**Agreement**

This Agreement (“**this** **Agreement**”) is executed on ………………………. (the “**Effective Date**”) by and among:

1. **………………………**, a private limited company incorporated and existing under the laws of India and having its registered office at ………………….., (hereinafter referred to as “**the Company**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns) of the **FIRST PART**;
2. The Persons identified as the Promoters and whose names and particulars are listed in **Schedule I** (hereinafter referred to as “**the Promoters**”, which expression shall, unless the context requires otherwise, mean and include their respective successors and permitted assigns) of the **SECOND PART**;
3. **Indian Institute of Technology Kanpur**, a research and educational institution of national importance, established under the Institute of Technology Act, 1961, enacted by the Parliament of Republic of India, registered under the Societies Registration Act 1860, having its office at P.O. IIT Kanpur, Kalyanpur, Kanpur, U.P.-208016, India, (hereinafter referred to as **“IITK”** which term shall unless repugnant to the context include its successor, representatives, administrators and permitted assign) and represented through its authorized signatory Prof. S. Ganesh, Dean R&D of the **THIRD PART**

(the Company, the Promoters and IITK are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.)

**WHEREAS:**

1. IITK is hosting “**Sustainable Entrepreneurship and Enterprise Development Fund”** program referred to as the **“Program”** launched by **Biotechnology Industry Research Assistance Council** (Hereinafter referred as the “**BIRAC”**) not-for-profit Section 8 Company, Schedule B, Public Sector Enterprise, set up by **Department of Biotechnology (DBT)**, Government of India. The Program helps the young start-ups, in the biotech industry of India, in creation of affordable products addressing the needs of the largest section of society by providing them Incubation, mentoring and Seed Fund Support.
2. The Company is engaged in the business of ………………………..
3. IITK in pursuant to the application of the Company under the ‘**Program’,** has sanctioned a Seed Funding of Rs 30 Lakhs, to be disbursed in different tranches/instalments, to the Company. The quantum of the tranche/ shall be decided by IITK, at its sole discretion. The disbursement of the Seed Fund shall be in the form of Equity Investment (Herein after called “Investment” or “Subscription Amount”) whereby the Company has agreed to issue **………. (………….. Only)** **New Subscription Securities** to IITK equivalent to **……..%** shareholding in the Company, at a pre-money valuation of Rs ……Crores subject to the detailed terms and conditions of this Agreement.

1. The Company in its Meeting of the Board of Directors (Board) held on ……………. has duly authorized the Company to enter this Agreement and has authorized its Director ………….. to execute all the documents and do all that is necessary to execute this Agreement is annexed hereto as **Exhibit A**.
2. The authorized capital of the Company is INR ………../- (Rupees ……….. only) divided into ………… Equity Shares (*as defined hereinafter*) of par value of INR 10/- (Rupees Ten only) each;
3. The issued and paid-up capital of the Company is INR ……. (Rupees ……………. Only) divided into ………..Equity Shares of par value of INR 10 (Rupees Ten only).
4. The Promoters and the Company, in pursuant to the Seed Fund, have requested IITK to invest the Subscription Amount (*as defined hereinafter*)in the manner stated in Clause 4, based on the tranche, sanctioned by IITK; which shall be consideration for the subscription to the New Subscription Securities, by the IITK, in the manner and proportion as set out herein;
5. IITK desire to subscribe to, and the Company desires to issue and allot to IITK, the New Subscription Securities in different tranches/instalments, in accordance with and subject to the terms and conditions as mentioned herein; and
6. The Parties are now entering into this Agreement for the purpose of recording the terms of the investment by IITK in the Company and governing the relationship of the Promoters, IITK and the Company, their *inter se* rights and obligations with respect to the management and operations of the Company.

The Recitals above shall form an integral part of this Agreement.

**NOW THEREFORE IT IS AGREED by and between the parties hereto as follows:**

1. DEFINITIONS& INTERPRETATION

## Definitions: In this Agreement the following capitalized words and expressions shall have the following meanings:

* + 1. “**Act**” shall mean the Companies Act, 2013 (to the extent that such enactment is in force and applicable to the context in which such term is used herein), and shall include all amendments, modifications and re-enactments of the foregoing;
    2. “**Affiliate**” of a Person (the “**Subject Person**”) shall mean (i) in the case of any Subject Person other than a natural Person, any other Person that, either directly or indirectly through one or more intermediate Persons, Controls, is Controlled by or is under common Control with the Subject Person, and (ii) in the case of any Subject Person that is a natural Person, shall include a Relative of such Person.
    3. “**Articles of Association**” or “**Articles**” shall mean the articles of association of the Company, as amended from time to time;
    4. “**Authorisations**” shall mean any consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or exemption from, by or with any governmental authority, whether given by express action or deemed given by failure to act within any specified time period and all corporate, creditors', shareholders' and third party approvals or consents;
    5. “**Board**” shall mean the Board of Directors of the Company;
    6. “**Charter Documents**” shall mean collectively the Memorandum (*defined hereinafter*) and the Articles;
    7. “**Claims**” shall mean any direct losses, liabilities, claims, damages, costs and expenses, including legal fees and disbursements in relation thereto;
    8. “**Closing**” shall have the meaning ascribed to it in Clause 6.1
    9. “**Closing Date**” shall have the meaning ascribed to it in Clause 6.1
    10. “**Conditions Precedent**” shall have the meaning ascribed to them in Clause 5.1
    11. “**Confidential Information**” means all information relating to the Company which might fairly be considered to be of a confidential nature or is marked and identified as confidential at the time of disclosure and includes, but is not limited to:
        1. any business or technical information whether or not stored in any medium, relating to the Business of the Company (and/or those of its customers) including but not limited to financial information, equipment, documentation, strategies, marketing plans, pricing information, information relating to existing, previous and potential customers and contracts disclosed to any Party or its representatives;
        2. information relating to the Company which is obtained whether (without limitation) in writing, pictorially, in machine-readable form or orally or in any media whatsoever, by any Party or its representatives from any other Party or its representatives;
        3. information derived from information falling within this definition;
        4. original information supplied by the Company or its representatives to the Parties; and
        5. terms of this Agreement.
    12. “**Control**” shall mean the power to direct the management or policies of any Person, whether through the ownership of over 50% (fifty percent) of the voting power of such Person, through the power to appoint more than half of the board of directors or similar governing body of such entity, through contractual arrangements or otherwise;
    13. “**Designated Bank Account**” shall mean the bank account maintained by the Company to which IITK shall remit their respective portions of the Subscription Amounts in accordance with the terms of this Agreement, the details of which are as follows:

|  |  |
| --- | --- |
| Account Name: |  |
| Bank: |  |
| Branch Code: |  |
| Address |  |
| Account no: |  |
| IFSC Code |  |
| Currency: | Indian National Rupee (INR) |

