[*To be Executed on Stamp Paper of Rs 500*]

**SECURITIES SUBSCRIPTION CUM TRANSFER AND SHAREHOLDERS’ AGREEMENT**

THIS SECURITIES SUBSCRIPTION CUM TRANSFER AND SHAREHOLDERS’ AGREEMENT (this **“Agreement”**) is made and executed at CHENNAI on this **[●]** day of May 2019 (the “**Execution Date**”), **BY & BETWEEN:**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 having CIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and with its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, through its Director and authorized representative **Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (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 the Company, its legal representatives, administrators, successors-in-interest and permitted assigns) of the **FIRST PART**;

**AND**

1. The Person/s listed in **Part A o**f **Schedule 1** of this Agreement, (hereinafter referred to as the **“Founders”**, and individually each as a **“Founder”**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include their respective legal heirs, successors, executors and permitted assigns) of the **SECOND PART**;

**AND**

1. **Kickstartup Advisory Services Llp**, a limited liability partnership, having its registered office a 3, 1st floor, 2nd Street, Subbarao Avenue, College Road, Chennai – 600006, represented by Mr. Hari Krishnan, the Designated Partner, (hereinafter referred to as “**KAS**”, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include KAS, its legal representatives, administrators, successors-in-interest and permitted assigns) of the **THIRD PART**;

**AND**

1. **Other Shareholders**, as listed in **Part B** of **Schedule 1** of the Agreement, of the **FOURTH PART.**

The Company, the Founders, KAS and the Other Shareholders are hereinafter, where the context so requires and permits, referred to individually as a “**Party**” and collectively as “**Parties**”.

**WHEREAS:**

1. The Company is in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. KAS holds \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_\_ only) Equity Shares (*as defined below*) of the Company (“**KAS Equity Shares**”). The terms of such KAS Equity Shares are, for the purposes of clarity, detailed in this Agreement.
3. KAS, out of its surplus funds, wishes to subscribe, and the Company is desirous of issuing and alloting to KAS, Non-Participating, Redeemable 0.01% Preference Shares (*as defined below*) in the Company in the manner set forth in this Agreement. Accordingly, the Company shall make an offer, on private placement basis, to KAS in the manner and as per the terms set forth in this Agreement. In pursuance of the above, KAS has agreed to invest an aggregate amount of INR \_\_,00,000/- (\_\_\_\_\_\_\_ Lakhs Indian Rupees only) (**“Subscription Money”**), by way of subscription to Non-participating, Redeemable 0.01% Preference Shares of the Company with face value INR \_\_\_\_\_/- (Indian Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) (“**Subscription Shares**”) on the terms and conditions set forth herein in this Agreement.

**NOW THEREFORE,** in consideration of the representations, promises and mutual covenants and agreements set forth herein and for other good and valuable consideration paid hereunder, the receipt and sufficiency of which is hereby acknowledged the Parties agree as follows**:**

# DEFINITIONS AND INTERPRETATION

* 1. **Defined Terms**. As used in this Agreement, the terms and expression when used with the first letter capitalized as set out in **Schedule 3 Part A** below shall, unless the context otherwise requires, have the meanings assigned to them in the said Schedule. All capitalized items not defined in the said Schedule shall have the meaning assigned to them in the other parts of this Agreement when defined for used in bold letter enclosed within quotes (““).
  2. **Interpretation**. The rules of interpretation set out in **Schedule 3 Part B** shall apply to this Agreement unless the context requires otherwise or as is expressly specified otherwise.

# KAS EQUITY SHARES

* 1. KAS has purchased shares as per the offer made by the Company, on private placement basis. Upon such transfer the shareholding pattern is as follows:

|  |  |  |
| --- | --- | --- |
| Name of the shareholder | Equity Shares held before placement offer of KAS Equity Shares | Equity Shares held after placement offer of KAS Equity Shares |
|  |  |  |
|  |  |  |
| KAS | - |  |

* 1. The Founders severally represent and warrant that:
     1. The Founders have a clear title to the KAS Equity Shares, and the KAS Equity Shares are free from any Encumbrance.
     2. The Company has endorsed share certificates evidencing the title of the KAS Equity Shares in the name of KAS, in a duly held meeting of the Board of Directors and that endorsed share certificates are delivered to KAS, along with the copy of the register of members evidencing KAS’s shareholding of the KAS Equity Shares.
  2. As the holder of the KAS Equity Shares, KAS shall have the voting right proportionate to the number of Equity Shares held by it on all matters concerning the Company.
  3. KAS will support the Company with regards to advisory on next rounds of financing, acquisition and general strategic advisory for the Company on a need basis.

