**ASSET PURCHASE AGREEMENT**

**[Insert Date]**

**[*Insert Name of Party I*]**

**[Seller]**

**and**

**[*Insert Name of Party II*]**

**[Purchaser]**

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**ASSET PURCHASE AGREEMENT[[1]](#footnote-1)**

THIS ASSET PURCHASE AGREEMENT (“**Agreement**”) is entered into on the [***insert date***],

**BETWEEN**:

[***Insert Name***], a company duly incorporated under the [Companies Act, 1956/2013] and having its registered at [***insert address***] (herein after referred to as the “**Seller**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the **FIRST PART**;

[***Insert Name***], a company duly incorporated under the [Companies Act, 1956/2013] and having its registered at [***insert address***] (herein after referred to as the “**Purchaser**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the **SECOND PART**; and

(The Purchaser and the Seller shall be individually referred to as a “**Party**” and collectively referred to as the “**Parties**”, as the context may require).

**WHEREAS:**

**A.** The Seller is inter alia engaged in the business of [***insert description***].

**B.** The Purchaser is an [Indian company] incorporated on and from [***insert date***] and is engaged in [***insert description***];

**C.** The Seller has agreed to sell and the Purchaser has agreed to purchase the Specified Assets (as defined hereinafter) free from all Liabilities on the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the above recitals, the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are now acknowledged, the Parties agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1** The capitalized terms used in this Agreement shall have the meanings ascribed to them at Part A to Schedule “A” to this Agreement.

**1.2** Agreement shall be interrelated in a manner and on the basis of principles as provided in Part B to Schedule “A” to this Agreement.

**2. SALE AND TRANSFER OF SPECIFIED ASSETS**

**2.1** Transfer of Specified Assets. The Seller hereby agrees to sell, assign, convey and transfer, the Specified Assets free from Liabilities and Liens to the Purchaser, and the Purchaser agrees to purchase the Specified Assets on the terms of this Agreement, at Closing.

**2.2** Liabilities. Notwithstanding anything to the contrary, all duties, obligations and liabilities under the Contracts in respect of services rendered by the Purchaser there under after the Closing shall be borne and discharged by the Purchaser. All other statutory dues and liabilities relating to the Specified Assets and accruing in relation to the period after the Closing shall be discharged by the Purchaser.

**2.3** Title and Risk. Subject to the terms and conditions of this Agreement, title to and risk in the Specified Assets shall pass to the Purchaser at the Closing.

**2.4** [Grant of License. The Seller shall at Closing grant a perpetual and royalty-free license to the Purchaser to [*insert details]* and all associated intellectual property rights in accordance with the terms of the License Agreement in the format as mutually agreed between the Parties.][[2]](#footnote-2)

**3. PURCHASE PRICE**

**3.1** Purchase Price. The purchase price for the transfer of the Specified Assets shall be a lump-sum price of the [***insert amount***] (the “Purchase Price”) payable by way of [pay order or banker’s draft drawn or by way of telegraphic transfer to such account(s) as may be notified to the Purchaser in writing at least five (5) business days prior to the Closing]. Except for the purchase price, no other amounts shall be payable by the Purchaser to the Seller under this Agreement. The purchase price shall not be subject to escalation.

**3.2** Deduction &Set-off. It is agreed and understood that any claims or demands of the Purchaser in respect of the Specified Indemnities set out at Schedule “F” of this Agreement may be deducted and set off against all or any part of the Purchase Price. Other than as provided under this clause and applicable withholding of tax at source, Purchase Price shall not be subject to any set off or deduction.

**3.3** The [Seller/Purchaser] shall be solely responsible for all Taxes payable in respect of the sale and transfer of the Business, including any existing tax liabilities in respect of the Assets.

**4. REPRESENTATIONS AND WARRANTIES**

The Seller represents and warrants to the Purchaser that the statements contained in Part A to Schedule “B” are true and correct, except as specifically disclosed in the Disclosure Schedule set out at Schedule “C” and shall remain true as on the Closing Date. The Purchaser represents and warrants to the Purchaser that the statements contained in Part B to Schedule “B” are true and correct and shall remain true as on the Closing Date.

The representations and warranties, and to the extent that they have not been fully performed at or prior to the Closing Time, the covenants and agreements, contained in this Agreement shall survive the Closing for the maximum period allowable under Applicable Law.

**5. CONDITIONS PRECEDENT**

The obligations of the Purchaser to proceed with the Closing of the transactions contemplated under this Agreement shall be subject to the fulfilment on or before the Closing of each of the conditions precedent set out at Schedule “D” to this Agreement.