* + 1. “**Disclosure Schedule**” shall mean the disclosure schedule set out in Schedule VI;
    2. “**Encumbrance**” shall mean (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, security interest or other encumbrance of any kind securing, or conferring any priority of payment in respect of, any obligation of any Person, including without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Law, (ii) any voting agreement, interest, option, right of first offer, refusal or transfer restriction in favour of any Person and (iii) any adverse claim as to title, possession or use and “**Encumber**” shall be construed accordingly;
    3. “**Equity Securities**” shall mean equity capital, Equity Shares, membership interests, partnership interests, joint ventures, or other ownership interests of a company or any options, warrants or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such equity capital, Equity Shares, membership interests, partnership interests or other ownership interests (whether or not such derivative securities are issued);
    4. “**Equity Shares**” shall mean the equity shares of the Company, having par value of INR 10/- (Rupees Ten only) per equity share;
    5. “**Event of Default**” shall mean:
       1. Breach or failure to comply with any material representation, Warranty, term covenant, undertaking or obligation contained herein by the Company and/or Promoters, which breach or failure, if capable of cure or remedy, has not been cured or remedied within 30 (thirty) days of receipt of written notice of such breach or failure from either party in this regard;
       2. any of the Promoters being chargesheeted for any offence involving moral turpitude or fraud.
       3. If the Company undertakes any action pursuant to the Reserved Matters as appended in Schedule V, without the prior written consent of IITK and where such action has not been rectified within 60 business days from the date of notification by IITK
       4. Bankruptcy, winding up, liquidation, insolvency an/or dissolution (other than for the purpose of solvent amalgamation, restructuring or reorganisation) of the Company
       5. Based on the findings of any concurrent audit or Investigation by IITK, it is revealed that the Company has used the subscription proceeds of IITK whereby the funds of the Company have been diverted for the purposes other than the planned expenditure, related to the business of the Company, approved by IITK in advance before the disbursement of the funds.
       6. Fraud, embezzlement by the promoters of the Company/ by the Company.
       7. Violation of any term and condition of this Agreement.
    6. “**Exit Price**” shall mean FMV of each of the Equity Securities held by IITK together with unpaid accrued dividends, if any, subject to a minimum price per share equal to 100% (one hundred percent) of the total consideration paid by IITK to acquire Equity Securities held by IITK divided by the total number of Equity Securities held by IITK;
    7. “**FMV**” with respect to the Equity Securities, shall mean the fair market valuation of such Equity Securities computed in accordance with Clause 11.55;
    8. “**Fully Diluted Basis**” shall mean that the calculation is to be made assuming that all outstanding Equity Securities (whether or not by their terms then currently convertible, exercisable or exchangeable) whether or not due to the occurrence of an event or otherwise, have been converted, exercised or exchanged into the maximum number of Equity Shares issuable upon such conversion, exercise and exchange, as the case may be;
    9. “**General Meeting**” shall mean the meeting of the Shareholders of the Company;
    10. “**Intellectual Property Materials**” means all documents, research, articles, blog posts, software, hardware, applications, photographic works, graphic works of any type and materials in any format or medium which are created or developed by the Company independently, to which the Promoters had access, or by the Promoters himself during the tenure of his employment with the Company, or jointly by the Promoters and the Company, pursuant to oral or written instructions by the Company in this behalf.
    11. “**IP Rights**” shall mean all rights in and in relation to all intellectual property rights subsisting in the products, software, etc. manufactured, developed, being developed and/or proposed to be developed by the Company, including all patents, patent applications, moral rights, trademarks, trade names, service marks, service names, brand names, internet domain names and sub-domains, inventions, processes, formulae, copyrights, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, database rights, methodologies, computer programs (including all source codes), technical information, manufacturing, engineering and technical drawings, know-how, all pending applications for and registrations of patents, entity models, trademarks, service marks, copyrights, designs and internet domain names and sub-domains and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) in each case anywhere in the world;
    12. “**Liquidity Event**” shall be deemed to include the following: -
        1. commencement of any proceedings for the voluntary winding up of the Company in accordance with the Act or the passing of an order of any court appointing a provisional liquidator or administrator in any other proceeding seeking the winding up of the Company; or
        2. the consummation of a consolidation, merger, reorganization or other similar transaction (whether in one or a series of transactions) of the Company resulting in its Shareholders (immediately prior to such transaction), collectively, retaining less than a majority of the voting power of the Company or the surviving entity immediately following such transaction after giving effect to any conversion, exercise or exchange of any Equity Securities convertible into or exercisable or exchangeable for, such voting Equity Securities; or
        3. a sale, lease, license or other Transfer of any significant block of assets of the Company (including any Business related IP Rights of the Company); or
        4. any change in Control; or
        5. an exit under Clause 11;

* + 1. “**Material Adverse Effect**” shall mean any significant change or effect that would have (or could reasonably be expected to have) a materially adverse financial impact to (a) the business, operations, assets, condition (financial or otherwise), operating results of the Company, or (b) the ability of the Parties to consummate the transactions contemplated herein, or (c) the validity, legality or enforceability of the rights or remedies of IITK under this Agreement;
    2. “**Memorandum of Association**” or “**Memorandum**” shall mean the memorandum of association of the Company, as amended from time to time;
    3. “**New Subscription Amount**” or “Subscription Amount” shall mean the aggregate subscription amount or the Seed Fund approved, [●] and [●], and shall mean INR [●] (Rupees [●] only) paid by IITK to the Company as consideration for subscription towards the [●];
    4. “**New Subscription Securities**” shall mean equity shares [●] issued at a price (including premium and par value) of INR [●] (Indian Rupee [●]), free of all Encumbrances, to [●] and [●] , each carrying the rights and terms as stipulated in accordance with Schedule – “III” this Agreement. The said New Subscription Securities as held by IITK in aggregate shall constitute [●] % ([●] percent) of the Share Capital on a Fully Diluted Basis as on the Closing Date;
    5. “**Person**” shall mean any natural person, limited or unlimited liability Company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under Law;
    6. **“Program”** means “Sustainable Entrepreneurship and Enterprise Development Fund” program as specified in point “c”of the recitals.
    7. "**Reserved Matters**" shall mean the list of items as set forth under Schedule V of this Agreement;
    8. “**ROC**” shall mean the Registrar of Companies.
    9. **“Seed Fund”** shall mean total amount of Investment approved by IITK under the “Program” to the Company.
    10. “**Tax**”, “**Taxes**” or “**Taxation**” any and all form of direct and indirect taxes with reference to income, profits, gains, net wealth, asset values, turnover, gross receipts including but not limited to all duties (including stamp duties), excise, customs, service tax, value added tax, goods and sales tax, charges, fees, levies or other similar assessments by or payable to a governmental authority (including any interest, fines, penalties, assessments, or additions to Tax);
    11. “**Transfer**” (including with correlative meaning, the terms “**Transferred** by” and “**Transferability**”) shall mean any transfer, sale, assignment, pledge, hypothecation, creation of any security interest in or lien on, placing in trust (voting or otherwise), exchange, gift or transfer by operation of Law or in any other way making anything subject to any Encumbrance or disposing of, whether or not voluntarily;
    12. “**Warranties**” shall mean the representations and warranties of the Warrantors as set forth in Clause 7 and Schedule IV *(Representations and Warranties of the Company and the Promoters)*; and
    13. “**Warrantors**” shall mean the Company and the Promoters jointly and severally.

1. TERM OF THIS AGREEMENT

## This Agreement shall come into effect on the Effective Date and shall continue to be in effect until terminated in the manner stated in Clause 16 (“the Term”).

