

KEY CONCEPTS

■ LLP Agreements ■ Joint Ventures and Foreign Collaborations Agreements ■ Service Agreements ■ Outsourcing Agreements

Learning Objectives

To understand:

- Drafting and details of Limited Liability Partnership Agreements
- Collaboration Agreements
- The detailed terms of Joint Development Right Agreements
- Dealership, Distributorship and Franchise Agreements
- Drafting of Outsourcing Agreements
- Preparation of Non-disclosure Agreements
- Types and Formation of e-contracts

Lesson Outline

- Introduction
- Important Clauses of Commercial Contracts
- Limited Liability Partnership Agreements
- Joint Venture
- Foreign Collaboration Agreement
- Joint Development Rights Agreement
- Service Agreements
- Dealership Agreement, Distributorship Agreement & Franchise Agreement
- Outsourcing Agreements
- Non-disclosure Agreement
- Electronic Contracts
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Limited Liability Partnership Act, 2008
- The Companies Act, 2013,
- Arbitration and Conciliation Act, 1996
- Transfer of Property Act, 1882
- Indian Contract Act, 1872

INTRODUCTION

When your business starts to make agreements with other businesses for supply or sale of goods and services, then a proper commercial contract is required to record these agreements and protect the parties in case of a dispute. Commercial contracts are legally enforceable agreements between two or more parties. They are agreements used to govern commercial activity(s) and involve with the commercial aspects of a product or service. They guarantee that parties follow their word and streamline transaction flow. The terms of a commercial agreement are usually quite formal and vary for each organisation and transaction. A commercial contract meets two objectives:

- the first is that it must simultaneously advance and protect the business interests of the parties.
- the second, and often overlooked, goal of a properly drafted commercial contract is that it should not unduly disturb or endanger the commercial arrangement that the two contracting parties have struck.

Examples
of
commercial
contracts
include

Joint Venture Agreement

Shareholders Agreement

Business Purchase Agreement

Purchase and Supply Agreement

Sale and Distribution Agreement

Franchise Agreement

Non-disclosure Agreement

Employment Contracts

Intellectual Property License and Assignment

Partnership Agreement

Loan and Finance Agreement

Important Clauses of Commercial Contracts

Confidentiality clause to prevent unauthorized disclosure of confidential information.

Dispute resolution clause stating how disputes arising from the transaction will be handled.

Details on the court that will have jurisdiction over matters arising from the transaction and the governing law, especially for domestic and international cross-border transactions.

Termination clause detailing how any party can opt-out of the arrangement and conditions that will end the contract.

Indemnity clause to protect parties from liabilities caused by a breach of contract or negligent acts of third parties.

Liquidated damages clause to specify damages upon breach of contract.

Force majeure clause to remove liability for failure to perform contractual obligation caused by unforeseen and unavoidable circumstances.

LIMITED LIABILITY PARTNERSHIP AGREEMENT

Limited Liability Partnership is governed by Limited Liability Partnership Act, 2008 which came into force on April 1, 2008. LLP Agreement is a written contract between the partners of the LLP or between the LLP and its designated partners. It establishes the rights and a duty of the designated partners toward each other as well toward the LLP. It is compulsory to execute and file the LLP agreement with MCA within 30 days of the incorporation of LLP. It creates the foundation for the smooth running of Limited Liability Partnership. It defines the outlook and set well define concepts for decision making, adding a new partner and leaving of existing partners or change in roles.

Content of LLP Agreement

1. Name of the LLP

The name must end with LLP or Limited Liability Partnership as per the provisions of the LLP Act, 2008.

2. Date of the agreement and parties to the agreement

After incorporation, the agreement is to be executed within 30 days as per the LLP Act, 2008. LLP

agreement is between all the partners and designated partner. The agreement must contain the date and of entering into an agreement.

3. Introductory provisions

It includes all the definitions of terms used in the LLP agreement.

4. Place of business

The agreement must contain the place of business which is the registered office of the LLP.

5. Business activity

It is important to include the business activities to be carried on by the LLP. It must be in the same nature as approved by the MCA at the time of incorporation of LLP.

6. Duration

If the LLP is formed for the specific period, then such period must be mention after which the LLP must be dissolved. LLP can also be formed for certain object, after completion of such object; the LLP must be closed. In the absence of specific period or object, one can include the duration of LLP as up to the period until which, it is terminated with the consent of the partners of the LLP.

7. Accounting and Auditing etc.

This includes how to maintain the books of accounts, whether it is cash basis or accrual basis. During which period a partner can access books of accounts, whether an audit is mandatory or will follow the rules mentioned in the LLP Act.

8. Partners' contribution and method of contribution

Represents the contribution ratio of partners in terms of capital invested, interest on contribution, Profit Sharing Ratio as well as the time period after which the capital can be withdrawn by any of the designated partners. It is important for maintaining a good relationship between partners.

9. Record keeping and bank arrangement

It includes the maintenance, storage, and recording of books and other related documents.

10. Allocation and distribution

It clarifies the system of profit sharing among all partners and distribution including interim distribution or final distribution. It portrays the distribution of Profit between the partners as per the decided ratio.

11. Disassociation of partner

Specifies the terms and conditions when partners can withdraw or disassociate from the LLP. This is one of the vital clauses of the LLP Agreement. It states the rights of partners and rights on assets after disassociation.

12. Partners' rights to records

Each partner has the right to check the records for avoiding misappropriation.

13. Management and Fiduciary Duty

It takes into account the liability of the management of a LLP and the appointment of the person liable for taking care of confidential information of the LLP.

14. Arbitration and General Provisions

In the case of conflict between parties, the parties may involve the third person known as an arbitrator

who listens to both the parties and takes a decision, which is to be accepted by both the parties concerned and the final order must be applied on both parties.

15. Other Provisions

Several other provisions also come under the LLP Agreement such as admission of new partners and its rights thereafter and changes in the designation. It includes the right to take part in business, title and interest in assets, right to access, right to continue the independent business, right to recover the due debt and selling, transferring of partnership right to existing partner and another partner. It covers the mode, time period of the meeting of partners, the decision-making process, agenda and the voting rights of the partners.

It also includes the rights of designated partners as well as how those rights can be availed from the LLP. It considers methods of readmission of partners as well as cross purchase. This clause illustrates the right of redemption of a partner's rights.

Specimen Model Limited Liability Partnership Agreement or LLP Agreement

Limited Liability Partnership Agreement or LLP Agreement

THIS AGREEMENT of Limited Liability Partnership (LLP) is made at _____ on this _____ day of _____, 20_____

BETWEEN

- (1) _____ a company registered under the Companies Act, 2013, having its Registered Office at _____ through its authorised representative which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY,
- (2) _____ s/o, d/o, w/o _____ r/o _____ which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY, and
- (3) _____ s/o, d/o, w/o _____ r/o _____ which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the THIRD PARTY, and

(All the PARTIES hereto, i.e., the FIRST PARTY, the SECOND PARTY and the THIRD PARTY shall be collectively called or referred to as the PARTNERS).

WHEREAS the First Party is _____.

WHEREAS the Second Party is _____.

WHEREAS the Third Party is _____.

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

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

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

Registered Office

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

Capital Contribution

3. The Capital Contribution of the LLP shall be Rs. _____ (Rupees _____ only) which shall be contributed by the partners in the following proportions:
 - First Party _____% i.e. Rs. _____ (Rupees _____ only)
 - Second Party _____% i.e. Rs _____ (Rupees _____ only)
 - Third Party _____% i.e. Rs _____ (Rupees _____ only)

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

Profit sharing ratio (PSR)

4. All the Partners of the LLP are entitled to share Profits & Losses in the ratio of their respective Capital Contribution in the LLP. The net profits & losses of the LLP shall be arrived at after providing for payment of Remuneration to the Designated and working partners and Interest on Partners' Contribution in the LLP or Loan given by them to the LLP.

Business and Objects of the LLP

5. The objects, business and activities of the LLP shall be under :
 - a. _____
 - b. _____

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

Common Seal

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

Admission of New Partner

8. No Person may be introduced as a new partner without the consent of all the existing partners. Such incoming partner shall give his prior consent to act as Partner of the LLP.
9. Capital Contribution of the new partner may be tangible, intangible, movable or immovable property and the incoming partner shall bring minimum Contribution of Rs _____ (Rupees _____ only).

10. Profit Sharing Ratio (PSR) of the incoming partner will be in proportion to his capital contribution in the LLP.

First Schedule of LLP Act not to apply

11. Provisions of First Schedule to the Limited Liability Partnership Act, 2008 will not apply to the LLP as the LLP will be governed by the terms of this LLP Agreement.

Remuneration & Interest to Partners

12. The LLP shall pay such Remuneration to the Designated Partners and working partners as may be decided by the majority of the Partners, for rendering his/her/its services.
13. The LLP shall pay such Interest to the Partners on Capital Contribution in the LLP as may be decided by the majority of the Partners.
14. If any partner advances any sum of money to the LLP over and above his Capital Contribution, the same shall be a debt due from the LLP to the said partner and shall carry simple interest at the rate of % per annum or any other rate decided by the partners by majority/unanimously.

Rights of the Partners

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

Duties of the Partners

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

24. Each Partner shall be just and faithful to the other partners in the conduct of business and all the transactions relating to the LLP.
25. Every partner shall indemnify the limited liability partnership (LLP) and the other existing partners for any loss caused to it by his/her/its fraud in the conduct of the business of the limited liability partnership (LLP).
26. Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives.
27. In case any of the Partners of the LLP desires to transfer or assign his, her or its interest or share in the LLP he has to offer the same to the remaining partners by giving 15 days notice. In the absence of any communication by the remaining partners the concerned partner can transfer or assign his share in the market.
28. No partner shall without the written consent of the LLP, –
 - a. Engage any employee or dismiss any employee of the LLP except for gross misconduct.
 - b. Employ any money, goods or effects of the LLP or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the LLP.
 - c. Lend money or give credit on behalf of LLP or have any dealings with any person, company or firm whom the LLP has previously in writing forbidden it to trust or deal with. Any loss incurred through any breach of the provisions shall be made good to the LLP by the partner incurring the same.
 - d. Enter into any bond, bail or become guarantor, surety or security with or for any person or knowingly do, cause or suffer to be caused anything whereby the LLP property or any part thereof may be seized or endangered.
 - e. Assign, mortgage or charge his/her/its share in the LLP or any asset or property of the LLP or make any other person a partner or sub-partner therein.
 - f. Compromise or compound or release or discharge any debt due to the LLP (except upon payment in full).
 - g. Engage directly or indirectly in any business competing with that of the limited liability partnership (LLP).

Meetings of Partners of the LLP

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

within thirty days of taking such decisions and are kept and maintained at the registered office of the LLP.

Duties of Designated Partners

34. Authorised representatives of the First Party and the Second Party shall act as the Designated Partners of the LLP in terms of the requirements of the Limited Liability Partnership Act, 2008.
35. Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership (LLP) in respect of compliance of the provisions of the LLP Act including filing of any Document, Return, Statement and the like Report pursuant to the provisions of Limited Liability Partnership Act, 2008.
36. The Designated Partners shall be responsible for the doing of all acts and deeds arising out of this LLP Agreement.
37. Each partner shall punctually pay and discharge the separate loans and debts and indemnify the other partners and the LLP assets against any loss caused or suffered by the LLP and all proceedings, costs, claims and demands from the LLP in respect thereof.

Books of Account

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

Bank Accounts

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

Extent of Liability of the LLP

42. The LLP is not bound by anything done by a partner in dealing with a person if –
 - a. the partner in fact has no authority to act for the LLP in doing a particular act; and
 - b. the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Indemnity

43. The limited liability partnership (LLP) shall indemnify each partner in respect of payments made and personal liabilities incurred by him –
 - a. in the ordinary and proper conduct of the business of the limited liability partnership (LLP); or
 - b. in or about anything necessarily done for the preservation of the business or property of the limited liability partnership (LLP).

44. The LLP shall indemnify and defend its partners and other officers from and against any and all liability in connection with claims, actions and proceedings (regardless of the outcome), judgment, loss or settlement thereof, whether civil or criminal, arising out of or resulting from their respective performances as partners and officers of the LLP, except for the gross negligence or willful misconduct of the partner or officer seeking indemnification.

Arbitration

45. All disputes between the partners or between the Partners and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this LLP Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).

Cessation of existing Partners

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

Winding up of the LLP

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

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

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

Signed by the above Party 1
(Name, Signature and Details)

Signed by the above named party 2
(Name, Signature and Details)

Signed by the above named party 3
(Name, Signature and Details)

Witnesses

1. _____
(Name, Signature and Details)

2. _____
(Name, Signature and Details)

SCHEDULE A

Incidental, Ancillary or Other Business of the LLP

- (1) **THE OBJECTS OR BUSINESS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS OR BUSINESS ARE:**
- (2) **THE OTHER BUSINESS ARE:**

SCHEDULE B

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

Note: According to section 23(4) of Limited Liability Partnership Agreement, 2008, in the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule as provided hereunder.