**6. CONDUCT PRIOR TO CLOSING**

Conduct of business of Seller. During the period from the date of this Agreement and up to the Closing, the Seller agrees that it shall (a) carry on the Business in the Ordinary Course of Business in substantially the same manner as heretofore conducted; (b) pay its debts and Taxes when due, (c) pay or perform other obligations when due; and (d) preserve intact the Specified Assets and preserve its relationship with, customers and lessors, having business dealings with it, to the end that its ongoing ability to provide services shall be unimpaired at the Closing.

**7. CLOSING**

 Subject to the fulfilment of the Conditions Precedent set forth in Schedule “D” hereto and the receipt of the Deliverables by the Purchaser set forth in Schedule “E”, the Closing will be in accordance with the terms of this Agreement. On or prior to the Closing, the Seller shall make the deliveries listed at Schedule “E” to the Purchaser. .

**8. POST-CLOSING OBLIGATIONS**

**9.1** On and after Closing, the Seller shall be obliged to promptly deliver to the Purchaser any payment, notice, correspondence, information or enquiry in relation to the Business which it receives.

**8.2** Non-competition.

### **(a)** The Seller agrees that on and after Closing it shall not, and shall cause its affiliates, relatives, associates, promoters and whole time directors not to, engage, directly or indirectly in any of the following activities:

### **(i)** Business or [***insert specific activities relating to Business***]

### **(iii)** The use or disclosure of any client database, intellectual property, [source or object code], or other confidential or proprietary information of the Business or other know-how or other information pertaining to the Business or its customers or suppliers;

### **(iv)** The solicitation of any customers or suppliers of the Business to terminate or otherwise adversely modify their relationship with the Business; or

### **(v)** The solicitation, engagement or retention in any capacity of any Employee of the Business or any director, officer or executive of the Purchaser, including but not limited to, involvement directly or indirectly of the Employees in any business involving the Business activity or related services.

### **(b)** The Purchaser agrees that on and after Closing it shall not, and shall cause its affiliates, relatives, associates, promoters and whole time directors not to, engage, directly or indirectly in the [***insert description of activities of Seller other than the Business***] save and except [***insert exceptions, if any***].

**(c)** Each of the covenants contained in this Section 9.2 shall be construed as a separate covenant and if, in any judicial proceeding, a court shall refuse to enforce any of the separate covenants of this Section 9.2, then such covenant shall be deemed included herein only to the extent enforceable as permitted under Applicable Laws for the purpose of such proceeding or any other judicial proceeding to the extent necessary to permit the remaining covenants to be enforced.

**10. CONDITIONS SUBSEQUENT:**

Within Thirty (30) days after the Closing, the Seller shall:

**a.** Apply for and receive all of the Required Contract Consents on terms not less favourable than those applicable to the Seller immediately prior to Closing. All liabilities arising in relation to defaults under the Transferred Contracts due to their assignment without the Required Contract Consent shall be borne and discharged by the Seller, and the Purchaser shall not be responsible for the same.

**b.** The Seller shall negotiate with the landlords of the premises held on leave & license basis currently occupied by the Seller for the purposes of the Business, to renew the leave & license agreement in favour of the Purchaser on the same terms and conditions of the earlier leave & license agreement between the Seller and the Landlord.

**c.** Transfer the accumulated balances of the Employees to the provident fund maintained by Purchaser with the Regional Provident Fund Commissioner.

**d.** Issue letters to all appropriate Governmental Authorities intimating them of the transfer of the Business to the Purchaser.

**11. INDEMNIFICATION**

**11.1** Each Party (an “Indemnifying Party”) agrees to indemnify and keep indemnified and hold harmless the other Party (the “Indemnified Party”) from and against any and all losses, penalties, judgments, suits, costs, claims, liabilities, assessments, damages and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by, imposed upon arising from or asserted against the other Party as a result of relating to or arising out of any breach, default or non-compliance under this Agreement.

Seller (an “Indemnifying Party”) agrees to indemnify and keep indemnified and hold harmless Purchaser (the “Indemnified Party”) from and against any and all losses, penalties, judgments, suits, costs, claims, liabilities, assessments, Damages and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) (collectively, “Losses”), incurred by, imposed upon arising from or asserted against the Purchaser as a result of relating to or arising out of the Specified Indemnities.

**11.2** Procedure for Indemnification.

### a. The Indemnified Party shall give notice to the Indemnifying Party of any claim, specifying in reasonable detail the factual basis for the claim, the amount thereof, estimated in good faith, all with reasonable particularity and containing a reference to the provisions of this Agreement in respect of which such claim shall have occurred.

### b. The Indemnified Party and the Indemnifying Party shall consult with each other and in good faith endeavor to resolve any claims under this Section in a mutually acceptable manner.

**11.3** Claims between Parties.

### a. With respect to claim solely between the parties hereto, following receipt of written notice from the Indemnified Party of a claim, the Indemnifying Party shall have fifteen (15) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable, and the Indemnified Party agrees to make available to the Indemnifying Party reasonable access to documents and information to substantiate the claim.

