prove;

- Whether the amount of liquidated damages is a reasonable forecast of the actual damages that would be or have been caused by the type of breach in question.

While evaluating the foregoing factors, if a court finds the liquidated damages amount to be excessive or that actual damages would have been easy to calculate at the time of contracting, the related contract provision will be considered a penalty and, therefore, could be held to be void. In order to pass muster by the courts, the liquidated damages clause should specify the contracting parties' reasoning for employing a liquidated damages provision, the reasonableness of the amount of such damages, and the provision's relation with other damages provisions.

A liquidated damages clause should, *inter alia*, include the following:

- What types of breaches trigger the liquidated damages provision;
- Why are the parties agreeing to liquidated damages (*i.e.*, why the actual damages caused by the type of breach in question would be difficult to calculate at the time of drafting, uncertain, or otherwise difficult to prove);
- The amount of liquidated damages or a formula to calculate the liquidated damages in the event of the type of breach in question;
- The intent of the parties that the liquidated damages amount be a fair estimate of the actual damages suffered in the event of the type of breach in question;
- In the event of a breach that triggers the liquidated damages provision, the liquidated damages are the exclusive remedy of the non-breaching party (*i.e.*, make sure that if your contract has a cumulative remedies provision, it does not apply to breaches that trigger the liquidated damages provision and associated remedy).

If seen as an enforceable liquidated damages clause, the courts will not look into actual damages suffered by a party to make it entitled to claim such damages. For this reason, it is important to carefully draft liquidated damages clause in your agreements.

Examples:

1. (a) The Contractor acknowledges that its failure to complete the Project within the stipulated period shall cause the Company to incur substantial economic damages and losses. The kind and amounts of such losses may be impossible to be calculated and ascertained as a basis for recovery by the Company of actual damages and liquidated damages may represent a fair, reasonable and appropriate estimate thereof.

   (b) Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Company as against the Contractor, in the event of delayed completion

and without the Company being required to present any evidence of the amount or character of actual damages sustained by reason thereof.

(c) The Contractor, therefore, shall be liable to the Company for payment of liquidated damages in the amount of Rs. 5,00,000 (Rupees five lakhs only) for each day that the completion of the Project is delayed beyond the stipulated time.

(d) The stipulated time shall be subject to any adjustment for time extensions provided under this Agreement. Such liquidated damages are intended to represent only estimated damages and are not intended as a penalty, and the Contractor shall pay them to the Company without limiting the Company's right to terminate this agreement for default as provided under this Agreement.

2. (a) The Parties acknowledge that the actual damages likely to result from a material breach of any provision of this Agreement may be difficult to ascertain on the date of execution of this Agreement and may be difficult for the Company to calculate and prove in the event of a material breach by the Contractor.

(b) Therefore, the Parties agree that the payment of liquidated damages in the amount of Rs. 50,000,000 (Rupees fifty million only) shall serve as a fair compensation to the Company for any damages sustained.

(c) The aforesaid amount does not represent any penalty and the Contractor agrees to pay this amount for any material breach.

3. (a) The Parties are aware that the Company shall have an absolute right to terminate the employment of the CEO at any time during the term of this Agreement. It would be difficult to estimate the damages suffered by the CEO in case of an early termination of his employment for any reason.

(b) Therefore, the Company and the CEO hereby agree that a sum of Rs 50,000,000 (Rupees fifty million only) shall represent a fair compensation to the CEO for loss of his office and this payment shall be received by CEO as liquidated damages and full and final settlement of all his claims against the Company for the termination of employment and otherwise.

CHAPTER 16

TERRITORY

The agreement may be limited in scope of its operation in respect of a particular territory.

A manufacturer may give distributorship of its products to different entities / individuals for specific territories.

An Indian manufacturing company may give distribution rights for domestic sale of its goods to a distributor and retain the right to export outside India.

Similarly, a foreign company may appoint an Indian company to be the distributor for its products in India.

A global cold drinks company may have a different joint venture partner in each country for bottling its products.

The appointee in this case can operate within the defined territory and not outside.

The legality or otherwise of such provisions should be checked keeping the governing law in mind and suitable provisions should be incorporated.

In the absence of any jurisdictional limits in the agreement, the agreement could be assumed to have universal operation.

Example:

1. The Franchisor appoints the Franchisee as its exclusive worldwide Master Franchisee.
2. The rights granted to the Distributor under this Agreement are granted for the following geographical areas and markets:
   (a)
   (b)
   (c) ….
3. The Company hereby appoints the Distributor to act as the Company's exclusive Master Distributor of the Products within the geographical territory defined as under (the "Territory"):
   (a)

(b)

(c) ….

4. The Licensee shall have an exclusive worldwide right to use the IPR for designing, advertising and promoting the Products 1 to 7. The Licensee shall also have an exclusive right to use the IPR for designing, advertising and promoting the Products 8 to 12 only in Asia, Africa and Europe. In respect of Products 13 to 22, the Licensee shall have an exclusive right to use the IPR for designing, advertising and promoting in Australia, USA and Canada.

CHAPTER 17

COSTS AND EXPENSES ALLOCATION

When you go out for food or drinks with friends, you should have a clear understanding as to who is footing the bill. Else, there could be disharmony of extremes, sometimes each one wanting to pay and sometimes, none coming forward to pay. Many friendships go sour on this count, if a particular person never pays up his due share.

Similarly, there are always costs attached to execution of an agreement and its implementation. The agreement should specify as to which party shall pay expenses related to the agreement or transactions contemplated thereunder (*e.g.*, stamp duty, professional fees, registration fees, etc.). If different parties are to pay separate heads, that must also be specified. In the alternative, the parties may share the cost proportionately.

For example, generally the lessee / buyer pays all costs related to the lease / purchases of property. In acquisition agreements, it is quite common that transaction costs (including those of the acquirer) are loaded on the target company. Under loan agreements, the borrower is supposed to bear all the expenses.

Coverage of this aspect is necessary to make the parties aware of the costs involved with the execution of the agreement and transactions and their cost sharing ratio and take a conscious call or negotiate, if need be. Certain agreements have considerable costs in terms of registration, stamp duty, etc. In the absence of this provision, sometimes each party is relaxed that the other party will take care of the expenses.

Examples:

1. Costs and expenses. The Borrower agrees to pay on demand, all costs and expenses in connection with the preparation, execution and delivery of this Loan Agreement, including stamp duty, registration charges, reasonable fees and out of pocket expenses of outside counsel for the Lender.
2. Each party shall bear its own costs and expenses (including fees and other disbursements to its own accountants and lawyers) incurred in connection with the negotiation, preparation and closing under this Agreement and all incidental matters.
3. Except as may be expressly provided otherwise in this Agreement, each party shall bear all costs and expenses associated with the performance of such party's obligations hereunder.
4. Each Party shall pay its own costs and expenses in connection with the preparation, execution and delivery of this Agreement and any other related documents and instruments to be delivered under this agreement.

CHAPTER 18

INDEMNIFICATION AND EXONERATION—DIFFERENCE FROM GUARANTEE

Indemnity means security or protection against a loss or other financial burden. Exoneration means the action of officially absolving someone from blame; vindication.

Indemnification clause is a provision in an agreement under which one party (or both / all parties) commits to compensate the other (or each other) for any harm, liability, or loss arising out of the agreement. Generally, a party undertakes to indemnify the other in cases wherein the former is at fault.

This clause could also be used to absolve a party from any responsibility for damage or other liability arising from the commercial transaction under the agreement.

Sometimes, the formula to calculate the amount of compensation towards indemnity is also incorporated in the agreement.

An Indemnification clause acts as an inter-party insurance policy, shifting risk and liability between the parties. It does so by creating the obligation that one party (the Indemnitor) will pay for losses the other party becomes liable for (the Indemnitee), either for any losses related to the agreement, or for losses from certain types of claims.

A separate obligation, also commonly included in the Indemnification clause, is Defence, where the Indemnitor will not only pay the losses of the Indemnitee, but will defend (by hiring a lawyer to defend) the Indemnitee against the claim in court.

Indemnity can be limited not only to losses from certain types of claims, but also to certain amounts of losses.

Indemnification clause varies from simple indemnification obligation for basic, low-risk, and low-money value agreements to complex indemnification clauses agreed after elaborate negotiations. There could be limits and exclusions to the indemnification obligation and indemnification procedures built in this clause.

Sometimes, guarantees and indemnities are used synonymously. However, the draftsman should understand the difference between the two so that she can draft an effective and correct clause.

A guarantee is a promise to be responsible for a third party's debt or default. Thus, basic components of a guarantee are third party obligations to exist and the intention of parties to secure the performance of that obligation through the guarantor. Obligations under guarantee are secondary in nature, *i.e.*, a guarantee is invoked only when the original party is unable to or fails to fulfil its obligations under the agreement. However, a guarantee obtained by concealing material facts or by misrepresentation is invalid.

On the other hand, obligations under an indemnity are primary and independent of any underlying obligation. Indemnities do not require a third person who is vicariously liable.

Examples:

1. XYZ shall indemnify ABC against all losses and expenses arising out of any proceeding brought by ABC or a third party arising out of XYZ's breach of its obligations, representations, warranties, or covenants under this agreement.
2. The Consultant shall indemnify the Client against all damages caused by the Consultant's negligent performance of Services.

   The Client agrees to indemnify the Consultant against all damages caused by the Client's negligence or mishandling.

   However, neither Party shall be obligated to indemnify the other for the other party's negligence.
3. Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding brought by the indemnified party or a third party arising out of the indemnifying party's (i) breach of its obligations or representations or warranties; or (ii) wilful misconduct; or (iii) gross negligence.

   Before bringing a claim for indemnification, the indemnified party shall notify the indemnifying party of the indemnifiable proceedings. If the indemnified party fails to notify the indemnifying party of the indemnifiable proceedings, the latter will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure to notify.

   The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this provision.

CHAPTER 19

REPRESENTATIONS AND WARRANTIES

This is one of the most critical components of commercial agreements.

While negotiating an agreement, parties make certain submissions and statements to each other as an inducement to enter into the agreement.

Although the terms representations and warranties are often used interchangeably, there is a technical distinction between them. A representation is simply a statement of fact upon which another party is expected to rely. A warranty on the other hand is a party's assurance to the other as to facts along with a commitment to indemnify, if that fact so represented turns out to be false. Most agreements club all such statements as representations and warranties. However, there is a minor difference in the meaning of the terms in certain context—particularly in the context of dealing with the available remedies.

Usually, the remedy for a breach of warranty is damages. The damages aim to put the claimant back in the position it would have been in had the warranty been true. Normally, there is no automatic termination right for the buyer on a breach of warranty and only damages are recoverable.

A representation is simply a statement of fact made by a party to the other. If the other party is convinced and relies on it, it brings the parties closer to executing the agreement and initiating their relationship. A warranty on the other hand is a party's assurance as to a particular fact along with an implied obligation to indemnify the other party, if the representation is found to be false at a later stage.

Invariably, every agreement has representations and warranties from each party. Each party assures the other of its ability to enter the agreement and fulfil its obligations thereunder - this is representation. Further, each party assures the other that if anything goes wrong, the former shall compensate the latter - this is warranty.

A representation generally moves from the past to the present. For example, a party informs the other party of its track record, reputation, financial status, etc. (past) and induces the latter to enter into an agreement with itself.

On the other hand, a warranty mostly moves from the present to the future. The party giving aforesaid representations, warrants that its products or services shall be of good quality and the former shall fix any shortcomings therein, if need be. This

could be in the form of repairs, replacement or compensation, depending on the facts and circumstances of the case.

Warranties may be expressed or implied. Expressed warranties are incorporated in an agreement and can be insisted upon by the receiving party. Enforcing expressed warranties is easier than those which are implied.

A warranty generally moves from the present to the future. The product that you are buying is warranted as being free of defects, and the company agrees to fix any defects for a specified amount of time into the future. Some products advertise that they have a lifetime warranty. As an example, if you buy a music system with lifetime warranty, then every time it needs repair, you can send it back to the seller to be fixed. The warranty casts an obligation on the seller to repair it.

Warranties can be either expressed or implied. Expressed warranties mean they are written into the agreement. Implied warranties imply that the products or services should be fit for a particular purpose. Expressed warranties, however, hold up better in a court than implied warranties. Therefore, the parties should try to incorporate as much warranties as possible in the agreement itself.

When an agreement clubs the terms, representations and warranties, the terms blend the past, present, and future together within terms of the agreement. Representations and warranties are assurances that one party gives to another party in an agreement. These assurances are statements that the purchasing party can rely on as true facts.

The expectations of the parties in respect of warranties need to be balanced while drafting an agreement. A performing or selling party does not want to give a long rope to the other party—it does not want to offer an open-ended obligation or a bottomless pit of obligations.

For example, a seller does not want the buyer to keep coming back to him claiming some deficiency or the other from time to time. The Seller may have already factored the deficiencies in negotiating the price of the goods or services. On the other hand, the service recipient or buyer wants an unrestricted assurance for maximum amount and period.

It is customary particularly in acquisition transactions to withhold some part of the consideration to be paid for acquisition to take care of representations and warranties for a certain period. If the representations hold good for such period and nothing untoward happens, the remaining amount is paid to the selling party, else indemnity amount is adjusted from the amount so withheld. If the indemnity amount exceeds the withheld amount, the selling party has to make good the deficient amount.

Generally, the party committing to indemnify the other party wants to limit its exposure by:

Limiting the time of warranty,

Limiting the instances wherein indemnity clause can be invoked,

Limiting the amount payable,

Limiting the number of occasions, a claim may be brought within,

Entertaining a claim above a specified benchmark only,

Imposing a deductible.

The above list is illustrative only. You should discuss this aspect with the parties and draft a suitable clause balancing the expectations of the parties.

Among the various factors involved in representations and warranties, the following play an important role:

- the relative strength or the negotiating position of each party;
- the expectations of each party, especially where one of the parties comes from overseas where market practices may be different; and
- the kind of agreement and whether or not market practice leans in one direction or the other in respect of that deal type.

As we have seen, what might seem to be relatively minor changes in the drafting of a contract, can have serious implications if something goes wrong later—having the right advice when taking a seat at the negotiating table is critical.

Representations and warranties form the basis of due diligence for buyers. Essentially, they provide an opportunity for the seller to disclose any potential issues with the target company prior to completing the transaction. Not disclosing any material event or circumstance potentially keeps a transaction from closing or may trigger a legal dispute post-transaction.

To mitigate the risk of financial loss from either party not representing something significant, purchase and sale agreements usually contain an indemnification clause. This clause protects the other party from an omitted or missed representation which may lead to a post-transaction financial loss. Therefore, it is important that both parties provide all information upfront in their representations and warranties to avoid having to enforce indemnification clauses.

In case of acquisition deals, it is usual to provide representations and warranties in a Schedule rather than in a clause of the agreement. An example is given hereinafter.

Example 1:

SCHEDULE A

REPRESENTATIONS AND WARRANTIES

The Target and the Sellers represent and warrant to the Acquirer that the following statements are all true and correct in all respects.

The representations, warranties and statements made by the Target and the Sellers in Clause __ of the Acquisition Agreement and in the certificates given or delivered by them to the Acquirer pursuant to this Agreement and any information

delivered by or on behalf of the Target, do not, either individually or collectively, contain any untrue statement of a fact, and do not omit to state a fact required to be stated therein or necessary in order to make such representations, warranties and statements.

The Target and the Sellers also represent and warrant to the Acquirer, as of the Effective Date and which shall be repeated each day until Closing in accordance with this Agreement, as hereinbelow:

1. Corporate Power, Authority

    1.1. The Target has been established and incorporated in accordance and compliance with all Applicable Laws, has the corporate power and authority to own and operate its assets and properties to carry on its business as currently conducted and proposed to be conducted and the Target has obtained and complied with all Approvals, permissions, authorities and consents required under all applicable laws.

    1.2. There has been no material adverse effect on the Target's business and its operations and there is no action or investigation or other proceedings of any nature whatsoever, by any Government Authority or any other Person pending, or threatened, which would restrain, prohibit or otherwise challenge the proposed acquisition or likely to have a material adverse effect on the business and its operations.

    1.3. None of the written materials provided by the Target to the Purchasers, contain any untrue statement of a fact or omit to state a fact necessary to make the statements contained therein.

    1.4. Other than those disclosed to the Acquirer, there are no other commitments / contracts entered into by the Target or by which the Target may be bound, which may be in breach of the terms of the transaction documents among the Parties or its obligations thereunder, or under which the execution, delivery and performance of this Agreement, the other transaction documents and/or the proposed acquisition may (a) constitute a breach or default, (b) confer upon any party the right to terminate amend, modify or suspend performance of, or accelerate any obligation or withhold any benefit under, the contract, or (c) result in the creation of any encumbrance upon the assets of the Target.

    1.5. No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting the Target are outstanding or threatened, and nor has the Target made any assignment for the benefit of its creditors or

taken any action in contemplation of, or which would constitute the basis for, the institution of such insolvency proceedings.

1.6. Except for this Agreement and/or any other transaction documents, there are no contracts, agreements or arrangements to which the Target is a party with respect to the holding or voting, in respect of any securities of the Target.

2. Contracts, etc.

2.1. The Target has not been a party to any agreement, arrangement or practice, which in whole or in part contravenes or is invalidated by any restrictive trade practices, fair trading practices, consumer protection or similar laws or regulations.

2.2. Each of the agreements entered into by the Target in respect of its business is in full force and effect and binding in accordance with its terms and there has been no default or breach.

2.3. The Target has neither received any notice of termination, rescission, invalidation or any claim pursuant to any actual breach or default of any of the agreements entered into in respect of its business nor has it received any notice or other communication alleging default or breach of any of the terms and conditions thereunder.

3. Subsidiaries

The Target does not own or control, directly or indirectly, any interest in any other company, association or other business entity. The Target is not a participant in any joint venture, partnership or similar arrangement.

4. Intellectual Property

The Target does not own any intellectual property.

5. Offices

The Target's registered office is situated at _____. The office premises are owned by the Target. All the fittings and fixtures at these premises are owned by the Target. The Target does not have any other branch or office.

6. Operations

The Target has not committed any act or omission in respect of the operations of Target having any material adverse effect.

7. Borrowings

There are no borrowings, whether present or future, actual or contingent, or charges, encumbrances or other security interests on the assets, whether tangible or intangible of the Target.

8. Corporate Matters

    8.1. The Target has made all necessary filings with the relevant authorities as required by applicable laws, including, but not limited to, the appropriate Registrar of Companies and / or Ministry of Corporate Affairs.

    8.2. The Target has given a power of attorney to its Managing Director, Ms. _____. Besides, relevant employees have been authorised to enter into routine trading contracts in the normal course of their duties.

9. Litigation

    9.1. No litigation or governmental or administrative proceeding or investigation is pending or, threatened against the Target.

    9.2. The Target has not received any notice from any governmental authority, for violation of, or in default with respect to, any statute, regulation, order, decree or judgment and the Target is not in violation or default with respect to, any statute, regulation, order, decree or judgment which would lead to such notice being issued.

    9.3. The Target has cleared all dues payable to governmental authorities as applicable and shall pay all dues attributable to the period up to the Closing date in relation to the same.

10. Insurance

    The Target does not have any insurance policies which are valid and existing.

11. Approvals

    The Target has all Approvals necessary for the conduct of its business as currently conducted and it has complied with all obligations under such approvals without any breach. The Target has not been restricted nor would the Target be in violation of any law, to apply for any further approvals as may be required.

12. Employees

    The Target has 34 employees listed in the information provided to the Acquirer.

13. Taxation

    13.1. No tax authority has issued any notice or is asserting or threatening to assert against the Target, any deficiency in payment or claim for additional or unpaid taxes. The Target neither has any outstanding liability for taxes, nor any outstanding claim for taxes, whether assessed or contingent.

13.2. All returns, computations, notices, deductions, withholdings and information which are or have been required to be made or given by the Target for any taxation purposes have been made on a proper and timely basis and are correct and none of them is subject of any dispute with the taxation authorities, as applicable, and all Taxes have been deducted and filings with respect to the same have been done and completed in accordance with law.

13.3. There are no encumbrances with respect to the Target arising in connection with any failure (or alleged failure) to pay any tax, which is due, in the present or past.

13.4. The Target has kept and preserved all material records and information as may be needed to enable it to deliver correct and complete returns to all relevant governmental authorities and for explaining or supporting the details of particulars set out in past Tax returns for all periods for which such returns and declarations are required.

Example 2:

1. The Company is duly organized, validly existing, and in good standing under the laws of the State of _____, India.
2. The Company has corporate power and qualification to carry on its business as it is now being conducted, and is qualified to do business. No proceeding is pending, or to the knowledge of the Company, threatened, involving the Company, in which it is alleged that the nature of its business makes qualification necessary in any additional jurisdiction.
3. The Company has the full right, power, and authority to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by the Company pursuant to this Agreement and to carry out the transactions contemplated hereby and thereby.
4. No waiver or consent of any person is required in connection with the execution, delivery, and performance by the Company of this Agreement and each agreement, document, and instrument to be executed and delivered by the Company pursuant to this Agreement.
5. The Company's authorised share capital consists of _____ equity shares of Rs. ___ each, of which _____ shares are issued and outstanding. All shares of Company are owned of record and beneficially by the shareholders in the amounts set forth in the attached Schedule. There are no outstanding dividends, whether current or accumulated, due or payable on any of the capital of the Company.
6. The shares to be issued to the Acquirer pursuant to this Agreement will be, (i) duly authorized, validly issued, and outstanding; (ii) fully paid,

non-assessable, and free of any pre-emptive rights; and (iii) free and clear of any and all pledges, claims, restrictions, charges, liens, security interests, encumbrances, or other interests of third parties of any nature whatsoever.

7. As of the date of these representations, there are no outstanding options, warrants, rights, commitments, or agreements of any kind for the issuance or sale of, or outstanding securities convertible into any additional shares of any class of the Company, and there are no voting trusts, voting agreements, proxies, or other agreements, instruments, or undertakings with respect to the voting of any shares to which the Company or any of its shareholders is a party.
8. The Company's financial statements present true and fair financial condition of the Company at the dates of said statements and the results of its operations for the periods covered thereby and will be prepared in accordance with generally accepted accounting principles and practices consistently applied and consistent with the books and records of the Company.
9. The attached schedules contain an accurate and complete list of all of the Company's real and material property. All leases to which the Company is a party are currently in full force and effect, and no party thereto is in default.
10. The Company owns the equipment, furniture, fixtures, improvements, and property set forth on attached schedules. The Company has good title to all of such assets and none of the assets of the Company are subject to any mortgage, pledge, lien, conditional sales agreement, security interest, encumbrance, or other charge except as specifically reflected in the attached schedule of assets.
11. All equipment owned or leased by the Company is in good repair and in working order, except for ordinary wear and tear.
12. The Company has filed all tax returns required to have been filed. All such tax returns were correct and complete in all material respects. All taxes owed by the Company (whether or not shown on any tax return) have been paid or provided for in the Company's financial statements.
13. There are no actual, pending or, to the Company's knowledge, threatened liens, encumbrances, or charges against any of the assets of the Company arising in connection with any failure (or alleged failure) to pay any tax.
14. The Company has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party.

15. There is no dispute or claim concerning any tax liability of the Company, either claimed or raised, by any authority in writing.
16. The Company has no undisclosed liabilities, either accrued or contingent, of a nature required to be reflected in the financial statements in accordance with generally accepted accounting principles, and whether due or to become due, which individually or in the aggregate are reasonably likely to have a material adverse effect on the Company.
17. A complete and accurate listing of all accounts receivable and accounts payable of the Company as of date accurately reflecting the aging thereof is attached in schedule __.
18. The Company's inventories, materials, and supplies are in good condition, usable and marketable. The values of the inventories stated in the financial statements reflect the Company's normal inventory valuation policies and were determined in accordance with generally accepted accounting principles, practices, and methods consistently applied.
19. The Company owns or has the right to use, free and clear of any claims or rights of others, all trade secrets, inventions, developments, customer lists, software, and other information and know-how used in its business.
20. The Company has good relationship with its employees. The Company is not delinquent in payments to any of its employees for any wages, other compensation or amounts required to be reimbursed to such employees.
21. The Company is in compliance with all applicable laws and regulations in respect of labour and employment including fair employment practices, terms and conditions of employment and wages. There are no charges of employment or age discrimination, sexual harassment or unfair labour practices, claims by employees against the Company or strikes, slowdowns, stoppages of work or any other concerted interference with normal operations existing, pending, or threatened against or involving the Company.
22. The statutory records and minutes book of the Company are complete and up to date and correctly reflect, in all material respects, all corporate actions of the Company taken at all meetings and accurately record all resolutions of the Company.
23. There has not been any operation of the Company out of the ordinary course of business or any change in the financial condition, properties, assets, liabilities, business, prospects or operations of the Company which change, by itself or in conjunction with all other such changes, has been or is likely to be materially adverse with respect to the Company.

24. The Company has not made any purchase, sale, license, or other disposition, or any agreement or other arrangement for the purchase, sale, license, or other disposition, of any part of the Company's properties or assets other than purchases for and sales from inventory in the ordinary course of business
25. There has not been any damage, destruction, or loss, whether or not covered by insurance, to the Company's properties, assets or business in excess of Rs. 50,000.
26. There has not been any change with respect to the Company's officers, management, or supervisory personnel other than in the ordinary course of business.
27. The Company has not made any payment other than in the ordinary course of its business.
28. The Company has not incurred any obligation or liability towards any bank, to any officer, director, or employee of the Company, other than in the ordinary course of business;
29. The Company has not granted any loans nor given any advances to any officer, director, employee, or stockholder of the Company, except for normal compensation and expense allowances payable to such persons.
30. There has been no significant change in the accounting methods or practices followed by the Company or any change in depreciation or amortization policies or rates adopted hitherto.
31. There has been no unusual change in the manner in which inventory of the Company is marketed or any increase in inventory levels in excess of historical levels for comparable period.
32. The company has not defaulted in or delayed or postponed payment of any accounts payable or other liabilities outside the ordinary course of business.
33. All patents, patent applications, copyrighted works, copyright applications, and registrations, trade names, trademarks and service marks, registered trademarks, and trademark applications, registered service marks and service mark applications which are used by, owned by or licensed to the Company (collectively, the "Intellectual Property") are listed in Schedule __ .
34. Use of the Intellectual Property and any other intellectual property used by the Company does not require the consent of any other person and the same is freely transferable.
35. The Intellectual Property is owned exclusively by the Company, free and clear of any attachments, liens, encumbrances, or adverse claims.
36. The Company's activities, products, or services do not infringe, misappropriate, dilute, impair, or constitute unfair competition with respect to any patent, trade name, trademark, copyright, or other proprietary rights of others.

37. No other person has an interest in or right or license to use, or the right to license the Intellectual Property to others.
38. There is no infringement of any of the Intellectual Property by others, nor is any of the Intellectual Property subject to any outstanding order, decree, judgment, stipulation, settlement, lien, charge, encumbrance, or attachment.
39. No claim or demand has been made and no proceeding has been filed or threatened to be filed charging the Company with infringement of any patent, trade name, trademark, service mark, or copyright.
40. There are no royalties, fees, or other payments payable by or on behalf of the Company to any person with respect to any of the Intellectual property.
41. No lawsuits, actions or administrative, arbitration or other proceedings or governmental investigations are pending or threatened against or relating to the Company or the Company's properties or business.
42. The Company has not entered into or been subject to any consent decree, compliance order, or administrative order with respect to any property owned, operated, leased, or used by the Company.
43. The properties and assets of the Company are insured to the extent mentioned in Schedule __. All such insurance policies are, and will be on the closing, in full force and effect.
44. The Company is not in default in the payment of any insurance premia.
45. Except for contracts, commitments, plans, agreements and licenses listed in Schedule __, there is no material contract for delivery of any goods or services at a cumulative value in excess of Rs. 500,000 per annum.
46. The Company has not violated of any laws, rules, or regulations which apply to the conduct of its business or any facilities or property owned, leased, operated, or used by the Company. There has never been any citation, fine, or penalty imposed, asserted, or threatened against the Company under any law or regulation relating to employment, occupational safety, zoning, or environmental matters and the Company is not aware of any present conditions which are likely to result in the imposition or assertion of such a citation, fine, or penalty.
47. The Company is not subject to any known asserted claims for liability on account of products sold or services rendered on or prior to the date hereof, which are not fully covered, including all costs of defence and investigation related to such claims, by its or its vendors' general liability insurance policies.
48. The Company has not used any corporate or other funds for any unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditure in any way relating to any political activity, government officials, or others.

CHAPTER 20

TERM / DURATION OF THE AGREEMENT

Unless you stipulate a specific duration of an agreement or tie it up with completion of a specific project, its applicability would be perpetual and the provisions thereof shall continue forever.

The agreement can be either time bound (in case of supply of good and services, employment, etc.) or can come to an end when the transaction contemplated under the agreement is completed.

If the parties intend to have a specific duration for their relationship, it must be clearly stated. If only one party has the right to terminate the agreement, it may be incorporated in the terms and a termination clause may be added as well.

Some examples:

1. The term of this Agreement shall commence as of the Effective Date and shall extend until the completion of the Project or 31st March, 2020, whichever is earlier, subject to prior termination as stipulated under this Agreement.
2. This Agreement shall come into force with effect from April 1, 2017 and shall continue to be effective for a term of 5 (five) years therefrom, unless terminated in accordance with the terms of this Agreement.
3. This Agreement shall be effective from the date of Closing as contemplated in Article 4.3 hereof and shall continue to be in force till the Parties hold more than 10% shares each in the Joint Venture Company, subject to prior termination provisions stipulated under this Agreement.
4. This Agreement shall be effective from April 15, 2017 and shall be valid for a period of 6 (six) months, that is, till October, 2017 ("the Term"), unless terminated earlier as provided in this Agreement.
5. This Agreement shall come into force from April 16, 2017 ("Effective Date") and continue to be in force for an indefinite period, until terminated by the Parties by mutual consent or by either Party in accordance with Article 17 of this Agreement.
6. The terms of this Agreement shall be effective from April 21, 2017 and shall continue in full force and effect till it is terminated by XYZ Continental Private Limited with a 15 (fifteen) days prior written notice.

CHAPTER 21

RENEWAL / EXTENSION OF THE AGREEMENT

For agreements with a specific duration, if the parties wish to allow flexibility for an extension or renewal, specific provisions to this effect should be incorporated.

The clause in this regard may provide for a specific process to be followed, if one or more parties intend to renew or extend the agreement. Such renewal / extension could either be on the same terms and conditions as the original agreement with an amendment agreement or a side letter.

If there is a change in only a couple of terms for the renewed term, it maybe mentioned in the renewal clause itself.

However, if the commercial understanding and other terms of the renewal or extension are to be very significantly different for the renewed term which entails a lot of changes to be made, it is preferable to execute a new agreement instead of an amendment to the agreement.

In common parlance, the words Extension and Renewal are used interchangeably.

However, if the parties are not renegotiating the terms and conditions of an agreement while extending the period of their commercial engagement, you may use the word "Extension", and not "Renewal".

Examples:

1. The Parties may extend this Agreement on the same terms and conditions by mutual agreement. Any Party intending to renew the Agreement must give a written notice to the other Party at least 3 (three) months prior to the expiry of this Agreement or the extended term, as the case may be.
2. The Parties may renew this Agreement by mutual agreement. Any Party intending to renew the Agreement must give a written notice to the other Party at least 3 (three) months prior to the expiry of this Agreement or the renewed term, as the case may be. On renewal, the Agreement shall continue to be in force with the same terms and conditions, unless otherwise indicated and agreed in writing by the Parties.
3. The Lessee shall have the right to renew the lease for a further term of 3 (three) years by giving a prior written notice to the Lessor at least 3

(three) months before the expiry. There shall be a 10% (ten percent) increase in the rent for such renewed term.

4. The Licensor shall have the sole right to renew the technical license for a further term of 10 (ten) years on a request made by the Licensee in this regard at least 6 (six) months before the expiry. The renewal shall also be subject to the following conditions:

   (a)

   (b)

   (c) ….

5. Subject to the Licensee being in compliance with all its obligations under this Agreement, the Licensor may grant a renewal of the Technology License for a further term of 3 (three) years upon receipt of a written request from the Licensee at least 30 (thirty) days before the expiry of this Agreement. The renewal shall be on mutually agreed payment and other conditions.

6. The Parties may renew this Agreement for such duration and upon such terms and conditions, as may be mutually agreed. However, there is no obligation upon or right of any Party regarding such renewal.

CHAPTER 22

BEWARE OF AUTOMATIC RENEWAL CLAUSES

The parties may sometimes advise you to draft either (i) a very long term agreement; or (ii) an agreement with an automatic renewal clause, that is to say, unless one or more of them wish to terminate the agreement, the agreement should continue automatically for another term.

This latter clause is also known as evergreen or self-renewal clause. It virtually continues the agreement in perpetuity in the absence of a termination notice by one or more parties.

Example:

> "Unless either Party giving a written notice of termination at least 30 (thirty) days prior to the expiry of the term of this Agreement, this agreement shall stand automatically renewed for a further term of 3 (three) years."

Mostly, parties choose this arrangement in long-term service agreements wherein the gestation period is long or specific projects take a long time. As long as the services and financials are in good stead under the agreement, this clause lies forgotten and unnoticed.

It is only when there are problems between the parties or a better alternative is available, that the parties seek to terminate the agreement. At this stage, many a times the parties find themselves stuck in a commercial relationship which could be undesirable, dissatisfactory, unviable, not sustainable or the like.

From a practical standpoint, it is always better to have a fixed term agreement, fixed by timeframe (for service agreements) or a transaction or an operational milestone. If the parties are comfortable working with each other after the expiry of fixed term, they can always discuss, negotiate and work out any amended terms for extension of their relationship.

This kind of arrangement is preferable to being stuck in an unhappy situation where you do not wish to work with another party but are forced to, due to your misjudgement, overestimation of the other party's capabilities or some other reasons.

If the parties still insist on automatic renewal, you may keep the renewed term smaller than the original term.

Another option can be to have strong termination clauses during the term of the agreement (by any party or by mutual consent).

Notwithstanding anything in the agreement, no condition in an agreement can be absolute and the parties can renegotiate the terms of the agreement. So, if a particular financial or other condition is unsuitable for a party, breeding resistance to continuation of commercial relationship, it can insist on renegotiation. It may offer a worthwhile solution to the affected party.

Keeping an automatic renewal clause is fraught with risk and should be avoided as much as possible.

Examples:

1. This Agreement shall be automatically renewed for successive one (1) year term thereafter (each such term referred to as a "Renewed Term") until and unless either Party provides the other Party with 30 (thirty) days prior written notice at the end of the Initial Term or the Renewed Term.
2. This Agreement shall be automatically renewed for succeeding terms of 3 (three) years unless either Party gives a written notice to the other Party at least 90 (ninety) days prior to the expiry of the original or extended term of its intention of not renewing the Agreement.
3. This Agreement shall automatically renew and the term shall be extended for an additional period equal to the initial term, upon the expiration of the initial term. Each extension of the term shall be upon the same terms and conditions contained in this Agreement. If a Party does not want the term of this Agreement to renew, it shall give the other Party a written notice of non-renewal not less than 90 (ninety) days prior to the scheduled end of the term.

CHAPTER 23

TERMINATION OF THE AGREEMENT

An agreement essentially expires or terminates when all the obligations of the parties and actions required to be performed thereunder are completed. The parties should keep a record to demonstrate the fact of fulfilment of their obligations under the agreement. This comes handy in case of a dispute being raised by the other party.

An agreement binds parties to one another. It requires the parties to fulfil their obligations detailed in the agreement during the term of the agreement.

However, there could be instances wherein the obligations of the parties have not been fulfilled completely but one or more parties do not wish to continue the relationship or are compelled to walk out of a commercial relationship.

The termination of an agreement could either be mutually agreed by all the parties or initiated by one or more parties to the agreement.

An agreement invariably requires one or more parties to do something, which is called performance. For example, a company may hire an artist to create certain artwork. Once the artist creates and hands over the artwork to the company, his duty under the agreement is over, it is called performance. However, if the artist becomes incapacitated or is unable to create the artwork for any other reason, it is termed as impossibility of performance. In such a case, the company has the right to terminate the contract in the case of an impossibility of performance.

Similarly, in cases where a party to the agreement does not adhere to its commitments under the agreement, it is called a breach of agreement. This is the most forceful and common ground for termination of an agreement. A breach of agreement may occur due to a party's failure to honour its obligations in full or in part.

It is also customary to define a "material breach" under an agreement to set benchmark for an affected party to terminate the agreement.

Sometimes, a party may misrepresent facts to induce the other to enter into an agreement or act illegally or make a mistake. The aggrieved party in such a case has the right to rescind the agreement. This can also happen if a party is legally not capable of entering into a valid agreement *e.g.*, a minor, lunatic or an insolvent person.

There could also be incidents wherein the parties can pre-agree to terminate an agreement in case of a contemplated or listed event.

A termination could happen due to one or more of the following events:

(i) death;
(ii) insolvency / bankruptcy;
(iii) change of control;
(iv) misrepresentation;
(v) breach of a warranty:
(vi) dissolution:
(vii) dispute;
(viii) non-performance;
(ix) change of law rendering the agreement ineffective;
(x) failure to get any requisite government approval;
(xi) revocation of government approval;
(xii) happening of a specified event;
(xiii) non-fulfilment of a condition precedent;
(xiv) mutual consent;
(xv) deadlock.

A party should give a written notice to the other(s) specifying the specific term of the agreement which gives it the right to terminate the agreement.

Termination could be with immediate effect or with a notice period, as may be specified under the agreement.

Providing for a notice period under the agreement is the norm. Termination without a notice period is a drastic measure and should happen in very grave situations.

If the agreement is to be terminated for a reason (say, a breach), it is usual to give a notice to remedy the breach, if it can be remedied. A termination notice follows in case of the breach not being remedied.

Generally, an agreement is terminated with immediate effect in very urgent and grave situations.

Examples:

1. The Parties may terminate this Agreement before the expiry of the Term by mutual consent.
2. Either Party shall have the right to terminate this Agreement with or without assigning a cause by serving the other Party a 15 (fifteen) days' prior written notice.

3. Except as otherwise provided in this Agreement, each Party shall have the right to terminate this Agreement by giving a 15 (fifteen) days' prior written notice to the other in any of the following circumstances:

   (a)

   (b)

   (c) ….

   However, each Party shall be entitled to terminate the Agreement forthwith in the following circumstances:

   (a)

   (b)

   (c) …

4. The Buyer shall have the right to terminate this Agreement by giving a 7 (seven) days' prior written notice to the Seller in any of the following circumstances:

   (a)

   (b)

   (c) ….

   The Seller shall have the right to terminate this Agreement by giving a 7 (seven) days' prior written notice to the Buyer in any of the following circumstances:

   (a)

   (b)

   (c) …

5. Either Party may terminate this Agreement upon a Material Breach of a provision of this Agreement after giving a 30 (thirty) days' notice to the breaching Party to cure such breach and if such breach is being cured within the aforesaid period.

6. The Landlord shall have the right to terminate the lease at any time during the term of this Agreement by giving a 30 (thirty) days' prior written notice to the Tenant.

7. If there is a breach of a material provision of this Agreement, the non-breaching Party shall have the right to terminate this Agreement (i) after giving a 30 (thirty) days' notice to the breaching Party to cure the breach; and (ii) the breach continues or hasn't been cured.

8. This Agreement may be terminated by the either of the Parties, without assigning any cause and without any liability, by giving 3 (three) months' prior written notice of such termination to the other Party or fees in lieu

thereof. The Company, however, shall have the right to terminate this Agreement with immediate effect in the event of a material breach by the Consultant. For the purpose of this clause, a "Material breach" shall include:

(i) any violation of the terms of Clauses …..;

(ii) any other breach that the Advisor has failed to cure within 21 (twenty one) days after receipt of written notice in this regard by the Company; and

(iii) an act of gross negligence or wilful misconduct by the Advisor.

CHAPTER 24

EFFECT OF EXPIRY OR TERMINATION

Apart from the termination clause, there should be provisions for the consequences of termination. Providing for termination isn't sufficient. You must indicate what will follow termination and how the parties have to conduct themselves after the termination. The obligations and process should be stipulated so that there is no ambiguity on these aspects and the parties can part ways in an amicable manner.

Some of the components of this clause could be:

(i) Terms and time frame for disengagement of the parties;
(ii) Return of each other's confidential information;
(iii) Non-solicitation of each other's employees or clients;
(iv) Right of First Refusal for any shares or business opportunity;
(v) Survival of certain clauses of the agreement;
(vi) Damages for any breach; and
(vii) Future restrictions from carrying out a competitive business in a specific territory or for a specific period.

The above-mentioned list is just illustrative.

Examples:

1. Upon expiry or termination of this Agreement for any reason whatsoever, all relevant licenses and sublicenses granted by the Licensor to the Licensee shall terminate automatically with effect from the date of such termination. The Licensee shall transfer, assign and convey all its ownership of any beneficial interest in the technical knowhow developed during the course of this Agreement to the Licensor without keeping any copies or reproductions thereof in any physical or virtual forms.
2. Upon expiration or early termination of this Agreement, all rights and obligations of the Parties shall cease to be effective. However:
    (i) any obligations that accrued prior to the effective date of termination (including, without limitation, all payment obligations) shall survive termination; and
    (ii) each Party shall destroy or return to the other Party all of the other's confidential information in its possession, as directed by the other Party.

3. Upon termination or expiry of this Agreement, neither party shall have any further obligations hereunder except for (i) obligations which accrue till the effective date of such expiry or termination, and (ii) obligations, promises, or covenants set forth in this Agreement which have been expressly agreed to survive such expiry or termination, including, without limitation, indemnities, non-compete and non-solicitation obligations.
4. In the event of termination of this Agreement by either Party for any reason:
    (i) any amount owed to the Licensor under this Agreement before such termination shall become immediately due and payable;
    (ii) all licenses granted in this Agreement will immediately cease to exist;
    (iii) the Licensee shall immediately discontinue using the Technology;
    (iv) the Licensee shall erase all copies or reproductions of the drawings and designs supplied to it by the Licensor under this Agreement from its systems; and
    (v) the Licensee shall return to Licensor all copies of the drawings and designs provided by the Licensor in its possession or control without keeping any copies or reproductions thereof.

CHAPTER 25

SURVIVAL OF CERTAIN CLAUSES

Even if the agreement comes to an end by way of its expiry or termination, the parties may be particular about survival of certain provisions under the agreement.

It could be confidentiality obligations, governing law, dispute resolution mechanism (as some disputes may even arise after termination, *e.g.*, guarantee / warrantee, misrepresentations, etc.) or certain other provisions.

For example, in acquisition deals, the seller usually provides an indemnity to the buyer for a certain period after the Closure of the transaction so that if any representation or warranty is found to be defective at a later stage, the buyer would be compensated.

You should clearly demarcate the provisions (in consultation with the parties) which shall survive the expiry or termination of the agreement and the parties shall continue to be bound by them.

If there are very few provisions of the agreement, which the parties intend to survive, a reference in respect thereof can be made in the operative clause itself.

Example:

> "The confidentiality obligations mentioned in this Article 7 shall survive the termination or expiry of this Agreement for any reason."

If, however, there are more than 2 such provisions, this demarcation can be made either by way of stating the heading of the obligation (Confidentiality, Non-compete, Non-solicitation, Governing law, etc.) and / or with specific clause numbers of the agreement.

Examples:

1. Any provision of this Agreement that requires performance of any obligation or observance of any covenant subsequent to termination or expiry of this Agreement shall survive termination or expiry of this Agreement and continue in full force and effect.
2. Notwithstanding the termination or expiry of this Agreement for any reason, Article 4 (Confidentiality), Article 7 (Non-compete), Article 9 (Dispute Resolution) and Article 14 (Representations and Warranties)

shall survive such termination or expiry and continue to be binding between the Parties.

3. Articles 7 to 11 of this Agreement shall survive the termination or expiry of this Agreement for any reason and shall continue in full force and effect and binding between the Parties.
4. Notwithstanding any other provision of this Agreement, the representations, warranties, covenants and indemnities of or by the Parties contained in this Agreement or in any side letter, support letter, certificate, document or instrument delivered pursuant to this Agreement shall survive the completion of the transactions contemplated by this Agreement.
5. The covenants and obligations set forth in Articles 7, 9, 13 and 14(2) of this Agreement shall survive the expiry or termination of this Employment Agreement for any reason whatsoever and shall continue to be binding upon the Managing Director notwithstanding such expiry or termination.
6. The respective rights and obligations of the Parties, particularly those relating to recovery of their outstanding dues, shall survive any termination or expiry of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

CHAPTER 26

UNDERLYING RELATIONSHIP OF THE PARTIES

The agreement must clarify in clear terms the nature of the relationship of the parties—whether they are independent contractors, agents, partners, representatives of each other, etc.

Such specification limits the parties' responsibilities, powers and obligations under the agreement.

It is also important from taxation and other enforcement aspects. For example, in certain cases, taxation authorities scan agreements to see the "Permanent Establishment" or "Related Party" angles to see if the transactions and consideration provided thereunder are genuine.

Examples:

1. This Agreement is not intended to and shall not create any partnership, joint venture, franchise, license or agency relationship between the Parties.
2. The parties are independent contractors and are dealing with each other on arm's length basis. Except otherwise expressly stipulated in this Agreement, nothing in this Agreement shall constitute or create any partnership, joint venture or co-ownership between the parties or put any party in the status of an agent, licensee, employee or representative of the other party, or empower any party to act for, bind or otherwise create or assume any obligation on behalf of the other party.
3. The parties shall maintain the status of independent contractors and this Agreement shall not create or be interpreted or construed as creating any agency, partnership, joint venture, franchise or employment relationship between them. No party shall have the authority to make any statements, representations or commitments of any nature whatsoever or to take any action which shall bind the other party.
4. This Agreement does not intend to establish any partnership, joint venture, employment, or other relationship between the Parties except that of independent contractors dealing on an arms' length basis.

5. The Parties are independent parties. Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venture partner or legal representative of the other. Except as otherwise specifically provided in this Agreement, neither Party will have nor represent itself to have any authority to bind the other Party or act on its behalf nor shall make any statements, representations or commitments on behalf of the other Party.
6. This Agreement shall not be deemed to create any partnership, joint venture, franchise or agency relationship between the parties. Each Party shall enter and perform its respective obligations under this Agreement as an independent contractor. No Party shall make any statements, representations or commitments on behalf of the other Party.
7. The relationship between the Parties shall be that of Buyer and Seller and they shall act as independent contractors. A Party or its employees, representatives or agents shall not act or give the impression of being employees, representatives or agents of the other Party.

CHAPTER 27

FORCE MAJEURE

Force majeure means "superior force", "chance occurrence", "unavoidable accident" in different languages and connotations.

Sometimes, one or more parties to an agreement may be unable to fulfil their respective obligations thereunder due to an extraordinary incident, event or circumstance. These events could vary from a war, strike, crime, riots or the like. The circumstances could even include events which are termed as "Act of God" in legal terminology, *e.g.*, earthquake, flood, hurricane, tsunami, volcanos, etc.

It is an event that makes it impossible or impractical for the affected party to perform its obligations under the agreement.

The basic test is that the event should be beyond the control of the affected party. Therefore, force majeure does not cover events which arise out of a result of any negligence of a party or events which make it economically difficult for the affected party to perform.

The force majeure clause frees the affected party from fulfilling its obligation and liability for non-compliance arising therefrom. However, such clause does not completely absolve the affected party from its obligations or performance under the agreement forever but merely suspends such obligations or performance for the duration of the force majeure event.

The presence of a force majeure clause does not absolve the parties from their responsibility of taking reasonable precautions for preventing or limiting the effects of the events. *For example*, a party should have suitable covered storage facility in rainy weather for its own goods. It should not leave its goods in the open and subject them to rain, merely because there is a force majeure clause in its supply agreement with buyers.

If the affected party has adequate insurance coverage to make good the loss suffered by it due to the force majeure event and it is placed under the same condition financially and otherwise after the event, it cannot refuse to deliver on its obligations after being put in the same condition, unless the obligation is time sensitive and performance is no longer of any use.

Further, a force majeure clause may also be limited in its application to obligations which are impossible to perform and not others.

The process of notification should be provided in the agreement. Generally, a time limit is set in the agreement, *i.e.* if a force majeure event persists beyond a certain time period and is unlikely to be over soon, the affected party needs to inform the other party. Only thereafter, the affected party's obligations are to be suspended, not otherwise.

Examples:

1. A Party shall not be liable for any delay or failure on its part in performance of its obligations under the Agreement, if such delay or failure

   (i) is beyond its reasonable control;

   (ii) affects the performance of any of its obligations under this Agreement;

   (iii) was incapable of having been foreseen or provided against with reasonable effort.

   However, the above does not include any financial difficulty particular to the affected Party or general economic or market conditions.

   For the purpose of this clause,

   "Force Majeure Event" shall mean a single event or a series of related events, outside the reasonable control of the affected party (including but not limited to change in law, fire, flood, riots, explosion, war, terrorist attack, industrial disputes, major power breakdown, etc.).

2. If a party is affected by a Force Majeure Event resulting in a failure or delay in performance of its obligations under this Agreement (other than making payments), those obligations shall remain suspended during the continuance of the Force Majeure Event.

   The aforesaid suspension shall be applicable only if the party affected by the Force Majeure Event informs the other party of such event within 7 (seven) days of such event having arisen and keep the other party updated in this regard on a weekly basis thereafter.

   The party affected by the Force Majeure Event shall take all reasonable steps to mitigate the effects thereof.

3. The Company shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement which arises out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services. However, the Company shall use reasonable best efforts consistent with

accepted practices in its industry to mitigate the effects of such event. The Company shall also endeavour to resume performance as soon as practicable under the circumstances.

A comprehensive force majeure could read like the following:

FORCE MAJEURE

11.1 As used in this Agreement, 'Force Majeure Event' means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Clause 11.2, 11.3 and 11.4 respectively including the impact/consequence thereof which:

(a) is beyond the control of the Party claiming to be affected by such event (the "Affected Party");

(b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and

(c) the Affected Party has been unable to prevent or overcome despite exercise of due care, diligence and best efforts.

11.2. **Non-Political Events:** Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 30 (thirty) days from the date of its occurrence, shall constitute a Non-Political Event:

(a) act of God, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion at its site;

(b) strikes or boycotts and not being an Other Event set forth in Clause 12.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Affected Party;

(c) any event or circumstance of a nature similar to any of the foregoing.

11.3. **Political Events:** Any of the following events shall constitute a Political Event:

(a) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any consent, approval, clearance, licence, permit, authorisation, no objection certificate, or exemption required by the Affected Party to perform its obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result

from the Affected Party's inability or failure to comply with any conditions relating to grant, maintenance or renewal of such consent, approval, clearance, licence, authorisation, no objection certificate, exemption or permit; or

(b) early determination of this Agreement by any government authority on account of public policy, national emergency, national security or the public interest.

11.4. **Other Events:** Any of the following events which prevent the Affected Party from performing any of its obligations under this Agreement for a continuous period of not less than 30 (thirty) days from the date of its occurrence, shall constitute the Other Event:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any civil commotion, boycott or political agitation which prevents the Affected Party to conduct its business in normal course;

(c) any order or judgement of a court of competent jurisdiction or statutory authority in India made against the Affected Party in any proceedings duly contested by the Affected Party; or

(d) any event or circumstance of a nature similar to any of the foregoing.

11.5. **Notice of Force Majeure Event:** The process for providing the notice of a force majeure event will be as under:

(a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 30 (thirty) days after the Affected Party comes to know, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

(b) The Notice shall *inter-alia* include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) description of the measures which the Affected Party has taken or proposes to take, to alleviate the

impact of the Force Majeure Event or to mitigate the damage;

(iii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations under this Agreement; and

(iv) any other relevant information.

(c) For the duration of the Force Majeure Event, the Affected Party shall provide the other Party with weekly updates and written reports containing the information called for by Clause 11.5(b) above and such other information as the other Party may reasonably request.

11.6. **Period of Force Majeure:** Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of a Force Majeure Event until the earlier of:

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Clause 11.8; or

(b) termination of this Agreement pursuant to Clause 11.10 hereof

11.7. **Resumption of Performance:** During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to mitigate the effects of the Force Majeure Event and make efforts to keep performing its obligations which are not affected by the Force Majeure Event. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible. The Affected Party shall notify the other Party of the end of the Force Majeure Event in writing at the earliest and resume the performance of all its obligations under the Agreement immediately.

11.8. **Performance Excused:** The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a result of the Force Majeure Event shall be excused from performance of the obligations. However, nothing contained herein shall release the Affected Party from any payment obligations accrued prior to the occurrence of the Force Majeure Event. Further, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

11.9. **Costs and Revised Timelines:** Each Party shall bear its costs, if any, incurred as a result of a Force Majeure Event. The Affected Party shall be granted extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the performance was affected by the Force Majeure Event.

11.10. **Termination Due to Force Majeure Event:** If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) days be entitled to terminate the Agreement.

CHAPTER 28

LIMITATION OF LIABILITY

You may have had a look at the reverse side of your Drycleaner's slip for the garments you have given him for laundry or dry cleaning or you may have found some terms written in very small letters on the computer-generated receipts handed to you by supermarkets.

Such slips have some terms and conditions written in very small font. One of these terms is, *inter alia*, to the effect that "The service provider's liability in any eventuality shall not exceed _____ (a particular amount)."

If you give your 2-piece Armani suit (which cost you half a million Rupees) for dry cleaning, the dry cleaner charges you a small sum, say Rupees 1,000 or 2,000 for its services.

What if your suit were to be damaged during the dry cleaning process? As a customer, ideally you would like a replacement of your garment with one in the same condition. Failing such a result, you would like full compensation for the loss or replacement of your suit plus the delay, mental agony, stress, loss of your dearest outfit, emotional trauma (you could be so attached to it, as it was the biggest purchase you made for yourself or a wedding gift from your wife). I know I am stretching it too far but this is how it happens in courtrooms when a party is seeking compensation.

However, a demand for such compensation does not make commercial sense for the dry cleaner. He cannot have an open-ended obligation which is not commensurate with his remuneration for his services. So, what your drycleaner tries to do is to limit his liability for any mishappening by providing a limit on his liability. You on the other hand, cannot insist on replacement guarantee or full indemnification from the dry cleaner, so have to give in to whatever terms he has put on the back of the slip.

As we have discussed at various places, parties have their respective rights and obligations under an agreement. They are required to perform their respective sets of responsibilities according to pre-agreed terms and conditions, norms, time-frames, etc.

Invariably, one or more parties are required under certain circumstances to compensate the other(s) for any failure, non-performance, breach, delay and other specified reasons.

A limitation of liability clause stipulates that a party will be obligated to pay to the other in such an event under the terms of an agreement. This clause limits the amount as well as the types of damages a party can recover from the other.

This is an effective way to cap the liability amount undertaken by a party (usually the service provider). Invariably, this exposure is capped at the amount equivalent to the fees paid to the service provider under the agreement or an additional amount which may be more or less than the fees. This way, among other things:

(i) the party limiting its liability can gauge the extent of its potential exposure under a particular agreement;

(ii) its auditors can also predict the maximum exposure and contingent liabilities; and

(iii) the party can take adequate insurance cover to take care of any potential liabilities.

This clause is more prevalent in service agreements and normally favours the service provider who wants to limit its exposure.

The underlying reason and rationale for such a clause is to protect a service provider who is undertaking a risk which may not be commensurate with the small fee that it may be charging for doing a particular assignment or handling an equipment or thing (as cited in the dry cleaner's example above).

The service provider's profit margin on projects or assignments in many cases may not support taking unlimited risk in respect thereof. Even insurance covers come with several riders and disqualifications and insurers insist on limitation of liability clauses in agreements.

Usually, the party drafting the agreement has an upper hand in this regard. It incorporates limitation of liability clause in its favour to limit its exposure from the first draft itself.

However, the enforceability of limitation of liability clauses is not absolute (for example, in cases involving gross and deliberate negligence on part of the service provider) and depends on merits of each case.

Examples:

1. The Distributor shall have no liability to compensate the Company for any claim pressed by the latter under this Agreement except as expressly provided under this Agreement.
2. The Agent shall not be liable or responsible for any action taken or omitted by him in pursuance of this Agreement in good faith, except for gross negligence, bad faith or wilful misconduct adjudicated by a court of competent jurisdiction.
3. The aggregate liability of the Agent towards the Principal in respect of any losses, costs claimed by the Client in relation to this Agreement shall

not exceed the fees received by the Agent provided that any such claim is made not later than within 15 (fifteen) days of termination of this Agreement.

4. The aggregate liability of the Service Provider and its directors, officers, employees, agents, sub-contractors in respect of any claims, losses, costs or damages arising out of or related to this Agreement shall not exceed the fees received by the Service Provider under this Agreement or Rs. 25,000 (Rupees twenty five thousand only), whichever is greater. Further, any such claim(s) must be made during the engagement period of the Service Provider or within 3 (three) months of the termination or expiry of this Agreement, as the case may be. The Service Provider's obligation shall also be restricted only to actual and direct losses and not to any indirect, special or consequential losses. The Service Provider shall not be subjected to any punitive or exemplary damages.
5. The aggregate liability of the Service Provider in respect of any claims, losses, costs or damages arising out of or related to this Agreement shall not exceed the fees received by the Service Provider under this Agreement or Rs. 25,000 (Rupees twenty five thousand) only, whichever is less. The Client shall be entitled to press only those claims in respect of which a loss or damage exceeds Rs. 5,000. The Client shall first make efforts to recover such losses through insurance. Any amount paid by the insurance company of the Client shall also be deducted from any claim pressed by the Client.
6. No Party shall have any liability towards each other under this Agreement, except in the case of a material breach. Even in the case of a material breach, a Party shall only be liable to make good any actual and direct losses. The breaching party shall not bear any indirect, special or consequential losses nor be subjected to any punitive or exemplary damages.

PART 7

BOILERPLATE CLAUSES

CHAPTER 1

BOILERPLATE CLAUSES

At the fag-end of an agreement, you would have seen "Miscellaneous" or "General" clauses (sometimes minor individual clauses too). Normally, these clauses invite limited or no attention from the draftsman and parties. The parties and their lawyers are so tired by the time such clauses appear that these clauses go unnoticed.

These clauses are called boilerplate clauses and are generally perceived as non-substantive provisions and are diverse from other transaction specific clauses which form the essence of the agreement. Many of the boilerplate clauses in the commercial agreements often go without any negotiations and modifications.

These boilerplate clauses may sometimes be blindly and unnecessarily included in the agreement irrespective of the fact that they may not be relevant in the context of the transaction or an amendment in law or a court ruling may have rendered them invalid or unenforceable..

I have seen instances where a poor draftsman has inadvertently incorporated such boilerplate clauses in the first draft circulated to the counterparty even though some of these clauses may be adverse to their own client's interests.

"These are standard clauses, do not bother about them" is every lawyer's preferred explanation while negotiating any agreement. They do not encourage reading or discussion on these clauses because they may not have spent any time on it themselves and are scared of their own client's or the other party's questions.

Another argument in favour of not disturbing such clauses is that these have been around for ages and no issues have arisen between (same or different) parties so far on these issues.

However, the devil always lies in details.

The boilerplate clauses can be drafted to benefit or deprive either of the parties involved and the party providing the first draft has an advantage. Therefore, it is essential to carefully examine these clauses provided at the fag-end of the agreements before signing on the dotted lines.

A blind transposition of boilerplate clauses from one agreement to another without independently considering the operational mechanics of each agreement is another element—sometimes, the draftsmen of the parties do not appreciate it and the consequences are severe.

Some common boilerplate clauses generally appearing in commercial contracts are:

- Entire Agreement;
- Notice;
- Force Majeure;
- Severability;
- Further Assurances;
- No set-off or counterclaim;
- Reliance or No reliance;
- No waiver;
- Governing Law and Jurisdiction.

We will discuss each of these clauses in detail in subsequent chapters.

The parties usually do not bother, as long as the going is good between them. However, all good things come to an end. The implications of having ignored a thorough review of boilerplate clauses become apparent when things start going wrong. The clauses that were considered inconsequential to even have merited a discussion suddenly became very important.

Sometimes, clients specifically request short and to the point agreement and may find the boilerplate clauses as irritants and unnecessary. In such a case, a draftsman has to be more careful to decide which clauses to retain and which ones to disregard. Deleting any boilerplate clauses should be carefully considered with a judicious analysis of the risks and benefits.

CHAPTER 2

FURTHER ASSURANCES

Successful execution and implementation of an agreement requires cooperation from all parties. The parties may require a lot of support from each other in terms of information, documents, consents, support letters, guarantees, board / shareholders resolutions, etc. from time to time in pursuance of the agreement.

An Assurance clause stipulates that each party to an agreement shall execute and deliver any and all additional information, documents and other support listed earlier, and shall do any and all acts and things as reasonably necessary in connection with the performance of its obligations and in pursuance of the agreement.

In the absence of this clause, a party might try to escape its obligations under the agreement by partially or fully withholding requisite assistance to the other party where such assistance is either necessary or of great importance.

The idea behind this clause is to exert moral pressure and seek commitment from all parties to cooperate in future. Sometimes, after the initial enthusiasm expressed during the course of negotiation and closing, the parties start lying low and some of them become indifferent towards implementation. This clause seeks to ensure their continued assistance.

However, this clause should be drafted carefully and not put unnecessary burden on the parties. The requests for cooperation should strictly be need based and not frequent, unreasonable and unnecessary. Otherwise, the requested party may get a feeling of being bullied by the other who had better bargaining power in drafting the agreement.

Examples:

1. Each Party shall perform all further acts and things and execute and deliver such further documents as may be necessary or as the other Party may reasonably require for implementing or giving effect to this Agreement.
2. Each party, on receipt of notice from the other party, shall execute or cause to be executed, all further documents and deeds, do or cause to be done, all further acts, and provide all assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

CHAPTER 3

NO SET-OFF OR COUNTERCLAIM

A no set-off or counterclaim clause is generally used in the standard loan agreements.

This clause is included to protect the interest of the lender in the event the borrower tries to set off amounts due to the lending party against any amounts allegedly claimed by the borrower from the lending party. There are delays in disbursement of loans and invariably, the borrowers try to claim set offs and raise counter claims towards damages suffered by them for such delays and the adverse effects on their business operations.

Such a clause provides that a borrower has no ground to withhold any payment obligation and must fulfil all its payment obligations without setting-off any amount. However, such a provision is not absolute in its operation and in case of a dispute over it, courts have the discretion to entertain the counterclaim of the borrower on merits before directing the borrower to make payment to the lender.

Examples:

1. **No set-off or counterclaim.** Except as otherwise specifically provided herein, the Borrower shall have no right of set-off or counterclaim in respect of any claim, debt or obligation against any payment for the benefit of the Lender provided for in this Agreement.
2. **No set-off or counterclaim.** Except as may be otherwise expressly provided under this Agreement elsewhere, the amounts / benefits payable shall not be subject to set-off, counterclaim, recoupment, defence or other claim which the Borrower may have against the Lender or anyone else. Accordingly, all amounts payable by the Borrower shall be paid without any notice or demand.

CHAPTER 4

RELIANCE OR NO RELIANCE

Such clauses operate in their respective fields and such operation depends on the facts, circumstances and nature of the agreement.

For example, in case of corporate borrowing, the borrower makes a lot of statements, representations, warranties and provides a big bunch of documents and information to convince the lender to lend. To hold the borrower to these, the Reliance clause is incorporated in the loan agreement to indicate that the lender has placed reliance on the correctness, validity, effectiveness or genuineness of documents or any statement, representations or warranties made by the borrower or its authorized representatives.

Example:

Reliance. Each director and officer of the Company ('Officer') shall, in the performance of his/her duties with respect to the Company, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Company whom the Officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, accountant or other person, as to a matter which the Officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

A 'No reliance' clause, on the other hand, is incorporated in an agreement in cases where the parties do not wish to bind each other towards any such information and statements. The objective of such like clause is to indicate that the parties have relied on only those of each other's representations which have been specifically incorporated under the agreement and nothing beyond that. The parties' disclosures and representations are thus, deemed limited to those included in the agreement itself.

On that count, a No Reliance clause is somewhat similar to the Entire agreement clause. We have discussed this clause in a separate chapter.

Examples:

1. Non-Reliance. The Parties represent to each other that in executing this Agreement they do not rely and have not relied upon any representation or

statement not set forth herein made by the other or by any of the other's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

2. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their related parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their related parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

CHAPTER 5

NOTICES

To fulfil their obligations and enforce their rights under the agreement, the parties need to inform the other parties by way of notices and other intimations.

An informative Notice clause is very important in this regard.

This clause should provide the name, designation, address, email id and other relevant particulars of the person (if individual) or organisation to whom a party could serve a notice under the agreement. If the person holding the designation leaves the organisation, the notice could be served to his successor in the same position.

The method of service of notice should also be mentioned. It is also customary to provide a clause regarding assumption of delivery after a specified period of sending the notice.

If there is a change in a party's particulars in the Notice clause (change of authorised person, address, email id, etc.), it should immediately intimate the other parties in this regard and thereafter, the notices should be served to the notifying party at new particulars.

Examples:

1. Any notice, intimation, consent, waiver or other communication permitted or required under this Agreement shall be valid and effective only if it is in writing and shall be deemed received by the Party to which it is sent (i) upon delivery, when delivered by hand; (ii) 3 (three) days after being sent, if sent with all sending expenses prepaid, by an express courier with a reliable system for tracking delivery; (iii) when transmitted; or (iv) 7 (seven) days after the date sent, if sent by certified or registered mail, postage prepaid, return receipt requested, addressed as under:

   If to the Company:

   Designation:

   Address:

   Attention:

   email id:

If to the Consultant:

Address:

email id:

A Party may change its addresses / email id for service of notices, etc. by a notice to the other Party delivered as provided above.

2. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated:
   (a) by personal delivery, when delivered personally;
   (b) by overnight courier upon written verification of receipt;
   (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or
   (d) by certified or registered mail, return receipt requested, upon verification of receipt.

Notice shall be sent to Distributor at the address set forth below and to the Company at its registered office, or such other address as either party may specify to the other in writing.

CHAPTER 6

PUBLICITY

Commercial relationships are arrived at after a lot of discussion, negotiation, bargaining and adjustments. The reasons, objective and profit margin behind every new transaction may be different for the same party.

Sometimes, a small party wants to flaunt its commercial relationship with the other party to attain mileage within its business sphere while for the bigger party, it is a routine matter and it does not wish to publicise it.

For this and many other reasons, it is important that the parties discuss and determine whether their relationship and the terms and conditions of their relationship (particularly the remuneration or consideration part) should remain confidential or can be publicised in media or to third parties.

Here, the parties should indicate whether all or only a part of the information under the agreement (say, only the information classified as Confidential Information) is subject to non-disclosure.

Sometimes, depending on the legal requirements relating to disclosure of commercial relationships, the restriction may apply to one or few parties only. Therefore, the respective obligations of the parties may differ. The exceptions to the general obligation of non-publicity should also be suitably incorporated in such provision.

Examples:

1. The Company is a listed company and as such is subject to certain reporting and disclosure requirements. Each of the Company and the Consultant agree not to disclose outside of their regulatory scope, the existence or contents of this Agreement to any third party without the prior written consent of the other Party except:
    (i) to its advisors, attorneys or auditors who have a need to know such information;
    (ii) to bankers for effecting payments mentioned under this Agreement;
    (iii) as required by any law or a court order;
    (iv) as required in connection with the reorganisation of a Party, or its merger into any other corporation, or the sale by a Party of all or substantially all of its undertakings, properties or assets; or

(v) as may be required to give effect to, register, implement or enforce this Agreement.

2. No publicity or information regarding the existence or contents of this Agreement shall be given or released by either Party without the prior written consent of the other Party, except as may be required under any applicable laws or regulations (inclusive of any stock exchange regulations) or in connection with a permitted assignment of this Agreement.

The Parties agree that the terms and conditions of this Agreement constitute Confidential Information and, unless otherwise specifically permitted hereby, will not be the subject of any public announcement or press release by either, except as provided in this Article.

The Parties acknowledge that in some events, certain aspects of this Agreement, including the text of this Agreement (other than the commercial terms) may be required to be disclosed by applicable law. As and when such disclosure is required, the disclosing Party shall notify the non-disclosing Party of the contents of the proposed disclosure prior to such disclosure for information and record of the non-disclosing Party. The disclosing Party shall, however, make efforts to minimise the disclosure to the extent possible.

CHAPTER 7

SEVERABILITY OF PROVISIONS

This clause is to protect the remaining terms of the agreement as a whole, if for some reason one or more provisions are invalidated for some reason (change of law, ignorance of law, unreasonableness, public policy, misunderstanding between the parties, etc.).

For example, if a new law is enacted negating a particular payment arrangement (say currency of billing and payment through a particular mode) between the parties, they may agree that the whole agreement will not become invalid and ineffective. Instead, only the provisions relating to payment arrangement would be invalidated, leaving the rest of the agreement valid and enforceable. In such a case, the parties may renegotiate the invalided provision to bring it in compliance with the new legal position.

Examples:

1. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions. The Parties shall modify the invalid or unenforceable provision to reflect the parties' original intent, to the extent legally possible.
2. If any provision of this Agreement is, or becomes, invalid or unenforceable under any applicable law, it shall be deemed to have been struck off and the remainder of this Agreement shall continue to be in full force and effect.
3. The invalidity or unenforceability of one or more provisions of this Agreement shall not invalidate the remaining provisions nor make them unenforceable. Any such invalidated or unenforceable provision shall be deemed severed from this Agreement and the remainder of this Agreement shall continue to be in full force and effect.
4. If any term of this Agreement is adjudicated to be invalid, illegal or unenforceable by a court of competent jurisdiction, such adjudication shall not affect any other term of this Agreement. The remainder of the Agreement shall continue to be in force and the respective rights and obligations of the Parties shall be construed, enforced and adjusted

accordingly. The Parties shall make efforts to modify the invalid term to the extent necessary to render such term valid, legal and enforceable, if possible.

5. If any term, condition or provision in this Agreement is pronounced to be illegal, invalid or unenforceable by a court of competent jurisdiction, such term, condition or provision shall be severed from this Agreement and become inoperative.

CHAPTER 8

GOVERNING LAW AND JURISDICTION

The parties must specify the governing law for the agreement.

At the outset of their commercial relationship, the parties to an agreement should agree as to which place, State or country's laws shall govern the respective rights and obligations of the parties and which Courts and authorities would have jurisdiction over any disputes arising out of the agreement.

Normally, when a dispute arises between the parties, the first battle is to find an appropriate court or forum to resolve such dispute.

If the parties, therefore, agree on governing law and jurisdiction, it avoids a preliminary battle between the parties just to settle the question of a governing law or a competent court or forum for resolution of any disputes between the parties.

This clause is particularly important in respect of agreements between transnational parties. In such scenario, the agreement may be executed and performed in different countries. Various legal systems may be relevant and have partial or complete jurisdiction to entertain a petition filed by a party. It is, therefore, advisable to have clarity and unanimity among the parties regarding the governing law and jurisdiction.

As a general principle, the parties to an agreement are free to choose the governing law. However, this choice is not unfettered. The governing law should have a connection with the agreement. Some valid considerations for choosing a specific governing law could be:

(i) the place where the agreement is executed;
(ii) place of performance;
(iii) place of domicile, residence or business of the parties;
(iii) national character of companies / corporations involved in the transaction;
(iv) subject matter of agreement; and
(v) other facts that help to localize the agreement.

Out of the above considerations, in the absence of a specific provision to this effect, law of place of performance of the agreement would assume greatest importance.

In case an agreement is to be performed completely at one place, the assumption is easy. However, if there are multiple places where the agreement is to be performed, it has to be main or primary place.

A jurisdiction clause indicates the parties' agreement regarding submission to the competent courts of a country or State (if the parties are from the same country). Such courts would have the right to hear any disputes between the parties arising out of their relationship under the agreement.

The jurisdiction clause mostly stipulates that the parties submit to the exclusive jurisdiction of competent courts of a particular State or country. This means that only these specified courts would have the jurisdiction to hear any disputes between the parties and none else.

While choosing governing law and jurisdiction, pay attention to the fact whether the decrees awarded by a particular court will be enforceable against a party in another country.

In certain cases, you may have to file a petition in the defendant's country to enforce the decree awarded by a foreign court. The process, thus, is duplicated entailing more cost and time.

Examples:

1. This Agreement shall be governed by and construed in accordance with Indian laws.
2. The Parties agree to submit all their disputes in connection with this Agreement to the exclusive jurisdiction of Singapore courts.
3. This Agreement shall be construed and governed in accordance with Indian laws and all claims relating to, breach thereof and arising out of this Agreement shall also be governed by Indian laws.
4. This Agreement shall be governed by and must be construed in accordance with the laws in force in the State of West Bengal. With respect to all matters arising out of or relating to this Agreement, the Parties hereby submit to the exclusive jurisdiction of competent courts of West Bengal.
5. This Agreement shall be governed exclusively by and interpreted, enforced and construed in accordance with Indian laws, which laws shall be deemed proper laws of the Agreement. The Parties irrevocably submit to jurisdiction of the Indian courts—whether having original or appellate jurisdiction in any suits, actions or other proceedings.
6. This Agreement shall be governed by and construed in accordance with applicable laws of India without having regard to choice of law principles. The Parties consent to the exclusive jurisdiction of Indian courts.
7. This agreement shall be governed by and construed in accordance with applicable Indian laws, excluding its conflict of laws principles. The Parties irrevocably consent to such jurisdiction and agree to bring any legal action or proceedings arising under this Agreement exclusively before Indian courts.

CHAPTER 9

WAIVER

Generally, such a clause in the agreement provides that a failure or delay by a party in enforcing an obligation, or exercising a right or remedy, does not amount to a waiver of that obligation, right or remedy. Further, a waiver of a breach of a term does not amount to a waiver of a breach of any other term in the agreement.

Waiver, No Waiver or Waiver and Extension clause aims to ensure that a party's failure to enforce its contractual rights, whether intentionally or by oversight, does not result in a waiver of those rights or remedies for their breach nor does it absolve the defaulting party of further defaults.

A party may decide not to strictly enforce the provisions of the contract on a particular occasion or under certain circumstances. It might, for example, accept late payments without insisting on an agreed-upon penalty, or allow the other party to send goods of a different quality on occasion.

In its most basic form, the Waiver clause provides that a party does not waive its rights to insist upon strict compliance with terms of the contract in the future simply because it has deviated from the enforcement of those terms in the past. A more complex Waiver and Extension clause will also make the parties right to extend or waive explicit, provide any limitations on that right, obligations, conditions, or time frames that cannot be extended or waived, and how extensions and waivers are executed.

Examples:

1. **Waiver.** The waiver by the Employer of a breach of any provision of this Agreement by Employee will not operate or be construed as a waiver of any other subsequent breach by Employee.
2. **Affirmative Waivers.** Neither party's failure nor neglect to enforce any of rights under this Agreement will be deemed to be a waiver of that party's rights.

   Written Waivers. A waiver or extension under this Agreement shall be effective only if in writing and signed by the party granting it.

   No General Waivers. A party's failure or neglect to enforce any of its rights under this Agreement shall not be deemed to be a waiver of that or any other of its rights.

No Course of Dealing. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

3. Waiver.

   (a) **No General Waivers.** The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach.

   (b) **Course of Dealing.** No course of dealing, or any failure to exercise, or any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

   (c) **Written Waivers.** No waiver of satisfaction of a condition or non-performance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

CHAPTER 10

ASSIGNMENT OR TRANSFER, IF POSSIBLE

It is advisable to observe the nature of the agreement and ascertain whether assignment or transfer of the parties' rights and obligations is permissible or not.

An assignment clause stipulates whether the Parties are entitled to transfer any of their rights, obligations or duties under the agreement. If such transfer is possible, conditions attached to such transfer should be specified.

In case of legal process (merger, amalgamation, restructuring of the parties, etc.), it is a part of the deal and / or prerogative of the court to give a ruling in this regard. However, it could also arise out of business needs of a party.

In respect of agreements wherein individualised products or services are being rendered, the recipient of such products or services is not likely to be receptive to the agreement being assigned to a third party.

Say, for example, Mr. X is an established actor and he enters into an agreement with a film production company for acting in three of the company movies. After completing one movie (which happens to be a mega flop), the actor does not want to appear in any more movies of the production house. Will the company be fine if the actor wants to assign the agreement to a junior artist?

Sometimes, the parties may be comfortable with assigning some rights or obligations to third parties, but not the remaining ones.

Therefore, the possibility and limitations for assignment of an agreement should be discussed.

Even if assignment is allowed, the non-assigning party insists on the assigning party to ensure that the proposed assignee shall give an undertaking to abide by all terms of the agreement.

It is common to attach a draft 'Deed of Adherence' to be executed by the proposed assignee as an annexure to a contract.

Therefore, an assignment clause could include the following:

(i) Assignment, whether permissible;

(ii) Any categories to whom assignment is not permissible;

(iii) Lock-in period within which assignment is not permissible;

(iv) Certain rights or obligations in respect of which assignment is not permitted; and

(v) Whether the assignee needs to execute a deed of adherence.

Examples:

1. This Agreement shall not be assigned by either Party and no Party shall be entitled to delegate any of its duties under this Agreement to a third party, except with the prior written consent of the other Party. All terms and provisions of this Agreement shall be binding on the Parties and their respective heirs, successors and permitted assigns.
2. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part (except by operation of law) by either party without the prior written consent of the other party. The assigning party shall have to guarantee the assignee's performance in case of an assignment.
3. The Service Provider shall have no right to assign, in whole or in part (except by operation of law), this Agreement or any of its rights, interests or obligations under this Agreement to any third party without the prior written consent of the Company. The Company, however, shall have the discretion to assign this Agreement or any of its rights, interests or obligations under this Agreement in whole or in part to any of its affiliates.
4. No Party shall be entitled to assign this Agreement or delegate any of its duties under this Agreement to a third party, except with the prior written consent of the other Party. The assigning Party shall ensure that the assignee executes a Deed of Adherence signifying its consent to be bound by this Agreement.
5. The Distributor shall have no right to assign (except by operation of law) this Agreement or any rights, interests or obligations thereunder to any third party without the prior written consent of the Company. The Company, however, shall have the right to assign this Agreement or any rights, interests or obligations thereunder to any of its majority owned affiliates.

CHAPTER 11

DISPUTE RESOLUTION MECHANISM

It appears like smooth sailing when the parties agree to have a commercial understanding and an agreement to put their understanding into effect. A dispute or discord is the last thing on their minds..

However, a clear dispute resolution clause is a very important part of their understanding.

There is no one-size-fits-all standard solution that you can incorporate in all agreements. One should take into consideration the parties' relationship (long standing, individual relatives, related parties, belonging to different countries, strangers), size and scale of the transaction, the limit of exposure the parties may have under the agreement, etc.

The mechanism suggested by you should pass the reasonability and proportionality tests. For example, you will not suggest international arbitration for an agreement between two Indian parties. Where the commercial agreement is of low value, you may suggest discussion or mediation. Size of arbitral tribunal may also be suggested depending on commercial and other considerations in the matter.

If the agreement pertains to a high value transaction and is quite voluminous, the parties may not like to share the entire agreement with third partiesin order to invoke the dispute resolution provisions in the event of a dispute. In such a case, they may execute a stand-alone arbitration agreement while referring to the original agreement.

Examples:

1. Any dispute, difference or question arising at any time between the Parties arising out of or in respect of this Agreement or the subject matter hereof shall be referred to the arbitration of Mr. _____.

   If Mr. _____ shall be unable or unwilling to act as arbitrator in the matter, the dispute shall be referred to another mutually agreed arbitrator.

   If the Parties are unable to agree on an arbitrator, Mr. _____ shall have the right to nominate a sole arbitrator.

   Arbitration shall be under the aegis of the Indian Arbitration and Conciliation Act, 1996.

The arbitration proceedings shall be conducted in English at New Delhi.

The decision of the arbitrator shall be final and binding on the Parties.

2. Any dispute, difference or question arising at any time between the Parties arising out of or in respect of this Agreement or the subject matter hereof shall be referred to a mutually agreed sole arbitrator.

   The arbitration proceedings shall be conducted under the aegis of the Indian Arbitration and Conciliation Act, 1996 in English at New Delhi.

   The decision of the arbitrator shall be final and binding on the Parties.

3. Any dispute, difference or question arising at any time between the Parties arising out of or in respect of this Agreement or the subject matter hereof shall be referred to a panel of 3 (three) arbitrators—each Party shall nominate 1 (one) arbitrator and the arbitrators so nominated shall jointly choose the Presiding arbitrator.

   The arbitration proceedings shall be conducted under the aegis of the Indian Arbitration and Conciliation Act, 1996 in English at Chennai.

   The Parties shall bear the cost of arbitration proceedings in equal proportion, unless otherwise awarded by the arbitral panel.

4. Any dispute, difference or question in respect of or relating to this Agreement shall first be referred to the Chief Executive Officers ("CEOs") of both Parties.

   The CEOs shall make efforts to resolve the dispute by discussing between them and / or by engaging other senior officials involved in the implementation of the Agreement in their discussion.

   If the CEOs fail to arrive at an amicable resolution within 30 (thirty) days of a referral having been made to them, the dispute shall be referred to a mutually agreed sole arbitrator.

   The arbitration proceedings shall be held in English at a venue in Mumbai under the Arbitration and Conciliation Act, 1996.

   The decision of the arbitrator shall be final and binding on the Parties.

5. All disputes arising between the parties related to the interpretation, operation or effect of or related to this Agreement, in the absence of a mutual resolution shall be referred to a mutually agreed sole arbitrator.

   If the Parties cannot agree on a sole arbitrator's name, Mr. _____ shall have the right to nominate such arbitrator.

   The decision of such arbitrator shall be final and binding upon the parties.

   Unless otherwise stipulated in the arbitration award, the parties shall bear the cost of arbitration proceedings equally.

   The venue of arbitration proceedings shall be New Delhi.

6. Any dispute arising out of or in connection with this Agreement which is not resolved within 30 [thirty] days after the service of a notice by a Party on the other, including any question regarding the existence, validity or termination of this Agreement, shall be referred to and finally resolved by arbitration at New Delhi in accordance with the London Court of International Arbitration India Arbitration Rules ("Arbitration Rules") for the time being in force.

   The arbitral tribunal shall consist of a sole arbitrator jointly selected by the claimant (or claimants jointly) and the respondent(s), failing which each of the claimant (or claimants jointly) and the respondent(s) shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator in accordance with the Arbitration Rules.

   The seat of the arbitration shall be New Delhi.

   Each Party shall bear its respective costs of arbitration.

7. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

   The number of arbitrators shall be [•].

   The seat, or legal place, of arbitration shall be [•].

   The language to be used in the arbitral proceedings shall be English.

   The governing law of the contract shall be the substantive law of [•].

8. All disputes arising out of or in connection with this Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

CHAPTER 12

COMPLETENESS

An agreement should be as complete and self-sufficient as possible.

One aspect of completeness is that it should cover all (as much as possible) aspects of the parties' negotiations and agreement. It should leave no scope for the parties to have to negotiate any aspect in the near future (barring the commercial arrangement, particularly if the commercials involved are dynamic). The agreement should incorporate the entire understanding between the parties in the recital, body, annexures, exhibits and so on.

Further, there should be no need to refer to any other document to know anything regarding the transaction contemplated in an agreement. If some agreements are inter-related and there is a need to refer to a particular clause of another agreement, the entire text of the relevant clause should be quoted verbatim. However, this works if such cross-references are not too many.

This clause normally goes together with the supersession of earlier agreements clause. These two provisions could be separate or together depending on the structuring of your draft.

Example of a clause:

1. This Agreement constitutes the entire agreement of the Parties in respect of the subject matter of this Agreement.
2. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior oral and written understandings, agreements and communications exchanged between the parties with respect to the aforesaid subject matter.
3. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior understandings and agreements between the Parties with respect to such subject matter. No representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between Parties other than those expressly set forth in this Agreement shall be effective or binding from the date of execution of this Agreement.

CHAPTER 13

SUPERSESSION OF EARLIER ARRANGEMENTS / AGREEMENTS

Once an agreement is executed, it supersedes all prior understandings, arrangements, agreements, etc. between the parties.

Many a times, as a first step, the parties execute Memorandum of Understanding ("MOU"), Letter of Intent ("LOI"), Non-Disclosure Agreement ("NDA"), etc. Most terms of MOU and LOI are non-binding in nature and provide a time frame for execution of a definitive agreement.

