**[*To be executed on a non-judicial stamp paper of adequate value.*]**

**Investment cum Shareholders Agreement**

This **Investment cum Shareholders Agreement** (hereinafter the “**Agreement**”) is entered into on this [●]th day of [●], [●] (“**Execution Date**”),

**By and Amongst**

**[●]**, a private limited company duly incorporated and registered under the Companies Act, [1956/2013], and having its registered office at [●] (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 **First Part**;

**And**

**The Persons listed in Part I of Schedule A hereto** (hereinafter referred to as the “**Investors**”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective successors, administrators and permitted assigns) of the **Second Part**;

**And**

**The Persons listed in Part II of Schedule A hereto** (hereinafter referred to as the “**Promoters**”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective heirs, successors, administrators and permitted assigns) of the **Third Part**;

**[And**

**The Persons listed in Part III of Schedule A hereto** (hereinafter referred to as the “**Other Shareholders**”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective heirs, successors, administrators and permitted assigns) of the **Fourth Part**;][[1]](#footnote-1)

Each party above named shall be referred to as a “**Party**” when referred to individually and shall be referred to as the “**Parties**” when referred to collectively.

# Recitals:

1. The Company is engaged in the business of [●][[2]](#footnote-2) (“**Business**”);
2. As on the Execution Date, the Paid-up Share Capital of the Company is held in the manner set forth in **Part I of Schedule B** hereto;
3. The Company is desirous of raising funds and has approached the Investors to invest in the Company by subscribing to Series A CCPS (as defined hereinafter) of the Company. The Investors, relying upon the representations, warranties and covenants provided by the Promoters and the Company in this Agreement and subject to the terms and conditions of this Agreement including fulfillment of the Conditions Precedent (as defined hereinafter), have agreed to invest an aggregate amount of INR [●]/- (Indian Rupees [●] only) (“**Subscription Consideration**”) in the Company by subscribing to [●] ([●]) Series A CCPS (“**Subscription Shares**”) in the Company.[[3]](#footnote-3)
4. The Parties have agreed to execute this Agreement in order to crystallize the terms and conditions in relation to: (i) investment in the Company by the Investors; (ii) management and governance of the Company; and (iii) the resultant relationship amongst the Parties hereto and other matters in connection therewith.

**It Is Agreed As Follows**:

# Definitions & Interpretation

1. **Definitions**

In this Agreement, in addition to any word or phrase defined in the recitals or in the body of this Agreement unless the context requires otherwise:

“**Act**” shall mean the Companies Act, 1956 and Companies Act, 2013 (as applicable), as may be amended and/or restated from time to time;

“**Affiliate(s)**” shall mean in relation to any Person, any entity Controlled, directly or indirectly, by that Person, any entity that Controls, directly or indirectly, that Person, or any entity under common Control with that Person or, in the case of a natural person includes any Relative (as defined under the Act) of such person.

For the purpose of this Agreement, “**Control**” means the power to direct the management and policies of an entity whether through the ownership of more than 50% (Fifty percent) of the voting capital, by the power to appoint the majority of directors on the board of directors or similar governing body of the entity, by contract or otherwise, and a holding or subsidiary company of any entity shall be deemed to be an Affiliate of that entity.;

“**Approval**” shall mean any permission, approval, consent, license, order, decree, authorization, authentication of, or registration, qualification, designation, declaration or notification, exemption or ruling with or from any Governmental Authority required under any statute or regulation;

“**Articles**” shall mean the articles of association of the Company, as amended from time to time;

“**Board**” shall mean the board of Directors of the Company;

“**Business** **Day**” shall mean any day, which is neither (a) a Saturday nor Sunday; nor (b) a day on which banks in New Delhi, India and United States are closed for ordinary banking business;

“**Charter Documents**” shall mean the Articles and the memorandum of association of the Company, as amended from time to time;

“**Confidential Information**” shall mean all communications between the Company, the Investor, the Shareholders of the Company, or any of them and all information and other material supplied to or received by any of the Parties hereto from the others which is either marked “Confidential” or is by its nature intended to be exclusively for the knowledge of the recipient alone, and any information concerning the affairs, the Business, customer details, Business transactions, Intellectual Property Rights or the financial arrangements of the Company or any Subsidiary or of the Shareholders of the Company or of any Person with whom any of them is in a confidential relationship and shall include the terms of this Agreement and all connected documents and/or writings;

“**Deed of Adherence**” shall mean a deed of adherence in the Agreed Form provided in **Schedule C** hereto;

“**Directors**” shall mean the directors of the Company, from time to time;

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

“**Equity Shares**” means the equity shares of the Company having a face value of INR [●]/- (Indian Rupees [●] only) each;

“**Force Majeure Event(s)**” shall mean any event or combination of events or circumstances beyond the control of the Parties, which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precautions and/or alternative measures be prevented, or caused to be prevented, and which materially and adversely affects the performance of the Parties obligations under this Agreement including: (i) acts of God. i.e. fire, drought, flood, earthquake, epidemics and other natural disasters; (ii) explosions or accidents; (iii) strikes or lock-outs; (iv) any change in Law; (v) actions of decree of Governmental Authorities whether by regulation, administrative action or otherwise, including refusal to grant the requisite Approvals (provided that such refusal is not caused by, or otherwise attributable to, either Party); or (vi) any event or circumstances analogous to the foregoing;

“**Fully Diluted Basis**” shall mean such outstanding Securities and stock options which are convertible into Equity Shares (whether or not by their terms then currently convertible, exercisable or exchangeable,) have been so converted, exercised or exchanged;

“**Governmental Authority**” 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, any Judicial Forum and shall include the Competition Commission of India and the Reserve Bank of India;

“**INR**” or “**Rs.**” shall mean Indian Rupees;

“**Intellectual Property Rights**” means all patents, trademarks, service marks, logos, diagrams, trade names, internet domain names, rights in designs, drawings, copyright (including rights in computer software) and moral rights, database rights, flow charts, semi-conductor topography rights, utility models, manuals, codes, rights in technical and process know-how, website address 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 a Person;

“**Investor Securities**” shall mean the Securities held by the Investors from time to time;

“**Judicial Forum**” shall include any statutory authority, tribunal, arbitral tribunal, board, quasi-judicial authority, court and instrumentality of state;

“**Law**” shall mean and include all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, directions, directives and orders of any Governmental Authority or stock exchange and, if applicable, international treaties and regulations;

“**Liquidity Event**” shall be deemed to include (i) the commencement of any proceedings for the voluntary winding up of the Company in accordance with the Act or the passing of an order of any court appointing a provisional liquidator or administrator in any other proceeding seeking the winding up of the Company; or (ii) the consummation of a consolidation, merger, reorganization or other similar transaction (whether in one or a series of transactions) of the Company resulting in its Shareholders (immediately prior to such transaction), collectively, retaining less than a majority of the voting power of the Company or the surviving entity immediately following such transaction after giving effect to any conversion, exercise or exchange of any Securities convertible into or exercisable or exchangeable for, such voting Securities; or (iii) a sale of any significant block of assets of the Company and/or its subsidiaries (including any Business related Intellectual Property Rights of the Company and/or its subsidiaries) not in the ordinary course of business of the Company and/or its Subsidiaries; or (iv) any change in Control;

“**Long Stop Date**” shall mean [●][[4]](#footnote-4);