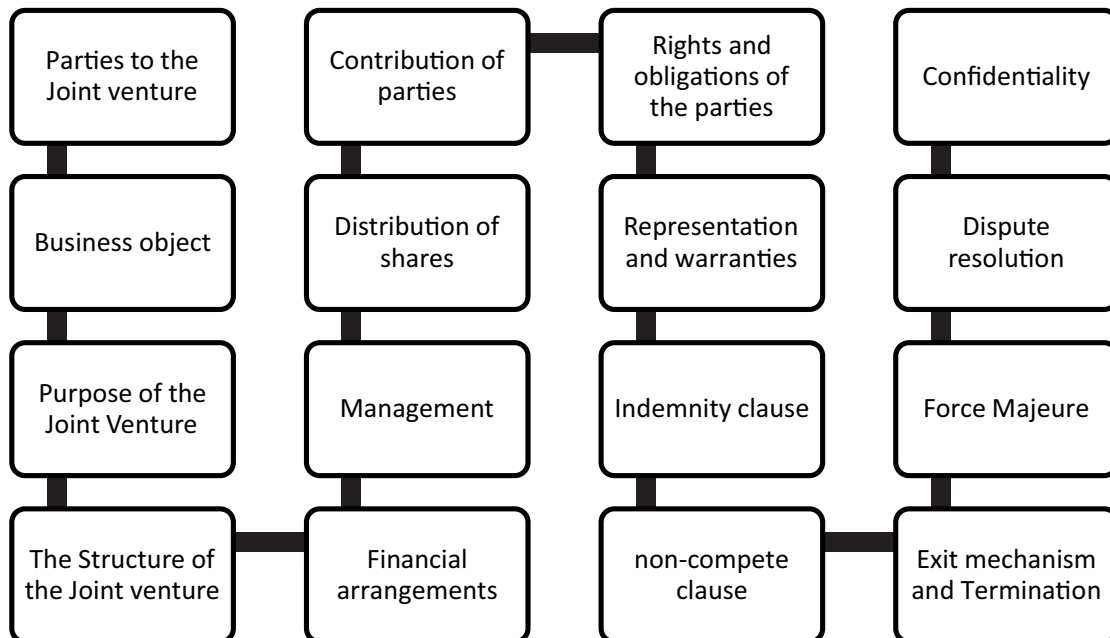
PROVISIONS REGARDING MATTERS RELATING TO MUTUAL RIGHTS AND DUTIES OF PARTNERS AND LIMITED LIABILITY PARTNERSHIP AND ITS PARTNERS APPLICABLE IN THE ABSENCE OF ANY AGREEMENT ON SUCH MATTERS

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him—
 - (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
 - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

JOINT VENTURE

A joint venture (JV) means a strategic arrangement between two or more businesses, where resources are pooled, to work together on a specific project or an ongoing basis. Joint ventures are a useful way of collaborating with other businesses and to combine different areas of expertise for targeted or general business purposes. Each of the participants in a JV is responsible for profits, losses, and costs associated with it. However, the venture is its own entity, separate from the participants' other business interests. It is important that the parties to the joint venture define their respective roles and responsibilities early on and how the parties will work together to achieve the joint venture's targets. There are several types of ways to structure a joint venture. Before taking too many steps towards a joint venture it is important to note whether the deal is for a short or long-term arrangement, whether a separate company should be set up for the purpose, whether it is purely a loose collaboration agreement or whether there is a view to a merger or acquisition in the future. Among the categories of JV Agreements Contractual Joint Venture can take the form of two or more parties coming together to collaborate on a specific project, share the costs of R&D act or share knowledge and expertise on an ongoing basis, Partnership where two or more parties start working together and carry on a business in common with a view to profit they will form a *de facto* partnership, even if the parties are unaware of this and Limited Liability Company involve a high-cost project, eg developing a new product or service, and both parties will put capital into the venture, they may decide to form a new company for this purpose (sometimes called a 'special purpose vehicle/SPV').

Important clauses of joint venture agreement include



Specimen Joint Venture Agreement

Joint Venture with Foreign Company

THIS JOINT VENTURE AGREEMENT IS MADE on this ____ day of _____, 20__ at _____

BETWEEN

AMCO INC. Incorporated under the laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART

AND

INCO LTD. a company registered under the Companies Act, 2013 having its registered office at _____ of the OTHER PART.

WHEREAS AMCO INC. (hereinafter referred to as AMCO) carries on business as manufacturer of and dealer and exporter in Computers, Computer Hardware and Software and has worldwide market and intends to extend its market here in India and elsewhere.

WHEREAS INCO LTD. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Software and intends to expand its business in India and abroad.

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

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

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt. Ltd. under the Companies Act 2013 having its Registered Office at _____.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardware and Software and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.
6. INCO will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. INCO will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and

products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.

10. AMCO will buy 75% of the products of new company for exporting; to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.
11. Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.
12. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.
13. The consideration for allotment of shares of the new company to INCO shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between AMCO and INCO.
14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.
15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.
16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.
17. IN WITNESS WHERE OF the parties hereto have signed, sealed and delivered these presents on the day, month and year first above-written.

Mr. _____

Mr. _____

Pursuant to the Board Resolution
dated _____ of AMCO

Pursuant to the Board Resolution
dated _____ of INCO

Signature in the presence of:

1 _____

2 _____

(Name and Details of Witnesses)

FOREIGN COLLABORATION AGREEMENTS

When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be

collaborating in a desired venture. The word “collaboration” has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad. The agreements drawn and executed between such collaborating parties are known as “foreign collaboration agreements”. With sophistication and technical advance achieved in the developed countries and motivated by the desire of carrying the country into the twenty-first century, the Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of agriculture, mining, oil exploration, power generation, etc. A large number of Indian industrialists have already entered into long and short-term collaboration arrangements with foreign companies, firms etc. In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

Example: Mr. A is a plot owner and Mr. B is constructor, entered into a contract stating inter alia that Mr. B will construct 4 floors on the entire plot and Mr. A will take two floors and remaining two floors will be owned by Mr. B on account of construction cost. Here, Mr. B is not taking any construction cost from Mr. A and they are using each other's' resources. Such contracts are named as Collaboration contracts.

Guidelines for entering into Foreign Collaboration Agreements

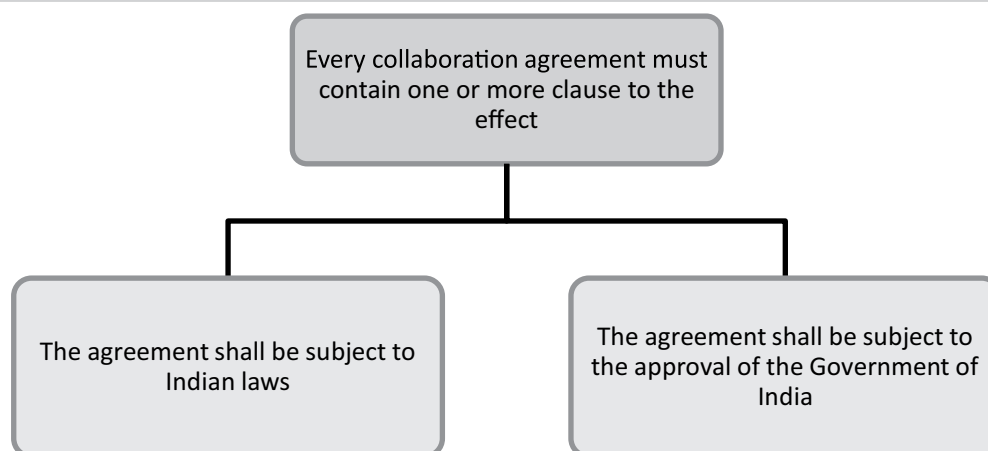
These guidelines cover the following aspects of foreign collaboration agreements:

1. **Investment:** Where in a foreign collaboration agreement, equity participation is involved, the value of the shares to be acquired about be brought in cash.
2. **Lump Sum Payment:** The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three instalments as follows:
 - (i) one-third to be paid after the agreement has been approved by the Central Government;
 - (ii) one-third on transfer of the technical documents; and
 - (iii) one-third on the commencement of commercial production.
3. **Royalty:** Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent. This rate will depend upon the nature and extent of the technology involved. Payment of a fixed royalty is preferred by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.
4. **Duration of agreement:** Normal period of a foreign collaboration agreement is eight years subject to maximum of ten years. The period is approved by the Government usually for five years from the date of the agreement in the first instance or five years from the date of commencement of commercial production; the total period, however, not exceeding eight years from the date of the agreement.
5. **Renewal or extension of agreement:** The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
6. **Remittances:** Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
7. **Sub-licensing:** An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval.

8. **Exports:** No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries, except in a case where the foreign collaborator has licensing arrangements in which case the countries concerned shall be specified.
9. **Procurement of capital goods etc.:** There should be no restriction on procurement of capital goods, components, spares, raw materials etc. by the Indian party. The Indian collaborator must be free to have control over pricing facility and selling arrangements.
10. **Technicians:** The number, terms of service, remuneration, etc., of technicians to be deputed on either side are subject to approval of the Reserve Bank of India.
11. **Training:** Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.
12. **Exploitation of Indian patents:** Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry. There should also be provision for manufacture by the Indian company of the said item even after the expiry of the collaboration agreement without making any additional payment.
13. **Consultancy:** If the necessity for any consultancy arises, it should be obtained from an Indian company. If, however, in the special circumstances foreign consultancy becomes essential, even then the prime consultant should be an Indian company.
14. **Brand Name:** There should be no insistence on the use of foreign brand names on products for sale in India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.
15. **Indian Laws:** All collaboration agreements shall be subject to Indian laws.
16. **Approval of Central Government:** Every foreign collaboration agreement shall be approved by the Central Government.

While drafting a collaboration agreement, care should be taken that it is in compliance with the guidelines as detailed above.

Two important Clauses for Foreign Collaboration Agreements



Specimen Foreign Collaboration Agreement

This Foreign Collaboration Agreement is executed on this _____ day of _____, 20_____

BETWEEN

M/s _____, a Foreign Company incorporated in the United Kingdom and having its registered office at _____ (hereinafter called the U.K. Company) of the ONE PART.

AND

M/s _____, a company incorporated in India under the Companies Act, 2013 and having its registered office at _____ (hereinafter called the Indian company) of the OTHER PART:

WHEREAS the Indian company has been incorporated with the object of manufacture and production of _____;

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

WHEREAS the Indian company with a view to improve, still further, the quality of the commodities manufactured, and to increase production, is desirous of procuring the latest technique and know-how relating to the manufacture of the above said commodities;

WHEREAS the Indian company, therefore, approached the U.K. company that has considerable experience in the line of manufacture engaged in by the Indian company, and requested the U.K. company to extend to the Indian company necessary technical assistance in that behalf; AND

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

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

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

- (2) For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs _____ to the U.K. company phased as follows:
 - (a) one-third on approval of the agreement by the Central Government;
 - (b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
 - (c) the balance one-third in three equal annual instalments thereafter after commencement of production.
- (3) This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.
- (4) The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported.
- (5) There shall be no restriction on the Indian company exporting their products to foreign countries.
- (6) The Indian company shall not have the right to pledge, mortgage or assign or to sub-licence the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. company.
- (7) There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.
- (8) Technicians who may be deputed by the U.K. company to the Indian company to advise and assist the Indian company under this agreement shall be paid their salary, travelling expenses and boarding and lodging by the Indian company.
- (9) The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. company for training in their works under clause 1(f) supra.
- (10) The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.
- (11) The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.
- (12) It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration, and that the Indian company shall have the right for the period of its duration the right to manufacture their products even after the expiry of this Agreement.
- (13) The Indian company shall not, during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to anyone other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.
- (14) On the expiry of the period prescribed herein or of extended period provided in clause 3 (supra) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession, and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

(15) The agreement shall be subject to Indian laws.

(16) The agreement shall be subject to the approval of the Government of India.

IN WITNESS WHEREOF the parties hereto have signed this Agreement on this ____ day of _____, 20____ in the presence of the following:

Mr. _____

Mr. _____

Pursuant to the Board Resolution
dated _____ of Indian Company

Pursuant to the Board Resolution
dated _____ of UK
Company

Signature in the presence of:

1 _____

2 _____

(Name and Details of Witnesses)

JOINT DEVELOPMENT RIGHTS AGREEMENT

Present is the age of collaborative science, where the resources of different agencies are collaborated and put together for harnessing the expertise of different agencies. For development of real estate, model of joint development arrangement has emerged as a popular model wherein land owner and developer combine their resources and efforts. In a Joint Development Agreement (JDA), a landowner contributes his land for the construction of a real estate project and the developer undertakes the responsibility for the development of property, obtaining approvals, launching, and marketing the project. This agreement should be registered in the court of law under Section 53A of the Transfer of Property Act. The agreement bounds the landowner and the developer in an agreement for the construction of new projects. In return for the land provided by the former, the latter agrees to provide to some provisions. The developer agrees to provide lump sum consideration, percentage of sales revenue, or a certain percentage of the newly constructed project on the said piece of land. This depends on the terms and conditions, mutually agreed upon by the parties. In this manner, the resources and efforts of land owner and developer are pooled together so as to bring out the maximum productive result. The cost of land in a real estate project entails substantial part of total cost of the project. In such arrangement, developer is not required to make investment for acquiring land at the initial stage and he can utilize his expertise of project development with limited resources in a much efficient manner. On the other hand, land owner, who may not be having requisite experience and expertise for developing the project, gets better price for his land in comparison to what he would have got in the case of outright sale of land. Thus, it creates a win-win situation for both the parties. In fact, it can be said that the joint development arrangement is a commercial arrangement of convenience where in both the parties try to exploit their respective resources in the best possible manner and without much financial investment.

However, the area of Joint development agreement is not restricted to Real Estate only. With the expansion of technology, a joint development agreement can be for a new product or technology. In these types of agreements, prominence is on the research and development of Intellectual Property Rights. A Joint development agreement is also called a strategic alliance agreement.