# MATTERS RELATING TO THE SUBSCRIPTION OF THE SUBSCRIPTION SHARES BY KAS

* 1. **Subscription**
     1. Upon fulfillment of the Conditions Precedent to Closing as set in **Schedule 7**, and within 7 (seven ) Business Days from fulfilment of the Conditions Precedent to the Closing, KAS shall remit the Subscription Money, in a single tranche, to the designated bank account of the Company (detailed in **Schedule 4**).Pursuant to the subscription of the above-mentioned Subscription Shares, the share holding pattern of the Company (on a Fully Diluted Basis), shall be as set out in **Part B of Schedule 2** hereto.
     2. If the activities as detailed in Clause 2 above have not been completed, then the same shall be completed as part of Conditions Precedent to Closing.
     3. The Subscription Shares shall carry a yearly non-cumulative dividend of 0.01% (zero point zero one percent) per annum, calculated on the face value of Subscription Shares.
  2. **Closing and allotment of Subscription Shares.**
     1. On the same date of receipt of such Subscription Money, the Company and the Founders shall carry out the following actions:
        1. Convene a meeting of the Board to allot the respective Subscription Shares to KAS; (ii) adopt Restated Articles; and (iii) call a meeting of the Shareholders to adopt the Restated Articles;
        2. Issue the duly stamped, signed and sealed share certificates for the Subscription Shares which shall have the following legend printed:

*The Shares represented by this certificate are subject to the terms and conditions contained in the Securities Subscription and Shareholders’ Agreement dated [***[●]** *MAY] 2019.*

* + - 1. Register KAS as members of the Company and as the beneficial owners of the respective number of Subscription Shares and provide a certified true copy of the extract of the register of members evidencing KAS as a member holding the Subscription Shares.
  1. **Conditions Subsequent to Closing.**
     1. The Company and the Founders shall ensure that the conditions listed in **Schedule 8** of this Agreement (“**Conditions Subsequent to Closing**”) are completed within 30 (thirty) days from the Closing Date.

# USE OF SUBSCRIPTION MONEY

* 1. The Subscription Money shall be only utilized by the Company for the furtherance of the Company’s Business as per the business plan approved by KAS.
  2. If the Company requires to utilize the funds for purposes not mentioned in Clause 4.1, then the same shall be with prior written approval by KAS.
  3. The Company shall upon written request by KAS, furnish from time to time, certificates confirming that the utilization of Subscription Money is as per the authorized purposes mentioned in Clause 4.1.

# TRANSFERS OF SHARES

* 1. The Founders and Other Shareholders shall not Encumber or otherwise Transfer, including beneficial ownership of their Shares, to any Third Party without approval by KAS, as long as KAS remains to be a Shareholder in the Company, except upto 5% of Shares held by each Founder. Subject to Clause 5.1, any transfer of Shares by the Founders and Other Shareholders shall be subject to the Tag along Right as per Clause 6.

Any new purchaser of Shares of the Company shall execute a Deed of Adherence as detailed in Schedule 6 of this Agreement.

Any attempt by to Transfer his/her/its Shares in contravention of the provisions contained in this Section 5 shall be considered void and invalid. KAS shall be free to transfer any Shares held by it to any Person, except to a Competitor and subject to approval of Founders. KAS shall Transfer any of their Shares (“Sale Shares”), to a Third Party only after first providing a written notice (the “Sale Notice”) to the Company and Founders. The Sale Notice shall set forth in detail, the terms of the proposed sale, including the (i) name of the Person(s) to whom the sale is proposed to be made (the “**Purchaser**”), (ii) the proposed sale price per Share (“**Sale Price**”), (iii) the date of the proposed sale (which shall not be less than 30 (Thirty) days from the date of receipt of the Sale Notice) and (iv) number of Sale Shares in the Company that are proposed to be sold. (‘Competitor’ for the purposes of this Clause shall mean any entity undertaking same or similar business as that of the Company).

# TAG ALONG RIGHT

* 1. Subject to the conditions contained in Section 5 above, the Founders or Other Shareholders (“**Selling Shareholder**”) shall Transfer any of their Shares (“**Sale Shares**”), to a Third Party only after first providing a written notice (the “**Sale Notice**”) to KAS(“**Tag Right Holder**”), in the Company, except in case of Transfer to Affiliates or inter-se transfer between the Founders. The Sale Notice shall set forth in detail, the terms of the proposed sale, including the (i) name of the Person(s) to whom the sale is proposed to be made (the “**Purchaser**”), (ii) the proposed sale price per Share (“**Sale Price**”), (iii) the date of the proposed sale (which shall not be less than 30 (Thirty) days from the date of receipt of the Sale Notice) and (iv) number of Sale Shares in the Company that are proposed to be sold.
  2. Upon receipt of the Sale Notice and in case of a sale to a Purchaser, the Tag Right Holder, shall have the right to Transfer any or all of its respective Shares, prior to the Selling Shareholder, on the terms and conditions as set out in the Sale Notice and subject to any other terms and conditions that the Sale Shares may be subject to by the Purchaser. If the Purchaser wishes to purchase additional Shares, then the Selling Shareholder may offer his/its Shares, pro-rata, to the Purchaser.
  3. If the Tag Right Holder chooses to exercise the Tag Along Right, then it shall serve upon the Selling Shareholder a written notice in that regard within 10 (Ten) days of receipt of the Sale Notice by the Tag Right Holder.
  4. The Parties agree that if completion of the sale under Clause 6.1 to the proposed Purchaser does not take place within the period of 90 (Ninety) days from the date of the Sale Notice, the Selling Shareholder’s right to Transfer above shall lapse and the provisions of this Clause 6 shall once again apply.