“**Major Investor**” shall mean each of [●][[5]](#footnote-5) and any other Investor holding more than [●]% ([●] Percent)[[6]](#footnote-6) in the Company;

“**Material Adverse Effect**” shall mean, with respect to any relevant Person (a) any event, occurrence, fact, condition, change, development or effect that is, or may reasonably be, materially adverse to the valuation, business, operations, results of operations, condition (financial or otherwise), properties or assets (whether tangible or intangible) or liabilities of such Person, or (b) a material impairment of the ability of such Person to perform their respective obligations hereunder;

“**Paid-up Share Capital**” shall mean the issued, subscribed and paid up equity share capital of the Company on a Fully Diluted Basis;

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

“**Securities**” shall include the Equity Shares and any other instrument or security that is convertible into Equity Shares;

“**Series A CCPS**” shall mean the fully and compulsorily convertible cumulative preference shares of par value of INR 100/- (Indian Rupees One Hundred only) each, issued by the Company on the terms and conditions as set forth in **Schedule D** hereto;

“**Shareholder**” or “**Shareholders**” shall mean a Person who holds shares and in whose name shares are registered in the Company's register of members and who becomes a party to this Agreement in accordance with the terms of this Agreement;

“**Shareholding Percentage**” shall mean the respective percentage proportions in which the Paid-up Share Capital of the Company is held from time to time by the Shareholders;

“**Transfer**” shall mean, whether directly or indirectly, any transfer, sale, assignment, creation of security interest in or Encumbrance on, placing in trust (voting or otherwise) or any other disposal; and

“**Warranties**” means the representations and warranties of the Company and the Promoters contained in this Agreement including in Clause 12 and in **Schedule E** to this Agreement.

# Investment and Status of Subscription Shares

1. **Subscription to Subscription Shares**

On and subject to the terms and conditions contained in this Agreement and in reliance upon the representations, warranties and covenants of the Promoters and the Company contained in this Agreement, the Investors agree to subscribe to and the Company, subject to receipt of the Subscription Consideration from the Investors (in a bank account as may be intimated by the Company in writing), agrees to issue, allot and deliver Subscription Shares to the Investors at Completion in terms of Clause 4, in the following manner:

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Name of the Investor** | **Number of Subscription Shares to be issued** | **Subscription Consideration Payable (INR)** |
|  | [●] | [●] | [●] |
|  | [●] | [●] | [●] |
|  | [●] | [●] | [●] |
|  | **Total** | **[●]** | **[●]** |

1. **Status of the Subscription Shares**
2. The Promoters and Company hereby represent, warrant and covenant to the Investors that the Subscription Shares issued to the Investors shall be free from all Encumbrances and shall, at all times, rank *pari passu* with all outstanding, issued and paid-up Equity Shares in relation to all stock activities including voting rights, rights issuance, bonus issues, dividends or any corporate actions.
3. The Company shall be responsible for the payment of any and all charges, taxes or duties relating to the issue and allotment of the Subscription Shares in terms of this Agreement.
4. Post Completion shareholding pattern of the Company shall be as set out in **Part II of Schedule B** hereto.

# Conditions Precedent & their Fulfilment

1. **Conditions Precedent**

The obligation of the Investors to subscribe to invest the Subscription Consideration and subscribe to the Subscription Shares is subject to the fulfilment of the following conditions and the delivery and execution of the items listed in **Schedule F** hereto (“**Conditions Precedent**”) to the satisfaction of the Investors, unless any one or more of the Condition Precedent is specifically waived in writing by the Investors.

1. **Fulfilment of Conditions Precedent**
2. Except to the extent waived in writing by the Investors, all of the Conditions Precedent shall be satisfied by the Long Stop Date in the manner acceptable to the Investors.
3. Each of the Company and the Promoters shall take all steps necessary to promptly and expeditiously fulfil the Conditions Precedent and shall promptly inform the Investors of all actions and steps taken in this behalf, on an on-going basis.
4. Within 7 (seven) Business Days of fulfilment (or waiver in writing by the Investors, on a case to case basis) of all the Conditions Precedent, the Company shall provide written confirmation of the same to the Investors in an Agreed Form (“**CP Confirmation Certificate**”).
5. Upon the Investors being satisfied with the fulfilment of the Conditions Precedent pursuant to Clauses 3.2.1 to 3.2.3 above, the Investors, the Company and the Promoters shall agree upon a date (“**Completion Date**”) on which the Completion shall occur, which shall occur on or before the Long Stop Date.

# Completion

1. **Date & Place**

Subject to the terms and conditions set forth in this Agreement including fulfilment of Conditions Precedent set forth in Clause 3.1 (unless specifically waived by the Investors), Completion shall take place on the Completion Date, at the registered office of the Company or at such other place, date and time as the Company, the Investors and the Promoters may agree in writing.

1. **Conduct of Parties at Completion**

At Completion, the Parties shall ensure the following:

1. The Investors shall remit the Subscription Consideration to the Company.
2. The Company shall and the Promoters shall cause the Company to hold a Board and a Shareholders’ meeting (where necessary under the Act) in order to give effect to the following: (a) recording and ratifying the execution of this Agreement and ratifying the transactions contemplated in this Agreement; (b) recording the receipt by the Company of the Subscription Consideration; (c) issuing and allotting the Subscription Shares to the Investors in the manner as set forth in Clause 2.1 above; (d) authorizing the issuance of duly stamped share certificates in relation to the Subscription Shares to the Investors; (e) authorizing the entry in the register of members maintained under the Act, the names of the Investors as the holders of their respective Subscription Shares; (f) amending the Charter Documents to incorporate the provisions of this Agreement; (g) approving and adopting the entrenchment provisions contained in the Restated Articles; and (h) authorising specified individuals to file all forms and resolutions with the appropriate Governmental Authorities in connection with issuance of the Subscription Shares and the amendments to the Charter Documents in accordance with the terms hereof.
3. The Company shall (and the Promoters shall ensure that the Company shall) deliver to the Investors, duly stamped share certificates in relation to the Subscription Shares duly evidencing the names of the Investors as the legal and beneficial owners of their respective Subscription Shares.
4. The Company shall (and the Promoters shall ensure that the Company shall) deliver to the Investors, certified true copies of the updated register of members maintained by the Company evidencing the names of the Investors as the legal and beneficial owners of their respective Subscription Shares.
5. The Company shall (and the Promoters shall ensure that the Company shall) deliver to the Investors, certified true copies of the resolutions passed as per Clause 4.2.2 above.
6. The Parties shall take all such actions as are necessary and required to effect Completion in accordance with the letter and spirit of this Agreement.
7. The obligations of each of the Parties in this Clause 4.2 are interdependent and shall be deemed to have occurred simultaneously. Completion shall not occur unless all of the obligations contained in this Clause 4.2 are complied with and are fully effective.

# Conditions Subsequent

The Company shall make the necessary filings and perform the requisite corporate compliance actions with the appropriate Governmental Authorities, promptly and in any case within 30 (thirty) days or such other shorter period prescribed under applicable Law, from the Completion Date and with any other Person as may be necessary and required for the purposes of giving effect in Law, to the actions taken at Completion, as the case may be.

# Voting at Shareholders’ Meetings

Each resolution of the Shareholders shall be adopted by a simple majority vote of the Shareholders personally present (or represented by a proxy or a representative appointed pursuant to applicable Law or voting through postal ballot) and voting. The voting rights of Shareholders shall be in proportion to their Shareholding Percentage, and the holders of the Series A CCPS shall be entitled to vote on an “as-if-converted basis”.

