

# 25 SECRETS FOR UNCONTESTED BUSINESS AGREEMENTS

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KAMALL AHUJA

# **25 SECRETS FOR UNCONTESTED BUSINESS AGREEMENTS**

**By Kamall Ahuja**

## Copyright

25 points for Drafting Agreements to Eliminate Disputes

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## Dedication

To my wife Poonam  
and my children Nitai and Mayank  
without whom this book would have  
been completed two years earlier

## Praise for the Book

25 Secrets for Uncontested Business Agreements is a content-rich, very meticulously organized and practically structured textbook optimized to present complex information in highly segmented, concise and accessible morsels.

This book is exceptional in the sense that it introduces law in general, and comprises agreements, contracts, deeds which are enforceable in India and presents a unique way of looking towards any legal action which could be encountered due to common errors & omissions while drafting or executing any contracts.

This book begins with the most basic and core concept about-General Law of drafting of Agreements/Deeds & Contracts, in order to refrain from the commercial litigations; the book outlines the crucial aspects to be considered prior documenting legal contracts and its enforceability.

It is crucial for lawyers and professionals to be aware of the different general and specific clauses, to be incorporated while drafting any of the documents and their implications and importance on the type of contracts being executed.



## Acknowledgements

I would like to express my gratitude to the many people who saw me through this book; to all those who provided support, talked things over, read, wrote, offered comments, allowed me to quote their remarks and assisted in the editing, proofreading and design.

Nobody has been more important to me in the pursuit of this project than the members of my family. I would like to thank my parents, whose love and guidance are with me in whatever I pursue. They are the ultimate role models.

Most importantly, I wish to thank my loving and supportive wife, Poonam and my two wonderful children, Nitai & Mayank; who provide unending inspiration.

Last and not least: I beg forgiveness of all those who have been with me over the course of the years and whose names I have failed to mention & quote.

New Delhi, 2020

Kamall Ahuja

## About the Author....

**Kamall Ahuja** is an expert in Corporate Laws, Cross Border Transactions, Mergers & Acquisitions, Intellectual Property Laws, banking and project finance, Commercial Arbitration, Business Structuring, and Government Regulatory, Secretarial affairs and Merchant Banking advisory whose accomplishments include:

**Education** :B. Com (Hons.), Cost & Works Accountant (Inter) Fellow Member of Institute of Company Secretaries of India, Law Graduate from Delhi University, Diploma in International Trade Business, Business Mastery program from Business Coach India (Rahul Jain).

### **Work History:**

- Founded Grover Ahuja & Associates, Company Secretaries firm in 1998 and at present having office in three major cities of India and after creating team of 30 dynamic Company Secretaries and Chartered Accountants moved to Legal arena for deeper insight of litigation and NCLT Practice and founded Lawmax Associates, Advocates & Solicitors. Regularly appeared as an attorney before numerous statutory bodies such as Registrar of Trademark, RBI, Regional Director, FIPB, Indian Tax Authorities and other regulatory authorities and recently ventured into Merchant Banking to help Small and Medium Scale Enterprises to raise Capital from Capital Market.
- Key Areas are corporate advisory, business structuring, International trade and taxation, banking and finance, foreign collaboration and joint ventures, commercial arbitration, inbound and outbound foreign investment and national/ international not-for-profit companies/ trust/societies, handled a variety of cases ranging from Intellectual Property Rights, Corporate and Commercial laws and has been instrumental in luring foreign investment for the setting up of units in SEZ/STPI. Being bestowed with a high degree of knowledge and expertise while handling complex issues and is renowned for limitless dedication when it comes to be a part of a team.

**Awards, Titles, and Designations:**

- Rank Holder in ICSI Inter.
- Founder Partner of Grover Ahuja & Associates (Company Secretaries).
- Partner at Lawmax Associates, Advocates & Solicitors.
- Promoter Director in Non- Banking Finance Company.
- Acted as Independent Director on the Board of various renowned companies.

**Personal Informations**

Married & proud father of two wonderful children.



## Preface

It is a great pride and pleasure for me to present before the readers this book on “25 Secrets for Uncontested Business Agreements”. This book is a work of reflection not scholarship, though it draws upon a variety of published and unpublished sources. As an active member Institute of Company Secretaries of India and an advocate by profession, having amid practical exposure about the challenges and accomplishments in producing no error materials, therefore believing on the wisely saying by *Chanakya* “*Learn from the mistakes of others, You can’t live long enough to make them all themselves*”, I consciously cast this book as an addition to the skill of flawless drafting, devoid of any footnotes or reference materials. This book has been prepared by keeping in mind the difficulties faced by the professionals while drafting various Agreements. I will feel immensely rewarded if the users of this book will find it interesting, comprehensive and easy to understand.

The distinguishing features of this book are:

- ★ Simple and lucid textual flow
- ★ Coverage of various types of Agreements that are necessary to impart a sound knowledge about the subject-matter of the book
- ★ Draft formats to equip the readers with better drafting skills

We sincerely hope that this book will meet the needs of the readers. Endeavour has been made to make this book error-free, yet mistakes might have crept in for which we are apologetic. We look forward to the readers for their suggestions and feedback at [kamal.ahuja@corporateconsultant.in](mailto:kamal.ahuja@corporateconsultant.in).

# Table of Contents

CHAPTER 1.....	SALE DEED
CHAPTER 2.....	JOINT VENTURE AGREEMENT
CHAPTER 3.....	MORTGAGE DEED
CHAPTER 4.....	ASSIGNMENT DEED
CHAPTER 5.....	GUARANTEE DEED
CHAPTER 6.....	WILL DEED
CHAPTER 7.....	LEASE DEED
CHAPTER 8.....	RENT AGREEMENT
CHAPTER 9.....	LICENSE DEED
CHAPTER 10.....	LOAN AGREEMENT
CHAPTER 11.....	EMPLOYMENT /SERVICE CONTRACT
CHAPTER 12.....	LLP AGREEMENT
CHAPTER 13.....	DOUBLE TAXATION AVOIDANCE AGREEMENT
CHAPTER 14.....	COLLABORATION AGREEMENT
CHAPTER 15.....	GIFT DEED

CHAPTER 16.....	BUSINESS CONTRACT
CHAPTER 17.....	PARTNERSHIP AGREEMENT
CHAPTER 18.....	SHAREHOLDER AGREEMENT
CHAPTER 19.....	CONTRACT OF AGENCY
CHAPTER 20.....	NON DISCLOSURE AGREEMENT
CHAPTER 21.....	PARTITION DEED
CHAPTER 22.....	VENDORS CONTRACT
CHAPTER 23.....	FAMILY SETTLEMENT DEED
CHAPTER 24.....	TRADEMARK LICENSE AGREEMENT
CHAPTER 25.....	HIRE PURCHASE AGREEMENT
CHAPTER 26.....	TRUSTS DEED
CHAPTER 27.....	CONVEYANCE DEED
CHAPTER 28.....	DISTRIBUTORSHIP AGREEMENT
CHAPTER 29.....	DISSOLUTION DEED

**CHAPTER 30..... PRE-INCORPORATION  
AGREEMENT**

**CHAPTER 31..... SHARE PURCHASE  
AGREEMENT**

**CHAPTER 32.....KNOW HOW TRANSFER  
AGREEMENT**

**CHAPTER 33..... ROYALTY  
AGREEMENT**

## **GENERAL**

DO'S & Don'ts for successful drafting of any "AGREEMENTS/DEEDS & CONTRACTS" *Commercial litigation* often occurs as a result of common and recurring mistakes that are made during the drafting and negotiation of contracts. We (and our clients) often wish that we could turn-back-the-clock so that a provision or two could be added to resolve a contractual problem.

Businesses that are conscious of the following top ten mistakes and seek to avoid making them will be less likely to face litigation.

Before initiating documentation of any legal contracts it should be primarily followed with investigations of subject matter to be covered and its enforceability because they can provide early warning signs about the desirability of a proposed business partner, the likelihood those contractual obligations will be met and whether litigation is likely if disputes arise. To ensure that contractual intent is achieved, contracts must contain well defined terms and unambiguous provisions. While it is impossible to entirely eliminate the risk that a party will assert that ambiguities exist, careful drafting avoids creating loopholes and increases the likelihood that contracts will be fulfilled and construed as intended. Typically, provisions are included stating that the written contract is a final expression of the parties and that the agreement supersedes all other prior communications and understandings and that any modifications must be by a written and signed amendment.

However considering the frequency of errors or disputes while interpreting the covenants of contracts, agreements and Deeds and performance of rights and obligations majorly arises in below named arrangements:

Reasons of occurrence of majority of disputes and litigations in contracts or deeds are duly accounted herein below under respective headings:

#### **GENERAL CLAUSES TO BE CONSIDERED WHILE DRAFTING AN AGREEMENT**

	<b>Clauses</b>	<b>Name of an Agreement/Contract /Deed</b>	<b>Description</b>

1.	Jurisdiction	Sale Deed, Rent Agreement, Lease Deed etc.	In these types of clauses, the parties agree that the contract terms will only be interpreted according to the laws of a specific state. Also, they may agree that litigation will only occur in a specified jurisdiction. These are only enforceable if they don't conflict with general requirements of law.
2.	Performance Clause	Every Agreement	This indicates the time frame in which the contract duties can or can't be performed. Some contracts state that "time is of the essence", meaning that a breach of contract suit can be filed if the duties aren't performed in a reasonable amount of time.
3.	Non-Waiver Clause	Sales deed, lease deed, license deed, performance deed	This clause protects parties who excuse the other party for non-performance of contract terms.

4.	Severability Clause	Any agreements	This ensures that the remainder of the contract is enforceable even if one part of the contract is determined to be invalid
5.	Confidentiality clause	Joint ventures, vendors contract, collaboration agreements and non-disclosure agreements etc.	Parties agree that state information to be kept confidential, thus barring the receiving party from disclosing the information
6	Force majeure clause	any agreements	Certain circumstances which are beyond parties control arise, making performance inadvisable, commercially impracticable, illegal, or impossible this relieves the parties from performing their contractual obligations
7.	Taxes and expenses	Lease deeds, rent agreements, licensing agreements, assignment contracts etc.	This clause clarifies the responsibility of parties who shall be liable to pay these expenses accounting fees, costs and expenses and all federal, state, local and other taxes and related

			charges and whose responsibility to pay them.
8.	Renewal and extensions	Lease deeds, rent agreements, License agreements and services contracts	This clause determines additional period of time set forth in the Extension Notice to extend the terms of contract
9.	Indemnity	Guarantee deed, mortgage deed, sale purchase deed and loan agreements etc.	This clause clarifies contractual transfer of risk between two contractual parties generally to prevent loss or compensate for a loss which may occur as a result of a specified event.
10.	Stamp duty	Nondisclosure agreements, will deed, assignment deed, gift deed, sale-purchase deed, lease deed, partition deed etc.	a person is required to pay the stamp duty charges to the Government at the time of buying a property as importance of stamp duty in relevance with income tax. The stamp duty payment is mandatory for the legal claim to become valid.



11.	Intellectual property	Agency contracts, joint collaboration contracts, assignment deeds, vendors contract etc.	IP clauses make it clear in license agreements that the only IP rights that will be exchanged are any that are licensed in the License Grant clause and others which are prohibited
12.	Representations and warranties	Vendors agreement, non-disclosure agreements, family settlements deed, partition deed, agency contracts etc.	It is an assertion to the fact that facts disclosed on the specific date is true on the date the representation is made and warranty is the promise made for indemnity where any assertion or representation made is false.
13.	Consideration	Sale-purchase agreements, lease deed, license deed, gift deed, Vendors contracts, business contracts, services contracts etc.	It sets the terms of payment, stages in which payments is to be made and sometimes it is the essence of contracts or agreements
14.	Breach of contract	Business contracts, sales purchase contracts, Service contracts, collaboration contracts, joint venture	This is the statutory right where if parties fail or refuses to perform its promise under the contract. Breach of contract is a legal cause

		contracts, settlement agreements, non-disclosure agreements, agency contracts etc.	of action in which a binding agreement is not honored by one or more parties by non-performance of its promise by him renders impossible.
15.	Termination	Partnership agreements, service contracts, joint ventures agreements, collaboration agreements, double taxation avoidance agreements, agency contracts etc	With this clause it allows the parties to terminate the agreements which may be at happening of certain specific events or non-happening of certain events
16.	Liability clause	Partnership agreements, rental agreements, sale-purchase agreements, collaboration agreements, joint venture agreements, service contracts, business contracts, agency contracts etc.	This clause mentions the exact proportion in which parties in the agreements are held liable for any act and the amount and types of damages that one party in default shall be paid

17.	Insolvency clause	Share transfer deeds, will deed, rent agreements, loan agreements, mortgage contracts, guarantee deed etc.	This clause is inserted as a reinsurance contract clause that requires the reinsurer to uphold its obligations even if the ceding party becomes insolvent
18.	Non-competition clause	Service/employment contracts, assignment deed, business contracts, joint ventures agreements, partnership contracts etc.	With this clause parties in the contract agrees that to not enter into or start a similar profession or trade competition against another party.
19.	Misrepresentation and concealment of materials	Sales-purchase agreements, vendors agreement, hire-purchase agreements, agency contracts, service contracts etc.	This clause reduces the proneness of loss that parties in the contract may suffer due to incorrect or false statement made by the one party that induces other party to enter into a contract
20.	Statute of limitation	Business contracts, lease agreements, sale deed, hire-purchase agreements etc.	This clause is stipulated so that contractual disputes dealing with the subject matter of the contracts.

21.	Arbitration clause	All Agreements	With this clause parties in the contract mutually decide to resolve their disputes and issues through an arbitration process.
22.	Registration clause	Nondisclosure agreements, sale-purchase deed, gift deed, will deed, non-disclosure agreements, partition deed etc.	With registering any contracts or agreements it enhances the legal evidence quality those further any other governmental laws benefit are also available with registration.
23.	Signature of parties' clause & Witnessing clause	Gift deed, will deed, sale-purchase contracts, license agreements, lease deeds, agency contracts etc.	With signature of parties on an agreement it binds parties with the clauses and execution of the agreement.  and Witnessing the documents means a witness watches the document be signed by the person they are being a witness for and who verifies its authenticity by signing their own name on the document as well. Witnessing the document help solidify

			and authenticate your contract by providing proof that the signatures are legitimate and consensual.
24.	Sub-letting clause	Lease deed, rent agreement, hypothecation agreements etc.	With a subletting clause one of the parties may agree or restrict the other party to assign, transfer or sub-let any part of the rights earlier covered under any previous contracts.
25.	Attorney Fees	Business contracts, joint ventures agreements, partnership contracts etc.	In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and

			expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.
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## **CHAPTER – 1**

### **SALE DEED**

A Sale Deed or Conveyance Deed is a document which is drafted at the time of sale of the property. Where subject matter or transfer is in the case of tangible immovable property whose value is of One Hundred Rupees or more or in case of reversion of tangible immovable property such transfer is enforceable only by a registered instrument i.e., by Sale Deed. Further in case of that tangible immovable property whose value is less than Rupees One Hundred then transfer of ownership of such property can be enforceable by a registered instrument or just by delivery of the property.

Besides, Transfer of Property Act, legislation like Income-Tax Act, FEMA, Urban Land Ceiling Act and some other laws affect the free transfer of immovable property.

To remove the area of lack in enforceability of such deeds following are few essential points which should be bear in mind by advocates/CS while drafting Deed:

#### **1. TRANSFER OF TITLE**

The signing of the sale deed implies transferring the title of the property to the buyer by the seller which cannot be revoked. It also means that they have adhered to the clauses, compensation agreed upon and paid in full. The buyer holds the legal rights of the property.

#### **2. REGISTRATION**

A sale deed is registered in accordance with the Registration Act, 1908. Both the parties have to be present in person along with two witnesses with all the relevant documents in the sub-registrar's office to sign the sale deed and close the deal.

#### **3. PROOF OF REGISTRATION**

The certified copy of the registered deed with the name of the buyer can be obtained from the registrar's office.

#### **4. RBI APPROVAL**

Where property acquired is owned by a non-resident as per the provisions of FEMA, in such case general permission of RBI is available.

#### **5. CONSIDERATION**

Where the consideration money of the property exceeds Rs. 5 Lakhs in all such cases it became obligatory for the parties i.e. seller and buyer, to enter into an agreement in writing, at least four months before the intended date of transfer and submit, under Section 269UC of the Income-Tax Act, a statement in duplicate and in Form 37-I giving such particulars as required therein to the Appropriate Authority within 15 days of such agreement. However, such consideration shall be paid in cash as well as by cheque.

#### **6. ASSESSING OFFICER APPROVAL**

Further, section 281 of the Income Tax Act, 1961 ("ITA") requires an assessee to obtain permission of the assessing officer ("AO") before creating a charge on or transfer of certain assets. This section classifies certain transfers to be void in case of any pendency of proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession and transfer by sale is one of them. However, no such transfer shall not be void in case the same is made with due permission of the Assessing Officer.

#### **7. CLEARANCE CERTIFICATE**

Under Section 230A of the Income-tax Act, 1961, the Income-tax Officer is required to be obtain a clearance certificate by the seller in every such cases where sale consideration of immovable property exceeds Rs. 5,00,000/- as a pre-requisites for registration of the Sale Deed with the Registrar/Sub-Registrar of Assurances under the Registration Act, 1908. Further under Section 17 of Indian Registration Act, 1908 it has been provided that agreement of sale of immovable property of the value of one hundred rupee and upwards are required to be registered to make it legally enforceable.



## **8. DOCUMENTATION**

Usually a transaction of a sale of immovable property involves two documents, e.g., Agreement to sell and the Conveyance Deed i.e. sale deed. But with only a Sale Deed the transaction of sale can be completed. It is also required to go through Section 54 of Transfer of Property Act, 1882 which provides essentials of valid sale.

### SALE DEED

THIS DEED OF SALE was made and executed at (Name of the place)\_\_\_\_\_on \_\_\_\_\_ day of \_\_\_\_\_ month, \_\_\_\_\_ year.

### BETWEEN

Shri.\_\_\_\_\_ aged about \_\_\_\_\_ years, S/o \_\_\_\_\_ residing at \_\_\_\_\_ (hereinafter called the SELLER).

### AND

In favour of Shri. \_\_\_\_\_ aged about \_\_\_\_\_ years, S/o \_\_\_\_\_ residing at \_\_\_\_\_ (hereinafter called the PURCHASER)

The term SELLER and PURCHASER, unless repugnant to the context, shall mean and include their respective heirs, successors, executors, administrators, trustees, legal representatives and assigns/ nominees of their respective parts.

WHEREAS the SELLER herein is the sole and absolute owner of immovable property being Flat / Apartment No.\_\_\_\_\_ on the \_\_\_\_\_ Floor of the building known as “\_\_\_\_\_”situated at \_\_\_\_\_and bearing Corporation No.\_\_\_\_\_, \_\_\_\_\_ Road, Division No.\_\_\_\_\_, with a super built-up area of \_\_\_\_\_ sq.ft. together with \_\_\_\_\_% share of undivided interest in the land equivalent to \_\_\_\_\_ sq.ft. along with common areas and facilities including car parking lot in the basement, which Flat / Apartment is described in the schedule hereunder and hereinafter called the Schedule.

WHEREAS the SELLER of the Flat / Apartment, he having purchased the same from Shri.\_\_\_\_\_ in terms of Sale Deed dated \_\_\_\_\_duly registered as Document No.\_\_\_\_\_ Book – I, Volume \_\_\_\_\_at Pages \_\_\_\_\_on date \_\_\_\_\_at the Office of the Sub-Registrar, \_\_\_\_\_since then the SELLER has been in possession and enjoyment of the Schedule Flat / Apartment on getting the bifurcated khata from the Corporation of the City of \_\_\_\_\_duly transferred in his name

bearing No. \_\_\_\_\_ vide Khata No. \_\_\_\_\_ dated \_\_\_\_\_ and on payment of taxes and levies thereon as sole and absolute owner thereof.

WHEREAS the SELLER herein for his bonafide needs & legal requirements, in his sound disposing mind without any pressure, force or compulsion or coercion has agreed to sell the Schedule Flat / Apartment, offered the same to the Purchaser and the Purchaser has agreed to purchase the Schedule Flat / Apartment in terms of an agreement for a total sale consideration of \_\_\_\_\_ (Rupees \_\_\_\_\_ only) and the Purchaser, after scrutinizing the Flat/ Apartment also having satisfied regarding the title of the Seller has agreed to pay the entire sale consideration at the time of execution of the sale deed.

WHEREAS IN CONSIDERATION of the Purchaser having paid the entire sale consideration of \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as aforesaid, the receipt of which has been duly acknowledged by the SELLER, who acquits the Purchaser from making any further payments towards sale consideration.

WHEREAS THE SELLER, as beneficial owner, *DOES HEREBY GRANT, CONVEY, TRANSFER BY WAY OF SALE AND ASSIGN* unto and in favour of the Purchaser the Schedule Flat / Apartment and every part thereof together with the right, title and interest therein, with all the benefits, advantages, concessions, licenses, hereditaments, easementary rights, equities, claims, demands etc., attached to belonging to and reputed to belong to the Schedule Flat / Apartment.

*TO HOLD, TO POSSESS AND TO ENJOY* the same forever free from all encumbrances, subject to common rights of owners of remaining shares of undivided interest in the land and the Flat / Apartments attributable thereto. The SELLER hereby declares and covenants with the Purchaser that he is the sole and absolute owner of the Schedule Flat / Apartment and has a clear, legally valid and marketable title thereto and therefore an absolute right to sell and convey the same to the Purchaser in terms of this Deed.

WHEREAS THE SELLER further declares that he has not done any acts, deeds or things so as to curtail, restrict or prejudice his right to convey or prevent him from selling the Schedule Flat / Apartment in terms of this Deed.

WHEREAS the Purchaser having now paid the entire sale consideration as detailed below, has requested the SELLER to execute the Sale Deed in his favour and the SELLER has duly agreed thereto,

**NOW THEREFORE THIS DEED OF ABSOLUTE SALE WITNESSETH AS HEREUNDER:**

1. The SELLER hereby confirms that the Purchaser has paid the entire sale consideration as under:

(a) Amount paid by Cheque No. \_\_\_\_\_ Dated \_\_\_\_\_ drawn on \_\_\_\_\_ Bank, \_\_\_\_\_

(b) Amount paid by Cheque No. \_\_\_\_\_ Dated \_\_\_\_\_ drawn on \_\_\_\_\_ Bank, \_\_\_\_\_ Total \_\_\_\_\_ Rupees \_\_\_\_\_ Only.

THAT The SELLER hereby further declares that the Schedule Flat / Apartment is free from all encumbrances, lien, charge, mortgage, lease, court or other attachments, lis-pendens, acquisition and requisition proceedings, minor's claims or any other adverse proceedings or claims from third parties which are in any way detrimental to the interest of the Purchaser.

THAT The SELLER hereby assures the Purchaser that all taxes and levies on the Schedule Flat / Apartment have been paid up to date and arrears if any, till the date of the Sale Deed shall be duly paid by him and future taxes in respect of the Schedule Flat / Apartment shall be paid by the Purchaser.

THAT The SELLER hereby declares and covenants with the Purchaser that he shall do or cause to be done all acts, deeds and things which are legally and reasonably required to be done at the instance of the Purchaser for more fully and perfectly assuring the right, title and interest of the Purchaser in the Schedule Flat / Apartment herein conveyed and the Purchaser shall bear such expenses.

THAT The SELLER hereby indemnifies and shall keep the Purchaser or his successors in-title fully indemnified against any loss or liability, cost or claims, action or proceedings, if any should arise, at any time in future against him owing to any defect in or for want of clear and marketable title or due to any default, violation or non-compliance of any of the declarations or covenants herein.

THAT The Purchaser shall be the sole and absolute owner of the Schedule Flat / Apartment with attendant rights of ownership, possession, enjoyment and shall be entitled to deal with or dispose off the Schedule Flat / Apartment as he deems fit without any interference, obstruction or hindrance from the SELLER or anyone claiming under, through or in trust from him. The Stamp duty, Registration charges and other incidentals have been borne by the Purchaser.

THAT The SELLER has this day delivered the vacant possession of the Schedule Flat / Apartment to the Purchaser along with all the available original title deeds and documents which are in his possession pertaining to or relating to the Schedule Flat / Apartment.

The Purchaser shall be bound to become Member of the Association of Apartment Owner's and duly comply with the provisions of this Apartment and the rules made thereunder and shall abide by the majority decisions of the said Association to be formed and to comply with other requirements of the aforesaid Act.

SCHEDULE OF FLAT / APARTMENT (Conveyed under this deed) All that piece and parcel of immovable property being Flat / Apartment No.\_\_\_\_\_, \_\_\_\_\_Floor of the building known as "\_\_\_\_\_", situated at and bearing Corporation No.\_\_\_\_\_, \_\_\_\_\_Road, Division No.\_\_\_\_\_, with a super built up area of \_\_\_\_\_sq.ft. together with \_\_\_\_\_% share of undivided interest in the land equivalent to \_\_\_\_\_sq.ft. along with common areas and facilities attributable thereto which area includes one car parking lot in the basement and the composite property is bounded by:

On the East: \_\_\_\_\_ On the West: \_\_\_\_\_ On the North: \_\_\_\_\_ On the South: \_\_\_\_\_

Market Value property is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

The Stamp duty is paid on the market value as computed above.

IN WITNESS WHEREOF the parties herein have affixed their respective signatures and thumb mark to this Sale deed after understanding all the contents of the same at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ month of \_\_\_\_\_ years in the presence of the witness

Signed and delivered by Shri \_\_\_\_\_

The within named Seller

Signed and delivered by Shri \_\_\_\_\_

The within named Purchaser

WITNESSES;

1. \_\_\_\_\_

2. \_\_\_\_\_

## **CHAPTER – 2**

### **JOINT VENTURE AGREEMENT**

Joint Venture Agreement (JV): International commercial arbitration provide a highly effective means of resolving disputes between commercial parties operating internationally. A large proportion of such commercial disputes arise in relation to joint ventures (JVs), which often involve partners from different countries operating in another country again. Further before lining up the disputes which are common in such ventures along with steps to be taken to resolve such disputes it is necessary to understand the term “Joint Venture. A business undertaking by two or more persons engaged in a single defined project is defined as Joint Venture. Idea behind a joint venture that each partner will contribute some special know-how or experience that the other partner or partners lack, and that all partners in a JV will work for a common benefit/goal.

Common guidelines which should be followed while drafting an ideal Joint Venture agreement are mentioned hereunder:

#### **1. INVESTMENT**

Equity participation if involved in such venture it is necessary to mention value of the shares to be acquired about to be brought in cash.

#### **2. LUMP SUM PAYMENT**

The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three installments as follows:

- one-third to be paid after the agreement has been approved by the Central Government;
- one-third on transfer of the technical documents; and
- one-third on the commencement of commercial production

#### **3. ROYALTY**

Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent and this rate will depend upon the nature and extent of the technology involved. In certain cases payment of a fixed royalty is preferred by the Government

#### **4. DURATION OF AGREEMENT**

Normal period of a foreign collaboration/JV is 8 years subject to minimum of 10 years. Government usually for five years from the date of the agreement in the first instance or five years from the date of commencement of commercial production; the total period, however, not exceeding eight years from the date of the agreement approve ventures for this period.

#### **5. RENEWAL OR EXTENSION OF AGREEMENT**

In case of foreign joint venture the Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.

#### **6. REMITTANCES**

Where party to any JV is a foreign company/individual, in such circumstances remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.

#### **7. SUB-LICENSING**

This clause is generally included to impose any restrictions on the sub-licensing of the technical know-how to other parties in venture. Such sub-licensing shall be mutually agreed to between all the concerned parties including the foreign collaborator if any. Sub-licensing however shall be subject to Central Government's approval.

#### **8. EXPORTS**



No JV's agreement shall be allowed to contain any restriction on the free export to all countries, except where collaboration has licensing arrangements in which case the countries concerned shall be specified.

**9. PROCUREMENT OF CAPITAL GOODS**

Generally in foreign ventures it is common to see restrictions on procurement of capital goods components, spares; raw materials etc. by the Indian party. Indian collaborator must be free to have control over pricing facility and selling arrangements

**10. TRAINING**

Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.

**11. EXPLOITATION OF PATENTS**

Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry.

**12. CONSULTANCY**

where necessity of any consultancy arises, it should be obtained only after the consultation of other party in such venture. However, if any special circumstances arise where outside consultancy or foreign consultancy becomes essential, then also the Prime consultant should be a party to the venture only.

**13. BRAND NAME**

No insistence on the use of foreign brand names on products for sale in India under any JV's shall be forced. However, there can be no objection for use of foreign brand name on products to be exported to other countries.

**14. INDIAN LAWS**

Every JV's between any Indian collaborators or Indo-Abroad collaborators shall be subject to Indian Laws.

**15. APPROVAL OF CENTRAL GOVERNMENT**

Every JV's shall be approved by the Central Government or other authorized authorities depending upon the type of venture.

## JOINT VENTURE AGREEMENT

THIS AGREEMENT IS MADE on this .....day of ..... (Year)

### BETWEEN

(Foreign Company)..... Incorporated under the appropriate laws of the (Country)..... its office at ..... of the ONE PART

### AND

(Indian Company) a company registered under the Companies Act, 2013 having its office at..... of the OTHER PART.

WHEREAS ..... (Foreign Company) (hereinafter referred to as ..... ) carries on business as manufacturer of and dealer and exporter in Computers, Computer Hardwares and Softwares and has worldwide market and intends to extend its market here in India and elsewhere.

Whereas ..... (Indian Company) (hereinafter referred to as ..... ) carries on business as manufacturer of, dealer in and exporter of Computer Softwares and intends to expand its business in India and abroad.

Whereas ..... and ..... intend to co-operate in manufacturing/dealing in and exporting Computers, Hardwares and Softwares in India and abroad for mutual benefit by setting up a new company.

**NOW THESE PRESENTS WITNESSETH AND THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. A Joint-stock company would be formed under the name and style of ..... (Company Name) under the Companies Act 2013 having its Registered Office at .....

2. .... (Foreign Company) and three of its nominees and .... (Indian Company) and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
  
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between .... (Foreign Company) and .... (Indian Company).
  
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of .... (Foreign Company) and .... (Indian Company) in relation to the said proposed company.
  
5. .... (Foreign Company) will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by .... (Foreign Company) to the new company and in consideration for assignments by .... (Foreign Company) of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to .... (Foreign Company) would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardwares and Softwares and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.
  
6. Will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.

7. Will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either ..... (Foreign Company) and ..... (Indian Company) within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by ..... (Foreign Company) and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.
- 10..... (Foreign Company) will buy 75% of the products of new company for exporting; to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.
- 11.Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.
- 12.The expenses for the setting up and promotion of the new company would be shared equally by ..... (Foreign Company) and ..... (Indian Company).
- 13.The consideration for allotment of shares of the new company to ..... (Indian Company) shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and

making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between ..... (Foreign Company) and ..... (Indian Company).

14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.

15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.

16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.

IN WITNESS WHEREOF the parties hereto have signed, sealed and delivered these presents on the day, month and year first above-written

Signed, sealed and delivered by

Mr. ....

Pursuant to the Board Resolution dated of ..... (Foreign Company)  
Signature in ..... (Place) in the presence of:

1 .....

2 .....

Signed, sealed and delivered by Mr. ....pursuant to  
the Board Resolution dated ..... of ..... (Indian Company)  
Signature in the presence of

1 .....

2 .....

### **CHAPTER – 3**

#### **MORTGAGE DEED**

It is the legal document through which the borrower is agreeing to mortgage his/her property for the loan amount mentioned therein and agreed upon by both the parties. However before initiating the drafting of this deed it is necessary to understand the type of mortgage is covered under the deed. To be in continuous with the knowledge of types of deed following are the types of mortgage deed:

- Simple Mortgage
- Mortgage by Conditional Sale
- Usufructuary Mortgage
- English Mortgage
- Mortgage by deposit of title of deeds
- Anomalous mortgage

It may be drafted either as a name change deed or Deed Poll on behalf of the mortgagor in favor of the mortgagee or as a deed between the mortgagor and mortgagee as parties. However, if mortgage is in the nature of equitable it is prudent to execute a memorandum also called deposit of title deeds to secure a specific mortgage money.

To minimize the proneness of disputes and litigations in this particular deed it is necessary to born in mind following points before initiating drafting:

**1. COVENANT FOR REPAYMENT**

This form focuses that in pursuance of the agreement and in consideration of the receipt of the mortgage money the mortgagor covenants to pay the mortgage money with interest at the stipulated rate in the manner agreed upon.

**2. MORTGAGE**

Property mortgaged is defined under this clause. This clause is mentioned so as to achieve an objective of thorough investigation of the titles of property going to be mortgaged to ensure that mortgagor has an absolute right over the property is recommended.

**3. EXPENSES**

With a view to effect repairs in case wherein default the mortgagee is given power to enter into possession without being liable as a mortgagee in possession so as to have clarity regarding responsibility to bear repair expenses.

**4. INSURANCE**

With this covenant mortgagor covenants to insure the mortgaged property in the name of the mortgagee approved and agreed by the mortgagee.

**5. COVENANT FOR TO NOT GRANT LEASES OR ACCEPT SURRENDER FURTHER**

disputes are often where mortgagor while in possession of mortgaged property grants long term leases prejudicing in the interest of the mortgagee. To eliminate such contingencies it is beneficial that it is agreed that the mortgagor shall not grant leases of mortgaged property for a period exceeding 1 year without the written permission of the mortgagee.

**6. INDEMNITY**



with this covenant undertakes to pay and discharge and indemnify the mortgagee against all rates, taxes, duties, charges, assessments whenever required.

**7. RIGHT TO SALE**

with this clause mortgagee is entitled to recover his outstanding dues by way of sale of the mortgaged property and if sale proceeds is insufficient then it can be recovered from the mortgagor itself or other person.

**8. RIGHT TO APPOINT RECEIVER**

with this clause mortgagee is given right to appoint a Receiver of the mortgaged property when the payment of interest in respect of loan to which a mortgage deed specify is in arrear for 2 or more installments.

**9. DURATION**

with this covenant mortgagor agrees by debarring himself to redeem the security before the lapse of certain specified period and mortgagee may also agree to not to call his/her money before the lapse of certain time. However, such time should not be unnecessarily for a longer period.

**10. RESERVING RIGHT TO SELL FOR THE MORTGAGOR WITH THE CONSENT OF MORTGAGEE**

With this clause mortgagor is authorized to sell the whole or part of mortgaged property only with the consent of mortgagee. However, such proceeds shall be credited to the mortgage account as a payment.

**11. REDEMPTION**

This clause mentions that mortgagor has paid his dues and other outstanding's and also that when such event arises in future mortgagee shall re-transfer the mortgaged property without any hindrance at his expense.

**12. ATTESTATION & EXECUTION OF DEED**

Attestation is compulsory in every mortgage deed and where the language of such deed is not familiar for either of the parties then such deed shall be explained to him so that there shall be proper execution of such deed.

**13. COVERING OTHER APPLICABLE ACTS IN DRAFTING**

Where mortgaged property is covered or subject to other applicable laws in force then this also has to be ascertained. Thus, it is mandatory to go through the Transfer of Property Act, 1882 carefully.

**MORTGAGE DEED**

THIS DEED of Mortgage made the..... day of..... 20\_\_\_\_, BETWEEN  
'AB' of..... (hereinafter called "the Mortgagor"), of the One Part

AND

'CD' of..... (hereinafter called the "Mortgagee"), of the Other Part.

WHEREAS the Mortgagor is absolutely seized and possessed of or otherwise is well and sufficiently entitled the property intended to be hereby mortgaged which is free from all encumbrances and attachments.

AND WHEREAS the Mortgagee has agreed to lend and advance a sum of ₹..... to the Mortgagor at his request upon having the repayment thereof, with interest at the rate hereunder stated and secured in the manner hereinafter expressed.

NOW THIS DEED WITNESSES, that in pursuance of the said agreement and in consideration of the sum of ₹..... paid to the Mortgagor by the Mortgagee simultaneously with the execution of these presents the receipt whereof the Mortgagor do hereby admit, acknowledge and confirm, the Mortgagor do hereby agree with the Mortgagee that the Mortgagor will on or before the..... day of..... 2019, pay or cause to be paid to the Mortgagee the sum of ₹..... with interest for the same in the meantime at the rate of %..... per cent, per annum, such interest to be paid monthly and every month on the 7<sup>th</sup> of each following month without any delay or default.

AND THIS DEED FURTHER WITNESSETH that as a security for the repayment of the said loan with interest, the said 'AB' do hereby charge, assure and mortgage, by way of simple mortgage, upto and in favour of the said 'CD' all property specifically described in the Schedule hereto annexed, and charge

and assure the same by way of security for the repayment of the said sum of ₦. .... together with interest thereon at the rate of..... per cent, per annum;

AND THE Mortgagor does hereby agree and covenant with the Mortgagee that he will pay or cause to be paid to the Mortgagee the principal sum aforesaid, together with the interest then due, on or before the..... day of..... 20\_\_, without delay or default;

AND THE INDENTURE FURTHER WITNESSETH and it is hereby agreed and declared by and between the parties that in case the said sum of ₦ ..... with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawful for the Mortgagee to enforce this mortgage and to cause the property or any portion sold and appropriate the proceeds towards satisfaction of the mortgage debt provided, however, that in the event of any short-fall or deficiency, i.e. should the claim be not then satisfied, the Mortgagee shall be entitled to recover the balance be ₦.....only as against the Mortgagor who shall be entitled to redeem the said mortgage at his option by payment of the amount of mortgage debt inclusive of interest at any time before the..... day of..... 20\_\_\_\_\_.

AND THIS INDENTURE FURTHER WITNESSETH that the Mortgagor do hereby covenant with the Mortgagee that notwithstanding any act, deed or thing here before done, executed, performed or suffered to the contrary, the Mortgagor has good title, full power and absolute authority to charge, assure and mortgage the said property in the manner hereunder effected and that the same is free from all encumbrances and attachments.

The Schedule above referred to

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year herein above mentioned.

Witnesses:

1. ....

(MORTGAGOR)

2. ....

(MORTGAGEE)

## **CHAPTER – 4**

### **ASSIGNMENT DEED**

An assignment agreement is an intellectual property (IP) transaction that deals with the ownership and disposition of intellectual property rights as well as with the control over the use of or access to intellectual property. Assignment is used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property. Generally transfer of actionable claims is called an assignment. Further Transfer of Property Act, 1882 also defines actionable claims (Business Debt).

Type of transfers which assignment deed covers is as follows:

#### **1. BUSINESS DEBT**

Business Debt is also called debt due, this means it may be payable now or will become payable in future by reason of present obligation. Where there is assignment of business debt existence of obligation is prior requirement. As it is one of the actionable properties it is heritable and assignable and covered under the Transfer of Property Act, 1882.

Following points should be cleared before initiating assignment covering business debt.

Section 130 of the Transfer of Property Act, 1882:

This section specifically lays down that “The transfer of an actionable claim [whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his...” This clears that passing of property does not depend on payment of consideration.

Section 132 in The Transfer of Property Act, 1882:

This section underlines that liability of transferee of actionable claim shall take effect subject to all the liabilities and equities and also to which the transferor was in subject thereof at the date of transfer

#### **2. SHARES IN THE COMPANY**

Very settled provision of Companies Act is that the shares or debentures or other interest of any member in a company shall be movable property and

transferable in the manner as provided by the articles of the company. Shares in the company represent the interest of the holder measured for purposes of liability and dividend by a sum of money.

However in case of listed securities, Section 22A of the Securities Contracts (Regulation) Act, 1956 shall be applicable.

### **3. INSURANCE POLICIES**

it has to be in knowledge that policies of insurance is mainly of two types:

- insuring risk to life of a person, and
- covering risks relating to goods.

An insurance policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It is the insurable interest which is the subject-matter insured and it is right which is assignable and this insurable interest is very prerequisite in such assignment. In case of life insurance, a sum of money is secured to be paid on the death of the person whose life is secured and in case of insurance covering risk in relation of goods insurer contracts to indemnify the assured against the loss/damage to goods.

### **4. INTELLECTUAL PROPERTY RIGHTS**

Ownership of intellectual property, including patents, copyrights, and trademarks, may be assigned, but special conditions attach to the assignment of patents and trademarks must to be done.

Section 68 of the Patent Act provides provisions regarding assignments of patents, this section particularly provides that no assignment of patent shall be valid on any ground until and unless such assignment were in writing and agreement is reduced to the form of a document embodying terms and conditions governing rights and obligation of parties along with application of registration of such document is filed in a prescribed manner with the controller within 6 months from the execution of the document.

Mass question which arises during assignment of *registered trade mark* is that whether goodwill of the business concerned and in relation to goods or services in respect of which such trade mark is registered is assignable or not, well answer for this mass question lies in the Trade Mark Act, 1999 itself which provides that *“Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.”* Thus this makes clear that right of registered trade mark is assignable with or without the goodwill in relation to such mark. However in case of unregistered trade mark goodwill in respect to such mark should be mandatorily transferred or else such assignment shall not be permissible under law, this fact can also be evidenced by going through the Section 9 of the Trade Mark Act, 1999.

Section 18 of the Copyright Act, 1957 speaks about assignment of copyright and this section also specifically clear the essential ingredients to not to be missed while assigning right under copyright which says *“that owner of the copyright in an existing work or the prospective owner of the copyright in a future may assign to any person”* this shows that works which are in existence is the valid point with which such assignment is enforceable under law. For any assignment to be valid it should be reduced into writing and shall to be signed by the assignor any person duly authorized by him, Section 19 sub clause (1) of the Copyright Act, 1957 also reserve provision for this.

This is the standard rule that personal injury torts causes of action are non-assignable as a matter of public policy or *order public*.

**DEED OF ASSIGNMENT OF BUSINESS DEBTS**

THIS DEED OF ASSIGNMENT made this..... day of..... between..... son of..... resident of..... (hereinafter called "the Assignor") of the one part,

**AND**

....., son of....., resident of....., (hereinafter called "the Assignee") of the other part.

WHEREAS the assignor has, for some time been carrying on the business of....., in the course whereof the several persons whose names, addresses and occupations are mentioned in the Schedule appended hereto, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names;

AND WHEREAS the assignor has contracted with the assignee for the absolute sale to him of the said business debts at..... and for the sum of ..... (Rupees.....).

NOW THIS DEED WITNESSES that in consideration of the sum of .....(Rupees.....) now paid to the assignor by the assignee (the receipt whereof the assignor hereby acknowledges), the said assignor, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the said assignee, all the several said debts, and sums of money specified in the said Schedule which are now due and owing to the assignor to have and to receive them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise and that the assignor does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive, and further that he has not entered into any arrangement with any of them and that the assignor shall at all times hereafter do, execute and perform all such and other acts, deeds, things, or writings as may be reasonably required for realization of the said debts, and further and better



and more effectively transferring and/or assuring them or any of them in favor of the assignee.

Schedule above referred to

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their signatures on the day, month and the year above mentioned at.....  
(place).

WITNESS:

1.....

(Assignor)

2.....

(Assignee)

## **CHAPTER – 5**

### **GUARANTEE DEED**

Section 126 of the Indian Contract Act 1872 deals with the contract of guarantee which defines it as “A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.”

Breaking the definition as under:

Section 126 of the Indian Contract Act, 1872 of guarantee it shows that guarantee deed contains three parties namely surety, principal debtor and creditor.

Where “surety” is the person who gives the guarantee, person in respect of whose default guarantee is given is called the “principal debtor” and the person to whom the guarantee is given is called the “creditor”.

The whole thought of guarantee is the undertaking to indemnify the creditors where principal debtor doesn’t fulfill his/her promises therefore contract of guarantee is also called contract to indemnity.