1. SHAREHOLDING PATTERN
   1. The shareholding pattern of the Company before and after the allotment of the New Subscription Securities to IITK, shall be as described in Schedule – “II”.
2. SUBSCRIPTION TO THE NEW SUBSCRIPTION SECURITIES
   1. Subject to the terms of this Agreement and relying on the Warranties, on the Closing Date, IITK hereby jointly and severally agree to subscribe to, and the Company hereby agrees to allot and issue to IITK the New Subscription Securities at a pre-money valuation of INR [●] /-  *Indian Rupees* [●]*.* IITK shall pay to the Company the New Subscription Amount in consideration of which the Company shall issue and allot to IITK, New Subscription Securities in accordance with Clause 6, based on different tranches.
3. CONDITIONS PRECEDENT
   1. The obligation of IITK to subscribe to the New Subscription Securities is subject to the fulfilment (unless specifically waived in writing by IITK), in form and manner satisfactory to IITK, of the following conditions (“**Conditions Precedent**”):
      1. Completion of financial, business and legal due diligence exercise of the Company by IITK and resolution of all issues raised by IITK pursuant thereto;
      2. The Parties shall have obtained necessary corporate approvals, management approvals, third party approvals, legal approvals, appropriate Authorisations from the Governmental Authorities, in form and manner reasonable and necessary for consummation of the transactions contemplated herein.
      3. The Company and the Promoters have complied all the regulatory requirements of the Companies Act 2013 or any other Applicable Laws in India for the allotment of the New Subscription Securities to IITK. These requirement may include-
      4. Passing of Board Resolutions for the allotment of the New Subscription Securities to IITK, and wherever needed to convene a General Meeting and the Company shall have convened a General Meeting to pass the following resolutions
      5. the amendment of the existing Charter Documents to conform to the transaction documents to the satisfaction of the Parties, which resolution shall state that the amended Charter Documents shall be effective from the Closing Date
      6. The Company shall have increased its authorized capital, to include the issuance and allotment of the New Subscription Securities to IITK.
      7. The Company and the Promoters shall have ensured that all documents (offer letter, Share subscription Application etc.) required from the Company and the Promoters to be filed under applicable Law in respect of allotment of New Subscription Securities to IITK are prepared and kept ready for submission to each of the relevant authorities (ROC, Ministry of Corporate Affairs etc.), as applicable.
      8. The Company shall have filled all the required e-forms (SH-7, MGT-14 etc. or any other prescribed form) with the Registrar of Companies (ROC)
      9. No event shall have occurred or be continuing which has, or would reasonably be expected to have, a Material Adverse Effect;
      10. Subject to the Disclosure Schedule, as of the Effective Date, each of the Warranties of the Warrantors being true and accurate in all material respects and not misleading in each case as of the Effective Date and as of the Closing Date;
      11. The Parties shall have agreed on the amendments required to be made to the Charter Documents to reflect the terms of this Agreement;
   2. Long-stop Date. All of the Conditions Precedent shall be satisfied no later than 30 (thirty) days from the Effective Date or such later date as may be mutually agreed to between the Parties in writing (the “**Long-Stop Date**”). If the Conditions Precedent have not been satisfied on or prior to such Long-Stop Date, each of IITK shall have the right to terminate this Agreement immediately by written notice to the other Parties hereto and no Party shall have any further rights or obligations under this Agreement against IITK.
   3. Conditions Precedent Confirmation
      1. The Company and the Promoters shall take all steps necessary to promptly and expeditiously fulfil the Conditions Precedent and shall promptly inform IITK of all actions and steps taken in this regard, on an on-going basis.
      2. Within 5 (five) days of fulfilment (or waiver by IITK, as the case may be) of all the Conditions Precedent required to be fulfilled, the Company shall provide written confirmation of the same (the “**CP Confirmation Certificate**”) to IITK.
   4. Notwithstanding the actual date of completion of the Closing, the Company shall file all the returns and e forms with ROC, in accordance with the provisions of the Companies Act 2013.
   5. Where requested, the Company shall immediately deliver to IITK certified true copies of the forms with the payment receipt in respect of each such form filed with the ROC.
4. CLOSING
   1. Subject to IITK being satisfied of the fulfillment of, or having waived (in writing) the Conditions Precedent, the Parties shall consummate the transactions contemplated in Clause 6.3 (“**the** **Closing**”) on the date that is 30 (thirty) business days from the date of receipt by IITK of the CP Confirmation Certificate or such other date that is mutually agreed to between the Parties (“**the** **Closing Date**”). The Closing shall occur at the registered office of the Company, or at such other place as may be agreed between the Parties.
   2. All transactions contemplated by this Agreement to be consummated at the Closing shall be deemed to occur simultaneously and no such transaction shall be deemed to be consummated unless all such transactions are consummated.
   3. On the Closing Date
      1. IITK shall pay the New Subscription Amount, based on the quantum of the tranche/instalment of the Seed Fund approved, by wire transfer or such other mutually decided mode of transfer to the Designated Bank Account;
      2. The Board shall hold a meeting and pass appropriate resolutions for:
         1. allotting the New Subscription Securities to IITK, based on the tranche of the Seed Fund released;

Further, where requested for by IITK, the Company shall immediately deliver to them extracts of the resolutions passed in connections with (i) above.

* + 1. The Company shall deliver to IITK duly stamped share certificates in relation to the New Subscription Securities not later than 30 (thirty) days from the Closing Date, and the details of IITK shall be entered in the records of the Company (including in the register of members) as the registered owners of the New Subscription Securities. In case if the Company does not deliver to IITK the said stamped share certificates with in 30 (thirty) days from the closing date, IITK may direct the Company to refund the New Subscription Amount with a penal interest @18% p.a. for such delay.
    2. The Company shall deliver to IITK a certified copy of the register of members in Form MGT.1 as at the date of allotment of the New Subscription Securities and the date immediately prior to the date of such allotment, certified by a Director to be true, complete and correct.
  1. Post-Closing Actions
     1. ROC Filings:

Within 20 (twenty) days of the Closing, the Company shall deliver to IITK a certified true copy of Form PAS-3 duly filed with the ROC in connection with the issue and allotment of the New Subscription Securities along with the receipt in respect of such forms.

1. REPRESENTATIONS & WARRANTIES
   1. Each Party represents to the other Parties hereto that:
      1. Such Party has the full power and authority to enter into, execute and deliver this Agreement and to perform its obligations and the transactions contemplated hereby and, if such Party is not a natural Person, such Party is duly incorporated or organised and validly existing under the Laws of the jurisdiction of its incorporation or organization, having full power and authority to enter into and perform its obligations under this Agreement.
      2. The execution and delivery by such Party of this Agreement and the performance by such Party of its obligations and the transactions contemplated hereunder has been duly authorised by all necessary corporate or other action of such Party.
      3. The Warrantors hereby represent, warrant and undertake to IITK the Warranties and acknowledge that IITK are entering into this Agreement relying on such Warranties.
      4. Warranties as of Closing: The Warranties shall be deemed to be repeated as at the Effective Date and the Closing Date, as if they were made on and as of the Effective Date and the Closing Date and as if all references therein to the date of this Agreement were references to the aforesaid dates, as applicable
   2. IITK jointly and severally represents to the Company and its promoters:
      1. the execution and delivery of this Agreement by IITK and their promises, agreements or undertakings under this Agreement do not violate any law, rule, regulation or order applicable to IITK or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which IITKis a party or which is applicable to IITK.
      2. IITK has independently undertaken its own business and legal due diligence with respect to information relating to the Company which was furnished to IITK by the Promoters and the Company;
      3. IITK has entered into this Agreement relying on representations and warranties provided by the Company and the Promoters;
      4. IITK shall be responsible only for its own representations, agreements and covenants hereunder;
      5. nothing contained herein and no action taken by any of IITK pursuant hereto shall be deemed to constitute IITK as a partnership, an association, a joint venture, or any other kind of entity, or create a presumption that IITK are acting in concert or as a group with respect to such obligations or the transactions contemplated in the Agreement; and
      6. IITK has read this Agreement, it has been adequately represented in the preparation, negotiation and execution of this Agreement by legal counsel of its own choice or has voluntarily declined to seek such counsel; and it understands the terms and consequences of this Agreement and is fully aware of the legal and binding effect of this Agreement.
2. USE OF PROCEEDS
   1. The Parties hereby expressly agree that IITK shall invest and disburse the Seed Fund in different tranches/instalments, as decided by IITK, at its own discretion, to the Designated Bank Account only and subject to the planned expenditure and milestones as approved, time to time, in advance by IITK, before disbursements of the Seed fund. The Company shall ensure that the physical progress of the project as well as the expenditure incurred on the project is as per the original schedule. IITK reserves a right, at its sole discretion, to set-aside, cancel, postpone and refuse the release of any tranche of the Seed Funds, not yet released, to the company, if the milestones, linked with the earlier tranche, released to the Company, are not achieved to the satisfaction of IITK.
   2. **Submission of Invoices and release of tranches**

The Company is required to submit the original invoices of the expenditures, spent out of the funds disbursed by IITK to the Company. At the end of each tranche, the due diligence will be conducted by IITK, on the expenditures spent and milestones achieved and based on the positive due diligence, the next tranche of the Seed Fund, shall be released.