# VESTING OF FOUNDER SHARES

* 1. Subject to Clause 5 and Clause 6 above, the Shares held by each Founder (“**Founder Shares**”) as on the Execution Date shall be deemed to be released to the respective Founders in accordance with the details provided in **Schedule 11** as long as the Founder is in continuous employment with the Company.
  2. For the purpose of this Agreement, in respect of each Founder, all Founder Shares which are released from the Vesting Period shall be referred to as “**Released Shares**”, and all Founder Shares which are not released from the Vesting Period shall be referred to as “**Unreleased Shares**”.
  3. Each Founder shall have voting rights in respect of all Founder Shares held by him in accordance with the terms of this Agreement, whether or not the Shares are Released Shares.
  4. Upon the termination of a Founder’s employment with the Company for Cause, the Released and Unreleased Shares of such Founder shall be Transferred to other shareholders in proportionate to their respective shareholding in the Company at the face value or at the lowest possible value permissible under Law at the time of such termination; or shall be treated in any other such manner, as determined by the Board, without the participation of the concerned Founder.
  5. Upon the resignation or termination of a Founder’s employment with the Company for a reason other than Cause, the Released Shares held by such Founder may be retained by him, and the Unreleased Shares held by such Founder shall be (i) Transferred to other shareholders in proportionate to their respective shareholding in the Company; and/or (ii) treated in any other such manner, as determined by the Board, without the participation of the concerned Founder; in each case at the face value or at the lowest possible value permissible under Law at the time of such termination under applicable Law.
  6. In cases of termination of Founder’s employment both with Cause or without Cause, the Transfer of Released Shares and/or Unreleased Shares, as the case may be in accordance with Clause 7.4 and Clause 7.5 above, to other Shareholders must be given effect to within 30 (thirty) days from the date of such termination of employment.
  7. In the event of an acquisition or a merger, the vesting of Unreleased Shares may be accelerated by the Board immediately prior to such event.

# REDEMPTION OF SUBSCRIPTION SHARES

* 1. After the expiry of a period Thirty Six months from the Closing Date (“**Redemption Trigger Date**”) or on the date when the Company has been able to secure fresh cumulative funding of a minimum of Rupees Two crores, whichever is earlier , KAS shall have the right to cause the Company to redeem the Subscription Shares at a premium of 18% (Eighteen per cent) IRR on the Subscription Money (“**Redemption Amount**”).
  2. The Founders hereby severally covenant and undertake that that in order to ensure the payment of the Redemption Amount to KAS and as part of the Conditions Precedent to Closing, execute and deliver in favor of KAS, an unconditional and irrevocable continuing guarantee (“**Guarantee Deed**”) as detailed in Schedule 10 of this Agreement.

# MEETINGS OF THE BOARD OF DIRECTORS AND SHAREHOLDERS

* 1. **Meetings of the Board**
     1. KAS shall be entitled to appoint an observer on the Board of the Company who shall be entitled to receive notices and attend all Board meetings (“**KAS Observer**”). For all the matters listed in **Schedule 9** (**Reserved Matters**), The observer shall not be able to participate in any decisions made by the Board.
     2. The notices to the meeting, quorum and conduct of meeting including adjournments thereof shall be dealt as per the Act. The Company may adopt video conferencing for holding the meetings, as per the Act.
  2. **Meetings of Shareholders of the Company**. A general meeting of the Shareholders shall be convened by serving at least 21 (Twenty One) days written notice to all Shareholders, with an explanatory statement containing all relevant information relating to the agenda for the general meeting.
     1. The notices to the meeting, quorum and conduct of meeting including adjournments thereof shall be dealt as per the Act.
     2. Notwithstanding the above, the approval or passing of a resolution in a Shareholders’ Meeting shall require the presence of valid quorum and approval of such resolution by the affirmative vote of a majority of Shareholders (or their authorized representatives) present and voting.

# INFORMATION, REPORTING, VISITATION AND INSPECTION RIGHTS

* 1. KAS shall receive from the Company (i) the annual (audited) financial statements within 90 (Ninety) days after the end of each fiscal year(ii) Monthly (unaudited) financial statements within one week from the end of the month (iii) MIS in the format as agreed between the Company and KAS. (iv) Such other information as asked by KAS from time to time. Such information shall not be shared by KAS with any third party.
  2. As long as KAS holds any KAS Equity Shares in the Company, KAS and/or their respective authorized representatives at his/her/its own cost, shall be provided access to visit the Company, at pre-agreed times during normal business hours, subject to suitable prior written notice.