# Operation & Management

* 1. **Consent of the Investors required for certain actions**

The Parties hereby agree and acknowledge that subject to applicable Laws, the consent of the Majority Investors shall be required for any actions on the part of the Company (including an amendment to the Charter Documents) which adversely affects the rights of the Investors.

* 1. **Conduct of Business**

Except as the Parties may otherwise agree in writing or save as otherwise provided or contemplated in this Agreement, the Promoters and the Other Shareholders shall exercise their respective powers in relation to the Company so as to ensure, that (i) the Company shall conduct itself such that all transaction with its “Related Parties” (as such term is defined under the Act), including investments / loans to Related Parties, formation of Subsidiaries shall be conducted on an arm’s length basis and the Company shall ensure that best corporate governance practices are followed in this regard; [(ii) the Company shall, at all times, maintain adequate insurance cover against all such risks and liabilities in such manner and amounts as shall accord with good commercial practice having regard to the Business and assets of the Company;] [and (iii) if the Company requires any Approval for carrying on its Business in the places and in the manner in which the same is being carried on or is proposed to be carried on at a later date, the Company shall ensure that such Approvals are maintained in full force and effect.]

Notwithstanding anything contained in this Agreement, it is hereby agreed and understood between the Parties hereto that subject to overall supervision and control of the Board, management over the day-to-day operations of the Company shall be the sole responsibility of the Promoters.

* 1. **Intellectual Property Rights**
		1. Any Intellectual Property Rights created or developed by or expressly on behalf of the Company in connection with the Business shall remain the absolute property of, and automatically vest (with full ownership rights) in the Company.
		2. The Promoters hereby agrees and undertake that they shall forthwith disclose to the Company, all Intellectual Property Rights created, developed or discovered by them and applied in connection with the Business and if and whenever required so to do (whilst being a Shareholder, or at any time thereafter), each Shareholder shall, at the expense of the Company apply or join in or appoint the Company as its/his agent with full powers for the purposes of applying for the registration or other equivalent protection (in India or any other part of the world) of any Intellectual Property Rights as contemplated in this Clause 7.3 and execute all instruments and do all things as may be reasonably necessary for vesting the said registration, or protection (including defense and enforcement of the Company’s rights) when obtained, and all rights, title and interest to and in the same in Company (or its nominees) absolutely and as sole beneficial owner or in such other Person as Company may require.
	2. **Financial Affairs and Accounting**
		1. The Company’s accounting and reporting system shall be in accordance with the generally accepted accounting principles as issued by the Institute of Chartered Accountants of India, to fairly represent the financial condition of the Company. The accounting and reporting systems, as well as the procedures to be adopted by the Company, shall be submitted to their respective Board for approval.
		2. The Shareholders shall have the right to inspect the records and books of accounts of the Company through representatives or accountants of their choice at reasonable times and providing reasonable notice.

# Transfer of Shares

* 1. **Lock-In**

During the term of this Agreement, the Promoters and the Other Shareholders shall not, without obtaining the prior written consent of the Major Investors, Transfer any Securities held by them to any third Party.

* 1. **Restriction on Transfer of Securities**
		1. The Shareholders shall not Transfer the Securities held by them or any right, title or interest therein or thereto, except as expressly permitted under this Clause 8. Any attempt to Transfer the Securities in violation of the preceding sentence shall be null and void *ab-initio*, and the Company shall not register any such Transfer.
		2. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the Transfer restrictions on the Shareholders in this Agreement and/or the Charter Documents shall not be avoided by the holding of Securities indirectly through a company or other entity that can itself be sold in order to dispose of an interest in the Securities free of such restrictions. Any Transfer, issuance or other disposal of any Securities (or other interest) resulting in any change in Control, directly or indirectly, of any entity holding Securities shall be treated as being a Transfer of the Securities held by such Party, and the provisions of this Agreement that apply in respect of the Transfer of Securities shall apply in respect of the shares (or other interest) so held.
	2. **Permitted Transfers**
		1. Notwithstanding any other provision of this Agreement, but subject to applicable Law, the Shareholders may at any time Transfer all or part of the Securities held by such Shareholders to an Affiliate subject to:
1. such Affiliate agreeing in writing to be bound by the terms and conditions of this Agreement by executing a Deed of Adherence, as provided in **Schedule C** hereto with the other Parties to this Agreement on the same terms that apply to the transferring party in relation to those Securities immediately before the Transfer, and
2. the new Shareholder shall then be construed to be part of a group comprising the transferring Shareholder(s) and such new Shareholder and consequently shall be liable as a member of such group, for the compliance and observance by the latter of the terms and conditions of this Agreement. Upon signature of the Deed of Adherence, and provided that the other requirements of this Agreement have been complied with in relation to the Transfer of the Securities to such Affiliate, such Affiliate shall be bound by all the obligations under this Agreement in the place of or in addition to the Shareholder that transferred such Securities.

Provided that in no case, the Promoters shall be entitled to Transfer more than 5% (Five Percent) of their aggregate shareholding in the Company during the term of this Agreement, to an Affiliate under this Clause, except with the prior written consent of the Major Investors.

* + 1. If a transferee at any time ceases to be an Affiliate, that transferee shall Transfer the Securities concerned back to the transferring Shareholder, no later than 15 (fifteen) days there from, notwithstanding that such transferee has executed a Deed of Adherence.
		2. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the Investor Securities (along with the rights attached thereto) shall at all times be freely transferable, without restrictions of any nature.

* 1. **Tag-Along Right of the Investors**

Subject to Clause 8.1 above, in the event that the Promoters and / or the Other Shareholders (as the case may be) (“**Selling Shareholder**”), wish to Transfer any Securities held by the Selling Shareholder (“**Tag** **Sale Securities**”) to any third Person (“**Tag Purchaser**”), then each Investor (“**Tag Exercising Investor**”) shall have the option to require the Selling Shareholder to include in the proposed Transfer, such number of Securities held by the Tag Exercising Investor as determined on a pro-rata basis as per the inter-se Shareholding Percentage of the Selling Shareholder and the Tag Exercising Investor (“**Pro-Rata Tag Along Right**”).

Provided that in case the Promoters are the Selling Shareholders and as a result of the proposed Transfer, the Promoters are likely to cease to be the single largest Shareholder in the Company, each Tag Exercising Investor shall be entitled to require the Selling Shareholder to include in the proposed Transfer all, but not less than all, of the Securities then held by such Tag Exercising Investor (“**Full Tag Along Right**”).

The Pro-Rata Tag Along Right and/or the Full Tag Along Right shall hereinafter be referred to as the “**Tag Along Right**” and shall be exercisable in accordance with, and in the manner specified in Clauses 8.4.1 to 8.4.5 below.