Above given explanation is an introductory portion of a Guarantee Deed now it is also necessary to in circle the essential ingredients guarantee deed as our motive is reduce the proneness of disputes which may arise in such deeds. Guarantors and indemnifiers take on a serious financial risk in entering into such transactions, and it is important that they are aware of all the implications.

Thus, following presented points are “not to miss out” features of a guarantee deed:

### **1. LIABILITY OF SURETY**

Liability of surety is governed under Section 128 of the Indian Contract Act, 1872 which provides that the liability of surety is co-extensive with that of the principal debtor, until and unless otherwise provided in the contract.

### **2. CONSIDERATION**

A contract of guarantee without consideration is void. Further section 127 of the Indian Contract Act, 1872 defines consideration for guarantee as *“Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee”* by interpreting same definition it is clear that word “done” shows that past benefit to the principal debtor can be good consideration for a bond of guarantee.

### **3. EXECUTION AS DEED**

Deeds are the most sorted way to execute guarantee and indemnities to overcome any document about whether good consideration has been given or not.

### **4. APPLICABILITY OF CONTRACT LAW PRINCIPLES**

Guarantees and indemnities are subject to general contract law principles on offer and acceptance, intention to create legal relations, consideration etc.

**5. MISREPRESENTATION AND CONCEALMENT OF MATERIAL FACTS**

It should be given special attention so that any guarantee is not disturbed by misrepresentation or by concealment of any material facts.

**DEED OF GUARANTEE FOR THE PERFORMANCE OF A CONTRACT**

THIS DEED OF GUARANTEE made this ..... day of ..... between Shri ....., son of Shri..... resident of..... (hereinafter called“the Guarantor”), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc. of the one part.

**AND**

Shri.....,son of..... resident of..... (hereinafter called “the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri..... son of Shri..... resident of..... etc., therein referred to as “the Contractor”, of the one part and the said..... Shri..... herein referred to as “the Principal”, of the other part,

It was inter alia agreed by and between the parties as follows:

(Here state the nature of the work to be done by the Contractor);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof.

**NOW IT IS AGREED AND DECLARED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgement on the part of the Contractor in performing or non-performing the contract.

2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

Signed, sealed and delivered in the presence of

1.....

(Guarantor)

2.....

(Principal)

## **CHAPTER – 6**

### **WILL DEED**

As per the Section 2(h) of Indian Succession Act, 1925, 'Will' means the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. Further, every written voluntary posthumous is a Will. The importance of Will cannot be stressed enough as lakhs of civil cases are pending before various Courts for resolving inheritance disputes. under Indian Succession Act, 1925, Wills are of two types:

#### **1. PRIVILEGED WILLS**

Any soldier being employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged] or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made in the manner provided in section 66. Such Wills are called

Privileged Wills. As per Section 66 of Indian Succession Act, 1925, a Privileged Will may be in writing, or may be made by word of mouth.

## **2. UNPRIVILEGED WILLS**

It is governed by Section 63 of the Indian Succession Act, 1925 and unlike privileged wills these wills are required to be in writing, signed by the testator and attested by the two witnesses.

### **Essential elements to be considered while drafting a Will Deed:**

1. Testator or writer who makes declaration in the will shall be of at least 18 years of age.
2. Execution of wills shall abide by the Section 63 of the Indian Succession Act, 1925 which gives direction to a person to make a Will and how its attestation shall be done. However the above mentioned section shall not be applicable on Privileged Wills.
3. Every declaration made under Will shall relate to the properties of the testator or writer which he/she wishes to bequeath.
4. Declaration made under Will should have effect that it shall operate after the death of the Testator.
5. Wills are adapted of walking nature which means it is revocable during the life-time of the testator and where any covenant is mentioned in the will deed which restrict the revocable part by the testator then such Will is considered void. Further Section 62 of the Indian Succession Act, 1925 reserved the power of revocation of Will for testator.
6. Except in the case of Wills made by Mohammedans every Will should be made in writing.
7. Will deed is neither chargeable with stamp duty nor is it required to get it compulsorily registered, however registered "Will deed" has its own benefit.

8. Wills required to be attested, where the person creating the Will (Testator) must sign or affix his mark to the Will, or have the Will signed by some other person in his presence and by his direction, will should be attested by two or more witnesses and each of the witness is required to see the testator sign or affix his mark to the will or see some other person sign the will, in the presence and by the direction of the testator and witnesses should also see that they receive from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person and it would be valid.

### **WILL DEED**

I Sri. \_\_\_\_\_ S/o \_\_\_\_\_ residing at \_\_\_\_\_  
aged about \_\_\_\_\_ years \_\_\_\_\_ by religion, occupation  
\_\_\_\_\_ do make this my last will and testament.

1. I have not made any will or other testamentary document, but if any made, I hereby revoke all previous wills and codicils, if any and declare this to be my last will and testament.

2. I appoint

(a) Sri. \_\_\_\_\_ S/o \_\_\_\_\_ residing at \_\_\_\_\_ aged about  
\_\_\_\_\_ years \_\_\_\_\_ by religion, occupation \_\_\_\_\_.

(b) Sri. \_\_\_\_\_ S/o. \_\_\_\_\_ residing at \_\_\_\_\_  
aged about \_\_\_\_\_ years \_\_\_\_\_ by religion, occupation \_\_\_\_\_.

(c) Sri. \_\_\_\_\_ S/o. \_\_\_\_\_ residing at \_\_\_\_\_  
aged about \_\_\_\_\_ years \_\_\_\_\_ by religion, occupation  
\_\_\_\_\_.

as the executor of this will and trustees of my estate.

3. My family consists of \_\_\_\_\_

4. My property consists of \_\_\_\_\_

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_ etc.

5. I bequeath all my property in whatever form existing at the time of my death to the said executor and trustees to hold the same on trust for the benefit of my wife Smt. \_\_\_\_\_ for her lifetime and till her death as hereinafter provided.

6. My executors and trustees shall, after spending the necessary money for the management of the said property out of the income thereof, pay the net income to my wife and the same will belong to her absolutely without liability to account for the same. My executor and trustees will also spend out of the corpus of estate such amounts as may be required by my wife for medical expenses or for pilgrimage. But my executor and trustees will not be entitled to sell my immovable property above mentioned or mortgage the same. On the death of my wife and if she predeceases me then on my death all my estate then existing whether mentioned in this will or not, will belongs to my children,

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

absolutely in equal shares and the trustees for the time being of the said estate under this will shall transfer the same among said children by executing proper document.

7. Provided that, if at the time of death of my wife or myself as the case may be any of the said children is a minor, the trustees shall hold the said property on trust until the youngest attains the age of majority and till then the net income of the said property will given or spend for maintenance and education of the said children.

8. My executor and trustees shall obtain probate of this will from a competent court, if required in law and shall pay all the probate duty and other expenses



required for such probate and also pay as first charge all my other liabilities by way of taxes or otherwise howsoever.

9. I have made this will out of my free will and when I am in sound health and in good understanding and in witness thereof I have put my signature hereunder in the presence of witnesses on this \_\_\_\_\_ day of \_\_\_\_\_ month of \_\_\_\_\_ year

TESTATOR

Signed by the within named testator

Shri. \_\_\_\_\_

opposite in the presence of witnesses, who in presence and at his request and in the presence of each other have put their signature as witnesses hereunder.

1. Shri. \_\_\_\_\_

Full Address: \_\_\_\_\_

\_\_\_\_\_

2. Shri. \_\_\_\_\_

Full Address: \_\_\_\_\_

\_\_\_\_\_

## **CHAPTER – 7**

### **LEASE DEED**

Lease Deed is a contract wherein the lessee (tenant) agrees to pay a periodic sum of money (rent) to the lessor for the use of an immovable property. A lease agreement may be made in respect of a Shop, Office, Flat, Apartment, Building Floor, Bungalow, Unit in a Commercial Tower or Mall, Industrial Site, farm houses, agricultural lands etc.

Following are some important points to be kept in mind while drafting a lease deed.

#### **1. PREMISES DESCRIPTION**

The lessor grants to the lessee, lease area indicated in recital. The premises are described in Schedule and Annexure mentioned in the deed.

#### **2. TERM**

The “*lease tenure*” must be mentioned in the deed i.e. the date from which the Lease shall commence hereinafter referred to as “*Lease Commencement date (LCD)*”

#### **3. LOCK IN PERIOD**

The parties shall not be entitled to terminate the Lease deed for the prescribed time until the lessee will pay rent for the balance unexpired period.

#### **4. RENT**

The parties with their mutual consent will decide the rent to be paid *subject to certain deductions if any then that should be clearly stated in the deed* and rent should be paid by the lessee on the date which is stated in the deed.

#### **5. SECURITY DEPOSIT**

The security deposit shall remain deposited with the Lessor throughout the subsistence of the Lease and any subsequent renewals thereof. The security deposit shall be returned by the Lessor subject to deduction of such sum as may be due by the Lessee to the Lessor within a prescribed period after the return of vacant possession of the premises by the Lessee to the Lessor.

**6. AGREEMENT FOR SERVICES**

The lessor and the lessee shall enter into a separate Agreement for services with Lessor or its assignee(s) in relation to the operation and maintenance of the common areas.

**7. MODE OF PAYMENT**

The Lessee shall make payment of rent and other monies due under the lease deed either by Demand draft or account payee cheque or Real time Gross Settlement or National Electronic Funds Transfers directly to the Lessor's account, the details of which shall be provided by the Lessor.

**8. INTEREST**

The Lessor shall have the right to charge interest per month or part thereof, if the rent or any sum due under the Lease Deed is not paid by the Lessee on the due date till the date of payment.

**9. TDS**

Lessee shall make payment to the Lessor after deduction of tax at source(TDS) as required by applicable law. In case tax is deducted by Lessee, a certificate as prescribed by law will be issued to the Lessor for the amount of tax.

**10. TAXES**

The Lessee shall pay taxes, duties, cess, fees and payments and statutory levies, in respect of the premises in accordance with the provisions of the Lease Deed.

**11. AUTHORIZED USE**

The lessee shall use the premises as stated in the Lease Deed and shall not use the same for any other purpose without the prior written consent of the Lessor.

**12. LESSEE'S APPROVALS**

The Lessee undertakes and warrants that it has all necessary permission and approvals as required to carry out its activities in the Premises and shall be solely responsible and liable for the same.

**13. CHANGE OF USE**

The Lessor may, if it deems fit and subject to such terms and conditions as may be specified in writing, allow the Lessee a change of use or to carry on any additional activity provided the same is permitted by the Statutory authorities.

**14. INFLAMMABLE OR EXPLOSIVE SUBSTANCES**

The Lessee shall not store or bring into the premises any article of explosive nature and shall comply with the requirement and recommendations of the statutory authorities.

**15. DAMAGE TO BUILDING /PLOT**

The Lessee shall not cause any damage to the building, plot and other facilities thereon.

**16. ADDITION AND ALTERATIONS**

The Lessee is not permitted to carry out any renovation works or make any structural additions to the premises.

**17. INSPECTION AND REPAIR**

The Lessee herein shall with prior permission or under emergency situations permit or allow the Lessor and their servants, agents, contractors to enter into the premises.

**18. SURRENDER OF PREMISES**

The Lessee shall surrender vacant and peaceful possession of the Premises on the expiry of the Lease Tenure or earlier determination thereof.

**19. COMPLIANCE WITH LAWS AND GUIDELINES**

The Lessee shall agree that it shall always perform and abide by all the rules and regulations of the Lessor entered separately between the parties for the effective management, control and maintenance of the building.

**20. INDEMNITY FOR BREACH**

The Lessee shall indemnify and keep indemnified the Lessor against any or all claims, losses, damages whatsoever which may be caused against the Lessor by any person out of any action or accident or otherwise or by any reason of the Lessee's operations and use of the Premises and various facilities.

**21. INSURANCE**

The Lessee shall insure the fixtures in the said premises by a comprehensive third party insurance covering any act or omission by the Lessee and the Lessee shall pay the premium in respect of such insurance.

**22. PET DETAILS**

The Lease Deed should specify whether or not a Lessee is allowed to have a pet. The limitations on number, size, and species should be listed as well. If

there is an additional deposit required for a pet, that amount should be included in the lease deed.

### **23. DISPUTE**

In case of any dispute between the parties of the Lease or related to any Act and the clauses mentioned in the Lease Deed regarding the use of property leased, the same will be settled in the jurisdiction of that Civil Court where the property is situated.

### **24. REGISTRATION**

Lease Deed will be registered in front of the registrar and the charges towards stamp duty, court fee & lawyer/coordinator will be equally borne by the Lessor & Lessee. However, if the deed is not registered then it shall not be held as enforceable.

### LEASE DEED

This Agreement is made at ..... this ..... day of ..... between Mr. A..... residing at ..... hereinafter referred to as 'The Lessor' of the One Part

AND

Mr. B ..... residing at ..... hereinafter referred to as 'The Lessee' of the Other Part;

WHEREAS the Lessor is the owner of a vacant piece of land situated at ..... and more particularly described in the Schedule hereunder written

AND WHEREAS the Lessor is entitled to hold the said land being within the ceiling limit.

AND WHEREAS the Lessee has requested the Lessor to give the said piece of land on a long lease to enable the Lessee to construct a building partly for his own residence and partly for letting out the same.

AND WHEREAS the Lessor has agreed to grant a lease of the said plot of land to the Lessee on the following terms and conditions:

#### **NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. The Lessor agrees to demise and the Lessee agrees to take on lease the said piece of vacant land more particularly described in the Schedule hereunder written for a term of.....years from the date of the Deed of Lease to be executed as hereinafter mentioned at the monthly/yearly rent of . ..... and subject to the terms, conditions and covenants hereinafter contained.
2. The Lessor shall make out a marketable title to the said land free from any encumbrances and reasonable doubt.
3. The Lessor shall produce the documents of title to the Lessee or his Advocate for inspection and investigation of title to the said land within eight days from the date hereof.

4. The Lessor will allow the Lessee to enter upon the said land, after he is satisfied with the title of the Lessor for the purpose of constructing a building thereon as hereinafter provided.

5. The Lessee agrees and covenants that -

- a) He will enter upon the said piece of land for construction of a building only as a licensee until the building is constructed and the Deed of Lease is executed in his favour and till then he'll have no right as a tenant or lessee to the said land.
- b) The Lessee will pay all the municipal taxes in respect of the said plot of land and the building to be constructed thereon if any payable until completion of the building and execution of the Deed of Lease.
- c) The Lessee shall after entering upon the said land as aforesaid commence and complete a building thereon as per plans to be sanctioned by the ..... Municipal Corporation.
- d) The Lessee will get the plans of the proposed building prepared by his architect for being submitted to the Municipal Corporation for approval. The Building shall consist of a ground floor and ..... upper floors and the total built up area will not exceed the F.S.I. available. The construction cost of the said building will not be less than ..... and the Lessee shall use quality building material and specifications on that basis.
- e) The Lessee shall not construct any work which will be un-authorized or against the Municipal building rules and regulations.
- f) The Lessee shall do the digging work for foundation to the extent necessary and shall not remove and dispose of any earth or gravel from the said land.



- g) The Lessee shall not also bring any unnecessary material on the said land.
  - h) During construction of the building the lessee shall have the property insured against fire and accident.
  - i) The Lessee shall on completion of the building obtain and produce for the Lessor's inspection the completion certificate of the Municipal Corporation.
  - j) The building will be constructed at the costs of the Lessee including the fees payable to Architects, Surveyors, Engineers, Labourer's etc.
  - k) The Lessee shall indemnify and keep indemnified the Lessor, against all losses, costs, charges and expenses that the Lessor may suffer or incur due to any claim from any person on regarding the said construction or due to any accident or due to breach of any rule and regulation of the Municipal Corporation or Government.
  - l) During construction the Lessee shall take precaution to see that no nuisance or annoyance is caused to the adjoining owner or Occupier of other properties
  - m) On the completion of the building as aforesaid and the Lessee obtaining the completion certificate, the Lessor shall execute a deed of lease of the said plot of land with the building thereon for a period of .....years from the date of the lease at the monthly/yearly rent of ₹ ..... . The Deed of Lease will be in the form which has been approved by the parties hereto and a copy thereof is hereto annexed and marked 'A' for Identification.
6. For the use and occupation of the said land for construction, the Lessee shall pay to the Lessor, a lump sum amount of ..... before the execution of the Lease.

7. The said building will be constructed and completed within a period of one year from the date hereof mentioned. Also, if the work is held up or delayed for any reason beyond the control of the Lessee, the said period shall be extended for such further period as may be expected to be required for completion of the building but not exceeding .....months/year.
8. If the building is not completed within the said period, the Lessor shall have the option to cancel this agreement by one month's prior notice to the lessee and on the cancellation of this agreement the Lessee shall remove all work of construction and hand over vacant possession of the said plot to the Lessor within one month from the date of cancellation unless the Lessor agrees to take over and purchase the construction work and building material at the cost that may be agreed upon between the parties.
9. All the costs including stamp duty and registration charges of and incidental to the Deed of Lease will be borne and paid by the Lessee. The fees of the Lessor's Advocate will be paid by the Lessor.
10. The Deed of Lease will be executed in duplicate and one original copy will remain with the Lessee and the other will remain with the Lessor.
11. In the event of any dispute arising between the parties hereto in respect of this agreement the same will be referred to arbitration of a common arbitrator If agreed upon, otherwise to two arbitrators one to be appointed by each party and the arbitration will be governed by the Arbitration & Conciliation Act, 1996.

The Schedule Above Referred to

IN WITNESS WHEREOF THE Parties have put their respective hands the day and year first herein above written

Signed and delivered by the within named Lessor .....

in the presence of .....

Signed and delivered by the within named Lessee.....

in the presence of .....

## **CHAPTER - 8**

### **RENT AGREEMENT**

A rental agreement is a contract, usually written, between the owner of a property and a renter who desires to have temporary possession of the property as distinguished from a lease which is more typically for a fixed term. The agreement identifies the parties, property, term of the rental, and the amount of rent for the term. The owner of the property referred to as the lessor/ owner and the renter as the lessee/tenant.

There is typically an implied, explicit, or written rental agreement or contract involved to specify the terms of the rent, which are regulated and managed under contract law.

All the above mentioned clauses of Lease Deed are covered under Rental Agreement. Both the terms are used interchangeably and are similar in nature.

Following are some important differences between these two agreements:

#### **1. DURATION**

A rental agreement differs from a lease agreement in that it is not a long-term contract and usually occurs on a month-to-month basis. This month-to-month agreement expires and then renews each month upon agreement of the parties involved.

#### **2. SUB-LETTING**

Tenant in the rent agreement can't sublet the property, lessee in the lease agreement can sublet the premises.

#### **3. STAMP DUTY**

In Maharashtra, stamp duty for the rent agreement depends on the rent, deposit and the duration of the agreement, and the stamp duty of the lease agreement depends on the property value and the duration of the agreement.

### **RENT AGREEMENT**

This Rent Agreement is executed at ..... on this .....  
20\_\_\_\_\_.

#### **BETWEEN**

Mr. ...., S/o ....., R/o ..... called the  
“First Party” (hereinafter referred to as ‘Owner’), which expression shall  
include their heirs, legal representatives, successors and assigns) of the one  
part

#### **AND**

Mr. ...., S/o ....., R/o .....called the  
“Second Party” (hereinafter referred to as ‘Tenant’), which expression shall  
include their heirs, legal representatives, successors and assigns) of the other  
part.

WHEREAS the First Party is the absolute owner of the  
....., located in the city of .....  
hereinafter referred to as "aforesaid premises".

WHEREAS the Second Party has requested the First Party to let out with respect to the aforesaid premises and the first party has agreed to let out to the Second Party peacefully, the aforesaid premises to use it solely for residential purpose, on the following terms and conditions:

**NOW THIS AGREEMENT WITNESSETH AS UNDER:**

1. The agreement in respect of the "aforesaid premises" shall commence from ....., 20\_\_\_\_\_ and shall be valid for a period of 11 months from the commencement date i.e. till ....., 20\_\_\_\_\_. Thereafter, the same may be extended further on mutual consent of both the parties.
2. That it has been mutually agreed between the First party and the Second party that the first party shall let out the aforesaid premises at Rs. ....../- per month (Rupees ..... Only) as rent, which shall be paid in advance to the First Party and shall remain the same for the entire 11 months for which the said agreement is made/ executed.
3. Payments made by cheque and cash shall be acceptable. The Owner acknowledges receipt of the First Month's rent of..... and a Security Deposit of..... .
4. The total of the above deposits shall secure compliance with the terms and conditions of this agreement and shall be refunded to the Tenant within ..... days after the premises have been completely vacated less any amount necessary to be paid to the Owner;
  - a) any unpaid rent,
  - b) cleaning costs,
  - c) key replacement costs,
  - d) cost for repair of damages to premises and/or common areas above ordinary wear and tear, and
  - e) any other amount legally allowable under the terms of this agreement.

A written acknowledgement of said charges shall be presented to the Tenant within ..... days of move-out. If deposits do not cover such costs and damages, the Tenant shall immediately pay the said additional costs, damages to the Owner.

5. A late fee of ....., (not to exceed.....% of the monthly rent), shall be added and due for any payment of rent made after the ..... of the month. Any dishonored cheque shall be treated as unpaid rent, and subject to an additional fee of .....
6. That all the sanitary, electrical and other fittings and fixtures and appliances in the aforesaid premises shall be handed over from the First party to the Second party in good working condition. Upon returning the aforesaid premises, all the sanitary, electrical and other fittings and fixtures will be restored by the Second party in a good condition as they are at present, subject to normal wear and tear and damage by the act of God.
7. That the Second party shall use the said premises for the residential purpose only and shall not use the said premises for any kind of illegal activity and can't sublet the said premises.
8. That no structural additions or alterations shall be made by the Second party in the aforesaid premises without the prior written consent of the First party but the Second party can install air-conditioners in the space provided and other electrical gadgets and make such changes for the purposes as may be necessary, at his own cost. The First party represents that the aforesaid premises possesses the adequate electrical infrastructure to cater for the electrical appliances including the air conditioners. On termination of the tenancy or earlier, the Second party will be entitled to remove such equipment and restore the changes made, if any, to the original state.
9. The Second party shall maintain the aforesaid premises in good and tenable condition. That it shall be the responsibility of the Second party to hand over the vacant and peaceful possession of the demised premises on expiry

of the let out period, or on its early termination, as stated hereinabove in the same condition subject to natural wear and tear.

10. That the First party shall pay for all taxes/cesses levied on the premises by the local or government authorities in the way of property tax for the aforesaid premises and so on. Further, any other payment in the nature of subscription or periodical fee to the welfare association shall be paid by the First party.
11. That the First party will keep the Second party free and harmless of any demands, claims, actions or proceedings by others in respect of quiet possession of the aforesaid premises.
12. No animal, fowl, fish, reptile, and/or pet of any kind shall be kept on or about the premises, for any amount of time, without obtaining the prior written consent and meeting the requirements of the Owner. Such consent if granted, shall be revocable at the Owner's option upon giving 30 days written notice. The Tenant must agree to carry insurance deemed appropriate by the Owner to cover possible liability and damages that may be caused by such animals.
13. When and if the Tenant is assigned a parking area/space on the Owner's property, the parking area shall be used exclusively for parking of passenger automobiles. The Tenant is hereby assigned or permitted to park only in the following area or space .....
14. The Tenant shall agree not to cause or allow any noise or activity on the premises which might disturb the peace and quiet of another Tenant and/or neighbor. Said noise and/or activity shall be a breach of this agreement.
15. The Tenant shall not paint, wallpaper, alter or redecorate, change or install locks, install antenna or other equipment, screws, fastening devices, large nails, or adhesive materials, place signs, displays, or other exhibits, on or in any portion of the premises without the written consent of the Owner.
16. The Tenant shall deposit all garbage and waste in a clean and sanitary manner into the proper receptacles and shall cooperate in keeping the garbage area neat and clean. The Tenant shall be responsible for disposing



of items of such size and nature as are not normally acceptable by the garbage hauler. The Tenant shall be responsible for keeping the kitchen and bathroom drains free of things that may tend to cause clogging of the drains. The Tenant shall pay for the cleaning out of any plumbing fixture that may need to be cleared of stoppage and for the expense or damage caused by stopping of waste pipes or overflow from bathtubs, wash basins, or sinks.

17. The terms and conditions of this agreement are subject to future change by the Owner after the expiration of the agreed lease period upon 30-day written notice setting forth such change and delivered to the Tenant. Any changes are subject to laws in existence at the time of the Notice of Change of Terms.
18. After expiration of the rent period, this agreement is automatically renewed from month to month, but may be terminated by either party giving to the other a 30-day written notice of intention to terminate. Where laws require "just cause", such just cause shall be so stated on said notice. The premises shall be considered vacated only after all areas including storage areas are clear of all the Tenant's belongings, and keys and other property furnished for the Tenant's use are returned to the Owner. If the Tenant holds the premises beyond the termination date or fails to vacate all possessions on or before the termination date, the Tenant shall be liable for additional rent and damages which may include damages due to the Owner's loss of prospective new renters.
19. If the Owner is unable to deliver possession of the residence to the Tenant on the agreed date, because of the loss or destruction of the residence or because of the failure of the prior residents to vacate or for any other reason, the Tenant and/or Owner may immediately cancel and terminate this agreement upon written notice to the other party at their last known address, whereupon neither party shall have liability to the other, and any sums paid under this Agreement shall be refunded in full. If neither party cancels, this Agreement shall be prorated and begin on the date of actual possession.

20.The Owner may enter, inspect, and/or repair the premises at any time in case of emergency or suspected abandonment. The Owner shall give 24 hours advance notice and may enter for the purpose of showing the premises during normal business hours to prospective renters, buyers, lenders, for smoke alarm inspections, and/or for normal inspections and repairs. The Owner is permitted to make all alterations, repairs and maintenance that in the Owner's judgment is necessary to perform.

21.That both the parties shall observe and adhere to the terms and conditions contained hereinabove.

22.In case of any dispute to this agreement and the clauses herein, the same will be settled in the jurisdiction of the civil courts where property is situated.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and the year first hereinabove written.

(Sh. ....)

S/o .....

First Party

(Sh. ....)

S/o .....

Second Party

WITNESSES:

1.

2.



## **CHAPTER – 9**

### **LICENSE DEED**

A license is a right to do or continue to do, in or upon the immovable property of the grantor, something which would in the absence of such right is unlawful, and such right does not amount to an easement or an interest in the property. Further, it is an authority to do a particular act or series of acts upon another's land without possessing any estate therein.

Thus, the primary distinction between a lease and a licence is that the lease is a transfer of a right in a specific immovable property, whereas, licence is a bare permission and a licensee is not entitled to notice to quit before evidence.

Primary distinctions between Lease and Licence are mentioned hereunder:

1. A lease is a transfer of an interest in a specific immovable property, while licence is a bare permission, without any transfer of an interest.
2. A lease creates an interest in favour of the lessee with respect of the property, but a licence does not create such an interest.
3. A lease is both transferable and heritable, a sub tenancy can be created by the tenant and on the death of the tenant, the tenancy can be inherited by his/her legal heir, whereas, licence is neither transferable nor heritable.
4. A licence comes to an end with the death of either the grantor or the guarantee, since it is a personal contract, but a lease does not come to an end on either the death of the grantor or grantee.
5. A licence can be withdrawn at any time at the pleasure of the grantor but the lease can come to an end only in accordance with the terms and conditions stipulated in the contract of tenancy agreement.
6. A lease is unaffected by the transfer of the property by sale in favour of a third party. It continues and the purchaser has to wait till the time period

for which the tenancy was created is over before he can get the possession, whereas, in case of a licence, if the property is sold to a third party, it comes to an end immediately.

### **AGREEMENT OF LICENSE FOR USE OF A HOUSE PROPERTY TO A COMPANY FOR OFFICE ACCOMMODATION.**

AN AGREEMENT MADE this..... day of.....  
20\_\_\_\_\_ BETWEEN AB son of..... by faith..... by  
occupation..... herein after referred to as the “owner” of the ONE PART.

#### **AND**

CD represented ..... by its secretary being signatory to this agreement having its principal office at present at No..... hereinafter referred to as “occupiers” of the OTHER PART.

WHEREAS the occupiers approached the owner for permission for using a portion of his property, viz. premises No. .... fully mentioned and described in the Schedule hereto for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and license only (which will stand *ipso facto* revoked on the expiry of the said term). Now, it is hereby expressly agreed and declared by and between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the occupiers which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the owner shall retain ..... rooms, viz., one in the ground floor and another in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.
2. The occupiers shall, in consideration of such accommodation as hereunder provided, pay to the owner a fixed sum of . .... as charges for such temporary occupation for the period of ..... months which sum will be paid at the rate of ..... per month on the ..... of every current month without delay or default and a further sum of ..... for service charges and also use of fittings and fixtures making thus a sum total of ..... per month. The two last mentioned amounts shall also be paid on the..... of every current month.
3. The occupiers shall also pay to the owner on account of Corporation of Calcutta all existing and future occupiers' share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the owner and his estate indemnified as against any loss, if any, arising out of such non-payment or non-observance of any of the covenant herein contained.
4. The occupiers have as security deposit for such payments and observance of the covenants hereunder contained, kept with the owner a sum of ..... to be repaid without interest on revocation of license and surrender and deliver the possession of the said portion of the property subject to such deductions as the owner shall be entitled as against the

occupiers. e.g., arrears of charges provided in Clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.

5. The occupiers shall on expiry of the period of..... and license hereunder granted or earlier revocation thereof, surrender the property and deliver the same to the owner when and in such an event he will be entitled to the refund of ..... subject to deductions provided in Clause 4 hereof.
  
6. Provided, however, and notwithstanding anything hereinbefore contained, it is hereby expressly agreed by and between the parties hereto that in default of any payment on the dates hereinbefore referred to above to the owner or the Corporation of Calcutta or other appropriate authorities the owner shall be entitled to and shall have always the power to revoke the license hereunder granted at his absolute discretion and reoccupy the said portion of the property without subjecting himself to any liability on that account and notwithstanding any intermediate negotiations or waiver of breach thereof when and in such an event the occupiers shall surrender the occupied portion of the property as hereunder contemplated.
  
7. The occupiers shall have no right to make any addition or alteration to the property except temporary removable walls by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the license hereby granted or earlier revocation thereof and repairs all the damages, if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this.....day of .....20\_\_\_\_.

Signed, sealed and delivered at Calcutta. In the presence of

(1).....

(2).....

(3).....



## **CHAPTER – 10**

### **LOAN AGREEMENT**

It is a written promise from a lender to loan money to someone in exchange for the borrower's promise to repay the money lent as described by the Agreement. Its primary function is to serve as written evidence of the amount of a debt and the terms under which it will be repaid, including the rate of interest (if any) and obligations of lender and borrower.

#### **1. AMOUNT OF LOAN**

The lender lends the amount to the borrower shall be mentioned in the Agreement with date and place with time and place of repayment.

#### **2. PAYMENT**

The principal amount of this Loan together with accrued and unpaid interest and all other charges, costs and expenses, is due and payable on or before mentioned date. All payments under this Agreement are applied first to accrued interest and then to the balance of the outstanding principal.

#### **3. PREPAYMENT**

The Borrower has the right to prepay all or any part of the principal amount of this Loan, together with accrued and unpaid interest thereon, at any time without prepayment penalty or premium of any kind

#### **4. LOAN DURATION**

Loan shall endure for a period of months calculated from (date) on which loan has been provided and mention any exemption or scheme if applied for.

#### **5. COST AND FEES**

The Borrower shall be liable for the costs, if any, in respect of the drafting, execution and default of this contract.

**6. WAIVER**

The Borrower and all sureties, guarantors and endorsers hereof, waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of Loan.

**7. SUCCESSORS AND ASSIGNS**

Agreement will be binding on the successors and permitted assignees of the Borrower. The Borrower may not assign its rights or delegate its duties under such agreement without the Lender's prior written consent.

**8. JOINT AND SEVERAL LIABILITY**

If there is more than one Borrower of loan, the obligation of each Borrower shall be joint and several under this loan.

**9. AMENDMENT**

Loan may be amended or modified only by a written agreement signed by the Borrower and Lender.

**10. SEVERABILITY**

In the event that any of the provisions of this Loan are held to be invalid or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid and enforceable as though the invalid or unenforceable parts had not been included.

**11. NOTIFICATION**

Any notice or communication under this Loan must be in writing and sent to the prescribed address of both the parties.

**12. GOVERNING LAW**

Loan shall be governed by and construed in accordance with the laws shall be stated clearly.

**13. ACCELERATION CLAUSE**

If the Borrower fails to pay any installment on due date the Lender shall be entitled but not obliged to claim the full balance of the loan together with interest up to the date of payment.

**14. INSOLVENCY**

The full balance of the capital and interest shall become payable immediately upon sequestration of the Borrower's estate.

**15. SECURITY**

This agreement is subject to a condition that the Borrower's obligations are secured by a surety who binds himself validly as surety and co-principal debtor.

**LOAN AGREEMENT**

This Loan Agreement ("the Agreement") is executed in.....

**BETWEEN**

Mr. ...., S/o ....., R/o .....  
.....(hereinafter referred to as "the Lender" shall mean

and include their respective heirs, executors, administrators and assigns;) of the first part;

**AND**

Mr. ...., S/o ....., R/o .....  
(hereinafter referred to as "the Borrower" shall mean and include their respective heirs, executors, administrators and assigns;) of the second part.

WHEREAS the Borrower is in need of funds and hence has approached the Lender to grant him/her an interest-free loan of ₹..... Rupees..... only) for a period of ..... years;

AND WHEREAS the Lender has agreed to grant a loan to the Borrower, free of interest, as the Lender and the Borrower have known each other since several years;

AND WHEREAS the parties hereto are desirous of recording the terms and conditions of this loan in writing;

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:**

1. The Borrower hereto, being in need of money, has requested the Lender to give her an interest-free loan of ...../- (Rupees ..... only) to enable her to purchase a residential flat, to which the Lender has agreed.
2. The said loan is required by the Borrower for a period of ..... years, commencing from ...../...../2019 and terminating on ...../...../.....
3. The Borrower hereby agrees and undertakes to return the loan of ₹..... (Rupees ..... only), in installments, within the aforesaid period of ..... years and gives her personal guarantee for the same.
4. The terms and conditions of this Agreement are arrived at by the mutual consent of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands the day and year first hereinabove written

SIGNED AND DELIVERED by the within-

Named Lender

in the presence of .....

SIGNED AND DELIVERED by the within-

Named Borrower

in the presence of .....

## **CHAPTER – 11**

### **EMPLOYMENT/ SERVICES CONTRACT**

An employment contract is a signed agreement between an employee and employer. It establishes both the rights and responsibilities of the two parties: the worker and the company. More specifically an employment contract shall include:

#### **1. POSITION OF TITLE**

The position which is offered to an employee must be specifically mentioned with effect from his joining date.

#### **2. REPORTING**

During an employment in the Company, the employee will report to or such person as may be communicated to him.

#### **3. SCOPE OF WORK**

The work will be allotted by the management.

#### **4. HOURS OF WORK**

The working hours and days should be mentioned.

#### **5. PROBATION PERIOD**

It is understood and agreed by the employee that the number of days of employment shall constitute a probationary period during which period the Employer may, in its absolute discretion, terminate the Employee's employment, for any reason without notice or cause.

#### **6. PLACE OF EMPLOYMENT**

The employee must acknowledge and agree that he may be assigned, transferred or deputed to offices, departments or units of Company

and/or its affiliates and/or their contractors and clients, whether in India or abroad. In such an event of any assignment, transfer or deputation of their services, their salary and other benefits may be adjusted in accordance with Company's policies.

**7. MODE OF COMMUNICATION**

Other than general notices, which may be intimated by e-mail, general notice, announcement on the Company's web site, bulletin e-mail, bulletin boards and other similar postings, notices will be provided to an employee in person, by email or by post at the address given by him at the time of his employment or such other address as may be intimated by him to the management thereafter.

**8. REMUNERATION**

The remuneration, annual package and such payments shall be subject to such normal statutory deductions by the Employer must be enclosed as Annexure-I, In addition to salary, employee may receive other benefits, as applicable under the Company's benefits or similar policies and may further re-structure the compensation depending on the Company's performance as well as employee performance by giving prior notice.

**9. STATUTORY AND OTHER BENEFITS**

Company will provide benefits such as disability, health and life insurance policies in which an employee has to file nomination form and other related policies as per the Company norms.

**10. LEAVE POLICY**

Company's leave policy shall be applicable to an employee and may be modified by Company at any time, in its sole discretion by giving prior intimation.

**11. PERFORMANCE REVIEWS**

The Employee will be provided with a written performance appraisal as per the Company's policies and said appraisal will be reviewed at which time all aspects of the assessment can be fully discussed.

**12. REIMBURSEMENT OF EXPENSES**

The Employee may incur reasonable expenses for furthering the Company's business, including expenses for entertainment, travel, and similar items. The Company shall reimburse Employee for all business expenses after the Employee presents an itemized account of expenditures, pursuant to Company

**13. EMPLOYEE TO DEVOTE FULL TIME TO COMPANY**

The Employee will devote full time, attention, and energies to the business of the Company, and, during this employment, will not engage in any other business activity, regardless of whether such activity is pursued for profit, gain, or other pecuniary advantage. Employee is not prohibited from making personal investments in any other businesses provided those investments do not require active involvement in the operation of said companies.

**14. RESTRICTION ON POST EMPLOYMENT COMPENSATION**

For a period of years after the end of employment, the Employee shall not control, consult to or be employed by any business similar to that conducted by the company, either by soliciting any of its accounts or by operating within the Employer's general trading area.

**15. ASSISTANCE IN LITIGATION**

Employee shall upon reasonable notice, furnish such information and proper assistance to the Company as it may reasonably require in connection with any litigation in which it is, or may become, a party either during or after employment.

**16. EFFECT OF PRIOR AGREEMENTS**

This Agreement supersedes any prior agreement between the Company or any predecessor of the Company and the Employee, except that this agreement shall not affect or operate to reduce any benefit or compensation inuring to the Employee of a kind elsewhere provided and not expressly provided in this agreement.

**17. SETTLEMENT BY ARBITRATION**



Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the rules of the Arbitration Association. Judgment upon the award rendered may be entered in any court with jurisdiction.

18. **LIMITED EFFECT OF WAIVER BY COMPANY**

Company waive breach of any provision of this agreement by the Employee, that waiver will not operate or be construed as a waiver of further breach by the Employee.

19. **SEVERABILITY**

The parties hereto agree that in the event any article or part thereof of this agreement is held to be unenforceable or invalid then said article or part shall be struck and all remaining provision shall remain in full force and effect.

20. **ASSUMPTION OF AGREEMENT BY COMPANY'S SUCCESSORS AND ASSIGNEES**

The Company's rights and obligations under this agreement will insure to the benefit and be binding upon the Company's successors and assignee.

21. **ENTIRE AGREEMENT**

This agreement contains the entire agreement between the parties, superseding in all respects any and all prior oral or written agreements or understandings pertaining to the employment of the Employee by the Employer and shall be amended or modified only by written instrument signed by both of the parties hereto.

22. **INTELLECTUAL PROPERTY RIGHTS**

Any discovery or invention of secret process or improvement in procedure made or discovered by an employee while in the service of the Company in connection with or relating to the business of the Company or disclosed to the Company or be the absolute property of the Company. If required by the Company then the employee shall execute all such deeds and documents as may be required by the Company to such invention process or improvement, without any compensation.

23. **NON- COMPETITION**

The employee must acknowledge that during the course of employment with the Company, will become familiar with the Company's trade secrets and with other confidential information concerning the Company and its holding shall not directly or indirectly own or manage, control, participate, in consult with, render service for or engage in any business competing with the businesses of the Company.

**24. VACATION:**

The Employee shall be entitled to vacations in the amount of prescribed number of weeks per annum.

**25. CONFIDENTIAL INFORMATION**

The employee must acknowledge that during the course of employment or after termination thereof, shall not disclose or make accessible to any other person or firm or any other entity without the previous consent in writing of the Company or its holding cannot attempt to use information in any manner, which may cause any injury or loss to the Company.

**26. TERMINATION OF EMPLOYMENT**

The contract of employment will be liable to be terminated on either side, by giving prescribed period of notice or one month salary in lieu of such notice In addition, the Company may terminate this agreement at any time by giving written notice to the Employee, if any employee found to be in moral breach of his responsibilities or committed any misconduct will return all the documents and other belongings to the Company.

**27. GOVERNING LAW**

The contract shall be governed in accordance with the Laws of India. This contract along with the broad policies of the Company attached with this letter constitutes the terms and conditions governing contract of employment with the Company.

**28. DECLARATION**

The employee has read and understood all its contents and accept this contract of employment. Thus any alterations shall be mutually agreed and will be notified to him personally.



## EMPLOYMENT CONTRACT

THIS CONTRACT ENTERED INTO BETWEEN \_\_\_\_\_ (hereinafter referred to as the Company/Principle Employer) AND the Employee the particulars of whom are as follows:

### PARTICULARS OF THE PERSON EMPLOYED

1. Name:
2. Father's Name:
3. Date & Place of Birth:
4. Nationality:
5. Sex:

WHEREAS MR./MS./MRS. \_\_\_\_\_ HAS REQUESTED FOR EMPLOYMENT IN THE CONSULATE AND HAS BEEN APPOINTED TO THE POST OF \_\_\_\_\_ SUBJECT TO CONFIRMATION AFTER THE SUCCESSFUL PERIOD OF PROBATION. THE CONTRACT OF EMPLOYMENT WILL BE IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

AND WHEREAS the Date of Commencement of Employment at the company is \_\_\_\_\_.

**IT IS HEREBY AGREED THAT THE TERMS AND CONDITIONS WILL BE AS FOLLOWS:**

### **1. POSITION OF EMPLOYEE**

The employee will be employed in the position of \_\_\_\_\_ (Position) on a ranking of \_\_\_\_\_ (Ranking Number) in accordance with the approved remuneration scales. The Company reserves the right at its sole discretion, to transfer the employee to any different position without affecting his/her salary even during the period of probation and after confirmation)

### **2. WORKING HOURS & DUTIES**

1. The employee who has been employed in the capacity of \_\_\_\_\_ will be required to work 5 days a week for 8 hours a day i.e. from 0900 to 1700 hrs (including Lunch break for the duration of 30 minutes.) However as situation arises and as the need demands the employee will work beyond regular hours.

2. When circumstances require the Employer may request the Employee to work overtime hours and the Employee hereby agrees to do so. The Employee will be paid for that additional overtime in accordance with the local law. It is agreed that working on Israeli/Jewish holidays will not be considered as overtime hours.

3. Wherever the nature of the duty and work of certain specified employees extends beyond regular office hours the concerned employees will be paid a consolidated overtime wage calculated for notional 75 hours of overtime work per month at the rate of \_\_\_\_\_ payable in Rupees.

4. It is hereby agreed that this will be the fixed sum of overtime wages regardless of whether the overtime hours are less than or more than 75 hours per month.

### **3. PROBATION PERIOD**

1. It is agreed upon by the Consulate General at Mumbai and the EMPLOYEE that the employee will be under a trial period of three (3) months, commencing from the date on which the Employee joined his/her employment so that the Company may in its sole discretion, determine whether the employee is suitable for the post and capable of performing the duties, intended to be entrusted to the Employee. During the period of probation each of the parties can terminate the contract at any time and for any reason and by giving seven days notice.

2. It is agreed that during the period of probation the condition of contract regarding termination of employment and severance payment will not be applicable and enforceable.

### **4. SALARY**

1. The employee will receive a gross salary of Rs. \_\_\_\_\_/- Rupees (number) for (month) which will be subject to Tax Deduction at source if applicable in accordance with the Income-Tax Act.

2. The Employee is also entitled to one-- month basic salary as bonus for Diwali to be paid in the month of October or November.