When the terms and conditions of a definitive agreement are crystalized between the parties, they execute the agreement and the MOU, LOI, NDA, etc. cease to be effective from the date of such execution.

Therefore, after execution of the definitive agreement, the parties should forget their earlier arrangements / agreements and adhere to the stipulations of the definitive agreement.

This clause usually comes at the fag-end of an agreement (usually tied with the complete agreement clause), as by then all or most of the agreed terms between the parties have been incorporated in the draft agreement and nothing more is left to be negotiated between the parties.

A statement to this effect should be appropriately incorporated in the agreement to avoid any ambiguity or confusion in the minds of the parties.

Examples:

1. This Agreement supersedes and replaces any and all previous arrangements, discussions, negotiations and agreements between the Parties.
2. This Agreement supersedes and replaces all previous arrangements and agreements between the Parties including, but not limited to, the Memorandum of Understanding dated March 12, 2017.
3. This Agreement constitutes the complete expression of the agreement and understanding between the Parties on the subject matter hereof and supersedes and replaces any prior oral or written arrangements or agreements between the Parties. Upon execution by the duly authorised representatives of the Parties, their relationship shall be solely governed

by the terms and conditions of this Agreement and not by any other arrangements or agreements.

4. This Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes all prior understandings, negotiations and agreements in this regard, except as may be otherwise specifically agreed among the Parties.

CHAPTER 14

AMENDMENTS

The agreement should clearly state the process to amend the agreement.

An amendment does not replace the original agreement. Only the provision(s) which are changed by the amendment are replaced. All other provisions continue to be in force without any interruption.

An amendment works if the changes are few and far between. The original and amendment agreement should be placed together to enable a reader to understand the current applicable provisions.

However, if the agreement requires too many fundamental changes or has been amended a number of times and it would be difficult to make sense when the original and amendment agreements are placed together, it is better to execute a fresh document.

This fresh document could be titled "Amendment and Restatement Agreement" or "Revision and Restatement Agreement" or say, "Revised and Restated Joint Venture Agreement", depending on the nomenclature of the original agreement. In this Restated Agreement, all the provisions of the original agreement (with changed provisions) are incorporated to facilitate a one-stop reading.

An agreement can only be amended by mutual consent of all the parties and by execution of the amendment agreement by all the parties or their authorised representatives.

Sometimes, however, depending on the negotiating power of a party, it may have the sole right to effect certain amendments in the agreement.

For example, we do not give much attention to the Most Important Terms and Conditions ("MITC") of banks. The bank may keep changing the MITCs time and again. As long as some change is not very drastic, we never bother or challenge it and continue using the bank's services.

The same is the case with websites' privacy or cookies policies. Do we actually read them and consciously agree to such policies?

The service providers mostly retain the sole right to make amends in these cases without specific approval of the user. Unless a user objects and keeps using the services, his consent is deemed to have been given.

Examples:

1. This Agreement can be amended only through a written instrument executed by all the Parties.
2. The Parties may agree to amend one or more provisions of this Agreement. However, any such amendment shall be effective and binding only if it is executed by the duly authorised representatives of the Parties. Except for the amended provisions, all other terms and conditions of the Agreement shall continue to apply with same force.
3. This Agreement may be amended only by the mutual agreement of the Parties. No such amendment shall be effective and binding, unless executed in writing by the duly authorised representatives of the Parties. Such amendment shall not affect the validity or existence of other terms and conditions of the Agreement.
4. No variation of this Agreement shall be effective unless it is made in writing and signed on behalf of each Party.
5. Any modification or amendment to this Agreement shall be enforceable only if it is in writing and signed by the authorised representatives of all Parties.

PART 8

SIGNING AND SEALING IT

CHAPTER 1

SIGNATURE PAGE

In India, it is a practice for each party to initial each page of an agreement and sign with full official signature on the last page. The primary objective of this exercise is to ensure that no party can replace any of the pages of the agreements.

The name of each Party, the signatory, his designation (if representing his organisation), date and place of execution should be mentioned here.

Regarding the authentication documents for identifying a signatory, details of which should be mentioned below the signatures of the authorised signatories, you should try to obtain a copy of a document that bears his official signatures. This will ensure that he does not sign the subject agreement any differently and allege thereafter that his signatures are not genuine.

Some organisations have strict rules to affix an impression of its rubber seal / common seal to every significant agreement that they sign to ensure its commitment and authenticity. This way, it becomes difficult to replace (although not impossible in today's world) any pages.

CHAPTER 2

MINOR CORRECTIONS

If any minor mistakes are detected after printing of the documents or there are some blanks (in respect of dates, any number, etc.), those can be corrected / filled with ink and all the parties should put their initials against such corrections / fillings on the side. Sometimes, names of the parties' authorised signatories are also mentioned.

CHAPTER 3

NUMBER OF COPIES

Normally, each party to the Agreement wants to keep an original copy with itself.

Sometimes, the lawyers of one or more parties too are provided with an original copy.

If there is a substantial stamp duty on an agreement, one copy of the agreement may be printed with stamp duty payment of appropriate amount and other copies may be printed with stamp paper of a nominal amount. In such a case, if one party is responsible for payment of stamp duty, it has the right to keep the original document on which appropriate stamp duty has been paid and other parties retain copies whereupon a nominal stamp duty has been paid.

However, the exact legal position should be confirmed in this regard as the position may differ in some cases.

A suitable number of copies may be executed at the same time by the parties accordingly.

Sometimes, when the parties are not executing at the same place, they may sign different copies of the agreement

The arrangement mutually agreed by the Parties should be narrated so as to avoid any ambiguity in this regard.

Example:

This Agreement may be executed in two or more counterparts which, taken together, shall constitute a single and the same agreement. A party may execute this Agreement and any related documents and transmit them to any other party. Such transmitted document shall be deemed to be, and utilized in all respects as, an originally executed document.

CHAPTER 4

WITNESSES

In India, an agreement does not compulsorily need to be witnessed to be legally effective. The position is more or less the same in several other countries too.

However, many times, things go wrong between the parties after reaching a commercial understanding and executing an agreement.

Usually, the party wanting to opt out of the agreement takes a plea that it never executed the agreement and the purported signatures on the agreement on its behalf are forged or the party signed the agreement under pressure or duress and so on.

For this very reason, the authorities insist on some sort of authentication in this regard by way of notarisation, legalisation, attestation, etc. for certain documents. To rely on any submission, they need to first assure themselves that the executant has actually executed the document and knows the contents of his submissions.

In case of agreements, a similar way of confirming the authenticity of execution is to have some independent parties to be witness to execution of the agreement.

The underlying purpose behind having execution in the presence of witnesses and having the witnesses sign the agreement in token thereof is its evidentiary value. If things go wrong between the parties as aforesaid and a party alleges that it did not sign the document, the witnesses may come to the rescue of the aggrieved party. The witness in such a case can be called upon to confirm the fact of execution.

However, the usefulness of the witness is limited. The witness can merely confirm that the supposed signatory signed the agreement in his presence. The witness is not supposed to read and verify the contents of the agreement nor the reasonability or commercial sense thereof.

The execution of agreement should always be done in the witness' physical presence.

The witness details must be very clear. He should sign the agreement, put his name in Capital letters, full residential address and some other identification proof (Aadhar card, PAN, etc.—passport numbers and residential address may change with time). This is to ensure that a witness can be easily traced and called upon to provide evidence, if required at a later stage.

To prevent forgery, many registration authorities have started taking photographs of the executants as well as witnesses at their office and made it mandatory to attach a copy of an identification document to the concerned document. This makes the process less prone to manipulation and impersonation.

CHAPTER 5

SCHEDULES AND ANNEXURES

An attachment to an agreement, assumes its significance in terms of how it is dealt with in the operative clauses of the agreement, irrespective of its nomenclature. The nomenclature does not add or reduce the importance of an attachment.

Generally, an annexure means something attached, added or appended to something larger or more important document, *i.e.*, the agreement in our discussion. On the other hand, a schedule means a table, catalogue, list, etc. of relatively minor details which instead of being incorporated in the operative body of the agreement (and thereby disturbing the flow of the agreement) is attached separately.

The benefit is that a reader who is more concerned with the operative provisions, can continue reading the agreement rather than going through the entire annexure or schedule. Alternatively, if he is interested in the information enlisted in the annexure or schedule, he can straightaway go to the annexure or the schedule. This helps in flow of the operative provisions of the agreement.

Annexures or schedules typically incorporate the following, among others:

(i) Representations and warranties;

(ii) Business Plan;

(iii) Remuneration details;

(iv) Timelines;

(v) Organisational structure;

(vi) Drafts of other agreements / documents.

An Exhibit, means a reproduction of some other document, for example, a government approval, an executed agreement, bye-laws of a company, etc.

PART 9

E CONTRACTS

CHAPTER 1

E CONTRACTS

The world around us is changing at an unprecedented pace. In particular, the last 25-30 years have brought about a communication revolution, to say the least. Our lives are technology driven today with e-mail, e-commerce, e-trade, e-contracts and so on. This is the e – way of living our lives and doing business.

People's way of working, commuting, communicating and doing business is changing rapidly. Old models of having physical stores for businesses and having to commute to eat out, shop or bank for customers are shrinking by the day. New business models like online banking, shopping, services, trading, etc. (collectively called e-commerce) are emerging. Increasingly, people carry simplest and trickiest of their day to day transactions on websites or apps. People find it more convenient and economical to carry these transactions from the comfort of their home, office, café or anywhere for that matter, which is merely a few clicks away. This kind of trade has crossed intercity, interstate and even international boundaries. There seems to be no stopping the e-commerce powertrain.

Companies can use e-signatures to conduct their business. Websites that connect different businesses can also enter into enforceable contracts while requesting services or ordering supplies. The Startup culture has invaded the entire business ecosystem in the recent past and the new-age entrepreneurs have sewn technology into their scheme of business in a big way. Even the law permits and recognizes companies to conduct their business entirely online. Business houses are saving considerable money with the online business model which allows them to pass on this cost-benefit to their customers in the form of competitively priced products and services, resulting in a win-win situation for all.

However, as discussed earlier in the book, all commercial relationships have to be encapsulated in a contract. In this kind of an e-world, where transactions are happening electronically by millions every day, it is virtually impossible for the parties to meet and execute elaborate contracts to govern their relationships.

Thus, came about the invention of an electronic contract or simply an e-contract. Necessity is the mother of invention. Most of us execute e-contracts day in, day out, knowingly and unknowingly – be it shopping, online banking, subscription to an app and the like. Think of it, even the illiterate Indian mobile subscribers execute millions of e-contracts every day, even without knowing about it!

The most common contracts are the EULA (End User License Agreement), where we click the "I agree" button while installing any software or terms/conditions/user agreement on the Website requires.

The interaction between the parties in forming an e contract may be through different electronic means: e-mail, a computer program, or two electronic agents programmed to recognize the formation of the contract.

An e-contract, however, is different from conventional contracts executed on paper, registered and stamped. Let us discuss some of the key aspects of e-contracts.

Legal Validity of e-contracts

In India, the Indian Contract Act, 1872 governs all contracts (i.e., legally enforceable agreements). The concept of online or e-contracts would not have been envisioned a century and half back, therefore we do not find any reference thereto. However, to have a valid and legally enforceable commercial relationship, even online contracts must satisfy the fundamental requisites of a contract as prescribed under the Indian Contract Act.

This would include, a valid offer and acceptance, mutual agreement (consensus) between the parties, a lawful object, legal competence, valid consideration, precise terms, etc. if any of these ingredients are missing, an e-contract would not be valid and hence, unenforceable.

In India, both the Indian Contract Act 1872 and the Information Technology Act 2000 should be complied with in accordance with a valid e-contract. An online contract is legally binding on the user when he/she clicks on the "I agree" button if the above essential terms are met.

The provisions of the Information Technology Act, 2000 (**IT Act**) provide legal recognition to an electronic (**E -Contract**) particularly section 10-A of the IT Act as under:

> *"**Section 10-A: Validity of contracts formed through electronic means.—***
>
> *Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."*

The above provision was introduced by the Information Technology (Amendment) Act, 2008 after recognizing the growing dependence on electronic means to conclude commercial agreements. This provision applies where the drafting of contract, communication of the proposal and acceptance is carried out electronically.

Evidentiary Value of Electronic Records

Indian courts recognize electronic documents under Section 65-A of the Indian Evidence Act, 1872. The procedure for furnishing electronic documents as evidence is provided under Section 65-B of the Indian Evidence Act, 1872.

As per Section 65-B of the Indian Evidence Act, 1872 any information contained in an electronic record produced by a computer in printed, stored or copied form shall be deemed to be a document and it can be admissible as evidence in any proceeding without further proof of the original.

Having said that, the admissibility is subject to various conditions prescribed under Section 65-B. It is required that the document or e-mail sought to be produced from a computer, was in regular use by a person having lawful control over the system at the time of producing it; the document or the e-mail was stored or received during the ordinary course of activities; the information was fed into the system on a regular basis; the output computer was in a proper operating condition and has not affected the accuracy of the data entered.

Kinds of e-contracts

We may categorise e-contracts into the following:

1. Shrink-wrap agreements

These are mostly license agreement for software. The terms and conditions for access to such software products are enforced by the person buying it, with the initiation of the packaging of the software product. Tightening-up agreements are simply the agreements that are accepted by users, at time of installing the software on a CD-ROM.

You may also observe some additional terms and conditions while loading a software on your computer. If you disagree, you may return the software product and walk out of the agreement.

The shrink-wrap agreement provides protection to the product manufacturer for any violation of copyright or intellectual property rights as soon as a buyer opens the product or its packaging for accessing the product.

2. Click-wrap agreements

Click-wrap contracts are web-based contracts. These contracts require the user's consent by means of "I agree", "I Accept," or "OK" button. The user has to accept the terms of use of the particular software with such agreements. Online shopping agreements are the most common examples of such agreements.

Users who disagree with the terms and conditions cannot use or purchase the product after cancellation or refusal. We see these agreements every day on almost all websites and apps. The idea is to alert the user about the terms of his engagement with the seller or other party before he gets into an agreement.

3. Browse-wrap agreements

This agreement binds different contracting parties through the use of a website. The simplest example of this is browsing any website, each user of the website must accept the terms and conditions of use and other website policies for continuous use. If he does not, his access to the website is denied and he can browse no more.

4. Miscellaneous agreements

Some other typical examples of e-contracts are – non-disclosure agreements, software development agreements, software license agreements, distribution agreements, escrow agreements, etc.

Formation of E-Contracts

E-contracts consisting of an offer and acceptance and other ingredients for a lawful contract are enforceable. Not only will a document executed online be considered an e-contract, but even the conduct of the concerned parties can imply a contract. Such conduct may include acceptance of a condition or terms or by simply downloading or exchanging emails on the subject.

Some of the ways and means to enter into an e-contract are as under:

Email

This is the most common form of e-contracts. These days, most of the corporate correspondence is conducted over the email. A valid contract can be entered into or inferred by exchanging e-mails. Offer, acceptance, pricing (consideration) and other terms can be completely exchanged via e-mail and this may be supplemented with annexures or oral / written communication.

Website Forms

Most e-commerce portals (websites and apps) sell goods or services. The customers are supposed to submit an order form. Depending on the nature of the products and services, the delivery may be online / offline. Even clicking the "I Agree" button while using a website or app constitutes a valid contract.

EULA

The End User License Agreements also form valid contracts in which end users click "I Accept" or "I Accept the Terms."

In summary, an e-contract is very different from a traditional contract. It is paperless, and it facilitates the parties to have contracts without having to meet each other face to face. It is instant and economical. Let us discuss some aspects of e-contract.

Offer and Acceptance

Most important and fundamental aspect of any contract is valid offer and acceptance.

In case of e-contracts, the parties do not meet physically, and have neither the time nor the opportunity to make an offer and convey acceptance in expressive or easily identifiable form. Both the offer and acceptance have to be gathered largely by the conduct of the parties. A contract will come into being only when the offer and acceptance process is complete. The contractual relationship between the parties comes into effect thereafter.

In relation to this question, e-commerce poses a major challenge. The offer and acceptance should be clearly identified as they determine the exact time and place of the agreement, and consequently the applicable jurisdiction.

Often in e-commerce transactions between parties, they never meet. This fact makes it tough to decipher that the parties had a clear understanding on all the issues including a valid offer and a valid acceptance. An offer is a declaration of the terms and conditions whereby the offeror agrees to be bound; and the other party (the offeree) accepts the offer. An acceptance is an unqualified final agreement by the offeree to the terms and conditions of the offer.

It is difficult to determine, in case of e-contacts, whether an offer on a website is an offer or an invitation to offer. Further acceptance of an offer becomes effective once it reaches the offeror. A website order form or e-mail is a common acceptance method in the field of e-commerce, but sometimes there is a lag between the acceptance and its receipt or non-receipt by the Offeror. In India, many transactions fail due to poor internet speed or loss of internet during the course of a transaction.

Jurisdiction and Place of Execution of a Contract

Jurisdiction is a territory or sphere of activity within which a court or other adjudicating authority's ability to entertain a dispute between the parties resides. Simply put, it means the country or the State whose laws would apply for interpreting any provisions of the contract in case of a dispute between the contracting parties.

In case of conventional contracts, the jurisdiction depends on the domicile of parties, place of execution of the contract, place of performance of the contract, place of payment, or other considerations. Parties mutually agreed on a jurisdiction normally based on these parameters.

This does not hold good for e-contracts. Here, the parties connect with each other online on one party's website or even on an independent website (which could be an aggregator only, providing a platform to introduce parties to buy / sell) and are invariably located at different places, even different countries.

Therefore, determination of the jurisdiction becomes tricky as there is no "place of execution." In case of e-contracts, the parties mutually agree to submit themselves to a particular jurisdiction – mostly, that of the business location of the supplier of goods or services.

Requirement of Signature

Signature means signing a document in one's own name and style. The underlying feature of signing a document is to confirm the identity of the contracting parties and to express consent to the contractual terms. A person signing a contract cannot at a later date deny or dispute the fact of execution or contents of a contract.

Conventionally, signatures are not an essential part for constituting a valid agreement in accordance with the Indian Contract Act. A valid contract may also be an oral agreement between parties.

However, certain legislations stipulate requirements for signature, for example, a transfer certificate on an immovable property cannot be valid if the signature and/or thumb impression has not been attested to by the seller to the same.

In the case of an e-contract, an electronic signature comes into play. An electronic signature is defined by Section 2(p) of the Information Technology Act (IT Act) as the authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and it includes a digital signature. Further, Section 5 of the IT Act provides that where any law requires that information or any other matter be authenticated by affixing a signature or any document signed by or bear the signature of any person, then such requirement shall be deemed to have been satisfied. Electronic signature serves the same purpose as a handwritten signature.

The Indian Evidence Act also stipulates that as far as a digital signature is concerned, the courts presume that the information provided in that certificate is true and correct.

In case of online contracts, for instance an app or a website, clicking the "I agree" box would amount to conveying acceptance of the terms and conditions, and will be equivalent to signing a contract.

Requirement of Stamping

Central and State legislations on the subject of stamp duty prescribe that certain documents whereunder rights are established or transferred must be properly stamped. A document not stamped or deficiently stamped is not permitted as evidence in a court, or even a competent authority unless the deficiency is corrected by way of a fine of 10 times the amount of the required stamp duty.

However, since there is no physical document in case of an e-contract, what do you get stamped? Having said that, remember Benjamin Franklin's words 'only death and taxes are certain in life'. Even there, taxes come before death. Many States

are now waking up to the possibility of generating additional revenue by prescribing stamp duty and registration requirements on e-contracts. Stamp duty is already payable on securities issued in e-format. We may soon see legislative provisions in this regard.

Reasonability in Standard Form Contracts

Most online contracts are 'Click-Wrap,' a standard contract form in which all conditions are stated on the software webpage or installation page. All the parties are required to use a click of the button appropriate for the terms and conditions. In such standard form contracts, invariably, there is no scope for negotiation. The form is prescribed by the supplier of goods and services and the customer has no say in the drafting or negotiation of such form. In case one is dealing with big corporate houses, there are standard templates (agreements) to enroll vendors. Any party desirous of conducting business with the party prescribing the standard form does not have any leverage and more often than not signs on the dotted line. Therefore, they do not spend much time in reviewing or arguing about any terms they may not be comfortable with. The party drafting such standard forms, templates or contracts (whatever be the format) has an upper hand in the process and does not provide an opportunity to the other party to comprehensively review or comment on the terms and conditions. Their excuse is the tight timeline, the large number of contracts they have to execute, and the inability to devote time required in drafting, reviewing and negotiating each contract separately. If one cannot agree to these standard terms, it is advised to look for business elsewhere.

Further, for small stake matters, at least in India, people even do not go the terms and conditions link and click the "I agree" button blindly.

The reasonability or otherwise of the terms and conditions, thus, comes to light only when there is a dispute between the parties.

However, the law expects that where a party holds a dominant position and enters into a contract with another party, and the transaction appears to be evidently burdensome or unreasonable on the other party, the onus lies on the dominant party to demonstrate that that contract was not imposed on the other party by applying pressure, coercion, etc.

Enforceability

There are enough legislative provisions, well laid and interpreted principles, and case law pertaining to conventional contracts (even the currently applicable Indian Contract Act is reaching a century and a half), be it oral or written.

However, in view of the recent emergence of technology driven contracts and lack of robust substantive law to deal with it, the enforceability of contracts executed on the internet is often questionable.

Often, the user of a commercial website is requested to read and agree to the terms and conditions of activities before purchasing or receiving the service provided by the site. The agreements entered into in this way are referred to as the clickwrap agreements, as the user normally specifies his agreement to the terms and conditions by clicking the button or the hyperlink marked "I agree".

Clickwrap agreements are enforceable a bit more easily compared to browsewrap agreements giving regard to traditional contractual principles. Case law on the subject is yet to develop with very few judicial decisions.

Exclusions

In particular, the IT Act 2000 excludes from electronic transactions the following documents:

- Negotiable Instruments
- Power of Attorney
- Trust Deed
- Will
- Sale Deed or Conveyance deed with respect to immovable property

Therefore, for these documents, one has to execute the contract in conventional form, get it executed, witnessed, stamped and registered as per legal requirements.

Conclusion

The law in India has to go a long way in embracing the avalanche of e-world ecosystem. The Information Technology Act was passed in 2000. However, many aspects of e-contracts including the requirements of signature and stamping, remain mired in controversy and confusion. We are moving more and more into a digital world and it is high time the government takes cognizance of these concerns and in fact, encourage execution and enforcement of e-contracts.

From a consumer perspective, it pays to be careful before executing any e-contracts. It may take some time but try to read the "Terms and Conditions" before you blindly click "I Agree" button. The devil always lies in the details. You must be aware of what you are getting into.

For a draftsman, it is necessary to be aware of the extant legal provisions and enforceability aspects in case of e-contracts. The level of care and attention expected in drafting online contracts is in fact more onerous since the other party can take the plea of having not read it or not been given a chance to negotiate it. All the factors we have discussed in this book to ensure an effective and balanced contract must be taken into account. For example, while drafting policies for websites generally and e-commerce portals, care must be taken to ensure the visitors' privacy, consumer rights and so on in line with the current legislative provisions and case law. There should be no one-sided, unreasonable provisions exonerating the website from all consequences, else it may be struck down.

PART 10

DO'S AND DON'TS

CHAPTER 1

SPELL CHECK, GRAMMAR CHECK

How much do you expect from your computer? Are you too demanding?

Computers have replaced so many things—clocks, calendars, watches, phones (if you use Skype) and other gadgets from our lives. This makes us too reliant on the computer, doesn't it?

Same goes while one is drafting any document.

While finalising any document, the most common trait of the lawyers is to take a spell and grammar check on their computer and if no mistakes are detected, it is good to go from their side. They feel satisfied that there are no mistakes.

Please understand and appreciate that 'Artificial Intelligence' cannot replace lawyers. For example, a computer may not detect the difference between a 'Statue" and a "Statute" or "trail" and a "trial", or "abide" and "avoid", "floor" and "flour", "their" and "there", "heir", "here", "hare" or "ire", "two", "too" or "to".

One actually needs to read the whole document to detect these errors and correct them.

In fact, it would be a cause of concern if computers were smarter than humans. You dread replacement by computers, don't you? All that talk of artificial intelligence and so on …

Doesn't it worry you?

CHAPTER 2

NO MARRIAGE MANTRAS / DOCTORS' HANDWRITING

In India, it is very common to see priests solemnising marriages by pronouncing marriage mantras in Sanskrit language. Very little of what they are saying is actually heard, captured and understood by those getting married or the people around them.

The same ritual happens in almost all religious ceremonies—the host and his family organising the ceremony sit in complete attention and the priest goes on chanting the holy mantras presumably appropriate for the occasion.

No one understands or bothers what is going on, but everyone nods in agreement and the marriage / ceremony is solemnised. One wouldn't even know whether the mantras are complete, correct or appropriate for the occasion.

Similarly, there is a common complaint against Indian doctors. They write prescriptions in such a way that no patient or those attending to the patient can make any sense out of it. One has to go to a chemist shop to understand the medicines, frequency of administering the medicines or treatment, precautions, etc. The Medical Council is now getting strict and making it mandatory for the doctors to write prescriptions in capital letters to make it legible for the patients and / or their families.

A lawyer's position is more or less akin to that of the priest or the doctor cited above. The client trusts a lawyer to churn out a good draft agreement on the basis of information provided to him and the lawyer's experience and expertise. Trust plays a very important part in India as far as professional services are concerned. Most of the professional relationships in India are still very personal.

Once a client trusts a professional, at times, he may not bother much about what the lawyer has incorporated in the agreement. The client relies on his lawyer's experience, expertise and skill in negotiating a good deal for him. In fact, many times, the parties do not delve deep into the negotiations or drafting, if they have engaged competent lawyers. They expect their lawyers to act in their best interest and balance their respective rights and obligations under the proposed agreements.

In contentious negotiations, the parties may get emotional or hyper at times. The lawyers, on the other hand, remain thoroughly professional and largely emotionless and are considered to be better in this regard.

This kind of situation implies a heavy burden or responsibility upon a lawyer. The client trusts him to apply his professional qualification and acumen to the best of his ability.

Therefore, he is expected to do a much better job than the priest or the doctor cited earlier.

One should be able to comprehend and understand the document and be fully aware of what one is actually getting into and then take a considered decision whether to get into it or not.

On a serious note, lawyers with good drafting skills are acknowledged the world over and are intrinsic team members of big corporate houses in every deal they execute.

CHAPTER 3

THE BALANCING ACT

A mistake that many draftsmen commit is to make a one-sided draft. Generally, when a professional gets a brief from his client, he tends to keep only his client in mind and each clause of the preliminary draft is skewed in his client's favour.

However, such an attitude does not help. Except the online software policies (which I challenge someone to actually read before clicking the "I agree" button), to my mind no commercial agreement is executed without review and negotiation. Invariably, all parties seek a balance of their respective rights and obligations and therefore, all agreements are executed somewhere in the middle of expectations of all parties. Some adjustments and compromises are expected at each party's end.

My question is, why be unreasonable in the first place? A good draft should be a balanced one, so that the parties trust each other and their advisors from the word go.

If any provision(s) of your draft is biased towards your client, the other party will seek balancing.

If you draft a completely one-sided agreement, it is bound to be rejected by other party and your draft is going to be red-marked all over. As a result, it will take more time and effort to reach an agreement.

A reasonably balanced draft will make the other party think before objecting or bargaining on any issues, if it feels you have given it enough leeway in the draft elsewhere. You can counter the other party's bargaining attempts or arguments with terms you have provided in their favour elsewhere in the agreement.

Putting forth a balanced draft for discussion creates trust and goodwill between the parties and ensures steady and expeditious negotiation process.

CHAPTER 4

ALL PROVISIONS IN CONJUNCTION AND HARMONY

Many provisions in an agreement are co-related and dependent on each other.

Reading the different provisions together, they should make commercial and logistic sense and make the agreement workable.

For example, in an acquisition transaction, the proposed acquirer wants to carry out a due diligence over the affairs of the target company and thereafter the acquisition price will be negotiated and eventually the acquisition will happen. What if the Acquisition Agreement draft provides that the proposed acquisition be completed within 30 days of execution of the agreement whereas another provision of the same agreement gives 60 days to complete the Due Diligence..

Similarly, a dispute resolution clause may say that a matter shall be referred to arbitration within 30 days of a written notice for a dispute having arisen between the parties. At another place, it may be mentioned that in case of a dispute, the parties shall first try to resolve it by appointing their senior officers in this regard and giving them 45 days from the date of a notice in this regard. Now, these two provisions are contradictory.

There could be many such examples, dealing with process, reporting, performance standards, timelines, etc.

You have to be very careful to ensure conformity and harmony between different provisions. Else, the parties would be sitting on landmines of potential disputes on something or the other.

CHAPTER 5

CROSS REFERENCING

Several provisions of the agreement are inter-connected and sometimes such cross-referencing could even be related to another agreement between the parties.

A provision often refers to another clause in the same agreement or another agreement. Sometimes, a provision can also refer to itself, for example, this Article 4.1.3. Such a cross reference indicates how the two provisions interact; whether one is an elaboration on the other, subordinated, in conjunction or prevailing.

An example:

> "Notwithstanding Article 4 (Restrictions on Transfer of Shares), a Party shall be free to transfer the Shares to its Affiliates with the prior written approval of the other Party."
>
> "Except the transfers permitted under Article 4 hereof, no Party shall transfer any Shares to a third party without the prior written approval of the other Party."

Now, to understand what sort of restrictions or liberty is there under Article 4 in the above examples, the reader will have to go to Article 4 in both the cases.

Cross-referencing is fine if these instances are few and far between.

Too many cross references, particularly those appearing as "subject to", "notwithstanding" and "without prejudice to", are normally confusing and break the flow of comprehension. Every time you make a cross reference, you force the reader to go back or ahead searching for another provision and read the current provision in consonance with the other provision and try to make a "combined" sense. Multiple cross-references make the agreement difficult to read and understand.

This problem is multiplied if the cross reference is to a provision of another agreement, which may or may not be attached with the present agreement. In such a case, the reader is supposed to first find the other agreement and then relate the two to understand the provision in a holistic way.

And what if the agreement has been through many rounds of negotiation and re-drafting? Having a lot of cross-references raises the possibility of erroneous or dead cross-references.

Try to eliminate cross references as much as possible.

Your draft should be such that the reader is able to understand a provision in the agreement on its own, without his having to turn to other parts of the agreement or even another agreement.

If there are many instances of cross references from another document, incorporate the relevant provision itself.

If incorporating the provisions isn't possible, at least the heading or sub-heading (if available) should be incorporated in the cross-referencing section.

An example:

> "Notwithstanding Article 4 (Restrictions on Transfer of Shares), a Party shall be free to transfer the Shares to its Affiliates with the prior written approval of the other Party."
>
> "Except the transfers permitted under Article 4 hereof, no Party shall transfer any Shares to a third party without the prior written approval of the other Party."

Now, to understand what sort of restrictions or liberty is there under Article 4 in the above examples, the reader will have to go to Article 4 in both case.

Use automated cross-referencing, if possible.

CHAPTER 6

REMEMBER, THE CLOCK IS TICKING

Sometimes, timing is very critical to the essence of the agreement and the objectives of the agreement may be defeated, unless the parties move swiftly.

In such a case, a suitable clause may be incorporated to emphasise that time is of essence and the Parties are supposed to strictly adhere to the timelines provided in the agreement.

In some cases, the parties may also insist on imputing a breach or material breach of the agreement on the other party in case of non-adherence to deadlines imposed by the agreement.

Be judicious to formulate a clause depending on facts of a particular transaction.

CHAPTER 7

MEASURE OF TIME/DUE DATES

Invariably, every agreement has time lines—duration of engagement, performance, notice period, etc. Let us discuss as to how this period should be calculated.

Suppose a notice period under an employment agreement is to be calculated in terms of days. The day when notice of termination of employment agreement is given may be excluded from the notice period. Thereafter,

1. If the notice period is to be calculated in terms of months, a "month" should mean a period of time commencing on the day when notice is given, and ending—
    - at the end of the day before the corresponding date in the following month (*e.g.* 15th September to 14th October);
    - where there is no corresponding date in the following month, at the end of the last day of the following month (*e.g.* 31st January to the last day of February); or
    - where the commencing day is the last day of a month, at the end of the last day of the following month (*e.g.* the last day of February (28th or 29th) to 31st March).
2. If the notice period is to be calculated in terms of weeks, a "week" should mean a period of time commencing on the day when notice is given, and ending at the end of seventh day after the date of notice. For example, if a week's notice is given on 7th October, you should exclude 7th and add 7 days. Therefore, the notice period would end on 14th October.
3. If the notice period is to be calculated in terms of days, a "day" should mean a period of time commencing on the day when notice is given, and ending at the end of the number of days in respect of which the notice is given. For example, if a 15 days' notice is given on 17th October, you should exclude 17th and add 15 days. Therefore, the notice period would end on 1st November.

Exclude public holidays in your calculation of "days", if the agreement provides for a notice of a particular number of "Business Days". However, public holidays do not make a difference if the stipulated period is expressed in terms of weeks or months.

CHAPTER 8

MULTIPLE TRANSACTION DOCUMENTS—WHICH SHALL PREVAIL?

Sometimes, there could be a series of agreements pertaining to a commercial transaction. For example, along with a Joint Venture Agreement, the JV parties may also execute Shareholders Agreement, Technical Licence Agreement, Secondment Agreement, Franchise Agreement, Distribution Agreement and so on.

Consistency must be ensured between the provisions on all such related agreements and it should be clearly specified as to which of the agreements (if any) are co-terminus.

It should also be clarified as to which provision shall prevail and have an overriding effect if the provisions of two agreements are not in harmony.

CHAPTER 9

EACH PARAGRAPH SHOULD BE SEPARATE

Split your content in paragraphs. One clause or paragraph should cover only one subject. Divide the same subject into sub-paragraph, if need be.

This will ensure an easy flow of information for the reader. If one subject matter is split across several clauses and paragraphs in the same section or different provisions of an agreement, it is tough to comprehend. The efficacy of all such provisions is lost as well.

Similarly, one paragraph should not be mixing up too many things. It confuses the reader.

CHAPTER 10

TABLE OF CONTENTS, INDEX

A table of contents and index helps a reader if he wants to have a quick look at the provisions.

This is required only if the agreement is of considerable length. If the entire agreement runs in less than, say, 10 pages, a reader can easily flip through and find the required provision.

During several stages of drafting and negotiation of an agreement, many clauses get deleted, added, renumbered, etc. from time to time.

In view of this, you should have an in-built auto system to correct and update the table of contents and index along with changes in your draft. Prepare it once your agreement is in final shape.

CHAPTER 11

PAGE NUMBERING

The pages of the agreement should be numbered in numerals. The pages should preferably be numbered at the bottom (aligned centre or right).

The cover page (if any) need not be numbered.

The index page(s) may not be numbered. If the index page itself runs into several pages, you may number it with some other number scheme, say in small Roman numbers.

Therefore, if possible, keep and print the cover page and index page(s) separately.

Schedules, Annexures and Exhibits of an agreement may be numbered in their own sequence. If some document is being enclosed with an agreement for reference, you could let its own numbering continue.

If you are keeping these documents in separate files, they may be numbered separately. However, page numbering in the index may become confusing. In such a case, insert a new number series, like A-1, A-2 …. Then B-1, B-2 for annexures A and B respectively.

CHAPTER 12

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property is, simply defined, any form of knowledge or expression created with one's intellect. It includes a lot of things—for example, scientific inventions, computer software, trademarks, trade names, works relating to literature, art, music or visuals; technology, drawings and designs and so on.

IPR protects the exclusive right of the holder to copy a creative work or allow someone else to do so, including the sole right to publish, produce or reproduce, to perform in public, to communicate a work to the public by telecommunication, to translate a work, and in some cases, to rent the work. However, IPRs do not protect bare ideas, but rather the expression of such ideas.

Usually, the author of a work is the first owner of copyright. However, where a work is created by an employee in the course of her employment with an organisation, in the absence of an agreement to the contrary, the employer is the first owner of the copyright of such work.

On the other hand, trade secrecy is basically a do-it-yourself form of protection adopted by the owner of such information. The owner may not have registered such information with concerned authorities to be secured a trade secret; it just keeps the information confidential without disclosing it to public or any third parties. Such protection comes to an end when a trade secret is made available to the public.

During the course of the transactions contemplated under an agreement, the parties may have access to each other's intellectual property rights ("IPRs") like brand names, logos, technology, etc.

Imagine a vendor obtaining a long-term arrangement with Pepsi or Sony. What if the vendor starts putting the Pepsi or Sony logo on its letterhead or visiting cards? The vendor wants to boast and show off its commercial relationship with these big corporate groups. People dealing with such a vendor may put him a notch higher than they normally would in their estimation, not knowing the nature and extent of the vendor's relationship with Pepsi or Sony. If not stopped, the vendor may keep using these logos on his stationery even after his association with Pepsi or Sony coming to an end. Right?

However, is such representation justified and legal? Most commercial agreements lay emphasis on confidentiality of commercial terms and even relationships. Further, the parties are not expected to use Intellectual Property Rights ('IPRs') including

brand name, logos, etc. belonging to the other, except in course of the business contemplated under the agreement.

The vendor may also come to know of certain technology or processes of these companies as well. Should he be allowed to use such information for his benefit?

In case of technology transfer, cooperation agreements or employment agreements, some new IPRs may also be developed or improved during performance of the agreement. In case of employment agreements, the employer seeks to own the IPR developed through the employment process, the employment being a sort of 'job work'.

One should carve an IPR clause stipulating respective rights and obligations of the parties owing and / or using such IPRs so as to avoid any disputes or challenges to ownership of old or new IPRs or any improvements therein.

These obligations can be covered in Confidentiality clause as well as a specific IPR protection clause. The parties should be barred from using each other's IPRs, unless required in pursuance of the agreement. Further, no party should claim any power, right or license in the other's IPR without obtaining a specific agreement or authorisation in this regard. There should be no scope for misrepresentation or falsehoods being spread by any unauthorised usage.

The clause may demarcate the following:

(i) scope of IPR;

(ii) restrictions on the recipient—disclosure, usage, etc.;

(iii) agreement regarding the new IPR developed;

(iv) assistance to each other for registration of new IPR;

(v) obligation to report any violation of the other's IPR;

(vi) assistance in pursuing any legal action alleging the violation mentioned in (v)

(vii) remedy for violation.

A sample IPR clause could be as under:

1. The Managing Director shall have no rights to any of the Company's concepts, inventions, processes, methodologies or trademarks, nor any rights to any materials that have been copyrighted by the Company. The Company shall own all rights to its patents, inventions, trademarks, service marks, trade names and other trade information. The Company shall own all copyright rights to its materials, including materials prepared by the Managing Director. Any inventions, concepts, processes, methodologies, trademarks, works or other material subject to copyright developed by the Managing Director in part or in whole in connection with his duties and responsibilities with or for the Company, shall belong exclusively to the Company.

2. The Licensee acknowledges that, except for the rights expressly granted herein, this Agreement does not transfer or confer to Licensee, and Licensee does not obtain from Licensor, any rights in and to the Software. All right, title and interest, including without limitation intellectual property rights, in and to the Software will remain solely with Licensor. Nothing herein is intended to, and shall not be construed to transfer to Licensor any rights in intellectual property developed by the Licensee. The Licensee's intellectual property rights shall remain solely with Licensee.

CHAPTER 13

IPR CONTRACTS

In today's world, intellectual property (IP) is a central element of most businesses, particularly for new-age businesses. It is the most valuable and sometimes the only asset of a business. In case some global brands, the value of its IP is bigger than the GDP of many underdeveloped countries.

However, for some reason, protection of these intellectual property rights (IPRs) is not always a top priority when running a business. Protection of IP of an entity is critical and failure in establishing processes to protect it could have adverse financial consequences for the business, irrespective of the violation being intentional or advertent. An IP violation could open your business up to lawsuits and can potentially have a big price tag. Understanding what types of IP exist and how they are protected by the law is critical to avoid accidentally infringing upon someone else's rights. There are various contracts which entail disclosure of protected IP – e.g., for employment, consultancy, supply, etc. Unless you incorporate adequate safeguards in your contracts, company policies or standard terms and conditions of business, you are exposing your IP to unauthorized usage and exploitation.

More than ever before, intellectual property has become critical to the success of a business. You must know and appreciate as to what exactly is your proprietary intellectual property, and how should you protect it?

In concept, intellectual property is a special intangible property, which one has created, and it should provide the creator some economic benefit, by virtue of him being the creator. This property must be new and unique, different from all others.

The three most common forms of intellectual property include trademarks (distinct signifiers of a brand), copyright (original authorship works) and patents (scientific inventions). One's capability to protect his intellectual property depends on which category it falls into, since there are different legislations and procedures for this purpose.

The underlying objective of these laws is to encourage more and more people and organisations to continue developing new creative works in the fields of art, technology, designing and so on. Such creativity benefits the society at large.

However, it is not easy to protect such intellectual property, particularly when you are entering into business deals every now and then. Your contracts must specify the extent of reliance, usage and permission to use your intellectual property by your counterparties while safeguarding its secrecy.

In this chapter, we will examine some typical contracts which entail disclosure of protected IP and discuss methods to limit the disclosure and bind the recipient parties to respect and protect the IP.

Let us first discuss some typical contracts and their purpose in relation to IPR protection.

- **Non-Disclosure Agreements**

While entering into any negotiations or even while executing a contract for commercial relationships, it is very common for the commercial entity disclosing some confidential information (including IPRs) to insist on execution of a non-disclosure agreement (NDA). This is primarily resorted to protect the confidential information qualifying as intellectual property. Such information is very intrinsic to the successful functioning of any company and could include client lists, manufacturing processes, trade secrets, business structures, long term plans, technologies or sourcing codes, etc. NDAs are largely a compulsory part in contemplation of any important and close business relationship to protect disclosure of confidential information in future. The provisions of NDA are applicable, irrespective of the contemplated transaction being concluded. Even if an MOU or Term sheet falls, in the absence of a definitive agreement between the parties, NDA obligations survive. Typical NDA clauses can also be found in other agreements, e.g., employment agreements, consulting agreements, etc.

- **Assignment Agreements**

Such agreements contemplate assignment (i.e. transfer) of the IPRs either fully or partially from the original creator of the IP to another person or organization. This transfer includes a consideration for the transfer to be valid and enforceable. Under such contracts, the original creator transfers his right to develop or further transfer the said IPR to another person or organization. Depending on the nature of the IPR in question (e.g., patents, designs, copyrights, trademarks, geographical indications, etc.), such assignments are governed by appropriate legislations. Following are the types of Assignments:

- **Trademark Licensing / Franchising Agreement**

Brand recognition has become one of the most important aspect driving the sales of any product or service. Trademarks are the distinguishing factor for the public to assist them in identifying the products and services of one entity from the others. Therefore, many entrepreneurs seek license or franchise of established brands to sell their products or services thereunder. Under such relationship, the seeker gets the recognition and goodwill of a well-established brand which helps him sell much easily. The brand assists the franchisee in promoting the business and maintaining the same product / service standard of the franchiser in respect of the products or services. These standards are normally universal with some tweaking around in

particular jurisdictions. Many of the popular restaurants / café chains e.g., McDonalds, Pizza Hut, Dominos, KFC, Starbucks, follow a franchisee model.

- **Technology Transfer Agreements**

Under such agreements, the IPR owner authorises another person or organization to use the IPR involved in the technology developed by the former for specific territory, period and purposes. There is a consideration for use of these rights by the licensee.

On a global stage, technology generally moves from developed countries to developing or underdeveloped countries. This helps smaller and newer organizations to grow by acquisition of technology from bigger and more established organizations for goods or services.

The technology provider is usually paid a monetary royalty by the licensee – a lump sum amount and / or a percentage on sales. Even securities of the licensee can be issued in lieu of royalty payment.

India is a classic example. After the liberalization of Indian economy in 1991, there has hardly been any sector in India which has not witnessed technology transfer from foreign companies. Most of the automobile sector in India expanded and improved with such arrangements. The beauty of such relationship was that in addition to the technology transfer, even financial joint ventures flourished whereunder the Indian companies benefitted from the foreign investor's technology and the foreign investor enjoyed the Indian partner's distribution network and wide and unmatched consumer base in India – a win-win situation for all.

- **Copyright Licensing**

The owner of the copyright can grant other people or organizations permission or 'license' to leverage the copyright, e.g., creating a reprint, or to reproduce or distribute the original works on mutually agreed terms under such an agreement. The scope of the permission or license may be restricted in terms of duration, language, territory and so on. The licensee thus become entitled to use the copyright work subject to the limitations laid down in the contract and does not attain any ownership rights in the copyright.

Here again, the licensee has to pay a royalty to the original creator of the copyrighted work on mutually agreed terms.

- **Employment agreement with inventions assignment**

This type of contract confers the employer the rights over any IPR created by an employee in the course of the latter's employment. Intellectual property rights in an employer-employee relationship are invariably assigned to employer. However, executing a separate inventions assignment agreement is very important for this purpose. Usually, all employment agreements stipulate that all the creations of an

employee are deemed to be under the employer's ownership. Further, these kind of agreements and clauses also protects the confidential information of the company.

Research and Development Agreement

Such agreements are executed between a company and any individual or an organization when any scientific research and development of an idea, goods or services is to be conducted. Some typical examples are scientists working with pharmaceutical companies, academics researching at universities, etc.

In such agreements, the employers insist on suitable assignment clauses to assign any intellectual property developed by the engaged people in the favour of the employers.

Contracts in nature of work for hire

When an organization hires someone (say, an artist or an expert in a particular area) to perform or to create some work over which the organization wants to own copyright, e.g. audio, video, logos, designs, logos, etc., such kind of contracts are executed. Identification of the intended / executed work / product is very important to avoid any ambiguities / disputes at a later stage.

Important Clauses in Intellectual Property Contract

The Intellectual Property Contracts we discussed above include a diverse and a wide range of rights that can be sold, transferred, assigned, licensed, etc. between the contracting parties. However, given the intangible nature of the IPR and complex methods of IPR valuation, utmost care should be taken to draft such contracts. This is more important from the IPR owner's perspective. However, the recipient too should know what it is getting into and must limit its obligations and financial exposure even in deemed default scenarios.

While executing any contract which pertains to IPR, the owner must try to optimize and derive value from its IPR rather than diluting the brand equity.

Following are some of the most important aspects that should be borne in mind while negotiating / executing an IPR contact

Ownership

The contract must clearly stipulate the respective rights of parties in the IPR which is in existence at the time of the initiation of the contract as well as the IPR which is developed pursuant to or during the course of the contract.

Further, ownership status over the IPR upon termination or expiration of the contract must also be agreed upon and incorporated in the agreement. Most disputes arise due to lack of clarity and ambiguity on this issue. An employee feels he has moral and other rights over something that has been created by him and the

employer is of the view that since the employee has been paid the consideration for its creation and as it is created in the course of employment, it is the employer's prerogative to assert ownership rights. This is one of the primary reasons for discontentment on disengagement with technology companies.

Confidentiality

The primary objective of IPR related agreements is to protect the proprietary and confidential nature of the IPR. Therefore, in virtually all commercial agreements, where some IPR is to be shared with the other party, the IPR owner must insist on a confidentiality clause. IPRs provide edge to the creators over others in several spheres of their business and therefore, conscious efforts to protect such rights from falling into third parties' hands is necessary. A confidentiality clause disincentivizes the recipient party from sharing it with unintended parties, particularly if the consequences for such unauthorized sharing are severe.

Limits of IPR Use

Whenever a party gives the right to another to use its IPR in any manner, it should have a comprehensive contract to lay down the parameters / limits for such usage. For example, the territory, the products or services or processes, the duration, the purpose, etc. of use of IPRs. Any use beyond these parameters should be deemed to be material breach of the contract.

Limit Access

The IPR owner must stipulate that the other party will restrict access to the confidential information only to those employees, agents, advisors, consultants or representatives who need to work on it in pursuance of the contact and no one else should be given access to such information.

Inventory

IPR owner should be diligent enough to record and document the IPRs in a way that they are easily identifiable at all times – at initiation or subsistence or termination of the agreement.

Consideration

IPR should fetch a good return to its owner. The contracts must stipulate precise methodology to calculate royalty and revisions therein from time to time and consequences for default.

Termination/ Breaches

The contracts must also prescribe the consequences of breach of the confidentiality / IPR contract including termination of contract, damages, legal pursuit and so on. The consequences should be severe and stringent enough to discourage the recipient party from violating the terms.

Transfer vs License

The contract must be very clear whether the IPRs are being transferred for good (virtually sold) or just being licensed (i.e., a permission for use for limited time and purpose). In the absence of such clarity, there could be a difference in the parties' perception of the nature of transfer and it could cause friction and disputes. Another issue emerges in case of termination or expiry, if it is a sale/assignment, nothing is to be done but in case of license, the owner may seek return of IPRs, drawings, designs, etc. and insist on the recipient not using it thereafter.

CHAPTER 14

ABOLISH CAPITAL PUNISHMENT IN WRITING

Writing in capital letters means you are shouting. It is very irritating to read and understand.

However, there could be some abbreviated definitions or initials of individual parties in capital letters.

Apart from this, you may also keep chapter or section headings or signatory details in capital letters.

Minimise the use of capital letters in your drafting.

CHAPTER 15

AVOID REDUNDANT, REPETITIVE WORDS AND PHRASES

It is customary in our day to day life to use such words and phrases. The use of more words than required is called pleonasm. We use such words and phrases to emphasise and once such words and phrases are used frequently, they become acceptable too.

Oxymoron. An oxymoron occurs when two contradictory words are together in one phrase. In fact, oxymoron translates from the Greek words oxy meaning sharp, and moron, which means dull. Thus, the word itself is two contradictory words joined together. The Webster Dictionary defines oxymoron as "a combination of contradictory or incongruous words".

Oxymorons can be used for dramatic effect, for example: Hell's Angels and deafening silence.

It goes without saying

Imagine a mental picture

Any particular type

Open secret

Larger half

Clearly confused

Act naturally

Found missing

Liquid gas

Seriously funny

Living dead

Original copies

Pretty ugly

Almost exactly

Exact estimate

Genuine imitation

Past memories

Very unique

Various differences

Basic fundamentals

True facts

Free gift

Past history

Unexpected surprise

Couplets. Sometimes, we use words in combination to emphasise or as a matter of practice without meaning any better.

Few examples:

Each and every

Goods and chattel,

Right, title, interest, property,

Risk, cost and responsibility

Aid and abet

Due and owing

Agree and undertake

By and between

Convey and transfer

Full and final

Old archaic words and phrases

Above

Attains the age of

At the time

Commence

Initiate

Dated as of even date

Does not operate to

Period of __ days

I hope you can easily make out that many words in the above phrases are useless and redundant. They add nothing to the meaning of adjoining words and merely emphasise the relevant word.

You should avoid such words as much as possible.

CHAPTER 16

GENERAL PROVISION FIRST, THEN EXCEPTIONS

While working on any draft, you should start with writing the basic premise or rule, that is, a general provision regarding a right, obligation, activity of a party, etc. This is called setting forth the rule. Invariably, there are exceptions to these rules. However, these exceptions are limited and not applicable in all cases and not applicable to everyone. Therefore, you should first set the rule very clearly and only thereafter (in the following sentence or paragraph) set forth exception with a clarification as to how and why the general rule does not apply to a particular case.

Exceptions and conditions attached to a general provision should follow the main sentence after the general provision has been set. Initiating a sentence with exception forces the reader to go back and forth to understand the implication of the general provision and the exception.

It is much easier to follow a basic idea incorporated in the agreement and go through exceptions, if any.

Read the following and observe which is easier to comprehend.

Example 1. Except its closure on Saturday and Sunday, the Store is open from 9 am to 8 pm.

Example 2. The store is open from 9 am to 8 pm. Closed on Saturday and Sunday.

CHAPTER 17

AVOID REPETITION OF CLAUSES

This happens when you do a cut-and-paste job or do not pay enough attention to the agreement structure.

The components of one clause are either scattered clumsily in several provisions or the clause itself is repeated several times, *inter alia*, due to:

(1) cutting and pasting contents from different drafts; or

(2) getting instructions from clients about insertion of a provision and you do not check that you have already provided for it in the agreement.

This leads to repetition. Further, the numerous clauses on the same subject may not be the same or consistent. In case of a dispute, which one is to be relied upon. Trust me, you will be in a soup for this oversight.

CHAPTER 18

WHY BE PASSIVE?

Just observe what do we use more while talking—(i) active voice; or (ii) passive voice?

I am sure your answer will be active voice.

Then why are agreements cursed to be written in passive voice.

An agreement is a way of talking to the reader, telling her what the agreement is all about. Right?

Then why should it be in a tone different than our normal speech which is easily comprehendible?

Agreements, therefore, should be drafted in the active voice, as much as possible.

This ensures brevity, makes the language tighter and conveys the intention more directly. Active voice sentences are more concise and fewer words are required. They clearly demonstrate as to what party does what.

Example:

1. The Products shall be delivered by the Supplier to the Client. (Passive Voice)

   The Supplier shall deliver the Products to the Client. (Active Voice)

2. No services shall be rendered by the Service Provider in the absence of advance payment. (Passive Voice)

   The Service Provider shall not render any services without advance payment. (Active Voice)

The first sentence emphasises the products or services erroneously, whereas the emphasis should be on the Supplier's or the Service Provider's obligation. The second sentence achieves this objective by putting the onus correctly.

It is tedious to read and comprehend sentences in passive voice.

Avoid passive voice as much as possible. It only makes sentences wordier and less effective.

CHAPTER 19

SMALL SENTENCES

Long sentences are a strain on the brain. If a sentence is too long, the reader tends to lose track of where the sentence started from and what it wanted to say.

Break long sentences into two or more smaller sentences or even sub-clauses, if need be. This makes it look neater and easy to understand.

Have a look at the following sentence / paragraph:

In the event that the Purchaser defaults in the payment of any instalment of purchase price, taxes, insurance, interest, or the annual charge described elsewhere herein, or shall default in the performance of any other obligations set forth in this Contract, the Seller may: at his option: (a) Declare immediately due and payable the entire unpaid balance of purchase price, with accrued interest, taxes, and annual charge, and demand full payment thereof, and enforce conveyance of the land by termination of the contract or according to the terms hereof, in which case the Purchaser shall also be liable to the Seller for reasonable attorney's fees for services rendered by any attorney on behalf of the Seller, or (b) sell said land and premises or any part thereof at public auction, in such manner, at such time and place, upon such terms and conditions, and upon such public notice as the Seller may deem best for the interest of all concerned, consisting of advertisement in a newspaper of general circulation in the county or city in which the security property is located at least once a week for Three (3) successive weeks or for such period as applicable law may require and, in case of default of any purchaser, to re-sell with such postponement of sale or resale and upon such public notice thereof as the Seller may determine, and upon compliance by the Purchaser with the terms of sale, and upon judicial approval as may be required by law, convey said land and premises in fee simple to and at the cost of the Purchaser, who shall not be liable to see to the application of the purchase money; and from the proceeds of the sale: First to pay all proper costs and charges, including but not limited to court costs, advertising expenses, auctioneer's allowance, the expenses, if any required to correct any irregularity in the title, premium for Seller's bond, auditor’s fee, attorney's fee, and all other expenses of sale occurred in and about the protection and execution of this contract, and all moneys advanced for taxes, assessments, insurance, and with interest thereon as provided herein, and all taxes due upon said land and premises at time of sale, and to retain as compensation a commission of five percent (5%) on the amount of said sale or sales; SECOND, to pay the whole amount then

remaining unpaid of the principal of said contract, and interest thereon to date of payment, whether the same shall be due or not, it being understood and agreed that upon such sale before maturity of the contract the balance thereof shall be immediately due and payable; THIRD, to pay liens of record against the security property according to their priority of lien and to the extent that funds remaining in the hands of the Seller are available; and LAST, to pay the remainder of said proceeds, if any, to the vendor, his heirs, personals representatives, successors or assigns upon the delivery and surrender to the vendee of possession of the land and premises, less costs and excess of obtaining possession. (Source : plainenglish.co.uk)

Dare explaining it to me, please.

I have read somewhere that Jonathan Coe's novel, 'The Rotters' Club', contains a sentence of 13,955 words. This is generally considered to be the longest sentence in English literature.

I fail to understand why a reader should be tortured into this. Please write small sentences, break them into sub-portions if need be or tabulate something which is difficult to explain in writing. As a draftsman, I believe your success lies in making your provision understandable, not the other way round.

CHAPTER 20

HOW TO WRITE DATES

A date can be written in many ways:

20 March, 2017

March 20, 2017

20th March, 2017

20 March, 2017

March 20, 2017

March 20th, 2017

20-03-2017

20/03/207

03/20/2017

03/20/207

If you were to write 09/11/2017, what date would it indicate?

In India, it would mean 9 November, 2017 as the format is Date/ Month/Year whereas in the US, it could indicate 11 September, 2017 as the format used there is Month/Date/Year.

To avoid any confusion, it is better to write the month in words (rather than number), for example 20th March, 2017 and whatever format is used first should be used throughout the agreement. This way, you will never be wrong and a same date would be registered in the mind of anyone reading the agreement anywhere in the world.

CHAPTER 21

HOW TO WRITE NUMBERS

When you are to write any amounts or time period in the agreement, try to write it in numerals followed by words in brackets. For example, USD 3,000 (Three thousand United States Dollars), 15 (fifteen) days, 7% p.a. (seven percent per annum) etc.

The dates and years may not be written in words. However, if you do so, though it may be overdoing something but it will definitely help in eradicating scope for any mistakes!

The percentages should always be mentioned in per month or per annum. Otherwise, it creates ambiguity. It is very simple for parties to say 2% penal charge for delay in performance, but there should be parity of thought process between the parties as to whether it is:

(i) a lump sum figure of 2% of the consideration;

(ii) 2% of consideration per month for the period of delay;

(iii) 2% of consideration per annum for the period of delay.

Clarity will help the parties to arrive a better claim management. Isn't it?

Also, be clear whether to write numbers in million, billions or lakhs and crores—the latter terms are used more frequently in India, a lakh being equivalent to one hundred thousand and crores meaning ten million. Choose a consistent style of writing numbers throughout the agreement, although it is always better to write numbers first then words in brackets, being more comprehendible.

Further, certain European countries use comma and decimal sign (full stop) in numbers differently from others.

In India 4,000 would mean four thousand but for a German party, it would mean four point zero as they use comma (,) for decimal point (.). Following numerals with words eliminates this confusion.

CHAPTER 22

AGREE ONLY ONCE

It is a very common (but outdated) practice to repeat "the parties hereby agree", "the parties agree", "the parties expressly agree", "the parties specifically agree" in several clauses.

This is an avoidable situation. Every agreement starts with the clause "The Parties agree as under:", doesn't it? Thereafter only, specific clauses start incorporating the specific provisions. It is clear thus that the parties agree on each clause of the agreement and therefore, the entire agreement.

Indicating the parties' agreement in different clauses doesn't add anything to the content thereof.

CHAPTER 23

DAYS VS BUSINESS DAYS

A calendar day is any day of the week including weekends and festivals. It could relate to any day of the week, month or year.

A business day or working day on the other hand could be any day of the week except the weekend days, which in most countries are Saturday, Sunday or both. This concept also excludes public holidays.

The concept of days and business days could vary between different parties, particularly when they are from different countries or walks of life.

Therefore, be careful while mentioning any timelines in the agreement (for example for giving notices, acting on a complaint, closing of a transaction, etc.) in terms of days. Wherever there is reference to days, specify if you mean business days.

As a norm, keep deadlines in terms of calendar days only. As mentioned earlier, the concept of business day may be different for different people. Even if a definition is put in for business days, calculating it over a long period would be prone to errors.

However, it is problematic when the deadline is spread over short time. Suppose, an action is to be taken within 3 days of receiving a complaint from the other party and a party lodges its complaint on Friday 23rd January evening. Saturday and Sunday (24th and 25th January) are weekly off days for the receiving party and Monday happens to be 26th January, which is a national holiday in India. How is the party receiving the notice supposed to act during this period? You may need to keep a provision of working or business days in such a situation.

Therefore, use the concept of business days sparingly. Use it when the number of days required for any action to be taken is very less, you actually need those number of business days and the business days are very easily identifiable during such period.

Similarly, if a specific time is to be mentioned, it is better to specify it in terms of 24-hour format.

A day, if not defined under the agreement, is most likely to be interpreted to be a calendar day. Similarly, a month would be construed to be a calendar month.

CHAPTER 24

USE OF PRECEDENTS

While drafting an agreement, you should bear in mind that no two transactions are the same.

Therefore, no two drafts can be identical. This holds good even if the transaction contemplated thereunder is the same, be it partnership, distributorship or an asset acquisition.

I am assuming that if you are using a precedent, the transaction therein is identical to the one with you in hand. If this is not the case, there is not much that you can use from an old draft apart from boilerplate clauses. How many provisions of an old partnership agreement can you replicate for drafting out a Share Purchase Agreement among 7 companies?

Over-reliance on precedents is a short-cut which can be counter-productive, if not used carefully.

In each transaction, the parties, their commercial arrangement, mindset, maturity level, respective jurisdictions, prior experiences of operating in a particular location or business environment, resources at disposal, expectations, ethical practices, corporate governance norms, governing law, vision (whether short-term or long-term), commitment level, to name a few aspects - all these elements are different in each transaction.

Once bitten, twice shy. In certain instances, you may come across a party may have had a bitter experience of working with some other party in a similar transaction earlier, so it may carry emotional baggage too. It is difficult for such a party to trust a new party. The doubting party's concerns regarding certain provisions could be genuine and have to be dealt with delicately.

No one-size-fits-all works for corporate / commercial transactions. Further, law is an ever-evolving subject. As your experience and knowledge increases (hopefully and quite optimistically thinking) with time, your drafting skills and drafts should also get better.

Check the parties' status (individual - male / female, partnership, LLP, company — whether a one-person company or public company or private company or listed company, government, Public Sector Undertaking, etc.). The status of parties in the current case may be different from the precedent you are using. The legal provisions applicable to different kind of parties are different and should be dealt accordingly.

You may therefore, need to go through the entire precedent very carefully and have to suitably change the terms like he, she, it, company, firm, LLP, his, her, they, them, theirs, etc. throughout with appropriate respective terms applicable in the present case while working on the draft. While using precedents, many people tend to lose track of this aspect.

Certain provisions of the used precedent may not be applicable to the present transaction because of different status of parties, location or governing law among other reasons.

For the same reasons, there could be many new elements required to be added in your draft.

Do not get carried away if you manage to get hold of a draft from a Magic Circle firm or draft of a mega deal which made pink newspapers headline a few weeks back. You still have to customise a draft for your deal and protect your client's interests.

Summing it up, however good a precedent, it cannot be a perfect draft. There would be something or the other different in the present transaction. Pay minute attention to each aspect of the current transaction and seek confirmation from the client, if need be.

CHAPTER 25

READ, READ AGAIN

Many times, a lawyer drafting the agreement does not take time to read the document carefully.

Many lawyers feel offended if they are asked to review their writing carefully. They are so full of themselves and feel entitled to feel that whatever they have drafted must be alright.

Another reason is that when a lawyer reads the draft agreement so many times during different stages of negotiation and drafting, his eyes stop hitting the wrong notes in the draft after a while.

It is only when the client / other party / other party's lawyer reads the document and comes back to the drafting lawyer with his comments on mistakes, oversights, blatant disregard to his brief or multiple issues that are either not required in the agreement or were never contemplated, that the mistakes or oversights are realised. Sometimes, the mistakes are too many as well as embarrassing—not every mistake can be justified or brushed aside or put under the carpet, you know.

Such episodes put a lawyer and / or the concerned law firm, as the case may be, to great embarrassment.

To borrow from the words of William Gregory Paige, "Three things that never come back — the spent arrow, the spoken word and the lost opportunity." In my opinion, a lawyer's draft may be safely and fittingly added to this.

It is better to read and fine tune any draft before circulating it outside your office (irrespective of the rounds of reading it takes from any number of people). Many of the errors can be detected by reading the draft carefully.

Once you get tired of reading the same thing over and over again, pass it on to someone else in your team for a more objective and critical reading. Take any critique (grammatical, factual or otherwise) and suggestions positively and improve your draft.

CHAPTER 26

CARE TO KNOW YOUR DRAFT

As a matter of fact and practice, not many draftsmen pay attention to all that is written in the draft agreement. This is because on an average, not more than 10% of a written agreement is actually written or drafted afresh. Drafts nowadays are mostly nothing but recycled, reworked or re-churned (whichever term you prefer) precedents.

For this reason, many old, redundant, outdated, obsolete, incorrect provisions continue in draft agreements because no one actually cares to read and understand whether they are correct or updated and whether they are required at all in the context of the present assignment in hand.

A common excuse for letting such clauses continue in a draft is—it's been there, so let it be. Who has the time to read, review, analyse and rework (if needed)—it will take so much time and effort? Why invest so much in a clause that's been there since time immemorial … this is particularly true with the Boilerplate clauses.

For the first 3 years of my career, I was involved with incorporation of a number of Indian companies. At the incorporation stage, the Articles of Association (bye-laws) used to be standard ones. Mostly, the draft used for incorporating the last company at the office was picked up, the name, capital clause and few other cosmetic changes were made and it was ready to go. However, when I actually started reading and trying to understand what was written, I was shocked to find grammatical errors, factual inaccuracies and variations from legal provisions. I learnt to correct these mistakes and not make the same mistakes next time.

There is so much pressure on lawyers (particularly in big law firms) to log in minimum billable hours and work on multiple transactions at a time, they feel helpless devoting too much time on one assignment.

Whatever be the constraints and pressure, this is a wrong approach.

One must actually read, understand and question all the provisions that are there. What if the client starts asking you the meaning, relevance and requirement of any provision which you have not cared to read?.

Remember the legal principle, *Nemo dat quod non habet*. This principle is used in case of passing on title of a property. It literally means "no one gives what he doesn't have".

The same principle can be applied in the present scenario. If you do not understand something in an agreement, you cannot explain its reason or rationale to anyone else. You must endeavour to understand each provision of your draft.It is only then that you can explain or justify them to your client, the counterparty or their lawyers.

For example, Articles of Association ('AOA') of companies typically contain provisions about calls, surrender, forfeiture, reissue, etc. relating to partly paid-up shares. However, if there is one sentence in the AOA to the effect that "The company shall only issue fully paid up shares.", none of these provisions are required. It is very likely that no one may notice this and the aforesaid provisions will perpetually continue in the draft.

Relying on old drafts too much may also not take note of new enactments, repeals or amendments in statutory provisions. Law is a very dynamic field. While working on a draft, you need to take care of the updated position on all legal provisions applicable to the present transaction. In fact, if some legal provision undergoes change while you are amidst drafting, you must update your draft while informing the parties of the development at the same time. It may have positive/negative/deal breaking effect on all or one or some of the parties.

There should be nothing in your draft, absolutely NOTHING, that you do not understand completely. You need to take care when the basis of your draft is an older draft with umpteen boilerplate clauses.

Do take the time to understand each provision. Include a provision from an earlier draft only if it is required in the present one and if you do not understand what it is and why it is needed, understand it first. Thereafter, take a call whether to include it; and if including it, whether you should include it in its present form or whether some changes are required.

If you carry out this exercise in the initial phase of your career, your succeeding years will be very productive and successful, trust me. In the military, they say the blood you spill while training is what you save while fighting.

CHAPTER 27

CONSISTENCY AND CONTINUITY—TWIN STARS

Just imagine going to watch the latest blockbuster at a fancy multiplex.

Half-way through the movie, you realise that you aren't watching a new movie but some editor has managed to merge clippings from 27 old movies of an actor and put it across as a new movie. How would you feel?

You may be aware of "Continuity editing" in movies or TV serials. This continuity gives the viewer the impression that the action unfolds with consistency. In most movies, logical coherence is achieved by cutting to continuity, which emphasizes smooth transition of time and space.

Continuity editing is the predominant style of film editing and video editing in the post-production process of moviemaking. The purpose of continuity editing is to smooth over the inherent discontinuity of the editing process and to establish a logical coherence between shots.

On the other hand, continuity errors are bloopers that don't match the storyline or timeline from other parts of the same episode or other episodes. Most people are intelligent enough to point out such bloopers.

Youtube is full of such bloopers being pointed out by the viewers in almost each movie and TV serials.

If you do a cut-and-paste job and draft different provisions of an agreement by picking up clauses from several precedents, what you get is a mish mash of different writing styles, number scheme for clauses, fonts, sizes, shading and what not. Some people use dynamic, crisp language and some use archaic language. Some people are still stuck in passive voice and some people write in active voice because they are active.

Never lift a precedent and start making changes therein. The properties of the file will continue to show the original author's credentials and date of creation of the document, if someone has an eye for detail. Always copy the desired text from an existing document, paste it in a new file on your system and start working on it the way you want.

If you work to only modify the earlier documents, you are bound to deviate from continuity editing and commit continuity errors.

Your reader is bound to get a movie-goer's experience mentioned above, if you provide him with a medley of drafts squeezed into one.

The flow of the agreement should be smooth and seamless, as if one is watching a new movie or participating in a dialogue. Even if it is a remake of an old movie, the new one should seem fresh and having been worked upon seriously.

You may have a hard time harmonising all the provisions from different precedents. However, you have to undertake this tedious task to ensure consistency. Otherwise, your efforts in collating different provisions from different places will become too apparent.

There should be consistency throughout the agreement.

Consistency of language, format, font, number scheme, writing style and everything else should be there.

Language. There are differences in British and American English spellings. Use one of them consistently.

Recognise—Recognize

Criticise - Criticize

Flavour—Flavor

Colour—Color

Endeavour - Endeavor

These words should not appear differently at different places in the agreement. Else, your spell check will show you confusing results and recommendations.

Font Style and size should be consistent throughout the agreement.

Headings, whether in bigger font size, bold, capital, italics, underlined, etc.—a similar pattern should be followed throughout.

Similarly, a consistent approach relating to indent and spacing between clauses and sub-clauses should be adopted.

Inconsistencies breed irritation and confusion in the mind of the reader. He is likely to feel dizzy and will become indifferent after a while if the consistency is lost mid-way.

CHAPTER 28

FORMAL AND SERIOUS TONE

Most of the corporate correspondence now takes place on the internet. Sometimes, because the correspondence is from person to person, a certain amount of informality and casualness creeps into the language used in correspondence over email.

However, the situation is different when the parties reach a commercial understanding and wish to execute a definitive agreement. An agreement is a formal and legal document. It is to be used by transacting parties and their officials may require submission to various domestic and international authorities and even arbitrators or courts in case of a dispute.

Therefore, the language of an agreement should reflect seriousness and business-like approach of the parties. There should be an air of formality in the agreement to reflect this serious mind-set. This is similar to wearing formal attire at formal occasions - it breeds seriousness and respect for the occasion.

These days, an agreement may also have parties from more than one country. The standards of acceptable language in terms of formality, politeness, simplicity, etc. may be different for them. If the agreement is in English language, the standard of English language knowledge between the parties may also be different.

Therefore, it is better to have an easy, simple and formal language in agreement.

Except for provisions in bullet points, there should be complete and grammatically correct sentences. Internet language and slangs should be avoided.

Some avoidable terms

Used Term	Correct / suggested term
&	And
@	at or at the rate of (whichever is correct in the context of the sentence)
Gonna	going to
wana / wanna	Want to
End	Terminate

Other words used lightly, without meaning them, out of context or abbreviations of internet terms should also be avoided to the extent possible. However, commonly understood professional abbreviations may be used with necessary explanation provided in the definition clause, if need be. This will enable even the non-technical readers or authorities to understand the agreement easily.

CHAPTER 29

SIMPLE LANGUAGE

If a student has bad handwriting, he may lose out on marks not only for his bad handwriting, but also inspite of correct answers.

This sub-optimal result could be due to the teacher's inability to read the answers (even correct ones) due to bad handwriting. A teacher gets very less time to examine an answer sheet and if most of his time goes only in trying to understand what a student has written; you cannot expect him to be 100% attentive, fair and generous.

Same goes with an agreement, which is not drafted in a simple, easy-to-understand language.

Remember, whom you are drafting the agreement for. It is broadly written for the benefit of, *inter alia*, the following:

1. Parties to the agreement
2. Their advisors and employees, who are to implement the agreement
3. Banks, who are the lifeline of any business and invariably want to see everything that their client does
4. Creditors of the parties
5. Government agencies
6. Court or arbitrators (in case of any dispute between the parties)

Which of the above (other than the Court or arbitrators) would have the time, intellect or inclination to decipher a complicated agreement, full of jargon and difficult words and phrases?

One tends to ignore what one doesn't understand and may not grant you the favour sought.

You cannot expect a reader to sit with a dictionary and try to make sense of each clause which you have very laboriously incorporated in the agreement after taking endless hours and burning the midnight oil. Am I getting carried away with my description? Sorry.

While drafting an agreement, your job is not to impress anyone with your multi-lingual proficiency or legal knowledge, jargon or verbosity. You should rather ensure

that your client's interests are protected to the maximum extent possible and he should derive the maximum benefit of the agreement in whatever he does and if the agreement is placed before any of the authorities, court or arbitrators for enforcement of your client's interest, they should understand your client's position favourably. Instead of trying to impress your client and other parties listed above, you may end up confusing them. If the readers lose interest in an agreement due to your supposedly stylish and "legal" language, it is an unintended self-goal you commit. A self-defeating endeavour, I would say.

For the benefit of all, thus, it is very important to draft an agreement in an easy-to-understand, simple language.

Minimise the use of non-English words, if you are drafting an agreement in English.

Use words that are commonly used and which most of the educated people know and understand.

Legalese and jargon should be minimised, as much as possible.

Certain words and phrases lose circulation with time and should be avoided. Replace them with contemporary words and phrases.

PARTING NOTE FROM AUTHOR

All good things come to an end. It is time to say goodbye.

I believe in 'Two ears, one mouth' theory and am a man of very few words. I try to hear more and speak less. This is my second book and most of the text has actually been typed by me, not lifted or cut-paste. Although I have more than 200 articles published by now, those are on diverse subjects and it is hard to believe I could actually write so much on one subject in this book.

The contents of this book have been generated from my experience of the last 2 decades. I would have drafted few thousand agreements and reviewed number many times that. I tried to capture as much as I could with my experiences while drafting or reviewing agreements.

The idea behind this book is not to teach law, but common drafting skills. The applicable rules, regulations, legislations are different for each agreement but the general skills required to draft an effective, efficient and unambiguous agreement are by and large the same. An industry specific knowledge would definitely add to your armour while drafting an agreement pertaining to that industry.

This book should help lawyers and non-lawyers, draftsmen as well as readers. Non-legal professionals in CXO positions often get bombarded with agreement drafts for their review and inputs. This book will give them ideas as to what makes an agreement complete and effective and what loopholes one should try to avoid.

Encapsulating so many experiences isn't an easy task - it took me almost a year to bring about this book.

My last book and articles on the subject have generated interest in law schools in imparting drafting skills to their students and I am increasingly getting invites from law and management colleges to give practical guidance to their students on drafting skills. Happy to help!

Learning good drafting skills is a lifetime investment for students and professionals. Those investing earlier reap higher returns.

Your inputs and suggestions are welcome on bhumesh.verma@gmail.com.

Best of luck in everything you do—read, review or draft an agreement.

PART 11

SAMPLE AGREEMENTS

ADVERTISING AGREEMENT

This Advertising Agreement (the "**Agreement**"), is made and entered into on _____ (the "**Effective Date**"), by and between:

1) _____, a company incorporated under the Companies Act, 2013 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Company**"); and

2) _____, a company incorporated under the Companies Act, 1956 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Agency**")

The Company and the Agency are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, the Company owns several _____ brands and owns, manages, and maintains sport outlets all over the world;

AND WHEREAS, the Agency is engaged in the business of advertising and marketing services (the "**Services**");

AND WHEREAS the Company has approached the Agency to assist Company in the advertising and marketing of its sports brands by providing specified services upon the terms and conditions set forth herein;

AND WHEREAS the Parties are desirous of recording their understanding in writing.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for good and valuable consideration, the Parties agree as follows:

1. Services:

1.1 The Agency has represented that it has the experience, ability and resources to provide the comprehensive Services as per the terms and conditions of the Agreement.

1.2 The Agency shall provide the Company with services subject to the compensation paid by the Company as agreed by the Parties.

2. Engagement and Authorization to Use Third Parties:

2.1 The Agency is retained and appointed by the Company to provide Services as described in the Agreement on a non-exclusive basis.

2.2 Nothing in this Agreement shall restrict the Company from engaging any other agency for advertising and marketing services.

2.3 In order to perform the Services, the Agency is authorized to enter into third party contracts to carry out the purposes of this Agreement, provided the prior written approval of the Company is sought to approve the engagement of such third-party contractors.

2.4 The Agency shall be fully liable and responsible to the acts and omissions of all third-party contractors employed by the Agency.

3. Use of Intellectual Property Rights

3.1 The Company authorizes the Agency to use the Company's intellectual property rights ("IP Rights") solely for the transactions contemplated under the Agreement.

3.2 Except as permitted in the Agreement, the Agency shall have no right to use any of the Company IP Rights without the prior written approval of the Company.

3.3 The Agency shall be fully responsible for loss or damage suffered by the Company for unauthorized use of the Company IP Rights.

4. Ownership of Intellectual Property

4.1 All advertising and marketing content provided by the Company and any other connected materials submitted ("Content"), created, developed or supplied by the Company shall be and remain Company's sole and exclusive property and shall be dealt with by the Agency as such.

4.2 The Agency expressly acknowledges and agrees that it will not own and possess any proprietary right in the Content except the utility rights expressly granted under the Agreement.

5. Terms and Conditions: The Agency expressly agrees and undertakes that:

5.1 The Agency shall prepare advertising and marketing plan ("Plan") and will implement the Plan to promote the brand of the Company subject to the Company's written approval.

5.2 The Agency shall perform all the Services subject to the terms and conditions of the approved Plan.

5.3 It shall be responsibility of the Agency to promote the Company brands across all social media platforms using the technology and strategies decided by the Parties.

5.4 The Agency shall not target or solicit the loyal customers of the Company using its association with the Company to solicit business for itself.

6. Audit

6.1 The Agency shall keep, maintain and preserve at its principal place of business for at least two (2) years following termination or expiration of the term of this Agreement or any renewal(s) hereof, complete and accurate records of accounts related to Services rendered under the Agreement.

6.2 The Company shall have the authority to inspect and audit the records related to the Services rendered under the Agreement.

6.3 Such records and accounts shall be available for inspection and audit at any time or times during or after the term of this Agreement or any renewal(s) hereof at the sole request of the Company.

6.4 The Company shall conduct such inspection or audit during reasonable hours upon serving the notice to the Agency.

6.5 The Agency agrees to cooperate with the Company in the performance of its duties of inspection and audit.

6.6 During the audit, if the Company identifies any discrepancy in the records and accounts of the Agency, shall be paid as penalty by the Agency for such discrepancy.

7. Representations and Warranties: The Agency represents and warrants that:

7.1 The services rendered will conform to stated specifications, will comply with descriptions in the Agency's sales materials and brochures, will match Agency's samples, will conform to all applicable codes and standards, and will fulfill all prior representations made by the Agency.

7.2 It has obtained appropriate releases granting the Company complete and unrestricted rights (unless otherwise specified in writing and attached to this Agreement) to use the services provided.

7.3 It is a company that has been duly incorporated or organized and is validly existing and in good standing.

7.4 It is properly qualified where qualification is necessary for the conduct of its business under the Agreement (e.g., necessary approvals and licenses to operate the advertising business).

7.5 It has adequate corporate and other power to enter into and perform the Agreement.

7.6 The Agreement has been duly executed and delivered by the Agency and is intended to be a valid and binding obligation of the Agency, enforceable against it in accordance with its terms.

8. Term and Termination:

8.1 This Agreement shall become effective on the execution ("Effective Date") and shall remain in full force and effect for a period of 3 (three) years following the Effective Date.

8.2 This Agreement may be terminated by the Company upon providing 30 (thirty) days' prior written notice to the Agency provided the Agency commits a material breach of the Agreement and fails to cure the breach within the cure period as agreed by the Parties.

8.3 The Company may terminate the Agreement for its own convenience with or without reason by providing prior notice of 15 (fifteen) days to the Agency.

8.4 The termination or expiry of the Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to the Company against the Agency, prior to such termination.

8.5 The Company shall not any incur liability for any kind of loss or damage suffered by the Agency as a consequence of the legitimate termination of the Agreement either by the Company and the Agency.

8.6 The provisions of the Agreement which, by their terms, require performance after the termination or expiration of the Agreement, or have application to events that may occur after the termination or expiration of the Agreement, will survive the Agreement termination or expiration.

9. Indemnification:

The Agency (the "**Indemnifying Party**") will defend, indemnify and hold harmless the Company, its parents, divisions, subsidiaries and affiliates, and their officers, directors, employees, agents, successors and assigns (collectively, "**Indemnified Parties**" and each of the foregoing being hereinafter referred to individually as "**Indemnified Party**"), from and against, all liability to third parties and promptly reimburse them for all costs and expenses (including, without limitation, all settlements, judgments, fines, damages, reasonable legal fees, court costs, expert fees, etc.) by reason of any claim, demand, tax, penalty or judicial or administrative proceeding or investigation arising from or in connection with:

9.1 Any breach of any representation or warranty contained in the Agreement by the Agency;

9.2 The negligent or willful acts or omissions of the Agency resulting in any bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property;

9.3 The Agency's infringement, misuse, or misappropriation of any third-party intellectual property rights; and

9.4 The Agency's failure to comply with applicable law, rules and regulations.

10. Limitation of Liability:

10.1 In no event shall the Company's liability for any claim arising out of or in connection with the Agreement exceed _____.

10.2 The Company will not be liable to the Agency for any consequential, special, exemplary, or punitive damages (including damages for loss of data, revenue, and/or profits), whether foreseeable or unforeseeable, arising out of the Agreement regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties or otherwise, and even if the Party has been advised of the possibility of those damages.

11. Confidential Information:

11.1 The Company shall disclose certain non-public information to the Agency under the Agreement that is marked as confidential or disclosed under the circumstances reasonably indicating its confidentiality (the "Confidential Information").

11. 2 The foregoing confidentiality obligations will not apply to Confidential Information that

(i) is already known to the Agency prior to disclosure by the Company;

(ii) is or becomes a matter of public knowledge through no fault of the Agency;

(iii) is rightfully received by the Agency from a third party not known by Agency to be bound by a duty of confidentiality to the Company with respect to such information; and

(iv) is independently developed by the Agency without using the Confidential Information.

11.3 The Agency shall not disclose Confidential Information to any third party or use the Confidential Information in violation of the Agreement for its own or certain third-party benefit.

11.4 The Agency may disclose the Confidential Information to its own employees only for exercising its rights and obligations under the Agreement provided such employees agreed to abide by the terms and conditions of the Agreement.

11.5 The Agency shall be fully responsible and liable for acts and omissions of its employees.

11.6 The Agency shall treat the Confidential Information with at least the same degree of care and protection as it will use with respect to its own confidential information of a similar nature, but in no event less than a reasonable standard of care.

11.7 The Agency shall hold in strictest confidence all the Confidential Information disclosed by the Company and use such Confidential Information for purposes authorized under the Agreement.

11.8 If the Agency believes that it will be compelled by a court or other authority to disclose Confidential Information, it shall

(i) give the Company timely written notice so that the Company may take steps to oppose such disclosure; and

(ii) cooperate with the Company in its attempts to oppose such disclosure, provided that such opposition is reasonable in light of applicable law or regulation.

12. Payment terms:

12.1 The Company will be invoiced on the first day of every month during the contract period. Payment shall be made to the Agency within 15 (fifteen) days from the receipt of invoice.

12.2 The Company will notify the Agency in writing of any dispute it has with any particular invoice within fifteen (15) days after its receipt of such invoice. The Parties shall work together in good faith to resolve any such disputed fees.

12.3 If the Parties are unable to resolve the disputed charge within thirty (30) days of Agency receipt of the dispute notice, the Parties shall be entitled to pursue remedies available hereunder.

12.4 The Company shall have the authority to set-off, deduct or otherwise withhold any payments due to the Agency under the Agreement as a compensation to the payment owed by the Agency to the Company.