Drafting of Joint Development Agreement

Drafting of a joint development agreement is a highly specialized job. Both the parties have to ensure that inbuilt safeguards are incorporated to take care of their respective interests. Joint Development Agreement

should be drafted in a manner so as to have, *inter alia*, clarity of terms as agreed between the parties, protection of interests of both parties, legal enforceability in case of need, fair exit-route for both the parties in case of any dispute having regard to tax considerations & implications. While drafting Joint Development Agreement, the following points should be carefully observed, which may have legal and tax implications of wide ramifications:

1. In what manner and at what point of time, ownership rights of the land are transferred by the land owner to the developer so as to decide the capital gain tax liability in the hands of the land owner.
2. Whether possession of the land is handed over to the developer in a manner so as to grant license to enter upon and possess land only for the development or the developer enjoys the possession of the land beyond that. Whether there is transfer of ownership/beneficial rights in the land in terms of the provisions of the Transfer of Property Act, 1882.
3. Whether exclusive rights to sell the developed real estate units and enter into buyers' agreement with the customer are granted to the developer under Joint Development agreement or as per other document executed between the land owner and the developer.
4. In what manner sale consideration of the land is determined and paid by the developer to the land owner. Whether sale consideration is determined in monetary terms or in kind or as combination of both and how the timing of the payment of the consideration is settled between them.
5. Whether rights and authority to mortgage the land is granted to the developer to avail the credit facilities from the banks against the security of the land.
6. In what manner and at what point of time, legal title or ownership right of the developed unit is acquired by the customers.
7. Along with the JDA, what kind of other documents, e.g. Power of Attorney, Supplementary Agreement, Memorandum of Understanding, etc. are required to be executed between the land owner and the developer determining or altering their rights & obligations and tax liability under the Income-tax Act and various other laws.
8. Whether the terms provided in Joint Development Agreement may result into creation of a separate legal entity or joint venture in the form of Association of Persons (AOP) or otherwise.
9. Whether any kind of principal-agent relationship or partners' relationship is created between the parties so that the action of one party may affect the rights and obligations of the other party.
10. Applicability and planning of liability under other tax laws, e.g. GST, Service Tax, VAT, Stamp Duty etc.
11. Whether the terms of Joint Development Agreement result into conversion of the land in the hands of the land owner from capital asset to business asset which may alter the chargeability of tax liability in his hands altogether.
12. Whether there are adequate terms in Joint Development Agreement providing dispute resolution mechanism and exit route to both the parties in case the real estate project does not take off in the desired manner.

Specimen Format of Joint Development Agreement

This Joint Development Agreement is made on this _____ day of _____, 20____ at _____.

BETWEEN

_____ through its _____ s/o

_____ only) to the Owner on completion of the building and at the time of signing of all necessary sale documents in regard to the first floor and second floor, to make the total consideration of Rs. _____ (Rupees _____ only).

2. If the Developer defaults in payment of any payment on the due date, the Owner will be entitled to terminate the agreement and to forfeit all moneys paid hereunder. On such termination, the licence to develop the property will be revoked and the Developer shall take away and remove within one month of such termination, all buildings, structures and materials brought on the property and in default thereof, the same shall belong to and vest in the Owner absolutely and the Developer shall not be entitled to any compensation or damages in respect thereof.

Without prejudice to his rights, the Owner may at his option, condone such default on payment by the Developer and extend the time for payment if the Developer pays interest at the rate of _____ % per annum on the defaulted installment provided that the Owner shall before terminating this agreement as aforesaid, make a demand in writing for payment of the said sum on the Developer. If the Developer pays the amount due to the Owner with interest within _____ days of receipt of such demand, then the Owner shall not be entitled to terminate the Agreement under this clause.

3. The Owner shall sign the necessary documents to enable the Developer to obtain all necessary permissions and sanctions as may be required.
4. That the Owner has executed attorney(s) by separate documents in favour of the Developer for submitting the applications, requisitions to the various authorities for obtaining permission, approvals, sanctions, allotment of building or other materials and concerning other matters required statutorily to be done and required in connection with the construction and completion of the said dwelling units/floors on the said property. However, the Developers undertake not to cause to be done any act deed or thing which may in any way misuse, contravene any rule, law or regulation or to misuse the powers which may be conferred upon the Developers by the Owner to construct super structure as stated herein above on the land beneath the said building as per agreement.
5. That in the meantime till such sanctions and permissions are forthcoming, the Developers shall have the suitable plans prepared for the proposed residential building at their cost and the concurrence of the Owner shall be obtained with regards to final submission of plans.
6. That the entire cost of construction of the new building including cost of material, labour and the charges for time extension for construction from Delhi Development Authority on above said plot and expenses for clearance from Urban Land Act and fee of the architect and others charges shall be borne and paid by the Developer.
7. That the construction shall be that of specifications, detailed and described in Annexure 1 attached hereto. That the Developers shall utilise the full F.A.R. available in respect of the property to be developed.
8. That the property tax till the execution of this deed shall be payable by the Owner. Any property tax payable thereafter shall be the liability of the Developer and shall be paid by the Developer till the flats are ready in all respects.
9. That the Owner gives licence and permission to the Developer to enter upon the said property with full right and authority to commence, carry on and complete development thereof, in accordance with the permission & terms herein mentioned. The said licence to develop the property will be personal to the Developer and under no circumstance the Developer will assign his title, right and interest to any other party, except with the prior written consent of the Owner. However, the Developer shall be entitled to

enter into separate contracts in his own name with building contractor, architect and others for carrying out the development at his own risk and costs.

10. That the dwelling units proposed to be constructed by the Developer shall be owned and possessed by the parties exclusively as under:
 - (a) Owner shall own and possess basement and ground floor and two car parking and two servant quarters with attached toilet of the said property with rear terrace for exclusive use and exclusive complete Ownership right of construction on second floor terrace (i.e., third floor) and right to all future FSI/FAR and right of construction on third floor if permitted by the bye-laws in future, in that case the Owner construct the water tanks on third floor terrace at their/his own cost/fund with 50% undivided land rights of total plot measuring _____ Sq. Yds.
 - (b) The Developer shall own and possess first floor, second floor, two car parking and two servant quarters along with toilet and front terrace for exclusives use, in case of construction of third floor, the Developer/buyers have rights to use front terrace of third floor terrace with 50% undivided land rights of total plots measuring _____ Sq. Yds.
 - (c) It is hereby specifically mentioned that the parties hereto shall be free to sell transfer and/or mortgage, assign or part with the possession of their respective portions at their own risk and account without any objection from the other party and to receive, accept any consideration, money in regards to above property and to issue receipt of full or partial payment. Each party shall have rights to negotiate his respective portion with common facilities to any intending purchaser.
11. The Owner agrees to execute, sign and deliver the document which might be required for conveying first floor and second floor of the said property in favour of the intending purchaser or nominee of Developer as a confirming party when the construction has been completed by the Developer and full consideration has been paid to the Owner. It is hereby specifically mentioned and agreed that the Owner shall not claim any remuneration for execution of the aforesaid documents and all the expenses whatsoever for the transfer of the first floor and second floor of the said property shall be borne and paid by the Developer/his nominee(s)/intending purchaser(s).
12. That the building shall be completed and finished in all respects within _____ months and the first party's share of property will be handed over to them within _____ months from the date of sanctioning of plans/handing over the vacant possession of the plot for development, except for reasons beyond second party's control such as strikes, war, riots and natural calamities and due to any unforeseen circumstances like drastic changes in laws and hindrance caused by concerned authorities.
13. If the Developer fails to complete building and fails to deliver basement and ground floor within stipulated period of _____ months then Developer shall be liable to give a sum of Rs. _____ (Rupees _____ only) per month to the party as compensation penalty.
14. That except as herein before provided, the Owner shall not interfere with or obstruct in any manner with the construction of work for the said residential flats. However, the Owner or his nominee or nominees shall have free hand and unfettered access to the construction site at all reasonable time and he shall be free to point out to the Developer or their agents, subcontractors or administrators and the Developer shall rectify such defective construction, workmanship or use of inferior materials.
15. That this agreement shall not to be deemed to constitute a partnership between the Owner and the Developer or an agreement for sale of the plot by the Owner to the Developer and shall not be deemed to bind the parties hereto except specifically recorded herein. The Developer shall solely be liable and responsible for any liability in connection with the construction of dwelling units in the land beneath the said building. The Owner and the Developer shall be solely responsible from the date of possession

for various expenses, taxes such as water charges, property tax, electric bills in respect of respective portions as mentioned aforesaid.

16. In case there is any accident in the aforesaid construction project, the Developer shall be fully responsible for all the consequences of the same under the Workmen Compensation Act or any other acts in force. If the Owner is ordered to attend a court or is requested or his presence is required by any other authority in this connection, he will empower the Developers to attend the court/authority concerned on his behalf and the Developer agrees to compensate the Owner fully in case an adverse order is passed or any compensation is ordered to be paid by the Owner by any court, judicial authority or any other competent authority.
17. That all costs of stamping, engrossing and registration of this agreement and any other paper relating to this agreement shall be borne by the Developer.
18. That during the course of construction all building materials and equipment used or to be used shall remain at the Developer's risk and the Developer shall not be entitled to any compensation from the first party for any damages, loss or destruction of such works or material or equipment arising from the any cause whatsoever.
19. If until the completion of building any case damage or harm occurs to the adjoining properties, neighbours, the Developer shall be fully responsible for all the consequences.
20. That the Owner has declared and assured the Developer that property is free from all sorts of encumbrances, i.e., mortgage, charges, gifts, wills, exchanges, attachments, injunction notice prior agreement to sell/collaboration agreement and shall also keep the property free from all sorts of encumbrances till the completion of the building, sharing of the respective portions in the new building and registration of their respective portions. Whatsoever if it will be ever proved otherwise, first party shall be liable and responsible for making good all losses, which may be suffered incurred, undergone and sustained all by the Developer as a result thereof.
21. That no change modification or alterations to this agreement shall be done without the written consent of the Owner and Developer. The parties hereto undertake not to contravene any of the terms of this agreement.
22. That the Developer shall be responsible for any eventuality or consequences arising out of the structural defects. Appropriate remedial measures to rectify such defects or remove such irregularities at the earliest shall be taken. The Developer shall also apply and obtain the C&D forms, electricity, water and sewer connections, etc., from the competent authority/authorities concerned at his cost.
23. That as and when house tax gets assessed the Developer undertakes to pay for his share that is the basement and ground floor at the rates applicable.
24. That the Owner shall hand over all the original documents of the property to the Developer at the time of execution of this collaboration agreement. The same shall be returned back to the Owner on completion of the construction and possession of the Developer's portion to him.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

Signed by the Owner
(Name, Signature and Details)

Signed by the Builder
(Name, Signature and Details)

Witnesses

1. _____

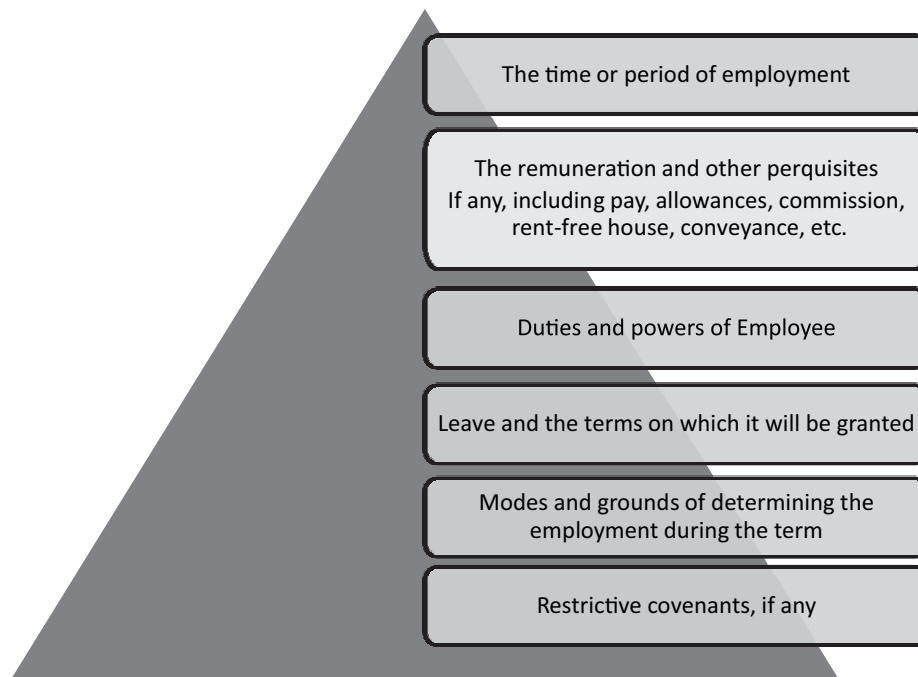
(Name, Signature and Details)

2. _____

(Name, Signature and Details)

Annexure 1: Specifications**SERVICE AGREEMENTS****Contents of a Service Contract**

Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). Important clauses for the service agreements are as under:

Necessary provisions for Service Agreements

As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man, Unlike other agreements and legal documents which need not contain matters presumed or implied by law, it is better in such an agreement to specify even such matters and all other matters so as to make it a complete code, embodying the rights and duties of each party.

In respect of Government service, normally no formal contract is executed and only an appointment order is issued and the terms of service are thereafter governed by statutory rules and Government order. The same is the position of statutory corporations as employers. For other employment contract, important terms are discussed hereinafter:

1. **Period of Service:** This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., "so long as the parties respectively please", the contract is terminable by a reasonable notice on either side. What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months. When no term is fixed, it is always proper to provide for determination by notice. In such a case, and also in case option of determination is reserved during the term, the period of notice should be settled and expressed in the agreement.
2. **Remuneration:** Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission. Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided.
3. **Leave:** Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated. In the case of Government servants engaged on contract, the leave rules applicable to permanent Government Servants in general may be applied but as there are different rules for different classes of Government Servants those applicable should be clearly referred to, or if they are not lengthy, they may be embodied in the agreement in the form of a covenant.
4. **Determination of Employment:** The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier, it may also be determined at pleasure by notice, without giving any ground. In the case of misconduct or neglect, no notice is required, but, provision may be made for framing charges and taking defence as in the case of Government Servants. Since an employee is entitled to damages for wrongful dismissal if the termination of the service is not properly made, provision in this respect should be carefully worded.
5. **Restrictive Covenants:** It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer's secrets or make improper use of his trade secrets or information about the employer's affairs.

While drafting restrictive covenants, it is necessary to see that they are not illegal. Agreements in restraint of trade are void under Section 27 of the Indian Contract Act, 1872 and should not be inserted in an agreement.