### **5. PROMOTION**

1. The rank and the salary of the employee will be in accordance with the approved remuneration scale and his/her promotion will be in accordance with his/her superiors'/recommendations.

2. A seniority salary increment will be paid to the employee beginning after the first year of full time employment, according to the Ministry guidelines and in accordance with the salary scale as of January 1st of each calendar year.

3. The employee will be paid for additional overtime hours in accordance with the local law. As agreed hereinabove work on regular working hours on holidays will not be considered as additional work. No extra compensation will be given for the same.

#### **6. ALLOWANCE**

All employees traveling on official duty are entitled to claim reimbursement of expenses incurred in the course of duty (subject to vouchers/invoice being forwarded to the Administration Office) and approved by the Company which are of the following nature:

1. Daily food allowance equivalent to \_\_\_\_\_.
2. Other Miscellaneous expenses related to the official duty.

#### **7. INCOME-TAX**

Local income taxes will be paid to the appropriate authorities by the Employer by deduction from the employee's gross salary.

#### **8. INSURANCE BENEFITS**

1. The Employer shall provide Medical Insurance Med claim for the Employee and the dependant family members. (The Medical Insurance policy is attached to this employment agreement as Annex A.) The Consulate will contribute an amount equivalent to the premium for the employee and \_\_% of the difference for the family members and the employee will contribute the balance proportionate amount as determined at the sole discretion of the company.

2. The Employer shall provide Personal Accidents Insurance for the Employee (The personal Accidents Insurance policy is attached to this employment agreement as Annex B) The Employer and Employee will both contribute to the said scheme of premium payments in the proportion determined at the sole discretion of the company.

#### **9. LEAVE**

1. ANNUAL LEAVE: Local Staff will be entitled to Annual paid leave of \_\_\_\_ days in a calendar year inclusive of casual leave.

The Employee is obligated to take a minimum number of vacation days in one working year and is limited in the accumulation of vacation days to the next working year, all in accordance with the instructions as submitted from time to time. The holiday, on the requested dates, will be subject to approval by the employer

2. MATERNITY LEAVE: A Female Employee is entitled to paid maternity leave of three months in accordance with the local law

3. OTHER HOLIDAYS: Total \_\_\_\_\_ Indian holidays to be declared by first week of the year. Israeli holidays may be cancelled/postponed without any notice. The employees may be called to work on these days. No extra compensation for these days will be given.

#### **10. RETIREMENT AGE**

An Employee will attain retirement at 60 yrs in accordance with local law. An employee may be given extension beyond the age of 60 yrs at the discretion of the Company.

#### **11. TERMINATION OF EMPLOYMENT**

1. Notice: One Calendar month Notice by Employer or Employee or one month's salary in lieu thereof to be paid to/by the Employee or added/deducted from the terminal benefits of the Employee.

2. Terminal benefits: One month's salary for each completed year of service by the employee with a minimum of one year's service. Terminal benefits will be paid when the termination takes place on any ground including on grounds of ill health, redundancy or old age retirement. In case of voluntary resignation the terminal benefits will be granted, subject to the employee completing a qualifying period of 5 years service and provided that the total amount of gratuity shall not exceed the amount of 15 months pay, the employee shall be paid one month's salary for each year of service.

Salary in this clause would mean last salary drawn at the time of termination.

3. The Employee will contribute to a Provident Fund Scheme. According to this scheme after one year continuous Service Employer will deduct 12% of the Employees' salary towards Provident Fund and an equal amount will be contributed by the Employer every year and paid to the Provident Fund

Scheme. The accumulated amount will be paid to the Employee on resignation, termination or retirement.

The benefits in (11.2) and (11.3) will also be available to the dependents/ legal heirs in the event of his/her death during service.

## **12. CONFIDENTIALITY**

During the course of the work with \_\_\_\_\_, the employee may learn information that is private, sensitive and or confidential. This information may concern or relate to \_\_\_\_\_, its clients or even parties with which the Company has dealings. The Employee must keep secret and must not, without specific written permission from the company, disclose any such private, sensitive or confidential information, from whatever source and however he/she may learn it, to any person or body.

A breach of the confidentiality as specified above may serve as cause to termination of employment. The obligations imposed on the employee under this clause will stay in effect and continue even if he/she leaves the employment of \_\_\_\_\_ - for whatever reason.

## **13. OTHER EMPLOYMENT**

During the employment with \_\_\_\_\_, the employee will not accept any other form of employment, or engage in any other business activity without the prior written consent of \_\_\_\_\_.

I, \_\_\_\_\_ RESIDING AT \_\_\_\_\_ HOLDER OF \_\_\_\_\_  
HEREBY FULLY AGREE TO COMPLY WITH THE ABOVE RULES AND REGULATIONS AND ALL APPENDICES RELATED ALONGWITH DURING MY TENURE WITH \_\_\_\_\_.

NAME:

DATE:

SIGNATURE:

On behalf of \_\_\_\_\_ being the Employer in the presence of (2)  
\_\_\_\_\_ being the Employee in the presence of \_\_\_\_\_





## **CHAPTER – 12**

### **LLP AGREEMENT**

LLP Agreement means a written agreement between the partners of the Limited Liability Partnership (LLP) or between the LLP and its partners which establish the rights and duties of the partners toward each other as well as towards the LLP.

It is a body corporate created by law. As per the Limited Liability Partnership Act, 2008, any two persons can incorporate an LLP by subscribing to the incorporation documents.

This agreement contains the below-mentioned provisions:

#### **1. NAME OF THE LLP**

The name of the LLP shall end with LLP or Limited Liability Partnership as per the provisions of the LLP Act.

#### **2. DATE AND PARTNERS OF THE AGREEMENT**

After incorporation, the LLP agreement is to be executed within 30 days as per the LLP Act and shall continue until dissolved and liquidated. This agreement is between partners of LLP which can be individual partners including designated partners as per LLP Act.

#### **3. PARTNERS CONTRIBUTION**

Ratio of partners in terms of capital, interest on contribution, profit sharing ratio as well as the time period after which the capital can be withdrawn by any of the partners shall be decided by the partners in the meeting.

#### **4. INCORPORATION**

Partners shall complete and deliver such forms as may be required to the Registrar and pay fees to incorporate the LLP in accordance with the LLP Act. The certificate of registration shall be kept at the registered office of the Company.

#### **5. REGISTERED OFFICE OF THE COMPANY**

LLP shall have its registered office at a place mutually agreed by the Partners and if there is any change in the address then that should be notified by them in the prescribed form and fees to the Registrar.

**6. BUSINESS**

LLP business shall be specified clearly and be carried out at the premises referred to in the Agreement.

**7. COMMON SEAL**

to be affixed on documents as defined by Partners under the signature of any of the Designated Partners.

**8. BANK AND AUTHORIZED SIGNATORY**

The designated partners of the LLP shall open a bank account for all the financial transactions and any one of them shall be authorized to sign not only all the banks documents but also all the legal compliances documents by way of a decision taken by them in the meeting.

**9. CHANGE IN PARTNERS**

Any admission or removal of a partner shall be reflected in this Agreement and intimated to the Registrar in manner and giving such notice as prescribed under the LLP Act.

**10. REMUNERATION**

LLP shall pay remuneration to the Designated Partner(s) as may be decided by the majority of Partners, for rendering the services.

**11. MEETINGS**

One or more meetings of the partners of the LLP may be held at any such time and at any such intervals as may be deemed fit by all the partners of the LLP.

**12. SERVICE OF NOTICE OF THE MEETING**

The notice of the meeting shall be given seven days prior to the Partners at their residential address and email address provided by them.

**13. PLACE AND MANNER OF HOLDING MEETINGS**

A meeting of the partners can be conducted through teleconferencing, videoconferencing or any other electronic media.

**14. QUORUM FOR MEETINGS**

Two Partners present in person shall be a quorum for a Meeting of partners of LLP.

**15. MINUTES**

The decisions taken at each meeting of the LLP shall be fairly and accurately recorded in the minutes and such minutes shall be maintained at its registered office.

**16. FORM OF CONTRIBUTION**

The contribution of the partners may be tangible, intangible, moveable or immoveable property, or in the form of contract of service, etc. However, the contribution in a form other than money shall be valued by an approved valuer, as provided under the LLP Act/ Rules.

**17. LIABILITY IN CASE OF DEATH OR DISABILITY OF PARTNER**

The interest of partners in the LLP constitutes their personal estate. In the event of death or disability of any partner or executor, trustee or administrator of such partner shall be bound by the provisions of this LLP Agreement. In case a partner is not a natural person, the legal representative of such Partner shall be bound by the provisions of this LLP Agreement.

**18. RESIGNATION / VOLUNTARY WITHDRAWAL**

No Partner shall withdraw or resign from the LLP without the prior consent of other Partners provided such content is not unreasonably withheld or delayed. A partner may tender his content to resign as a Partner by giving not less than seven days notice in writing.

**19. DEATH OF PARTNER**

On the death of any Partner, the LLP shall not be dissolved. In such a case the following order of preference shall be followed:

- (i) The deceased Partner's legal heir shall have the choice of either being admitted as a Partner in his place; or
- (ii) Selling of his share to any of the existing Partner's or
- (iii) In case an existing partner refuses to purchase the share as above, selling the share to such a person as may be mutually agreed amongst the surviving Partners and the legal heir

**20. INSOLVENCY OF PARTNER**

If a Partner becomes insolvent, the LLP will not be dissolved, The insolvency shall cause automatic vacation of office of such Partner in the LLP. The remaining partners shall have the option to purchase the share of such insolvent Partner and the purchase price shall be calculated in the manner decided among the partners.

**21. MAINTENANCE AND AUDIT OF BOOKS OF ACCOUNT**

The accounts of the LLP shall be maintained according to the accounting year (April to March), a Statement of Account and Solvency shall be drawn of all capital assets and liabilities of the LLP, as at 31<sup>st</sup> March in each year and, if required by the LLP Acts / Rules, the Statement of Account and Solvency shall be audited by a Chartered Accountant appointed in terms of this Agreement and applicable provisions of the LLP Act.

**22. WINDING UP**

LLP can be wound up with the consent of all the Partners subject to the provisions of Limited Liability Partnership Act.

## LLP AGREEMENT

THIS AGREEMENT of Limited Liability Partnership (LLP) is made at .....  
this .....day of .....20.....

### BETWEEN

(1) ..... a company registered under the Companies Act, 2013 , having its Registered Office at..... through its authorised representative ..... which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assigns and hereinafter called the FIRST PARTY,

(2) ..... S/o, D/o, W/o ..... R/o ..... which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assigns and hereinafter called the SECOND PARTY,

### AND

(3) ..... S/o, D/o, W/o ..... R/o ..... which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assigns and hereinafter called the THIRD PARTY, and (All the PARTIES hereto, i.e., the FIRST PARTY, the SECOND PARTY and the THIRD PARTY shall be collectively called or referred to as the PARTNERS).

WHEREAS the First Party is .....

WHEREAS the Second Party is.....

WHEREAS the Third Party is .....

NOW the First Party, the Second Party and the Third Party are interested in forming a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008 and intend to write down the terms and conditions of the said LLP as below.

**IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES/PARTNERS HERETO AS FOLLOWS:**

**1. NAME OF THE LLP**

A Limited Liability Partnership (LLP) shall be carried on in the name and style of M/s. ....LLP and hereinafter called as the LLP.

**2. REGISTERED OFFICE**

The LLP shall have its Registered Office at ..... and/or at such other place or places, as shall be agreed to by the majority of the partners from time to time.

**3. CAPITAL CONTRIBUTION**

The Capital Contribution of the LLP shall be. .... (Rupees ..... only) which shall be contributed by the partners in the following proportions:

First Party .....% i.e. . .... (Rupees ..... only)

Second Party .....% i.e. . .... (Rupees ..... only)

Third Party.....% i.e. .... (Rupees..... only)

The further Contribution if any required by the LLP shall be brought by the partners in their profit sharing ratio.

**4. PROFIT SHARING RATIO (PSR)**

All the Partners of the LLP are entitled to share Profits & Losses in the ratio of their respective Capital

**5. CONTRIBUTION IN THE LLP**

The net profits & losses of the LLP shall be arrived at after providing for payment of Remuneration to the Designated and working partners and Interest on Partners' Contribution in the LLP or Loan given by them to the LLP.



**6. BUSINESS AND OBJECTS OF THE LLP**

The objects, business and activities of the LLP shall be under

.....  
.....  
.....  
.....  
.....  
.....  
.....

and other incidental and ancillary business more particularly described in the  
Schedule 'A' annexed herewith or any other business in any other manner  
as may be decided by the majority of the Partners.

**7. COMMON SEAL**

The LLP shall have a common seal to be affixed on documents as defined by  
partners under the signature of any of the Designated Partners. That the  
immovable properties purchased by the LLP shall be clear, marketable and  
free from all encumbrances.

**8. ADMISSION OF NEW PARTNER**

No Person may be introduced as a new partner without the consent of all the  
existing partners. Such an incoming partner shall give his prior consent to  
act as Partner of the LLP.

**9. ADMISSION OF A NEW PARTNER**

Capital Contribution of the new partner may be tangible, intangible, movable or  
immovable property and the incoming partner shall bring minimum  
Contribution of ..... (Rupees ..... only). Profit Sharing  
Ratio (PSR) of the incoming partner will be in proportion to his capital  
contribution in the LLP.

**10. REMUNERATION & INTEREST TO PARTNERS**

The LLP shall pay such Remuneration to the Designated Partners and working  
partners as may be decided by the majority of the Partners, for rendering  
his/her/its services. The LLP shall pay such Interest to the Partners on  
Capital Contribution in the LLP as may be decided by the majority of the

Partners. If any partner advances any sum of money to the LLP over and above his Capital Contribution, the same shall be a debt due from the LLP to the said partner and shall carry simple interest at the rate of .....% per annum or any other rate decided by the partners by majority/unanimously.

#### **11. RIGHTS OF THE PARTNERS**

All the partners hereto shall have the rights, title and interest in all the assets and properties in the said LLP in the proportion of their Capital Contribution.

All the partners of the LLP shall be the working partners and each of the partners shall give time and attention as may be required for the fulfillment of the objects of the LLP business. Every partner has a right to have access to and inspect and have copy any of the books of the LLP.

Each of the parties hereto shall be entitled to carry on their own, separate and independent business as they might hitherto be doing or may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto, provided that the said partner has intimated the said fact to the LLP before starting or commencing the independent business and in case of a business directly or indirectly competing with that of the LLP taken written consent of the LLP, provided also that he/she/it shall not use the name of the LLP to carry on the said business. The LLP shall have perpetual succession and the death, retirement or insolvency of any partner shall not dissolve the LLP. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partnership as herein provided. However, upon insolvency of a partner his or her rights, title and interest in the LLP shall come to an end. Upon the death of any of the partners herein any one of his or her or its heirs will be admitted as a partner of the LLP in place of such deceased partner. The heirs, executors and administrators of such deceased partners shall be entitled to and shall be paid the full payment in respect of the right, title and interest of such deceased partner. On the death of any partner, if his or her or its heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the LLP.

#### **12. DUTIES OF THE PARTNERS**

Every partner shall account to the limited liability partnership (LLP) for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP, or from any use by him of the property, name or any business connection of the LLP.

Each Partner shall be just and faithful to the other partners in the conduct of business and all the transactions relating to the LLP.

Every partner shall indemnify the limited liability partnership (LLP) and the other existing partners for any loss caused to it by his/her/its fraud in the conduct of the business of the limited liability partnership (LLP).

Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives.

In case any of the Partners of the LLP desires to transfer or assign his, her or its interest or share in the LLP he has to offer the same to the remaining partners by giving 15 days notice. In the absence of any communication by the remaining partners the concerned partner can transfer or assign his share in the market.

No partner shall without the written consent of the LLP, –

- i. Engage any employee or dismiss any employee of the LLP except for gross misconduct.
- ii. Employ any money, goods or effects of the LLP or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the LLP.
- iii. Lend money or give credit on behalf of LLP or have any dealings with any person, company or firm whom the LLP has previously in writing forbidden it to trust or deal with. Any loss incurred through any breach of the provisions shall be made good to the LLP by the partner incurring the same.
- iv. Enter into any bond, bail or become guarantor, surety or security with or for any person or knowingly do, cause or suffer to be caused anything whereby the LLP property or any part thereof may be seized or endangered.
- v. Assign, mortgage or charge his/her/its share in the LLP or any asset or property of the LLP or make any other person a partner or sub-partner therein.

- vi. Compromise or compound or release or discharge any debt due to the LLP (except upon payment in full).
- vii. Engage directly or indirectly in any business competing with that of the limited liability partnership (LLP).

### **13. MEETINGS OF PARTNERS OF THE LLP**

All matters related to the LLP as mentioned in Schedule B to this LLP Agreement shall be decided by a Resolution passed by majority in number of the partners & for this purpose each partner shall have one vote. The meeting of the Partners may be called by sending 15 days prior notice to all the partners at their residential address or by mail at the e-mail ID provided by the individual Partners in written to the LLP. In case any partner is a foreign resident the meeting may be conducted by serving 15 days prior notice through e-mail. Provided that the meeting may be called at shorter notice, if the majority of the partners agree in writing to the same either before or after the meeting. In case, any urgent meeting is called, the notice requirement may be ratified by all the Partners. Meetings of the Partners shall ordinarily be held at the Registered Office of the LLP or at any other place as per the convenience of partners. With the written Consent of all the partners, a Meeting of the Partners may be conducted through Tele-Conferencing or Video-Conferencing. The limited liability partnership (LLP) shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the LLP.

### **14. DUTIES OF DESIGNATED PARTNERS**

Authorized representatives of the First Party and the Second Party shall act as the Designated Partners of the LLP in terms of the requirements of the Limited Liability Partnership Act, 2008. Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership (LLP) in respect of compliance of the provisions of the LLP Act including filing of any Document, Return, Statement and the like Report pursuant to the provisions of Limited Liability Partnership Act, 2008. The Designated Partners shall be responsible for the doing of all acts and deeds arising out of this LLP Agreement. Each partner shall punctually

pay and discharge the separate loans and debts and indemnify the other partners and the LLP assets against any loss caused or suffered by the LLP and all proceedings, costs, claims and demands from the LLP in respect thereof.

#### **15. BOOKS OF ACCOUNT**

Books of Accounts of the limited liability partnership (LLP) shall be kept at the registered office of the LLP for reference, access, inspection and having copies of by all the partners. The accounting year of the LLP shall be the Financial Year, i.e., from 1st April of the year to 31st March of the subsequent year. The first accounting year shall be from the date of commencement of the LLP till 31st March of the subsequent year.

#### **16. BANK ACCOUNTS**

Bankers of the partnership shall be ..... Bank, ..... Branch and/or such other Bank or Banks as the partners may from time to time be agree upon by majority/ unanimously. Bank Accounts of the LLP including Loans, Advances & Credit Limits, if any, from the Banks and Financial Institutions taken by the LLP, may be opened and operated by the Designated Partners and other Partners either singly or jointly as may be agreed upon from time to time by the partners by majority/ unanimously.

#### **17. EXTENT OF LIABILITY OF THE LLP**

The LLP is not bound by anything done by a partner in dealing with a person if –

- (1) the partner in fact has no authority to act for the LLP in doing a particular act; and
- (2) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

#### **18. INDEMNITY**

The limited liability partnership (LLP) shall indemnify each partner in respect of payments made and personal liabilities incurred by him –

- (1) in the ordinary and proper conduct of the business of the limited liability partnership (LLP); or

(2) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership (LLP).

(3)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 (regardless of the outcome), judgment, loss or settlement thereof, whether civil or criminal, arising out of or resulting from their respective performances as partners and officers of the LLP, except for the gross negligence or willful misconduct of the partner or officer seeking indemnification.

#### **19. ARBITRATION**

All disputes between the partners or between the Partners and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this LLP Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

#### **20. CESSATION OF EXISTING PARTNERS**

Any partner may cease to be a partner of the LLP by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.No majority of Partners can expel any partner except in the situation where any partner has been found guilty of carrying of activity/business of the LLP with fraudulent purpose.

#### **21. WINDING UP OF THE LLP**

The LLP can be wound up with the consent of all the partners subject to the provisions of the Limited Liability Partnership Act 2008

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

Signed and delivered by

For and on behalf of ..... (Name of the LLP )

(Partner)

(Partner)

(Partner)

WITNESSES:

1. Name: .....

Address: .....

Signature: .....

2. Name: .....

Address: .....

Signature: .....

### **SCHEDULE A**

Incidental, Ancillary or Other Business of the LLP

(1) THE OBJECTS OR BUSINESS INCIDENTAL OR ANCILLARY TO THE  
ATTAINMENT OF THE MAIN OBJECTS OR BUSINESS ARE:

(2) THE OTHER BUSINESS ARE:

### **SCHEDULE B**

MATTERS TO BE DECIDED BY A RESOLUTION PASSED BY A MAJORITY IN  
NUMBER OF THE PARTNERS.



## **CHAPTER – 13**

### **DOUBLE TAXATION AVOIDANCE AGREEMENT**

Agreement between the Government of the Republic Of India and the Government of the people's Republic of any other Country for the Avoidance Of Double Taxation and the Prevention Of Fiscal Evasion with respect to taxes on income.

The Government of the Republic of India and the Government of the People's Republic of any other country Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income Have agreed as follows:

#### **1. PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

#### **2. TAXES COVERED**

This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

The existing taxes to which the Agreement shall apply are:

In India and the other country:

the individual income-tax;

(ii) the income-tax for enterprises with foreign investment and foreign enterprises;

(iii) the local income-tax;

(iv) the income-tax including any surcharge thereon; (hereinafter referred to as "Indian Tax ").

#### **3. RESIDENT**

For the purposes of this Agreement, the term

"resident of Contracting State " means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office or any other criterion of a similar nature.

#### **4. PERMANENT ESTABLISHMENT**

For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

#### **5. INCOME FROM IMMOVABLE PROPERTY**

includes property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property. The provisions shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

#### **6. BUSINESS PROFIT**

In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere in accordance with the provisions of tax law of that Contracting State.

#### **7. SHIPPING AND AIR TRANSPORT**

Profits derived by an enterprise which is a resident of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that Contracting State.

#### **8. ASSOCIATED ENTERPRISES**

an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

#### **9. CAPITAL GAINS**

Gains derived by a resident of a Contracting State from the alienation of immovable property and situated in the other Contracting State may be taxed in that other Contracting State.

#### **10. OTHER INCOME**

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

#### **11. METHODS FOR THE ELIMINATION OF DOUBLE TAXATION**

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in another country, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in another country whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in another country.

The tax paid in a Contracting State mentioned above shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting States for the promotion of economic development.

#### **12. TERMINATION**

This Agreement shall remain in force indefinitely but either of the Contracting States may give written notice of termination to the other Contracting State through the diplomatic channels.

#### **13. PROTOCOL**

At the signing of the Agreement between the Government of the Republic of India and the Government of the People's Republic of any other country for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as " The Agreement ") both sides have agreed upon the following provisions which form an integral part of the Agreement:

It is understood that the term "tax" should not include any penalty imposed for non-compliance of the laws and regulations relating to the taxes to which this Agreement applies.

## **DOUBLE TAXATION AVOIDANCE AGREEMENT**

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF ANY OTHER COUNTRY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the People's Republic of Australia desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows:

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

The existing taxes to which this Agreement shall apply are:

- a. In Australia
  - i. The income-tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia;
- b. In India:
  - i. the income-tax including any surcharge thereon; and
  - ii. the surtax imposed on chargeable profits of companies.

This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of the Commonwealth of Australia or the law of the Republic of India after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in the laws of their respective States relating to the taxes to which this Agreement applies.

**RESIDENCE**

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States if the person is a resident of that Contracting State for the purposes of its tax. However, a person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

2. Where, by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:

a. the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

b. if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are closer (centre of vital interests).

For the purposes of this paragraph, an individual's citizenship of a Contracting State as well as that person's habitual abode shall be factors in determining the degree of the person's personal and economic relations with that Contracting State.'

Where, by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

**PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

a. a place of management;

b. a branch;

- c. an office;
  - d. a factory;
  - e. a workshop;
  - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - g. a warehouse in relation to a person providing storage facilities for others;
  - h. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
  - i. premises used as a sales outlet or for receiving or soliciting orders;
  - j. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
  - k. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than six months.
3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States And to carry on business through that permanent establishment if:
- a. substantial equipment is being used in that State by, for or under contract with the enterprise;
  - b. it carries on activities in that State in connection with the exploration for or exploitation of natural resources in that State; or
  - c. it furnishes services, including managerial services and those mentioned in sub- office but not those services in respect of which payments or credits that are royalties as defined are made, within one of the Contracting States through employees or other personnel, but only if those services are furnished within that State:

- i. for a period or periods aggregating to more than 90 days within any 12-month period; or
- ii. for another enterprise, if both enterprises are within either of the described in sub-paragraphs (1)(a) and (b) of Article 9.

4. An enterprise shall not be deemed to have a permanent establishment merely by reason of:

- a. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; or
- e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

However, the preceding provisions of this paragraph shall not apply where an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business for any purpose other than those specified in this paragraph.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State--other than an agent of an independent status to whom paragraph applies--shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

- a. The person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;



b. The person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the enterprise;

c. The person habitually secures orders in that State, wholly or principally for the enterprise itself or for the enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise; or

d. in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

8. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of Article 11 and paragraph (5) of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

**INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)**

1. Income from real property may be taxed in the Contracting State in which that property is situated.

2. For the purposes of this Article, the term "real property":

a. In the case of Australia, has the meaning which it has under the laws of Australia and shall include:

i. a lease of land and any other interest in or over land, whether improved or not; and

ii. a right to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of the exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and

b. In the case of India, means such property which, according to the laws of India, is immovable property and shall include:

i. property accessory to immovable property;

ii. rights to which the provisions of the general law respecting landed property apply; and

iii. usufruct of immovable property and rights to receive variable or fixed payments either as consideration for the working of or the right to work or explore for, or in respect of exploitation of, mineral or other deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

3. A lease of land, any other interest in or over land and any rights or property referred to in any of the sub-paragraphs of paragraph (2) shall be regarded as situated where the land; mineral or other deposits, oil or gas wells, quarries, natural resources or property, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph (1) shall apply to income derived from the direct use, letting or use in any other form of real property.

5. The provisions of paragraphs (1), (3) and (4) shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

### **BUSINESS PROFITS**

1. The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

a. that permanent establishment; or

b. sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment.

2. Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, in accordance with and subject to the limitations of the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses of the enterprise, being expenses which are incurred for the purposes of the business of the permanent establishment (including executive and general administrative expenses so incurred), whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where the correct amount of profits attributable to a permanent establishment is incapable of determination by the taxation authority of one of the Contracting States or the ascertaining thereof by that authority presents exceptional difficulties nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that the law shall be applied, so far as the information available to that authority permits, in accordance with the principles of this Article.

6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

9. Where:

a. a resident of one of the Contracting States is beneficially entitled, whether directly or through one or more -interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated in that other State as a company for tax purposes; and

b. in relation to that enterprise, that trustee would, in accordance with the principle that permanent establishment in that other Contracting State, the enterprise carried on by the trustee shall be deemed to be a business carried on in that other Contracting State by that resident through a permanent

establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

### **SHIPS AND AIRCRAFT**

1. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State.
3. The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.
4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State

### **ASSOCIATED ENTERPRISE**

Where:

- a. an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State, and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then

any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Nothing this shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be made to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

### **SOURCE OF INCOME**

1. Income, profits or gains derived by a resident of one of the Contracting States which may be taxed in the other Contracting State, shall for the purposes of the law of that other State relating to its tax be deemed to be income from sources in that other State.
2. Income, profits or gains derived by a resident of one of the Contracting States which, may be taxed in the other Contracting State, shall for the purposes and of the law of the first-mentioned

**METHODS OF ELIMINATION OF DOUBLE TAXATION**

a. Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Indian tax paid under the law of India and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in India shall be allowed as a credit against Australian tax payable in respect of that income.

b. Where a company which is a resident of India and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent. of the voting power of the first-mentioned company, the credit referred to in sub-paragraph (a) shall include the Indian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

2. In paragraph (1), Indian tax paid shall include:

a. subject to sub-paragraph

b. an amount equivalent to the amount of any Indian tax forgone which, under the law of India relating to Indian tax and in accordance with this Agreement, would have been payable as Indian tax on income but for an exemption from, or reduction of, Indian tax on that income in accordance with:

i. section 10(4), 10(15)(iv), 10A, 10B, 80HHC, 80HHD or 80-I of the Income-tax Act, 1961, in so far as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or

ii. any other provision which may subsequently be made granting an exemption from or reduction of Indian tax which the Treasurer of Australia and the Ministry of Finance of India agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that

provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; and

c. in the case of interest derived by a resident of Australia which is exempted from Indian tax under the provisions referred to in sub-paragraph (a), the amount which would have been payable as Indian tax if the interest had not been so exempt and if the tax referred to in paragraph (2) of Article 11 did not exceed 10 per cent. of the gross amount of the interest.

3. Paragraph (2) shall apply only in relation to income derived in any of the first ten years of income in relation to which this Agreement has effect under subparagraph (1)(a)(ii) of Article 28 or in any later year of income that may be agreed by the Contracting States in letters exchanged for this purpose.

4. In the case of India, double taxation shall be avoided as follows:

a. the amount of Australian tax paid under the laws of Australia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India in respect of income from sources within Australia which has been subjected to tax both in India and Australia shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax; and

b. for the purposes of the credit referred to in sub-paragraph (a) above, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

5.. Where a resident of one of the Contracting States derives income which, in accordance with the provisions of this Agreement, shall be taxable only in the other Contracting States, the first-mentioned State may take that income into account in calculating the amount of its tax payable on the remaining income of that resident.

## **TERMINATION**



This Agreement shall remain in force indefinitely but either of the Contracting States may give written notice of termination to the other Contracting State through the diplomatic channels.

**PROTOCOL**

At the signing of the Agreement between the Government of the Republic of India and the Government of the People's Republic of any other country for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as " The Agreement ") both sides have agreed upon the following provisions which form an integral part of the Agreement. It is understood that the term "tax" should not include any penalty imposed for non-compliance of the laws and regulations relating to the taxes to which this Agreement applies.

## **CHAPTER – 14**

### **COLLABORATION AGREEMENT**

Collaboration agreement mainly concerns the agreement of sharing the resources of two entities to attain the same goal. This agreement is basically for people who have decided to work on a project together and an agreement is necessary for projects that cannot be realized without the other party, which means projects that are inseparable to the other.

Following points shall be taken into consideration while drafting collaboration agreement

#### **1. INCORPORATION**

Agreement contains name of the parties, date of incorporation of collaboration, purpose of an agreement, capital invested, place where registered office of the Company is situated.

#### **2. COMPLETION DATE**

Collaborators must complete contributions by the given date included in the agreement. If a Collaborator fails to do so, the Collaborators will mutually agree, in writing, to extend the time for completion.

#### **3. LEAVING THE COLLABORATION**

If a Collaborator is unwilling to continue or complete work, the Collaborators shall enter into a written agreement setting forth the rights of the withdrawing Collaborator, including what authorship credit, compensation and copyright ownership, if any, shall be shared with the withdrawing collaborator. The remaining Collaborator shall have the right to complete the work alone or with others.

#### **4. COPYRIGHT OWNERSHIP**

Collaborators intend that the completed Work shall be a joint work. Upon completion the Collaborators shall be the owners of the work

#### **5. DECISION MAKING**

All editorial, business and other decisions affecting the work shall be made jointly by all the Collaborators, and no sale, disposition, licensing or other agreement with a third party shall be valid without the written consent of all the Collaborators.

**6. REPRESENTATIVES**

The Parties shall each nominate a primary representative to act on their behalf in all matters related to this collaboration agreement. Chosen primary representatives shall be vested with the full ability to make decisions on behalf of their respective employers.

**7. FUNDING**

The Parties shall equally share any financial burden, obligation, or direct costs associated with this collaboration agreement. If one party provides additional capital above and beyond their equal share, that capital shall not grant them additional interest or control over the collaboration. Instead, that capital shall be considered as a loan and shall be repaid from the proceeds from the collaboration's efforts.

**8. STAFFING**

The Parties shall equally share any staffing responsibilities related to this collaboration agreement. This includes providing personnel and financial resources to obtain additional personnel for the purpose of achieving the objective.

**9. ADDITIONAL PARTIES**

No additional partners or subcontractors shall be hired or procured without prior written approval from both the parties. The Parties agree that an independent consultant shall be hired to carry out a risk assessment prior to beginning any work related to this collaboration agreement.

**10. INSURANCE**

The Parties agree to maintain insurance adequate to protect their respective personnel and assets from loss, theft, or damage. The Parties agree to name each other in their respective insurance policies, and to

indemnify and hold each other harmless in all cases save for those of gross or willful misconduct or neglect.

**11. PAYMENTS**

All the partners shall mutually agree upon in writing, all money accruing from the exploitation of the Work shall be divided equally among the Collaborators.

**12. EXPENSES**

All expenses incurred in creating the Work shall be shared equally. Materials obtained by a Collaborator at his/her own expense to prepare the work shall belong to that Collaborator. Otherwise, all materials shall be jointly owned and may be disposed of only upon the Collaborators' mutual consent.

**13. NO PARTNERSHIP**

Collaborators are collaborating on this single work. This agreement does not create a partnership relationship.

**14. DERIVATIVE WORKS**

The Collaborators agree that none will incorporate material based on or derived from the Work in any subsequent work without the written consent of the other Collaborator(s).

**15. WARRANTIES AND INDEMNITIES**

Collaborators represent and warrant to each other that: each is free to enter into this agreement; all contributions to the Work are original or all necessary permissions and releases have been obtained and paid for; and no intellectual property rights have been infringed upon or other laws violated. Each Collaborator agrees to indemnify the other(s) for any loss, liability or expense resulting from the actual breach of these warranties.

**16. ASSIGNMENT OF AGREEMENT, GOVERNING, JURISDICTION, AND ARBITRATION**

This agreement cannot be assigned or transferred without the written consent of the other Collaborators. This agreement constitutes the entire agreement between the Collaborators. No modification shall be enforceable except in writing and signed by the Collaborators hereto. This agreement shall be governed by the laws of the state in which the Registered or Corporate office of the Company is situated. In the event any dispute arising under this agreement results in litigation, arbitration, or mediation, such action or proceeding shall be brought within the state. Any dispute arising from this agreement shall be resolved in accordance with the Arbitration and Conciliation Act.

**17. SEVERABILITY**

If any provision of this agreement or the application thereof is held invalid, then invalidity shall not affect other provisions or applications of this agreement which can be given effect without the invalid provisions or application, and to this end the provisions of this agreement are declared to

- i. be severable.

**18. TERMINATION**

Each of the Collaborator will hold the option to revoke this agreement upon written notice. All remaining parties will have the opportunity to begin a new agreement upon termination of the current agreement.

**19. AGREEMENT EXTENSION**

This agreement may be extended or amended only by written approval from all parties. The decision to amend or extend the agreement shall include the date of the amendment/extension, and the signatures of appointed representatives of each participating organization as well as any new terms and conditions amended or added to this agreement.

**20. ACCEPTANCE**

Each collaborator has had the ability to read and accept all terms and conditions and indicates full acceptance and approval of this collaboration agreement by signing electronically.

**COLLABORATION AGREEMENT**

Agreement executed this ..... day of ..... between M/s ....., a Foreign Company incorporated in the United Kingdom and having its registered office at .....hereinafter called the U.K. Company of the ONE PART.

**AND**

M/s..... a company incorporated in India and having its registered office at .....hereinafter called the Indian company of the OTHER PART:

WHEREAS the Indian company has been incorporated having for its object the manufacture and production of.....

WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of.....;

WHEREAS the Indian company with a view to improve still further the quality of the commodities manufactured and to increase production are desirous of procuring the latest technique and know-how relates to the manufacture of the above said commodities; WHEREAS the Indian company therefore approached the U.K. company who have considerable experience in the line of manufacture engaged in by the Indian company, and requested them to extend to them necessary technical assistance in that behalf;

AND WHEREAS the U.K. company has agreed to extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

1. In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter the U.K. company shall supply to the Indian company:
  - a) technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries if necessary for the manufacture of.....;
  - b) further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;
  - c) render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;
  - d) lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;
  - e) provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary;
  - f) impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;
  - g) advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties which may be referred to by the Indian company during the continuance of this agreement.



2. For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian Company shall make a lump sum payment of .....to the U.K. company phased as follows
  - a) one-third on approval of the agreement by the Central Government;
  - b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
  - c) the balance one-third in three equal annual installments thereafter after commencement of production.
3. This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.
4. The Indian company may but not be bound to use foreign brand names on their products for internal sale or on products to be exported.
5. There shall be no restriction on the Indian company exporting their products to foreign countries.
6. The Indian company shall not have the right to pledge, mortgage or assign or to sub-licence the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. Company.
7. There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.

8. Technicians who may be deputed by the U.K. Company to the Indian company to advise and assist the Indian Company under this agreement shall be paid their salary, travelling expenses and boarding and lodging by the Indian company.
9. The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. Company for training in their works under clause 1
10. The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.
11. The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. Company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.
12. It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration and that the Indian company shall have the right for the period of its duration and that the Indian company shall have the right to manufacture their products even after the expiry of this Agreement.
13. The Indian company shall not during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to any one other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.
14. On the expiry of the period prescribed herein or of extended period provided in clause 3 (*supra*) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies

of information data or material sent to it by the U.K. company under this Agreement and then in its possession and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

IN WITNESS WHEREOF the parties hereto have signed this Agreement this.....day of..... 2019 in the presence of the following:

WITNESSES:

1.....

2.....

## **CHAPTER – 15**

### **GIFT DEED**

A gift deed is an official legal document used to give a gift of property or money to another person. It transfers the money or ownership of property from the recipient, without the exchange of money or another type of property. The transfer also occurs without requiring the recipient to work for what he receives. Property transferred in this manner is usually given out of the love and affection the giver has for the recipient.

There are two types of gift deed

#### **1. REVOCABLE GIFT DEED**

In such a situation, the donor drafts the document but does not give it to the recipient right away. Instead, he holds onto the document until he feels ready to give it to the recipient. In such a case, the donor may revoke the gift if he sees fit to do so, and he does not have to deliver or hand over the property or money to the recipient, even if the deed is complete, signed, and witnessed.

#### **2. IRREVOCABLE GIFT DEED**

A donor cannot change or revoke an irrevocable gift deed. In this situation, the owner drafts the document and has it signed and witnessed in accordance with his jurisdiction's laws. Once he gives the

document to the recipient, the recipient takes immediate legal ownership of the gift. The donor cannot change his mind and reclaim the money or property he has transferred in this manner.

Following are the things that go into a properly drafted Gift Deed :

**1. ABSOLUTE ABSENCE OF CONSIDERATION**

The gift deed needs to mention that the donor is transferring his property by way of gift out of natural love and affection and there is no monetary consideration. There should be absolutely no element of consideration involved. The transfer shall cease to be a gift if this important aspect of no consideration is not met.

**2. NO COERCION**

The transfer should be voluntary and it should not be out of fear, undue influence, misrepresentation, coercion or duress of any kind. It should be gratuitous. The donor must have clear intention to make a gift and should be well aware of the consequences that will ensue once the transfer is effected.

**3. DONOR, THE OWNER OF THE PROPERTY**

Nobody can transfer a better title than he himself has. At the time of transferring of the property by way of a gift, the donor should be the actual owner who is seized and possessed of the property, the property should be existing, gift of a future property is not admissible. He should also be the one paying taxes and levies accruing on the scheduled property.

**4. DESCRIPTION OF THE PROPERTY**

A gift deed should provide a proper description of the property that is being transferred for an instance: area, built up area, address where the property is situated etc.

**5. ADDITIONAL RIGHTS**

This includes all rights, liabilities, easement rights that are appurtenant to the property in question.

**6. RELATIONSHIP BETWEEN THE DONOR AND THE DONEE**

This clause needs to mention as to how the donor is related to the donee, whether by blood relation or otherwise.

**7. DONEE'S RIGHTS**

The gift deed should clearly mention the donee's rights to possess, occupy and enjoy the property. The donee also has the right to accrue rent, profits etc and the donee shall have the right to use the property for his/her own use and it should be free from all legal actions, lawsuits whatsoever by the donor or any of his heirs, assigns etc.

**8. DELIVERY OF POSSESSION**

Delivery can be express or implied and some affirmative act needs to take place for it to constitute delivery. Donee should be given the vacant and peaceful possession of the gift property. All liabilities, taxes, penalties, levies etc need to be borne by the donor till the possession is given to the donee. After which all these will be borne and discharged by the donee.

**9. STAMP DUTY ASSESSMENT**

The value of the property in question should be ascertained for the purpose of ad valorem stamp duty.

**10. WITNESSES**

The gift deed needs to be executed in the presence of at least two witnesses.

**11. ACCEPTANCE**

A gift deed needs to be duly accepted by the donee. Acceptance suggests that the donee has accepted the gift wholly and unconditionally. If the gift is not accepted by the donee, the gift will become void. The donee must accept the gift after it is executed even before it is registered.

## DEED OF GIFT OF PROPERTY

THIS GIFT is made the..... day of.....  
BETWEEN AB of, etc. (hereinafter called “the Donor”) of the one part,

### AND

CD of, etc. (hereinafter called “the Donee”) of the other part.

WHEREAS the donee intends to start a school in his village..... for the education of girls

AND WHEREAS the donor is desirous of donating the land fully mentioned and described in the Schedule hereto to be used as a site for the said School.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said pious wish and desire and as a patron of the proposed school to be started by the donee, the donor do hereby and hereunder freely and voluntarily grant, convey, transfer, give, assign and assure unto and to the use of the donee and his successor to be used solely and exclusively for the purpose of a site for construction and accommodation of the proposed girls’ school

TO HAVE AND TO HOLD the same so long as the same shall be used and occupied as a site and/or building of the school AND THAT the donee accepts the gift of the said property hereunder made solely and exclusively for the purpose hereinbefore indicated subject to the condition hereunder provided.

THIS INDENTURE FURTHER WITNESSETH that it is expressly agreed and understood by and between the parties that this gift of land will stand *ipso facto* revoked in the event the land hereunder given is not used for the purpose of the intended school for which the same is given within a period of one year from the date of these presents or in the alternative the said school is abolished or shifted elsewhere or amalgamated with some other institution when and in all or any such event or events the land with all buildings and structures, if any erected thereon, shall revert to in the donor or his heirs, executors, administrators and representatives and shall form part of his former estate as if this deed of gift was never executed nor intended. And it is further agreed by and between the parties that in case the land is acquired by the Government, the donee or his successors, including any person or persons

managing the school, shall invest the compensation money to be awarded in purchase of another land or building to be used solely and exclusively for the school unless otherwise directed by any court of competent jurisdiction. The estimated value of the property is .....

IN WITNESS WHEREOF the donor has executed this deed of a gift and delivered the same to the donee who has also executed the same in token acceptance thereof the day, month and year first above written.

The Schedule above referred to Signed, sealed and delivered

AB

CD

## **CHAPTER – 16**

### **BUSINESS CONTRACTS**

Business contracts are crucial to the relationships between companies and business partners. These Contracts specify the terms of agreements, services or products to be exchanged and any deadlines associated with the partnership. Business contracts prevent disputes and misunderstandings, providing for legal remedies if one party does not uphold his end of the contract.

#### **1. ALL PARTIES ARE LEGALLY ABLE TO PARTICIPATE**

[COMPANY NAME], with a business address at [ADDRESS] (“Client”), and [CONTRACTOR NAME], with a business address at [ADDRESS] (“Provider”), enter into this Business Contract for the performance of services as set forth in the statement of work at the price stated in each Statement of Work attached part of this Agreement.