13. Miscellaneous:

13.1 **Injunctive Relief:** The Agency acknowledges that failure to comply with the requirements of the Agreement will result in irreparable injury to the Company for which no adequate remedy at law or equity may be available, and the Agency consent to the issuance of, and agree to pay all court costs and reasonable attorneys' fees incurred by the Company in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief.

13.2 **Assignment:**

13.2.1 This Agreement may not be assigned in whole or in part by the Agency without the prior written consent of the Company. Any such assignment in violation of the Agreement shall be null and void.

13.2.2 The Company shall assign the Agreement to its affiliate or successor in interest or any third party of its option.

13.3 **Force Majeure:** In case of any failure or delay of either Party in the performance of its obligations hereunder due to riot, insurrection, fire, flood, storm, explosion, act of God, government action, earthquake, shortage of materials or any other event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay.

13.4 **Non-Solicitation:**

13.4.1 During the term of the Agreement and for period of one (1) year thereafter expiration or termination of the Agreement, the Agency shall not actively solicit the employment of any employee of the Company, which employee was engaged in any activity performed pursuant to the Agreement.

13.4.2 For the violation of this provision, the Agency shall have to pay a penalty equivalent to 100% of the gross annual salary of such employee.

13.5 **Severability**: If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not in any way affect the validity of any other provision of the Agreement.

13.6 **Waiver**: No failure to enforce any of its right by a Party shall not constitute waiver of such right.

13.7 **Notices**: Any notice required or permitted to be given is to be provided in writing to the person designated by a Party and at the address listed in the Agreement, or certified mail, return receipt requested.

13.8 **Relationship between the Parties**: It is understood and agreed that the Agency and the Company are independent parties. Nothing contained or implied in the Agreement creates a relationship of employer-employee between the Agency and the Company nor does it create a joint venture, partnership, or similar relationship between the Agency and the Company.

13.9 **Governing Law and Arbitration:**

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

13.9.2 The Parties shall submit to the exclusive jurisdiction of courts at Mumbai.

13.10 **Arbitration:**

13.10.1 In the event of any dispute, difference or question arising out of or in relation to the breach of the Agreement, the same shall be governed by and settled by a sole arbitrator under the procedures of Arbitration and Conciliation Act, 1996.

13.10.2 The arbitration venue shall be at Mumbai. The decision or award so given shall be final and binding on the Parties.

13.10.3 Each Party shall bear its own costs and expenses of conducting the arbitration.

13.11 **Entire Agreement:**

13.11.1 The Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

13.11.2 No amendment, supplement, modification or restatement of any provision of the Agreement shall be binding unless it is made in writing and signed by each Party.

IN WITNESS WHEREOF, the Parties have executed the Agreement by their duly authorized officers to be legally valid as of the Effective Date.

Company	**Agency**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

ARBITRATION AGREEMENT

This Arbitration Agreement (the "Agreement") is made and entered into on _____ (the "Effective Date"), by and between:

1._____, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called the "Company"); and

2._____, an individual person, aged _____, Son of _____ with PAN _____ and place of residence located at _____ (hereinafter called as the "Employee").

The Company and the Employee are hereinafter individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS:

A. The employee is employed with the Company as _____ (position) with effect from _____;

B. During the employment period, disputes may arise between Company and Employee related to employment.

C. The Parties have agreed to resolve any such disputes privately and without recourse to courts, as much as possible, through a fair, impartial, faster and cost-effective process.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

1. **Claims covered by this agreement:** This Agreement applies to all disputes between the Parties, arising out of Employee employment with Company or the termination thereof, whether asserted during employment with Company or after it has ended, or during any pre-employment processes in which Employee may participate (referred to as Claims).

2. **Internal grievance procedure:** The Employee understands that before commencing arbitration under this agreement, he may attempt to resolve a claim through Company's internal procedure for resolving Employee grievances in effect at that time.

3. Arbitration:

3.1 If any Claims cannot be resolved through the internal grievance procedure, if applicable, or another mutually acceptable voluntary dispute resolution method such as mediation, the claims must be resolved through final and binding arbitration conducted under Indian Arbitration and Conciliation Act, 1996.

3.2 The venue for arbitration shall be in Chennai, unless the Parties agree otherwise.

3.3 The arbitration shall be administered in conformity with the provisions of Indian Arbitration and Conciliation Act, 1996 and any other applicable rules; provided, however, that where such procedures are inconsistent with the procedures set forth below, the procedures set forth below shall govern.

4. Arbitration procedures:

4.1 Any request for arbitration by either Party shall be served and filed within the statute of limitations applicable to the claim(s) upon which arbitration is sought or required.

4.2 Each Party is expected to respond within thirty (30) calendar days to each communication regarding the selection of an arbitrator and the scheduling of a hearing.

4.3 The Parties shall select a mutually-agreeable neutral arbitrator (who shall be a retired judge of Chennai High Court).

4.4 The arbitrator shall be bound by the law applicable to the claims asserted by either Party and/or any defenses thereto and shall have jurisdiction to award all relief available in law or equity that is requested by the Parties and supported by credible, relevant and admissible evidence.

4.5 The arbitrator may rule on pre-hearing disputes and hold such pre-hearing conferences by telephone or in person as he or she may determine.

4.6 Either Party may submit, or the arbitrator may order either or both Parties to submit, a brief prior to the arbitration hearing.

4.7 Either Party, at its own expense, may arrange for a court reporter to provide a stenographic record of the proceedings at the hearing.

4.8 Upon request at the close of the arbitration hearing, either Party may file a post-hearing brief within the time set by the arbitrator.

4.9 The arbitration award will be final and binding on the Parties to the arbitration.

5. Arbitration costs:

5.1 Each Party shall bear their own standard arbitration and litigation type costs.

5.2 Notwithstanding Clause 5.1, the arbitrator may award the fees and costs to the prevailing Party under any applicable statute or written agreement to the same extent.

6. Alternative dispute resolution process: The Parties understand that they are agreeing to substitute one legitimate dispute resolution forum (arbitration) for another (litigation) because of the mutual advantages this forum offers. This substitution involves no surrender, by Party, of any substantive, statutory or common law benefit, protection or defence.

7. Governing law and Conflict of law:

7.1 This agreement shall be governed by and construed and enforced pursuant to the procedural and substantive provisions of applicable Indian laws.

7.2 Regardless of any conflict of law analysis: (a) Where the Parties have agreed to a choice of law, the arbitrator(s) shall honor that choice; and (b) Where the Parties have not agreed to a choice of law, the arbitrator(s) shall apply and follow the applicable laws under which the claim arose.

8. Severability: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

9. Waiver: No failure to enforce any of its right by a Party shall not constitute waiver of such right.

10. Third Party Beneficiaries: For purposes of this Agreement, each Party's subsidiaries and affiliates are deemed to be intended third-party beneficiaries and they may fully enforce the terms of this Agreement. For the avoidance of the doubt, any person or entity other than such subsidiaries and affiliates will not be treated as a third-party beneficiary under this Agreement and shall not have any right to enforce any provision of the Agreement and authority to act as a Party to this Agreement.

11. No aggregate claims: Any arbitration under this Agreement must be on an individual basis. No Party may aggregate claims with others and/or bring or participate in a collective, class, or other representative action.

12. **Interpretation:** This Agreement shall be interpreted in favor of arbitration. No rule of construction shall be applied to undermine any presumption in favor of enforcement of this Agreement or in favor of arbitration.

13. **Enforceability:** This Agreement contains a binding arbitration provision that may be enforced by either Party.

14. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

15. **Amendments:** No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is in writing and signed by each Party.

16. **Notice:** Notices permitted or required under this Agreement shall be in writing and delivered personally (including courier service), by certified or registered mail, return receipt requested, or by confirmed facsimile transmission. Notices shall be effective upon receipt.

17. **Counterparts:** This Agreement may be executed simultaneously in one or more counterparts, each of which is deemed an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the effective date.

Company	**Employee**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witness:

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1. _____, a company incorporated under the Companies Act, 1956/2013 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Seller**"); and

2. _____, a company incorporated under the Companies Act, 1956/2013 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Purchaser**").

The Seller and the Purchaser are hereinafter individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Seller has agreed to sell, and the Purchaser has agreed to purchase, accept and assume, all of the former's right, title and interest in and to the assets identified in Exhibit A (the "**Purchased Assets**").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Sale:** The Seller does hereby sell to the Purchaser as of the Effective Date all right, title and interest in and to, or other benefits deriving from, the Purchased Assets.

2. **Ownership Affirmation:** The Seller does hereby confirm that it is the lawful owner of the Purchased Assets. The Purchased Assets are fully assignable and free from all encumbrances.

3. **Instruments:** The Seller agrees to execute and deliver to the Purchaser all instruments necessary to convey the title of Purchased Assets to the Purchaser.

4. **Indemnification:** Each Party will defend, indemnify, and hold other Party harmless from and against all claims to the extent that such Claims arise out of or relate to:

    (i) Any breach of any representation or warranty contained in this agreement by a Party;

(ii) The negligent or willful acts or omissions of a Party resulting in any bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property; and

(iii) Such Party's infringement, misuse, or misappropriation of any third-party IP rights.

The Seller agrees to defend and indemnify the Purchaser from any and all claims that may arise from the Purchased Assets prior to the Effective Date, provided such claims occurred due to the acts or omissions of the Seller.

5. **Acceptance:** The Purchaser does hereby purchase and accept such transfer of the Purchased Assets and agrees to indemnify and hold the Seller harmless from any claims, losses, damages, expenses and attorney fees, which may arise from the Purchased Assets after the Effective Date due to the negligence of the Purchaser.

6. **Consideration:** The Purchaser shall purchase the Purchased Assets at the consideration listed in the schedule attached to this Agreement. The Purchaser shall pay 50% of the consideration of the Purchased Assets on the Effective Date of this Agreement. Rest of the consideration shall be paid by the Purchaser within 15 (fifteen) days of the execution of this Agreement. The Purchaser failure to pay the consideration as agreed will draw an interest of 15% percent.

7. **Assumed liability:** The Purchaser and the Seller each hereby acknowledges and agrees that, each Party shall assume, or agree to or be obligated to perform, discharge or satisfy its obligations and liabilities incurred under this Agreement ("**Assumed Liability**")

8. **Excluded Liability:** Each Party hereby acknowledges and agrees that, other than Assumed Liability no Party shall not be responsible to assume, or agree to or be obligated to perform, discharge or satisfy obligations and liabilities not incurred by it under this Agreement ("**Excluded Liability**").

9. **Tax Payment:** It is the Seller's responsibility to pay all applicable taxes related to the Purchased Assets prior to the Effective Date. The Purchaser shall be responsible for making the payment of applicable existing and future taxes after the Effective Date.

10. **Transfer of Possession:** Upon the payment of the Consideration for the Purchased Assets, the Seller shall transfer the possession of Purchased Assets to the Purchaser. If the Seller fails to transfer the possession of the Purchased Assets within stipulated time, the Purchaser is entitled to claim compensation for the loss suffered due to the Seller failure to deliver the possession.

11. Enforcement of Agreement:

11.1 Each Party acknowledges and agrees that the other Party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any Party could not be adequately compensated in all cases by monetary damages alone.

11.2 Accordingly, in addition to any other right or remedy to which any Party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breach or threatened breach of any of the provisions of this Agreement.

12. Confidential Information:

12.1 Either Party (**Discloser**) may disclose certain non-public information to the other Party (**Recipient**) which is clearly marked as confidential (**Confidential Information**). The Recipient shall not use the Confidential Information or permit the unauthorized use of Confidential Information in violation of this Agreement.

12.2 The foregoing confidentiality obligations will not apply to Confidential Information that:

(a) is already known to the Recipient prior to disclosure by Discloser;

(b) is or becomes a matter of public knowledge through no fault of the Recipient;

(c) is rightfully received by the Recipient from a third party not known by the Recipient to be bound by a duty of confidentiality with respect to such information; or

(d) is independently developed by the Recipient without violation of the Agreement.

12.3 The Recipient may disclose the Confidential Information to its own employees for exercising its rights and obligations under the Agreement provided such employees agreed to abide by the terms and conditions of the Agreement.

12.4 The Recipient shall treat the Confidential Information with at least the same degree of care and protection as it will use with respect to its own confidential information of a similar nature, but in no event less than a reasonable standard of care.

13. Term and Termination:

13.1 This Agreement shall remain in effect for perpetuity unless terminated by the Parties with their mutual consent.

13.2 This Agreement may be terminated by either Party upon providing 7 (seven) days' prior written notice to the other Party provided the other Party commits a material breach of the Agreement and fails to cure the breach within the cure period as agreed by the Parties.

14. Limitation of Liability:

14.1 Either Party's liability for any claim arising out of or in connection with the Agreement shall not exceed _____.

14.2 Either Party will not be liable to the other Party for any consequential, special, exemplary, or punitive damages (including damages for loss of data, revenue, and/or profits), whether foreseeable or unforeseeable, arising out of the Agreement regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties or otherwise, and even if the Party has been advised of the possibility of those damages.

14.3 Each Party hereby expressly waives to the fullest extent permitted by law, any right to, or claim for, indirect, consequential, punitive or exemplary damages against the other Party and agree that, in the event of a dispute between them, the non-defaulting Party is entitled and limited to recovering only the actual damages proven to have been sustained by it.

15. Representations and Warranties: Each Party represents and warrants to the other Party that:

15.1 It is a company that has been duly incorporated or organized and is validly existing and in good standing.

15.2 It is properly qualified where qualification is necessary for the conduct of its business under the Agreement.

15.3 It has adequate corporate and other power to enter into and perform the Agreement.

15.4 The Agreement has been duly executed and delivered by such Party and is intended to be a valid and binding obligation of such Party, enforceable against it in accordance with its terms.

16. Entire Agreement and Modification:

16.1 This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes, together with the Schedule, a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter.

16.2 This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the Parties.

17. **Time is of the Essence:** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

18. **Severability:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

19. **Waiver:** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any other covenant, duty, agreement or condition. Any waiver must be specifically stated as such in writing.

20. **Governing Law:** This Agreement shall be construed, and disputes hereunder shall be settled under the laws of India. The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of India in relation to any dispute arising out of or relating to this Agreement.

21. **Notices:** Each notice, consent or request required to be given to a Party pursuant to this Agreement must be given in writing.

22. **Assignment:** This Agreement may not assigned by either Party without prior written consent of other Party, however, each Party shall assign the Agreement to its affiliate or successor-in-interest without prior written consent of other Party. Any assignment in violation of this Agreement shall be null and void.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Seller	**Purchaser**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witness:

Schedule A

Purchased Assets description

Sl. No	Assets	Consideration
1		
2		
3		
	Total consideration	

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **Assignment and Assumption Agreement** (the "Agreement") is made and entered into on _____ (the "Effective Date"), by and between:

1. _____, a company incorporated under the Companies Act, 1956 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Assignor**"); and

2. _____, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Assignee**").

The Assignor and the Assignee are hereinafter individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS:

1. The Assignor is the Licensee of certain Software licenses purchased pursuant to a software license agreement dated _____ between _____ ("Licensor") and the Assignor (the "SLA");
2. The Assignor wishes to assign its rights, interests, and obligations related to those software licenses to the Assignee and the Assignee wishes to acquire rights, interests, and obligations related to those software licenses in order to continue business development and to manufacture and market its own products; and
3. The Parties wish to reduce their understanding on the subject matter into writing.

NOW, THEREFORE, in consideration of the mutual covenants and premises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment:** The Assignor hereby assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, as of the Effective Date, all of the Assignor's rights, title and interests and assumes the Assignor's obligations under the SLA (the "Assigned Interest) and Licensor hereby consents to such assignment and assumption.

2. **Assumption of Responsibility:** The Assignor assumes responsibility with respect to any statements, warranties or representations made in or in connection with the respect to SLA.

3. **Acknowledgement:** Each Party acknowledges and agrees that it will be bound by the provisions of this Agreement and of the SLA and will perform its obligations in accordance with the terms and Conditions of this Agreement and the SLA.

4. **No Amendment:** Parties agree that they may not amend this Agreement in any way that will materially affect the Licensor's rights or provisions of the SLA.

5. **Indemnification:** Each Party shall indemnify and hold harmless other Party and Licensor against any and all loss, liability, damage or expenses which may be incurred by other Party and Licensor due to any claims of a third party in connection with the breach, default or non-performance of the SLA by a Party on or after the date of execution of this Agreement.

6. **SLA:** Except as otherwise provided herein, all terms and conditions of the SLA shall remain effective with respect to the Assignor and the Licensor.

7. **Defined Terms/Integral Part:** Defined terms used herein and not otherwise defined herein, shall have the meaning ascribed to such terms in the SLA. The recitals set forth at the beginning of this Agreement shall be deemed to be an integral part of the SLA and are hereby incorporated in the SLA.

8. **Notices:** All notices and other communications which are to be given under this Agreement shall be given in accordance with the notice provisions as set forth in the SLA.

9. **Acts and execution:** The Parties shall from time to time do and perform such additional acts and execute and deliver such additional documents and instruments as may be required or reasonably requested by any Party to affect the intents and purposes of this Agreement.

10. **Entire Agreement:** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes and cancels any and all prior negotiations, discussions and agreements between the Assignor and the Assignee with respect thereto.

11. **Construction:** Each provision of this Agreement has been mutually negotiated, prepared and drafted, and in connection with the construction of any provision hereof, no consideration shall be given to the issue of which Party actually prepared, drafted, requested or negotiated any provision of this Agreement or its deletion.

12. **Expenses:** Notwithstanding anything herein to the contrary, any nonrecurring costs and expenses incurred by the Parties to effect the transactions contemplated hereby which are not allocated pursuant to the terms of the SLA or this Agreement shall be the responsibility of the Party which incurs such costs and expenses.

13. **Counterparts:** This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each of the Parties has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

14. **Severability:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

15. **Waiver:** No failure to enforce any of its right by a Party shall not constitute waiver of such right.

16. **Dispute resolution:**

    16.1 Any dispute arising from this Agreement shall be settled by the Parties through friendly negotiation or mediation.

    16.2 If no settlement can be reached through negotiation or mediation, either Party may submit the dispute by a sole arbitrator mutually agreed to by the Parties.

    16.3 The arbitration proceedings will be conducted in English language at a venue in Bangalore.

    16.4 The arbitral award will be final and binding on the Parties.

17. **Governing Law:**

    17.1 The formation, validity, construction and performance of and settlement of disputes arising in connection with this Agreement shall all be governed by the applicable Indian laws.

    17.2 The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of Bangalore in any dispute arising out of or relating to this Agreement.

18. **Warranties:**

    18.1 Each Party warrants that it is legally authorized to enter into this Assignment and Assumption Agreement.

    18.2 The Assignor warrants that it has received the prior consent of the Licensor and can assign the SLA, pursuant to the terms therein.

19. No Third-Party Rights: The provisions of this Agreement are intended to bind the Parties hereto as to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies, and no person is or is intended to be a third-party beneficiary of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Assignor	**Assignee**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witness:

BUSINESS CENTRE AGREEMENT

This Business Centre Agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1. _____ Limited, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Service Provider**"); and

2. _____ Private Limited, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Client**").

The Service Provider and the Client are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, The Service Provider owns a business Centre at _____ (Property Details) accommodating different clients to conduct various business activities of such clients;

AND WHEREAS, the Client intends to engage the Service Provider to assist Client in conducting its business activities in the said business Centre by performing certain services as specified in this Agreement:

NOW, THEREFORE, for and in good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending legally to be bound hereby, the Parties agree as follows

1. **Services:** The Service Provider shall provide the services listed below to the Client for conducting the Client business operations without any interruption on a non-exclusive basis:

   Description of services:

   (i) _____.

   (ii) _____.

   (iii) _____.

   (iv) _____.

2. Use of business Centre:

2.1 The Business Centre is provided to use only for the Client office and business purposes.

2.2 Any use of business Centre by a third party on behalf of the Client shall require prior written consent of the Service Provider.

2.3 Any constructional modifications, alterations and extensions will also require the prior written approval of the Service Provider.

2.4 The Client will be held liable for all damages caused by any modifications.

2.5 At the end of the agreement period, the Client is obliged to rebuild the provided rooms to their original state and to provide for a final cleaning and repaint at his expense.

3. Fees:

3.1 Fees for the services shall be charged to the Client on monthly basis.

3.2 Fees shall be paid within 7 (seven) calendar days following the receipt of the invoice. The Client's failure to pay the fees shall attract an interest of 2% per month. The Client, in its reasonable opinion believes that any invoice is issued erroneously then the Client shall dispute such invoice. The Client is not obligated to pay the disputed invoice until the dispute is resolved by the Parties amicably.

4. Term:

4.1 This Agreement shall be in effect for a term of 3 years following the Effective Date ("**Initial Term**") and shall automatically renew for subsequent 12 month terms unless earlier terminated.

4.2 After the Initial Term, either Party may terminate this Agreement by providing 30 days' written notice to the other Party.

4.3 The termination of the Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to any Party against the other Party, prior to such termination.

4.4 No Party shall incur any liability for any kind of loss or damage suffered by the other Party as a consequence of the legitimate termination of the Agreement.

4.5 Any provisions of the Agreement which, by their terms, require performance after the termination or expiration of the Agreement, or have application to events that may occur after the termination or expiration of the Agreement, will survive the Agreement termination or expiration.

5. Permitted Use: The Client agrees to use the Business Centre only for legal purposes. Use of the services for any illegal or illicit purposes shall be considered a breach of this Agreement and a ground for immediate termination.

6. Rules and Regulations:

6.1 During the term of this Agreement, the Client shall adhere to the rules and regulations of the Service Provider related to the maintenance of the business Centre.

6.2 The Client's failure to adhere to the rules and regulations shall allow the Service Provider to terminate the Agreement with immediate effect.

7. Non-solicitation:

7.1 During the Term of this Agreement and for two (2) years thereafter, no Party shall directly or indirectly induce or attempt to induce any of the employees of other Party to leave the employment of other Party.

7.2 For the violation of this provision, the breaching Party shall have to pay a penalty equivalent to 100% of the gross annual salary of such employee.

8. Notices: Any notice under this Agreement must be in writing and must be sent by certified mail, return receipt requested, or by an expedited mail service that provides proof of delivery, to the last address of the Party to whom notice is to be given, as designated by such Party in writing.

9. No Assignment or Sublease:

9.1 No assignment or sublease of this Agreement or any part thereof shall be made by the Client without the Service Provider's prior written consent.

9.2 The Service Provider may assign the Agreement to any third party with prior written consent of the Client.

10. Indemnity:

10.1 Each Party agrees to indemnify and hold other Party and its employees, officers and affiliates harmless from and against any and all claims, damages or causes of action for damages (including reasonable attorneys' fees and court costs) brought on account of injury to any person or damage to property, or loss of life, arising out of such Party's breach of any provision of this Agreement or a negligent act or omission.

10.2 No Party shall make any indemnification compromise or settlement without prior written consent of the other Party. For the avoidance of doubt, it is hereby expressly stated that no Party shall bear any responsibility for any indemnification compromise or settlement made by the other Party without prior written consent of such Party.

10.3 A Party seeking indemnity shall issue notice of such indemnity claim to the other Party. Failure to provide indemnity claim notice shall not impair the right of a Party to seek indemnity.

10.4 The Parties shall reasonable co-operate with each other for amicable settlement of indemnity claim.

11. Limitation of Liability:

11.1 To the maximum extent mandated by law, no Party will be liable to the other Party for any lost profits or business opportunities, loss of use, loss of revenue, loss of goodwill, business interruption, loss of data, or any other indirect, special, incidental, or consequential damages under any theory of liability, whether based in contract, tort, negligence, product liability, or otherwise.

11.2 Either Party's liability for any claim arising out of or in connection with the Agreement shall not exceed _____.

12. Representations and Warranties:

Each Party hereby represents and warrants to the other Party that:

(a) It has requisite corporate capacity to execute this Agreement, grant the rights and licenses granted herein and perform this Agreement in the other aspects;

(b) Upon execution and delivery, this Agreement shall constitute its legal, valid and binding obligations enforceable against it in accordance with its terms; and

(c) It shall perform its obligations hereunder in accordance with all the requirements of the Laws.

13. Confidential Information:

13.1 Either Party (**Discloser**) may disclose Confidential Information to the other Party (**Recipient**) in confidence provided that the disclosing Party identifies such information as proprietary and confidential:

(i) either by marking it, in the case of written materials, or,

(ii) in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by e-mail or written correspondence, or via other means of communication.

13.2 The foregoing confidentiality obligations will not apply to Confidential Information that

(i) is already known to Recipient prior to disclosure by Discloser;

(ii) is or becomes a matter of public knowledge through no fault of Recipient;

(iii) is rightfully received by Recipient from a third party not known by Recipient to be bound by a duty of confidentiality with respect to such information;

(iv) is independently developed by Recipient;

(v) is disclosed under operation of law; or

(vi) is disclosed by Recipient with the prior written approval of Discloser.

13.3 Recipient shall not disclose Confidential Information to any third party or use the Confidential Information in violation of the Agreement for its own or certain third party benefit. Recipient may disclose the Confidential Information to its own employees for exercising its rights and obligations under the Agreement provided such employees agreed to abide by the terms and conditions of the Agreement.

13.4 Nothing in this Agreement shall restrict the right of the Recipient to independently design, develop, acquire, market, service or otherwise deal in, products or services competitive with those of the Discloser as long as Recipient is not in breach of this Agreement.

14. Governing Law:

14.1 This Agreement shall be construed, and disputes hereunder shall be settled under the laws of _____.

14.2 The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of _____ in any dispute arising out of or relating to this Agreement.

15. Severability: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

16. Waiver: No failure to enforce any of its right by a Party shall constitute waiver of such right.

17. Force Majeure: In the case of any failure or delay of either Party in the performance of its obligations hereunder due to any event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay provided such Party has taken reasonable precautions to avoid such failure or delay.

18. Publicity: Except as permitted under the Agreement, no Party shall use name of the other Party in any publicity related activities without prior written consent of the other Party. Further, no Party will issue any press releases about discussions taking place between the Parties and the fact that the Parties entered into the Agreement without prior written consent of other Party.

19. **Additional Documents:** The Parties agree to execute, acknowledge and deliver to the other Party and to procure the execution, acknowledgment and delivery to the other Party of any additional documents or instruments which either Party may reasonably require to fully effectuate and carry out the provisions of the Agreement.

20. **Relationship between the Parties:** The Service Provider and the Client are independent parties. Nothing contained or implied in the Agreement creates a relationship of employer-employee between the Parties nor does it create a joint venture, partnership, or similar relationship between the Parties.

21. **Entire Agreement:**

    21.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

    21.2 No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is made in writing and signed by each Party.

22. **Counterparts:** This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23. **Arbitration:**

    23.1 In the event of any dispute, difference or question arising out of or in relation to the breach of the Agreement, the same shall be governed by and settled by a sole arbitrator under the procedures of Arbitration and Conciliation Act, 1996.

    23.2 The arbitration venue shall be at Mumbai. The decision or award so given shall be final and binding on the Parties.

    23.3 Each Party shall bear its own costs and expenses of conducting the arbitration.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the effective date.

Service Provider	**Client**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

BUSINESS TRANSFER AGREEMENT

This Business Transfer Agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1. _____, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Seller**"); and

2. _____, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Purchaser**").

The Seller and the Purchaser are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS:

A. The Seller is the owner of a _____ manufacturing business unit ("**Business**") located at _____.

B. The Seller intends to sell such business unit to a purchaser interested in procuring that business unit.

C. The Purchaser is the owner of a _____ franchise of international fame.

D. The Purchaser is interested in procuring the said business unit.

E. The Seller has therefore agreed to enter into this Agreement -to sell, transfer and convey the milk manufacture unit to the Purchaser, subject to the terms and conditions contained herein.

NOW THEREFORE, the Parties, intending to be legally bound hereby agree as follows:

1. Sale:

1.1 The Seller hereby sells to the Purchaser who hereby purchases the Business as a going concern.

1.2 The purchase shall be effective from the date of execution of this Agreement and subject to the timely fulfilment or waiver of the conditions set forth herein.

2. Purchase Price:

2.1 The purchase price for the transfer of the Business shall be a lump-sum price of the _____ payable by way of electronic funds or through cheque as may be notified to the Purchaser by the Seller in writing.

2.2 Except for the purchase price, no other amounts shall be payable by the Purchaser to the Seller under this Agreement.

2.3 Purchase price shall be paid within 10 days from the Effective Date.

3. Title and Risk:

3.1 From the date of execution, the Purchaser shall be only entitled to the income and profits of the Business accrued after the Effective Date.

3.2 If any of the business unit assets are damaged before the Effective Date, which materially and adversely affects the conduct or profitability of the Business, the Purchaser may immediately terminate this contract by notice in writing to the Seller.

3.3 The Purchaser and its representatives are entitled to full management and control of the Business at and from the Effective Date.

4. **Assistance:** The Seller shall do whatever is reasonably necessary to introduce the Purchaser to customers and suppliers connected with the Business and give the Purchaser reasonable assistance and advice about running the Business during the assistance period.

5. **Post-closing obligations:** On and after the Effective Date, the Seller shall be obliged to promptly deliver to the Purchaser any payment, notice, correspondence, information or enquiry in relation to the Business which it receives.

6. Non-compete and Non-solicit obligations:

6.1 The Seller agrees that on and after the Effective Date it shall not, and shall cause its affiliates, relatives, associates, promoters and whole-time directors not to, engage, directly or indirectly in any of the business similar to the Business under this Agreement.

6.2 The Seller shall not solicit any customers or suppliers of the Business to terminate or otherwise adversely modify their relationship with the Business and engage with it in any manner whatsoever.

7. Indemnification:

7.1 Each Party agrees to indemnify and keep indemnified and hold harmless the other Party from and against any and all losses, penalties, judgments, suits, costs, claims, liabilities, assessments, damages and expenses (including, without limitation, reasonable attorneys' fees and

disbursements) incurred by, imposed upon arising from or asserted against the other Party as a result of relating to or arising out of any breach, default or non-compliance under this Agreement by such Party.

7.2 No Party shall make any indemnification compromise or settlement without prior written consent of the other Party. For the avoidance of doubt, it is hereby expressly stated that no Party shall bear any responsibility for any indemnification compromise or settlement made by the other Party without prior written consent of such Party.

8. Assignment:

8.1 No Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of other Party.

8.2 However, either Party may at any time assign this Agreement and any of its rights and obligations hereunder to any of its affiliate without the consent of other Party.

9. Termination:

9.1 This Agreement may be terminated by either Party upon providing 7 (seven) days' prior written notice to the other Party provided the other Party commits a material breach of the Agreement and fails to cure the breach within the cure period as agreed by the Parties.

9.2 The Seller may terminate the Agreement, if Purchaser commits payment default and fails to cure such payment default within the stipulated time sanctioned by the Seller.

9.3 The Purchaser may terminate the Agreement, if Seller fails to transfer the business within the stipulated time agreed by the Parties.

9.4 The termination of the Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to any Party against the other Party, prior to such termination.

9.5 No Party shall incur any liability for any kind of loss or damage suffered by the other Party as a consequence of the legitimate termination of the Agreement by either Party.

10. Representations and Warranties: Each Party represents and warrants to the other Party that:

(i) It is a company that has been duly incorporated or organized and is validly existing and in good standing.

(ii) It is properly qualified where qualification is necessary for the conduct of its business under the Agreement.

(iii) It has adequate corporate, financial and other power to enter into and perform this Agreement.

(iv) This Agreement has been duly executed and delivered by such Party and is intended to be a valid and binding obligation of such Party, enforceable against it in accordance with its terms.

11. Limitation of Liability:

11.1 Either Party's liability for any claims arising out of or in connection with the Agreement shall not exceed _____.

11.2 No Party will be liable to the other Party for any consequential, special, exemplary, or punitive damages (including damages for loss of data, revenue, and/or profits), whether foreseeable or unforeseeable, arising out of the Agreement regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties or otherwise, and even if the Party has been advised of the possibility of those damages.

12. Confidential Information:

12.1 Each Party ("**Discloser**") shall disclose certain non-public information to the other Party ("**Recipient**") under the Agreement that is marked as confidential or disclosed under the circumstances reasonably indicating its confidentiality (the "**Confidential Information**").

12.2 Recipient shall not disclose Confidential Information to any third party or use the Confidential Information in violation of the Agreement for its own or certain third-party benefit.

12.3 Recipient may disclose the Confidential Information to its own employees for of exercising its rights and obligations under the Agreement provided such employees agreed to abide by the terms and conditions of the Agreement.

12.4 Recipient shall treat the Confidential Information with at least the same degree of care and protection as it will use with respect to its own confidential information of a similar nature, but in no event less than a reasonable standard of care.

12.5 The foregoing confidentiality obligations will not apply to Confidential Information that:

(i) is already known to Recipient prior to disclosure by Discloser;

(ii) is or becomes a matter of public knowledge through no fault of Recipient;

(iii) is rightfully received by Recipient from a third party not known by Recipient to be bound by a duty of confidentiality to Discloser with respect to such information; and

(iv) is independently developed by the Recipient without using the Confidential Information disclosed under this Agreement.

13. **Governing Law and Jurisdiction:** This Agreement shall be governed by the laws of _____ and shall be subject to exclusive jurisdiction of courts in _____.

14. **Further Assurances:** From and after the Effective Date, the Seller shall from time to time, at the request of the Purchaser and without further cost or expense to the Purchaser, execute and deliver such other instruments of conveyance and transfer and take such other actions as the Purchaser may reasonably request in order more effectively to carry out this Agreement and the transactions contemplated hereunder.

15. **Waiver:** No failure to enforce any of its right by a Party shall not constitute waiver of such right.

16. **Publicity:** Either Party will not issue any press releases about discussions taking place between the Parties and the fact that the Parties entered into this Agreement without prior written consent of the other Party.

17. **Notices:** Any notice required or permitted to be given is to be provided in writing to the person designated by a Party and at the address listed in this Agreement, or certified mail, return receipt requested.

18. **Expenses:**

    18.1 Each Party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

    18.2 All stamp duty and registration costs imposed on this Agreement and the instruments and documents executed pursuant hereto shall be borne by the Purchaser.

19. **Independent Rights:** Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them.

20. **Entire Agreement:** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understanding of the Parties, oral and written, with respect to such subject matter.

21. **Severability:** If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not in any way affect the validity of any other provision of the Agreement.

22. Force Majeure:

22.1 In the case of any failure or delay of either Party in the performance of its obligations hereunder due to riot, insurrection, fire, flood, storm, explosion, act of God, government action, earthquake, shortage of materials or any other event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay.

22.2 The Purchaser payment obligations shall be exclusively excluded from the purview of force majeure provision.

IN WITNESS, the Parties have executed this Agreement as of the date first written above.

Seller	**Purchaser**
BY: _____	BY: _____
Name: _____	Name: _____
Title:_____	Title:_____

Witnesses:

CHANGE OF CONTROL AGREEMENT

This Change of Control Agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1._____, a company incorporated under the Companies Act, 1956/2013 with CIN_____, PAN _____ and its registered office at _____ (hereinafter called as the "**Company**"); and

2._____, a person, aged ___, Son of _____, with PAN _____ and resident of _____ (hereinafter called as the "**Employee**").

The Company and the Employee are hereinafter individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS:

A. The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Employee, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company.

B. The Board believes it is imperative to diminish the inevitable distraction of the Company by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage Employee's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Employee with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Employee will be satisfied and which are competitive with those of other corporations.

NOW THEREFORE, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement; and

1. **Change of Control**: "Change of Control" means the occurrence of any one or more of the following events following the completion of the sale of the Shareholding of the Company to the public pursuant to a registration statement filed with the Securities Exchange Board of India:

   (i) Any Person becomes the owner of 50% or more of the Company's Shareholding; or

(ii) A reorganization, merger, consolidation or similar transaction that will result in the transfer of ownership of more than 50% of the Company's outstanding Shareholding or that will result in the issuance of new shares of Company Shareholding in an amount equal to more than 50% of the amount of Shareholding outstanding immediately prior to such issuance; or

(iii) Liquidation or dissolution of the Company or sale of substantially all of the Company's assets.

2. Entitlement to Severance Benefits: If, during the period following the commencement of efforts to sell the Company and prior to a Change of Control or 12 (twelve) months following or otherwise in connection with a Change of Control, the Company terminates Employee's employment without Cause, or if Employee terminates the employment for good reason, the Company will, provide severance benefits to the Employee.

3. Severance Benefits: The Company will provide the Employee with the following severance benefits:

3.1 **Accrued Salary, Vacation and Benefits**. The Employee shall receive all salary and accrued vacation (less applicable withholding) earned through the Employee's termination date, and the benefits, if any, under the Company benefit plans to which the Employee may be entitled pursuant to the terms of such plans.

3.2 **Stock Award Acceleration**. Subject to the terms of this Agreement, all outstanding stock options granted and restricted stock issued by the Company to the Employee prior to the Change of Control shall become fully vested and exercisable immediately prior to the effective date of the termination upon a Change of Control.

3.3 **Cash Severance Payment**. The Employee shall receive a lump sum cash payment in an amount equal to twelve (12) months of the Employee's effective base salary (less applicable withholding), paid within ten (10) business days of the effective date of the termination upon a Change of Control.

4. Withholding: All payments required to be made by the Company to the Employee under this Agreement will be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as may be required by the law.

5. No Duty to Mitigate:

5.1 Benefits payable under this Agreement as a result of termination of the Employee's employment will be considered severance pay in consideration of the past service and continued service from the effective date of the Change of Control.

5.2 The Employee's entitlement to the benefits under this Agreement will neither be governed by any duty to mitigate the Employee damages by seeking further employment nor offset by any compensation that the Employee may receive from other employment.

6. Successors:

6.1 This Agreement will inure to and be binding upon the Company's successors.

6.2 The Company will require any successor to all or substantially all of the business and assets of the Company by sale, merger or consolidation, lease or otherwise, by agreement in form and substance satisfactory to Employee, to assume this Agreement expressly.

6.3 This Agreement is not otherwise assignable by the Company or by the Employee.

7. Release and Waiver of Claims: The Company may condition the payments and benefits set forth in this Agreement upon the delivery by the Employee of a signed release and waiver of any further claims in a form satisfactory to the Company.

8. Agreement Not to Solicit: If the Company performs its obligations to deliver the severance compensation as set forth in this Agreement, then for a period of one (1) year after Employee's termination of employment, the Employee will not solicit any employee of the Company to discontinue that person's employment relationship with the Company.

9. Arbitration:

9.1 Any claim, dispute or controversy arising out of this Agreement, the interpretation, validity or enforceability of this Agreement or the alleged breach thereof shall be submitted by the Parties to arbitration by a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

9.2 The site of the arbitration proceeding shall be at Chennai.

9.3 The arbitration proceedings will be conducted in English language.

9.4 The Parties shall honour the arbitration award including the allocated of costs of arbitration mandated by the arbitrator, if applicable.

10. Conflict in Benefits; Effect of Agreement: This Agreement shall supersede all prior arrangements, whether written or oral, and understandings regarding severance compensation following a Change of Control and shall be the exclusive agreement for the determination of any severance compensation

due upon the Employee's termination of employment upon a Change of Control.

11. No Employment Agreement: This Agreement does not alter the Employee's at-will employment status or obligate the Company to continue to employ the Employee for any specific period of time, or in any specific role or geographic location.

12. Indemnity: Each Party shall indemnify and hold the other Party harmless from and against any loss, liability, damage, or expense, arising out of or in connection with such Party's violation of this Agreement or any negligent act or omission of such Party under this Agreement.

13. Warranty and Representation: Each Party represents and warrants that it has the authority to enter and execute this Agreement and does not need consent of any third party to enter into this Agreement and execution of this Agreement by such Party in any way do not violate any third-party agreements entered by it.

14. Confidential Information:

14.1 Each Party may disclose certain non-public information which is confidential in nature to the other Party that is marked as confidential or disclosed under circumstances reasonably indicting its confidentiality.

14.2 No Party shall use the confidential information or disclose confidential information to any third party in violation of this Agreement.

15. Termination:

15.1 The Company may terminate this Agreement if the Employee fails to issue a statement releasing the liability of the Company under this Agreement provided that the Company has paid all the payments due to the Employee under this Agreement.

16. Limitation of Liability:

16.1 Either Party's liability) for any claim (other than the Company's liability for Severance Benefits) arising out of or in connection with the Agreement shall not exceed _____.

16.2 No Party will be liable to the other Party for any consequential, special, exemplary, or punitive damages arising out of the Agreement.

17. Governing Law: This Agreement shall be interpreted in accordance with and governed by the laws of India. The Parties agree that they shall submit to the exclusive jurisdiction of Indian courts.

18. **Severability:** If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not in any way affect the validity of any other provision of the Agreement.

19. **Waiver:** No failure to enforce any of its right by a Party shall constitute waiver of such right.

20. **Force Majeure:** In case of any failure or delay of either Party in the performance of its obligations hereunder due to riot, insurrection, fire, flood, storm, explosion, act of God, government action, earthquake, shortage of materials or any other event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay.

21. **Notices:** Any notice required or permitted to be given is to be provided in writing to the person designated by a Party and at the address listed in the Agreement, or certified mail, return receipt requested.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Company	**Employee**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witness:

LOAN AGREEMENT

This Loan agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1._____ Bank Limited, a banking company incorporated under the Companies Act, 1956 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Lender**"); and

2._____, a company incorporated under the Companies Act, 2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Borrower**").

The Lender and the Borrower are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS the Borrower has approached the Lender for loan for the purpose of _____;

AND WHEREAS the Lender has agreed to lend to the Borrower subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the Parties agree as follows:

1. Loan and delivery of collateral security:

1.1 Subject to the terms and conditions hereinafter set forth, the Lender agrees to provide to the Borrower a line of credit in an amount of _____.

1.2 The Lender will pay the loan amount to Borrower within 15 (fifteen) days of execution of this Agreement.

1.3 The Borrower's obligation to repay the loan amount shall be evidenced by one or more promissory notes issued in the form of "Exhibit A" (the "**Promissory Notes**").

1.4 To secure its obligations under the loan, the Borrower will deposit _____ as collateral security with the Lender.

1.5 The Lender will retain such collateral security deposited with it, until the Loan is repaid by the Borrower.

2. Loan proceeds:

2.1 All loan amounts payable to the Borrower shall be wired directly to the Borrower based on wire instructions provided by the Borrower from time to time, without deduction for any charges, expenses or commissions, except for a 2% engagement service fee (the "Engagement Service Fee") payable to the Lender.

2.2 Net loan proceeds shall be immediately available to the Borrower.

2.3 Delivery of the Promissory Notes to the Lender shall be a condition precedent to delivery of the loan amount by the Lender, which will also be subject to confirmation by outside counsel of the Lender as to availability of funds.

3. Return of loan documents: Except as otherwise provided in this Agreement, upon satisfaction of all principal and interest under the Promissory Notes, the Lender shall promptly deliver to the Borrower the collateral security and the loan documents, other than the Lender's copy of the loan documents.

4. Term:

4.1 The initial term of the loan will be 3 (three) years from the date of disbursements.

4.2 The Borrower shall have the option to request an extension of the loan, in whole or in part, for up to one additional 1 (one) year period.

4.3 The Borrower shall exercise its right to request the extension of the loan by advising the Lender in writing not less than 30 (thirty) days prior to the loan termination date then in effect.

5. Termination: The Lender shall terminate the Agreement with immediate effect if the Borrower fails to repay the loan amount and / or interest thereon within the stipulated time period agreed by the Parties and the Lender shall freeze the collateral security deposited and conduct a sale of the said security to recover the loan amount.

6. Interest Rate: The interest rate on the loan will be ___% per annum on reducing balance basis. The interest rate may be adjusted once during each 12-month loan agreement period.

7. Payments:

7.1 The interest payments shall be made quarterly in arrears.

7.2 The Lender shall have the right to charge additional interest on late scheduled quarterly interest payments.

7.3 Payments shall be deemed late if the agreed quarterly interest is not paid on the due date as stated in the interest payment schedule which shall be issued upon acceptance and draw down of funds by the Borrower.

7.4 The interest charge on late payments will be calculated at _____% until said interest is paid.

8. Representations and warranties of the Borrower: In order to induce the Lender to provide the loan according to Promissory Notes in the form of attached Exhibit A, the Borrower makes the following representations and warranties to the Lender:

(a) The Borrower has all requisite power and authority to enter into this Agreement and all other loan documents, including, without limitation, the Promissory Notes, and to carry out the transactions contemplated hereby.

(b) This Agreement, the Promissory Notes, and other loan documents, when executed and delivered, will constitute valid binding agreements of the Borrower, enforceable in accordance with their respective terms.

9. Condition precedent to lender's obligations: The obligation of the Lender to consummate the transactions contemplated herein is subject to the satisfaction of the following conditions:

(a) The Borrower will have performed all obligations and complied with all conditions required to be performed or complied with by the Borrower at or prior to the closing.

(b) The representation and warranties of the Borrower made herein shall be true and correct as of the closing.

10. Indemnity:

10.1 Each Party will protect, defend, indemnify, and hold the other Party harmless from and against all claims to the extent that such claims arise out of or relate to breach of any provision of the Agreement by such Party or any negligent act or omission of the other Party.

10.2 Each Party shall not make any indemnification compromise or settlement without prior written consent of the other Party.

10.3 For the avoidance of doubt, it is hereby expressly stated that either Party shall not bear any responsibility for any indemnification compromise or settlement made by the other Party without prior written consent of such Party.

11. Limitation of Liability:

11.1 Each Party's liability for any claim arising out of or in connection with the Agreement shall not exceed _____.

11.2 No Party will be liable to the other Party for any consequential, special, exemplary, or punitive damages (including damages for loss of data, revenue, and/or profits), whether foreseeable or unforeseeable, arising out of the Agreement regardless of whether the liability is based on breach of contract, tort, strict liability, breach of warranties or otherwise, and even if the Party has been advised of the possibility of those damages.

12. Confidential Information:

12.1 Each Party may disclose certain non-public and confidential information to the other Party that is marked as confidential.

12.2 Each Party shall use such confidential information in furtherance of the purpose of the Agreement and shall not use such confidential information in violation of the Agreement.

12.3 Each Party may disclose the confidential information to its representatives on a need to know for performance of such Party's rights and obligations.

12.4 The Confidentiality obligations shall survive for a period of 5 years from the date of disclosure of such confidential information.

13. General Provisions:

13.1 **Assignment:**

13.1.1 This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party.

13.1.2 Any such assignment in violation of the Agreement shall be null and void.

13.1.3 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13.2 **Amendment:** This Agreement may be amended, or the terms hereof waived, only in writing and having been executed by the Parties.

13.3 **Notices:**

13.3.1 All notices and other communications hereunder shall be delivered in writing and shall be deemed to have been given if delivered by hand or facsimile transmission or if deposited with a recognized overnight delivery service, with receipt, addressed to the recipient address.

13.3.2 Notices sent by facsimile transmission must show the sender's time of transmission information ("TTI") on such copy.

13.4 **Governing law and jurisdiction:**

13.4.1 This Agreement shall be governed by the laws of India.

13.4.2 The Parties agree to the exclusive jurisdiction of courts of Bangalore.

13.5 **Force Majeure**: In the case of any failure or delay of either Party in the performance of its obligations hereunder due to any event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay.

13.6 **Counterparts, facsimile and signatures:**

13.6.1 This Agreement may be signed in any number of counterparts, and such shall be deemed an original together as one and the same document.

13.6.2 The Parties agree that facsimile signatures which copy shall show the sender's TTI shall be deemed an original.

13.7 **Severability**: If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not in any way affect the validity of any other provision of the Agreement.

13.8 **Waiver**: No failure to enforce any of its right by a Party shall not constitute waiver of such right.

13.9 **Entire agreement:** This Agreement and related Loan Documents constitute the entire agreement of the parties with respect to the subject matter hereto and supersede any prior or contemporaneous understandings or agreements.

13.10 **Time of essence:** Time is specifically declared to be of the essence in the performance by the Borrower and the Lender of their respective duties and responsibilities under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Lender	**Borrower**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

SECURED PROMISSORY NOTE

INR _____ (Amount) DATE: _____

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____ ("Borrower"), promises to pay to _____ ("Lender") at _____ (Address) or any other place as Lender may from time to time designate in writing, the principal sum of _____ (INR_____) (the "Principal Amount"), hereof until this Note is paid in full at the rate of _____ (__%) per annum.

The Borrower is to pay interest quarterly in arrears, and principal is due _____ (Date) as stated in the Collateral Loan Agreement. All further terms and conditions of this note are governed by the Collateral Loan Agreement executed by the Borrower and Lender on _____ (Date)

The payments shall be made in lawful money and shall be free from set off, deduction, or counterclaim of any kind. The Borrower may prepay this Note in whole or in part on the anniversary date of the note without premium or penalty. Unless the Lender shall elect otherwise, any partial pre-payment shall be credited first to accrued interest and then to the Principal Amount outstanding and shall not extend or postpone the due date of any subsequent payment or change the amount of such payment.

By: _____ (Borrower)

(Name)

Title: _____

Date: _____

CONSTRUCTION AGREEMENT

This Construction Agreement (the "**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1._____, a company incorporated under the Companies Act, 2013 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Owner**"); and

2. _____, a company incorporated under the Companies Act, 2013 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Contractor**").

The Owner and the Contractor are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS:

A. The Owner is desirous of constructing a commercial office ("**Office**") with intent to lease out the Office to multi-national companies for office purposes.

B. The Owner wishes to engage the Contractor to construct the Office and the Contractor accepts the engagement to construct the Office and the Contractor is ready to construct the Office; and

C. The Parties are desirous of executing their understanding on the subject matter in writing.

NOW THEREFORE, in consideration of the mutual promises of the Parties, the Owner and the Contractor agree as follows:

1. Construction work:

1.1 The Contractor shall construct the Office according to the approved construction plan and subject to the terms and conditions of this Agreement.

1.2 The Contractor shall not make any modifications to the approved construction plan, except without prior written consent of the Owner.

1.3 The Contractor shall arrange all labor, materials, equipment, supplies and other items necessary to construct the Office.

2. Construction period:

2.1 The Contractor shall commence the construction work only when directed in a written notice issued by the Owner.

2.2 The construction work shall commence no later than_____ and shall be completed within ____ months from commencement.

2.3 In view of the difficulty or impossibility of determining the Owner's damages from construction delay, if the Contractor fails to construct the Office within agreed completion date, the Contractor agrees to a deduction of a sum of _____ for each day of delay as liquidated damages for such delay.

2.4 If liquidated damages exceed the last instalment of the contract price due or to become due, then the Contractor shall pay the Owner the difference within 3 days of receipt of written demand.

3. Contract Price: The Owner shall pay to the Contractor the following contract price, depending on phase wise construction as provided in the approved plan.

4. Payment Schedule:

4.1 The Owner shall make monthly payments to the Contractor on account of the contract price.

4.2 If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract or in any award by a court, interest at the rate as agreed by the Parties, shall become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

5. Contractor's Responsibilities:

5.1 The Contractor shall thoroughly acquaint with all available information concerning the conditions of the construction work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the construction work.

5.2 The Contractor shall study and compare the contract documents sufficiently in advance of beginning each phase or portion of the construction work to be performed and immediately report any material error, inconsistency, conflict, ambiguity, or omission that is discovered to the Owner.

5.3 The Contractor shall have a competent superintendent on the site at all times during the progress of the construction work.

5.4 The Contractor's superintendent must be acceptable to the Owner. The superintendent shall have such assistants with such individual specialized competencies.

5.5 The Contractor shall at all times enforce strict discipline and good order among the workers on the construction site and shall not employ or continue to employ any unfit person on the construction site or any person not skilled in the work assigned to him.

5.6 The Contractor shall be responsible to the Owner for all acts and omissions of its employees, subcontractors and suppliers.

5.7 The Contractor shall file with the Owner at the time of execution of the Agreement, a performance bond, a payment bond, and a warranty bond on Owner approved forms, each in the full amount of the contract.

5.8 The Contractor shall maintain a daily log of construction activities for each calendar day of the contract time, using a form approved by the Owner.

6. Indemnification:

6.1 Each Party agrees to defend, indemnify and hold the other Party harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by such Party's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of such Party in the performance of this Contract.

6.2 No Party shall make any indemnification compromise or settlement without prior written consent of the other Party.

6.3 For the avoidance of doubt, it is hereby expressly stated that either Party shall not bear any responsibility for any indemnification compromise or settlement made by the other Party without prior written consent of such Party.

7. Confidential Information:

7.1 Each Party shall disclose certain non-public information to the other Party under the Agreement that is marked as confidential or disclosed under the circumstances reasonably indicating its confidentiality (the "Confidential Information").

7.2 No Party shall disclose Confidential Information to any third party or use the Confidential Information in violation of the Agreement for its own or certain third-party benefit.

7.3. Each Party may disclose the Confidential Information to its own employees for the purpose of exercising their rights and obligations under the Agreement provided such employees agreed to abide by the terms and conditions of the Agreement.

7.4 Each Party shall treat the Confidential Information with at least the same degree of care and protection as it will use with respect to its own confidential information of a similar nature, but in no event less than a reasonable standard of care.

7.5 If Recipient believes that it will be compelled by a court or other authority to disclose Confidential Information, it shall:

(i) give the discloser timely written notice so that the discloser may take steps to oppose such disclosure; and

(ii) cooperate with the discloser in its attempts to oppose such disclosure, provided that such opposition is reasonable in light of applicable law or regulation.

7.6 The foregoing confidentiality obligations will not apply to Confidential Information that:

(a) is already known to the recipient prior to disclosure by the discloser;

(b) is or becomes a matter of public knowledge through no fault of the recipient;

(c) is rightfully received by the recipient from a third party not known by the recipient to be bound by a duty of confidentiality to the discloser with respect to such information;

(d) is independently developed by the recipient without using the Confidential Information; and

(e) is disclosed by the recipient with the prior written approval of the discloser.

8. Work inspection:

8.1 All construction work done, and all materials are subject to inspection by the Owner to determine if they conform to the contract documents.

8.2 The Owner shall at all times have access to the construction work, including materials being fabricated or stored off site.

8.3 The Contractor shall furnish any facilities necessary for sufficient and safe access to the construction work.

9. Delays and extensions: If the Contractor is delayed at any time in the progress of the construction work by any neglect act of the Owner or by changes in the work, or by labor disputes or any other similar reason and without any fault or negligence of the Contractor then the contract time shall be extended by the Owner as deemed necessary.

10. Termination:

10.1 Either Party may terminate the Agreement, if other Party commits a material breach and fails to cure such material breach within the cure period agreed by the Parties.

10.2 The Owner may terminate the Agreement, if the Contractor fails to conclude the construction work within the stipulated time.

10.3 The Agreement may be terminated by the Contractor as a consequence of non-payment of the arrears due to the Contractor by the Owner.

10.4 The termination of the Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to any Party against the other Party, prior to such termination.

10.5 No Party shall incur liability for any kind of loss or damage suffered by the other Party as a consequence of the legitimate termination of the Agreement by either Party.

11. Limitation of Liability:

11.1 Each Party's liability for any claim arising out of or in connection with the Agreement shall not exceed _____.

11.2 No Party will be liable to the other Party for any consequential, special, exemplary, or punitive damages arising out of the Agreement.

12. Representations and Warranties: Each Party represents and warrants to the other Party that:

12.1 It is a company that has been duly incorporated or organized and is validly existing and in good standing.

12.2 It is properly qualified where qualification is necessary for the conduct of its business under the Agreement.

12.3 It has adequate corporate and other power to enter into and perform the Agreement.

12.4 The Agreement has been duly executed and delivered by such Party and is intended to be a valid and binding obligation of such Party, enforceable against it in accordance with its terms.

13. General Provisions:

13.1 **Assignment/Subcontract:**

13.1.1 Each Party may not assign the Agreement or subcontract the construction work without prior written consent of the other Party.

13.1.2 Any assignment or subcontract in violation of the Agreement shall be null and void.

13.2 **Governing Law and Jurisdiction:**

13.2.1 This Agreement shall be governed by and construed in accordance with the laws of _____.

13.2.2 The Parties agree that they shall submit to the exclusive jurisdiction of courts at _____.

13.3 **Waiver and Severability:**

13.3.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

13.3.2 No failure to enforce any of its right by a Party shall not constitute waiver of such right.

13.4 **Notices**: Any notice required or permitted to be given is to be provided in writing to the person designated by a Party and at the address listed in this Agreement, or certified mail, return receipt requested.

13.5 **Entire Agreement**:

13.5.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

13.5.2 No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is in writing and signed by each Party.

13.6 **Force Majeure:**

13.6.1 In the case of any failure or delay of either Party in the performance of its obligations hereunder due to any event that is unforeseeable, unavoidable and beyond the reasonable control of such Party, such Party shall not bear any liability for such failure or delay.

13.6.2 The Owner payment obligations shall be exclusively excluded from the purview of force majeure provision.

13.7 **Relationship between the Parties:** It is understood and agreed that the Owner and the Contractor are independent parties. Nothing contained or implied in the Agreement creates a relationship of employer-employee between the Parties nor does it create a joint venture, partnership, or similar relationship between the Parties.

13.8 **Arbitration:**

13.8.1 In the event of any dispute, difference or question arising out of or in relation to the breach of the Agreement, the same shall be governed by and settled by a sole arbitrator under the procedures of Arbitration and Conciliation Act, 1996.

13.8.2 The arbitration venue shall be at _____.

13.8.3 The decision or award so given shall be final and binding on the Parties.

13.8.4 Each Party shall bear its own costs and expenses of conducting the arbitration.

13.9 **No third-party beneficiaries:** There are no third-party beneficiaries of the Agreement or of the transactions contemplated hereby and nothing contained herein shall be deemed to confer upon anyone other than the Parties (and their respective successors and permitted assigns), any right to insist upon or to enforce the performance any of the obligations contained herein.

13.10 **Counterparts**: This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

13.11 **Additional Documents:** The Parties agrees to execute, acknowledge and deliver to the other Party and to procure the execution, acknowledgment and delivery to the other Party of any additional documents or instruments which either Party may reasonably require to fully effectuate and carry out the provisions of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the effective date.

Owner	**Contractor**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witness :

CONSULTING AGREEMENT

This Consulting Agreement (the "**Agreement**") is entered into on this [●] day of [●], 2018 (the "Effective Date") at Kanpur:

By and between:

1._____ **Private Limited**, a company incorporated under the Companies Act, 2013, having CIN: _____ and having its registered office at _____ (hereinafter referred to as the "**Company**" which expression shall wherever the context requires or admits shall mean and include its affiliates, successors and permitted assigns);

and

2. **Mr.** _____, son of Mr. [●] having PAN number [●] and residing at [●] (hereinafter referred to as "**Consultant**" which expression shall unless repugnant to or inconsistent with the context, mean and include his Affiliates, successors and assigns).

(The Company and the Consultant are hereinafter referred to individually as a "**Party**" and collectively as "the **Parties**").

WHEREAS:

A. the Company is engaged in the business of _____;

B. the Consultant has represented to the Company that he has considerable expertise in _____ and would like to provide consulting services to the Company;

C. based on the aforesaid representations, the Company wishes to engage the Consultant to provide certain services in the areas of Consultant's expertise domain; and

D. now, the Parties wish to record their understanding on the subject matter and terms of the Consultant's engagement in writing.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Engagement and Services

(a) **Engagement.** The Company hereby engages the Consultant to provide and perform the services set forth in Annexure 1 (the "**Services**"), and the Consultant hereby accepts the engagement.

(b) **Designation.** The Consultant shall be allowed to use the designation of '_____', while interacting with third parties in relation to the Services.

(c) **Standard of Services.** The Company shall expect the Services to be performed with promptness, diligence and at a level of proficiency expected of a consultant with the background and experience that Consultant has represented to it.

(d) **Providing Information.** The Company shall provide such access to its information, property and personnel as the Consultant may reasonably require to enable and facilitate him to perform the Services.

(e) **Ethical Standards.** The Consultant shall adhere to highest ethical standards and shall not indulge in any unlawful or corrupt practices.

(f) **Representations and Warranties.** The Consultant represents and warrants to the Company that he is under no contractual or other restrictions or obligations inconsistent with the execution of this Agreement or interfering with the performance of the Services hereunder.

(g) **Non-compete and Confidentiality Agreements.** The Consultant shall execute and comply with Non-Compete and Confidentiality Agreement and any other agreement(s), as may be required by the Company.

2. Effective Date, Duration, Termination

(a) **Commencement.** This Agreement shall commence with effect from the execution hereof and shall remain in effect for a period of 3 (three) years therefrom, unless terminated earlier as provided in Clause 2 (b).

(b) **Termination**. This Agreement may be terminated by either Party, without cause and without liability, by giving 3 (three) months prior written notice or payment of Consulting fees in lieu thereof.

In addition, the Company shall also have the right to terminate this Agreement with immediate effect in the event of a material breach by the Consultant.

"Material breach" shall include:

(i) any violation of the terms of Clauses 1 (c), 4, 5 or 6;

(ii) any other breach that the Consultant has failed to cure within 7 (seven) days after receipt of written notice by the Company;

(iii) an act of gross negligence or wilful misconduct by the Consultant.

(c) **Effect of Termination.** Upon the effective date of termination of this Agreement, all legal obligations, rights and duties of the Parties arising out of this Agreement shall terminate except for those as shall have accrued prior to the effective date of termination and except as otherwise expressly provided in this Agreement.

(d) **Renewal/Extension.** Upon expiry of this Agreement, the Parties may renew this Agreement for such duration and on such terms and conditions, as may be mutually agreed. However, there shall be no obligation upon any Party for such renewal.

3. Consulting Fee and Expenses

(a) **Consulting Fee.** In consideration of the Services to be rendered hereunder, the Company shall pay Consultant a Consulting fee set forth in Annexure 2 (the "**Consulting Fee**").

(b) **Reimbursement of Expenses.** In addition to the Consulting Fee, the Consultant shall be entitled to reimbursement for all pre-approved expenses incurred in performance of the Services, upon submission and approval of written statements and receipt in respect of such reimbursements.

(c) **Invoice.** The Consultant shall submit a monthly invoice to the Company detailing the Services performed during the preceding month and the amount due.

(d) **Payment.** The Consultant's invoices shall be due and payable within 15 (fifteen) days after receipt thereof by the Company.

(e) **Tax withholding.** All the payments made to the Contractor under this Agreement shall be subject to applicable deduction of tax at source.

4. Intellectual Property and License

(a) **Definition.** In this Agreement, the term "Intellectual Property" shall include any ideas, concepts, creations, discoveries, inventions, know how, trade secrets; trademarks, service marks, designs, utility models, tools, devices, models, methods, procedures, processes, systems, principles, algorithms, works of authorship, flowcharts, drawings, and other confidential and proprietary information, computer programming code, databases, software programs including their source code; data, documents, instruction manuals, policies, promotional and advertising material, other literature, documentation and materials, records, memoranda, notes, user guides; in printed or machine-readable form, which are in existence at the date of this Agreement or which may come into existence thereafter, any ideas or concepts, reports, recommendations, analysis, press materials, speeches, white papers and other information, data, and materials developed or prepared by the Consultant either singly or jointly with Company officials, in connection with his engagement with the Company.

(b) **Ownership.** The Consultant irrevocably, absolutely and perpetually assigns to the Company worldwide rights in respect of all his right/s, title/s, and interest/s under any statute or common law including patent rights, copyrights including moral rights, trademarks, designs, anywhere

in the world, whether negotiable or not in respect of his contribution/s, free from encumbrances of any kind for the full term of each and every such right, including renewal or extension of any such term.

All of the Intellectual Property (created solely by the Consultant or jointly with others) given, disclosed, created, developed or prepared in connection with his engagement with the Company shall be deemed to be works and/or inventions developed in the course of his engagement with the Company within the meaning of the copyright laws, and the Company shall be deemed to be the sole author thereof in all jurisdictions for all purposes.

If under any applicable law, any results and proceeds of the services of the Consultant during the term of engagement with the Company are not deemed to be works/ and or inventions developed in the course of the engagement with the Company, then to the fullest extent allowable and for the full term of protection otherwise accorded to the Consultant under such applicable law, the Consultant hereby assigns and transfers to the Company any/all right/s, title/s and interest/s in such works and/or inventions.

5. Confidential Information

(a) **Exposure to Confidential Information.** In course of his engagement with the Company, the Consultant shall be exposed to Confidential Information about the business of the Company and that of its group companies, suppliers and customers which (i) amounts to a trade secret; (ii) is confidential; (iii) is commercially sensitive; (iv) may not be readily and legally available to others engaged in a similar business to that of the Company or to the general public; and (v) if disclosed, would be liable to cause significant harm to the Company.

(b) **Definition.** In this Agreement, the term "Confidential Information" shall mean and include all information and data relating to the purpose which is obtained, whether in writing, pictorially, in machine readable form, on compact disc, electronic mail, mail or orally in connection with or during the course of the engagement including but without limitation, financial information, schematics, trade secrets, technology, customer lists (potential or actual), Intellectual Property and other customer-related information, supplier information, sales statistics, market intelligence, marketing and other business strategies and other commercial information of a confidential or proprietary nature.

(c) **Exclusions.** Confidential Information shall, however, not include information which:

(i) is in or comes into the public domain without breach of this Agreement by the Consultant;

(ii) was in the possession of the Consultant prior to receipt from the Company and was not acquired by the Consultant from the Company under an obligation of confidentiality or non-use;

(iii) is acquired by the Consultant from a third party not under an obligation of confidentiality or non-use to the Company;

(iv) is approved for release or use by written authorisation from the Company;

(v) is required to be disclosed by any of the Parties at the request of or at the express direction of any Governmental or Judicial Agency.

The burden of proof that the Confidential Information, which is disclosed is covered within one of the exceptions set forth above, shall be on the Consultant. In the event of a dispute between the Parties regarding the applicability of one of the exceptions set forth above, the Consultant shall maintain the confidentiality of the Confidential Information until a final and non-appealable court judgement or arbitration award is granted.

(d) **Obligations of Non-Disclosure and Non-Use.** Unless otherwise agreed to in advance and in writing by the Company, the Consultant will not, except as required by law or court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services or disclose the Confidential Information to any third party.

(e) **Period of confidentiality.** The Consultant shall keep secret and shall not at any time either during his engagement with the Company, and 3 (three) years after its expiry or termination, for whatever reason, use, communicate or reveal to any person for his own or another's benefit, any secret or Confidential Information concerning the business, finances or organisation of the Company, its suppliers, customers or clients which shall have come to his knowledge during his engagement with the Company. The Consultant shall also use his best endeavours to prevent the publication or disclosure of any such information.

(f) **No taking away.** The Consultant shall not carry any Confidential Information outside the offices of the Company, except for bona fide official purposes.

(g) **Protection of Confidential Information.** In case the Consultant comes to know of any misuse or wrongful disclosure of any Confidential Information, he shall provide the Company with prompt written notice thereof to enable the Company to seek a protective order, injunctive relief, confidential treatment or other appropriate remedy, with or without his support.

(h) **Return of Confidential Information.** During the Agreement or on expiration or termination hereof, the Company may require the

Consultant to return all Confidential Information disclosed to it. Immediately upon such request, the Consultant shall:

(i) Return all Confidential Information including without limitation, all originals, copies, reproductions and summaries of Confidential Information; and

(ii) Destroy all copies of Confidential Information in his possession, power or control, which are present on magnetic media, optical disk or other storage device, to render the Confidential Information unrecoverable.

The Consultant shall certify to the Company of the said return or destruction of such Confidential Information within 7 (seven) days of the Company's request.

6. Interference with the Company's Business

(a) **Non-Competition.** The Consultant hereby irrevocably undertakes that at any time during the subsistence of the engagement with the Company and 1 (one) year thereafter, he shall not carry on or engage in, directly or indirectly, whether as principal or director or through partnership or as a shareholder, joint venture partner, collaborator, consultant or agent or in any other manner whatsoever, whether for profit or otherwise any business which competes directly or indirectly with the whole or any part of the business carried on by the Company or any activity related to the business carried on by the Company, whether by using the Confidential Information or otherwise.

(b) **Non-Solicitation.** The Consultant agrees that during the validity of this Agreement and for a period of one (1) year after expiry or termination of this Agreement, he shall not:

(i) divert or attempt to divert from the Company any business of any kind in which it is engaged, including, without limitation, the solicitation of or interference with any of its suppliers or customers, or

(ii) employ, solicit for employment, or recommend for employment any person employed by the Company.

7. Independent Contractor

The Consultant will render all Services as an independent contractor and this Agreement does not create an employer-employee relationship between the Parties. The Consultant shall have no right to receive any employee benefits provided by the Company to its employees. Further, this Agreement does not generally authorize the Consultant to act for the Company as its agent or to make any commitments on behalf of the Company, unless specifically authorized by the Company.

8. Force Majeure

In the event that either Party is unable to perform any of its obligations (except the obligation to make payments) under this Agreement as a result of natural disasters, actions or decrees of governmental bodies, communication line failures not due to the fault of the affected Party, or any other delay or failure which arises from causes beyond a Party's reasonable control and without negligence or wilful misconduct of the Party otherwise chargeable with such failure, delay or default (hereafter referred to as a "**Force Majeure Event**"), the affected Party shall immediately give written notice to the other Party. Such notice shall specify the facts which constitute the Force Majeure Event, and the affected Party shall do everything reasonably possible to resume performance at the earliest possible.

For the avoidance of doubt, a Force Majeure Event shall exclude any event that a Party could reasonably have prevented by testing, work-around, or other exercise of diligence. If the period of non-performance exceeds 30 (Thirty) days from the receipt of written notice of the Force Majeure Event, either Party may by giving written notice to the other Party terminate the Agreement.

9. Non-Publicity

Each Party agrees not to disclose the existence or contents of this Agreement to any third party without the prior written consent of the other Party except:

(i) to its advisors, attorneys or auditors who have a need to know such information;

(ii) as required by law or a court order;

(iii) as required in connection with the reorganization of the Company, or its merger into any other company, or the sale by a Party of all or substantially all of its properties or assets;

(iv) as may be required in connection with the enforcement of this Agreement.

10. Assignment

The Services to be performed by Consultant hereunder are personal in nature, and Company has engaged him because of his expertise relating to such Services. The Consultant, therefore, agrees that he shall not assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of his right, duty or obligation under this Agreement without the Company's prior written consent.

However, nothing in this Agreement shall prevent the Company from assigning this Agreement or any right, duty or obligation hereunder to any third party.

11. Injunctive Relief

The Consultant acknowledges that a violation of any terms and conditions of this Agreement would cause immediate and irreparable harm to the Company for which monetary damages would be inadequate. Therefore, the Company shall be entitled to injunctive relief for the Consultant's breach of any of its obligations without proof of actual damages. Such remedy shall not be deemed to be the exclusive remedy for such violation but shall be in addition to all other remedies available at law or in equity.

12. Governing Law, Jurisdiction and Specific Performance

12.1 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to any choice of law or conflict of law provisions.

12.2 **Jurisdiction.** All disputes shall be settled in accordance with the provisions of this Agreement in accordance with the laws in force in India. The courts at Kanpur shall have exclusive jurisdiction in respect of all disputes arising from this Agreement.

12.3 **Remedies.** In the event of any breach or threatened breach by any Party of its covenant, obligation or other provision set forth in this Agreement, the other Party shall be entitled, in addition to any other remedy that may be available to it, to seek:

(i) a decree or order of specific performance to enforce the observance and performance of such covenant, obligation or other provisions; and/or

(ii) an injunction restraining such breach or threatened breach. Confidential Information is a special property and in the event of a breach of the terms of this Agreement, monetary relief may not be sufficient, and the Company is entitled to seek mandatory injunctions.

13. General

13.1 **Relationship between the Parties.** This Agreement is on a principal to principal basis and no Party shall have any authority to assume or create any obligation whatsoever express or implied, in the name of the other Party or to bind the other Party in any way or manner. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party, or to create any fiduciary relationship between the Parties.

13.2 **Notices.** Any notice, request, consent, waiver or other communication required or permitted hereunder shall be effective only if it is in writing and shall be deemed received by the Party to which it is sent

(i) upon delivery when delivered by hand;

(ii) 7 (Seven) days after being sent, if sent with all sending expenses prepaid, by an express courier with a reliable system for tracking delivery;

(iii) when transmitted, if sent by Company facsimile; or

(iv) 7 (Seven) days after the date sent, if sent by certified or registered mail, postage prepaid, return receipt requested, addressed as follows

If to Company:	If to the Consultant:
Address:	Address:
Attention:	Attention:

13.3 **Severability.** In case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such provision shall be modified to the extent necessary to render it, as modified, valid and enforceable under applicable laws and such invalidity or unenforceability shall not affect the other provisions of this Agreement.

13.4 **Further Assurance.** Each Party shall co-operate with the other Party and execute and deliver to the other Party such instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and exercise their rights hereunder and the intended purpose of this Agreement and to ensure the complete and prompt fulfilment, observance and performance of this Agreement.

13.5 **Covenants Reasonable.** Having regard to all the circumstances, the covenants contained herein are reasonable and necessary for the protection of the Parties. If any such covenant is held to be void as going beyond what is reasonable in all the circumstances but would be valid if amended as to scope or duration or both, the covenant shall apply with such minimum modifications regarding its scope and duration as may be necessary to make it valid and effective.

13.6 **Independent Rights.** Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such right shall not prejudice or constitute a waiver of any other right of the Party, whether under this Agreement or otherwise.

13.7 **Counterparts.** This Agreement may be executed in counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of

By:

Name:

Title:

Witness:

Signed

_____

Name:

EMPLOYMENT AGREEMENT

This Employment Agreement (this "**Agreement**") is executed at _____ as of ____ February, 2018

By and Between:

1. _____ Limited, a company registered under the Companies Act, 2013 CIN _____ and having its registered office at [●] India, hereinafter referred to as the "**Company**" (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns); and

2. Mr. _____ Chopra son of [●], resident of [●], having his PAN Number [●], hereinafter referred to as "**Mr. Chopra**".

The Company and Mr. Chopra are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

A. The Company is desirous of employing Mr. Chopra as the Chief Executive Officer of the Company ("CEO"), and Mr. Chopra has agreed to be employed by the Company in the said capacity;

B. The Board of Directors of the Company ("Board") has passed a resolution in its meeting held on _____, 2018 to appoint Mr. Chopra as the CEO; and

C. The Parties now wish to incorporate the terms and conditions of the aforesaid appointment and employment in writing.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. Definitions and Interpretations:

a. **Definitions:**

In this Agreement, the following expressions shall have the following meanings:

"**Confidential Information**" shall mean all communication and all information whether written, visual or oral and all other material supplied to or obtained by Mr. Chopra from the Company (including any Group Company) during the continuance of his employment with the Company and all information, reports, recommendations or advice given to the Company or any Group Company by Mr. Chopra in

pursuance of his duties hereunder, and shall (without limitation of the foregoing) include any information from whatever source supplied to or obtained by Mr. Chopra concerning the trade secrets, customers, business associations and transactions, financial arrangements and technical or commercial affairs of the Group;

"**Group Company**" shall mean the Company, the holding company of the Company, and any company, which is for the time being a subsidiary of the Company or of the Company's holding company;

"**IPR**" means all forms of intellectual property rights including:

(i) inventions, whether or not patentable, reduced to practice or made the subject of one or more pending patent applications;

(ii) national and multinational statutory invention registrations, patents and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations thereof) registered or applied for in India or other nations, all improvements to the inventions disclosed in each such registration, patent or patent application;

(iii) copyrights (whether or not registered) and registrations and applications for registration thereof in India and other nations, including all derivative works, moral rights, renewals, extensions, reversions or restorations associated with such copyrights, now or hereafter provided by law, regardless of the medium of fixation or means of expression;

(iv) computer software (including source code, object code, firmware, operating systems and specifications);

(v) trade secrets and, whether or not marked as confidential, business information (including pricing and cost information, business and marketing plans and customer and supplier lists) and know-how (including manufacturing and production processes and techniques and research and development information);

(vi) industrial designs (whether or not registered),

(vii) databases and data collections;

(viii) copies and tangible embodiments of any of the foregoing, in whatever form or medium;

(ix) all rights to obtain and rights to apply for patents, and to register trademarks and copyrights;

(x) all rights in all the foregoing provided by international treaties, conventions and common law; and

(xi) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing.

b. **Interpretation:**

In this Agreement, unless the context otherwise requires:

(a) The headings are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(b) Any reference to any enactment or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;

(c) Words in the singular shall include the plural and vice versa; and

(d) References to an "agreement" or "document" shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement.

2. Appointment & Duties

2.1 Subject to and in accordance with the following terms and conditions, the Company shall employ Mr. Chopra and Mr. Chopra shall serve the Company as the Chief Executive Officer of the Company.

2.2 Mr. Chopra's employment during the term of this Agreement shall be on a full-time basis.

2.3 The Agreement shall be effective from the date of joining by Mr. Chopra for a term of 5 (five) years subject to the employment being previously determined in pursuance of any of the provisions of this Agreement.

2.4 As the CEO, Mr. Chopra shall perform such duties and exercise such powers in connection with the employment generally as may from time to time be assigned or entrusted to him by the Board,

2.5 Mr. Chopra shall perform his duties and exercise his powers subject to the overall supervision, direction and control of the Board.

2.6 Initially, Mr. Chopra shall provide his services from and be based in Kolkata. However, he may be required to travel to and work from other cities in India or abroad. The location at which Mr. Chopra shall perform his duties shall be specified to him from time to time by the Board.

2.7 During his employment pursuant to this Agreement, Mr. Chopra shall:

(i) be in charge of all day-to-day operations of the Company;

(ii) shall report directly to the Board;

(iii) shall faithfully and diligently perform such duties hereunder, use his best efforts to promote the business, management, operations and welfare of the Company;

(iv) shall devote the whole of his time, attention and abilities during hours of work to the affairs of the Company;

(v) shall observe and comply with all resolutions, regulations and directions made or given by the Board from time to time;

(vi) shall conform to such hours of work as may from time to time reasonably be required of him for the proper discharge of his duties under the employment and not be entitled to any remuneration additional to that provided in his employment terms for work performed outside normal hours;

(vii) shall not without the Company's prior written consent be, directly or indirectly, engaged or interested in any capacity in any Competitive Activities;

(viii) shall represent the Company before all third parties, business associates, statutory authorities, etc. generally and specifically as may be mandated by a proper authorization, if need be;

(ix) shall be responsible of all activities of the Company (including being designated as a Manager and an Occupier under applicable laws), in compliance with the directions of the Board;

(x) shall be responsible for preparation and presentation of Annual Budgets and Business Plan for the Company;

(xi) shall ensure that all key positions/functions of the Company are adequately covered by adequate and fully qualified personnel.

2.8 During his employment with the Company, Mr. Chopra shall, whenever required by the Board, undertake to travel throughout India and outside India to perform his duties as the Board may require/direct.

2.9 The Board may, from time to time, issue a Board resolution or a Special or General Power-of-Attorney, authorization letter, etc. from time to time in Mr. Chopra's favour to represent the Company or authorize him to take certain actions, as may be required.

3. Remuneration, Benefits & Perquisites

3.1 In consideration for the performance of his duties under this Agreement, Mr. Chopra shall be entitled to the remuneration, benefits and perquisites as more particularly set out in Schedule __.

3.2 The Company shall be entitled to deduct from Mr. Chopra's remuneration any monies due from him to the Company or any Group Company including and any moneys required to be deducted from Mr. Chopra's remuneration under applicable Indian laws, including income tax deductions at source, any outstanding loans, advances, the cost of repairing any damage to or loss of the Company's property caused by him (and of recovering the same) and any other monies owed by him to the Company or any Group Company.

4. Competitive Activities

4.1 During the period of his employment and for one (1) year after the termination of this Agreement, Mr. Chopra shall not, directly or indirectly:

(a) solicit, entice, persuade or induce any employee of the Company or the Group Company to terminate such of his or her employment; or

(b) approach any such employee for any of the foregoing purposes; or

(c) authorize, solicit or assist in the taking of such actions by any third party.

(d) make any financial investment in, engage, participate, carry on whether through partnership or as a shareholder, joint venture partner, collaborator, (financial or technical or otherwise howsoever) or become employed by or render advisory or other services to or for any person or other business enterprise (other than a Group Company) whether for profit or otherwise, which competes with or is similar to the whole or any part of the business carried on by the Company or a Group Company or which may prejudice the interest of the Company or a Group Company in any manner (any of the foregoing activities being referred to herein as "**Competitive Activities**").

4.2 Notwithstanding Clause 4.1, Mr. Chopra may make investments in the securities of any company, whether or not engaged in competition with the Company, if such securities are traded on any recognized stock exchange in India or abroad and such investment does not exceed one percent (1%) of the issued and outstanding shares of such company nor gives Mr. Chopra the right or power to control or participate directly in management of such company. Mr. Chopra shall provide information about all such permitted investments to the Company.

4.3 Mr. Chopra hereby acknowledges and agrees that damages will not be an adequate remedy for his breach of any of the covenants contained in this Clause 4 and further agrees that the Company shall be entitled to obtain appropriate injunctive and/or other equitable relief for any such breach.

5. Confidentiality

5.1 Mr. Chopra shall not, during the continuance of his employment hereunder or at any time thereafter divulge or disclose the Confidential Information or copy or make lists of any Confidential Information of the Group to any person whomsoever or make any use whatsoever for his own purpose or for any purpose other than that of the Group, of any information or knowledge obtained by him during his employment as to

the business or affairs of the Company or its methods or as to any trade secrets or secret processes of the Group. In addition, Mr. Chopra shall during the continuance of his employment hereunder also use his best endeavors to prevent any other person from engaging in such activities and duly report such incidents coming to his notice to the Company.

5.2 If, however, Mr. Chopra is required by law to disclose any Confidential Information, he shall provide the Company with prompt written notice thereof so that the Company may seek a protective order (with Mr. Chopra's co-operation, if needed), confidential treatment or other appropriate remedy. In any event, Mr. Chopra shall furnish only that portion of the information which is necessary to be furnished.

5.3 Mr. Chopra may also divulge or disclose any Confidential Information to officers and employees of the Company on a need to know basis during the course of the operations of the Company and such disclosure shall not be deemed to be a contravention of this Clause.

5.4 All records, files, documents and materials, or copies thereof, relating to the Company or any Group Company, which Mr. Chopra shall prepare, or use, or come into contact with, shall be and remain the sole property of the Company or the Group, as the case may be.

5.5 Mr. Chopra shall promptly return all records, files, documents and materials or copies thereof in his possession to the Company upon termination of his employment with the Company.

5.6 Mr. Chopra shall not retain any copies of the materials returned under Clause 5.5 above.

6. Termination of Employment

6.1 The Company shall be entitled to terminate this Agreement for Cause in which event all his rights to payment from the Company (including pursuant to any plan or policy of the Company) shall terminate immediately, except the right to payment in respect of Salary in respect of period prior to such termination.

"**Cause**" shall mean if Mr. Chopra is:

(a) found to be of unsound mind by a Court of competent jurisdiction; or

(b) applies to be adjudicated an insolvent; or

(c) is adjudged as insolvent; or

(d) is convicted by any Court of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or

(e) an order disqualifying him for appointment is passed by a court or Tribunal; or

(f) is convicted of any offence dealing with related party transactions; or

(g) is guilty of fraud or other gross misconduct, or gross incompetence or neglect of duty, or commit any other breach of any of the obligations agreed under the Agreement; or

(h) acts in a manner (whether in the course of his duties or otherwise) which is likely to bring him, the Group or the Company into disrepute or prejudice the interests of the Group or the Company; or

(i) refuses to carry out any reasonable instructions given to him by the Board in the course of his employment or fails to diligently attend to his duties hereunder; or

(j) is guilty of continuing unsatisfactory conduct or deficient performance of his duties, after having received instructions from the Company relating to the same; or

(k) is in breach of the terms of any other agreement entered into with the Company.

Any delay or forbearance by the Company in exercising any right to terminate this Agreement shall not constitute a waiver of such right.

6.2 Notwithstanding anything contained in sub-clause 6.1, either Party shall be entitled to terminate this Agreement by giving not less than 3 (three) months' notice in writing in that behalf to the other without the necessity of showing any cause and without being liable for any compensation or damages of any nature whatsoever in that behalf.

Provided however, the Company shall also be entitled to terminate this Agreement with immediate effect upon payment of 3 (three) months' Salary given in lieu of notice.