6. **Effect of Labour Laws:** Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Employees' Compensation Act etc. In drawing up a service contract for such an employee, the provisions of the relevant Acts must be kept in view. Any term of contract contrary to the statutory provisions will be null and void, as it is not open to an employee to contract out of the safeguards provided by the legislature for his protection.

Specimen Agreement of Employment of Manager of a Business Concern

THIS AGREEMENT is made on this _____ day of _____, 20____ at _____

BETWEEN

_____, acting through its Managing Director _____
 _____ (Name with Designation), hereinafter called the Employer, First Party.

AND

_____ through its _____ s/o

_____ r/o _____, hereinafter called the Manager, the Second Party

(The expression of the terms Employer and the Manager, whenever they occur in the body of this Agreement shall mean and include their respective heirs, executors, administrators and assign unless and until is repugnant to the context or meaning thereof.)

WHEREAS

1. The employer wants to appoint a suitable person to work as manager for his business concern; and
2. CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The manager shall work as such for a term of _____ years from the day of _____ at _____ or any other place as desired by the employer.
2. The manager shall give his whole time and attention to the said business and shall use his best endeavour to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealing thereto.
3. The manager shall keep at the place of business at _____ proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorised by the employer to retain for immediate requirements of the said business.
4. The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained the salary of Rs _____ per month on the first day of every calendar month commencing from the first day of _____ without any deduction except such as he will be bound to make under the Income-tax law for the time being in force, and shall also pay the manager at the end of each year during the aforesaid period a further sum equal to 5 per cent on the gross sale return for the said year (or on the net profits of the said business for the said year (if any) after making such deductions as are properly made according to the usual custom of the said business in the estimation of net profits) provided always that upon the death or termination of the engagement of the manager before the expiration of the said period of _____ years/ the employer shall forthwith pay to him or his heirs, executors, administrators or other legal representatives, as the case may be, in respect of the services of the manager of the whole or any part of the current month a due proportion of the salary of Rs _____ per month together with such further sum in lieu of such percentage as aforesaid as shall bear the same proportion to the estimated gross return (net profits) for the then current year as the part of the said year during which he has served, shall bear to the whole year, the gross return (net profits) being calculated on average of the past three years.
5. The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
6. The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense

actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed by rail and a halting allowance of Rs _____ per diem when a halt of not less than 8 hours is made at one place).

7. The manager shall be entitled during his engagement to leave on full pay for a period equal to 1/11th of the period of service rendered and to a further leave on half pay in case of illness or in capacity to be proved to the satisfaction of the employer for a period of 15 days in one year.
8. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of _____ years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice, the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.
9. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.
10. The manager will at his own expense find and provide two respectable sureties to the amount of Rs _____ each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

Employer

(Name, Signature and Details)

Manager

(Name, Signature and Details)

Witnesses

1. _____

(Name, Signature and Details)

2. _____

(Name, Signature and Details)

Specimen Renewal Agreement of Term of Service of an Employee (Either on old terms or new terms)

THIS SERVICE RENEWAL AGREEMENT is made on this _____ day of _____, 20____ at

BETWEEN

_____, acting through its Managing Director _____

_____ (Name with Designation), hereinafter called the Employer, First Party.

AND

_____ through its _____ s/o

_____ r/o _____, hereinafter called the Manager, the Second Party.

(The expression of the terms Employer and the Manager, whenever they occur in the body of this Agreement shall mean and include their respective heirs, executors, administrators and assign unless and until is repugnant to the context or meaning thereof.)

WHEREAS the said Second party has served the said Employer as Manager under an agreement between the parties hereto dated the_____.

AND WHEREAS the term of the said Manager's engagement under the said agreement having expired on the_____, it has been agreed that the said Employer shall re-engage, the said Manager upon the terms and conditions hereinafter appearing (or, upon the terms and conditions contained in the said agreement dated the_____).

NOW THESE PRESENTS WITNESS AND THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

(1) The said Manager shall serve the said Employer as Manager for one year from the _____.

(2) _____.

(or, 2. The terms and conditions of the said agreement shall be the same as are contained in the aforesaid agreement of the parties dated _____ in so far as they may be applicable to the employment under this agreement and all the terms and conditions contained in the said agreement shall be deemed to have been incorporated in this agreement).

(3) etc.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

Employer

(Name, Signature and Details)

Manager

(Name, Signature and Details)

Witnesses

1. _____
(Name, Signature and Details)

2. _____
(Name, Signature and Details)

DEALERSHIP AGREEMENT, DISTRIBUTORSHIP AGREEMENT & FRANCHISE AGREEMENT

Dealership Agreement

A dealership agreement is a legal document that outlines the terms of the contract between a distributor or a vendor and a dealer. A dealer agreement can also govern the business relationship between a general dealer and a vendor. These agreements can get more complex and lengthier depending on the size of the manufacturer and dealers involved in the agreement. A dealership agreement with a larger manufacturer can include obligations of a dealer such as requirements of the facilities, rules around the dealer's employees and personnel selling and requirements for statements and sales reporting. Common sections included in Dealership Agreements are:

- Purpose of the agreement.

- Tenure of the Agreement.
- The obligation of the parties, which may include.
- The procedure of supply and return of goods.
- Promotion and training.
- Invoices and the mode of payment.
- Any restrictions upon the parties.
- Termination of the dealership.

Distributorship Agreement

A distributorship agreement is a legally binding contract between a supplier and a distributor in which the distributor purchases and sells items from the supplier in order to sell them to retailers and/or consumers directly. As a result, the distributor does not hold any stock in the firm. The distributorship agreement describes the parties' rights, expenses, area, and obligations in respect of product distribution. The agreement confers on the distributor the right to supply the manufacturer's goods within a region or regions. The basic elements of a distributorship agreement include the term (time period for which the contract is in effect), terms and conditions of supply and the sales territories covered by the agreement. Matters such as remuneration to be paid, insurance; transportation and related risk, duration of the distributorship, legal matters are mentioned in a distributorship agreement. The manufacturer or vendor must also determine whether the distributorship agreement will be exclusive or nonexclusive. In an exclusive agreement, the specified distributor will be the sole distributor with the right to sell the product within a particular geographic region or within multiple regions. If the arrangement is nonexclusive, the manufacturer or vendor may supply other distributors, sometimes competing in the same market. The following is a checklist of factors to be considered when drafting a distribution contract:

- Exclusive Distributor/ Distributors.
- Terms and conditions of sale.
- Term for which the contract is in effect.
- Duration of the agreement.
- Marketing rights.
- Trademark licensing.
- Geographical territory covered by the agreement.
- Performance.
- Reporting.
- Returned goods credits and costs.
- Defects and returns provisions.
- Circumstances under which the contract may be terminated.

Difference between a distribution agreement and a dealer agreement

- A distributor agreement involves the manufacturer and a distributor, while a dealership agreement is between a distributor or a vendor and a dealer.

- Dealers, such as retailers or value-added resellers, buy products from distributors and resell them to their consumers. The distributor operates as an intermediary between a supplier and dealers in a distributor-dealer relationship.
- The scope of both agreements also varies. Distributors are often assigned territorial rights, which may stretch across one or several states, while dealers typically limit their operations to the city or a local community. The investment involved in Distributorship is considerably more than the Dealership. Both distributors and dealers rely on each other. The structure is such that distributors are wholesalers who buy from manufacturers and provide to dealers, whereas the dealers obtain products from the distributors and sell to the public.
- A dealership agreement often outlines the conditions of sales for items acquired from the distributor, as well as the dealer's expected obligations and responsibilities and the circumstances under which the agreement may be cancelled.

Franchise Agreement

A franchise agreement is a legally enforceable contract between a franchisor and a franchisee. These agreements authorise a franchisee to open a franchise site while also granting the ability to use franchise-specific resources such as branding, business methods, and supplier sources. A franchise agreement, like any other contract, is intended to define precise conditions for the parties' relationship. These agreements provide safeguards and duties that benefit both parties. Franchise agreements define the limitations within which franchisees can operate and clarify any financial commitments they have to their franchisors. They also often provide greater safeguards to franchisors than to franchisees. Typically, these types of agreements are unilateral in nature. One of the primary goals of a franchise settlement is to protect the franchise system as a whole. This includes the brand, the integrity of the operating system, and the conduct of franchisees within the mix.

What should a standard franchise agreement include:

1. Basis of the agreement
2. Grant of a franchise
3. The agreement's duration
4. Fee for franchising
5. Operations management
6. Services provided by franchisor
7. Safety of Intellectual Property
8. Training
9. Advertising
10. Limitations relating to defaults and damages
11. Obligations upon expiration
12. Royalties
13. Quality assurance
14. Indemnification
15. Geographic restrictions

16. Insurance
17. Restrictions and non-compete covenants.

Difference between a Distributorship Agreement and a Franchise Agreement

<i>Difference areas</i>	<i>Franchise Agreement</i>	<i>Distributorship Agreement</i>
The method of operation	The franchisee is allowed and encouraged to use the franchisor's trademarks and brand name in ordinary business procedures under the terms of the franchise agreement. To aid the franchisee's success, the franchisor also gives advertising and training assistance. To retain the franchisor's brand identity, a franchisee must follow precise criteria while promoting and selling items.	A distributor is not allowed to use the company's trademarked name when distributing its items. Instead, the distributor does business under its own identity. It serves as a product reseller, but it does not conduct business on behalf of the firm that manufactures the things.
The degree of control	Franchisor has far more influence over the franchisee and the franchisee's management of the franchised firm. An excellent example is a franchisor maintaining continuous quality control over its franchisees, frequently through an operations manual, marketing strategies, inspections, and other processes to guarantee brand standards are maintained across the network.	The supplier has less influence over the operations of a distributor.
Payments	A franchisee pays an initial fee and a continuing royalty to the franchisor in exchange for the right to operate the business under the franchisor's name.	A distributor pays for the items purchased from the supplier.

Specimen of a Dealership Contract

THIS AGREEMENT is made on the _____ day of _____, 20____

BETWEEN

ABC Ltd. a company incorporated under the Companies Act, 2013 and having its Registered Office at _____ and its Manufacturing unit at _____ acting through its Company Secretary, (hereinafter called "the company", which expression shall, unless the context admits otherwise, include its representatives) of the one part

AND

M/s _____ a partnership firm comprising Mr _____, Mr _____ and Mr _____ partners, having its main business place at _____ and branches at _____,

_____ and _____ (hereinafter called "the firm" which expression shall unless the context admits otherwise, include the partners, their heirs, executors, administrators, representatives and assigns of the other part).

WHEREAS the company is manufacturing _____;

AND WHEREAS the firm has its own marketing network and is selling goods of various branches and is desirous of selling the goods of the company at a new sales outlet recently taken on rent by it for the purpose and has communicated the same to the company;

AND WHEREAS the company, after having considered the proposal of the firm, has agreed to appoint the firm as its dealer on the terms and conditions as contained in this agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. That the company hereby appoints the firm as its dealer to sell its products, more specifically defined in the Schedule to this agreement, in the areas also clearly defined in the said Schedule.
2. The agreement shall remain in force for one year commencing from _____ and shall be renewable for similar periods on the agreed terms and conditions.
3. The firm shall keep a minimum stock of _____ pieces each of the company's products to meet the demand of the ultimate users/consumers, which quantity shall be reviewed every quarter in the light of the sales during the previous quarter and the market trends.
4. The company shall supply to the firm its products on fifteen days credit from the date of the invoice and if payments are not made within the credit period shall charge interest at the rate of _____ per cent per annum from the sixteenth day of the invoice till payment.
5. The company shall supply to the firm sufficient quantities of publicity and advertisement material for display at the firm's sales outlet and for distribution in its area of operation.
6. The company shall bear 50% of the cost of maintaining the sales outlet of the firm including rent thereof subject to a maximum of 5% of the invoice value of the firm of all the products of the company, which amount shall be credited to the firm's running account in the books of the company at the end of each quarter.
7. The company and the firm shall settle their accounts every six months and the balance credit/debit shall be squared by making payment by the party owing to the other.
8. The firm shall make all efforts to promote the sale of the company's products and in the event of the company forming an opinion on the basis of sale records that the firm is not properly performing its duty as dealer, the company shall be at liberty to terminate this agreement by giving the firm one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
9. The company agrees and undertake to supply to the firm its products as per the firm's orders and in the event of the company failing to supply the ordered goods within fifteen days of receipt of each purchase order, the firm shall be entitled to terminate the agreement by giving the company one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
10. The firm shall not sell any product of the company at a price higher than the one indicated by the company from time to time.
11. The firm shall be at liberty to appoint sub-dealers, salesmen, commission agents or other sales personnel on salary, commission or any other basis, so long as they function in accordance with the provisions of this agreement and do not do anything which is detrimental to the interest of the company, or the firm and the collective interest of both.

Note: Any additional terms and conditions of the appointment may be incorporated.

IN WITNESS THEREOF the parties aforementioned have signed this agreement in the presence of the witnesses:

SCHEDULE OF PRODUCTS

1. _____

3. _____

2. _____

4. _____

Witnesses:

(1) Name : _____ for ABC Ltd.

Father's Name :

Address : _____ (_____)

Signature : _____ Company Secretary

(2) Name : _____ Mr _____

Father's Name : _____ Mr _____

Address : _____ Mr _____

Signature : _____

Partners, M/s _____

Specimen of a Distributorship Agreement

This MEMORANDUM OF AGREEMENT entered on this _____ day of _____ 20____ at _____.

BETWEEN

_____, a company incorporated under the Companies Act, 2013 having its registered office at _____ (hereinafter referred to as 'A', which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

M/s _____ represented by its Sole Proprietor / duly Authorised Managing Partner, Mr./ Ms. _____ s/o / d/o / w/o Mr. _____, aged _____ years, having a permanent address at _____ and presently residing at _____ having Trading Business (hereinafter called "DISTRIBUTOR" which expression shall mean and include heirs, executors, administrators and legal representatives of the sole proprietor) of the Other Part.