* + 1. The Selling Shareholders shall, send to the Investors a written notice of the proposed Transfer to the Tag Purchaser (hereinafter referred to as the “**Tag Notice**”). The Tag Notice shall *inter-alia* state: (a) the number of the Tag Sale Securities; (b) the proposed price, including the proposed amount and form of consideration (including consideration other than cash) and terms and conditions offered by the Tag Purchaser; (c) the date of consummation of the proposed Transfer and the rights which are proposed to be granted/transferred to the Tag Purchaser; (d) a representation that the Tag Purchaser has been informed of Tag Along Rights provided for in this Agreement; (e) a representation that no consideration, tangible or intangible, is being provided, directly or indirectly, to the Selling Shareholders that will not be reflected in the price paid to the Tag Exercising Investor upon exercise of the Tag Along Right (including a refund or a discount).
		2. The Tag Notice shall be accompanied by a true and complete copy of all agreements between the Selling Shareholder and the Tag Purchaser relating to the proposed Transfer of the Tag Sale Securities by the Selling Shareholders.
		3. Each Investor shall be entitled to respond to the Tag Notice by serving a written notice (“**Response Notice**”) to the Selling Shareholder prior to the expiry of 30 (thirty) days from the date of receipt of the Tag Notice (the “**Tag Period**”) requiring the Selling Shareholder to ensure that the Tag Purchaser also purchases the Securities held by the Tag Exercising Investor as mentioned in the Response Notice at the same price and on the same terms as are mentioned in the Tag Notice.
		4. If the Tag Purchaser(s) is/are unwilling or unable to acquire all of the Securities held by the Tag Exercising Investor as mentioned in the Response Notice upon such terms, then the Selling Shareholder may elect either to cancel such proposed Transfer or with the prior written consent of the Tag Exercising Investor, allocate the maximum number of Securities which the proposed transferee(s) is/are willing to purchase among the Tag Sale Securities and the Securities held by the Tag Exercising Investor in the Response Notice, pro-rata in the ratio of the Shareholding Percentage of the Selling Shareholder and the Tag Exercising Investor in the Company at the time of Transfer to the Tag Purchaser.
		5. It shall be the responsibility and liability of the Selling Shareholder to ensure that, along with the Tag Sale Securities, the Tag Purchaser also acquires the Securities specified by the Tag Exercising Investor in the Response Notice for the same consideration and upon the same terms and conditions as applicable to the Tag Sale Securities. Where an Investor has elected to exercise its Tag Along Right and the Tag Purchaser fails to purchase from the Tag Exercising Investor, the Securities which the Tag Exercising Investor is entitled to sell under this Clause 8.4, the Selling Shareholder shall not make the proposed Transfer, and if purported to be made, such Transfer shall be null and void.
	1. **Consequences of Non Exercise of Tag Along Right**

In the event that the Investors are entitled to exercise the Tag Along Right but do not deliver any Response Notice to the Selling Shareholder prior to the expiry of the Tag Period, then, upon the expiry of the Tag Period, the Selling Shareholder shall be entitled to sell and transfer the Tag Sale Securities to the Tag Purchaser mentioned in the Tag Notice on the same terms and conditions and for the same consideration as is specified in the Tag Notice. If completion of the Transfer to the Tag Purchaser does not take place within a period of 75 (seventy five) days following the expiry of the Tag Period, the Selling Shareholder’s right to transfer the Tag Sale Securities to the Tag Purchaser or any third party shall lapse and the provisions of Clause 8.4 shall once again apply to the Tag Sale Securities.

# Additional Funding and Pre-Emptive Right

After the Completion Date, in order to meet any additional funding requirements if the Company intends to raise additional funding (“**Additional Funding**”), the Company shall, raise the Additional Funding by way of a fresh issue of Securities to the Shareholders in proportion of their then existing Shareholding Percentage, on terms and conditions, including price, which are acceptable to the Investors, provided that notwithstanding anything to the contrary contained in this Agreement, till such time that the Company raises an Additional Funding of INR [●]/- (Indian Rupees [●] only)[[7]](#footnote-7) in a single round (“**Qualified Financing**”), the Major Investors shall be entitled to invest a sum of up to INR [●]/- (Indian Rupees [●] only) in each Additional Funding over and above their right to invest pro rata to their then existing Shareholding Percentage as per this Clause. In the event that any of the Shareholders (“**Non-Participating Shareholder**”) is unable or unwilling to contribute his/its share of capital in the aforesaid manner (“**Unsubscribed Securities**”), the other Shareholders (“**Participating Shareholder**”), may, at their option, meet such shortfall, which shall result in the consequent dilution of the Non-Participating Shareholders. If any of the Shareholders do not subscribe, in full or part to the Unsubscribed Securities, then the Board may, in its discretion, issue and allot such of the Unsubscribed Securities, as the case may be, to any Person as it deems fit, within such period as may be agreed by the Major Investors.

# Liquidation Preference

* 1. In the event of a Liquidity Event, the proceeds from the Liquidity Event (less any amounts required by applicable Laws to be paid or set aside for the payment of creditors of the Company, if applicable) (“**Liquidation Proceeds**”) shall be paid or distributed in the following order:
		1. The holders of the Series A CCPS shall be entitled to receive, for each of the Series A CCPS and any other class of Securities (not being Securities as set out in Clause 10.1.2) held by them, involved in the Liquidity Event prior and in preference to any payment or distribution to any other Shareholder, an amount which is the higher of (a) the subscription price paid towards subscription to such Series A CCPS and any other class of Securities (not being Securities as set out in Clause 10.1.2) as held by each of them (plus all declared but unpaid dividends on all such Series A CCPS or any other class of preference shares held by such shareholders) before any further distributions (if any) are made to any other class of Shareholders; or (b) such amount as would be distributed to the relevant holders of the Series A CCPS, had such shares been converted into Equity Shares immediately prior to such Liquidation Event (“**Series A Preference Amount**”).
		2. Subject to applicable Laws, the Investors shall be entitled to receive in respect of their Securities, excluding Series A CCPS, and any such Securities referred in Clause 10.1.1, involved in the Liquidity Event, *pari passu* to the holders of the Series A CCPS, but prior and in preference to any payment or distribution to any other Shareholders, an amount, which shall be the aggregate of the price paid by the relevant Investors, as the case may be, towards acquisitionof such Securities, plus any arrears of declared and accrued but unpaid dividends on any such Securities, calculated to the date of such payment (“**Equity Preference Amount**”).

(The Series A Preference Amount and the Equity Preference Amount shall collectively be referred to as the “**Preference Amount**”).

The Investors shall have the option to forego their entitlement to receive the aforementioned preferential distribution and receive such portion of the Liquidation Proceeds that is proportionate to the Shareholding Percentage represented by each Series A CCPS or Securities, as the case may be, involved in the Liquidity Event, calculated on a Fully Diluted Basis, in the aggregate number of the Securities involved in the Liquidity Event, calculated on a Fully Diluted Basis.

* 1. **Liquidation Preference for equity shareholders**: After the payment of Preference Amount from the Liquidation Proceeds as per Clause 10.1 above, each Shareholder (excluding the Investors) shall be entitled to the balance portion of the Liquidation Proceeds that is proportionate to the percentage represented by each Security involved in the Liquidation Event in the aggregate number of the Securities involved in the Liquidation Event.
	2. In the event that the Liquidation Proceeds available for distribution are not sufficient to pay full Preference Amounts necessary to be paid under Clause 10.1 above, the entire Liquidation Proceeds so available shall be paid first to the holders of Series A CCPS pro-rata to the respective sums paid towards subscription to the Series A CCPS, to attempt at ensuring that each of them receive their respective Preference Amounts, and no Liquidation Proceeds shall be distributed to the holders of the Equity Shares or any other outstanding Securities of the Company.
	3. The Parties shall fully co-operate with each other in making the payment of the amounts payable under Clauses 10.1 and 10.3 above, in the order and manner provided above and to do all such things as may be reasonably necessary and that they shall use and employ all necessary efforts and commit best endeavour to ensure that payment of the amounts payable under Clause 10.1 and Clause 10.3 above, is made in accordance with this Clause 10. The Company and the Promoters shall do all necessary acts, deeds and things to obtain any Approvals and consents in a timely manner such that the liquidation preference can be made to the Investors within the time periods mentioned above.
	4. The Parties hereby agree and acknowledge that in the event of occurrence of a Liquidation Event prior to a Qualified Financing, notwithstanding anything to the contrary contained in this Agreement, before any distribution or payment shall be made to the any other Shareholders, the Investors shall be entitled, to receive a sum equal to [2 (two)][[8]](#footnote-8) times the total sum paid by the Investors in acquiring the Securities held by them, plus all declared and unpaid dividends on such Securities.