Notwithstanding anything contained herein or on the expiry of the period of such notice or immediately upon payment in lieu of such notice, as the case may be, the employment of Mr. Chopra shall come to an end and Mr. Chopra forthwith shall cease to be the CEO of the Company, without the need to pass any Board resolution in that behalf or any other action on part of the Company or the Board.

The Company shall file necessary filings with any authorities, if required intimating such change.

6.3 Any termination of the employment by the Company shall be communicated by written notice to Mr. Chopra.

6.4 Notwithstanding anything contained in this Agreement, if the Company terminates this Agreement for Cause, Mr. Chopra shall be entitled to receive only the Monthly Salary till the date of termination and shall not be entitled to any commission, performance linked bonus with respect to the incomplete fiscal year.

6.5 Immediately upon termination of this Agreement for any reasons whatsoever, Mr. Chopra shall be liable to hand over all properties, assets (movable and immovable) of the Company in his possession, to the Company.

7. Intellectual Property Rights

7.1 Any copyrightable works prepared by Mr. Chopra within the scope of his employment shall be "works for hire" under the Copyright Act in India and under international copyright laws. The Company will be considered the sole owner of such copyrightable works, and Mr. Chopra shall not have any right, title or interest in the same.

7.2 Mr. Chopra also agrees that all inventions and IPR and other rights including the IPR related thereto that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by Mr. Chopra for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company. Mr. Chopra hereby irrevocably assigns such rights to the Company immediately upon their formation.

7.3 Any prior Inventions and IPR developed by Mr. Chopra for the usage, work or business of the Company (whether individually or in collaboration with other parties) prior to commencement or execution of this Agreement shall also be assigned as an irrevocable and exclusive right to the Company for any such Invention and IPR, for the operation of this Agreement and Mr. Chopra shall provide the list of all such IPRs, as applicable under this provision.

8. Miscellaneous

8.1 Successors: The Company may assign its rights under this Agreement to any of its successors in business by merger or otherwise. However, the rights of Mr. Chopra under this Agreement shall not be assigned or encumbered by Mr. Chopra, voluntarily or involuntarily, during his lifetime, and any such purported assignment shall be void *ab initio*. However, all rights of Mr. Chopra under this Agreement shall inure to the benefit of and be enforceable by Mr. Chopra's personal or legal representatives, estates, executors, administrators, heirs and beneficiaries.

8.2 Third Parties: Except for the rights granted to the Company pursuant to this Agreement and except as expressly set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the Parties and their successors and permitted assigns any rights or remedies under or by reason of this Agreement.

8.3 Enforcement: The provisions of this Agreement shall be regarded as divisible, and if any of said provisions or any part thereof is declared invalid or unenforceable by a court of competent jurisdiction, the validity

and enforceability of the remainder of such provisions or parts hereof and the applicability thereof shall not be affected thereby.

8.4 Amendment: This Agreement may not be amended or modified at any time except by a written instrument approved by the Board, and executed by the Parties provided, however, that any attempted amendment or modification without such approval and execution shall be null and void *ab initio* and of no effect.

8.5 Governing Law: This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of India.

8.6 Arbitration: Any dispute or difference or question shall at any time hereafter arise between the Parties or their respective representatives or assigns in respect of any construction of this Agreement or concerning anything herein contained or arising out of or as to the rights liabilities or duties of the Parties which cannot be mutually resolved by the Parties, the same shall be referred to arbitration by a sole arbitrator. The arbitration proceedings shall be held in English language at _____ in accordance with the Arbitration and Conciliation Act, 1996.

8.7 Notice: Notices given pursuant to this Agreement shall be in writing and delivered at the addresses given above or to such other address as the Party to be notified shall have given to the other in accordance with the notice provisions set forth herein, by registered post or similar means.

8.8 No Waiver: No waiver by either Party at any time of any breach by the other Party of, or compliance with, any condition or provision of this Agreement to be performed by the other Party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

8.9 Headings: The headings contained herein are for reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year first written above.

On behalf of _____ **LIMITED**

Name: [●]

Title:

_____

Mr. _____

Witness:

1.

2.

APPOINTMENT LETTER

(On letterhead of the Company)

Dated : __ March , 2018

Mr. _____ Merchant,

_____ (Address)

Dear Mr. Merchant,

Subject: **Appointment letter**

Further to your successful interview with us, we are pleased to offer you the position of _____ (designation) with _____ India Private Limited ("the Company") on the following terms:

1. We offer you appointment as _____ (Position) with effect from _____ (the "Effective Date").
2. The first six (6) months of your engagement shall constitute a probationary period during which your performance and progress will be monitored ("Probation").
3. The Company may, during the Probation period, in its absolute discretion, terminate your employment, for any reason without notice or cause.
4. Confirmation of your employment with the Company after the Probation period shall be subject to your satisfactory performance during the Probation.
5. On completion of the Probation period, the Company reserves the right to (i) extend the period of Probation; or (ii) terminate your employment at its sole discretion without providing notice or payment in lieu thereof.
6. The Company may conduct a background check on you, and you agree to the aforesaid offer being made subject to the satisfactory completion of the same.
7. At the time of appointment, we shall require you to provide copies of certain documents as proof of address, identity, educational qualifications and experience, as detailed in Annexure A.
8. The Company shall pay you remuneration as mentioned in "Annexure B".
    8.1 The remuneration shall be paid on a monthly basis, subject to tax and other deductions.

8.2 In addition to your remuneration, you will also get reimbursement for _____ against submission of bills for actual expenses incurred.

The remuneration set out in Annexure B shall be subject to review in accordance with the Company's practice and policies from time to time.

9. Your role and general responsibilities shall be as set forth in "Annexure C" and shall also include such further duties and responsibilities as the Company may delegate to you from time to time.

9.1 You shall perform all such duties as may be delegated to you by the Company to you and comply with all such directions as your supervisor may from time to time assign or give to you.

9.2 You shall, during your employment with the Company, devote your entire time and attention and abilities to the business of the Company and not be employed in any other organisation as an employee, agent, promoter or investor either for part time or full time in any capacity.

10. You shall work for six days a week and Sunday will be your weekly holiday. However, you may be required to be flexible in working hours and work such additional hours as may be necessary for efficient performance of your duties. No overtime payments with respect to any hours worked by you outside normal business hours shall be payable to you. However, if you are required to work on any Sunday or any other declared Holiday, you will get compensatory leave in lieu thereof.

11. Your place of employment shall be _____ and the Company shall arrange an accommodation for you there at its own cost. However, the Company may depute you to any other location, if required.

12. You will directly report to General Manager, Finance.

13. In addition to weekly holidays, you shall be entitled to such holidays, as may be declared by the Company in accordance with Company policy.

14. Your leave will be calculated on a calendar year basis. In addition to declared holidays, you shall be entitled to:

Sick leave / casual leaves of Twelve (12) days per year, calculated on a pro-rata basis. You shall not be entitled to carry over any unused leave to the next year, and the same shall lapse.

Eighteen (18) days of privilege leave per year, calculated on a pro-rata basis. These can be carried forward to next year, if not utilised.

Any holidays taken by you over your Holiday Entitlement, shall result in loss of pay.

15. You shall not at any time, either during the continuance of, or after the termination of your employment with the Company, use, disclose or communicate to any person whatsoever any Confidential Information which you

have or of which you may come to obtain or possess during your employment with the Company nor shall you supply the names or addresses of any clients, customers, vendors or agents of the Company to any person except as authorised by the Company or as ordered by a court of competent jurisdiction.

16. Upon termination of your employment with the Company, you shall, within seven (7) days, immediately deliver to the Company, any desktops, laptops, tablets, phones, and any other device provided by the Company to you for the purpose of carrying out your duties, all copies of any and all materials and writings received from, created for, or belonging to the Company including, but not limited to, those which relate to or contain Confidential Information. You will not retain copies of any material in any form.
17. The Agreement shall come into effect on the Effective Date and shall remain in force until the termination of the Agreement by either Party.
18. The Company may terminate this Agreement at any time by giving a one (1) months' written notice or salary in lieu thereof. You may terminate this Agreement by a similar notice.

    18.1 Without prejudice to and notwithstanding the above, this Agreement and your employment with the Company hereunder may be terminated immediately by the Company without any requirement of prior notice, if at any time in the sole and absolute discretion of the Company (which decision shall be final and binding upon you):

    (i) you commit any serious or repeated or continual breach of any of your obligations under this Agreement or as set out in the policies and procedures of the Company; or

    (ii) you are guilty of any misconduct or neglect in the discharge of your duties under this Agreement; or

    (iii) by your actions or omissions, you bring the name or reputation of the Company into serious disrepute or prejudice the interests of the business of the Company; or

    (iv) by your actions or omissions, there are grounds for the summary termination of your employment.

    18.2 In the event of termination pursuant to Clause 18.1, the Company shall not be obliged to make any payment to you except, the amount of remuneration actually accrued, on a pro rata basis, up to and including the date of such termination. The Company shall be entitled to deduct from such payment, any sums owing to the Company from you, which deduction you expressly hereby consent and authorise. Termination of the Agreement under this sub-clause would be without prejudice to:

    (i) the Company's right to claim the actual damages it has suffered through the breach by you of any terms and conditions hereto; and

(ii) any other relief to which the Company may be entitled under contract, law or equity.

19. You shall, in addition to the terms and conditions of employment specifically stated herein, also be governed by the rules, regulations and such other practices, systems, procedures and policies (collectively, "the Policies") as may be framed, amended or modified by the Company from time to time. In the event of any conflict between the terms and conditions of employment, as specifically stated herein and the Policies, the terms of this Agreement shall prevail, unless notified otherwise.

20. You shall not, during the term of your employment with the Company, and for a period of 6 (six) months from the termination of such engagement, engage in or otherwise carry on, directly or indirectly, any activity which is in competition with any the business of the Company. You further agree that during the term of your employment with the Company, you shall not accept any positions of consultancy, employment, directorship, or in any way, become involved or engaged with any Competitive Business.

21. You shall not during the term of your employment with the Company, and for a period of two (2) years from the termination of such engagement, directly or indirectly, on your behalf or on behalf of any other person, (a) endeavour to divert or entice away from the Company or any person who or which is or was at any time prior to the date that your employment by the Company ceases, known to you to be an employee, consultant, contractor, vendor, supplier, client or prospective client of the Company, or (b) disparage the Company or its management, employees, or any products or services the Company may offer.

22. You shall, at all times defend and indemnify the Company, from and against any and all third party claims, damages, losses and expenses arising out of, or related to:

    (i) any illegal acts committed by you; and

    (ii) gross negligence or wilful misconduct on your part; and

    (iii) any breach of this Agreement.

23. This Agreement shall be governed by the laws of India, and the courts at New Delhi shall have exclusive jurisdiction with respect to any dispute arising hereunder.

Please sign a copy of this letter as an acknowledgement of the above terms and conditions and return to the Company.

_____	_____
Name and Designation	_____Merchant
Date:_____ , 2018	Date: _____, 2018

JOINT VENTURE AGREEMENT

This Joint Venture Agreement ("Agreement") is made and entered into:

BY AND BETWEEN:

1. ABC _____, a company incorporated under the laws of _____ and having its corporate office at _____ (hereinafter referred to as "**ABC**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns);

AND

2. XYZ India Private Limited, a company incorporated under the Companies Act, 2013, with CIN _____, holding PAN _____ and having its registered office at _____, (hereinafter referred to as "XYZ", which expression shall include its successors and permitted assigns).

(ABC and XYZ are hereinafter referred individually as a "**Party**" and collectively as the "**Parties**")

WHEREAS:

A. ABC has global operations and experience in the business of manufacturing, distributing and selling _____.

B. XYZ is engaged in the business of _____ in India.

C. The Parties are desirous of establishing a joint venture company in India ("JVC") with equal shareholding for carrying out the Business (as defined hereinafter).

D. The Parties have agreed to execute this Agreement to record their understanding as to how affairs and management of the JVC shall be conducted and to grant certain rights to each other and cast obligations in relation to the ownership and operations of the JVC.

NOW, THEREFORE, in consideration of the premises, mutual agreements and covenants contained in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties hereby agree as under:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, the following expressions shall have the following meanings:

(a) "**Act**" means the (Indian) Companies Act, 2013;

(b) "**Affiliate**" means:

(i) in relation to an individual, any body corporate under his Control (as defined herein) individually or in association with his Relatives, any trust of which he is either a settler or a beneficiary, any partnership firm under his Control individually or in association with his Relatives, or his Relatives; and

(ii) in relation to a Person other than an individual, any Person which (i) Controls, (ii) is Controlled by or (iii) is under the common Control with such Person;

(c) "**Agreement**" means this Joint Venture Agreement and all its schedules and annexures, as may be amended from time to time;

(d) "**Applicable Laws**" means any laws, rules, regulations, ordinances, orders, directives, codes, judgments, decrees, injunctions or any interpretations, determinations, awards, permits, licences, authorisations, directives, rulings or decisions of, agreements with, or by any Government Authority, applicable from time to time;

(e) "**Articles of Association**" or "**AOA**" mean articles of association of the JVC;

(f) "**Board**" or "**Board of Directors**" means collectively all the directors of the JVC; and **"Director"** means a director appointed to the Board of the JVC;

(g) "**Board Meeting**" means a meeting of the Board;

(h) "**Business**" means _____;

(i) "**Business Day**" means a day, other than a Saturday or Sunday, on which the principal commercial banks located in Chennai are open for business during normal banking hours;

(j) "**Chairman**" means chairman of the Board, appointed in accordance with this Agreement;

(k) "**Closing**" means the closing of the subscription to the Shares and other matters as set forth in Clause 4;

(l) "**Closing Date**" means the later of (a) the 15th (fifteenth) Business Day following the date upon which the last of the conditions precedent as specified in Clause 3 have been satisfied (or, as the case may be, waived), or (b) such other later date as the Parties may otherwise agree in writing;

(m) "**Control**" with respect to a Person means the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting rights/ share in the profits of such Person and/or the power to direct or cause the direction of the management and policies of such Person acting individually or in concert;

(n) "**Deed of Adherence**" means a deed to be executed by any third party undertaking to adhere to the terms and conditions of this Agreement in the form attached in **Annexure __**;

(o) "**Effective Date**" shall have such meaning as ascribed to it in Clause 2.1;

(p) "**Encumbrance**" means and includes any third-party rights, interests, mortgages, security interests, liens, encumbrances or charges of any nature whatsoever, including any right of first offer or refusal, non-disposal undertaking, previous sale, gift, claims, demands, orders, judgments or any notifications, securities, sureties and guarantees;

(q) "**Fair Value**", means, with respect to,

(i) Issue of Shares–a mutually agreed terms and price, provided the price is determined in accordance with applicable laws (including the applicable Indian foreign exchange control laws). In the absence of an agreement on the price, it shall be determined in accordance to procedure established in Clause (ii)(B).

(ii) Transfer of Shares–for exit of a Shareholder from the JVC and acquisition of the subject Shares by another existing Shareholder(s) or by a third party, a price determined as under:

(A) A mutually agreed and negotiated price (in compliance with applicable Laws (including the applicable Indian foreign exchange control laws).

(B) In the absence of an agreement on the price in accordance with (A) above within a period of 30 (thirty) days, then each Party shall appoint its own valuer and get the valuation and the average price of the two prices (if different) shall be fair value price.

(r) "**General Meeting**" shall mean a general meeting (Annual General Meeting or Extraordinary General Meeting) of the shareholders of the JVC;

(s) "**Government Authority**" means any administrative, commission, court or other government or regulatory authority, instrumentality or forum;

(t) "**MOA**" means the memorandum of association of the JVC, as amended from time to time;

(u) "**Person(s)**" shall include an individual or association or body of individuals whether incorporated or not, company, firm,

partnership, limited liability partnership, joint venture, association, trust, syndicate or corporation, including a government or political subdivision, or an agency or instrumentality thereof and/or any other legal entity;

(v) "**Products**" means _____;

(w) "**Share Capital**" means the total issued and paid-up equity share capital of the JVC;

(x) "**Share**" means equity share of the JVC;

(y) "**Technology License Agreement**" means the technical license agreement to be executed between the Parties and the JVC.

1.2 Interpretation

In this Agreement, except to the extent that the context otherwise requires:

(a) Headings are for convenience only and shall not affect interpretation;

(b) The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to any Person or Persons or circumstances except as the context otherwise permits;

(c) The terms "hereof, "herein", "hereto", "hereunder" or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Clause of this Agreement;

(d) The schedules and annexures annexed to this Agreement, form an integral part of this Agreement;

(e) References to the words "own(s)" or "ownership" with respect to Shares shall be construed as ownership, directly or indirectly, as the legal and/or beneficial ownership of such Shares;

(f) Reference to any statute or statutory provision shall include:

(i) All subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);

(ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement and shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced;

(g) The recitals and schedules shall form a part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement;

(h) Any reference to this Agreement shall include any recitals and schedules to it;

(i) Any references to Clauses and schedules in this Agreement are to clauses of and schedules to this Agreement;

(j) References to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;

(k) Each representation, warranty and covenant made by the Parties under this Agreement is independent of the other;

(l) The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and

(m) Any time limits specified in this Agreement for performance of any obligations or complete any activity, shall be extended by such period as may be required to comply with requirements of Applicable Laws.

2. Effective Date, Purpose and Scope

2.1 Effective Date

This Agreement shall come into force and effect from the date of execution of this Agreement or in case of execution on different dates, the date on which the last Party executes this Agreement.

2.2 Compliance with Agreement

2.2.1 The Parties shall vote and act as a shareholder of the JVC to fulfil the provisions of this Agreement and to comply with and use all reasonable efforts to cause the JVC to comply with this Agreement in all respects.

2.2.2 The Parties shall exercise the voting rights in respect of their Shares and cause its respective nominee Directors to exercise their voting rights in accordance with this Agreement and to the extent permissible under Applicable Laws.

2.3 Compliance with Applicable Laws

The performance of any obligation or completion of any activity pursuant to this Agreement or by the JVC shall at all times be subject to compliance with all Applicable Laws and that the Parties shall, at all

times, act in good faith and take all necessary steps to ensure compliance with Applicable Laws.

2.4 Covenants of the Parties

2.4.1 Each Party confirms to and covenants with the other Party that:

(a) this Agreement shall operate and be effective as embodying its rights, obligations and duties and shall be enforceable as such; and

(b) it will cause its Affiliate(s) and the JVC, to the extent required, to abide by this Agreement to achieve the intent outlined in (a) above.

3. Conditions Precedent

3.1 The obligations of the Parties to incorporate the JVC, shall be subject to the fulfilment, or waiver, as the case may be, of the following conditions precedent:

(a) the Board of Directors of ABC shall have approved the execution of this Agreement and the subscription by ABC to the Shares; and

(b) the shareholders and Board of Directors of XYZ shall have approved the execution of this Agreement and the subscription by XYZ to the Shares.

3.2 The obligations of the Parties to subscribe to the Shares shall be subject to the fulfilment or waiver, as the case may be, of the following conditions precedent:

3.2.1 The JVC shall be incorporated as a private limited company under the Act within a period of 6 (six) weeks from the Effective Date. Each Party shall render all necessary assistance and execute/ furnish all requisite documents for the formation of the JVC. The registered office of the JVC shall be located at _____. All costs and expenses for incorporation of the JVC shall be borne by the JVC or reimbursed by the JVC to the incurring Party.

3.2.2 The name of the JVC shall be "_____**Private Limited**" or such other name as may be decided by the Parties mutually and approved by the concerned Registrar of Companies, Ministry of Corporate Affairs, Government of India.

3.2.3 The Parties shall agree on draft language of MOA and AOA. In case of any discrepancy between this Agreement and the MOA or the AOA, the Parties shall amend the MOA or the AOA, so as to conform with this Agreement, to the extent possible.

3.2.4 The Parties shall have performed, in all material respects all of the obligations required to be performed by them on or prior to Closing.

3.2.5 Nothing shall have occurred which would render (or have the effect of rendering) any of the warranties and representations of a Party, untrue in any material aspect.

3.2.6 Requisite approval from the Government Authorities, if any for foreign investment in the JVC or to commence the Business, as agreed hereunder, within a period of 6 (six) weeks from the incorporation of JVC, shall have been obtained;

3.2.7 This Agreement shall be binding on the Parties and shall so remain unless terminated

(i) by mutual consent, or

(ii) in accordance with the provisions of Clause 15, or

(iii) with respect to the transferring Party, upon transfer of all of its Shares, or

(iv) upon the dissolution of the JVC.

3.2.8 No Party shall have the right to terminate this Agreement for a period of 2 (two) years from the Closing Date.

3.3 Non-satisfaction of Conditions Precedent

If the Closing does not occur within 3 (three) months from the Effective Date, then unless otherwise agreed by the Parties, this Agreement shall cease to be of any further force or effect and no Party shall have any claim against the other Party, except in relation to any breach hereof.

4. Closing

4.1 Upon satisfaction of the Conditions Precedent, the Parties shall proceed to Closing.

4.2 The Closing shall occur on the Closing Date at the registered office of the JVC.

The following actions shall be undertaken at Closing:

(a) ABC shall subscribe to _____ Shares for an aggregate amount of Rs. _____ and shall pay such amount to the JVC;

(b) XYZ shall subscribe to _____ Shares for an aggregate amount of Rs. _____ and shall pay such amount to the JVC;

(c) Upon receipt of the subscription monies from the Shareholders as set out in sub-clause 4.2(a) and (b) above, a Board Meeting of JVC shall:

(i) pass requisite resolutions for the allotment of the Shares and issue and allot the Shares to the Parties as fully paid;

(ii) deliver duly stamped original share certificates to the Parties;

(iii) register the Shares in the name of the respective Parties in its statutory registers;

(iv) appoint the Parties' nominees as Directors and elect the Chairman;

(v) adopt the first Business Plan of the JVC;

(vi) authorise the relevant directors/personnel of the JVC as authorised signatories for operating JVC's bank accounts; and

(vii) adopt this Agreement and take the same on record by executing a Deed of Accession and becoming a party to this Agreement.

4.3 Upon completion of the issue and allotment of Shares to the Parties as set out above, the shareholding pattern of the JVC shall be as under:

Name of Shareholder	Number of fully paid up equity shares	Percentage Shareholding
ABC	_____	50%
XYZ	_____	50%
Total	_____	100%

4.4 Within 10 (ten) days following the Completion Date, the JVC shall:

(i) file the return of allotment with the concerned Registrar of Companies and provide a copy of to each Party;

(ii) file all necessary forms in relation to reconstitution of the Board with the Registrar of Companies; and

(iii) ensure that all necessary forms are filed in respect of foreign investment with authorised dealer bank.

5. Shareholding and Additional Capital

5.1 Authorised Capital

5.1.1 The initial authorised Share Capital of the JVC shall be Rs. _____ divided into _____ equity shares of Rs. _____ each. The authorised share capital of the JVC may be increased from time to time, depending upon the business requirements of the JVC and mutual agreement of the Parties.

5.2 Initial Capital Contribution & Shareholding

5.2.1 The initial issued and paid up share capital of the JVC shall be Rs. _____ divided into _____ equity shares of Rs. ___ each fully paid-up.

5.2.3 Each Party shall invest further amounts in the JVC, as required and called upon by the Board of the JVC from time to time.

5.2.4 A Party may hold shares in the JVC either by itself and / or through one or more of its Affiliates. The shareholding held by a Party's Affiliates shall be included for calculation of its shareholding in the JVC or for the exercising of any right or the compliance with any obligation,

5.2.5 All Shares shall be of the same class and shall rank pari passu with each other.

5.3 Credit Facility

In addition to capital contribution in the JVC, the Parties may provide a mutually agreed credit line to the JVC in equal proportion.

5.4 Additional Funding

5.4.1 The Board of the JVC shall determine the additional funding requirements of the JVC, from time to time. However, no such funds shall be raised without prior written approval of the Parties.

5.4.2 The additional funds shall in the first instance be raised, to the extent possible, from banks and financial institutions.

5.4.3 Subject to Clause 5.3 above, all such borrowings shall, where practicable be non-recourse to the Parties, and the Parties shall not be obligated to lend money to the JVC nor obligated to provide guarantees for such borrowings.

5.5 Further Capital Contributions

5.5.1 If the Parties are required to provide additional capital, they shall do so in accordance with the Annual Budget of the JVC, by subscribing to additional Shares, such additional Shares be issued in favour of the Parties in proportion to their shareholding in the JVC.

5.5.2 The additional Shares shall be issued at a price per Share and on a date decided by the Board and approved by the Shareholders. If a Party is unable to subscribe to all or part of its entitlement of the additional Shares, such Party shall notify the JVC and the other Party of the extent of its inability. All or part of such shortfall may be subscribed to by the other Party on the same terms and conditions.

5.5.3 In a Shortfall event, the shareholding of the Parties in the JVC shall change correspondingly.

5.5.4 Failure or Inability to subscribe to additional Shares by a Party under this Agreement shall not be deemed to be a default by such Party.

6. Management of the JVC

6.1 Board of Directors

6.1.1 Subject to the provisions of this Agreement, the management of the JVC shall be conducted in accordance with the applicable provisions of the Act.

6.1.2 The Business, operations and administration of the JVC shall be managed and conducted by the Board.

6.1.3 The Board shall consist of __ (___) Directors.

6.1.4 As long as the Parties hold equal shareholding in the JVC, each Party shall be entitled to equal number of Directors.

6.1.5 Each Party shall vote as a shareholder of the JVC and/or through its nominee at the Board in favour of the other Party's nominees on Board and shall not block any such appointment.

6.1.6 In the event of any change in Shareholding of the Parties, the Parties shall negotiate the number of Directors they can each appoint.

6.1.7 The Directors shall not be required to hold any qualification Shares.

6.1.8 The Chairman of the Board shall be appointed for a term of 1 (one) year.

6.1.9 Each Party shall have the right to appoint the Chairman by rotation. The first Chairman shall be appointed by ABC.

6.2 Key Managerial Personnel of the JVC

6.2.1 The Parties shall mutually agree and appoint the CEO and the CFO of the JVC.

6.2.2 The CEO shall be responsible for the day to day operations of the JVC, subject to the supervision and control of the Board.

6.2.3 The CFO shall be responsible for the financial affairs of the JVC.

6.3 Removal and Replacement of Directors

For so long as a Party is entitled to nominate any Director, such Party shall be entitled to:

(a) remove from the Board (with or without cause) any Director nominated by it by way of a written request to the Board and other Directors; and

(b) designate a replacement Director to fill the vacancy created, if the Director nominated by it ceases to serve as a Director.

6.4 Alternate Directors

A Party shall be entitled to, in accordance with the provisions of the Act, designate, by delivering written notice to the Board, for any of the Director(s) nominated by it, an alternate Director named in such written notice.

Such alternate Director shall be entitled to receive notice of all Board Meetings and to attend and vote at such Board Meetings in place of the original Director nominated by such Party, for so long the original Director is unable to attend a meeting of the Board.

6.5 Board Meetings and Notice thereof

6.5.1 The Board shall meet at least once every 3 (three) months and at least four times in a year in the manner set out in the Act. The participation in a Board may either be in person or through other permitted means.

6.5.2 The Board meetings shall be held at the JVC's registered office or any other mutually agreed place in or outside India.

6.5.3 The Chairman shall preside over Board Meetings. If the Chairman is unable to attend a Board Meeting for whatever reason or is unwilling to preside, then one of the Directors (being a nominee of the Shareholder whose nominee is the current Chairman) shall be elected as Chairman of that meeting.

6.5.4 There shall be at least 21 (twenty one) days' prior written notice for holding a Board meeting, except that:

(a) the Chairman may call a Board Meeting in case of an urgency by giving not less than 7 (seven) days' notice of such Board Meeting (including all relevant papers and information for discussion at the Board Meeting); or

(b) the Directors may unanimously agree otherwise for a shorter notice.

6.5.5 The Chairman shall lay down the agenda of a Board meeting in consultation with other Board members.

6.6 Quorum

The Quorum for Board Meetings shall be one-third (1/3rd) of the then strength of the Board or at least two (2) Directors, whichever is higher, provided at least 1 (one) Director nominated by each Party shall be required to form a valid Quorum provided such Party holds a minimum of 26% (twenty six percent) of the total paid up share capital in the JVC.

6.7 Voting

6.7.1 All Board resolutions shall be adopted by the approval of a simple majority of the Directors present and such majority shall

include affirmative vote of least one (1) Director nominated by each Party.

6.7.2 Matters enlisted in Annexure __ shall only be adopted by a unanimous resolution of the Board.

6.7.3 Each Director present at a Board meeting shall have one (1) vote.

6.7.4 In the event of equality of votes, the Chairman shall have a casting vote.

6.7.5 A written resolution circulated to all the Directors and approved by such of the Directors as is required to approve any resolution of the Board as mentioned hereinbefore, shall (subject to compliance with the relevant requirements of the Act) be as valid and effective as a resolution duly passed at a Board Meeting.

6.8 General Meetings

6.8.1 Annual General Meeting

An annual general meeting of the shareholders of the JVC ("**AGM**") shall be held every year in accordance with the relevant provisions of the Act.

6.8.2 Holding of Extraordinary General Meeting

An extraordinary general meeting of the shareholders of the JVC ("**EGM**") may be held whenever needed by the resolution of the Board or at the request of either Party, provided that such meeting shall be convened in compliance with the relevant provisions of the Act.

6.8.3 Convening of the General Meeting

The written notice for any General Meeting shall be given to the Parties at least 21 (twenty one) days prior to the date of the meeting (with agenda and other necessary information). A General Meeting may be held at shorter notice with mutual consent of the Parties in compliance with the relevant provisions of the Act.

6.8.4 Chairman

The Chairman of the Board shall also chair General Meetings.

6.8.6 Unanimity requirement

All matters stipulated in **Annexure** ___ (List of Reserved Matters) shall require the unanimous consent of the Shareholders of the JVC.

7. Deadlock

7.1 Deadlock Resolution

The Parties shall make best efforts to avoid deadlock impasse in decisions to be made in a Board Meeting or a General Meeting through amicable discussion.

7.2 Negotiation following a Deadlock Event

7.2.1 The Parties shall enter into bona fide negotiations to settle the Deadlock for a period of 15 (fifteen) days following a Deadlock notice by either Party.

7.2.2 The Parties may extend the negotiation period of 15 (fifteen) days mentioned in 7.2.1 above.

7.2.3 The JVC shall continue to operate in normal course of business, even in case of a Deadlock event.

8. Transfer of Shares

8.1 Restrictions on Transfer

8.1.1 Neither Party shall, directly or indirectly sell, transfer, assign, or in any other way dispose of or create any encumbrance with respect to any Shares or the legal or beneficial ownership thereof or any of its rights or obligations under this Agreement, in favour of any third party, without the prior written consent of the other Party, till the expiry of the 2 (two) years from the Closing Date.

8.1.2 However, any Party may sell, transfer or assign any of its Shares in favour of any of its Affiliates; provided that such Affiliates shall execute a Deed of Adherence in the form attached at **Annexure __**.

8.1.3 Notwithstanding anything to the contrary contained in this Agreement, no Party shall sell, transfer or assign any Shares in favour of any party competing with the other Party.

8.1.4 Either Party may transfer Shares to the other Party in accordance with this Clause 8.

8.2 Right of First Refusal

8.2.1 Subject to Clause 8.1, if a Party ("**Selling Shareholder**") is desirous of transferring or selling all its Shares in the JVC ("**Sale Shares**") to a third party ("**Purchaser**"), such Selling Shareholder shall send a notice ("**Offer Notice**") to the remaining shareholder informing it of:

(a) The identity of the Purchaser;

(b) The number of Shares proposed to be transferred;

(c) The price of the proposed transfer; and

(d) All other terms and conditions of the proposed transfer.

8.2.2 Within 30 (thirty) days of the receipt of the Offer Notice, the other Shareholder may,

(a) Exercise its Right of First Refusal and offer to acquire the Sale Shares on the same or better terms and conditions as set out in the Offer Notice by means of a written notice ("**ROFR Notice**"); or

(b) Tag along with the Selling Shareholder and seek transfer all or a part of the Shares in the JVC to the proposed Purchaser, on the same or better terms and conditions as set out in the Offer Notice ("**Tag Along Right**") by means of a written notice ("**Tag Along Acceptance Notice**").

8.2.3 If a Shareholder exercises the Right of First Refusal in terms of Clause 8.2.2(a), the Selling Shareholder shall transfer all Sale Shares, to such Shareholder within 10 (ten) days of the date of the ROFR Notice.

8.2.4 If a Shareholder exercises its Tag Along Right in terms of Clause 8.2.2(b), the Selling Shareholder shall cause the Shares of such other Shareholder to be transferred along with the Sale Shares to the proposed Purchaser within 10 (ten) days of the date of the Tag Along Acceptance Notice.

8.2.5 If a Shareholder does not exercise the options pursuant to Clause 8.2.2 within the time specified, the Selling Shareholder may transfer the Sale Shares to the proposed Purchaser within a period of 45 (forty five) days from the date of the Offer Notice, on the same terms and conditions as contained in the Offer Notice. If (i) such transfer does not take place within the time period specified hereinabove, or (ii) transfer of the Sale Shares to the Shareholder exercising its ROFR right does not occur within the time specified in Clause 8.2.2; or (iii) transfer of the shares of the Shareholder exercising its Tag Along Right does not occur within the time specified in Clause 8.2.2; any transfer of the Sale Shares shall take place only after complying with the requirement of Clause 8.2.2 afresh.

8.2.6 If a Shareholder exercises its rights under Clause 8.2.2, the Selling Shareholder shall transfer his shares to such Shareholder and the price payable for the shares shall be the price mentioned in the Offer Notice.

9. Separate Rights

All the rights available to a Party under this Agreement shall run concurrently and the exercise of one or some of the rights by a Party at one point of time shall not be construed as waiver of the other rights by such Party.

10. Business and Policies of the JVC

10.1 Business of the JVC

The JVC shall carry out the business of _____.

10.2 Business Plan

The Business Plan of the JVC shall set out the monthly, quarterly and yearly targets for number of Products to be manufactured. The Parties shall ensure and procure the JVC to work sincerely and aggressively to produce, promote and market the Products.

10.3 Non-Compete; Non-Solicitation:

10.3.1 Till such time either Party is a Shareholder of the JVC and for a period of 3 (three) years thereafter, directly or indirectly, whether jointly and/or severally or together with any other Person (including, any combination thereof or through or with any of their respective affiliates or any director of the JVC or otherwise howsoever), neither Party shall:

(i) incorporate, promote, join, engage, enter into or associate itself in any capacity whatsoever or be interested in or concerned in any manner with a business that competes with that of the JVC, in whatever form and wherever organized, to that of the Business of the JVC and / or any of its Affiliates as now or hereafter may be carried on (or agree to or enter into or participate in any negotiations or discussions to do all or any of the foregoing); and / or

(ii) invest in the capital or become a shareholder of all or any of the subsidiaries and/ or any or the respective Affiliates or in any joint venture or other entity with a business that competes with that in which the JVC and/ or its subsidiaries and/ or any of their respective Affiliates are involved, or collectively and/ or individually initiate or be engaged in any new activities that could be in competition with the business activities of the Company and/ or its subsidiaries and/ or any of their respective Affiliates as now or hereafter may be carried on, through any vehicle other than the JVC and/ or its subsidiaries and/ or any of their respective Affiliates.

10.3.2 Non-Solicitation Restrictions. Till such time either Party is a Shareholder of the JVC and for a period of 3 (three) years thereafter, it shall not, directly or indirectly:

(i) attempt in any manner to solicit from any client/ customer of the JVC, except on behalf of the JVC or for the benefit of the JVC, business of the type carried on by the JVC at any time or to persuade any Person who/ which is a client/ customer of the Company, to cease doing business or to reduce the amount of business, which any such client/ customer has customarily done or might propose doing with the Company whether or not the relationship between the Company and such client/customer was originally established in whole or in part through his or its efforts; or

(ii) employ, or attempt to employ, or assist anyone else to employ any Person who is in the employment of the JVC, or was in the employment of the JVC at any time during the preceding 6 (six) months; or

(iii) otherwise interfere in any manner with the contractual, employment or other relationship of any employee, or a person who was an employee of the JVC at any time during the preceding 6 (six) months.

10.3.4 Reasonableness: The Parties acknowledge that considering the nature of the Business and the investments being made by them in this regard, if any Party breaches, or threatened to breach, the provisions of this Clause 10.4, such behaviour shall cause grave and irreparable harm, loss and injury to the JVC and the non-breaching Party, which harm cannot be fully redressed by the payment of damages to the JVC or the non-breaching Party. The Parties acknowledge that the scope and duration of the non-compete and non-solicitation provisions are reasonable.

10.3.5 The JVC shall cause all of its officers and employees to sign non-competition and non-disclosure agreements preventing them from competing with the JVC or using or disclosing the JVC's confidential information.

10.3.6 The provisions of this Clause 10.3 shall survive termination hereof.

10.4 <u>Business Territory</u>

10.4.1 In India

The JVC shall be entitled to manufacture, sell and distribute the Products only in India.

10.4.2 Outside India

The JVC shall be entitled to export the Products manufactured/ assembled in India, exclusively to ABC and/or to any of its Affiliate(s), as designated by ABC in this regard.

11. Parties Contributions

11.1 XYZ's Contributions & Obligations

11.1.1 Personnel

(a) XYZ shall second such of its personnel to the JVC as may be mutually agreed to by the JVC and the Parties in line with agreed Business Plan.

(b) XYZ shall assist the JVC in recruiting appropriate managers and staff for the JVC.

(c) Costs in respect of XYZ employees seconded to the JVC shall be borne by the JVC at competitive market rates.

(d) During the term of this Agreement and for a period of 3 (three) years from the termination of this Agreement, ABC shall not offer any employment or other contracts to any of the employees of XYZ that are deputed to the JVC, without prior written consent of XYZ. Further, if upon termination of the Agreement, XYZ exits from the JVC by selling its Shares to ABC/ its Affiliate or a third party appointed by ABC, the JVC shall not offer any employment or other contracts to any of the employees of XYZ without the consent of XYZ.

11.1.2 XYZ shall assist in the administration and day to day management and liaison, as the Board may require.

11.2 ABC's Contributions

11.2.1 Licensing

(a) ABC shall provide to the JVC, the right and license to assemble ABC's proprietary _____ designs and models, including the use of copyrights and trademarks. The Parties shall cause a Technology License Agreement to be executed between the JVC and ABC in this regard.

(b) The license of ABC models including any improvements thereto shall remain in force for such period as ABC is a shareholder in the JVC and shall continue thereafter, if ABC so elects, in its sole and absolute discretion.

(c) ABC will provide technical assistance and know-how to the JVC to produce the Products with proper standards.

(d) The JVC shall have no right whatsoever to sub-license ABC models, copyrights, trademarks or Know-How or any part thereof to any Person including XYZ or any of XYZ's Affiliates.

(e) In consideration for the license of ABC models, copyrights, trademarks and Know-How to the JVC, the JVC shall pay royalties to ABC, as set forth in the Technology License Agreement.

(f) The Parties shall take all steps for the JVC to obtain all approvals, if required under Applicable Laws as may be required for making such royalty payments.

11.2.2 Personnel

(a) ABC shall second such of its personnel to the JVC as may be mutually agreed to by the JVC and the Parties in line with agreed Business Plan.

(b) Costs in respect of ABC employees seconded to the JVC (including all out of pocket expenses of such personnel) shall be borne by the JVC at applicable competitive market rates.

(c) During the term of this Agreement and for a period of 3 (three) years from the termination of this Agreement, XYZ or its Affiliate(s) shall not offer any employment or other contracts to any of the employees of ABC that are deputed to the JVC, without prior written consent of ABC. Further, if upon termination of the Agreement, ABC exits from the JVC by selling its Shares, the JVC shall not offer any employment or other contracts to any of the employees of ABC without prior written consent of ABC.

11.2.3 Intellectual Property

(a) All the intellectual property owned by ABC that is contributed from time to time by ABC to the JVC ("**ABC IP**") shall be deemed to be licensed to the JVC for the work it performs, so long as ABC remains a Shareholder in the JVC.

(b) Title to the intellectual property in any improvements made to the ABC IP by the JVC shall vest in ABC and if ABC so agrees, the JVC shall have a right to use the same on the work it performs, for so long as ABC is a shareholder of the JVC.

12. Accounts of the JVC

12.1 Financial Year

The first financial year of the JVC shall be the period from the date of incorporation until following March 31. The subsequent financial years

shall begin on April 1 of a calendar year and end on March 31 of the next calendar year.

12.2 Books, Records and Reports

The JVC shall keep true and accurate accounting records of all business operations. Such records shall be open to inspection and audit by the Parties or by their duly authorised representatives during regular business hours at the costs and expense of such Parties.

The JVC shall provide the Parties with monthly and quarterly financial statements and other information as are necessary to meet the requirements of the financial reporting and accounting system of the Parties.

The Parties and their nominated representatives shall maintain the confidentiality of the JVC's financial operations and carry out any audit without affecting or disturbing the regular operation of the JVC.

12.3 Maintenance of Accounts

12.3.1 The JVC's Accounts shall be maintained in accordance with the generally accepted Indian accounting principles. Accounting principles and related reports shall be provided to each Party in the English language.

12.3.2 Every month, and within the first three months of each financial year, the CFO of the JVC shall compile a balance sheet and a profit and loss statement for the preceding year. The CFO shall also prepare, on a quarterly basis and within thirty (30) days of the end of the JVC's financial year, restated financial statements of the JVC in accordance with generally accepted accounting principles ("**GAAP**"). Promptly thereafter, the CFO shall provide copies of the said financial statements to the Shareholders and summaries of such statements to the Board.

12.3.3 The JVC shall also produce annual financial statements in accordance with Indian regulations and shall pay the relevant applicable taxes.

12.3.4 At ABC's request, the accounts of the JVC may also be prepared in accordance with U.S. GAAP.

12.4 Auditors

The first Auditors of the JVC shall be appointed within the time period set out in the Act. The auditors shall be appointed at General Meetings and shall be an independent firm of chartered accountants and preferably one of the Big 4s, which shall be mutually agreed between the Parties and appointed in accordance with applicable law.

12.5 Annual Budget and Business Plan

12.5.1 The Parties shall, simultaneously with the execution of this Agreement, agree on the Business Plan for the JVC, which shall be applicable for the initial term of 5 (five) years or such shorter duration as they may agree to in writing. At least 3 (three) months prior to the expiry of the initial term of 5 (five) years, the shareholders shall agree to the revised Business Plan (with or without modifications to the previous Business Plan) of the JVC. The Board shall review and update the Business Plan on an annual basis within a reasonable period prior to the end of each financial year, to align the Business Plan with the needs, requirements and expectations of the Parties.

12.5.2 Each year, during the last 3 (three) months of the Financial Year, the CEO shall prepare and present to the Board for its approval, an Annual Budget for the JVC for the next financial year. The Annual Budget shall have to be consistent with the terms of the Business Plan and may be adopted by the Board with or without any amendments to it. The Annual Budget shall be valid for one financial year and each year, an Annual Budget shall have to be prepared and presented by the CEO.

12.5.3 The Board shall be responsible for the approval of the Business Plan and the CEO will be responsible for the implementation of the Business Plan.

12.6 Dividend

Any dividend shall be distributed in accordance with the provisions of the Act and other Applicable Laws and after making such transfers to reserves, provisions and funds as required under Applicable Laws and funding the investments mutually agreed in the Business Plan of the JVC.

13. Representations and Warranties

13.1 Each Party represents and warrants to and covenants with the other Party that:

(a) it has been duly incorporated or created and is validly subsisting and in good standing under the laws of the jurisdiction indicated in the preamble to this Agreement;

(b) it has the corporate power and authority to enter into and perform its obligations under this Agreement;

(c) this Agreement has been duly authorised, executed and delivered by it and constitutes a valid, binding and enforceable obligation enforceable against it in accordance with its terms;

(d) neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder nor compliance by it with the provisions hereof shall violate, adversely affect, contravene or breach or create a default or accelerate any obligation under any indenture, mortgage, lease, agreement, instrument, charter or any Applicable Laws;

(e) it shall exercise the voting rights with respect to Shares held by it, directly or indirectly, to ensure that all provisions of this Agreement, to the extent required and permissible under Applicable Laws are incorporated in the AOA;

(f) there is no suit, action, litigation, investigation, claim, complaint or proceeding in progress or pending or threatened against or relating to it, which, if determined adversely, could prevent it from fulfilling any or all of its obligations set out in this Agreement or arising from this Agreement;

(g) that all related party transactions, and transactions with a Director or his relative or partner or firm or private company, of the JVC, shall be on arms-length commercial terms; and

(h) it shall cause the JVC to comply with all the terms and conditions of this Agreement and all Applicable Laws.

14. Indemnification

14.1 Each Party agrees to indemnify, defend and hold harmless the other Party, and its respective lawful successors and assigns from and against any and all losses, liabilities, claims, damages, costs and expenses including reasonable legal fees and disbursements in connection therewith and interest chargeable thereon (collectively, "**Claims**") asserted against or incurred by such other Party which arise out of, results from, or may be payable by virtue of:

(a) any misrepresentation or any breach of, inconsistency with or inaccuracy of any representation, warranty or covenant of such indemnifying Party under this Agreement; and

(b) default by such indemnifying Party in performance of any of its obligations (whether in whole or part) required to be performed by such indemnifying Party under this Agreement.

14.2 Notwithstanding Clause 14.1, in no event shall the indemnifying Party be liable under the laws of tort, misrepresentation, warranty, negligence, strict liability or otherwise, for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement.

15. Termination and Dissolution

15.1 Termination for Event of Default

15.1.1 In case of occurrence of any of the following events (hereinafter referred to as "**Event of Default**") either Party may terminate this Agreement by giving immediate written prior notice to the other Party:

(a) If the other Party fails to perform, or commits a material breach of any obligation, warranty, representation or provision contained herein and fails to rectify or remedy such failure or breach within 90 (ninety) days following delivery to such a Party of a written notice of the alleged failure or breach;

(b) if the Bankruptcy occurs involving the other Party;

(c) If the other Party undergoes a change in Control;

(d) If the other Party is dissolved or liquidated, except as a consequence of a merger, amalgamation or corporate reorganisation to which such a Party is a partner provided there is no change in Control of the other Party as described in Clause 15.1.1(c) above; or

(e) If the other Party is in violation or breach of any anti-bribery laws.

15.1.2 If this Agreement is terminated pursuant to Clause 15.1.1 above, without prejudice to any other rights or remedies available under this Agreement, including under Clause 14 dealing with Indemnification, the Party who has not caused the Event of Default (the "**Non-Defaulting Party**") shall have the right, exercisable at its sole discretion, at any time within ninety (90) days of the day it became aware of such Event of Default, to give notice ("**Default Notice**") to the Party who has caused the Event of Default ("**Defaulting Party**") containing an offer by the Non-Defaulting Party, at the option of the Non-Defaulting Party to either:

(a) sell all of the Shares held by the Non-Defaulting Party to the Defaulting Party ("**Offer to Sell**") at a price that is equivalent to the Fair Value of such Shares; or

(b) purchase, directly or indirectly, through a designated nominee, all of the Shares held by the Defaulting Party ("**Offer to Purchase**") at a price that is equivalent to the Fair Value.

15.1.3 Within sixty (60) Days of the determination of the Fair Value, the Defaulting Party shall complete the transaction of the

purchase and sale as specified in the Offer to Sell or Offer to Purchase, as the case may be.

15.1.4 The Defaulting Party shall be liable for all costs and expenses (e.g., costs for determination of Fair Value, stamp duty, etc.) including, but not limited to, those that the Non-Defaulting Party or its nominee may incur (including reasonable legal fees) to complete the transaction of sale and purchase pursuant to Clause 15.1.2.

15.1.5 In any Event of Default where the JVC suffers any expenses, liabilities or losses, the Defaulting Party shall indemnify the JVC the amount of all such expenses, liabilities or losses caused by its default.

15.2 Termination with dissolution of the JVC

In case of occurrence of any of the following events either Party may request from the other Party, the dissolution and liquidation of the JVC, and the Parties shall, unless otherwise agreed by the Parties, exercise their voting rights at the General Meeting so as to enable the JVC to be dissolved and liquidated (and upon completion of such a dissolution and liquidation of the JVC this Agreement shall be terminated):

(a) if the JVC is declared as a sick company under Indian laws;

(b) if the total liabilities of the JVC exceed the book value of all assets of the JVC;

(c) where legal restriction is imposed or a political or environmental change which is beyond control of either of the Parties has occurred;

(d) If one of the Party has been acquired by a competitor and the other Party has elected to terminate this Agreement; or

(e) If a Non-Defaulting Party elects to terminate this Agreement according to the provisions and does wish to buy or sell Shares from the Defaulting Party.

15.3 Effects of termination

Termination of this Agreement for any cause shall not:

(i) release either Party from any liability which at the time of termination has already accrued to the respective Party or which thereafter may accrue in respect of any act or omission prior to such termination, nor shall any such termination affect in any way the survival of any right, duty or obligation of either Party which is expressly stated elsewhere in this Agreement to survive termination, and

(ii) impede either Party from referring to arbitration pursuant to the provisions of this Agreement the question of whether or not this

Agreement may be terminated for breach pursuant to the provisions of this Clause.

15.4 Termination effect on outstanding business

In case of termination of this Agreement for any reason whatsoever the Parties undertake to negotiate in good faith the consequences of such termination on the outstanding business.

16. Governing Law and Dispute Resolution

16.1 This Agreement shall be governed by Indian laws. In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "**Dispute**"), it shall be first settled amicably by the Parties.

16.2 In the event the Parties are unable to resolve a Dispute within a period of 60 (sixty) days from the date of such reference, the Dispute shall be referred to and finally resolved by an arbitral tribunal comprising of 3 (three) arbitrators, with each Party having the right to appoint 1 (one) arbitrator and the 2 (two) arbitrators so appointed, shall appoint the third presiding arbitrator.

16.3 The arbitrations shall be carried out in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996, as amended, the provisions of which are deemed to be incorporated by reference into this Clause.

16.4 The language of arbitration shall be English, and the seat and venue of arbitration shall be Chennai, India.

16.5 The Parties further agree that in the event that the process of the courts is required to be invoked for enforcement of this Clause, including for seeking of any interim relief prior, during or after invocation of this Clause, the competent courts at Chennai alone shall have exclusive jurisdiction and the Parties submit to the same.

17. Miscellaneous

17.1 Application of this Agreement

The terms of this Agreement shall apply mutatis mutandis to any Shares:

(a) resulting from any conversion, reclassification, re-designation, subdivision or consolidation or other change of the Shares; and

(b) of the JVC or any successor body corporate which may be received by Parties as a result of any merger, amalgamation, arrangement or other reorganisation of or including the JVC.

Prior to any such action being taken Parties shall carry out any changes which may be required to this Agreement in order to give effect to the intent of this Clause 17.1.

17.2 Confidentiality

17.2.1 Each of the Parties ("**Receiving Party**") shall exercise a high degree of care to prevent the unauthorised dissemination, disclosure or use by the Receiving Party, other than as expressly provided herein, of any Confidential Information of another Party ("**Disclosing Party**"). Subject to Clause 17.2.3, the Receiving Party shall not make or allow any disclosure of such Confidential Information to any other Person.

17.2.2 Confidential Information shall not include information which:

(a) is, or becomes, publicly known, through no wrongful act of the Receiving Party or any of its Affiliate, agents, consultants or employees; or

(b) is approved for release by written authorisation of the Disclosing Party; provided that the Disclosing Party has the necessary authority to release the Confidential Information.

17.2.3 A Receiving Party may make disclosure of Confidential Information:

(a) to any of its employees, management, Affiliates and agents, advisors and consultants on a need to know basis; or

(b) in course of legal proceedings, or to a Governmental Authority, if such disclosure is necessary under Applicable Laws.

17.2.4 In all such cases where disclosure is made under Clause 17.2.3(b), the Receiving Party shall give written notice to the Disclosing Party prior to making such disclosure, if permitted by Applicable Laws.

17.2.5 The provisions of this Clause 17.2 shall apply throughout the term of this Agreement and for the period of 3 (three) years following its termination.

17.3 Further Assurances

The Parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary to achieve the purpose of this Agreement.

17.4 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties.

17.5 Costs and Expenses

Each Party shall bear all costs and expenses incurred by it in connection with any discussions, negotiations and investigations undertaken in connection with the subject matter hereof, including costs and expenses associated with retention of its professional advisers.

17.6 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior understandings and agreements between the Parties with respect to such subject matter. No representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between Parties other than those expressly set forth in this Agreement shall be effective or binding from the date of execution of this Agreement.

17.7 Amendments and Waivers

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the Parties. No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the waiving Party.

17.8 Assignment

Except as may be expressly provided in this Agreement, neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

17.9 Survival

17.9.1 Notwithstanding anything to the contrary in this Agreement, any termination pursuant to this Agreement shall not affect the applicability of the provisions of Clause ___, Clause _____, Clause ___ and Clause ___; these provisions are specifically enforceable by the Parties, independent of this Agreement for any breach thereof.

17.9.2 No termination of this Agreement shall release any Party from any liability to any other Party which at the time of such termination has already accrued, nor affect the survival of any right or obligation of any Party which is expressly stated elsewhere in this Agreement or in any agreement related hereto to survive the expiration or termination hereof.

17.10 No Partnership:

The Parties expressly do not intend to form a partnership, either general or limited. The Parties do not intend to be partners to one another or partners as to any third party or create any fiduciary relationship between themselves.

17.11 No Agency:

No Party shall act as an agent of the other Party or have any authority to act for or to bind the other Party. Any Party violating this provision shall be solely responsible for, and shall indemnify the other Party against, any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities of any kind or nature whatsoever that such other Party may at any time become subject to or liable for by reason of such violation.

17.12 Good Faith:

The Parties acknowledge and agree that there may be contracts of the JVC with either Party. The Parties shall act in good faith in all such dealings and such transactions shall be undertaken on an arms' length basis.

17.13 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part of such provision and the remaining part of such provision and all other provisions of this Agreement shall continue to be in full force and effect.

17.14 Force Majeure

Neither Party shall be liable to the other Party for its failure to fulfil any of its obligations under this Agreement if such failure is caused by an event of Force Majeure.

For the purposes hereof, an event of "Force Majeure" shall include an act of God, action or failure to act of any government or governmental board, department, bureau or authority, confiscation, war, blockade, insurrection, riot, sabotage, flood, fire, explosion, landslide, lightening, earthquake, storm, accident, strike, lock out or any failure (other than a failure caused by the negligence or deliberate act or omission of the Party relying on this Clause).

17.15 Notices

Any notice, documents or other writings required or permitted to be given under this Agreement or for the purposes of this Agreement to any Party shall be sufficiently given if delivered,

(i) by hand – upon personal delivery; or

(ii) if sent by prepaid registered mail - within 3 days of the date of dispatch; or

(iii) if transmitted by fax or other form of recorded communication tested prior to transmission and subject to receipt of fax delivery confirmation; or

(iv) by email – once the email is dispatched by a Party;

to such Party at the following address details or at such other address as the Party to whom such writing is to be given shall have last notified to the other Party:

(a) **In the case of a notice to XYZ,**

Attention: _____

Address: _____

Email: _____

(b) **In the case of a notice to ABC,**

Attention: _____

Address: _____

Email: _____

Any notice personally delivered to the Party to whom it is addressed as provided herein shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the immediately following Business Day.

17.16 **Counterparts**

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

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be duly executed by their duly authorised representatives.

FOR AND ON BEHALF OF XYZ (Signature)	**FOR AND ON BEHALF OF ABC** (Signature)
Name:	**Name:**
Designation:	**Designation:**
Date:	**Date:**
Witness No. 1	**Witness No. 2**

Name:	Name:
Date:	Date:
Place:	Place:

MASTER SERVICE AGREEMENT

This **MASTER SERVICE AGREEMENT** ("**Agreement**"), is made and entered into on _____ (the "**Effective Date**"), by and between;

1) _____, a company incorporated under the Companies Act, 1956 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Company**"); and

2) _____, a company incorporated under the Companies Act, 1956 with PAN _____ and its registered office located at _____ (hereinafter called as the "**Supplier**").

The Company and the Supplier are hereinafter referred to individually as a "**Party**," and together as the "**Parties**,".

RECITALS

WHEREAS, The Company is engaged in manufacturing of _____;

AND WHEREAS the Supplier is engaged in business of providing technical services;

AND WHEREAS the Company is desirous of engaging the Supplier to provide certain technical services for the purpose of technical data maintenance and the Supplier is willing to provide technical services to the Company.

NOW, THEREFORE, in consideration of the mutual covenants and premises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions:

1.1 "**Affiliate**" means any legal entity that controls, is controlled by, or is commonly controlled with a Party. "Control" means having more than 50% ownership or the right to direct the management of the entity.

1.2 "**Deliverables**" means all work product developed by the Supplier (or a Subcontractor of the Supplier) for the Company under a SOW or as part of the Services under this Agreement.

1.3 "**Intellectual Property**" or "**IP**" means all intellectual property rights, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including any application for and all renewals, extensions and restorations.

1.4 "**Company Materials**" means any materials provided by the Company to the Supplier to perform the Services.

1.5 "**Services**" means the services specified in a SOW or otherwise performed by the Supplier under this Agreement.

1.6 "**SOW**" means Statement of Work, i.e., a written agreement signed by authorized representatives of both Parties expressly referencing this Agreement.

1.7 "**Subcontractor(s)**" means a third party to whom the Supplier delegates one or more of its obligations under this Agreement.

1.8 "**Supplier IP**" means the Supplier's pre-existing or independently developed proprietary tools, processes or IP; and any modifications to or derivative works of the foregoing that the Supplier creates as a part of the Services.

2. Services

2.1 **Scope of services:**

2.1.1 The Parties will describe the Services in one or more SOWs.

2.1.1 This Agreement applies to each SOW.

2.1.2 Each SOW shall contain the details of description of the Services, Deliverable schedule, pricing and project Management.

2.2 **Acceptance:**

2.2.1 Upon completion of the Deliverables, the Supplier shall submit the Deliverables to the Company.

2.2.2 The Company shall specify its acceptance or rejection of such Deliverables within 15 days from the delivery of the Deliverables.

2.2.3 Failure to convey its acceptance or rejection to the Supplier shall be deemed as acceptance of Deliverables by the Company.

2.2.4 If the Company reports any error in Deliverables to the Supplier, the Supplier shall re-work on such Deliverables and resubmit Deliverables to the Company.

2.3 **Subcontractors and Assigned Personnel:**

2.3.1 The Supplier, at its sole discretion, shall engage any subcontractor without obtaining prior written consent of the Company.

2.3.2 If any assigned personnel are not performing the Services to the Company's satisfaction, at the Company's written request, the Supplier shall replace such assigned personnel within 15 days of the Company's request.

2.4 **Company Materials:**

2.4.1 The Supplier shall use the Company Materials provided to it solely for the purpose of providing Services to the Company.

2.4.2 The Supplier is not liable for delay in performance of Services occurred due to the Company's failure to provide the Company Materials as such performance is contingent on supply of the Company Materials.

3. Ownership:

3.1 Excluding any Intellectual Property Rights owned by the Supplier, all Work product developed or created by the Supplier in performing the technical services pursuant to this Agreement shall be owned exclusively by the Company subject to the payment of applicable fees.

3.2 The Supplier shall grant the Company non-exclusive and non-transferable license to use the Supplier IP to the extent necessary to use the Deliverables.

4. Indemnity:

4.1 **General Indemnity**: Each Party (Indemnitor) shall defend, hold harmless, and indemnify other Party and its affiliates, officers, employees and agents (Indemnitee) against any and all loss, liability, damage, or expense, for injury or death to persons, including other Party employees, and damage to property, arising out of or in connection with intentional, wilful, wanton, reckless or negligent conduct of such Party.

4.2 **Indemnification Procedure:**

4.2.1 With respect to a claim for which indemnification is sought under this Agreement, the Indemnitee shall provide Indemnitor with

(i) prompt written notice of such claim,

(ii) tender of the defense or settlement, and

(iii) full cooperation in the defense.

4.2.2 Failure to give prompt written notice of a claim will not affect the Indemnitee's right to indemnification unless the failure materially and adversely affects the rights, remedies or liability of the Indemnitor.

4.2.3 If the Indemnitor fails to honor a timely request for indemnification and has a binding legal obligation to do so, the Indemnitee shall be entitled to all costs (including reasonable attorneys' fees) incurred in the enforcement of its indemnification rights.

4.2.4 The Indemnitor shall not make a compromise or settlement of a claim without the Indemnitee's consent.

4.2.5 The Indemnitee shall have no liability for any compromise or settlement made without its consent, which, subject to the foregoing conditions, will not be unreasonably withheld or delayed.

5. Relationship of the Parties: The Parties are independent contractors and nothing in this Agreement creates a joint venture, partnership or relationship of agency between the Parties, and except as expressly authorized herein, neither Party has any authority to act, make representations, or contract on behalf of the other Party.

6. Payment:

6.1 The Company will pay the Supplier fees as agreed by the Parties in applicable SOW within thirty (30) days from receipt of the invoice.

6.2 No Party is entitled to offset against amounts due to it by the other Party.

6.3 The Company shall dispute an invoice if the Company identified any discrepancy in the invoice.

6.4 The Company is not obligated to pay the disputed invoice until the time the dispute is resolved.

7. Term and Termination:

7.1 **Term:**

7.1.1 The Agreement shall commence on Effective Date and shall be in effect until terminated by a Party upon providing 30 prior written notice to other Party.

7.1.2 Termination of this Agreement shall not result in termination of any SOW executed pursuant to this Agreement.

7.1.3 Despite of termination or expiration of this Agreement, the Agreement shall be deemed to be in effect and continue to govern such SOW until the SOW is completed or terminated.

7.2 **Termination for Material breach**: Either Party may terminate this Agreement by providing 30 (thirty) days' prior written notice to the other Party, upon the other Party's material breach of this Agreement, provided breaching Party fails to cure the material breach within 30 (thirty) days of receipt of said breach notice.

7.3 **Termination for convenience**: Each Party may terminate this Agreement at any time without cause by giving 30 (thirty) days' written notice to the other Party.

7.4 **Effect of termination:**

7.4.1 Upon termination of this Agreement, the Supplier will deliver to the Company any Deliverables in progress and all data and materials related to them.

7.4.2 The Supplier will assist the Company with a post-termination transition at the Company's request.

7.4.3 The Supplier's post-termination assistance will not exceed 180 (one hundred eighty) calendar days.

7.4.4 The Company will pay the Supplier for its post-termination assistance at a rate as agreed by the Parties.

7.4.5 No Party will be liable for any loss suffered by other Party as a consequence of termination of the Agreement by either Party.

7.5 **Survival:** The provisions of this Agreement which, by their nature or terms, require performance after the termination or expiration of this Agreement, or have application to events that may occur after the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.

8. Confidential Information:

8.1 **Definition**: The term "Confidential Information" means all non-public information disclosed by one Party (Discloser) and received by other Party (Recipient) that is designated as confidential. During the Term of this Agreement, Recipient will hold in strictest confidence, and will not use or disclose to any third party, any Confidential Information.

8.2 **Standard of Care**: Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own Confidential Information of a like nature.

8.3 **Publicity**: No Party will issue any press releases or other publicity related to the Supplier's relationship with the Company or this Agreement, without prior written approval from other Party.

8.4 **Exclusions**: The foregoing confidentiality obligations will not apply to Confidential Information that

(i) is already known to Recipient prior to disclosure by Discloser;

(ii) is or becomes a matter of public knowledge through no fault of Recipient;

(iii) is rightfully received by Recipient from a third party not known by Recipient to be bound by a duty of confidentiality with respect to such information;

(iv) is independently developed by Recipient;

(v) is disclosed under operation of law; or

(vi) is disclosed by Recipient with the prior written approval of Discloser.

8.5 **Permitted disclosure**: Recipient may disclose the Confidential Information to its representatives on a need to know basis to perform their obligations imposed under this Agreement. Recipient shall be responsible for acts or omissions of its representatives.

9. Limitation of Liability:

9.1 No Party will be liable to other Party for any lost profits or business opportunities, loss of use, loss of revenue, loss of goodwill, business interruption, loss of data, or any other indirect, special, incidental, or consequential damages under any theory of liability, whether based in contract, tort, negligence, product liability, or otherwise.

9.2 No Party's liability under this Agreement will, in any event, exceed the Fees paid by the Company during the last twelve (12) preceding months from the date of cause of action arise.

10. Service Warranty:

10.1 The Supplier warrants that the Services will be performed professionally and be of high grade, nature and quality.

10.2 In the event of any deficiency in Services, the Supplier shall re-perform such Services.

10.3 Except as provided in this Agreement, the Supplier hereby disclaims all express, implied, or statutory, warranties including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

11. Miscellaneous:

11.1 **Assignment:**

11.1.1 No Party shall assign the Agreement to any third party without prior written consent of other Party.

11.1.2 This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

11.2 **Dispute Resolution Process:**

11.2.1 The Parties agree to utilize the dispute resolution process to resolve any disputes, claim or question between them with respect to this Agreement ("Dispute") as expeditiously as possible.

11.2.2 A Party shall give written notice to the other Party of the Dispute and request commencement of the Dispute resolution process.

11.2.3 The project managers from each Party shall meet within five (5) business days to negotiate and use commercially reasonable efforts to promptly reach a resolution of the Dispute.

11.2.4 If the Dispute is not resolved by the project managers within such five (5) day period, either Party may give notice to the other Party that the Dispute must be escalated to the senior officers of each Party, who will meet within ten (10) business days to negotiate and use commercially reasonable efforts to resolve the Dispute.

11.2.5 In the event the senior officers are unable to resolve the Dispute within thirty (30) days (unless the Parties mutually agree to extend their discussions) either Party may pursue any remedies that may be available at law or in equity.

11.3 **Non-Solicitation of Personnel**: During the term of the Agreement and for a period of 1 (one) year thereafter, no Party can solicit the employment of any employee of the other Party, which employee was engaged in any activity performed pursuant to this Agreement.

11.4 **Notice:**

11.4.1 Except where specifically provided otherwise, any notice required or permitted to be given is to be given in writing to the person and at the address listed in this Agreement, or certified mail, return receipt requested.

11.4.2 The presumed date of service of notice is as follows:

(i) the date upon which such notice is so personally delivered; or

(ii) if by certified mail, the date of delivery.

11.5 **Severability**: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect validity of any other provision of this Agreement.

11.6 **Waiver**:

11.6.1 Failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of any other covenant, duty, agreement or condition.

11.6.2 Any waiver must be specifically stated as such in writing.

11.7 **Governing Law:**

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

11.7.2 The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of Hyderabad in relation to any dispute arising out of or relating to this Agreement.

11.8 **Entire Agreement:**

11.8.1 This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

11.8.2 No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is in writing and signed by each Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Company	**Supplier**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

MASTER SOFTWARE DEVELOPMENT SERVICES AGREEMENT

This Master Software Development Services Agreement (the "Agreement") is entered by and between:

1. _____, a corporation, existing under the laws of the United States of America with a place of business at _____, U.S.A. ("**Zebra**") and

2. _____Private Limited, a company incorporated under the (Indian) Companies Act, 2013, CIN _____, PAN _____ and having its registered office at _____ (the "**Developer**").

(Zebra and the Developer are hereinafter referred individually as a "**Party**" and collectively as the "**Parties**")

1. Definitions and Interpretation

1.1 "**Affiliate(s)**" means any present or future direct or indirect parent company of Zebra and any present or future company, partnership, LLP, association, or other entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Zebra or any present or future direct or indirect parent company of Zebra. For the purpose of this definition, the term "control" means possession, of the power to direct or cause the direction of the management and policies of another entity through the ownership of voting securities, by contract or otherwise.

1.2 "**Designated Employee**" mean a Developer employee assigned to perform Development Services under this Agreement.

1.3 "**Development Services**" means the software development, software testing, software localization, customization, coding, software administration and other similar services to be provided by Developer under the terms and conditions of this Agreement.

1.4 "**Documentation**" means the notes, manuals, user guides, on-line help, instructions, performance descriptions, design documents, test materials, operation guides, training materials and similar materials developed by the Developer in any form (including written or electronic form) in respect of development, creation and operation of the Software.

1.5 "**Executable Code**" means the fully compiled version of the Software that can be executed by a computer or otherwise in accordance with the Specifications for the Software and used by an end user.

1.6 "**Intellectual Property Rights**" includes all intellectual property rights worldwide arising under statutory or common law or arising by contract whether or not perfected, already existing or hereafter filed, issued or acquired, including all trademark, copyrights, patent, trade secret, moral rights or any other similar rights and privileges relating to intangible property.

1.7 "**Open Source License Terms**" means license terms that (i) create, or purport to create, obligations of the user with respect to the user's software programs or any derivative work thereof; or (ii) grant, or purport to grant, to any third party any rights to or immunities under the user's intellectual property or proprietary rights in the user's software programs or any derivative work thereof.

1.8 "**SOW**" means a written statement for procuring Development Services under this Agreement. An SOW may include a product requirements document or engineering requirements document created or generated by Zebra which may identify a software product to be jointly developed by the Parties.

1.9 "**Specifications**" means the software specifications, performance descriptions, features, software functionality, performance, coding guidelines, service descriptions, service objectives, service goals, design documents, test materials, operation guides, procedures, functions, features and the other similar materials relating to Development Services as stipulated by Zebra to the Developer in the applicable SOW and/or otherwise communicated by Zebra to the Developer.

1.10 "**Software**" means the software programs identified by Zebra in an SOW to be developed with the assistance of the Developer for Zebra and the Documentation for the applicable Software, including applicable test materials, build environment and operation guides.

1.11 "**Source Materials**" means the complete source code from which Software is compiled. Source Materials shall include the fully commented source code and internal system documentation for the Software, as well as all other materials, in both machine readable and hard-copy form, which are used to develop or test the Software. "Fully commented source code" shall mean source code that includes all comments made by or for the Developer. Source Materials shall include all electronically readable source documentation, commentary, procedural code, design documents, data models, help materials, tutorial programs, appropriate debug code, algorithms, notes, scripts, charts, test cases, data diagrams and schematics, including those developed by or for the Developer during the term of this Agreement.

Rules of Interpretation.

Words importing the singular shall include the plural and vice versa

The Article headings are inserted only as a matter of convenience in this Agreement and in no way define, limit, construe or describe the scope or extent of such Article or in any way affect such section.

Whenever the words, "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

Any ambiguous terms in this Agreement shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of contracting.

2. Development Services

2.1 **Scope of Agreement.** The terms and conditions of this Agreement shall apply to all services provided by Developer to Zebra and / or its Affiliates. All Development Services shall be agreed to in writing pursuant to an SOW executed by the Parties.

2.2 **Availability of Development Services.** Zebra shall have the right to acquire Development Services from the Developer as specified herein. Development Services may be acquired on a time and materials basis or a fixed price basis.

2.3 **Relationship Managers.**

2.4.1 During the term of this Agreement, the Parties shall each nominate a Relationship Manager. Relationship Manager of a Party shall be single point of contact for the other Party and shall coordinate and administer all aspects of the relationship between the Parties related to the Development Services.

2.4.2 Such Relationship Managers shall interact on a periodic basis, either through meetings or by telephone conference, to review the status of the performance of the Development Services and to review any issues related to such performance as may arise from time-to-time during the course of dealing between the Parties.

2.4 **Standard of Performance.**

2.5.1 The Developer shall deploy suitably trained, knowledgeable and skilled professionals to perform the Development Services under this Agreement and make efforts to complete all Development Services in time while complying with the Specifications, goals, objectives and policies stipulated by Zebra in an SOW or otherwise.

2.5.2 The Developer hereby acknowledges that time is of the essence in its performance of the Development Services hereunder.

2.5 **Compliance with Laws and Rules.**

2.6.1 The Developer and the Designated Employees shall comply with all applicable laws applicable to the performance of Development Services under this Agreement.

2.6.2 At all times during the performance of Development Services, Developer and the Designated Employees shall also comply with and observe Zebra's policies, procedures and work rules and work instructions related to the Development Services communicated to them.

2.6.3 The Developer shall defend, indemnify and hold Zebra harmless against any and all costs, expenses, claims, actions, liabilities, damages, etc. (including legal expenses) arising from or related to the Developer's non-compliance with all applicable laws and Zebra policies.

2.6 **Acceptance of Development Services.**

2.7.1 All Development Services shall be subject to acceptance by Zebra as specified in this Article.

2.7.2 Upon completion of any Development Services, the Developer shall provide a written notice of completion of the applicable Services.

2.7.3 Zebra shall review the Development Services and testing any Deliverables provided by the Developer in accordance with acceptance criteria and test procedures that have been mutually agreed to in writing by the Parties.

2.7.4 The Developer shall also provide any information or demonstration requested by Zebra in enabling Zebra to assess the Development Services and any Deliverables.

2.7.5 If Zebra observes that any Development Services or any Deliverables, proposed for acceptance do not meet the acceptance criteria mutually agreed upon by the Parties, Zebra may give written notice thereof within 15 (fifteen) days to the Developer specifying the shortcomings.

2.7.6 On receipt of a notice under Clause 2.7.5, the Developer shall promptly cure any deficiencies.

2.7.7 After completing such cure, the Developer shall resubmit the Development Services, including any Deliverables, for review and testing as set forth above.

2.7.8 The notice of completion, review and notice of non-acceptance shall continue until the Services, including any Deliverables, are acceptable to Zebra.

2.7.9 Any additional services performed based on non-acceptance by Zebra shall be performed at the Developer's sole cost and expense.

2.7.10 The Developer shall perform such corrective actions under this Article until Zebra accepts the applicable Development Services or terminates the applicable Development Services.

2.7.11 Zebra shall have the sole right to terminate the applicable Development Services with immediate effect written notice after Zebra has notified the Developer of non-acceptance of Development Services after two resubmissions thereof.

2.7.12 Upon any notification of non-acceptance under Clause 2.7.11, Zebra's payment obligations for the applicable Development Services not accepted by Zebra shall be deemed canceled and any amounts previously paid to the Developer for such non-accepted Development Services shall be refunded to Zebra.

2.7 **Change Orders.** If the Parties wish to change the scope of any terms in the SOW, they shall document those changes and the impact thereof in a written change order to the applicable SOW. No changes to any SOW shall be effective unless executed in writing by the Parties.

2.8 **Progress Reports.**

2.9.1 The Developer shall provide Zebra with written progress reports concerning the status of the Development Services on such periodic basis as Zebra may request in a format acceptable to Zebra.

2.9.2 Unless otherwise requested by Zebra, such reports shall, inter alia, contain details with respect to: (i) the status of progress for the Development Services; and (ii) any existing or anticipated technical problems, delays or cost overruns.

3. Designated Employees and Location of Performance

3.1 **Designated Employees.**

3.1.1 The Developer shall assign the number of employees as set forth in an SOW to perform Development Services for Zebra.

3.1.2 During the period of performance of Development Services, the Developer shall ensure that all Designated Employees are exclusively dedicated to the performance of Development Services and shall not be assigned to perform development services for any other client of the Developer, or to develop any other products and/or services for the Developer.

3.1.3 If in Zebra's assessment, any Designated Employee is acting in a manner detrimental to the effective performance of Development Services or is not performing to Zebra's sole satisfaction, Zebra shall have the right to notify the Developer of its assessment. In such an event, the Developer shall replace the concerned employee with a different employee with equal or greater qualifications, training and skills.

3.1.4 In the event that the Developer terminates assignment of a Designated Employee to perform Development Services for Zebra, it shall notify Zebra of such termination and shall ensure that the applicable employee's access to Zebra Confidential Information is also terminated immediately.

3.1.5 The Developer shall not assign or allow any such employee to perform development services for any other client of the Developer that is a Zebra Competitor for a period of 1 (one) year from the effective date of termination of services for Zebra.

3.2 **Location of Development Services.**

3.2.1 Except as otherwise specified in an SOW, all Development Services shall be performed by Designated Employees located at the Developer's facilities.

3.2.2 Designated Employees shall not perform Development Services remotely from another location without Zebra's prior written consent.

3.2.3 The Developer shall ensure that Designated Employees are located together in a secure facility separate from other Developer employees that are working for other Developer clients and on other Developer matters.

4. Access to Zebra materials and ownership

4.1 **Access, License to Zebra Materials.**

4.1.1 During the term of this Agreement, Zebra may provide Developer with access to Zebra Intellectual Property Rights and/or other assets owned, licensed or used by Zebra ("Zebra Materials"). Such information may be provided electronically through network access by the Developer to Zebra's information systems or through actual delivery of materials to the Developer.

4.1.2 All Zebra Materials and any Developments shall be deemed to be Zebra Confidential Information.

4.1.3 Subject to the terms and conditions of this Agreement, Zebra grants to the Developer a non-exclusive, non-transferable license to use the Zebra Materials, including the Software and the Source Materials, at the Development Location solely and exclusively for carrying out the Development Services under this Agreement and only to the extent necessary to perform the Development Services.

4.2 **Access only to the Developer's Authorized Personnel.**

4.2.1 Only Designated Employees with a need to know the Zebra Materials shall have access to such Zebra Confidential Information and only after each such Designated Employee has

entered into a written agreement with the Developer to treat the Zebra Confidential Information in accordance with the terms of this Agreement.

4.2.2 Designated Employees shall have access to the Zebra Confidential Information only during their employment with the Developer.

4.2.3 It shall be the duty of the Developer to secure that the Authorized Personnel's use of the Confidential Information is in accordance with the terms of this Agreement.

4.3 **Indemnification for Zebra Materials.** The Developer shall defend, indemnify and hold Zebra harmless against any and all claims, actions, causes of action, costs, expenses, liabilities, damages and/or losses, including legal fees, caused directly or indirectly by the Developer's breach, errors or omissions with respect to any provisions of this Agreement with respect to Zebra Materials.

4.4 **Ownership of Developments.**

4.4.1 All products, inventions, documents, writings, graphic designs, photographs, software (including modifications, enhancements, extensions, derivatives, compilations, ports, localizations and documentation), and other materials prepared or produced by the Developer in connection with the Development Services acquired under this Agreement (collectively, the "Developments") shall be the sole and exclusive property of Zebra and shall be deemed Zebra Confidential Information.

4.4.2 The Developer agrees that the Developments shall be works made for hire to the extent permitted by applicable law, and that Zebra shall retain all Intellectual Property Rights in the Developments.

4.4.3 In the event that any of the Developments do not qualify as works made for hire, the Developer hereby assigns to Zebra at no additional consideration all right, title and interest and all Intellectual Property Rights in such Developments and all extensions and renewals thereof.

4.4.4 The Developer agrees to execute written assignments of such rights in the Developments to Zebra and any other documents necessary for Zebra to establish, preserve, perfect or enforce its Intellectual Property Rights in the Developments, if so requested by Zebra.

4.4.5 Zebra shall not be obligated to pay the Developer any royalties or sublicense fees for the sublicense, distribution, transfer or assignment of any Developments to any Party, including the Intellectual Property Rights specified herein.

4.4.6 The Developer hereby agrees not to assert at any time, and otherwise waives, any moral rights that it may have in the Developments, and hereby assigns to Zebra all moral rights therein.

4.5 **Inspection of Developments.**

4.5.1 Zebra shall have the right to examine the Developments and any work-in-progress related to the Developments at any time and for any reason.

4.5.2 Zebra may send its authorized representatives to inspect the Developer's location for reviewing and verifying Developer's compliance with the terms of this Agreement and/or any SOW related to the protection and security of Zebra's Confidential Information.

4.5.3 The Developer shall cooperate in performing such inspection and review. The costs of conducting such inspection shall be borne by Zebra.

5. Process of Order and Payments

5.1 **Services Fees.** The Services Fees and rates for Development Services shall be specified in respective SOWs.

5.2 **Expenses.**

5.2.1 The Development Services shall be performed at the Developer's location and travel will not be required for Designated Employees.

5.2.2 To the extent that travel is specifically authorized in an SOW and/or Zebra approves the travel expenses in writing, Zebra shall reimburse the Developer for reasonable travel expenses for travel by Developer personnel which is approved by Zebra and mutually scheduled in advance.

5.2.3 Zebra shall not reimburse the Developer for any travel expenses for which the applicable receipts are not provided to Zebra.

5.3 **Invoicing and Payment.**

5.3.1 Unless otherwise specified in an SOW, the Developer shall issue a monthly invoice for Development Services.

5.3.2 All payments shall be made in _____ currency and all payments are due and payable within ___ (__) days after the date of Zebra' receipt of invoice.

5.3.3 If Zebra disputes all or any portion of an invoiced provided by the Developer, Zebra may withhold payment of the amounts subject to the dispute and shall pay to the Developer all

undisputed amounts when such become due and payable in accordance with this Agreement.

5.3.4 Payment of any disputed amounts shall be made upon resolution of the dispute.

5.3.5 No failure by Zebra to identify a disputed fee prior to payment shall limit or waive any of Zebra's rights or remedies with respect to such fee, including Zebra' right to withhold disputed amount from subsequent fees due to the Developer.

5.3.6 Nonpayment of any disputed fees shall not be considered a breach of this Agreement.

5.4 **Taxes.**

5.4.1 Zebra shall be responsible for any taxes applicable to the purchase or use of the Development Services provided under this Agreement, which are separately mentioned on an invoice.

5.4.2 The Developer shall bill all applicable taxes as a separate line item on its invoices and shall not include taxes in the purchase price of item acquired under this Agreement.

5.4.3 If any withholding or similar tax must be paid under the laws based on the payments to the Developer specified in this Agreement, then Zebra may withhold such taxes from the amounts payable and shall provide to the Developer original or certified copies of all tax payment receipts.

5.5 **Audit.**

5.5.1 For a period of five (5) years after the completion of the applicable Development Services, the Developer shall maintain complete and accurate books, records and documents of the Development Services performed under this Agreement in accordance with generally accepted accounting procedures, including original receipts for costs or expenses billed to Zebra, evidencing the Services fees and expenses under this Agreement.

5.5.2 Upon request by Zebra, the Developer shall provide Zebra or its authorized representatives access to such books and records for any purpose.

6. Duration and Termination

6.1 **Term.**

6.1.1 The term of this Agreement shall commence on the execution hereof ("Effective Date") and shall continue for a period of ___ (__) years from such date.

6.1.2 The term of this Agreement shall be automatically renewed for additional annual periods, unless terminated earlier in accordance with this Agreement or unless a Party provides at least 30 (thirty) days prior written notice of non-renewal.

6.2 **Termination of Agreement.** Zebra shall have the right, at its sole convenience, to terminate this Agreement, in whole or in part, or any Software license or Services acquired hereunder upon 30 (thirty) days prior written notice to the Developer.

6.3 **Termination of Particular Development Services.**

6.3.1 Any Development Services authorized by Zebra under this Agreement may be terminated by Zebra at any time for any reason, with or without cause, upon 10 (ten) days prior written notice to the Developer.

6.3.2 In case of a termination under Clause 6.3.1, Zebra' sole liability to the Developer based on any such termination shall be the payment of the Services Fees related to the Development Services performed by the Developer prior to the effective date of termination, subject to acceptance by Zebra as specified in this Agreement if applicable

6.3.3 Any payment under Clause 6.3.2 shall be limited to the maximum amount authorized by Zebra under the applicable SOW.

6.3.4 Upon completion or termination of Development Services, the Developer shall promptly deliver to Zebra any and all Deliverables, Developments, work product and work-in-process created or developed with respect to the completed or terminated Services to the extent not already provided to Zebra.

6.4 **Termination for Breach.** Either Party may terminate this Agreement for the other Party's breach upon 30 (thirty) days prior written notice, if such breach remains uncured at the end of the notice period.

6.5 **Effect of Termination.** Expiration or termination shall not affect payment obligations arising under this Agreement or a specific SOW. Termination of this Agreement shall not limit either Party from pursuing other remedies available to it, including injunctive relief.

7. Representations, Warranties and Indemnity

7.1 The Developer represents and warrants to Zebra as follows:

(i) It has the full right, power and authority to enter into this Agreement.

(ii) Entering into this Agreement and performing its obligations hereunder shall not violate terms of any contract, obligation, law, regulation or ordinance to which it is or becomes subject.

(iii) It has the full legal right to provide the Development Services in accordance with the terms of this Agreement and there is no claim, litigation or proceeding pending or threatened against it with respect to any such Deliverables and Developments alleging infringement of any Intellectual Property Rights of any person or entity.

(iv) The Deliverables and Developments are provided to Zebra free of any claims, liens, encumbrances or security interests, whether perfected or unperfected.

(v) The Deliverables and Developments do not infringe any Intellectual Property Right of any person or entity.