### b. If the Indemnified Party disputes the claim, the Indemnified Party, without prejudice to its rights to seek recovery of the claim against the Indemnifying Party, shall be entitled to apply to a Court or an arbitral tribunal constituted under Section 13.4 for set-off, deduction and/or suspension of payment of any part of the Purchase Price to the Seller and the Purchaser shall be entitled to set-off, deduct or suspend payment of such part of the Purchase as is ordered by the Court or arbitral tribunal (on an interim or final basis).

**11.4** Third-Party Claims. The obligations and liabilities of each party to this Agreement under this Section 11 hereof related to third party claims shall be subject to the following terms and conditions:

### a. At any time after receipt of notice of any third party claim asserted against, imposed upon or incurred by an Indemnified Party, the Indemnified Party shall notify the Indemnifying Party of such claim in writing. The Indemnified Party hereby appoints the Indemnifying Party and the Indemnifying Party shall be entitled, at its own expenses, to participate in and shall undertake the defense thereof in good faith for and on behalf of the Indemnified Party by counsel of the Indemnifying Party’s own choosing, which counsel shall be satisfactory to the Indemnified Party; provided, however, that in addition, the Indemnified Party shall at all times have the option, at its own expense, to participate fully therein (without controlling such action).

### b. If within thirty (30) days after written notice to the Indemnified Party of the Indemnifying Party’s intention to undertake the defense of any third party claim the Indemnifying Party shall fail to defend the Indemnified Party against such third party claim, the Indemnified Party will have the right (but not the obligation) to undertake the defense and/or enter into a compromise or settlement of such third party claim on behalf of, and for the account and at the risk of, the Indemnifying Party.

c. If the Indemnifying Party disputes the claim, the Indemnified Party, without prejudice to its rights to seek recovery of the claim against the Indemnifying Party, shall be entitled to set-off against the Purchase Price such amount of the claim as is payable by the Indemnified Party pursuant to an order, decree or judgment (interim or final) of a Court or Governmental Authority and if no stay of such order has been obtained by Seller within 30 days thereafter, provided that payment of the Purchase Price shall be suspended during such 30 day period.

**11.5** Other Rights and Remedies Not Affected. The indemnification rights of the parties under this Section 11 are independent of, and in addition to, such rights and remedies as the parties may have at law or in equity or otherwise for any misrepresentations, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any party hereto, including the right to seek specific performance, rescission, or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.

**12. TERM & TERMINATION**

This Agreement shall enter into effect from the date of its execution by both the parties hereto. This Agreement may be terminated at any time prior to Closing:

**(a)** By mutual written consent of Seller and Purchaser;

**(b)** By Purchaser, upon written notice to the Seller, if there shall have been (x) a breach of any Warranty on the part of Seller, or if any Warranty of Seller shall have become untrue in any respect, or (y) a breach by Seller of any of its covenants or agreements hereunder and such breach is not cured within fifteen (15) days after notice thereof by Purchaser.

**(c)** By Purchaser, in the event that Seller becomes or is declared insolvent or bankrupt, makes an assignment for the benefit of all or substantially all of its creditors, enters into an agreement for the composition, extension or readjustment of all or substantially all or of its obligations, or becomes the subject of any Proceedings related to its liquidation or insolvency or for the appointment of a receiver or similar officer.

**13. MISCELLANEOUS**

**13.1** Successors and Assigns. The Seller shall not assign this Agreement or any of their rights or obligations hereunder without the prior written consent of Purchaser. The Purchaser may at any time assign this Agreement and any of its rights and obligations hereunder to any affiliate of the Purchaser without the consent of the Seller, and to any other party by providing prior notice in writing to the Seller. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or Liabilities under or by reason of this Agreement, except as expressly provided herein.

**13.2** Specific Performance. The parties hereto acknowledge and agree that Damages along would not provide an adequate remedy for any breach or threatened breach of the provisions of this Agreement and therefore that, without prejudice to any and all other rights and remedies a party may have (including but not limited to, Damages), such party shall be entitled without proof of special Damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of such provisions. The remedies set forth in this Section 13.2 are cumulative and shall in no way limit any other remedy any party hereto has at law, in equity or pursuant hereto.

**13.3** Governing Law and Jurisdiction. This Agreement shall be governed by the laws of India and subject to clause 13.4, shall be subject to jurisdiction of courts in [***insert place***].