WHEREAS

1. 'A' is a wholly owned subsidiary of 'A' Investments Ltd. and is engaged in the business of _____;
2. 'A' appoints DISTRIBUTORS for sale of the products through Whole Sale outlets.
3. The party of the Other Part is a merchant/trader with familiarization, experience in business with sound financial background.

4. The other party had approached 'A' for the appointment as the DISTRIBUTOR to purchase and distribute the products on a whole sale basis.
5. 'A' has agreed to appoint the party of the Other Part as the DISTRIBUTOR to buy and distribute certain identified products on a whole sale basis on terms and conditions set out herein.

The DISTRIBUTOR is registered with the appropriate Sales Tax Authority at _____ Local Sales Tax Certificate No _____ dated _____.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Distributor

That 'A' hereby appoints the party of the Other Part as the DISTRIBUTOR and the party of the Other Part agrees to act as the DISTRIBUTOR of 'A' and for the products or class of products of 'A' as set out in the schedule hereunder (referred to as the Products/Goods) on the terms and conditions stipulated hereunder. It is being understood between parties that 'A' retains the right to add to or remove specified products from the products listed in the said schedule.

2. Basis of the Agreement

The relationship between the parties shall be that of seller and buyer and not that of principle and agent and the transaction is on principle-to-principle basis not withstanding anything to the contrary that may be contained in this agreement or any correspondence or letters between the parties hereto. Accordingly, the DISTRIBUTOR shall at no point hold himself out as an agent of 'A' and 'A' shall not be responsible for any act omission or commission on the part of the DISTRIBUTOR.

3. Right to appoint other distributor

'A' shall have the right:

- (i) To appoint other DISTRIBUTORs in respect of all or any of the Products in the town in which the DISTRIBUTOR is situated and operated as 'A' may deem expedient and necessary.
- (ii) To sell all or any of the Products to any other persons at any time in the said town to whom 'A' wishes to sell.

4. Order placement/acceptance

- 4.1 The DISTRIBUTOR shall place the order with 'A' for supply of the products with remittance as provided in clause 8 herein.
- 4.2 The quantity ordered for each individual line shall be in multiples of standard pack size of such product which is considered reasonable.
- 4.3 Receipt by 'A' of remittance against an order shall neither imply acceptance of such order nor shall it imply 'A' has agreed to sell the Products at a price other than the price ruling on the date of dispatch by 'A'.
- 4.4 All orders for the Products so placed by the DISTRIBUTOR with 'A' shall be subject to acceptance by 'A'. If an order is accepted, 'A' may deliver the Products by such mode of transport, at such times, in such convenient lots and quantities, as 'A' shall in its discretion decide. 'A' shall be entitled at any time after acceptance of an order to cancel the same in whole or in part even though it shall have been partly executed. For this purpose, each lot dispatched against an order shall be deemed a separate contract and the failure of dispatch of one lot shall not vitiate or affect the contract as to other lots. The order shall be deemed to have been accepted by 'A' on the date of dispatch and only in respect of the goods actually dispatched.

5. Terms/Condition

Sales by 'A' of the Products to the DISTRIBUTOR shall be subject to the conditions of this Agreement and also subject to such other terms as may be specified on 'A's official order forms from time to time.

6. Sale price

- 6.1 The sale of products by 'A' to the DISTRIBUTOR shall be at the rates chargeable as per 'A's price list on the date of dispatch.
- 6.2 Each lot dispatched against an order shall be invoiced at 'A's prices to DISTRIBUTOR at the prices ruling on the date of dispatch which when so invoiced shall be binding on the DISTRIBUTOR without any previous notice in that regard. 'A' shall be entitled to vary the prices of the products at any time up to the date of dispatch.

7. Maximum retail price

'A' shall be entitled to suggest Maximum Retail Price (MRP) in respect of the resale or disposal by the DISTRIBUTORS of the stock of the Products supplied to the DISTRIBUTOR in orders placed by the DISTRIBUTOR. The DISTRIBUTOR shall not charge in excess of the MRP suggested by 'A' but he may at his discretion charge prices lower than the suggested MRP.

8. Payment

- 8.1 The sale of the goods by 'A' shall be on payment by RTGS/Demand Draft/cheque against supplies made as may be required by 'A' from time to time. The discretion of 'A' on choice of mode of payment shall be final and binding upon the DISTRIBUTOR.
- 8.2 Such payment against dispatch shall always be of essence to the transaction, which 'A' may accept to execute in whole or in part on receipt of the written or oral order of supply from the DISTRIBUTOR.
- 8.3 For the sake of administrative convenience, the DISTRIBUTOR may of his own accord and at his option keep with 'A' – duly signed, crossed 'account payee only' cheque drawn in the name of 'A' India Private Limited, with the direction to 'A' to fill up the amount of the bill/invoice of the goods dispatched/received/and confirmed by the DISTRIBUTOR.
- 8.4 The signed cheques, until and unless contramanded, shall be deemed to constitute a representation and assurance on the part of the DISTRIBUTOR, to 'A' that the DISTRIBUTOR has sufficient funds with his banker to cover the amount of the cheque.
- 8.5 The DISTRIBUTOR shall keep with 'A' a continuing security deposit of Rs. _____ (Rupees _____ only) against which the DISTRIBUTOR shall be paid interest @ 6.50% P.A. Such interest shall be paid to the DISTRIBUTOR once in a year. The security amount is refundable at the time of termination of agreement by either party.

9. Hold the goods in trust

If the DISTRIBUTOR pays the price of the goods by cheque, then the DISTRIBUTOR shall hold the goods or the value thereof in Trust for the benefit of 'A' until the full amount of the cheque is realized.

10. Lien on goods

'A' shall have lien over the goods or the value thereof and /or any other goods/stocks and other materials which are in possession with the DISTRIBUTOR till the receipt of payment by 'A'.

11. Unpaid cheque

Each sale to the DISTRIBUTOR shall be treated as a cash sale and in case the said cheque is not realized within their reasonable period or returned unpaid then the DISTRIBUTOR would replace the said cheque by RTGS /Demand Draft payment only within seven days of intimation from 'A' to the DISTRIBUTOR; failing which 'A' shall initiate legal action and also terminate this agreement if deemed necessary by 'A'.

12. Dispatch

Goods will be dispatched by rail, road, and water, according to the availability and suitability of the mode of transport at 'A's discretion. Dispatches by rails will be at railway risk. Dispatches by water where goods are sold at C.I.F. will be insured by 'A's W.P.A. including risk of theft, pilferage and non-delivery _____.

13. Delivery

Delivery under such contracts of sale by 'A' shall be deemed to be sufficient if 'A' sends to the DISTRIBUTOR railway receipt/ lorry receipt/ bill of lading / delivery order or other document entitling the DISTRIBUTOR to obtain delivery of the products_____.

14. Failure to take delivery

On the failure of the DISTRIBUTOR to take delivery within a reasonable period and pay for the goods dispatched or delivered by 'A' upon the terms and conditions of the contract of sale 'A' shall be entitled to sell or dispose of the goods on the account and risk of the DISTRIBUTOR in all respects either by public auction or by private bargain without notice to the DISTRIBUTOR.

15. Claim on quality

The DISTRIBUTOR shall not be entitled to make any claim for an allowance or otherwise in regard to the quality of the goods on the date of dispatch unless notice in writing of the DISTRIBUTOR to make such claim is given to 'A' within seven (7) days after the date the goods arrived at the destination. In default of such notice the goods sold hereunder shall be deemed in all respects to be in accordance with the contract.

16. Distributor service & support

The DISTRIBUTOR shall be primarily responsible for markets/territories covered by his operation in order to provide prompt, equitable and effective distribution services to the customers_____.

17. Business Promotion

In the terms of the present agreement the DISTRIBUTOR reiterates his commitment to work in promoting 'A's business, brands, products and goodwill. In furtherance of the same the DISTRIBUTOR agrees to support and assist 'A' in the brand/product promotion exercises undertaken from time to time, through sales promotion exercises/schemes/ contests/ trade discounts/ _____.

18. Optimum level stocks

To ensure the availability of quality products at optimum levels in the market the parties agree that 'A' may from time to time suggest norms for damaged stock disposal, stock controls, and stock rotation which norms may be verified through a system of reporting as may be decided between the parties from time to time.

19. Information and records

The DISTRIBUTOR will faithfully and correctly, in specified formats, maintain and furnish all such

information and data as may be required by 'A' from time to time in order to track sales, consumer demands/preferences, ascertain overall market positions, sales performance of 'A's products.

20. Statutory obligations

The DISTRIBUTOR shall discharge all statutory obligations cast upon him including those under indirect taxation statutes and shall forthwith, upon request, furnish the returns/proof/declarations forms in respect thereof to 'A' failing which, any consequential liability accruing to 'A', 'A' shall be at liberty to adjust appropriate and/or recover the amounts from the DISTRIBUTOR.

21. Secrecy / confidentiality

The DISTRIBUTOR undertakes that all information, arising out-of and in the course of this agreement, pertaining to the sale of the products, including formal records, summaries and reports as mentioned above, shall be treated as confidential information. The DISTRIBUTOR shall use its best endeavour to ensure that the employees who have authorised access to such information shall keep it confidential and in secrecy.

22. Duration of the Agreement and renewal

This Agreement shall be in force unless and until terminated as mentioned in para 23 below

23. Termination

This agreement may be terminated by either Party without assigning any reason by giving 30 days written notice to the other party or in the event of a breach /violation of the any of the terms, conditions and obligations OR by Mutual consent.

'A' can terminate this agreement on the happening of any one or more of the following events:

- i. In case of individual or sole proprietary concern, on the death of the individual or sole Proprietor or any change in the status or ownership or conversion to partnership firm or any other form of trading.
- ii. In case of Partnership firm, a change in the constitution of the firm by death dissolution, taking in a new partner or dispute among partners *inter-se* or otherwise changing the structure/management of the DISTRIBUTOR business without notice to 'A'.

24. Trademark

- a. The DISTRIBUTOR should not use the trade name, logo, trade mark, design, copyright belonging to 'A' or of which 'A' is the proprietor/owner thereof in any way which might challenge or damage the validity or use of trade name, trade mark, design, copyright wrongfully causing injury to 'A's business, reputation & goodwill.
- b. The DISTRIBUTOR shall not use adopt/utilize any of 'A's logo, trade mark, design, copyright as a part of any trade name or its or any other corporate name on any other product or literature, pamphlet or except as otherwise expressly the authorized in writing by 'A' _____.

25. Distributor

It is expressly agreed and understood between the parties that all the staff and personnel employed by the DISTRIBUTOR are and all time be and remain as DISTRIBUTOR's employees.

26. Distributor to return books

On the termination of this agreement the DISTRIBUTOR shall forthwith shall return to 'A' all books,

documents, papers, software packages, industrial property and other property of the property in possession of the DISTRIBUTOR.

27. No waiver

Any indulgence shown by 'A' or failure on the part of 'A' to enforce at any time the provisions of this Agreement shall in no way be construed to be waiver of such provisions or affect 'A's right to enforce such provision any time thereafter.

28. Jurisdiction

The DISTRIBUTOR agrees that the place for all goods sold or supplied to him by 'A' under this agreement is _____ (Place of Business) and that any suit to enforce the rights of either party under or in respect of this agreement shall be instituted in and tried by a competent court only in the City of _____ (Place of Business) and in no other court. The DISTRIBUTOR further expressly agrees to submit to the jurisdiction of such court.

29. Dispute resolution

All disputes between the parties, relating to or arising from this agreement shall in the first instance resolve through mutual discussions by the parties. Any unresolved disputes shall be referred to a mutually appointed Sole Arbitrator.

30. Commissions

In consideration of the services rendered by the Firm, 'A' will pay to the Firm Commission & other charges as agreed from time to time.

31. Supersedes previous agreements

This agreement supersedes all previous communications, representations, assurances or agreement either written or oral between the parties hereto or between "The DISTRIBUTOR" and any other Entity to which A' is a successor.

32. Agreement in duplicate

The agreement is executed in duplicate the original whereof will remain with 'A' and the duplicate will remain with the DISTRIBUTOR.

33. Headings / captions

The Headings / Captions to the various sections/clauses are given to facilitate easy location and shall not be referred for construction or interpretation thereof. IN WITNESS whereof the parties hereto have hereunto duly executed these presents the day, month and year first above return.

Signed sealed and delivered by

Signed sealed and delivered by the Distributor, M/s

'A' (through Authorised Representative)

through its Sole Proprietor/ Managing Partner

Witness

1. _____

2. _____

Specimen of a Franchise agreement

This agreement is made on this _____ day of _____, 20____ at _____.

BETWEEN

M/s ABC Pvt Ltd through its Director Mr _____ S/o Shri _____
having its registered office _____ & Corporate office at _____
_____ (Hereinafter called the party of the First part or the Company or the Seller).

AND

M/s. _____ through its proprietor Mr. _____ S/o Mr.
_____ residing at _____. (Hereinafter called
the Party of the Second Part or the buyer).

Whereas the party of the First Part is manufacturing and marketing their readymade garments products
“_____” & their other brands.