(vi) It has fully complied with, and will fully comply upon performance, with all applicable laws, rules and regulations connected with the performance of the Development Services.

(vii) The Development Services shall be performed in a professional and workmanlike manner and in conformance with any Specifications.

(viii) It will not incorporate into or, combine with, the software or a derivative work of such Software, any software that is licensed pursuant to Open Source License Terms and will not utilize in the performance of its Development Services any software subject to Open Source License Terms.

(ix) Notwithstanding any other terms of this Agreement, Zebra shall have the right to seek any and all remedies available to Zebra at law or in equity for any breach of the terms of this Article.

(x) The Deliverables and Developments, the media on which these may be provided, and any other software code provided by the Developer are provided by the Developer free of:

(a) any computer code or instructions that may disrupt, damage or interfere with any use of the Deliverables and Developments or use of any computer facilities, e.g. malicious code, viruses, or which may replicate, transmit or activate software code outside the control of the person operating the computer on which the code is installed;

(b) any devices that are capable of automatically or remotely stopping the Deliverables and Developments from operating, e.g. passwords, authorization keys, node locks, locks, fuses, time bombs, time-outs, dongles or other functions, whether implemented by electronic, mechanical or other means;

(c) any mechanisms or devices capable of transmitting to or disclosing to the Developer or any other party any data, content, or information stored in or processed by any Software, Deliverables and/or Developments; or

(d) any computer instructions or software code which alters, damages, or erases any data, content, or information stored in or processed by the Software, Deliverables and/or Developments, which alteration, damages or erasure was conducted outside the control of the person operating the computer on which the code is installed.

(xi) It will provide its Development Services without adding or creating any "back doors" or "trap doors" in the Software, Deliverables and/or Developments.

Notwithstanding any other terms of this Agreement, Zebra shall have the right to seek any and all remedies available to Zebra at law or in equity for any breach of the terms of this Article.

7.2 **Disclaimers.** The warranties specifically incorporated in this Agreement are in lieu of all other expressed, implied or statutory warranties, including those of merchantability and fitness for a particular purpose.

7.3 **Indemnities.**

7.3.1 General Indemnification. The Developer shall defend, indemnify and hold Zebra harmless against any and all claims, actions, liabilities, damages, costs, expenses (including legal fees) arising from or related to:

(i) death, personal injury or loss or damage to property arising from or related to the negligence or willful misconduct of the Developer or its employees;

(ii) any breach of the warranties specified in this Agreement particularly resulting in security breach, computer malfunction, and loss or destruction of data or information; and/or

(iii) any material security breach by the Developer in connection with Zebra's networks resulting in computer malfunction, and loss or destruction of third party data caused by any Software failure or error.

7.3.2 **Infringement Indemnification.** The Developer shall defend, indemnify and hold Zebra harmless against any and all claims, actions, liabilities, damages, costs, expenses (including legal fees) arising from or related to any allegation or claim that the Deliverables and/or Development or any Development Services infringe a patent, copyright, trade secret right, trademark right or any other intellectual property right of any third party.

In case of such a claim, action or allegation being brought or threatened or in the event an injunction is issued or threatened where the Developer has an obligation to provide indemnification, the Developer shall:

(i) procure for Zebra the right to continue to use the Deliverables and/or Development or any Development Services so that the item is no longer infringing with no alteration or reduction in rights; or

(ii) modify or replace the Deliverables and/or Development or any Development Services (at no charge to Zebra) so as to avoid infringement if such modification results in an equivalent functionality.

8. Miscellaneous provisions

8.1 **Nondisclosure.**

8.1.1 In the course of performing work hereunder, each Party may be exposed to certain confidential and proprietary information of the other not generally known to the public that is identified at the time of disclosure as confidential or proprietary (herein "Confidential Information").

8.1.2 Zebra' Confidential Information shall include customer and Zebra employee Data, its software programs, plans, product roadmaps, computer networks and systems, formulas, methods, know-how, processes, designs, new products, developmental work, marketing requirements, marketing plans, and this Agreement, regardless of whether such information is identified as confidential.

8.1.3 The existence, terms and pricing under this Agreement shall not be disclosed without the prior written consent of either Party.

8.1.4 A Party's Confidential Information shall not include information that:

(a) is or becomes a part of the public domain through no act or omission of the receiving Party;

(b) was in the receiving Party's lawful possession prior to the disclosure and had not been subject to limitations on disclosure;

(c) is lawfully disclosed to the receiving Party by a third party who did not acquire the information directly or indirectly from the disclosing Party and was otherwise not restricted as to disclosure; or

(d) is independently developed by the receiving Party without breach of this Agreement.

8.1.5 The receiving Party may disclose the disclosing Party's Confidential Information as required by court order provided the receiving Party promptly notifies the disclosing Party in writing of the requirement for disclosure and minimizes the possibility and scope of such disclosure.

8.1.6 No Party shall use Confidential Information received from the other Party for any purpose other than to facilitate its performance pursuant to this Agreement.

8.1.7 The Developer acknowledges and agrees to hold the Software, Zebra Materials, Deliverables and Developments in strict confidence and shall not disclose or distribute such Zebra Confidential Information to any third party, except as otherwise authorized by Zebra.

8.1.8 The Developer shall immediately notify Zebra and shall take all steps to protect Zebra from harm resulting from any breach of confidentiality or any other breach of this Agreement with respect to the Software, Zebra Materials, Deliverables and Developments.

8.1.9 A recipient Party will protect a disclosing Party's Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature.

8.1.10 A recipient shall use the discloser's Confidential Information solely to the extent necessary to exercise its rights and obligations under this Agreement and will ensure that Confidential Information is disclosed only to its employees, contractors and other personnel (individually and collectively, "Personnel") with a bona fide need to know and who are under binding written obligations of confidentiality with the recipient Party.

8.1.11 A recipient shall maintain the confidentiality of the of the discloser's Confidential Information during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement, the Parties will hold each other's Confidential Information in confidence.

8.2 **No Publicity.**

8.2.1 The Developer shall not disclose the existence of this Agreement or the business relationship with the Parties to any unauthorized third party without Zebra' prior written consent.

8.2.2 The Developer shall not use Zebra' name or trademarks, service marks, logos or trade dress in any advertising, publicity, press release, marketing collateral, brochure, user list or customer list, unless the Developer has received prior written consent from Zebra for such use.

8.2.3 The Developer shall not make any press release or other public announcement concerning the transactions contemplated by or completed under this Agreement without Zebra' prior written consent.

8.3 Notices. All notices sent hereunder shall be in writing and shall be deemed to have been given upon

(i) the date sent by confirmed facsimile,

(ii) on the date it was delivered by courier, or

(iii) if by certified mail return receipt requested, on the date received,

to the addresses set forth below, or to such other address or individual as the Parties may specify from time-to-time by written notice to the other Party.

If to Zebra:	If to the Developer:
Zebra Inc.	_____
_____	_____
_____	_____
Attention: _____	Attention: _____

8.4 Compliance with Laws and Export Control.

8.4.1 The Developer commits to compliance with all applicable national, state and municipal laws, regulations and rules governing the Software and/or the Development Services and their export or re-export.

8.4.2 The Parties also agree to comply with all applicable export and import laws, rules, and regulations in connection with its activities under this Agreement.

8.4.3 A violation of this provision shall be considered a material breach of this Agreement.

8.5 **Governing Law and dispute resolution.**

8.5.1 This Agreement will be governed by and construed in accordance with Indian laws.

8.5.2 Any legal action or proceeding relating to this Agreement shall be instituted in appropriate Indian courts.

8.5.3 The Parties shall submit to the jurisdiction of, and agrees that venue is proper in, these courts in any such legal action or proceeding.

8.5.4 In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "**Dispute**") shall be first settled amicably by the Parties.

8.5.6 If the Parties are unable to resolve a Dispute within a period of 60 (sixty) days from the date of such reference, the Dispute shall be referred to and finally resolved by a sole arbitrator, appointed by the Parties jointly.

8.5.7 The arbitration shall be carried out in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended, the provisions of which are deemed to be incorporated by reference into this Clause.

8.5.8 The language of arbitration shall be English and the place of arbitration shall be New Delhi, India.

8. 6 **Non-Solicitation.**

8.6.1 During the term of this Agreement and for a period of 3 (three) years thereafter, the Developer shall not directly or indirectly, whether on its own or together with any other Person:

(i) attempt in any manner to solicit from any client/ customer of Zebra, business of the kind carried on by Zebra or to persuade any Person who/ which is a client/ customer of Zebra, to cease doing business or to reduce the amount of business, which any such client/ customer has customarily done or might propose doing with Zebra; or

(ii) employ, or attempt to employ, or assist anyone else to employ any Person who is in the employment of Zebra; or

(iii) otherwise interfere in any manner with the contractual, employment or other relationship of any employee, or a person who was an employee of Zebra at any time during the preceding 6 (six) months.

8.6.2 The Parties acknowledge that considering the nature of Zebra's business, if the Developer breaches this clause, it shall cause grave and irreparable harm, loss and injury to Zebra, which harm cannot be fully redressed by the payment of damages to Zebra.

8.6.3 The Parties acknowledge that the scope and duration of the non-solicitation provisions are reasonable.

8.6.4 The Developer shall cause its officers and employees to sign non-competition and non-disclosure agreements preventing them from competing with Zebra or using or disclosing Zebra's confidential information.

8.6.5 The provisions of this clause shall survive termination of this Agreement.

8.7 **Assignment.** Subject to the terms of this Article, this Agreement shall be binding upon and inure to the benefit of each Party's successors and assigns. Zebra shall have the right to assign this Agreement to any Affiliate or to any survivor in any merger or consolidation or any purchaser of substantially all of the assets of Zebra or an Affiliate. Otherwise, neither Party may assign this Agreement, in whole or in part and whether by operation of contract, law or otherwise, without the prior written consent of the other Party.

8.8 **Waiver and Remedies.**

8.8.1 Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

8.8.2 A waiver of any breach or default shall not constitute a waiver of any other right for subsequent or other breach or default.

8.8.3 Any waiver to be effective must be in writing signed by the waiving Party.

8.8.4 Zebra' rights and remedies herein are in additional to any other remedies and rights provided at law or in equity.

8.9 **Severability.** If any provision or part of this Agreement is adjudged to be illegal or unenforceable by a court of competent jurisdiction or other competent authority, it will be enforced to the maximum extent legally permissible, and the legality and enforceability of the other provisions of this Agreement will remain in full force and effect.

8.10 **Relationship of the Parties.** The Developer shall act as an independent contractor and not as a partner, agent, employee or principal of Zebra. The Developer shall not represent that it has any authority to assume or create any obligation, express or implied, on behalf of Zebra.

8.11 **No Restrictions on Zebra.** Zebra shall have the right to develop, use, market, license, sell, distribute and otherwise exploit any other development services. Further, nothing in this Agreement shall limit Zebra' right to obtain software or services from other sources, or to restrict Zebra from making, getting made, using, marketing, leasing, licensing, selling or otherwise disposing of any products or services whatsoever. Nothing herein shall be deemed to limit Zebra' right to deal with any other vendors, suppliers, or contractors in India or elsewhere in the world.

8.12 **Complete Agreement.** This Agreement, including any Exhibits, addenda and SOWs, constitutes the final, complete and exclusive agreement between the Parties with respect to the subject matter hereof and supersedes any previous agreement, proposal, commitment, or representation, whether oral or written, and any other communications between the Parties in relation to such subject matter.

Any amendments to this Agreement shall be valid and enforceable only if made in writing and duly signed by authorized representatives of each Party.

8.13 **Counterparts.** This Agreement may be signed in two counterparts, which together shall form a single agreement as if the Parties had executed the same document. Signed copies of this Agreement (including any of its addenda, attachments, and exhibits, and any Order Forms submitted hereunder) provided via facsimile transmission will be deemed binding to the same extent as original documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives.

ZEBRA:	DEVELOPER:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT A

SOW FORMAT

This SOW No. …… ("SOW"), effective …… ("Effective Date"), is entered by and between Zebra _____ ("Zebra") and …….. ("Developer") and shall be governed exclusively by the Master Software Development Services Agreement between the Parties dated ……., ("Agreement").

Capitalized terms used but not defined herein shall have the same meanings as set forth in the Agreement.

1. Relationship Managers

For Zebra

_____

For Developer

_____

2. Additional Details

……	

3. Contacts

Developer -		**Zebra -**	
Project Lead:		Project Lead:	
Address:		Address:	
City, State, Zip		City, State, Zip	
Telephone:		Telephone:	
Email:		Email:	

4. Description

A. Services: Developer will provide the following Services to Zebra pursuant to the Agreement, this SOW and [Specify proposal, Developer's response, etc.] attached as Exhibit I.

[Describe the Services, Deliverables and purpose of this SOW, including requirements and assumptions that are appropriate.]

As part of the Services, Developer will deliver to Zebra the following deliverables:

No.	Description of Deliverables	Due Date or Estimated Duration
1		
2		
3		
4		
5		

B. Personnel: A list of Developer's Designated Employees under this SOW, including their respective roles and rates. Developer will use its best reasonable efforts to keep listed personnel assigned to the Services for the duration of the SOW and will notify Zebra immediately of any personnel changes and the corresponding impact, if any, on the Services. Unless otherwise requested or agreed to by Zebra in writing, Developer will promptly provide replacements which possess equal or greater qualifications and skills than the removed personnel. In no event will Zebra be invoiced or obligated to pay for any time or expenses incurred to train or familiarize replacement personnel with the applicable Services engagement.

Role	Name	On-Site / Off-site	Zebra Location	Developer Location	Standard Hourly Rate	Dis-counted Rate to Zebra	Total Days/ Hours	Extend-ed Rate to Zebra
							Total Services Fees:	$
							Total Maximum Expenses :	$
							Total Maximum Services Fees and Expenses:	**$**

** indicates key personnel*

5. Reimbursement of Expenses: Zebra will reimburse Developer for expenses incurred in the performance of Services hereunder up to a maximum amount not to exceed $_____. All expenses shall be invoiced to Zebra at cost and without mark-up of any kind and in accordance with the Zebra Developer Travel and Expense Policy. Developer will submit receipts and other appropriate documentation to Zebra to substantiate invoiced expenses.

6. Fees, Payment Schedule and Invoices

A. Fees: In consideration for Developer's completion of Services under this SOW, Zebra will pay Developer a maximum amount up to and not to exceed $_____, including expenses (collectively, the "Fees"). Notwithstanding anything to the contrary in this SOW, the Agreement or otherwise, Zebra shall not be invoiced or obligated to pay for (1) any fees or expenses incurred prior to Zebra's issuance to Developer of a corresponding purchase order, or (2) for any amounts in excess of the Fees except as expressly set forth in a change order to this SOW that is executed by the Parties.

B. Payment Schedule: Developer will invoice Zebra for the Fees following completion of the Services.

Developer will invoice Zebra on a monthly basis for all Services performed and expenses incurred in the immediately preceding month, with a final invoice to be sent upon_____.

Developer will invoice Zebra upon completion of certain milestones in accordance with the following schedule:

No.	Milestone	Estimated completion date	Expected invoice date/month	Fee
1				
2				
3				
4				
5				
			Total Fee	**$**

C. Invoices: Developer will include in all invoices a description of the Services performed and a reference to the applicable Zebra Purchase Order number. Developer will also submit documentation (i.e., copies of receipts and third party invoices) necessary for Zebra to substantiate all invoiced expenses. Developer acknowledges that failure to comply with this section may result in a delay in payment. Invoices will be submitted to Zebra as follows:

For invoices by mail: Zebra Inc.

Attn: _____

For invoices by email: _____

For Developer inquiries by phone: _____

For Developer inquiries by email: _____

7. **Change Orders:** No change or modification to this SOW shall be effective or binding except as expressly set forth in a written change order signed by the Parties.

8. Term: This SOW will begin on the Effective Date and shall continue until ……, 20…… unless terminated earlier in accordance with the Agreement.

ZEBRA _____	**DEVELOPER:** _____
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

MASTER SOFTWARE LICENSE AGREEMENT

This **MASTER SOFTWARE LICENSE AGREEMENT** ("**Agreement**"), is made and entered into on _____ (the "**Effective Date**"), by and between:

1) _____, a company incorporated under the Companies Act, 2013 with PAN _____ and its registered office located at _____ (hereinafter called as "**Licensor**"); and

2) _____, a company incorporated under the Companies Act, 2013 with PAN _____ and its registered office located at _____ (hereinafter called as "**Licensee**")

The Licensor and the Licensee are hereinafter referred to individually as a "**Party**," and collectively as the "**Parties**," to this Agreement.

RECITALS

WHEREAS, the Licensor is in business of Software licensing and related support services;

AND WHEREAS the Licensee is willing to purchase certain the Software licenses from the Licensor;

AND WHEREAS the Licensor has agreed to license the Software subject to the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and premises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions:

1.1 "**Documentation**" means, in a format as mutually agreed, the user guide, compilation instructions, documents, manuals and computer-readable files, regarding the installation, use, operations, functionality, troubleshooting and other technical information sufficient to use the Software.

1.2 "**Intellectual Property Rights**" means all rights associated with works of authorship throughout the world, including but not limited to, copyrights, moral rights, maskworks, trademarks and trade name rights and similar rights, trade secret rights, patents, designs, algorithms, and other intellectual and/or industrial property rights and all registrations,

initial applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force.

1.3 "**License**" means a license granted under Section 2.1.

1.4 "**License Key**" means a serial number that enables the Licensee to activate and use the Software.

1.5 "**License Term**" means the duration of a License as specified in the order.

1.6 "**Open Source Software**" means software components that are licensed under a freeware license and that are embedded in the delivered Software.

1.7 "**Software**" means any Software to which the Licensee acquires a license under an order, together with any software code and related Documentation."

1.8 "**Territory**" means India, Australia and New Zealand.

1.9 "**Third Party Contractors**" means the Licensee's consultants or contractors.

2. License Grant

2.1 **Scope of License:**

2.1.1 Subject to the terms and conditions of this Agreement, the Licensor hereby grants the Licensee, during the License Term, a non-exclusive, transferable, fully paid up and perpetual License to use the Software, purely for its business operations within the Territory in accordance with the Documentation and other applicable limitations as agreed by the Parties.

2.1.2 The Licensee may make copies of the Software for archival and backup purposes subject to the written approval of the Licensor.

2.2 **Third Party Use:**

2.2.1 The Licensee may permit its Third Party Contractors to use the Software for the sole purpose of delivering services to the Licensee.

2.2.2 The Licensee will be fully responsible for its Third Party Contractors compliance with terms and conditions of this Agreement and any breach of this Agreement by a Third Party Contractors shall be deemed to be a breach by the Licensee.

2.3 **Open Source Software:**

2.3.1 Open Source Software is licensed to the Licensee under such Open Source Software's own applicable license terms, which can be found in the Documentation.

2.3.2 In the event this Agreement imposes greater restrictions on Licensee than the applicable Open Source Software license

terms, the Open Source Software license terms shall take precedence over this Agreement.

3. Restrictions: Except as expressly permitted in Section 2, the Licensee will not and will not permit any Third Party Contractor to:

(i) sell, lease, license, distribute, sublicense or transfer the Software or Documentation to any third party;

(ii) reverse engineer the Software to derive source code from the Software;

(iii) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software;

(iv) create derivative works based upon the Software; and

(v) remove any product identification, proprietary, copyright or other notices contained in the Software.

4. Ownership:

4.1 The Software and Documentation and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of the Licensor.

4.2 Except for the license rights granted to the Licensee in this Agreement, no other rights with respect to the Software and Documentation are implied.

5. Indemnification:

5.1 **IPR Indemnification**: The Licensor shall defend and hold harmless the Licensee against any third party claim that the Software infringes any Intellectual Property Right of such third party under the laws of the Territory ("Infringement Claim") and indemnify Licensee from the resulting costs and damages (including reasonable attorney fees and court expenses) finally awarded against Licensee to such third party by a court of competent jurisdiction or agreed to in settlement.

5.2 **Remedies**: If the Licensor reasonably believes that the use of Software is likely to be enjoined, or in the event the Licensor reasonably believes that Software may be subject to an infringement claim, the Licensor may, at the Licensee Option or its option:

(i) substitute substantially equivalent functionality non-infringing Software;

(ii) modify the infringing Software so that it no longer infringes but remains substantially of equivalent functionality;

(iii) obtain for Licensee, at Licensor's expense, the right to continue use of such Software; or

(iv) a Party may terminate this Agreement as to the infringing Software and the Licensor shall refund the License fee paid.

5.3 **Exclusions**: The Licensor will not be obligated to defend or be liable for costs or damages to the extent the infringement arises out of

(a) the Licensee's combining with, adding to, or modifying the Software beyond such combinations, additions, or modifications which are (i) contemplated under this Agreement (ii) necessary for the operation of the Software or (iii) are otherwise proposed by Licensor, or

(b) the Licensee's failure to use reasonable materials or instructions provided by the Licensor which would have rendered the Software non-infringing after sufficient time, after receipt by the Licensee and before actual infringement, for the Licensee to reasonably implement them; and use of any older version of the Software when use of a newer revision would have avoided the infringement.

5.4 **General Indemnity:**

5.4.1 Each Party (Indemnitor) shall defend, hold harmless, and indemnify the other Party (Indemnitee) against any and all loss, liability, damage, or expense, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with intentional, wilful, wanton, reckless or negligent conduct.

5.4.2 However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.

5.5 **Indemnity Procedure**: With respect to a Claim for which indemnification is sought under this Section 5, the Indemnitee shall provide Indemnitor with

(i) prompt written notice of such claim,

(ii) tender of the defence or settlement, and

(iii) full cooperation in the defence.

5.6 Failure to give prompt written notice of a Claim will not affect the Indemnitee's right to indemnification unless the failure materially and adversely affects the rights, remedies or liability of the Indemnitor.

5.7 If the Indemnitor fails to honor a timely request for indemnification and has a binding legal obligation to do so, the Indemnitee shall be entitled

to all costs (including reasonable attorneys' fees) incurred in the enforcement of its indemnification rights.

5.8 The Indemnitor shall not make a compromise or settlement of a Claim without the Indemnitee's consent.

5.9 The Indemnitee shall have no liability for any compromise or settlement made without its consent, which, subject to the foregoing conditions, will not be unreasonably withheld or delayed.

6. Warranty:

6.1 **Software Warranty**: The Licensor warrants to the Licensee that the Software will, for a period of sixty (60) days following delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software

(i) has been properly installed and used at all times and in accordance with the applicable Documentation; and

(ii) has not been modified or added to by persons other than the Licensor or its authorized representative.

6.2 **Remedies**: The Licensor will, at its own expense and as its sole obligation and as the Licensee's exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to the Licensor by the Licensee in writing during the Warranty Period.

6.3 **Additional Warranties**: Each Party represents and warrants as follows:

6.3.1 It is a company duly registered and validly existing under the laws of India.

6.3.2 The Agreement will constitute a legal, valid and binding agreement of such Party will be enforceable against it in accordance with its terms upon its execution.

6.3.3 It, subject to its company power and business scope, has taken necessary company actions to get the proper authorization and the consents or approvals (if necessary) from other third party or governments, without breaching any restricts of the laws and company that binds or affects it to execute and perform this Agreement.

6.4 **Warranty Disclaimer**: The Licensor licenses, and the Licensee accepts, the Software on "AS IS" basis. Except as provided herein, the Licensor provides no warranties as to the function or use of the software, whether express, implied, or statutory, including, without limitation, any implied warranties of merchantability or fitness for particular purpose. The entire risk as to the quality and performance of the software is with the Licensee. The Licensor does not warrant that the functions contained in

the licensed programs will meet the Licensee's requirements or that the operation of the licensed programs will be uninterrupted or error free.

7. Limitation of Liability:

7.1 **Liability Limitation:**

7.1.1 To the maximum extent mandated by law, in no event will each Party be liable to other Party for any lost profits or business opportunities, loss of use, loss of revenue, loss of goodwill, business interruption, loss of data, or any other indirect, special, incidental, or consequential damages under any theory of liability, whether based in contract, tort, negligence, product liability, or otherwise.

7.1.2 Each Party's liability for any claim raised under this Agreement will not, in any event, exceed the license fees the Licensee paid for the Software under this Agreement.

7.2 **Exclusions**: The limitations on liability set forth above do not apply to liability arising from:

(i) Breach of a Party's indemnity obligations provided under this Agreement;

(ii) Breach of a Party's confidentiality obligations under this agreement;

(iii) Any infringement, misuse or misappropriation of any Intellectual Property Rights; or

(iv) Gross negligence, misrepresentation or fraud.

8. Term and Termination:

8.1 **Term:** The Agreement shall commence on Effective Date and shall be in effect until terminated by either Party upon providing 30 (thirty) days' prior written notice to the other Party.

8.2 **Termination for Material breach**: Each Party may terminate this Agreement by providing 30 (thirty) days' prior written notice to the other Party, upon other Party's material breach of this Agreement, provided other Party fails to cure the material breach within 30 (thirty) days of receipt of said breach notice.

8.3 **Termination for convenience**: Either Party may terminate this Agreement at any time without cause by giving 30 (thirty) days' prior written notice to the other Party.

8.4 **Termination for insolvency**: Each Party may terminate this Agreement in its entirety effective immediately upon written notice to other Party if other Party:

(i) terminates or suspends its business;

(ii) becomes insolvent; or

(iii) becomes subject to any bankruptcy or insolvency proceeding.

8.5 **Effect of Termination**: If this Agreement is terminated pursuant to the rights herein:

(i) all licensed rights to all Software granted to Licensee under this Agreement will immediately cease to exist; and

(ii) the Licensee must promptly discontinue all use of all Software, and destroy all Software copies.

Either Party shall not be liable for loss or damage suffered by other Party as a consequence of the legitimate termination of the Agreement by either Party.

8.6 **Survival**: The provisions of this Agreement which, by their nature or terms, require performance after the termination or expiration of this Agreement, or have application to events that may occur after the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.

9. Confidential Information:

9.1 **Definition:** Confidential Information means any and all information which is disclosed by a Party ("Discloser") and received by a Party ("Recipient"), that is expressly marked or identified as confidential or provided under circumstances reasonably indication its confidentiality.

9.2 **Exclusions**: Confidential Information does not include any information that

(i) is or becomes generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Recipient or its representatives);

(ii) is or becomes available to Recipient on a non-confidential basis from a source other than Discloser, provided that such source is under no confidentiality obligation to Discloser; or

(iii) has already been developed, or is hereafter independently acquired or developed, by Recipient without violating any provision of this Agreement.

9.3 **Permitted Use and Disclosure:**

9.3.1 Recipient shall

(i) protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication

of the Confidential Information as the Recipient uses to protect its own Confidential Information of a like nature,

(ii) not use such Confidential Information in violation of any use restriction imposed under this Agreement, and

(iii) not disclose such Confidential Information to any third party, except as expressly permitted under this Agreement, without prior written consent of the Discloser.

9.3.2 Recipient may disclose the Confidential Information to its representatives on a need to know basis to perform their obligations imposed under this Agreement.

9.3.3 Recipient shall be responsible for acts or omissions of its representatives.

9.4 **Compelled Disclosure**: If Recipient believes that it will be compelled by a court or other authority to disclose Discloser Confidential Information, it shall

(i) give Discloser timely written notice so that the Discloser may take steps to oppose such disclosure, but in any event the Recipient shall not be prohibited from complying with such requirement; and

(ii) cooperate with the Discloser in its attempts to oppose such disclosure, provided that such opposition is reasonable in light of applicable law or regulation.

10. Force Majeure

No Party shall be deemed to be in default of any provision of this Agreement, nor be liable for any delay, failure in performance or interruption of services, resulting directly or indirectly from any cause beyond its reasonable control; provided, however, that such Party shall exercise reasonable efforts to the extent reasonably practicable, to remedy any such cause of delay or cause preventing performance.

11. Miscellaneous:

11.1 **Assignment:**

11.1.1 No Party may assign the Agreement without prior written consent of the other Party.

11.1.2 This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

11.2 **Notices**:

11.2.1 Each notice, consent or request required to be given to a Party pursuant to this Agreement must be given in writing.

11.2.2 A notice may be given by delivery to an individual or by fax, and shall be validly given if delivered on a Business Day to an individual, or, if transmitted on a Business Day, by fax to the Party fax number that the Party so designates by notice given in accordance with this Section. Any notice

(i) if validly delivered on a Business Day, shall be deemed to have been given when delivered; and

(ii) if validly transmitted by fax on a Business Day, shall be deemed to have been given on that Business Day.

11.3 **Third Party Rights.** The provisions of this Agreement are enforceable solely by the Parties, and no shareholder, employee, agent of any Party or any other Person shall have the right to enforce any provision of this Agreement or to compel any Party to this Agreement to comply with the terms of this Agreement.

11.4 **Independent Parties**: The Licensor and the Licensee are independent parties. Nothing in this Agreement is intended to create or shall be construed as creating a partnership or joint venture between the Parties.

11.5 **Severability**: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

11.6 **Waiver**:

11.6.1 Failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of any other covenant, duty, agreement or condition.

11.6.2 Any waiver must be specifically stated as such in writing.

11.7 **Payment Terms and Taxes:**

11.7.1 The Licensee shall pay all License Fees within 30 (thirty) days from invoice date.

11.7.2 If the Licensee fails to pay the applicable fees within the stipulated time, then the Licensee shall be obligated to pay interest at the rate of 15% per annum for the period of delay.

11.7.3 The Licensee shall pay applicable taxes imposed on it under this Agreement.

11.7.4 The Licensor shall issue invoice in compliance with invoice process mutually agreed by the Parties.

11.7.5 Invoice shall include detailed break up of all the tasks performed and expenses incurred.

11.8 **Audit**:

11.8.1 During this Agreement Term, the Licensor may, upon reasonable notice to the Licensee, audit such records to verify that the Licensee have used the Software solely in the manner authorized herein and paid all applicable license fees.

11.8.2 If audit reveals that the Licensee commits breach in use of the Software or payment of fees, the Licensee shall pay such sum as penalty as agreed by the Parties.

11.9 **Governing Law:**

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

11.9.2 The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of Kolkata in relation to any dispute arising out of or relating to this Agreement.

11.10 **Entire Agreement:**

11.10.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

11.10.2 No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is in writing and signed by each Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Licensor	**Licensee**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

NON DISCLOSURE AGREEMENT

This **NON-DISCLOSURE AGREEMENT** ("**Agreement**") is made and entered into on _____ (the "**Effective Date**"), by and between:

1) _____, a company incorporated under the Companies Act, 1956/2013 with CIN _____, PAN _____ and its registered office located at _____ (hereinafter called as the "**Company**"); and

2) _____, a company incorporated under the laws of _____ and its registered office located at _____ (hereinafter called as the "**Corporation**")

The Company and the Corporation are hereinafter referred to as a "**Party**," and collectively as the "**Parties**".

RECITALS

WHEREAS:

A. The Parties are in discussions for the purpose of creation of a joint venture project in India ("**Project**").

B. In course of such discussions, the Corporation may have to disclose certain confidential information ("Confidential Information") to the Company.

C. In order to protect the confidentiality of the Confidential Information, the Corporation has insisted on execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and premises of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Confidential Information:

1.1 During the course of discussions related to the Project, the Corporation shall disclose to the Company certain non-public information in any form under this Agreement which is marked as confidential or disclosed orally or disclosed under the circumstances indicating its confidentiality.

1.2 Any information which is disclosed orally shall also be accorded equal confidentiality treatment, provided such information shall be reduced into writing within 15 days from the date of disclosure.

2. **Exclusions:** Confidential Information shall not include the following information:

   (i) previously known to the Company without an obligation of confidence owed to the Corporation,

   (ii) independently developed by or for the Company without use of or access to Confidential Information,

   (iii) acquired by the Company from a third-party which is not known by the Company to be under an obligation of confidence owed to the Corporation with respect to such information, or

   (iv) which is or becomes publicly available through no breach of this Agreement by the Company.

3. **Permitted Use and Disclosure:** The Company shall:

   (i) protect the secrecy of the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as the Company uses to protect its own Information of a like nature,

   (ii) use such Confidential Information for exercising its rights and performing its obligations under this Agreement, and

   (iii) disclose such Confidential Information to any third party, if required, only to the extent necessary in relation to accomplishment of the purpose of this Agreement.

4. **Disclosure to Company Representatives:** The Company, in its discretion, may disclose the Confidential Information to its employees, officers, agents and third party consultants on a need to know basis in furtherance of the Project.

5. **Compelled Disclosure:**

   5.1 To the extent absolutely necessary, the Company may disclose Confidential Information, if required by any judicial or governmental request, requirement or order; provided that the Company will provide with sufficient prior written notice of such request, requirement or order to the Corporation so that the Corporation shall contest such request, requirement or order to oppose the disclosure of Confidential Information.

   5.2 The Company shall cooperate with the Corporation in its attempts to oppose such disclosure.

6. Ownership:

6.1 The Corporation is and shall be the owner of the Confidential Information.

6.2 The Company shall be the owner of any confidential information developed by it in course of discussions taken place under this Agreement.

7. Term and Protection Period:

7.1 This Agreement shall be in effect for a period of three (3) years following the Effective Date.

7.2 The Company may terminate this Agreement with or without reason upon providing 15 (fifteen) days prior written notice to the Corporation.

7.3 Following the expiry or termination of the Agreement, the Company is entitled to retain copy of Confidential Information for archival, backup and compliance purposes.

8. Representations or Warranties. The Corporation represents and warrants to the Company that:

(i) It has the right to disclose the Confidential Information and shall be liable for any damages suffered by Company as a consequence of use of the Confidential Information.

(ii) It is a corporation that has been duly incorporated or organized and is validly existing and in good standing.

(iii) This Agreement has been duly executed and delivered by the Corporation and is intended to be a valid and binding obligation of the Corporation, enforceable against it in accordance with its terms.

9. Indemnity: The Corporation shall protect, indemnify, and hold the Company harmless from any loss suffered by the Company due to the authorized use of the Confidential Information by the Company.

10. Assignment:

10.1 The Corporation shall not assign the Agreement without prior written consent of the Company.

10.2 The Company may assign the Agreement to its affiliate or successor in interest or any third party of its option without consent of the Corporation.

10.3 Any such assignment in violation of this provision shall be null and void.

11. Governing Law:

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

11.2 The Parties agree to submit to the exclusive jurisdiction of, and venue in, the courts of Chennai in any dispute arising out of or relating to this Agreement.

12. Severability: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the validity of any other provision of this Agreement.

13. Waiver: No failure to enforce any of its right by a Party shall constitute waiver of such right.

14. Publicity: The Corporation will not issue any press releases about discussions taking place with the Company and the fact that the Parties entered into this Agreement without prior written consent of the Company.

15. Notices: Any notice required or permitted to be given is to be provided in writing to the person and at the address listed in this Agreement, or certified mail, return receipt requested.

16. Entire Agreement:

16.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

16.2 No amendment, supplement, modification or restatement of any provision of this Agreement shall be binding unless it is made in writing and signed by each Party.

17. Right to Independent Development: Nothing in this Agreement shall restrict the right of the Company to independently design, develop, acquire, market, service or otherwise deal in, products or services competitive with those of the Corporation as long as the Company is not in breach of this Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers to be effective as of the Effective Date.

Corporation	**Company**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Witness:	

SHAREHOLDERS' AGREEMENT

This Shareholders' Agreement (this "**Agreement**") is executed on _____ 2018 among:

(1)_____ **Private Limited,** a private unlisted limited company incorporated and existing under the laws of India with CIN _____ having its registered office at _____ (hereafter referred to as "**the Company**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns);

(2) **Mr.** _____, S/o _____ with PAN _____ and currently residing at _____, (hereafter referred to as "**Promoter**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to include his successors, legal heirs and permitted assigns);

(3)_____ **Private Limited,** a private unlisted limited company incorporated and existing under the Laws of India with CIN _____ and having its registered office at _____ (hereafter referred to as "**Investor**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns).

(The Company, Promoter and Investor are hereafter referred to individually as a "**Party**" and collectively as the "**Parties**".)

WHEREAS:

A. The Company is engaged in the following business as under hereinafter referred as "**the Business**":

_____

B. The Parties are parties to the Shares Subscription agreement executed on even date, *i.e.*, _____ ("**Share Subscription Agreement**"); and

C. The Parties are desirous of entering into this Agreement to record the rights and obligations agreed to among them in respect of the management and control of the affairs of the Company and certain rights and obligations, *inter se,* following the Closing, in accordance with the terms and conditions set out herein.

The recitals above shall form an integral part of this Agreement.

NOW THEREFORE IT IS AGREED by and AMONGST the parties as follows:

1. Definitions and Interpretation

1.1. In this Agreement, the following terms, to the extent not inconsistent with the context thereof, shall have the meanings assigned to them herein below:

(i) "**Act**" shall mean the Companies Act, 2013 (to the extent that such enactment is in force and applicable to the context in which such term is used herein), and shall include all amendments, modifications and re-enactments of the foregoing;

(ii) "**Affiliate**" of a Person (the "**Subject Person**") shall mean (i) in the case of any Subject Person other than a natural person any other Person that, either directly or indirectly through one or more intermediate Persons, Controls (as defined below), is Controlled by or is under common Control (as defined below) with the Subject Person, and (ii) in the case of any Subject Person that is a natural Person, shall include a Relative of such Subject Person. For the purpose of this definition, in relation to the Investor, an Affiliate shall include any investment fund or special purpose vehicle that shares the same investment manager and/ or the same investment advisor;

(iii) "**Affirmative Voting Matter**" shall have the meaning given to the term under Clause 0;

(iv) "**Annual Budget**" shall mean the budget for a Financial Year of the Company in relation to sales budget, revenue and operating expenditure, cash flow, capital expenditure and key financial ratios;

(v) "**Articles of Association**" or "**Articles**" shall mean the Articles of Association of the Company, as amended from time to time;

(vi) "**Board**" or "**Board of Directors**" shall mean the collective body of the Directors of the Company;

(vii) "**Board Meeting**" shall mean a meeting of the Board duly convened in accordance with the Act, the Charter Documents and this Agreement;

(viii) "**Business**" shall have the meaning as ascribed in Recital A;

(ix) "**Business Plan**" shall mean, in relation to any Financial Year, the annual business plan of the Company approved by the Board;

(x) "**Charter Documents**" shall mean collectively the Memorandum and the Articles;

(xi) "**Claims**" shall mean any losses, liabilities, claims, damages, costs and expenses, including legal fees and disbursements in relation thereto;

(xii) "**Closing**" and "**Closing Date**" shall have the meanings given to the respective terms under the Share Subscription Agreement

(xiii) "**Competitor**" shall mean a Person as may be identified as such by the Investor;

(xiv) "**Control**" shall mean the power to direct the management or policies of any Person, whether through the ownership of over 50% (fifty percent) of the voting power of such Person or through the power to appoint more than half of the board of directors or similar governing body of such entity or through contractual arrangements or otherwise;

(xv) "**Deed of Adherence**" shall mean the deed of adherence, the form of which is attached as Schedule 1 to this Agreement;

(xvi) "**Director**" shall mean a director on the Board;

(xvii) "**Drag Along Notice**" shall have the meaning given to the term in Clause 0;

(xviii) "**Drag Sale**" shall mean the sale (or other transaction such as merger, amalgamation or sale of assets having a similar effect) of such number of Equity Securities of the Company to a Drag Sale Purchaser as the Investor may mandate at its sole discretion and in the manner set out in Clause 0;

(xix) "**Drag Sale Purchaser**" shall have the meaning given to the term under Clause 0;

(xx) "**Dragged Shareholders**" shall have the meaning given to the term under Clause Clause 0;

(xxi) "**Encumbrance**" shall mean (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under applicable Law (as defined below), (ii) any voting agreement, interest, option, pre-emptive right, right of first offer, refusal or transfer restriction in favour of any Person and (iii) any adverse claim as to title, possession or use and "**Encumber**" shall be construed accordingly;

(xxii) "**Equity Securities**" shall mean equity capital, Equity Shares, membership interests, registered capital, joint venture or other ownership interests of the Company or any options, warrants, rights or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such equity capital, membership interests, partnership interests, registered capital, joint venture or other ownership interests (whether or not such derivative securities are issued), or in relation to the Investor, as the context arises, and shall include the Subscription Securities, of the Company;

(xxiii) "**Equity Shares**" shall mean the equity shares of the Company whether issued or to be issued, having par value of INR 10 (Rupees Ten only) per equity share, including the Investor Equity Shares and Securities including CCCPP as if they are fully converted into equity shares.

(xxiv) "**Event of Default**" shall mean:

(i) Breach or failure to comply with any material representation, Warranty, term, covenant, undertaking or obligation contained in the Transaction Documents by the Company or the Promoter, which breach or failure, if capable of cure or remedy, has not been cured or remedied within 60 (sixty) days of the receipt of written notice of such breach or failure from the Investor in this regard;

(ii) Failure to obtain prior written consent or approval of the Investor with respect to any Affirmative Voting Matters in accordance with the terms of the Transaction Documents; or

(iii) The Promoter committing any fraud, or a violation of any Law that may lead to a Material Adverse Effect, or an offence involving moral turpitude, or initiation of disciplinary action by any Governmental Authority or the finding of any audit or investigation which reveals that the affairs of the Company have been conducted in a fraudulent manner.

(iv) Exit by key managerial person(s) or the Promoter before the agreed tenure.

(xxv) "**Exercise Notice**" shall have the meaning given to the term under Clause 0;

(xxvi) "**Exit Notice**" shall have the meaning given to the term under Clause 0;

(xxvii) "**Exit Period**" shall have the meaning given to the term under Clause 0;

(xxviii) "**Exit Price**" shall mean a price which is higher of (i) FMV of each of the Equity Securities held by the Investor together with unpaid accrued dividends, if any; or (ii) the Investment Amount; and the requisite multiple of investment.

(xxix) "**Financial Statements**" shall mean the audited financial statements of the Company comprising an audited balance sheet as of the relevant Financial Year end and the related audited statement of income for the Financial Year then ended, together with the auditor's report thereon and notes thereto prepared in accordance with Indian GAAP and applicable Laws;

(xxx) "**Financial Year**" shall mean the period commencing from April 1 of each calendar year and ending on March 31 of the immediately succeeding calendar year;

(xxxi) "**First Adjourned Board Meeting**" shall have the meaning given to the term under Clause 0;

(xxxii) "**FMV**" with respect to Equity Securities, shall mean the valuation of such Equity Securities computed in accordance with Clause 0;

(xxxiii) "**FMV Computation Date**" shall have the meaning given to the term under Clause 0;

(xxxiv) "**Fully Diluted Basis**" shall mean that calculation is to be made assuming that all outstanding Equity Securities (whether or not by their terms then currently convertible, exercisable or exchangeable) whether or not due to the occurrence of an event or otherwise, have been converted, exercised or exchanged into the maximum number of Equity Shares issuable upon such conversion, exercise and exchange, as the case may be *and it is clarified that* all authorised options under the ESOP shall be included for the aforesaid calculation irrespective of whether or not they have been issued, granted, vested, or exercised;

(xxxv) "**Government**" or "**Governmental Authority**" means any statutory authority, government department, agency, commission, board, tribunal, court or other entity in India authorised to make or interpret Laws;

(xxxvi) "**Greater Preliminary Valuation**" shall have the meaning given to the term under Clause 0;

(xxxvii) "**Independent Valuer**" shall have the meaning given to the term under Clause 0;

(xxxviii) "**Indian GAAP**" shall mean generally accepted accounting principles applicable in India, consistently applied throughout the specified period and in the comparable period in the immediately preceding Financial Year;

(xxxix) "**Information**" shall have the meaning given to the term under Clause 0;

(xl) "**INR**" or "**Rupees**" or "**Rs.**" shall mean Indian rupees, being the lawful currency of the Republic of India;

(xli) "**Investment Amount**" shall mean total of the Subscription Amount.

(xlii) "**IPO**" shall mean the initial public offering of Equity Shares or other Equity Securities (including depository receipts), either domestic or overseas, of the Company and consequent listing of the Equity Securities of the Company in stock exchanges, domestic or overseas;

(xliii) "**IP Rights**" shall mean all rights in and in relation to all intellectual property rights subsisting in the products, software, etc. manufactured, developed, being developed and/or proposed to be developed by the Company, including all patents, patent applications, moral rights, trademarks, trade names, service marks, service names, brand names, internet domain names and sub-domains, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, database rights, methodologies, computer programs (including all source codes), technical information, manufacturing, engineering and technical drawings, know-how, all pending applications for and registrations of patents, entity models, trademarks, service marks, copyrights, designs and internet domain names and sub-domains and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) in each case anywhere in the world;

(xliv) "**Issuance Notice**" shall have the meaning given to the term under Clause 0;

(xlv) "**Issuance Price**" shall have the meaning given to the term under Clause 0;

(xlvi) "**Issuance Shares**" shall have the meaning given to the term under Clause 0;

(xlvii) "**Key Employees**" shall mean _____ and _____;

(xlviii) "**Law**" or "**Laws**" shall mean and include all applicable statutes, enactments, acts of legislature or the Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority, tribunal, board, court or a recognised stock exchange of India;

(xlix) "**Lesser Preliminary Valuation**" shall have the meaning given to the term under Clause 0;

(l) "**Liquidity Event**" shall be deemed to include the following:

(i) commencement of any proceedings for the voluntary winding up of the Company in accordance with the Act or the passing of an order of any court appointing a provisional liquidator or administrator in any other proceeding seeking the winding up of the Company or the liquidation of the Company; or

(ii) the consummation of a consolidation, merger, acquisition, reorganization or other similar transaction (whether in one or a series of transactions) of the Company resulting in its Shareholders (immediately prior to such transaction), collectively, retaining less than a majority of the voting power of the Company or the surviving entity immediately following such transaction after giving effect to any conversion, exercise or exchange of any Equity Securities convertible into or exercisable or exchangeable for, such voting Equity Securities;

(iii) a sale, lease, license or other Transfer of over 50% (fifty per cent) of the Equity Securities or any significant block of assets of the Company (including any Business-related IP rights of the Company);

(iv) any change in Control;

(v) a Drag Sale; or

(vi) an exit under Clause 0;

(li) "**Material Adverse Effect**" shall mean any change or effect (including but not limited to, change in applicable Law) that would have (or could reasonably be expected to have) a materially adverse financial impact to (a) the Business, operations, Assets, condition (financial or otherwise), operating results of the Company, or (b) the ability of the Parties to consummate the transactions contemplated herein, or (c) the validity, legality or enforceability of the rights or remedies of the Investor under the Transaction Documents;

(lii) "**Memorandum of Association**" or "**Memorandum**" shall mean the Memorandum of Association of the Company, as amended from time to time;

(liii) "**Observer**" shall have the meaning given to the term in Clause 3.2

(liv) "**Offer of Existing Securities**" shall have the meaning given to the term under Clause 7.1

(lv) "**Offered Terms**" shall have the meaning given to the term under Clause 0;

(lvi) "**Person**" shall mean any natural person, limited or unlimited liability company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under applicable Law;

(lvii) "**Pre-emptive Right**" shall have the meaning given to the term under Clause 0;

(lviii) "**Pre-emptive Right Holders**" shall mean the Investor and the Promoter;

(lix) "**Preliminary Valuation**" shall have the meaning given to the term under Clause 0;

(lx) "**Preliminary Valuation Report**" shall have the meaning given to the term under Clause 0;

(lxi) "**Promoter Directors**" shall have the meaning given to the term under Clause 0;

(lxii) "**Promoter ROFO Acceptance Notice**" shall have the meaning given to the term under Clause 0;

(lxiii) "**Promoter ROFO Notice**" shall have the meaning given to the term under Clause 0 (i) (a);

(lxiv) "**Promoter ROFO Offerees**" shall have the meaning given to the term under Clause 0 (i) (a);

(lxv) "**Promoter ROFO Period**" shall have the meaning given to the term under Clause 0 (i) (b);

(lxvi) "**Promoter ROFO Shares**" shall have the meaning given to the term under Clause 0 (i);

(lxvii) "**Promoter Valuer**" shall have the meaning given to the term under Clause0;

(lxviii) "**Proposed Issuance**" shall have the meaning given to the term under Clause 0;

(lxix) "**Proposed Transferee**" shall have the meaning given to the term under Clause 0(i)(a);

(lxx) "**Relative**" shall mean a 'relative' as defined under Section 2(77) of the Act;

(lxxi) "**Right Holders**" shall mean the Investor;

(lxxii) "**ROFR Exercise Notice**" shall have the meaning given to the term under Clause 0(b);

(lxxiii) "**ROFR Notice**" shall have the meaning given to the term under Clause 0(a);

(lxxiv) "**ROFR Period**" shall have the meaning given to the term under Clause 0(b);

(lxxv) "**ROFR Price**" shall have the meaning given to the term under Clause 0(a);

(lxxvi) "**SEBI**" shall mean the Securities and Exchange Board of India;

(lxxvii) "**Second Adjourned Board Meeting**" shall have the meaning given to the term under Clause 0;

(lxxviii) "S**hare Capital**" shall mean the total paid up share capital of the Company determined on a Fully Diluted Basis;

(lxxix) "**Shareholder(s)**" shall mean the shareholders, from time to time, of the Company;

(lxxx) "**Share Subscription Agreement**", shall mean as ascribed to it in Recital B;

(lxxxi) "**Subsidiary**" with respect to any Person shall have the meaning ascribed to the term under Section 2 (87) of the Companies Act, 2013;

(lxxxii) "**Subscription Amount**" shall mean a sum of INR _____ payable by the Investor into the Designated Bank Account of the Company, in consideration of the Subscription Securities;

(lxxxiii) "**Subscription Securities**" shall mean _____ Equity Securities issued to or acquired by the Investor and/or its Affiliates.

(lxxxiv) "**Tag Along Right**" shall have the meaning given to the term under Clause0;

(lxxxv) "**Tag Along Exercise Notice**" shall have the meaning given to the term under Clause0;

(lxxxvi) "**Tag Along Shares**" shall have the meaning given to the term under Clause0;

(lxxxvii) "**Tax**", "**Taxes**" or "**Taxation**" shall mean any and all form of direct and indirect taxes with reference to income, profits, gains, net wealth, asset values, turnover, gross receipts including but not limited to all duties (including stamp duties), excise,

customs, service tax, value added tax, goods and services tax, charges, fees, levies or other similar assessments by or payable to a governmental authority (including any interest, fines, penalties, assessments, or additions to Tax);

(lxxxviii) "**Third Valuer**" shall have the meaning given to the term under Clause 0;

(lxxxix) "**Transaction Documents**" shall mean the following:

(i) this Agreement;

(ii) the Share Subscription Agreement; and

(iii) any other documents mandated hereunder or under the Share Subscription Agreement;

(xc) "**Transfer**" (including with correlative meaning, the terms "**Transferred by**" and "**Transferability**") shall mean to transfer, sell, assign, pledge, hypothecate, create a security interest in or lien on, place in trust (voting or otherwise), exchange, gift or transfer by operation of Law or in any other way subject to any Encumbrance or dispose of, whether or not voluntarily;

(xci) "**Transfer Shares**" shall have the meaning given to the term under Clause 0(a);

(xcii) "**Transferring Shareholder**" shall have the meaning given to the term under Clause 0;

(xciii) **"Transferring Investor"** shall have the meaning given to the term under Clause 0 (i);

(xciv) "**Third Party**" shall mean any Person other than the Parties; and

(xcv) "**Warranty**" shall have the meaning given to it under the Share Subscription Agreement.

1.2. Interpretation: Unless the context of this Agreement otherwise requires:

(i) Words denoting any gender shall be deemed to include all other genders;

(ii) Words importing the singular shall include the plural and vice versa, where the context so requires;

(iii) The terms "hereof", "herein", "hereby", "hereto" and other derivatives or similar words, refer to this entire Agreement or specified Clauses of this Agreement, as the case may be;

(iv) Reference to the term "Clause" or "Schedule" shall be a reference to the specified Clause or Schedule of this Agreement;

(v) Any reference to "writing" includes printing, typing, lithography and other means of reproducing words in a permanent visible form;

(vi) The term "directly or indirectly" means directly or indirectly through one or more intermediary persons or through contractual or other legal arrangements, and "direct or indirect" shall have correlative meanings;

(vii) All headings and sub-headings of Clauses and Schedules, and use of bold typeface are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement;

(viii) Reference to any legislation or Law or to any provision thereof shall include references to any such Law as it may, after the effective date of this Agreement (as mentioned in Clause 0), from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation made from time to time under that provision;

(ix) Reference to the word "include" or "including" shall be construed without limitation;

(x) The Schedules hereto shall constitute an integral part of this Agreement;

(xi) Terms defined in this Agreement shall include their correlative terms;

(xii) Time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of essence;

(xiii) The Parties acknowledge that they and their respective counsel have read and understood the terms of this Agreement and have participated equally in the negotiation and drafting. Accordingly, no court or arbitrator construing this Agreement shall construe it more stringently against one Party than against the other;

(xiv) The terms referred to but not defined in this Agreement shall, unless defined otherwise or unless inconsistent with the context or meaning thereof, have the same meaning as defined under the Share Subscription Agreement;

(xv) All references to this Agreement or any other Transaction Document shall be deemed to include any amendments or modifications to this Agreement or the relevant Transaction Document, as the case may be, from time to time;

(xvi) Any word or phrase defined in the recitals or in the body of this Agreement as opposed to being defined in Clause 0 shall have the meaning so assigned to it, unless the contrary is expressly stated or the contrary clearly appears from the context;

(xvii) If any provision in Clause 0 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement;

(xviii) Any reference to "satisfactory to the Investor", "acceptable to the Investors" and phrases of similar import mean the occurrence of the relevant event or circumstance or fulfillment of the relevant condition to the reasonable satisfaction of the Investor; and

(xix) Unless stated otherwise, any and all rights available to the Investor in the Company under this Agreement shall, *mutatis mutandis,* be available to the Investor in the Company's (present or future) Subsidiaries, and the Company and the Promoter shall take all requisite steps procure the same.

2. Effective Date

2.1. This Agreement shall be effective from the Closing Date.

3. Management of the Company

3.1. Directors: The Company shall be managed by the Board which shall have powers to do all acts and take all actions that the Company is authorized to do and take; subject to those matters that are statutorily required under the Act to be approved by the Shareholders or being referred for approval to the Shareholders.

3.2. Board and Observer:

(i) The Board shall be composed of at least 4 (four) Directors

(ii) The Investor shall have the right to nominate 50% Directors on the Board, in the manner set out in this Clause 0. The Promoter shall have the right to nominate the remaining 50% Directors on the Board, in the manner laid down in this Clause 0.

(iii) The Persons nominated as Directors under Clause 3.2(ii) above shall be decided upon by the Investor in consultation with the Promoter but the final decision on appointment of Investor Directors shall be with the Investor. However, the Persons nominated by either Party as Directors shall not, at any time include any Person or category of Persons deemed to be Competitors in Business or nuisance creators by the Investor. The Investor shall have right to make specific exclusions for being appointed as directors by the Promoter.

(iv) In addition to the nomination / appointment of any Director(s), the Investor shall have a right to appoint an observer or adviser, who shall have a right to attend the Board meetings &

Committee thereof. Such observer / advisor shall, however, have no vote at the meetings. Such appointment / nomination of observer / adviser shall be done solely by the Investor; and such observer / adviser shall have right to seek information & documents from the Promoter and the Company.

3.3. Appointment, Removal and Replacement, of Investor Directors:

(i) The Shareholders and Board shall procure that each appointment, removal or replacement of the Investor Director(s) ("**Investor Board Nominees**") or Promoter Director(s) in terms of Clause 0 above is implemented without delay and where necessary, meetings of the Shareholders of the Company, or the Board Meetings, as applicable, are convened for this purpose.

(ii) The Investor may require the removal of the Investor Board Nominees at any time, and may at any time nominate another individual in place of a removed Investor Board Nominee, and all Shareholders shall exercise their rights to ensure the removal and appointment of the Investor Board Nominee as aforesaid.

(iii) In the event of resignation, retirement or vacation of office of any Investor Board Nominee due to any reason, the Investor shall alone be entitled to appoint another person as a nominee in place of such Investor Board Nominee and all Shareholders shall exercise their rights to ensure the appointment of the individual nominated for appointment as the Investor Board Nominee as aforesaid.

3.4. No Qualification Shares: The Directors need not hold any qualification shares.

3.5. Casual Vacancies: If any Director resigns, vacates or is removed from office before his term expires, the resulting casual vacancy may only be filled by the Shareholder nominating such Director.

3.6. Proceedings of Board: The Board shall hold meetings, approve decisions or pass resolutions and grant consents in accordance with the procedures set out in this Clause 0 and applicable Laws.

3.7. Number of Board Meetings and venue:

(i) The Board shall meet at least 4 (four) times in every calendar year; *provided that* the interval between 2 (two) Board Meetings shall not exceed 120 (one hundred twenty) days. Board Meetings shall be held at such place, within India, as may be mutually decided by the Promoter and the Investor, from time to time. At least 50% of the Board Meetings in each calendar year shall be held outside _____ as per convenience of the Investor.

(ii) The Investor Director may be granted leave of absence for the meetings of the Board, subject to applicable Law, including for the Board Meetings conducted between the mandatory Board Meetings as set out in Clause 3.70, where the agenda is to transact on the routine business matters and not dealing with any Affirmative Voting Matters, if so requested by the Investor Director.

(iii) Subject to applicable Laws, all reasonable expenses and costs incurred for such Board Meetings shall be borne by the Company.

3.8. Convening Board Meetings: The Chairman of the Board, and the secretary of the Company, if so appointed, shall, on the requisition of a Director, summon a Board Meeting, in accordance with the notice and other requirements set out in Clause 0 and 0 below.

3.9. Notice for Board Meetings: At least 7 (seven) days' prior written notice shall be given to each of the Directors, in the manner prescribed under the Law. A Board Meeting may be held at shorter notice with the written consent of a majority of the Directors, including the Investor Director.

3.10. Contents of Notice: Every notice convening a Board Meeting shall be in accordance with the Companies (Meetings of Board and its Powers) Rules, 2014 and shall set forth in full and sufficient detail each item of the business to be transacted thereat, and no item or business shall be transacted at such meeting, unless the same has been stated in full and in sufficient detail in the notice convening the meeting, except as otherwise consented to by all the Directors, or their respective alternate Directors.

3.11. Quorum for the Board Meetings

(i) Subject to applicable Law, the quorum for a Board Meeting shall be one third of the total number of Directors with the minimum of 2 (two) Directors, subject to condition that at least 50% of present at such meeting are Investor Director(s), unless the Investor Director provides written notice prior to the commencement of any such Board Meeting waiving the requirement of his presence to constitute valid quorum for a particular Board Meeting.

(ii) If a quorum (as required under this Clause 3.110 is not present at a Board Meeting within half an hour of the time appointed for a properly convened meeting, the meeting shall be adjourned for 7 (seven) days to be held at the same place and time of day ("**First Adjourned Board Meeting**").

(iii) If at the First Adjourned Board Meeting a quorum is not present within half an hour of the time appointed for a properly convened meeting, the First Adjourned Board Meeting shall be

adjourned again for 7 (seven) days to be held at the same place and time of day ("**Second Adjourned Board Meeting**").

(iv) At an original or Adjourned Board Meeting, the Directors present shall, subject to the provisions of the Act and this Agreement, constitute a quorum, provided that no Affirmative Voting Matter shall be discussed or transacted or voted upon at any such Board Meeting save with the written consent of the Investor.

(v) First or Second Adjourned Board Meeting may be held prior to or later than 7 days if agreed to by all the Directors.

3.12. Committees of the Board

(i) Only the Board can appoint a committee of Directors or delegate its powers to any Persons.

(ii) The Investor Director or his respective nominee (as may be decided by the Investor) shall be appointed constituting at 50% of its directors on all the committees formed by the Board.

(iii) The provisions relating to the proceedings of Board Meetings contained herein shall apply *mutatis mutandis* to the proceedings of the meetings of any committees of the Board.

3.13. Telephonic/Video Participation: The Directors may participate and vote in the Board Meetings by telephone or video conferencing or any other means of contemporaneous communication, in the manner as permitted under Laws. Notwithstanding the aforesaid, it is clarified that in relation to any Affirmative Vote Items, the written confirmation of the Investor approving the proposal with respect to the Affirmative Voting Matters shall always be required prior to the relevant Board Meeting (in which such Affirmative Voting Matter is to be tabled) before the Board may transact or take any decision in relation to the Affirmative Voting Matters.

3.14. Circular Resolutions: The Board may act by written resolution, or in any other legally permissible manner, on any matter, except in respect of matters specified otherwise in this Agreement, or which by Law may only be acted upon at a meeting. Subject to any restrictions imposed by Law, no written resolution shall be deemed to have been duly adopted by the Board, unless such written resolution shall have been approved by the requisite majority of Directors under Law and as provided in various provisions in this Agreement, subject to compliance with Clause 0.

3.15. Chairman: The chairman of the Board shall be one of the Investor Directors.

3.16. Alternate Directors: Any Director appointed to the Board shall be entitled to nominate an alternate Director to attend and vote at Board Meetings in his absence. Such alternate Directors shall be approved in

writing by the Shareholders and shall be appointed by the Board in accordance with the provisions of the Act.

3.17. Decisions of the Board: Except as otherwise required by the relevant Laws and except for decisions in connection with Affirmative Voting Matters, all decisions of the Board shall be made by simple majority.

3.18. Liability of the Investor Director:

(i) The Promoter and the Company expressly agree that the Investor Directors shall be non-executive Directors; and the Investor Directors shall have no liability whatsoever relating to the conduct of Company business,

(ii) Subject to applicable Law, the Company shall indemnify the Investor Directors against any act, omission or conduct (including, contravention of any Law) of or by the Company, its officials, employees, managers, representatives or agents, or the Shareholders, as a result of which, in whole or in part, any Investor Directors is made party to, or otherwise incurs any Claims, including a loss pursuant to or in connection with any action, suit, claim or proceeding arising out of or relating to any such act, omission or conduct or any act or omission by the Investor Directors at the request of or with the consent of the Company, its officials, employees, managers, representatives or agents or the Shareholders or on account of any Investor Directors being construed or deemed as an "occupier" or "officer in charge" under any Laws.

(iii) The Promoter shall have a right to appoint Chief Executive Officer (CEO) of the Company.

3.19. Affirmative Voting Matters:

(i) Notwithstanding any other provision of this Agreement or any power conferred upon the Board by this Agreement, the Act or the Articles, neither the Company nor any Shareholder, Director, committee member, or any of their respective delegates shall, without the affirmative written consent or approval of the Investor, take any decisions or actions in relation to any of the matters set forth in Schedule 2 ("**Affirmative Voting Matter**"), whether in any Board Meeting, meeting of a committee of Directors, general meeting, through any resolutions by circulation or otherwise, with respect to the Company.

(ii) The principles set out in this Clause 0 are fundamental to the governance of the Company and each Party undertakes not to commit any act or omission that would violate this Clause 0.

(iii) If any other provision of this Agreement conflicts with the provisions of this Clause 0, the provisions of this Clause 0 shall prevail and be given effect.

3.20. Business Exclusivity:

(a) The Key Employees shall devote all of their working time, energy and efforts to the activities of the Company and the promotion of the Business and shall not assist, advise or obtain any rights in any other business or commercial venture without obtaining the prior written approval of the Investor. Further, the Key Employees shall also execute an employment agreement with the Company as to the reasonable satisfaction of the Investor.

(b) The Promoter and the Company undertake that, except with the prior written consent of the Investor, all new projects and businesses relating to the Business shall only be undertaken by the Company, and not through any other Affiliate of the Promoter.

(c) The Promoter shall ensure that all opportunities for new projects and businesses relating to the Business that are developed or sourced by, or offered to the Promoter, shall be referred exclusively to the Company.

(d) In consideration of the Investor investing in the securities of the Company the Promoter agrees that he will not, directly or indirectly, (as long as any of the Investor holds any Securities in the Company), set up, solicit business on behalf of, render any services to, engage in, guarantee any obligations of, extend credit to, or have any ownership interests or other affiliation in, any business or endeavour other than the Company (whether directly or indirectly), *provided that* nothing contained herein will restrict the Promoter from investing up to 2% (Two percent) of a listed company's securities, as long as such investment is not accompanied by any corporate governance or management rights.

3.21. ESOP

(i) The Company shall reserve (by way of an in-principle Board resolution) an employee stock option plan comprising of __ % post-Closing Share Capital on a Fully Diluted Basis ("**ESOP**") for the benefit of the senior management and employees of the Company, on terms (including conversion or exercise price of the options) agreeable to the Investor. The ESOP may, if so decided by the Board, be managed by an ESOP trust or by an ESOP advisory committee to be formed by the Board on the

terms of reference determined by the Board and the first of such terms of reference framed and adopted being acceptable to the Investor. Shares to the ESOP Pool shall be issued by way of fresh issue and thus, the shareholding of the existing shareholders and the Investor shall be affected accordingly.

(ii) All employees of the Company including the members of the senior management, purchasing, or receiving options to purchase, Equity Shares under the ESOP following the date hereof shall be required to execute share purchase or option agreements, in the manner stated in the ESOP scheme of the Company.

(iii) Options issued under the ESOP or any other employee or management stock option plan of the Company issued by the Company shall be convertible only into Equity Shares.

(iv) Further, it has been agreed that any unallocated options forming part of the ESOP pool at the time of the Investor's exit as set out in Clause 0, shall be offered to the Shareholders, which subject to applicable Law, shall be entitled to buy such Shares from the trust (if any) at nominal value, or the capital structure shall be re-organized in the manner, where the Investor gets the corresponding number of shares as to the un-allocated options and/or Shares.

4. Shareholders Meetings

4.1. General Meetings: An annual general meeting of the Shareholders shall be held as per the provisions of the Act. Subject to the foregoing, the Board, on its own or at the request of the Investor, may convene an extraordinary general meeting of the Shareholders, whenever it may deem appropriate.

4.2. Notices for General Meetings:

(i) At least 21 (twenty-one) days' prior written notice of every annual general meeting of the Company shall be given to all Shareholders whose names appear on the register of members of the Company, Directors, and the auditors of the Company.

(ii) A meeting of the Shareholders may be called by giving shorter notice with the consent (written or through electronic mode) of the minimum number of Shareholders as provided under the Act, provided however that the Shareholders consenting to the shorter notice shall include the Investor.

4.3. Contents of Notice: The notice shall specify the place, date, day and time of the meeting. Every notice convening a meeting of the Shareholders shall set forth in full and sufficient detail the business to be transacted

thereat, and no business shall be transacted at such meeting unless the same has been stated in the notice convening the meeting.

4.4. Chairman for General Meeting

(i) The chairman of the Board shall be the chairman for all general meetings. The chairman of the general meeting shall have any second or casting vote, in case of a tie of votes.

(ii) English shall be the language used at all Shareholder meetings and non-English speaking Shareholders shall be required to express themselves through interpreters who have entered into confidentiality agreements with the Company.

4.5. Proxies and Authorised Representatives:

(i) Any Shareholder of the Company may appoint another Person as his proxy (and in case of a corporate shareholder, its authorized representative) to attend a meeting and vote thereat on such Shareholder's behalf, provided that the power given to such proxy or representative must be in writing.

(ii) Any Person possessing a proxy or other such written authorization with respect to any Equity Shares shall be able to vote on such Equity Shares and participate in meetings as if such Person were a Shareholder personally present at the meeting, subject to applicable Law.

4.6. Quorum for General Meetings: 2 (Two) Shareholders of the Company, provided that the presence of an authorized representative of the Investor, shall be necessary to form a quorum for a valid general meeting unless the authorized representative of the Investor provides a written notice prior to the commencement of any general meeting or adjourned meeting waiving the requirement of his presence to constitute valid quorum for a particular general meeting or adjourned meeting, as the case may be.

4.7. Adjournment of General Meetings for lack of Quorum

(i) If a quorum is not present within 30 (thirty) minutes of the scheduled time for any Shareholders meeting or ceases to exist at any time during the meeting, then the meeting shall be adjourned, to the same day, place and time in the next succeeding week (it being understood that the agenda for such adjourned meeting shall remain unchanged and the quorum for such adjourned meeting shall be the same as required for the original meeting).

(ii) In the event the agenda for an original meeting and consequently an adjourned meeting only contain matters other than Affirmative Voting Matters listed in Schedule 2, then even if authorized representatives of the Investor are not present at such an adjourned meeting, or indicates by writing his consent or dissent on the matters on the agenda of such meeting, the quorum shall be deemed to have been validly constituted for such meeting even without the presence of such authorized representatives of the Investor. It is clarified that provisions relating to quorum at adjourned meetings contained in this paragraph will not apply to any meeting in which one or more Affirmative Voting Matters are to be considered, save with the prior written consent of the Investor obtained on any such Affirmative Voting Matters, which consent may be unqualified or conditional.

4.8. Decision Making: Except as otherwise required by the relevant applicable Laws and except for Affirmative Voting Matters (which shall require the affirmative vote of the Investor as stated in Clause 0), all decisions of the Shareholders of the Company shall be made by simple majority.

4.9. Electronic Participation:

(i) The Shareholders may participate and vote in general meetings by telephone or video conferencing or any other means of contemporaneous communication, in the manner permitted under Law.

(ii) Notwithstanding the aforesaid, it is clarified that in relation to any Affirmative Voting Matter, the written confirmation of the Investor approving the proposal with respect to the Affirmative Voting Matter shall always be required.

4.10. Voting: Each Equity Security by the Investor shall carry votes equal to the number of shares held by Investor at every meeting of the Shareholders.

5. Pre-Emptive Rights for New Issues of Equity Securities

5.1. In the event the Company is desirous of issuing any new Equity Securities after the Closing Date (other than under an IPO), including by way of a preferential allotment ("**Proposed Issuance**"), the Company shall comply with Clause 0 and shall provide, a right to both the Investor and the Promoter (collectively "**Pre-emptive Right Holder(s)**") to participate on *pro-rated* basis (based on the respective shareholding of the Pre-emptive Right Holders computed on a Fully Diluted Basis) in any such Proposed Issuance ("**Pre-emptive Right**").

The Company shall give the Pre-emptive Right Holders written notice of any such Proposed Issuance ("**Issuance Notice**") specifying:

(i) the number and class of Equity Securities proposed to be issued ("**Issuance Shares**");

(ii) the price per Equity Security of the Proposed Issuance ("**Issuance Price**");

(iii) the manner and time of payment of the subscription amount; and

(iv) the date of the Proposed Issuance (the "**Offered Terms**").

5.2. The Pre-emptive Right Holders shall be entitled to exercise their Pre-emptive Right by issuing a written notice to the Company, within 30 (thirty) days from the date of receipt of the Issuance Notice, intimating the Company that they wish to exercise their Pre-Emptive Right ("**Exercise Notice**") and shall pay for and subscribe to such number of Issuance Shares as they wish to subscribe to, at the Issuance Price and on the terms and conditions set out in the Issuance Notice. Subject to the receipt of the payment against exercise of the Pre-emptive Right by the Pre-emptive Right Holders, the Company shall issue and allot such number of the Issuance Shares as is set out in the Exercise Notice to the Pre-emptive Right Holders on the date of closing of the issuance as stated in the Issuance Notice.

5.3. In the event that either of the Pre-emptive Right Holders, entitled to participate in such Proposed Issuance do not subscribe to its respective portions of the Proposed Issuance ("**Non-Participating Right Holder**"), then the other Pre-emptive Right Holder shall have the right to subscribe to such Issuance Shares as remains unsubscribed ("**Unsubscribed Issuance Shares**") by the Non-Participating Right Holder, over and above his Pre-emptive Right.

5.4. Upon becoming aware of a Non-Participating Right Holder's intent, to not subscribe to its respective portion of the Proposed Issuance, the Company shall promptly issue a notice ("**Unsubscribed Issuance Notice**") in writing to the other Pre-emptive Right Holder intimating it of the number of Unsubscribed Issuance Shares and offering such Pre-emptive Right Holder, the right to subscribe thereto.

5.5. If the Pre-emptive Right Holder wishes to exercise its right to subscribe to all or a portion of the Unsubscribed Issuance Shares (by itself or through any of its Affiliates), it shall within 30 (thirty) days from the date of the Unsubscribed Issuance Notice, issue a written notice to the Company intimating the Company of the number of Unsubscribed Issuance Shares it wishes to subscribe to ("**Unsubscribed Issuance Exercise Notice**") and shall pay for and subscribe to such number of

Unsubscribed Issuance Shares at the Issuance Price and on the terms and conditions set out in the Issuance Notice. Subject to the receipt of the payment against the Unsubscribed Issuance Shares by the Pre-emptive Right Holder, the Company shall issue and allot such number of the Unsubscribed Issuance Shares as is set out in the Unsubscribed Issuance Exercise Notice to the such Pre-Emptive Right Holder within 7 (seven) Business Days of the Unsubscribed Issuance Exercise Notice.

5.6. If the Pre-emptive Right Holders do not, in full or in part, exercise their Pre-emptive Right as mentioned in Clause 0 or the Investor does not subscribe to, in full or in part, the Unsubscribed Issuance Shares as mentioned in Clause 0, then the Board may, in its discretion, issue and allot such of the Issuance Shares or Unsubscribed Issuance Shares (as the case may be) as are not subscribed by the Pre-emptive Right Holders in Clause 0 or the Investor in Clause 0, to any Person as it deems fit on the terms and conditions set out in the Issuance Notice within a period of 60 (sixty) days from the date of the Issuance Notice. In the event the Company does not complete the issuance and allotment to such party within 60 (sixty) days from the date of the Issuance Notice, the Company shall not proceed with such issuance and allotment without issuing a fresh Issuance Notice and following the procedure set out in this Clause 5.

5.7. Notwithstanding the above, there exists no commitment by the Investor to further capitalize the Company or to provide finance or any other form of support to the Company, including in the form of loans or guarantees or any security.

5.8. Anti-Dilution Adjustments:

The Investor shall be entitled to broad-based weighted average anti-dilution protection in relation to any and all Equity Securities held by the Investor ("**Protected Shares**"), in the event the Company issues any Equity Securities (other than pursuant to an IPO) at a price per Equity Security that is less than the price paid by the Investor to acquire the Protected Shares This anti-dilution mechanism shall be accomplished by issuing such number of Equity Shares to the Investor at the lowest price possible under Law, so as to give full effect to the broad-based weighted average anti-dilution protection right set out herein.

6. Transfer of Shares

6.1. The Company hereby agrees and confirms that it shall not record any Transfer or agreement or arrangement to Transfer in its books and shall not recognize or register any equitable or other claim to, or any interest in, such Equity Securities which have been Transferred in any manner other than as permitted under this Clause 0, including any indirect

Transfers of Equity Securities by the Shareholders and all such purported Transfers shall be void *ab initio*, as well as a breach of this Agreement.

6.2. The Equity Securities held by the Investor under this Agreement shall, subject to the Promoter's right of first offer as set out in Clause 0 at all times be freely Transferable to any Person (including Affiliates) without the prior consent of the Company or the Promoter. *Provided that*, the Investor will not sell any of the Equity Securities to Competitors, during the period of 5 (five) years from the Closing Date, without prior written approval of the Promoter.

6.3. Lock-in

(i) The Promoter and his Affiliates shall not Transfer, in any way or manner any of the Equity Securities held by them ("**Restricted Shares**") for a period of 5 (five) years from the Closing Date ("**Initial Restriction Duration**"). Subsequent to the expiry of Initial Restriction Duration, the Promoter and / or its Affiliates shall be entitled to freely Transfer the Equity Securities held by it to any Person subject to the provisions of Clause 0, as set out herein.

(ii) Notwithstanding anything contained above, at any time after the Closing Date, the Promoter and/or its Affiliates may, in aggregate, Transfer only up to 5% (five percent) of the Equity Securities held by them in the Share Capital (on Fully Diluted Basis) ("**Permitted Transfer**"), to any Third Party (which is not a Competitor), without the requirement of the Investor's prior consent to such Transfer, subject to the right of first refusal (and not subject to Tag Along Right as set out in Clause 0) of the Investor as set out herein below

(iii) The Parties shall have customary voting rights, as prescribed under the Act, in respect of all the Equity Securities held by each.

6.4. Right of first refusal of the Shareholders

(i) Save as otherwise provided in Clause 0 and 6.3, if any Shareholder proposes to Transfer any of the Equity Securities held by it in the Company, either directly or indirectly, to any Person ("**Proposed Transferee**"), then the other Shareholders (the "**Right Holders**") shall have a right of first refusal in respect of such Transfer. The process to be followed for the exercise of the right of first refusal is set out below:

(a) If any of the Shareholder proposes to Transfer any Equity Securities ("**Transferring Shareholder**"), it shall first give a written notice (hereinafter referred to as

"**ROFR Notice**") to all the Shareholders, including the Investor. The ROFR Notice shall, inter alia, state

(i) the identity of the Proposed Transferee;

(ii) the number of Equity Securities proposed to be Transferred (hereinafter referred to as the "**Transfer Shares**") and the number and class of Equity Securities the Transferring Shareholder owns at that time on a Fully Diluted Basis;

(iii) the proposed price per Transfer Shares ("**ROFR Price**") and other material terms and conditions, if any, of the proposed Transfer; and

(iv) the proposed date of consummation of the proposed Transfer. Such notice shall be accompanied by documents evidencing key commercial terms as agreed between the Transferring Shareholder and the Proposed Transferee.

(b) The Right Holders shall be entitled to respond to the ROFR Notice by serving a written notice (the "**ROFR Exercise Notice**") on the Transferring Shareholder prior to the expiry of 30 (Thirty) days from the date of receipt of the ROFR Notice (the "**ROFR Period**"), communicating to the Transferring Shareholder, whether or not the ROFR Price and the terms set out in the ROFR Notice are acceptable to it, and if acceptable, specifying the number of Equity Securities with respect to which such Right Holder proposes to exercise (either by itself or through an Affiliate or a nominee)its right of first refusal. In the event that the Right Holder decides to exercise its right of first refusal, the Transferring Shareholder shall Transfer such number of Equity Securities to the Right Holder as mentioned in the ROFR Exercise Notice at the ROFR Price and on the terms as are mentioned in the ROFR Notice, within the period mentioned in the ROFR Notice or within 30 (Thirty) days of the Right Holder delivering the ROFR Exercise Notice, whichever is earlier.

(c) In the event that the Right Holder(s) does not deliver ROFR Exercise Notice to the Transferring Shareholder prior to the expiry of the ROFR Period or deliver ROFR Exercise Notice to purchase the

Transfer Shares, upon the expiry of the ROFR Period, (but after compliance with Clause 0) the Transferring Shareholder shall be entitled to Transfer such number of the Transfer Shares in respect of which ROFR Exercise Notice has not been delivered or has been delivered post expiry of the ROFR Period, to any Proposed Transferee mentioned in the ROFR Notice, on the same terms and conditions mentioned in the ROFR Notice and at a price per Equity Security not less than the ROFR Price and on terms no more favourable to such Proposed Transferee than the terms offered to the Right Holder in the ROFR Notice, provided that such Proposed Transferee shall execute a Deed of Adherence.

(d) If completion of the sale and Transfer to such Proposed Transferee does not take place within the period of 60 (sixty) days following the expiry of the ROFR Period, the Transferring Shareholder's right to sell the Transfer Shares shall lapse and the provisions of Clause 0 shall once again apply to the Transfer Shares.

(e) Where a Right Holder requires prior legal, governmental, regulatory or shareholder consent for acquiring the Transfer Shares pursuant to this Agreement, then, notwithstanding any other provision of this Agreement, such Right Holder shall only be obliged to acquire the Transfer Shares once such consent or approval is obtained, and the Parties shall use their reasonable endeavours to obtain any such required approvals.

6.5. Tag-Along Right of the Investor

(i) In the event that the (i) the Investor does not exercise its right of first refusal as set out in Clause 0, or (ii) the Transferring Shareholder proposes to Transfer such number of the Transfer Shares in respect of which the right of first refusal is not exercised, as set out in Clause 6.4 to the Proposed Transferee, the Investor shall have the right (the "**Tag Along Right**") to sell up to such number of Equity Securities held by the Investor on a *pro rata basis* (computed on a Fully Diluted Basis) in the proposed Transfer by the Transferring Shareholder at the same price per Equity Security (which shall not be less than the ROFR Price under Clause 6.4) and on the same terms on which the Transferring Shareholder proposes to Transfer the Transfer Shares .Provided however that, if the Transferring Shareholder(s)

proposes to Transfer such number of Equity Securities as will result in the Promoter ceasing to hold at least 5% (five percent) of the Share Capital, the Investors shall have a Tag Along Right to the extent of all the Equity Securities held by the Investor and all such Equity Securities shall be deemed to be Tag Along Shares (as defined below) for the purposes of this Clause 0.

(ii) If the Investor desires to exercise its Tag Along Right, it shall exercise the said right by giving the Transferring Shareholder a written notice ("**Tag Along Exercise Notice**") to that effect within the ROFR Period, relevant to such ROFR Notice, as the case may be, specifying the number of Equity Securities held by it with respect to which it has elected to exercise its Tag Along Right, (the "**Tag Along Shares**") and upon giving such Tag Along Exercise Notice, the Investor shall be deemed to have effectively exercised its Tag Along Right.

(iii) If the Investor decides to exercise the Tag Along Right, the Transferring Shareholder shall cause the Proposed Transferee to purchase from the Investor, the Tag Along Shares at the same price per Equity Security (which shall not be less than the ROFR Price under Clause 6.4) at which the Transfer Shares are being purchased from the Transferring Shareholder. The Investor will not be required to make any representation, provide any covenants or undertakings, grant any indemnifications or incur any obligations to the Proposed Transferee or any other Person (other than a representation on the clear title of the Tag Along Shares). The Transferring Shareholder shall ensure that all of the terms of the proposed Transfer offered by the Proposed Transferee are also offered to the Investor for the same consideration, provided that the Investor may, subject to applicable Law, choose to receive (in its absolute discretion) the cash equivalent of any such consideration which is in a form other than cash.

(iv) If for any reason, the Proposed Transferee acquiring the Transfer Shares hereunder is unable to or refuses to acquire the Tag Along Shares in respect of which the Investor has exercised its Tag Along Right (or any part thereof) within 60 (Sixty) days, then, at the sole option of the Investor, the Transferring Shareholder shall not be entitled to Transfer any of its Equity Securities held by them in the Company to such Proposed Transferee.

(v) It is clarified that in the event that a Transfer under this Clause 0 qualifies as a Liquidity Event, the Investor shall, with respect to each Equity Security held by the Investors involved in such exit, be entitled to receive no less than the Preference Amount.

6.6. Right of First Offer of the Promoter

(i) Subject to clauses 6.2 if, at any time prior to the expiry of the Exit Period, the Investor ("**Transferring Investor**") proposes to Transfer any of the Equity Securities held by it in the Company ("**Promoter ROFO Shares**"), either directly or indirectly, to any non-Affiliate Third Party (other than to its own subsidiary, affiliates or relative), then the Promoter shall have a right of first offer on such Transfers of the Promoter ROFO Shares in such proportion as the Promoter may decide in their discretion. The process to be followed for the exercise of the right of first offer is set out below:

(a) The Transferring Investor shall first give a written notice (hereinafter referred to as "**Promoter ROFO Notice**") to the Promoter ("**Promoter ROFO Offerees**"). The Promoter ROFO Notice shall state the number of Promoter ROFO Shares proposed to be Transferred and the number and class of Equity Securities the Investor owns at that time on a Fully Diluted Basis.

(b) The Promoter ROFO Offerees shall be entitled to respond to the Promoter ROFO Notice by serving a written notice (the "**Promoter ROFO Acceptance Notice**") on the Transferring Investor prior to the expiry of 30 (Thirty) days from the date of receipt of the Promoter ROFO Notice (the "**Promoter ROFO Period**"), specifying the price at which the Promoter ROFO Offerees (collectively or any one of them individually) propose to exercise their right of first offer and acquire from the Transferring Investor all of the Promoter ROFO Shares ("**Promoter ROFO Price**") which shall not be less than the higher of (I) FMV, and (II) the cost incurred by the Investor for the Promoter ROFO Shares.

(c) On receipt of the Promoter ROFO Acceptance Notice, the Transferring Investor shall be entitled to Transfer the Promoter ROFO Shares (i) to the Promoter ROFO Offeree at the Promoter ROFO Price, or (ii) to a non-Affiliated Third Party at a price not lower to the price offered by the Promoter ROFO Offeree in the Promoter ROFO Acceptance Notice.