# EXIT OPTIONS

* 1. With Respect to **KAS EquityShares**.
     1. Within 5 (five) years from the Closing Date (“**KAS Equity Shares Exit Period**”), the Company and the Founders will use their commercially reasonable best efforts to provide KAS an exit option with respect to its KAS Equity Shares (“**KAS Equity Shares Exit**”) in the form of a (i) sale of KAS Equity Shares at the Next Financing Round at the fair market value determined at the Next Financing Round; or (ii) Trade sale by a Third Party at a fair market value as determined by such Third Party, such that KAS shall receive a minimum IRR of 18% (Eighteen per cent) or (iii) any other mechanism as may be decided by the Company and KAS. In the event of an IPO, KAS shall not be required to call itself or be considered as promoter of the Company and therefore the KAS Equity Shares shall not be subject to any lock-in conditions applicable to promoter, for and after the IPO, subject to applicable Law.
  2. **With Respect to Subscription Shares.**
     1. Within a period of 15 (Fifteen) days from the Redemption Trigger Date (“**Subscription Shares Exit Period**”), the Company and the Founders will use their commercially reasonable best-efforts to undergo a Next Financing Round and provide KAS an exit option with respect to its Subscription Shares in the form of redemption of the Subscription Shares against the payment of Redemption Amount as mentioned in Clause 8.1, within 30 (Thirty) Business Days of the completion of Next Financing Round by the Company.
     2. Notwithstanding the provisions of the above Clause 11.2.1, if the Company is unable to undergo Next Financing Round or redeem at the Next Financing Round, the Founders shall, within 90 (Ninety) days of the expiry of the Subscription Shares Exit Period, the founders should ensure that the Company is required to redeem the Subscription Shares at the Redemption Amount (calculated as on the date the offer of redemption by the Company).
     3. In the event the Subscription Shares are not redeemed, KAS shall be entitled to enforce the Guarantee Deed executed by each of the Founders for realizing the Redemption Amount as well as all interest, costs, charges, expenses payable by the Company to KAS in addition thereto.

# LIQUIDATION PREFERENCE

* 1. In case of occurrence of a Liquidation Event, other than an acquisition, subject to applicable Law, KAS shall have the liquidation rights senior to all other outstanding Securities of the Company. KAS shall receive an amount which shall be the higher of:
     1. 100% (One Hundred percent) of the Subscription Money invested into the Company by KAS, adjusted for stock splits, stocks, dividends, recapitalizations, amount already disbursed in lieu of any Subscription Shares, along with unpaid dividend if any; or
     2. The Redemption Amount as calculated under Clause 8.1 of this Agreement, and shall have *pro-rata* share in the liquidation proceeds of the Company in accordance with the percentage of KAS’s shareholding in the Company as on the date of the occurrence of the Liquidation Event on a Fully Diluted Basis.
  2. In case of an acquisition, then subject to applicable Law, KAS shall have the liquidation rights senior to all other outstanding Securities of the Company. KAS shall receive an amount which shall be the higher of:
     1. Three times the subscription money invested into the Company by KAS, adjusted for stock splits, stocks, dividends, recapitalizations, amount already disbursed in lieu of any subscription shares, along with unpaid dividend if any; or
     2. The Redemption Amount as calculated under Clause 8.1 of this Agreement, and shall have *pro-rata* share in the liquidation proceeds of the Company in accordance with the percentage of KAS’s shareholding in the Company as on the date of the occurrence of the Liquidation Event on a Fully Diluted Basis.
  3. The balance proceeds thereafter, if any, shall be distributed amongst all the remaining Shareholders, pro-rata to their then shareholding in the Company, on a Fully Diluted Basis.
  4. It is further clarified that while determining the quantum of proceeds from a Liquidation Event, as set out in Clauses 12.1 and 12.2, any consideration received by the Promoters, whether in cash or by way of incentives or stock options or shares of any other company (collectively referred to as “**Additional Consideration**”), whether received immediately, or anytime within 6 months after the Liquidation Event with or without further vesting, shall be taken in to consideration for calculating the proceeds from the Liquidation Event. In case of incentives or stock options or shares, the fair market value of such incentives or stock options or shares shall be taken in to consideration for calculating the proceeds from the Liquidation Event. The Promoters hereby undertake to disclose promptly details of such Additional Consideration to the investors promptly and no later than 5 days from the date they become aware of such Additional Consideration, and shall ensure that the Investors receive their share of such Additional Consideration in accordance with this Clause 12.4, within 15 days from the date of receipt of Additional Consideration by them, without requiring any additional action or demand from the Investors."

# INTELLECTUAL PROPERTY

* 1. All Intellectual Property used by the Company in connection with its Business are to be held and registered in the name of the Company. The Company shall procure and the Founders shall undertake to assign and transfer to the Company all of the Founders’ right, title and interest in and to any Intellectual Property made, received, conceived, acquired or written by a Founder (whether or not at the request or upon the suggestion of the Company, solely or jointly with others), during the period of such Founder’s engagement with the Company that (i) result from, arise out of, or relate to any work, assignment or task performed by the Founder on behalf of the Company, whether undertaken voluntarily or assigned to the Founder within the scope of his/her responsibilities to the Company, or (ii) were developed using the Company’s facilities.