Whereas the party of the Second Part has shown interest for opening a showroom of the party of the First Part
which has agreed to appoint the party of the Second Part as its Authorised Buyer.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. That the Party of the First Part hereby appoints M/s _____ the Party of
the Second Part as their Operational Brand Franchisee/Consignment Agent and allows it to retail all
“_____” & their other brands Products through its showroom which will be
opened at _____.
2. The party of the Second Part will not sell the product of any other brands in the Show Room.
3. That the agreement shall come into effect from _____ and the Party of the First
Part shall dispatch and deliver the goods to the party of the Second Part on sale/purchase basis.
The freight of goods sent on consignment shall be borne by the party of the First Part i.e. the goods /
products shall be supplied to the party of the Second Part on F.O.R basis by Road Transport only; air
freight shall be payable by the party of the Second Part minus subsidy of Road Transport charges.
4. That the party of the Second Part shall be allowed a net Sales Margin of 10% on Selling Price (Net
realization) upto a sales target of Rs. 50 lacs (Rupees Fifty Lacs) annually. If the Annual Net Sales
Amount exceeds Rs. 50 lacs (Rupees Fifty Lacs) but is less than Rs. 50 lacs (Rupees Fifty Lacs) then the
Party of the First Part shall award the Second Part an incentive of 2% (one percent) on entire amount.
If the Annual Net Sales Amount exceeds Rs. 50 lacs (Rupees Fifty Lacs) but is less than Rs. 80 Lacs
(Rupees Eighty Lacs) then the Party of the First Part shall award the Second Part an incentive of 1% (one
percent) on the entire amount. For any amount of Annual Net Sales that exceeds Rs. 80 (Rupees Eighty
Lacs) an additional 1% (one percent) of the entire amount will be paid as incentive by the party of the
First Part.
5. Calculation for basic Sales Margin will be done monthly. Incentives on the Annual Net Sales, if it
exceeds Rs. 50 Lacs (Rupees Fifty Lacs) will be determined at the end of the year.
 - (a) That the party of the Second Part shall deposit total Net Realization Value (i.e. gross sales
including GST/VAT) payment with the party of the First Part in respect of the goods sold on daily
basis. This procedure has to be strictly followed. Any delay in depositing the payment for more
than 3 working days will attract interest @ 24% p.a. & if the payment is delayed more than 7 days
the party of the Second Part will be treated as defaulter.

- (b) It is mandatory to send monthly sales and bank deposits showing balance “NIL” on the end of the month before 5th of the next month by the Party of the Second Part as per performa attached herewith by the Party of the First Part.

In case of non-deposit/payment of the daily sales proceeds into the bank account of the party of the First Part, the First Party holds the right to withhold the Sales Margin cheque due towards the Second Party until that time when the Second Party releases the payment of all due amount till the latest date.

6. The store has minimum covered area of 500 Sq. ft.
7. That the party of the Second Part shall arrange the furnished premises as per design and maps provided by the Party of the First Part at their own expenses for the purpose of Brand Retail Showroom of the product under the brand names of “_____” & their other brands only.
8. Operating and staffing expenses
 - a) The party of the Second Part alone shall be responsible for and shall bear all recurring charges and expenses, whatsoever, incurred or to be incurred in carrying on their business without prejudice to the generality of the foregoing, the Second Party shall pay:
 - All rates and taxes and other outgoing payable to the local authorities in respect of their office and storage premises.
 - All wages and salaries of the employees/employed in the showroom, all day-to-day expenses, courier, maintenance & running expenses and miscellaneous expenses for operating the showroom.
 - All charges in connection with the up-gradation of the computer hardware and peripherals such as printers, scanners, modem, etc.
 - All rent and related ancillary expenses of the office or storage premises.
 - (b) The Second Part shall at its own expense and cost employ / engage as many suitable personnel as the first part may consider necessary (i.e. one sales person per 300 sq.ft of shop area) for maintaining the premises, for displaying the stock and for carrying out other functions in order to provide efficient services to the customers.

The First Party shall (if it feels necessary) assist the Second Party in the selection, recruitment and training of such personnel. The second party shall bear all salaries, expenses and contributions including statutory contributions in respect of such personnel and it is agreed that they shall at no point of time be or construed to be the employees of the Company (party of the First Part).
 - (c) The Second Party shall use only such software stationery, letterheads, name board and other items as have been either supplied by the Company or approved for use by the Company in writing.
 - (d) The Second Party shall not at any time release advertisements in newspapers or other publications, brochures, pamphlets, direct mail, etc or undertake any other form of sales promotion in the name of or on behalf of the Company except in the form and manner approved by the Company in writing.
9. That their shall be some sales through credit card for which the First Party shall bear the commission which is as actual as charged by the Card Agency. The First Party shall pay this amount of commission to the concerned bank on monthly basis.

10. Stocks to be adequately insured for all risk (earthquake, fire, riots) with the policy stating the beneficiary being the first part in event of any claim. The cost of all such insurance will be borne by First Party. In the unfortunate event that any damage shall be incurred by the Party of the Second Part due to such force majeure the liability of the total extent of the damage done is the sole responsibility of the Party of the Second Part and in the event that a settlement claim shall be received from the Insurance company by the Party of the First Part, such amount shall be credited to the Second Part's account.
11. That the Second Party shall deposit the local GST/VAT amount as per Jammu & Kashmir State GST/VAT Rules & maintain all the records of the same. The First Party will reimburse this GST/VAT amount to the Second Party. The Party of the Second Part will be responsible to pay GST (Goods and Service Tax) on their GST no. against E-Way Bill . The party of the First Part hold the right to keep in abeyance such amount equivalent to 4% of the Value of the Goods sent for which the Part of the Second Part fails to provide the Party of the First Part the necessary 'Any' Forms.
12. That the working will be on simple sale purchase basis and credit notes will be issued in case of any goods return on the basis of debit note raised by the party of the Second Part and sent with the return documents as per the performa being given by the company.
13. The First party will be liable to reimburse only GST/Vat calculated as per law prevailed at that time. All other taxes including Service Tax (if applicable), etc. will be paid by the Second Party. The Party of the Second Part is liable to bear ½ or 50% of the GST (Goods and Service Tax) paid by the First Party for selling the goods to the Second Party. If due to unawareness or negligence on the part of the Second Party any liability arises or becomes due, the First Party will not be responsible for that in any manner.
14. Ownership and custody of goods
 - It is specifically understood and agreed by and between the parties that at all times the Company shall be the sole and exclusive owner of the Products supplied by the First Party to the Second Party under this agreement and/or in the possession of the Second Party or in transit. Nothing herein contained shall be deemed or intended to create any proprietary rights on the Products in favour of the Second Party. The products shall always belong to and remain in the judicial custody of the First Party.
 - The Second Party shall not have or claim any right, title, interest, claim or demand in the products entrusted to them and they shall not have any lien or any other claim whatsoever in or upon the Products.
 - The Second Party shall not purport to hypothecate, create any right whatsoever in respect of the products entrusted to them under this Agreement.
 - The Second Party shall not pledge, loan, gift or in any other manner deal with or dispose of or destroy the products or do any act, deed or thing whereby any right, title or interest of the First Party in the products entrusted to the Second Party are in any manner adversely affected.
 - The Second Party shall ensure proper and safe custody of the stock of the First Party.
 - The First Party shall be entitled to conduct physical stock verification of the stocks and/or the books of accounts maintained by the Second Party either by its own employees or by the auditors or through any other person authorized by the Co., periodically or at any time as may be convenient during a working day. In the event of there being any difference between the physical stock and the stock as per the books of the First Party, then the value of such stocks at the M.R.P. less Sales Margin shall be compensated to the First party in addition to the interest of 2% per month for the period between the last reconciliation/business commencement date till the day such shortage was found. Such amount shall be deposited in the Bank immediately, failing which the amount

involved along with the interest shall be recovered from the Sales Margin payable to the Second Party by the First Party.

15. (a) That the second party shall be responsible for any shortage or loss due to the pilferage or damage to the goods. However, the second part shall not be held for the damages / loss that may be incurred due to reasons beyond their control i.e. fire, riots, natural calamities like flood, earthquake , etc. which would be covered by Insurance Company and claims payable to the first party. In the case of theft, burglary and robbery the total value of the goods stolen is the responsibility of the party of the Second Part.
- (b) That in the event of any loss / damages arising due to fire, earthquake ,riots or any other force majeure conditions may be, the party of the First part shall not be liable any damages to the building and no Sales Margin will be paid to the Party of the Second Part for the period till the building becomes usable for the purpose of business of the Party of the First Part.
16. That The party of the Second Part will give refundable interest free security deposit of Rs.7,00,000 (Rs. Seven Lacs Only) which will be refunded only when the agreement is terminated by the party of the First Part provided NO dues are outstanding by the Second Party (Daily Sales Amount, Furniture purchase, etc.)
17. That the party of the Second Part agrees and undertakes to keep four without dated cheques of Rs.250000/- each aggregating to Rs.10 lacs as security with the party of the First Part during the tenure of this agreement. The party of the First part shall be entitled to cash the said cheques in case of default in payment of its liabilities by the party of the Second Part in accordance with the Law.
18. That party of the Second part shall be responsible for all the insurance of furniture, fixture, interior, air conditioner, cash-in-hand at the shop, office equipment etc. of the shop. However, the cost of all such insurance shall be borne by the second party. The copy of such policy shall be provided to the party of the First Part.
19. That the party of the Second Part shall maintain proper records which includes books of accounts and stock showing the sales made and the stock lying with them in respect of the goods dispatched under this agreement and shall send every month a sales & stock statement to the party of the First Part along with Trial Balance up to 7th of next month. In order to clear the non-saleable stocks lying with the party of the Second Part / showroom the party of the First Part can ask the party of the Second Part for organizing the clearance sale.
20. That in the case of this agreement being terminated the party of the First Part shall buy back all the non-saleable stock from the Second Party at the price charged by the First Party in the invoice. In case the Second Party terminates the agreement within 3 years the party of the First Part in not liable to buy back the stock lying at their shop.
21. That this agreement is valid for the period of 3 years from March 1st 2020. The party of the Second Part will be locked in for a period of 3 years. If the party of the Second Part terminates the agreement before the expiry of 3 year then it will have to bear the cost of In-store branding, Glow Signboard, Software Wizapp cost, 50% Advertising costs in newspapers & cable TV and other media used for the benefit the franchisee's sale as well as full transportation costs to and from franchisee's store location and reshelving fee of 10% of goods sent back.

If the party of the Second Part fails to send the party of the First Part daily sales data and the Cash deposits for a period of more than one (1) month then the party of the First Part retains the right to terminate the agreement and confiscate the interest free security deposit given by the party of the Second Part. On termination of this agreement by the party of the First Part, the party of the Second Part

- shall hand over all the stocks lying with them to the party of the First Part immediately and all accounts shall have to be cleared with the party of the First Part in respect of the goods sold and shortages or loss if any.
22. That the party of the First Part shall maintain a total stock quantity of 2000 pieces of garments and accessories at all times. Stock quantity at this location shall be voluntarily increased by the First Party according to the monthly average pieces sales ratio.
 23. That the party of the First Part will supply the stationery / packing material to the party of the Second Part from time to time, free of cost, to promote the sales and facilitate the customers.
 24. That all the expenses at any stage in all conditions and circumstances of advertisements like Banners, hand bills, through radios / A.I.R., Cables, TV, Posters, Hoarding, Newspapers, Newsprint, Magazines etc. shall be borne and arranged by the party of the First Part to promote the sales of the product of the Company, albeit not exceeding 3% of the Net Sales till the time such expenses are met.
 25. That party of the Second Part can't sell products at a price higher than maximum retail price quoted on the products. However, discounts/clearance sales will be allowed to customers from time to time with instructions/policies of the party of the First Part.
 26. That the party of the Second Part will make no sales to dealers/whole sellers.
 27. In the event of the failure of the party of the Second part to comply with the above provisions or to provide proper services to the customers, the Party of the First Part shall be entitled to terminate the agreement without any prior notice and giving sufficient evidence to prove the failure of the Party of the Second Part.
 28. The party of the Second Part shall open the “_____” Brand Show Room in all 7 days of the week and, if required the party of the Second Part shall take prior approval for opening the shop from the concerned authorities.
 29. That any violation in the above terms and conditions shall give the right of termination of this agreement to the party of the First part. On termination of this agreement, the party of the Second part shall hand over all the stocks with them to the Party of the First part immediately and full accounts in respect of the goods sold and shortages or loss if any.
 30. Any dispute arising from or in connection with this Agreement shall be settled by amicable efforts from the parties to the dispute or / otherwise it may be referred to arbitration. In case of arbitration, it shall be referred to Mr. A who is a pre-approved arbitrator by both the parties and the proceedings of such an arbitration will only be held in Delhi. Such an Arbitration proceeding will adhere to the Arbitration and Conciliation Act, 1996. The competent court in Delhi alone shall hereby have jurisdiction in respect of all matters arisen out of this Agreement or Arbitration.
 31. This agreement is done with the aid and help of Mr. D who takes full responsibility of stock shortages and reconciliation, meeting sales targets and Retail Costs, daily data transfer, supply of any Forms, collection and deposition of daily Sales proceeds in ABC PVT LTD.'s bank account.
 32. There are two identical copies of the same agreement printed on Indian Non-Judicial Stamp paper nos. _____ and _____. In the event that either of them differs then the final agreement copies that both parties will have to adhere to will be Stamp paper no. _____.
 33. All disputes arising under or out of this Agreement or in any way connected with this Agreement shall be subject to the jurisdiction of the courts of _____.

IN WITNESS WHEREOF, the parties have this _____ day of _____, 20____ caused their respective seals to be affixed on this Agreement.

For FRENCHISER ABC PVT LTD For

(Authorised Signatory)

(Authorised Signatory)

IN PRESENCE OF

Witness 1 _____

Witness 2 _____

OUTSOURCING AGREEMENTS

Outsourcing is the contracting out of a company's activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.

Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO). BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities. Knowledge Process outsourcing (KPO) includes outsourcing related to legal, paralegal, and other highly skilled activities. A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises. However, many a times people neglect to pay attention while drafting an outsourcing agreement. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a professional before finalizing any outsourcing agreement.