(d) The Investor shall, within a period of 120 (one hundred twenty) days from the earlier of (i) the date of receipt of the Promoter ROFO Acceptance

Notice by the Transferring Investor, or (ii) the date of expiry of the Promoter ROFO Period, effect the Transfer of the Promoter ROFO Shares at a price not lower to the price offered by the Promoter ROFO Offerees.

(ii) If completion of the sale and Transfer of the Promoter ROFO Shares to the Third Party does not take place within the period of 90 (Ninety) days set out in Clause 00 above, the Transferring Investor's right to sell the Promoter ROFO Shares to the Third Party shall lapse and the provisions of this Clause 0 shall once again apply to the Promoter ROFO Shares.

(iii) Where a Party requires prior legal, governmental, regulatory or shareholder consent for selling or acquiring the Promoter ROFO Shares pursuant to this Agreement, then, notwithstanding any other provision of this Agreement, that Party shall only be obliged to sell or acquire the shares, as the case may be, once such consent or approval is obtained, and the Parties shall use their reasonable endeavors to obtain any such required approvals.

(iv) Notwithstanding the foregoing or anything to the contrary herein, the provisions of this Clause 0 shall not apply in the case of Transfers of the Equity Securities by the Transferring Investor to its Affiliates / relatives.

7. Exit

7.1. The Company shall consummate an IPO or a secondary sale to a financial investor involving all or such portion of the Equity Securities held by the Investor and offered by the Investor upon completion of __ years from the Closing Date. The Board shall, with the prior written consent of the Investor, and in consultation with a firm of independent merchant bankers, and subject to such statutory guidelines as may be in force, decide on:

(i) In case of an IPO:

(a) The method of listing the Equity Securities, *i.e.* either:

(I) Through a public issue of fresh Equity Securities; or

(II) Through an offer of existing Equity Securities by some or all the Shareholders (an "**Offer of Existing Securities**"); or

(III) A combination of (A) and (B).

(b) The price and other terms and conditions of the IPO.

(c) The timing of the IPO.

(d) The stock exchanges on which the Equity Securities are to be listed.

(e) Any other matters related to the IPO.

(ii) In case of a secondary sale:

(a) the identity of the purchaser;

(b) the price; and

(c) all other matters related to the secondary sale.

7.2. Any such secondary sale or an IPO shall be subject to the approval of the Investor.

7.3. The Promoter shall offer as many incremental Equity Securities in the IPO as may be required, under Law, to enable the listing of Equity Securities of the Company. Notwithstanding the foregoing, in the event of the IPO by way of an Offer of Existing Securities, the Investor shall have the right (but not the obligation) to offer their Equity Securities for sale in the IPO, in priority to any other Shareholders of the Company.

7.4. The Promoter hereby agrees to vote in favour of and to do all acts and deeds necessary for effecting the IPO. The Promoter agrees that, in the event of an IPO, it shall offer such number of their Equity Securities for a lock-in as may be required to meet the minimum lock-in requirements under the applicable SEBI regulations and guidelines. The Investor shall not be required to call itself and the Company shall not refer to the Investor as "**Promoter**" or "**Founder**" in the offer documents or filings with the SEBI or any other Governmental Authorities, nor shall the Investor be required to offer any of such Investor's Equity Securities for such lock-in.

7.5. All fees and expenses (including *inter alia* payment of all costs relating to the listing and sponsorship, underwriting fees, listing fees, merchant bankers fees, bankers fees, brokerage, commission, and any other costs that may be incurred due to the changes to Law for the time being in force) required to be paid in respect of the IPO, shall be borne and paid by the Company and all intermediaries, agents and managers shall be appointed by the Company in consultation with the Investor. Provided that if the Law requires the Investor to bear any expenses in relation to an IPO by offer for sale or any other method, the Investor's liability in relation thereto will be limited only to the statutory expenses under Law.

7.6. The Company and the Promoter shall indemnify the Investor to the maximum extent permitted under Law, against any loss, Claim, damage, liability (including reasonable attorneys' fees), cost or expense arising out

of or relating to any misstatements and omissions of the Company in any registration statement, offering document or preliminary offering document, and like violations of applicable securities Laws by the Company or any other error or omission of the Company in connection with a public offering hereunder, other than with respect to information provided by such Investor, in writing, expressly for inclusion therein.

7.7. In the event the Company undertakes an IPO, each of the Shareholders shall cooperate to facilitate the IPO, including without limitation (A) the exercise of its voting rights at relevant Shareholder meetings, and (B) causing its nominated Directors to execute all documents as required by the Company from time to time in connection with the IPO.

7.8. **Exit Default Rights**

(i) If at the expiry of the 180 (one hundred eighty) days from the __th anniversary of the Closing Date (the "**Exit Period**"), the Company does not or is unable to, for any reason, complete an IPO or a secondary sale in accordance with Clause 0, then the Investor by issuing a written notice ("**Exit Notice**") to the Company at any time subsequent to the expiry of the Exit Period, have the right to require the Company to appoint a merchant banker acceptable to the Investor to find a buyer for the Equity Securities held by the Investor at a price per share that is not less than the Exit Price (five times of the Investment made by the Investor). Upon receipt of an Exit Notice, the Company and Promoter shall provide an exit to the Investor in the manner provided in this Clause 0 at a price per share that is not less than the Exit Price within 2 (two) years from the date of completion of __ years.

(ii) It is clarified that in the event that an exit under this Clause 0 qualifies as a Liquidity Event, the Investor shall, with respect to each Equity Security held by the Investor involved in such exit, be entitled to receive the higher of the (i) Exit Price, or (ii) the Preference Amount.

7.9. **Procedure for determination of FMV**

7.9.1 The Promoter and the Investor shall mutually agree upon and appoint 2 (two) reputed investment banks or Big Five Firms (each an "**Independent Valuer**") to compute the FMV of Equity Securities.

7.9.2 If the Promoter and the Investor are, within 10 (ten) days of commencing the exercise of appointment of Independent Valuer, unable to agree upon the 2 (two) Independent Valuers, then the Investor shall appoint 1 (one) Independent Valuer ("**The Investor Valuer**") and the Promoter shall appoint 1 (one)

Independent Valuer ("**Promoter Valuer**") within 15 (fifteen) days from expiry of such 10 (Ten) days mentioned above, to compute the FMV of the Equity Securities ("**Preliminary Valuation**") and deliver a valuation report ("**Preliminary Valuation Report**") within a period of 1 (one) month of the date of their appointment ("**FMV Computation Date**").

7.9.3 *Provided that*, if either the Investor or the Promoter fail to appoint the Investor Valuer or Promoter Valuer (as the case maybe) within the time period stipulated herein, the Independent Valuer, so appointed by the other Party shall be deemed to be the sole authority to determine the FMV as per this Clause0 and the decision of such Independent Valuer shall be final and binding on the Parties.

7.9.4 In the event that the greater (in value) of the Preliminary Valuations ("**Greater Preliminary Valuation**") is equal to or less than 120% (one hundred twenty percent) of the lesser (in value) of the Preliminary Valuations ("**Lesser Preliminary Valuation**"), then the average of the 2 (two) Preliminary Valuations shall be the FMV.

7.9.5 In the event that the Greater Preliminary Valuation is greater than 120% (one hundred twenty percent) of the Lesser Preliminary Valuation, then the Investor Valuer and the Promoter Valuer shall, within 7 (seven) days from the FMV Computation Date, jointly select another reputed investment bank or Big Five Firm (not being either of the Independent Valuers) ("**Third Valuer**") to evaluate the 2 (two) Preliminary Valuation Reports and deliver a report, within 30 (thirty) days of its appointment, selecting 1 (one) of the 2 (two) Preliminary Valuations or such other intermediate valuation (falling between the monetary range of Lesser Preliminary Valuation and Greater Preliminary Valuation)as the FMV.

7.9.6 The selection of the FMV by such Third Valuer shall be the final and binding FMV.

7.10. **Buy Back of Securities**

(i) In the event, the Company is not able to provide an exit to the Investor through an IPO or a secondary sale or through the other exit option set out in Clause 0, then on the expiry of 6 (Six) years from the Closing Date, the Company shall buy back the Equity Securities as held by the Investor ("**Investor Shares**") at that time in the Company (the "**Buy-Back**") at the higher of the Investment Amount or the FMV of such Equity Securities, calculated in the manner provided in Clause 0 above, subject to applicable Laws.

(ii) Upon receipt of the Buy-Back Notice, the Company shall undertake all procedures necessary under the Act to effect the Buy-Back including obtaining the necessary Board and Shareholder resolutions and shall effect the Buy-Back within 30 (thirty) days of receiving the Buy-Back Notice from the Investor.

8. Drag Along Rights

8.1. In the event that an exit is not provided to the Investor even after the expiry 30 (thirty) days from the Buy-Back Notice, the Investor shall have the right, exercisable by written notice to the Company ("**Drag Along Notice**"), to require the conducting of a Drag Sale, in a manner determined by the Investor in conjunction with an offer received by a Third Party (the "**Drag Sale Purchaser**") (including by way of sale of Equity Securities of the Company, sale of assets of the Company or a merger or amalgamation).

8.2. In the event of exercise of Drag Sale by the Investor, all the Shareholders (except the Investor) (collectively the "**Dragged Shareholders**") hereby agree to:

(i) Transfer up to all the Equity Securities of the Company held by such Dragged Shareholders to the Drag Sale Purchaser, in furtherance of a Drag Sale, *provided that* the price (on a per Equity Security basis) offered to the Dragged Shareholders shall be the same as that offered to the Investor involved in such Drag Sale (subject, at all times, to the Investor receiving the higher of the (a) Exit Price, or (b) the Preference Amounts with respect to each Equity Security held by the Investor that is involved in such Drag Sale);

(ii) vote, as Shareholders of the Company and as holders of Equity Securities of the respective classes and series, in favour of a Drag Sale; and

(iii) execute and deliver any and all agreements, certificates, deeds, instruments and other documents reasonably required in connection therewith and to take all other steps requested by the Investor to cause such Drag Sale to be consummated, including, as appropriate, exercising their best efforts to cause all Directors under their control or influence to vote, as Directors, to approve the Drag Sale.

8.3. Upon receipt of the Drag Along Notice, the Company shall forthwith send such notice to all the Dragged Shareholders. A Drag Along Notice shall be revocable by the Investor by written notice to the Company at any time before the completion of the Drag Sale, and any such revocation shall not prohibit the Investor from serving a further Drag Along Notice subject to fresh compliance with the procedure laid down under this Clause 00.

On receipt of the Drag Along Notice, the Dragged Shareholders shall not directly or indirectly, approach the Drag Sale Purchaser to propose or negotiate any transaction in relation to the securities or assets of the Company.

8.4. The Company and the Promoter agree to provide such access and information as may be requested by the Drag Sale Purchaser, co-operating in any due-diligence conducted by such Drag Sale Purchaser and providing such representations, warranties and related indemnities with respect to the operations of the Company in addition to the title to the Equity Securities held by the Shareholders as are customary for such transactions.

9. Right of Inspection

9.1. The Investor shall, at all times, by giving a notice of at least 3 (three) days, be entitled to carry out inspection of site, accounts, documents, records, premises, and equipment and all other property of the Company during normal working hours through its authorized representatives or agents subject to execution of confidentiality and non-disclosure agreements with the Company or the Investor at its own cost and the Company shall use reasonable efforts to provide such information, data, documents, evidence as may be required for the purpose of and in the course of such inspection in connection therewith. The Investor shall be entitled, at its own cost and expense, to consult with the statutory auditors of the Company regarding the financial affairs of the Company. It shall be the responsibility of the Promoter to ensure that the obligations under this Clause 0 are given full effect.

9.2. The Company and the Promoter shall take all necessary and desirable actions in connection with the exercise of the Investors' rights under Clauses 0 and 0 hereof, including without limitation, the timely execution and delivery of such agreements and instruments and other actions reasonably necessary to co-operate with all prospective purchasers of the Equity Securities of the Company, to provide such access and information as may be requested by such Third Party purchasers, and co-operating in any due-diligence conducted by each such purchaser.

10. Information Rights

10.1. The Company shall deliver to the Investor (in relation to the Company), the following information:

(i) As soon as practicable, but in any event within 90 (Ninety) days after the end of each Financial Year of the Company, the audited Financial Statements (including the management letter from the auditor);

(ii) As soon as practicable, but in any event within 30 (Thirty) days after the end of each quarter of each Financial Year of the Company, unaudited quarterly management accounts;

(iii) As soon as practicable, but in any event within 15 (Fifteen) days after the end of each quarter, quarterly progress reports based on a format acceptable to the Investor and the Company;

(iv) As soon as practicable, but in any event no later than 30 (Thirty) days prior to the end of each Financial Year, the draft Annual Budget and draft Business Plan for the next Financial Year;

(v) As soon as practicable, copies of any reports filed by the Company with any Governmental Authority including copies of all filings (including Tax returns) made with Governmental Authority or such other filings as may be requested by the Investor, from time to time;

(vi) As soon as practicable, but in any event within 15 (Fifteen) days of such meeting, minutes of general meetings and Board Meetings; and

(vii) Promptly upon request by the Investor, but in any event within 10 (Ten) days, such other information as such the Investor may from time to time reasonably request.

10.2. The Financial Statements delivered under Clause 0 shall be prepared in English in accordance with Indian GAAP consistently applied with past practice for prior periods and shall be accompanied by a certificate signed by the Chairman of the Board certifying that such Financial Statements conform to the requirements of Clause 0 and fairly present the financial condition of the Company and its results of operation for the periods specified therein, subject to year-end audit adjustment.

10.3. All management reports to be provided by the Company under Clause 0 shall include a comparison of the financial results with the corresponding quarterly and Annual Budgets.

11. Use of Proceeds

All amounts invested by the Investor, in the Company shall be utilized for Business and Technology development related activities only and not for repayment of any loan taken by the Promoter / Company.

12. Invalid Transfers

The Company shall refuse to register any Transfer or other disposition of Equity Securities purported to be made by the Promoter or any other Shareholder in breach of any of the provisions herein contained. The Parties shall cause their nominees on the Board to cast their votes in such a manner

as to ensure that the Company registers all Transfers made in accordance with this Agreement and refuses to register a Transfer that is not in accordance with this Agreement.

13. Borrowings and Funding

In the event the Company proposes to borrow funds from any Person, including but not limited to banks and financial institutions, the Investor shall not be asked, or be required to give any warranties, letter of comfort and/or guarantees, of any nature whatsoever for any loans or with regard to any aspect of the business or functioning of the Company.

14. Pledge of Shares

The Investor shall not be required to pledge its Equity Securities or provide any support to any Third Party, including but not limited to lenders of the Company.

15. Representations and Warranties

Each Party represents to the other Parties that:

(i) Such Party has the authority and capacity to enter into, execute and deliver this Agreement and to perform its obligations and the transactions contemplated hereby and, if such Party is not a natural Person, such Party is duly incorporated or organised with limited liability and validly existing under the Laws of the jurisdiction of its incorporation or organization, having full corporate power and authority to enter into and perform its obligations under this Agreement; and

(ii) The execution and delivery by such Party of this Agreement and the performance by such Party of its obligations and the transactions contemplated hereunder have been duly authorised by all necessary corporate or other action of such Party.

16. Financial Accounting and Audits

16.1. Financial and accounting records: The Company shall maintain true and accurate financial and accounting records of all operations in accordance with all relevant Indian statutory and accounting standards and the policies from time to time adopted by the Board. The Financial Statements and accounts of the Company shall be prepared in English and shall be audited on an annual basis.

16.2. Statutory Auditors: For the current financial Year, the Company shall appoint any of the Auditor Firm of the Investor's choice along with the existing auditor of the Company to jointly conduct a financial audit of

the Company. Subsequently the existing auditor shall resign from such capacity and for the term of this Agreement, the Company shall appoint and retain Auditor Firm of the Investor's choice as the statutory auditors of the Company in accordance with applicable Law, who shall also be responsible for the audit. The Investor shall have right to seek appointment a practicing Chartered Accountant or a firm of Chartered Accounts of its choice as the statutory and internal auditors.

17. Other Covenants

17.1. Insurance

The Company shall maintain adequate directors' and officers' liability insurance for all Directors, in a form and of an amount acceptable to the Investor.

17.2. Good industry practices

The Company shall, and the Promoter shall cause the Company to, comply with applicable Laws in the conduct of its Business and affairs, and the Company shall conduct itself and operate in accordance with good industry practices, the terms of applicable Laws (including applicable Laws regulating foreign investment and exchange control) and any approvals received in terms thereof.

17.3. Promoter' Status

(i) The Company and the Promoter undertake that the Investor and/ or its Affiliates shall not be named or deemed as 'Founders', 'Promoter' or 'Sponsors' of the Company nor shall any declaration or statement be made to this effect, either directly or indirectly, in filings with regulatory or Governmental Authorities, offer documents or otherwise without the prior written consent of the Investor in writing.

(ii) The Company and the Promoter further undertake that the Investor, its respective officials, employees, nominee directors, managers, representatives or agents shall not be named or deemed as an 'occupier' or 'officer in charge' or 'officer who is in default' under any applicable Laws. In the event any Governmental Authority takes a view or draws an inference that the Investor or its Affiliates or its officials, employees, nominee directors, managers, representatives or agents, is a 'sponsor', 'occupier' or 'officer in charge' or 'officer who is in default', then the Company and/or the Promoter shall co-operate with the Investor to make such representations and make full disclosures to the Investor or such body or authority as may be required by the Investor to dispel or correct such inference or view under the Law.

(iii) Except as provided in Clause 0, the Promoter further undertakes that he shall not hold shares or directorships or equivalent positions in any other company or other Person which is in a competing business, without the prior written consent of the Investor. Provided that nothing contained herein will restrict the Promoter from investing up to 2% (Two percent) of a listed company's securities, as long as such investment is not accompanied by any corporate governance or management rights.

(iv) Key Employee Exclusivity and Non-Compete

The Promoter shall also serve as the CEO. The CEO and Key Employees shall devote all of their working time and effort to the Company and its business, and shall not assist, advise or obtain any rights in any other business or commercial venture without obtaining the prior approval of the Investor. The CEO shall be responsible for the day-to-day operations of the Company and shall have full authority to operate within the approved business plan. The Promoter shall serve the Company for at least __ years, from the Closing Date. The Key Employees shall not do any competing business during the tenure of their engagement with the Company and 2 years thereafter.

17.4. Ethical Practices

The Company and its officers, Directors, employees and agents shall, and the Promoter shall cause the Company to engage only in legitimate business and ethical practices in commercial operations and in relation to Governmental Authorities. None of the Company or any of its officers, employees or agents shall otherwise pay, offer, promise or authorize the payment, directly or indirectly, of any monies or anything of value to any government official or employee or any political party for the purpose of influencing any act or decision of such official or of any Governmental Authority to obtain or retain business, or direct business to any Person.

17.5. Filings

The Company shall act in good faith and take all steps and make all filings with the relevant Governmental Authority, as are necessary, from time to time, to maintain all consents, approvals and licenses that it requires under the applicable Laws, for the conduct of its business and operations.

17.6. Status of the Company

The Parties hereby acknowledge and agree that the Company is and shall be maintained as a 'private limited company' (as defined under the Act) and any conversion or action that would result in conversion of the

Company to a public limited company shall be subject to the prior written consent of the Investor.

17.7. Tax Covenants

The Company and the Promoter shall act in good faith and shall pay all Taxes (direct and indirect), duties, cess, fees or any other amount payable (whether by way of Tax or otherwise) as determined by the Government/ or any regulatory authority in India, under the applicable Laws of India. Further, the Company, and the Promoter shall take all steps to make the necessary Tax filings under the applicable Laws of India (including but not limited to the return of income for the relevant Financial Years, withholding Tax returns, etc.).

17.8. Annual Budget

The Annual Budget and Business Plan for each Financial Year shall be discussed and approved by the Board, which approval will require an affirmative vote by the the Investor no later than 30 (thirty) days before the beginning of such Financial Year. Upon the execution of this Agreement, the Promoter and the Company shall take all steps necessary, including the exercise of their rights at general meetings and causing their nominee Directors to exercise their rights at Board Meetings, to ensure that the Company operates the Business in accordance with the terms of the Annual Budget and the Business Plan agreed from time to time.

17. Related Party Transactions

Without prejudice to the requirements under Clause 0, the Company and the Promoter hereby undertake that any transactions with related parties shall be conducted at commercially justifiable terms and at an arm's-length basis, as provided in the Act.

18. Intellectual Property Rights

All the IP Rights arising out of the performance by the Company of its Business and the inputs of the Promoter in the course of his association with the Company, shall be owned by the Company and all Parties will assist the Company in securing such IP Rights as the Company may own by filing for appropriate protection under applicable Laws or by executing separate written agreements in the name of the Company. No Party will act in any manner derogatory to the proprietary rights of the Company over such IP Rights.

19. Termination

19.1. This Agreement may be terminated by the Party specified below, by the issuance of a notice in writing of at least 30 (Thirty) days, upon the happening of any of the following events, in the manner and to the extent stated below:

(i) With respect to a Party, upon such Party (and its Affiliates) ceasing to hold any Equity Securities (in the manner permitted hereunder); or

(ii) With respect to each Party, on all the Parties agreeing in writing to terminate this Agreement mutually; or

(iii) With respect to each Party, upon the consummation of the IPO or secondary sale.

19.2. The rights and obligations of the Parties under this Agreement, which either expressly or by their nature survive the termination of this Agreement, shall not be extinguished by termination of this Agreement. Without prejudice to the generality of the foregoing, Clauses 14 (Representation and Warranties), 0 (Confidentiality) 22 (Governing Law), 23 (Dispute Resolution), and 25 (Miscellaneous) shall survive the termination of this Agreement.

19.3. The termination of this Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to any Party against the other Parties, prior to such termination.

20. Events of Default

20.1. (a) In the Event of Default by the Company or the Promoter, the Investor may, but shall not be obliged to seek to resolve the matter on an amicable basis.

(b) Following amongst others shall be deemed to be events of defaults:

(i) Non-compliance of provisions of Act, IT related laws and any other legal compliance related to the Company;

(ii) Violation of any of the affirmative rights;

(iii) Non-fulfilment of condition of the Shareholders Agreement and/or Share Subscription Agreement (together, the "**Definitive Agreements**").

(c) Investors shall be entitled to three times of its investment, if the Company or the Promoter commits any of the above defaults.

20.2. If the matter that constitutes an Event of Default, or if the Investor determines that the matter constitutes an Event of Default, cannot be resolved on an amicable basis, the Investor may, without prejudice to any other rights or remedies it may have under Law, give notice ("**Put Notice**") to the Company to buy-back all or part of the Equity Securities held by the Investor ("**Put Securities**") at a price which is higher of three times of the Subscription Amount or the FMV ("**Put Price**").

20.3. Upon delivery of the Put Notice, the Company shall follow the procedure in the manner as set out in Clause 0.

20.4. In the event that the Investor has not received the Put Price pursuant to Clauses 0 and 0 above, the Board shall, within 60 (Sixty) days of the expiry of the period specified above, stand reconstituted and the Investor shall be entitled to appoint a majority of Directors on the Board.

20.5. Upon the occurrence of an Event of Default, the Investor shall not be subject to any transfer restriction whatsoever set out here in, including as set out in Clause 0, Clause 0 and Clause 0, in addition to its other rights hereunder, shall also have the right to exercise its drag along rights under Clause 0 at any time notwithstanding the non-expiry of the Exit Period which right the Investor may waive to the extent it deems fit, at its discretion. In the event that the Investor exercises such right pursuant to an Event of Default, the price at which the Equity Securities shall be sold in the Drag Sale to the Drag Sale Purchaser shall be subject to the Investor receiving no less than the Put Price.

20.6. In addition to the foregoing, the Company and Promoter agree, jointly and severally, to indemnify, defend and hold harmless the Investor and its Affiliates, directors, officers, representatives, employees and agents (collectively, the "**Investor Indemnified Persons**") from and against any and all Claims incurred by the Investor Indemnified Persons, as a result of, arising directly or indirectly from, or in connection with or relating to any matter inconsistent with, or any breach or inaccuracy of any representation, Warranty, covenant or agreement made or failure to perform (whether in whole or part) any obligation required to be performed by any of them pursuant to this Agreement. Any claim for indemnity pursuant to this Agreement shall be made by the Investor Indemnified Persons by notice in writing ("**Indemnity Notice**") to the other Parties. Any such compensation or indemnity shall be such as to place the Investor Indemnified Persons in the same position as they would have been in, had there not been any such breach.

20.7. Notwithstanding anything contained herein, the Investor shall be entitled to all the rights and remedies (including right to claim damages) which are available to the Investor under Law, equity or otherwise including such other rights and remedies as may be mutually agreed between the Parties in this Agreement.

21. Confidentiality

21.1. Each Party shall keep all information relating to each other Party, information relating to the transactions herein and this Agreement (collectively referred to as the "**Information**") confidential. None of the Parties shall issue any public release or public announcement or otherwise make any disclosure concerning the Information, without the

prior approval of the Investor; provided however, that nothing in this Agreement shall restrict any of the Parties from disclosing any information as may be required under applicable Law subject to providing a prior written notice of 10 (Ten) days to the other Parties. Subject to applicable Law, such prior notice shall also include (a) details of the Information intended to be disclosed along with the text of the disclosure language, if applicable; and (b) the disclosing Party shall also cooperate with the other Parties to the extent that such other Party may seek to limit such disclosure including taking all reasonable steps to resist or avoid the applicable requirement, at the request of the other Parties.

21.2. Nothing in this Clause shall restrict any Party from disclosing Information for the following purposes:

(i) To the extent that such Information is in the public domain other than by breach of this Agreement;

(ii) To the extent that such Information is required to be disclosed by any applicable Law or stated policies/standard practice of the Investor or required to be disclosed to any governmental authority to whose jurisdiction such Party is subject or with whose instructions it is customary to comply;

(iii) To the extent that any of such Information is/are later acquired by such Party from a source not obligated to any other Party, or its Affiliates, to keep such Information confidential;

(iv) The Investor shall have the right to prepare an information memorandum (without requiring the consent of the Promoter or the Company) and disclose the same to Third Parties (except for the Competitors during the Exit Period) for purposes of selling any of the Equity Securities held by the Investor to any prospective purchasers;

(v) Insofar as such disclosure is reasonably necessary to such Party's employees, directors or professional advisers, provided that such Party shall procure that such employees, directors or professional advisors treat such Information as confidential. For the avoidance of doubt, it is clarified that disclosure of information to such employees, directors or professional advisors shall be permitted on a strictly "need-to-know basis";

(vi) To the extent that any of such Information was previously known or already in the lawful possession of such Party, prior to disclosure by any other Party; and

(vii) To the extent that any information, materially similar to the Information, shall have been independently developed by such Party without reference to any Information furnished by any other Party.

21.3. Any public release or public announcement (including any press release, conference, advertisement, announcement, professional or trade publication, mass marketing materials or otherwise to the general public) containing references to the Investor or the investment made by the Investor in the Company, shall require the prior written consent of the Investor. Any request for such prior written consent shall be made at least 7 (seven) days prior to any public release or announcement.

22. Governing Law

This Agreement and the relationship among the Parties shall be governed by, and interpreted in accordance with, the laws of India. Subject to Clause 03, the courts in New Delhi shall have exclusive jurisdiction over all matters arising pursuant to this Agreement.

23. Dispute Resolution

23.1. If any dispute or difference arises between any of the Parties during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, including the question as to whether the termination of this Agreement by any Party has been legitimate, the Parties shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties, after reasonable attempts which attempt shall continue for not less than 30 (Thirty) days, gives 30 (Thirty) days' notice thereof to the other Party in writing.

23.2. All disputes, differences or claims arising out of or in connection with this Agreement including, any question regarding its existence, validity, construction, performance, termination or alleged violation which is not resolved under Clause 0 shall be resolved by binding arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996, as amended from time to time. The arbitration shall be conducted by a sole arbitrator.

23.3. The venue for such arbitration shall be New Delhi, and all proceedings shall be conducted in the English language.

23.4. A Party seeking to commence arbitration under this Clause shall first serve a written notice, specifying the matter or matters to be so submitted to arbitration, on the other Parties.

23.5. All claims and counter claims shall, to the extent such claims or counterclaims are known at the time any arbitration is commenced, be consolidated and determined in the same arbitration proceeding.

23.6. Deposits to cover the costs of arbitration shall be shared equally by the parties thereto. The award rendered by the arbitrator shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and

decide which of the parties thereto shall bear such costs or in what proportions such costs shall be borne by such parties.

23.7. The award rendered by the arbitrator shall be final and conclusive on all Parties, whether or not such Parties have taken part in the arbitration and shall be subject to forced execution in any court of competent jurisdiction.

23.8. Each Party shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement.

23.9. Nothing shall preclude either Party from seeking interim or permanent equitable or injunctive relief, or both, from the competent courts, having jurisdiction to grant relief on any disputes or differences arising from this Agreement. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy (including for monetary damages) through the arbitration described in this Clause 3.

24. Subsidiaries

24.1. Unless stated otherwise, any and all rights available to the Investor in or with respect to the Company under the Transaction Documents, including, without limitation, the right under Clause 0, shall be also available the Investor in the Company's Subsidiaries, applied *mutatis mutandis*, and the Company and Promoter shall procure that the Company's Subsidiaries comply with such related obligations.

24.2. The Company shall ensure that all of the rights, preferences and privileges of the Investor which are contained in this Agreement, including all management principles set out in this Agreement, shall be continuously made applicable to each of the future Subsidiaries of the Company and shall form part of the memorandum and articles of association or other charter documents of such Subsidiaries till such time the Investor holds any Equity Security in the Company.

25. Miscellaneous:

25.1. Waiver: No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorised representative of the waiving Party.

25.2. Cumulative Rights: All remedies of either Party under this Agreement whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.

25.3. Notices

(i) Notices, demands or other communication required or permitted to be given or made under this Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or email addressed to the intended recipient at its address set forth below, or to such other address or email number as a Party may from time to time duly notify to the others:

(a) If to the Company:

(i) Name: _____

(ii) Address: _____

(iii) Attention: _____

(iv) Email: _____

(b) If to the Investor:

(i) Name: _____

(ii) Address: _____

(iii) Attention:

(iv) Email: _____

(c) If to the Promoter:

(i) Name: _____

(ii) Address: _____

(iii) Email: _____

(ii) Any such notice, demand or communication shall, unless the contrary is proved, be deemed to have been duly served at the time of delivery in the case of service by delivery in person or by post, and on transmission in the case of service by email, provided that such notice, demand or communication shall also be dispatched by post within 1 (One) day of transmission of such notice, demand or communication by email.

25.4. Severability

(i) Each obligation under this Agreement shall be treated as a separate obligation and shall be severally enforceable as such in the event of any obligation or obligations being or becoming unenforceable in whole or in part.

(ii) To the extent that any provision or provisions of this Agreement are unenforceable they shall be deemed to be deleted from this Agreement and any such deletion shall not affect the

enforceability of the remainder of this Agreement not so deleted provided the fundamental terms of this Agreement are not altered.

25.5. Amendment/Variation: No amendment or variation of this Agreement shall be binding on any Party unless such variation is in writing and duly signed by all the Parties.

25.6. Fees: The Company agrees to reimburse expenses to the Investor in a sum up to INR _____ for closing of this transaction; without any supporting documents.

25.7. Taxes: Any payments payable to the Investor pursuant under this Agreement shall be increased to such amount as may be necessary so that the Investor receives the full amount it would have received (taking into account any Taxes payable on amounts payable by the Company) had those payments been made without that deduction.

25.8. No Assignment

(i) Subject to the provisions of this Agreement, the Company or the Founders shall not be permitted to assign this Agreement to any Person (including Affiliates) without the prior written approval of the Investor. It is hereby clarified that the Promoter shall not be permitted to assign any of their obligations or management/governance rights under this Agreement, without the prior written approval of the Investor.

(ii) The Investor may, subject to the provisions of this Agreement at its sole discretion, assign any of its rights under this Agreement to any Person of its choosing, upon any sale/transfer of the Equity Securities held by the Investor. Notwithstanding anything to the contrary, the Investor shall be allowed to freely transfer any of its right under this Agreement to its Affiliates.

25.9. Conflict with Articles: In the event of any conflict between the terms of this Agreement and those of the Articles, as amongst the Parties, and the Company, to the extent permitted by Law, the terms of this Agreement shall prevail over the Articles and the Parties shall take all such steps as are within their powers, to ensure that the terms and conditions of this Agreement are adhered to, and to the extent possible under the relevant Laws effect such amendments or alterations to the Articles of the Company to carry out the conditions of this Agreement in letter and in spirit.

25.10. Superior Rights: Neither the Company nor the Promoter shall provide any Person with rights in relation to the Company which are more favourable than those provided to the Investor without the Investor's prior written consent. Without prejudicing the foregoing right of the Investor, the Company and the Promoter hereby agree that in the event any Person who

invests in the Company is offered rights, including those relating to voting, dividends, transfer of Equity Securities, liquidation preference and further issues of Equity Securities that are more favourable to such Person than those available to the Investor under this Agreement, the Company and the Promoter shall undertake all acts as may be necessary (including passing of appropriate corporate resolutions and executing appropriate documents) to ensure that the Investor is entitled to enjoy any and all such superior rights offered to such other Person.

25.11. Entire Agreement

(i) This Agreement constitutes the whole agreement among the Parties relating to the subject matter hereof and supersedes any prior arrangements whether oral or written, relating to such subject matter.

(ii) No Party has relied upon any representation or warranty in entering into this Agreement other than those expressly contained herein.

25.12. Relationship

(i) None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties and no Party shall have any authority to bind or shall be deemed to be the agent of the other in any way.

(ii) The Parties have agreed that their respective rights and obligations with regard to their business relationship between them inter se and with the Company will be interpreted, acted upon and governed solely in accordance with the terms and conditions of this Agreement and the Articles.

25.13. Counterparts: This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

25.14. Further Assurance: Each of the Company and Promoter shall, at any time and from time to time upon the written request of the Investor:

(i) promptly and duly execute and deliver all such further instruments and documents, and do or procure to be done all such acts or things, as the Investor may reasonably deem necessary or desirable in obtaining the full benefits of this Agreement and of the rights and ownership herein granted; and

(ii) do or procure to be done each and every act or thing which the Investor may from time to time reasonably require to be done for the purpose of enforcing the Investors' rights under this Agreement.

25.15. Where an exact number of shares of any class or series is specified in any provision of this Agreement for any purpose, such number shall be automatically and proportionally adjusted to account for any share splits, share dividends, recapitalizations, or like events affecting all Shareholders of that class and series.

IN WITNESS WHEREOF, the Parties have entered into this Agreement the day and year first above written.

Signed and delivered for and on behalf of

_____

duly represented through its authorised representative

By : _____

Name : _____

Title : _____

Signed and delivered for and on behalf of

_____

duly represented through its authorised representative

By : _____

Name : _____

Title : _____

Signed and delivered by **Mr.** _____

_____

SCHEDULE 1:

DEED OF ADHERENCE

THIS **DEED OF ADHERENCE** is made on {DATE} at {PLACE}

AMONG:

{Full details here} (hereinafter referred to as "**the Covenantor**" or the "**TRANSFEREE**") to whom shares of the Company have been transferred by {Full details here} ("**THE TRANSFERRING SHAREHOLDER**"); and

{Full details here} ("**THE CONTINUING SHAREHOLDERS OF THE COMPANY**"); and

<<>> of <<Registered Office of Company>> ("**THE COMPANY**")

THIS DEED IS SUPPLEMENTAL to the Shareholders Agreement ("**Agreement**") made on _____ of Agreement between _____ **AND WITNESSES** as follows:

The Covenantor hereby confirms that it has been supplied with a copy of the Agreement and the Articles of Association and hereby covenants with each of the Continuing Shareholders and the Company to observe, perform and be bound by all the terms thereof which were applicable to the Transferring Shareholder and are capable of applying to the Covenantor to the intent and effect that the Covenantor shall be deemed with effect from the date on which the Covenantor is registered as a member of the Company to be a Party to the Shareholders Agreement.

The Covenantor hereby covenants that it shall not do any act or commit any omission that derogates from the provisions of the Shareholders Agreement or the Articles of Association of the Company.

This Deed shall be governed in all respect by the laws of India.

EXECUTED as a deed the day and year first before written.

Signed and delivered for and on behalf of Company

_____

duly represented through its authorised representative

By : _____

Name : _____

Title : _____

Signed and delivered for and on behalf of Investor

_____

duly represented through its authorised representative

By : _____

Name :

Title :

Signed and delivered by **the Promoter**

_____

Signed and delivered by the Covenantor

_____

SCHEDULE 2:

AFFIRMATIVE VOTING MATTERS

1. Any change in the authorized, issued, subscribed or paid-up Share Capital (including any Equity Securities) of the Company, including any re-organization of the Share Capital, any new issue of Equity Securities (including warrants) or any preferential issue of shares or redemption or cancelation or otherwise reorganizing, or altering any rights attaching to, any Equity Shares or Equity Securities, the issuance of convertible instruments or grant of any options or other rights over shares or other securities ;
2. Any amendment of the Charter Documents;
3. Undertake or intend to undertake any merger, acquisition, recapitalization, listing, business combination, joint venture, consolidation, reorganization, trade sales or other change of Control/ composition of the Company or any other arrangement with creditor of the Company, sale, mortgage, Transfer of substantially part of the Company's assets, business or property including Transfer in the form of an exclusive license of IP Rights;
4. Any change in Business or commencement or acquisition of a new line of business, or any transactions involving the sale, other disposal, charge acquisition, creation, modifications or destructions of any assets (including securities) or business or property (or any rights thereto) or raising of term debt in excess of INR _____ in any year when taken as an aggregate over and above the approved Business Plan;
5. Any change/create/adoption of the ESOP creation/adoption of any stock option plan (by whatever name called), restricted stock plan or similar incentive or equity plan or effecting any ESOP/incentive pool increases, any grant of options or allotment of shares under such plans (including the ESOP), or allocations or issuances by the Company;
6. Any change in the terms of employment of any Promoter or key employees including hiring, suspension and termination, and including any change in the rights, duties and terms of compensation.
7. Approval or adoption of, and any material deviations from the Annual Budget or Business Plan in excess of 10% (ten) percent in a single transaction or a series of transactions;
8. Approval of Accounts and other financial statements.
9. Any transaction between the Company or any of its Subsidiaries with any related party.
10. Any change in the accounting policies/practices of the Company, except for those carried out in order to comply with the regulations or GAAP requirements;
11. Transfer of shares by Promoter.

12. Soliciting of the Company employees by the Promoter;
13. Appointment or any change in auditors;
14. Any declaration of dividend and buy-back of securities;
15. Any change in the constitution, number or structure of the Board
16. Any alteration with respect to the rights of any class of securities of the Company;
17. Availing any loan or financial assistance from any bank, financial institution, Promoter or Directors, any creation of Encumbrance/lien against any asset or right of the Company in connection with such loan or financial assistance, any pre-payment/early repayment of any such loan or financial assistance;
18. Sale, exchange or pledge, lease or licence or any other disposal of any IP Rights of the Company or the acquisition or licensing of any third-party IP Rights by the Company;
19. Any winding-up, liquidation, composition with creditors, bankruptcy or dissolution of the Company;
20. Bringing an IPO;
21. Appointment and removal of independent internal and statutory auditors, including the scope of work, terms of reference, or any modifications, changes thereto;
22. Any creation of any Subsidiary of the Company whether by formation, acquisition or otherwise; and
23. Any conversion of the Company into a public limited company.
24. Relocation of operations of the Company.
25. Any other matters, as may otherwise be mutually agreed upon and contained in the definitive agreements executed between the Parties or incorporated in the Articles of Association.

SHARE SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT

This Share Subscription and Shareholders' Agreement (the "**Agreement**") is made on _____, 2018 at New Delhi

BY AND BETWEEN

(i)_____ **Pte. Limited**, a company incorporated under the laws of _____ and having its registered office at _____ (the "**Investor**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

(ii) _____ **Private Limited,** a private limited company incorporated under the laws of India and having its registered office at _____ New Delhi – 110065 (the "**Company**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

(iii) **Mr.** _____, a resident Indian citizen, PAN _____, residing at _____ (the "**Founder**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include his successors and permitted assigns); and

(iv) **Persons listed in Schedule 1** (each such Person and the Founder, a "**Promoter**" and together, the "**Promoters**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include their successors and permitted assigns).

The Investor, the Company, the Founder and the Promoters are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS

A. The Company is engaged in the business of _____ (the "**Business**").

B. The Promoters are currently the legal and beneficial owners of 100% of the Share Capital (defined below).

C. The Company is desirous of raising resources for expansion of the Business. The Company proposes to issue to the Investor, and the Investor proposes to subscribe to, the Shares (defined below) of the Company in two tranches on the terms and conditions contained herein.

D. The Parties are desirous of entering into this Agreement to govern the terms and conditions relating to the investment in the Subscription Shares by the Investor and to provide for their respective rights and obligations with respect to the governance, management and operation of the Company and certain other rights and obligations as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement the Parties hereby agree as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, the following terms, to the extent not inconsistent with the context thereof, shall have the following meanings assigned to them:

"**Act**" means Companies Act, 1956 and / or Companies Act, 2013, as applicable and as amended from time to time.

"**Affiliate**" means with respect to: (a) a corporation, partnership, association, trust, fund or any other entity (in each case, a "Person"), means any Person who, directly or indirectly, Controls, is Controlled by or is under common Control with such Person, including, without limitation any general partner, officer or director of such Person now or hereafter existing which is Controlled by or under common Control with one or more general partners or shares the same management company with such Person, and (b) an individual (including the Sellers), means any relative of such individual, any Person which is directly Controlled by or is under common Control with the individual, or spouse and/or children of such individuals, or family trusts created for the benefit of such individual, his spouse and/or children.

"**Annual Budget**" means the annual budget of the Company and any Subsidiaries, as applicable, determined every Financial Year.

"**Articles**" **or** "**Articles of Association**" mean the Articles of Association of the Company or any Subsidiaries, as applicable.

"**Big 6 Auditors**" mean one of the following auditing firms _____.

"**Board**" or "**Board of Directors**" means the board of directors of the Company.

"**Business Day**" means a day other than Saturday or Sunday on which commercial banks are generally open for business in New Delhi, India.

"**Business Plan**" means the business plan as mutually agreed between the Parties and set out in ***Schedule 7*** and as the same may be amended from time to time in accordance with the terms of this Agreement.

"**Claims**" mean all actions, suits, proceedings or arbitrations, whether civil, criminal, administrative or investigative, pending or threatened, at Law, in equity or before any Competent Authority.

"**Competent Authority**" means any governmental, quasi-governmental, statutory, departmental, regulatory or public body constituted by any statute, law, regulation, ordinance, rule or bye-law or a tribunal or court of competent jurisdiction or other authority in any nation, state, city, locality or other political subdivision thereof.

"**Control**" with respect to a company, shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

"**Director**" mean a director of the Company and any alternate of such director appointed in accordance with the Act and the Articles.

"**Disclosure Schedule**" means the disclosures made by the Company and the Promoters, as the case may be, qualifying the Representations and Warranties, as more particularly set out in the ***Attachment to Schedule 4***.

"**Encumbrances**" includes any mortgage, pledge, equitable interest, assignment, hypothecation, trust, right of other persons, claim, security interest, encumbrance, title defect, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, and any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security, in each case under any Law.

"**Equity Shares**" mean the fully paid up equity shares of the Company of a face value of Rs.10 each or any other issued share capital of the Company that is reclassified, reorganised, reconstituted or converted into equity shares of the Company.

"**Execution Date**" means the date of this Agreement first mentioned above.

"**FEMA**" means the Foreign Exchange Management Act, 1999, as amended and the regulations framed thereunder.

"**Financial Statements**" mean any financial statements of the Company and any Subsidiaries (which include a balance sheet, statement of cash flows, a profit and loss statement and financial information regarding business operations) prepared in accordance with Indian GAAP.

"**Financial Year**" means each period of twelve (12) months commencing on April 1 and ending on March 31 of the succeeding calendar year.

"**Force Majeure Event**" means any act or event affecting the performance by a Party of its obligations under this Agreement, which is beyond the reasonable control of such Party, including disaster, fire, flood, actual or threatened terrorist attack.

"**Fully Diluted Basis**" means the total of all classes and series of shares outstanding combined with shares represented by all options and convertible securities of all kinds and the effect of any anti-dilution protection regarding previous and future financings, all on an "as if exercised" or "as if converted" basis, as adjusted for any stock splits or any capital or other restructuring or consolidation or reduction in capital.

"**General Meeting**" means any duly convened meeting of the shareholders of the Company.

"**Indian GAAP**" means generally accepted accounting principles followed in India.

"**Investor Director**" shall have the meaning ascribed to it in Clause 8.1.1.

"**Law**" means any statute, law, regulation, ordinance, rule, bye-law, judgment, Order, decree, ruling, approval, directive, guideline, policy, clearance, requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration having the force of law of any of the foregoing by any Competent Authority having jurisdiction over the matter in question, whether in effect as of the Execution Date or at any time thereafter.

"**Material Adverse Change**" means any change, effect, event, occurrence, state of facts condition or item, including but not limited to any change in national or international monetary, financial, economic or political conditions or currency rates or applicable Law, that has had or would be reasonably expected to have, individually or in the aggregate, a material adverse effect on the valuation, Business, management, operations, results of operations, condition (financial or otherwise), prospects, properties, assets or liabilities of the Company or any Subsidiary, or the Company's ability to consummate the transactions contemplated in this Agreement in a timely manner.

"**Memorandum**" or "**Memorandum of Association**" means the Memorandum of Association of the Company or any Subsidiaries, as applicable.

"**Order**" means any judgment, injunction, writ, award, decree or order of any nature of any Competent Authority.

"**Person**" includes an individual, an association, a corporation, a company, a partnership, a joint venture, an unincorporated organisation, a joint stock company and any other entity or organisation, including a government or political subdivision, or an agency or instrumentality thereof, and any other legal entity.

"**Promoters Director**" shall have the meaning ascribed to it in Clause 8.1.1.

"**Related Party**" means any Director, director of any Subsidiary, Promoter, any Affiliates of any Promoter or any entity Controlled by the Relative(s) of any Promoters.

"**Relative**" shall have the meaning ascribed to it under the Act.

"**Representations and Warranties**" mean the representations and warranties made by any Party under this Agreement and ***Schedule 4***.

"**Reserved Matters**" means the reserved matters as set out in Clause 8.4 of this Agreement.

"**Share Capital**" means the total outstanding, issued, subscribed and fully paid up equity share and the preference capital of the Company on a Fully Diluted Basis.

"**Shares**" mean all securities issued by the Company including Equity Shares and any other preference or equity-related or convertible securities.

"**Subscription Amount Tranche 1**" means Rs. _____ being the aggregate consideration payable by the Investor to the Company for the issue and allotment by the Company of the Subscription Shares Tranche 1 to the Investor in accordance with this Agreement.

"**Subscription Amount Tranche 2**" means Rs. _____ being the aggregate consideration payable by the Investor to the Company for the issue and allotment by the Company of the Subscription Shares Tranche 2 to the Investor in accordance with this Agreement.

"**Subscription Shares**" mean a total of Subscription Shares Tranche 1 and Subscription Shares Tranche 2.

"**Subscription Shares Tranche 1**" means _____ Equity Shares (bearing voting rights) of Rs. 10 each issued at Rs. _____ per share representing __% of the Equity Share Capital immediately upon Closing.

"**Subscription Shares Tranche 2**" means _____ Equity Shares (bearing voting rights) to be issued at fair market value representing ___% of the Share Capital at the time of investment.

"**Subsidiary**" or "**Subsidiaries**" mean any subsidiary(ies) of the Company (within the meaning of Section 2 (87) of the Companies Act, 2013).

"**Tax**" means any central, state, local or foreign income tax, property tax, withholding tax, wealth tax, capital gains tax, excise duty, customs duty, sales tax, service tax, minimum alternative tax, value added tax, fringe benefits tax, transfer tax, dividend tax, stamp duty, employment tax and all other kinds of taxes, charges, levies, cesses surcharges and duties that may be imposed by any Competent Authority, including any deficiencies, additions, interest and penalties in connection therewith.

"**Transfer**" in relation to a Share, means the sale, transfer, assignment, mortgage, lien, gift, pledge, hypothecation or other disposition of such Share or the declaration of a trust or charge or creation of an Encumbrance in or over such Share.

"**Weighted Average Benchmark**" means the amount of total investment made by the Investor in the Company divided by number of Equity Shares held by the Investor from time to time.

1.2 **Interpretation**

Unless the context otherwise requires:

1.2.1 All references in this Agreement to statutory provisions shall be construed as meaning and including references to:

(a) any statutory modification, consolidation or re-enactment for the time being in force or made any time thereafter;

(b) all statutory instruments or orders made pursuant to a statutory provision; and

(c) any statutory provisions of which such statutory provisions are a consolidation, re-enactment or modification.

1.2.2 A reference to any document (including this Agreement) is to such document as amended, consolidated, supplemented, novated or replaced from time to time.

1.2.3 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.2.4 Headings to clauses, sub-clauses and paragraphs are for convenience only and shall not form part of the operative provisions of this Agreement or the Schedules and shall be ignored in construing such provisions.

1.2.5 References to Recitals, Clauses or Schedules are, unless the context otherwise requires, to recitals, clauses or schedules of this Agreement.

1.2.6 Reference to days, months and years are to Gregorian days, months and calendar years respectively.

1.2.7 The *ejusdem generis* (of the same kind) rule will not apply to the interpretation of this Agreement and the words "include" and "including" are to be construed without limitation.

1.2.8 The expressions "hereof", "herein" and similar expressions shall be construed as references to this Agreement as a whole and not limited to the particular Clause or provision in which the relevant expression appears.

1.2.9 Where a word or phrase is defined, other parts of speech and grammatical forms and the cognate variations of that word or phrase shall have corresponding meanings.

1.2.10 References to writing include any mode of reproducing words in a legible and non-transitory form.

1.2.11 References to "Rupees" and "Rs." are references to the lawful currency of India.

1.2.12 The terms referred to in this Agreement shall, unless defined otherwise or inconsistent with the context or meaning thereof, have the meaning ascribed to them under the Act.

1.2.13 The Disclosure Schedule, as well as all other schedules hereto shall be deemed part of this Agreement and included in any reference to this Agreement.

1.2.14 Unless otherwise specified, the term "Promoters" shall be interpreted as the Persons set out in ***Schedule 1*** acting together as one and the same entity and any action to be performed hereunder by the Promoters shall be performed by each Promoter, or by Founder on behalf of the Promoters, which action shall be valid and binding on each Promoter.

2. Conditions Precedent

2.1 The Company and the Promoters shall have performed all obligations required to be respectively performed by them under this Agreement at or prior to Closing.

2.2 The obligation of the Investor to subscribe for the Subscription Shares Tranche 1 in the manner provided herein is conditional upon the fulfilment of all the following conditions at or prior to Closing to the satisfaction of the Investor, unless specifically waived in writing by the Investor (the "**Conditions Precedent**"):

(a) The authorised share capital of the Company shall have been increased by Rs. Rs. _____ and the Memorandum

and Articles shall have been suitably amended to permit the issue and allotment of the Subscription Shares Tranche 1 to the Investor;

(b) Receipt of all necessary approvals under any agreement entered into by the Company and from any lender, bank or financial institution from whom the Company has availed of any credit facility or borrowing or working capital requirement;

(c) Finalising and initialling by the Parties of the amendments to the Articles (in terms satisfactory to the Investor), to reflect the provisions of this Agreement (the "**Restated Articles**");

(d) Adoption of resolutions by the Board in relation to

(i) the execution of this Agreement, and

(ii) in-principle approval of the Board for the issue and allotment of the Subscription Shares Tranche 1 to the Investor in accordance with the terms of this Agreement, subject to the receipt of the Subscription Amount Tranche 1 from the Investor;

(e) No Material Adverse Change or a material change in applicable Law shall have occurred and be continuing from Execution Date to Closing Date;

(f) The Representations and Warranties of the Company and the Promoters shall be true and correct as of the date of this Agreement and as of Closing as though made as of Closing;

(g) No action challenging the legality of, and no action or Order seeking to restrain, prohibit or materially modify, the transactions provided for in the Agreement shall have been instituted and not settled or otherwise terminated;

(h) No Person shall have made, or to the extent the Company and/or the Promoters are aware, threatened, any Claim asserting that such Person may be the holder or the beneficial owner of, or may have the right to acquire or to obtain beneficial ownership of, any Subscription Shares Tranche 1;

(i) No Force Majeure Event shall have occurred and be continuing from Execution Date to Closing Date;

(j) Company shall have received a valuation certificate from a chartered accountant or such other prescribed document, in respect of the Subscription Shares Tranche 1 (in form acceptable to the Investor) for the purposes of filing requirements prescribed under applicable Laws, including the filing of Form FC-GPR;

(k) Receipt by the Company of the approvals of any Competent Authority, if required in connection with the transactions contemplated by this Agreement;

(l) Receipt by the Investor of the audited Financial Statements of the Company for the financial year ended _____;

(m) The completion of a legal, financial, tax and business due diligence by the Investor (directly and/or through its advisers) on the Company and resolution of all issues raised by the Investor and its advisers pursuant to such due diligence exercise to the Investor's satisfaction;

(n) All the minutes of the board meetings and shareholder meetings are duly signed and bound with numbering;

(o) All the leases entered into by the Company are duly registered and suitable stamp duty is paid in accordance with applicable Law;

(p) All the share certificates are duly stamped and properly delivered to the respective shareholders;

(q) Execution of employment agreement between the Founder and the Company for re-appointment as Managing Director as per mutually agreed draft.

(r) Compliance with necessary formalities as prescribed under various applicable laws including the Act.

(s) Delivery prior to Closing by the Company and the Promoters to the Investor of a certificate in the form set out in ***Schedule 5***, signed by at least two (2) Directors and the Founder (the "**Completion Certificate**") to the effect that:

(i) the Conditions Precedent in Clauses 2.2(a) to (r) have been fully satisfied; and

(ii) there have been no material defaults under any agreements entered into by the Company or any Subsidiaries and there has been no Material Adverse Change from Execution Date to Closing Date.

The Completion Certificate shall be accompanied with remittance instructions for the payment by the Investor of the Subscription Amount Tranche 1 to the Company, through electronic transfer and, to the extent relevant and applicable, with documents providing evidence, to the satisfaction of the Investor, of the fulfillment of all Conditions Precedent, including certified true copies of the resolutions of the Board and the shareholders in respect of Clauses 2.2(c) and 2.2(d).

2.3 If any of the Conditions Precedent under Clauses 2.2(a) to (r) are not fulfilled or satisfied within 30 (thirty) days of the Execution Date, the Investor shall have the right to terminate this Agreement unless otherwise agreed among the Parties in writing.

2.4 Each Party shall use all commercially reasonable efforts to ensure the expeditious fulfilment of the Conditions Precedent that are within the concerned Party's control and the other Parties shall extend all necessary assistance and co-operation as may be reasonably required by such Party.

2.5 The Investor may, in its sole discretion, including without any request from the Company or the Promoters to do so, waive fulfilment of any Condition Precedent and upon such waiver the said Condition Precedent shall, unless otherwise agreed by the Investor in writing, automatically become an obligation/covenant of the Company and the Promoters to be satisfied within a time period specified by the Investor, after the Closing Date.

2.6 It is clarified that each of the Conditions Precedent set out in Clause 2.2 above are solely for the benefit of the Investor.

3. Subscription for the Subscription Shares

3.1 On the Closing Date, subject to applicable Law and the terms and conditions of this Agreement and fulfilment of the Conditions Precedent set out in Clause 0 and relying upon the Representations and Warranties and undertakings and indemnities made by the Company and the Promoters under this Agreement, the Investor hereby agrees to subscribe for, and the Company hereby agrees to issue and allot, the Subscription Shares Tranche 1, free and clear from all Encumbrances, to the Investor upon payment of the Subscription Amount Tranche 1 by the Investor to the Company.

3.2 Subject to the Company achieving the pre-agreed milestones defined in ***Schedule 3***, the Investor hereby agrees to subscribe for, and the Company hereby agrees to issue and allot, the Subscription Shares Tranche 2, free and clear from all Encumbrances, to the Investor upon payment of the Subscription Amount Tranche 2 by the Investor to the Company. The Investor shall pay the Subscription Amount Tranche 2 within 30 (thirty) days of review of achieving the pre-agreed milestones defined in ***Schedule 3***.

3.3 In case the Investor (in its absolute discretion) decides not to invest Subscription Amount Tranche 2 due to failure by the Company to achieve the milestone stated in Schedule 3, the following rights of the Investor under this Agreement shall fall away:

3.3.1 The affirmative voting right of the Investor under Clause 8.4 of this Agreement (Reserve Matter) for the following actions,

decisions and resolutions in relation to the Company and/or Subsidiary shall not be required:

(a) Clause 8.4.1 (o) Raising of debt of more than Rs. _____ aggregate in one financial year.

(b) Clause 8.4.1 (t): Engaging a new employee at remuneration, which could exceed a rate of Rs. _____ per annum but not exceeding Rs. _____ per annum.

3.3.2 The Investor will ensure that one of the Investor Director's shall resign from the Board of the Company. The Investor will lose its right to appoint two directors on the Board and will only have the right to appoint one Director.

3.3.3 The Right of First Refusal available to the Investor as per Clause 9.4 under this Agreement shall be substituted by Right of First Offer detailed below:

(i) Without prejudice to Clause 9.3 and 9.6, if at any time, the Promoter desires to Transfer any or all of its Shares ("**Promoter Offer Shares**"), to a third party, it shall first make an offer for the sale of such Promoter Offer Shares to the Investor (the "**Right of First Offer**") by a notice in writing ("**Investor Offer Notice**") mentioning the total number of the Promoter Offer Shares.

(ii) The Investor shall be entitled to accept the offer by written notice to the Promoter ("**Investor Acceptance Notice**") within a period of 30 (thirty) days from the date of receipt of the Investor Offer Notice ("**Investor Acceptance Period**"). The Investor Acceptance Notice shall specify the price at which the Investor will purchase the Promoter Offer Shares. Failure by the Investor to respond to the Investor Offer Notice prior to the expiry of the Investor Acceptance Period shall be deemed to constitute the election by the Investor to not exercise its rights under this Clause.

(iii) The Promoter will have the right to either accept the Investor Acceptance Notice or sell the Promoter Offer Shares to the third party at a price which shall be higher than the price offered by the Investor. In case the Promoter accepts the Investor Acceptance Notice within a period of 90 (ninety) days from receipt of Investor Acceptance Notice, the purchase of the Promoter Offer Shares by Investor shall be completed

within 30 (thirty) days from the date of receipt of such acceptance from Investor. In case the Promoter does not accept the Investor Acceptance Notice and Promoter is unable to sell the Promoter Offer Shares (to a third party) within a period of 90 (ninety) days from the date of receipt of the Investor Acceptance Notice, any Transfer of Shares by the Promoter to the third party shall again become subject to requirements mentioned under this Clause.

(iv) If the Promoter is desirous of selling the Shares to a third party in adherence with the clauses above, the Company shall fully cooperate with the Promoter in order for such third party to get information on the Company needed to evaluate the purchase of the Promoter Offer Shares, arranging a due diligence (financial, legal, tax, business), etc.

3.3.4 In case due to any reason, Subscription Amount Tranche 2 is not invested in the Company within a period of 24 months from the date of Closing, the Investor will not unreasonably withhold its consent to any proposal by the Promoters which is directed towards reducing operational cost or fixed cost.

4. Closing

4.1 The Company and the Promoters shall deliver the Completion Certificate (and the documents annexed thereto) in accordance with Clause 0. Following the receipt of the Completion Certificate to the Investor's satisfaction, the Investor shall provide a written confirmation of the same to the Company and the Promoters. In the event the Investor notifies the Company and/or the Promoters of any dissatisfaction, the Company and the Promoters shall endeavour to remove the cause of such dissatisfaction, and the provisions of this Clause 0 shall reapply.

4.2 The Closing shall occur within 45 (forty-five) days of the Execution Date and no later than _____ or such other date as may be mutually agreed in writing by the Parties (the "**Closing Date**"). However, if the Parties extend the date of completion of condition precedents, the Closing Date shall also be extended with the same time frame.

4.3 On the Closing Date, the following shall occur:

4.3.1 The Investor shall transfer the Subscription Amount Tranche 1 in favor of the Company to the bank account specified in the Completion Certificate as consideration for the Subscription Shares Tranche 1;

4.3.2 Upon receipt of the Subscription Amount Tranche 1, the Company and the Promoters shall procure that a meeting of the Board is held at which the Board adopts valid and effective resolutions in respect of the following matters:

(a) The issue and allotment of the Subscription Shares Tranche 1 to the Investor in accordance with the terms of this Agreement;

(b) Reconstitution of Board with the appointment of two (2) Investor Directors and two (2) Promoters Directors;

(c) The adoption of the Restated Articles; and

(d) The convening of an extraordinary general meeting of the Company with shorter notice immediately after the Board meeting to adopt the Restated Articles.

(e) The Founder shall be reappointed as Managing Director of the Company for a period of 3 (three) years under an Employment Agreement.

4.3.3 The Company shall pay applicable stamp duty on the certificate(s) evidencing the Subscription Shares Tranche 1. Any stamp duty or other Tax payable on such certificates shall be borne by the Company; and

4.3.4 The Company shall make necessary entries in its statutory registers to reflect the Investor as the legal and beneficial owner of the Subscription Shares Tranche 1 and change in composition of Board and any other changes.

4.4 On the Closing Date and immediately after the Board meeting under Clause 4.3, the Company shall hold an extraordinary general meeting to adopt the Restated Articles.

4.5 The Company shall promptly provide to the Investor certified true copies of:

(i) the resolutions adopted in the meeting of the Board held on the Closing Date;

(ii) the register of members of the Company;

(iii) register of Directors; and

(iv) the resolutions adopted in the extraordinary general meeting to adopt the Restated Articles.

4.6 On or immediately after the Closing Date and as soon as practicable within the time periods specified under applicable Law, the Company and the Promoters shall procure that the Company makes all required

filings with the Registrar of Companies, the Reserve Bank of India and any other Competent Authority, in connection with the subscription for the Subscription Shares Tranche 1 by the Investor, appointment of Investor Director, and Promoters Director, on Board and provide certified true copies of each of such filings to the Investor.

4.7 The Parties shall finalise and initial the amendments to the Articles (in terms satisfactory to the Investor), to reflect the provisions of this Agreement (the "**Restated Articles**");

4.8 In the event that the Closing does not occur in accordance with this Agreement, the Subscription Amount Tranche 1, if paid by the Investor will be immediately remitted back to the Investor.

5. Use of Proceeds

The Company shall utilise the proceeds of the subscription by the Investor for the Subscription Shares Tranche 1 only for the purposes approved by the Board of Directors by way of approving a Business Plan, within one month of Closing, for the financial year _____.

6. Employee Compensation Scheme

Subsequent to Closing, the Board of Directors of the Company, within a reasonable time frame will formulate an employee compensation scheme linked to performance of the Company. If as part of such scheme any new equity shares are to be issued or any transfer of shares in favor of employee(s) has to take place, the dilution/transfer by Investor and Founder will be based on the ratio of their shareholding.

7. Representations and Warranties

The Company and the Promoters jointly and severally represent and warrant that the Representations and Warranties set out in ***Schedule 4*** are true, accurate and complete as of the Execution Date and as of the Closing Date, and acknowledge that the Investor is entering into this Agreement and subscribing for the Subscription Shares Tranche 1 in reliance upon these Representations and Warranties. Each Representation and Warranty is to be construed independently of the others and is not limited by reference to any other Representation and Warranty. None of the Representations and Warranties shall be treated as qualified by any actual or constructive knowledge on the part of, or by any information disclosed or made available to or received by, the Investor or any of its agents, representatives, officers, employees or advisers.

7.1 The Company and the Promoters jointly and severally represent and warrant that the business of M/s. _____ (Partnership) will transfer into Company and/or its subsidiary on or before Closing Date and shall not continue as a separate entity.

7.2 All rights of ownership or licenses to use the Intellectual Property are exclusively held by the Company and shall continue to be retained by the Company and no other party has any rights whatsoever in respect of the Intellectual Property.

7.3 If, after the Execution Date and before the Closing Date, the Company and/or the Promotors become aware of any event or matter which constitutes or may constitute a breach of their Representations and Warranties set out in *Schedule 4* or which is likely to cause a Material Adverse Change, the Company and the Promoters shall promptly notify the Investor in writing of any such event or matter.

7.4 Each Promoter hereby represents and warrants to the Investor as of the Execution Date and as of the Closing Date that:

7.4.1 It is legally entitled under the laws of India, and has the necessary power, capacity and authority, to execute this Agreement, and this Agreement, upon execution and delivery, shall constitute a legal, valid and binding obligation, enforceable in accordance with its terms.

7.4.2 It has taken all necessary actions, corporate or otherwise, as applicable to it, to authorise or permit the execution, delivery and performance of this Agreement.

7.4.3 The execution and delivery of this Agreement by it, and promises, agreements or undertakings under this Agreement do not violate any applicable Law or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements, any other instrument to which the Company or any Subsidiary is a party or which is applicable to any of them, or any obligation by which any of them is bound.

7.4.4 No distress or execution has been levied on any of its assets and it is not insolvent or bankrupt or unable to pay its debts as they fall due.

7.4.5 There are no Claims pending against it and it has not received any notice of any Claim that has been threatened, at Law, in equity, in arbitration or before any Competent Authority against it. No Order has been issued by any court or other Competent Authority against it purporting to enjoin or restrain the execution, delivery or performance of this Agreement.

7.4.6 It owns legally and on record, the Equity Shares that are disclosed against its name in *Part A of Schedule 2*, free and clear of any Encumbrances.

7.4.7 It is not a party to, nor bound by, any non-competition covenant or other agreement that restricts it from owning the Equity Shares that are disclosed against its name in *Part A of*

Schedule 2, conducting the Business through the Company, entering into this Agreement or consummating the transactions contemplated hereby.

7.5 The Investor hereby represents and warrants to the Company as of the Execution Date and as of the Closing Date that:

7.5.1 It is duly incorporated under the laws of _____.

7.5.2 It has the corporate and financial power and authority to execute and deliver this Agreement. The execution and delivery of this Agreement has been duly authorised and approved by the Investor and does not require any further authorisation or consent of any third party to this Agreement.

7.5.3 Upon execution and delivery, this Agreement will be a legal, valid and binding obligation of the Investor, enforceable in accordance with its terms.

7.5.4 The execution and delivery of this Agreement by it, and its promises, agreements or undertakings under this Agreement do not violate any applicable Law or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which it is a party or which are applicable to it.

7.5.5 No distress or execution has been levied on any of its assets and it is not insolvent or bankrupt or unable to pay its debts as they fall due.

7.5.6 There are no Claims pending against it and it has not received any notice of any Claim that has been threatened, at Law, in equity, in arbitration or before any Competent Authority against it. No Order has been issued by any court or other Competent Authority against it purporting to enjoin or restrain the execution, delivery or performance of this Agreement.

7.5.7 It is not a party to, nor bound by, any non-competition covenant or other agreement that restricts it from owning the Shares, conducting the Business through the Company, entering into this Agreement or consummating the transactions contemplated hereby.

7.6 Any Representation and Warranty herein or in any certificate or writing shall be deemed to be material and to have been relied upon by the Parties.

7.7 All Representations and Warranties shall, except in cases where a Representation or a Warranty is made as of a particular date specified therein, will be deemed to be made as of the Execution Date and as of the Closing Date.

8. Corporate Governance

8.1 **The Board of Directors**

8.1.1 On subscription by the Investor for the Subscription Shares Tranche 1, the Board shall comprise of 4 (four) Directors, of whom 2 (two) shall be the nominees and appointed Directors of the Investor (**Investor Directors**) and 2 (two) shall be the nominees and appointed Directors of the Founder/Promoters (**Promoters Directors**). In addition, both Investor and Promoters will have right to appoint 1 observer each to attend the board meetings.

8.1.2 Upon the request of the Investor for inclusion of the Investor Director on any committee of the Board, including without limitation, any audit committee or remuneration committee, the Company shall, and the Promoters shall cause the Board to, ensure that such committee of the Board includes the Investor Director and Promoters Director.

8.1.3 The Investor Directors shall be appointed to the Board on the Closing Date, or such other date as specified by the Investor.

8.1.4 The Company shall, and the Promoters shall cause the Company to, promptly make all such filings with Governmental Authorities that may be required under any Law to give effect to the provisions set forth in this Clause.

8.1.5 The Company shall obtain directors' liability insurance for all the Directors, including the Investor Directors.

8.2 **Board Meetings**

8.2.1 The Board shall hold its meetings in conformity with the Act at New Delhi or a location determined by the Board at its previous meeting, or if no such determination is made, then as determined by the chairperson of the Board. The Founder shall be the chairperson of the Board and in his absence, a new chairperson shall be appointed by the Board for that meeting.

8.2.2 Written notice of at least 7 (seven) Business Days of every meeting of the Board shall be given to every Director and every alternate Director at their usual address whether in India or abroad, provided always that a meeting may be convened by a shorter notice with consent of all the Directors, including the Investor Director.

8.2.3 The notice of each Board meeting shall include an agenda setting out the business proposed to be transacted at the meeting. Unless waived in writing by all Directors, any item not

included in the agenda of a meeting shall not be considered or voted upon at that meeting of the Board.

8.2.4 All resolutions and decisions of the Board shall be taken by majority vote of the Directors present or represented at the meeting. However, there shall be no quorum unless at least one of the Investor Director and one of the Promoters Director is present at such meeting. The chairperson of the Board shall not have a casting vote.

8.2.5 Subject to provisions of the Act, where the agenda for any Board meeting includes matters specified in Clause 8.4, there shall be no quorum unless at least one of the Investor Director and one of the Promoters Director is present at such meeting.

8.3 **General Meetings**

Subject to provisions of the Act, the quorum for a General Meeting shall be two (2) shareholders present in person, provided that, where the agenda for any General Meeting includes matters specified in Clause 8.4, there shall be no quorum unless the Investor and Founder is represented at such General Meeting. A corporate shareholder represented by a duly authorised representative shall be deemed to be present in person for purposes of this Clause 8.3.

8.4 **Reserved Matters**

8.4.1 The Parties agree that the following actions subject to Clause 9, decisions and resolutions in relation to (i) the Company shall not be taken or adopted by the Board (including any committee thereof) or at shareholders meetings without the affirmative vote of at least one Investor Director or a representative of the Investor and one Promoters Director or a representative of the Promoters, as applicable and (ii) any Subsidiary shall not be taken or adopted by the board of directors or the shareholders of the relevant Subsidiary without the prior written approval of the Investor and Promoter:

(a) Any amendment, supplement, modification or restatement of the Memorandum or Articles of the Company or any Subsidiary in any manner or any other action that would Materially Adversely Change the rights, preferences, privileges or restrictions of any of the Equity shareholders;

(b) Acquisition of or investment in any shares or any assets, business, business organisation or division of any other Person, creation of any legal entities, joint ventures or partnerships, mergers, de-mergers, spin-offs or consolidations or the creation of any new subsidiaries;

(c) Sale, transfer, license, dissolution, winding-up, liquidation or other disposal of all or substantial assets of the Company, any Subsidiary and any of their respective joint ventures, or any restructuring or reorganisation that has a similar effect;

(d) Any change in the capital structure of the Company or any Subsidiary, including the issued, subscribed or paid up equity or preference share capital, reorganisation of the share capital, including redemption, retirement or repurchase of any shares or other securities, splits, capital or other restructuring or consolidation or reduction in capital;

(e) Subject to Clause 6 of this Agreement, issuance of equity or equity-linked securities, including the issuance of convertible debentures or warrants or the creation of any employee or management stock option plan or the grant of any options over its shares by the Company or any Subsidiary, other than those issued by the Company;

(f) Buy back of any shares or other securities by the Company or any Subsidiary, except as provided in this Agreement;

(g) Change in any members or the number of members of the Board or the board of directors of any Subsidiary;

(h) The prosecution or settlement of legal actions or Claims in excess of Rs. _____;

(i) The appointment, removal or any change by the Company or any Subsidiary of its auditors internal or statutory;

(j) Change in the accounting or tax policies, procedures and practices of the Company or any Subsidiary, except as required under applicable Law;

(k) Any change in the terms of employment of Founder as Managing Director or Chief Marketing Officer, Chief Operating Officer and Chief Financial Officer or persons holding similar responsibilities (**Key Employees**) as at the Closing Date, including, hiring, suspensions and termination and including any change in the rights, duties and terms of compensation and terms therein approved in Business Plan;

(l) Approval, adoption, amendment or modification of the Annual Budget or Business Plan of the Company or any Subsidiary, and any subsequent deviation from the Annual Budget by more than 20% with respect to indebtedness or other financial obligations, operating expenses or capital expenditure, or the taking of any action that would be inconsistent with the budget or business plan then in effect;

(m) Entry into any transaction (or series of connected transactions) by the Company or any Subsidiary for a cumulative value of Rs. _____ per annum with any consultants, advisors, key management employees or Related Parties, other than consultants hired by the Company on an arm's length basis in the ordinary course of business;

(n) Declaration of any dividends by the Company or any Subsidiary;

(o) Raising of debt of more than Rs. _____ aggregate in one financial year;

(p) Listing or delisting of any securities of the Company or any Subsidiary on any stock exchange, other than a Qualified IPO, or the taking of steps towards or appointments of any advisers in connection with a potential sale or flotation of securities of the Company or any Subsidiary on any stock exchange;

(q) Commencement of any new line of business or making of any investment (other than short-term deposits with banking institutions and investments in securities in the ordinary course of business);

(r) any matters which would have any material adverse effect on the Company's intellectual property or any substantial changes thereto;

(s) making substantial changes in the conditions of employment of a considerable number of employees simultaneously or within a short interval or the granting or establishment of pension schemes or employee share option schemes or any changes to management or operational policy which the Board had already agreed upon;

(t) Engaging a new employee at remuneration, which could exceed a rate of Rs. _____ per annum; and

(u) Introduction of new products/services lines by the Company not similar to the products/services provided by the Company at the time of Closing.

8.5. **Deadlock and Deadlock Resolution**

8.5.1 For the purposes of this Clause 8.5, a "**Deadlock**" shall be deemed to have occurred if a resolution relating to item of the Reserved Matter ("**Deadlock Event**") is not passed at 2 (two) consecutive meetings of the Board or of the Shareholders of the Company, which have been duly convened with a minimum interval of 3 (three) months.

8.5.2 If the Deadlock event cannot be resolved by the Board or the Shareholders in 2 (two) consecutive meetings of the event which has resulted in a Deadlock Event having been deemed to occur under Clause 8.5.1 above, the Parties shall attempt to first resolve such matter through discussions between senior executives of Investor and the Promoters who will attempt to resolve the Deadlock Event within 30 (thirty) days ("**Deadlock Resolution Timeline**"). The senior executives of Parties will use their best efforts to find an appropriate solution to the Deadlock Event taking into account the interests of each Shareholder and of the Company.

8.5.3 If despite the use of all reasonable efforts the senior executives cannot resolve the matter within the Deadlock Resolution Timeline, the matter shall be finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**Arbitration Act**") which shall be commenced in accordance with Clause 19.10 of this Agreement.

8.6 Statutory Auditors

The Company shall appoint and retain one of the Big 6 Auditors for statutory audits in its next annual general meeting.

9 Further Issue and Transfer of Shares

9.1 **General**

Any issue or Transfer of Shares shall be subject to, and must be in compliance with, the provisions of this **Clause 9**.

9.2 **Pre-emptive Rights**

9.2.1 The Investor and the Founder shall have the right to subscribe for any fresh issue of Equity Shares by the Company, in proportion to their then existing percentage of shareholding in the Company. Further, the Investor shall be entitled to broad-

based weighted average anti-dilution protection on all future issuances i.e. further issuance of Shares to be at price higher than Weighted Average Benchmark per share paid by the Investor.

9.2.2 The Company shall notify the Investor in writing (the "**Issuance Notice**") of the terms of the proposed issuance, including the proposed issuance price (the "**Issuance Price**"), the date of closing of the proposed issuance and the number of new Shares that are proposed to be issued.

9.2.3 Within thirty (30) days from the date of receipt of the Issuance Notice, the Investor may agree to subscribe for or refuse to subscribe for all or part of the new Shares, proportionate to its then existing percentage of shareholding in the Company on a Fully Diluted Basis, at the Issuance Price and shall notify the Company in writing of its intention and the number of new Shares that the Investor proposes to subscribe for (the "**Investor Pre-emption Shares**").

9.2.4 If the Investor exercises its option to subscribe for the Investor Pre-emption Shares, the Investor shall pay for and subscribe for such Investor Pre-emption Shares at the Issuance Price on the terms and conditions set out in the Issuance Notice, it being clarified that the Investor shall be provided with a further period of at least fifteen (15) days for making the payment for the subscription of Investor Pre-emption Shares, and the Company shall issue and allot the Investor Pre-emption Shares to the Investor on the Business Day immediately following the receipt of the consideration from the Investor, as set out herein.

9.2.5 If the Investor does not exercise its option to subscribe for any of the Investor Pre-emption Shares or fails to reply to the Issuance Notice within the prescribed time set out in clause 9.2.3 above, the Company may issue and allot all or part of the Investor Pre-emption Shares to a third party subscriber at the Issuance Price and on same terms and conditions, as mentioned in the Issuance Notice within ninety (90) days of the date of the Issuance Notice. If the Company does not issue all or part of the new Shares within ninety (90) days of the date of the Issuance Notice, as set out in this Clause 9.2, the Company's right to issue and allot any new Shares shall lapse and the provisions of this Clause 9.2 shall once again apply to the new Shares.

9.2.6 The Parties acknowledge and agree that the rights of the Investor under this Clause 9.2 are without prejudice to the requirement of prior written approval of the Investor under Clause 8.4 in respect of any issuance of equity or equity-linked securities by the Company.

9.3 Restrictions on Transfer of Shares by the Promoters and Put Option

The Promoters undertakes that they shall not, Transfer to any other Person all or any part of the Shares held by them for a period of three (3) years from the Execution Date and the Investor undertakes that it shall not Transfer to any other Person all or any part of the Shares held by it for a period of two (2) years from the Execution Date (the "**Lock-in Period**"). Subsequently, the Founder shall have an option to put up to 10% (ten percent) of shareholding in the Company held by it to the Investor ("**Put Option**"). The price for Put Option will be fair market price and will be determined by one of the Big 6 Auditors to be mutually agreed. The Put Option will be exercised not earlier than 24 months of Closing and not later than 36 months of Closing.

9.4 **Sale of Shares by the Promoters and the Investor's Right of First Refusal**

9.4.1 Without prejudice to Clause 9.3 and 9.6, in the event any Promoter desires to Transfer any of its Shares or interest in the Company to any Person (a "Third Party Purchaser"), such Promoter shall be required to first offer such Shares to the Investor (the "Right of First Refusal") through a written notice (the "Offer Notice") setting forth the terms of the proposed Transfer, including the purchase price per Share proposed for such Transfer (the "Proposed Purchase Price"), and the number of Shares which the Investor is entitled to purchase (the "Right of First Refusal Shares").

9.4.2 The Investor shall deliver a written notice to the Promoter specifying either (a) its acceptance to purchase the Right of First Refusal Shares, or (b) its refusal to purchase the Right of First Refusal Shares, within thirty (30) days of being notified (the "**Notice Period**") by the Promoter.

9.4.3 If the Investor exercises its Right of First Refusal, the Promoter shall Transfer the Right of First Refusal Shares to the Investor within thirty (30) days of the expiry of the Notice Period.

9.4.4 In the event the Investor is unable or unwilling to purchase the Right of First Refusal Shares or is unable to respond within the Notice Period, the Promoter shall be entitled to Transfer the Right of First Refusal Shares to the Third-Party Purchaser at a price equal to or higher than the Proposed Purchase Price and otherwise on the same terms as set out in the Offer Notice. The Investor shall be entitled, in its sole discretion, to exercise its rights under **Clause 9.6** in respect of any proposed Transfer to the Third-Party Purchaser.

9.5 **Sale of Shares by the Investor and the Promoters Right of First Offer**

9.5.1 Without prejudice to Clause 9.3, if at any time, Investor desires to Transfer any or all of its Shares ("Investor Offer Shares"), to a third party, it shall first make an offer for the sale of such Investor Offer Shares to the Promoters (the "Right of First Offer") by a notice in writing ("Promoters Offer Notice") mentioning the total number of the Investor Offer Shares.

9.5.2 Promoter shall be entitled to accept the offer by written notice to Investor ("**Promoter Acceptance Notice**") within a period of 30 (thirty) days from the date of receipt of the Promoter Offer Notice ("**Promoter Acceptance Period**"). The Promoter Acceptance Notice shall specify the price at which Promoter will purchase the Investor Offer Shares. Failure by Promoter to respond to the Promoter Offer Notice prior to the expiry of the Promoter Acceptance Period shall be deemed to constitute the election by Promoters to not exercise their rights under this Clause 9.5.

9.5.3 Investor will have the right to either accept the Promoter Acceptance Notice or sell the Investor Offer Shares to the third party at a price which shall be higher than the price offered by Promoters. In case the Investor accepts the Promoter Acceptance Notice within a period of 90 (ninety) days from receipt of Promoter Acceptance Notice, the purchase of the Investor Offer Shares by Promoter shall be completed within 30 (thirty) days from the date of receipt of such acceptance from Promoter. In case Investor does not accept the Promoter Acceptance Notice and Investor is unable to sell the Investor Offer Shares (to a third party) within a period of 90 (ninety) days from the date of receipt of the Promoter Acceptance Notice, any Transfer of Shares by Investor to the third party shall again become subject to requirements mentioned under this Clause 9.5.

9.5.4 If Investor is desirous of selling the Shares to a third party in adherence with the clauses above, the Company shall fully cooperate with Investor in order for such third party to get information on the Company needed to evaluate the purchase of the Investor Offer Shares, arranging a due diligence (financial, legal, tax, business) etc.

9.5.5 In case the Investor intends to sell its Shares to any third party who is a competitor of the Business, then the Promoter shall have Right of First Refusal on such Shares in accordance with the process described hereunder.

(a) In the event the Investor desires to Transfer any of its Shares or interest in the Company to any third party purchaser (who is a competitor of the Business), then Investor shall be required to first offer such Shares to the Promoters (the "Right of First Refusal") through a written notice (the "Offer Notice") setting forth the terms of the proposed Transfer, including the purchase price per Share proposed for such Transfer (the "Proposed Purchase Price"), and the number of Shares which the Promoters are entitled to purchase (the "Right of First Refusal Shares").

(b) The Promoters shall deliver a written notice to the Investor specifying either (a) its acceptance to purchase the Right of First Refusal Shares, or (b) its refusal to purchase the Right of First Refusal Shares, within thirty (30) days of being notified (the "**Notice Period**") by the Investor.

(c) If the Promoters exercises its Right of First Refusal, the Investor shall Transfer the Right of First Refusal Shares to the Promoter within thirty (30) days of the expiry of the Notice Period.

(d) In the event the Promoter is unable or unwilling to purchase the Right of First Refusal Shares or is unable to respond within the Notice Period, the Investor shall be entitled to Transfer the Right of First Refusal Shares to the third-party purchaser at a price equal to or higher than the Proposed Purchase Price and otherwise on the same terms as set out in the Offer Notice.

9.6 **Tag-Along Right**

9.6.1 Without prejudice to Clause 9.4 and 9.5, in the event of any proposed Transfer of Shares by either of Promoters/Founder or Investor (Transferring Party) to any Third Party Purchaser, the non-transferring Party shall have the right, but not the obligation, exercisable upon delivery of a written notice to such non-transferring Party, with a copy to the Company (the "**Tag Notice**"), within five (5) days of the expiry of the Notice Period, to participate in the Transfer of any Shares by the Transferring Party by requiring the Transferring Party to procure that the Third Party Purchaser purchases from the non-transferring Party, at the sole discretion of the non-transferring Party, such number of Shares (or any other securities on a Fully Diluted Basis) then held by the non-transferring Party as bears

proportion to the ratio of shareholding between the non-transferring Party and the Transferring Party, at the same price and upon the same terms and conditions on which the Transferring Party proposes to transfer its Shares to the Third Party Purchaser.