#### **2. SCOPE OF WORK**



Provider shall supply, at Provider's sole expense, all necessary off-site equipment, tools, materials, and/or supplies, if any, to perform the services. If Client provides any equipment, tools and/or materials, it will be used exclusively for Client related projects and it will be returned at the conclusion of the work described in this Agreement.

### **3. SUBCONTRACTORS**

No subcontractors or consultants shall be engaged to carry out any part of the Services without prior written permission of Client. Client shall have the right at any time to request the immediate replacement of Provider's personnel.

### **4. TERM**

Number of years, from the date of its execution by Provider or until the completion of the work described in the Statement of Work.

### **5. PAYMENT**

Provider will invoice Client for Services performed within a number of days of performance. Client will pay Provider as set forth in each Statement of Work within a number of days of receipt and acceptance of such invoice and the agreed consideration paid for the services performed must be deducted with the taxes which are mutually decided among them.

### **6. INTELLECTUAL PROPERTY**

Client will retain ownership of any data, information or intellectual property furnished to Provider in connection with this Agreement. Clients can use the property if license is granted by the Provider on the terms and conditions.

### **7. CONFIDENTIALITY**

For purposes of this Agreement, the term "Information" shall mean any information that Provider may receive from Client. Provider shall not use the Information except to perform the Services. He will disclose the information only to its officers and employees directly concerned with the work.

**8. INDEMNIFICATION**

Provider shall comply with worker's compensation laws and shall provide a certificate of worker's compensation insurance, where applicable. Client agrees to indemnify and hold Provider harmless against all claims, demands, suits, liabilities, losses, damages or injuries (collectively "Liabilities") that arise out of Client's use of the Services, except to the extent such Liabilities result from the negligence or wrong doing of Provider.

**9. LIMITATION OF LIABILITY**

In no event will either party be liable for any Special, Indirect, Consequential, or Incidental damages.

**10. NOTICES**

Any notices permitted or required pursuant to this Agreement shall be deemed effective if made in writing and sent, postage prepaid, return receipt requested, or by overnight delivery.

**11. ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement between Client and Provider as to its subject matter. None of the terms of this Business Contract shall be amended except in writing signed by both parties.

**12. TERMINATION FOR BREACH**

If either party breaches this Agreement, the other may terminate this Agreement if the breaching party does not cure the breach within thirty days of written notice of the same. Termination shall be without prejudice to any rights which may have been accrued to either party before termination.

**13. FORCE MAJEURE**

Neither Client nor Provider shall be liable for failure of or delay in performing obligations set forth in this Agreement, and neither shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably beyond the control of Client or Provider.

**14. CHOICE OF LAW**

This Agreement shall be construed in accordance with the laws of the State.

**BUSINESS CONTRACT**

This Agreement entered into at \_\_\_\_\_Between M/s.  
\_\_\_\_\_A Company incorporated under the Companies Act, 2013,  
having its registered office at \_\_\_\_\_and Factory at  
\_\_\_\_\_

**AND**

M/s.  
\_\_\_\_\_Represented  
by \_\_\_\_\_ hereinafter referred to  
as the AGENCY/SECOND PARTY.

WHEREAS the company/first party intends to appoint the Agency/Second  
Party as Consignee Agent in the State of\_\_\_\_\_State on the following  
terms and conditions.

**NOW THIS DEED WITNESSETH AS UNDER AGREED BY AND BETWEEN THE  
PARTY HERETO.**

1. This agreement will be effective and from \_\_\_\_\_and will expire  
on \_\_\_\_\_ and be renewable for further periods as may be  
mutually agreed upon between the parties deem fit and proper to be  
mutually decided.
2. The Agency shall maintain proper records of the stocks received from the  
company for delivery/dispatches and account for all the stocks kept by  
them from time to time.
3. The Agency undertakes to provide proper and adequate office and  
warehousing facilities with lying with them to keep proper records and to  
ensure the stocks.
4. The Agency shall ensure that no change is made in the constitution of the  
organization of the Agency's firm except for reasons beyond the control of

the Agency in which case the Agency shall inform the Firm within thirty days of such change.

5. The Agency shall ensure that :

- a) No modification or variation of the agreement shall be valid or binding unless made in Writing and executed by both the parties.
- b) The agency shall not assign or otherwise transfer its rights or benefits liabilities duties or obligations under this agreement to any other party without the prior consent in writing from the company.

6. The agency shall render the following services:

- a) Secure inward and outward handling of our goods including transport cartage. The Agency will efficiently perform the functions as laid down in this agreement.
- b) Invoicing/Delivery/Dispatch/Booking of the consignment to the customers in accordance with companies instructions from time to time.

7. a) The goods would be dispatched by the company from time to time and should carefully be taken delivery of by the Agency from the carriers as having received the goods on behalf of the company.

b) Goods received by the Agency on Company's behalf from the carriers will be kept By the Agency in the warehouse and proper documents shall be made to record the Receipt.

c) In the event of any shortage/damage/manufacturing defect to the consignment noticed. At the time of receipts of stocks from the carriers either or customers, the Agency will inform such facts in writing to the company forthwith within one week of the delivery of the said good, no claim in this regard would be entertained thereafter under any circumstances.

d) To accept and store returned goods from the customers in the company's account and Dispatch the same to the company after making the necessary adjustment in the accounts.

8. a) The goods received by the Agency for Delivery/dispatch, the Agency will be fully responsible for the safe custody of our products. Any shortage/damages would be to the Agency's account in terms of Clause 7 above.

The Agency undertakes that the company's products shall be always stored in a proper manner, which may be verified by the Company's authorized representatives.

b) The Agency shall release the company's products only on receipt of a written order from the company. Expeditious dispatch of stocked materials against all orders received by the Agency shall be the essence of the contract.

9. a) The Agency will deliver the goods of the company's customers within the state of ———— & shall see that the dispatch to the company's customers is made accurately and that the stocks pertaining to respective customers (as indicated in the invoice) are delivered dispatched accordingly in view of the express order placed by the company to the Agency.

b) The agency will back the consignments meant for the company's up-country customers According to the company's express order/advice through stipulated carriers and obtain the Consignment note for the same.

c) In connection with the above two deliveries, the Agency may incur following incidental Expenses wherever necessary in their own account.

I. Packing as and when required.

II. Telegraphic/telephonic expenses.

III. Local courier, postage etc.

IV. Loading and unloading expenses.

V. Legal charge.

VI. Fax & Xerox charge.

VII. Outward Freight & Local (cartage) shall be debited to the company's account with supporting documents.

VIII. The agency shall strictly adhere to the company's delivery/supply instructions.

d) All the business of the respective state will be executed only through the agency.

e) The Agency/Second Party shall charge at the rate of 10% on the company's rate as his services charge and should prepare the bills in the name of distributors.

f) All the distributors will be appointed with mutual consents of the company and the Agency. However, the payment responsibility lies solely with the agency. There is no target set in the first phase of the plan but the same will be done at a latter Date as soon as the market establishes.

g) All the materials as per the indent placed by the agency will be dispatched through Transport and the bill along with consignment note shall be forwarded to the agency directly. No credit shall be allowed and all the goods supplied to the Agency shall be after the payment of the bills against the ordered good.

h) The company will spend on local advertising (Magazines etc.) and P.O.P.S.

10. In consideration for the services performed by the Agency as stated hereinabove, the Company shall pay to the Agency charges in the following manner:

The party of the second part that is the Agency undertakes to provide a deposit of ₹. ————— only to the party of the First Party by issuing a Cheque. In favour of the Party on the First Part and shall be returned/refunded to the party of the second party on expiry/termination of this agreement.

11. a) Submit a detailed stock ledger to the company at its head office on the 15th of every month.

b) Provide the company's head office in time with the necessary statements reports.

c) Not to provide access to any unauthorized person in the company's warehouse where the goods are stored or in the office where information on stocks prices are available.

d) Help the company in filing sales Tax returns and any other relevant acts by providing accurate sales date to HO. The company shall not take responsibility of payment of all dues from C & A premises and the C&A (Agency) will be held responsible for any non-payment of such dues to the Government.

12. Should there be any dispute between the company and the Agency in regard to or related to or arising out of this Agreement the party shall try to resolve the dispute in mutual trust and goodwill.

In the event of such dispute or difference is not settled amicably by negotiation, the same shall be referred to a sole Arbitrator and the matter will be settled as per the provisions of Indian Arbitration Act.

The decision of the Arbitration shall be final and binding on both the parties. This agreement is entered into at————— and Jurisdiction of all the matters pertaining to this agreement shall be at (Registered office only).

The Authorized representative(s) of the company shall have the right to visit the company's ware house and will also have the right to inspect verify and direct the Agency in connection with the aforesaid business. The Agency agrees to comply with such instructions, directions within the framework of this Agreement and the decision of the authorized representative shall be final & binding in whatsoever may be the matter.

The company shall designate and only authorize an (office of the company to give instructions and Directions for day to day operations for or on behalf of the company. The agency shall at all times during the continuance of this Agreement obey and observe all directive and instructions which may be given from time to time by such representative within the framework.



13. The transit insurance on the supply made by the company to the agency's warehouse and from the warehouse to the customer will be arranged by the company.

14. Either party may terminate this agreement by giving to the other party 90 days prior notice in writing sent through a registered post with A/D of its intention to do so and upon its termination. The Agency shall account for and hand over to the company forth with all the goods/documents of the company in the Agency's custody. Simultaneously with receiving amounts of deposit with agreed interest and commission expenses due if any.

15. The company shall be entitled to terminate this agreement forthwith upon the happening of the following events.

a) If the Agency commits a breach of any provisions of this agreement and fails to rectify the same within 15 days from receipt of a written notice from the company to do so.

b) If the owner of the Agency's firm becomes insolvent or is adjusted as an Insolvent or if the Agency has made any application to the Court to be adjusted as insolvent.

c) If the agency enters into a compromise with their or his creditors or if any Distress execution of other process is served upon the Agency or if any encumbrance takes possession or a receiver is appointed for any part of the property or assets of the Agency of its proprietor.

16. That the company reserves the right to amend, modify or cancel any or all the clauses mentioned herein without assigning any reason, therefore.

17. Neither company it's representative would not responsible for payment from the parties in any case.

WITNESSES:

SIGNATURE:

ADDRESS

FIRST PARTY

SECOND PARTY

**CHAPTER – 17****PARTNERSHIP AGREEMENT**

Partnership Agreement is an agreement between two or more individuals which includes terms for how profits will be divided, the responsibilities of the partners, how to manage the partnership, and how decisions will be made. A buy-sell agreement is used to control what happens to the business partnership ownership and management. Partnerships can offer tax advantages by allowing income to be taxed at the partner's individual tax rate, rather than corporate rates.

**1. NAME AND BUSINESS**

The names of the parties hereby form a Partnership to conduct a business and contains a place where principal office of the business is situated.

**2. TERM**

The term in Partnership Agreement implies the date of commencement of business and shall continue until terminated.

**3. CAPITAL CONTRIBUTION**

The capital of the partnership shall be contributed in cash by the partners. A separate capital account shall be maintained for each partner. Neither partner shall withdraw any part of his capital account upon the demand of either partner, the capital accounts of the partners shall be maintained at all times in the proportions in which the partners share in the profits and losses of the Partnership.

**4. PROFIT AND LOSS**

The net profits of the partnership shall be divided equally between the partners and the net losses shall be borne equally by them. A separate income account shall be maintained for each partner. Partnership profits and losses shall be charged or credited to the separate income account of

each partner. If a partner has no credit balance in his income account, losses shall be charged to his capital account.

**5. SALARIES AND. DRAWINGS**

Neither partner shall receive any salary for services rendered to the Partnership. Each partner may, from time to time, withdraw the credit balance in his income account as mutually agreed by all the partners.

**6. INTEREST**

No interest shall be paid on the initial contributions to the capital of the Partnership or on any subsequent contributions of capital.

**7. MANAGEMENT DUTIES AND RESTRICTIONS**

The partners shall have equal rights in the management of the partnership business, and each partner shall devote his entire time to the conduct of the business. Without the consent of the other partner neither partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business.

**8. BANKING**

All funds of the Partnership shall be deposited in its name in such chequing account or accounts as shall be designated by the partners. All withdrawals are to be made upon cheques signed by an authorized partner.

**9. BOOKS**

The Partnership books shall be maintained at the Principal office of the Partnership, and each partner shall at all times have access thereto. The books shall be kept on a fiscal year basis. An audit shall be made as of the closing date.

**10. TERMINATION**

The Partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable

promptness to liquidate the business of the partnership. The partnership name shall be sold with the other assets of the business. The assets of the partnership business shall be used and distributed in the following order:

- i. (i) To pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations.
- ii. (ii) To equalize the income accounts of the partners.
- iii. (iii) To discharge the balance of the income accounts of the partners.
- iv. (iv) To equalize the capital accounts of the partners.
- v. (v) To discharge the balance of the capital accounts of the partners.

#### **11. DEATH OF THE PARTNER**

On the death of any Partner, the Partnership shall not be dissolved. In such a case the following order of preference shall be followed:

- i. (i) The deceased Partner's legal heir shall have the choice of either being admitted as a Partner in his place; or
- ii. (ii) Selling of his share to any of the existing Partner's or
- iii. (iii) In case an existing partner refuses to purchase the share as above, selling the share to such a person as may be mutually agreed amongst the surviving Partners and the legal heir.

#### **12. ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in accordance with the rules of Arbitration & Conciliation of the Act and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

## PARTNERSHIP AGREEMENT

THIS INDENTURE OF PARTNERSHIP IS MADE ON the..... day  
of..... 20\_\_\_\_\_

### BETWEEN

A.B. .... S/o..... R/o.....  
aged..... (hereinafter called the 'First Party')

### AND

C.D..... aged..... years, son of.....  
resident of.....(hereinafter called the 'Second Party').

WHEREAS the parties hereto have agreed to commence business in partnership and it is expedient to have a written instrument of partnership.

WHEREAS the parties hereto have mutually agreed to carry on the business of..... (here describe the business) at..... (here specify the place or the principal place of business) and to share the profits and losses of the said business in partnership between themselves and they have with that object constituted themselves into a firm of partners under the name and style of M/s..... (here give the name of the firm).

### THE TERMS AND CONDITIONS AGREED TO BY AND BETWEEN THE PARTIES HERETO WITNESSES:

1. The duration of the firm shall be, to begin with, a period of..... years or such further or lesser period as the parties may choose to mutually agree.
2. The capital of the firm for the time being is fixed at ..... (Rupees.....) only which has been contributed by the partners as follows namely:

First Party.....

Second Party.....

(In case minor is admitted to the benefits of the partnership the capital contributed by him, if any)

Provided that the partners may by mutual agreement increase or decrease the capital and their respective contributions thereto. The partners by mutual consent may raise capital by way of loans if considered expedient.

3. The partners shall distribute the net profits and bear the losses in the following ratios:

First Party.....

Second Party.....

4. The partner shall be entitled to withdraw out of the profits, money not exceeding Rs..... in each month adjustable against the account of the respective partners at the time of annual accounting.

5. The First party shall make available to the firm the shop premises in which the business of the firm shall be carried on, situated at..... and which shop or premises is in his occupation as a tenant from month to month paying a monthly rent of Rs..... to Shri..... and shall hereafter hold the said shop or premises in trust for the partnership for which rent shall be paid out of the partnership from the date mentioned in para 1 above.

6. The said rent, and all taxes, duties, repairs and outgoings in respect of the said shops or premises or other place or places of business of the partnership shall be paid out of the partnership.

7. No apprentice, clerk or servant shall be employed or dismissed without the consent of all the partners.

8. The firm shall regularly maintain in the ordinary course of business a true and correct account of all its incoming and outgoings and also all its assets and liabilities in proper books of accounts which shall ordinarily be kept at the firm's place of business.

9. Immediately after each..... day of..... in every year, the partners shall take an account and valuation of the effect, credits and liabilities of the partnership. Such accounts and valuations shall after mutual examination be drawn up in duplicate and signed by the partners, we shall each retain a copy. The entries in such signed accounts shall be final and binding between the parties. The profits or loss, as the case may be, shall be divided as aforesaid, after the signing of such account.

10. The authority of the partners, individually shall be limited to the following:

a) No partner shall individually purchase goods for the partnership without consulting the other and obtaining his consent for purchases of the value exceeding .....

b) No partner shall singly bind the partnership by taking any loan or raising any money whether with or without security to the extent of more than.....

c) No partner shall commit the partnership without obtaining the written consent of the other, to any undertaking which involves the partnership financially to the extent of more than .....

d) All lawsuits shall be filed and defended by the partnership by the partners acting jointly in all cases which involve the partnership financially to the extent of more than .....

11. The partnership shall be deemed to be continuing on the admission of a fresh partner or partners, provided the admission is on the terms herein laid down and is approved by all the partners.

12. Every partner shall be entitled to dissolve the partnership in the event of the other committing breach of the conditions herein covenant. The partnership may be dissolved by a notice in writing sent by registered post to the address herein given or such address as may be registered from time to



time with the Registrar of Firms. On the dissolution of the firm under this clause the expelled partners shall not be liable for any loss incurred as from the date of dissolution. But no profit or loss shall be paid or become payable except at the time of annual accounting.

13. On the bankruptcy of any partner or on notice being given to either partner under clause above or on the death and there being no major legal representative willing or capable to take the place of the deceased partner the partnership shall terminate. The share of such partner may be purchased by the remaining partner(s) at a valuation to be made by arbitrators or their umpire as hereinafter mentioned. The price shall be paid in 3 equal six monthly installments. The tenancy right of the first party shall be valued at..... years' rental.

14. Upon the determination of the partnership by afflux of time, or upon its determination by any other partner then, as soon as convenient, a full and general account of valuation shall be taken of the property and assets and liabilities of the partnership and the property and the assets put to sale and the debts realized and the creditors paid. The net proceeds in cash shall be equally divided between the then partners or the partners and the legal representative or representatives of the deceased partner; PROVIDED always, that if the proceeds are less than the liabilities the loss shall be made good in equal shares by the then partner, or the legal representative or representatives of any deceased partner.

15. If at any time any dispute, doubt or question shall arise between the partners, or their representatives either on the construction of these presents, or respecting the accounts, transaction, profits or losses of the business or otherwise in the relation to the partnership then every such dispute, doubt or question shall be referred to arbitrators chosen by each of the partners and the representatives of their umpire to be appointed in the manner provided by law and such reference shall in all respect, as to the mode and consequence thereof conform to the provisions in that behalf contained in the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

IN WITNESS WHEREOF the said A.B. and C.D. have hereto at..... signed the day and the year first above mentioned.

WITNESSES

Sd/- A.B.

Sd/- C.D.

## **CHAPTER – 18**

### **SHAREHOLDER AGREEMENT**

A Shareholders' agreement is an important contract between shareholders and the company, and between the shareholders themselves. It governs the shareholders' rights, obligations and liabilities

Provisions found in a shareholders agreement include:

#### **1. ISSUE OF SHARES**

The issued share capital is the total of a company's shares that are held by shareholders. A company can, at any time, issue new shares, unless a limit is set in the company's articles subject to an authorized capital figure, that is, the maximum amount of share capital a company is authorized to issue to shareholders until their memorandum and articles are amended.

#### **2. SHARE CERTIFICATE**

The shareholders acknowledge their receipt of certificates, representing the shares issued by the Company subject to this Agreement. There shall be no further issue of capital without the consent of both the parties hereto, and unless otherwise agreed upon in writing further investment shall be as mutually decided by both parties.

#### **3. MEETING**

Shareholders have the right to conduct the Extraordinary General Meeting, Annual General Meeting and other meetings. They are entitled to vote and authorize any other shareholder to act as proxy at any meeting.

#### **4. TRANSFER OF SHARES**

Any sale or transfer of shares in the Company by either party shall first offer such shares in writing to the other shareholder. If the other does not accept in writing the offer within 15 days of receipt of the offer, the first party shall then be at liberty within 30 days thereafter to sell the shares so offered to any other persons of its choice at the same price and on the same terms and conditions as contained in its written offer to the other party hereto transfer strictly in accordance with the provisions of this Agreement.

#### **5. SHAREHOLDER'S APPROVAL**

The shareholders approval is required by passing special resolution in such cases like reduction of share capital, buy back of shares etc.

#### **6. DISPUTE**

If any dispute arises between the Company and shareholders then the parties shall refer to Arbitration & Conciliation Act to resolve the problem.

#### **7. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the parties hereto on the subject matter hereof and cancels and supersedes all prior agreements, arrangements or understandings, if any, whether oral or in writing, between the parties hereto on the subject matter hereof.

#### **8. DRAG ALONG AND TAG ALONG RIGHTS**

A drag along right allows a majority shareholder of a company to force the remaining minority shareholders to accept an offer from a third party to purchase the whole company. The majority shareholder who is 'dragging' the other shareholders must offer the minority shareholders the same price, terms and conditions that the majority shareholder has been offered. A drag along right allows a majority shareholder of a company to force the remaining minority shareholders to accept an offer from a third party to purchase the whole company. The majority shareholder who is 'dragging'

the other shareholders must offer the minority shareholders the same price, terms and conditions that the majority shareholder has been offered.

- i. Moreover, Tag along rights are also known as 'co-sale rights' are the inverse of drag along rights. When a majority shareholder sells their shares, a tag along right will entitle the minority shareholder to participate in the sale at the same time for the same price for the shares. The minority shareholder then 'tags along' with the majority shareholder's sale. Tag along rights are usually worded to state that if the tag along procedures aren't followed then any attempt to buy shares in the company is invalid and won't be registered.

## SHAREHOLDER AGREEMENT

THIS AGREEMENT made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

### BETWEEN

MR\_B residing at \_\_\_\_\_ (hereinafter referred to as "A") (which expression shall, unless repugnant to the context or meaning hereof, mean and include his heirs, executors, administrators and assigns) of the First Part.

### AND

MR. B residing at \_\_\_\_\_ (hereinafter referred to as "B") (which expression shall, unless

repugnant to the context or meaning hereof, mean and include his heirs executors, administrators and assigns) of the Second Part.

### AND

\_\_\_\_\_ ( P ) LTD., a Company incorporated under the Companies Act, 2013 and having its registered office at \_\_\_\_\_ herein represented by its \_\_\_\_\_ (hereinafter referred to as "XYZ") which expression shall, unless repugnant to the context or meaning hereof, include its successors and assigns) of the Third Part;

### WHEREAS:

A. A and B hereto have agreed to jointly manage a company in India named "XYZ Pvt Ltd";

B. A and B have agreed to become Equity Partners by investing in the shares of the Company subject to the condition that they shall enter into a Shareholders Agreement in terms of these presents;

C. The Company "XYZ PVT. LTD. " has been requested to, and has agreed to, join in the execution of these presents and to take this Agreement on record so that it is aware of the rights and obligations of A AND B, the parties hereto and ensure that they comply with the same;

D. The parties hereto are desirous of recording the terms and conditions of their Agreement in writing;

**NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1.a) A and B shall jointly invest in the Company which is an existing company limited by shares under the Companies Act, 2013 and known as "XYZ PVT LTD".

b) The registered office of the Company shall be situated at \_\_\_\_\_, or at such other places as may be mutually agreed upon between the parties in writing.

c) The Company shall carry on the business of running and managing restaurants and (Description of the business and complete address), either by itself or through other agencies or company industries and may carry on any other business as may be decided by B hereto and shall ensure that no other business activity is undertaken by the Company at any time without the consent of A hereto.

2. The authorized share capital of the Company is ₹\_\_\_\_\_/-(Rupees)\_\_\_\_\_ only) consisting of \_\_\_\_\_ (\_\_\_\_\_) equity shares of Rs.10/- (Rupees ten) each.

3. The subscription by A hereto to the aforesaid authorized share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10 (Rupees ten only) and the subscription by B to the aforesaid authorized share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10/-(Rupees ten only).

4. There shall be no further issue of capital without the consent of both the parties hereto, and unless otherwise agreed upon in writing further investment shall be as mutually decided by both parties.

5.a) The Board of Directors of the Company shall consist of A and B

b) A shall have the right to nominate two (2) Additional Directors onto the Board and B shall have the right to nominate three or more Additional

Directors on the Board. Both parties shall be entitled at any time to remove any of the representatives on the Board by written notice to the other party and to appoint another or other/s in their place.

c) The day to day management of the Company shall be looked after by a Managing Director to be appointed with the consent of B hereto. Any major acquisition of property, substantial expansion of business activities or diversification or matters of policy shall be with the prior consent of B.

d) It is agreed as between the parties hereto that the position of Chairperson of the Company shall be held by B or a nominee of B. The Chairman of the Board shall also be the Chairman of all general meetings of the Company.

6. A and B hereto jointly and severally shall vote and act as members of the Company and with respect to the shares of the Company held by them, so as to ensure that Directors of the Company are at all times appointed and maintained in office in conformity with the provisions of this Agreement. If at any time the provisions of this Agreement are not fully complied with, A and B jointly and severally agree to promptly take all necessary steps to ensure that the provisions of this Agreement hereof are fully implemented in letter and spirit.

7. a) The Auditors of the Company shall be M/s. \_\_\_\_\_

b) The Auditors of the Company shall not be changed without the prior written consent of both A and B.

8. Any sale or transfer of shares in the Company by either party shall be as provided in Clause 9. If at any time during the continuance of this Agreement either A or B, desire to sell or transfer all or any of their respective shares held by them in the Company, they shall do so strictly in accordance with the provisions hereinafter written.

9. If either A or B desires at any time to sell the whole or part of their shares in the Company, he shall first offer such shares in writing to the other. If the other does not accept in writing the offer within 15 days of receipt of the offer, the first party shall then be at liberty within 30 days thereafter to sell the shares so offered to any other persons of its choice at the same price and on

the same terms and conditions as contained in its written offer to the other party hereto in the first instance, failing which the procedure contained in this sub-clause will have to be repeated by a party desiring to sell his shares.

10. B will bring in further working capital to run an F & B Unit(s) at \_\_\_\_\_ (Address of registered office). \_\_\_\_\_ Bank had advanced loans of about . 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) to XYZ which loans have to be repaid by them. B will be bringing further money upto Rs. (Rupees Only) to repay the loan. The Balance . \_\_\_\_/- has been secured with the collateral security provided B. XYZ have entered into a Management and Royalty Agreement with ----- (P) Ltd., for the operation and management of the F&B unit(s) of XYZ and are entitled to receive their share of profit. A and B are equally entitled to this share of profit being equal shareholders of XYZ. It is hereby agreed that A shall not be entitled to a percentage of the profit which shall not exceed \_\_\_\_\_ (Rupees Only) per month from XYZ out of his share of profit subject to the terms contained herein and/or in any other document executed by him on behalf of XYZ.

The balance money attributable to A shall be utilized to repay the loans and interest outstanding to \_\_\_\_\_ Bank, and the amount of. \_\_\_\_\_ /- brought in by B and interest thereon, and towards the working capital brought in by B and interest thereon and any other loans of the XYZ. This arrangement will continue till the entire sums (liabilities) together with the interest thereon have been repaid. However B will be entitled to withdraw the profit attributable to his share.

11. B will be entitled to interest at the rate of 12% per annum on the sums brought in by him or his Associates / concerns / businesses

12. A and B agree and undertake not to disclose or divulge directly or indirectly to any third party any trade or business secret or other secret or confidential information pertaining to the business, affairs or transactions of each other or of the Company or of their clients or customers, that may have been disclosed, imparted to or acquired by either of them from the other or from the Company.

13. A and B jointly and severally undertake:-



a) that they shall ensure that they, their representatives, proxies and agents representing them at general meetings of the shareholders of the Company shall at all times exercise their votes in such manner so as to comply with, and to fully and effectively implement, the provisions of this Agreement.

b) That if any resolution is proposed contrary to the terms of this Agreement, the parties, their representatives, proxies and agents representing them shall vote against it. If for any reason such a resolution is passed, the parties will, if necessary, join together and convene an extraordinary, general meeting of the Company in pursuance of section 169 of the Companies Act, 1956 for implementing the terms of this Agreement.

14. A and B shall jointly and severally procure and/or ensure that the Director or Directors of its choice on the board of the Company shall at all times fully and effectively implement and comply with (including by exercise of voting rights at meetings of the Board or resolutions by circulation and on resolutions passed at a meeting of any Companies of the Directors) the provisions of this Agreement.

15. If either A or B shall commit a breach of any of the terms or provisions of this Agreement and shall fail to rectify such breach within Sixty (60) days from the receipt of written notice from the party complaining of the breach, then the latter shall be entitled, without prejudice to its other rights and remedies under this Agreement or at law, to terminate the Agreement recorded herein by written notice.

16. No modification or alteration of this Agreement or any of its terms or provisions shall be valid or binding on A and/or B unless made in writing duly signed by both.

17. This Agreement is personal to A and B and shall not be transferred or assigned in whole or in part by either party without the prior written consent of the other.

18. If any dispute or difference shall at any time arise between A and B as to any terms, provisions or matters contained herein on as to their respective rights, claims, duties or liabilities hereunder or otherwise, howsoever in

relation to or arising out of or concerning this Agreement, such dispute or difference shall be referred to the arbitration.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first

Herein above written.

SIGNED AND DELIVERED by

(MR. A)

(in the presence of)

SIGNED AND DELIVERED by

(MR. B)

(in the presence of)

SIGNED AND DELIVERED

For and On Behalf of

(XYZ by its Shareholders and Authorized Directors)

MR. A

MR. B

(in the presence of)

## **CHAPTER - 19**

### **CONTRACT OF AGENCY**

When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a 'Contract of Agency'. The person who is so represented is called the 'principal' and the representative so employed is called the 'agent'. The duty of the agent is to enter into legal relations on behalf of the principal with third parties. But, by

doing so he himself does not become a party to the contract nor does he incur any liability under that contract. Principal shall be responsible for all the acts of his agent provided they are not outside the scope of his authority

Agency may be created by any of the following ways:

**1. EXPRESSLY**

When an agent is appointed by words spoken or written, his authority is said to be express.

**2. IMPLIEDLY**

When agency arises from the conduct of the parties or inferred from the circumstances of the case, it is called implied agency.

**3. AGENCY BY NECESSITY**

Under certain circumstances, a person may be compelled to act as an agent to the other, e.g. the master of the ship can borrow money at a port where the owner of the ship has no agent, to carry out necessary repairs to the ship in order to complete the voyage. In such a case of necessity, a person acting as an agent need not necessarily have the authority of the principal. However, the agent must act under pressing conditions and for the benefit of the principal.

**4. AGENCY BY ESTOPPEL**

When an agent has without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts and obligations if he has by his words or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority.

**5. AGENCY BY RATIFICATION**

Ratification means subsequent acceptance and adoption of an act by the principal originally done by the agent without authority. According to section 196 "Where acts are done by one person on behalf of another but without his knowledge or authority, he may check to ratify or to disown

such act. If he ratifies them, the same effects will follow as if they had been performed by his previous authority.”

## **6. ASSIGNMENT OF RIGHT**

This is the key clause in the Agency Agreement that gives the Company’s agent the right to market the products or services and allows the Company some flexibility in amending the scope of the products or services it allows the Agent to offer on its behalf.

## **7. TERRITORY**

Here we can define the geographic area in which the Agent will be allowed to market and sell the product or service. The scope of the Territory may be as large or as restrictive as the Company deems appropriate.

## **8. EXCLUSIVITY**

This section defines whether or not the Agent will be the sole party allowed to market the product or service within the territory. It grants them such exclusivity. However, we can appoint multiple agents within a territory by not providing exclusive right to market the Products within the Territory.

## **9. TRADEMARK RIGHTS**

This point does two things:

- (i) Reaffirm the Company’s rights in its trademark and
- (ii) Clearly spell out the permission the Agent has to use the Company Trademarks in order to promote the products or services.

## **10. AGENT RESPONSIBILITIES**

This point should clearly set out the agent’s responsibilities in marketing and offering the Products for sale in the Territory.

## **11. COMMISSION**

This point is to clearly state the percentage (%) of all Net Product Sales directly from the Agent’s Efforts and is payable to the Agent. *(Net Product Sales shall be defined as the amount of sales revenue from any sales made*

*by the Agent less any charge backs, returns, or defaults by customers) or such other critical factor related to the payouts of Agent.*

**12. CONFIDENTIALITY**

This point aims to prohibit the Agent from disclosing any sensitive information and also ensure that the Agent returns to the Company any proprietary documentation that may contain such information, such as customer lists and price points.

**13. TERM AND TERMINATION**

This point should mention the commencement (*generally on the date of execution of contract*) and the date or time of termination of the contract.

**14. INDEMNIFICATION AND MODIFICATION**

This point seeks to protect the Company from any harmful acts taken by the Agent while performing the duties under this Agency Agreement and ways to modify the agreement.

**15. APPLICABILITY OF THE LAW**

This point should mention the laws of the State and exclusive jurisdiction of the federal and state courts located in the area by which Agreement and the interpretation of its terms shall be governed and construed.

**16. WITNESS**

This point should mention the detail of the person who witnesses the execution of this agreement.

**AGENCY CONTRACT**

THIS        agreement        made        on        this.....day  
of.....

**BETWEEN**

.....(principal) (hereinafter called "the principal") of the one part

**AND**

..... (agent) (hereinafter called "the agent") of the other part.

**WHEREBY IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS**

1. That the agent is hereby appointed the sole agent of the principal for the town..... (in the district of) (hereinafter called "the agency town") for the purpose of making sales of the principal's goods for a term of..... years commencing from the date hereof on the terms and conditions set forth hereunder.
2. That the agent shall not, while selling the principal's goods make any representation in the trade or give any warranty other than those contained in the principal's printed price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself..... per cent of the list price of all goods sold on behalf of the principal. The agent shall keep a record of all sales and shall regularly remit to the principal on each Saturday all sums received by the agent in respect of such sales less..... per cent his agency commission. All sales shall be made for cash against delivery of goods unless the principal's consent in writing to give credit to any particular purchaser be in any case first obtained and in the case of such credit sales the principal may direct for such increase in the price of his goods over and above the current list price of the principal.

4. That the agent shall not make purchases on behalf of nor in any manner pledge the credit of the principal without the consent in writing of the principal.

5. That the agent shall, at the expense of the principal, take on rent and occupy for the purpose of the agency, suitable premises with prior approval of the principal and shall keep insured for full value against all available risks, all the goods entrusted to his custody by the principal under this agreement and on request, shall produce to the principal, receipts, for the rent, rates and taxes of the said premises and for the premiums on insurance policies showing that the same have been paid on or about their respective due dates. That the agent shall bear all expenses relating to or incidental to the said agency.

6. That the agent, while selling to persons in the trade, shall obtain the purchaser's signature to an agreement to the following effect:

(i) That the said principal's goods shall not directly or indirectly be re-sold outside the agency district.

(ii) That the said principal's goods shall not be re-sold to the public below the list price for the time being.

7. That the agent shall, in all his commercial dealings and on documents and on the name-plate or letterhead indicating his place of business, describe himself as selling agent for the principal.

8. That a breach of the condition in clause 6 hereof shall entitle the principal to put an end to this agreement forthwith and also to recover from the said agent by way of liquidated damages the sum of ₹..... for each such article sold in breach of such clause. The agent undertakes that all purchasers to whom he may sell the principal's goods shall duly enter into, and carry out the aforesaid agreement referred to in clause 6 hereof for the purposes of this agreement be deemed to be a breach of clause 6 of this agreement by the agent and give the principal the rights and remedies against the agent for breach by the agent of this agreement.

9. That the principal shall keep with the agent a stock of his goods free of all expenses of delivery to the value of ₹..... according to

the principal's current price list and the principal further undertakes to replenish such stock on the close of each month so as to keep it at the agreed value. Provided always that the agent shall have no right of action against the principal for delay resulting from shortage of stock, delays in transit, accidents, strikes or other unavoidable occurrences in replenishing such stock. The principal shall always have the right, without any prior notice, to cause a stock checking of the said goods and on any shortage or deficiency found on such stock-taking the agent shall on demand pay to the principal the list price of such shortage or deficiency less the deduction by way of commission or rebate receivable by the agent. The agent shall not alter, remove, or tamper with the marks or numbers on the goods so entrusted into his custody.

10. That the agent shall not sell the goods of the principal to any purchaser except at the current price list of the principal conveyed by him from time to time. The agent may, however, allow a discount or rebate of..... per cent.

11. That in the event of any dispute arising between the agent and a purchaser of the principal's goods, the agent shall immediately inform the principal of the same and shall not without the principal's approval or consent in writing take any legal proceedings in respect of or compromise such dispute or grant a release to any purchaser of the principal's goods.

12. That either party may terminate this agreement at his option at any time after the expiration of..... years by giving the other one month's notice in writing.

13. That the benefits under this agreement shall not be assignable to any other person.

14. That the agent shall always, during the existence of this agreement, devote his whole business time and energy for pushing the sale of the principal's goods and shall in all such dealings act honestly and faithfully to the principal and shall carry out orders and instructions and shall not engage or be interested either directly or indirectly as agent or servant in any other business or trade without the prior consent in writing of the principal.

15. That on the termination of his agreement for any reason whatsoever, the agent shall not for the period of one year solicit trade orders from the persons



who had been purchasers of the goods of the principal any time within..... years immediately preceding the date of such termination and the agent shall not for a period of one year engage or be interested as agent or servant in any business, firm or company manufacturing, selling or dealing in goods similar to those of the principal.

16. That all goods shall be sold by the agent for delivery at agent's place or business but the agent shall, at his own expense, have the right to deliver goods to purchasers at their places of business.

17. That without prejudice to any other remedy he may have against the agent for any breach or non performance of any part of this agreement, the principal shall have the right summarily to terminate this agreement:

(i) on the agent being found guilty of a breach of its provisions or being guilty of misconduct or negligence of his duties; or

(ii) on the agent absenting himself from his business duties entrusted to him under this agreement for .....days without the principal's prior permission in writing; or

(iii) on the agent committing an act of bankruptcy.

18. That in the event of any dispute arising out of or in relation to or touching upon the agreement, the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

19. That the principal shall be entitled to terminate this agreement by one month's notice in writing to the agent in the event of his ceasing to carry on the said business of the principal.

20. That on the termination of this agreement for whatever reason, the agent shall forthwith deliver to the principal all the unsold stock of goods and shall pay to the principal for the shortages of deficiency of stock at list price less commission and rebate allowable to the agent. The agent shall also deliver to the charge of the principal all books of account and documents of the agency, cash, cheques, bills of exchange or other securities he may have received during the normal course as a result of sales of the principal's goods and shall

transfer, assign or negotiate in favor of the principal all such securities on demand.

IN WITNESS WHEREOF the parties have signed this deed.

Witness:

.....

(Principal)

.....

(Agent)

## **CHAPTER – 20**

### **NON DISCLOSURE AGREEMENT**

In a general sense a Non-Disclosure Agreement (NDA) is an agreement in which one or more parties to an agreement agrees not to disclose the confidential information specified in that agreement. These agreements are also known as a Confidential Agreement (CA), a Confidential Disclosure Agreement (CDA), a Secrecy Agreement (SA) and a Proprietary Information Agreement (PIA). It outlines the knowledge or information which are confidential and denies the access of that information to any third party. Although NDAs are commonly signed between the two companies, individuals or other entities, an employer can also enter into a Non-Disclosure agreement with his employee.

In India, a non-disclosure agreement is governed by the Indian Contract Act, 1872 for the validity and enforceability of the NDA, which are to be stamped. NDAs are often entered upon so that it can help in protecting the intellectual

property rights like databases, client lists, proprietary information, and sensitive business-related information of a person or a business. It helps the parties to understand their duties and privileges better by writing down their Non-Disclosure Agreement.

There are of three types of NDA:

**1. UNILATERAL NDA**

It involves two parties, out of which only one party discloses certain information to the other and expects that the information is prevented from any further disclosure.

**2. BILATERAL NDA**

It involves two parties; both the parties disclose information to each other, and both of them intend to protect the information from disclosing to another. E.g. Joint Venture.

**3. MULTILATERAL NDA**

It involves three or more parties to the agreement, out of which one of the parties discloses the information to other parties and wishes to have that information protected from any further disclosures. These types of NDAs also eliminate the need for distinct unilateral or bilateral NDA..

Important clauses to be entered in to NDA:

Ignoring the NDA could sooner or later result in legal headaches for the company. Further the unawareness of the indispensable clauses of a

Non-disclosure agreement often leads to lacking of structure and cardinal stipulations.

Important non-disclosure clauses that must be added to every non-disclosure agreement in India (*whether bilateral NDA or unilateral NDA*)

### **1. DEFINITION OF CONFIDENTIAL INFORMATION CLAUSE**

The whole point of the agreement is to keep the information confidential. So it is important to clearly crystallize what is considered to be confidential. The information should be specific and leave no room for ambiguities.

### **2. PARTIES CLAUSE**

It is important to disclose the name of the parties and the representative who shall have access to the confidential information shared during the term of business.

### **3. THE TERM OF CONFIDENTIALITY CLAUSE**

The important factor is the time period for which the NDA should last. Some may want it for a definite period and the others may want it for an infinite period considering that at any point in time why such confidential information is revealed. However, from the perspective of the receipt of the confidential information, it will become a costly affair to guard the confidential information for an indefinite period. Confidential information clause is the most important NDA clause.

### **4. USE OF CONFIDENTIAL INFORMATION CLAUSE**

It is very crucial to clearly state the intended use of the shared confidential information. It should state what is the purpose of sharing the information and where all it can be used. The scope of usage of confidential information clause should mention the name of all the third parties who will be dealing with confidential information.

### **5. MANDATORY AND LEGAL DISCLOSURE CLAUSE**

The recipient may, at some point, be legally compelled to disclose the confidential information to a government agency, court or lawyers. As a measure of protecting both the parties, the NDA must include a clause that

acknowledges that such disclosure will not amount to a violation of agreement.

#### **6. ARBITRATION CLAUSE**

The remedy in case of breach by the recipient must be clearly stated in the arbitration clause of NDA. If the parties wish to resolve their conflict via ADR (alternative dispute resolution) like Arbitration, the NDA must specify arbitration terms, the seat of arbitration and number of arbitrators that can be appointed. The mechanism opted by the parties is mostly arbitration and thus the dispute resolution clause is also known as NDA arbitration clause.

#### **7. JURISDICTION CLAUSE**

Jurisdiction clause of NDA specify which court will have jurisdiction over the parties in case of a future dispute between them.

#### **8. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION EXCHANGED**

The Clause on return or destruction of Confidential Information exchanged

After the expiry of the term of the NDA, the receipt should either destroy or return the confidential information. The clause should stipulate how and when this should occur.

#### **9. CONFIDENTIAL INFORMATION ALONG WITH ITS SCOPE SHOULD BE DEFINED**

Every information should be specified, in other words no space shall be left that may not cover any bases and the information shared by the other party. Scope of the confidential information must be kept wide enough to ensure more protection to current or future trade secrets by enabling the disclosing party to sue for any kind of breach of contract.

#### **10. EVERY PARTY SHOULD BE DEFINED**

Every recipient party of the information should be named or defined. Though it is necessary to define the recipient parties, it is also equally important to not miss mentioning and defining any third recipient party to whom any confidential information may have been disclosed during the course of business discussions.

**11. TERMS AND DURATION OF THE AGREEMENT**

When and how long the confidential agreement shall sustain be fixed and accordingly shall be covered as terms of the agreement. This clause will clarify how long the confidential information needs to stay confidential. How long such trade secrets should be covered under Non-disclosure agreements depends on the situation and each of them may be unique, so it is necessary to specify that in the agreement.

**12. LEGAL OBLIGATIONS TO DISCLOSE**

There are times when recipients of confidential information are legally compelled to disclose which they may have agreed to keep confidential under NDA. So, to overcome such instances such clause shall be included. As this may save the disclosing party as well as the recipient of such information from violation of the agreement.