* 1. **Utilisation Certificate**

IITK shall have a right to ask the Company to produce a Utilization certification (UC), dully certified by a Chartered Accountant, for the amount disbursed by IITK, IITK reserves the right to get the original invoices/ documents, so submitted, to be verified by its own chartered accountant. In such a case the Company shall fully cooperate with the Chartered Accountant of IITK in providing to them / giving access to them all books of accounts, vouchers, registers, bills invoices over the tangible and intangible assets of the Company.

* 1. **Expenditures not permitted**

The Company shall not utilise the proceeds of the Investment for following expenditures

Repayment of dues of promoters and their associates,

1. Repayment of loan neither from any other source nor for payment of interest on the loan borrowed from such other source,
2. For extending loans to promoters, their relatives and associates
3. For making any inter corporate deposits or any speculative purpose,
4. Personal benefit of promoters or relatives and their association.
5. Any salary/Honorarium/ remuneration/ fees etc. to the directors/promoters/founder of the Company and their family members
6. Cash expenditure, exceeding Rs.5000 (Five Thousand Only) in any month
7. Any other expenditure, prescribed by IITK.
8. CORPORATE GOVERNANCE

## Board Observer

## IITK shall have a right to appoint a board observer (“IITK Advisor”) on the Board of Directors (Board) of the Company. The IITK Advisor shall be entitled to attend meetings of the board of directors of the Company in a non-voting, observer capacity. The IITK Advisor shall be entitled to attend every meeting of the Board of the Company The Company shall provide to the IITK Advisor, concurrently with the Board, all notices, agenda and minutes and other papers in the same manner and to the same extent, as circulated to the Directors of the company.

## Reserved Matters that require IITK’s pre consent in writing

## The Company shall obtain prior consent of IITK, in writing, before initiating any decision related to the matters and items, listed in Schedule V.

## Notices for the Board Meeting and General Meetings

## All the notices supported with the agenda of the Board meetings and General Meetings, within the timelines as prescribed under the Companies Act 2013, shall be served to IITK either through registered post or electronic mail to the following address-

*Professor-In-Charge*

*Innovation & Incubation*

*IIT Kanpur*

*Email Id- (i)* [*dord@iitk.ac.in*](mailto:dord@iitk.ac.in) *(ii)* [*siic@iitk.ac.in*](mailto:siic@iitk.ac.in)

1. COVENANTS
   1. Superior Rights: The Company and the Promoters shall use their best efforts to ensure that any Person is not provided with rights in relation to the Company which are more favourable than those provided to IITK without IITK’ prior written consent.
   2. Conduct of Business: The Company shall and the Promoters shall cause the Company to materially comply with Laws in the conduct of its Business and affairs and shall conduct itself and operate in accordance with good industry practices, the terms of Laws, and any approvals received in terms thereof.
   3. Anti-Corruption

The Company represents that it has not and shall not permit any of its Subsidiaries or Affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to promise, authorize or make any payment to, or otherwise contribute any item of value, directly or indirectly, to any third party, in violation of any applicable anti-bribery or anti-corruption law. The Company further covenants, undertakes and represents that it shall and shall cause each of its Subsidiaries and Affiliates to cease all of its or their respective activities, as well as remediate any actions taken by the Company, its Subsidiaries or Affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of any applicable anti-bribery or anti-corruption law. The Company further covenants, undertakes and represents that it shall cause each of its Subsidiaries and Affiliates to maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with all applicable anti-bribery or anti-corruption laws

1. EXIT
   1. The Company shall work towards a plan that would give IITK an exit on or before 1st April 2022 or any other date as communicated by IITK **(“Exit Period”)**. This can happen in the following ways:
   2. IITK or the Promoters shall, by issuing a written notice (“**the** **Exit Notice**”) to the Company and the other existing Shareholders, make efforts to arrange for an exit of IITK through acquisition of the New Subscription Securities by a third party or where the Company decides to raise subsequent rounds of funding, IITK at their sole discretion, may decide to sell their New Subscription Securities to such third party at a mutually agreed price (at or above their FMV).
   3. Alternatively, the Company shall buyback the Equity Securities held by such Shareholder at a price per share that is not less than the Exit Price within 180 (one hundred eighty) days from the date of the Exit Notice.
   4. In the event, if the promoters are unable or unwilling to purchase the “Equity Securities” within one (1) year from the date of expiry of the **“Exit Date”,** IITK, at its own discretion, be entitled to sell or transfer the Equity Securities to a third party purchaser, at the price mutually decided between IITK and the third party purchaser.

The Promoters shall use its best efforts to facilitate and assist the sale and transfer of the Equity Securities as stated in this clause.

* 1. The Parties shall mutually agree upon and appoint a certified **Independent Valuer** to compute the FMV of Equity Securities. The Independent Valuer shall deliver a valuation report (“**the** **Valuation Report**”) within a period of 1 (one) month of the date of its appointment (“**the** **FMV Computation Date**”).

1. SHARE TRANSFERS

## Right of First Refusal

* + 1. None of the Shareholders shall Transfer any of their Equity Securities without first offering the said Equity Securities (“**the** **Sale Shares**”) to the other existing shareholders. It is clarified that the other existing Shareholders shall have the right, but not the obligation, to purchase such Sale Shares, from the selling Shareholders(s) (“**the** **Selling Shareholder**”).
    2. The Selling Shareholder, shall send a written notice (“**the** **Sale Notice**”) to the Company and the other existing Shareholders, setting forth in detail the terms of the proposed sale, including the (i) name of the Person(s) to whom the Transfer is proposed to be made (“**the** **Purchaser**”), (ii) the proposed price per Share (“**the** **Sale Price**”) and other material terms and conditions, if any, of the proposed Transfer, (iii) the date of the proposed Transfer, and (iv) number of Sale Shares in the Company that are proposed to be sold. Such notice shall be accompanied evidencing key commercial terms as agreed between the Selling Shareholder and the Purchaser regarding the proposed Transfer.
    3. Upon receipt of the Sale Notice, the other existing Shareholders shall have the right, exercisable at its sole discretion to purchase all (but not less than all) of the Sale Shares at the Sale Price on the terms and conditions mentioned in the Sale Notice (“**the** **Right of First Refusal**”), by serving upon the Selling Shareholder a written notice (“**the** **Acceptance Notice**”) in that regard within 30 (thirty) days of the date of receipt of the Sale Notice by it. (“**the** **ROFR Exercise Period**”).
    4. In case either of the existing Shareholders exercises its Right of First Refusal as mentioned above, the Selling Shareholder shall tender all of the Sale Shares to that Shareholder whose Acceptance Notice it first receives, within 15 (fifteen) days from the date of receipt of such Acceptance Notice, subject to the necessary consents from Governmental Authorities. The Parties shall use their reasonable endeavours to obtain any such required approvals.
    5. In the event that the Selling Shareholder does not receive an Acceptance Notice from either of the other existing Shareholders, then, upon the expiry of the ROFR Exercise Period, the Selling Shareholder shall be entitled to Transfer all of the Sale Shares (“**the** **Refused Sale Shares**”) to the Purchaser at a price per share no less than the Sale Price and on terms no more favourable to such Purchaser than the terms offered to the other existing Shareholders in the Sale Notice, *provided, however, that,* the Transfer to the Purchaser shall be subject to the Parties’ Tag Along Right as set forth in herein.