**13.4** Arbitration. The parties hereto irrevocably agree that any dispute, controversy or claim arising out of, relating to or in connection with this Agreement (including any provision of any exhibit, annex or schedule hereto) or the existence, breach, termination or validity hereof shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be held in [***insert place***], and shall be conducted by a sole arbitrator appointed by mutual consent of the Seller and the Purchaser, or failing such agreement, such sole arbitrator shall be appointed as per the applicable rules under Arbitration and Conciliation Act, 1996. Nothing in this Section 13.4 shall prevent the parties from obtaining relief from a court of competent jurisdiction in the form of provisional or conservatory measures (including, without limitation, preliminary injunctions to prevent breaches hereof). Any request for such provisional measures by a party to a court shall not be deemed a waiver of this agreement to arbitrate.

**13.5** Notices. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (i) on the date of delivery when delivered by hand; (ii) on the date of transmission when set by facsimile transmission during normal business hours with telephone confirmation of receipt; (iii) three (3) days after dispatch when sent by a reputable courier service that maintains records of receipt; or (iv) seven (7) days after dispatch when sent by first class or airmail letter, provided, however, that in any such case, such communication is addressed provided in Section 13.5. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be addressed as follows:

# If to Seller

* + - 1. Name : **[●]**
			2. Address: **[●]**
			3. Attention : **[●]**
			4. Email : **[●]**

# If to Purchaser

# Name : [●]

* + - 1. Address **:** **[●]**
			2. Email **:** **[●]**

or to such other addresses any party shall have designated by notice in the foregoing manner to the other parties.

**13.6** Amendments and Waivers. This Agreement may be modified, supplemented or amended only by a written instrument executed by the parties hereto. No waiver of any provisions, condition or covenant of this Agreement shall be effective as against the waiving party unless such waiver is in a writing signed by the waiving party. Waiver by a party as provided in this Section 13.6 shall not be construed as or constitute either a continuing waiver of such provision, condition or covenant or a waiver of any other provision, condition or covenant hereof. The failure of any party at any time to require performance by the other party of any provision, condition or covenant of this Agreement shall in no way affect its right thereafter to enforce the provision, condition or covenant or any other provision condition or covenant.

**13.7** Severability. If any covenant or provision hereof its determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provisions of this Agreement are so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than over-breadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the parties hereto to the maximum extent possible, consistent with law and public policy.

**13.8** Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to Purchaser upon any breach or default of Seller under this Agreement, shall impair any such right, power or remedy of Purchaser nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit consent or approval of any kind or character on the part of Purchaser of any breach or default under this Agreement, or any waiver on the part of Purchaser of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to Purchaser, shall be cumulative and not alternative.

**13.9** Expenses. Irrespective of whether the Closing is effected, each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. All stamp duty and registration costs imposed on this Agreement and the instruments and documents executed pursuant hereto shall be shared equally between the Seller and the Purchaser.

**13.10** Further Assurances. From and after the Closing, the Seller shall from time to time, at the request of the Purchaser and without further cost or expense to the Purchaser, execute and deliver such other instruments of conveyance and transfer and take such other actions as the Purchaser may reasonably request in order more effectively to carry out this Agreement and the transactions contemplated hereunder.

**13.11** Independent Rights. Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of a Party, whether under this Agreement or otherwise.

**13.12** Entire Agreement. This Agreement (together with the Disclosure Schedule, the Schedules, and the other agreements expressly identified in this Agreement) constitutes the entire agreement of the parties with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understanding of the parties, oral and written, with respect to such subject matter.

**13.13** Counterparts. This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

**13.14** Survival. Any other provision which by virtue of its nature is intended to survive shall survive the termination of this Agreement.

[**FOLLOWING THIS PAGE IS THE EXECUTION PAGE**]

**IN WITNESS**, the Parties have executed this Business Transfer Agreement as of the date first written above.

|  |  |
| --- | --- |
| **SELLER:** | **PURCHASER:** |
| **[*Insert Name*]** | **[*Insert Name*]**  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:Address:Authorised Signatory | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title:Address:Authorised Signatory |
| **Witnesses** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Witnesses****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**SCHEDULE “A”**