# TERMINATION

* 1. Notwithstanding anything contained in this Agreement, the rights and obligations of the Parties under this Agreement shall terminate upon the occurrence of the earlier of the following:
     1. Upon the completion by the Company of an exit option as mentioned in Clause 11 above;
     2. By the written consent of all Parties;
     3. Upon any respective Representations and Warranties being found to be materially false and incorrect as on the Execution Date or as on the Closing Date.
  2. Provided however that, notwithstanding anything contained in this Clause 14 or any other provisions of this Agreement, Clause 17 (*Governing Law and Arbitration*), Clause 18 (*Confidentiality*) and this Clause 14.2 of this Agreement shall survive the termination of this Agreement.

# INDEMNIFICATION

* 1. Indemnification Event: The Company and the Founders (the “**Indemnifying Parties**”) shall indemnify, defend and hold harmless, KAS and its respective agents, officers, directors and/or Affiliates (the **“Indemnified Party**”), from and against any actual, incurred and direct losses, damages, costs and expenses incurred or suffered, by the Indemnified Party including third party claims, arising out of or in connection with any of the following (“**Claim**”):

1. Failure by the Company or the Founders to perform or otherwise fulfill any covenant, undertaking or other agreement or obligation contained in this Agreement;
2. Any liability arising out of non-compliance of any obligations undertaken by the Company;
3. Any liabilities and obligations of whatever nature relating to any litigation, Claims made by third parties relating to the Company including legal claims made by Third Parties relating to the Company for the products and technology developed by the Company or governmental investigation pending or relating to the business or operations of the Founders or the Business of the Company prior to the Closing Date;
4. Any liability due to any non-compliance of any applicable Law, rules or regulations prior to the Closing Date which cause Material Adverse Effect;
5. Any inaccuracy in or any breach of any Representation and Warranty of the Founders or the Company, as the case may be;
6. Any undisclosed liability or obligation, including without limitation, penalties and interest, relating to the reporting, payment or withholding of taxes by the Founders and/or the Company prior to Closing Date;
7. Failure to seek prior written consent or approval of KAS with respect to a Reserved Matters in accordance with the terms of this Agreement or the Company failing to remedy the same (if such breach is remediable) within 30 (Thirty) days of being notified of the same by KAS.

# SPECIFIC PERFORMANCE

* 1. KAS shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Parties from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies KAS may have at Law or in equity, including without limitation a right for damages.

# GOVERNING LAW AND ARBITRATION

* 1. This Agreement and its performance shall be governed by and construed in all respects in accordance with the Laws of the Republic of India and the courts at Chennai shall have the exclusive jurisdiction over any dispute arising under this Agreement. In the event of a dispute or difference (“**Dispute**”) relating to any of the matters set out in this Agreement, the Parties shall discuss in good faith to resolve the Dispute. In case the Dispute is not settled within 30 (Thirty) days, it shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), as amended from time to time.
  2. All Disputes that have not been satisfactorily resolved under Clause 17.1 above shall be referred to arbitration before a sole arbitrator to be jointly appointed by the Parties. In the event the Parties are unable to agree on a sole arbitrator within 10 (Ten) calendar days following the 30 (Thirty) calendar day period specified in Clause 17.1 above (“**Initial Period**”), the matter will be referred to a panel of arbitrators (“**Panel**”) to be appointed within 10 (Ten) days from the expiry of the Initial Period. Both Parties to the dispute (that is the party instituting the arbitration proceeding and the respondent party) shall appoint 1 (One) arbitrator each to the Panel and the 2 (Two) arbitrators so appointed by the Parties shall together appoint one more arbitrator to the Panel.
  3. The arbitration proceedings shall be conducted in the English language and shall be held at Chennai. The Parties shall equally share the costs of the arbitrator’s fees, but shall bear the costs of their own legal counsel engaged for the purposes of the arbitration.

# CONFIDENTIALITY

* 1. Each of the Parties shall maintain the utmost confidentiality, regarding the contents of this Agreement and the Confidential Information at all times. Provided however nothing contained herein shall affect the ability of the Parties to make disclosure to any governmental authority or any other Person under the provisions of any Law, and/or the ability of the Parties to make disclosures to its lenders, vendors or customers, provided however in all such circumstances, the Party who is be required to disclose such information shall have to give prior notice to the other Parties before making the disclosure, indicating the nature of information that is proposed to be disclosed. Further, a Party shall not make any announcements to the public or to any third party regarding the arrangements contemplated by this Agreement without the prior written consent of the Company and KAS, provided that none of the aforesaid Parties shall be liable for making such announcements if the same are made in the course of business and/or as required to be disclosed by law or regulation (including SEBI Guidelines) or pursuant to the legal process. This applies so long as any party holds any Shares in the Company, and for a period of 1 year thereafter.