# Information Covenants

The Parties hereby agree and undertake to ensure that the Company shall provide the following information in relation to the Company to each of the Shareholders: (a) audited annual financial statements, within 90 (ninety) days of the end of each Financial Year; (b) quarterly financial statements, within 21 (twenty one) days of the end of each quarter; (c) suitable monthly management reports from the Promoters which comprehensively cover the financial position, operations and progress of the Company, within 10 (ten) days from the end of each month; (d) copies of any material reports submitted or notices received for purposes of any regulatory compliance or compliance with applicable Law; (e) details of any major litigation (including any insolvency proceedings or notices under any enactment or regulation), proceedings, material disputes, or adverse changes that impede or which are likely to adversely affect the Business, assets or otherwise; and (f) details of any Force Majeure Event or any other event that would, or is likely to have, have an effect on the Company’s profits or Business.

# Representations and Warranties

* 1. Each Party hereby represents and warrants to the other Party (where applicable) as follows, as at the Execution Date and as at the Completion Date:
		1. it is duly organized, validly existing and in good standing under the applicable Laws of the jurisdiction of its organization;
		2. it has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations under this Agreement; and
		3. this Agreement has been duly executed and delivered by it and constitutes a valid and legally binding obligation on it, enforceable against it in accordance with the terms hereof.
	2. In addition to the foregoing representations as set out in Clause 12.1, each of the Promoters and the Company hereby jointly and severally make the Warranties as set out in **Schedule E** to the Investors, as on the Execution Date and the Completion Date.
	3. The Promoters and the Company acknowledge that the Investors have decided to invest in the Company and enter into this Agreement on the basis that the Warranties are true and accurate as on the Execution Date as well as of the Completion Date, and nothing contained in the Warranties is/will be designed to create an inaccurate or false picture as on the Execution Date as well as the Completion Date.
	4. The Company and the Promoters undertake to promptly notify the Investors in writing if any of them becomes 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 to become untrue or inaccurate in any material respect.
	5. Each of the Warranties shall be construed as separate and independent.
	6. It is expressly agreed between the Parties that other than any representation and Warranty expressly given by each Party in this Agreement, such Party has not provided any other representations and warranties.

# Term & Termination

* 1. **Term**

This Agreement shall become effective from the Execution Date and shall remain valid and subsisting until the date of termination of this Agreement in accordance with the provisions hereof (“**Term**”).

* 1. **Termination**

This Agreement may be terminated in the following manner: (a) at any time based on the mutual consent of all Parties; or (b) prior to Completion, by the Investors in the event the Conditions Precedent are not fulfilled within the period as specified in this Agreement; (c) prior to Completion, by any Investor, in respect of itself, if Completion does not occur within the period as specified in this Agreement, after receipt of the Subscription Consideration by the Company from such Investor; (d) upon the winding up of the Company by resolution of the Shareholders or by a final order of a court; or (e) upon listing of the Equity Shares of the Company on any stock exchange, whichever is earlier.

* 1. **Antecedent Breach**

Any termination of this Agreement shall be without prejudice to any rights and obligations of the Parties accrued or incurred prior to the date of such termination, which shall survive the termination of this Agreement. Provided that, in the event the Agreement is terminated by an Investor pursuant to Clause 13.2(c) above, the Company shall immediately after such termination, refund the Subscription Consideration received by it from such Investor.

* 1. **Survival after Termination**

The provisions of Clause 12 (*Representations & Warranties*), this Clause 13 (*Term and Termination*), [Clause 14.1 (*Confidentiality*),] Clause 14.5 (*Assignment*), Clause 14.6 (*Waiver*), Clause 14.8 (*Notices*), Clause 15 (*Dispute Resolution*) and Clause 16 (*Governing Law & Jurisdiction*) shall survive the termination of this Agreement.

# Miscellaneous

* 1. [**Confidentiality**

Each Party shall keep confidential and shall not disclose or divulge, any Confidential Information which it holds pursuant to the terms of this Agreement, other than (i) to its professional advisors including attorneys, accountants, consultants, and other professionals, to the extent necessary to obtain their services, provided such professional advisors also accept confidentiality obligation equivalent to that set out in this Clause 14.1; (ii) to the extent it is required to be disclosed as per applicable Law; or (iii) to the extent such Confidential Information is publicly available (other than as a result of breach by such Party of its obligations under this Clause 14.1).]

* 1. **Counterparts**

This Agreement may be executed in [3 (three)][[9]](#footnote-9) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

* 1. **Entire Agreement**

This Agreement, and the documents referred to in it, contain the whole agreement and understanding between the Parties with regard to the matters dealt with in this Agreement and supersedes any prior agreement, understanding, arrangement or promises, whether written or oral, relating to the subject matter of this Agreement. The Parties expressly acknowledge that, in relation to the subject-matter of this Agreement, each of them assumes no obligations of any kind whatsoever other than as expressly set forth in this Agreement.

* 1. **Severability**

If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, prohibited or unenforceable to any extent for any reason including by reason of any Law, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from one Party to another and the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

* 1. **Assignment**

No right or obligation under this Agreement may be assigned or transferred by any Party or by operation of law or otherwise without the prior written consent of the other Parties except as otherwise expressly permitted under this Agreement.

* 1. **Waiver**

The failure of any Party to insist, in one or more instances, upon strict performance of the obligations of this Agreement, or to exercise any rights contained herein, shall not be construed as waiver, or relinquishment for the future, of such obligation or right, which shall remain and continue in full force and effect.

* 1. **Relationship**

The Parties to this Agreement are independent contractors. None of the Parties shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Parties except as specifically provided by this Agreement. Nothing in this Agreement shall be interpreted or construed to create an association or partnership between the Parties or to impose any liability attributable to such relationship upon any Party nor, unless expressly provided otherwise, to constitute any Party as the agent of the other Parties for any purpose.

* 1. **Notices**
		1. Notice Requirements

All notices under this Agreement shall be in writing and shall be sent by hand or by courier or by facsimile or by electronic mail to the applicable Party at the contact details indicated below or to such other address or facsimile number as a Party shall designate by similarly giving notice to the other Parties:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of the Party** | **Address** | **Attention** | **Email** | **Facsimile No.** |
| [●] | [●] | [●] | [●] | [●] |
| [●] | [●] | [●] | [●] | [●] |
| [●] | [●] | [●] | [●] | [●] |

* + 1. Delivery

Any notice, document, or communication: (a) given by hand or by courier is deemed to be received at the commencement of the Business Day next following delivery to that addressee; and (b) sent by facsimile or electronic mail during normal business hours of the recipient, is deemed to be received when sent, and if not sent during normal business hours, then is deemed to be received, on the addressee’s next Business Day.