**PART A- DEFINITIONS**

1. “Agreement” shall mean this Asset Purchase Agreement, including its schedules and annexure.
2. “Applicable Law” shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, judgment, award, permit, license, authorization, directive requirement, agreement with, or by a Government Authority.
3. “Bankruptcy Matter” shall mean any liquidation; dissolution; winding up order passed by the competent court; insolvency; bankruptcy; suspension of payments, inability to repay debts as such debts become due within the meaning of Section 434 of the Companies Act, 1956 (or the corresponding provision under the Companies Act, 2013); or a petition seeking to take advantage of any Applicable Laws providing for relief of debtors.
4. “Business” shall mean [***include description***].
5. “Closing” shall mean [***insert date***] or such other date that the parties may mutually decide in writing, for transfer of the Specified Assets.
6. “Damages” shall mean all claims, demands, actions, causes of action, assessments by a Government Authority, losses, Proceedings, damages, penalties, fines, costs, payments, expenses and judgments, including interest and penalties and reasonable attorneys’ fees, disbursements and expenses.
7. “Employees” shall mean the employees of the Seller.
8. “Governmental Authority” shall mean any administrative agency, commission, court or other governmental or regulatory authority or instrumentality, whether central, state, local or municipal or judicial, quasi-judicial or administrative forum, including but not limited to, ministries and departments of the Government of India, and Tax authorities.
9. “Liabilities” shall mean any obligation, liability or indebtedness of any kind, character or description, whether absolute, contingent, accrued, liquidated, unliquidated, known, unknown, executory or otherwise, and shall include but not be limited to the following, in relation to the Business:
10. All liabilities relating to Taxes and statutory dues in respect of the period prior to the Closing;
11. All obligations with respect to the Employees arising out of or relating to their employment with the Seller prior to the Closing;
12. All borrowings and indebtedness of the Seller, and amounts payable by the Seller to banks;
13. All litigation liabilities for claims pertaining to or arising from any date prior to the Closing;
14. All obligations under any, or liability of the Seller with respect to any breach of, any contract or other agreement prior to or on the Closing; and
15. All obligations to the STPI and customs authorities, including liabilities relating to non-fulfillment of export obligation.
16. “Lien” shall mean any pledge, hypothecation, charge, assignment, deposit arrangement, encumbrance, security interest, lien, right of first refusal, conditional sale agreement, restriction, easement, option, and any security or similar agreement of any kind or nature whatsoever.
17. “Material Adverse Effect” shall mean the occurrence or reasonably likely occurrence of any event, change, circumstance or effect that individually or in the aggregate (taking into account all other such events, changes, circumstances or effects), is or is reasonably likely to (A) have a material adverse effect to the financial conditions, operations or prospects of the use of Specified Assets, or (B) materially hinder or delay Seller’s ability to consummate the transactions contemplated herein, or (C) materially hinder Purchaser’s ability to own and/or operate the Specified Assets substantially in the manner previously conducted following the Closing.
18. “Ordinary Course of Business” shall mean the ordinary course of business and usage of Specified Assets consistent with past custom and practice (including with respect to quantity and frequency), but only to the extent consistent with Applicable Law and the custom of entities engaged in the same business as the existing business of Seller.
19. “Proceeding” shall mean any action, suit, charge, hearing, claim, legal quasi-judicial, administrative, regulatory, arbitration or other alternative dispute resolution proceeding or investigation.
20. “Required Contract Consents” shall mean the consents set out in Schedule “H” that are required for assignment and transfer of the Transferred Contracts to the Purchaser.
21. “Seller Financial Statements” shall mean the audited financial statements of the Seller for the financial years ended March 31, [***insert years***]
22. "Specified Assets" shall mean all property, assets, benefits and rights of the Seller relating to, (a) the licensed property ( building and structures) set out at Schedule “G.1”, (b) the moveable assets, vehicles, furniture and fixtures, equipment and inventory set out at Schedule “G.2”, (c) the intellectual property rights and other intangibles described at Schedule “G.3”, (d) the customers of the Business listed at Schedule “G.4”, (e) the all contracts relating to the Business listed at Schedule “G.5”, (f) the right, obligation, liabilities of all permits, licenses and approvals relating to the Specified Assets listed at Schedule “G.6, (g) the insurance policies relating to the Specified Assets listed at Schedule “G.7”;
23. “Specified Indemnities” shall mean each of the matters set out in Schedule “F” hereto.
24. “Tax” and, collectively “Taxes” shall mean any and all foreign, central, state, municipal and local (or equivalent) taxes of any country, assessments and other governmental charges, customs duties, duties, impositions and Liabilities, including taxes based upon or measured by gross receipts, income, profits sales, service, use and occupation, and value added, ad valorem, stamp duty, stamp transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts.
25. “Transaction Agreements/ Transaction Documents” shall include the following: (a) receipts/ Protocol evidencing transfer of the moveables relating to the Specified Assets by way of delivery, (b) assignment deeds for assignment and transfer of the intellectual property set out in Schedule G.3, (c) license agreements for grant of perpetual and royalty-free license in respect of the intellectual property rights, and (d) such other deeds, documents, instruments, certificates, receipts and writings as may be necessary or expedient for consummating the transactions contemplated under this Agreement.
26. “Transferred Contracts” shall mean all of the contracts relating to the relating to the Specified Assets listed at Schedule “G.5”.
27. “Warranties” shall mean the representations and warranties set out in Section 5 of the Agreement.