# NON-COMPETE

* 1. So long as KAS holds any Shares in the Company, the Founders shall not be involved directly or indirectly in any business or operation, whether as principal, shareholder, investor, consultant, director, advisor, contractor, sub-contractor, trustee, committee member, office bearer, joint venture partner or otherwise, in any similar business that competes with the Business of the Company, during the period of their association with the Company, and for a period of 1 (One) year thereafter, except with the written consent of KAS. So long as KAS holds any Shares in the Company, If KAS is involved in any competing business, then a notice to the company informing the same has to be provided. For purposes of clarity it may be noted that this is for information only.
  2. The Founders during the period of their association with the Company, and for a period of 1 (One) year thereafter, directly or indirectly, shall not attempt attempt to employ, solicit, incite, canvass, or attempt to employ, or assist any person to employ, any person who is in the employment of the Company or KAS.
  3. It is clarified that the Founders and the Company shall have no objection to KAS and/or their Affiliates investing or collaborating with any business or entity in the same or allied field as the Business being carried on by the Company.

# MISCELLANEOUS

* 1. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, with respect to the subject matter of this Agreement. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties hereto. Any notices shall be sent to the addresses of the Parties mentioned in this Agreement. The Laws of India shall govern the interpretation and enforcement of this Agreement and the Parties submit to the exclusive jurisdiction of the courts at Chennai. Each Party may not sell, transfer, assign, sublicense or subcontract any right in this Agreement without the prior consent of the other Party. However, KAS may assign any part or whole of the Agreement to an affiliate or group company. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term was never included. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by each Party. The Parties are independent contracting parties and will have no power or authority to assume or create any obligation or responsibility on behalf of each other and this Agreement will not be construed to create or imply any partnership, agency or joint venture, or employer-employee relationship. Either Party’s failure to insist on any one or more instances upon strict performance by the other Party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of nay term hereof.

# OTHER COVENANTS AND UNDERTAKINGS OF THE COMPANY AND FOUNDERS

* 1. The Company and the Founders hereby covenant and undertake that in Next Financing Round, the Company and the Founders shall ensure the redemption of the Subscription Shares irrespective of any restrictions placed by the investing Third Party. The Company and the Founders shall be vigilant and oversee this obligation in negotiating and signing the term-sheet for the Next Financing Round and ensure that no such restriction is include such term-sheet or other transaction document forming part of the Next Financing Round.
  2. The Founders hereby covenant and undertake that should the Founders start or be promoting in any **other entity similar to the Business** of the Company then KAS’s shareholding in the Company shall likewise be reflected in such other entity as mentioned above where the Founder(s) are promoters or stakeholders.

{*Schedules and Signature Pages Follow*}

**SCHEDULE 5**

**REPRESENTATIONS AND WARRANTIES**

**REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE FOUNDERS**

* + 1. **CORPORATE EXISTENCE AND POWER**

The Company is (a) duly organised, validly existing and in good standing under the laws of India; (b) has all requisite power and authority to enter into and execute contracts in its own name.

1. **AUTHORISATION, NO CONTRAVENTION**

The execution, delivery and performance by the Company of this Agreement and the transactions contemplated therein have been duly authorised by all necessary corporate actions of the Company.

1. **POWER AND CAPACITY OF THE FOUNDERS**

The Founders hereby represent and warrant to KAS as follows:

1. Each Founder has the power and capacity to execute and deliver this Agreement;
2. The Agreement has been duly executed by them and upon execution and delivery, will be a legal, valid and binding obligation of the Founders enforceable in accordance with its terms;
3. The execution and delivery of this Agreement by the Founders and their promises, covenants, representations, warranties, agreements or undertakings under this Agreement do not violate any law, rule, regulation or order applicable to them or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which any of them is a party or which is applicable to them;
4. Any of the Founders has not and shall not enter into or agree to enter into any contract, arrangement, undertaking, commitment or transaction on behalf of the Company or incur any liabilities (actual or contingent) on behalf of the Company or otherwise bind the Company in any way whatsoever except in the ordinary course of business and within the scope of the authority conferred by the Company;
5. there are no other commitments / contracts / Encumbrances / arrangements entered into by the Company and / or the Founders, which may be in breach of the terms of this Agreement or the obligations of the Founders or the Company hereunder.
6. **BINDING EFFECT**

This Agreement has been duly executed and delivered by the Company and the Founders, KAS and the Other Shareholders, and constitute the legal, valid and binding obligations of the Company and the signatories, enforceable against the Company and the signatories in accordance with the terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity relating to enforceability.

1. **GOVERNMENTAL AUTHORISATION, THIRD PARTY CONSENTS**

No governmental approval, permit, compliance, exemption, authorisation, or waiver that are required, in order to enable such Person to execute and deliver this Agreement to which it is a party, is necessary or required in connection with the execution, delivery or performance by, or enforcement against the Company of the transactions contemplated therein.

1. **LITIGATION**

There are no contractual or tortious or any other claims, pending against the Company and the Company has not received any notice of any claim that has been threatened, at law, in equity, in arbitration or before any governmental authority against the Company.

1. **OUTSTANDING LOANS**

The Company has outstanding loan of Rs. \_\_\_\_\_\_\_ Towards unsecured loan from \_\_\_\_\_\_\_\_\_\_\_\_ relative of Director (or “The Company has no outstanding loan towards the Founders, other than disclosed).

