

**INVESTMENT AGREEMENT**

BY AND BETWEEN

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AND

**National Skill Development Corporation**

AND

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**Dated \_\_\_\_\_ 2011**

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## INVESTMENT AGREEMENT

**THIS INVESTMENT AGREEMENT** made at New Delhi on this \_\_\_\_ day of [●],  
\_\_\_\_\_ (“**Execution Date**”)

### **BETWEEN:**

- (1) \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as "**Promoter**" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) acting through Mr. [●], [Designation] of \_\_\_\_\_, duly authorized vide board resolution dated [●], of the **First Part**; and
- (2) **National Skill Development Corporation** a non-profit company, registered under the Companies Act, 1956 and licensed under section 25 of the Companies Act, 1956, having its registered office at D-4, Clarion Collection, Shaheed Jeet Singh Marg, New Delhi - 110016 (hereinafter referred to as "**Investor/NSDC**" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) acting through Mr. Dilip Harel Mitra Chenoy, Managing Director and Chief Executive Officer of NSDC, of the **Second Part**; and
- (3) \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as "**Company**" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) acting through Mr. [●], [Designation] of Company, duly authorized vide board resolution dated [●], of the **Third Part**.

\_\_\_\_\_, NSDC and **Company**, are hereinafter individually referred to as ‘**Party**’ and collectively as ‘**Parties**’.

### **WHEREAS:**

- (A) NSDC is established with the object of developing unskilled and semi-skilled labour force into productive and skilled labour and to establish, manage, run and support institutes, companies and polytechnics for achieving this objective.
- (B) \_\_\_\_\_ is inter alia engaged in the business of [●] with special emphasis on skill development in the Country.

(C) \_\_\_\_\_ has submitted a Project Proposal dated \_\_\_\_\_ to NSDC with a request to invest in the equity share capital of the Company and provide financial assistance in the form of long term loan facility. The present paid up capital of the Company consists of \_\_\_\_\_ equity shares of Rs. \_\_\_\_ each, aggregating to Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only). The paid up share capital of the Company as on the Execution Date is held as follows:

S.No	Name of Shareholder	Number of Shares	Value per Share ( in Rs.)	Paid up Capital (in Rs.)	% holding to the paid up capital
1.					
2.					
	<b>Total</b>				

(D) \_\_\_\_\_ and the Company have collectively represented to the Investor that the Company shall engage in the business of establishing, managing and operating facilities/skill centres for capacity building and skill development of unskilled and semi-skilled labour force in various trades/sectors of industry including [enter details of trades in which the company shall be engaged]. The detailed objectives of the Company are more particularly set out in Schedule I of this Agreement (hereinafter referred to as “**Business**”).

(E) The Investor has, at Promoter’s request and the representations and warranties made by the Promoter and the Company and subject to the terms and conditions contained in this Agreement, agreed to subscribe to \_\_\_\_\_ (\_\_\_\_\_ only) equity shares of the Company (the “**Investor Subscription Shares**”) at a price of Rs. \_\_\_\_ per share aggregating to Rs. \_\_\_\_\_ (\_\_\_\_\_ only) (the “**Investor Subscription Price**”), which shall upon issue of such shares to the Investor, constitute not exceeding \_\_\_\_% (\_\_\_\_\_ percent) of the post Closing issued, subscribed and paid up equity share capital of the Company. The Promoter has agreed that such investment by the Investor shall be made in tranches in terms of the Business Plan and on pro-rata basis alongwith the contribution of the Promoter

who has agreed to subscribe to \_\_\_\_\_ equity shares (the “**Promoter Subscription Shares**”) at a price of Rs. 10 per share each aggregating to Rs. \_\_\_\_\_/(Rupees \_\_\_\_\_ Only) (the “**Promoter Subscription Price**”) which along with the shares acquired or already held shall represent \_\_\_ % of the post Closing issued, subscribed and paid up equity share capital of the Company.

- (F) That the Promoter, Investor and the Company agree that the respective shareholding of the Investor and the Promoter in the Company shall remain in the ratio of \_\_:\_\_ unless there is change in the shareholding in accordance with the terms of this Agreement. Subject to the terms of this Agreement, the Investor shall have a right but not an obligation to continue to hold a minimum of \_\_\_% shares in the Company hereinafter referred to as “**Anti-dilution Rights of Investor**”. The Shares may be subscribed to in tranches in accordance with the Business Plan.
- (G) While restating its commitment under this Agreement simultaneously with the execution of this Agreement, the Company has agreed to enter into Facility Agreements (“**Facility Agreements**”) with NSDC (including the Loan Agreement, Deed of Hypothecation, undertakings, indemnities for availing a Project Term loan of Rs. \_\_\_\_\_(Rupees \_\_\_\_\_ only) (“**Loan**”) bearing interest at a concessional rate of \_\_\_% per annum, duly secured by corporate guarantee of the Promoter/ personal Guarantee of the individual Promoters (if any), charge on the assets created in Company out of Investor funding, charge on the revenues generated by the Company and other terms as mutually agreed between the Promoter, the Investor and the Company.
- (H) This Agreement sets out the understanding and relationship between the Parties hereto and their rights and obligations in relation to the investment in the Subscription Shares (as defined below) by the Investor and the Promoter and other matters connected therewith.

**THE PARTIES HERETO AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, including in the Recitals, and unless the context requires otherwise, the following words and expressions shall have the following meanings:

“**Act**” means the Companies Act, 1956, including all amendments, restatements, modifications or supplements thereto;

“**Affiliate**” means, in relation to a Party, any other person controlling, controlled by or under common control with such person.

For purposes hereof, “control” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by contract or otherwise or ownership of more than 50% of the share capital of such person.

A holding or subsidiary company of any entity shall be deemed to be an Affiliate of that entity;

“**Agreement**” means this agreement together with its Schedules and Annexures, as the same may be amended, modified, and supplemented from time to time in writing in accordance with the terms and conditions hereof;

“**Board**” or “**Board of Directors**” means the board of directors of the Company or any duly appointed committee thereof from time to time;

“**Business Day**” means a day (excluding Saturdays and Sundays) on which banks generally are open in New Delhi for the transaction of normal banking business;

“**Business Plan**” shall mean the business plan of the Company as set out in Schedule II to this Agreement. The Business Plan shall inter alia provide for the milestones based on which the Investor shall make investment in the Company by way of equity / disbursements by way of loan and the post investment shareholding pattern of the Company;

“**Closing/Closing Date**” shall mean the occurrence of the actions mentioned in Clause 6;

“**Competitor**” means a Person who is itself directly or indirectly engaged in the business similar to that of the Company;

“**Conditions Precedent**” means the conditions set out in Clause 4;

“**Confidential Information**” shall have the meaning set forth in Clause 22.1;

“**Connected Person/Concern**” of the Company includes:-

- (i) any holding company or subsidiaries of the Company;
- (ii) any company under the same management;
- (iii) the promoters or any Affiliate of the promoters;
- (iv) any director of the Company or of any holding or subsidiary company of the Company or of any Affiliate of the Company;
- (v) any director of any holding or subsidiary company of any promoter or any Affiliate of the promoters;
- (vi) any firm or company in which the Company or the promoters or any such director or any Affiliate or partner of any such director, promoters or Affiliate is a partner, shareholder or director or has any share, control or interest; and

- (vii) any company, the board of directors, managing director or manager whereof acts or is accustomed to act in accordance with the directions or instructions of the Board of Directors of the Company, of the promoters, of any such director or of any Affiliate mentioned above.

**“Definitive Agreements”** include but is not limited to this Agreement, Facility Agreement, Escrow Agreement, Deed of Hypothecation, and any other mutually agreed agreement entered between the Parties along with their respective schedules, annexures and amendments, if any;

**“Encumbrance”** means any encumbrance including, without limitation, any claim, debenture, mortgage, pledge, charge, hypothecation, lien, deposit by way of security, bill of sale, option or right of pre-emption, beneficial ownership (including usufruct and similar entitlements), public right, common right, way leave, any provisional or executorial attachment and any other interest held by a third party;

**“Fair Value”** means the fair market value as determined by NSDC for a transaction contemplated under this Agreement which shall be on a discounted cash flow method taking into account the profitability projections of a minimum of 7 years on the date of such calculation;

**“Financial Year”** means a financial year commencing on 1 April and ending on 31 March in the immediately succeeding year;

**“Government”** shall include the President of India, the Government of India, the Governor and the Government of any State in India, any Ministry or Department of the same and any local or other authority exercising powers conferred by Law and shall include, without limitation, the Securities and Exchange Board of India (**SEBI**), any recognised stock exchange and the Reserve Bank of India (**RBI**);

**“Loan”** shall have the meaning ascribed to it in Recital H;

**“Promoter Shares”** means [REDACTED] equity Shares which are issued and or acquired by the Promoter at any point of time under or pursuant to the terms of this Agreement, including without limitation, Promoter Subscription Shares, any additional or further Shares and all shares arising from or connected to any Shares pursuant to any reorganisation, in each case, so long as such shares are held by Promoter;

**“Intellectual Property Rights”** means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world which are held or beneficially owned by the Company;

**“Investor’s Shares/Investor Shares”** means the [REDACTED] Shares which are issued to the Investor at any point of time under or pursuant to the terms of this Agreement,

including without limitation, the Investor Subscription Shares, any additional or further Shares and all shares arising from or connected to any Investor's Shares pursuant to any reorganisation, in each case, so long as such shares are held by the Investor;

**"Law"** includes all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Government, statutory authority, tribunal, board, court or recognized stock exchange and, if applicable, international treaties and regulations;

**"Long Stop Date"** shall have the meaning ascribed to it in Clause 4.2.

**"Losses"** includes all losses, claims, costs, and damages (whether direct, indirect, general, special, absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including interests and penalties with respect thereto and out-of-pocket expenses, including reasonable attorneys' and accountants' fees and disbursements;

**"Material Adverse Effect"** means any (a) event, occurrence, fact, condition, change, development or effect that is, or may reasonably be, materially adverse to the valuation, business, operations, prospects, results of operations, condition (financial or otherwise), properties (including intangible properties), assets (including intangible assets) or liabilities of the Company or the Promoter as the case may be; or (b) material impairment of the ability of Company or the Promoter to perform their respective obligations hereunder;

**"Person(s)"** means any individual, sole proprietorship, unincorporated association, unincorporated organization, body corporate, corporation, company, partnership, unlimited or limited liability company, joint venture, Government authority or trust or any other entity or organization;

**"Rupees"** or **"Rs."** means the lawful currency of the Republic of India;

**"Shares"** shall mean the equity shares of the Company comprised in the share capital of the Company and having the rights attached to them as described in this Agreement and the Articles of Association of the Company.

**"Tax"** or **"Taxation"** means all forms of taxation, duties, levies, imposts and social security charges, including without limitation corporate income tax, withholding tax, provident fund, employee state insurance and gratuity contributions, value added tax, customs and excise duties, capital tax and other legal transaction taxes, stamp duty, dividend withholding tax, real estate taxes, other municipal taxes and duties, environmental taxes and duties and any other type of taxes or duties in any relevant jurisdiction, together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any relevant jurisdiction;

**"Transfer"** includes any transfer, assignment, sale, disposal, lease or Encumbrance;

**"Warranties"** mean the representations and warranties provided by the Promoter and the Company in this Agreement.

## 1.2 Interpretation

1.2.1 In this Agreement, unless the context requires otherwise:

- (a) references to persons shall include individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (b) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (c) references to one gender include all genders;
- (d) any reference to any enactment of statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted (with or without modification) and includes all instruments or orders made under such enactment;
- (e) words in the singular shall include the plural and vice versa;
- (f) any reference to Article, Clause, Schedule or Appendix shall be deemed to be a reference to an Article, Clause, Schedule or Appendix of this Agreement;
- (g) references to an **agreement** or **document** shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement with respect to amendments;
- (h) any reference to a party to this Agreement shall include, in the case of a body corporate, references to its successors and permitted assigns and in the case of a natural person, to his or her heirs, executors, administrators and legal representatives, each of whom shall be bound by the provisions of this Agreement in the same manner as the party itself is bound;
- (i) any reference to a document in agreed form is to a document in a form agreed between the Company and the Investor and initialled for the purpose of identification by or on behalf of each of them (in each case with such amendments as may be agreed by or on behalf of the parties).

1.2.2 No provisions of this Agreement shall be interpreted in favour of, or against, any party by reason of the extent to which such party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof.

## 2. AGREEMENT TO SUBSCRIBE TO THE SUBSCRIPTION SHARES

2.1 Subject to the terms and conditions contained in this Agreement, at Closing, the Investor agrees to subscribe to the Investor Subscription Shares at a price of Rs. 10 per Investor Subscription Share (aggregating to Rs. \_\_\_\_\_, the “**Investor Subscription Price**”) in consideration

thereof and for other good and valid consideration, the receipt of which the Company and the Promoter acknowledge. The Company and Promoter agree to allot the Investor Subscription Shares to the Investor, as the case may be, and provide the Investor with the rights contained herein. The Shares will be issued in tranches as may be determined by the Board in accordance with the Business Plan.

2.2 Subject to the terms and conditions contained in this Agreement, at Closing the Promoter agrees to subscribe to the Promoter Subscription Shares as provided in the Business Plan at a price of Rs. 10 per Share (aggregating to Rs \_\_\_\_\_, the “**Promoter Subscription Price**”) consideration thereof and for other good and valid consideration, the receipt of which the Company acknowledges. The Company agrees to allot the Promoter Subscription Shares to the Promoter, as the case may be, and provide the Promoter with the rights contained herein.

2.3 Post Closing, the shareholding of Investor and the Promoter in the Company shall be as follows:

Name of the Shareholder	Number of Shares	Amount (in Rs.)	Percentage Shareholding and voting rights
Promoter			
Investor			
<b>Total</b>			<b>100</b>

2.4 Both Investor and the Promoter hereby agree and undertake that they shall, without any protest and demur, promptly take all actions to ensure that capitalization of the Company occurs in accordance with Clauses 2.1, 2.2 and 2.3 above and the Business Plan. Each of Investor’s and Promoter’s obligations to capitalize the Company are material obligations and the Parties have entered into this arrangement, inter alia, on the assurance that each Shareholder shall comply with their respective obligations to capitalize the Company.

**3. FURTHER ISSUE OF SHARES**

3.1 The Promoter and Investor undertake to hold Shares in the Company in the ratio \_\_\_:\_\_\_ respectively. The Promoter agrees that it shall continue to hold a minimum of 51% of the total issued and paid up share capital of the Company, which shall remain locked in for a period of \_\_ (\_\_) years from the Closing

Date or till the time the Loan by the Investor is outstanding, whichever is earlier.

- 3.2 In the event the Company proposes to undertake any new issuance of equity after the Closing which shall be in accordance with the Business Plan, all existing Shareholders of the Company shall have the right and obligation to subscribe to the new shares in proportion to their respective shareholding. In case any Shareholder fails to subscribe to the new shares then the other Shareholder shall, subject to Clause 3.1, be entitled to subscribe to the unsubscribed portion, in which case the shareholding of the Shareholder not subscribing to the shares shall stand diluted.
- 3.3 Except in terms of the present Agreement, the Promoter and the Company undertake that until the loans/debt availed of by the Company from the Investor, are outstanding and are repaid in full, the Company shall not incur, raise or avail any additional debt/loans without the prior written consent of the Investor. It is further agreed that termination of this Agreement shall not impact or nullify the obligations of the Parties under the Facility Agreements executed between the Company and the Investor.

#### **4. CONDITIONS PRECEDENT**

- 4.1 The obligations of the Investor under this Agreement shall be conditional upon the following Conditions Precedent having been fulfilled by the Company and the Promoter to the satisfaction of the Investor or waived by the Investor in writing:
- (a) The Board of Directors of the Company passing a resolution, in a form satisfactory to the Investor, approving this Agreement and also authorising the person(s) signing this Agreement for the Company to sign on behalf of the Company.
  - (b) The Board of Directors of the Promoter passing a resolution, in a form satisfactory to the Investor, approving this Agreement and also authorising the person(s) signing this Agreement for the Promoter to sign on behalf of the Promoter.
  - (c) The Board of Directors of the Company passing a resolution, in a form satisfactory to the Investor, approving the issue and allotment of Investor Shares to the Investor;
  - (d) Receipt of an undertaking from Company that from the Execution Date till the date of Closing, the Company has not issued any equity/ debt related securities, either convertible or non-convertible into equity Shares of the Company, to any third party;
  - (e) Receipt of an undertaking from the Promoter that from the Execution Date till the date of Closing, the Promoter has not agreed to issue any

equity/ debt related securities, either convertible or non-convertible into equity Shares of the Company, to any third party;

- (f) Receipt of a No-objection Certificate from the Promoter and Company consenting to the Investor to continue its existing businesses in India, making investments in or entering into collaboration or other agreements or arrangements with persons in India engaged in same or similar business as that of the Company;
- (g) Receipt of governmental and regulatory approvals under all applicable Laws for the proposed investment under this Agreement;
- (h) Conduct of due diligence of the Company by the Investor to its satisfaction;
- (i) Execution of each of the Definitive Agreements;
- (j) The Representations and Warranties given by the Promoter and Company under the Definitive Agreements being true and correct at and as of Execution Date and as of the Closing Date;
- (k) Alteration of Articles of Association of Company to bring the same in line with this Agreement and other Definitive Agreements;
- (l) Receipt of an undertaking from the Promoter that it has not, directly or indirectly, transferred, sold, pledged, hypothecated or in any other manner whatsoever created or permitted to exist any lien or Encumbrance on any shares of the Company and they shall neither create any Encumbrance or dispose off any shares of the Company, except to the extent as agreed in this Agreement (“**Non Disposal Undertakings**”);
- (m) Receipt of an undertaking from the Promoter that it is not restricted by any covenants and/or conditions of its existing investment/loan agreements from making downstream investments in the Company, and that the memorandum of association and articles of association of the Promoter do not restrict the investment by it into the Company;
- (n) Receipt of an undertaking from the Promoter that ownership of the mutually identified course content/training modules shall vest with the Company;
- (o) Directors proposed to be appointed pursuant to this Agreement shall have obtained valid Directors Identification Numbers.
- (p) The authorised share capital of the Company shall have been increased to such levels as may be required for issue of shares contemplated under this Agreement.

**4.2 Endeavours to fulfil Conditions Precedent**

The Company and the Promoter shall ensure that each of the Conditions Precedent (to the extent that it is not waived in writing by Investor) is fulfilled as soon as reasonably practicable and in any event within 60 days from the Execution Date or such extended date as may be specified by the Investor (*the “Long Stop Date”*).

4.3 Upon fulfilment of Conditions Precedent, the Company and \_\_\_\_\_ shall certify the fulfilment of the same to the Investor, together with documentary evidence of such fulfilment to the satisfaction of the Investor.

**4.4 Non-fulfilment of Conditions Precedent**

If any of the Conditions Precedent, to the extent not waived by the Investor in writing, are not fulfilled to the satisfaction of the Investor on or before the Long Stop Date or any such Conditions Precedent becomes incapable of being satisfied (unless they have been waived by the Investor in writing), this Agreement shall thereupon terminate and no Party hereto shall be entitled to make any claim against any other Party. Provided that the provisions of Clauses 8 (representations warranties and indemnity), 21.7 and 21.8 (announcements), 25 (notice), 26 (arbitration), 27 (governing law and jurisdiction)] shall survive the termination of this Agreement pursuant to this Clause.

**5. CONDUCT BEFORE CLOSING**

The Promoter and the Company shall ensure that from the Execution Date until the Closing Date, except as agreed between the Parties, the Company shall not undertake any other business activities or issue any Shares other than as contemplated by this Agreement. The Promoter and the Company shall ensure that no liability or obligation shall be created in the Company till the Closing and that there shall be no Material Adverse Effect particularly for the Investor. If any liability or obligation is created in the Company prior to the Closing Date, as contemplated in this Clause, the Promoter undertakes to be liable for the discharge of such liability or obligation, without any cost or expense to Investor and the Company.

**6. CLOSING**

6.1 Subject to the fulfilment of the Conditions Precedent to the satisfaction of the Investor, Closing shall take place at such venue as may be mutually agreed between the Parties, within 7 (seven) days of Long Stop Date. On Closing, the events set out in the following provisions of this Clause shall take place. The obligations of each of the Parties in this Clause are interdependent. Closing

will not occur unless all of the obligations set out in this Clause are effectively complied with.

- 6.2 On or before the Closing Date, Investor shall electronically transfer the Investor Subscription Price to the designated bank account of the Company as intimated to Investor by the Company provided that the Promoter has transferred the Promoter Subscription Price to the bank account of the Company;
- 6.3 On or before the Closing Date, the Promoter shall electronically transfer the Promoter Subscription Price to the bank account of the Company as intimated by the Company. The Promoter further undertakes to lodge with the Company, prior to the Closing Date, the necessary share transfer deeds and share certificate for registration of transfer of [ ] Shares of the Company held by [ ] to the Promoter.
- 6.4 The Company shall hold a meeting of its Board of Directors, at which the following shall be resolved:
- (a) The Investor shall be allotted and issued the Investor Subscription Shares which it has agreed to subscribe in Clause 2.1 and upon subscription the Investor shall hold \_\_\_% of the issued, subscribed and paid up share capital of the Company.
  - (b) The Promoter shall be allotted and issued Promoter Subscription Shares which it has agreed to subscribe in Clause 2.2 and upon subscription and acquisition of Shares in accordance with Clause 6.3, the Promoter shall hold \_\_\_% of the issued, subscribed and paid up share capital of the Company.
  - (c) The name of the Investor and the Promoter be entered in the register of members of the Company as the holders of the above subscription Shares.
  - (d) Appoint such number of persons nominated by Investor and the Promoter as additional directors on the Board so that the Board comprises of such directors as prescribed under this Agreement;
  - (e) To authorise a person(s) to carry out all the statutory and regulatory filings with the relevant authorities; and
  - (f) Approval and adoption of the Business Plan.
  - (g) Alter the Articles of Association to bring the same in conformity with this Agreement including convening an extra ordinary general meeting.
- 6.5 The Company shall duly issue and allot the Investor Subscription Shares and deliver the share certificates representing the Investor Subscription Shares to the Investor within seven (7) days of the Closing. The Company shall duly pay

the requisite amount of stamp duty in respect of the subscription shares so issued to the Investor.

- 6.6 The Company shall duly issue and allot the Promoter Subscription Shares and deliver the share certificates representing the Promoter Subscription Shares to the Promoter within seven (7) days of the Closing.
- 6.7 The Investor Subscription Shares and \_\_\_\_\_ Subscription Shares shall rank *pari passu* with the remaining Shares of same class in all respects, including with respect to entitlement to dividend.
- 6.8 The Company shall, within 30 (thirty) days of the Closing, file with the relevant Registrar of Companies, Form No. 2 and Form 32 in connection with the issuance and allotment of the Investor Subscription Shares and \_\_\_\_\_ Subscription Shares and appointment of directors pursuant to Clause 6.4 respectively and file Form No. 23 for alteration of the Articles of Association of the Company.

**7. SHARE CAPITAL**

7.1 Equity Share Capital

- 7.1.1 The existing issued, subscribed and paid-up share capital of the Company is [ ] equity shares of Rs. 10 each aggregating to Rs. [ ].
- 7.1.2 The issued, subscribed and paid-up share capital of the Company upon Closing shall be Rs. [ ](Rupees [ ]only) divided into [ ] equity Shares of Rs. 10/-each.
- 7.1.3 The issued, subscribed and paid up equity share capital and the shareholding pattern of the Company shall thus be as follows on Closing:

S. No.	Subscriber	No. of shares	Face value	% of shareholding
1.	Investor		10/- each	27
2.	Promoter		10/- each	73

**8. REPRESENTATIONS AND WARRANTIES**

- 8.1 Company represents and warrants as at the date of this Agreement and as on Closing that:

- (a) the Company has been duly incorporated and is validly existing under the laws of India and has all necessary corporate power, authority and capacity to own and deal with its property and assets, and to carry on the Business;
- (b) Company has the power to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other action has been taken to authorise such execution, delivery and performance;
- (c) the execution, delivery and performance of its obligations under this Agreement does not and will not:
  - (i) contravene any Law, regulation or order of any Governmental or other official body or agency or any judgment or decree of any court having jurisdiction over it; or
  - (ii) conflict with or result in any breach or default under any agreement, instrument, regulation, licence or authorisation binding upon it or any of its assets;
- (d) there are no pending actions, suits or proceedings against it or affecting any of its assets and Business and there has been no event or occurrence which, in each case, might reasonably be expected to give rise to a Material Adverse Effect.

8.2 The \_\_\_\_\_ represents and warrants as at the date of this Agreement and as on Closing that:

- (a) \_\_\_\_\_ has been duly incorporated and is validly existing under the laws of India and has all necessary corporate power, authority and capacity to own and deal with its property and assets, and to carry on the Business;
- (b) \_\_\_\_\_ has the power to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other action has been taken to authorise such execution, delivery and performance;
- (c) It shall use the funds invested by the Investor, solely for the purpose of the Business in accordance with the Business Plan;
- (d) It is not restricted by any covenants and/or conditions of its existing investment/loan agreements from making downstream investments in the Company, and that the memorandum of association and articles of association of \_\_\_\_\_ do not restrict the investment by \_\_\_\_\_ into the Company
- (e) the execution, delivery and performance of its obligations under this Agreement does not and will not:

- (i) contravene any Law, regulation or order of any Governmental or other official body or agency or any judgment or decree of any court having jurisdiction over it; or
    - (ii) conflict with or result in any breach or default under any agreement, instrument, regulation, licence or authorisation binding upon it or any of its assets;
  - (f) there are no pending actions, suits or proceedings against it or affecting any of its assets or business and there has been no event or occurrence which, in each case, might reasonably be expected to give rise to a Material Adverse Effect.
- 8.3 Investor represents and warrants as at the date of this Agreement and as on Closing that:
- (a) Investor has been duly incorporated and is validly existing under the laws of India and has all necessary corporate power, authority and capacity to own and deal with its property and assets, and to carry on the Business;
  - (b) Investor has the power to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other action has been taken to authorise such execution, delivery and performance;
  - (c) The execution, delivery and performance of its obligations under this Agreement does not and will not:
    - (i) contravene any Law, regulation or order of any Governmental or other official body or agency or any judgment or decree of any court having jurisdiction over it; or
    - (ii) conflict with or result in any breach or default under any agreement, instrument, regulation, licence or authorisation binding upon it or any of its assets;
  - (d) there are no pending actions, suits or proceedings against it or affecting any of its assets and there has been no event or occurrence which, in each case, might reasonably be expected to give rise to a Material Adverse Effect.
- 8.4 The Company and \_\_\_\_\_ represent and warrant to the Investor as at the date of this Agreement and as of Closing that the Warranties are true in all respects and acknowledge that the Investor has entered into this Agreement in reliance upon the Warranties being true in all respects, and that the Warranties shall stand repeated on Closing.
- 8.5 Each of the Warranties shall be construed as a separate warranty and (save as expressly provided to the contrary herein) shall not be limited or restricted by

reference to or inference from the terms of any other Warranty or any other term of this Agreement.

- 8.6 The Company and \_\_\_\_\_ undertake to notify the Investor in writing promptly if they become aware of any fact, matter or circumstance (whether existing on or before the date of this Agreement or arising afterwards) which would cause any of the Warranties given by them, to become untrue or inaccurate or misleading in any material respect.
- 8.7 Each of the Warranties is separate and independent and none of the Warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Investor and \_\_\_\_\_ or any of their agents, representatives, officers, employees or advisers.
- 8.8 Where any statement in this Clause or elsewhere in this Agreement or in any of the Schedules is qualified by the expression "so far as the relevant Warrantor/any party is aware" or "to the best of the relevant Warrantor's / party's knowledge, information and belief" or any similar expression, that statement shall, save as expressly provided to the contrary herein, be deemed to include an additional statement that it has been made after due and careful enquiry. Where any statement in this Clause or elsewhere in this Agreement or in any of the Schedules is qualified by the expression "material" with respect to the Company, it means the event, change or effect referred to in such statement is material or materially adverse, as the case may be, to the business, financial condition, profits, operations, properties, assets and/or liabilities of the Company.

## **9. INDEMNITY**

- 9.1 The Promoter shall indemnify, defend and hold harmless, the Investor and/or any Affiliate(s), agents, employees, officers and representatives of the Investor, promptly upon demand at any time and from time to time, against any and all losses arising out of or in connection with:
- (a) any misrepresentation or any breach of any Warranty or any covenant contained herein, and/or
  - (b) any liabilities (including contingent liabilities, whether or not known or contemplated at the time of execution of this Agreement) not fully disclosed to the Investor in writing prior to the execution of this Agreement including liabilities in respect of the conduct of the Business prior to Closing; and/or
  - (c) any pending or threatened claims against the Company or Promoter or any claims which may be made against the Company or Promoter and which relate to or arise out of, the period prior to Closing; and/or
  - (d) any and all costs and expenses incurred by the Investor in respect of a claim under this Indemnity.

- 9.2 The Promoter hereby indemnifies the Investor and its Affiliates, employees, agents, officers and representatives (the ***Indemnified Parties***) and agree to keep the Indemnified Parties fully indemnified against, all Losses relating to or arising out of or in connection with any actual or threatened claim, legal action, proceeding, suit, litigation, prosecution, mediation, arbitration, enquiry or mediation (together, ***Claim***) by or against any Indemnified Party, where the Claim relates to any event, matter or circumstance arising or existing in relation to the Company prior to Closing.
- 9.3 The Investor shall be entitled, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any claim (including without limitation, making claims or counterclaims against third parties).
- 9.4 The indemnification rights of the Investor under this Agreement are independent of, and in addition to, such other rights and remedies as the Investor may have at Law or in equity or otherwise, including the right to seek specific performance, rescission, restitution or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.
- 9.5 It is clarified that the benefit of the Warranties and of the indemnities granted under this Clause shall extend also to any and all Losses in relation to any Investor's Shares held by the Investor or any affiliate(s) of the Investor at any time on or after the date of this Agreement.
- 9.6 The Promoter undertakes to the Investor for itself and as trustee for the directors, officers and agents and to the employees of the Company to waive any rights, remedies or claims which they may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by their directors, officers or agents or employees in connection with assisting the Company in the giving of any Warranty.
- 9.7 In respect of any matter in relation to which any Investor is entitled to be indemnified by the Promoter under this Agreement, Promoter agrees and acknowledges that the Investor shall be entitled, at its option, to proceed against the Promoter and Promoter shall be liable in this regard and in the event that the Promoter makes any payment to the Investor hereunder, the same shall be grossed up to take into account the loss suffered by the Investor as a consequence of such payment on account of the shares held in the Company by the Investor.

## **10. COVENANTS OF THE COMPANY**

### **10.1 Financial Records**

The Company shall allow Investor and its authorized representatives the right during normal business hours to inspect books and accounting records of the

Company and all the projects/ centers of the Company, to make extracts and copies there-from at its own expense.

10.2 Visits and Targets

The Company shall allow the Investor or its authorised representatives to visit and inspect all the projects /centres of the Company, after giving 5 days advance notice.

10.3 Books and Records

The Company shall keep proper, complete and accurate books of account in Rs. and in accordance with Indian generally accepted accounting principles.

10.4 Reports

10.4.1 The Company shall provide to the Investor the following records/ books for so long as the Investor holds at least 10% of the total paid-up share capital of the Company, calculated on a fully diluted basis, after the Closing:

- (i) within 30 days after the end of each quarter, unaudited consolidated statements of income, statements of cash flows of the Company for such quarter and for the period beginning from the current fiscal year to the end of such quarter, and unaudited consolidated balance sheet as of the end of such quarter;
- (ii) un-audited half yearly (within 60 days of period end) financial statements;
- (iii) audited financial statements, including cash flow statements, within 120 days of the fiscal year end;
- (iv) annual operating financial budget as approved by the Board of directors of the Company;
- (v) details of material adverse changes affecting the business, operations, conditions (financial or otherwise), prospects, assets or liabilities of Company; and
- (vi) such additional information as may be reasonably requested by the Investor

10.4.2 The Investor shall be entitled to appoint a project monitor in terms of its Financial Management and Procurement Manual for monitoring the use of funds by the Company, its business operations and such other aspects which the Investor may deem appropriate. The Promoter and the Company shall extend full support and cooperation in this regard.

10.5 Insurance

The Company shall keep insured at all times in a sufficient amount and with such coverage as are generally maintained by responsible companies in the

same industry. Such policies shall be sufficient to cover liabilities to which the Directors and officers of the Company may reasonably be considered at risk in the course of their respective businesses. To the extent legally permissible the Company shall indemnify its Directors including the Directors nominated by the Investor and beyond which, \_\_\_\_\_ shall indemnify the Directors including the Directors nominated by the Investor.

10.6 Intellectual Property Protection

10.6.1 The Company shall take all steps promptly to protect its Intellectual Property Rights, including registering all its trademarks, brand names and copyrights.

10.6.2 Any new content/ training/ trademark/ logo/ tag line, modules created by the Company will be owned by the Company. \_\_\_\_\_ and Investor shall have the right to use the content subject to the same being on an arms length basis.

10.7 Dividend Distributions

Subject to the Company not defaulting on any Loan payments due to Investor under the relevant financing/Facility Agreements, the Company may declare dividend on an annual basis in the event of a surplus profit and in accordance with the Business Plan.

**11. RESERVED MATTERS**

11.1 Notwithstanding anything contained in this Agreement, the Company shall not become bound or committed to any resolutions or transactions relating to the reserved matters listed in Schedule III (“**Reserved Matters**”) and the Board or Shareholders shall not, directly or indirectly, take any steps of any nature to authorise or permit the Company to become bound or committed to any such resolution or transaction unless such resolution or transaction has been approved (i) through affirmative vote of the authorized representative of Investor (as a shareholder) if dealt in the general meeting (ii) through affirmative vote of nominee director of Investor if dealt with at a Board meeting in the Company. However, in the interest of the business of the Company, in the event the Investor nominee director/representative fails to appear for a Board/shareholders meeting as well as the reconvened Board/shareholders meeting, despite issuance and delivery of proper written notice of meeting in both instances of ten (10) days and seven (7) days respectively, in accordance with the Articles of Association of Company, such Investor nominee director/representative presence shall not be required to constitute a quorum at the third reconvened meeting of the Board of directors/shareholders and the Reserved Matters, set forth in the notice of the original meeting of the Board/shareholders may be transacted or undertaken at the second reconvened meeting without the consent of the Investor nominee director/representative provided a written notice of seven (7) days has been

provided for such reconvened meeting. Delivery of the notice is effective when the notice is duly sent in writing at the address provided by the addressee.

- 11.2 It is agreed that the 'Affirmative Vote' to the Investor on 'Reserved Matter/s' is granted as a 'minority protection' right and the exercise of the same by the Investor shall be in good faith and not obstruct/impede the business or operations of the Company.

## 12. BOARD OF DIRECTORS

- 12.1 The Parties shall be entitled to appoint a maximum of \_\_\_\_\_ ( ) directors on the Board of the Company for the purposes of overseeing the Business of the Company. Without prejudice to Anti-dilution Rights of Investor contained herein, for so long as the Investor holds shares equal to or less than \_\_\_% (but not less than \_\_\_%), it shall be entitled to nominate 2 directors on the Board. Where the Investor holds less than \_\_\_% but not less than \_\_\_% shares in the Company, it shall be entitled to nominate 1 director on the Board of the Company. Where the Investor holds less than 10% shares in the Company, the Board shall review and consider the nomination of director by the Investor. The directors appointed by Investor shall be referred to as "**Investor Directors**". The Promoter shall be entitled to appoint \_\_\_\_\_ ( ) directors and there shall be \_\_\_\_\_ ( ) independent directors.
- 12.2 The Investor Directors will be non-rotational directors. The Investor Directors shall be entitled to be members of/ invitees to the committees of the Board, if any constituted. In the absence of Investor Directors, the Investor shall be entitled to appoint alternate directors or observers who shall have the right to attend any and all meetings of the Board and all committees of the Board.
- 12.3 The Parties shall be entitled to remove Directors nominated/appointed by them at any time or from time to time and appoint any other person to be a Director in the place of the Director so removed in accordance with and subject to the provisions of this Agreement. Every Director appointed pursuant to this Clause shall hold office until he/she is either removed or vacates office pursuant to the provisions of the Act, or the Articles of Association or this Agreement.
- 12.4 The Parties agree to use their voting rights to effectuate the system of appointment and election of directors elaborated in this Clause. Neither of the Shareholders shall be entitled to remove the director or directors nominated or appointed by the other.

- 12.5 No default in repayment of any loan and/or interest amount in respect of the Loan availed by the Company from the Investor shall be attributable to the Investor or Investor Directors.
- 12.6 The quorum for the Board meeting or at any meeting of the committee of the Board shall require the presence of at least one Investor Director or his alternate Director and at least one director nominated and appointed by \_\_\_\_\_ or his alternate Director, unless specifically waived in writing by the Party waiving its presence. If the Board meeting cannot be held on the appointed date due to the absence of the quorum provided in this Clause, then the meeting shall stand adjourned to a day after a period of ten days at the same time and at the same place subject to a due notice of seven days for the adjourned meeting is issued by the Company as provided in Clause 12.7 of this Agreement. If at the adjourned meeting also a quorum as provided in this Clause is not present, the Directors present being not less than two shall constitute the quorum provided no Reserved Matters are proposed to be discussed at such meeting.
- 12.7 A meeting of the Board (including by telephone or video-conferencing or other means of contemporaneous communication in accordance with the Act) shall be held at least once in every three calendar months and at least four meetings shall be held in every calendar year. A meeting of the Board may be called at the instance of any director by giving not less than ten (10) days notice in writing and not less than seven (07) days notice in writing for the reconvened/adjourned meetings unless such notice is waived by a majority of the Directors provided such majority shall include at least one Investor Director or his alternate. Every notice of meeting shall specify the place, day and hour of the meeting and shall always be accompanied by the Agenda setting out in reasonable detail the items of business proposed to be transacted at the meeting of the Board and supporting papers or documents relevant to the consideration of each item of business. No business shall be transacted at a meeting of the Board of Directors of the Company, which has not been specially and explicitly mentioned in the notice convening the same or in the Agenda without the consent in writing of the majority of the Directors provided such majority shall include at least one Investor Director.
- 12.8 Each Party shall bear all the expenses and costs of each visit of the Directors appointed by it on the Board of the Company to attend the meetings of the Board.

### **13. POWERS OF THE BOARD**

- 13.1 All decisions at meetings of the Board of Directors except for the Reserved Matters shall be taken in accordance with the Act and the Articles of Association of the Company.
- 13.2 \_\_\_\_\_ and the Board shall be responsible for the day to day conduct of the business operations as per the Business Plan and as may be approved by the Board of Directors from time to time. Board shall also be responsible for overseeing the Business of the Company and shall be responsible for all acts and omissions of the Company.
- 13.3 A “Deadlock” shall be deemed to have occurred provided that such Deadlock can occur only after the Lock-in Period, if the Board of Directors fail to reach a decision on any of the Reserved Matters specified in Schedule III of this Agreement, because the Investor has not voted in favour of such matter and such matter fails to be resolved within three consecutive meetings of the Board and two re-scheduling(s) thereof.

#### **14. KEY MANAGERIAL PERSONNEL**

- 14.1 Subject to the terms of this Agreement, the Board shall have the right to appoint the Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) and all other key managerial personnel of the Company. The appointment of the CEO/Managing Director (“MD”) of the Company shall be for a minimum period of three years (unless terminated by the Company for gross misconduct or dereliction of duties) and the same shall be discussed and agreed upon at the meeting of the Board of the Directors to be held within Thirty (30) days of the Closing.
- 14.2 The Board of the Company shall also appoint a full time COO to manage the day to day operations of the Company. The COO shall report directly to the CEO/MD.
- 14.3 The CEO will appoint and be responsible for the functional teams in running the operating Business of the Company.
- 14.4 The CFO shall be generally responsible for all financial/accounting aspects of the day to day operations of the Company including but not limited to management of cash flows, budgeting and other relevant statutory compliances as per the Act, subject always to the provisions of this Agreement.

#### **15. GENERAL MEETING**

- 15.1 Subject to the provisions of Section 174 of the Act, a general meeting of Shareholders of the Company shall be validly quorate only if minimum two Shareholders are personally present and who shall comprise of one

representative each of \_\_\_\_\_ and Investor. Each representative shall be the legal representative of the appointing Party or the proxy of such legal representative, duly authorised in writing, by such legal representative.

- 15.2 If any general meeting of the Shareholders cannot be held for want of a quorum, it shall be adjourned by fifteen (15) days at the same time and at the same place, or if that day is a holiday, to the next working day subject to due notice of 21 days for the adjourned meeting being issued by the Company. If such adjourned meeting cannot be held for want of the quorum specified in this Clause, but is otherwise quorate for the purposes of the Act, the members present, not being less than two, shall, notwithstanding anything else contained in this Clause, constitute the quorum at that meeting provided that no business shall be transacted which pertains to any of the Reserved Matters. However in case the Reserved Matters are proposed to be discussed at such Shareholder meeting, the meeting shall stand adjourned to a day after a period of seven days at the same time and at the same place subject to a due notice of seven days for the adjourned meeting is issued by the Company. In case the representative of Investor fails to appear for the second reconvened Shareholder meeting, despite issuance and delivery of proper written notice of the meeting, such Investor's representative presence shall not be required to constitute a quorum at the second reconvened meeting of the Shareholders and the Reserved Matters, set forth in the notice of the original meeting may be transacted or undertaken at the second reconvened meeting without the consent of the Investor representative.
- 15.3 For all matters agreed by the Board (other than Reserved Matters), the Parties will use their voting rights at the relevant Shareholder meeting(s), if any is held, to approve resolution(s) in respect of such matter(s) approved by the Board.
- 15.4 A "Deadlock" shall be deemed to have occurred if the Shareholders fail to reach a decision on any of the Reserved Matters specified in Schedule III of this Agreement, because the Investor has not voted in favour of such matter and such matter fails to be resolved within two consecutive shareholders meetings of the Company and one re-scheduling thereof.
- 15.5 The Company shall each year hold in addition to any other meeting a general meeting as its Annual General Meeting, and shall specify the meeting as such in the notices calling it. A general meeting of the Company may be called by giving not less than 21 days' notice in writing. Every notice of meeting shall specify the place, the day and hour of the meeting and shall contain a statement of the business to be transacted thereat. A general meeting of the Company may be called by giving shorter notice with the unanimous written consent of Investor and \_\_\_\_\_.

## 16. DEADLOCK

16.1 For the purposes of resolution of Deadlock deemed to have been occurred pursuant to Clauses 13.3 and 15.4 of this Agreement, \_\_\_\_\_ or the Investor may, within seven (7) business days of the occurrence of the event giving rise to the 'Deadlock', issue a notice ("**Deadlock Notification**") addressed to the other Party stating that the Deadlock has occurred and identifying the subject matter of the Deadlock. If no such Deadlock Notification is issued by a Party, then status quo shall be maintained on the subject.

16.2 In case the Parties are not able to resolve the Deadlock within a period of 30 (thirty) days from the date of Deadlock Notification, the matter shall be referred to a nominee identified by \_\_\_\_\_ and a nominee identified by the Investor on behalf of the Investor with a view to resolve the Deadlock matter within a period of thirty days from the expiry of the first thirty days referred to in this Clause ("**First Deadlock Resolution Period**"). If a "Deadlock" is not resolved within the First Deadlock Resolution Period also, the matter shall be referred to the second nominee identified by \_\_\_\_\_ and the second nominee identified by Investor on behalf of the Investor with a view to resolve the Deadlock matter to resolve the Deadlock within a period of fifteen (15) business days from being referred to it ("**Second Deadlock Resolution Period**").

In the event that the matter is still not resolved at the end of the Second Deadlock Resolution Period provided under Clause 16.2, then the Parties agree that Investor, being the minority shareholder shall have the right to require \_\_\_\_\_ to buy Investor Shares in the Company if so desired by the Investor. The Investor shall have the right to offer all and not less than all of its Shares to \_\_\_\_\_ at a price which shall be the Fair Value or a mutually agreed price, and \_\_\_\_\_ shall be obliged to purchase such Shares within 3 (three) months from the notification of such offer, either by themselves or through any designated person /entity. The fair market value shall be as determined by two independent valuers (appointed each by \_\_\_\_\_ and Investor) using the same valuation methodology. In the event of variation in the value determined by the two independent valuers by more than 5%, the Fair Market Value shall be as determined by a third independent valuer appointed from any of the reputed accounting firms whose decision shall be final.

## 17. AUDITORS

17.1 The Board shall appoint the statutory auditors of the Company in accordance with the terms of this Agreement.

17.2 With respect to internal audit where the management decides to externally source this activity, the Company will employ services of one of the big four audit firms or an audit firm, mutually decided by \_\_\_\_\_ and the Investor. In case the Company decides to employ an internal auditor, the same shall be appointed by the audit committee of the Board.

17.3 Each of \_\_\_\_\_ and Investor shall have the right to appoint their own independent auditors/consultants to examine and monitor the accounting and strategic statements of the Company and other mutually agreed matters on a quarterly basis upon reasonable notice. The cost of such examination shall be borne by the Party conducting the audit.

## **18. MEMORANDUM AND ARTICLES OF ASSOCIATION**

18.1 The Parties agree to incorporate the relevant provisions of this Agreement into the Articles of Association of the Company. The Company undertakes that the relevant provisions of this Agreement shall be made a part of its Articles of Association by an alteration of the Articles of Association of the Company. The Memorandum and Articles of Association of the Company shall give full effect to the terms of this Agreement, to the extent permitted by Law. It is expressly agreed that whether or not the Memorandum or Articles of Association of the Company fully incorporate the provisions of this Agreement or any of them, \_\_\_\_\_'s rights and obligations shall be governed by this Agreement that shall prevail in the event of any ambiguity or inconsistency between the two.

18.2 The Company hereby duly adopts, ratifies and confirms this Agreement and undertakes to faithfully observe each provision of this Agreement in so far as it is applicable to or binding on the Company.

## **19. EXERCISE OF RIGHTS**

19.1 Without prejudice to the other provisions of this Agreement, \_\_\_\_\_ and the Company agree to exercise all powers and rights available to them (including their voting rights and their rights as and in respect of directors) in support of the provisions of this Agreement and so as to procure and ensure that the provisions of this Agreement are complied with in all respects by each of them.

## **20. TRANSFER AND SALE OF SHARES**

### **20.1 Intentionally left blank**

## 20.2 Lock in Period

Notwithstanding anything contained in this Agreement, \_\_\_\_\_ shall not transfer, sell, assign, pledge, create lien, mortgage, charge, otherwise encumber or part with the beneficial ownership of its shareholding to the extent of 51% wholly or in part to any third person or party for a period of \_\_\_(\_\_\_\_) years commencing from the Closing Date (“**Lock- In- Period**”).

- 20.3 Subject to Clause 20.2 the Parties shall not be entitled to transfer, sell, transfer, assign, pledge, create lien, mortgage, charge, otherwise encumber or part with the beneficial ownership of its shareholding wholly or in part to any third person or party except as follows:

### 20.3.1 Right of First Refusal (“ROFR”)

- (a) After the Lock-In-Period, in the event, \_\_\_\_\_ or the Investor (the "**Selling Party**") desires to transfer its shareholding in the Company to a third party (the "**Third Party**"), the Selling Party shall first offer its shares to the Investor by delivering a notice in writing to the Investor or \_\_\_\_\_ whereby the Selling Party shall offer to sell its shares in the Company to the Investor at a price, payable in cash and on such other terms and conditions set out therein (the "**Sale Notice**"). The Investor or \_\_\_\_\_ shall have the right, exercisable by written notice, to purchase the Shares offered for sale by the Selling Party, in accordance with the terms set out in the Sale Notice within 60 (sixty) days.
- (b) If Investor or \_\_\_\_\_ accepts the offer to purchase the offered Shares on the same conditions, then the Selling Party will be bound, upon receipt of the prescribed price, to transfer the offered Shares to Investor or \_\_\_\_\_. The receipt by the Selling Party of the Price shall be a good discharge to Investor or \_\_\_\_\_ and after the name of Investor or \_\_\_\_\_ has been entered in the Register of Members and any other corporate record of the Company, the validity of such proceedings shall not be challenged by any Party.
- (c) If the Investor or \_\_\_\_\_ refuses or fails to purchase the Shares offered by the Selling Party under the Sale Notice, the Selling Party may sell his/its Shares to a third party at a price which shall not be more favourable to such third party than the terms and conditions under the Sale Notice. Such sale to the third party shall be completed within a period of 60 (sixty) days from the refusal /failure of the Investor to purchase the Shares under the Sale Notice, failing which a fresh offer shall need to be made by the Selling Party to the Investor.
- (d) If a sale to the prospective purchaser is not concluded as per aforesaid sub Clauses, the entire ROFR process is to be repeated for subsequent sales.

### 20.3.2 Tag Along Right of the Investor

- (a) In addition to ROFR provided above, the Investor shall be entitled to participate in any transfer of the Shares of the Company by \_\_\_\_\_ to any third party ("**Third Party**") subject to the Lock-In restrictions on \_\_\_\_\_, (the "**Tag Along Rights**") under which such Third Party shall be required to purchase Investor Shares, in proportion to that transferred by \_\_\_\_\_ and on the same terms and conditions provided that where as a result of such sale by \_\_\_\_\_, the shareholding of \_\_\_\_\_ in the Company would fall below 51%, in such an event the Investor shall have a right to sell upto all the Shares then held by the Investor in the Company to such Third Party under its Tag Along Rights. \_\_\_\_\_ shall be under an obligation to inform the Third Party of the Tag Along Rights of the Investor;
- (b) In the event of an exercise of a Tag-Along Right, the Investor shall (i) provide relevant representations and warranties for its Investor Shares; (ii) shall receive the full consideration for such Shares in the manner as received by \_\_\_\_\_; and (ii) be entitled to receive the cash equivalent of any non-cash consideration received by \_\_\_\_\_.
- (c) Upon exercise of Tag Along Rights by Investor, \_\_\_\_\_ shall be obliged to require the Third Party to purchase the relevant shareholding of the Investor at a price not less than the price that the Third Party has agreed to pay for the Shares. \_\_\_\_\_ undertakes not to sell its Shares in the event that the Third Party refuses to satisfy the Tag Along Rights exercised by the Investor.

### 20.3.3 Legend

Each share certificate representing any Shares held by the Parties shall be duly endorsed and stamped and shall contain the following legends.

"THIS CERTIFICATE AND THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT IN ALL RESPECTS TO THE PROVISIONS OF THE INVESTMENT AGREEMENT DATED \_\_\_\_\_, 2011 BY AND BETWEEN [ ], [ ], [ ] AND [ ]. SUCH INVESTMENT AGREEMENT, AMONG OTHER THINGS, IMPOSES VARIOUS RESTRICTIONS ON THE TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, GIFT, PLACEMENT IN TRUST (VOTING OR OTHERWISE), OR OTHER LIEN OR DISPOSAL OF AN INTEREST IN, DIRECTLY OR INDIRECTLY AND WHETHER OR NOT VOLUNTARILY, BY OPERATION OF LAW OR OTHERWISE, THE SHARES REPRESENTED BY THIS CERTIFICATE."

## 21. OTHER COVENANTS

### Connected Person

21.1 All agreements and transactions between the Company and any Connected Person/Concern shall be entered into on at arms' length /market price basis and with the prior written consent of Investor.

### Future Investments by the Investor & Referrals by \_\_\_\_\_

21.2 \_\_\_\_\_ and the Company consent to the Investor to continue its existing businesses in India, making investments in or entering into collaboration or other agreements or arrangements with persons in India engaged in same or similar business as that of the Company, and the Company and \_\_\_\_\_ shall execute and deliver the No-objection Certificate to the Investor on Execution Date. 21.3 \_\_\_\_\_ shall make reasonable efforts to refer to the Company on an arms length commercial basis, any skill development opportunity that it is aware of in India provided that the trades/sectors for which financial assistance is granted by the Investor to the Company shall be carried out only in the Company.

### More Favourable Rights

21.4 The Company shall not provide any investor with rights in relation to the Company which are more favourable than those provided to the Investor hereunder.

### ANNOUNCEMENTS

21.5 No formal or informal public announcement or press release which makes reference to the Investor and/or terms and conditions of this Agreement or any of the matters referred to herein, shall be made or issued by or on behalf of the Company or \_\_\_\_\_ without the prior written approval of the Investor.

21.6 If the Company or \_\_\_\_\_ is obliged to make or issue any announcement or press release required by law or governmental or regulatory authority, it shall give the Investor every reasonable opportunity to comment on any announcement or release before it is made or issued (provided that this shall not have the effect of preventing the Company or \_\_\_\_\_ from making the announcement or release or from complying with its legal, governmental and/or regulatory obligations).

## 22. CONFIDENTIALITY

22.1 All communications between the Parties and/or any of them and all Confidential Information given to or received by any of them from any other Party and all information concerning the Business transactions and the financial arrangements of any Party with any entity or Person with whom any of them is in a confidential relationship with regard to the matter in question which comes to the knowledge of the recipient (“**Confidential Information**”),

shall be kept confidential by the recipient unless or until the recipient can reasonably demonstrate that any such communication or Confidential Information is in the public domain through no fault of its own. If it is in the public domain, this obligation shall then cease in relation to the specific information concerned only.

- 22.2 The Parties shall use all reasonable endeavours to procure the observance of such restrictions, and shall take all reasonable steps to minimize the risk of disclosure of Confidential Information by ensuring that only they and such of their employees and Directors whose duties will require them to possess any of such Confidential Information have access thereto and by instructing such employees and Directors to treat such information as confidential.
- 22.3 The obligations contained in this Clause shall survive the termination of this Agreement, for a period of **3** years after such termination.
- 22.4 Notwithstanding the aforementioned provisions of this Clause, information shall not be deemed to be Confidential Information and the recipient thereof shall have no obligation with respect to such information if such information:
- (a) Is or was already known to the recipient prior to the Execution Date; other than by virtue of such information having been given to the recipient by any Shareholder;
  - (b) Is received by the recipient from a third party which is not subject to similar confidentiality restrictions and without breach of this Agreement;
  - (c) Is independently developed by the recipient;
  - (d) Is required to be disclosed by Law.
- 22.5 Notwithstanding Clauses 22.1 to 22.4 inclusive, each Party or the Company may at any time disclose any Confidential Information:
- (a) To its Affiliates;
  - (b) To its directors, officers, representatives, professional advisers and lenders or those of any of its Affiliates;
  - (c) If required to do so by Law or any applicable regulatory requirements or the rules of any stock exchange or by applicable generally accepted accounting principles; or
  - (d) If requested to do so by any regulatory body to whose jurisdiction that Party or the Company is subject or with whose instructions it is customary to comply,
- provided that the Party or the Company required to make the

disclosure has taken all reasonable steps to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Parties or the Company as the case may be, before making the disclosure.

- 22.6 Notwithstanding the foregoing provisions of Clause 22, a Shareholder may provide Confidential Information to a prospective purchaser of its Shares to whom the Shares are transferred in accordance with the terms of this Agreement, (not being a Competitor) if:
- (a) The prospective purchaser has signed a non-disclosure agreement in customary form, agreeing to hold all such Confidential Information in the strictest confidence; and
  - (b) Such Shareholder gives written notice to the Company and the other Shareholder of the identity of all Persons so receiving any such Confidential Information.

### **23. TERM AND TERMINATION**

- 23.1 This Agreement shall become effective upon the execution thereof by the Parties hereto.
- 23.2 In the event that either of the Shareholders (the "**Defaulting Party**") is in breach or fails to observe or comply with any material term, covenant or obligation contained in this Agreement, which breach or failure, if capable of cure or remedy, has not been cured or remedied within 30 Business Days of the receipt of written notice of such breach or failure from the other (the "**Non-Defaulting Party**") or there occurs a liquidation, bankruptcy, receivership or reorganization or dissolution/winding up under any insolvency laws or any similar action or becoming insolvent or making any compromise or arrangement with its creditors or having a receiver or similar officer appointed over a substantial part of its assets of the Defaulting Party, the Non-Defaulting Party shall, without prejudice to other rights and remedies available in terms of this Agreement or under Law, have the right to forthwith terminate this Agreement.
- 23.3 Upon termination of this Agreement, that Investor, being the minority shareholder, shall have the right to require \_\_\_\_\_ to buy the Investor Shares in the Company if so desired by the Investor. The Investor shall have the right to offer all and not less than all of its Shares to \_\_\_\_\_ at a price which shall be 120% of the Fair Value or a mutually agreed price, and \_\_\_\_\_ shall be obliged to purchase such Investor Shares within 3(three) months from the notification of such offer, either by themselves or through any designated person /entity.
- 23.4 The Fair Market Value of the Shares for the purpose of Clause 23 shall be

determined by the Independent Valuer appointed by the Non Defaulting Party and the same shall be final and binding on the Parties, in the absence of manifest errors.

- 23.5 This Agreement may also be terminated by mutual written consent of the Parties upon terms and conditions mutually agreed between the Parties.

## **24. MISCELLANEOUS**

### **No partnership or agency**

- 24.1 Nothing in this Agreement (or any of the arrangements contemplated herein) shall be deemed to constitute a partnership between the Parties, nor, except as may be expressly provided herein, constitute any party as the agent of another party for any purpose, or entitle any party to commit or bind another party in any manner.

### **Entire agreement**

- 24.2 This Agreement together with any agreement specifically executed pursuant to this Agreement constitutes the whole and only agreement between the Parties relating to the Business, and save to the extent repeated in this Agreement, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.
- 24.3 Each Party acknowledges that in entering into this Agreement on the terms set out in this Agreement, it is not relying upon any representation, warranty, promise or assurance made or given by the other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out in this Agreement.

### **Further assurances**

- 24.4 The Company and \_\_\_\_\_ agree to do all such further things and to execute and deliver all such additional documents as are necessary to give full effect to the terms of this Agreement.
- 24.5 The Company and \_\_\_\_\_ undertake with the Investor that (so far as it is legally able and permitted to do so) it will do or procure to be done all such further acts and things, execute or procure the execution of all such other documents and exercise all voting rights and powers, whether direct or indirect, available to it in relation to any Person so as to ensure the complete and prompt fulfilment, observance and performance of the provisions of this Agreement and generally that full effect is given to the provisions of this Agreement.
- 24.6 The Company and \_\_\_\_\_ agree that if any provisions of the Articles of Association of the Company at any time conflict with any provisions of this Agreement, the Articles of Association of the Company shall be promptly

amended to the extent necessary to give effect to the provisions of this Agreement and in order to ensure that the provisions of this Agreement shall prevail.

### **English Language**

24.7 All notices or formal communications under or in connection with this Agreement shall be in the English language.

### **Assignment**

24.8 Neither Party shall have the right to assign their respective rights hereunder or transfer their respective rights and obligations, in whole or in part, to any third party, except to the extent as provided herein and in favour of one or more of their Affiliates, provided however that third party executes a Deed of Adherence in the format provided in Schedule IV.

### **Severability**

24.9 If any provision of this Agreement is or becomes invalid, illegal or unenforceable under the laws of any jurisdiction, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement which shall not in any way be affected or impaired. The Parties hereto shall then use all reasonable endeavours to replace the invalid or unenforceable provisions with a valid and enforceable and mutually satisfactory substitute provision, achieving as nearly as possible the intended commercial effect of the invalid, illegal or unenforceable provision.

### **Waivers and remedies**

24.10 No failure or delay by the Parties in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

24.11 The rights and remedies of the Parties under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under the general laws of India.

### **Variation**

24.12 No variation of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is made by an instrument in writing and signed by duly authorised representatives of each of the Parties hereto. The expression "variation" shall include any variation, amendment, supplement, deletion or replacement however effected.

## **Counterparts**

24.13 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

## **25. NOTICES**

### **Service of Notice**

25.1 Any notice or other communication to be given by one Party to any other Party under, or in connection with, this Agreement shall be made in writing and signed by or on behalf of the Party giving it. It shall be served by letter or facsimile transmission (save as otherwise provided herein) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), at the time of transmission (in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission and a hard copy of such notice or communication is forthwith sent by prepaid post to the relevant address set out below) or ten days after being despatched in the post, postage prepaid, by the most efficient form of mail available and by registered mail if available (in the case of a letter) to such party at its address or facsimile number specified in Clause 25.2 , or at such other address or facsimile number as such Party may hereafter specify for such purpose to the other Parties hereto by notice in writing.

### **Details for Notices**

25.2 The addresses and fax numbers for the purpose of Clause 25.1 are as follows:

#### **The Company**

Address:

Fax:

For the attention of:

#### **The Investor**

Address:

Fax:

For the attention of:

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

Fax:

**26. FOR THE ATTENTION OF: DISPUTE RESOLUTION**

- (i) All or any dispute, controversy, claim or disagreement arising out of or touching upon or in relation to the terms of this Agreement or its termination, breach, invalidity, including the interpretation and validity thereof and the respective rights and obligations of the Parties hereof, that cannot be amicably resolved by mutual discussion within ninety (90) calendar days of the commencement of discussions, shall be referred to arbitration which shall be governed by the Arbitration and Conciliation Act, 1996.
- (ii) The Parties shall mutually appoint a sole arbitrator to resolve the dispute or differences, failing which it shall be appointed in accordance with Arbitration and Conciliation Act, 1996.
- (iii) The place of arbitration shall be New Delhi. The arbitration proceedings shall be conducted in the English language.
- (iv) During the pendency of any dispute resolution exercise whether by negotiations or arbitration, the Parties shall be bound by the terms of this Agreement and shall continue to perform their respective obligations not under dispute under this Agreement.

**27. Governing Law and Jurisdiction**

This Agreement and the relationship between the Parties hereto shall be governed by, and interpreted in accordance with, the laws of India. The Parties irrevocably agree that subject to Clause 26, the courts at New Delhi, India shall have exclusive jurisdiction in relation to all matters arising out of this Agreement.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the Parties the day and year first before written.

**Signed and delivered for and on      Witness  
behalf of**

1.

**Name:**

**Designation:**

2.

**Signed and delivered for and on      Witness**

behalf of \_\_\_\_\_

1.

Name:

Designation:

2.

Witness

Signed and delivered for and on behalf  
of Investor

1.

Name:

Designation:

2.

Signed and delivered for an on  
behalf of the Company

Witness

1.

Name:

Designation:

2.

**Schedule I - Detailed Business Objectives of \_\_\_\_\_**

**Schedule II**  
**Business Plan of the Company**

**Schedule III**  
**List of Reserved Matters**

1. Appointment of CEO and his compensation, including bonus;
2. Fund raising, beyond the approved Business Plan, if the amount exceeds Rs. 50,000,000 (Rupees Five Crores only);
3. Entering into of any union, merger or amalgamation with any other body corporate or reorganization or arrangement of the Company including any downstream investments by the Company;
4. Sale, lease, exchange or disposition of all or substantially all of the assets, business or undertaking of the Company;
5. Approving transfer of equity shares, if it results in change in controlling interest of the Company; provided such transfer is not in favor of Affiliates;
6. The appointment or change in statutory auditors of the Company;
7. Fixing the borrowing limits;
8. Fixing the key commercial terms of contracts, if the value of such contracts exceeds Rs. 50,000,000 (Rupees Five Crores only);
9. Any amendments to the Memorandum of Association or Articles of Association of the Company;
10. The entry into by the Company of any contract where the monetary value involved exceeds Rs. 50,000,000 (Rupees Five Crores only)
11. Investments of funds, other than in the normal course of business, including day-to-day treasury functions of the Company;
12. Any increase or decrease in the number of Directors;
13. The issue of further share capital;
14. The dissolution, liquidation or winding-up of the Company, any declaration of bankruptcy or insolvency by the Company, or the filing of any proposal or plan pursuant to any insolvency legislation or any other legislation providing relief or protection of debtors from their creditors in general;
15. Making of any related party transactions other than on "arms' length basis ".
16. Declaration of dividends, if the Company is in default in servicing of loans;
17. Listing of the Shares of the Company, pursuant to an IPO;

**Schedule IV**  
**Deed of Adherence**

THIS DEED OF ADHERENCE (“**Deed**”) is made on the [●] day of [●].

BETWEEN

[●] (hereinafter called “the **Continuing Party**”);

AND

[●] (hereinafter called “the **Transferor**”);

AND

[●] (hereinafter called “the **Transferee**”).

SUPPLEMENTAL to the Investment Agreement dated the [●] of [●], 2010 and entered into between \_\_\_\_\_, NSDC and Company as amended, varied, novated or supplemented from time to time (the “**Principal Agreement**”)

- (A) The Transferor intends to transfer to the Transferee Shares held by the Transferor in the capital of the Company subject to the Transferee entering into this Deed.
- (B) The Transferee agrees to purchase such shares and agrees to enter into this Deed as hereinafter provided.

**IT IS HEREBY AGREED** as follows:

1. Words and phrases defined in the Principal Agreement shall have the same meaning when used in this Deed.

2. The Transferee hereby unconditionally and irrevocably undertakes to and covenants with all the Parties to the Principal Agreement, with effect from the date of the execution of this Deed, to fully and in good faith comply with the provisions of and to perform all the obligations of the Transferor in the Principal Agreement as a shareholder so far as they may remain to be observed and performed and the Continuing Party undertakes to and covenants with the Transferee with effect from the date of the execution of this Deed to comply with the provisions of and to perform its respective obligations as provided in the Principal Agreement, so far as they remain to be observed and performed from the date of execution of this Deed. The Transferee shall become a Party to the Principal Agreement as if the Transferee were named in the Principal Agreement as a shareholder holding [●] Shares in place of the Transferor.
  
3. The Transferee hereby confirms that it has been supplied with a copy of the Principal Agreement and the Memorandum and Articles of Association of the Company and hereby covenants with the Continuing Party to observe, perform and be bound by all the terms thereof that are applicable to the Transferee.
  
4. The Transferee hereby covenants that it shall not do any act, matter, deed or thing or commit any omission that derogates from the provisions of the Principal Agreement or the Memorandum and Articles of Association of the Company.
  
5. The parties to this Deed agree that save as hereby provided all provisions of the Principal Agreement shall remain in full force and effect.
  
6. This Deed shall be governed by, and construed in accordance with, Indian law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Deed as of the day and year first above written.

Witnessed by: Name [●] Address[●]	<b>(Continuing Party)</b> <b>Through [●]</b> Name [●]
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By[•] Title[•]	Title[•] Address[•]
Witnessed by: Name [•] Address[•] By[•] Title[•]	(Transferor) <b>Through [•]</b> Name [•] Title[•] Address[•]
	(Transferee) <b>Through [•]</b> Name [•] Title[•] Address [•]