* 1. **Specific Performance and Injunctions**

The Parties agree that damages may not be an adequate remedy for any breach of this Agreement and a Party shall therefore be entitled as against any of the other Parties to the remedy of specific performance, injunction and other equitable relief for any threatened or actual breach of this Agreement.

* 1. **Expenses**

Each Party shall bear the fees and expenses of its respective counsel, accountants and experts and all other costs and expenses incurred by it incidental to the negotiation, preparation, execution and delivery of this Agreement. The Company shall bear the stamp duty and such other cost incidental thereto payable on this Agreement.

# Dispute Resolution

Any dispute, difference, controversy or claim between the Parties (“**Disputing Parties**”) arising out of or relating to this Agreement or the breach, termination or validity thereof (“**Dispute**”) shall, upon the written request (“**Request**”) of any Party served in accordance with Clause 14.8 (*Notices*), be referred to the authorised representatives of the each Party for resolution. In the event that the Disputing Parties are unable to resolve the Dispute through negotiation within a period of 30 (thirty) days, or any mutually extended period of time after service by a Party of a Request, then the Dispute shall be resolved by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 (“**Rules**”) by a sole arbitrator appointed under the Rules. The seat of arbitration shall be [New Delhi] and all the arbitration proceedings shall be conducted in the English language. The costs of the arbitration shall be borne by the Parties in equal proportion or in such manner as the sole arbitrator shall direct.

# Governing Law & Jurisdiction

1. This Agreement, including all matters relating to its validity, construction, performance and enforcement, shall be governed by and construed in accordance with Indian Law.
2. Subject to Clause 15 above, the High Court of Judicature at [Delhi] shall have sole and exclusive jurisdiction on Disputes.

# Schedule A – Details of the Parties

**Part I – Details of the Investors**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Name** | **Age[[10]](#footnote-10)** | **Address** |
| 1. | [●] | [●] years | [●] |
| 2. | [●] | [●] years | [●] |
| 3. | [●] | [●] years | [●] |

**Part II – Details of the Promoters**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Name** | **Age** | **Address** |
| 1. | [●] | [●] years | [●] |
| 2. | [●] | [●] years | [●] |
| 3. | [●] | [●] years | [●] |

**Part III – Details of the Other Shareholders**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Name** | **Age** | **Address** |
| 1. | [●] | [●] years | [●] |
| 2. | [●] | [●] years | [●] |
| 3. | [●] | [●] years | [●] |

# Schedule B – Shareholding Pattern of the Company

**Part I – Shareholding Pattern of the Company as on the Execution Date**

[●][[11]](#footnote-11)

**Part II – Shareholding Pattern of the Company as on the Completion Date**

[●][[12]](#footnote-12)

# Schedule C – Deed of Adherence

This Deed Of Adherence is made on [*insert date of execution*] by:

[(1)] [*Insert name of Transferee*] (the “Transferee”), a company incorporated in [*state country of incorporation*] with its registered office at [*insert address of registered office*];

[(2)] [*Insert name of Transferor*] (the “Transferor”), a company incorporated in [*state country of incorporation*] with its registered office at [*insert address of registered office*];

[(3)] [*Insert names and descriptions of other parties to the Investment cum Shareholders Agreement, including persons who have previously executed the Deed of Adherence*] (together, the “Beneficiaries”);

in favour of and for the benefit of each and all of the parties to the Investment cum Shareholders Agreement dated [*insert date*], 2016 (the “**Agreement**”) made between the Beneficiaries.

WHEREAS:

(A) The Transferee is the purchaser of [*insert number of Securities*] Securities (the “Transfer Shares”) of the Company, sold by the Transferor in accordance with Clause [●] of the Agreement vide [*specify instrument of transfer of Securities*].

(B) Under the terms of Clause [●] of the Agreement, the Transferee and the Transferor are to execute this Deed.

NOW THIS DEED WITNESSES as follows:

1. In this Deed, capitalised words and expressions have the meanings given in the Agreement unless otherwise provided herein.

2. The Transferee hereby covenants and agrees with each of the Beneficiaries that as from the date of completion of the sale of the Transfer Shares, it will observe and discharge all the terms and conditions of the Agreement which are applicable to it as a party to the Agreement, including all undertakings, limitations and restrictions contained therein and as an owner of the Transfer Shares in all respects as if it had been originally named as a Party to the Agreement in respect of the aforesaid provisions.

3. The parties agree that, following the transfer of the Transfer Shares, the Transferee shall be entitled to exercise all rights under the Agreement which were exercisable by the Transferor as if the Transferee were a party to the Agreement. The parties further irrevocably and unconditionally consent to the transfer of the rights and obligations of the Transferor under the Articles of Association of the Company (the “**Articles**”) to the Transferee, such that references in the Articles to the Transferor shall be deemed to be references to the Transferee, it being hereby clarified that pursuant to the instant transfer, the rights of the Transferee shall not be duplicated.

4. The parties hereby release the Transferor from all present and future claims, demands, obligations and liabilities whatsoever under the Agreement.

5. This Deed shall be governed by, and construed in accordance with, the Laws of India.

6. The address of the Transferee for the purpose of notice under Clause [●] is [●].

IN WITNESS WHEREOF this Deed has been entered into on the date stated first above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR [*Insert name of Transferee*]

Authorised Signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR [*Insert name of Transferor*]

Authorised Signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR [*insert names of Beneficiaries*]

Authorised Signatory

# Schedule D – Terms and Conditions of the Series A CCPS

* 1. **Dividend Rights**

The Series A CCPS are issued at a minimum preferential dividend rate of 0.001% (Zero point Zero Zero One Percent) per annum (“**Preferential Dividend**”). The Preferential Dividend is cumulative and shall accrue from year to year whether or not paid, and accrued dividends shall be paid in full (*together with dividends accrued from prior years,* *provided that such dividends are due only when declared*) prior and in preference to any dividend or distribution payable upon shares of any other class or series in the same fiscal year. Notwithstanding the above, the Preferential Dividend shall be due only when declared by the Board. In addition, each Series A CCPS would be entitled to participate *pari-passu* in any cash or non-cash dividends paid to the holders of shares of all other classes, on as-if-converted basis.

* 1. **Rights upon Occurrence of a Liquidity Event**

Upon the occurrence of a Liquidity Event, the entitlement of the holders of Series A CCPS over the Liquidation Proceeds shall be determined in the manner contemplated under Clause 10 (*Liquidation Preference*) of this Agreement.

* 1. **Conversion of the Series A CCPS**
		1. Conversion
			1. Each Series A CCPS may be converted into Equity Shares at any time at the option of the holder of that Series A CCPS.
			2. Subject to compliance with Law, each Series A CCPS shall automatically be converted into Equity Shares, at the Series A Conversion Price then in effect, upon the earlier of (i) 1 (one) day prior to the expiry of 20 (twenty) years from the date of issuance of such Series A CCPS; or (ii) in connection with a listing of the Securities, prior to the filing of a prospectus (or equivalent document, by whatever name called) by the Company with the competent authority or such later date as may be permitted under Law.
			3. The Series A CCPS shall be converted into Equity Shares at the Series A Conversion Price determined as provided herein in effect at the time of conversion (“**Series A Conversion Price**”). The initial Series A Conversion Price for the Series A CCPS shall be the Series A CCPS Subscription Price and shall be subject to adjustment from time to time as provided herein.