1. **COMPLIANCE WITH LAWS**

(a) The Company is in compliance with all applicable Law and all orders issued by any court or governmental authority against the Company in all respects.

(b) The Company has all licenses, permits and approvals of any governmental authority that are necessary for the conduct of the Business of the Company;

1. **CAPITALISATION**

(a) On the Execution Date, there are no options, conversion privileges, subscription or purchase rights or other rights presently outstanding to purchase or otherwise acquire (i) any authorised but unissued or unauthorised shares of the Company’s share capital, (ii) any other Securities of the Company, and there are no commitments, contracts, agreements, arrangements or understandings by the Company to issue any equity shares or other Securities of the Company.

(b) As of Closing Date, all of the issued and outstanding Securities Shares are duly authorised, validly issued, fully paid, and were issued in compliance with every applicable Requirement of Law and the Articles.

(c) The Shares are duly and validly authorized.

(d) No Securities currently held by any Person are, or would be, subject to any rights pursuant to any existing agreement or commitment of the Company other than as provided for under the Shareholders’ Agreement.

1. **ENVIRONMENTAL AND SOCIAL POLICIES**

The Company is compliant with all applicable statutes, laws, ordinances, rules, and regulations, including, but not limited to, any license, permit or other governmental authorization imposing liability or setting standards of conduct concerning any environmental, social, labour, health and safety or security risks and the Company shall adopt policies to address the same.

1. **RELATED PARTY CONTRACTS**

All arrangements, agreements or obligations (whether legally enforceable or not) between the Company with any officer, Director, shareholder, other interested party or any other party related, directly or indirectly to any of them, are on a commercial and an arm’s length basis.

1. **EMPLOYEES**

(a) The Company has entered into employment agreements with the Founders and all employees. All material facts and matters relating to the employees and workmen (including generally the terms of employment or engagement) have been disclosed to KAS.

(b) None of the Company’s key employees or Founders are obligated under any contract, or subject to any law, judgment, decree or order of any governmental authority, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Business.

(c) The Company has, in relation to each of its employees/workers:

1. complied in all respects with its obligations under relevant laws and all other statutes and regulations relevant to its relations with each employee/workers or the conditions of service of the employee/worker and has maintained adequate and suitable records regarding the service of the employee/worker. The Company is not in violation of any applicable Laws relating to labour which is likely to have a Material Adverse Effect on the Company;
2. adequately provided for in all respects its obligations to pay all salaries, wages, commissions, gratuity payments, provident fund payments, bonuses, overtime pay, holiday pay, sick pay, leave encashments, and other benefits of or connected with employment up to the date of this Agreement;
3. complied in all respects with all its obligations concerning the health and safety at work of each of the employees/work and has not incurred any liability to any employee/worker in respect of any accident or injury, which is not fully covered by insurance; and
4. complied in all respects with all its obligations under all applicable labour legislations pertaining to leave, whether central or state.
5. **BINDING AUTHORITY**

This Agreement constitutes valid, legally binding and enforceable obligations of the Company. No statute, law, rule or regulation or any order of any authority or Government bars the Company from issuing and allotting the Subscription Shares to KAS, as envisaged herein.

1. **CORPORATE ACTION**

The Company and/or the Founders do not own any equity, voting or ownership interest in any company, partnership or other legal entity including entities that carry on any business that competes with the Business as presently conducted or as contemplated to be conducted.

**REPRESENTATIONS AND WARRANTIES OF KAS**

KAS hereby represents and warrants to the Company and the Founders as follows:

1. KAS has all the requisite power and authority to enter into this Agreement, to perform its/his obligations thereunder and to consummate the Transaction contemplated hereby. The execution and delivery of this Agreement by KAS and the performance by KAS of its obligations hereunder and consummation by KAS of the Transactions contemplated hereby, have been duly authorized by all necessary actions.
2. The Agreement constitutes valid, legally binding and enforceable obligations of KAS. No statute, law, rule or regulation or any order of any authority or Government bars KAS from receiving the Subscription Shares from the Company, as envisaged herein.

**SCHEDULE 6**

**DEED OF ADHERENCE**

**This DEED OF ADHERENCE** (“**Deed**”) made on the [●] day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BY:**

[Name of New Shareholder] (*insert details of the transferee*), (hereinafter called “**the Covenantor**” which expression shall, unless repugnant to the meaning or context thereof be deemed to include [his/her/its] successors and permitted assigns) to whom the Shares of the Company have been issued or Transferred by [●] (the “**Transferor**”), as may be contextually applicable.

**RECITALS:**

1. On or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Private Limited (the “**Company**”), (“**KAS**”), (the “**Founders**”) and (the “**Other Shareholders**”) entered into a Securities Subscription and Shareholders’ agreement dated [●] (the “**Agreement**”).
2. The Agreement forms a part of this Deed and is attached hereto as Exhibit A.
3. The Covenantor wishes to subscribe or have been Transferred to it, as may be contextually applicable, [number] [type] shares (the “**Shares**”) of the Company or in the capital of the Company [from [name] (the “**Transferor**”)] and in accordance with the Agreement has agreed to enter into this Deed.