**13. SPACE FOR EXCEPTIONS**

Drafters should ensure that they have provided certain exceptions to the agreement i.e. certain information which should be included as exceptions in the agreement for example: information already known to the recipient at the date of disclosure, information which are publicly known, information which are disclosed under legal process i.e. by order of court.

**14. REMEDIES**

Equitable remedies and liquidated damages are available as a remedy when there is a breach of disclosure. Injunctive relief is the most opted remedy agreed by the parties of NDA. However it is advisable to include the clause of arbitration also to prevent lengthy litigation in case of breach and along with this jurisdiction clause has also to be included to determine the place of suit in case of any breach of contract.

**15. RETURN OF INFORMATION**

Non-disclosure agreement should contain a clause stipulating how and when confidential information covered under NDA need to be returned by the recipient party. This clause is necessary as it would inform the Recipient

Party that all received information must be returned or deleted. This clause also makes clear that in what manner these information has to be returned.

**16. REGISTRATION AND STAMPS**

Registration of document arises when there is a transaction for an immovable property. However in NDA's it covers purely business information so agreement can be printed on a non-judicial stamp and can get the same notarized to avoid disputes in future.

## NON DISCLOSURE AGREEMENT

This Agreement is made and entered into by and between \_\_\_\_\_ ABC (hereinafter referred to as ABC) having offices at \_\_\_\_\_

### AND

DEF (hereinafter referred to as DEF) having offices at \_\_\_\_\_

Subject of ABC Information: Business and technical information including but not limited to its ideas, products, proposed products, processes, services, capabilities, and materials, or any information which quantifies, classifies, or identifies any ideas, products, proposed products, processes, services, capabilities and materials to be employed including \_\_\_\_\_

Subject of DEF Information: Business and technical information including but not limited to its ideas, products, proposed products, processes, services, capabilities, and materials, or any information which quantifies, classifies, or identifies any ideas, products, proposed products, processes, services capabilities and materials to be employed including \_\_\_\_\_

Purpose(s) of Disclosures:

To exchange confidential information to enable the parties to discuss possible future business collaborations relating to the aforementioned business and technology.

The parties anticipate that technical and business information, and/or media samples, prototype parts or other tangible embodiments of information, may be disclosed or delivered between the parties, for the above stated Purpose(s), such information and tangible embodiments constituting confidential information, being considered by ABC and DEF to be proprietary (and being referred to hereinafter, collectively, as "Proprietary Material"). Any party furnishing Proprietary Material will be referred to as a "disclosing party" and a party receiving Proprietary Material will be referred to as a "receiving party." In order to provide for the protection of such Proprietary Material from



unauthorized use and disclosure, the parties hereby agree that the disclosure of such Proprietary.

**MATERIAL BETWEEN THEM SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. Both parties agree that all Proprietary Material which relates to the above-stated Subject(s)

and Purpose(s) and which is disclosed to the receiving party by the disclosing party, whether orally, or in written or other tangible form, will be maintained by the receiving party in confidence, provided, that:

a) disclosures in writing are expressly marked with a confidential or proprietary legend;

b) oral disclosures and tangible embodiments in a form other than written are identified as confidential or proprietary at the time of disclosure or delivery; and

c) oral disclosures are thereafter reduced to writing and marked with a confidential or proprietary legend, which writing is thereafter furnished to the receiving party within thirty (30) days after the oral disclosure.

The receiving party may, however, in furtherance of the aforesaid Purpose(s), disclose such Proprietary Material to its professional advisors, investment committee participants, and those of its employees and others under its control, all of whom will be advised of this Agreement and agree to accept the obligations there under. The receiving party further agrees not to reverse engineer any tangible embodiments of Proprietary Material furnished by the disclosing party, not to disclose any Proprietary Material to third parties and limit circulation of the Proprietary Material to such employees and others under its control having a direct "need to know" in connection with the above mentioned Purpose.

2. The receiving party additionally agrees to take reasonable care to safeguard the confidential nature of the foregoing Proprietary Material, and such reasonable care shall not be less than the degree of care used to prevent disclosure of its own proprietary material. However, the receiving party will

not be liable for disclosure and use of such Proprietary Material: if the Proprietary Material is in, or becomes part of, the public domain other than through a breach of this Agreement by the receiving party; if the Proprietary Material is disclosed to the receiving party by a third party who is not known by the receiving party to be subject to any confidentiality obligation; if the Proprietary Material is disclosed by the receiving party with the disclosing party's prior written approval; or if disclosure of the Proprietary Material is required by any judicial order or decree or by any governmental law or regulation. Further, with respect to such

Proprietary Material provided to the receiving party by the disclosing party, or rule of any stock exchange the receiving party shall not be liable for disclosure and use thereof if such Proprietary Material was of record in the files of the receiving party at the time of its disclosure to the receiving party by the disclosing party or if such Proprietary Material is developed by the receiving party completely independently of the disclosing party's Proprietary Material. Prior to disclosure to any third party of any Proprietary Material to which the receiving party determines the obligations of confidentiality, non-use and non-disclosure do not apply pursuant to this Agreement, the receiving party shall provide thirty (30) days' prior written notice to disclosing party of the intent to disclose such Proprietary Material, stating the grounds upon which the exception is claimed and providing documentation in support thereof. The receiving party shall limit the scope of disclosure to only the portion of the Proprietary Material not protected.

3. Proprietary Material identified and disclosed as provided in this Agreement shall be held in confidence for a period of \_\_\_\_\_ years from the date of disclosure. During such period, such Proprietary Material shall be used only for the Purpose(s) stated above. Neither party acquires any intellectual property rights under this Agreement, except the limited rights to carry out the Purpose(s) above stated.

4. Each party understands that the other is developing and acquiring technology for its own products, and that existing or planned technology independently developed or acquired by that party may contain ideas and concepts similar or identical to those contained in the disclosing party's proprietary information. The disclosing party agrees that entering this

Agreement shall not preclude the receiving party from developing or acquiring technology similar to the disclosing party's, without obligation to the disclosing party, provided the receiving party does not use the disclosing party's proprietary information to develop such technology.

5. All Proprietary Material received and identified in accordance with this Agreement shall remain the property of the disclosing party and shall be returned or destroyed upon request except that the receiving party may keep one copy of such proprietary material for its legal files which shall remain subject hereto. Nothing contained herein shall be construed as a right or license, express or implied, under any patent or copyright, or application therefore, of either party by or to the other party.

6. Each disclosing party warrants that it has the right to make disclosures under this Agreement. *NO OTHER WARRANTIES ARE MADE BY EITHER PARTY. ALL PROPRIETARY MATERIAL IS PROVIDED "AS IS".*

7. The receiving party agrees that no technical data furnished to it by the disclosing party shall be exported from the \_\_\_\_\_ without first complying with all requirements of the concerned rules and regulations, including the requirement for obtaining any export license, if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting any request for authority to export any such technical data.

8. This Agreement

a) will be effective as of the date of the signature by the last party to execute this Agreement, and may be terminated at any time upon written notice by either party;

b) shall automatically terminate \_\_\_\_\_ years from its effective date unless terminated sooner pursuant to provision (a) above;

c) does not obligate either party to deliver a purchase order for the performance of any service or for the supply of any article whatsoever

d) does not obligate either party to perform any service or to furnish any proposal or comments;

e) does not obligate either party to disclose Proprietary Material to the other; and

f) will be binding upon the parties hereto and their successors, assignees, or personal representatives as the case may be. Any termination of this agreement shall not relieve the receiving party of any obligations herein incurred prior to the date of such termination or to be performed subsequent to the date of such termination.

9. The terms and conditions herein constitute the entire agreement and understanding of the parties and shall supersede all communications, negotiations, arrangements and agreements, either oral or written, with respect to the subject matter hereof. No amendments to or modifications of this Agreement shall be effective unless reduced to writing and executed by the parties hereto. The failure of either party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.

10. This Agreement shall apply to any Proprietary Material that may have been provided to either party prior to the effective date hereof.

11. No rights or obligations other than those expressed and recited herein are to be implied from this Agreement. No other existing Agreement between the parties, if any, are modified or terminated by this Agreement. No warranty or representation is made by either party hereto that any information transmitted by it hereunder is patentable or copyrightable, or that any such information involves concepts or embodiments that are free of infringement of other rights. Neither party hereto shall be obligated to prosecute any such action or bring any suit against any person not a party hereto for infringement. Neither party shall indemnify the other party hereto for any liability resulting from infringement of patent, copyright or trademark of a third party caused by the use of any Proprietary Material transferred pursuant to the Agreement. Neither party hereto confers the right to the other to use in advertising, publicity, or otherwise any trademark or trade name of the other party, nor confers any authorization to the other party to act as an agent on its behalf for any purpose.

12. This Agreement shall be governed and interpreted in accordance with the laws of the \_\_\_\_\_, without giving effect to its internal principles of conflict of law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

ABC

DEF

By: \_\_\_\_\_

By: \_\_\_\_\_

(Authorized Signature)

(Authorized Signature)

Name \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date:

## **CHAPTER – 21**

### **PARTITION DEED**

#### **MUTUAL CONSENT**

1. Each party involved has no problem and wants the partition to take place; therefore co-owners execute a Deed of Partition.
2. A Deed of Partition must be signed between the co-owners irrespective of the number of co-owners.
3. Partition Deed has to be registered at the office of the sub-registrar of the place where the property is situated.
4. Stamp duty payable is 2% of the value of the property partitioned.
5. It is not necessary that the proportion of all the owners shall be equal therefore the share of each owner depends on the amount of investment as in the purchase document or as per the law applicable.
6. Where the share of investment is absent in the purchase document it is assumed as per the law that all the co-owners have an equal undivided share of interest, right, and title in the property.

#### **MUTUAL CONSENT IS ABSENT**

1. When all the parties involved do not agree partition deed is executed on a stamp paper and drafted in a clear and explicit manner
2. Deed should be recorded at the office of the sub-registrar to give it a legally binding effect.
3. There should be mentioned in particular the date from which the partition will be effective
4. This particular deed is legally binding document which ensures that the partition of property takes place as per law, and
5. Proper execution of such a deed makes certain that each party involved gets his/her fair share.

Further in case of inherited properties all the co-owners are required to state their share of investment in order to avoid conflicts, hassles in inheritance,

taxation to name a few. Laws of inheritance play an important role in the property division process. Property laws differ for all communities including Hindus, Muslims, and Sikhs. Hence, it is important to study property laws before planning on dividing a property.

**PARTITION DEED**

THIS DEED OF PARTITION made at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN**

(1) Sri. \_\_\_\_\_, S/o. \_\_\_\_\_, Age \_\_\_\_\_ years,  
Occupation \_\_\_\_\_, Residing at \_\_\_\_\_ hereinafter referred  
to as the Party of the First Part.

**AND**

(2) Sri. \_\_\_\_\_, S/o. \_\_\_\_\_, Age \_\_\_\_\_ years,  
Occupation \_\_\_\_\_, Residing at \_\_\_\_\_  
hereinafter referred to as the Party of the Second Part.

**AND**

(3) Sri. \_\_\_\_\_, S/o. \_\_\_\_\_, Age \_\_\_\_\_ years,  
Occupation \_\_\_\_\_, Residing at \_\_\_\_\_  
hereinafter referred to as the Party of the Third Part.

WHEREAS;

1 a) The parties hereto are the members and coparceners of their joint and undivided Hindu Family and as such own immovable properties consisting of land and building thereon and situated at \_\_\_\_\_ and more particularly described in Schedule "A" hereunder written and each of the parties hereto is entitled to share in the Schedule "A" property.

b) Parties to this partition have thrown their properties described in Schedule "A" in the common hatch pot and declared themselves as these properties belonging to Joint Family property.

2. The parties desire to effect a partition of the said properties between themselves as they no longer desire to continue as members and coparceners of their joint family property and desire to be separate in food, worship and estate.



3. The parties have agreed that the said Schedule "A" properties will be divided and partitioned in such a way that namely;

a) The property described in the said First Schedule shall be allotted and belongs to the Party of the First Part exclusively,

b) The property described in the said Second Schedule shall be allotted and belongs to the Party of the Second Part exclusively and,

c) The property described in the said Third Schedule shall be allotted and belongs to the Party of the Third Part exclusively.

4. The parties hereto have proposed to effect and record the said partition in the manner following:

**NOW THIS DEED WITNESSETH AS FOLLOW**

1. The parties have agreed that the said Schedule "A" properties will be divided and partitioned in such a way that namely;

a) The property described in the said First Schedule shall be allotted and belongs to the Party of the First Part exclusively,

b) The property described in the said Second Schedule shall be allotted and belongs to the Party of the Second Part exclusively and,

c) The property described in the said Third Schedule shall be allotted and belongs to the Party of the Third Part exclusively.

2. In consideration aforesaid, each of the parties hereto grant and release all his/her undivided share, right, title and interest in the property allotted to the other of them as aforesaid so as to constitute each party the sole and absolute owner of the property allotted to him/her freed and discharged from all rights, title, interest claims and demands of the other party hereto or concerning the same but subject to the payment of all taxes, rates, dues and duties and assessment payable to Government or Municipal Corporation or any other public body in respect thereof.

3. Each party covenants with the other that he/she has not done any act deed or thing whereby or by means whereof he/she is prevented from conveying and releasing the property to the other in the manner aforesaid.

4. Each party also covenants with the other that each party will execute and get registered, if necessary any deed, assurance or other document which may be required for fuller and more perfectly and assuring the property, allotted to the other but at the cost and expenses of the other.

5. Each party hereto further covenants with the other that the latter will hereafter hold and stand possessed of the property allotted to him/her quietly and peacefully and enjoy the rents and profits thereof without any suit, interruption, claim or demand by the covenanting party, his/her heirs, executors, administrators and assigns or any person claiming under him/her.

6. The original of the deed of partition will remain in the custody of the Party of the First Part and the duplicate copy hereof will remain in the custody of the Party of the Other Part.

7. And it is further agreed and declared that the title deeds relating to the properties and which are common to both of them and which are set out in the \_\_\_\_\_ Schedule hereunder written shall remain with the Party of the First Part who has agreed to give a covenant for production in favour of the Party of the \_\_\_\_\_ Part.

Schedule A

(Details of Undivided properties belongs to Joint Family)

Sr No.	Description of the Property	Property standing in the name of


FIRST SCHEDULE

(Property allotted to the share of Sri..... First part)

SECOND SCHEDULE

(Property allotted to the share of Sri.....Second part)

THIRD SCHEDULE

(Property allotted to the share of Sri.....Third part)

WITNESS:

1. FIRST PARTY
2. SECOND PARTY
3. THIRD PARTY

**CHAPTER – 22**

**VENDORS CONTRACT**

Vendors Contract is entered into to smoothen the business transaction and avoid the future risk of confusion and disputes between parties within the business transactions along with the rights and obligations of the parties. In every economic transaction this agreement is the savior against disputes which may arise between parties. It precisely defines all the details of the product or services being provided.

Following Points should be kept in mind while drafting a Vendors Contract:

**1. DESCRIPTION OF GOODS AND SERVICES TO BE PROVIDED**

It is necessary to give precise provision while describing or specifying the goods or services to be provided. If any recurring services have to be provided then it is beneficial to add a statement of work which will be helpful in defining the stages in which such services have to be provided.

**2. CONSIDERATION AND THE MANNER TO BE PAID**

The vendor agreement should contain a clause for consideration which shall be the essence of the agreement, here in this clause it shall be detailed that how much products or the services cost, when shall payment become due, to whom it shall be paid, on what payment terms it shall be paid and also if there are any penalties for late payment.

**3. TERMS AND TERMINATION**

Engagement terms both for initials and renewals shall be defined which shall also determine the manner in which the transactions have to be done and completed. How the party can terminate the agreement. In many agreements it is somewhere agreeable to terminate agreement for convenience after a specific period of time and somewhere termination of agreement is reasonable for the cause. This clause shall be the essence of performance of agreements.

**4. REPRESENTATIONS AND WARRANTIES**

Representations shall be made by Vendor that the products and services when will get delivered to other party of agreement it shall conform to the specified

requirements, that vendors have the capacity to contract and shall also warrant that no third party rights shall be infringed and services shall be provided in accordance to the industrial standards.

**5. INDEMNIFICATIONS**

Indemnification, by definition, is an obligation by which one party engages to save another from a legal consequence of the conduct of one of the parties, or of some other person this clause is generally inserted to indemnify for a breach of warranty under the agreement, willful or negligent acts, omissions and for infringement of a third party's intellectual property rights.

**6. LIABILITY**

it is advisable to insert this clause as it will define the liabilities of the acts of parties to the agreement. Further to meet the specifics of the business arrangement it is also equally important to mention limitation of liabilities of the parties like by determining sort of overall monetary cap to a party's liability.

**7. INSURANCE COVERS**

for insurance of the merchandise it is advisable to insert this particular clause. The insurance provision will state as to which party will be responsible for taking out insurance and what type of insurance cover has to be taken.

**8. QUALITY, QUANTITY AND INSPECTION IN CASE OF GOODS**

it is the most common area where most of the disputes arise. Suitable provisions relating to the descriptions and inspection of the quality in the contract/agreements.

**9. CONFIDENTIALITY**

it is necessary to determine the definition of confidential information for the purpose of the contract and this definition may change from contracts to contracts as they may cover different aspects and how long the period of protection is required to such definitions.

**10. SETTLEMENT OF DISPUTES AND ARBITRATION**

It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution. It is necessary to provide provisions regarding settlement of disputes under the contract by arbitration or other third party mediation.

**11. FORCE MAJEURE**

Acts of God should be added as an exception clause for the purpose of the performance of the contract this clause specifically mentions under what circumstances and events which are beyond the control of the vendor which would entitle him to delay the performance of contract or non-performance of the contracts.

**12. JURISDICTION**

jurisdiction of the agreement shall be determined where if any disputes may arise in performance of agreements can be sued accordingly

**VENDOR CONTRACT**

THIS AGREEMENT made on this \_\_\_\_\_ day of \_\_\_\_\_, between XYZ a company incorporated under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the SELLER, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the ONE PART

**AND**

PQR (give name and description of the person or legal entity) (hereinafter referred to as the BUYER which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the OTHER PART.

WHEREAS the Seller is a manufacturer of \_\_\_\_\_ (Details of business)

WHEREAS the buyer is a trader and has approached the Seller asking him to sell the goods at the rate of \_\_\_ per unit/ Kilo.

**THE PARTIES HERETO AGREE TO ABIDE AS UNDER:**

1. The Seller undertakes to sell the Buyer and the Buyer undertakes to buy from Seller \_\_\_\_\_ goods (hereinafter called the 'said goods') at a price of \_\_\_\_\_.
2. The Seller will send the said goods through the designated ship the information of which ship and the date of its arrival at the port of dispatch in India shall be sent to the buyer.
3. The Seller shall make an agreement with the master of the ship for the transportation and delivery of the said goods at the Indian port.
4. It shall be the responsibility of the Buyer to have said goods insured for their value upon the current terms and make out an invoice.
5. It shall be the responsibility of the Buyer to have a letter of credit through its banker which shall cover the price of the goods, freight insurance and other charges in favor of the Seller's banker.

6. After the shipment of the said goods the seller shall send all the necessary documents including the contract of an insurance policy, invoice, bills of lading, etc., to its banker at the Indian port.
7. The aforesaid document shall be delivered to the Buyer banker's against the encashment of the letter of credit which shall, in turn, deliver the same to the Buyer to enable him to get the goods cleared at the Indian port. Delivery of the documents shall constitute the delivery of goods and henceforth the goods shall be at the risk of the Buyer.
8. It shall be the responsibility of the Buyer to open a letter of credit with his banker in favour of the Seller's banker. The Buyer's bankers shall credit the amount of price in the Seller's name with Seller's banker against the receipt of the document of title.
9. In case some formalities are to be completed prior to the import of the aforesaid goods at the place of destination the same shall be completed by the Buyer at his own costs.
10. If some export formalities are to be completed for the export of the aforesaid goods from the place of dispatch, the same shall be completed by the Buyer/Seller at his own costs.
11. It shall be the Buyer's right to examine the goods for his satisfaction at the point of destination. If the goods are not according to the sample or specification, the Buyer shall have the right to reject the goods at the risk and cost of the seller.
12. In the event of any dispute or difference between the parties hereto arising out of or in connection with this deed of whatsoever nature the same shall be referred to arbitration of a common arbitrator if agreed upon, failing which to two Arbitrators one to be appointed by each party to the Arbitration. The said Arbitrators shall appoint a presiding Arbitrator and the Arbitration shall be governed by the Arbitration Act and Conciliation Act, 1996, or any statutory modification thereof.

SIGNED, SEALED AND DELIVERED



(by the within named Seller by the hands of its authorized representative/Director)

Mr. \_\_\_\_in the presence of

Mr.\_\_\_\_ and Mr.\_\_\_\_

SIGNED, SEALED AND DELIVERED

(by the within named Buyer by the hands of its authorized representative/Director)

Mr.\_\_\_\_\_ in the presence of

Mr. \_\_\_\_ and Mr. \_\_\_\_

## **CHAPTER – 23**

### **FAMILY SETTLEMENT DEED**

Family Settlement Deed is the deed by which partition of properties is made between family members. However where there is joint ownership or co-ownership over properties is in existence in such instances only family settlement deed can be effected. However to test co-ownership over any properties these should be in capacity of possession, to enjoy and to dispose

of the properties. However properties here not have limited definition it extends from immovable property to movable property like jewelry or money in a bank and other assets also. By means of settlement one can have co-ownership changed into sole ownership. Every family settlement is mutually worked out, all parties are related to each other and all of them must have certain claims over such property.

Now, though this settlement is mutually worked out but there are instances when disputes may arise in reason of poorly drafted settlement deed .To eliminate these disputes few essential clauses of a family settlement deed is elucidated below:

**1. FAMILY MEMBERS AS PARTIES SHOULD BE MENTIONED**

Family members between whom property co-owned by them to be distributed through this deed should be mentioned in a precise manner.

**2. MUTUAL CONSENT**

every settlement deed should have a clause which shows the intention of family members that they have agreed for the present settlement deed for distribution of co-owned properties and such consent is not affected by fraud or any coercion.

**3. DISTRIBUTION OF PROPERTIES**

the manner and in proportion in which the property is to be divided between the family members shall also be mentioned and settled so that no disputes shall arise in future.

**4. REPRESENTATIONS**

all the parties shall assure each other that the said property is free from all sorts of encumbrances, disputed and that they clear title in respect of the share and properties as mentioned in above clause.

**5. DEEMED INVALIDITY CLAUSE**

any correspondence, letters and documents etc. which may be found inconsistent and contrary to the contents of this document shall be deemed

null and void and this Deed of family settlement is irrevocable & cannot be challenged on any ground whatsoever.

#### **6. SIGN AND REGISTER**

legal formality to ensure agreement is valid is that settlement documents should be signed by all the family members; a missing signed settlement document can be a ground challenging the validity of a deed in court. As per section 17 of the registration act a family settlement that purports to assign immovable property must be mandatorily registered or the deed would be invalid and where no registration is necessary family arrangements may be even oral also.

#### **7. STAMP DUTY**

stamp duty is applicable on such deed and the amount should be paid depending on the value of property involved and subject to the respective state stamp duty provisions.

Thus on a course of drafting, may seem dry and technical, there are a number of strongly held ideological values and clauses underlying various Acts and its rules which are stated above are helpful for professionals in resolving any disputes. Understanding these provisions can help a practitioner appreciate the goals and assumptions underlying the rules involved in drafting of such agreements.

### **FAMILY SETTLEMENT AGREEMENT**

This Deed of Family Arrangement is executed on this ..... in the year  
20\_\_\_\_\_

#### **BETWEEN**

A B S/o MN aged ..... years, occupation ..... R/o ..... (hereinafter  
called as the first party)

#### **AND**

CD S/o XM aged ..... years, occupation and R/o .....  
(hereinafter called as the second party)

#### **WHEREAS**

1. The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.
2. The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labor and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.
3. The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

#### **NOW THIS DEED WITNESSETH AS FOLLOWS**

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.

2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this ..... day of ..... in the year ..... at .....

#### WITNESSES

1.

2.

#### Signatures

First Party.....

Second Party.....

Schedule 'C'

Schedule 'D'

Schedule 'E'

**CHAPTER – 24****TRADEMARK LICENSE AGREEMENT**

In a Trademark licence agreement the proprietor (Licensor) of a registered trademark gives authorization to another company (Licensee) to manufacture and distribute products under this trademark. The license is given for a specific range of products (typically consumer and fashion products) for which the licensee obtains exclusivity in a distinct territory (typically a country). In exchange for the rights granted, the Licensee shall pay to the Licensor a certain amount of money and a percentage (royalties) based on the sales value of the products sold under the license.

**TradeMark License Agreement**

THIS AGREEMENT is made on this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ M/s \_\_\_\_\_, a Company registered under the Companies Act, 1956/2013, and having its registered office at \_\_\_\_\_ hereinafter referred to as 'the Licensor' of the One Part and Mr. \_\_\_\_\_ carrying on business of \_\_\_\_\_ Hereinafter referred has 'the Licensee' of the Other Part.

**WHEREAS**

1. The Licensor is the proprietor of a trade mark more particularly described in the schedule hereunder written and which is duly registered under the Trade and Merchandise Marks Act 1958.

2. The Licensors is manufacturing and selling the goods viz \_\_\_\_\_ under the said trade mark.

3. The Licensee who is running a small scale industry has requested the Licensors to grant him a license to manufacture the said goods with the trade mark embossed or printed thereon as is being done by the Licensors and which the Licensors has agreed to do on the following terms and conditions agreed to between the parties hereto.

**NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS**

1. The Licensors hereby grants to the Licensee a license to manufacture the said goods as a job work by applying the said trade mark, particulars of which are described in the Schedule hereunder written.

2. The Licensee agrees and undertakes that all of the said goods manufactured by the Licensee in his factory at \_\_\_\_\_ or elsewhere shall be sold to the Licensors and not to anybody else at the price of Rs \_\_\_\_\_ per item or article. The Licensee undertakes to manufacture and supply to the Licensors a quantity of not less than \_\_\_\_\_ every month.

3. The goods so manufactured with the said trade mark applied to them will be supplied and delivered by the Licensee to the Licensors at the latter s business premises at \_\_\_\_\_ at his own costs of transport.

4. The price of the said goods so supplied will be paid by the Licensors against delivery after deducting there from the royalty payable by the Licensee to the Licensors as hereinafter provided.

5. The Licensors shall have the right to reject any goods supplied if they are not as per specifications or quality which are made known to the Licensee and in the event of such rejection the Licensee shall take back the rejected goods from the Licensors's premises at his own costs and until such removal they will be at the risk of the Licensee. The Licensors agrees that during the subsistence of this agreement, the Licensors will not get the said goods manufactured from anybody else.

6. The ownership of the said trademark will always remain with the Licensors and the Licensee will not pass off the said goods as if he is the owner of the said trademark.

7. The Licensee will be at liberty to put a label or advertise that the said goods are manufactured by him but it will also be mentioned that the trademark belongs to the Licensor and that the goods are manufactured for the benefit of the Licensor.

8. In consideration of the Licensor allowing the Licensee to manufacture the said goods with the said trade mark the Licensee agrees to pay to the Licensor by way of royalty a sum equal to \_\_\_\_\_per cent of the price of the goods at which they will be sold to the Licensor by the Licensee as aforesaid.

9. The Licensee shall keep an account of the goods manufactured and sold to the Licensor and the price received by him and royalty paid in respect thereof and such account shall be open to inspection by the Licensor from time to time as may be required by the Licensor. The Licensor will also have the right to enter upon the premises of the Licensee where the goods are manufactured and to take inspection of the goods manufactured.

10. This agreement will remain in force for a period of \_\_\_\_\_ years from the date hereof and on the expiration of the said period or earlier termination thereof as herein provided, the Licensee shall stop manufacturing the said goods under the said trade mark and all the goods till then manufactured and lying undelivered to the Licensor will be delivered to the Licensor in terms of this agreement as aforesaid.

11. If the Licensee commits breach of any term of this agreement, the Licensor will be entitled to terminate this agreement by fifteen days prior notice in writing to the Licensee and on the expiration of the notice period, this agreement shall stand terminated unless in the meanwhile the breach complained of is remedied to the satisfaction of the Licensor.

12. The Licensee may get himself registered as a registered user under the provisions of the Trade & Merchandise Marks Act 1958 subject to the terms of this agreement.

13. If the Registrar of TradeMarks while registering the Licensee as a registered user puts any condition which is not acceptable to the Licensor, the Licensee will withdraw the application for registration or the Licensor will have the option to terminate this agreement.



14. If any person is found by the Licensee to infringe the said trade mark either by passing off or otherwise, the Licensee will bring that fact to the notice of the Licensor to enable him to take necessary legal action against such person and in that event the Licensee will give all cooperation to the Licensor in prosecuting such action and all the costs thereof will be borne and paid by the parties hereto in equal shares.

15. If the Licensee himself infringes the said trade mark by passing off or otherwise, then

notwithstanding anything provided in clause 16 hereof it will be open to the Licensor to take legal action against him and in such case the Licensee will not be entitled to challenge the ownership of the Licensor in respect of the said trade mark.

16. In the event of any dispute arising out of this agreement, the same will be referred to arbitration of a common Arbitrator if agreed upon or in the absence of such agreement, to two Arbitrators one to be appointed by each party hereto and the Arbitration will be governed by the Arbitration Act for the time being in force.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

THE SCHEDULE ABOVE REFERRED TO

Signed and delivered for and on behalf of

Within named Licensor \_\_\_\_\_ Company

By its Managing Director

In the presence of \_\_\_\_\_

Signed and delivered by the

Within named Licensee Mr. \_\_\_\_\_

In the presence of \_\_\_\_\_

## **CHAPTER – 25**

### **HIRE PURCHASE AGREEMENT**

A contract of hire, is governed by the provisions of Chapter IX of the Indian Contract Act. It usually covers the common day finance agreements like purchase of consumer durables like Motor Vehicles, Computers, Household appliances like Televisions, Refrigerators etc. In the Industrial sector purchase of machinery etc is also financed by this method of hire purchase.

The basic principle underlying the transaction is that the installment determined is taken as hire ( rental ) till the time the agreement envisages such payments. On determination of the said period the Hirer ( Purchaser ) has the option of paying a nominal amount to become the owner of the goods.

Hire-purchase agreements are of two forms:

1. In the first form the goods are purchased by the financier from the dealer and the financier obtains a hire-purchase agreement from the customer, under which the customer becomes the owner of the goods on payment of all the installments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price. . The owner gets his money from the financier, who recovers the cost from the customer.

2. In other form the customer purchases the goods and he executes a hire-purchase agreement with a financier, under which he remains in possession of goods, subject to payment of the amount paid by the financier

on his behalf to the owner. The financier gets a right to seize the goods in the event of non-fulfillment of conditions of hire purchase agreement by the customer.

### **AGREEMENT FOR HIRE-PURCHASE OF MACHINERY**

THIS AGREEMENT made at ..... this ..... day of ....., 2000, between ABC & Co. Ltd., a company incorporated under the Companies Act, 1956/2013, and having its registered office at ..... (hereinafter called "the Owner") of the First Part and M/s. X Y & Sons, a partnership firm, carrying on the business of printing press and having its place of business at ..... (hereinafter called "the Hirer") of the Second Part and Shri A son of B resident of ..... (hereinafter called 'the Surety') of the Third Part.

WHEREAS the hirer has vide his letter dated ..... requested the owner to provide finance for the purchase of printing press.

AND WHEREAS the owner has by its reply dated ..... agreed to provide finance for the purchase of printing press on the terms and conditions laid down in the said letter and the documents to be executed for the said purpose.

AND WHEREAS the hirer has placed an order with M/s ..... for the purchase of printing press.

AND WHEREAS the owner has provided the finance by making payment of an amount of Rs..... vide cheque No..... dated ..... drawn on ..... to the supplier .....

### **NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

1. The owner, being the owner of the printing press with fittings, tools, and accessories, more particularly described in the Schedule hereto shall let and the hirer shall take on hire from the ..... day of .....
2. On execution of these presents, the hirer shall pay a sum of Rs ..... to the owner as initial payment by way of hire and shall during the continuance of this agreement pay to the owner at his address for the time and without

previous demand by way of rent for the hire of the said printing press the monthly sum of Rs..... the first payment to be made on the ..... day of ..... next and each subsequent payment on the ..... day of each succeeding month during the said term.

3. During the continuance of the agreement, the hirer shall-

a) not sell or offer for sale, assign, mortgage, pledge, underlet, let or otherwise deal with the said printing press or any part or parts thereof or with any interest therein;

b) keep the said printing press in his own possession and will not remove the same or any part or parts thereof from the place where such printing press is for the time being situate without the previous consent in writing of the owner;

c) Not allow any lien to be created upon the said printing press whether for repairs or otherwise and will duly and punctually pay all rents, taxes, rates, charges and levies payable in respect of the premises wherein the said printing press shall for the time being be situate and produce all receipts for such payment to the owner on demand and will protect the said printing press against distress, execution or seizure;

d) Use the printing press in a skilful and proper manner and shall at his own expense keep the said printing press in good and substantial repair and condition (reasonable wear and tear excepted);

e) keep insured the printing press during the period of hiring against any loss or damage by hire or otherwise in the sum of Rs ..... with an insurance company in the name of the owner and deliver the policy of such insurance to the owner and duly and punctually pay all premiums necessary for keeping the said insurance effective throughout the period of this agreement:

Provided that in case the hirer shall at any time fail to effect or keep effect the said policy by making default in any payment of premium, the owner shall be entitled to effect such insurance and pay the premium to the said insurance company and the hirer shall forthwith pay to the owner all the premiums and other sums paid by the owner;

f) not do or omit to do any act which may result in seizure and/or the confiscation of the printing press by the Central or State Government or local authority or any public officer or authority under any law for the time being in force.

4. If the said printing press shall be destroyed or damaged by fire or otherwise, all moneys received or receivable in respect of such insurance as aforesaid shall forthwith be received by the owner who shall as the case may require, apply such money either in making good the damage done or in replacing the said printing press by other articles of similar description and value and such substituted articles shall become subject to the provisions of this agreement in the same manner as the articles for which they shall have been substituted.

5. The hirer may determine the hiring at any time by giving ..... days notice in writing to the owner at his address for the time being and by returning the said printing press at the hirer's own risk and expense and shall thereupon forthwith pay to the owner all hire charges upto the date of such determination and other sums due under the agreement and 25% of the balance of the total hire charges still to fall due as settled compensation.

6. If the hirer shall make default in punctual payment of the monthly sum so to be paid by him for the hire of the said printing press or if a receiving order in bankruptcy is 'made against him or if he compounds with his creditors or do or suffer any act or thing whereby or in consequence of which the said printing press may be distrained or taken in execution under legal process or by any public authority or fails to pay to the Government or any public authority any taxes or surcharges due in respect of the said printing press or fails to observe and perform the terms and conditions of this agreement on his part to be observed and performed or if the hirer shall do or cause to be done or permit or suffer any act or thing whereby the owner's rights in the said printing press may be prejudiced or put in jeopardy, the owner may without notice determine the hiring and it shall thereupon be lawful for the owner to take possession of the said printing press and for that purpose to enter into or upon any premises where the same may be kept and the determination of the hiring under this clause shall not affect the right of the owner to recover from the hirer any money due to the owner under this agreement or damages for breach thereof. The hirer shall also be liable to pay

to the owner all expenses incurred by the owner in repossessing or attempting repossession of the said printing press.

7. If the agreement is determined before the property in the said printing press passes to the hirer, the hirer shall forthwith return to the owner, policies and other documents relating to the said printing press.

8. The hirer acknowledges and agrees with the owner that he has inspected the printing press and he is satisfied that the printing press is suitable for his purpose and the owner shall not be liable to the hirer for any liability, claim, loss, damage or expenses caused directly or indirectly by the said printing press or any inadequacy thereof for any purpose or any defect therein or by the use thereof or in relation to any repairs, servicing, maintenance of the said printing press.

9. The hirer shall be liable to bear and incur the installation cost, cost of detachment of the printing press taken on hire and to pay any tax, levy, rates or assessments levied at any time by the Central Government, State Government or any local authority on the total of or any installments payable under this agreement.

10. If the hirer shall duly perform and observe all the terms and conditions in this agreement and the covenants on his part to be performed and observed and shall punctually pay to the owner the sums specified in clause 2 hereof amounting (together with the said sum of Rs ..... so paid on the execution of this agreement as aforesaid) to the sum of Rs ..... then the hiring shall come to an end and the said printing press shall become the property of hirer and the owner will assign and make over all his rights, title and interest in the same to the hirer but until such payments have been made, the printing press shall remain the property of the owner.

11. No neglect, delay, indulgence, forbearance or waiver on the part of the owner in enforcing any terms or conditions of this agreement shall prejudice the rights of the owner hereunder.

12. In consideration of the owner letting the said printing press to the hirer at the rent and under the agreements and conditions hereinbefore expressed, the surety hereby guarantees the due payment of the said rents and all other sums of money which may become payable under this agreement and the performance and observance of the said agreements and conditions by the

hirer and this guarantee shall not be prejudiced by the owner neglecting or forbearing to enforce this agreement against the hirer or giving time for the payment of the said rents when due or delaying to take any steps to enforce the performance or observance of the said agreements or conditions or granting any indulgence to the hirer.

13. The parties to this agreement hereby declare that they have fully understood the meaning of all the clauses, terms and conditions of this agreement and they have accepted and executed this agreement with full knowledge and understanding of the obligations herein.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and the year first hereinabove written.

The Schedule above referred to

(Particulars of the printing press)

The common seal of ABC & Co. Ltd., the within named owner has been hereunto affixed pursuant to the Resolution of its Board of Directors on .....

in the presence of Shri ..... Director and

Mr. .... Secretary of the company,

who have signed these presents

Signed and delivered by M/s. X Y & Sons, the within named hirer by its partners

Signed and delivered by A, the within named surety

WITNESSES;

1.

2.





## **CHAPTER 26**

### **TRUST DEED**

As per Section 3 of Indian Trusts Act, 1882, a Trust is defined as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another or of another and the owner.

The person who reposes or declares the confidence is called the 'author of the trust'. The person who accepts the confidence is called the 'beneficiary'.

The subject matter of the trust is called the 'trust property' or the 'trust money'. The person or persons who manages/manage the trust property or trust money is/are called the 'trustee/trustees' of the trust. The author of the trust himself or any other person can be the trustee of the trust.

The beneficial interest or interest of the beneficiaries is/are his/their right(s) against the trustee as owner of the trust property; and the instrument by which the trust is declared is called the 'instrument of trust'.

There are two types of Trusts:

#### **1. PUBLIC TRUST**

In a public trust the beneficiary is the general public or a specified section of it. The beneficial interest is vested in an uncertain and fluctuating body of persons. The nature of the trust may be proved by the evidence of dedication or by user and conduct of parties.

#### **2. PRIVATE TRUST**

In a private trust the beneficiaries are defined and ascertained individuals. Where a trust is created for the benefit of the members of the settlor's family, it is a private trust.

Following should be taken care of while drafting a trust deed:

#### **1. CREATION OF TRUST**

As per Section 5 of the Indian Trusts Act, 1882, a trust in respect of immovable property can be declared only by a non-testamentary instrument in writing

signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee. A trust in respect of movable property can be made either by a declaration as above or by the transfer of the ownership of the property to the trustee.

The deed creating a trust should contain in reasonable certainty, among others, the following:

- a. an intention to create a trust;
- b. the purpose of the trust;
- c. the beneficiaries;
- d. names of the trustee/s;
- e. trust property;
- f. unless the author is himself a trustee transfer of the legal ownership of the property to the trustee; and
- g. duties, rights and liability of the settler, trustee and the beneficiary.
- h. reimbursement of expenses incurred by the trustee(s) in discharging of his/their duties as a trustee

## **2. DRAFTING OF TRUST DEED**

An instrument of trust is drafted either as a deed poll or as a regular deed between the author of trust and the trustee. Where trustees are strangers and a transfer of property is involved, it is better to draft the deed as a deed between the author of trust and the trustees. Where the author is to be the trustee himself and the deed requires a mere declaration of trust, it is drafted as a deed poll. No specific words are necessary, but, whatever the words used, the deed should contain with reasonable certainty the matters mentioned under the heading 'Creation of Trust'.

## **3. ACCEPTANCE OF TRUST**

Acceptance of trust by trustee may be either express, e.g. by executing the deed of trust or by verbal assent, or inferred from conduct, e.g., by entering into possession of the property and on the duties as trustee. But it is always safer to have the deed of trust executed by the trustee also.

## **4. REGISTRATION AND STAMP DUTY**

A trust created by will requires neither registration nor stamp duty. But a trust in relation to movable or immovable property which is declared by a

non-testamentary instrument must be registered, irrespective of the value of the property. Deeds of wakf or of religious and charitable endowments must be registered if they relate to immovable property worth Rs. 100 and upwards. A trust declared otherwise than by a will is chargeable to stamp duty under Article 64, Schedule I of the Indian Stamp Act, 1899. The stamp duty varies from State to State.

## **5. REVOCATION OF TRUSTS**

A trust cannot be revoked unless :

- a) all the beneficiaries consent;
- b) a power of revocation has been reserved in the deed; and in case of a trust for payment of debts, it has not been communicated to the creditors.

If the trust property is to be applied for the author's own benefit the trust can be revoked. A power of revocation may with advantage always be reserved in the deed. The declaration of trust for creating provident fund, pension fund, superannuation fund, gratuity fund etc. should be irrevocable. If they are otherwise the recognition under the Income Tax Act, 1961 will not be available to such trusts and in consequence the payment made to such funds will not be allowed as deduction in the hands of the authors of the trusts in their income tax assessments.

## **6. EXTINGUISHMENT OF TRUST**

- a) when its purpose is completely fulfilled; or
- b) when its purpose becomes unlawful; or
- c) when the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- d) when the trust, being revocable, is expressly revoked.

## **DEED OF TRUST**

This DEED OF DECLARATION OF TRUST executed at on this..... day of..... by .....hereinafter called as AUTHOR OF THE TRUST which expression shall wherever the context so permits mean and include its successors –in-office of the ONE PART and;

WHEREAS the AUTHOR OF THE TRUST decided to create and establish a Trust to make research in Alternative Medicine and Acupuncture for the welfare of the community at large without discrimination of caste, creed etc with objects and constitution as hereinafter set forth;

WHEREAS the said objects in view, the AUTHOR OF TRUST have decided to endow the said TRUST a nucleus of Rs. .... (Rupees ..... only) in cash; and

WHEREAS it is necessary and desirable to declare and constitute the said Trust and to record the objects and constitution of the said Trust.

**NOW THIS DEED OF DECLARATION OF TRUST WITNESSETH AS FOLLOWS:**

**1. TRUSTEES**

mean and include the Board of Trustees as described in these presents, and these Trustees, as appointed, nominated or selected by the remaining members of the Board of Trust whenever any vacancy arises.

**2. CREATION OF THE TRUST**

In pursuance of the intention, the AUTHOR OF TRUST has settled the sum of Rs. .... by cash unto and in favour of the Trustees herein to be held by them for and on behalf of the Trust hereby created and known as “ ” the receipt of which sum of Rs. which has already been handed over to the Trustees mentioned hereunder, is hereby acknowledged by the Trustees, who hereby accept the appointment as such Trustees of the said Trust, under the terms and conditions, set out hereunder for the fulfillment of the objects of the Trust, more fully and particularly described and set out hereunder.

**3. REGISTERED OFFICE OF THE TRUST**

The registered office of the Trust is situated at present at No. ....

**4. TRUSTEES**

The AUTHOR OF THE TRUST has appointed the following persons to hold the office of the Trust as Trustees:

1. ....
2. ....