For the purpose of this Clause, “**Series A CCPS Subscription Price**” shall mean an amount equal to INR [●]/- (Indian Rupees [●] only)[[13]](#footnote-13) as adjusted to account for any share splits, share dividends, recapitalizations, or like events affecting all Shareholders of that class and series.

* + - 1. The number of Equity Shares issuable pursuant to the conversion of any Series A CCPS shall be that number obtained by dividing the total amount paid by the Investors to acquire the Series A CCPS by the applicable Series A Conversion Price (as defined above and subject to adjustment set forth therein) at the time in effect for such Series A CCPS. No fractional shares shall be issued upon conversion of the Series A CCPS, and the number of Equity Shares to be issued shall be rounded to the nearest whole number.
		1. Conversion Procedure

Each holder of a Series A CCPS who elects to convert the same into Equity Shares shall surrender the relevant share certificate or certificates therefore at the registered office of the Company, and shall, at the time of such surrender, give written notice to the Company that such holder has elected to convert the same and shall state in such notice the number of Series A CCPS being converted (disregarding fractional shares), which shall be converted within 10 (ten) days after receipt of such notice and the accompanying share certificates by the Company. Subject to the requirements of Law, such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the Series A CCPS, and the person entitled to receive the Equity Shares issuable upon such conversion shall be treated for all purposes as the record holder of such Equity Shares on such date.

* + 1. Anti-dilution Adjustments
1. Upon each issuance by the Company of any Securities (other than pursuant to an employee stock option approved by the Board or an initial public offering) at a price per Security less than the Series A Conversion Price then in effect (a “**Dilutive Issuance**”), the Series A Conversion Price will be adjusted downward on a broad based weighted average basis, per the formula set out below:
	* + - 1. The adjusted Series A Conversion Price (“**NCP**”) in each such instance will be calculated as follows:

**NCP = [OCP x (SO + SP)] / (SO + SAP),** where:

**OCP** = prevailing Series A Conversion Price (before adjustment);

**SO** = the aggregate of all the Equity Shares outstanding immediately prior to the Dilutive Issuance reckoned on a Fully Diluted Basis;

**SP** = The total consideration received by the Company from the subscriber of the Dilutive Issuance divided by OCP; and

**SAP** = Number of Securities (on a Fully Diluted Basis) actually issued in the Dilutive Issuance.

* + - * 1. To the extent that the holders of the Series A CCPS hold Equity Shares, this anti-dilution mechanism shall be accomplished as far as is possible under law by an adjustment to the Series A Conversion Price, and thereafter by issuing such number of Equity Shares to holders of Series A CCPS at the lowest price possible under Law, so as to give full effect to the broad based weighted average anti-dilution rights per the formula set out above.
				2. If all of the Series A CCPS have been converted to Equity Shares, this anti-dilution mechanism shall be accomplished by issuing such number of Equity Shares to the relevant bearers of the Series A CCCPS at the lowest price possible under Law, so as to give full effect to the broad based weighted average anti-dilution rights per the formula set out above.
1. In the event that the Company undertakes any form of restructuring of its share capital (“**Capital Restructuring**”) including but not limited to: (i) consolidation or sub-division or splitting up of its shares, (ii) issue of bonus shares; (iii) issue of shares in a scheme of arrangement (including amalgamation or demerger); (iv) reclassification of shares or variation of rights into other kinds of securities; and (v) issue of right shares, the number of Equity Shares that each Series A CCPS converts into and the Series A Conversion Price for each such Series A CCPS shall be adjusted accordingly in a manner that holders of Series A CCPS receive such number of Equity Shares that such holder would have been entitled to receive immediately after occurrence of any such Capital Restructuring had the conversion of the Series A CCPS occurred immediately prior to the occurrence of such Capital Restructuring.
2. Notwithstanding anything contained elsewhere in this Agreement, the provisions in this Agreement relating to conversion and payment of dividends in relation to the Series A CCPS shall be subject to Law including the provisions of the Act and the Foreign Exchange Management Act, 1999 and the rules/regulations made thereunder. In the event that any provision in this Agreement contravenes any Law, the Parties agree to amend the relevant provision so as to confer upon the holders of Series A CCPS the benefits originally intended under the relevant provision to the fullest extent permitted under Laws.
	1. **Voting Rights**
		1. The holders of the Series A CCPS shall be entitled to receive notice of and vote on all matters that are submitted to the vote of the Shareholders of the Company (including the holders of Equity Shares). The Promoters and the Company hereby acknowledge that the Investors have agreed to subscribe to the Series A CCPS on the basis that the Investors will be able to exercise voting rights on the Series A CCPS as if the same were converted into Equity Shares. Each Series A CCPS shall entitle the holder to the number of votes equal to the number of whole or fractional Equity Shares into which such Series A CCPS could then be converted.
	2. **General**
		1. Certificate of Adjustment: In each case of an anti-dilution adjustment, the Company shall cause any of its Directors to compute such adjustment or readjustment and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to the Investors at their address as shown in the Company’s statutory registers.
		2. No Impairment: The Company shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the Investors against impairment.

# Schedule E – Warranties

1. **Conduct of Business**
	* 1. The Company has conducted, and is conducting, the Business in compliance with all applicable Laws and it has no notice of any action or investigation or other proceedings of any nature whatsoever, by any Governmental Authority or any other Person which would restrain, prohibit or otherwise challenge the Company to conduct the Business. No circumstances exist that may result in a violation of, conflict with or failure on the part of the Company or the Promoters to conduct the Business in compliance with, any applicable Law and the Company has neither received any notice, nor is under any action or investigation with respect to and has not been threatened to be charged with any violation of, conflict with, or failure to conduct the Business in compliance with, any applicable Laws.
		2. The Company and the Promoters hereby confirm that, no Material Adverse Effect has occurred and no circumstances exist that is likely to have a Material Adverse Effect.
		3. The Company is entitled and authorized to issue the Subscription Shares in the manner and upon the terms and conditions contained in this Agreement, pursuant to the Charter Documents.
2. **No Violation**

The execution, delivery and the performance, by the Company and the Promoters, of this Agreement and their respective obligations in relation to the transactions contemplated under this Agreement shall not: (i) constitute a breach or violation of the Charter Documents; (ii) conflict with or constitute (with or without the passage of time or the giving of notice) a default under or breach of performance of any obligation, agreement or condition that is applicable to each such Party which (with or without the passage of time or the giving of notice) affords any Person the right to accelerate any indebtedness or terminate any right; (iii) constitute a default under or breach or result in any circumstances which would result in such default or breach, of any other contract to which each such Party is a party; (iv) result in the creation of any Encumbrance over the Investor Securities; (v) result in a violation of any applicable Laws, applicable to each such Party or its business or assets; or (vi) give any third party a right to terminate or modify, any agreement, license or other instrument or result in the creation of any Encumbrance.

1. **Corporate Matters**
	1. The copies of the Charter Documents that have been provided to the Investors are true, correct, complete and accurate in all respects, and have annexed to or incorporated in them copies of all resolutions or agreements required by applicable Law to be so annexed or incorporated. No agreement and, in particular, no contract explicitly or by inference or implication modifies the provisions set forth in the Charter Documents, whether or not such agreement or contract is enforceable vis à vis third parties.
	2. The Company has, at all times, truly and accurately maintained and continues to maintain in accordance with applicable Law, all statutory books, records and registers required to be kept or maintained by the Company under applicable Law and all such statutory books, records and registers are up to date. No notice that any of the statutory books, records or registers of the Company is incorrect or should be rectified has been received.
	3. All forms, returns, reports, filings, registrations, resolutions and other documents and intimations that the Company is required, by applicable Law, to file with, make or deliver to any Government Authority have been correctly made, duly filed and/or delivered and there is no outstanding notice from any Government Authority received by the Company as to its non-compliance with its obligations as to filings, returns, resolutions and/ or other documents.
	4. All approvals required by the Company for the legal and valid issue and allotment of the Subscription Shares to the Investors have been obtained or will be obtained on or by the Completion Date.
	5. As on the Execution Date, the authorized share capital of the Company is INR [●] (Indian Rupees [●] only) divided into [●] ([●]) Equity Shares. The Paid-up Share Capital of the Company as on the Execution Date is INR [●] (Indian Rupees [●] only) divided into [●] ([●]) fully paid up Equity Shares.
	6. The Securities already issued, which are correctly and completely listed in **Part I of Schedule B** are the only form of Securities presently issued by the Company, and except such Securities, there are no other arrangements entitling any Person to acquire any Securities. The Securities issued by the Company as listed in **Part I of Schedule B** as well as the Investor Securities are not subject to any pre-emptive rights, rights of first refusal or other rights pursuant to any existing agreement or commitment of the Company.
	7. All Securities issued by the Company have been issued in accordance with Law and all filings required under Law in relation to such issuances of Securities have duly and accurately been made in a timely manner.
	8. The Securities have not been and are not listed on any stock exchange or regulated market.
	9. The Company does not have any voting or ownership interest in any other Person.
	10. The Company has not given a power of attorney or any other authority (express or implied) which is still outstanding or effective to any Person, to enter into any contract or commitment or to do anything on its behalf.
	11. Except as contemplated in this Agreement, there are no outstanding convertible instruments, agreements, rights, plans, options, warrants, calls, conversion rights, repurchase rights, redemption rights or any contracts, arrangements, requirements or commitments of any character (either oral or written, firm or conditional) obligating the Company to issue, deliver, sell, purchase, repurchase or otherwise acquire, or cause to be issued, delivered, sold, purchased, repurchased or otherwise acquired, any Securities or any securities exchangeable for or convertible into Equity Shares or obligating the Company to grant, extend or enter into any such contract, arrangement, requirement or commitment, nor are there any rights to receive dividends or other distributions in respect of any such Securities.
	12. The Subscription Shares shall be validly issued, fully paid-up and the Investors shall have marketable title to and shall be the sole legal and beneficial owner of the Subscription Shares, free from any Encumbrance or claim or demand of any description whatsoever and shall be entitled to all rights accorded to a holder of such Securities in the Company.
	13. Immediately after Completion, the shareholding pattern of the Company shall be as set forth in **Part II of Schedule B** hereto.

# Schedule F – Conditions Precedent

* + 1. [Completion of financial, business and legal due diligence exercise of the Company by the Investors and resolution by the Company of all issues identified by the Investors and its advisors pursuant to such due diligence exercise to the satisfaction of the Investors;][[14]](#footnote-14)
		2. The Company and the Promoters shall have obtained all relevant corporate approvals, third party approvals, waiver of pre-emption rights of existing Shareholders, appropriate Approvals from Governmental Authorities, necessary for consummation of the transactions contemplated hereby, including without limitation for the issuance of the Subscription Shares and the amendment of the Charter Documents;
		3. [The Company shall have increased and reclassified its authorized capital, to allow for the issuance and allotment of the Subscription Shares to the Investors in accordance with the provisions of the Act and other applicable Laws;][[15]](#footnote-15)
		4. No event shall have occurred or be continuing which has, or would reasonably be expected to have, a Material Adverse Effect;
		5. There shall not have been any proceeding, temporary restraining order, preliminary or permanent injunction, attachment or other order issued by any court of competent jurisdiction or other legal or regulatory prohibition or restriction or other action issued, pending or threatened to the knowledge of the Promoters and/or the Company which (i) involves a challenge to or seeks to or prohibits, prevents, restrains, restricts, delays, makes illegal or otherwise interferes with the consummation of any of the transactions contemplated under this Agreement, or materially impairs or prejudices the due and proper consummation of the transactions contemplated under this Agreement, or (ii) seeks to impose conditions upon the ownership or operations of the Company or which affects the ability of the Investor to invest in the Company;
		6. Each of the Warranties being true and accurate in all material respects and not misleading in each case as of the Execution Date and as of the Completion Date;
		7. The Company shall have amended its Charter Documents to incorporate a provision to the effect that Sections 43 and 47 of the Act would not apply to the Company.
		8. The Parties shall have agreed on the amendments required to be made to the Articles to reflect the terms of this Agreement (“**Restated Articles**”);
		9. The resolutions to be passed by the Board and the Shareholders at Completion, being in Agreed Form;
		10. The Company having executed a foreign investment side letter in a form and manner satisfactory to [●][[16]](#footnote-16); and
		11. [●].[[17]](#footnote-17)

**In Witness Whereof** this Agreement has been executed as a deed on the date first above written.

[***Signature blocks to be finalized post agreement on the principal terms of the Agreement.***]

1. *To be deleted if there are no other shareholders in the Company other than the Promoters.* [↑](#footnote-ref-1)
2. *Details of the business of the Company to be inserted here.* [↑](#footnote-ref-2)
3. *In the event the issuance to the Investors is proposed to be undertaken under the rights issue route, it is recommended that adoption of such procedure be described in the Recitals. Further, this draft presumes that the Investors will be subscribing to only compulsorily convertible preference shares of the Company. In the event, subscription to equity shares is proposed, the draft will need to be revised accordingly.* [↑](#footnote-ref-3)
4. *To be inserted basis discussion between the Parties.* [↑](#footnote-ref-4)
5. *Name of the investing entity to be inserted.* [↑](#footnote-ref-5)
6. *Appropriate shareholding threshold to be inserted.* [↑](#footnote-ref-6)
7. *Sums to be inserted basis discussion with the commercial team on each deal.* [↑](#footnote-ref-7)
8. *Multiple to be agreed between the Parties.* [↑](#footnote-ref-8)
9. *To be mutually agreed between the Parties.* [↑](#footnote-ref-9)
10. *Age to be inserted in case any Investor is a natural person.* [↑](#footnote-ref-10)
11. *Shareholding pattern as on the Execution Date to be inserted.* [↑](#footnote-ref-11)
12. *Shareholding pattern as on the Completion Date to be inserted.* [↑](#footnote-ref-12)
13. *The per share subscription price of the current round to be inserted here.* [↑](#footnote-ref-13)
14. *To be deleted if no diligence is proposed to be undertaken by the Investors.* [↑](#footnote-ref-14)
15. *To be deleted in case the authorized share capital has been increased and/or reclassified in this regard.* [↑](#footnote-ref-15)
16. *Name of the investing entity to be inserted.* [↑](#footnote-ref-16)
17. *Any deal specific Condition Precedent or any Conditions Precedent arising out of due diligence to be inserted here.* [↑](#footnote-ref-17)