**THE PARTIES HEREBY AGREE FOLLOWS** as follows:

* 1. **Interpretation**. In this Deed, except as the context may otherwise require, all words and expressions defined in the Agreement shall have the same meanings when used herein.
  2. **Undertaking.** The Covenantor hereby undertakes and covenants to the Company and to all other Persons who are at present or who may hereafter become bound by the Agreement to adhere to and be bound by all the rights, duties, burdens and obligations thereof which were applicable to the Shareholders pursuant to the provisions of the Agreement and shall be deemed, with effect from the date on which the Covenantor is registered as a member of the Company, to be a party to the Agreement. All documents expressed and agreed in writing to be supplemental or ancillary thereto as if the Covenantor had been an original party to the Agreement since the date thereof.
  3. The Covenantor hereby covenants that it shall not do any act or commit any omission that derogates from the provisions of the Agreement or the Articles of the Company.
  4. **Governing Law**. This Deed of Adherence shall be governed by and construed in accordance with the laws of India.

**IN WITNESS WHEREOF**, this Deed of Adherence has been executed as a deed on the date first above written.

**SIGNED, SEALED AND DELIVERED** by **[ COVENANTOR]**

in the presence of:

Name: [ ]

**SCHEDULE 7**

**CONDITIONS PRECEDENT TO CLOSING**

The Conditions Precedent to Closing shall be the following:

1. The Founders shall have caused the Company to make necessary applications under the Startup India Scheme to get recognized as a ‘Start-up’ by the Department for Promotion of Industry and Internal Trade (DPIIT).
2. The Company, through its authorized representative, shall have duly executed each of the Transaction Documents to which they are Parties.
3. Each of the Founders have entered into an employment agreement with the Company stating that that the Founders are in full time employment of the Company.
4. The Founders have transferred the KAS Equity Shares to KAS.
5. The Company and the Founders shall have increased and reclassified its authorized share capital to enable the issuance and allotment of the Subscription Shares to KAS.
6. The Company shall have and the Founders shall have caused the Company to have provided to KAS copies of the resolutions passed by the Board and Shareholders for issuance of Subscription Shares to KAS, as per applicable provisions of the Act.;
7. The Company and the Founders shall have obtained all necessary corporate and regulatory consents, approvals and waivers as may be required for the execution, delivery, and enforcement of the Transaction contemplated in this Agreement.
8. There shall have occurred no Material Adverse Effect as on the Execution Date and as on Closing Date.
9. The Representations and Warranties of the Company and the Founders and KAS set out in **Schedule 5** of this Agreement, shall be true, correct and complete as of the Execution Date and as of the Closing Date.
10. The Company shall procure a valuation certificate validating the issuance price of the Subscription Share as per applicable laws.
11. The draft of the Restated Articles shall have been provided to KAS in agreed form.

**SCHEDULE 8**

**CONDITIONS SUBSEQUENT TO CLOSING**

The following are the actions to be completed as Condition Subsequent to Closing:

* + - 1. The Company shall ensure the filing of Form PAS-3, and other necessary forms, in the requisite manner as required by the Act and within the time frames as set out under the Act. Further, the Subscription Money can be used by the Company, only upon such filings.
      2. The Company shall file Form MGT 14 with the Registrar of Companies with respect to the adoption of the Restated Articles and provide an acknowledged copy of the same to KAS;
      3. The Company shall update the statutory registers to reflect the Transaction activities herein.
      4. The Company shall within 30 days from the Closing Date, restate the articles of association to include the provisions of this Agreement (Restated Articles) and hold an extra-ordinary general meeting of the Shareholders for (a) adopting the Restated Articles, including the entrenchment of the Articles.

**SCHEDULE 9**

# RESERVED MATTERS

The following shall be considered as Reserved Matters under the Agreement:

1. Any Liquidation Event, merger, demerger, comprise or any arrangement with creditors, sale or transfer of any assets or business and any restructuring;
2. Any amendment of the charter documents of the Company;
3. Any modifications to the capital structure including issue of any new shares, conversion of any loan into equity, creation of warrants or other convertible securities, buybacks, reduction of share capital;
4. Creation of any subsidiary, affiliate company, holding company;
5. Declaring dividends, payment of any ‘deemed dividend’, approving any other distribution to the shareholders;
6. Creation or modification of any employee stock option pool or other equity incentive plan and approval of any option or incentive grants;
7. Acquisition of any securities or voting power in any other entity;
8. Adoption or modification of the annual business plan and the annual budget;
9. Adoption of financial statements;
10. Any acquisition, purchase, sale, transfer, licensing, sub-licensing, franchising or assignment of brands or other intellectual property rights;
11. Raising or incurring any indebtedness (including any contingent liability) above accumulative limit of INR 50,00,000/- (Rupees Fifty Lakhs only) at any time;
12. Acquisition or disposal of any assets in excess of INR 2,00,000/- (Rupees Two Lakhs only) on a cumulative basis, in any financial year (unless already approved by KAS in the annual business plan);
13. Commencement or defense of any material litigation;