**5. MOTTO OF THE TRUST**

The Motto of the Trust is

.....

**6. OBJECTS OF THE TRUST**

The objects of the Trust are:

- a. ....  
.....
- b. ....  
.....

**7. BENEFIT OF THE TRUST**

The Benefits of the Trust are open to all irrespective of Caste, religion, race, sex etc. That the Trust will not carry on any activities with an intention of earning profit.

**8. THE PROPERTIES OF THE TRUST**

The properties of the Trust shall be:-

- a) the said sum of Rs. .... above referred to the receipt of which is hereby acknowledged by the Trustees;
- b) any properties movable or immovable, that may be acquired by the Trust either by purchase or otherwise;
- c) all additions and acceptations to the Trust fund;
- d) all voluntary donations both towards corpus or otherwise gifts, legacies or grants in cash or in kind accepted by the trustees;
- e) all grants and contributions made to the Trust by the Government, Government bodies, Trust or Institutions, Trade Union or Societies etc; and
- f) all sums and assets which by and means become the property of the Trust.

**9. QUALIFICATION OF THE TRUSTEES**

The qualification for the trustees shall be-

- a) One Trustee shall possess qualification in alternative medicine or acupuncture;
- b) One may be Specialist in yoga therapy;
- c) Other trustees shall be social workers or professionals in the field of medicine or accounts or law.

#### **10. CESSATION OF TRUSTEESHIP**

A Trustee mentioned below shall cease to be the trustee of the Trust if:-

- a) he resigns;
- b) he becomes insolvent;
- c) He is removed by the majority of the members of the, if it is found that the trustee(s) activities are detrimental to the activities or administration or funds of the trust.

#### **11. APPOINTMENT OF TRUSTEES**

Any vacancy in the Board of Trustees shall be filled up by the remaining members of the Trust selecting a suitable person.

#### **12. ADMINISTRATION OF THE TRUST**

The administration of the TRUST shall vest with the Board of Trustees which consist of-

- a) One Managing Trustee;
- b) One Joint Managing Trustee;
- c) One Deputy Managing Trustee and three trustees

#### **13. POWER OF THE TRUSTEES**

The Board of Trustees shall have the control and management of the Trust and exercise the following powers:

- a) To determine from time to time to commence and to take up the object and purposes for which the funds of the trust shall be used and allot and allocate to each of the objects such portion of the funds as they deem fit;
- b) To purchase and acquire any immovable property of any kind for this object of the Trust or as a source of income for the Trust;
- c) To sell, mortgage, or dispose of any immovable property/properties belonging to the Trust;

- d) To incur all expenditure necessary as in their own opinion useful for carrying out the objects and administration of the trust;
- e) To sell, lease, mortgage or dispose of any property, immovable property/properties belonging to the Trust;
- f) To open one or more bank accounts of the trust with any bank or banks as the Trustees may deem fit and deposit monies of the Trust in the Bank accounts.
- g) To borrow for and on behalf of the Trust with or without security from banks, Governments, Universities or any other government Body/bodies both central and state;
- h) to employ staff of all kinds necessary and useful for carrying out the objects of the trust.
- i) To incur such other items of expenditure as is necessary and incidental for carrying out the objects of the Trust;
- j) To institute, conduct, defend, compound, withdraw, compromise, adjust, refer to arbitration or to do such things as are incidental and necessary, concerning the affairs of the Trust and to sign and verify vakalats, pleadings, affidavits and other powers;
- k) To delegate all or any of the powers vested in the Trustees to any body' to frame rules, bylaws and other codes for the conduct of the affairs of the Trust and its transactions and establishing any Committee;
- l) To accept contributions in cash or in kind either by way of addition to the trust funds generally or for any one or more of the specified objects of the Trust;
- m) To establish as many ad hoc committees for any purpose.

#### **14. MEETING OF TRUSTEES**

- a) The Managing Trustee shall preside over all the meetings of the trustees and in his absence the Joint Managing Trustee shall preside such meeting and in the absence of both, the trustees attended such meeting may elect any one of them to preside over the meeting;
- b) The meetings of the Trustees may be convened by the Managing Trustee or under his direction by any other Trustees
- c) The quorum of the meeting of the Trustees shall be four personally present.

d) In the event of equality of votes, the person presiding such meeting shall exercise casting vote (additional vote).

#### **15. RESOLUTIONS**

a) The Trustees may exercise all the powers vested in them in clause 9 under these presents by resolution passed at a simple majority of the trustees attended such meetings of the Board of Trustees.

b) Any resolution in writing signed by all Trustees holding office for the time being shall be valid and binding.

#### **16. SUITS**

The Managing Trustee of the Trust is authorized to sue or to be sued on behalf of the Trust.

#### **17. EXECUTION OF DOCUMENTS**

All Deeds, Documents etc. shall be executed by the Managing Trustee, Joint Managing Trustee and Deputy Managing Trustee jointly representing the Trust.

#### **18. ACCOUNTS AND AUDIT**

a) The Trustees shall maintain true and correct accounts of all Trust monies and of all the income and investments and all the outgoing expenses.

b) The year of account shall be the financial year commencing from 1st April and ending 31st March.

c) The Trustees shall each year issue a report setting out the accounts showing the income and expenditure of the Trust for the preceding year not later than six months from the end of the preceding year of accounts.

d) The accounts of the Trust shall be audited every year by a Chartered Accountant who may be appointed for the purpose by the board of Trustees and the audited statement of accounts together with Auditors' report shall be laid before the Board of Trustees for approval.

#### **19. BANK ACCOUNT**



The Managing Trustee along with the Deputy Managing Trustee shall operate bank account(s) jointly.

**20. POWER TO ALTER RULES AND REGULATIONS**

The Board of Trustees shall have full power and authority to make, alter and rescind rules and regulations for the management and administration of the Trust. Any amendment to the Trust Deed will be carried out only with the approval of the Commissioner of Income Tax.

**21. APPLICATION OF INCOME AND TRUST FUND**

The Board of Trustees shall be empowered to invest the funds of the Trust in movable or immovable properties, in such manner as they deem fit for the purpose of the objects of the trust provided that such investments shall be in accordance with the provision of Section 13(I) read with Section 11(5) of the Income Tax Act, 1961 as well as of any other law for the time being in force as are applicable to charitable trusts.

**22. REMUNERATION TO THE TRUSTEES**

The Trustees are not entitled for any remuneration. But they shall however be entitled to receive out of pocket expenses incurred by them in the course of discharging the functions of the Trust. Further the Income and funds of the Trust will be solely utilized towards the objects and no portion of it will be utilized for payment of Trustees by way of profits, interest, dividend or otherwise.

**23. INDEMNITY**

Every Trustee shall be indemnified out of the fund in respect of any loss arising from or contingent upon any investment made out of the monies of the Trust unless such loss shall have been occasioned by own negligence and also every Trustee shall be indemnified out of the Trust against all proceedings, suits, claims, costs, damages and expenses occasioned by any claim in connection with the matters or affairs relating to the Trust created by these presents or in the exercise of powers or discretion vested in them by virtue of these presents.

**24. IRREVOCABILITY**

The Trust is irrevocable.

**25. ACTIVITIES OF THE TRUST**

The activities of the Trust shall be only within India and its Union territories and shall not be extended anywhere outside India.

**26. DISSOLUTION**

On dissolution of the Trust, the net assets of the Trust shall be transferred to an association of persons or trust or society having similar objects of this Trust.

**27. PROCEEDING OF THE TRUST**

Any defect in the constitution of the Trust shall not invalidate its proceedings.

**28. RESIDUARY**

For matters not provided for in these presents, the provisions of the Indian Trust Act and the Income Tax Act, 1961 and rules made there under will apply accordingly.

IN WITNESS WHEREOF THE AUTHOR OF THE TRUST HAS SET HIS HAND AND SIGNATURE ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN IN THE PRESENCE OF

WITNESSES: -

1.....

2. ....

AUTHOR OF THE TRUST



## **CHAPTER-27**

### **CONVEYANCE DEED**

‘Conveyance’ refers to the act of transferring the title, ownership, rights and interests in a property, from one entity to another. The term ‘deed’ refers to an instrument, like a written document that is signed by all the parties to a contract, in this case, the seller and buyer. It is a binding contract that is enforceable in a court of law. A conveyance deed is, therefore, a contract in which the seller transfers all rights to the legal owner. The purchase of a property is not complete without a valid conveyance deed.

#### **Contents of Conveyance Deed**

1. Establish exact boundaries of the property to avoid any dispute relating to land ownership,
2. State that all the rights relating to the property have been transferred along with the property,
3. Provide details regarding delivery and acceptance of the property,
4. State all terms and conditions relating to the transfer,
5. Be made on a non-judicial stamp paper and signed by both parties,
6. Mention full names, addresses and other requisite details of the seller and the buyer,
7. State that the property is free from any encumbrances, disputes and restrictions,
8. Be signed by at least two witnesses
9. Be in writing and notarized, and
10. Be registered through the local registrar’s office by submitting an appropriate registration fee. Registration is proof that the property is free from any disputes and has been transferred to the buyer permanently with a clean title.
11. Once the registration is complete, the buyer becomes the absolute owner of the property and the conveyance process gets over officially. A lawyer and a real estate agent can help two parties compose, sign, and register a deed of conveyance during a transaction. The government obtains its revenue from the stamp duty and registration fees.

### Documents required for Conveyance Deed

1. Registered Agreement for sale entered into with the seller
2. Mutation entries/ Property card,
3. Location Plan
4. City survey plan or survey plan from the revenue department.
5. Layout Plot plan approved by the local authority
6. Architect certificate about the entitlement of undivided interest in the entire Layout Plot, common areas and the facilities by each of the entity or the structure constructed or to be constructed on such Layout Plot.
7. Certificate under Urban Land Ceiling Act, 1976
8. Building/ Structure Plan approved by the appropriate authority
9. Commencement Certificate
10. Completion Certificate,
11. Occupancy Certificate (exempted if not available),
12. List of owners
13. Proof of payment of Stamp Duty
14. Proof of Registration
15. Development agreement or power of attorney or agreement for sale, if executed by the seller
16. Draft conveyance deed / Declaration proposed to be executed in favour of the applicant.

**CONVEYANCE DEED**

This CONVEYANCE DEED (hereinafter referred to as 'this Deed') is executed at \_\_\_\_\_ on \_\_\_\_\_, by and between:

**BY AND AMONGST**

M/s \_\_\_\_\_ (CIN No. \_\_\_\_\_) a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at \_\_\_\_\_, represented by its authorized signatory \_\_\_\_\_ duly authorized vide board resolution dated \_\_\_\_\_, hereinafter referred to as the "Seller" or "Company" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its executors, administrators, successors-in-interest and permitted assigns).

**AND**

Mr. ....S/o ....., aged ....., R/o .....

(Hereinafter singly/jointly, as the case may be, referred to as the "Buyer" which expression shall unless repugnant to the context or meaning thereof, be deemed to include his/her/their respective heirs, executors, administrators, legal representatives, successors and assigns).

The "Company" and the "Buyer" are hereinafter individually referred to as such or the 'Party' and collectively referred to as the 'Parties'.

Whereas:

I. The Company is the absolute and lawful owner of land admeasuring \_\_\_\_Bigha comprised in Khasra Nos \_\_\_\_situated at \_\_\_\_\_(hereinafter referred to as "Said Land") vide various registered sale deed(s) details of which are provided in Schedule -IV attached hereto.

II. The Said Land is earmarked for the purpose of building a residential project and the

Company is developing, marketing and selling residential project comprising of apartment buildings including studio apartments, 1BHK, 2BHK flats and 4BHK Villas, recreational facilities, landscaped gardens and other utilities by the name and style of \_\_\_\_\_ ( hereinafter referred to as “Project”);

III. The following Occupancy Certificate in respect of \_----- has been issued by the Department of Town & Country Planning (hereinafter referred to as “DTCP”), Govt. of \_\_\_\_\_ for the Said Project \_\_\_\_ vide reference No. \_\_\_\_\_ dated \_\_\_\_\_.

IV. The Company has registered the Project under the provisions of the Act with the Himachal Pradesh State Real Estate Regulatory Authority at \_\_\_\_ on \_\_\_\_\_ under registration no. \_\_\_\_\_

V. The Buyer, being fully satisfied with the rights and title of the Company in respect of the said Land and the said Project, has agreed to purchase the Apartment/Villa \_\_\_\_\_ bearing \_\_\_\_\_ Apartment/Villa no. \_\_\_\_\_ having an approximate Carpet Area of \_\_\_\_\_ square meters (i.e. \_\_\_\_\_ square feet approximately) measuring super area \_\_\_\_\_ square meters, in the \_\_\_\_ Complex, fully described in Schedule-I attached herewith and shown in Apartment plan attached herewith as Schedule-II (hereinafter referred to as the “said Apartment”) located on the \_\_\_\_ floor in Tower/Block/Street no. \_\_\_\_ (hereinafter referred to as the “said Building”) on the terms and conditions set out in the Agreement for Sale dated \_\_\_\_\_ (hereinafter referred to as the said “Agreement for Sale”).

OR

The Buyer, being fully satisfied with the rights and title of the Company in respect of the said Land and said Project, has agreed to purchase the Villa bearing Villa no. \_\_\_\_\_ having an approximate Carpet Area of \_\_\_\_\_ square meters (i.e. \_\_\_\_\_ square feet approximately) measuring super area \_\_\_\_\_ square meters, in the villa No. \_\_\_\_\_, fully described in Schedule-I attached herewith and shown in Villa plan attached herewith as Schedule- II (hereinafter referred to as the “said Villa”) located on the Plot No. \_\_\_\_ on the terms and conditions set

out in the Agreement for Sale dated \_\_\_\_\_ (hereinafter referred to as the said "Agreement for Sale").

VI. The Company has clarified and the Buyer has clearly understood that the sanctioned layout plan of the Project depicting the various areas for residential, other structures and facilities & amenities, to be developed in the said Project and that the construction, structures, facilities and amenities and their earmarked uses may be modified in accordance with the approvals received/to be received from Department of Town & Country Planning, \_\_\_\_\_ (DTCP) and other competent authorities, at any stage, as per applicable laws. Such changes shall be binding on both the Parties. It is clarified, the scope of this Deed is confined and limited only to the sale of the Apartment/Villa in the Building to be constructed on a portion of the Said Land.

VII. The Buyer has inspected the ownership/title record of the Said Land, license, building plans, various approvals, consents and permissions including but not limited to all environmental clearances etc. granted by the competent authorities and all other information, clarifications, specifications of the Apartment/Villa/ Project etc. sought by him with regard to all the above and all documents relating to the competency and rights of Company to develop and construct the Project on the Said Land and all other relevant details. The Buyer acknowledges and confirms that the Buyer is fully satisfied with the title and competency of the Company to execute this Deed. The Buyer has relied on his/its own judgment and investigations in purchasing the said Apartment/Villa. The Company hereby disclaims to have made any representations, warranties, statements or estimates of any nature whatsoever, whether written or oral, except those mentioned in this Deed and no oral or written representations or statements of the Company shall be considered to be part of this Deed.

VIII. The Buyer has confirmed to the Company that it has the requisite permissions and approvals from the competent authority for purchasing the said Apartment/Villa including permission under section 118 of of H.P. Tenancy and Land Reforms Act, 1972 and is purchasing the said Apartment/Villa with full knowledge of all rules, laws, regulations, notifications etc. applicable to the said Building and Project in general and the said Apartment/Villa in particular and the terms and conditions contained in



this Deed, the Agreement for Sale and the Maintenance Agreement and that the Buyer has clearly understood its rights, duties, responsibilities and obligations there under.

IX. The Company relying on the confirmations, representation and assurances of the Buyer to faithfully abide by all the terms, conditions and stipulations contained in this Deed, the Agreement for Sale and the Maintenance Agreement have agreed to execute this Deed and sell the said Apartment/Villa to the Buyer subject to and on the terms and conditions set out in the said Agreement for Sale and terms appearing hereinafter.

**AND NOW THEREFORE, THIS DEED IS WITNESSETH AS UNDER:**

1. In pursuance of the said Agreement for Sale and in consideration of a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) ("Total Price") (including but not limited to sale price, taxes, charges and deposits) (specific details of payment made are set out in Schedule III attached herewith), the receipt whereof the Company hereby acknowledges and admits, the Company hereby grants, transfers and conveys unto the Buyer the said Apartment/Villa [i.e. Apartment/Villa bearing Apartment/Villa no. \_\_\_\_ having an Carpet Area of \_\_\_\_\_ square meters (i.e. \_\_\_\_\_ square feet), located on the \_\_\_\_ floor of the said Building], free from all encumbrances, charges, lien, lis-pendens, subject to the restrictions, covenants, exceptions and conditions mentioned in this Deed.

2. The Buyer confirms and acknowledges having taken over/received actual, physical and vacant possession of the said Apartment/Villa. Before taking over possession of the said Apartment/Villa, the Buyer has physically inspected and verified the said Apartment/Villa and fully satisfied himself about the construction, various installations in the said Apartment/Villa such as construction work, electrification work, fittings and fixtures, water and sewage connection, if any, etc. and all items of work, quality of workmanship, materials, specifications, fittings and fixtures used and provided therein and the Buyer confirms that it has no complaint or claims against the same. The Buyer further confirms that it shall not raise any objections or make any claims against the Company in future in respect of items of works or allege any of it not to have been carried out or completed for any reason whatsoever, including any delay in handing over possession of the said Apartment/Villa

and such claims or objection, if any, shall be deemed to have been waived by the Buyer.

3. The Buyer shall have the common right of ingress, egress and use of the Common Areas and facilities in the manner and to the extent as would be absolutely essential for beneficial enjoyment of the Apartment/Villa subject to timely payment of maintenance charges and the compliance of applicable rules and regulations and upon terms and conditions mentioned herein. The Buyer has confirmed and agreed that he will not raise any objection in any manner in this regard. The Common Areas and facilities in the Project will be handed over to the Association of Apartment Owners after completion of construction and development of the entire Project and after receipt of completion certificate of the entire Project as per applicable laws.

4. The Buyer confirms and undertakes that the Buyer shall be liable to pay all taxes including but not limited to property tax, municipal tax, and all government rates, levies, cesses, charges, surcharges, Goods and Service Tax (GST), tax on land, wealth tax, fees of all and any kind and any other charges, by whatever name called, whether levied now or leviable in future by the Government, municipal authority or any other competent authority on the said Apartment/Villa/said Building/ Project, Said Land, as the case may be, as assessable, whether prospectively or retrospectively. The Buyer further agrees that till the time said Apartment/Villa is not assessed separately, Buyer shall pay the same to Company on proportionate basis [i.e. the proportion which the area/ carpet area of the Apartment/Villa and parking (if applicable) bears to the total area/ carpet area of all the Apartment/Villas in the Project].

5. As and when the said Apartment/Villa is assessed separately, the Buyer shall pay applicable taxes, cesses, levies and charges directly to the competent authority(ies) on demand being raised by the competent authority(ies). The Buyer shall indemnify and keep the Company indemnified and harmless against all claims, losses, harm, damages, costs that may be suffered or incurred by the Company in the event of non-payment of liabilities, charges, fees, property taxes, cesses or levies, levied or leviable by the competent authorities or any other dues as per the terms herein.

6. The Buyer has paid proportionate charges towards External Development Charges (EDC) and Internal / Infrastructure Development Charges (IDC) at

current applicable rates along with costs, interest and penalty paid to DTCP on these demands. However, in the event of increase or enhancement in charges of EDC or IDC or levy of fresh EDC/ IDC charges, by whatever name called, by the authorities, whether prospectively or retrospectively, the Buyer shall bear and pay to the Company on demand further amounts on proportionate basis towards such increase or enhancement or fresh levy along with other costs incurred by the Company in respect of the these charges/demands. The Buyer further agrees and undertakes, that as and when demanded by the Company, the Buyer shall pay on a proportionate basis any additional charges, taxes and/or levies etc. which may be levied by the competent authorities pursuant to any government orders / directives / policies.

7. If deemed necessary by the Company, or if any provision of the existing and future laws, guidelines, directions etc. of any Government authority or the competent authorities made applicable to the said Apartment/Villa/Project requires provision of new/additional facilities/equipment/devices or their upgradation etc. including but not limited to providing additional fire safety measures etc., any charge deposits/securities to be paid to authorities, provision of external, infrastructural and / or peripheral services attributable to the Project /Said Land, increase in charges or deposits for bulk supply of electrical energy and/or any other increase in cost and charges on any ground, whether prospectively or retrospectively, then the cost of the such additional devices, equipment, facilities or upgradation etc. shall also be borne and paid by the Buyer on proportionate basis, as and when demanded by the Company.

8. The Buyer confirms that subject to the terms and conditions of this Deed, the Buyer shall only be entitled to the following rights as per details given below:

8.1 Ownership of the said Apartment/Villa along with the right to use the car park space(s) as more particularly detailed in Schedule- I attached herewith as Reserved for the use by Buyer for parking his /her/ its vehicle, if applicable, (hereinafter referred to as the “Reserved Car Parking Space”); and

8.2 The Buyer shall also have undivided proportionate share in the Common Areas. Since the share/ interest of Buyer in the Common Areas is undivided and cannot be divided or separated, the Buyer shall use the Common Areas along with other occupants, maintenance staff etc., without causing any

inconvenience or hindrance to them. It is clarified that the Company shall hand over the Common Areas to the Association of Allottees after duly obtaining the Completion Certificate from the competent authority as provided in the Act. The right of Buyer to use such Common Areas shall always be subject to timely payment of maintenance charges, IFMS, and other charges, deposits and amounts payable by the Buyer to the Company, Maintenance Agency under this Deed, the said Agreement for Sale and Maintenance Agreement. The Buyer shall not have any ownership right on the areas declared as limited common areas and facilities, and the right to use such limited common area and facilities shall be limited to allottees who have been specifically authorized to use such limited common areas and facilities. The Company shall be entitled to regulate the usage of the limited common areas and facilities and dispose the same as it may deem fit.

9. That the Reserved Car Parking Space(s) forming part of the Apartment/Villa, if applicable, bundled with and deemed to be part and parcel of the said Apartment/Villa and the same shall not have an independent legal entity detached from the said Apartment/Villa. The Buyer undertakes not to sell/transfer/deal with or part with possession of the Reserved Car Parking Space independent of the said Apartment/Villa and further undertakes that he shall not modify or make any changes or cover the Reserved Car Parking Space(s) or divert the user of the said Reserved Car Parking Space(s) in any manner whatsoever at any point of time. The Buyer undertakes to park his vehicle in the designated parking space allotted to him and not anywhere else in the Project. The Buyer agrees and confirms that in the event of cancellation or resumption of the said Apartment/Villa under any of the provisions of this Agreement, the Reserved Car Parking Space(s), if applicable, along with additionally allotted parking space(s), if any, to him shall automatically be cancelled or resumed as the case may be. No separate proceedings for cancellation or resumption of Reserved Car Parking Space(s) shall be initiated or followed by the Company independently that of the said Apartment/Villa in any manner whatsoever. The Buyer hereby acknowledges and agrees that the Company shall be entitled to shift/relocate the Reserved Car Parking Space(s), if applicable, to any other location in the said Project.

10. The Buyer understands and acknowledges that the service areas in the basement of the said Building and said Project or anywhere else in the said

Project which are Reserved and earmarked by the Company for services, use by maintenance staff earmarked by the Company to house services including but not limited to electric sub-station, transformer, DG set rooms, underground water tanks, pump rooms, maintenance and service rooms, fire fighting pumps and equipment etc., shall not be used by the Buyer for parking or any other purpose, of any nature whatsoever. All clauses pertaining to allotment, use, possession, forfeiture, cancellation etc., of the said Apartment/Villa shall apply mutatis mutandis to the Reserved Car Parking Space(s). The liability to pay for the maintenance and upkeep charges as may be levied from time to time by the Maintenance Agency/Company on such Reserved Car Parking Space(s) shall be the responsibility of and payable by the Buyer. Any violation of this condition shall be a breach of this Deed by the Buyer.

11. The Buyer agrees and understands that due to changes in government policies, orders, rules, regulations, and statutory provisions, additional FAR / FSI (i.e. over and above current sanctioned / permitted FAR/FSI) may be permitted by competent authorities to be developed on the Said Land. Therefore, the Buyer agrees and confirms that the Company / its nominee shall at all times be entitled to construct and develop, as part of the Project, any additional FAR / FSI as per necessary sanctions and related project approvals that may be obtained from the competent authority and to seek changes in the approved layout plan, building plans and other approved drawings as per norms of the competent authority for such development as per applicable laws, to which the Buyer shall have no objection and hereby extends its/his/her approval for the same. Further, since the current layout plan and building plans for the Project does not include the provision of such additional development, the Company may subsequently at its own option/discretion provide for / develop the same at any location in the Project as per applicable laws. The Buyer hereby confirms that it has no objection to such additional development by the Company /its nominee and also undertakes to provide requisite assistance and co-operation in this regard including but not limited to signing necessary undertakings, no objection letter, agreements and documents as may be required by the Company / its nominee from time to time.

12. The Buyer shall not:

12.1 do or suffer to be done anything in or to said Building, the Project, the said Apartment/Villa, the staircases, lifts, common passages, corridors, circulation area, atrium and/or area in the compound, which may be in violation of any laws or rules of the competent authority;

12.2 change or cause to be changed structure of the said Apartment/Villa or any portion thereof, and shall also not make or cause to be made any additions or alterations in the said Apartment/Villa or any part thereof, or sub-divide the said Apartment/Villa, so as to or which may cause blockage in any passage, verandas, open spaces etc. or affect the structure of the said Apartment/Villa, said Building and/or said Project;

12.3 make any structural alterations to the Apartment/Villa and/or effect any change to the plan or elevation and shall not enclose the balconies attached to the Apartment/Villa. The Buyer shall not demolish the said Apartment/Villa or any part thereof nor will at any time make or cause to be made any construction/additions/alterations of whatever nature to the said Apartment/Villa or any part thereof;

12.4 store or cause/permit any of its agent, servants, occupants or other visitors of the said Apartment/Villa to store, stock, bring into or keep in the said Apartment/Villa any prohibited goods, materials, explosives, hazardous, combustible or inflammable substances which may cause risk by fire or which causes damage to or endanger the safety of the said Apartment/Villa, adjacent Apartment/Villas, said Building and/or the Project/towers therein. The Buyer shall not place any heavy material in the common passages or staircase of the Building;

12.5 construct, place or maintain any matter or thing upon, over or under the Common Areas of the said Building and/or said Project nor throw/stack trash, garbage, excess materials of any kind on or about the common areas of the said Building and/or said Project;

12.6 change colour scheme of outer walls or paintings of exterior side of the doors and windows etc. or carry out any change in the exterior elevation or design;

12.7 fix/install the air-conditioners/coolers at any place other than the space(s) provided for in the building design or Project or open them upto

inside passage, common areas, or in the staircase, and shall ensure that no water drips from any cooler/air-conditioners in the Common Areas;

12.8 use the Common Areas / parts of the Building / Project for keeping/chaining pets, dogs, birds or for storage of cycles etc. and not to block the common areas/parts of the tower in any manner whatsoever;

12.9 keep the battery, invertors/petrol, kerosene, generators, flowers, vessels, air conditioners, coolers etc. in the stairs or the entrance or road or parking places.

12.10 remove any wall, including load bearing wall, of the said Apartment/Villa; or

12.11 distribute the electrical load which is not in conformity with the electrical systems installed in the said Building and/or said Project. The Buyer hereby agrees and confirms that any non-observance of the provision of this clause shall entitle the Company and/or Maintenance Agency, to enter the said Apartment/Villa, if necessary and remove the non-confirming fitting, fixtures and changes at the cost and expense of the Buyer.

13. The Buyer shall not use / permit the use of the said Apartment/Villa for any purpose other than residential purpose. The Buyer shall not use the said Apartment/Villa or permit the same to be used for any other purposes, or for any illegal or immoral purposes and shall not do or cause to be done any act/omission which may cause nuisance, damage, annoyance or inconvenience to the occupiers of adjoining apartment/areas.

14. Further, the Buyer shall do or permit anything to be done in or around the said Apartment/Villa which tends to cause damage to any flooring or ceiling or services of any Apartment/Villa over, below or adjacent to the said Apartment/Villa or anywhere in the said Building and the said Project or in any manner interfere with the use or access thereof of spaces, passages, corridors or amenities available for common use. The Buyer shall also strictly follow the instructions as may be issued by the Company/Maintenance Agency from time to time in this regard. The Buyer agrees to indemnify the Company against any penal action, damages or loss borne/suffered by the Company due to any misuse of the said Apartment/Villa by the Buyer for which the Buyer shall be solely responsible.



15. The Buyer has specifically agreed that the allotment of the Apartment/Villa shall be subject to strict compliance of a code of conduct, rules, guidelines, policies etc. that may be determined by the Company/Maintenance Agency for occupation and use of the Apartment/Villa and such other conditions as the Company/Maintenance Agency may deem fit from time to time which may include but is not limited to usage of the Apartment/Villa, operation hours of various maintenance services, general compliance for occupants of the Project, regulation as to entry/exit of the visitors, invitees, guests, security, etc. It is clarified that the code of conduct, rules, guidelines, policies etc. as may be specified by the Company/Maintenance Agency is always subject to change by the Company/Maintenance Agency.

16. The Buyer agrees that it shall not display any name, address, signboard, nameplate, neon-light, publicity material, advertisement material, billboards, hoarding, on the external façade of the Apartment/Villa, Building and/or the Project. The Buyer would be permitted to place its name board at the entrance to the Apartment/Villa only at the designated place specified by the Company.

17. The Buyer shall not put any hindrance/obstruction in the construction/development of the Project and shall not interfere thereto in any manner. The Buyer understands and agrees that the Company shall be carrying out other development in the Project and there will be construction activities on the Said Land in future even after possession of the allotted Apartment/Villa is handed over to the Buyer. The Buyer shall not object nor raise any claim towards any inconvenience faced by him due to such construction activities.

18. The Buyer agrees that the Company shall have the right to make additions to or put up additional structures in/upon the Said Land, as may be permitted by the competent Government authorities and in accordance with applicable laws.

19. Maintenance of the said Building / Project

19.1 \_\_\_\_\_, having its registered office at \_\_\_\_\_  
("Maintenance Agency") which is the maintenance agency appointed by the



Company or such other maintenance agency as may be nominated and appointed by the Company from time to time in its sole discretion shall be providing the maintenance services in the Common Areas in the Project till handover of the same to the Association of Apartment/Villa Owners or competent authority or to any other assignee/nominee, other body corporate. The Buyer has signed and executed a Maintenance Agreement dated \_\_\_\_\_ ("Maintenance Agreement") with the Maintenance Agency and the Buyer agrees to also abide by the terms and condition of the said Maintenance Agreement. Further, the Buyer shall provide requisite cooperation and assistance including executing necessary documents, agreements etc., as may be required by the Company and/or Maintenance Agency from time to time.

19.2 The Buyer has paid Interest Free Maintenance Security (IFMS) calculated @ Rs.\_\_\_\_/- (Rupees \_\_\_\_\_) per sq. ft. of the Carpet Area. In case of failure of the Buyer to pay the maintenance charges, electricity charges or any other charges under the Maintenance Agreement on or before the due date, the Company/Maintenance Agency shall have the right to disconnect electricity supply to the said Apartment/Villa and/or discontinue provisioning of maintenance services in respect of the said Apartment/Villa. Further the Maintenance Agency shall be entitled to adjust, in the first instance such deficit the interest accrued out of the maintenance deposit against such defaults in the payment of maintenance bills, electricity bills and other charges, dues etc. and in case such accrued interest falls short of the amount of the default, then the Maintenance Agency shall be entitled to adjust the principal amount of the IFMS against such defaults. If due to such adjustment in the principal amount, the IFMS falls below the agreed sum of Rs.\_\_\_\_\_-/- (Rupees \_\_\_\_\_ only) per sft of the Carpet Area of the Apartment/Villa, then the Buyer hereby undertakes to make good the resultant shortfall within 15 (fifteen) days of demand by the Company. The Company reserves the right to increase the IFMS from time to time in keeping with the increase in the cost of maintenance services and the Buyer agrees to pay such increases within 15 (fifteen) days of demand by the Company.

19.3 As and when any plant & machinery within the Project including DG sets, electric sub-stations, fire fighting equipment, any other plant and equipment of capital nature etc. require replacement, up-gradation, additions etc., the cost thereof shall be contributed by all the Buyer in the Project, as the case

may be, on a pro-rata basis. The Company or the Maintenance Agency shall have the sole authority to decide the necessity of such replacement, upgradation, additions etc. including its timings or cost thereof and the Buyer agrees to abide by the same.

The Company/Maintenance Agency shall have the sole authority to decide the necessity of such repair, replacement, up gradation, additions, refurbishment etc. including its timings or cost thereof and the Buyer agrees to abide by the same.

19.4 The Buyer assures and undertakes to pay maintenance charges, maintenance bills, IFMS, electricity charges, other charges and amounts and clear all dues as per the terms agreed under the Agreement for Sale, this Deed and the Maintenance Agreement, as the case may be. The Buyer acknowledges and confirms that the Company/Maintenance Agency reserves the sole right to modify/revise the maintenance charges, sinking fund charges, IFMS, and other amounts payable under the Maintenance Agreement.

19.5 The use of and access to maintenance services, Common Areas in the said Building and said Project shall be subject to compliance by the Buyer of the terms and conditions of this Deed, said Buyer Agreement and Maintenance Agreement including and not limited to those relating to timely payments of maintenance charges and other charges by the Buyer.

19.6 In addition to the above the other terms and conditions relating to maintenance services, use of Common Areas and maintenance / payment of IFMS, maintenance charges, etc., shall be as set out in the Maintenance Agreement and said Agreement for Sale.

20. The Buyer shall be solely responsible to maintain inside of the said Apartment/Villa at its own cost, in a good condition and shall keep its walls and partitions, sewers, drains, pipes and appurtenances thereto or belonging thereto, in good condition and maintain the same in a fit and proper condition and ensure that the support, shelter etc., of the said Building or pertaining to the said Building is not in any way damaged or jeopardized. In addition to the Company's and Maintenance Agency's right of unrestricted usage of Common Areas in the Project, car parking spaces and other areas / spaces in the Project for providing maintenance services, the Buyer shall permit the Company/Maintenance Agency and/or its/their agents, workmen, employee, nominees etc., to enter into the said Apartment/Villa or any part thereof, after due notice and during normal working hours, unless the circumstances warrant otherwise, , for carrying out any repair, alternations, etc. and for any other purpose in connection with the provision of maintenance services,

structural repairs, connections / dis-connection of the electricity and water and/or for repairing / changing the common utilities / services running through or around the said Apartment/Villa. Further, the Buyer agrees and confirms that in the event of any emergency or any exigency situation, the Maintenance Agency and/or its representatives, employees etc. shall be entitled to enter the Apartment/Villa without any notice in order to prevent any further damages / losses to the life and / or property in the Apartment/Villa and the Buyer shall raise no objections to the same and if required extend all its cooperation in this regard. Any refusal of the Buyer to give such right of entry will be deemed to be violation of this Deed and the Company shall be entitled to take such actions as it may deem fit.

21. The Buyer hereby agrees to pay electricity consumption charges as per meter reading and further comply with the rules and regulations imposed by the authorities in respect thereto. Irrespective of the fact whether the Apartment/Villa is occupied by the Buyer and/or their tenants/permitted persons or not, the Buyer /occupant shall be liable to pay the minimum charges as may be stipulated by concerned authority to the Company/Maintenance Agency. Any default would result in cutting of supply of electricity to the Apartment/Villa and will be restored on payment of all the arrears with interest, if any. The Buyer agreed that in the event the Company/Maintenance Agency installs separate water meters for the Apartment/Villa, then the Buyer shall pay the water consumption charges as per meter reading and further comply with the rules and regulations imposed by the authorities in respect thereto.

22. The Buyer acknowledges that the Company/Maintenance Agency may get the Project/building structure insured against fire, earthquake, riots and civil commotion, militant action etc. on behalf of the Buyer and the Buyer agrees to pay pro-rata cost of the same as per the amounts invoiced in the maintenance bill by the Maintenance Agency as a part of the maintenance bill. However, the fittings, fixtures and furniture kept/installed inside the said Apartment/Villa shall be insured by the Buyer at his own cost. The Buyer shall not do or permit to be done any act or thing which may render void or voidable, insurance of any Apartment/Villa or any part of the Project or cause increased premium to be payable in respect thereof, for which the Buyer shall be solely responsible and liable.

23. That the Buyer do hereby declare and confirm that:

23.1 All the terms and conditions of the said Agreement for Sale shall be deemed to have been incorporated in this Deed save and except those terms and conditions of the said Buyer Agreement which are at variance with the

terms and conditions contained in this Deed, in which case terms and conditions of this Deed shall prevail.

23.2 It shall abide by all the laws, bye-laws, rules, regulations, notifications, etc., which are applicable to the Said Land/Project/said Apartment/Villa. The Buyer shall be solely responsible and liable for violations, if any, of the provisions of the applicable laws and that Buyer shall indemnify the Company for any liability and/or penalty in that behalf.

23.4 It shall neither do on its own nor permit anything to be done to any part of the Project, which would be in violation to the sanctioned plans, completion certificate and any other approvals / permissions relating to the Project.

23.5 It has conducted and undertaken necessary due-diligence of the said Apartment/Villa/Project and has sought all clarifications and perused/verified all the documents in respect of the Project and has satisfied himself about the right, title and interest of the Company over the Said Land and specific features/characters of the said Apartment/Villa.

23.6 Except the said Apartment/Villa, the Company shall be entitled to raise finance, loan and create security, guarantee, mortgage, charge or otherwise encumber all other areas, land, Apartment/Villas, development etc., in the Project.

24. In the event the Buyer desires to transfer the said Apartment/Villa to a subsequent purchaser, lessee, assignee and / or assignee, the transfer shall be subject to the Buyer making good the deficit in IFMS, paying requisite transfer charges and administrative charges, pending maintenance charges and any other pending dues and charges etc., payable by the Buyer to the Company and/or Maintenance Agency and fulfilling other terms and conditions as may be specified by Company in this regard, before such transfer, lease and /or assignment of the said Apartment/Villa.

25. The Buyer further agrees and undertakes that he has joined the Association of Apartment Owners formed by the Company under the name and style of “\_\_\_\_\_” (hereinafter referred to as “Association of Apartment Owners”). The Buyer shall pay the prescribed fees, subscription charges thereof and shall complete such documentation and formalities as is deemed necessary by the Company in this regard. Further, the Buyer shall adhere to and comply with the bye-laws, rules, regulations and policies of such association.

26. The Buyer acknowledges and confirms that the infrastructures facilities provided / to be provided by government in the entire locality is beyond the control of the Company / Maintenance Agency, and Buyer undertakes not to raise any claim or dispute against the Company and/or Maintenance Agency in respect of the facilities provided / to be provided by government or any statutory authorities.

27. The Buyer agrees and understands that the Company shall use the terrace above the top floor of Apartment/Villa building within the Project, for purpose such as installation and operation of antenna, satellite dishes, communication towers, other communication equipment or for display signage purposes and the Buyer shall not have a right to object or cause any hindrance to the same or make any claims on this account.

28. The Buyer shall ensure that the persons to whom the said Apartment/Villa or part thereof is let, transferred, assigned or given possession of will execute, acknowledge and deliver to the Company and Maintenance Agency such instruments and take such actions as the Company/Maintenance Agency may reasonably request to confirm or perfect any right to be created or transferred pursuant to any such transaction. The Buyer also undertakes to incorporate the terms of this Deed in any transfer document which he may execute whether pertaining to sale of the said Apartment/Villa or lease or any other similar transaction.

29. The Buyer confirms that all the obligations arising of this Deed in respect of the said Apartment/Villa/ Project/ Said Land shall be equally applicable and enforceable against any and all occupiers, tenants, licensees and/or subsequent purchasers of the said Apartment/Villa as the said obligations go with the said Apartment/Villa for all intents and purposes and the Buyer assures the Company that the Buyer shall take sufficient steps to ensure performance in this regard.

30. In case of non-observance of any of the provisions contained in this Deed, Agreement for Sale and/or Maintenance Agreement, the Company /Maintenance Agency may issue a notice to the Buyer to rectify the breach within \_\_\_\_\_ (“Notice Period”). However, in case the Buyer fails to rectify the breach within the Notice Period the Company and/or the Maintenance Agency through their authorised representative shall be entitled, but not obligated to remedy / rectify the breach at the cost and expenses of the Buyer. Further, the Buyer shall be responsible for all losses, damages, claims, penalties, liability, costs and/or expenses suffered by or caused to or incurred by the Company and/or Maintenance Agency in this regard.

31. The Buyer confirms that he has understood each and every clause, covenant of this Deed and its legal implications along with Buyer's obligations and liabilities Company as said forth in this Deed. The Buyer shall keep the Company, his agents, representative and estate indemnified and harmless against any loss or damages that the Company may suffer as a result of non-observance or non-performance by the Buyer's, it's nominees, assignees, transferees, lessee, tenants, licensees etc. of the covenants and conditions in this Deed, Agreement for Sale and Maintenance Agreement.

32. Upon taking over of possession of the Apartment/Villa by the Buyer, if there is any damage or destruction in the Project or any portions thereof for any reason other than structural defects, where such damage or destruction occurs after the completion of the Project, all the Apartment/Villa owners shall have the right to repair or rebuild the damage and the Apartment/Villas. Subject to applicable law, the repair or reconstruction of the Project shall be carried out on the basis of the sanctioned plan and other approvals that may be required. All the Apartment/Villa owners of the Project which is damaged or destroyed shall bear the cost of such repair or reconstruction in a fair and equitable manner and may utilise the funds available with the Association of Apartment Owners for these purposes in accordance with the rules and regulations of the declaration. Without prejudice to the foregoing, the Buyer agrees that the proceeds of any insurance that may be obtained by the Association of Apartment Owners for insuring the Project against any such damage or destruction, shall be utilized only for the purpose of such repair or reconstruction only.

33. The Buyer acknowledges that there are several products /equipment /services to be provided by third party (for example lifts, ac, wardrobes, Fans, lights, etc.) within the said Apartment/Villa and/or the said Project. The warranty and guarantee provided by the respective third party may be available to the Buyer as per the products/equipment /services specifications and the Buyer can approach such third parties directly for such warranty or guarantee claims. The Company shall not be responsible for warranty or guarantee for any such third party products/ equipment / services.

34. All expenses towards execution and registration of this Deed and any other document to be executed between the Buyer and the Company including but not limited to the cost of stamp duty, registration fee and other incidental charges has been and shall be paid solely by the Buyer. Any deficiency in the stamp duty, as may be determined by the competent authority, along with consequent penalties and deficiencies as may be levied in respect of the said



Apartment/Villa shall be borne and paid by the Buyer without any liability on the Company.

35. The Schedules to this Deed are part and parcel of this Deed and may be read in conjunction with this Deed while interpreting the terms and conditions of this Deed.

36. Failure of the Parties to enforce at any time or for any period of time the provision(s) hereof shall not be construed to be waiver of any provisions or of the right thereafter to enforce each and every provision.

37. If any provision of this Deed shall be determined to be void or unenforceable under applicable laws, such provisions shall be deemed amended to the extent necessary to conform to applicable laws and the remaining provisions of this Deed shall remain valid and enforceable.

38. Failure by any Party to enforce at any time or for any period any one or more of the terms, conditions, provisions or stipulations of this Deed shall not constitute as a waiver of such term, condition, provision or stipulation nor of the right of such Party to enforce the same subsequently.

39. Capitalised terms used herein but not defined shall have the meaning assigned to them in the said Agreement for Sale.