**PART B- INTERPRETATION**

In this Agreement:

* + 1. Words denoting any gender shall be deemed to include all other genders;
		2. Words importing the singular shall include the plural and vice versa, where the context so requires;
		3. The terms “hereof”, “herein”, “hereby”, “hereto” and other derivatives or similar words, refer to this entire Agreement or specified Sections of this Agreement, as the case may be;
		4. Reference to the term “Section” or “Schedule” or “Annexure” shall be a reference to the specified Section or ” or Schedule or Annexure of this Agreement;
		5. Any reference to “writing” includes printing, typing, lithography and other means of reproducing words in a permanent visible form.
		6. The term “directly or indirectly” means directly or indirectly through one or more intermediary persons or through contractual or other legal arrangements, and “direct or indirect” shall have correlative meanings;
		7. All headings and sub-headings of Sections and Schedules, and use of bold typeface are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement;
		8. Reference to any legislation or Law or to any provision thereof shall include references to any such Law as it may, after the Effective Date, from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation made from time to time under that provision;
		9. Reference to the word “include” or “including” shall be construed without limitation;
		10. The Schedules/ Annexure hereto shall constitute an integral part of this Agreement;
		11. Terms defined in this agreement shall include their correlative terms;
		12. Time is of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of essence;
		13. References to the knowledge, information, belief or awareness of any Person shall be deemed to include the knowledge, information, belief or awareness of such Person after examining all information which would be expected or required from a Person of ordinary prudence;
		14. The Parties acknowledge that they and their respective counsel have read and understood the terms of this Agreement and have participated equally in the negotiation and drafting. No provisions of this Agreement shall be interpreted in favour of, or against, any Party by reason of the extent to which such Party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof;
		15. All references to this Agreement or any other Transaction Document shall be deemed to include any amendments or modifications to this Agreement or the relevant Transaction Document, as the case may be, from time to time;
		16. Reference to days, months and years are to calendar days, calendar months and calendar years, respectively, unless defined otherwise or inconsistent with the context or meaning thereof; and
		17. Any word or phrase defined in the recitals or in the body of this Agreement as opposed to being defined Schedule shall have the meaning so assigned to it, unless the contrary is expressly stated or the contrary clearly appears from the context.