9.6.2 A failure by the non-transferring Party to respond within such prescribed period shall constitute a decision by the non-transferring Party not to exercise its right to tag-along as provided herein, provided however, that if the Transferring Party fails to consummate the Transfer of such Shares to the Third Party Purchaser in accordance with this Agreement within fifteen (15) days of the expiration of the Notice Period, the rights of the non-transferring Party under this **Clause 9.6** shall revive in relation to such Transfer.

9.6.3 In no event the Founder shareholding shall fall below 26% (twenty six percent) as a result of the proposed Transfer of Shares by the Promoters to a Third-Party Purchaser.

9.6.4 Without prejudice to **Clause 9.3**, if, as a result of a proposed Transfer of Shares by the Promoters to a Third Party Purchaser, the Promoter's shareholding in the Company will fall below 10% of the Share Capital, the Investor's right under **Clause 9.6.1** to participate in such Transfer of Shares by the Promoter shall be with respect to all of the Shares (or any other securities on a Fully Diluted Basis) then held by the Investor.

9.7 **Drag Along Rights**

9.7.1 If, in case of Exceptional Situations, the Investor intends to transfer Shares held by it to a third party, it shall have the right (the "**Drag-Along Right**"), but not the obligation, to require the Promoters to sell or arrange to sell their proportionate Shares as a part of the same sale and at the same price. The transfer shall be on an arms-length basis at a price which is not less than the fair market value.

9.7.2 The Investor shall notify the Promoters in writing (the "**Drag Notice**"), inter alia, specifying

(i) the number of Shares to be sold by the Promoters on a Fully Diluted Basis to the third party (the "**Dragged-Along Shares**");

(ii) the offer price (the "**Drag Price**");

(iii) the terms and conditions of the sale; and

(iv) the proposed date and place of the closing of the sale.

9.7.3 For the purposes of the above clause, Exceptional Situations shall mean and include gross negligence, willful misconduct, breach of statutory obligations by the Company and / or the Promoters.

9.8 **Transfer of Shares by the Investor or Promoter**

9.8.1 Notwithstanding anything to the contrary contained herein, the Investor may at any time without the prior consent of the Promoters, Transfer any of the Shares held by it to any Affiliates, provided that such Person has executed a deed of adherence substantially in the form set out in ***Schedule 6***.

9.8.2 Notwithstanding anything to the contrary contained herein, the Promoter may at any time without the prior consent of the Investor, Transfer any of the Shares held by it to any of its Affiliates, provided that such Affiliates has executed a deed of adherence substantially in the form set out in ***Schedule 6***.

9.9 **Claw Back Option**

The Founder shall have the right to call up to 2% (two percent) of the Equity shareholding in the Company held by the Investor calculated at a price equal to Weighted Average Benchmark paid per share plus interest calculated at the rate of 10% per annum. The call option is to be exercised within a period of 3 months from the expiry of a period of 21 months of the Closing. Further, in case the Founder exercise the call option under this Clause then his right to exercise Put Option under Clause 9.3 shall cease to exist.

10 Information Rights

10.1 The Company shall provide to the Investor:

10.1.1 audited Financial Statements of the Company and each Subsidiary not later than ninety (90) days of the end of every Financial Year, as applicable;

10.1.2 unaudited quarterly Financial Statements of the Company and each Subsidiary not later than thirty (30) days of the end of each quarter of every Financial Year, as applicable;

10.1.3 unaudited monthly Financial Statements of the Company and each Subsidiary not later than ten (10) days of the end of each month of every Financial Year, as applicable;

10.1.4 details of the creation of any Encumbrance on any Shares owned by any of the Promoters; and

10.1.5 details of any Claim against any of the Promoters, or the Directors and periodic updates in respect of the status of such Claims.

10.2 In addition, the Company shall promptly provide, and the Promoters shall procure that the Company promptly provides, to the Investor, any information relating to material developments in the financial condition, operations and prospects of the Company and any Subsidiary, including estimated changes in the balance sheet, changes in the business plan and forecasts, expansion or fund-raising plans, any plans relating to an IPO and material developments in relationships with employees and sub-contractors.

10.3 The Investor and its duly authorised officers, employees, accountants and attorneys shall have the right, at any time, and from time to time during normal business hours and upon prior written notice to the Company, to inspect and take copies of the books, records and other related documents of the Company and to consult with the officers, employees, accountants and attorneys of the Company for the purpose of affording the Investor full opportunity to make such investigation as it shall desire.

10.4 The Investor shall have the right to conduct an audit of the Business to review financial and operational processes being followed by the Company and make recommendations in that behalf. The Company shall take all steps to procure that such recommendations are duly implemented in a timely manner, subject to the approval of such recommendations by the Board.

11 Liability of the Non-Executive Directors

11.1 The Company and the Promoters expressly agree and undertake that to the maximum extent permitted by applicable Law, the non-executive Directors shall not be liable for any default or failure of the Company in complying with the provisions of any applicable Law, including defaults under the Act and taxation and labour laws of India, based upon, resulting from, arising out of, in relation to, or otherwise in connection with, any inaccuracy in, or any breach of, any representation and warranty, any covenant or agreement of the Promoters and/or the Company contained in this Agreements.

11.2 The Company and the Promoters expressly agree and undertake that they shall not identify any of the non-executive Directors as an "officer in default" of the Company, or occupier of any premises used by the Company or employer under applicable Law as long as the director(s) continue to be a non-executive Director. Further, the Company and the Promoters undertake to procure that the other Directors or suitable persons are nominated as compliance officers, occupiers and/or employers, as the case may be, in order to procure that, to the maximum extent permitted by applicable Law, the non-executive Directors do not incur any liability.

11.3 The Company shall compensate, indemnify, defend and hold harmless, to the maximum extent permitted by applicable Law, any/all of the non-executive Directors of the Company who was/were or is/are made a party, or is threatened to be made a party, to any Claim (including any action brought by or in the name of the Company), by reason of the fact that such Director is or was a Director, or otherwise relating to any action taken or omitted to be taken in such person's capacity as a non-executive Director, against all or any such claims and losses in connection with the Business.

12 Indemnity

12.1 Without prejudice to any other rights available to the Investor in law or under equity, the Company and the Promoters shall be jointly and severally liable to compensate, indemnify, defend and hold harmless, the Investor, its directors, officers, representatives, employees agents and the Company, from and against any and all Claims, actions, losses, damages, penalties, costs, charges, expenses, suits, or proceedings of whatever nature made, suffered, accrued, incurred or borne, including, without limitation, any legal or other fees and expenses actually incurred in connection with investigating, disputing, preparing or defending any action or claim (collectively, "**Losses**") based upon, resulting from, arising out of, in relation to, or otherwise in connection with, any inaccuracy in, or any breach of, any Representation and Warranty, any covenant or agreement of the Promoters and/or the Company contained in this Agreement. The right of the Investor to be indemnified under this **Clause 12.1** in respect of any Losses based upon, resulting from, arising out of, in relation to, or otherwise in connection with, any inaccuracy in, or any breach of, any matter inconsistent with, any Representations or Warranties relating to the Company shall survive for a period of three (3) years from the Closing Date.

12.2 If any Tax or other liability is paid, incurred or suffered by the Company based upon, resulting from, arising out of, in relation to, or otherwise in connection with, any transaction effected or deemed to have been effected on or prior to the Closing Date, including due to retrospective application of laws of any jurisdiction, and for which no provision has been made in the Financial Statements (the "**Tax Liability**"),

(a) the Promoters undertake to pay to the Company an amount equal to the Tax Liability together with any costs and expenses incurred by the Company in connection with any such Tax Liability; and

(b) the Promoters shall compensate, indemnify, defend and hold harmless the Investor, its directors, officers, representatives, employees and agents, from and against any claims and losses

paid, incurred or suffered by such indemnified person, based upon, resulting from, arising out of, in relation to, or otherwise in connection with, any Tax Liability or any breach of the Representations and Warranties set out in **Clause** 7 of ***Schedule 4***.

The right of the Company and the Investor to be indemnified under this **Clause 12.2** shall survive for a period of three (3) years from the Closing Date.

12.3 The rights and remedies of the Investor in respect of any breach of any of the Representations and Warranties, covenant or agreement of the Promoters and/or the Company contained in this Agreement shall not be affected by any act or occurrence which otherwise might have affected such rights and remedies, except by a specific written waiver by the Investor.

12.4 The Investor shall not assume in any manner, any responsibility or liability whatsoever in respect of the Business of the Company and its operations or activities, to any Person and any Competent Authority nor assume any responsibility or liability for any non-compliance with any Law by the Company and/or the Promoters.

12.5 The Investor shall be entitled, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any Claim (including, without limitation, making claims or counter-claims against third parties).

12.6 The indemnification rights of the Investor under this Agreement are independent of, and in addition to, such other rights and remedies as the Investor may have at Law or in equity or otherwise, including the right to seek specific performance, rescission, restitution or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.

12.7 The Investor shall be entitled to claims and indemnity thereto if the amount of each such claims exceeds an amount of Rs. _____ ("De-Minimus"). Further, the Investor may only raise and entitled to claims and indemnity thereto if the cumulative amount of all valid claims exceeds an amount of Rs. _____ ("Deductible").

12.8 The overall indemnity of the Promoters and the Company will be capped to the amount invested by Investor plus 10% IRR on investment till such date of claim sought under this indemnity.

13 Liquidation Event

13.1 Upon occurrence of any liquidity event (including any IPO, liquidation, merger, acquisition, change of control, trade sale, sale of Business, sale of

assets), the Investor will have liquidation rights preferential to all other outstanding Shares and securities of the Company other than debt and shares with rights preferential to the Shares held by Investor.

13.2 The Investor will be entitled to receive, in preference to all other holders of equity shares or any other Shares and securities than the debt and shares with rights prudential to Investor shares, an amount equal to the purchase price paid per share plus any accrued or declared but unpaid dividends.

13.3 After the payment of such initial preferential amounts, the balance of the proceeds shall be shared pro rata among the Investor and the shareholders of the Company.

14 Exit

The Parties agree that they shall cooperate and support each other in case either of the Party intends to exit from the Company after 7 (seven) years from the Closing Date subject to provisions of Clause 9.

15 Notices

15.1 Any notice provided for in this Agreement shall be in writing and may be transmitted by or email transmission, and then confirmed by postage, prepaid registered post with acknowledgement due or by internationally recognised courier service, in the manner, as elected by the Party giving such notice:

In the case of notices to the Investor:

Address:_____

Attention:_____

E-mail:_____

In the case of notices to the Company and/or the Promoters:

Address: _____

Attention: _____

E-mail:_____

All notices shall be deemed to have been validly given on (a) the same Business Day if sent by email, (b) the Business Day of receipt, if sent by courier, or (c) the expiry of five (5) Business Days after posting, if sent by registered post.

15.2 Any Party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to all the other Parties not less than ten (10) Business Days prior written notice thereof.

16 Termination

16.1 Either of the Party shall be entitled to terminate this Agreement forthwith, by giving a notice in writing to the other Party which has committed a Material Breach of any of the provisions of this Agreement.

Material Breach shall mean any failure by the Party to perform, keep or fulfill any of the representations, warranties, covenants, undertakings, obligations, or conditions set forth in this Agreement and the continuance of any such default for a period of thirty (30) Business Days after the date of service of written notice from the other Party.

16.2 This Agreement shall terminate automatically:

16.2.1 if the Closing Date does not occur on or prior to _____, unless extended by the mutual agreement of the Parties in writing; or

16.2.2 if the Investor (or its permitted transferee) or Promoter ceases to hold at least 10% of the Equity Shares in the Company.

16.3 Clauses 12, 15, 18, 19.5, 19.6, 19.7, 19.8, 19.10, 19.11, 19.13 and this Clause 16.3 shall survive any termination of this Agreement.

16.4 Termination of this Agreement shall not relieve any Party of any liability, which at the time of termination has already accrued to the other Party hereto, or which may, thereafter, accrue in respect of any act or omission prior to such termination.

16.5 Notwithstanding Clause 0, this Agreement may be terminated by mutual consent of the Parties.

17 Non-Compete and Non-Solicitation

17.1 During the subsistence of this Agreement and for a further period of 2 (two) years after termination of this Agreement, the Founder/Promoters agree not to, directly or indirectly, engage, in their individual capacity or otherwise, in any activity that is similar to or may compete with the Business or invest, advise or participate in any business that undertakes, or proposes to undertake, any activity that is similar to or may compete with the Business. However, the Promoters shall be exempted to be involved in media promotion, knowledge/ thought leadership activities or publishing books as long as they are not in full time in nature as long as they are employed by the Company and free to pursue full time once they cease to be employed by the company. Provided that the involvement in such activities shall not dilute the attention to be paid to the affairs of the Company. Further, the Parties agree that for the post termination period of 2 (two) years, the Founder shall be entitled for 6 (six) months' salary as non-compete fee payable at the commencement of the Non-Compete period payable in 6 (six) monthly instalments starting

with the month of commencement of non-compete period post contract termination

17.2 During the continuance of this Agreement and so long as the Promoters, directly or indirectly, legally and/or beneficially, holds any Equity Share and for a further period of 2 (two) years following the latest of the dates on which the Promoters ceases to hold any Equity Shares in the Company, the Promoters shall not, and shall cause its Affiliates not to:

(i) Directly or indirectly, attempt in any manner to solicit from any client/customer any business of the Company or its Subsidiaries, or to persuade any person, firm or entity which is a client/customer of the Company to cease doing any business or to reduce the amount of such business which any such client/customer has customarily done with the Company whether or not the relationship between the Company and such client/customer was originally established in whole or in part through their efforts; or

(ii) Employ or attempt to employ or assist anyone else to employ any person who is in the employment of the Company or any of the Subsidiaries, or was in the employment of the Company or any of its Subsidiaries at any time during the preceding 6 (six) months.

17.3 The Parties acknowledge and agree that adequate consideration has been provided for the non-compete covenants contained in this Agreement and that restrictions contained in this **Clause 17** are considered reasonable for the legitimate protection of the Business.

17.4 The Parties acknowledge and agree that the covenants and obligations as set forth in this **Clause 17** relate to special, unique and extraordinary matters, and that a violation of any of the terms of such covenants and obligations by one Party will cause the other Parties irreparable injury. Therefore, it is agreed that the Parties shall be entitled to an interim injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the Parties, as the case may be, with respect to any violation of the covenants and obligations contained in this **Clause 17**. These injunctive remedies are cumulative and are in addition to any other rights and remedies that the Parties may have at Law or in equity.

17.5 The Parties agree that in case this Agreement is terminated due to Investor ceasing to be a shareholder in the Company, then the Promoters shall be permitted to conduct business similar to the Business.

18 Confidentiality

18.1 The Parties agree to hold in confidence, and not disclose without the prior written approval of the other Parties, all information concerning the Business and affairs of the Company (the "**Confidential Material**"), and to only make available Confidential Material to such officers, employees and representatives (including legal, consultancy, and accounting representatives) as is necessary for the Parties to enter into this Agreement or as may be required by applicable Law or to comply with the requirements, statutory or judicial, of an applicable governing agency or court.

18.2 However, Confidential Material does not include any such information which

(i) is or becomes available to the public as a result of a disclosure by the Company;

(ii) was known to the Parties on a non-confidential basis prior to its disclosure by the Company; or

(iii) becomes available to the Parties on a non-confidential basis from a source other than the Company or its agents or representatives.

19 Miscellaneous Provisions

19.1 **Facilitation and Further Assurance**

19.1.1 The Promoters shall, at all times, do, execute and perform all such further deeds, documents, assurances, acts and things and exercise the votes that they hold at both shareholders meetings and/or Board meetings as may be required for compliance with, and performance of, the terms of this Agreement and the Articles by the Promoters and the Company, including the pre-emptive and anti-dilution rights of the Investor under **Clause 9**, to the maximum extent permissible under applicable Law.

19.1.2 The Company shall, at all times, do, execute and perform all such further deeds, documents, assurances, acts and things, as may be required for compliance with, and performance of, the terms of this Agreement and the Articles, including the pre-emptive and anti-dilution rights of the Investor under **Clause 9**, to the maximum extent permissible under applicable Law.

19.2 **Compliance with Law**

The Company shall, and the Promoters shall cause the Company to, conduct the Business and the business of any Subsidiary in accordance with Law, including in relation to the health and safety of its employees.

19.3 **No Objection to Future Investments**

The Parties agree that the Investor shall not invest in any _____ business in India for a period of 2 (two) years from the Closing Date. After expiry of 2 (two) years, Investor may invest in such business in India with prior approval of the Promoters (which shall be not be unduly withheld) provided no Intellectual Property or Trademark owned by the Company or its subsidiaries are used outside the Company. Further, other than _____ business, the Investor and its Affiliates and associates shall be entitled to:

(i) invest in, including, by way of subscription or acquisition of shares of; and

(ii) enter into any kind of agreement, including a technology transfer agreement or trademark license agreement with,

an Indian company that is engaged in the same or allied field as the Company or any Subsidiary, and the Company and the Promoters hereby confirm that they shall not object to any such transaction by the Investor or its Affiliates or associates.

The Company and the Promoters agree to unconditionally sign (without payment of further consideration) such deeds, documents and/or instruments (including such consents or approvals) as the Investor or its Affiliates or associates may require from time to time in connection with the conduct of the business activities described in the immediately preceding sentence.

19.4 **Reservation of Rights**

No forbearance, indulgence or relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision, and any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver or acquiescence of any continuing or succeeding breach of such provisions, a waiver of any right under or arising out of this Agreement or acquiescence to or recognition of rights other than that expressly stipulated in this Agreement.

19.5 **Partial Invalidity**

If any provision of this Agreement or the application thereof to any Person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. Any invalid or unenforceable provision of this Agreement

shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

19.6 **Amendments**

No modification or amendment of this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the Parties.

19.7 **No Assignment**

19.7.1 The Investor shall be entitled to freely transfer or assign its Shares, rights and benefits (in full or in part) to any third person with proportionate tag along rights to Founder and subject to Right of First Offer and Right of First Refusal provisions outlined in Clause 9.4 and 9.5 respectively.

19.7.2 This Agreement and the rights and liabilities hereunder shall bind and inure to the benefit of the respective successors of the Parties, but the Promoters shall not assign or transfer its rights and liabilities hereunder to any other Person without the prior written consent of the other Parties, except to the extent specifically provided for herein.

19.8 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes and cancels any prior oral or written agreement, representation, understanding, arrangement, communication or expression of intent relating to the subject matter of this Agreement.

19.9 **Relationship**

None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties or constitute any Party the agent of any other Party for any purpose or entitle any Party to commit or bind any other Party in any manner or give rise to fiduciary duties by one Party in favour of any other Party.

19.10 **Governing Law and Dispute Resolution**

19.10.1 This Agreement shall be governed by and construed in accordance with the laws of India and subject to the provisions of arbitration as set out below, the courts at New Delhi shall have exclusive jurisdiction.

19.10.2 In the event any Party is in breach of any of the terms of this Agreement, another Party may serve written notice to require the Party in breach to cure such breach within 30 (thirty) days of the receipt of such written notice thereof.

19.10.3 In the case of any dispute or claim arising out of or in connection with or relating to this Agreement, or the breach (where such breach has not been cured by the Party in breach within 30 (thirty) days of a written notice thereof), termination or invalidity hereof, the Parties shall attempt to first resolve such dispute or claim through discussions between senior executives of Investor and the Promoters.

19.10.4 If the dispute is not resolved through such discussions within 30 (thirty) Business Days after one of the Parties has served a written notice on the other Party under clause 19.10.3 above, the dispute or claim shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**Arbitration Act**") then in effect. The place of arbitration shall be New Delhi.

19.10.5 For the purpose of such arbitration, there shall be 3 (three) arbitrators. Investor shall appoint 1 (one) arbitrator, the Company and the Promoters shall appoint 1 (one) arbitrator and the two arbitrators so appointed shall appoint the third arbitrator (the Arbitration Board). All arbitration proceedings shall be conducted in the English language.

19.10.6 The arbitrator's award shall be substantiated in writing. The arbitration panel shall also decide on the costs of the arbitration proceedings.

19.10.7 The award shall be binding on the Parties subject to applicable Law and the award shall be enforceable in any competent court of law. The Parties agree to be bound thereby and act accordingly.

19.10.8 The Parties shall cooperate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced pursuant to this Agreement.

19.11 **Public Announcements**

None of the Parties to this Agreement shall issue any press release or make any disclosure, public statement, announcement or other communication about the subject matter of this Agreement or the transactions contemplated hereby to any Person without the prior written consent of the other Parties, unless it is required by applicable Law or by any Competent Authority.

19.12 **Execution in Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

19.13 **Authorisation**

The persons signing this Agreement on behalf of the Parties represent and covenant that they have the authority to so sign and execute this document on behalf of the Parties for whom they are signing.

19.5 **Costs**

Subject to the closing of the transactions contemplated by **Clause 4** of this Agreement, the Company shall bear all costs and expenses incurred in connection with any legal and financial due diligence, drafting of the Agreement, discussions, negotiations and investigations undertaken in connection with the subject matter hereof, including costs and expenses associated with the retention of financial, legal, tax and other professional advisors by the Parties from the Subscription Amount Tranche.

IN WITNESS WHEREOF THE PARTIES HAVE PUT THEIR HANDS THE DAY AND YEAR FIRST HEREINABOVE WRITTEN

SIGNED AND DELIVERED

by the withinnamed "**Investor**"

by the hand of Mr. _____

Authorised Signatory

SIGNED AND DELIVERED

by the withinnamed "**Company**"

by the hand of Mr. _____

Authorised Signatory

SIGNED AND DELIVERED

by the withinnamed "**Founder**"

by the hand of Mr. _____

SCHEDULE 1

PROMOTERS

1.
2.
3.

SCHEDULE 2

SHAREHOLDING STRUCTURE

Part A

Shareholding structure of the Company immediately prior to the execution of the Agreement:

S. No.	Name	Number of Equity Shares	Percentage Equity Interest (%) on a Fully Diluted Basis
1.			
2.			
3.			
	Total		

Part B

Shareholding structure of the Company on the Closing Date:

S. No.	Name	Number of Equity Shares	Percentage Equity Interest (%) on a Fully Diluted Basis
1.			
2.			
3.			
4.			
	Total		100

SCHEDULE 3

MILESTONES

The Company will achieve following financial targets as a condition precedent to the tranche II investment to be made by the Investor-

1. Revenue of not less than Rs. _____ per annum
2. EBIDTA of not less than Rs. _____ per annum
3. Number of paid clients (new, existing and repeat) served shall be not less than _____ per annum.

(i) **First Review**: The above milestones shall be reviewed after 1 year of the Closing Date based on the audited numbers of the financial year ending _____. If 2 out of 3 milestones are achieved by the Company, then Investor will invest Subscription Amount Tranche 2 within 30 (thirty) days of review.

(ii) **Second Review**: In case the above milestones are not achieved in First Review then the same shall be again reviewed after 6 months based on the audited numbers for the last 12 months of period ending _____. If 2 out of 3 milestones are achieved by the Company, then Investor will invest Subscription Amount Tranche 2 within 30 (thirty) days of review.

(iii) **Third Review**: In case the above Milestone are still not achieved after then the same shall again be reviewed finally after 6 months based on the audited numbers for the last 12 months of period ending _____. If 2 out of 3 milestones are achieved by the Company, then Investor will invest Subscription Amount Tranche 2 within 30 (thirty) days of review.

In case the milestones are still not achieved after the third review, Investor will have an option on his absolute discretion to decide whether to invest Subscription Amount Tranche 2 or not and with relevant provisions of Clause 3 and its sub-clause as applicable.

SCHEDULE 4

REPRESENTATIONS AND WARRANTIES

In this Schedule, capitalised terms have the meanings set forth in the Agreement and a reference to the Company shall, unless contrary to the context, be deemed to include any Subsidiary and any branch offices, whether in India or abroad, as applicable.

The Representations and Warranties set out in this Schedule are subject to the disclosures made and set out in the Disclosure Schedule which is an attachment to this Schedule.

1. **Organisation and Qualification of the Company; Standing**

   (a) The Company is a private limited company with liability limited by shares duly incorporated and validly existing under the laws of India, bearing company identification number (CIN) _____ with full power and authority to enter into and execute contracts (including the Agreement), own or take on lease its properties and to conduct its business in the manner and in the places where such properties are owned or taken on lease or such business is conducted by it.

   (b) The copies of the Memorandum and Articles attached hereto, certified by the Company's Director or secretary are up to date, complete and correct.

   (c) The Company is not insolvent or unable to pay its debts as and when they fall due.

   (d) No meeting has been convened or resolution proposed, or notice received of any petition being presented, and no Order has been made, for the winding-up of the Company.

   (e) No distress, execution or other similar Order or process has been levied or notice received of any such Order or process on any of the properties or assets of the Company.

   (f) No voluntary arrangement has been proposed or reached with any creditors of the Company to wind-up the Company.

   (g) No receiver, manager, provisional liquidator, liquidator or other officer of the court has been appointed or notice received of such appointment in relation to the properties or assets of the Company.

2. **Business**

   The Company is not engaged in any business other than the Business.

3. **Capitalisation of Company**

   (a) The current authorised capital of the Company is Rs. _____ divided into _____ equity shares of Rs. 10 (Rupees Ten) each. Further, the total paid up share capital of the Company is Rs. _____ divided into _____ equity shares of Rs. 10 (Rupees Ten) each. All such Shares were issued in compliance with applicable Law. There are no outstanding or authorised subscriptions, warrants, options or other rights to purchase or acquire, or pre-emptive rights with respect to the issuance or sale of the Shares of the Company.

   (b) Each Promoter represents and warrants that it is the legal and beneficial owner of the Equity Shares that are disclosed against its name in ***Part A of Schedule 2***, free and clear of any Encumbrances, and that it does not own, legally or beneficially, any other Shares, or rights, options, or warrants with respect thereto.

(c) The shareholding structure of the Company on a (i) immediately prior to the execution of the Agreement is as set out in ***Part A of Schedule 2***; and (ii) upon Closing shall be as set out in ***Part B of Schedule 2***.

(d) On the Closing Date, after giving effect to the transactions contemplated by the Agreement the Investor shall hold _____ Equity Shares of Rs. 10 each issued at Rs. _____ per share representing __ % of the Equity Share Capital.

(e) As of the Closing Date, all of the issued and outstanding Equity Shares are duly authorised, validly issued, validly subscribed, fully paid, and were issued in compliance with Law and the Articles of the Company.

4. **Compliance**

The Company is not:

(a) in violation of its Memorandum and Articles;

(b) in default under or breach of performance of any obligation, agreement or condition of any debt instrument which affords to any Person the right to accelerate any indebtedness or terminate any right; or

(c) in default under or in breach or aware of any circumstances which would result in such default or breach, of any other contract to which the Company is a party which gives any third-party rights to damages.

5. **Governmental Authorisation, Third Party Consents**

No approval, consent, compliance, exemption or authorisation from, or other action by, or notice to, or filing with, any Competent Authority or any other Person (other than filings with the Reserve Bank of India and the Registrar of Companies), and no lapse of a waiting period under applicable Law is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company of the Agreement or the transactions contemplated herein.

6. **Authority; No Conflict**

The Company has the power and authority to execute and deliver the Agreement and to carry on its Business and operations as they are being conducted. The execution and delivery of the Agreement has been duly authorised and approved by the Company and does not require any further authorisation or consent of any third party.

Upon execution and delivery, the Agreement will constitute a legal, valid and binding obligation of the Company, enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws, affecting rights of creditors and by general principles of public policy or equity, whether considered in a proceeding at Law or in equity.

The execution, delivery and performance of the Agreement, the consummation of the transactions contemplated in the Agreement and compliance by the Company with any of the terms or provisions of the Agreement, will not:

(a) constitute a breach or violation of the Memorandum or Articles;

(b) conflict with or constitute a default under or breach of performance of any obligation, agreement or condition of any debt instrument which affords any Person the right to accelerate any indebtedness or terminate any right;

(c) constitute a default under or breach or result in any circumstances which would result in such default or breach, of any other document, contract or agreement to which the Company or any Subsidiary is a party or is applicable to the Company or any Subsidiary;

(d) result in the creation of any lien or Encumbrance upon the Share Capital, in whole or in part, of the Company; or

(e) result in a violation of any Law.

7. **Financial Statements**

7.1 The Company has delivered to the Investor the audited Financial Statements for the Financial Years ended March 31, _____ (the "**Statements**"). The Statements are true and fairly present the financial position of the Company, on the dates of such accounts and the results of their respective operations on the applicable basis for the relevant periods covered thereby.

7.2 The Statements have been prepared in accordance with Indian GAAP and are true and fair in all respects so far as they are stated to be facts and not estimates and accordingly give a true and fair view of all the assets and liabilities (actual or contingent) and of the state of affairs, financial position as at and the income, expenses and results of operations of the Company for the periods covered thereby.

7.3 Without limiting the generality of the foregoing and to the best of the Company's knowledge:

(a) the Statements show a complete, true and fair view of (i) the assets, liabilities, financial position and state of affairs as at the relevant dates of such Statements; and (ii) the income, expenses and results of operations of the Company for the relevant periods covered by such Statements;

(b) other than in respect of the unaudited Statements, the Statements have been prepared and audited in accordance with the requirements of the laws of India and any other applicable Law, the applicable accounting standards, principles and

practices specified on the face of the Statements and the notes thereon;

(c) the basis and policies of accounting adopted for the purpose of preparing the Statements have been applied consistently and without revaluing upwards any assets during the period which is the subject of the Statements (except for true and fair disclosures made in such financial statements);

(d) the Statements make proper provision and reserve for debts which the Company considers to be or which Indian GAAP requires to be treated as bad and doubtful debts and, other than such bad and doubtful debts, all of the Company's book debts, whether shown in the Statements or arising after the period to which they apply, are collectable;

(e) the Statements make full provision or reserve for all Tax, including deferred or provisional taxation in respect of the accounting period for such Statements, which the Company was then or could reasonably be expected at any time thereafter to become or have become liable;

(f) the Company has not factored any of its debts or entered into any off-balance sheet or other financing arrangement which are not disclosed in the Statements;

(g) the Company has disclosed all known and reasonably foreseeable liabilities in the Statements;

(h) the statutory auditor of the Company that prepared the Statements was independent at the time of preparing each such Statement and continues to be independent of the Company; and

(i) the Statements do not include any unusual, exceptional, non-recurring or extraordinary item of income or expenditure (save as expressly disclosed in them).

8. **Absence of Certain Changes**

Since _____ and to the best of Company's knowledge, there has not been:

(a) any change in the financial condition (including share capital, working capital, earnings and reserves), properties, assets, liabilities, business or operations of the Company which change by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, has been or would reasonably be expected to be materially adverse with respect to the Company;

(b) any contingent liability incurred by the Company as guarantor or otherwise with respect to third party obligations;

(c) any Encumbrance on any of the properties of the Company which remains in existence on the date hereof;

(d) any obligation or liability incurred by the Company that may result in a Material Adverse Change;

(e) any purchase, sale or other disposition, or any agreement or other arrangement for the purchase, sale or other disposition, of any of the properties or assets of the Company other than in the ordinary course of business;

(f) any damage, destruction or loss, whether or not covered by insurance, materially adversely affecting the properties or assets of the Company;

(g) any declaration, setting aside of payment of any dividend on, or the making of any other distribution in respect of, the Share Capital, or any direct or indirect redemption, purchase or other acquisition by the Company of its own shares;

(h) any labour trouble or claim of unfair labour practices involving the Company or any change in the compensation payable or to become payable by the Company to any of its officers, employees or agents, or any bonus payment or arrangement made to or with any such officers, employees or agents or any change in the compensation payable or to become payable by the Company to any of its officers, employees or agents involving additional cost to the Company;

(i) any change with respect to the management or supervisory personnel of the Company;

(j) any loss or change in the relationship with any client, supplier, contractor, licensor, or supplier which may have a Material Adverse Change;

(k) any payment or discharge of a lien or liability of the Company which was not incurred in the ordinary course and which was not disclosed in the Financial Statements;

(l) any obligation or liability incurred by the Company to any of its officers, Related Parties or shareholders or any loans or advances made by the Company to any of its officers, Directors or shareholders except normal compensation, expense and allowances payable to officers or Directors in the ordinary course of business consistent with past practices;

(m) any write-down of the value of any inventory (including write-downs by reason of shrinkage or mark-down) or write-offs as uncollectible any notes or accounts receivable other than what has historically been considered to be reasonable; or

(n) any disposal or lapse of any rights to the use of any registered trademarks, trade name, design, patent or copyrights, or disposal of or disclosure to

any person other than the Investor of any trade secret, formula, process or know-how not theretofore a matter of public knowledge other than pursuant to confidentiality agreements.

9. **Payment of Taxes**

(a) The Company has timely filed all returns with respect to Taxes and other statutory dues, if any, required to be filed by it. All such returns were at the time filed and are as of the date hereof complete and correct in all material respects.

(b) With respect to all Tax returns of the Company:

(i) there is no unassessed Tax deficiency proposed;

(ii) no unusual scrutiny is in progress with respect to any return for Taxes; and

(iii) no extension of time is in force with respect to any date on which any return for Taxes was or is to be filed and no waiver or agreement is in force for the extension of time for the assessment or payment of any Tax.

(c) All Taxes which have become due through the Closing Date have been paid.

(d) All Taxes which the Company is required to:

(i) pay as advance tax has been paid within due dates; and

(ii) withhold or collect have been withheld or collected and have been paid over to or will be paid over to the proper government or other authorities as required (including as to the due time of payment).

(e) The Company has duly responded to or furnished requisite particulars or clarifications or complied with all notices, inquiries, assessment notices received from taxing authorities. As far as the Company is aware, neither the income tax authorities nor any other Competent Authority is now asserting or threatening to assert against the Company any deficiency or claim for additional Taxes.

(f) The Company has no liabilities for Taxes or material outstanding claim for Taxes, whether assessed or contingent. So far as the Company is aware, the Company has not received any notice from any fiscal or other authority in India for the purpose of conducting any investigation on the Company.

(g) All provisions for Tax liabilities of the Company with respect to the Statements have been made in accordance with its applicable generally accepted accounting principles consistently applied, and all liabilities for Taxes of the Company attributable to periods prior to or ending on the Closing Date have been adequately provided for in the Statements.

10. **Title to Assets; Liens; Condition of Assets**

    (a) Correct and complete details and identification of the major fixed assets reflected in the Statements are and will be set forth in the books and records maintained by the Company.

    (b) All real properties used or occupied by the Company are either owned or leased by the Company. All interests held by the Company as lessee in respect of any real property leased by it are free and clear of all Encumbrances of any nature and kind whatsoever.

    (c) Each lease or other agreement to which the Company is a party, is valid and enforceable against the other parties thereto, all payments required to be made by the Company pursuant to any such lease or other agreement have been duly paid and no breach or default has occurred and is continuing under any of those leases or other agreements.

    (d) None of the material assets owned or used by the Company is subject to any Encumbrance.

11. **Collectability of Accounts Receivable**

    All of the accounts receivable of the Company shown or reflected on the accounts (less any reserve for bad or doubtful debts in the amount shown on the accounts) are:

    (a) valid and enforceable claims;

    (b) which arose out of transactions with unaffiliated parties; and

    (c) realisable in the ordinary course of business.

    The Company had no accounts or loans receivable from any Person that is affiliated with the Company or from any director, officer or employee of any of them except for loans to officers and employees in the ordinary course of business.

12. **Intellectual Property Rights**

    (a) For purposes of this Agreement, "**Intellectual Property**" means the trade marks, copyright and technical know-how, process know-how, drawings, designs, diagrams, product recipe, flow charts, technical documentation, manuals, code, website address used or for use in the Business.

    (b) All rights of ownership of, or licenses to use the Intellectual Property are exclusively held by the Company.

    (c) All rights to Intellectual Property which are owned by the Company are free and clear of any Encumbrances and are not subject, to the best of the knowledge of the Company, to any outstanding Order, decree, judgment or stipulation.

    (d) All fees for the grant or renewal of registered Intellectual Property owned by the Company have been paid.

(e) As far as the Company is aware, no proceedings have been commenced or threatened in writing against the Company which (i) challenge the rights of the Company in respect of the Intellectual Property owned or used by the Company, or (ii) charge the Company with infringement of any other Person's rights in Intellectual Property owned or used by the Company.

(f) the Company is not infringing upon any intellectual property rights of any other Person and none of the Intellectual Property rights owned or used by the Company or any interest therein has been assigned or licensed to or created in favour of any third party without any or with a token consideration or with a consideration not disclosed in the Statements.

(g) No Director, officer, employee or agent of the Company, or any other Person owns, directly or indirectly, in whole or in part, any rights of Intellectual Property owned or used by the Company.

(h) All persons who are or have been engaged by the Company, whether as a consultant or an employee, in relation to any of its products have either assigned all rights they may have in relation to the products to the Company or are engaged under contracts which require them to transfer any Intellectual Property developed (whether inside or outside the course of their employment) to the Company and none of the processes, products or activities of the Company give rise to a liability to pay compensation or fees of any sort to persons who are or have been engaged by the Company, whether as a consultant or an employee.

(i) The Company has not granted, does not propose to grant and is not obliged to grant any licences or assignments under or in respect of any rights to use the Intellectual Property owned or used by the Company in favour of any third party.

(j) All Intellectual Property owned by third parties and used by the Company are the subject of binding and enforceable licences from third parties in favour of the Company;

(i) of which no notice to terminate has been received;

(ii) all parties to which have fully complied with all obligations in those licences;

(iii) in relation to which no disputes have arisen or are foreseeable; and

(iv) in relation to which, no circumstances exist which might lead to their modification or termination.

13. **Contracts and Commitments**

(a) No party with which the Company has entered into any material contract has given notice of intention to terminate or repudiate the contract.

(b) With respect to each agreement relating to the Company that is material to its business:

(i) the agreement is legal, valid, binding, enforceable, and in full force and effect in all respects;

(ii) the Company is not in breach or default of its obligations under the agreement; and

(iii) the agreement will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated by the Agreement.

(c) There is no liability, obligation or commitment of any kind on the part of the Company (including a capital commitment), which has not been incurred in the ordinary course of business.

(d) There is no material claim outstanding against any sub-contractor, vendor or job worker of the Company in connection with any breach or default by the sub-contractor, vendor or job worker.

(e) All of the contracts entered into by the Company with its customers are in full force and effect and no default exists on the part of the Company under any such contract.

(f) All the contracts entered into by the Company with its vendors are in full force and effect and no default exists on the part of the Company under any such contract.

(g) No notice has been received by the Company which has threatened termination, cancellation or limitation of, or any adverse modification or change in, the business relationship of the Company, with any customer, vendor or supplier.

(h) So far as the Company is aware, there exists no present condition or state of fact or circumstances that could materially adversely affect the condition, financial or otherwise, or the business, management, assets or prospects of the Company or prevent the Company from conducting such business relationships or such business with any such customer, vendor or supplier in the same manner as are presently conducted by the Company.

(i) The Company is not a party to or bound by any contract, agreement or arrangement that is of a type described below:

(i) any agreement or group of related agreements for capital expenditures or the acquisition or construction of fixed assets which requires total future payments in excess of Rs. _____;

(ii) any agreement or group of related agreements for the purchase, maintenance or acquisition, or the sale or supply, of materials, supplies, merchandise, equipment or other property or services that involve consideration in excess of Rs. _____;

(iii) any agreement granting to any Person a first-refusal, first-offer or similar preferential right to purchase or acquire any securities of the Company or any material right, asset or property of the Company;

(iv) any indenture, mortgage, loan or credit agreement under which the Company has borrowed any money or issued any note, bond, indenture or other evidence of indebtedness for borrowed money or has had imposed any security interest on any of its assets, or guaranteed indebtedness of others or any guarantee or other Contract pursuant to which the Company is liable for any liability or obligation of any other person;

(v) any lease under which the Company is

(i) a lessee of, or holds or uses, any machinery, equipment, vehicle or other personal property owned by a third party; or

(ii) a lessor of, or makes available for use by any third party, any personal property owned by the Company, which in either case requires aggregate annual payments in excess of Rs. _____;

(vi) any agreement concerning a partnership or joint venture;

(vii) any non-competition, restrictive covenant or other agreement that restricts the Company from conducting the Company's business;

(viii) any agreement (or group of related agreements) that is not made in the ordinary course of business and that involves future payment or performance valued in excess of Rs. _____;

(ix) any agreement under which the consequences of a default or termination could reasonably be expected to have a Material Adverse Change;

(x) any agreement that requires consent or approval of, notices or notifications to or filings or registrations with, any Competent Authority or third party in connection with:

(i) the execution and delivery by the Company and the Promoters of the Agreement;

(ii) the performance by the Company and the Promoters of their respective obligations under the Agreement; and

(iii) the consummation by the Company and the Promoters of the transactions contemplated by the Agreement; and

(xi) any other agreement (or group of related agreements) the performance of which involves consideration in excess of Rs. _____.

(j) No purchase order or commitment of the Company is in excess of requirements in the ordinary course of business, nor are prices provided therein in excess of current market prices for the services to be provided thereunder.

14. **Employment Matters**

(a) The Company has complied in all respects with applicable Law relating to the employment of labour, including those relating to wages, hours, unfair labour practices, discrimination, contract labour and payment of provident fund contribution, employee state insurance contribution, and other applicable employee welfare laws.

(b) There are no arbitration proceedings, labour strikes, slowdowns or stoppages, grievances or other labour troubles pending or threatened with respect to the employees of the Company.

(c) There are no complaints against the Company pending or threatened before any similar state or local labour agency by or on behalf of any employee of the Company.

(d) There is no contingent liability for sick leave, encashment of leave or any retirement benefit, retrenchment compensation or similar items not set forth on the Statements.

(e) There are no trade union activities existing with respect to the employees of the Company.

(f) No key officer or key employee, or any group of key employees has served a notice to the Company stating that he or they intend to terminate their employment with the Company.

(g) The Company has not discussed or taken any steps to terminate the employment of any key officer, key employee or group of key employees.

(h) Each of the Company's key officers and key employees spends all, or substantially all, of his or her business time on the Company's business.

(i) As far as the Company is aware, no notice has been received by the Company of any civil, criminal or administrative judgment, action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter pending against the Company and no notice has

been received by the Company of any such action threatened against the Company pursuant to applicable Law relating to health and safety of its employees or pursuant to all agreements or arrangements between the Company and its employees or trade unions or other organisations which represent some or all of its employees.

(j) There are no past or present events, conditions, circumstances, activities, practices, incidents, agreements, actions or plans which could reasonably be expected to prevent compliance with, or which have given rise to or will give rise to liability under, such laws.

15. **Permits**

(a) The Company holds all licenses, permits, registrations, authorisations, approvals and franchises (the "**Permits**") of any applicable Competent Authority that are required under applicable Law to permit it to conduct its businesses as presently conducted.

(b) The Company is in compliance with any conditions and other requirements specified in such Permits.

(c) Such Permits are either in full force and effect or applications seeking their extension have been filed in a timely manner, and no suspension, revocation or cancellation of any of them is threatened which, if adversely determined, may have a Material Adverse Change.

(d) No violations are or have been recorded in respect of any Permit and no notice has been received by the Company from any Competent Authority requiring a licence, permit or approval that is not a Permit.

16. **Warranty or Other Claims**

So far as the Company is aware, there are no existing or threatened claims against the Company for services or merchandise which are defective or fail to meet any service or product warranties which would have a Material Adverse Change.

17. **Litigation**

(a) So far as the Company is aware, there is no Claim against the Company and no Order has been issued by any Competent Authority against the Company or its Directors by which any of the Company's assets are bound or which purports to enjoin or restrain the execution, delivery or performance of the Agreement.

(b) So far as the Company is aware, there is no Claim against any of the Promoters or Directors.

18. **Borrowings and Guarantees**

(a) A comprehensive and complete list of agreements or undertakings pursuant to which the Company

(i) is borrowing or is entitled to borrow any money;

(ii) is lending or has committed itself to lend any money; or

(iii) is a guarantor or surety with respect to the obligations of any Person,

is set forth in the Disclosure Schedule.

(b) In addition, the amount of all indebtedness of the Company as of the Closing Date and the Encumbrances that relate to such indebtedness, as set out in paragraph 18(a) above is complete and accurate.

(c) No creditor of the Company is entitled to any voting rights in any matters voted upon by the holders of the Equity Shares.

(d) No indebtedness of the Company has become due or payable or is now due and payable, before its normal or originally stated maturity.

(e) No notice has been received by the Company stating that an event or circumstance has occurred, or may occur with the giving of notice or lapse of time, which may entitle any person to require the payment or repayment of any indebtedness of the Company before its normal or originally stated maturity.

(f) There are no outstanding liabilities owed from the Company to the Promoters and/or its Affiliates.

19. **Insurance**

(a) The Company maintains adequate insurance as per industry practice on all of its major assets, moveable and immovable (including leased premises) that insures against all risks as per industry practice, whether in relation to loss or damage to property, personal injury, other casualty (including extended coverage), product liability or otherwise and for amounts which would be maintained in accordance with prudent business practice.

(b) All of the major assets, moveable and immovable (including leased premises), of the Company has at all times been and are at the Execution Date insured as aforesaid to their full replacement value and all premiums due and payable thereunder have been paid, and all such policies are in full force and effect in accordance with their respective terms.

(c) No notice of cancellation or termination has been received with respect to any insurance policy.

(d) There are no claims pending under any of the said policies, or disputes with insurers.

(e) The Company has duly observed and complied with the terms and warranties of the insurance policies and has not done or omitted to do any act which would render the insurance invalid or unenforceable.

(f) There are no circumstances which might lead to any liability under such insurance being avoided by the insurers or the premia being increased and there is no fact or circumstance known to the Founder, which might lead to any of the contracts of insurance which cover those risks being prejudiced in any way.

(g) None of such policies will be affected by, or terminate or lapse by reason of, any transaction contemplated by the Agreement.

20. **Records**

(a) All statutory and other records of the Company, including those provided to the Investor and its representatives:

(i) are up to date, complete, true and accurate; and

(ii) have been properly prepared and accurately maintained in accordance with applicable Law.

(b) The originals of all statutory and other records which ought to be in the possession of the Company are in its possession or under its control.

(c) The Company is in compliance with applicable Law in respect of corporate records, including the provisions as to filing of returns, resolutions and other documents with any Competent Authority, including the applicable Registrar of Companies.

21. **Minute Books, Register of Members and Share Certificates**

(a) The minute books of the Company constitute a complete, true and accurate record of all actions taken and resolutions adopted by its shareholders, Board of Directors and any committee thereof in accordance with applicable Law.

(b) The register of members of the Company constitutes a complete, true and accurate record of all issuances and transfers of shares or other securities of any member of the Company and neither the past nor present members of the Company have received any notice of any application or intended application for rectification of its register of members.

(c) The share certificates are printed with common seal of the Company affixed on them and proper stamp duty is paid.

22. **Transactions with Related Parties**

(a) The Company has not entered into any contract or transactions with any Related Party or with any of its shareholders or any firms or companies in which any of the Directors or its shareholders is interested.

(b) There are no amounts or any damages due or payable (or that may become due or payable after the Closing Date) by the Company to any Related Party.

(c) No Related Party has or had any direct or indirect interest in any of the Company's assets; no Related Party has entered into, or has had any direct or indirect financial interest in, any contract, transaction or business dealing of any nature involving the Company.

(d) No Related Party has any claim or right against the Company.

(e) No event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for any claim or right in favour of any Related Party against the Company.

(f) Any future transaction with a Related Party shall be at a market price and on arm-length basis.

23. **Compliance with Laws**

(a) The Company has duly observed, complied with, and conducted its Business and operations in compliance with, Law and all Orders issued by any Competent Authority against the Company in all respects.

(b) There is no existing or proposed Law that could reasonably be expected to prohibit or restrict the Company from, or otherwise materially adversely affect the Company in, conducting its Business in any jurisdiction in which it now conducts or proposes, to conduct its Business.

(c) The Company is eligible to receive foreign investment under the automatic route under the FEMA and the foreign investment policy of the Government of India.

24. **Other Shareholders' Agreements**

There are no other agreements or arrangements that have been entered into between the Company and any of its shareholders that regulate the governance, management and operation of the Company or the relationship between any shareholders of the Company or restrict the transfer of securities of the Company.

25. **Information provided by the Company to the Investor**

(a) All information, documents and statements given or provided by the Company to the Investor or any of its advisers for the purposes of legal, financial, commercial and technical due diligence of the Company were true and fair and adequate on the dates such information, documents and statements were given or provided.

(b) The Company has not omitted to give or provide any information, documents or statements to the Investor or its advisers for the purposes of legal, financial, commercial and technical due diligence of the Company, which would make any information, document or statement given or provided to the Investor or its advisers misleading.

(c) The information, documents and statements given or provided by the Company to the Investor or any of its advisers for the purposes of legal, financial, commercial and technical due diligence of the Company contain all the information necessary to enable the Investor to make a reasonably informed assessment of the Company and the businesses of the Company for the purpose of making a decision to invest in the Company on the terms set out in the Agreement.

26. **Environment**

The Company has complied and is in compliance with applicable Law concerning public health and safety and pollution or protection of the environment.

27. **Network and Computer Back-up**

(a) The Company has made back-ups of all databases utilised by it and maintains such databases on a back-up server.

(b) The Company has full and unrestricted access to and use of any and all computer, telecommunications, network equipment and/or computer programmes, including all modules (the "**IT Systems**"), owned or used by it, and no third-party agreements or consents are required to enable the Company to continue such access and use following the completion of the transactions contemplated by the Agreement.

(c) No part of the IT Systems is or has been infected by any virus or other extraneously-induced malfunction, and no person has had unauthorised access to the IT Systems or any data stored thereon. The Company operates a documented procedure to avoid such infections and unauthorised access.

(d) The Company has taken all steps necessary to ensure that its business can continue in the event of a failure of the IT Systems (whether due to natural disaster, power failure or otherwise).

28. **Corrupt Practices**

The Company has not made, directly or indirectly, any payment or promise to pay, or gift or promise to give, or authorised such a promise or gift, of any money or anything of value to:

(a) any official of any Competent Authority for the purpose of influencing any such official or inducing him or her to use his or her influence to affect any act or decision of any Competent Authority, or any agency or subdivision thereof; or

(b) any political party or official thereof or candidate for political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of any Competent

Authority or agency or subdivision thereof, except as permitted under any applicable Law; or

(c) any officer of any body corporate with which the Company interacts during the conduct of the business of the Company for the purpose of influencing any act or decision of such body corporate,

in the case of (a), (b) and (c) above in order to assist the Company to obtain or retain business, or direct business to the Company.

29. **Internal Controls and Procedures**

The Company maintains proper and adequate internal accounting controls and procedures that provide assurance that:

(i) transactions are executed with management's authorisation;

(ii) transactions are recorded as necessary to permit preparation and certification of its Financial Statements and to maintain accountability for its assets;

(iii) access to its assets is permitted only in accordance with management's authorisation;

(iv) the reporting of its assets is compared with existing assets at regular intervals; and

(v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

30. **Disclosure of Material Information**

None of the Agreement, any document or any certificate provided to the Investor contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

****

Attachment to Schedule 4

DISCLOSURE SCHEDULE

[Date]

To,

Name of Investor

Address of Investor

Re: Disclosures with respect to the Representations and Warranties of the Company and the Promoters in Clause 7 and Schedule 4 of the Share Subscription and Shareholders' Agreement dated [●].

Dear Sir,

With respect to the Share Subscription and Shareholders' Agreement dated [●], entered among the Company and Promoters and Investor Limited (the "**Agreement**"), we hereby declare that the Representations and Warranties given under **Clause** 7 and ***Schedule 4*** of the Agreement are subject to the disclosures set out in this ***Attachment to Schedule 4***.

Each disclosure made in this Disclosure Schedule shall pertain only to the specific Representations and Warranties made by the Company and the Promoters in ***Schedule 4*** that are indicated below in respect of such disclosure.

All capitalized terms used herein shall have the meaning ascribed to them in the Agreement.

DISCLOSURE BY THE COMPANY AND THE PROMOTERS

[●]

Signed and delivered on behalf of the **Company**

[●]

Name:

Title:

Signed and delivered on behalf of the **Promoters**

[●]

Name:

SCHEDULE 5

FORMAT FOR COMPLETION CERTIFICATE

[Date]

To,

[Name of the Investor]

Address of the Investor

Re: Conditions Precedent to the execution of the Share Subscription and Shareholders' Agreement

Dear Sirs,

We hereby confirm that the Conditions Precedent set out in **Clauses 2.2(a) to (r)** of the Share Subscription and Shareholders' Agreement dated _____ entered among the Company, the Promoters and [Investor] (the "**Agreement**") have been

fully satisfied and there have been no defaults under any agreements entered into by the Company or any Subsidiary and no event or events have occurred that have constituted or are reasonably likely to constitute a Material Adverse Change.

Enclosed are the following documents in connection with the conditions listed in **Clauses 2.2** of the Agreement.

(a) Certified true copies of the resolutions of the Board in relation to the execution of this Agreement, in-principle approval of the Board for the issue and allotment of the Subscription Shares Tranche 1 to the Investor in accordance with the terms of this Agreement, subject to the receipt of the Subscription Amount Tranche 1 from the Investor.

(b) The audited Financial Statements of the Company for the year ended _____ and [un]audited Financial Statements of the Company for the period ended [_____] under Indian GAAP.

(c) Valuation certificate from a chartered accountant in respect of the Subscription Shares Tranche 1.

We request you to remit the Subscription Amount Tranche 1on or prior to the Closing Date to the following bank account of the Company:

[●]

All capitalised terms used and not defined herein have the same meaning as ascribed to them under the Agreement.

Regards,

Signed and delivered on behalf of the **Company**

[●]

Name:

Title:

Signed and delivered on behalf of the **Promoters**

[●]

Name:

SCHEDULE 6

DEED OF ADHERENCE

DEED OF ADHERENCE made on the [●] day of, [●] (the "**Deed**")

BY:

[Name of the new shareholder] (the "New Investor");

[Name of the transferor] (the "Old Investor");

[Name of the existing shareholders] (the "Existing Shareholders"); and

[Name of the Company] (the "Company").

RECITALS:

(A) On [●], _____, [Investor], the Company, and the Promoters entered into a share subscription and shareholders' agreement (the "Agreement").

(B) The Agreement forms a part of this Deed and is attached hereto as Exhibit A.

(C) The New Investor wishes to have transferred to it [*number*] Equity Shares (the "Shares") in the capital of the Company from the Old Investor and in accordance with the Agreement has agreed to enter into this Deed.

NOW THIS DEED WITNESSES as follows:

1. Interpretation

In this Deed, except as the context may otherwise require, all words and expressions defined in the Agreement shall have the same meanings when used herein.

2. Undertaking

The New Investor confirms that:

(i) it has received a copy of the Agreement and has fully understood the terms thereof, and

(ii) all provisions relating to its rights, duties and obligations of any nature whatsoever under the Agreement are incorporated by reference herein and deemed to be part of this Deed to the same extent as if such provisions had been set forth in their entirety herein.

The New Investor hereby undertakes and covenants to the Company and the Promoters to become a party to the Agreement from the date hereof and adhere to and be bound by all the terms of the Agreement, including the duties, burdens and obligations of the Old Investor imposed pursuant to the provisions of the Agreement, and all documents expressed in writing to be supplemental or ancillary thereto as if the New Investor had been an original party to the Agreement.

3. Enforceability

From the date hereof, each of the Company and the Promoters shall be entitled to enforce the Agreement against the New Investor, and the New Investor shall, subject to the Agreement, be entitled to all rights and benefits of the Old Investor under the Agreement in each case as if the New Investor had been an original party to the Agreement.

4. Representations and Warranties

The New Investor represents and warrants to the Company and the Promoters that its execution of this Deed has been duly authorised and that such execution or compliance with its terms does not, and will not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any agreement or other instrument it has executed or by which it is bound; or

(ii) violate any of the terms and provisions of its statutory documents or any Order or any statute, rule or regulation applicable to it.

5. Governing Law

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

6. Notice

The address and facsimile number of the New Investor for the purposes of the Agreement is as follows:

[●]

7. Counterparts

This Deed may be executed in any number of counterparts, all of which shall together constitute one and the same deed and any party may enter into this deed by executing a counterpart.

IN WITNESS WHEREOF, this Deed of Adherence has been executed as a deed on the date first above written.

SIGNED, SEALED AND DELIVERED by
[NEW INVESTOR]
in the presence of:

Name: [ ]
Title: [ ]

[OLD INVESTOR]

in the presence of:

Name: [ ]
Title: [ ]

[COMPANY]
in the presence of:

Name: [ ]
Title: [ ]

[PROMOTERS]
in the presence of:

Name: [ ]
Title: [ ]

SCHEDULE 7
BUSINESS PLAN

SHARE SUBSCRIPTION AGREEMENT

This Share Subscription Agreement (this "**Agreement**") is executed on _____ (the "**Effective Date**") among:

(1) _____ **Private Limited,** a private limited company incorporated and existing under the Indian laws, having CIN _____and its registered office at _____ (hereafter referred to as the "**Company**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns);

(2) **Mr.** _____, S/o _____, PAN _____ and currently residing at _____ (hereafter referred to as the "**Promoter**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to include his successors, legal heirs and permitted assigns); and

(3) _____ **Private Limited**, a company incorporated and existing under Indian laws with CIN _____ and having its registered office at _____ (hereafter referred to as the "**Investor**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns).

(The Company, Promoter and Investor are hereafter referred to individually as a "**Party**" and collectively as the "**Parties**".)

WHEREAS:

A. The Company is engaged in the business of _____ ("**Business**");

B. The authorised capital of the Company as on the Effective Date is Rs. _____ divided into _____ Equity Shares of par value of Rs. 10/- (Rupees Ten only) each. The issued and paid-up capital of the Company is Rs. _____ divided into _____ Equity Shares of par value of INR 10/- (Rupees Ten only) each;

C. The Company had, in order to raise funds undertook a rights issue, made an offer for the issue of _____ equity shares of Rs.10/- each on rights basis to the equity shareholders of the Company (the "**Rights Offer**"). The Board took on record the letters of non-participation submitted by the offerees declining to subscribe to _____ equity shares offered under the Rights Offer;

D. The Board being empowered to dispose of the Equity Shares declined by the equity shareholders, as per Section 62(1)(a)(iii) of the Companies Act, 2013, has decided to dispose of the declined Equity Shares (forming the aggregate of the Subscription Securities (*as defined hereafter*)) in a manner not detrimental to the Company or to the Shareholders and accordingly has offered the same to the Investor;

E. The Promoter and the Company have requested the Investor, and the Investor has agreed to invest an aggregate of Rs. _____ (the "**Subscription Amount**") as set out in Clause 0, in consideration for the subscription to the _____ Equity Shares (collectively as the "**Subscription Securities**") to be issued and allotted to the Investor as on the Closing Date, constituting __% of the Share Capital on a Fully Diluted Basis;

F. The Promoter and the Company are ready and willing to facilitate the investment by the Investor in the Subscription Securities as per the terms of this Agreement, and the Company desires to issue and allot the Subscription Securities to the Investor on the Closing Date, in accordance with and subject to the terms and conditions as mentioned in the Transaction Documents; and

G. The Parties are now entering into this Agreement for the purpose of recording the terms and conditions for the subscription to the Subscription Securities by the Investor.

NOW, THEREFORE, IT IS AGREED by and AMONGST the parties as follows:

1. Definitions and Interpretation

1.1. **Definitions:** In this Agreement, the following terms, to the extent not inconsistent with the context thereof, shall have the meanings assigned to them hereinbelow:

(a) "**Act**" shall mean the Companies Act, 1956 (to the extent that such enactment is in force and applicable to the context in which such term is used herein), or the Companies Act, 2013 (to the extent that such enactment is in force and applicable to the context in which such term is used herein), and shall include all amendments, modifications and re-enactments of the foregoing;

(b) "**Affiliate**" of a Person ("**Subject Person**") shall mean (i) in the case of any Subject Person other than a natural person any other Person that either directly or indirectly through one or more intermediate Persons, Controls, is Controlled by or is under common Control with the Subject Person, and (ii) in the case of any Subject Person that is a natural person, shall include a Relative of such Subject Person. For the purpose of this

definition, in relation to the Investor, an Affiliate shall include any investment fund or special purpose vehicle that shares the same investment manager and/ or the same investment advisor (such investment advisor being corporate entity);

(c) "**Affirmative Voting Matter**" shall have the meaning given to it under the Shareholders' Agreement;

(d) "**Articles of Association**" or "**Articles**" shall mean the articles of association of the Company, as amended from time to time;

(e) "**Assets**" shall mean any assets or properties of every kind, nature, character, and description (whether immovable, movable, tangible, intangible, absolute, accrued, fixed or otherwise) as now operated, hired, rented, owned or leased by a Person, including cash, cash equivalents, receivables, securities, accounts and notes receivable, real estate, plant and machinery, equipment, trademarks, brands, other Intellectual Property, raw materials, inventory, finished goods, furniture, fixtures and insurance;

(f) "**Authorisations**" shall mean any consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or exemption from, by or with any Governmental Authority, whether given by express action or deemed given by failure to act within any specified time period and all corporate, creditors', shareholders' and third-party approvals or consents;

(g) "**Board**" or "**Board of Directors**" shall mean the collective body of the Directors of the Company;

(h) "**Board Meeting**" shall mean a meeting of the Board duly convened in accordance with the Act, the Charter Documents and the Shareholders Agreement;

(i) "**Business**" shall have the meaning attributed to the term in Recital-A**Error! Reference source not found.**;

(j) "**Charter Documents**" shall mean collectively the Memorandum and the Articles;

(k) "**Chartered Accountant**" shall mean a chartered accountant as defined in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-Section (1) of Section 6 of the Chartered Accountants Act, 1949;

(l) "**Claims**" shall mean any losses, liabilities, claims, damages, costs and expenses, including legal fees and disbursements in relation thereto;

(m) "**Closing**" shall mean successful allotment of Subscription Securities in the manner as set out in Clause 0 ;

(n) "**Closing Date**" shall have the meaning attributed to the term in Clause 0;

(o) "**Conditions Precedent**" shall have the meaning given to the term in Clause 0;

(p) "**Control**" shall mean the power to direct the management or policies of any Person, whether through the ownership of over 50% (fifty percent) of the voting power of such Person or through the power to appoint majority of the board of directors or similar governing body of such entity or through contractual arrangements or otherwise;

(q) "**CP Confirmation Certificate**" shall have the meaning given to the term in Clause 0;

(r) "**Designated Bank Account**" shall mean a new bank account to be opened by the Company to which the Investor shall remit the Subscription Amount (or a portion thereof as the context may require) in accordance with the terms of this Agreement.

(s) "**Director**" shall mean a director on the Board;

(t) "**Disclosure Schedule**" shall mean the schedule referred to in Clause 0;

(u) "**Effective Date**" shall mean the date of execution of this Agreement;

(v) "**Encumbrance**" shall mean (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including without limitation, any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under applicable Law, (ii) any voting agreement, interest, option, pre-emptive rights, right of first offer, refusal or Transfer restriction in favour of any Person and (iii) any adverse claim as to title, possession or use and "**Encumber**" shall be construed accordingly;

(w) "**Equity Securities**" shall mean equity capital, equity shares, membership interests, or other ownership interests of a company or any options, warrants or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such equity capital, equity shares, membership interests, or other

ownership interests (whether or not such derivative securities are issued) of the Company;

(x) "**Equity Shares**" shall mean the equity shares of the Company whether issued or to be issued, having par value of Rs. _____ per equity share;

(y) "**Financial Statements**" shall mean the audited financial statements of the Company comprising the cash flow statement, balance sheet, bank reconciliation statements, and capitalization table of the Company as of the relevant Financial period ending on _____ and the related statement of income, together with the auditor's report thereon and notes thereto prepared in accordance with Indian GAAP and Laws;

(z) "**Financial Year**" shall mean the period commencing from April 1 of each calendar year and ending on March 31 of the immediately succeeding calendar year;

(aa) "**Fully Diluted Basis (FDB)**" shall mean that calculation is to be made assuming that all outstanding Equity Securities (whether or not by their terms then currently convertible, exercisable or exchangeable) whether or not due to the occurrence of an event or otherwise, have as per their terms of conversion, been converted, exercised or exchanged into the maximum number of Equity Shares issuable upon such conversion, exercise and exchange, as the case may be and it is clarified that all authorised options under the employee stock option plan ("**ESOP**") would be included for the aforesaid calculation irrespective of whether or not they have been issued, granted, vested, or exercised;

(bb) "**General Meeting**" shall mean a meeting of the Shareholders duly convened in accordance with the Act, the Charter Documents and the Shareholders' Agreement;

(cc) "**Government**" or "**Governmental Authority**" shall mean any statutory authority, government department, agency, commission, board, tribunal, court or other entity in India authorised to make Laws;

(dd) "**Improper Payment Laws**" shall have the meaning given to the term in Clause 0 of **Schedule I**;

(ee) "**Indemnity Notice**" shall have the meaning given to the term in Clause 0;

(ff) "**Indian GAAP**" shall mean generally accepted accounting principles applicable in India, consistently applied throughout the specified period and in the comparable period in the immediately preceding Financial Year;

(gg) "**Information**" shall have the meaning given to the term in Clause 0;

(hh) "**Intellectual Properties**" shall have the meaning given to the term in Clause 0 of **Schedule I**;

(ii) "**Investor Indemnified Persons**" shall have the meaning given to the term in Clause 0;

(jj) "**Key Employees**" shall the person listed in _____;

(kk) "**Law**" or "**Laws**" shall mean and include all applicable statutes, enactments, acts of legislature or the Parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders having the force of law, of any Governmental Authority, tribunal, board, court or a recognised stock exchange of India;

(ll) "**Long Stop Date**" shall mean _____ or such later date as may be mutually determined by the Parties;

(mm) "**Material Adverse Effect**" shall mean any change or effect (including but not limited to, change in applicable Law) that would have (or could reasonably be expected to have) a materially adverse financial impact on:

(a) the Business, operations, Assets, condition (financial or otherwise), operating results of the Company, or

(b) the ability of the Parties to consummate the transactions contemplated herein, or

(c) the validity, legality or enforceability of the rights or remedies of the Investor under the Transaction Documents;

(nn) "**Memorandum of Association**" or "**Memorandum**" shall mean the memorandum of association of the Company, as amended from time to time;

(oo) "**Orders**" shall have the meaning given to the term in Clause 0 of **Schedule I**;

(pp) "**Person**" shall mean any natural person, limited or unlimited liability company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under applicable Law;

(qq) "**Proceedings**" shall have the meaning given to the term in Clause 0 of **Schedule I**;

(rr) "**Rights Offer**" shall have the meaning ascribed to such term in Recital 0;

(ss) "**Relative**" shall mean a relative as defined under Section 2(77) of the Companies Act, 2013 and the rules framed thereunder;

(tt) "**RoC**" shall mean the Registrar of Companies;

(uu) "**Shareholders**" shall mean the shareholders, from time to time, of the Company;

(vv) "**Shareholders' Agreement**" shall mean the Shareholders' Agreement of even date entered into among the Parties;

(ww) "**Share Capital**" shall mean the total paid up share capital of the Company determined on a Fully Diluted Basis;

(xx) "**Subscription Amount**" shall mean a sum of Rs. _____ payable by the Investor into the Designated Bank Account, in consideration of the Subscription Securities;

(yy) "**Subscription Securities**" shall mean _____ Equity Shares which constitute _____% of the Share Capital as on the Closing Date and such additional Equity Securities issued to or acquired by the Investor and/or its Affiliates from time to time;

(zz) "**Subsidiary**" with respect to any Person shall have the meaning ascribed to the term under Section 2 (87) of the Companies Act, 2013;

(aaa) "**Tax**", "**Taxes**" and "**Taxation**" shall have the meanings given to the respective terms in **Schedule I**;

(bbb) "**Tax Claim**" shall have the meaning given to the term in **Schedule I**;

(ccc) "**Tax Demand**" shall have the meaning given to the term in **Schedule I**;

(ddd) "**Third Party**" shall mean any Person other than the Parties to this Agreement;

(eee) "**Transfer**" (including with correlative meaning, the terms "**Transferred by**" and "**Transferability**") shall mean to transfer, sell, assign, pledge, hypothecate, create a security interest in or lien on, place in trust (voting or otherwise), exchange, gift, dispose of or transfer by operation of Law or in any other way subject to any Encumbrance, whether or not voluntarily;

(fff) "**Transaction Documents**" shall mean the following:

(i) this Agreement;

(ii) the Shareholders' Agreement; and

(iii) any other documents mandated hereunder or under the Shareholders' Agreement.

(ggg) "**Transaction Fee**" shall have the meaning given to the term in Clause 0;

(hhh) "**Warranty**" or "**Warranties**" shall mean the representations and warranties of the Warrantors as set forth in Clause 0 and **Schedule I**; and

(iii) "**Warrantors**" shall mean the Company and the Promoter jointly and severally.

1.2. Interpretation: Unless the context of this Agreement otherwise requires:

(a) Words denoting any gender shall be deemed to include all other genders;

(b) Words importing the singular shall include the plural and vice versa, where the context so requires;

(c) The terms "hereof", "herein", "hereby", "hereto" and other derivatives or similar words, refer to this entire Agreement or specified Clauses of this Agreement, as the case may be;

(d) Reference to the term "Clause" or "Schedule" shall be a reference to the specified Clause or Schedule of this Agreement;

(e) Any reference to "writing" includes printing, typing, lithography and other means of reproducing words in a permanent visible form;

(f) The term "directly or indirectly" means directly or indirectly through one or more intermediary persons or through contractual or other legal arrangements, and "direct or indirect" shall have correlative meanings;

(g) All headings and sub-headings of Clauses and Schedules, and use of bold typeface are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement;

(h) Reference to any legislation or Law or to any provision thereof shall include references to any such Law as it may, after the Effective Date, from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation made from time to time under that provision;

(i) Reference to the word "include" or "including" shall be construed without limitation;

(j) The Recitals and Schedules to this Agreement shall constitute an integral part of this Agreement;

(k) Terms defined in this Agreement shall include their correlative terms;

(l) Time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of essence;

(m) References to the knowledge, information, belief or awareness of any Person shall be deemed to include the knowledge, information, belief or awareness of such Person after examining all information and making all due diligence inquiries and investigations which would reasonably be expected or required from a Person of ordinary prudence;

(n) The Parties acknowledge that they and their respective counsel have read and understood the terms of this Agreement and have participated equally in the negotiation and drafting. Accordingly, no court or arbitrator construing this Agreement shall construe it more stringently against one Party than against the other;

(o) All references to this Agreement or any other Transaction Document shall be deemed to include any amendments or modifications to this Agreement or the relevant Transaction Document, as the case may be, from time to time;

(p) Any word or phrase defined in the recitals or in the body of this Agreement as opposed to being defined in Clause 0 shall have the meaning so assigned to it, unless the contrary is expressly stated or the contrary clearly appears from the context;

(q) If any provision in Clause 0 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement;

(r) Any reference to a document in "agreed form" is to a document in a form agreed between the Parties and confirmed in writing as being in agreed form by or on behalf of each of them (in each case, with such amendment as may be agreed by or on behalf of the Parties);

(s) Any reference to "satisfactory to the Investor", "acceptable to the Investor" and phrases of similar import mean the occurrence of the relevant event or circumstance or fulfilment of the relevant condition to the reasonable satisfaction of the Investor; and

(t) For the purpose of the Disclosure Schedule, "fully and fairly disclosed" means disclosed in such manner and in such detail as to enable a reasonable investor to make an informed assessment of the matter concerned.

2. Shareholding Pattern

2.1. The shareholding pattern of the Company as of the Effective Date is as described in **Part A** of **Schedule III**.

2.2. The shareholding pattern of the Company (i) immediately upon the allotment of the Subscription Securities to the Investor on the Closing; and (ii) after issuing ESOP shall be as described in **Part B of Schedule III**.

3. Subscription to the Subscription Securities

Subject to the terms of this Agreement, upon completion of the Conditions Precedent, and based on the Warranties, on the Closing Date, the Investor hereby agrees to subscribe to, and the Company hereby agrees, and the Promoter hereby agrees to cause the Company, to allot and issue to the Investor, the Subscription Securities, in consideration for which the Investor shall pay the Subscription Amount to the Designated Bank Account of the Company.

4. Conditions Precedent

4.1. The obligation of the Investor to subscribe to the Subscription Securities is subject to the fulfilment, in form, manner and substance satisfactory to the Investor, of the following conditions and the delivery and execution of the following items ("**Conditions Precedent**"), unless any one or more of the following is specifically waived in writing by the Investor:

(a) Completion of financial, business and legal due diligence exercise of the Company by the Investor, and compliance with other conditions by the Company, as may be reasonably required by the Investor pursuant to the due diligence;

(b) The Company and the Promoter shall have obtained all relevant corporate approvals, Third Party approvals, appropriate Authorisations from the Governmental Authorities necessary for consummation of the transactions contemplated hereby, including without limitation, for the issuance of the Subscription Securities, the amendment of the Charter Documents, and where applicable, passing of necessary resolutions in connection with the transaction contained herein. Further, the Company and the Promoter shall have delivered an extract of the relevant Authorisations (including appropriate resolutions of the Board authorising the execution of the Transaction Documents by the Company) and all such other documents as may be necessary in connection with the above, certified by any of the Directors, to the Investor;

(c) The Company and the Promoter shall have submitted waiver letters waiving their pre-emptive rights or any other related

rights affecting proposed transaction as contemplated in this Agreement, as contained under any agreement or the Articles of the Company;

(d) The Board shall have convened a meeting to pass appropriate resolutions:

(i) to approve issuance of the Subscription Securities; and

(ii) to accord approval for, and to convene a general meeting to obtain the approval of the Shareholders for:

(I) the increase of the authorized capital of the Company to provide for the issuance and allotment of the Subscription Securities, in accordance with the provisions of the Act and other applicable Laws;

(II) the amendment of the existing Charter Documents to conform to the Transaction Documents to the satisfaction of the Investor, which resolution shall state that the amended Charter Documents shall be effective from the Closing Date; and

(III) the entrenchment provisions contained in the proposed amendments to the Charter Documents (such approval to be accorded by unanimous consent of all the Shareholders)

and shall have delivered to the Investor a certified true copy of the aforementioned resolutions along with all requisite supporting documents and other proof evidencing compliance, to the satisfaction of the Investor, with the processes prescribed under the Act;

(e) The Company shall have convened a general meeting, and the Shareholders shall have passed:

(i) an ordinary resolution increasing the authorized capital of the Company, to provide for the issuance and allotment of the Subscription Securities;

(ii) a special resolution, approving the issuance of the Subscription Securities;

(iii) a special resolution amending the existing Charter Documents to conform to the Transaction Documents to the satisfaction of The Investor, which resolution shall state that the amended Charter Documents shall be effective from the Closing Date. The Articles of

Association of the Company shall be amended to make Shareholders Agreement as a part of Articles of Association.

and shall have delivered to the Investor a certified true copy of the aforementioned resolutions;

(f) The Company shall have provided to the Investor a valuation certificate from a Chartered Accountant, in a form and substance satisfactory to the Investor, certifying the valuation of the Equity Securities, as per any internationally accepted pricing methodology on arm's length basis;

(g) Each of the Transaction Documents shall have been executed by each of the Parties thereto and shall be in full force and effect and no default shall have occurred under any of the Transaction Documents;

(h) No event shall have occurred or be continuing which has a Material Adverse Effect;

(i) The Company shall have ensured that all requisite actions and compliances in connection with the Rights Offer have been undertaken in compliance with the Act and the rules thereunder and the Company shall have delivered to the Investor, a certified true copy of the Board and General Meeting resolutions along with all requisite supporting documents and other proof evidencing compliance, to the satisfaction of the Investor, with the Act and the rules thereunder in connection with the Rights Offer;

(j) Subject to the Disclosure Schedule, as of the Effective Date, each of the Warranties of the Company and the Promoter being true and accurate in all material respects and not misleading in each case as of the Effective Date, the Closing Date and as of any date on which any part of Closing occurs;

(k) The pre-Closing covenants that are set forth in Clause 0 having been complied with as confirmed in writing;

(l) The Promoter shall have caused the Company to execute and the Company shall have executed and delivered to the Investor, a KYC form as set out in **Schedule V**;

(m) The Promoter shall execute an Employment Agreement with the Company including conditions of his exit and non-compete.

(n) Opening of the Designated Bank Account.

4.2. Conditions Precedent Confirmation:

(a) The Company and the Promoter shall take all steps necessary to promptly fulfil the Conditions Precedent and issue the CP Confirmation Certificate at the earliest, and not later than the Long Stop Date, unless extended by the Investor.

(b) Each of the Company and the Promoter shall take all steps necessary to promptly and expeditiously fulfil the Conditions Precedent and shall promptly inform the Investor of all actions and steps taken in this behalf, on an on-going basis.

(c) Within 5 (five) days of fulfilment (or waiver in writing by the Investor, on a case to case basis) of the last of the Conditions Precedent required to be fulfilled prior to the Closing, the Company shall provide written confirmation of the same ("**CP Confirmation Certificate**") to the Investor in the form attached at **Schedule IV**.

(d) If the Conditions Precedent are not fulfilled (or the performance of any Condition Precedent is not waived in writing by the Investor) by the Long Stop Date, the Investor may terminate this Agreement by written notice to the other Parties and upon issuance of such written notice, this Agreement shall *ipso facto* cease and determine against the Investor and the other Parties and none of the Parties shall have any claim against the other(s) for costs, damages, compensation or otherwise in relation thereto, save for any terms of this Agreement which are expressly stated to survive the termination of this Agreement.

4.3. Notwithstanding the actual date of completion of the Closing, the Company shall:

(a) file Form SH.7 with the RoC within 30 (thirty) days from the date of the ordinary resolution increasing the authorized capital of the Company, to provide for the issuance and allotment of the Subscription Securities;

(b) file Form MGT.14 with the RoC within 30 (thirty) days from the date of the special resolution amending the existing Charter Documents to permit the issuance of preference shares;

(c) file Form MGT.14 with the RoC within 30 (thirty) days from the date of the resolution approving the issuance of the Subscription Securities;

(d) file Form MGT.14 with the RoC within 30 (thirty) days from the date of the special resolution amending the existing Charter Documents to conform to the Transaction Documents to the satisfaction of the Investor; and

(e) file Form MGT.14 with the RoC within 30 (thirty) days from the date of the resolution by unanimous consent of all Shareholders agreeing to entrenchment provisions in the Charter Documents.

4.4. The Company shall deliver to the Investor certified true copies of the forms set out in Clause 0 above along with the receipt in respect of each such form filed with the RoC.

5. Closing

5.1. On the satisfaction or waiver in writing by the Investor of the Conditions Precedent, the Parties shall consummate the transactions contemplated in Clauses 0 and 0 on a date that is within 10 (ten) days from the date of receipt by the Investor of the CP Confirmation Certificate or such other date that is mutually agreed to between the Parties (the "**Closing**"). The Closing shall occur at Hyderabad, or at such other place as may be agreed between the Parties.

5.2. All transactions contemplated under this Agreement to be consummated at Closing shall be deemed to occur simultaneously and no such transaction shall be deemed to be consummated unless all such transactions are consummated.

5.3. Within 10 (ten) days from the receipt of the CP Confirmation Certificate, the Investor shall remit the Subscription Amount by transfer to the Designated Bank Account after adjusting the application money paid in advance and costs and expenses as mentioned in Clause 17.2.

5.4. On the date on which the Company receives the Subscription Amount in the Designated Bank Account (the "**Closing Date**"), the Company shall undertake the following actions:

(a) The Board shall hold a meeting and pass appropriate resolutions:

(i) for issuing and allotting the Subscription Securities to the Investor;

(ii) to enter the name of the Investor in the register of members of the Company (maintained in Form MGT – 1 (as set out in the Companies (Management and Administration) Rules, 2014)) in respect of the Subscription Securities, subject to the receipt of, and with effect from the date of receipt of, all documents required under Law for effectuating of such issuance;

(iii) authorising officials of the Company to duly endorse the share certificates pertaining to the aforesaid Subscription Securities;

(iv) for appointing the persons nominated by the Investor as nominee Director in accordance with the provisions of the Shareholders' Agreement;

(v) for calling a General Meeting of the Shareholders at shorter notice, for the confirmation of the nominee Director nominated by the Investor as Director;

(b) The Company shall deliver to the Investor: (a) extracts of the resolutions, referred to above, certified as a true copy by a Director (other than the Director(s) nominated by the Investor), and (b) duly stamped share certificates in relation to the Subscription Securities evidencing the title to the Subscription Securities.

(c) The Company shall convene an extraordinary general meeting at shorter notice, and the Shareholders shall pass appropriate resolutions for confirmation of the persons nominated by the Investor as Directors.

(d) The Company shall deliver to the Investor a certified copy of the register of members in Form MGT.1 and register of Directors of the Company (maintained as per Rule 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014) as at the date of allotment of the Subscription Securities to the Investor and the date immediately prior to the date of such allotment, certified by a Director (not nominated by the Investor) to be true, complete and correct.

Post- Closing Actions:

(e) **RoC Filings:**

(i) Within 30 (thirty) days from the Closing Date, the Company shall deliver to the Investor a certified true copy of Form PAS-3 duly filed with the RoC in connection with such issue and allotment of the Subscription Securities to the Investor.

(ii) Within 30 (thirty) days from the Closing Date, the Company shall deliver to the Investor, a certified true copy of Form DIR-12 along with the receipt in respect of each such form filed with the RoC in connection with the appointment of the Investor nominated Director(s).

(f) **Insurance**: The Company shall, within 30 (thirty) days of the Closing Date, obtain a directors' and officers' liabilities insurance in respect of all its Directors, subject to reasonable policy cover, from a reputable insurer acceptable to the Investor and for a value as may be acceptable to the Investor.

(g) The Company shall appoint an auditor acceptable to the Investor within a period of 3 (three) months from the Closing Date.

5.5. Notwithstanding anything contained in this Agreement, if the Closing does not occur in the manner and time envisaged in this Agreement after

remittance of the respective Subscription Amount, then, without prejudice to the other rights that the Parties may have under this Agreement and under Law or equity, at the request of the Investor, the Company shall, within 7 (seven) days of such request, refund the relevant Subscription Amount to the Investor, and the Investor shall (subject to any rights the Parties may have) have the right, but not the obligation to terminate this Agreement by written notice to the Company and upon issuance of such written notice, this Agreement shall *ipso facto* cease and determine against the Investor.

6. Representations and Warranties

6.1. Each Party represents to the other Parties that:

(a) Such Party has full authority and capacity to enter into, execute and deliver this Agreement and to perform its obligations and the transactions contemplated hereby and, if such Party is not a natural Person, such Party is duly incorporated or organised and validly existing under the Laws of the jurisdiction of its incorporation or organization, having full corporate power and authority to enter into and perform its obligations under this Agreement; and

(b) The execution and delivery by such Party of this Agreement and the performance by such Party of its obligations and the transactions contemplated hereunder has been duly authorised by all necessary corporate or other action of such Party.

6.2. Subject to the information specifically, fully and fairly disclosed in the disclosure schedule in **Schedule II** ("**Disclosure Schedule**"), the Warrantors hereby jointly and severally represent, warrant and undertake to the Investor as set forth in **Schedule I**; and acknowledge that the Investor entering into the Transaction Documents is relying on such representations, Warranties and undertakings, which have constituted a material inducement to the Investor to enter into the Transaction Documents.

6.3. No information (except as contained in the Disclosure Schedule) about the Company of which the Investor has knowledge, and no investigation by or on behalf of the Investor will prejudice any claim made by the Investor under the Warranties.

6.4. **Warranties as of the Closing:** The Warranties shall be deemed to be repeated as of the Closing (and if applicable as of any date on which any part of the Closing occurs), as if they were made on and as of each of such dates.

6.5. **Due Diligence:** Except as set out in the Disclosure Schedule, all the Warranties are valid, notwithstanding any information or document

furnished to or findings made by the Investor during any due diligence exercise and no such information, document or finding shall limit the liability of the Warrantors hereunder except to the extent contained in the Agreement.

6.6. **Change in Warranties:** Each of the Warrantors shall give the Investor prompt notice of any event, condition or circumstance occurring from the Effective Date that would constitute a violation or breach of any of the Warranties as of any date from the Effective Date or that would constitute a violation or breach of any terms and conditions contained in this Agreement. This shall not however prejudice the right of the Investor to terminate this Agreement pursuant to Clause 0.