Before signing an outsourcing agreement, the following factors must be properly addressed:

- Duties and obligations of Outsourcer
- Duties and obligations of service receiver
- Security and confidentiality
- Legal compliance
- Fees and payment terms
- Proprietary rights
- Auditing rights
- Applicable law to outsourcing agreement
- Term of the Agreement
- Events of Defaults and Addressing
- Dispute Resolution Mechanism
- Time limits
- Location of Arbitration
- Number of Arbitrators
- Interim measures/Provisional Remedies
- Privacy Agreement

- Non-compete Agreement
- Confidentiality Agreement
- Rules Applicable
- Appeal & Enforcement
- Be aware of local peculiarities
- Survival terms after the termination of the outsourcing agreement.

Every outsourcing agreement should be modified as applicable under different circumstances. [Source: *www.madaan.com*]

A Specimen of Outsourcing Agreement for Converting Hard Copies of a Book in a Compact Disc (CD)

This Agreement for the conversion of the book titled "Intellectual Property Protection in India" is executed on _____ day of _____, 20____ at _____

BY AND BETWEEN

The Silvername Law Publishing Co. Pvt. Ltd. having their Office at _____ represented by Mr _____ Manager, Silvername Law Publishing Co. Pvt. Ltd. (hereinafter referred to as 'the SLP Pvt. Ltd.)

AND

M/s Redwell Web Services Pvt. Ltd, a Company registered under the Companies Act having their office at _____ and represented by Mr _____ Director, M/s Redwell Web Services Pvt. Ltd, (hereinafter referred to as the M/s Redwell Pvt. Ltd.)

WHEREAS the SLP Pvt. Ltd. has published the book Intellectual Property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (Compact Disc) along with a Search Engine. The SLP Pvt. Ltd. floated a tender for this book vide tender document with closing date _____ and after evaluating the bids of various parties, the SLP Pvt. Ltd. has decided to award the project to M/s Redwell Pvt. Ltd. on the following terms and conditions:

- (1) M/s Redwell Pvt. Ltd. would perform the job of digitisation (of the relevant portions marked for digitization) of the book including Data punching / Scanning, OCR Validation, Proof-reading (at an accuracy level of 99.9%), Tagging according to search parameters, Linking, Indexing etc.
- (2) M/s Redwell Pvt. Ltd. would be developing a search engine as per the SLP's requirement. The search engine would be licensed to the SLP Pvt.Ltd. for its perpetual use. The SLP Pvt. Ltd. would further be free to use this Search Engine for any purpose and would not be liable to pay to M/s Redwell Pvt. Ltd. any additional amount for such usage.
- (3) The copyright of the contents of the CD, marketing rights and all other rights pertaining to the said CD would solely vest with the SLP Pvt. Ltd.
- (4) M/s Redwell Pvt. Ltd. undertakes to complete the assignment within a period of 100 days from the date of execution of this agreement.
- (5) After the completion of the job M/s Redwell Pvt. Ltd. would give sufficient training including technical aspects (relating to the features of the search engine developed by the M/s Redwell Pvt. Ltd. to the people deputed by the SLP Pvt. Ltd. to facilitate to use the search engine independently. The training must be up to the satisfaction of the SLP Pvt. Ltd. in all aspects.

- (6) M/s Redwell Pvt. Ltd. would hand over the digitized contents of the book to the SLP Pvt. Ltd. after the completion of the job.
- (7) The total project cost to be paid to M/s Redwell Pvt. Ltd. would be as follows.
- Cost of developing the Search Engine – Rs _____ (Rupees _____ only)
 - Digitization cost for each page (in hard copy) – Rs _____ per page
 - Conversion cost for each page (in soft copy) – Rs _____ per page
 - Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs _____ per CD

It is to be noted that the original CD lot would be of 750 CDs only.

For the purpose of page count, 50% or more coverage would be treated as one full page and less than 50% would be ignored and would not be taken in counting.

- (8) M/s Redwell Pvt. Ltd. would not be paid any advance money for undertaking the job. M/s Redwell Web Services Pvt. Ltd. would however be paid 25% of the total project cost after the stage of completion of the Master CD and subject to the satisfaction of the SLP Pvt. Ltd.
- (9) M/s Redwell Pvt. Ltd. agrees to keep the hard copies of the book given for digitization in good shape. M/s Redwell Pvt. Ltd. has however been allowed to mark the relevant portions required for search taggings with special marks.
- (10) For updating the CD, the SLP Pvt. Ltd. reserves the right to either conduct the updation in part on its own or the SLP Pvt. Ltd. may assign this job to M/s Redwell Pvt. Ltd. or any other agency. If the SLP Pvt. Ltd. decides to assign this job to M/s Redwell Pvt. Ltd., the cost would be as follows:
- Content assimilation, Software upgradation and Annual Maintenance charges – Rs. _____ per annum
 - Conversion cost of each page (in soft copy) – Rs _____ per page
 - Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs _____ per CD (subject to a minimum lot of 1000 CDs)
- (11) Both the parties i.e. The SLP Pvt. Ltd. and M/s Redwell Pvt. Ltd., agree to abide by all remaining terms and conditions of the original tender document floated by the SLP Pvt. Ltd. for the said job.
- (12) Any notice or request or communication given or required to be given under this contract shall be given to:
- In case of M/s Redwell to:
- Mr. _____, Director, M/s Redwell Web Services Pvt. Ltd. (Give Address) _____
- In case of SLP Pvt. Ltd. to:
- Mr _____, Manager, Silvername Law Publishing Co. Pvt. Ltd. (Give Address) _____
- (13) M/S Redwell PRIVATE LIMITED HEREBY FURTHER COVENANTS AND AGREES to indemnify and keep at all times indemnified the SLP Pvt. Ltd. against any loss or damage that the SLP may sustain as a result of the failure or neglect of M/s Redwell to faithfully carry out its obligations under this

agreement and further to pay for all losses, damages, costs, charges and expenses which the SLP Pvt. Ltd. may reasonably incur or suffer and to indemnify and keep indemnified the SLP Pvt. Ltd. in all respects.

- (14) This Agreement can be terminated by the SLP Pvt. Ltd. by giving three month's notice in writing in the event of failure of M/s Redwell Pvt. Ltd. for adhering to time schedules / unsatisfactory execution of the conversion of the book or quality of output or requisite training not given to the people deputed by the SLP Pvt. Ltd or for any other reasonable cause and under such notice period, the performance of the project shall continue in operation by both the parties.
- (15) **FORCE MAJEURE** : If at any time during the continuance of this contract, the performance in whole or in part by either party or any obligation under this contract is prevented or delayed by reason of any war, hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, power failure or acts of God (herein after referred to as events) provided notice of the happenings of any such event is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such events, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such nonperformance or delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 180 days, both parties shall consult each other regarding the termination of the contract on agreed equitable terms or otherwise devise future course of action.
- (16) All disputes, claims and demands arising under or pursuant to or concerning this contract shall be referred to the sole Arbitrator to be appointed by the Chief Manager, SLP Pvt. Ltd. The award of the sole Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall be held under the provisions of the Arbitration and Conciliation Act, 1996 as amended till date. The place of arbitration shall be _____.
- (17) The Courts at _____ (Mention the name of the place) alone shall have jurisdiction to adjudicate any dispute arising between the parties under this agreement.
- (18) Notwithstanding anything contained in this agreement, the parties agree that any terms of this agreement may be varied by way of supplementary deed/agreement. Such supplementary agreement/deed shall be effective only if it is in writing and signed by duly authorised representatives of both the parties.

IN WITNESS WHEREOF the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

Signed and Delivered By:

On behalf of M/s Redwell Web Services Pvt. Ltd.

On behalf of SLP Pvt. Ltd.

Name:

Name:

Designation:

Designation:

Place:

Place:

In the presence of witnesses:

- 1.
- 2.

NON-DISCLOSURE AGREEMENT

A non-disclosure agreement (NDA) which is sometimes also referred to as a “Confidentiality Agreement” is a legally binding contract that establishes a confidential relationship. The party or parties signing the agreement agree that confidential/sensitive information they may obtain will not be made available to any others. An NDA may also be referred to as a confidentiality agreement. The NDA serves a purpose in a variety of situations e.g. NDAs are generally required when two companies enter into discussions about doing business together but want to protect their own interests and the details of any potential deal. In this case, the language of the NDA forbids all involved from releasing information regarding any business processes or plans of the other party or parties. The key elements of Non-Disclosure Agreements:

- Identification of the parties
- Definition of what is deemed to be confidential
- The scope of the confidentiality obligation by the receiving party
- The exclusions from confidential treatment
- The term of the agreement.

Specimen of Non-disclosure Agreement

THIS NON-DISCLOSURE AGREEMENT (Agreement) IS MADE AND ENTERED ON THIS THE _____ DAY OF _____, 20_____

BY AND BETWEEN

(1) _____ a company incorporated under the Companies Act, 2013 with CIN _____ and having its registered office at _____ (hereinafter referred to as “**Company**”.)

AND

(2) _____ a company incorporated under the Companies Act, 2013 with CIN _____ and having its registered office at _____ (hereinafter referred to as “**Corporation**”)

(**COMPANY** and **CORPORATION** shall hereinafter be referred to as such or collectively as “Parties” and individually as “Party”.)

WHEREAS both the Parties herein wish to pursue discussions and negotiate with each other for the purpose of entering into a potential business arrangement in relation to _____ (“Proposed Transaction”);

AND WHEREAS the Parties contemplate that with respect to the Proposed Transaction, both the Parties may exchange certain information, material and documents relating to each other’s business, assets, financial condition, operations, plans and/or prospects of their businesses (hereinafter referred to as “Confidential Information”, more fully detailed in clause 1 herein below) that each Party regards as proprietary and confidential; and

AND WHEREAS, each Party wishes to review such Confidential Information of the other for the sole purpose of determining their mutual interest in engaging in the Proposed Transaction.

IN CONNECTION WITH THE ABOVE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. “Confidential and or proprietary Information” shall mean and include any information disclosed by one Party (Disclosing Party) to the other (Receiving Party) either directly or indirectly, in writing, orally, by

- inspection of tangible objects (including, without limitation, documents, prototypes, samples, media, documentation, discs and code). Confidential information shall include, without limitation, any materials, trade secrets, network information, configurations, trademarks, brand name, know-how, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and/ or future business and operations of the Disclosing Party and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Disclosing Party. Confidential Information may also include information disclosed to the Receiving Party by third parties on behalf of the Disclosing Party.
2. The Receiving Party shall refrain from disclosing, reproducing, summarising and/or distributing Confidential Information and confidential materials of the Disclosing Party except in connection with the Proposed Transaction.
 3. The Parties shall protect the confidentiality of each other's Confidential Information in the same manner as they protect the confidentiality of their own proprietary and confidential information of similar nature. Each Party, while acknowledging the confidential and proprietary nature of the Confidential Information agrees to take all reasonable measures at its own expense to restrain its representatives from prohibited or unauthorised disclosure or use of the Confidential Information.
 4. Confidential Information shall at all times remain the property of the Disclosing Party and may not be copied or reproduced by the Receiving Party without the Disclosing Party's prior written consent.
 5. Within seven (7) days of a written request by the Disclosing Party, the Receiving Party shall return/ destroy (as may be requested in writing by the Disclosing Party or upon expiry and or earlier termination) all originals, copies, reproductions and summaries of Confidential Information provided to the Receiving Party as Confidential Information. The Receiving Party shall certify to the Disclosing Party in writing that it has satisfied its obligations under this paragraph.
 6. The Receiving Party may disclose the Confidential Information only to the Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party shall have executed or shall execute appropriate written agreements with third parties, in a form and manner sufficient to enable the Receiving Party to enforce all the provisions of this Agreement.
 7. Confidential Information, however, shall not include any information which the Receiving Party can show:
 - i) is in or comes into the public domain otherwise than through a breach of this Agreement or the fault of the Receiving Party; or
 - ii) was already in its possession free of any such restriction prior to receipt from the Disclosing Party; or
 - iii) was independently developed by the Receiving Party without making use of the Confidential Information; or
 - iv) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party.
 8. In the event either Party receives a summons or other validly issued administrative or judicial process requiring the disclosure of Confidential Information of the other Party, the Receiving Party shall promptly notify the Disclosing Party. The Receiving Party may disclose Confidential Information to the extent such disclosure is required by law, rule, regulation or legal process; provided however, that, to the extent practicable, the Receiving Party shall give prompt written notice of any such request for such information to the Disclosing Party, and agrees to co-operate with the Disclosing Party, at the

Disclosing Party's expense, to the extent permissible and practicable, to challenge the request or limit the scope thereof, as the Disclosing Party may reasonably deem appropriate.

9. Neither Party shall use the other's name, trademarks, proprietary words or symbols or disclose under this Agreement in any publication, press release, marketing material, or otherwise without the prior written approval of the other.
10. Each Party agrees that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character and that an impending or existing violation of any provision of this Agreement would cause the other Party irreparable injury for which it would have no adequate remedy at law and further agrees that the other Party shall be entitled to obtain immediately injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity.
11. The Receiving Party shall indemnify the Disclosing Party for all costs, expenses or damages that Disclosing Party incurs as a result of any violation of any provisions of this Agreement. This obligation shall include court, litigation expenses, and actual, reasonable attorney's fees. The Parties acknowledge that as damages may not be a sufficient remedy for any breach under this Agreement, the non-breaching party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies at law or in equity.
12. Neither Party shall be liable for any special, consequential, incidental or exemplary damages or loss (or any lost profits, savings or business opportunity) regardless of whether a Party was advised of the possibility of the damage or loss asserted.
13. Both the Parties agree that by virtue of the Parties entering into this Agreement neither Party is obligated to disclose all or any of the Confidential Information to the other as stated in this Agreement. The Parties reserve the right to disclose only such information at its discretion and which it thinks, is necessary to disclose in relation to the Proposed Transaction.
14. Both the Parties agree that this Agreement will be effective from the date of execution of this Agreement by both Parties and shall continue to be effective till the Proposed Transaction is terminated by either Party by giving a thirty (30) days notice, in case either Party foresees that the Proposed Transaction would not be achieved.