40. Each Party agrees that it will from time to time, do execute, acknowledge and deliver all such further acts, documents, and instruments as may be reasonably required by the other Party in order to carry out fully and effectuate the transactions herein contemplated in accordance with the provisions of this Deed. The Buyer undertakes to execute all requisite documents and present himself for execution and registration of this Deed as and when required by the Company.

41. The Buyer acknowledges and confirms that the Buyer has read and understood the said Act and the implications thereof in relation to the various provisions of this Deed and the Buyer is in full agreement with the provisions of this Deed in relation to the Act or any statutory amendments or modifications thereof or the provisions of any other law(s) dealing with the matter.

42. Unless the context otherwise requires, (i) words importing the masculine gender shall also include the feminine gender and vice versa; and (ii) the use of the singular shall include the plural and vice-versa.

43. That courts at \_\_\_\_\_ alone shall have exclusive jurisdiction to try and decide all disputes arising out of / touching and/or concerning this Deed.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS TO  
THESE PRESENT ON THE DAY, DATE, MONTH AND YEAR FIRST MENTIONED.

\_\_\_\_\_  
(For and on behalf of M/s \_\_\_\_\_)  
COMPANY

\_\_\_\_\_  
(For and on behalf of \_\_\_\_\_)  
BUYER

Witnesses:

- 1.
- 2.

Schedule -I

1. Description of the said Apartment/Villa and Reserved Parking Space

Apartment/Villa Number

Tower Number/Building Number

Apartment/Villa Type

Floor No

Carpet Area (sft)

Carpet Area (sqm)

Exclusive Balcony (sqf)

Exclusive Balcony (sqm)

Exclusive Veranda (sqf)

Exclusive Veranda (sqm)

Carpet Area (sft)

Carpet Area (sqm)



The said Apartment/Villa is bounded as under:

North By:

South By:

East By:

West by:

Parking Space No.: [insert number of car parks]

1.Covered / Open : [insert details of covered / open car park space number]

and bounded as under:

North By:

South By:

East By

West by:

2. Covered / Open : [insert details of covered / open car park space number]

and bounded as under:

North By:

South By:

East By:

West by:

3. Covered / Open : [insert details of covered / open car park space number]

and bounded as under:

North By:

South By:

East By:

West by:

4. Covered / Open : [insert details of covered / open car park space number]

and bounded as under:

North By:

South By:

East By:

West by:

Schedule-II

Floor Plan of the said Apartment/Villa

Schedule-III

Manner of Payment of Total Price

Schedule-IV

Details of Sale Deeds of Said Land

## **CHAPTER 28**

### **DISTRIBUTORSHIP AGREEMENT**

A distributorship agreement is a document that creates a relationship of distributorship between a manufacturer and a distributor. The agreement confers on the distributor the right to supply the manufacturer's goods within a region or regions. Such rights may be exclusive within that particular region/regions.

The distributorship agreement shall contain the understanding between the manufacturer and distributor along with the terms and conditions of distributorship.

## **DISTRIBUTORSHIP AGREEMENT**

This agreement made and entered into the day..... of by and between ..... INC, a corporation duly organized and existing under the laws of Taiwan with its principal place of business at Taipei Taiwan (hereinafter called Seller )

### **AND**

..... LIMITED, a company registered under the Companies Act, 1956/2013 with its principal place of business at ..... NEW DELHI, INDIA (hereinafter called Distributor ).

Whereas Clause

WHEREAS, Seller is desirous of exporting the products stipulated in article 4 hereof to the territory stipulated in Article 3 hereof and WHEREAS , Distributor is desirous of importing from Seller and selling the said products in the said territory; NOW, THEREFORE, in consideration of the promises and the mutual covenants to be faithfully performed herein contained.

### **IT IS HEREBY AGREED AND UNDERSTOOD AS FOLLOWS:**

#### **ARTICLE 1. APPOINTMENT**

During the effective period of this agreement, Seller hereby appoints Distributor as its exclusive distributor and Distributor accepts and assumes such appointment.

#### **ARTICLE 2. PRIVITY**

The relationship hereby established between Seller and Distributor during the effective period of this Agreement, shall be solely that of Seller and Distributor has no authority to assume or create any obligation in the name of or of any kind on behalf of Seller.

#### **ARTICLE 3. TERRITORY**

The territory covered under this Agreement shall be expressly combined to the entire territory of INDIA. (hereinafter called territory ).

#### **ARTICLE 4. PRODUCTS**

The products covered under this agreement shall be expressly confined to Uninterruptedly Power Supply (UPS) (hereinafter called Products).

#### **ARTICLE 5. PRICES**

As applicable from time to time and conveyed by the Seller to the Distributor in writing & Distributor giving its consent in writing to the Seller.

#### **ARTICLE 6. TECHNICAL IMPROVEMENT AND PATENT APPLICATION**

During the term of this Agreement, Seller shall furnish to Distributor any technical improvements and inventions relating to the Products made by Seller without any delay and free of charge. As Seller has the right to apply for the issuance of patents thereon, the Distributor agrees to make reasonable efforts to obtain such protection in India. During the term of this Agreement, Distributor agrees to furnish to Seller all technical improvement and inventions related to the Products required by Distributor without any delay and free of charge in consideration of services in Article 6-1 above.

#### **ARTICLE 7. AFTER SALE SERVICE**

Seller will provide a one year full guarantee to Distributor after the shipping date. In case of faulty Products, Seller shall replace the faulty units with new All-in one PCB. Distributor shall send faulty PCB back to Seller for repair. Whenever Seller has received a complaint as to the products from the distributor, Seller shall immediately make investigation and take proper action.

#### **ARTICLE 8. EXCLUSIVE RIGHT**

In consideration of the exclusive right herein granted, Distributor shall not purchase, import, sell, distribute or otherwise deal in any products competitive with or similar to Products in Territory, and Seller shall not offer, sell or export Products to Territory through other channel than Distributor during the effective period of this Agreement. The Seller shall not provide assistance, supply directly or indirectly to the technical details of the products to anyone in the Territory.

#### **ARTICLE 9. MINIMUM PURCHASE**

Distributor shall purchase at least US\$ .....(U.S. Dollar .....only ) of product during one (1) year ( 12 months ) during the effective period of this Agreement and its extension thereof, if any.

#### **ARTICLE 10. INDIVIDUAL CONTRACT**

Each individual contract under this Agreement shall be subject to this Agreement but such contract shall be concluded and carried out by Seller's sale note or confirmation which shall set forth the terms, conditions, rights and obligations of the parties hereto arising from or in relation to or in connection with such contract except those stipulated in this Agreement.

#### **ARTICLE 11. PAYMENT**

Payment by either irrevocable letter of credit or remittance by telegraphic transfer through bank. Letter of credit: Within 7 days after the receipt of Seller's confirmation of order, the Distributor shall cause irrevocable confirmed Letter of Credit(s) available by Seller's sight draft to be established with a prime bank satisfactory to Seller. Remittance by Telegraphic Transfer. Payment shall be received by Seller 7 days prior to shipment effect.

#### **ARTICLE 12. INFORMATION AND REPORT**

Both Seller and Distributor shall periodically and/or on the request of either party furnish information and market reports to each other to promote the sale of Products as much as possible. Distributor shall give Seller such reports as inventory, market conditions and other activities of Distributor.

#### **ARTICLE 13. SALES PROMOTION**

Distributor shall diligently and adequately advertise and promote the sale of Products throughout Territory. Seller shall furnish with or without charge to Distributor reasonable quantity of advertising literatures, catalogues, leaflets, folders etc.

Representatives of Seller may periodically visit Distributor and advise Distributor in methods and means best suited to promote the sale of Products throughout Territory.

#### **ARTICLE 14. INDUSTRIAL PROPERTY RIGHTS**

Distributor may use the trade-mark(s) of Seller during the effective period of this Agreement only in connection with the sales of Products, provided that even after the termination of this Agreement Distributor may use the trade-mark(s) in connection with the sale of Products held by it in stock at the time of termination. Distributor shall also acknowledge that any and all

patents, trademarks, copyrights and other industrial property rights used or embodied in Products shall remain to be sole properties of Seller, and shall not dispute them in any way

#### **ARTICLE 15. DURATION**

This Agreement shall become effective on the day appearing at the first above written upon the signing of both Seller and Distributor and shall remain effective for a period of one year. At least three (3) months before the expiration of the term, Seller and Distributor shall consult with each other for renewal of this Agreement.

#### **ARTICLE 16. PROHIBITION OF SALE OUTSIDE TERRITORY**

Unless prior notice and approved by Seller, Distributor shall not sell or export, nor cause any other person, firm or corporation in Territory to sell or export Products outside Territory during the effective period of this Agreement.

#### **ARTICLE 17. ASSIGNMENT**

Neither party shall assign and/or transfer this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party.

#### **ARTICLE 18. OBSERVANCE OF SECRECY**

Both Seller and Distributor shall keep in strict confidence from any third party(s) and all important matters as to the business affairs and transactions covered by this Agreement.

#### **ARTICLE 19 .NOTICE**

All notice which may or shall be given under this agreement shall be made by registered airmail or cable to the address mentioned below or to such address as are notified in writing by the parties hereto. If either party has changed its address, a written notice thereof shall be given to the other party. All notices shall also be deemed to have been given on the day when deposited in post.

TAIPEI 10560 TAIWAN,R.O.C.

#### **ARTICLE 20. ASSEMBLING**

To secure regular supplies in the territory, if both the parties agree, the seller shall provide all parts of the product to assemble the product in the territory.

If the Seller wishes to establish its manufacturing unit in the territory, the Distributor shall be given preference to establish such unit.

**ARTICLE 21. GOVERNING LAW & ARBITRATION**

This Agreement shall be governed and interpreted by the laws of India. In case that any dispute or controversy arises out of or in relation to this Agreement between both parties shall be settled amicably but, in case of failure, these disputes or controversies shall be finally settled in London by arbitration in accordance with International Commercial Arbitration Association where the award shall be final binding upon the parties hereto.

**ARTICLE 22. ENTIRE AGREEMENT**

This Agreement constitutes the entire and only agreement between the parties hereto and supersedes all previous negotiations, agreements, commitments relating to the sale of Products and shall not be released, discharged, changed or modified in any manner, except by instruments signed by duly authorized officer or representative of each of the parties hereto. IN WITNESS WHEREOF, the parties hereto have caused this Agreement in English and duplicate to be executed by their respective duly authorized officer or representative as of the day first above written

WITNESSTH

1. ....  
..... INC.  
2. ....  
[SELLER]

..... LTD.

[DISTRIBUTOR]





## **CHAPTER 29**

### **DISSOLUTION DEED**

A partnership firm shall if it cease to exist, it needs to be dissolved. The procedure, known as dissolution of a partnership firm, involves the sale or disposal of all assets of the partnership firm, final settlement of all of its liabilities, and the settling of the accounts. Any sum that remains in the business is then transferred towards the partners in the profit-sharing ratio mentioned in the dissolution partnership deed.

After the partnership firm is dissolved, the existing relationship between the partner's changes. However, the firm continues its activities. The dissolution of partnership takes place in any of the following ways:

1. Change in the existing profit-sharing ratio.
2. Admission of a new partner
3. The retirement of an existing partner
4. Death of an existing partner
5. Insolvency of a partner as he becomes incompetent to contract. Thus, he can no longer be a partner in the firm.
6. On completion of a specific venture in case, the partnership was formed specifically for that particular venture.
7. On expiry of the period for which the partnership was formed

### **DEED OF DISSOLUTION OF PARTNERSHIP**

This Deed of Dissolution Is made at ... this day ... between Mr. A residing at ... hereinafter referred to as 'the Party of the First Part' and Mr. 'B' residing at ... hereinafter referred to as 'the Party for the Second Part' and Mr. 'C' residing at ... hereinafter referred to as 'the Party of the Third Part,'

Whereas the Parties hereto have been carrying on business of... in partnership in the Firm name of M/s. XYZ & CO on the terms and conditions recorded in the Deed of Partnership dated ... entered into by and between the parties hereto. since the ... day of ...

And Whereas as certain differences have arisen between the parties hereto (or as the parties do not desire to continue the said partnership for diverse reasons the parties) have agreed to dissolve the said partnership as from the ... day of ... on the terms herein recorded.

AND WHEREAS the assets of the partners consist of

- i. the land and premises purchased and belonging to the Party of the First Part and brought in by the Party of the First Part as his contribution to the capital of the Firm
- ii. the lands and premises described In the Second and Third Schedule hereto purchased or otherwise acquired by the Firm in the course of Its business.
- iii. and the goodwill, the stock-in-trade, furniture and other articles and things and bank balances and outstandings.

AND WHEREAS accounts of the partnership business have been made upto the date of dissolution and the total value of the assets have been ascertained to be Rs... including Bank balances, and outstanding debts and excluding therefrom the debts and liabilities of the Firm.

AND WHEREAS each partner is entitled to an equal share in the assets and profits of the firm, under the said Deed of Partnership.

AND WHEREAS it is agreed that the property described In the First Schedule will be returned back to the Party of the First Part in lieu of his share In the

said assets, the property described In the Second Schedule will be assigned to the Party of the Second Part in lieu of his share in the said assets and the property described in the Third Schedule will be retained by the Party of the Third Part in lieu of his share in the said assets.

AND WHEREAS for equalisation of shares the Party of the Third Part will pay to the Parties of the First and Second Parts in cash a sum of Rs... in the manner hereinafter provided. --

AND WHEREAS it is agreed that the business of the firm will be continued by the Party of the Third Part alone in the same name and he will be entitled to retain not only the property described in the Third Schedule but all the stock-in- trade, furniture, articles and moneys in lieu of his share in the assets subject to payment of the said sums payable to the Parties of the First and Second Part and subject to all debts and liabilities of the Firm and that the Parties of the First and Second Part will be deemed to have retired from the partnership

AND WHEREAS the parties have agreed to record the terms of and effectuate the dissolution of the Firm In the manner following.

#### **NOW THIS DEED WITNESSETH AS FOLLOWS**

1. It Is agreed and declared that the partnership between the parties hereto in the name of M/s ... be and it is hereby dissolved with effect from the ... day of ..... , .
2. The accounts of the business and assets, profits and losses of the said partnership firm till the date of dissolution have been made and settled and signed by the Parties and the Parties confirm the same and except as hereinafter provided no party is liable to the others in respect thereof.
3. The business of the Firm shall be continued to be carried on by the Party of the Third Part alone and as the sole proprietor thereof as from the said date and the Parties of the First and Second Part shall be deemed to have retired from the partnership and shall have no claim thereto except to the extent hereinafter mentioned.
4. The property described In the First Schedule hereto shall cease to be a part of the assets of the Firm and shall continue to belong to the Party of the

First Part in his own personal capacity and the Parties hereto of the Second and Third Part hereby release and renounce all their right, title and Interest therein or thereto as partners of the Firm.

5. The property described in the Second Schedule hereto shall also cease to be a part of the assets of the Firm and shall belong to the Party of the Second Part alone and in his own personal right and the Parties of the First and Third Part hereby grant, transfer and release all their respective shares, right, title and interest therein together with the appurtenances thereto To Have and To Hold the same unto and to the use of the Party of the Second Part absolutely subject to the payment of the taxes, rates, assessments, dues and duties payable in respect thereof to the Government or Municipal Corporation or any other public body.

6. The Parties of the First and Second Part also release or renounce in favour of the Party of the Third Part all their share, right. title and interest, claim and demand in or to the stock-in-trade. furniture and other articles and moneys belonging to the Firm, the goodwill, thereof and in or to all the debts and outstandings belonging to the Firm.

7. The property described in the Third Schedule hereto shall belong to the Party of the Third Part alone and the Parties of the First and Second Part hereby grant, transfer and release all their respective shares, rights. title and interest therein To Have And To Hold the same unto the use of the Party of the Third Part absolutely subject to the payment of all the taxes, rates, assessments, dues and duties In respect thereof payable to the Government or the Municipal Corporation or any other public body.

8. The Party of the Third Part agrees and covenants to pay to each of the parties of the First and Second Parts a sum of Rs... by quarterly equal instalments with Interest thereon at ... % p.a. the first of such instalments to be paid on the ... day of ... and each subsequent instalments on the ... day of each subsequent quarter provided that in default of payment of any two instalments the whole of the said amount or any part thereof then remaining due shall become payable forthwith and provided further that, the payment of the said amounts shall remain charged on the property described in the Third Schedule hereto and allotted to the Party of the Third Part.

9. The Party of the Third Part covenants with the Parties of the First and Second Part that he will pay and is liable to pay all the debts and liabilities of the Firm subsisting on the date of dissolution including liabilities of Firm's income-tax and other taxes and Government dues and shall indemnify and keep indemnified the Parties of the First and Second Parts against the said liability and against all loss, costs, charges and expenses incurred by any of them on account of such debts and liabilities or any of them or any part thereof being required to be paid by them or any of them.

10. Each of them the Parties hereto hereby releases the other or others from all proceedings, accounts, claims and demands in respect of the said partnership but without prejudice to any rights or claims and remedies in respect thereof under these presents.

11. The Parties of the First and Second Part hereby jointly and severally appoint, nominate and constitute the Party of the Third Part their attorney or agent with authority to collect all the assets and property of the partnership and to ask, demand, sue for and recover and receive and to sign and give discharge for all the debts, estate and effects or other moneys due or owing or in any wise belonging to the said partnership and to settle accounts, reckoning, matters and things whatsoever relating thereto and to compound or release all or any of the debts or claims belonging to the partnership and to Institute any suit or legal action or other proceedings for compelling payment, discharge or delivery of any moneys or other property belonging to the partnership and for any of the purposes aforesaid from time to time to appoint any substitute or substitutes and at any time to remove him or them, to sign, declare pleadings, applications and other papers as may be required for the purpose, and generally to do all such acts and things as may be necessary or expedient for the purpose of recovering All debts and liabilities of the Firm or for vesting in the Party of the Third Part the premises hereby assigned or released to him.

12. The Parties of the First and Second Part shall not for a period of one year from the date hereof carry on or engage or be concerned or interested either directly or indirectly in the same business carried on by the said partnership in the city of ...

13. The benefits of or rights to all permits licenses held by the said Firm shall belong to the Party of the Third Part alone and the Parties of the First and Second Part will have no right or claim thereto.

14. Each of the parties hereto agrees and undertakes to sign all applications. documents, and other papers as may be. required to properly transfer the properties and other assets allotted, assigned or released to the other or others including all licenses and permits in the Government or Municipal records or otherwise but the costs, charges and expenses in respect thereto will be borne by the party requiring such documents to be signed.

15. Each of the parties hereto assures the others that except as recorded in the books of account of the Firm and other record, any of them has not received. collected or discharged or compromised any claim demand or credit due or to become due to the Firm or incurred any debt or liability or obligation that may now or hereafter directly or indirectly charge or affect the partnership or any of its property and assets.

16. The notice of the dissolution of the firm in the prescribed form will be given by the Party of the Third Part within prescribed time as required by the Partnership Act and Rules made thereunder and the Party of the Third Part will publish the dissolution in the Government Gazette as early as possible.

17. All the expenses of and incidental to stamp and registration of this Deed will be borne by the parties hereto in equal shares.

18. The original of this Deed will remain in the custody of the Party of the Third Part and will be produced by him to the other or others whenever required for inspection or production before any Court. any Govt. Officer, Central or State, including the Offices of the Income tax and Sales Tax Department. One duplicate signed copy of this Deed will remain with each of the other two parties hereto.

19. Notwithstanding anything hereinbefore contained all the liability for income-tax on the personal Income including capital gains tax of any party hereto including any interest thereon and penalties imposed In respect thereof incurred before dissolution or after will be that of the party whose Income it is and such party shall indemnify and keep indemnified the other parties against such liability and costs. charges and expenses incurred on that account.

**IN WITNESS WHEREOF** the parties have put their respective hands the day and year first hereinabove written.

THE FIRST SCHEDULE ABOVE REFERRED TO

THE SECOND SCHEDULE ABOVE REFERRED TO

THE THIRD SCHEDULE ABOVE REFERRED TO

Signed and delivered by the within named Party of the

First Part Mr. A in the presence of

Signed and delivered by the within named Party of the

Second Part Mr. B in the presence of

Signed and delivered by the within named Party of the

Third Part Mr. C in the presence of

## **CHAPTER 30**

### **PRE INCORPORATION AGREEMENT**

A pre-incorporation agreement is crucial to establish the organization, control, and operation of the proposed business during the pre-incorporation process.

A pre-incorporation agreement may avoid disputes which may take place in future. By drafting an agreement on important terms at the beginning of incorporation, before later efforts complicate matters. Frequently, to avoid the dispute in future like pre-incorporation agreement; shareholders agreements and confidentiality agreements are also created at the same time.

A pre-incorporation agreement is one of the legal forms used at the beginning of the incorporation process. By using a pre-incorporation agreement, the proposed entity or the promoters of the proposed entity ensures that everyone involved in establishing or developing the business has a clear understanding of the plans, strategy thereby minimizing the chance for future disputes and litigation. A pre-incorporation agreement includes the date for completing the formation of a corporate and it also contains the provision for handling the cost and expenditures occurred in incorporating the company.

It lays out the out the basic organization of the business, the name of the business, its purpose, its mission and vision, the directors of the proposed company, their role in the company and its business, a capital contribution of the promoters etc.

The following are some of the basic terms included in pre-incorporation agreements:

**1. NAME**

NAME of the proposed entity that is the name and style which will be registered with the appropriate authority and with which it will carry on the business.

**2. OBJECT**

What will be the object of the company or the business activity that shall be carried on by the company once it gets incorporated? Does the business activity require any license from the respective authority; if yes then what is the procedure or action taken to obtain such license?

**3. DUE DATE**

A date for completion of corporate formation. There must be a target date to accomplish the incorporation procedure.

**4. ADDRESS**



The address of the corporate headquarters that will be used in the articles of incorporation. The address of the office which shall be used in future for the further communication and for receiving the documents on behalf of the company and that office shall be used where the documents will be kept safely.

**5. NAME OF THE PROPOSED DIRECTORS**

Name of all the proposed directors if any chosen or name of the officers. Their occupation, address and all other information which may be necessary.

**6. CAPITAL CONTRIBUTION**

What will be the Capital contributions of the subscribers or what will be the mode of the contribution?

**7. THE OPENING OF A BANK ACCOUNT**

Terms for the establishment of a corporate bank account and authority for signing corporate checks. Where the bank account will be open in the name of the company and who will be authorized to carry out the transaction for and on behalf of the company.

**8. AUTHORIZED PERSON**

A person who will be authorized to carry out the business operations such as signing contracts and borrowing on behalf of the corporation.

**9. REIMBURSEMENT OF EXPENSES**

Reimbursement of shareholder fees and expenses for handling incorporation and corporate matters

**DEED OF DISSOLUTION OF PARTNERSHIP**

THIS DEED OF DISSOLUTION OF PARTNERSHIP made the..... day  
of..... 2020

BETWEEN.....

WHEREAS the partners hereto under a deed of partnership dated..... made between them formed themselves into a business firm and carried on business under the name and style of..... pursuant to the covenants, stipulations and provision contained in the said deed;

AND WHEREAS it has been mutually decided between the parties that the said partnership shall be dissolved, and the said trade and business shall be wound up and the stock-in-trade, assets and credits realized and called in, and the net proceeds after payment and satisfaction of all debts and liabilities divided between the partners according to the covenants in this behalf appearing in the deed of partnership.

NOW THIS DEED WITNESSES that in pursuance of the said agreement it is hereby declared and agreed by and between the parties hereto as follows, that is to say:

1. The said partnership between the partners hereto under the deed, dated..... hereunto appended shall be determined and stand dissolved as from the..... day of..... 2020. And the parties hereto singly or jointly shall not carry on the business of the said firm of..... under the said name and style for a period of..... years hence.
2. The parties hereto shall on the aforesaid date of..... sign notices of the dissolution and forthwith advertise in the local Official Gazette the fact of dissolution as required by Section 45 of the Indian Partnership Act AND shall also intimate the fact of dissolution to the Registrar of Firms under the provision of Section 63 of the said Act.
3. Within..... days after the dissolution of the partnership a full and general account and balance sheet shall be taken and made of the property, assets and liabilities of the partnership; and a full and particular

inventory and valuation of all the machinery, plants, tools, utensils, stock in hand, office equipment, materials and effects belonging to the firm shall be made by the parties or such other person as the partners may choose to appoint, whose decision shall be final and binding upon

the partners, and all debts owing to the firm shall be collected and got in by the parties or such other persons as the parties may by instrument in his behalf appoint.

4. That as soon as may be, after the property, assets and liabilities have been got in and disbursed the parties or such other person or persons whom the parties may have appointed under the foregoing clause shall divide and apportion the share of the parties, in the proportion of the contribution of the parties towards the capital. In such division any amounts paid earlier or due to the parties according to the books of the partnership shall be taken into account. That the cost of liquidation proceedings shall also be deemed to be a liability of the partnership and paid from the funds of the partnership.

5. That in case the winding up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts of the partnership then the partners shall forthwith pay such losses in the proportion of their contribution to the capital.

6. Each of the parties shall, so soon as the others or any of them, or their or his representatives, shall have executed and done all the assurances, acts or things hereby agreed to be done by them respectively and at the request and cost of such other or others, or their or his representatives execute to them or him such releases, indemnifies, and assurances as may be reasonable and proper;

IN WITNESS WHEREOF the said AB, CD and EF have hereto signed and executed this agreement of dissolution and appended it to the said deed of partners, dated.....

WITNESSES:

1. Sd/- A.B.
2. Sd/- C.D.
3. Sd/- E.F.



## **CHAPTER 31**

### **SHARE PURCHASE AGREEMENT**

SPA may be executed between a single buyer and seller or may be between a single seller and multiple buyers. In case of multiple buyers, if they are companies created only for the purpose of effecting a SPA (or Shell Companies), thus lacking administrative or financial credibility, it is essential to ensure that heads of such companies (or Principals) are made Covenants/Guarantors so as to protect the compensation or payment in cases of non-payment or fraud of any kind.

A Share Purchase Agreement Format is considered to be an essential business practice since a casual approach to such transactions and absence of a legally enforceable agreement can bring about consequences which are not desirable to both parties and those related to the transaction of share purchase/transfer. The SPA ensures that due care is taken while formulating the terms and mentioning the rights and liabilities of the parties.

1. The Agreement being formally executed for sale of shares makes the transaction legally accurate and organized by clearly laying out the expectations of the parties.
2. Bring detailed, they cover all the areas involved in the transaction thus making it unambiguous and reducing the possibility of confusion in the future.
3. It facilitates the companies to maintain a record of shareholders and includes them in the processes of decision making.
4. Such agreements help the appropriate authority to keep track of similar transactions and enforce them.
5. Such a legal framework protects the rights and interests of both the seller and the purchaser to minimize the risk of getting conned.

**SHARE PURCHASE AGREEMENT**

THIS share purchase agreement (hereinafter referred to as “the agreement” is made on 2019 at New Delhi,

**BY & BETWEEN**

\_\_\_\_\_ S/o or D/o \_\_\_\_\_ r/o \_\_\_\_\_ having PAN No \_\_\_\_\_ hereinafter referred to as “**Seller 1 or Shareholder 1**” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the **FIRST PART**

\_\_\_\_\_ S/o or D/o \_\_\_\_\_ r/o \_\_\_\_\_ having PAN No \_\_\_\_\_ hereinafter referred to as “**Seller 2 or Shareholder 2**” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the **SECOND PART**

\_\_\_\_\_ S/o or D/o \_\_\_\_\_ r/o \_\_\_\_\_ having PAN No \_\_\_\_\_ i \_\_\_\_\_ hereinafter referred to as “**Seller 3 or Shareholder 3**” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the **THIRD PART**

\_\_\_\_\_ S/o or D/o \_\_\_\_\_ r/o \_\_\_\_\_ having PAN No \_\_\_\_\_ hereinafter referred to as “**Seller 4 or Shareholder 4**” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the **FOURTH PART**

**AND**

\_\_\_\_\_, a Company incorporated under the provisions of Companies Act, 1956/2013 having its registered office at \_\_\_\_\_ represented through Mr. \_\_\_\_\_ S/o Mr. \_\_\_\_\_, R/o \_\_\_\_\_ having PAN \_\_\_\_\_ being Director of the Company duly authorized vide Board resolution dated -----, 2019 (hereinafter referred to as “**BUYER** (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the **FIFTH PART**

**AND**

\_\_\_\_\_, a Company incorporated under the provisions of the Companies Act, 1956/2013 having its registered office at \_\_\_\_\_ and CIN: \_\_\_\_\_ represented through Mr. \_\_\_\_\_ S/o Mr. \_\_\_\_\_ R/o \_\_\_\_\_ having PAN \_\_\_\_\_ duly authorized vide Board resolution dated \_\_\_\_\_, 2019, 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) of the **SIXTH PART**;

The Seller 1 through 4 inclusive, together referred to herein as the “**Sellers or Shareholders**”. The Sellers, BUYER and the Company are sometimes hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

### **WHEREAS**

A. The Sellers are the only shareholder of the Company. The Company was incorporated under the Companies Act, 1956/2013 and as such the Sellers hold \_\_\_\_ Equity Shares comprising of \_\_\_\_% of the total issued subscribed and paid-up share capital of the Company of Rs. \_\_\_\_ divided into \_\_\_\_\_ fully paid up equity shares of the face value of Rs.\_\_\_\_/- each (“**Sale Shares**”). The Sellers holds Sale Shares in the Company as per the details given hereunder :

Sr. No	Name of Shareholder	No of Shares held	% of Shares

All the above Sellers are also the Directors of the Company.

B. The Company carries on business of setting up and running of \_\_\_\_\_

C. The Company is the leasehold right holder and owns land admeasuring

\_\_\_ sq mtr bearing \_\_\_\_\_ registered in the district of Sub-Registrar, \_\_\_\_\_ vide document no \_\_\_\_\_ book no \_\_\_ volume no \_\_\_ at page no \_\_\_ and additional book no \_\_\_ at volume no \_\_\_ at page no \_\_\_ to -\_\_\_ on \_\_\_\_\_ (hereinafter referred to as “**Land**”).

D. The Sellers have already partly constructed a building (Photos of the building as on the date of signing of this Agreement are attached at Annexure II) over the Land as per the building plan sanctioned by the appropriate authority ( hereinafter referred as “**Building**”)

E. The Land and Building (on as is where is basis) together be referred as “**Premises**” in this Agreement.

F. **WHEREAS** the BUYER has been apprised by the Shareholders that the Premises has been mortgaged to \_\_\_\_\_ branch (“**Bank**”)and there is an outstanding dues of an amount of Rs\_\_\_\_\_ ( Rupees In Words) as on \_\_\_\_\_.

G. **WHEREAS** the Buyer and Sellers agree that this Agreement is in continuance of Memorandum of Understanding (hereinafter referred to as MOU) dated \_\_\_\_\_ entered into between the Parties with respect to the subject matter of this Agreement, and all the terms and conditions of MOU will be applicable hereto with respect to the subject matter hereof.

H. The Sellers are desirous of selling the Sale Shares of\_\_\_\_\_ and **Buyer** has agreed to purchase the Sale Shares at the consideration as mentioned in this Agreement.

Parties have consented for the aforementioned sale and purchase of Sale Shares and assignment of rights and obligations in relation to such Sale Shares and are now desirous that the Buyer shall acquire the Sale Shares including the Premises from the Sellers, on the terms and conditions as set out in this Agreement.

**IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, THE PARTIES HERETO AGREE AS FOLLOWS:**



## 1. **AGREEMENT TO SALE AND PURCHASE SHARES**

1.1 Subject to the terms and conditions hereof and applicable law, the Sellers agree hereby to sell to the Buyer, and the Buyer, agrees hereby to purchase from the Sellers, the Sale Shares for total consideration of Rs \_\_\_\_/- (Rupees In Words) which includes Rs. \_\_\_\_ Cr ( Rupees In Words) of bank liabilities, and upto\_\_ Cr (Rupees In Words) of Property/Plot, and other liabilities amounting to balance payment, the aggregate share value of the four share holders inclusive of any taxes (hereinafter referred as the “**Sale Price**”) payable to the Seller and the Company. The Buyer shall pay to Sellers and the Company the said Consideration in the following manner :

(i) An amount of Rs \_\_\_\_/- (Rupees In Words ) shall be paid in one or more tranches but not beyond\_\_\_\_\_ which shall be utilized for repayment of loan taken from the Bank. The buyer shall issue post dated cheques to this effect.

(ii) It is mutually agreed between the parties that as the payment of installments due to bank is made in tranches, simultaneously there will be transfer of shares amounting to the payment of installment to bank who will be acting as custodian of shares and the bank will be liable to make transfer of shares once all its dues are cleared. The Seller has agreed to transfer the Sale Shares with all rights and obligations pertaining thereto to bank.

(iii) In compliance of the terms of MOU and NOC issued by bank. Payment of Rs \_\_\_\_/- (Rupees In Words) has already been made by the BUYER through RTGS dated \_\_\_\_\_ and Rs \_\_\_\_/- (Rupees In Words) has been paid through cash on \_\_\_\_\_ to the Seller.

(iv) In compliance of above clause mentioned in Clause 1 Sub-clause (ii) of this agreement, as on date Seller is under obligation to transfer shares amounting to Rs \_\_\_\_/- (Rupees In Words) to Bank on Buyer’s behalf, by executing share transfer deeds amounting to Rs \_\_\_\_/- (Rupees In Words)

1.2 It is agreed between the parties that the BUYER will transfer by executing sale agreement, two Residential Property/ Plot worth Rs \_\_\_\_ cr (Rupees In Words) each located \_\_\_\_\_ **and** \_\_\_\_\_, in pursuance to the compliance of this condition, at later stage shares will be transferred from the company to BUYER amounting to Rs \_\_\_\_ cr (Rupees In Words) by executing share transfer deeds.

1.3 It is agreed between the Buyer and Seller that two Directors of the BUYER will be inducted in the board of the Seller Company after payment of installments amounting to Rs \_\_\_\_/- (Rupees In Words) due to bank has been made by the Buyer.

1.4 It is also further agreed between the parties that once the payment of outstanding dues amounting to Rs \_\_\_\_/- (Rupees In Words) are made by the BUYER, either the Statutory Registers and records of the Company or all the documents relating to property will be handed over by Seller to Buyer.

1.5 The Parties hereby agree to complete the transaction on the Closing Date (as defined herein below).

## 2. **MORTGAGE**

The said property is mortgaged with \_\_\_\_\_.

The Bank shall handover the original lease deed of the said Land to the Sellers upon receiving the outstanding bank dues. The Sellers shall handover the original lease deed of the Land to the Buyer only after receiving full consideration amount.

## 3. **CLOSING**

3.1 The sale and purchase of the Sale Shares and property shall take place within a time mutually agreed between the Parties but in no event such time shall not be later than \_\_\_\_\_ unless otherwise agreed between the Parties in writing ("**Closing Date**").

### 3.2 **CLOSING OBLIGATIONS**

3.2.1 On payment of installments due to bank in tranches, at the same time, the Seller will transfer shares simultaneously by executing share transfer deeds and sale agreement.

3.2.2 On the Closing Date, the Seller after receiving the total consideration, shall handover to the Buyer, the original share certificates of the Sale Shares and executed shares transfer deeds (duly signed and stamped by all the concerned parties) and lease deed and the Buyer shall, as a result thereof, become the absolute owner of the Sale Shares and leased property and all

rights attached therewith (free from any encumbrance and past liabilities).

3.2.3 The Sellers shall handover the site to the Buyer on receiving full consideration amount of Rs \_\_\_\_/- (Rupees In Words) as mentioned in clause 1.1 hereinabove.

4. **TERMINATION**

This Agreement can be terminated by the sellers if the buyer defaults in payment liabilities or to the shareholders. It cannot be terminated by the Parties except by mutual written consent of all the Parties and shall be enforced specifically.

5. **ENTIRE AGREEMENT**

Except as otherwise agreed among the Parties and subject to the consummation of transactions contemplated under this Agreement, this Agreement constitutes the entire agreement of the Parties as to its subject matter and supersedes any previous understanding or agreement, whether written or oral, on such subject matter.

6. **ASSIGNMENT**

The Agreement and the rights and obligations therein cannot be assigned by any of the Parties.

7. **AMENDMENTS**

No amendment to this Agreement shall be valid or binding upon either Party unless made in writing and signed by both the Parties.

8. **REPRESENTATIONS AND WARRANTIES**

8.1 **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

The Sellers hereby represents and warrants to Buyer as follows:

I. The Sellers are in good standing under the laws of India and is duly qualified and licensed to do business in each jurisdiction in which the character of its properties or the nature of its activities requires such qualifications;

II. The Sellers has full power and authority to enter into this Agreement and to take any action and execute any documents required by the terms hereof; and that this Agreement, entered into, have been be duly authorized by all necessary corporate proceedings, have been duly and validly executed and delivered by the Sellers, and, assuming due authorization, execution and delivery by the Buyer, is a legal, valid, and binding obligation of the Sellers, enforceable in accordance with the terms hereof; and that the executants of this Agreement on behalf of the Sellers have been duly empowered and authorized to execute this AGREEMENT and to perform all its obligations in accordance with the terms herein;

III. No Consent, approval, Authorization, order, registration or qualification of, or with, any court or regulatory authority or other governmental body having jurisdiction over the Sellers, the absence of which would adversely affect the legal and valid execution, delivery and performance by the Sellers of this Agreement or the documents and instruments contemplated hereby or the taking by the Sellers of any actions contemplated herein, is required;

IV. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, or the fulfillment of or compliance with the terms and conditions of this Agreement, conflict with or result in a breach of or a default under any of the terms, conditions or provisions of any legal restriction (including, without limitation, any judgment, order, injunction, decree or ruling of any court or governmental authority, or any federal, state, local or other law, statute, rule or regulation) or any covenant or agreement or instrument to which the Sellers are now a party except as disclosed in preamble **F** , or by which the Sellers or any of the Company's property is bound, nor does such execution, delivery, consummation or compliance violate or result in the violation of the Company's Certificate of Incorporation, Memorandum and Articles of Association;

V. The Sellers have the legal capacity to enter into and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Sellers enforceable against the Sellers in accordance with its terms;

VI. All the Shares are legally owned by the Sellers, and the Sellers are entitled to sell and transfer to Buyer the ownership of the Shares in accordance with the terms of this Agreement; and

VII. The Sellers have not entered into any agreement or arrangement to sell, transfer, assign, create a Lien or otherwise dispose of the Shares to any Person

other than in accordance with this Agreement.

## **8.2 REPRESENTATIONS AND WARRANTIES OF “BUYER”**

Buyer hereby represents and warrants to the Sellers and Company as follows:

- I. It is duly organized and validly existing under the laws of India, and has full power and authority to enter into this Agreement and to perform its obligations under the Agreement; and
- II. The execution and delivery of this Agreement and the performance by it of its obligations under this Agreement has been duly and validly authorized by all necessary corporate action on the part of it. This Agreement constitutes a legal, valid and binding obligation of BUYER enforceable against it in accordance with its terms.
- III. The Buyer has already done a detailed due diligence of the Company and the Premises and is fully aware in respect of all the risks and benefits of the transaction, while signing this Agreement.
- IV. The Buyer hereby agrees and undertake that this agreement shall stand null and void, in case the Buyer shall fails to pay the consideration to the Sellers/Company as mentioned in clause 1.1 herein above and all the amount earlier paid by the Purchaser to the Company or to the Sellers shall stand forfeited.

## **9. MISCELLANEOUS**

- a) This Agreement shall be specifically enforceable at the instance of either Party.
- b) In the case of any time, period or date referred to in any provision of this Agreement, time shall be of the essence.
- c) Notices, demands of 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 by telex or legible telefax addressed to the intended recipient at its address set forth below, or to such other address or telex or telefax number as either Party may from time to time duly notify to the others:

If to the Sellers /Company:

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If to “Buyer”:

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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 at the time of dispatch in the case of service by telex or telefax.

d) All expenses, charges and duties and other costs associated with purchase of the Shares shall be borne by the Buyer. The Buyer shall bear all stamp duty payable in connection with this Agreement and the purchase of the Shares by Buyer.

e) No rights or liabilities under this Agreement shall be assigned by any of the Parties hereto without the prior written consent of the other Party.

f) This Agreement supersedes all prior discussions, understandings and agreements (whether oral or written, including all correspondence) if any, between the Parties with respect to the subject matter of this Agreement, and this Agreement contains the sole and entire agreement between the Parties hereto with respect to the subject matter hereof.

g) Any provision of this Agreement which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the remaining provisions hereof.

## 10. **CONFIDENTIALITY**

### 10.1 **DISCLOSURE OF TERMS**

The terms and conditions of this Agreement ("**Terms**"), including their existence, shall be considered confidential information and shall not be disclosed by any Party hereto to any third party except in accordance with the provisions set forth below.

### 10.2 **LEGALLY COMPELLED DISCLOSURE**

In the event that any Party is requested or becomes legally compelled whether under the applicable laws of any jurisdiction (including without limitation, pursuant to securities laws and regulations) to disclose the existence of this Agreement or any of the Terms hereof in contravention of the provisions of this Clause 10, such Party (the "**Disclosing Party**") shall to the extent

possible, immediately upon becoming aware that the disclosure is required, provide the other Party (the “**Non-Disclosing Party**”) with prompt written notice of that fact so that the appropriate Party may seek (with the cooperation and reasonable efforts of the other Party) a protective order, confidential treatment or other appropriate remedy. In such an event, the Disclosing Party shall furnish only that portion of the information, which is legally required and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information to the extent reasonable requested by any Non- Disclosing Party.

11. **COSTS**

Save as expressly otherwise provided in this Agreement, each of the Parties hereto shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.

12. **EFFECT OF CLOSING**

The terms of this Agreement shall in so far as not performed at Closing and subject as specifically otherwise provided in this Agreement continue in force after and notwithstanding Closing.

13. **WAIVER, AMENDMENT**

13.1 No waiver of any term, provision or Condition of this Agreement shall be effective unless such waiver is evidenced in writing and signed by the waiving Party.

13.2 No omission or delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

13.3 No variation to this Agreement shall be effective unless made in writing and signed by all the parties.

**14. FURTHER ASSURANCES**

At any time after closing the Seller shall fully co-operate with Buyer in connection with execution of all such documents and such acts and things as the Buyers may reasonably require for the purpose of vesting in the Buyers the full legal and beneficial title to the Sale Shares.

**15. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

**16. GOVERNING LAW**

16.1 This Agreement shall be governed by and construed in accordance with laws of Indian Contract Act.

16.2 Upon receipt of a written notice with respect to a dispute, during the subsistence of this Agreement or any time thereafter, in connection with the validity, interpretation, implementation or material breach of any provision of this Agreement or regarding any question in connection performance, termination of this Agreement, or otherwise in connection with this Agreement the Parties shall use reasonable endeavors to settle such dispute through friendly consultations and negotiations.

16.3 If no settlement can be reached through consultations within [30] days of receipt of the notice referred to in Clause 16.2 above, the dispute shall be finally and exclusively settled by arbitration as provided below.

16.4 The Parties shall refer the dispute to a panel of three arbitrators, one arbitrator shall be appointed by the Buyer, the other by the Sellers and the third arbitrator shall be appointed by the two arbitrators already appointed, as above.

16.5 The arbitration proceedings shall be held in \_\_\_\_ accordance with the Arbitration and Conciliation Act 1996. The jurisdiction shall be of courts of \_\_\_\_.

16.6 The proceedings of arbitration shall be in the English language. The



arbitrators' award shall be substantiated in writing. To the extent permitted by law, the arbitrators' award shall be final and binding and the award shall be enforceable in any competent court of law.

16.7 The prevailing Party shall be entitled to receive the costs of the arbitration proceedings and reasonable attorney's fees as fixed by the arbitrators.