## Tag along right

* + 1. In the event that the other existing Shareholders do not exercise its Right of First Refusal as provided in Clause 12.1 above and they shall have the right (“**the** **Tag Along Right**”) to sell up all its Equity Securities held by it (computed on a Fully Diluted Basis) in the proposed Transfer by the Selling Shareholder(s) at the same price per Equity Security and on the same terms on which the Selling Shareholder(s) propose to Transfer the Refused Sale Shares.
    2. If any Existing Shareholder desires to exercise its Tag Along Right, it shall exercise the said right by giving the Selling Shareholder(s) a written notice (“**the** **Tag Along Notice**”) to that effect within 15 (Fifteen) days from the expiry of the ROFR Exercise Period relevant to such Sale Notice, specifying the number of Equity Securities held by it with respect to which it has elected to exercise its Tag Along Right, (“**the** **Tag Along Shares**”).
    3. In the event any Shareholder decides to exercise the Tag Along Right, the Selling Shareholder(s) shall cause the Purchaser to purchase the Tag Along Shares from such Shareholder at the same time and at the same price per share at which the Refused Sale Shares are being purchased from the Selling Shareholder(s).
    4. If for any reason, the Purchaser acquiring the Transfer Shares hereunder is unable to or refuses to acquire the Tag Along Shares in respect of which the Shareholders have exercised their Tag Along Right (or any part thereof) within 90 (ninety) days from the date of the Sale Notice, then, the Selling Shareholder(s) shall not be entitled to Transfer any of the Refused Sale Shares held by them in the Company to the Purchaser.

1. PRE-EMPTIVE RIGHTS FOR NEW ISSUES OF SECURITIES
   1. In the event the Company is desirous of issuing any new Equity Securities after the Closing Date, including by way of a preferential allotment or right issue (“**the** **Proposed Issuance**”), the Company shall to provide, a right to the every existing Shareholder at such time (“**the** **Right Holder**”) to subscribe up to such number of the Issuance Shares, calculated on a pro-rata basis (“**the** **Issuance Ceilings**”), in any such Proposed Issuance (“**the** **Pre-emptive Right**”). The Company shall give the Right Holder written notice of any such Proposed Issuance (“**the** **Issuance Notice**”) specifying: (i) the number and class of Equity Securities proposed to be issued (“**the** **Issuance Shares**”); (ii) the price per Equity Security of the Proposed Issuance (“**the** **Issuance Price**”); (iii) the manner and time of payment of the subscription amount; and (iv) the date of the Proposed Issuance (“**the** **Offered Terms**”).
   2. The Right Holder shall be entitled to exercise its Pre-emptive Right by issuing a written notice to the Company, within such time as may specified in the Issuance Notice, intimating the Company that it wishes to exercise its Pre-Emptive Right (“**the** **Exercise Notice**”) and shall pay for and subscribe to such number of Issuance Shares (not exceeding the respective Issuance Ceiling as applicable to the Right Holder) as it wishes to subscribe to at the Issuance Price and on the terms and conditions set out in the Issuance Notice. Subject to the receipt of the payment against exercise of the Pre-emptive Right by the Right Holder, the Company shall issue and allot such number of the Issuance Shares (not exceeding the respective Issuance Ceiling as applicable to the Right Holder) as is set out in the Exercise Notice to the Right Holder on the date of closing of the issuance as stated in the Issuance Notice.
   3. If the Right Holder does not, in full or in part, exercise his Pre-emptive Right as mentioned in this Clause in accordance with the terms contained in the Issuance Notice, then the Board may, in its discretion, issue and allot such of the Issuance Shares as are not subscribed by the Right Holder to any Person as it deems fit on the terms and conditions set out in the Issuance Notice within a period of 60 (sixty) days from the date of the Issuance Notice. In the event the Company does not complete the issuance and allotment to such party within 90 (ninety) days from the date of the Issuance Notice, the Company shall not proceed with such issuance and allotment without issuing a fresh Issuance Notice and following the procedure set out in this Clause.
2. NON-COMPETE& BUSINESS EXCLUSIVITY

# In consideration of IITK investing, through the New Subscription Securities in the Company, each of the Promoters agrees that he will not (as long as he is an employee of the Company or he (or any of his Affiliates), directly or indirectly, holds any Equity Securities in the Company and for a period of 6 (six)months thereafter), as an individual, employee, consultant, independent contractor, partner, shareholder, member or in association with any other Person, except on behalf of the Company, directly or indirectly, and regardless of him continuing to be employed by the Company, or the reason for him ceasing to be so employed by the Company, directly or indirectly:

##### set up, solicit business on behalf of, render any services to, engage in, guarantee any obligations of, extend credit to, or have any ownership interests or other affiliation, or management or lead responsibility in, any business or other endeavour, (whether directly or indirectly), which is engaged in the same and competitive business;

##### solicit, render services to or for, or accept from, anyone who is a client or customer of the Company (whether present or future), any business of the type performed by the Company;

##### interfere or seek to interfere or take such steps as may interfere with the continuance of supplies to the Company or any Subsidiary (or the terms relating to such supplies) from any suppliers, or sale to any distributor or other customer of the Company or any Subsidiary; or

##### employ as an employee or retain as a consultant any Person, firm, corporation or other form of entity who is then or at any time during the 6 (six) months period prior to the date of the purported solicitation was, an employee of or exclusive consultant to, the Company, persuade or attempt to persuade any employee of or exclusive consultant to the Company, to leave the employment of the Company or to become employed as an employee or retained as a consultant by any other Person, firm, corporation or other form of entity.

# The Parties acknowledge that (a) the type and periods of restriction imposed in the provisions of this Clause are fair and reasonable and are reasonably required in order to protect and maintain the legitimate business interests and the goodwill associated with the Business; and (b) the time, scope, geographic area and other provisions of this Clause have been specifically negotiated by sophisticated commercial parties.

# Business Exclusivity

* + - 1. Each of the Promoters shall devote all of his reasonable time, energy and efforts to the activities of the Company and the promotion of the Business.
      2. The Promoters shall ensure that all opportunities for new projects and businesses relating to the Business that are developed or sourced by, or offered to, any Promoter shall be referred exclusively to the Company.

15. INDEMNIFICATION

* 1. The Company shall indemnify, defend and hold harmless IITK and their Affiliates, and their respective directors, officers, representatives, employees and agents (collectively, “**the** **Indemnified Persons**”) from and against any and all Claims incurred by the Indemnified Persons, and up to an aggregate amount not exceeding New Subscription Amount (“**the** **Indemnity Cap**”) as a result of, arising directly or indirectly from, or in connection with or relating to:
     1. any matter materially inconsistent with, or any material breach or inaccuracy of any representation, Warranty, covenant or agreement made;
     2. any material failure to perform (whether in whole or part) any significant obligation required to be performed by any of them pursuant to this Agreement.
  2. Notwithstanding anything contained herein, the Company and the Promoters shall jointly and severally shall indemnify, defend and hold harmless the Indemnified Persons from and against any and all Claims incurred by the Indemnified Persons, without any Indemnity Cap and/or any limitation set out in this Agreement, (a) fraud, gross negligence or wilful misrepresentation, or (b) breach or misrepresentation of matters pertaining to the title to Shares, shareholding and accuracy of information, capital structure, organization structure, authorizations and capacity of the Promoters and the Company to enter into this Agreement.
  3. The indemnification rights of the Indemnified Persons under this Agreement are independent of, and in addition to, such other rights and remedies as IITK may have at law or in equity or otherwise, including the right to seek specific performance, rescission or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.
  4. The obligation of the Company and Promoters to indemnify pursuant to this Clause shall arise immediately upon the Indemnified Person notifying the Company or the Promoters of it incurring any liability pursuant to a Claim. The Indemnified Persons shall intimate of any Claims to the Company and/or Promoters within 15 (fifteen) days of receiving any notice of such Claims (Claim Notice). In the event the Promoter and/or the Company do not object in writing within 10 (ten) days of receipt of the such Claim Notice from the Indemnified Persons, and Claims the validity and amount of which shall have been the subject of a final determination, or which have been settled with the consent of the Indemnified Persons, are referred to collectively as “Agreed Claims”. Within 10 (ten) days of any amounts being deemed or determined as Agreed Claims, the Company and/or the Promoter must pay to the Indemnified Persons an amount equal to the Agreed Claim by wire transfer, in immediately available funds, to the bank account designated by the Indemnified Persons. In the event the Promoter and/or the Company do object to any Claim within 10 days of receipt of Claim Notice from the Indemnified Persons, it will be construed as Dispute and the provisions of Clause in relation to a dispute as contain herein shall apply to resolve such dispute.