**SCHEDULE “B”**

**PART A: SELLERS’ REPRESENTATIONS & WARRANTIES[[3]](#footnote-3)**

1. Incorporation of the Seller. The Seller is incorporated and validly existing under the laws of India. The Seller is duly registered, licensed or qualified to carry on business and is in good standing in each jurisdiction in which the character of its properties and Assets owned or leased or the nature of its business makes such registration, licensing or qualification necessary. The Seller has the corporate power and capacity to carry on its Business as it is currently conducted and to own or lease its property and assets.
2. Corporate Power and Authorization. The Seller has the corporate power and capacity to carry on its business as it is currently conducted, to own and lease its property and assets, and to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is a party. The Seller has taken all necessary corporate and shareholder action to authorize the execution, delivery and performance of this Agreement and each of the Transaction Documents to which such party is a party. This Agreement has been duly executed and delivered by the Seller .
3. Enforceability. This Agreement is a legal, valid and binding obligation of the Seller, enforceable in accordance with its terms, subject to the usual exceptions as to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights and the availability of specific performance, injunctive relief, or other equitable remedies. At the Closing Time, each of the Transaction Documents to which the Seller is a party will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to the usual exceptions as to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights and the availability of equitable remedies.
4. Right to Sell Purchased Assets.The Seller is the sole registered and beneficial owner of the Assets with good and marketable title thereto, and on the Closing Date, the Purchased Assets shall be free of all Encumbrances. There are no agreements or restrictions which in any way limit or restrict the transfer to the Purchaser of any of the Assets.
5. Non-Contravention. The execution, delivery and performance of this Agreement and each of the Transaction Documents by the Seller, and the completion by the Seller (or any Affiliate of the Seller, as the case may be) of the transactions contemplated by this Agreement and the Transaction Documents, do not and will not:
	1. contravene any provision of the charter documents, by-laws or any shareholders agreement of the Seller;
	2. result in a material violation or material breach of, or constitute a material default or give rise to any termination rights under any Transferred Contract or permit pertaining to the Specified Assets;
	3. give rise to any indebtedness in favor of any Person, with respect to the Specified Assets;
	4. result in a breach or contravention of any Applicable Law or any order, judgment or decree of any court or Governmental Authority;
	5. give any Governmental Authority the right to revoke, withdraw, suspend, cancel or terminate any Permit which could materially affect the ownership or use of any of the Specified Assets;
	6. result in the imposition of, give rise to or trigger any Encumbrance upon any of the Specified Assets, or restrict, hinder, impair or limit the ability of the Seller to use any of the Specified Assets;
	7. cause the Seller to lose any Intellectual Property Rights necessary for use or operation of the Specified Assets.
6. Consents and Approvals. No authorization, consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required by the Seller in connection with the execution, delivery or performance of this Agreement and the Transaction Documents or the completion of the transactions contemplated by this Agreement and the Transaction Documents as the case may be.
7. Financial Statements. The Financial Statements: (i) have been prepared from, and are in accordance with, the books of account and other financial records of the Seller ; (ii) in respect of the Seller have been prepared in accordance with Indian GAAP applied on a consistent basis throughout the periods indicated; and (iii) fairly, completely and accurately present in all material respects the financial position and assets owned by the Seller.
8. Taxes.
	1. The Seller has duly filed all material Tax Returns required to be filed by it when due, or received a valid extension, in accordance with Applicable Laws, and all such tax returns are true, correct and complete in all material respects.
	2. The Seller has duly and timely paid all Taxes, including Taxes which are capable of forming or resulting in a lien on the Specified Assets or of becoming a liability or obligation of the Purchaser.
	3. There are no outstanding Tax liens that have been filed by any Governmental Authority against any of the Specified Assets.
	4. The Seller has not received from any Governmental Body any (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency which may result in or adversely affect completing the transaction contemplated under this Agreement.
	5. There are no actions, suits, proceedings, audits, investigations, enquiries, reassessments or claims pending against the Seller in respect of the Specified Assets, nor has any such event been asserted or threatened against the Seller.
9. Contracts. The Seller is not a party to or bound by or subject to any Transferred Contract that may result in a claim in respect of any of the Specified Assets as a result of entering into this arrangement with the Purchaser or which may terminate any necessary licenses or proprietary rights necessary for operation of the Specified Assets.
10. Compliance with Laws. The Seller is in compliance with all Applicable Laws with respect to the ownership of the Specified Assets.
11. Absence of Certain Changes or Events. The Seller has not, since the Financial Statement date:
	1. conducted sold, leased or otherwise disposed of, or permitted an Lien on, any Assets.
	2. incurred or suffered any damage, destruction or loss, by fire or other hazard, to any of the Specified Assets, whether or not covered by insurance;
	3. waived, released or cancelled any rights or claims with respect to the Specified Assets;
	4. commenced, participated or agreed to commence or participate in any bankruptcy, involuntary liquidation, dissolution, winding up, insolvency or similar proceeding;
12. Specified Assets in Good Condition. All the Specified Assets being sold by the Seller are in good operating condition and in a state of good maintenance and repair having regard to the use to which the assets are put and the age thereof, subject to regular wear and tear.
13. Inventory. The inventory forming part of the Specified Assets and as indicated in the Financial Statements is of a quality and quantity usable and saleable in the ordinary course of the Business.
14. Litigation and Other Proceedings. There is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal or criminal); arbitration or other dispute settlement procedure; investigation or inquiry by any Governmental Authority; or any similar matter or proceeding (collectively "**proceedings**") against or involving any of the Specified Assets. To the Seller's Knowledge, no event has occurred which might give rise to any proceedings and there is no judgment, decree, injunction, rule, award or order of any Governmental Authority to which any of the Specified Assets may be subject.
15. Books of Account. The books and records of the Seller maintained in respect of the Specified Assets accurately and timely record all existing Specified Assets of the Seller.

**PART B: PURCHASER’S REPRESENTATIONS & WARRANTIES**

1. Incorporation of the Purchaser. The Purchaser is incorporated and validly existing under the laws of India.
2. Corporate Power and Authorization of the Purchaser. The Purchaser has the corporate power and capacity to enter into and perform its obligations under this Agreement. The Purchaser has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the transaction documents to which the Purchaser is a party. This Agreement has been duly executed and delivered by the Purchaser. At the Closing, each of the transaction documents to which the Purchaser is a party will be duly executed and delivered by the Purchaser.
3. Enforceability against the Purchaser. This Agreement is a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms. At the Closing, each of the transaction documents to which the Purchaser is a party will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to the usual exceptions as to applicable laws.
4. Non-Contravention by the Purchaser. None of the execution, delivery or performance of this Agreement or the transaction documents by the Purchaser will contravene any provision of its prior existing material agreement, obligation or instrument to which it is a party or by which it is bound nor will contravene in any material respect any Applicable Law that would prevent or significantly impede the purchase of the Assets by the Purchaser.
5. Consents and Approvals. No authorization, consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement or the transaction Documents by the Purchaser.

**SCHEDULE “C”**

**FORMAT OF DISCLOSURE SCHEDULE**

Date: [●]

To,

**[*insert name of the Purchaser*]**

[*insert address*]

Kind attention: [*insert name and designation*]

Dear Sirs,

Sub: Disclosure Schedule

I refer to the Asset Purchase Agreement dated [●], in relation to sale and purchase of the Business to [*insert name of the Purchaser*] (hereinafter the “**Agreement**”).