Notwithstanding anything contained herein, the provisions of this Agreement shall survive and continue after expiration or termination of this Agreement for a further period of five year(s) from the date of expiration.

It being further clarified that notwithstanding anything contained herein, in case a binding agreement is executed between the Parties in furtherance of the Proposed Transaction, the terms and conditions of this Agreement shall become effective and form a part of that binding agreement and be co-terminus with such binding agreement and shall be in effect till the term of such binding agreement and shall after its expiry and or early termination shall continue to be in force in the following manner:

- i. _____ years after the termination of the binding agreement
- ii. _____ years after the expiry of the binding agreement

(whichever is earlier).

15. Each Party warrants that it has the authority to enter into this Agreement.
16. If any provision of this agreement is held to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected and each provision hereof shall be valid and enforceable to

the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision that is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

17. This Agreement may be executed in two counterparts, each of which will be deemed to be an original, and all of which, when taken together, shall be deemed to constitute one and the same agreement.
18. The relationship between both the Parties to this Agreement shall be on a principal-to-principal basis and nothing in this agreement shall be deemed to have created a relationship of an agent or partner between the Parties and none of the employees of COMPANY shall be considered as employees of PARTY 1.
19. This Agreement shall be governed by the laws of India. Both parties irrevocably submit to the exclusive jurisdiction of the Courts in Bangalore, for any action or proceeding regarding this Agreement. Any dispute or claim arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of Procedure of the Indian Arbitration & Conciliation Act, 1996, including any amendments thereof. The arbitration tribunal shall be composed of a sole arbitrator, and such arbitrator shall be appointed mutually by the Parties. The place of arbitration shall be Bangalore, India and the arbitration proceedings shall take place in the English language.
20. Additional oral agreements do not exist. All modifications and amendments to this Agreement must be made in writing.
21. The Agreement and/or any rights arising from it cannot be assigned or otherwise transferred either wholly or in part, without the written consent of the other Party.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONFIDENTIALITY AGREEMENT IN DUPLICATE BY AFFIXING THE SIGNATURE OF THE AUTHORISED REPRESENTATIVES AS OF THE DATE HEREIN ABOVE MENTIONED.

Disclosing Party

Signature 1

Name

Designations

Place

Date

Receiving Party

Signature 1

Name

Designations

Place

Date

WITNESS

ELECTRONIC CONTRACTS (E-CONTRACTS)

Due to the immoderate advancement of technology E-Commerce has become a part of human daily life. E-Commerce is the selling and purchasing of goods and services using technology. E-Contracts are basically the contracts analyzed with E-Commerce and other transactions taking place in the digital environment.

E-contract (contract that is not paper based but rather in electronic form) is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. Traditional contract principles and remedies also apply to e-contracts. This is also known as electronic contract.

Electronic contracts are born out of the need for speed, convenience and efficiency. For example, a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet somewhere and sign the contract. In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a scenario.

There was initially an apprehension amongst the legislatures to recognize this modern technology, but now many countries have enacted laws to recognize electronic contracts. In India, Information Technology Act, 2000 governs the law relating to e-contracts substantially. The Act provides for the Attribution, Acknowledgement, Dispatch of Electronic Records, Secure Electronic Records and Secure Digital Signatures which are related to the E-Contracts [Sections: 4, 11, 12, 13, 15].

The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the Indian Contract Act, 1872.

The Indian Contract Act, 1872 governs the manner in which contracts are made and executed in India. It governs the way in which the provisions in a contract are implemented and codifies the effect of a breach of contractual provisions. Within the framework of the Act, parties are free to contract on any terms they choose.

Indian Contract Act consists of limiting factors subject to which contract may be entered into, executed and breach enforced.

The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information Technology Act (IT Act) solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.

The Indian Evidence Act, 1872 deals with the presumption as to e-records. Providing the electronic records as evidence in the disputed matter [Sections: 85A, 85B, 88A, 85C]

ESSENTIALS OF E-CONTRACT

As per the Indian Contract Act, the essentials of a e-contract are:

- (i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.
- (ii) An intention to create legal relations or intent to have legal consequences.
- (iii) The agreement is supported by lawful consideration.
- (iv) The parties to contract are legally capable of contracting.
- (v) Genuine consent between the parties.
- (vi) The object and consideration of the contract is legal and is not opposed to public policy.
- (vii) The terms of the contract are certain.
- (viii) The agreement is capable of being performed, i.e., it is not impossible of being performed.

Therefore, to form a valid contract there must be

- (1) an agreement,
- (2) based on the genuine consent of the parties,
- (3) supported by consideration,
- (4) made for a lawful object, and
- (5) between the competent parties.

The bargaining process must satisfy two requirements to result in a valid contract: first, mutual assent as an expression of the parties' intent to contract and second, sufficiently definite terms. In arriving at such mutual assent and definite terms, the parties employ the mechanics of offer and acceptance.

TYPES OF E-CONTRACTS

Generally the basic forms of e-contracts are:

- The Click-wrap or Web-wrap Agreements.
- The Shrink-wrap Agreements.
- The Electronic Data Interchange or (EDI).
- Online Shopping Agreements.

Click-wrap or Web-wrap Agreements

These are the agreements which we generally come across while surfing internet such as "I AGREE" to the terms or "I DISAGREE" to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a "click through" agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. Type and Click where the user must type "I accept" or other specified words in an on-screen box and then click a "Submit" or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. Icon Clicking where the user must click on an "OK" or "I agree" button on a dialog box or pop-up window. A user indicates rejection by clicking "Cancel" or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a "take-it-or-leave-it" type of contract that lacks bargaining power.

The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Electronic Data Interchange or EDI

These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

On-Line Shopping Agreement

Suppose 'X' Ltd. wants to offer online shopping services to its customers. 'X' would tie-up with manufacturers of books, toys, clothes, etc., and offers their products for sale through its website. Some of the products could be stocked in Y's warehouses while others could be stocked with the manufacturers.

Additionally, visitors can post reviews, comments, photos etc on the 'X' website. 'X' would need to enter into a contract with all its potential customers "before" they place an order for a product using 'X' services. This contract must serve the following purposes:

1. Outline the scope of services provided by 'X' Ltd.
2. Restrict 'X's liabilities in case there is any defect in the products sold through the 'X' website.
3. Outline the duties and obligations of the customer.
4. Grant suitable licence to the customer to use the 'X' website.
5. Restrict Y's (Product) liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the 'X' website.

IMPORTANT POINTS IN REGARD TO E-CONTRACTS

The important points relating to e-contracts are as under:

1. Customer's relationship with 'X'

The contract must specify that by using the 'X' website, the customer becomes subject to the terms of a legal agreement between the customer and Y. Customers must be informed that they must be of legal age to enter into the contract.

2. Acceptance of the terms of the contract

The contract must clearly lay down that a customer cannot use the 'X' website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "I Accept" checkbox.

3. Copyright

The contract should clearly state that all content included on the 'X' website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of 'X' Ltd.

4. Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

- i. Not overload Y's systems.
- ii. Not download or modify the 'X' website.
- iii. Collect and use any product listings, descriptions, or prices.
- iv. Download or copy account information by data gathering and extraction tools.
- v. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
- vi. Not use any meta tags or any other "hidden text" utilizing Y's name or trademarks.
- vii. License from Y

5. License from Y

The contract should specify that 'X' is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of 'X' so long as the link does not portray Y, or its products

or services in a false, misleading, derogatory, or otherwise offensive matter. The contract must also specify that 'X' is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the 'X' website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the 'X' website. The contract must forbid the customer from the following acts in respect of the said software:

- i. copying,
- ii. modifying,
- iii. creating a derivative work of,
- iv. reverse engineering,
- v. decompiling or otherwise attempting to extract the source code. The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the 'X' software.

6. Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." It should also be stated that a customer who posts content grants to 'X' Ltd. non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies 'X' against all legal action and claims resulting from the said content.

7. Risk of loss

'X' has a shipping contract with various courier companies to deliver the products to the customers. The contract should clearly state that once the products are handed over to the courier company, 'X's liability ends.

8. Pricing

The contract should clarify how the prices listed on the 'X's website are computed. The various options could be:

- i. The listed price represents the full retail price listed on the product itself,
- ii. The listed price is suggested by the manufacturer or supplier,
- iii. The listed price is estimated in accordance with standard industry practice, or
- iv. The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

9. Prohibitions

The contract must specifically prohibit the following:

- i. Using "deep-link", "page-scrape", "robot", "spider" etc. to access, acquire, copy or monitor any portion of the service.
- ii. Reproducing the navigational structure or presentation of the service.

- iii. Circumventing the navigational structure or presentation of the service.
- iv. Attempting to gain unauthorized access to any portion or feature of the service.
- v. Harvesting or collecting user names, email addresses or other member identification information.
- vi. Probing, scanning or testing the vulnerability of the service.
- vii. Tracing information relating to other users.
- viii. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
- ix. Using the service for any unlawful purpose.

10. Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

11. Limitation of liability

The contract must clearly mention that 'X' Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

- i. Access delays or interruptions to the 'X' web site.
- ii. The loss of registration or processing of an order.
- iii. The unauthorized use of the customer's account with Y.
- iv. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to 'X' staff.
- v. Errors taking place with regard to the processing of the customer's orders.
- vi. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the 'X' website.
- vii. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the 'X's services.
- viii. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Y website.
- ix. Changes in or cessation of the 'X' services.
- x. Customer's failure to keep his account information, passwords etc secure and confidential.

12. Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available".

The contract must expressly disclaim all warranties and conditions of any kind (express and implied). It must also be mentioned clearly that 'X' (its subsidiaries, affiliates, licensors etc.) do not represent or warrant that:

- i. the 'X' services will meet the customer's requirements,

- ii. the 'X' services will be uninterrupted, timely, secure or free from error,
- iii. the information provided by or through the 'X' services will be accurate or reliable, and
- iv. that defects in the operation or functionality of the Y services will be corrected.

13. Ending the relationship between 'X' and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Y. 'X' must retain the right to terminate the contract under the following circumstances:

- i. The customer breaches any provision of the contract.
- ii. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
- iii. 'X' is required by law to terminate the contract.
- iv. The provision of the services to the customer is no longer commercially viable.

LESSON ROUND-UP

- Commercial contracts outline transaction details, payment terms, goods or services exchanged, date, and price. However, it's important to note that each commercial contract is different and contains varied elements. They specify the parties, the deliverables, a clear plan for what will happen if the parties don't fulfill their responsibilities, and the applicable law.
- Limited Liability Partnership is governed by Limited Liability Partnership Act-2008. LLP Agreement is a written contract between the partners of the LLP or between the LLP and its designated partners. It establishes the rights and a duty of the designated partners toward each other as well toward the LLP. Well-structured detailed LLP Agreement set the groundwork and act as a backbone to strengthen the firm. It is the guide that gives directions to the LLP registration.
- A collaboration between a resident and non-resident nation is known as a "foreign collaboration." It is a partnership or union between a domestic and international business. It takes the shape of a contract that both parties have signed for their mutual benefit. Forming a foreign partnership requires the association of one non-resident entity.
- A Joint Venture is a strategic partnership when two or more people or businesses concur to contribute capital, goods, or services to a single commercial enterprise. Compatibility between the parties to the contract is essential for any joint venture to be successful in India. The associated parties should have a distinct objective, and conditions should be spelled out in the JV (Joint Venture) agreement provisions.
- A Joint Development Agreement is a contract between a real estate developer and the landowner to build projects on the latter's land. As per the contract, the landowner provides the land, and the developer manages the construction side of the project.
- Service Agreement is an agreement between a business providing services and its customer or client. A clear demarcation of the services to be offered by either party along with their expertise, saves the time of the parties and reduces the chances of dispute due to the agreed set of terms and conditions in the Agreement.

- Dealership Agreement means an oral or written agreement, either express or implied, between a supplier and a dealer which provides that the dealer is granted the right to sell, distribute, or service the supplier's equipment, regardless of whether the equipment carries a trade name, trademark, service mark, logotype, advertisement, or other commercial symbol, and which provides evidence of a continuing commercial relationship between the supplier and the dealer.
- A distribution agreement is a legally binding agreement between a supplier and a distributor of products. The distribution agreement governs the distribution of items made by a producer and sold by a distributor. The details of the agreement are defined in the distribution contract, which includes the cost of the items or the commission rate, the length of the contract, the distributor's operating area, and other data.
- A franchise agreement is a legally enforceable contract between a franchisor and a franchisee. These agreements authorise a franchisee to open a franchise site while also granting the ability to use franchise-specific resources such as branding, business methods, and supplier sources. A franchise agreement, like any other contract, is intended to define precise conditions for the parties' relationship.
- An outsourcing contract is an agreement made between the company and the outsourcing service provider, placed over a legal document that states what work will be handled to the outsourcing service provider. Typically, an outsourcing agreement includes provisions such as pricing and payment, transfer of assets, information security, intellectual property matters, monitoring provisions, termination, service level etc.
- A non-disclosure agreement is a legally enforceable contract that creates a confidential connection between two parties. The signatory party or the parties to the agreement agree that any sensitive information they collect will not be shared with anyone else. A confidentiality agreement is another name for a non-disclosure agreement.
- Globalization and diffusion of technology has accelerated the presence of e-commerce companies throughout the world. E-Contract is an agreement that is enforceable under the law and is in all respects drafted, negotiated, and executed digitally.

GLOSSARY

Collaboration: Collaboration is a working practice whereby individuals work together for a common purpose to achieve business benefit.

E-contracts: Electronic contracts are the contracts which take place through e-commerce, without meeting of the parties to the contract.

Franchise: The right or license granted to an individual or group to market a company's goods or services in a particular territory.

Joint Venture: A joint venture (JV) is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task.

Outsourcing: Outsourcing is a business practice in which a company hires a third party to perform tasks, handle operations or provide services for the company.