6.7. **Independent Warranties:** Each of the representations and warranties shall be construed as a separate representation, warranty, covenant or undertaking, as the case may be, and shall not be limited by the terms of any other representation or warranty or by any other term of this Agreement (except the Disclosure Schedule).

6.8. **Non-Qualification:** No representation or warranties shall be deemed to qualify any other representation or warranty. Each Party agrees that such representations and warranties have constituted a material inducement to the other Parties to enter into this Agreement.

7. Closing Covenants

7.1. From the Effective Date through to Closing Date and except as otherwise provided in this Agreement, the Company shall not, and the Promoter shall procure that the Company shall not, without the prior written consent of the Investor:

(a) take any decisions or actions (whether in any Board Meeting, meeting of a committee of Directors, general meeting, through any resolutions by circulation or otherwise) in relation to any of the Affirmative Voting Matters; or

(b) suffer or permit any change in the management or constitution of the Board which may lead to a change in Control of the Company.

7.2. The Company shall ensure that the Company shall, between the Effective Date and the Closing Date:

(a) conduct its business in the ordinary and normal course, consistent with past practice and existing policies;

(b) conduct its operations in a manner, and shall otherwise use all reasonable efforts, so as to ensure that the Warranties shall continue to be true and correct on and as of the Closing Date as if made on and as of that date;

(c) comply with all Laws affecting its operations;

(d) provide the Investor and its representatives with reasonable access, upon reasonable prior written notice and during normal business hours, to all of the Company's Assets, books, records and personnel designated for this purpose by the Company; and

(e) confer with the Investor concerning all matters of a material nature relating to the Company and the Business.

8. Other Covenants

The Company and the Promoter confirm that from the Effective Date to the Closing Date, none of them shall directly or indirectly speak or discuss, enter into agreement or understanding (whether or not such agreement or understanding is absolute, revocable, contingent, conditional, oral, written, binding or otherwise) or solicit with any Third Party or cause their respective agents, representatives, and other persons acting on their behalf to solicit, negotiate with respect to facilities, or accept any offers or enter into any agreements or arrangements for an investment transaction in relation to the Company, including a potential investment in or acquisition of Equity Shares or Equity Securities or any prospective investment in a Person similar to the Company or any company/entity of the Promoter or any similar business ventures with the business of the Promoter, except as contemplated hereunder.

9. Use of Share Subscription Proceeds

9.1 All amounts on account of Share Subscription will only be infused into the business of the Company.

9.2 The Share Subscription amount received from the Investor shall not be used for repayment of any loan or for any other purpose not connected with the enhancement of business.

9.3 The Share Subscription amount received from the Investor will be placed in a Designated Bank account (which will not be the regular checking account of the Company).

9.4 The Investor will have joint / signatory control along with the Promoter on such account. Such moneys will be used and drawn for expansion of the business as and when required, as stated above.

10. Indemnification

10.1. The Warrantors agree jointly and severally to indemnify, defend and hold harmless the Investor and its Affiliates, directors, officers, representatives, employees and agents (collectively referred to as the "**Investor Indemnified Persons**") from and against any and all Claims

incurred by the Investor Indemnified Persons, as a result of and arising directly from, any breach or inaccuracy of any representation, warranty or covenant under the Transaction Documents by the Company and/or the Promoter (including the Warranties) (collectively referred to as "**Losses**").

10.2. Any Claim for indemnity pursuant to this Agreement shall be made by the Investor Indemnified Persons by notice in writing ("**Indemnity Notice**") to the Warrantors.

10.3. The knowledge of the Investor Indemnified Persons or the conduct of any investigation in relation to the Company or any of its Affiliates or any of the Assets thereof (actual, constructive or imputed) shall not in any manner affect or limit the right to indemnification, payment of Claims or other remedies with respect to the accuracy, or inaccuracy of or compliance or non-compliance with, any representation, warranty, covenant, obligation or arrangement hereafter, subject to a reasonable duty to mitigate Losses on the part of the Investor Indemnified Persons.

10.4. Except as specifically disclosed in this Agreement including the Disclosure Schedule, none of the Company or the Promoter shall invoke the Investor Indemnified Persons' knowledge (actual, constructive or imputed) of a fact or circumstance that might make a statement untrue, inaccurate, incomplete or misleading as a defence to a Claim for breach of the Warranties.

10.5. The indemnification rights of the Investor Indemnified Persons under this Agreement are in addition to, such other equitable rights and remedies as the Investor may elect, such as the right to seek specific performance, rescission or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.

10.6. The obligation of the Company and the Promoter to indemnify pursuant to this Clause shall arise immediately upon the Investor Indemnified Persons incurring any liability pursuant to any Claim, which shall be intimated by a notice to the Warrantor. The relevant Warrantor shall within a period of 30 (thirty) days from receipt of such notice make the payment to the Investor Indemnified Persons towards the said Claim, unless such breach has been remedied without any Loss to the Investor Indemnified Persons before the expiry of the aforesaid time period for the payment and the Warrantors represents and warrants to the Investor Indemnified Person of no Claim in future on the said rectified breach.

10.7. The failure of the Investor Indemnified Person to notify a Claim shall not relieve the Warrantors of any indemnification responsibility under this Clause.

10.8. In the event that a Claim is incurred by an Investor Indemnified Person pursuant to any claim brought by a Third Party, the Company and/or the Promoter shall assume the defence of such Claim within 30 (thirty) days from the date of the Indemnity Notice issued by the Investor Indemnified Persons.

10.9. All expenses related to such defence shall be borne by the Company and/or the Promoter.

11. Termination and Default

11.1. This Agreement shall come into effect on the Effective Date.

11.2. This Agreement may, subject to Clause 0 hereunder, be terminated prior to the Closing as follows:

(a) Upon the mutual written agreement of the Parties;

(b) At the discretion of the Investor if the Promoter or the Company has materially breached any Warranties or any other material covenant or agreement of the Promoter or the Company contained in this Agreement, and such material breach cannot be or is not cured within 30 (thirty) days after being notified in writing of the same in accordance with Clause 0;

(c) Upon expiry of the Long Stop Date.

11.3. Notwithstanding anything contained in Clause 0, the Parties shall be entitled to all the rights and remedies which are available to the Parties under Law, equity or otherwise including such other rights and remedies as may be mutually agreed between the Parties in this Agreement.

11.4. The rights specified in this Clause 0 shall be in addition to and not in substitution for any other remedies, including a claim for damages that may be available to the Parties.

11.5. No expiry or termination of this Agreement shall prejudice in any manner any claim or rights of action previously accrued to the Parties hereunder.

11.6. Notwithstanding the above, Clauses 0 (*Representations and Warranties*), 0 (*Indemnification*), 0 (*Termination and Default*), 0 (*Specific Performance*), 0 (*Notices*), 0 (*Confidentiality*), 0 (*Governing Law*), 0 (*Dispute Resolution*), 0 (*Costs and Expenses*) and 0 (*Miscellaneous*) shall survive the expiry or earlier termination of this Agreement.

11.7. Any provision and obligation of the Parties relating to or governing their acts, which expressly or by its nature survives such termination or expiration, shall be enforceable with full force and effect notwithstanding such termination or expiration, until it is satisfied in full or by its nature expires.

12. Specific Performance

12.1 The Investor shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Parties from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement.

12.2 These injunctive remedies are cumulative and are in addition to any other rights and remedies that the Investor may have at Law or in equity, including without limitation, a right for damages.

13. Notices

13.1. Notices, demands or other communication required or permitted to be given or made under this Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or email addressed to the intended recipient at its address set forth below, or to such other address or email number as a Party may from time to time duly notify to the others:

(a) If to the Company:

(i) Name: _____

(ii) Address: _____

(iii) Attention: _____

(iv) Email: _____

(b) If to the Investor:

(i) Name: _____

(ii) Address: _____

(iii) Attention: _____

(iv) Email: _____

(c) If to Promoter:

(i) Name: _____

(ii) Address: _____

(iii) Email: _____

13.2. Any such notice, demand or communication shall, unless the contrary is proved, be deemed to have been duly served at the time of delivery in the case of service by delivery in person or by post, and on transmission in the case of service by email, provided that such notice, demand or

communication shall also be dispatched by post within 1 (one) day of transmission of such notice, demand or communication by email.

14. Confidentiality

14.1. Each Party shall keep all information relating to each other Party, information relating to the transactions herein and this Agreement (collectively referred to as the "**Information**") confidential.

14.2. No Party shall issue any public release or public announcement or otherwise make any disclosure concerning the Information without the prior approval of the Investor; provided however, that nothing in this Agreement shall restrict any of the Parties from disclosing any information as may be required under applicable Law subject to providing a prior written notice of 7 (seven) days to the other Parties. Subject to applicable Law, such prior notice shall also include:

(a) details of the Information intended to be disclosed along with the text of the disclosure language, if applicable; and

(b) the disclosing Party shall also cooperate with the other Parties to the extent that such other Party may seek to limit such disclosure including taking all reasonable steps to resist or avoid the applicable requirement, at the request of the other Parties.

14.3. Nothing in this Clause 0 shall restrict any Party from disclosing Information for the following purposes:

(a) to the extent that such Information is in the public domain other than by breach of this Agreement;

(b) to the extent that such Information is required to be disclosed by any applicable Law or stated policies or standard practice of the Investor or required to be disclosed to any Governmental Authority to whose jurisdiction such Party is subject or with whose instructions it is customary to comply;

(c) to the extent that any such Information is later acquired by such Party from a source not obligated to any other Party, or its Affiliates, to keep such Information confidential;

(d) the Investor shall have the right to prepare an information memorandum (without requiring the consent of the Promoter or the Company) and disclose the same to Third Parties for purposes of selling any of the Equity Securities held by the Investor to any prospective purchasers;

(e) insofar as such disclosure is reasonably necessary to such Party's employees, directors or professional advisers, provided that such Party shall procure that such employees, directors or professional advisors treat such Information as confidential. For the

avoidance of doubt, it is clarified that disclosure of information to such employees, directors or professional advisors shall be permitted on a strictly "need-to-know basis";

(f) to the extent that any of such Information was previously known or already in the lawful possession of such Party, prior to disclosure by any other Party; and

(g) to the extent that any information, materially similar to the Information, shall have been independently developed by such Party without reference to any Information furnished by any other Party.

14.4. Any public release or public announcement (including any press release, conference, advertisement, announcement, professional or trade publication, mass marketing materials or otherwise to the general public) containing references to the Investor or the investment made by the Investor in the Company, shall require the prior written consent of the Investor. Any request for such prior written consent shall be made at least 7 (seven) days prior to any public release or announcement.

15. Governing Law

This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, the Laws of India. Subject to Clause 0, the courts in Hyderabad shall have exclusive jurisdiction over all matters arising pursuant to this Agreement.

16. Dispute Resolution

16.1. If any dispute or difference arises between any of the Parties during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, including the question as to whether the termination of this Agreement by any Party has been legitimate, the Parties shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement shall be considered to have failed as soon as one of the Parties, after reasonable attempts which attempt shall continue for not less than 30 (thirty) days, gives 30 (thirty) days' notice thereof to the other Party in writing.

16.2. All disputes, differences or Claims arising out of or in connection with this Agreement including, any question regarding its existence, validity, construction, performance, termination or alleged violation which is not resolved under Clause 0 shall be resolved by binding arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

16.3. The arbitration shall be conducted by a sole arbitrator with the procedural rules governing the arbitration laws of India.

16.4. The venue for such arbitration shall be Hyderabad and all proceedings shall be conducted in the English language.

16.5. A Party seeking to commence arbitration under this Clause shall first serve a written notice, specifying the matter or matters to be so submitted to arbitration, on the other Parties.

16.6. All claims and counterclaims shall, to the extent such claims or counterclaims are known at the time any arbitration is commenced, be consolidated and determined in the same arbitration proceeding.

16.7. Deposits to cover the costs of arbitration shall be shared equally by the parties thereto. The award rendered by the arbitrator shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties thereto shall bear such costs or in what proportions such costs shall be borne by such parties.

16.8. The award rendered by the arbitrator shall be final and conclusive on all Parties, whether or not such Parties have taken part in the arbitration and shall be subject to forced execution in any court of competent jurisdiction.

16.9. Each Party shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement.

16.10. Nothing shall preclude any Party from seeking interim or permanent equitable or injunctive relief, or both, from competent courts, having jurisdiction to grant relief on any disputes or differences arising from this Agreement.

16.11. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy (including for monetary damages) through the arbitration described in this Clause 0.

17. Costs and Expenses

17.1. The Company and the Promoter shall bear their respective expenses (including the fees and cost of any financial or technical advisors or lawyers engaged by them) in relation to the negotiations, preparation and execution of the Transaction Documents and ancillary documents referred thereunder and the consummation of the transactions contemplated under the Transaction Documents. The Company shall also bear the stamp duties payable on the Transaction Documents and on the issue of the Subscription Securities.

17.2. The Company shall pay to the Investor a sum of Rs. _____ ("**Transaction Fee**"), towards external costs and expenses incurred by the Investor in connection with the transactions contemplated under the

Transaction Documents. The Transaction Fee shall be payable no later than 7 (seven) days from a demand being made by the Investor after the Closing Date.

18. Miscellaneous

18.1. No Party, acting solely in its capacity as a Shareholder, shall act as an agent of the Company or have any authority to act for or to bind the Company.

18.2. Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of a Party, whether under this Agreement or otherwise.

18.3. This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

18.4. No amendment or variation of this Agreement shall be binding on any Party unless such variation is in writing and duly signed by all the Parties.

18.5. Subject to the provisions of this Agreement, this Agreement is personal to the Company and the Promoter and shall not be capable of assignment by any of the Company or Promoter.

18.6. Notwithstanding anything to the contrary in this Agreement, the Investor may, at its sole discretion, assign any of its rights under this Agreement to any of its Affiliates or to a Third Party, subject to such Affiliates or Third Party executing a deed of adherence to this Agreement in a form agreed by the Parties.

18.7. Upon communication of any assignment under Clause 18.6, the Company will acknowledge such transferee's rights.

18.8. Having regard to all the circumstances, the covenants contained herein are reasonable and necessary for the protection of the Parties and their Affiliates. If any such covenant is held to be void as going beyond what is reasonable in all the circumstances but would be valid if amended as to scope or duration or both, the covenant will apply with such minimum modifications regarding its scope and duration as may be necessary to make it valid and effective.

18.9. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective

unless made in writing and signed by an authorised representative of the waiving Party.

18.10. Each obligation under this Agreement shall be treated as a separate obligation and shall be severally enforceable as such in the event of any obligation or obligations being or becoming unenforceable in whole or in part.

18.11. To the extent that any provision or provisions of this Agreement are unenforceable they shall be deemed to be deleted from this Agreement and any such deletion shall not affect the enforceability of the remainder of this Agreement not so deleted provided the fundamental terms of this Agreement are not altered.

18.12. This Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any prior arrangements whether oral or written, relating to such subject matter. No Party has relied upon any representation or warranty in entering into this Agreement other than those expressly contained herein.

18.13. Any date or period as set out in any Clause of this Agreement may be extended with the written consent of the Parties failing which time shall be of the essence.

18.14. Each of the Company and the Promoter shall, at any time and from time to time upon the written request of the Investor:

(a) promptly and duly execute and deliver all such further instruments and documents, and do or procure to be done all such acts or things, as the Investor may reasonably deem necessary in connection with this Agreement; and

(b) do or procure to be done each and every act or thing which the Investor may from time to time reasonably require to be done for the purpose of effecting the Investor's rights under this Agreement.

18.15. The provisions of this Agreement and the Charter Documents shall (as far as possible) be interpreted in such a manner as to give effect to all such documents; provided however, that in the event of an inconsistency between this Agreement and the Charter Documents, to the extent permitted by applicable Law, provisions of this Agreement shall prevail as between the Parties and shall govern their contractual relationship and the Parties shall cause the necessary amendments to the Charter Documents.

IN WITNESS WHEREOF, the Parties have entered into this Agreement the day and year first above written.

Signed and delivered for and on behalf of

_____

duly represented through its authorised representative

By: _____

Name:

Title :

Signed and delivered for and on behalf of

_____

duly represented through its authorised representative

By: _____

Name:

Title: _____

Signed and delivered by **Mr.** _____

_____

SCHEDULE I

REPRESENTATIONS AND WARRANTIES OF THE WARRANTORS

Except as set out in the Disclosure Schedule, the Warrantors hereby jointly and severally represent, warrant and undertake to the Investor that as of the Effective Date, the following Warranties are true and correct in all respects.

In this Schedule, the following terms shall have the meanings assigned to them herein below:

"Tax", "Taxes" or "Taxation" shall mean any and all forms of applicable direct and indirect taxes with reference to income, profits, gains, net wealth, asset value, turnover, gross receipts, including but not limited to, all duties (including stamp duties), excise, customs, service tax, value added tax, goods and services tax, charges, fees, levies or other similar assessments by or payable to a Governmental Authority (including its agent and Persons acting under its authority), including without limitation, in relation to:

(a) income, manufacture, import, export, services, gross receipts, premium, immovable property, movable property, assets, profession, entry, capital gains, expenditure, procurement, wealth, gift, sales, use, Transfer, licensing, withholding, employment, payroll, fringe benefits and franchise taxes and

(b) any interest, fines, penalties, assessments, or additions to Tax resulting from, attributable to or incurred in connection with any proceedings, contest, or dispute in respect thereof;

"Tax Claim" shall mean any notice received by the Company of any:

(a) claim on the Company pursuant to any assessment, administrative or appellate or court proceedings; or

(b) proposed change or adjustment by any taxing authority in each case, concerning, for or in respect of any and all Taxes applicable to the Company with respect to any taxable period ending on or before the Effective Date or beginning before and ending on or after the Effective Date (but only in relation to the portion thereof applicable to the period prior to the Effective Date); and

"Tax Demand" shall mean any Tax Claim under which demand for payment of Tax is made on or adjustment of any Tax refunds claimed by a Person and outstanding as on date of such Tax Claim is demanded from, a Person by any taxing authority (or any combination of the foregoing).

1. Authority and Capacity

1.1. The Company is duly incorporated under the Act and validly existing under the Laws of India. The Warrantors have the legal right, power and authority, including corporate authority, as applicable, to enter into, deliver and perform this Agreement and any other documents executed by it pursuant to or in connection with the transactions contemplated under the Transaction Documents. Subject to applicable Laws, this Agreement when executed, will constitute legal, valid and binding obligations of each of the Warrantors and shall be enforceable against each of the Warrantors in accordance with its terms.

1.2. The execution, delivery and the performance, by the Promoter of this Agreement and the respective obligations in relation to the transactions contemplated herein will not (as applicable):

(a) breach or constitute a default under the Charter Documents of the Company;

(b) conflict with or result in any material breach or violation of any of the terms and conditions of, or constitute (or with notice or lapse of time or both constitute) a default under, any instrument, contract or other agreement or arrangement (to which such Party is a party or by which such Party is bound;

(c) give any Third Party a right to terminate or modify, or result in the creation of any Encumbrance under, any agreement, licence or other instrument to which such Party is a party or by which such Party is bound;

(d) cause the Company to lose the benefit of any right, credit or privilege it presently enjoys, or, to the best knowledge of the Warrantors, cause any Person who normally does business with the Company not to continue to do so on the same basis;

(e) result in a violation or breach of or default under any applicable Law;

(f) constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other applicable Law for the protection of debtors or creditors;

(g) other than as provided in the Agreement, require such Party to obtain any consent or approval from any Governmental Authority or any other authority in a relevant jurisdiction; and

(h) violate any order, decree or judgement against, or binding upon, such Party or upon its respective securities, properties or businesses.

1.3. No Authorisation of, or registration, qualification, declaration or filing with, any Person is required in connection with the execution, delivery and performance by the Company and the Promoter, of this Agreement and any other documents executed in the course of or pursuant hereto, other than as specifically stated in this Agreement.

1.4. To the best knowledge of the Warrantors, there are no claims or proceedings before any court in progress or pending against or relating to the Promoter which could be expected to enjoin, restrict or prohibit the transactions as contemplated by the Agreement.

1.5. The Subscription Securities issued to the Investor in accordance with this Agreement will be validly issued and fully paid-up at the time of such issuance. Upon the issue of the Subscription Securities to the Investor, the Investor shall have marketable title to and shall be the sole legal and beneficial owner of the Subscription Securities, free from any Encumbrance or claim or demand of any description whatsoever.

1.6. To the best knowledge of the Warrantors, the Warrantors have not, nor has anyone on their behalf, done, committed or omitted any act, deed, matter or thing whereby the Subscription Securities can be forfeited, extinguished or rendered void or voidable.

1.7. The issued and paid-up share capital of the Company as well as the current shareholding pattern of the Company as on the Effective Date is as specified in **Part A of Schedule III**. Upon (i) the Closing; and (ii) issue of ESOP, the shareholding pattern will be as specified in **Part B of Schedule III**.

2. Corporate Matters

2.1. The Company is a private limited company for the purposes of the Act.

2.2. The copies of the Charter Documents of the Company delivered to the Investor are up-to-date, true, correct and complete copies and the Company has complied with all the provisions of its Charter Documents and, in particular, has not entered into any *ultra vires* transaction.

2.3. The Company has the corporate power and authority to own and operate its Assets and properties to carry on its businesses as currently conducted.

2.4. The Company has not bought back, repaid or redeemed or agreed to buy back, repay or redeem any of its Equity Securities or otherwise reduced or agreed to reduce its share capital or purchased any of its own shares or carried out any transaction having the effect of a share buy-back or reduction of capital.

2.5. Save and except as specified in this Agreement, there are no Encumbrances, outstanding options, warrants, rights (including conversion or pre-emption rights) or agreements or understanding (whether or not such agreements or understanding is absolute, revocable, contingent, conditional, oral, written, binding or otherwise) for the subscription from the Company of any shares of the Company or any securities convertible into or ultimately exchangeable or exercisable for shares of the Company including voting agreements.

2.6. The Company has no Subsidiaries or joint ventures and has not formed an association of persons for Tax purposes, nor does it own any direct or indirect equity, voting or ownership interest in any Person, including Persons that carry on any business that competes with the Business as presently conducted or contemplated to be conducted.

2.7. The Board of Directors of the Company is duly elected and validly appointed as per the provisions of the Act and the Charter Documents and none of the Directors are disqualified to continue as directors under any provisions of the Act and/or any other statutory legislation, as may be applicable.

2.8. To the best knowledge of the Warrantors, none of the Directors have any direct or indirect ownership (i) in any business entity with which the Company is affiliated; or (ii) in any business entity that competes with the Company.

2.9. The Company is complying with all requirements of the Act and its Charter Documents for validly conducting the meetings of the Board and meetings of the Shareholders and have duly reflected the proceedings of the meetings in the respective minutes. The statutory registers and books of the Company have been properly maintained and are up to date in all respects and contain accurate records.

2.10. Except those already disclosed to the Investor, there are no outstanding powers of attorney or authorisations given by the Company and/or the Promoter to any Person, in relation to the Company.

2.11. The issued and paid-up capital of the Company as on the Effective Date is Rs. _____ divided into _____Equity Shares of par value of Rs. 10/- (Rupees Ten only) each.

3. Financial Matters

3.1. The accounting books and records of the activities of the Company have been fairly and properly maintained and are in accordance with Law and Indian GAAP and consistently applied accounting principles and are up-to-date and contain all material matters required by Law to be entered in them.

3.2. The Business and the financial condition (including the Assets, liabilities and state of affairs) of the Company are truly and fairly provided in the last Financial Statements, and there has been no change thereto, other than in the ordinary course of business, and there has been no material change thereto, in any event.

3.3. Except as set out in the Disclosure Schedule, the Company does not have liabilities of any kind, whether accrued, absolute, contingent or otherwise (including liabilities as guarantor or otherwise with respect to obligations of others, or liabilities for Taxes due or then accrued or to become due), or outstanding borrowing or indebtedness in the nature of borrowing, in any form whatsoever, or any Claims outstanding against it.

3.4. No event(s) of default has occurred under any of the documents related to any of the indebtedness of the Company or any related security documents ("**Loan Documents**"), nor has the Company received notice of—

(a) occurrence of any event of default under any Loan Documents, or

(b) demand of payment of indebtedness before the originally stated period, or

(c) termination, suspension, cancellation of any entitlement to draw money or exercise other rights under any Loan Documents, or

(d) any event or circumstance, which could lead to any of the foregoing.

3.5. The Company does not have any outstanding borrowing or indebtedness in the nature of borrowing, any Encumbrance, or, any transaction in each case in which a Director or a relative of such Director has material interest, or any other material transactions in relation to which such Directors are considered to be interested Directors within the meaning of the Act. In particular, there are no outstanding loans made by the Company or the Promoter or to the Company or the Promoter by, any Director or officer of the Company or any Person connected with any of them.

3.6. There are no outstanding guarantees, indemnities, sureties or comfort letters (whether or not legally binding) given by or for the benefit of the

Company. The Company has not granted or issued or agreed to grant or issue any mortgages, charges, debentures or other securities for money or redeemed or agreed to redeem any such securities or given or agreed to give any guarantees or indemnities.

3.7. To the best knowledge of the Warrantors, there are no Encumbrances created over any present or future properties, Assets or revenues of the Company whether tangible, intangible or real, or whether created voluntarily or otherwise.

3.8. To the best knowledge of the Warrantors, there are no liabilities (contingent or otherwise) that may arise, accrue and/or attach to the Investor or any Affiliate of the Investor as a result of the consummation of the transactions contemplated by this Agreement.

3.9. To the best knowledge of the Warrantors, there have been no instances of fraud on, or by, the Company which have been noticed and not reported, and the Investor and its Affiliates shall have no liabilities accrued and/or attached on account of any of such frauds.

4. Taxation Matters

4.1. The Company has complied with all the material requirements as specified under the respective Tax Laws as applicable to it in relation to returns, computations, notices, deductions, withholdings and information which are or are required to be made or given by the Company to any Tax authority for Taxation and for any other Tax or duty purposes, have been made on a proper and timely basis and are correct and none of them is the subject of any dispute with the Indian taxation authorities and all Taxes have been deducted, collected, withheld, deposited and paid and filings with respect to the same have been done and completed in accordance with Law and no Tax Demand has been received or, threatened in respect thereof.

4.2. The Company has discharged all due and payable sums towards payment of Taxes of any other Persons that they are required to discharge under any applicable contracts.

4.3. The Company is not subject to Tax in any jurisdiction other than India.

4.4. The Company has no Tax liability arising out of any matter up to Closing except as disclosed and reserved for on its balance sheet.

4.5. With respect to any period for which Tax returns are not yet due and thus have not been filed, or for which Taxes are not yet due or owing, the Company has made due and sufficient accruals for such Taxes in its books and records and in accordance with Indian GAAP and applicable Laws, including the Financial Statements.

4.6. The Company has not paid or become liable to pay any material interest, penalty, surcharge or fine relating to any applicable Taxes. The Company has not been and is not currently subject to any investigation, audit or search and/or seizure by any revenue authority.

4.7. The Company has not been subject to and is not currently subject to any investigation, audit or search and/or seizure or other proceedings by any revenue authority with respect to (i) any Taxes due from or with respect to the Company or in relation to the filing of any Tax returns or failure to do so or (ii) any pending proceedings under any Tax Laws that have any adverse impact on the Company's ability to consummate the transactions contemplated herein or that has the effect of creating any charge or lien on any Equity Securities or any Assets of the Company in favour of a Governmental Authority.

4.8. No relief (whether by way of deduction, reduction, set-off, exemption, postponement, roll-over, hold-over, repayment or allowance or otherwise) from, against or in respect of any Taxation has been claimed and/or given to the Company which could or might be effectively withdrawn, postponed, restricted, clawed back or otherwise lost as a result of the transaction contemplated under this Agreement, and/or as a result of any act, omission, event or circumstance arising or occurring at or at any time before completion of the transaction contemplated under this Agreement.

5. Contracts

5.1. The Company is not in default of the performance, observance or fulfilment of any of its obligations, covenants or conditions contained in material contracts, nor has it received notice of default or requiring cure of any breach or termination from any counterparty under a material contract.

5.2. To the best of the Warrantors' knowledge, none of the counterparties to any of the material contracts are in default of the performance, observance or fulfilment of any of their respective obligations, covenants or conditions contained in material contracts.

5.3. No counterparty has indicated any intention to terminate any such contract prior to the expiration of its term.

5.4. All material contracts have been duly authorised, executed and delivered by the Company and constitute a valid and binding obligation of each party thereto, enforceable against each party in accordance with its terms.

5.5. Other than (a) the current articles of association of the Company; and (b) this Agreement, there are no agreements or understandings to which the Company is a party or by which it is bound which:

(i) grants direct or indirect management, operational or voting rights or economic interest in the Company to any third Person including any power of attorney with respect to the foregoing;

(ii) is a non-competition contract restricting in any way the Business activities of the Company;

(iii) was entered into outside of the ordinary course of business of the Company;

(iv) provides for the sharing of the revenue of the Company with any Third Party or the Promoter;

(v) is a contract with any Person relating to the use of the Assets of the Company; or

(vi) is adverse to the Business or financial condition of the Company.

5.6. The Company is not a party to any contract with any current or former employee, of the Company or in which any such Person as aforesaid is interested (whether directly or indirectly) nor are any such contracts, arrangements or understanding outstanding or in force.

5.7. The Company is not a party to any contract, arrangement or practice which in whole or in part materially contravenes or is invalidated by any restrictive trade practice, fair trade, consumer protection or similar Laws or regulations in any jurisdiction or in respect of which any filing, registration or notification is required pursuant to such Laws or regulations (whether or not the same has in fact been made).

5.8. Documents/agreements relating to the Assets and properties executed by it and/or any Person on behalf of the Company are adequately and duly stamped (where required to be stamped), and registered if so required by Law.

5.9. The Company warrants that apart from those disclosed to the Investor, there are no agreements, understandings between the Company and any of its Key Employees or Directors.

5.10. There are no known and/ or potential liabilities on account of liquidated damages payable by the Company.

5.11. There are no year-end commissions, incentives, discounts payable by the Company.

5.12. There are no other agreements or contractual obligations to which the Company or any of the Promoter are a party, which are inconsistent with the provisions of this Agreement.

6. Related Party Arrangements

6.1. Except those disclosed to the Investor, the Company has not entered into any contract, arrangements, agreements or transactions with any of the related parties.

6.2. There are no subsisting contracts or arrangements entered into by the Company which contravene Sections 185 or 188 of the Companies Act, 2013.

6.3. No corporate guarantees have been issued by the Company for the benefit of any of its related parties and there are no reimbursement arrangements/agreements between the Company and any of the related parties in relation to corporate guarantees issued by such related parties for the benefit of the Company or otherwise.

7. Employees

7.1. Except as provided in the Disclosure Schedule, no other benefits are being provided to the employees and/or the workers including deferred compensation agreement, incentive plan, profit sharing plan, retirement agreement or other such employee compensation agreement.

7.2. The Company does not have any existing employee stock option plans or schemes for its employees.

7.3. All employee costs for the relevant period, are reflected in the Financial Statements as of _____ and no employee receives or is entitled to receive any compensation, salary, benefits, performance incentive from anyone other than the Company.

7.4. There are no outstanding loans and advances which have been made by the Company to its respective employees or to the employees of its related parties.

7.5. The Company has no collective bargaining agreements, arrangements and other similar understanding with any trade union, staff association or other body representing the employees or workmen of the Company and no labour union has requested or sought to represent any employee, workman, representative or agent of the Company.

7.6. There have neither been any strikes or other labour disputes involving the Company nor are such strikes or similar actions pending or to the best of the knowledge of the Warrantors threatened by or against the Company.

7.7. Neither the Company nor the Promoter are aware of any of the Key Employees of the Company intending to terminate her/his employment with the Company nor does the Company have an intention at present to terminate the employment of any Key Employee.

7.8. To the best knowledge of the Company or the Promoter, none of the Company's employees or workers are obligated under any contract, or subject to any Law, judgment, decree or order of any Governmental Authority, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Business.

7.9. The Company has, in relation to each of its employees/workers and (so far as relevant) to each of its former employees/workers:

(a) complied in all material respects with its obligations under relevant employment Laws and all other statutes and regulations relevant to its relations with each employee/worker or the conditions of service of the employee/worker and has maintained adequate and suitable records regarding the service of the employee/worker;

(b) discharged or adequately provided for in all respects its obligations to pay all salaries, wages, commissions, gratuity payments, provident fund payments, bonuses, overtime pay, holiday pay, sick pay, leave encashment and other benefits of or connected with employment up to the date of this Agreement; and

(c) complied in all respects with all its obligations concerning the health and safety at work of each of the employees/worker and has not incurred any liability to any employee/worker in respect of any accident or injury, which is not fully covered by insurance.

8. Legal Matters

8.1. The Company is in compliance with all applicable Laws and the business and operations of the Company have been carried on in accordance with the Charter Documents and requirements of all applicable Laws.

8.2. The Company has all the Authorisations including Tax registrations necessary for the conduct of its Business as currently conducted and the licenses and approvals are valid and existing as of date of this Agreement and shall continue to be valid upon the consummation of the transactions pursuant to or under this Agreement.

8.3. The Company is not in breach of or in default under any permits, approvals, Authorisations, licenses or registrations, nor are the Company or the Promoter, to the best of their knowledge, aware of any event or circumstance or any intention or proposal under which any of those licences, permits, approvals are likely to be revoked, terminated or cancelled or (where applicable) not renewed in the ordinary course.

8.4. None of the Warrantors has notice of, nor is a party to, nor affected by, any investigation enquiries, litigation, or any other proceedings, whether of a civil, criminal, administrative or any other nature.

8.5. Neither the Company nor the Promoter have, committed:

(a) any criminal or unlawful act involving dishonesty;

(b) any material breach of trust;

(c) any material breach of contract or statutory duty; or

(d) any act which could, have a Material Adverse Effect on the Business or Company, or could entitle any Third Party to terminate any contract with the Company.

8.6. To the best knowledge of the Warrantors, no Claim for damages or compensation has been made by any Person against the Company or the Promoter, which will adversely affect the transactions contemplated by the Agreement.

8.7. The Company, its employees, agents and consultants and each other person acting for, or on behalf of, the Company, has complied with the applicable Laws regarding illegal payments and gratuities.

8.8. The Promoter and/or the Company, are not under investigation with respect to and have not been given notice of, any violation of any Improper Payment Laws applicable to the Business of the Company, as presently conducted or as has been conducted.

8.9. Neither the Company nor any officer, director, agent or employee purporting to act on behalf of the Company or any other related party has at any time, directly or indirectly:

(a) made, provided or paid any unlawful contributions, gifts, entertainment or other unlawful expenses to any candidate for political office, or failed to disclose fully any such contributions in violation of any applicable Law;

(b) made any payment to any agent, employee, officer or director of any entity with which the Company or any other related party does business for the purpose of influencing such agent, employee, officer or director to do business with the Company or any related party;

(c) engaged in any transaction, maintained any bank account or used any corporate fund, except for transactions, bank accounts and funds which have been and are reflected in the normally maintained books and records of the Company and/or any other related party;

(d) made any payment in the nature of criminal bribery or any other unlawful payment.

9. Litigation

9.1. There are no actions, suits, claims, proceedings or investigations ("**Proceedings**") pending or, threatened against or by the Warrantors at Law, in equity or otherwise, and whether civil or criminal in nature in, before, or by, any court, commission, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders

("**Orders**") of any such court, commission, arbitrator or Governmental Authority, including Proceedings or Orders which:

(a) involve a challenge to, or seek to, or prohibit, prevent, restrain, restrict, delay, impair, prejudice, make illegal or otherwise interfere with the due and proper consummation of any of the transactions contemplated under the Transaction Documents, or

(b) seek to impose conditions upon the ownership or operations of the Company or which affect the ability of the Investor to invest in the Company.

9.2. No order has been made, petition presented, resolution passed or meeting convened for the winding up (or other process whereby the Business is terminated or the Assets of the Company are distributed amongst their creditors and/or shareholders or other contributories) of the Company, and/or for an administration order against the Company and there are no cases or proceedings pending under any applicable insolvency, reorganisation, or similar Laws concerning the Company and no events have occurred which, under applicable Laws, would result in any such case or proceeding.

9.3. The Company is not insolvent or bankrupt, or unable to pay its debts as they fall due. No receiver, liquidator, trustee, administrator, custodian or similar official has been appointed in respect of the whole or any part of the Business or Assets of the Company and no notice has been received for the appointment of such a Person.

9.4. The Company is not involved whether as plaintiff or defendant or other party in any demand, claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry or arbitration and no such demand, claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry or arbitration is pending or threatened by or against the Company (or any Person for whose acts or defaults the Company may be vicariously liable).

10. Insurance

10.1. The Company has adequately insured its material Assets and the Business in accordance with prudent business practices against comprehensive liability, fire, earthquake and other appropriate insurance coverage.

10.2. In respect of all insurances relating to the Company or its Assets,

(a) all premiums have been duly paid to date;

(b) all the policies are in full force and effect and no act, omission, misrepresentation or non-disclosure by or on behalf of the Company has occurred which makes any of these policies voidable, nor has there been any breach of the terms, conditions and warranties of any of the policies that would entitle insurers

to decline to pay all or any part of any Claim made under the policies; and

(c) no Claim is outstanding, and no circumstances exist which are likely to give rise to any Claim.

11. Properties

11.1. The Company does not own any immoveable property.

11.2. Insofar as all the immovable properties used by the Company for the purpose of its Business are concerned, the usage thereof is as per applicable Law. All leases, tenancies, licenses and agreements of like nature to which the Company is a party are valid, binding and enforceable obligations of the respective parties thereto and there have occurred no grounds for rescission, avoidance or repudiation of any of the contracts or such leases, tenancies, licenses or agreements and no notice of termination or of intention to terminate has been received by the Company in respect of any thereof.

11.3. With respect to the properties and Assets, which the Company has taken on lease, rent or leave and licence, the Company is not in any material non-compliance with such leases, rental agreements or licences.

11.4. There does not exist any mortgage, charge, pledge, lien, Encumbrance over all or any of the present or future revenues of the Company or any agreement in this regard.

11.5. The Company is enjoying the right to quiet and peaceful possession of all of its immovable property and no notice of any disturbance of, or challenge to the Company's quiet and peaceful possession has been received.

11.6. To the best knowledge of the Warrantors, in relation to each of the Assets no notices, orders, proposals, applications or requests affecting or relating to any of such Assets, have been served or made by any authority on (i) the Company or (ii) to the best knowledge of the Warrantors, the actual owners of the Assets, and there are no circumstances known to the Warrantors, which are likely to result in, any being served or made.

11.7. All significant records and information, belonging to the Company or relating to its Business (whether or not held in written form) are in the possession and under the direct control of the Company and subject to unrestricted access by it.

11.8. All Assets of the Company including all debts due to the Company which are included in the audited financial accounts of the Company or have otherwise been represented as being the property of or due to the Company and/or being used by the Company for the purposes of its Business are the absolute property of the Company, and/or is being leased/licensed to the Company.

12. Intellectual Property

12.1. The Company is the absolute owner, valid licensee, or authorised user (as the case may be) of its trademarks, trade names, logos, trade secrets, proprietary information and knowledge, technology, databases, copyrights (if any), licenses and, franchisees and formulas, formulations or rights with respect thereto necessary for its Business as is now being operated ("**Intellectual Properties**").

12.2. The use of the Intellectual Properties as is being used by the Company does not infringe and/or breach or affect the intellectual property rights of any Person.

12.3. All rights in all Intellectual Properties, confidential business information and trademarks owned or otherwise required for the Business as currently conducted are vested in or validly granted to the Company and are not subject to any limit as to time or restriction and all renewal fees and steps required for their maintenance or protection have been paid and taken.

12.4. To the best knowledge of the Warrantors, there are no legal proceedings including any litigation, arbitration, infringement and/or passing off actions filed against the Company and to the best of the knowledge of the Warrantors, no litigation, arbitration, infringement and/or passing off actions is proposed and/or threatened to be filed against the Company by any Person and the Company has not received any cease and desist notice so far and is not aware of any circumstance under which such a notice may be issued.

13. Material Information

All information relating to the Company which is material in relation to the Company's Business, operations, financial conditions, assets and liabilities, Intellectual Property, organisation, Tax, employment related matters, compliance matters and litigation, the Rights Issue required to be known by any prudent investor for valuable consideration has been disclosed to the Investor.

14. General

To the best knowledge of the Warrantors, all the information set out in the Schedules to this Agreement is complete, true and accurate and correct in all material respects and no facts or information have been omitted therefrom that would make such information untrue, inaccurate or misleading. There are no material facts or circumstances in relation to the Business, the Company and the Promoter or the transactions contemplated in this Agreement which have not been fully and fairly disclosed in writing and which if disclosed might reasonably have been expected to affect the decision of the Investor to enter into this Agreement.

SCHEDULE– II

DISCLOSURE SCHEDULE

The following specific disclosures are made in relation to the Warranties. Each matter disclosed is listed against the sub-section number of the Warranties to which the disclosure relates but a disclosure applies to all of the Warranties only to the extent it is reasonably apparent on its face.

Section 1 (Authority and Capacity)

<<>>

Section 2 (Corporate Matters)

2.6 The Company has no Subsidiaries or joint ventures and has not formed an association of persons for Tax purposes, nor does it own any direct or indirect equity, voting or ownership interest in any Person, including Persons that carry on any business that competes with the Business as presently conducted or contemplated to be conducted.

Section 3 (Financial Matters)

<<>>

Section 4 (Taxation Matters)

<<>>

Section 5 (Contracts)

<<>>

Section 6 (Related Party Arrangements)

6.1 The Company has not entered into any contract, arrangements, agreements or transactions with any of the related parties except _____.

<<>>

Section 7 (Employees)

Except as provided in the Disclosure Schedule there are no other benefits that are being provided to the employees and/or the workers including deferred compensation agreement, incentive plan, profit sharing plan, retirement agreement or other such employee compensation agreement. The Company does not have any existing employee stock option plans or schemes for its employees.

Section 8 (Legal Matters)

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Section 9 (Litigation)

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Section 10 (Insurance)

Section 11 (Properties)

<<>>

Section 12 (Intellectual Property)

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SCHEDULE - III

PART A

SHAREHOLDING PATTERN OF THE COMPANY AS ON THE EFFECTIVE DATE

Shareholder	Equity Shares	% shareholding
Total		

PART B

SHAREHOLDING PATTERN OF THE COMPANY UPON COMPLETION OF THE CLOSING AND ESOP

Shareholder	**Equity Shares**	**Total Number of Shares on (FDB)**	**% share-holding**	**Number of Shares after ESOP**	**% share holding**
TOTAL					
ESOP Pool __% of _____Shares					
Total Shares after ESOP Pool					

SCHEDULE- IV

FORMAT OF THE CP CONFIRMATION CERTIFICATE

(***On the Letterhead of the Company***)

<<insert date>>

To,

_____

Dear Sirs and Madams,

We write with reference to the Share Subscription dated <<>> entered into between the Investor, the Company and the Promoter (the "**Agreement**").

Capitalized terms and expressions used in this letter but not defined shall have the same meaning as the Agreement.

This certificate is being issued pursuant to Clause 0 of the Agreement.

Accordingly, we certify as follows:

1. <<to be finalised post due diligence findings>>

Regards,

Signed and delivered for and on behalf of the Company	Signed and delivered by **(Promoter)**
_____	_____
Name :	Name:
Title : Director	

SCHEDULE - V

KYC FORMAT

(***On the Letterhead of the Company***)

[Date]

To

_____ **(Investor)**

This is in relation to the share subscription agreement related to the securities of _____ ("**Company**"), dated _____.

I, _____, a director of the Company, do hereby certify the following:

(i) The attached certificate of incorporation is a true copy of the original;

(ii) The attached memorandum and articles of association are true copies of the originals;

(iii) The attached PAN copy of <<>> is a true copy of the original;

(iv) The current directors of the board of the Company are: <<>>

By _____

Name:

Title:

Contact Number:

TECHNICAL LICENCE AGREEMENT

This Technical License Agreement ("**Agreement**") is executed as of ____ day of _____ ("**Effective Date**") at _____

BY AND BETWEEN:

1. ABC _____ , a company incorporated under the laws of _____ and having its offices at _____ (hereinafter referred to as the "**Licensor**" which meaning shall, unless repugnant to the context or meaning thereof, mean and include its successors in title and permitted assigns);

AND

2. XYZ _____ **Private Limited**, a company incorporated under the provisions of the (Indian) Companies Act, 2013 and having its CIN _____, PAN _____ and registered office at [•] (hereinafter referred to as the "**Licensee**" which meaning shall, unless repugnant to the context or meaning thereof, mean and include its successors in title and permitted assigns).

The Licensor and the Licensee shall hereinafter be jointly referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS:

A. The Licensor is company engaged in the business of _____ and has its operations in many countries;

B. The Licensee is engaged in the business of _____ in India;

C. The Licensee has requested the Licensor to provide the Licensee with technology for undertaking the manufacturing and production of the Products (as defined hereinafter), Quality Control support in relation to such manufacturing and the rights to use Licensor's brands and trademarks; and

D. The Licensor has agreed to provide the Licensee with a license to manufacture the Products in India on terms and conditions set out in this Agreement.

Now, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in this Agreement and other consideration, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions and Interpretation

1.1. Definitions

In this Agreement, the following capitalised words and expressions shall have the following meanings:

"**Business**" shall mean the assembling/manufacturing and distribution of the Products.

"**License**" shall have the meaning set forth at Clause 2.1;

"**Loss**" shall have the meaning set forth at Clause 13.1;

"**Products**" shall mean _____;

"**Rights**" shall mean all intellectual property rights of any form or description whatsoever, including without restriction, copyright, design right, registered designs, trademarks, patents, confidential information, know how, and ideas and moral rights and all other rights whatsoever of a like nature world-wide whether such rights are registered or not;

"**Royalty**" shall mean _____;

"**Sale Price**" shall mean _____.

"**Technology**" shall mean _____;

"**Technical Information**" shall mean _____;

"**Trade Marks**" shall mean the trademarks owned by the Licensor associated with the Licensor and its products, including the Products and as more specifically set out in **Schedule __**.

1.2. Interpretation:

(i) In this Agreement, unless the context requires otherwise:

(a) reference to the singular includes a reference to the plural and vice versa;

(b) reference to any gender includes a reference to all other genders;

(c) reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to statutory provisions;

(d) reference to any statute or regulation made using a commonly used abbreviation shall be construed as a reference to the title of the statute or regulation; and

(e) reference to any Clause, section, Schedule, annexure or appendixes, if any, shall be deemed to be a reference to a

Clause, a section, Schedule, Annexure or appendix of or to this Agreement.

(ii) Headings in this Agreement are inserted for convenience only and shall not be used in its interpretation.

(iii) When any number of days is prescribed in any document, the same shall be reckoned exclusively of the first and inclusively of the last day; if the last day does not fall on a business day, the last day shall be the next succeeding day which is a business day.

(iv) The use of the word "including" followed by a specific example/s in this Agreement shall not be construed as limiting the meaning of the general wording preceding it.

(v) The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply.

(vi) The Schedules, annexures, appendices, if any, to this Agreement shall be deemed to be incorporated in and form an integral part of this Agreement.

(vii) Reference to any agreement, deed, document, instrument, rule, regulation, notification, statute or the like shall mean a reference to the same as may have been duly amended, modified or replaced.

2. Grant of License to the Licensee

2.1. Subject to the terms and conditions set out in this Agreement, the Licensor hereby grants to the Licensee,

(i) a limited exclusive license to use the Technology and the Technical Information to manufacture the Products designed and developed by Licensor for the Indian market, and to market and sell the Products in India; and

(ii) a limited exclusive license to use the Trade Marks, solely for marketing, promotion, supply and sale of the Products in India.

(hereinafter collectively referred to as "**License**").

2.2. In addition to the grant of License to the Licensee to manufacture the Products, the Licensor shall, if so required by the Licensee, provide the Licensee with Quality control support for manufacturing of the Products.

2.3. The License to manufacture, market and sell the Products and the services to be provided shall be for the period of this Agreement and subject to payment of the Royalty.

2.4. The Licensee shall not have the right to sub-license or assign or create any third-party rights in the License or the Technology, the Technical Information and/or the Trade Marks.

3. Disclosure of Technical Information

3.1 The Licensor shall deliver the Technical Information to the Licensee to exploit the License hereby granted.

3.2 The Licensor shall provide the Licensee, any revisions and additions to the Technical Information, from time to time, which shall form part thereof.

3.3 The Licensor shall provide all the Technical Information under this Agreement in English language.

4. Training and Support

4.1. The Licensor shall provide training to the Licensee's employees on need basis. Such training shall be provided at mutually agreed charges.

4.2. During the term of this Agreement, the Licensor shall provide the Licensee with advice and support from time to time at the Licensee's request.

4.3 The Licensee shall bear all costs and expenses associated with training and support services.

5. Manufacturing

The Licensee shall use the Technology to manufacture the Products, in conformity with and adherence to the Technical Information. The Licensor shall have the right to inspect the Licensee's manufacturing facility or processes during business hours to confirm compliance of the terms of this Agreement by the Licensee, from time to time.

6. Use of Trade Marks

6.1. The Licensee shall use its best efforts to supply and market the Products under the License hereby granted by pursuing all potential opportunities for such sale.

6.2. The Licensee shall market and sell Products manufactured pursuant to the License hereby granted only in association with the Trade Marks. Upon a request by the Licensor, the Licensee shall provide to the Licensor, copies of each advertisement, catalogue, brochure, sales manual, other sales literature, price list and other marketing documents published by the Licensee which relates to Products manufactured utilizing the Technology or refers to the Rights of the Licensor.

6.3 When using any of Licensor's Rights, the Licensee shall, at all times, clearly indicate that such Rights are owned by the Licensor and are being used by the Licensee under the limited license granted hereunder.

6.4 The Licensee shall not use the Licensor's Rights for any purpose or in any manner other than marketing and promoting the sale of Products.

6.5 The Licensee shall not engage, participate or otherwise become involved in any activity which diminishes the image or reputation of the Products or the Trade Marks.

6.6 The License and other rights granted hereunder to the Licensee shall be non-transferable and non-assignable.

7. Royalty

7.1 In consideration of the grant of License by the Licensor to the Licensee and for the support services to be provided by the Licensor, the Licensee shall pay Royalty to the Licensor as per Schedule __.

7.2 The Licensee shall pay the Royalty in arrears on a quarterly basis within 15 (fifteen) days from the beginning of the following quarter.

7.3 The Licensee shall, within 5 (five) days following the end of each quarter, provide the Licensor with a statement, setting out details of all Products manufactured and sold by the Licensee, pursuant to the License during such calendar quarter.

7.4 The Licensor may also undertake an independent audit of manufacturing/ sales figures of the Licensee by providing notice to the Licensee in this regard.

7.5 The Licensee shall be authorised to withhold applicable tax from the Royalty amount at the time of making a payment to the Licensor.

7.6 All payments to be made by the Licensee to the Licensor shall be in _____ (currency).

7.7 If the Licensee fails or delays in making payment of Royalty or any part thereof, it shall be required to pay interest on the deficient amount at the rate of 12% (twelve percent) per annum for the period of delay.

8. Accounting and Audit

8.1. The Licensee shall provide certified copies of the Licensee's annual audited accounts, as requested by the Licensor.

8.2. During the term of this Agreement and for a period of 5 (five) years after termination thereof, the Licensee shall keep and maintain detailed and accurate books and records with respect to all Products manufactured and sold pursuant to the License hereby granted and Royalty paid.

8.3. The Licensor's authorised representatives shall be given access to any books and records to ensure compliance with the terms of this Agreement by the Licensee and, in connection therewith, be entitled to seek copies of all/ specific information forming part of such records, at the cost of the Licensor. Such review and audit shall be conducted at Licensor's expense. However, in case of any discrepancy or error detected during such exercise, the cost of the review and audit shall be borne by the Licensee. The Licensee shall be obligated to immediately pay for all such deficiencies and errors to the Licensor, together with applicable interest.

8.4. The Licensee shall provide any information/ document requested by the Licensor under this Agreement, within 7 (seven) days from the date of such request.

9. Improvements

9.1. All Improvements to the Technology during the term of the Agreement, whether developed by the Licensor, the Licensee or jointly by the Parties, shall be the property of the Licensor.

9.2 The Licensee shall immediately and fully disclose to the Licensor, any Improvement to the Technology or the Technical Information which the Licensee discovers or develops, from time to time, to permit the Licensor to evaluate and consider the implementation of such Improvement.

9.3 Such Improvement shall not be considered part of the Technology until it is adopted by the Licensor and approved to be included as part of the License.

9.4 Notwithstanding the fact whether an Improvement is shared by the Licensor with the Licensee as part of the License granted in terms of this Agreement, the Licensee agrees to assign all Improvements to the Licensor, without consideration and immediately upon discovery.

9.5 The Licensee shall execute all necessary documents and provide all necessary assistance, both during and after the term of this Agreement, to enable the Licensor to perfect and maintain its right, title and interest in and to all Improvements.

9.6 The Licensor shall have the right, at its expense and in its name, to apply for, prosecute and defend all Proprietary Rights with respect to all such Improvements.

9.7 Such Improvement shall thereafter form a part of the License to be used as a part of the Technology and/ or Technical Information for utilisation towards the manufacturing of the Products by the Licensee, for the term of this Agreement.

9.8 Notwithstanding anything to the contrary herein, all Improvements to the Technology or the Technical Information discovered, developed or acquired by the Licensor shall be provided to the Licensee only if the Licensor is of the view that providing such Improvement to the Licensee shall improve the manufacturing of Products by the Licensee or reduce the cost of manufacturing the Products.

10. Rights and Confidentiality

10.1 The Licensee acknowledges that the Licensor has all Rights in and to the Technology and the Technical Information. The Licensee shall not itself, and shall not permit any other person, directly or indirectly, to use the Rights, the Technology or Technical Information, except as strictly permitted by this Agreement. The Licensee shall not dispute or contest, directly or indirectly, the validity, ownership or enforceability of Licensor's right, title and interest in and to the Technology, the Technical Information and all Rights therein.

10.2. The Licensor, in its activity of designing, developing, testing, certifying, homologating and industrializing the Products, shall supply to Licensee for manufacturing/ assembling and selling, reserves the right to control the product planning timelines as well as the manufacturing, industrializing and launching dates of such Products and/or changes in Product specifications. The Licensee agrees and acknowledges that any Product information provided at any time by the Licensor to the Licensee, may suffer changes or delays, which in all regards are at the discretion and control of the Licensor and the Licensee shall indemnify and keep and hold the Licensor and its directors, shareholders and design engineers harmless and indemnified for any or all such delays, changes as well as refrain from seeking any form of economic compensation in the event of the occurrence of such potential delays and/or changes in Product specifications. Further, the Licensee agrees and undertakes that payment of Royalty shall, in no way be affected for any of these potential changes, delays or for any other reason whatsoever.

10.3. The Licensee agrees that it is up to the Licensor to decide what Products to be offered to Licensee for manufacture and selling in the Territory. The Licensor reserves the right to decide on all matters regarding the Products and despite the market or technical feedback that the Licensee may provide to the Licensor, it shall be the Licensor who shall, at all times, control the product development decisions, in its capacity as the owner of the Technology and the Technical Information and having the first and paramount right on it, including the exploitation of it by any person.

10.4. The Technical Information, the Technology and all other information provided by the Licensor relating to the Technology, the Products or

Licensor's manufacturing processes or licensees (collectively, the "**Confidential Information**") shall be kept confidential and secret by the Licensee. Provided however, that Confidential Information does not include information that:

(i) is generally available to the public; or

(ii) is already in the possession of the Licensee, prior to delivery by the Licensor, without violation of any right by the Licensee; or

(iii) is obtained from any third party who was under no restriction with respect to the use and disclosure of such information.

10.5 The Licensee shall not disclose any Confidential Information, other than to employees who have a need to know the Confidential Information in order to utilize it in manufacturing, marketing and selling Products in accordance with this Agreement.

10.6 The Licensee shall use all reasonable precautions to protect the confidentiality of the Confidential Information (including, without limitation, precautions which involve at least the same degree of care as used by the Licensee in protecting the confidentiality of its own proprietary information).

10.7 The Licensee acknowledges that, due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of the Licensee's obligations under this Clause. Therefore, upon any such breach or any threat thereof, the Licensor shall be entitled to appropriate equitable relief in addition to whatever remedies it may have at law, and to be indemnified by the Licensee from any loss or harm in connection with any such breach or enforcement of the Licensee's obligations hereunder.

10.8 Upon termination of this Agreement, the Licensee shall forthwith return to the Licensor, all documents and other materials containing Confidential Information.

11. Infringement

11.1. The Licensee shall promptly notify the Licensor of any actual, threatened or imminent infringement of Licensor's Rights in the Technology/ Technical Information and/or Products (or any part thereof) by any third party that comes to the attention of the Licensee. The Licensor shall, at its expense, have the right (and not the obligation) to engage in such proceedings as it, in its sole discretion, considers necessary to protect its Rights and to stop any infringement by third parties.

11.2 The Licensee shall cooperate with the Licensor, at Licensor's cost and expense, in prosecution of any infringement suit commenced by the Licensor. If the Licensor declines or decides not to institute or defend

any such action or suit, the Licensee may exercise, at its own cost and expense, all such rights as it may have under law with respect to the enforcement or defence of the Rights with notification to the Licensor.

12. Representations and Warranties

12.1 The Licensor warrants to the Licensee that:

(i) it has the full right and power to enter into this Agreement and grant the License set forth in Clause 2 hereof;

(ii) to the best of Licensor's knowledge, it is the sole and rightful owner of all rights, title and interest in and to the Technology and the Trade Marks and all related Rights therein and has the unrestricted right to grant the License to the Licensee hereunder;

(iii) to the best of Licensor's knowledge, no claims have been made in respect of the Technology by any third party, and no proceedings have been instituted or are pending or threatened that challenge the rights of the Licensor in respect thereof; and

(iv) except for the representations and warranties contained in this Clause 12.1, it is hereby understood and agreed that the Licensor makes no representations and warranties, express or implied, in respect of any of infringement of patents or other rights of third parties due to the Licensee's operation under the License hereby granted.

12.2 The Licensee represents and warrants in favour of the Licensor that:

(i) It has the power and authority to execute and deliver this Agreement and is not prohibited from entering into this Agreement;

(ii) This Agreement when executed, shall be a legal, valid and binding obligation, enforceable in accordance with its terms; and

(iii) The execution and delivery of this Agreement and the promises, agreements or undertakings under this Agreement do not violate any law, rule, regulation or order applicable to them or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments executed or which is applicable to the Licensee.

13. Indemnification

13.1. The Licensee hereby irrevocably and unconditionally agrees to indemnify and hold the Licensor, its directors, employees, affiliates, officers, agents and representatives fully indemnified and harmless, from and against any and all liabilities, losses, damages, costs, claims, actions, proceedings,

judgments, settlements, expenses or the like ("**Loss**") which may be suffered or incurred by the Licensor as a result of, inter alia,

(i) any notice of any liability to any employee/ worker in respect of any accident or injury at the manufacturing site of the Licensee;

(ii) use of the Technical Information or the Technology in a manner other than permitted under this Agreement;

(iii) misrepresentation or breach of any representation or warranty made by the Licensee in this Agreement; or

(iv) non-fulfilment of or failure to perform any covenant or obligation or agreement or undertaking contained in this Agreement.

13.2. The Licensor hereby irrevocably and unconditionally agrees to indemnify and hold the Licensee fully indemnified and harmless, from and against all Losses which may be suffered or incurred by the Licensee as a result of the use of the Technical Information or the Technology in a manner permitted under this Agreement.

14. Term and Termination

14.1 The term of this Agreement shall be 5 (five) years from the Effective Date ("**Term**"). The Parties shall have the right to extend the term of this Agreement for such period and on such terms as mutually agreed to between them, in writing.

14.2 Notwithstanding anything contained elsewhere in this Agreement, the Licensor may, at its option, immediately terminate this Agreement by notice in writing to the Licensee upon the occurrence of any of the following events:

14.2.1 if the Licensee commences voluntary winding up proceedings under any applicable bankruptcy, insolvency, liquidation, winding up, dissolution or other similar law now or hereafter in effect;

14.2.2 if the Licensee becomes the subject of any involuntary proceedings for winding up under any such law, which are not dismissed within a period of 60 (sixty) days from the date of such involuntary proceedings are initiated or is ordered to be wound up or ceases to do the business or otherwise terminates its business operations, makes a general assignment for the benefit of its creditors;

14.2.3 if a liquidator, trustee, receiver or any other officer with similar powers is appointed for the Licensee;

14.2.4 if the Licensee proposes an arrangement or compromise with its creditors;

14.2.5 if the Licensee takes any action seeking reorganization, readjustment or arrangement of its business under any law;

14.2.6 if the Licensee sells all or substantially all of its assets, other than to the Licensor;

14.2.7 if the Licensee breaches any other provision of this Agreement and fails to cure such breach within 45 (forty-five) days after notice thereof from the Licensor, provided such breach is capable of being remedied.

14.3 Upon termination of this Agreement by the Licensor, the following provisions shall apply:

14.3.1 all rights and License granted by the Licensor to the Licensee under this Agreement shall forthwith terminate;

14.3.2 the Licensee shall immediately cease using the Technology and shall return to the Licensor, all Technical Information and Confidential Information in its possession;

14.3.3 the Licensee shall immediately cease using the Trade Marks and shall not thereafter use any name or trade mark confusing similar to the Trade Marks; and

14.3.4 the Licensee shall immediately pay to the Licensor, all Royalty accrued and payable up to the date of termination.

14.4 Any termination under this Clause shall be without prejudice to any other rights, remedy or relief to which the Parties may have under law or contract.

15. Miscellaneous

15.1. Force Majeure - Neither Party shall be liable to the other Party for its failure to fulfil any of its obligations under this Agreement if such failure is caused by an event of Force Majeure. For purposes hereof, an event of "Force Majeure" means and includes an act of God, action or failure to act of any government or governmental board, department, bureau or authority, confiscation, war, blockade, insurrection, riot, sabotage, flood, fire, explosion, landslide, lightening, earthquake, storm, accident, strike, lock out, power failure or shortage or any failure (other than a failure caused by the negligence or deliberate act or omission of the party relying on this Clause) of supplies, equipment, labour or transportation.

15.2. Governing Law and Arbitration

15.2.1 This Agreement shall be governed by Indian law.

15.2.2 In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence,

validity or termination (a "**Dispute**") shall be first settled amicably by the Parties.

15.2.3 In the event the Parties are unable to resolve a Dispute within a period of 60 (sixty) days from the date of such reference, the Dispute shall be referred to and finally resolved by a sole arbitrator, appointed by the Parties jointly.

15.2.4 The arbitration shall be carried out in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended, the provisions of which are deemed to be incorporated by reference into this Clause.

15.2.5 The language of arbitration shall be English and the place of arbitration shall be New Delhi, India.

15.3 Jurisdiction – In the event that the process of the courts is required to be invoked for enforcement of Clause 15.2, including for seeking of any interim relief prior, during or after invocation of Clause 15.2, the competent courts at New Delhi alone shall have exclusive jurisdiction and the Parties submit to the same.

15.4 No Partnership: The Parties do not intend hereby to form a partnership, either general or limited, under any jurisdiction's partnership law. The Parties do not intend to be partners or agents of each other or partners as to any third party or create any fiduciary relationship between themselves.

15.5 Entire Agreement: This Agreement (including the Schedules) contains the entire agreement between the Parties with respect to matters covered by this Agreement, and supersedes all prior agreements, written or oral, with respect thereto. Changes in or additions to this Agreement may be made only by an instrument in writing executed on behalf of the Parties. None of the terms of this Agreement shall be deemed to have been waived or altered unless such waiver or alteration is in writing and is signed by the Parties.

15.6 Severability: In the event that any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby and the Parties agree to attempt to renegotiate such provisions in good faith to replace it with another provision as commercially similar in import as the affected clause. The remainder of the Agreement shall be interpreted as if the provisions were so excluded.

15.7 Binding Effect: All covenants, agreements, representations, warranties and undertakings contained in this Agreement by and on behalf of the Parties shall bind and inure to the benefit of the respective successors and

assigns of the Parties, whether so expressed or not. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors-in-interest and permitted assigns. The Licensee shall have no right to assign the terms of this Agreement or the License or rights granted to it in terms of this Agreement without the express written consent of the Licensor.

15.8 Costs and Expenses: Each Party shall bear by itself all costs and expenses incurred by it in connection with any discussions, negotiations and investigations undertaken in connection with the subject matter hereof, including costs and expenses associated with retention of financial, legal, tax and other professional advisers.

15.9 Notice and communication: Any notice or other communication given pursuant to this Agreement must be in writing and should be delivered to the following particulars:

(i) To the Licensor:

Attention: _____

Address: _____

Email: _____

(ii) To the Licensee:

Attention: _____

Address: _____

Email: _____

All notices and other communications required or permitted under this Agreement that are addressed as provided in this Clause shall:

(i) if delivered personally or by overnight courier, be deemed given upon delivery;

(ii) if delivered by tele-facsimile or similar facsimile transmission, be deemed given when electronically confirmed.

Any Party may change its address for the purpose of notices to that Party by giving a similar notice specifying a new address, but no such notice of change of address shall be deemed to have been given until it is actually received by the Party sought to be informed of the contents thereof.

15.10. Waiver:

15.10.1 A waiver by a Party of a provision or of a right under this Agreement shall be binding on the Party granting the waiver only if executed in writing on its behalf.

15.10.2 No delay in exercising or omission to exercise any right, power or remedy shall impair any such right or constitute a waiver

thereof or any acquiescence by the holder thereof in respect of any default, nor shall it affect or impair any right, power or remedy of either Party in respect of any other default.

15.10.3 If at any time any Party shall waive its rights accruing to it under this Agreement due to breach of any of the provisions of this Agreement, such waiver shall not be construed as constituting waiver of the rights accruing to it under this Agreement as regards other breaches or other provisions of this Agreement.

15.11. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the date indicated above.

For and on behalf of ABC_____	For and on behalf of XYZ _____ Private Limited
(Signature)	(Signature)

LLP AGREEMENT

THIS AGREEMENT OF LIMITED LIABILITY PARTNERSHIP

made at _____ this_____day of_____2020

BETWEEN

M/s. (Name of…….Individual / Body Corporate), (LLPIN_____)

having its registered office at_____ _____hereinafter called 'ABC' (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors, administrators and permitted assigns);

AND

MR._____S/o SHRI_____aged_____ years, presently residing at, _____ _____hereinafter called 'XYZ' (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors, administrators and permitted assigns).

ABC and XYZ are hereinafter referred to individually as a 'Party' and collectively as 'the Parties'.

WHEREAS

The parties have agreed to form and constitute a Limited Liability Partnership under the provisions of the Limited Liability Partnership Act, 2008 to carry on the business of _____ as elaborated herein below in the name and style of _____LLP, and

The parties are desirous of reducing to writing the terms of the Partnership agreed upon between themselves by executing a formal instrument of Partnership on the terms and conditions as hereinafter appearing.

NOW THEREFORE THIS LIMITED LIABILITY PARTNERSHIP AGREEMENT executed in terms of Section 23(1) of the Limited Liability Partnership Act, 2008 **WITNESSETH** and it is hereby agreed by and between the Parties as follows:

I. PRELIMINARY

1. Subject as hereinafter provided, the Regulations contained in the First Schedule to the Limited Liability Partnership Act, 2008 shall apply to the Limited Liability Partnership.

2. Definitions

In this Agreement and in the Schedules to this Agreement, the following terms shall have the following meanings unless the context otherwise requires.

"**Accounting Year**" means the Financial year as defined in the LLP Act, 2008

"The Act" or "LLP Act" means the Limited Liability Partnership Act, 2008

"**Business**" includes _____.

"**Change**" **m**eans a change in the constitution of the body of Partners or Designated Partners.

"**Designated Partner**" means the Designated partners of the LLP and includes persons holding the position of Designated Partners by whatever name called.

"**LLP**" means the Limited Liability Partnership formed in the name of _____ LLP pursuant to this Agreement.

"**LLP Agreement**" means this Agreement or any supplementary Agreement executed between the Parties determining the mutual rights and duties of the partners and their rights and duties inter se and in relation to the LLP.

"**Partner**" means any person who becomes a partner of the LLP in accordance with this Agreement.

"**Registered Office**" means the registered office of the LLP.

"**The Seal**" means the common seal of the LLP.

3. The Incorporation Documents for the LLP have been executed by the Parties.

4. The Incorporation and other documents are being submitted to the concerned authorities along with filing fees.

5. Name of LLP

5.1 The LLP shall be called_____**LLP** or such other name as may be mutually agreed upon by the Parties from time to time and approved by the concerned authorities

5.2 The name of the LLP may only be changed by pursuing the procedure as laid down in the Act.

6. Business of LLP

6.1 The business of the LLP shall be:

_____

AND such other ancillary business as more particularly described in the Schedule 1, unless changed by mutual consent and such other business as maybe mutually agreed upon from time to time by the Partners.

6.2 However, no change may be made in the nature of business of the Limited Liability Partnership without the consent of the Partners.

7. Registered Office of LLP

7.1 The business of the **LLP** shall be carried on at and from the following premises:

_____, which shall be the registered office of the LLP and/or at and from such other place/s, as shall be agreed to by the Partners from time to time.

7.2 The Registered Office can be changed only by following the procedure as laid down in the Act.

7.3 In addition to the Registered Office, the LLP may use any other address for the purpose of correspondence as its address for service of documents, under sub-section (2) of section 13 of LLP Act, 2008 with the consent of the Partners.

8. Partners of LLP

8.1 The Partners of the LLP shall be the Parties executing this Agreement or any person who becomes a partner of the LLP later in accordance with this Agreement. There shall be no limit on the number of Partners to be admitted at any time and from time to time. To effect such admission, the terms of this Agreement may be changed subject to acceptance by all the then existing Partners at a meeting or otherwise confirmed in writing.

8.2 The following shall be the first Partners of the LLP as specified in the Incorporation Document:

_____

_____

8.3 The number of Partners shall be not less than two. There shall be no maximum limit for the number of Partners.

8.4 Subject to the terms of this Agreement, each partner may take part in management and affairs of the LLP.

9. Designated Partners

9.1 The LLP may have one or more Designated Partners. First Designated Partner of the LLP as named in the Incorporation Document is Mr. _____ (DPIN _____)

9.2 The said Designated Partner has given his consent to act as Designated Partner of the LLP.

9.3 There shall be at least one Designated Partner of the LLP.

9.4 The Designated Partners shall satisfy all the conditions and requirements as may be prescribed by the Central Government in that behalf.

9.5 Every Designated Partner shall have a Designated Partner Identification Number.

9.6 Details/particulars of every Designated Partner and his/her consent to act as such should be filed with the Registrar within thirty days of his appointment.

9.7 The day to day Business of the LLP shall be conducted and managed by the Designated Partners and their decision shall be final and conclusive on the LLP.

9.8 The Designated Partners shall be accountable for all acts, deeds, matters and things as required to be done by the LLP in compliance with the provisions of the Act and any Rules made thereunder.

9.9 The Designated Partners shall carry out the business of the Partnership for the greatest common advantage of the partners and shall be responsible for making good to the LLP any loss directly caused by or attributable to their acts or omissions or which they were legally forbidden to do.

9.10 No Designated partner shall carry any of the following acts, except without the written consent of the other Designated Partners:

(i) Release or compound any debt or claim owing to the LLP.

(ii) Guarantee the payment or discharge of any sum or claim.

(iii) Execute any deed or stand surety for any payment for or acknowledge any liability on behalf of the LLP.

(iv) Transfer his interest in the LLP in any manner.

9.11 The Designated Partners shall be personally liable to any penalties imposed on the LLP for any contravention of the provisions of the Act.

9.12 The Designated Partners shall be entitled to remuneration not exceeding _____.

9.13 The Designated Partner may appoint any person as his representative by passing a Resolution. Upon the death or cessation of such representative, the Designated Partner can appoint another representative by passing a Resolution.

9.14 On the insolvency of the Designated Partner, such partner shall inform the LLP and the other Partners regarding it within 7 (seven) days.

9.15 The LLP shall reimburse any expenses incurred by the Partners prior to its incorporation.

9.16 The Designated Partners shall be true and just to each other at all times during the continuance of the partnership and shall diligently and faithfully employ themselves in the conduct and management of the said business and concerns of the partnership.

10. Contribution

10.1 The Initial capital of the LLP shall be _____ and shall be contributed by the partners in the following proportion: -

ABC _____ (__%)

XYZ _____ (__%)

10.2 The Contribution can be increased or reduced with the consent of all the Partners.

10.3 If any further capital is required at any time for the purposes of the LLP, Partners shall bring in additional contribution in their respective proportion of capital contributions made, unless otherwise agreed.

10.4 The LLP shall not pay any Interest on the Contribution received from Partners.

10.5 No Partner shall withdraw any part of his capital account while he is a Partner, without reducing his proportionate share in the LLP.

11. Refund of Contribution

The Contribution of Partners will not be returned or refunded except:

(a) In case of death, retirement, expulsion or cessation of the said Partner.

(b) Winding up of the LLP

12. Rights of Partners

Subject to the management powers specifically delegated to the Designated Partners, all the Partners shall generally have the right to:

(a) take part in the day to day management of the LLP.

(b) pledge/ hypothecate/ mortgage assets of LLP for borrowing money for furthering LLP's business.

(c) access and inspect books of accounts and other records of the **LLP**.

(d) carry on or engage in their own, separate and independent business except any business competing with the LLP's business.

13. Duties of Partners

(a) The Partners shall work faithfully and give adequate time and attention as may be required for the LLP business.

(b) The Partners shall render true accounts and information of all facts, events and affairs affecting the LLP and other Partners.

(c) The Partners shall account to the LLP for any benefit derived by them from any transaction or resources involving the LLP.

(d) If a Partner wants to transfer his share in LLP, he shall first offer the same to the other Partners by giving 30 (thirty) days' time. If the other.

(e) Partners do not convey their willingness to accept the offer, the offering Partner can transfer his share to a third party.

14. Limits on Partners' Authority

Without the written consent of the other Partners, no Partner shall: -

(i) Transfer, assign or mortgage his share of interest in the LLP.

(ii) Lend money or give credit to any persons on behalf of the LLP.

(iii) Execute any bond or surety or guarantee binding the **LLP or its** property thereby.

(iv) Release, discharge, settle, compromise or compound any debt (except full payment with applicable interest / penalty) due to the **LLP.**

(v) Buy, sell, lease, create any third party rights in, encumber or pledge any LLP property.

(vi) Draw, accept or endorse any bill of exchange or promissory note on behalf of the LLP.

(vii) Draw and sign any cheque on behalf of the LLP exceeding Rs. _____.

(viii) Breach confidentiality of LLP business, information or dealings for personal or third parties' benefit.

(ix) File, admit, refuse or withdraw any claims or legal proceedings on behalf of the LLP.

(x) Compete with the business of the LLP.

(xi) Pursue any action that may conflict his interest with the interest of the LLP or other Partners.

15. LLP's Liability

The LLP shall not bound by anything done by a Partner in any dealing in case the Partner acted without any authority to act for the LLP and the Partner concerned shall be personally liable.

16. Partners' Liability

Subject to the provisions of the Act, the liability of the Partners to this LLP Agreement shall be limited to the Contribution committed by them to the LLP.

17. Indemnity and Defence

17.1 The LLP shall indemnify each Partner for payments made and personal liabilities incurred by him in due and legal course or business.

17.2 The LLP shall indemnify and defend its Partners and other Officers from and against any and all liability in connection with claims, actions and proceedings barring in the event of gross negligence or willful misconduct of the Partner or officer seeking indemnification.

17.3 Each partner shall indemnify the LLP and the other Partners for any loss caused to it / them by his unauthorized acts or any fraud committed by him in conducting the LLP business.

18. Effective Date

This Agreement shall be effective from the date of incorporation of the LLP.

19. Management of LLP

19.1 The overall management of the LLP will be conducted by the Partners.

(a) Any matter or issue relating to the LLP shall be decided by Resolution passed by the Partners. Each partner shall have one vote. The Partners' meeting shall be called by sending at lease 14 (fourteen) days prior written notice.

(b) Partners' meetings shall be held at the Registered Office.

(c) Decisions taken at Partners' meetings shall be properly recorded in the minutes book and kept at the Registered Office.

(d) No Resolution or decision shall be valid without the approval of the Partners holding 75% voting rights.

(e) In the absence of a Partners' meeting, a circular resolution signed by the Partners holding 75% voting rights would be effective.

20. Seal

20.1 The LLP shall have a Seal.

20.2 The Designated Partners shall have the right to affix the Seal on instruments and ensure the safe custody thereof.

21. New Partners

21.1 No new Partner shall be inducted without the consent of all the existing Partners.

21.2 The contribution and profit sharing ratio of the incoming Partner will be decided by the existing Partners.

21.3 Any person having any business interest which is in conflict or competition with the LLP's business shall not be admitted as a Partner.

22. Cessation of Partnership

A. RETIREMENT:

A.1 A Partner may cease to be partner of the **LLP** by giving a notice in writing of not less than 30 (thirty days) to the other partners of his intention to retire as partner.

A.2 Upon receipt of the said resignation notice, the LLP's assets and liabilities shall be evaluated and a statement of accounts shall be drawn up.

A.3 The Retiring Partner shall be entitled to the credit balance or be liable for the debit balance as arrived as per the said accounts which shall be payable to him or receivable from him, as the case may be, as may be mutually agreed upon within 14 (fourteen) days of effective date of his retirement.

A.4 The retirement shall be effective from a date mutually agreed by the Partners.

B. EVENTS OF DEFAULT:

B.1 The following shall be considered to be events of defaults on part of the Partners, which may lead to the cessation as a partner of the LLP:—

(a) If a Partner is declared to be of unsound mind by a competent Court; or

(b) If a Partner has applied to be adjudged as an insolvent or is declared as an insolvent; or

(c) If a Partner is found to be engaged in any grave financial misconduct or any activity involving moral turpitude.

(d) If a Partner has committed a breach of his obligations under this Agreement.

B.2 On occurrence of any such events of default, a Designated Partner shall cause the accounts of the LLP to be drawn up on the date of the default or cessation of such partner and settle the account of the defaulting Partner within 30 (thirty) days of the date of default.

C. DEATH:

C.1 Upon the death of a Partner, any nominee appointed by the heirs of the deceased Partner, by a notice given to the other Partners in writing and in absence of such notice, any nominee appointed by such deceased Partner under his will shall be inducted as a Partner from the date of his demise in his place.

C.2 In the event there is no notice is given or the deceased Partner has not made any will or his nominee refuses to join the LLP as a Partner, the deceased Partner's account shall be settled within 60 (sixty) days of his death.

23. Voluntary Winding up or Termination of LLP

24.1 The LLP shall continue to operate subject to the provisions of the LLP Act, 2008 until termination of this Agreement and dissolution by consent of all the Partners.

24.2 With mutual consent of the Partners, the LLP may initiate the proceedings for its winding up.

24.3 On the winding up of the LLP, the Liquidator, may subject to the provisions of the Act and the Rules thereunder divide among the Partners in species or otherwise the whole or any part of the LLP assets.

24. Bank Accounts

24.1 The LLP shall open bank accounts with scheduled banks only, with prior consent of all the Partners.

24.2 The LLP's bank accounts shall be operated singly and/or jointly by the Designated Partners or as may be otherwise mutually decided by the Partners.

25. Borrowings

25.1 The LLP may borrow any money for its business through any Bank, Financial Institutions or NBFCs at reasonable and prevailing rate of interest with the consent of the Designated Partners.

25.2 Such borrowing facilities may be on secured or unsecured basis.

25.3 The Partners may also lend funds for LLP business at an interest rate approved by all the Partners.

26. Profit and Loss Share of Partners

26.1 The Net profit of the LLP arrived at after providing for and deduction of all the costs, charges, expenses, liabilities, debts and taxes shall be divided and distributed between the Partners in the following proportion:

ABC __%

XYZ __%

26.2 On the cessation of business of the LLP, all the lawful outstanding dues of the secured and unsecured creditors shall be first paid and all the other lawful liabilities of the LLP shall be cleared. The balance, if any, shall be distributed among the Partners in the profit sharing ratio.

26.3 The Losses of the LLP, if any, shall be borne and paid by the Partners in the following proportion:

ABC __%

XYZ __%

Partners may withdraw out of the Partnership funds as drawings such amount towards their share of profit or from the credit balance of his income account. as may be unanimously agreed by the Partners.

27. Intellectual Property Rights

The Partners or any third parties shall not have any claim or rights in the brand names, logos, trademarks, etc. (whether registered or not) which belong to or used by the LLP. All the assets owned by or belonging to the LLP including the Intellectual Property Rights shall be the sole and exclusive property of the LLP.

28. Accounts and Audit

28.1 The accounting year of the **LLP** shall be from 1st April of a calendar year to 31st March of the next calendar subsequent year. The first accounting year shall be from the date of incorporation of this **LLP** till 31st March of the subsequent year viz. 31st March, 2019.

Accounting Principles in India

(**Delete the second sentence**)

28.2 The books of accounts of the LLP shall be kept at the Registered office.

28.3 The LLP shall maintain proper books of accounts relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting.

28.4 The accounts of the LLP shall be audited in accordance with the Act and Rules prescribed thereunder.

29. Confidentiality

Every Partner and any other person employed in the business of the LLP shall maintain utmost confidentiality in respect of all transactions of the LLP with its customers/clients and not reveal any matters which may come to his knowledge in the discharge of his duties except when required to do so by mutual consent of the Partners and except so far as may be necessary in order to comply with the provisions of the Act or any other law.

30. Alteration of LLP Agreement

30.1 The Partners may modify, after or vary the terms and conditions of this Agreement with mutual consent.

30.2 With respect to any matter connected with the affairs of the LLP, not specifically covered herein, the Partners may make mutually agreed agreements in respect thereof.

30.3 The Partners shall draw up a new Agreement in case of a change in constitution of Partnership (either due to change in profit/loss sharing ratio between the partners or due to admission of a partner or otherwise).

30.4 No alteration to or amendment or change in this LLP Agreement shall be valid unless executed to writing as a Supplementary Agreement by the Partners.

31. Miscellaneous Provisions

31.1 The LLP shall reimburse any expense incurred exclusively for the LLP business by the Partners.

31.2 This Agreement represents the entire agreement between the Partners.

31.3 If any provision of this Agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, then only that provision shall be severable and divisible from this Agreement and shall

be deemed to stand deleted and the validity of the remaining provisions and otherwise of this Agreement shall not be affected.

31.4 Any relaxation/delay made/ shown by any party in exercising his rights against the other shall not be deemed and/or construed to be waiver of any such rights and shall not prejudice the rights and remedies of such party in any manner whatsoever.

32. Dispute Resolution

32.1 All disputes between the Partners or between any Partner and the LLP arising out of the LLP or this Agreement which cannot be resolved in terms hereof shall be referred to arbitration by a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue of the arbitration proceedings shall be _____ and the proceedings shall be conducted in English.

32.2 The courts of competent jurisdiction at _____ shall have exclusive jurisdiction in all matters.

IN WITNESS WHEREOF the Parties have put their respective hands the day and year first hereinabove written.

ABC

XYZ

Witnesses

_____

_____

Practical Guide to Drafting Commercial Contracts is a concise handbook enumerating the key aspects pertaining to drafting effective commercial agreements. Written in a lucid language, the author explains the factors that a draftsman must consider while drafting an agreement that clearly reflects the intent of the parties. A carefully drafted contract must be precise, comprehensive, devoid of contradictions, grammatically accurate and amenable to clear legal interpretation in case of disputes arising therefrom. Contract drafting is a crucial skill that every lawyer must acquire and hone.

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Bhumesh Verma is the Managing Partner of Corp Comm Legal, an independent Indian law firm headquartered in New Delhi. Besides, he is the convenor of Global Business Lawyers' League and The Indian Lawyers' League. With over 25 years' experience, he is one of the leading Indian senior corporate practitioners ranked *inter alia* in the 'A List' of the Top 100 Indian Lawyers by India Business Law Journal from time to time, most Admired Indian Lawyers, most followed Indian lawyers on LinkedIn, etc. An avid reader, a sought-after speaker, guest faculty and prolific writer, he has contributed to in-house journals of many international law firms on Indian laws and published more than 400 articles so far.

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ISBN: 978-93-89176-47-6

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