1. TERMINATION
   1. This Agreement may:
      1. be terminated prior to the Closing Date upon the mutual written agreement of the Parties or pursuant to Clauses 5.2.
      2. upon the occurrence of an Event of Default.

## be terminated after the Closing, with respect to a Shareholder, if such Shareholder ceases to hold any Equity Securities of the Company, provided that such cessation of shareholding is effected fully in accordance with the terms of this Agreement.

## The termination of this Agreement shall be without prejudice to any claim or rights of action previously accrued to the Parties hereunder.

* 1. Notwithstanding the above, Clause 7 (Representations & Warranties), 15 (Indemnification), 16 (Termination), 17 (Event of Default), 18 (Notices), 22(Confidentiality), 19 (Governing Law), 20 (Dispute Resolution), and 21 (Expenses) shall survive the expiry or earlier termination of this Agreement. Any provision and obligation of the Parties relating to or governing their acts, which expressly or by its nature survives such termination or expiration, shall be enforceable with full force and effect notwithstanding such termination or expiration, until it is satisfied in full or by its nature expires.

1. EVENT OF DEFAULT
   1. Upon the occurrence of an Event of Default, without prejudice to any other rights that IITK may have under this Agreement any other documents, IITK shall have option to exercise any or all of the followings

1. Terminate this Agreement with immediate effect.
2. Claim damages (which would be up-to the amount Invested by IITK in the company plus any other loss occurred to IITK), except in the event of default arising from noncompliance of clause 11 (exit rights), and/or
3. Claim specific performance from the company and the Promoters.
4. Sell the equity shares held by IITK in the Company, to any person, at any price.
5. NOTICES
   1. Notices, demands or other communication required or permitted to be given or made under this Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or by email addressed to the intended recipient at its address set forth in Schedule VII, or to such other address or email address as a Party may from time to time duly notify to the others.
   2. Any such notice, demand or communication shall, unless the contrary is proved, be deemed to have been duly served at the time of delivery in the case of service by delivery in person or by post, and on receipt of transmission in the case of service by email.
6. GOVERNING LAW
   1. This Agreement and the relationship between the Parties hereto shall be governed by, and interpreted in accordance with, the laws of India without having regard to the conflict of laws provisions thereunder. The courts of Kanpur, Uttar Pradesh shall have exclusive jurisdiction over all matters arising pursuant to this Agreement.
7. DISPUTE RESOLUTION
   1. If any dispute or difference arises between any of the Parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, including the question as to whether the termination of this Agreement by any Party hereto has been legitimate (“**Dispute**”), the Parties hereto shall endeavour to settle such dispute amicably.
   2. Any Dispute that remains unresolved for a period of 30 (thirty ) days shall be resolved by binding arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. The arbitration shall be conducted by a sole arbitrator, mutually appointed, in Kanpur, Uttar Pradesh.
   3. Deposits to cover the costs of arbitration shall be shared equally by the disputing parties thereto. The award rendered by the arbitrator shall, in addition to dealing with the merits of the case, fix the costs of the arbitration.
   4. The award rendered by the arbitrator shall be final and conclusive on all Parties to this Agreement, whether or not such Parties have taken part in the arbitration, and shall be subject to forced execution in any court of competent jurisdiction.
   5. Nothing shall preclude any Party from seeking interim or permanent equitable or injunctive relief, or both, from the competent courts, having jurisdiction to grant relief on any disputes or differences arising from this Agreement. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy (including for monetary damages) through the arbitration described in this Clause 20.
8. EXPENSES
   1. The Company shall bear all expenses, including those *inter alia*, for stamp duty for the issuance of the shares to IITK and the Stamp Duty for the execution of this Agreement. All other expenses including legal and attorney fees in connection to the issuance of shares under this Agreement shall be individually borne by IITK.
9. CONFIDENTIALITY
   1. Each Party shall keep all information relating to each other Party, information relating to the transactions herein (including the term sheet governing the transactions contemplated herein) and this Agreement (collectively referred to as “**the** **Information**”) confidential. None of the Parties shall issue any public release or public announcement or otherwise make any disclosure concerning the Information, without the prior approval of all the other Parties; *provided however*, that nothing in this Agreement shall restrict any of the Parties from disclosing any information as may be required under Law subject to providing a prior written notice of 7 (seven) days to the other Parties. Subject to Law, such prior notice shall also include (a) details of the Information intended to be disclosed along with the text of the disclosure language, if applicable; and (b) the disclosing Party shall also cooperate with the other Parties to the extent that such other Party may seek to limit such disclosure including taking all reasonable steps to resist or avoid the applicable requirement, at the request of the other Parties.
   2. Nothing in this Clause 22 shall restrict any Party from disclosing Information for the following purposes:
      1. To the extent that such Information is in the public domain other than by breach of this Agreement;
      2. To the extent that such Information is required to be disclosed by any Law or required to be disclosed to any governmental authority to whose jurisdiction such Party is subject or with whose instructions it is customary to comply;
      3. To the extent that any of such Information is/are later acquired by such Party from a source not obligated to any other Party hereto, or its Affiliates, to keep such Information confidential;
      4. Insofar as such disclosure is reasonably necessary to such Party’s employees, directors or professional advisers, provided that such Party shall procure that such employees, directors or professional advisors treat such Information as confidential. For the avoidance of doubt, it is clarified that disclosure of information to such employees, directors or professional advisors shall be permitted on a strictly “need-to-know basis”;
      5. To the extent that any of such Information was previously known or already in the lawful possession of such Party, prior to disclosure by any other Party hereto; and
      6. To the extent that any information, materially similar to the Information, shall have been independently developed by such Party without reference to any Information furnished by any other Party hereto.
      7. Disclosure of any information by **IITK** about the Company (e.g. Company’s Profile, Incubation support provided by IITK to the Company, Products of the Company, Directors and Promoters etc.) to the print or electronic media, in order to promoter the Incubation Centre of IITK and its mentoring services. However this information shall not include the business secrecy including the technical aspects, process and procedures, IP Rights of the Company.
   3. The Parties warrant that they shall at all times keep confidential (and shall use best endeavours to procure that its respective employees and agents keep confidential) any Confidential Information which is in their possession or which they may acquire in relation to the Company or in relation to the clients, business or affairs of any other Party hereto and shall not use or disclose such information except with the consent of every other Party to this Agreement.
   4. The Parties, in the course of their relationship with the Company, are likely from time to time to obtain access, knowledge or right to use (by agreement or conduct or otherwise) of trade secrets, intellectual property rights and other Confidential Information of the Company and to have dealings with the customers and suppliers of the Company and in order to protect such rights and other Confidential Information and the goodwill of the Company, the Parties undertake to not to, directly or indirectly engage in competing business with that of the Company or disclose, misuse, pass on, license, publish, exploit, distribute such trade secrets, intellectual property rights and other Confidential Information, details of the customers, suppliers without express consent of the Board.
10. **INTELLECTUAL PROPERTY RIGHTS**
    1. The Parties agree that all IP Rights in any materials, Information or products of the Company and title, and interest therein shall remain with the Company or its licensors. Nothing contained herein is intended to grant any rights to the Promoters or IITK under any patents, copyrights, trademarks, or trade secrets of the Company.
    2. The Promoters acknowledge that they may make, discover or create materials and products in the course of their employment and association with the Company and agree that in this respect they have an obligation to protect such developments and use them solely to further the interests of the Company.
    3. Subject to the provisions of the laws relating to intellectual property for the time being in force in India, if at any time during his employment, the Promoters make or discover or participate in the making or discovery of any Intellectual Property Materials relating to or capable of being used in the Business for the time being carried on by the Company or any of its subsidiaries or associated companies, the Promoters shall execute all such documentation to and do all things which may be necessary or desirable to enable the Company to obtain IP Rights in the Intellectual Property Materials in such parts of the world as may be specified by the Company and for vesting the same in the Company.
    4. The employment contracts between the Promoters and the Company shall contain detailed and binding clauses with respect to protection of the Company’s IP Rights and shall take prevalence in case of any inconsistencies between this Agreement and the employment contract.
11. **INFORMATION RIGHTS** 
    1. IITK shall have customary inspection and visitation rights to inspect the books of accounts of the Company, including the right to discuss the Company’s affairs, directly with its auditors. IITK shall have right to call the Company to present its monthly or quarterly reports, comprising of information, as per the format prescribed by IITK. The information rights of IITK, as stated in this clause, shall also be applicable to the subsidiaries the Company. Any information, demanded by IITK, from the Company shall be responded, with n the timelines as prescribed by IITK.
    2. The Company shall keep IITK informed, in writing, every time it proposes to bring in further investment or funds in, either from the existing Shareholders or from third party investors at any time after the Execution Date of this Agreement and will have to share the term sheet/shareholder’s agreement/ investment agreement with IITK. IITK shall ensure full confidentiality of the term sheet/shareholder’s agreement shared by the Company.
12. MISCELLANEOUS
    1. Severability: Any provision in this Agreement, which is or may become prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in the same or any other jurisdiction.
    2. Entire Agreement: This Agreement represents the entire agreement between the Parties in relation to the terms of the matters contained in this Agreement and shall supersede and extinguish any previous drafts, agreements or understandings between all or any of the Parties (whether oral or in written) relating to the subject matter herein.
    3. Counterparts: This Agreement has been signed in counterparts as necessary, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
    4. IITK not be promoters of the Company.

The parties, hereby, agree that IITK shall only be treated as an Investor and shall, in no event and under no circumstances considered to be the promoters of the Company.

* 1. Settlement, Adjustment and Set off of dues payable to IITK, by the Company

In case of any Dues (Rent, Fees, Facilities charges, Incubation Fees and any other similar dues) payable by the Company to IITK is continued to be pending for a period of 45 (forty five) days, IITK shall have a right to settle, set off or adjust the said dues with the undisbursed portion of the Seed Fund approved to the Company, under the Program and the same shall not be disputed by the Company.

* 1. Amendments and Waivers: Any provision of this Agreement may be amended or waived if, and only if such amendment or waiver is in writing and signed.
  2. Independent Contractors: The Parties are independent contracting parties and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture, or employer-employee relationship.
  3. Further Assurances: The Company and the Promoters shall, at any time and from time to time upon the written request of IITK:

### promptly and duly execute and deliver all such further instruments and documents, and do or procure to be done all such acts or things, as IITK may reasonably deem necessary or desirable in obtaining the full benefits of this Agreement and of the rights and ownership herein granted; and

### do or procure to be done each and every act or thing which IITK may from time to time reasonably require to be done for the purpose of enforcing IITK’ rights under this Agreement.

* 1. Assignability: None of the Parties shall be entitled to assign their rights and obligations under the Agreement to a third party without the prior written consent of all the other Parties.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement on the date and the year first hereinabove written.

**For & on behalf of For & on behalf of IITK**

Signature Signature

Name: ………………………………………. Name - …………………………

Designation: DIRECTOR Designation – DEAN R&D

Seal Seal

Witness (Name & Address) Witness (Name & Address)

Date …………………………. Date ………………

**SCHEDULE – “I”**

**DETAILS OF THE PARTIES**

**PART A**

**Details of the Promoters**

|  |  |
| --- | --- |
| **Name** | **Particulars** |
| [●] | PAN: [●]  Address: [●]{*to be inserted*}  Email Address: |
| [●] | PAN: [●]  Address: [●]{*to be inserted*}  Email Address: |

**SCHEDULE – “II”**

**SHAREHOLDING PATTERN**

**Shareholding Pattern of the Company as on the Effective Date**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sr. No.** | **Shareholder** | **Equity Shares** | **Fully Diluted Shareholding** | **Percentage Shareholding** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  | **Total** |  |  |  |

**Shareholding Pattern of the Company at the Closing:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Sr. No.** | **Shareholder** | **Equity Shares** | **CCPS** | **Fully Diluted Shareholding** | **Percentage Shareholding** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | **Total** |  |  |  |  |

**Schedule –III**

**TERMS AND CONDITIONS OF ISSUE OF NEW SUBSCRIPTION SECURITIES**

1. **LIQUIDITY PREFERENCE**

In the event that the Board of Directors of the Company resolves to undertake any sale or transfer of equity shares of the Company or sale, transfer or disposal of assets of the Company, or undertake any merger, demerger, restructuring or reorganisation that has a similar effect, IITK shall be entitled to be repaid the greater of **(i)** The Investment amount plus all the declared but unpaid dividends or **(ii)** a pro rata amount of any assets or cash available to be distributed to the shareholders of Company.

1. **ANTI-DILUTION**

The New Subscription Securities allotted to IITK shall be fully dilutable; however, dilution resulting from the allotment of equity shares to the Promoters of the Company is not permitted.

**Explanation-** The clause interprets that the equity shares held by IITK in the Company cannot be diluted in case if the Company allots further equity shares to the Promoters of the Company. There will be no dilution, in case if the Company allots equity shares to the Investors, other than the Promoters of the Company.

1. **DIVIDENDS RIGHTS**

IITK shall be entitled to a dividend on the Equity Shares held by them on a prorata basis, as and when declared by the Board.

**4) VOTING RIGHTS**

The equity shares, held by IITK, shall have voting rights in accordance with the provisions of the

Companies Act 2013.

SCHEDULE –IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE PROMOTERS

* 1. The Warrantors jointly and severally represent and warrant in respect of their respective Warranties in favour of IITK that the statements set out in this Schedule IV are true and accurate and not misleading as of the date of this Agreement; and will be true and accurate and not misleading at the Closing.
  2. **AUTHORITY AND CAPACITY** 
     1. The Company has been duly incorporated and organized, and is validly existing in good standing, under the Laws of India.
     2. All the directors of the Company are not disqualified by the Companies Act or any other Act of India.
     3. At least 51% shareholders of the Company are Indian Citizens (it does not include person of Indian origin OR Overseas Citizen of India).
     4. The Company has all material permits, approvals, authorizations, licenses, registrations, and consents including registrations necessary for the conduct of the Business as currently conducted.
     5. Subject to Law and the consents to be procured in relation to the performance of the obligations of the Company under this Agreement, the Company and the Promoters have the legal right, power and authority to enter into, deliver and perform this Agreement and all other documents and instruments required to be executed pursuant thereto or in connection therewith, and such documents, when executed, will constitute valid and binding obligations and be enforceable against the Company and the Promoters in accordance with their respective terms.
     6. The Company hereby confirms that there has been no Material Adverse Effect in the Company’s Business and operations of the Company and that it has no notice of any action or investigation or other proceedings of any nature whatsoever, by any Governmental Authority or any other Person which would restrain, prohibit or otherwise challenge the Transaction or would be likely to have a Material Adverse Effect on the Company or Company’s Business and operations.
     7. The execution, delivery and the performance, by the Company and the Promoters of this Agreement and the respective obligations in relation to the transactions contemplated herein will not:
        1. breach or constitute a default under the Charter Documents of the Company;
        2. conflict with or result in any breach or violation of any of the terms and conditions of any contract or other document to which any of them is a party or by which any of them is bound;
        3. give any third party a right to terminate or modify, any agreement, license or other instrument or result in the creation of any Encumbrance;
        4. result in a violation or breach of or default under any Law.
  3. **CORPORATE MATTERS** 
     1. The copies of the Charter Documents of the Company delivered to IITK are true and complete copies, and the Company has complied with all the provisions thereof.
     2. The Subscription Securities shall be validly issued, fully paid-up and the IITK shall have marketable title to and shall be the sole legal and beneficial owner of the Subscription Securities, free from any Encumbrance or Claim or demand of any description whatsoever and shall be entitled to all rights accorded to a holder of such shares in the Company. The Subscription Securities shall be issued based on the quantum of the Seed Fund released by IITK to the Company.
     3. The Company does not have any voting or ownership interest in any other Person.
  4. **ACCOUNTS AND RECORDS**
     1. The books of accounts of the Company have been properly maintained in accordance with Law and Indian GAAP, so as to give a true and fair view of the Company’s Business.
  5. **TAXATION MATTERS**
     1. The Company has complied with all the material requirements as specified under the applicable Tax Laws in relation to payments, returns, computations, notices and information which are required to be complied by the Company.
     2. The Company has no notice of any Tax disputes or other liabilities of Taxes in respect of which a claim has been made or notice has been issued against the Company.
  6. **CONTRACTS**
     1. All material contracts have been duly authorised, executed and delivered by the Company and constitutes a valid and binding obligation of each party thereto, enforceable against each party thereto in accordance with its terms.
  7. **RELATED PARTY ARRANGEMENTS** 
     1. The Company has not and no Person on behalf of the Company has entered into any Related Party Transactions.
  8. **EMPLOYEES**
     1. The Company has, in relation to each of its employees/workers complied in all material respects with its obligations under relevant labour Laws.
  9. **LITIGATION**
     1. The Company carries on Business in compliance with all Laws.
     2. There are no actions, suits, claims, proceedings or investigations pending or threatened against and/or by the Company, before any court, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders against the Company.
  10. **ANTI-CORRUPTION**
      1. The Company, their respective employees, agents and their consultants and each other person acting for, or on behalf of, the Company, has complied with all applicable Laws regarding illegal payments. The Promoters and/or the Company, are not under investigation with respect to and have not been given notice of, any violation of any Improper Payment Laws applicable to the Business of the Company, as presently conducted or as has been conducted. Neither the Company nor any officer, director, agent or employee purporting to act on behalf of the Company or any other related party has at any time, directly or indirectly:
         1. made, provided or paid any unlawful contributions, gifts, entertainment or other unlawful expenses to any candidate for political office, or failed to disclose fully any such contributions in violation of any applicable Laws;
         2. made any payment to any local, state, federal or any other type of governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or allowed by applicable Law
         3. made any payment to any agent, employee, officer or director of any entity with which the Company or any other related party does business for the purpose of influencing such agent, employee, officer or director to do business with the Company or any related party;
         4. engaged in any transactions, maintained any bank account or used any corporate funds, except for transactions, bank accounts and funds which have been and are reflected in the normally maintained books and records of the Company and/or any other related party;
         5. made any payment in the nature of criminal bribery or any other unlawful payment.
  11. **PROPERTIES**
      1. All properties, rights and assets necessary for the carrying on of the Business fully and effectively are owned/ leased in the name of the Company.
  12. **INTELLECTUAL PROPERTY**
      1. The Company is the absolute owner, valid licensee, or authorized user (as the case may be) of IP Rights necessary for its Business as is now being operated, including its trademarks.
      2. The use of the IP Rights as is being used by the Company does not and will not infringe and/or breach or affect the intellectual property rights of any Person.
  13. The Company and the Promoters shall forthwith disclose in writing to the IITK, any event or circumstance which may arise or become known to them after the Closing Date which is inconsistent with any of the representations and warranties in this Schedule IV (Representations and Warranties of the Company and the Promoters) or which, had it occurred on or before the date of this Agreement would have constituted a breach of their representations and warranties.
  14. All information relating to the Company which is material in relation to the Company’s Business, operations, financial conditions, assets and liabilities, intellectual property, organisation, Tax, employment related matters, compliance matters and litigation, required to be known by any prudent investor for valuable consideration has, been disclosed to the Investors.
  15. There are no material facts or circumstances in relation to the Business, the Company and the Promoters or the transactions contemplated in this Agreement which have not been fully and fairly disclosed in writing and which if disclosed might reasonably have been expected to affect the decision of the IITK to enter into this Agreement.
  16. **ANTI-DILUTION OF EQUITY SHARES-**

For any period of time in which IITK owns and/or holds the Equity Shares in the Company, the Company shall, in the event any of the Promoters of the Company increase or raise their individual shareholding in the Company, whether by issue and/or transfer of any new Equity Securities or otherwise (“Proposed Increase”),grant a right of non-dilution to IITK; ensuring no dilution to the Equity Shares owned/held by IITK, whereby the Company shall provide to the Company, a right to subscribe up-to such number of Equity Shares, calculated on a pro-rate basis, so as to correspondingly increase the amount of Equity Shares held by IITK so that the IITK’s proportionate ownership in the Company, on happening of the Proposed Increase, is not decreased.

SCHEDULE –V

RESERVED MATTERS

**Reserved Matters**

1. Any expenditure, other than the planned Expenditure, approved by IITK in advance before the disbursement of the funds, to be spent from the Proceeds of the Investment by IITK, in the Company.
2. Any license, lease, sale, assignment or transfer of any assets or properties of the Company (including its intellectual properties of the Company) other than in ordinary course of business;
3. Appointment or removal (including any change in terms thereof) of any senior management personnel, Key Managerial Personnel and the Director of the Company.
4. Any merger, consolidation, sale of shares or Securities or similar transaction resulting in a change of control of the Company or the sale of all or substantially all of the assets of the Company;
5. Any material change in the general scope of the Business or entering into, or engaging in any transaction in, a line of business other than the Business;
6. Any dissolution or liquidation of the Company;
7. Any amendment in the Company’s charter documents (Memorandum of Association and Articles of Association) of the Company;
8. Entering into an Agreement /MoU which may impact the terms and conditions of this Agreement.
9. Change in the name of the Company.
10. Any strategic, financial or other alliance with a third party which results in investments by the Company or other certain rights to such third party that results in Investments by the Company or offer certain exclusive rights to such third party.
11. Any material change to the broad terms of existing contracts between the Company and/or its subsidiaries with third party other than in the normal course of the business.
12. Any other matter as prescribed by IITK in regards to safeguard the interest of its Investment in the Company.

IITK has the right to require the Company to seek its prior approval wherever necessary and to stipulate such additional condition as the IITK in its absolute discretion deem fit for effecting any change as stated herein above.

SCHEDULE –VI

DISCLOSURE SCHEDULE

SCHEDULE –VI

NOTICES

# If to the Company:

# Name :

# Address :

# Attention :

Email :

# If to the Promoters:

Name :

Address:

Email :

# If to IITK: Professor Incharge- Innovation & Incubation

Name : Amitabha Bandyopadhyay

Address: Innovation & Incubation, SIIC, IIT Kanpur-208016

Email : abandopa@iitk.ac.in