Capitalised terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Agreement, unless the context other requires.

The following are the exceptions and disclosures to the warranties as referred to in Agreement. The Clause numbers in this Disclosure Schedule correspond to the relevant Clause numbers of the warranties mentioned in the Agreement.

|  |  |  |
| --- | --- | --- |
| **Clause No.** | **Heading** | **Disclosure** |
|  |  |  |
|  |  |  |
|  |  |  |

Yours sincerely,

Signed and delivered for and on behalf of Seller

[*insert name of the Company*]

By : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name : [●]

Title : Director

**SCHEDULE “D”**

**CONDITIONS PRECEDENT[[4]](#footnote-4)**

1. Representations and Warranties. The representations and warranties of the Seller contained in the Agreement shall be true in all respects at and as of the Closing with the same effect as if made at and as of the Closing.

1. Board resolution of Seller. The board of directors of the Seller shall have passed a resolution approving the execution of this Agreement authorising the consummation of the transactions under this Agreement and the Transaction Agreements.
2. Performance. The Seller shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.
3. Instruments. All deeds, instruments and documents provided by the Seller required to carry out this Agreement or incidental hereto shall be in from and substance reasonably satisfactory to the Purchaser.
4. No Restraint. No action, suit, investigation, or Proceeding by or on account of any Governmental Authority shall have been instituted or threatened to restrain or invalidate the transactions contemplated by this Agreement.
5. No Material Adverse Effect. No event or circumstance shall have occurred or shall be likely to occur which has or is likely to have a Material Adverse Effect on the Specified Assets.
6. Conduct of Business in the Ordinary Course. The business and operations of the Specified Assets shall have been conducted in the Ordinary Course of Business up to and including Closing.
7. Closing Deliveries. The Seller shall have made or stand willing to make all the deliveries to the Purchaser described in Schedule E of the Agreement.
8. Consent of Lenders. The lender Bank holding charge over the Specified Assets shall have granted a no objection certificate for all of the transactions contemplated under this Agreement.
9. Section 281 Certificate. Receipt of clearance under Section 281 of the Income Tax Act, 1961 from the tax authorities.

**SCHEDULE “E”**

**DELIVERABLES TO PURCHASER AT CLOSING**

1. A certificate signed by the Seller stating that the representations and Warranties of Seller are true and correct as of the Closing.
2. A certificate signed by the Seller stating that the conditions precedent have been fulfilled prior to the Closing.
3. All of the Transaction Agreements duly signed by the Seller.

**SCHEDULE “F”**

**SPECIFIED INDEMNITIES[[5]](#footnote-5)**

**[*insert details*]**

**SCHEDULE “G”**

**DESCRIPTION OF THE SPECIFIED ASSETS**

**Schedule G.1 – Office Space and Immovable Assets**

[*insert details*]

**Schedule G.2 – Equipment and Movable Assets**

[*insert details*]

**Schedule G.3 – Intellectual Property Rights**

[*insert details*]

**Schedule G.4 – Customers and Suppliers**

[*insert details*]

**Schedule G.5 – Transferred Contracts**

[*insert details*]

**Schedule G.6 – Licenses, etc.**

[*insert details*]

**Schedule G.7 – Insurance Policies**

[*insert details*]

**SCHEDULE “H”**

**REQUIRED CONTRACTS CONSENTS**

|  |  |  |
| --- | --- | --- |
| **Sr. No.** | **Contract**  | **Details of Counter Party** |
|  |  |  |
|  |  |  |

1. **ARA Comment:** (i) Parties to exchange necessary corporate resolution(s) at the time of execution of this Agreement; (ii) To be stamped on stamp paper of adequate value. [↑](#footnote-ref-1)
2. **ARA Comment:** To be retained in case of any license or assignment of intellectual property right. [↑](#footnote-ref-2)
3. **ARA Comment:** This is an illustrative set of standard and customary representations and warranties taken from the Sellers. This needs to be factually confirmed on case to case basis and modified/ elaborated as per the transaction specifics, commercial terms and the outcome of due diligence exercise. [↑](#footnote-ref-3)
4. **ARA Comment:** This is an illustrative set of standard conditions precedent taken from the Sellers. This needs to be factually confirmed on case to case basis and modified/ elaborated as per the transaction specifics, commercial terms and the outcome of due diligence exercise. Further, in case any condition is required to be met by the Purchase on the basis of transaction specifics or commercial terms, same needs to be incorporated here as well. [↑](#footnote-ref-4)
5. **ARA Comment:** Details of events or matters which require specific indemnity obligations to be inserted. This depends upon case to case basis, transaction specifics, commercial terms and the outcome of due diligence exercise. [↑](#footnote-ref-5)