### **INVALIDITY**

If at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.

**IN WITNESS WHEREOF**, the parties have entered in Agreement the day and year first above written:

**For** \_\_\_\_\_

**Mr.** \_\_\_\_\_

**(Director)**

For Seller

Ms.

Mr.

Ms.

Mr.

For

Mr

(Director)



**CHAPTER 31****PLEDGE AGREEMENT**

AGREEMENT FOR PLEDGE OF SHARES/ DEBENTURES/ SECURITIES ETC. BY \_\_\_\_\_(Insert the name of the Pledgor/ s/s)

IN FAVOUR OF \_\_\_\_\_ Amount Rs.\_\_\_\_ This forms part of the Agreement for Pledge of Shares/ Debentures/ Securities etc. executed between \_\_\_\_\_Insert the name of the Pledgor/ s\_\_\_\_\_and \_\_\_\_\_dated \_\_\_\_\_ Pledgor/ s

THIS AGREEMENT is made at the place and date as specified in Schedule I (a) by the persons, whose name(s) and address(es) are as specified in Schedule I (b) (hereinafter referred to as the “Pledgor/ s/s” which expression shall unless repugnant to the context or meaning thereof include its successors and assigns and all persons deriving/ claiming title there under) IN FAVOUR OF \_\_\_\_\_, a banking company incorporated under the Companies Act 1913 and having its Registered Office at “\_\_\_\_\_ and one of its Branch Offices at the place specified in Schedule I (c) (hereinafter referred to as the “Bank” which expression shall unless repugnant to the context or meaning thereof include its successors and assigns)

WHEREAS the Pledgor/ s/s is/are the owner/s of shares/debentures/securities etc. more particularly described in the schedule below, which is held in physical form and/or beneficial owner, as provided under Depositories Act 1996, of shares/debentures/securities more particularly described in schedule II below (hereinafter referred to as "securities") which is held in the dematerialized form under a depository system and the Pledgor/ s/s is/ are entitled to all the rights, benefits and privileges as absolute owner of said securities.

WHEREAS at the request of the Person/s specified under Schedule III (a) of this Agreement(hereinafter referred to as “Borrower” which expression unless repugnant to the context or meaning thereof shall include his/her/their heirs, executors, administrators, legal representatives, successors and permitted assigns), to grant the loan/ limit/ credit facility for the amount, both specified under Schedule III (b) of this agreement against pledge of said securities and

in terms of above request Bank has granted /agreed to grant the loan/ limit/ credit facility against pledge of said securities in favour of the Bank which is held in physical or dematerialised form under a depository system, through a depository participant on the terms and conditions mentioned hereunder and on compliance of required formalities/ procedure as provided under the relevant rules/regulations.

NOW IT IS HEREBY AGREED, DECLARED, RECORDED AND CONFIRMED BY THE PLEDGOR/ S AS FOLLOWS:-

1. IN CONSIDERATION OF the Bank having granted/agreed to grant the loan/ limit/ credit facility in the account of the borrower on the terms and conditions stipulated in the sanction letter issued by the Bank/ and also on agreeing to continue with the credit facility specified under Schedule III (b) of this agreement, Pledgor/ s hereby pledge to the Bank the securities including those in Dematerialised form, more particularly described in the Schedule to this agreement as security for the repayment to the Bank on demand of all amounts due/outstanding or which hereafter may become due/payable by the Borrower to the Bank, as well as for interest thereon at the rates and rests charged by the Bank as per other documents executed by the Borrower including all costs, expenses and charges, of all securities with transfer deeds duly signed which is being deposited now or which may have already deposited with the Bank or which may be in their possession on this behalf as also all securities which the Pledgor/ s may hereafter deposit with the Bank in addition to or in substitution for the securities already deposited or which may hereafter come into their possession. In case the Pledgor/ s pledges and creates charge/lien upon the securities which are in dematerialized form then the Pledgor/ s shall comply with all the requirements and formalities in the manner as prescribed in Depository Act including all costs, expenses and charges to keep such securities in form and charged to the Bank. The Pledgor/ s shall comply with all such Rules and Regulations as may be prescribed in form and manner from time to time and shall make necessary application to the Depository Participant. The present securities shall also include any addition and accretion and/or escalation thereto of any nature whatsoever including interest, cost etc. thereupon.

2. The Pledgor/ s confirm that all the securities pledged are the absolute property of the Pledgor/ s at its sole disposal and are unencumbered.
3. The Pledgor/ s acknowledge that the securities which are the subject matter of pledge under this Agreement may be wholly in a dematerialized state or in a physical state or partly in one form and partly in another form. The Borrower agrees that the applicable provisions of this Agreement shall operate depending on whether the securities are in a dematerialized state or physical state, as the case may be.
4. The Pledgor/ s hereby authorizes and empowers, for the purpose hereinafter mentioned, any officer of the Bank, to complete the transfer deed in respect of securities, enumerated therein and to sign, seal, execute and deliver any such transfer or other documents that may be necessary or required for the purpose of completing the title of the Bank to any of such securities and register the same in the books of the concern to which the same relates and obtain fresh scrip or duplicate for the securities enumerated therein in his/her own name or in that of any other employee or nominee of the Bank without any reference to or consent of the Pledgor/ s, also to pledge and/or sell and absolutely dispose of all or any such securities at such price and in such manner as he/she may think fit without any reference to or consent of the Pledgor/ s.
5. That the Pledgor/ s shall at the request of the Bank to sign or as the case may be, to sign, seal and execute and deliver any transfer or other document that may be necessary or required by the Bank for the purpose of completing the title of the Bank to any of such securities.
6. The Pledgor/ s hereby agrees that Bank need to disburse the loan amount/ permit the Borrower to avail the credit facilities sanctioned/ continue to avail the credit facilities, only on creation/ recording of the pledge by the Depository/Depository participant and on receiving intimation / confirmation by the Bank with regard to creation of pledge/ recording of creation of pledge from the Depository/ Depository participant and confirmation as to compliance of said procedures shall be unto the satisfaction and discretion of the Bank. It is agreed by the Pledgor/ s that disbursement of loan / permitting availing of credit facilities/ allowing to continue with the credit facilities shall

be at the sole discretion of the Bank and Bank or any of its officials shall not be liable for any delay, denial, discontinuance in respect of disbursement/ release/ availing of credit facilities, sanctioned to the Borrower.

7. The Pledgor/ s represents that in relation to those securities which are in a dematerialized state, the Pledgor/ s has entered into an agreement with the Participant in terms of Section 5 of the Depositories Act, 1996 and Regulation 41 of the Depository Participants Regulations, 1996 (D&P Regulations) and the particulars of the said securities are entered in the respective records of the Participant and Depository. All the particulars of the Participant and Depository including their respective names and addresses have been furnished to the Bank the Pledgor/ s undertake not to effect any changes in either the Participant or Depository without the prior written permission of the Bank.

8. The Pledgor/ s undertakes that being the present beneficial owner of the securities, it/he/she/they shall follow the procedure prescribed under Regulation 58 of D&P Regulations for creating pledge of the securities in favour of the Bank. The Pledgor/ acknowledges and confirms that forthwith upon the Depository recording and registering in its register in the name of the Pledgor/ s, the pledge of the securities shall be deemed to have been created in favour of the Bank and the Pledgor/ s shall ensure that all the documentary and other evidence and entries are recorded in terms of Regulation 58 of the D&P Regulations, and the name of the Bank or its Depository Participant or its custodian as required by the Bank is registered by the Participant as the pledge having created in respect of the securities in the records of the Participant so as to ensure that the effective and valid pledge on the said securities is created in favour of the Bank forthwith.

9. The Pledgor/ s hereby irrevocably agrees that the Bank shall be entitled to invoke pledge at its absolute discretion at any point of time without giving prior intimation to the Pledgor/ s (as pledgee's right specified in clause 58 (8) of the SEBI (DEPOSITORIES AND PARTICIPANTS) REGULATIONS 1996 as amended from time to time or by any other provisions of law or by contract and Bank is also entitled to all rights/privileges as a pledgee provided under the provisions of Indian Contract Act, and that the decision of the Bank in this respect shall be final and conclusive.

10. The Pledgor/ s agree and undertake to receive all accretions in a dematerialized state in relation to the securities which are pledged in a dematerialized state.

11. The Pledgor/ s shall not give instructions to his/her/their participants or any other participants after changing the existing one with the consent of the Bank, for freezing and /or blocking / closing his / their account with the Participants in respect of the securities pledged with the Bank and /or give any instructions to his/her/their participants/ Depositories which in any way affect the rights, interests etc. of the Bank with regard to invocation of pledge and /or disposal of securities and/or do or cause to be done any such act which in any way restrict, limit or withhold the right of the Bank in invocation of pledge and/or disposal of securities.

12. The Pledgor/ s shall not apply for any duplicate certificate in respect of the securities or any of them or create any interest therein so long as the obligations of the Pledgor/ s to the Bank in respect of the credit facilities availed by the Borrower remain undischarged and the Bank may advise the companies/organizations concerned not to issue such duplicates.

13. In case of any securities transferred in the name of the Bank, the Pledgor/ s shall comply with the requirements of Section 187-C and other applicable provisions of the Companies Act, 1956 and other applicable provisions of law.

14. If any of the securities is a debt security convertible into equity, and it would be necessary to take a decision regarding the exercise of the right of conversion, the Bank may in its discretion take a decision either way and such decision taken by the Bank shall be binding on the Pledgor/ s.

15. The Pledgor/ s agrees that the Bank alone, as the holder of the securities, shall have the right, subject to the provisions of law, to participate in general meetings and extra ordinary general meetings of the Company, either through a representative or a proxy. The Pledgor/ s shall not be entitled to advise or instruct the Bank as to the manner of voting on any resolutions at such meetings.

16. That the Pledgor/ s further authorizes and empowers the Bank to reimburse themselves in respect of its dues out of the proceeds of any pledge

or sale after getting the securities registered in its name all costs, charges and expenses incurred by them in transferring and selling all or any of such securities and the Pledgor/ s agrees that the Bank shall not be responsible for any loss from or through any brokers or others employed in the sale of any such securities or for any loss or depreciation in value of any such securities arising from or through any cause whatsoever. AND any deficiency whatsoever and however arising, the Pledgor/ s agrees to make good and pay on demand to the Bank. And it is further agreed that the Bank shall have a lien and charge on all securities or on the proceeds after sale thereof, if sold, as security for or in part payment of any other debt due or liability then incurred or likely to be incurred by the Pledgor/ s to the Bank. And the Pledgor/ s further authorizes and empowers the Bank to collect and receive all dividends and bonuses payable or hereafter paid in respect of any such securities to apply and receive any right shares etc. and engage to sign all such further documents as may be necessary effectually to vest in or secure to the Bank the property in the said securities and dividends, bonus shares etc., bonuses payable and/or any addition, escalation and/or accretion to such securities by any way whatsoever, in respect thereof or to effect the selling or transferring of the same or to enable the Bank to obtain new securities.

17. That the Pledgor/ s declares that in the event of a temporary or permanent depreciation in value of any such securities, at the request of the Bank either to pay the Bank in moneys the difference between the market value of such securities on the date when they were deposited with or came into the possession of the Bank and on the date when such payment as aforesaid may be made or to deposit with the Bank other approved securities equivalent in value to the market deterioration. And in the event the Pledgor/ s failing to comply with such request or failing to pay to the Bank on demand all or any part of the moneys then due/or owing by the Pledgor/ s to exercise all or any of the powers hereby conferred upon them and him.

18. That the Pledgor/ s declares that the Bank shall not be answerable or responsible for any damage or depreciation which any of such securities may suffer whilst in their possession under this agreement nor shall the Bank be under any liability whatsoever to make any payment of money or to do any other act or things for the purpose of preventing the loss or depreciation of



the securities already deposited and now being deposited by the Pledgor/ s with the Bank and that the same accepted for such deposit are within his own disposition and control free from any prior charge.

19. That the Pledgor/ s shall duly pay all calls which during the continuance of the security created by these presents, shall become payable in respect of any of the securities and shall repay to the Bank on demand all moneys which the Bank may pay, without any obligation to do so, to keep such securities alive and in respect of any such call with interest at the agreed rate from the date on which the Bank shall have paid the same until repayment and until so repaid such moneys and interest shall be a charge on the securities hereby pledged.

20. That the terms and conditions of this agreement shall in all respects apply to renewals and/or enhancements of this credit facility, if any, subject to any changes agreed to by the Pledgor/ s and the Bank.

21. That the pledged securities shall not be prejudiced by any collateral or other security now or hereafter held by the Bank for any money hereby secured or by any release, exchange or variation of such security and the Bank may give time for payment to or make any other arrangement with any guarantor/surety and/or co-signatory without prejudice to the Pledgor's liability and obligation.

22. That this agreement is applicable to all current and future transactions in continuous operation notwithstanding an alteration by death, retirement, introduction of a new partner or otherwise, change in the name and style of the firm/company from time to time.

23. The Bank may at its absolute discretion permit the Pledgor/ s to release part of the securities pledged and such partial release of securities and accepting of additional securities, invocation of pledge of partial securities etc. will not in any way affect the holding of the remaining securities by the Bank and the rights and liabilities created in terms of these presents.

24. The Pledgor/ s agrees that any shares, debentures etc. offered as further security from time to time during the currency of loan/credit facilities shall form part of the said securities described in the schedule hereunder and the

particulars of such securities shall be described in separate schedule(s) that shall be annexed to this agreement which schedule(s) also shall form part of this agreement and securities mentioned therein shall be deemed to have been added/ incorporated to the securities mentioned in the schedule hereunder and all the terms and conditions of this agreement shall be applicable to the securities offered from time to time during the currency period of the credit facility.

25. The Pledgor/ s agrees that security created herein shall be and remain a continuing security for all the indebtedness and liability in respect of limit/ credit facility sanctioned by the Bank, notwithstanding that by receipts or payments from time to time made in the Borrower's account with the Bank may at any time be increased, reduced, extinguished or brought into credit.

26. That it is specifically agreed that none of the provisions of this agreement shall be deemed to have been waived by any act or acquiescence on the part of the Bank, its employees, officers or agent, but only by an instrument in writing signed by an authorized and empowered officer of the Bank.

27. The Pledgor/ s agrees that the bank shall have the right to recall the advance/ credit facilities at any time at its discretion and /or on violation of any of the terms of the agreement and/or any other conditions stipulated from time to time or even without assigning any specific reason thereof. It is also agreed that the bank may at its absolute discretion discontinue the facility granted with or without assigning any reason whatsoever and the bank shall not be liable for any loss or damage that may cause or incur to the Pledgor/ sthereof .

28. The Pledgor/ s agrees that in the event of any default Borrower, in discharging its obligations or payment of dues, or on becoming the account irregular, or on violation of any of the terms and conditions of the relevant loan/security agreement, or at any point of time during the currency of loan/ credit facilities at the discretion of the Bank, the Bank shall be entitled to invoke the pledge as provided under SEBI (Depository and Participants) Regulations 1996 and exercise any right as a pledgee as per the provisions of Indian Contract Act and thereby sell, transfer in its own name as beneficial owner or otherwise dispose off the said securities or such part as

the Bank may desire, and appropriate the sale proceeds first in payment of the cost, secondly towards repayment of the balance amount due with interest and cost in any of the loan accounts of the Borrower. The shortfall left if any in any of the loan account of the Borrower after such appropriation shall be made good by the Borrower and/or Pledgor/ s on demand by the Bank.

29. The Pledgor/ s also agrees that in the event of rematerialisation of shares with prior consent of the Bank, the Pledgor/ s shall place in Bank's possession all the share certificates/ debentures in original and the relevant transfer deeds duly signed by or on behalf of the Pledgor/ s, under the Bank's absolute dispossession in such manner that such possession and dispossession may be apparent and indisputable.

30. The Pledgor/ s also undertake to hold the Bank harmless and indemnified in respect of any defect, loss, forgery, electronic and computer crimes, theft, larceny, tampering, destruction/ deterioration of data in respect of securities pledged with the Bank, occurred at the hands of the Pledgor/ s, Depository Participant, Depository or its nominees, agents, brokers etc. at any stage and the Pledgor/ s shall be liable / responsible to compensate/ repay any loss, damages, dues and costs and expenses incurred/ to be incurred by the Bank on this account.

31. The Pledgor/ s agrees that the amount shown as due to the Bank based on the books of the Bank shall be conclusive evidence as to the amount for the time being due to the Bank from the Borrower and the Pledgor/ s shall accept the same without any objection whatsoever.

32. That it is also agreed that except as otherwise provided herein, if any provisions of this agreement shall be held by a Court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions and clauses shall remain in full force and effect.

33. That the Bank shall have a right, power and authority to deal with the pledged assets/securities belonging to the Pledgor/ s without resorting to or exhausting its remedies against the Borrower, other guarantor(s) etc. and/or borrower's/guarantor(s)'s hypothecated/mortgaged assets/properties given to the Bank for repayment of the amount

## SCHEDULE – I

a.	Date and Place of Agreement	
b.	Name of the Pledgor/ s/s	
	Constitution of the Pledgor/ s/s	
	PAN/ TAN/ CIN of the Pledgor/ s/s	
	Name(s) of the signatories/ authorised signatory(ies)	
	Address of the Pledgor/ s/s	
	Fax No/s.	
	E-mail id	
	Phone No/s	
	Attn: Mr./Ms	
c.	Name of the Branch	
	Address of the Branch	

	Fax No/s	
	E-mail id	
	Phone No/s.	

## SCHEDULE – II

Sl.No.	Name of Security	Name of issuing Co.	Qty.	F.Value	DP ID

## SCHEDULE – III

a.	Name of the Borrower/s	
	Constitution of the Borrower/s	
	PAN/ TAN/ CIN of the Borrower/s	
	Name(s) of the signatories/ authorised signatory(ies)	

	Address of the Borrower/s	
b.	Details of facility	
	Nature of loan/ limit/ credit facility	
	Amount of facility (in figures)	
	Amount of facility (in words)	

## **CHAPTER 32**

### **KNOW HOW TRANSFER AGREEMENT**

#### **AGREEMENT FOR PERMISSION OF TECHNICAL KNOW-HOW**

THIS AGREEMENT entered into on the .....day of .....by and between a company registered in India under the Companies Act, 1956 having its registered office at ..... (hereinafter referred to as the Licensee which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns.....and a German corporation, with place of registry in..... and having an office at.....(hereinafter referred to as the Licensors which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns.

WHEREAS the Licensors is engaged in the manufacture of.....  
AND WHEREAS the Licensors is in possession of extensive know-how and

technical information concerning the manufacture of such products and has at its disposal skilled technical personnel to assist in the transfer of such known-how and technical information to a third party ;

AND WHEREAS the Licensee desires to acquire from the Licensor know-how, technical information and assistance to enable the Licensee to manufacture.....;

AND WHEREAS the Licensor is willing to furnish to the Licensee such know-how and technical information and assistance for the manufacture of  
THEREFORE, the parties have agreed as follows:

1. Article 1 : Definitions:-

For the purpose of this agreement , the terms set forth in this Article 1, when employed in this agreement either in the singular or plural form, are defined to mean, unless the context otherwise requires, the following

1.1. The terms “Contract Products” means  
.....  
.....

1.2. The terms ‘Technical Information’ means engineering and manufacturing information available with the Licensor relating to design, production methods, manufacture and testing of Contract Products as well as information relating to materials used in the manufacture thereof, insofar as such information has either been successfully incorporated in or forms part of the manufacturing or engineering technique of the Licensor and is applicable to the operations of the Licensee. With regard to materials used in the manufacture of Contract Products, ‘Technical Information’ means instruction on the required quantity, quality and characteristics and on their treatment in the manufacture of the Contract Products as well as sources of supply.

1.3. The term “Documentation” means and comprises the written Technical information and Improvements pertaining to Contract Products.

1.4. The term “Improvements” means future modification relating to designs, production methods, manufacture and testing of Contract Products insofar as such modifications have either been successfully incorporated in or form part

of the manufacturing or engineering technique of the Licensor and are applicable to the operations of the Licensee.

1.5. The term 'Documentation' means and comprises the written Technical information and Improvements pertaining to Contract Products. The term 'The Licensor's Patent Rights' means and includes all patents of the Licensor that are in force during the term of his agreement, and patent applications of the Licensor filed or having a priority date prior to the termination of this agreement to the extent they apply to Contract Products and/or cover information available to the Licensee under this agreement.

1.6. The term 'Germany' means the Federal Republic of Germany including the territory of West Berlin.

1.7. The term "Effective Date of the Agreement" means the date on which the agreement has been taken on record by the Government of India after being duly signed by the two parties.

1.8. The term 'commencement of Regular Commercial On-Line Production' means the date on which the Licensee has delivered the initial orders of Contract Products for a total.....of at least..... production, to customers and said customers have accepted the delivered Contract Products.

## 2. Article 2 : Technical Assistance to be rendered by the Licensor

2.1. The scope of technical assistance will cover the following :

2.2. The Licensor shall assist the Licensee in order to enable the Licensee to adapt its available plant, machinery and equipment to the requirements for manufacture of Contract products by the Licensee. The assistance will include information regarding additional machinery and any equipment required for the manufacture of Contract Products.

2.3. That Licensor shall train an adequate number of personnel of the Licensee as set forth in Article 3

2.4. The Licensor shall transmit its Technical Information to the Licensee as set forth in Article 4.



2.5. The Licensor shall transmit its Technical Information to the Licensee as set forth in Article 5.

2.6. The Licensor shall upon request of the Licensee render addition assistance to the Licensee under the provisions of Article 6.

### 3. Article 3: Training of the Licensee's Personnel

3.1. During the term of this agreement the Licensor shall receive the Licensee's personnel for training in its Plant in Germany. Such personnel will be trained by the Licensor in the functions relating to the design manufacture and testing of Contract Products and materials used therein and maintenance of plant and equipment. The Training shall be for such periods and for such numbers as may from time to time be agreed upon by the parties, but altogether for not more than twelve working man-months. The Licensor shall endeavor to ensure that training of the Licensee's personnel in the above fields will be adequate to impart complete competency in the respective fields to enable them to undertake eventual independent performance of these functions for the Licensee. The Licensee shall obtain the prior approval of the Government authorities concerned, wherever, applicable, for the delegation of their personnel to the Licensor.

3.2. The Licensee shall be responsible for and shall pay all such salaries, living allowances, travelling expenses and other remuneration and expenses to which its personnel delegated to the Licensor may-be entitled.

3.3. The Licensee's personnel deputed to the Licensor shall have sufficient knowledge in their respective lines and actively participated in their respective functions. They shall also have sufficient working knowledge of the German language.

3.4. A man-month as used in this Article 3 is based upon and regular working time of five days per week with eight hours each, with no working on holiday in Germany.

3.5. The Licensee's personnel shall during their training observe all the rules and regulations of the Licensor as applicable to the Licensor's own employees.

3.6. The Licensor shall not charge any additional remuneration apart from the payment provided for in Article 8.1 for the training of the Licensee's personnel in its factory.

#### 4. Article 4 : Delegation of the Licensor's Personnel

4.1. Subject to the Licensee obtaining the prior approval of the Government authorities concerned, and upon mutual agreement of the parties, the Licensor shall delegate to the Licensee for periods to be agreed upon by the parties suitable specialists who are required in India in order to train personnel at the Licensee's factory and to provide general technical assistance by active participation in establishing production, quality control and testing at the Licensee's factory of Contract Products.

4.2. The delegation of the Licensor's technical personnel to India shall be on the terms and conditions and for the periods to be mutually agreed upon.

#### 5. Article 5 : Termination of Technical Information

5.1. During the terms of this Agreement, the Licensor shall transmit to the Licensee the Technical Information and Improvements except Technical Information and Improvements that the Licensor is precluded from passing on to the Licensee in view of contractual obligations under other agreements of the Licensor. In spite of the above restrictions, the Licensor confirms that the Technical Information that will be transmitted by the Licensor under this Agreement is sufficient to permit the manufacture to complete Contract Products and will enable the Licensee to fulfill the objectives of this Agreement.

5.2. The time and extent of the transmission of Technical Information and Improvements will be mutually determined by the progress of the Licensee in the respective manufacturing stages.

5.3. The Documentation to be supplied to the Licensee by the Licensor hereunder shall be in the metric system and in English, if available, otherwise in German.

5.4. The Documentation shall be given in a form of suitable reproducible available with the Licensor such as transparencies, microfilms, etc. If it cannot

be furnished in the form of such reproducible, then the Licensor shall furnish on duplicate copy without additional charge.

5.5. The Licensor shall deliver documentation to the Licensee in Germany by either dispatching by airfreight, destination the Licensee, or at the request of the Licensee it shall be made available by the Licensor to personnel of the Licensee delegated to the Licensor or to a representative of the Licensee in Germany.

#### 6. Article 6 : Additional Assistance –

6.1. Provided sufficient engineering capacity not required for other purposes is available at the Licensor and at the request of the Licensee, the Licensor is prepared.

a. to provide assistance to the Licensee with regard to problems of import substitution, production techniques, variation in designs, etc., to manufacture the Contract Products suitable for the specific requirements of the Indian and Foreign Market ;

b. to undertake engineering development with respect to Contract Products or to the design and layout of the Licensee's factory and equipment (such as the preparation of engineering and manufacturing information specially prepared at the request of the Licensee) and provide additional Information, resulting therefrom ;

c. to supply or give assistance to the Licensee to obtain tools and other manufacturing equipment required for the manufacture of Contract Products as parts or components of Contract Products or materials therefore at reasonable prices ;

d. to give the Licensee advice and assistance for the adaptation of design, drawings and other manufacturing data furnished by the Licensor to Indian Standards.

6.2. For the services agreed to be rendered by the Licensor pursuant to Article 6.1, the Licensee shall obtain the prior approval of the Government authorities concerned and pay to the Licensor charges to be mutually agreed upon. Such charges shall be paid by the Licensee to the Licensor in the Federal Republic of Germany in Deutsche Mark of the Deutsche Bundesbank. The

Licensor shall give an estimate of the charges and obtain the Licensee's clearance to go ahead commencing work.

6.3. The technical information originating from the service rendered by the Licensor

7.1. The Licensor for the period of this Agreement grants to the Licensee under its under Article

6.1 shall otherwise be deemed to be Technical Information as defined under Article 1.2.

7. Article 7: Manufacturing Patent and Selling Rights-Technical Information and Improvement furnished by the Licensor to the Licensee pursuant to this agreement as well as under relevant patents of the Licensor which the Licensor has filed or will file for said Technical Information, non-exclusive, non-transferable rights to manufacture Contract Products in India and to sell Contract Products in accordance with Article 7.2.

7.2. The Licensee shall make arrangements for the marketing of Contract Products in consultation with the Licensor. In the same way, the offer for export of Contract Products may be arranged to other countries all over the world , except where the Licensor has manufacturing or contractual relationship (e.g. licensing ) regarding Contract Products, from time to time.

Currently, the Licensor has arrangement in the following countries  
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7.3. During the term of this arrangement, the Licensor undertakes not to enter into a similar collaboration agreement with a third party for the manufacture of Contract Product in India without the prior written consent of the Licensee, which consent shall not be withheld unreasonably.

7.4. The Licensee shall have the right to sub-licence the rights granted hereunder to any other party in with the prior written approval of the Licensor and the Government authorities, on terms and conditions to be mutually agreed upon by the parties hereto.

## 8. Article 8: Consideration-

8.1. In consideration of the documentation prepared and transmitted in Germany and the technical assistance rendered in Germany comprising the training of the Licensee's

personnel by the Licensor in Germany as per Article 3, the Licensee shall pay to the Licensor a lump sum payment of DM\_\_\_\_\_subject to the applicable Indian taxes, in three equal installments as detailed below :

a. 1/3 on the agreement having been taken on record by the Central Government.

b. 1/3 at the time of transfer of technical documentation.

c. 1/3 within one month after the commencement of commercial production, or 4 years after the agreement is taken on record, whichever is earlier.

8.2. In consideration of the grant of the Licensor's Patent and other rights and use of Technical Information and Improvements as well as the technical assistance rendered in India, the Licensee shall pay to the Licensor a royalty of.....% (.....) of the ex-factory selling price of all Contract Products and parts thereof manufactured and sold or leased or used commercially by the Licensee during the validity of this Agreement as defined in Article 13.1. All payments of royalty shall be subject to the then applicable Indian taxes. According to Indian law, the liability to pay taxes lies with the Licensor. The Licensee shall be free to deduct such taxes at source on behalf of the Licensor from the royalty payable to the Licensor. In case any taxes are paid by the Licensee on behalf of the Licensor, the Licensee shall submit a tax receipt certificate to the Licensor.

8.3. Whenever Regular Commercial On-Line Production of a Contract Product commence, the Licensee shall immediately inform the Licensor in writing in this regard, i.e., of the date of delivery and acceptance of the respective order as defined in Article 1.8.

8.4. With regard to this Agreement, Contract Product shall be considered as sold when invoiced by the Licensee to the purchaser or, if not invoiced, when delivered, dispatched or set apart for the own use of the Licensee, and term

“ex-factory price” shall mean the net invoiced amount ( or the current invoiceable value when not invoiced) of the Licensee excluding all charges and expenses relating to packing, freight, insurance as well as taxes and duties, if any, levied on the Contract Products and less the cost of standard brought out components and the landed cost of imported components, but not materials, made by the Licensor (or any other company abroad ) and contained in such Contract Products.

8.5. Within two months after March 31st and September 30th of each year beginning with the Commencement of regular Commercial On Line Productions, the Licensee shall render to the Licensor a report showing the total ex-factory selling prices of each of the Contract Products manufactured and sold by the Licensee during the preceding half year, the amount invoiced for foreign supplies in components in accordance with Article 8.4 as well as the corresponding royalties due.

8.6. The royalties which are due shall, after conversion into Deutsche Mark of the Deutsche Bundesbank at the lawful selling rate (most favorable to the Licensor) , be remitted to the Licensor, arriving at their bank account in the Federal Republic of Germany within four months after the end of the respective half year defined in article 8.5. The Licensee shall send a copy of the respective documents (application for transfer of royalties) to the Licensor within two months along with the report of the royalties due.

8.7. The Licensee shall keep proper books and records giving full information regarding the turnover subject to royalties payable to the Licensor. The Licensor shall be entitled to have these records and relevant documents examined by independent chartered accountants. For the purpose of examination, the Licensee is obliged to grant such chartered accountants inspection of its books and record and access to its offices.

#### 9. Article 9: Improvements and Modification by the Licensee-

During the term of this agreement, the Licensee shall communicate to the Licensor all improvements and modifications developed by the Licensee with respect to Contract Products. Under such information and under any respective patents of the Licensee, the Licensee hereby grants to the Licensor a nonexclusive, unlimited licence, including the right to sub-licensee a

non-exclusive, unlimited licence, including the right to sub-licensee to third parties. In case the Licensor or its sub-licensee make use of patents of the Licensee, the Licensor shall pay to the Licensee a reasonable patent royalty for such patent use, the amount of which shall be determined by mutual agreement.

#### 10. Article 10 : Limitation of Liability-

10.1. The Licensor shall proceed with its usual care in preparing, selecting and transmitting Documentation, Technical information and/or Improvements to the Licensor. However, the Licensor shall not be responsible for any bonafide oversight, which may occur in spite of such care. The Licensor shall not be responsible for the Contract Products manufactured by the Licensee under Documentation, Technical Information, Patents of the Licensor and/ or Improvements of the Licensor or for the claims of third parties with respect to Contract Products.

10.2. Neither party to this Agreement shall be liable for any failure or delay on its part in performing any of its obligations under this Agreement or for any loss, damages, costs, charges or expenses incurred or suffered by the other party by reason of such failure or delay, if and so far as such failure or delay shall be the result of or arising out of force majeure.

#### 11. Article 11 : Standard of Quality : Designation of Contract Products\_

11.1. Subject to the Licensor providing the necessary Technical Information and Improvements, the Licensee shall take all reasonable measures to ensure that the Contract Products made under the Technical Information and Improvement of the Licensor conform to the quality laid down in such Technical Information.

11.2. The Contract Products made by the Licensee according to the designs of the Licensor and conforming to the quality laid down in the corresponding Technical Information and Improvements furnished to the Licensee shall-if requested or at the request of the Licensee agreed to by the Licensor-be marked with a designation indicating that they are made under licence of the Licensor. The layout of the designation and any other markings on the

Contract Products as well as the use and layout of name of the Licensor shall be made with the prior written approval of the Licensor

11.3. The Licensee forthwith, whenever called upon by the licensor in that regard, cease using any reference to the name of the Licensor.

11.4. Upon termination of this Agreement, the Licensee shall forthwith cease using any name, marking or other term or designation indicating that the Contract Products are made according to the Licensor's design, unless otherwise agreed to by and between the parties hereto in writing.

## 12. Article 12 : Secrecy-

The Licensee is obliged to use the Documentation, Technical information and Improvements furnished to it under this Agreement only in the manufacture of Contract Products and keep confidential the same until the same has become public knowledge. The obligation shall survive the termination of this Agreement for five years.

## 13. Article : Validity

13.1. This agreement shall come into force on the Effective Date of the Agreement and it shall be valid for a period of five years therefrom, or where Regular Commercial On-Line Production of any of the Contract Products is commences after the Effective Date of this Agreement, for five years from the date of commencement of regular Commercial On-Line Production of the respective Contract Products, provided such production is not delayed beyond three years from the Effective Date of the Agreement (i.e. maximum period of period of eight years from the Effective Date of the Agreement and to the terms of any such extension shall be taken up one year prior to the expiry of this Agreement. Extension shall, however, be subjected to approval, if any, required of the respective Government authorities.

13.2. Either party hereto may, by notice in writing to the party terminate this Agreement if any order shall be made or effective resolution passed for the winding up of such other party or if a receiver shall be appointed of such other party's undertaking and assets or, any part thereof.



13.3. Should there be at any time a change in the existing management and /or control of the Licensee whether through the alienation of shares, or through the increase of capital and the issue of new shares, otherwise howsoever, or should a different company form be chosen, then the Licensor shall forthwith be informed thereof by the Licensee by a registered letter. On receipt of such letter, the Licensor and the Licensee shall negotiate with each other with a view of arriving at a mutually satisfactory arrangement with regard to the subject-matter of this Agreement, and upon such arrangement being arrived at, the parties shall give effect to it. In the event of no such mutually satisfactory arrangement being arrived at in six months' time, the licensor shall be at liberty to terminate this Agreement by giving 90 days' notice in writing to the Licensee in that behalf.

13.4. Furthermore, if the Licensor does not decide within the period indicated in section 13.3 to terminate the Agreement, the Licensor shall still be entitled later on to terminate the Agreement if, in the opinion of the Licensor, the actions of the Licensee as a result of the change referred to in article 13.3 above be prejudicial to the business interest of the Licensor.

13.5. The provisions of articles 13.3 and 13.4 also apply should the changes referred to therein occur repeatedly.

13.6. Should the Licensee make arrangements with a third party relating to manufacturing assistance in the same field without prior consent of the Licensor, the Licensor, the Licensor may at any time terminate this Agreement on giving 90 days' notice if in the judgment of the Licensor there is a danger that the Technical Information/Improvements furnished or to be furnished by the Licensor under this Agreement may pass to such third party.

13.7. After the termination of the Agreement according to Article 13.1 hereof, the Licensee may continue to use the Technical Information/Improvements and Indian Patent Rights of the Licensor, and the Licensor may continue to use the Information and patent rights of the Licensee furnished to them under this Agreement free of charge.

13.8. After the termination of this Agreement according to any other Clause hereof, except for completion of work in progress under contract and orders already booked, the rights acquired by the Licensee under Technical

Information, Improvements and Patent Rights shall expire with the termination.

13.9. Independent of the cause for termination, the Licensee shall remain obliged to pay all royalties accrued until such termination and accruing according to Article 13.8, if any

#### 14. Article 14: Arbitration-

Any dispute or difference or claim arising out of or in relation to this Agreement including the construction, validity, performance or breach thereof which the parties thereto cannot settle by reaching a mutual understanding, shall be referred to the Indo-German Chamber of Commerce, Bombay for settlement under the Arbitration Rules then in force, and the Award of the Arbitration Court of the Chamber shall be final and binding on both the parties to this Agreement.

#### 15. Article 15 : Miscellaneous –

15.1. Neither this Agreement nor any rights hereunder in whole or part shall be assignable or otherwise transferable by one party without prior written permission of the other party to this Agreement.

15.2. This Agreement constitutes the full and complete understanding between the parties with respect to Contract products. This Agreement cannot be modified except by a written instrument signed by the Licensee and the licensor.

15.3. The correspondence in all matters concerning the validity , life interpretation, modification or extension of this Agreement or of the rights and obligations of the parties or the accounting the payment shall be addressed, if to the Licensee, to \_\_\_\_\_ and, if to the Licensor, to \_\_\_\_\_  
All other correspondence shall be sent to such address as the party to receive the same may direct.

16. Article 16: Applicable Charges Except otherwise expressly provided elsewhere in this Agreement, all governmental applicable charges relating to

or arising out of this Agreement or of any rights, granted in the form of permits, stamp duties, registration fees, contributions or taxes of any governmental or local law of any degree shall be paid as follows :

- a. by the Licensor when such charges are due under any federal, state or other local law of Germany ; and
- b. by the Licensee when such charges are due under any governmental, state or other local law of India.

#### 17. Article -

This Agreement shall be subject to Indian Laws, IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

Signed sealed and delivered by \_\_\_\_\_

The Common seal of \_\_\_\_\_

was hereunto affixed pursuant to a Resolution of its Board of Directors passed in that behalf in the presence of Mr.....a Director and Mr.....Its secretary who have signed in the presence of.....

### **CHAPTER 33**

#### **ROYALTY AGREEMENT**

A royalty agreement is a legal document between two parties where one party agrees to pay the other party royalty fees based on sales of intellectual property. Royalties are monetary compensations to the owner of intellectual property rights Intellectual property rights are rights owned by a person who created a form of intellectual property. This type of property includes song lyrics, books, patented inventions and slogans. The payment amounts and frequency are discussed within the royalty agreement. Royalties are typically paid as a percentage of gross revenue from sales directly related to the intellectual property rights.



### **AGREEMENT BETWEEN AUTHOR AND PUBLISHER**

WHEREAS \_\_\_\_\_ hereinafter called the “Author”, has written a work entitled \_\_\_\_\_ hereinafter called the “Work” and whereas \_\_\_\_\_ Publishing Co, having its business premises at Delhi, hereinafter called the “publishers” are desirous of publishing the Work in book form and whereas the Author agrees to prepare and supply to the Publishers before \_\_\_\_\_ (Date) a double-spaced typescript of the work suitable for use as printer’s copy and acceptable to the Publishers in content and form, together with illustrations as may be mutually deemed desirable and in a form mutually agreed and with index, the Author does hereby grant and convey to the Publishers the right to:

Print, publish and sell the Work, for the First edition thereof and including all translations, abridgments and adaptations thereof in English and Indian languages.

The copyright, save the rights assigned herein to the Publishers, shall vest in the Author. The Publishers, in consideration thereof, agree to publish the Work in book form at their expense, in a style as to paper, printing and binding considered suitable by the Publishers, and to use all ordinary means to market the said Work upon terms as follows:

#### **1. PUBLICATION, SALE AND TERMS OF SALE**

The Publishers shall have exclusive control of the form, get-up, price, sale and terms of sale of the Work.

#### **2. ROYALTIES**

The Publishers agree to pay to the Author a royalty of \_\_\_\_\_ per cent of the list price on each copy of the work actually sold.

The Publishers agree to render to the Author statements of copies sold semi-annually as on June 30 and December 31 each year, and to make settlements thereof within one month thereafter.

No Royalty will be payable in respect of any copies given away for review or complimentary copies.

If the Publishers themselves undertake the publication of translations, or abridgments, or adaptations of the Work in English or in Indian languages, this agreement will govern, as far as the context will permit, such publication by the Publishers and accounting and payment to the Author will be governed by clauses 2(a), 2(b) and 2(c) above, subject to the deduction of expenses incurred by the Publishers in having the said translations, abridgments or adaptations prepared.

### **3. AUTHOR'S CORRECTIONS**

Should the Author make or cause to be made any alterations in type, illustrations or plates which are not corrections of typographical or draftsman's errors, which shall cost in excess of twenty per cent (20%) of the cost of composition independent of the cost of the said alterations, the cost of such excess alterations shall be charged to, and paid for by, the Author. The Publishers may, at their discretion, agree to debit such charges to the royalty account.

### **4. DELIVERY OF WORK**

If the Author fails to supply the full and final typescript along with the agreed illustrations by the date mentioned for this purpose in this agreement, the Publishers shall have the option, any time after this date, unilaterally to declare this agreement cancelled after giving the Author thirty days' notice in writing to provide the necessary material, unless the Publishers have meanwhile agreed in writing to an extension of the period of submitting the material. In the absence of such a written notice, this agreement will continue to be fully effective and for this period the Publishers will be deemed to have agreed to an extension of the date for the delivery of the material till the date of the expiry of any notice the Publishers may subsequently serve on the Author.

### **5. CORRECTION OF PROOFS**

The Author undertakes diligently to check and correct printers' proofs sent to him for this purpose by the Publishers and to return them to the Publishers within 10 days of the receipt of the proofs. If the Author fails or is unable to check proofs as just stipulated, the Publishers shall be free to arrange for such checking by a person competent, in the Publishers' judgment, to do so and the

cost of this arrangement will be debited to the royalty account of the Work as the \_rst charge.

#### **6. SUBJECT-INDEX**

The Author agrees to provide a subject-index for each edition of the book. On his inability or refusal to do so, the Publishers would be free to get the same prepared by any person deemed competent by them and the cost will be debited to the royalty account as a \_rst charge.

#### **7. AUTHOR'S COPIES**

The Publishers agree to give to the Author on publication of each new edition of the Work. . . . .copies of that edition and to sell him such additional copies as he desires for personal use and not for resale at the terms allowed by the Publishers to booksellers, both in respect of discount and packing, postage, freight and forwarding charges.

#### **8. DAMAGED COPIES**

The Publishers may dispose of copies of the Work damaged in storage and/or transit or by any other means or circumstances rendered unsaleable, either by discarding them as waste or selling them as scrap below cost and, on copies so discarded or sold, no royalties will be payable.

#### **9. SUPPLEMENT**

If and when a supplement to the Work is deemed necessary by the Publishers, the Author agrees to supply the same within reasonable time failing which the Publishers would be at liberty to get the same prepared against his cost.

#### **10. WARRANTY**

The Author warrants that the Work is original except for such excerpts from copyrighted works as may be included with the permission of the copyright owners thereof, that it contains no libellous statements, that it contains nothing unlawful, and does not infringe upon any copyright, trademark, patent, statutory right, proprietary right of others, and that he will indemnify the Publishers against any costs, expenses and damages arising from any of this warranty.

**11. ASSIGNMENTS**

This agreement may be assigned by either party, but only as a whole, and no part of the respective interests of either party may be assigned without the written consent of the other party. Notwithstanding any such assignments, this agreement shall be binding on the parties hereto, their heirs, successors, assigns and personal representatives.

**12. PROTECTION OF COPYRIGHT**

The Publishers shall be free to take, on the Author's behalf but at the Publishers' expense, any action, including legal action, that the Publishers may consider necessary to protect their rights under this agreement arising out of the Author's copyright in the Work.

**13. DISPUTES**

If a dispute arises between the parties to this agreement concerning matters covered by this agreement or incidental thereto, this dispute will be referred to the arbitration of two arbitrators, one each appointed by the parties hereto, and, in case the arbitrators disagree, to an umpire of their choice, and the provisions of the Indian Arbitration Act as in force at the time of the arbitration will apply.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto on the dates following their signatures.

Date:

Author

\_\_\_\_\_

Publishers

\_\_\_\_\_

Witnesses: