



**Selection of Partner for JVC to manufacture GPON /
GEPON consisting of Optical Line Terminal (OLT) /
Splitter and Optical Network Terminal (ONT) /
Optical Networking Unit (ONU) and other Telecom /
IT related products at Naini**

COR / PP / JVC / NNI

30th October 2009

VOLUME – III

DRAFT SHAREHOLDERS' AGREEMENT

ITI LIMITED

Regd. & Corporate Office :

ITI Bhavan, Doorvaninagar

Bangalore - 560016

TEL: 080-25617490 FAX:080-2561-8289

Email : mohankn_crp@itild.co.in

Website : www.itild-india.com

INDEX

1	DEFINITIONS AND INTERPRETATION	3
2	EFFECTIVE DATE	8
3	GENERAL UNDERTAKINGS OF THE SHAREHOLDERS	8
4	REPRESENTATION AND WARRANTIES	9
5	CAPITAL STRUCTURE	11
6	SCOPE AND OBJECTIVE OF THE COMPANY: BUSINESS PLAN.....	15
7	MANAGEMENT AND THE BOARD OF DIRECTORS	18
8	SHAREHOLDERS' RIGHTS AND OBLIGATIONS.....	23
9	TERMINATION.....	23
10	CONFIDENTIALITY	25
11	MISCELLANEOUS.....	26
	SCHEDULE 1 : CONSORTIUM MEMBERS.....	31
	SCHEDULE 2 : BROAD PRINCIPLES FOR DERIVING FAIR MARKET VALUE OF EQUITY SHARES 32	
	SCHEDULE 3 : RESERVED BOARD MATTERS.....	33
	SCHEDULE 4 : RESERVED SHAREHOLDERS MATTERS	34
	SCHEDULE 5 : BUSINESS PLAN	35
	ANNEXURE 1 : DEED OF ADHERENCE	36

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS AGREEMENT is made at [•] on this [•] day of [•], 20

BY AND BETWEEN :

- 1) **ITI LIMITED**, a company incorporated under the Companies Act, 1956, and having its registered office at ITI Bhavan, Doorvaninagar : Bangalore – 560 016 (hereinafter referred to as “**ITI**”, which expression shall, unless repugnant to the context hereof, include its nominees, successors-in-title and permitted assigns) of the one part;
- 2) **The Parties listed at Schedule 1 hereto** (hereinafter collectively referred to as the “**Consortium Members**” and individually referred to in the manner set out in Schedule 1 hereto; which expression shall, unless repugnant to the context hereof, include their successors-in-title and permitted assigns) of the second part;

AND

- 3) **[Name of the Company]**, a company incorporated under the Companies Act, 1956, having its registered office at [•] (hereinafter referred to as “**the Company**”, which expression shall, unless repugnant to the context hereof, include its successors-in-title and permitted assigns).

ITI and the Consortium Members are hereinafter collectively referred to as the “**Shareholders**” and individually as a “**Shareholder**”.

Each of the Shareholders and the Company are collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS :

- (A) ITI, a Government of India Undertaking, is a company established under the Companies Act, for the purpose of manufacturing telecom products.
- (B) ITI is consolidating its diversification into Information and Communication Technology (ICT)
- (C) As part of the above, ITI wishes to utilise its manufacturing facilities located at Naini for manufacture of state-of-the-art Telecom equipments and ensure the availability of latest technology, which shall be upgraded from time to time to meet the market requirements.
- (D) To meet the objective stated at Recital (C) above, ITI issued an RFQ cum RFP on [•] inviting proposals from interested parties for selection of a joint venture partner (either individually or as a consortium) for undertaking the Project (hereinafter defined).
- (E) Consortium Members are members of a consortium, which had bid, were thereafter short listed and eventually selected by ITI as the joint venture partners for undertaking the Project.

- (F) ITI and the Company shall enter into a Development Agreement (hereinafter defined), pursuant to which the Company shall undertake the Project, in accordance with the terms and conditions set forth therein.
- (G) The Shareholders shall, in accordance with the terms and conditions set forth in this Agreement, subscribe to such Equity Shares of the Company so that immediately thereafter the equity capital is held in the manner and quantity, and subject to such rights and restrictions, powers and obligations as provided for hereunder.
- (H) The Shareholders hereto, for themselves intend to set forth and record the terms and conditions to govern the relationships in their mutual capacity as the shareholders of the Company and to record their respective rights and obligations in relation to the management and functioning of the Company and other matters incidental thereto.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows :

1 DEFINITIONS AND INTERPRETATION

1.1 In this Shareholders' Agreement (including any recital, annexure or schedule attached hereto), except where the context requires otherwise, the following words or terms shall have the following meaning :

Adjourned Meeting shall have the meaning ascribed to the term in Clause 7.16;

Affected Party shall have the meaning ascribed to the term in Clause 11.3;

Affiliate in relation to any Party means any Person who, either directly or indirectly, controls or is under the control of or under common control with such Party, provided however that the Company shall not be deemed to be the Affiliate of any of the Shareholders;

Alternate Director shall have the meaning ascribed to the term in Clause 7.9;

Agreed Form means, in relation to any document, the form of that document which has been initialled for the purpose of identification by or on behalf of each of the Shareholders;

Agreement means this Shareholders' Agreement, including all annexes, schedules and documents attached or incorporated herein, and as may be amended from time to time;

Auditor means the auditor appointed by the Company, and being one of the reputed accounting firms practicing in India;

Board of Directors or Board means the Board of Directors of the Company;

Business has the meaning given in Clause 6.1;

Business Day means a day on which banks are generally open in New Delhi for normal business;

Business Plan means the plan to implement the Project, as appearing in Schedule 5 and the same may be amended from time to time after the prior approval of the Shareholders;

Capital Contribution means a payment by ITI and the Consortium Members to the Company of an amount, as the Company may require in accordance with the terms of this Agreement and the Business Plan, by way of an increase in the shareholding of such Shareholder by way of subscription for further shares in the Company (subject to any

restrictions under Indian law and the Charter Documents on the form any capital increase is required to take);

Cash Call has the meaning given in Clause 5.3;

Chairman means the Chairman of the Company and has the meaning given in Clause 7.21;

Charter Documents means the Memorandum of Association and Articles of Association of the Company incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement

Claimant(s) shall have the meaning ascribed to the term in Clause 11.5

CM Default Purchase Period shall have the meaning ascribed to the term in Clause 9.3(c);

CM Offer Notice shall have the meaning ascribed to the term in Clause 5.8(a);

CM Offer Price shall have the meaning ascribed to the term in Clause 5.8(a);

CM Purchase Shares shall have the meaning ascribed to the term in Clause 5.8(a);

Consortium Members shall have the meaning ascribed to it in the preamble of this Agreement;

Companies Act means the Companies Act (1 of 1956) of India;

Company means [•], incorporated under the Companies Act (having registration number [•] of [•]) whose registered office is at [•];

Consequential Loss shall have the meaning ascribed to the term in Clause 11.19;

Control means the ownership, directly or indirectly, of more than 50% of the voting securities of any Person or controlling the majority of the Board of Directors of the Person, or power to direct the management and policies of such Person by virtue of a contract or otherwise.

Deed of Adherence has the meaning given to it in Clause 5.7 and more particularly set out in Annexure-1;

Defaulting Party shall have the meaning ascribed to the term in Clause 9.3(a)

Defaulting Shareholder(s) shall have the meaning ascribed to the term in Clause 5.6

Development Agreement means the agreement to be entered into between ITI and the Company for implementation of the Project;

Directors means the directors of the Company and **Director** means any one of them (as the context requires);

Effective Date shall have the meaning ascribed to it in Clause 2.1;

Equity Shares shall mean the equity shares of the Company;

Fair Market Value shall mean the value of the Equity Shares of the Company as determined in accordance with Schedule 2;

Financial Year means a financial year of the Company ending on March 31 of any year or any other financial year agreed by the Shareholders pursuant to the provisions of this Agreement;

Foreign Entity means any Entity other than an Indian Entity;

GOI means the central government of India and any ministry, department, or instrumentality thereof;

GOI PSU shall mean any company in which not less than fifty-one (51) percent of the paid up share capital is held by GOI, and includes a company which is a subsidiary of a GOI PSU as thus defined;

Group Entities with respect to a specified Entity, includes any other Entity directly or indirectly controlling, controlled by or under common control with such specified Entity; provided, however, that, for purposes of this definition, the terms “controlling”, “controlled by” or “under common control with” mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect or appoint at least 50% of the directors, managers, partners or other individuals exercising similar authority with respect to such Entity;

India means the Republic of India;

Indian GAAP means the accounting principles and policies that are generally accepted in India;

Initial Subscription shall have the meaning ascribed to the term in Clause 5.2;

ITI Nominee(s) shall mean any GOI PSU nominated by ITI;

ITI Default Purchase Period shall have the meaning ascribed to the term in Clause 9.3(d);

ITI Offer Notice shall have the meaning ascribed to the term in Clause 5.8(b);

ITI Offer Price shall have the meaning ascribed to the term in Clause 5.8(b);

ITI Purchase Period shall have the meaning ascribed to the term in Clause 5.8(b);

ITI Purchase Shares shall have the meaning ascribed to the term in Clause 5.8(b);

Lead Member means [•], the Consortium Member designated as Lead Member in accordance with the MOU dated _____ who shall directly or indirectly hold equity interest in the Company in accordance with the terms hereof and whose or whose Lead Promoter’s financial qualifications have been evaluated for the purposes of evaluation of the Consortium during the competitive Bidding Process adopted by ITI, and having prime responsibility for the implementation of the Project;

Lenders means financial institutions, banks, funds or trusts who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to/trustee for the holders of debentures/bonds or other securities issued by the Concessionaire to meet the cost of the Project, provided that the Shareholders providing the Shareholders Loans shall not be considered as Lenders for the purposes of this Agreement.

Managing Director has the meaning given in Clause 7.22;

Non-Defaulting Party shall have the meaning ascribed to the term in Clause 9.3(a);

Option shall have the meaning ascribed to the term in Clause 5.4(a);

Original Director shall have the meaning ascribed to the term in Clause 7.9(a)

Person means any person, body corporate, trust, partnership firm or other association of persons/ individuals whether registered or not;

Project shall mean development of Project Facilities as per the Business Plan;

Proprietary Information shall have the meaning ascribed to the term under Clause 10.1;

Respondent(s) shall have the meaning ascribed to the term in Clause 11.5(a);

Remaining CM Purchase Period shall have the meaning ascribed to the term in Clause 5.8(a);

Remaining Consortium Members shall have the meaning ascribed to the term in Clause 5.8(a);

Reserved Board Matters means the matters listed under Schedule 3;

Reserved Shareholders Matters means the matters listed under Schedule 4;

Rupees or **Rs.** means the legal currency of the Republic of India;

Seller CM shall have the meaning ascribed to the term in Clause 5.8(a);

Second CM Offer Notice shall have the meaning ascribed to the term in Clause 5.8(a);

Second CM Purchase Period shall have the meaning ascribed to the term in Clause 5.8(a);

Shareholders shall have the meaning ascribed to such term in the Preamble to this Agreement, and includes all Persons who hold shares in the Company from time to time, in accordance with the terms of this Agreement;

Third Party means any Entity not a Party to this Agreement;

Transfer includes: (i) any transfer or other disposition of Shares or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment, gift, donation, redemption, conversion or other disposition of such Shares or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes;

1.2 All other capitalised terms, not defined in Clause 1.1 above, shall have the meanings assigned to them in the Development Agreement.

1.3 Any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to :

- (a) that enactment as amended, extended or applied by or under any other enactment before, on or after the date of this agreement;
- (b) any enactment which that enactment re enacts (with or without modification); and
- (c) any subordinate legislation (including regulations) made (before, on or after the date of this agreement) under that enactment, as re enacted, amended, extended or applied as described in paragraph (a) above, or under any enactment referred to in paragraph (b) above.

1.4 In this agreement, references to a person shall be construed so as to include any individual, firm, company, unincorporated association of persons, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality).

- 1.5 In this Agreement, reference to including and include shall be construed to mean "including without limitation" and "include without limitation" respectively.
- 1.6 In this Agreement, references to times of the day are to Indian Standard Time in the relevant jurisdiction unless otherwise stated.
- 1.7 Where there is any inconsistency between the definitions set out in this Clause 1 and the definitions set out in any other Clause or schedule, then for the purposes of construing such Clause or schedule, the definitions set out in such Clause or schedule shall prevail.
- 1.8 In this Agreement :
- (a) words importing the singular shall include the plural and vice versa; and
 - (b) references to a Person shall include the successors or permitted assigns of that Person (immediate or otherwise).
- 1.9 The headings in this Agreement do not affect its interpretation.
- 1.10 Any schedule or annex to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its schedules and annexures.
- 1.11 In this Agreement, unless the contrary intention appears, a reference to a recital, Clause, paragraph, sub-paragraph, schedule or item is a reference to a recital, Clause, paragraph, sub-paragraph, schedule or item of this Agreement.
- 1.12 If any provision of Clause 1.1 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 1.13 The rule of construction, if any, that a contract should be interpreted against the Parties responsible for the drafting and preparation thereof, shall not apply.
- 1.14 All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, modified, substituted, novated or assigned from time to time.
- 1.15 Clauses 1.1 to 1.14 apply unless the contrary intention appears.

2 EFFECTIVE DATE

- 2.1 The Shareholders acknowledge and agree that this Agreement shall take effect on the latter of the following dates (“the **Effective Date**”):
- (a) the date hereof; and
 - (b) the Commencement Date under the Development Agreement.

3 GENERAL UNDERTAKINGS OF THE SHAREHOLDERS

- 3.1 The Shareholders agree to ensure and procure that the Company shall go for an Initial Public Offer (IPO) as soon as it is eligible and complies with the relevant provisions of Companies Act, SEBI Guidelines, Listing Requirements and other relevant provisions of applicable statutes.
- 3.2 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Company and to use its best endeavours to the extent that it has the authority and ability to do so to promote the success of the Company and the Project and in attaining the objectives set forth in the Business Plan.
- 3.3 Each Shareholder hereby undertakes to the other Shareholders and for the benefit of the Company :
- (a) To perform and observe all of the provisions of this Agreement, the Charter Documents and all other Project Agreements; and
 - (b) Subject to ITI's rights in relation to the Reserved Matters, to procure that: (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power of vote to be exercised, at any meeting of the Shareholders or the Board of the Company, as the case may be, so as to ensure that the approval of any and every resolution necessary or desirable to procure that the affairs of the Company are conducted in accordance with the Development Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Development Agreement and/or the provisions of this Agreement; provided however, that except as expressly directed by any provisions in this Agreement each Shareholder shall have full discretion on how to vote the Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Company, subject only to Applicable Law.
- 3.4 Each Shareholder covenants with the other Shareholders that it shall not use or (insofar as it can reasonably do so) allow to be used for the purposes of trade (except by the Company) any trade name used by the Company or any other name intended or likely to be confused with such a trade name.

- 3.5 Each Shareholder shall take all steps within its power or control to procure that the Company shall provide each Shareholder with audited annual accounts of the Company within six (6) months of the end of each Financial Year.
- 3.6 The Lead Member hereby agrees and confirms that it shall have the sole and full responsibility for the development and implementation of the Project in accordance with the Business Plan.
- 3.7 Save where this agreement provides otherwise, none of the rights or obligations under this Agreement may be assigned or transferred without the prior written consent of all Shareholders hereto.
- 3.8 Nothing in this agreement shall be deemed to neither constitute a partnership between the Parties nor constitute either Party the agent of the other Party for any purpose.

4 REPRESENTATION AND WARRANTIES

- 4.1 Each Shareholder represents and warrants to the other Shareholders at the date hereof that each of the following statements is true and accurate:
 - (a) it has the power to enter into and perform its obligations under this Agreement and each of the other documents referred to in this Agreement to which it is a party;
 - (b) it has all necessary consents, licences and approvals in connection with the entry into and performance of its obligations under this Agreement and as a member of the Company; and
 - (c) its entry into this Agreement and performance of its obligations under this agreement will not violate or conflict with, or exceed any limit imposed by, (i) any law or regulation to which it is subject, (ii) its memorandum and articles of association or other applicable Charter documents or (iii) any other agreement, instrument or undertaking binding upon it.
- 4.2 Each of the Consortium Members hereby warrant and represent to and for the benefit of ITI, the Company and the other Consortium Members that:
 - (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
 - (b) The execution and delivery by the Consortium Member of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
 - (c) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Consortium Member, enforceable

against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;

- (d) It is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a material adverse effect on its ability to perform its obligations under this Agreement.
- (f) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Consortium Member's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

4.3 ITI hereby warrants and represents to and for the benefit of the Company and the Consortium Member that :

- (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) The execution and delivery by ITI of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (c) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of ITI, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) ITI is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a material adverse effect on its ability to perform its obligations under this Agreement.
- (f) There are no actions, suits, claims, proceedings or investigations pending or, to the best of ITI's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which

materially and adversely affects its ability to perform its obligations under this Agreement.

- 4.4 Each of the Parties to this Agreement hereby acknowledges that (i) other than the representations and warranties made in and / or referred to in this Clause 4, no Party has relied upon or will rely upon any other representation or warranty (whether written or oral) or any financial projection or forecast or market information delivered to it with respect to the business and operations of the Company for the purposes of this Agreement; and (ii) there are no representations or warranties by or on behalf of any Party or its representatives other than those expressly set forth and / or referred to in this Clause 4 for the purposes of this Agreement.

5 CAPITAL STRUCTURE

- 5.1 The Company shall have an initial authorised share capital of Rs. ____ (Rupees ____).
- 5.2 The Shareholders hereby agree to subscribe to, no later than 14 days from the Effective Date, such number of Equity Shares of the Company necessary for the Shareholders to own and hold, legally and beneficially, issued share capital of Rs. ____ (Rupees ____) ("**Initial Subscription**") in the manner set out below :

Shareholder	Number of shares	Percentage holding
ITI Limited		
Consortium Member (s)		
TOTAL		100%

The Parties hereby undertake and agree that the Company shall, immediately, but no later than twenty-one (21) days, after the Initial Subscription reimburse to ITI the incorporation costs (including, but not limited, any legal costs or registration charges paid by ITI) incurred by ITI for, or in relation, to the incorporation of the Company, to the extent the same have not already been reimbursed by the Company.

5.3 Cash Calls and Future Capitalisation

- (a) Subject to the Initial Subscription as set out in Clause 5.2 hereinabove, the Company, in order to meet its financial requirements may, from time to time, increase its authorized and / or paid up capital. Towards this end, the Consortium Members (without diluting ITI (along with ITI Nominees) equity shareholding) hereby covenant and agree to infuse funds in such form and quantity as may be necessary. Notwithstanding anything contained to the contrary in this Clause 5.3(a), where any financing documents prescribe that equity capital be infused in the Company prior to any draw-down of debt, the Company may, to the extent necessary, make such cash calls or issue such fresh equity to its shareholders, so as to ensure compliance with the requirements of such financing documents.
- (b) Subject to the Company complying with the requirements of Clause 5.3(a) above, the Consortium Members hereby undertake and agree to subscribe to such number of

Equity Shares as may be called upon to do so by the Company, proportionately in accordance with their respective shareholding in the Company or in such other proportions as may be mutually agreed.

5.4 ITI's Option :

- (a) The Parties hereby further acknowledge and agree that, subsequent to the Initial Subscription, ITI (along with ITI Nominees) shall have the right, but not the obligation, to subscribe to such number of Equity Shares in any subsequent capitalization of the Company, proportionate to its then shareholding in the Company ("**Option**"). It is hereby expressly acknowledged and agreed between the Parties that to the extent any ITI Nominee does not subscribe (whether in whole or in part) to any Equity Shares that it is otherwise entitled to subscribe in any future capitalization of the Company, ITI (or any other ITI Nominee(s) designated by ITI in this regard) shall have the right, but not the obligation, to subscribe (whether in whole or in part) to such number of Equity Shares as the ITI Nominee was entitled to subscribe but did not subscribe in such future capitalization of the Company.
- (b) In the event ITI (along with ITI Nominees) does not inform the Company of its decision to exercise such Option within the prescribed time, ITI shall be deemed to have not exercised its Option and will accordingly not be bound to subscribe to any Equity Shares in the additional capitalisation of the Company.
- (c) To the extent ITI (along with ITI Nominees) chooses or is deemed to have not to exercised its Option, it shall be the obligation of the Consortium Members to acquire the aforesaid Equity Shares, proportionately in accordance with their then, inter-se, respective shareholding in the Company or such other proportion as may be mutually agreeable between the Consortium Members. Provided however, the Parties hereby agree that reasonable time shall be provided to the Consortium Members to acquire such Equity Shares.
- (d) The Parties further agree, that to the extent ITI (along with ITI Nominees) chooses to exercise its Option (whether in whole or in part) in accordance with Clause 5.4(a) hereinabove, but fails, for whatsoever reason, to subscribe its portion of the Equity Shares of the Company within the prescribed time, it shall be deemed that ITI (along with ITI Nominees) has not exercised its Option and the provisions of Clause 5.4(c) shall apply accordingly.

5.5 The Equity Shares of the Company shall, unless otherwise provided for under this Agreement, have identical rights and privileges with respect to dividend and voting right.

5.6 If, for any reason, any of the Shareholders are unable to fulfill their obligation to capitalize the Company in the manner and effect provided hereinabove ("**Defaulting Shareholder(s)**") by the due date of such capitalization, then the Defaulting Shareholder(s) shall be liable to pay an interest of the then State Bank of India Prime Lending Rate plus an additional five (5) percent per annum from the aforesaid due date upto the date of rectification (in full) of such default by the Defaulting Shareholder. If the Defaulting Shareholder does not fulfill its capitalization obligation, within thirty (30) days of the due date of such capitalization (or such other date as may be mutually agreed between the Parties), then all rights of the Defaulting Shareholder under this Agreement including those on the Board shall stand suspended until rectification of

default by the Defaulting Shareholder. Such default shall be considered a material breach (but not the only material breach) for the purposes of this Agreement, and if such material breach is not remedied by the Defaulting Shareholder within thirty (30) days from a Breach Notice being issued (in accordance with Clause 9.3(a) and 9.3(b)), this Agreement may be terminated vis-à-vis the Defaulting Shareholder in accordance with Clause 9.3.

In this regard, the Parties expressly undertake and agree that in the event the entire shareholding of the Defaulting Party is purchased by any of the non-defaulting Consortium Members (or their approved nominees) in accordance with the provisions of Clause 9.3, the non-defaulting Consortium Members (or their approved nominees) shall be obliged to subscribe to such additional Equity Shares of the Company as may be required to rectify the default of the Defaulting Shareholder, proportionately in accordance with the number of Equity Shares purchased by the non-defaulting Consortium Members (or their approved nominees) from the Defaulting Shareholder in accordance with the provisions of Clause 9.3 or in such other proportions as may be mutually agreed between the non-defaulting Consortium Members.

5.7 Transfer restrictions

- (a) Any Shareholder may, subject to the provisions of this Agreement and the Development Agreement, and in compliance with the Applicable Law, Transfer, whether directly or indirectly, all or any of its / their Equity Shares to a Third Party provided that :
- (i) The Shareholder is not in default of this Agreement;
 - (ii) Prior to the proposed Transfer by the any of the Consortium Members in favour of any third Person, the transferring Consortium Member shall offer the Shares to ITI, by giving notice thereof mentioning the total number of Shares proposed to be offered for sale and the price at which it wishes to sell the Shares. In the event that ITI fails to exercise its right to purchase the Shares within thirty (30) days of the receipt of the notice from the transferring Consortium Member, the transferring Consortium Member shall be entitled to Transfer the Shares to the third Person.
 - (iii) The price for the sale to the third person shall not be less than the price at which the shares were offered to ITI
 - (iv) The Transfer shall only be to a Person of equal competency and satisfying the same criteria as laid down in the Bidding Process;
 - (v) The Third Party purchaser agrees and undertakes to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annexure 1 (“**Deed of Adherence**”).
 - (vi) The consent of ITI (as required under the provisions of the Development Agreement) is obtained.
- (b) In the event that ITI does not purchase the shares offered pursuant to Clause 5.7(a) (ii), ITI shall have the right but not the obligation to require the third person to purchase from ITI for the same consideration per Equity Share and upon the same terms and conditions as to be paid to and given to the transferring Consortium Member, upto a maximum of the number of the Equity Shares held by ITI multiplied by a fraction, the numerator of which is the number of shares proposed to be transferred by the Consortium Member and the denominator of which is the total number of Shares held by the Consortium Member and ITI.

- (c) For abundant caution, it is hereby expressly clarified that where Consortium Member is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Company (such Consortium Member being an “**SPV CM**”), a Transfer of any shareholding in such SPV CM shall constitute an indirect Transfer of Equity Shares by the SPV CM for the purposes of this Agreement and be subject to the restrictions on transfer of shares as set forth in this Agreement.

5.8 Rights of First Refusal :

- (a) In addition to the requirements set out in Clause 5.7 and subject always to the lock-in provisions set out under Clause 5.3 of Section 5 of the Development Agreement, if at any time, a Consortium Member desires to Transfer, whether directly or indirectly, any or all of its Equity Shares or voting interests therein owned by it (the “**Seller CM**”), then, it shall:
- (i) make an offer for the sale of the CM Purchase Shares (as defined hereunder) to the other Consortium Members (the “**Remaining Consortium Members**”) by a Notice mentioning therein:- (a) the total number of Equity Shares proposed to be offered for sale (the “**CM Purchase Shares**”), (b) the price at which the CM Purchase Shares are being offered for sale (the “**CM Offer Price**”; and (c) any other terms and conditions in connection therewith (the “**CM Offer Notice**”). A copy of the CM Offer Notice shall also be sent to ITI;
 - (ii) Subject to receiving the CM offer Notice, and in accordance with its terms and conditions, the Remaining Consortium Members shall have the option to purchase between them all, but not less than all, of the CM Purchase Shares, proportionately in accordance with their, inter-se, respective shareholding in the Company or in a manner as may be mutually agreed between them.
 - (iii) Transfer of all, but not less than all, of the CM Purchase Shares to the Remaining Consortium Members shall take place at the same time and date at the registered office of the Company within thirty (30) days from the date of the CM Offer Notice (the “**Remaining CM Purchase Period**”);
 - (iv) If the Remaining Consortium Members do not purchase all the CM Purchase Shares from the Seller CM within the Remaining CM Purchase Period then the Seller CM shall, within three (3) days of the expiry of the Remaining CM Purchase Period, make an offer by notice to ITI for the sale of the CM Purchase Shares at the CM Offer Price and on the same terms and conditions as contained in the CM Offer Notice (the “**Second CM Offer Notice**”);
 - (v) Subject to receiving the Second CM Offer Notice and in accordance with its terms, ITI (along with ITI Nominees), shall, at ITI’s option, have the right to purchase all, but not less than all, of the CM Purchase Shares.
 - (vi) Transfer of all, but not less than all, of the CM Purchase Shares to ITI and/or any of the ITI Nominees shall take place at the same time and date at the registered office of the Company within thirty (30) days from the date of the Second CM Offer Notice (the “**Second CM Purchase Period**”);
 - (vii) If ITI (along with any of ITI Nominees) does not purchase all the CM Purchase Shares from the Seller CM within the Second CM Purchase Period, then the Seller CM shall be at a liberty to sell, within a period of ninety (90) days of the expiry of the Second CM Purchase Period all, but not less than all, of the CM Purchase Shares at a price not lower than the CM Offer Price and on terms and

conditions not more favourable than those offered to ITI in the Second CM Offer Notice to any Entity.

- (b) If at any time, ITI and/or ITI Nominees desire to Transfer any or all of Equity Shares or voting interests therein owned by it/ them, to any Entity (other than any inter-se transfer amongst themselves or their Group Entities), they shall:
- (i) make an offer for the sale of the ITI Purchase Shares (as defined hereunder) to the Consortium Members by a notice mentioning therein:- (a) the number of Equity Shares proposed to be offered for sale (the “**ITI Purchase Shares**”), (b) the price at which the ITI Purchase Shares are being offered for sale (the “**ITI Offer Price**”; and (c) any other terms and conditions in connection therewith (the “**ITI Offer Notice**”). A copy of the ITI Offer Notice shall be sent to each Consortium Member, who shall have the option to purchase between them all, but not less than all, of the ITI Purchase Shares, proportionately in accordance with their, inter-se, respective shareholding in the Company or in a manner as may be mutually agreed between them;
 - (ii) Transfer of all, but not less than all, of the ITI Purchase Shares to the Consortium Members in accordance with the ITI Offer Notice shall take place at the same time and date at the registered office of the Company within thirty (30)days of the date of the ITI Offer Notice (the “**ITI Purchase Period**”);
 - (iii) If the Consortium Members do not purchase all the ITI Purchase Shares from ITI and/or ITI Nominees within the ITI Purchase Period then ITI and/or ITI Nominees shall be at a liberty to sell, within a period of ninety (90) days of the expiry of the ITI Purchase Period, all but not less than all, the ITI Purchase Shares at a price not lower than the ITI Offer Price and on terms and conditions not more favourable than those offered to the Consortium Members in the ITI Offer Notice, to any Entity.

5.9 In accordance with the Business Plan the Shareholders shall cause the Company to procure debts from the Lenders.

5.10 The shareholding of Foreign Entities shall be within the limits permissible for the telecom equipment manufacturing, which is 100% at present as per the FDI regulations, and shall be governed by the law of the land at all times.

5.11 The share capital of the company shall comprise of equity shares only.

6 SCOPE AND OBJECTIVE OF THE COMPANY: BUSINESS PLAN

6.1 The business of the Company (“**the Business**”) shall be limited to the following :

- (a) The implementation of the Project / Project Facilities in accordance with the provisions of the Development Agreement, the Business Plan and Applicable Laws;
- (b) The JVC may manufacture other Telecom / IT related products at the Project site in addition to the mandatory product line apart from the following :
 - (i) WI-MAX Base Station Trans Receiver Equipments and associated Customer Premises Equipment

- (ii) IP CORE Systems consisting of : (a) Media Gateway Controller (Soft Switch), (b) TMGW (Trunking Media Gateway) / LMGW, (c) SGW (Signalling Gateway), (d) Session Border Controller, (e) Media Server

Provided that the JVC may manufacture (i) and (ii) above after the expiry of 5 years from the CPD.

- (c) The activities required for the Company to perform its obligations or for the exercise of its rights under the Project Agreements, the Business Plan and Applicable Laws;
- (d) Any other ancillary or related activities contemplated for the Company under the Development Agreement or the other Project Agreements, subject to compliance with the Business Plan and Applicable Laws;
- (e) The employment of the Project / Project Facilities in a manner that optimises their use;
- (f) Identifying any new opportunities and improving the existing products in order to optimise the usage of the Project;

6.2 The purpose of the Company shall be to implement the Project / Project Facilities in accordance with the provisions of the Development Agreement.

6.3 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Company and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Company and the Project and in attaining the objectives set forth in the Business Plan. Provided however, the Parties hereby expressly acknowledge and agree that ITI (or ITI Nominees) shall only be responsible for contributing equity capital in the Company in the manner and to the extent set out in this Agreement.

6.4 Each Shareholder hereby undertakes towards the other Shareholders and to the benefit of the Company :

- (a) To perform and observe all of the provisions of this Agreement, the Charter Documents and all other agreements between the Parties;
- (b) Subject to ITI's rights in relation to the Reserved Board Matters and the Reserved Shareholder Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board of the Company, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Company are conducted in accordance with the Development Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Development Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement each Shareholder shall have full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Company, subject only to Applicable Law; and

- (c) To cause any of its Group Entities, to comply with the provisions of Clause 6.3 and paragraphs (a) and (b) of this Clause 6.4.
- 6.5 If any Director nominated by a Shareholder pursuant to Clause 7, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.
- 6.6 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge that each ITI Nominee or every person for the time being representing the ITI Nominee in its capacity as shareholder, as the case may be, shall exercise any power to vote or cause the power to vote to be exercised, at any meeting of the shareholders, as the case may be, in the same manner as ITI exercises its power to vote or causes the power to vote to be exercised (including abstaining from voting if ITI so abstains) or in such other manner as may otherwise be notified by ITI in writing.
- 6.7 Without prejudice to Applicable Law or the provisions of this Agreement, the proceedings and the Business of the Company shall at all times be conducted in accordance with sound and best international business practice and the highest ethical standards, on sound commercial principles and in such manner as to maximise returns to the Shareholders from the Company.
- 6.8 The Shareholders and their Affiliates shall deal with the Company such that any future contracts (including any management services contract with the Lead Member or any other Consortium Member) and dealings between any Shareholder (or any of its Affiliates) and the Company shall be on an arm's length basis and shall be subject to such approvals, if any, as may be required under the Companies Act.
- 6.9 If it is proposed that a future contract is or could be entered into between any Shareholder or its Affiliate and the Company, where the amount to be paid for such contract or dealing during a financial year is likely to be in excess of Rs. 100 Lakhs, the company shall hold a meeting of the Shareholders wherein the Shareholders shall form Contract Committee, comprising of at least one representative of each of the Shareholders excluding the interested Shareholder/s, who shall unanimously decide whether discussions or negotiations in respect of that contract should take place with the relevant Shareholder or its Affiliate and, if so, the terms of reference for such discussions or negotiations. It shall then be the sole responsibility of the relevant Shareholder to negotiate the contract with its relevant Affiliate in accordance with the stipulated terms of reference. The relevant Shareholder shall be obliged to report back to the contract committee on a periodic basis as may be reasonably required by the contract committee. Once the negotiations for the draft contract have been successfully concluded (subject to the acceptance of the terms by the Company in accordance with this agreement), the relevant Shareholder shall report back to the contract committee which will then decide, acting unanimously, whether the relevant contract should be put to the Board for approval.

- 6.10 Each of the Shareholders agrees to exercise its respective rights under this Agreement and as a Shareholder in the Company so as to ensure that the business of the Company consists exclusively of the Business and is conducted in accordance with the Business Plan.
- 6.11 The management of the Company shall be exercised in India and the Shareholders shall use all reasonable endeavours to ensure that the Company shall be treated for all purposes, including taxation, as solely resident in India.
- 6.12 The Shareholders acknowledge, agree and shall procure that the Company shall, at all times, be in compliance with, and conduct the Business in compliance with, all Applicable Laws and Applicable Permits.
- 6.13 Each of the Shareholders hereby undertakes and agrees on behalf of itself and its Affiliates to adhere at all times and procure the adherence of the Company at all times to the Business Plan.

7 MANAGEMENT AND THE BOARD OF DIRECTORS

- 7.1 The Company shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Company and the Project. The officers of the Company shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.
- 7.2 The Board shall consist of a minimum of two Directors and a maximum of twelve Directors.
- 7.3 The composition of the Board shall be as under:
- (a) ITI shall have the right to nominate such number of Directors as is proportionate to its shareholding in the Company subject to a minimum of one (1).
 - (b) For abundant clarity, it is expressly set out here that the aforesaid right of ITI to nominate one (1) director to the Board shall subsist and survive irrespective of ITI not being a Shareholder in the Company.
 - (c) The Consortium Members shall, subject to the right of the Lenders to nominate Directors, have the right to nominate the remaining Directors.
- 7.4 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Company in such manner so as to ensure appointment of the nominees of ITI, the Consortium Members and Lenders (if any) as Directors on the Board of the Company from time to time.

- 7.5 Each Shareholder shall be entitled by notice in writing to the Company to appoint and to remove or replace its nominated Director(s). No Shareholder shall be entitled to remove any Director appointed by another Shareholder, save where the appointing Shareholder fails to immediately procure the resignation of such Director(s) or where a Director is required to be removed in accordance with Applicable Law (and, in the latter case, the relevant Shareholder shall be entitled to immediately nominate a replacement).
- 7.6 The Directors shall not be required to hold any qualification Shares in the Company.
- 7.7 Any Director may, by prior written notice to the other Shareholders and the Company, nominate one alternate at any time to act on his behalf as a Director (including where that alternate is another Director) in circumstances and for such period as may be valid under Applicable Law, and the Shareholders shall procure that the Board shall approve any such nomination and appoint the relevant individual to act as that Director's alternate. The Shareholders shall procure that the Board will, unless the nominating Director instructs the Board otherwise, automatically reappoint any nominated alternate if, for any reason, the nominated alternate's office is deemed to have been vacated.
- 7.8 All Directors, except the Managing Director, shall be liable to retire by rotation provided that ITI or the Consortium Members (as the case may be) shall be entitled to nominate the same or any other person as a Director to fill the vacancy caused by such retirement/ rotation. Except where a Director is required by Applicable Law or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the shareholders of the Company to effect such removal and to vote in favour thereof, if so required.
- 7.9 Alternate Director
- (a) A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).
- (b) Such Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in this Clause 7.10(b)), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to constitute quorum, exercise the vote and sign a written resolution on behalf of the Original

Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Law his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

- (c) An alternate Director shall automatically vacate his office as an alternate Director if the Director who appointed him ceases to be a Director.

7.10 If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of one (1) month / two consecutive Board Meetings from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the election of such replacement Director.

7.11 The Board shall meet as necessary to discharge its duties but in any case no less frequently than holding at least one meeting every three calendar months. The minutes of the Board shall be circulated within ten (10) Business Days of the date of the meeting. At the beginning of each meeting of the Board, the Board minutes of the previous meeting shall be approved.

7.12 Meetings of the Board shall be held at such places in India as the Board may determine and failing any such determination at the Company's registered office. If and when permitted under Applicable Law, a Director may participate in a meeting of a committee of the Board by means of telephone, audio or video conferencing or other communication facilities, as permit all persons participating in the meeting to hear each other, and a Director participating in such a meeting by such means shall be deemed to be purposes of this Agreement, to be present at that meeting.

7.13 Unless the requirement of notice is waived by all Directors present in India, a minimum of three (3) days written notice of the Board meetings shall be given to all Directors and their alternates. Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying the matters to be discussed at the meeting and shall be accompanied by all necessary written information. The Board may transact the business set out in the agenda accompanying the notice to the Directors, including ITI Reserved Matters.

7.14 The Board may transact the business that is not set out in the agenda accompanying the notice to the Directors, apart from ITI Reserved Matters. Provided however that with the unanimous consent of all the Directors present, with at least 1 (one) Director nominated by ITI in attendance, the Board may transact the business falling under ITI Reserved Matters that is not set out in the agenda.

7.15 Resolutions :

- (a) A resolution which is signed or approved by all the Directors entitled to receive notice of a meeting of Directors (whether staying inside or outside India) shall be as valid

and effectual as if it had been passed at a meeting of Directors duly called and constituted.

- (b) The resolution may be contained in one document or in several documents in like form each signed or approved by one or more Directors concerned; but a resolution signed or approved by an alternate Director need not also be signed or approved by his appointer and, if it is signed or approved by a Director who has appointed an alternate Director, it need not be signed or approved by the alternate Director in that capacity.
- (c) In this Clause 7.15, references to a document being "signed or approved" include it being approved by letter, fax or email.

7.16 If within half an hour appointed for holding a meeting of the Board, a quorum is not present, the said Board meeting shall stand adjourned to the same day in the next week, to be held at the same time and place (the "**Adjourned Meeting**"). If at the adjourned meeting as well, a valid quorum is not constituted, the Directors present shall constitute a valid quorum.

7.17 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

7.18 Each Director shall have one vote on the Board and, subject to the quorum requirements being met, all decisions of the Board shall (unless expressly stated otherwise in this Agreement or the Charter Documents) be taken on the basis of a simple majority of those Directors present or deemed to be present at that meeting. Any Director appointed as an Alternate Director on behalf of one or more of the Directors in accordance with Clause 7.9 shall have as many votes as the number of Directors he is representing at that meeting (including himself).

7.19 The Business of the Company shall be managed by the Directors who may exercise all the powers of the Company save as otherwise provided in this Agreement.

7.20 Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Company individually.

7.21 Chairman

- (a) The Parties hereby undertake and agree that till such time as the Consortium Members in the aggregate hold more than Fifty-one (51) percent of the total paid up and outstanding equity share capital of the Company, they shall have the right to nominate the Chairman of the Company, who shall be appointed by the Board.
- (b) The Chairman shall preside over all the meetings of the Board or of the Shareholders of the Company.
- (c) If the Chairman is not present at a Board meeting or a Shareholders meeting, the Directors who are present may appoint an acting Chairman from the other nominee Directors of Consortium Members or, if none of the nominee Directors of Consortium

Members are present, any Director present at the meeting, for the purpose of the Board meeting.

7.22 Managing Director

- (a) The Consortium Members shall also nominate the Managing Director of the Company, who shall, following a Board resolution, be appointed by the Board. The Managing Director shall not be liable to retire by rotation. The term of each appointment for the Managing Director shall be for such period as would be decided by the Board from time to time and subject to a detailed employment agreement (if considered necessary by the Board) with the appointee.
- (b) The Managing Director shall be responsible for day-to-day management of the Company and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

7.23 Subject to Applicable Law, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

7.24 It is hereby agreed between the Parties that ITI shall have the right to examine the books, records and accounts to be kept by the Company and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

7.25 Committees of the Board

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained, ITI shall have the right to nominate one nominee each on every committee and sub-committee constituted by the Board.

7.26 Without prejudice to the generality of Clause 7.24, the Company shall supply ITI with copies of :

- (a) audited accounts of the Company (complying with all relevant legal requirements); and
- (b) monthly / quarterly management accounts of each principal division of the Company; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Company including a statement of progress against the relevant Business Plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Financial Year and itemizing all expenditure in relation to the Company's capital programme entered into by each principal division of the Company during that period;

8 SHAREHOLDERS' RIGHTS AND OBLIGATIONS

- 8.1 Till such time as ITI along with ITI Nominees, in the aggregate hold at least ten (10) percent Equity Shares in the Company, the Company (or any of its Directors, officers, agents or representatives) shall not give effect to any decision or resolution in respect of the Reserved Shareholders Matters, unless the same is approved by the affirmative vote of ITI.
- 8.2 The Articles of Association of the Company shall (a) expressly permit the proxies to vote at the Company's shareholders' meetings; and (b) expressly permit the appointment of multiple proxies/representatives in respect of the Company's shares and specify the number of votes that each proxy is authorised to use.

9 TERMINATION

- 9.1 This Agreement shall be valid and in force till such time as the Development Agreement subsists, and shall automatically terminate upon a termination of the Development Agreement.
- 9.2 The Parties agree that in the event any of the Shareholders (along with any of their respective Group Entities and in case of ITI, also along with the ITI Nominees) cease to hold, directly or indirectly, any Equity Shares of the Company, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 10) and dispute resolution (Clause 11.5) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.
- 9.3 Right to Terminate for Cause
- (a) In the event of occurrence of a material breach of any of the terms and conditions of this Agreement or any covenant, representation, warranty or agreement set forth herein ("**Material Breach**") on the part of a Shareholder (the "**Defaulting Party**"), any other Shareholders ("**Non-Defaulting Party**") may give written notice of the alleged breach ("**Breach Notice**") to the Defaulting Party.
- (b) A termination event ("**Termination Event**") shall be deemed to have occurred :
- (i) If such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within thirty (30) days of receipt of the Breach Notice ("**Cure Period**"), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice;
- (ii) In the event an insolvency, winding up or a bankruptcy petition or other insolvency application is presented against a Shareholder, or a court of competent jurisdiction makes an order, or a resolution is passed, for the winding up, dissolution or judicial management or administration of that Shareholder otherwise than in the course of a reorganisation or restructuring previously approved in writing by the other Shareholders (such approval not to be

unreasonably withheld). For avoidance of doubt, it is clarified that exercise of any powers by GOI with respect to ITI or its property, including but not limited to reconstitution thereof shall not be a Termination Event;

- (iii) In the event any attachment, sequestration, distress, execution or other legal process is levied, enforced or instituted against the assets of a Shareholder, or a liquidator, judicial manager, receiver, administrator, trustee-in-bankruptcy, custodian or other similar officer has been appointed (or a petition for the appointment of such officer has been presented) in respect of any assets of a Shareholder; or
- (c) On the occurrence of a Termination Event on the part of any of the Consortium Members :
- (i) the non-defaulting Consortium Members shall have the right to acquire the entire shareholding of the defaulting Consortium Member in the Company; and the defaulting Consortium Member hereby undertakes and agrees to so transfer, its entire shareholding in the Company to the non-defaulting Consortium Members at such price as agreed / to be agreed between the Consortium Members;
 - (ii) Transfer of all, but not less than all, of the Equity Shares held by the defaulting Consortium Member shall take place at the registered office of the Company within thirty (30) days from the date of occurrence of a Termination Event (“**CM Default Purchase Period**”);
 - (iii) In the event the entire shareholding of the defaulting Consortium Members is not purchased by the non-defaulting Consortium Members pursuant to Clause 9.3(c) (i) and (ii) above, ITI (and / or ITI Nominees nominated by ITI in this regard) shall have the right, but not the obligation, upon issuing notice within forty five (45) days after expiration of the CM Default Purchase Period to the defaulting Consortium Member, to acquire the entire shareholding held by Defaulting Party in the Company and the defaulting Consortium Member undertakes and agrees to so transfer its entire shareholding held in the Company to ITI and / or ITI Nominees (as the case may be) at the lesser of (i) 50% of the par value; or (ii) 50% of the Fair market Value.
 - (iv) If all of the Equity Shares held by the Defaulting Party are not purchased by the Non-Defaulting Party (being either ITI (and/or ITI Nominees) or the non-defaulting Consortium Member (or their approved nominees)) within sixty (60) days of the expiry of the Default Purchase Period, then the Material Breach, in respect of which the Breach Notice was given, shall be deemed to have been condoned and the Termination Event shall be deemed to have been lapsed without prejudice to other remedies at law or under this Agreement which the Non-Defaulting Party may have against the Defaulting Party.
- (d) On the occurrence of a Termination Event by Material Breach of ITI :
- (i) the Consortium Members shall have the right, but not the obligation, upon issuing notice to the ITI within forty five (45) days after date of occurrence of the Termination Event (“**ITI Default Purchase Period**”), to acquire the entire shareholding of ITI (including the shareholding of the ITI Nominees) at the lesser of (i) 100% of the par value; or (ii) 100% of the Fair market Value.
 - (ii) If all of the Equity Shares held by ITI (along with ITI Nominees) are not purchased by the Consortium Member (or their approved nominees) within sixty (60) days of expiration of the Default Purchase Period, then the Material Breach, in respect of which the Breach Notice was given, shall be deemed to have been condoned and the Termination Event shall be deemed to have been lapsed without prejudice to

other remedies at law or under this Agreement which the Non-Defaulting Party may have against the Defaulting Party.

- (e) Any Shareholder entitled to purchase shares under this Clause 9.3 shall have the right to designate any of its' Group Entity(s) to purchase the said shares, in place and instead of such Shareholder. Provided however, that the Group Entity agrees and undertakes to be bound to the terms and conditions of this Agreement and executes the Deed of Adherence.

10 CONFIDENTIALITY

10.1 The Parties hereby acknowledge and agree that each of them and their Group Entities possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them and their Group Entities, which information has commercial value in the business in which they and their Group Entities, are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties, on behalf of themselves and their Group Entities, agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all such Proprietary Information, and they and their Group Entities will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Parties.

10.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner or its Group Entities all documents and data of any nature pertaining to the Proprietary Information owned by such Party or any of its Group Entities, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.

10.3 This Clause shall not, however, apply to information which :

- (a) is or becomes publicly available without fault of any Party;
- (b) was known to any Party on a non-confidential basis prior to disclosure;
- (c) is independently developed by any Party without use of the Proprietary Information;
- (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
- (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
- (f) is disclosed in order to comply with the requirements of Applicable Law including any requirements for the stock exchange listing of the Company or any Entity, which directly or indirectly, holds Equity Shares;
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

10.4 The Shareholders on behalf of themselves and their respective Group Entities also agree with each other and their respective Group Entities and the Company to use their, and to cause the Company to use its, best efforts to assure that all information disclosed in connection with the business of the Company and not otherwise generally available shall be kept confidential and shall not be revealed.

11 MISCELLANEOUS

11.1 Notices :

Any notice to be given under this Agreement shall be deemed to have been duly given upon receipt when in writing and delivered in person, by facsimile transmission, by telex or by courier, addressed as follows:-

(a) If to ITI and / or ITI Nominees :

Company Secretary,

ITI Limited

ITI Bhavan, Doorvaninagar

Bangalore – 560016

(b) If to the Company :

(c) If to Consortium Members :

Any Party may change its address provided above for the purpose of this Agreement by giving written notice to the other Parties of such change in the manner hereinabove provided.

Any notice or document shall be deemed to be given :

(a) if delivered in person, at the time of delivery; or

(b) if sent by fax, at the expiration of two hours after the time of despatch, if despatched before 3.00 p.m. (local time at the place of destination) on any Business Day, and in any other case at 10.00 a.m. (local time at the place of destination) on the next Business Day following the date of despatch.

In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the fax was properly addressed and sent.

The Parties agree that the provisions of this clause shall not apply to the service of any writ, summons, order, judgment or other document relating to or in connection with any legal proceedings.

11.2 Force Majeure :

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

11.3 Specific Performance of Obligations :

The Parties to this Agreement agree that, to the extent permitted under Applicable Law, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a Defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

11.4 Governing Law and Consent to Jurisdiction; Arbitration :

- (a) This Agreement and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.
- (b) The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this Agreement, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within sixty (60) days of such consultations having commenced, the provisions of Clause 11.5 shall apply.

11.5 Arbitration :

- (a) If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to submit that dispute for arbitration under ICADR Arbitration Rules, 1996. A notice of the intent to refer the dispute to arbitration may be given by a Party or group of Parties ("**Claimant(s)**") to the other Party or group of Parties ("**Respondent(s)**").
- (b) Such arbitration shall, unless otherwise agreeable to the Parties, be held at Naini, India. All proceedings of such arbitration shall be in the English language.
- (c) The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

11.6 Entire Agreement :

This Agreement, together with all Annexures, Schedules and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

11.7 Language :

The language of this agreement, the transactions envisaged by it and the operation of the Company generally (to the extent this is permitted under Indian law) (including in relation to the Company's internal and external reporting processes and any other communications between the Shareholders, Directors and management of the Company) is English and all notices, demands, requests, statements, certificates or other documents or communications shall be in English unless otherwise agreed.

11.8 Amendments :

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorized representative of each Party.

11.9 Severability :

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

11.10 Counterparts :

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

11.11 Waivers :

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

11.12 No Agency :

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

11.13 No Third Party Beneficiaries :

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any Entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

11.14 Independence of the Parties with respect of each other and of the Company :

The Parties are and shall remain independent. None of the Parties or any Group Entity thereof shall be considered an agents of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Company.

11.15 Arms Length :

All relationships between each Party and / or any relevant Group Entity of such Party of the one part, and the Company, of the other part, shall be conducted at arms length and on competitive terms.

11.16 Expenses :

Each of the Parties shall bear the fees and expenses of its respective counsel, accountants and experts and all other costs and expenses incurred by it incidental to the negotiation, preparation, execution and delivery of this Agreement.

11.17 ITI not Promoter :

For the benefit of the shareholders and expediting the operation of this agreement and of the Development Agreement, ITI has blocked the name “_____ **Private Limited**” with the Registrar of Companies and has got the skeleton of the structure of the Company registered. The Parties hereby expressly agree and acknowledge that merely by such act of ITI or its shareholding, neither ITI nor any of the ITI Nominees shall, at any point, for whatsoever reason, be construed to be the promoter(s) of the Company. If at any point, ITI and / or any of the ITI Nominees are held to be promoters of the Company under Applicable Law, resulting in some loss, expense, cost or liability to the ITI and / or its nominee(s), the Consortium Members shall keep ITI and/or its nominee(s) harmless and shall indemnify them in full.

11.18 Encumbrance

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that the Consortium Members shall have the right but not the obligation to, in any way, Encumber their shareholding in the

Company in favour of the Lenders for raising Debt for the use of the Company, in accordance with the provisions of the Development Agreement.

11.19 Consequential Loss :

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. Each party undertakes not to sue any other party, its officers, employees and agents in respect of such Consequential Loss.

For the purposes of this provision, “**Consequential Loss**” means any indirect or consequential loss (including loss or protection, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach knew or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

11.20 Inconsistency :

If there is any inconsistency between this agreement and the Charter Documents, this agreement prevails as between the parties to the extent of the inconsistency and the parties agree to exercise their voting rights as Shareholders and take any steps which are necessary to ensure that the Charter Documents are consistent with this agreement.

AS WITNESS this agreement has been signed by the Parties (or their duly authorised representatives) on the date stated at the beginning of this agreement.

For and on behalf of **ITI Limited** :

Signed by _____

Witnessed by :

For and on behalf of **Consortium Member/s** :

Signed by _____

Witnessed by :

SCHEDULE 1 : CONSORTIUM MEMBERS

Sr. No.	NAME

SCHEDULE 2 : BROAD PRINCIPLES FOR DERIVING FAIR MARKET VALUE OF EQUITY SHARES

In the event that a determination needs to be made of the Fair Market Value of the Equity Shares, the procedures and approach set forth in this Schedule shall apply:

1. If the Company at that time is publicly listed company then the Fair Market Value shall be the weighted average of the daily trading price for the shares over the previous twelve (12) week period, with the weights being the value of the daily turnover of the Equity Shares.
2. If the Company is not publicly listed, then:
 - (i) Fair Market Value of the Equity Shares means the value of the Equity Shares determined by a firm of independent chartered accountants of international reputation (the "Valuer") on the basis of a transaction between a willing seller and a willing buyer and in accordance with Indian GAAP. Provided that in the event ITI is not the defaulting Party, in determining such value, the Valuer shall :
 - (a) not ascribe or take into account directly or indirectly, any value per se to the land provided to the Company under the Lease Deed.
 - (b) exclude any value attributable directly or indirectly to the state support granted to the Company.

Provided however, if ITI is the defaulting Party then the Valuer shall attribute the above value while determining the Fair market Value of the Equity Shares.

- (ii) Upon receiving a request from a concerned Party for determination of the Fair Market Value of Equity Shares where required in terms of this Agreement, the Board will select the Valuer and instruct the Valuer to determine the Fair Market Value in accordance with Paragraph 1 above.
- (iii) The Company will provide the information required by the Valuer for such determination, within a period of seven (7) days of his appointment.
- (iv) The Valuer shall determine the Fair Market Value within a period of twenty (20) days thereafter and provide his report to the Board, with copies to all Parties.
- (v) The costs, including fees of the Valuer, incurred for such determination shall be borne by the seller and / or the buyer, as may reasonably be determined by the Board.

SCHEDULE 3 : RESERVED BOARD MATTERS

1. Any change in the business of the Company (including any cessation of any kind of business);
2. Change of rights of any class or classes of shares (directly or indirectly);
3. Sale, transfer, lease, license or disposal of all or a substantial part of its business, undertaking or assets whether by a single transaction or series of transactions, related or not, provided that this clause shall not apply where the value of and consideration for the business, undertaking and/or assets being sold, transferred, leased, licensed or disposed of aggregates to less than ten (10) percent of the net fixed asset of Company in any period of twelve (12) months;
4. Approving the writing off of amounts/assets of the Company being in excess of Rs. 50 Lakhs (Rupees Fifty Lakhs Only)
5. Approving the dividend policy of the Company
6. Commencement of any action to wind up or dissolution of the Company including passing of a resolution that the Company be liquidated.

ITI Reserved Matters :

1. Alteration of the Company's name;
2. Alteration of the Charter Documents;
3. Consolidation, subdivision or alteration of any rights attached to any Share capital of the Company, purchase of the Company's own Shares, reduction of the Company's share capital, capitalisation of any amount standing to the credit of any reserve of the Company or reorganisation of any of the share capital of the Company
4. Incorporation or acquisition of any subsidiary or subscription for or acquisition of any shares or other securities or interest in any company, trust or business
5. Giving of any guarantee or indemnity or securing the liabilities or obligations of any Person or provide credit or make any loan or advance to any Person other than which is incurred in the ordinary course of business and which has a value of more than Rs. 50 Lakhs (Rupees Fifty Lakhs Only)
6. Appointment or change of the internal Auditors

SCHEDULE 4 : RESERVED SHAREHOLDERS MATTERS

1. Any change in the business of the Company (including any cessation of any kind of business);
2. Change of rights of any class or classes of shares (directly or indirectly);
3. Sale, transfer, lease, license or disposal of all or a substantial part of its business, undertaking or assets whether by a single transaction or series of transactions, related or not, provided that this clause shall not apply where the value of and consideration for the business, undertaking and/or assets being sold, transferred, leased, licensed or disposed of aggregates to less than ten (10) percent of the net fixed assets of the Company in any period of 12 months;
4. Commencement of any action to wind up or dissolution of the Company including passing of a resolution that the Company be liquidated;
5. Any shareholder resolution requiring the consent of not less than three-fourths (75%) of the shareholders voting (special resolutions) under the provisions of the Companies Act.

ITI Reserved Matters :

1. Alteration of the Charter Documents;
2. Consolidation, subdivision or alteration of any rights attached to any Share capital of the Company, purchase of the Company's own Shares, reduction of the Company's share capital, capitalisation of any amount standing to the credit of any reserve of the Company or reorganisation of any of the share capital of the Company
3. Incorporation or acquisition of any subsidiary or subscription for or acquisition of any shares or other securities or interest in any company, trust or business

SCHEDULE 5 : BUSINESS PLAN

8. This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders Agreement in relation to the provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.