

**PREFERENCE SHARE SUBSCRIPTION AND
SHAREHOLDERS AGREEMENT**

Among

GOLD Technologies Bangladesh Limited
[As “**Company**”]

And

GOLD Technologies PVT HK Limited
[As “**Majority Shareholder/Holdco**”]

And

Bahadur Shah
[As “**Shareholder/Founder**”]

And

HDFC VENTURE CAPITAL FUND 1
[As “**HDFC**”]

This is a Preference Share Subscription and Shareholders Agreement
 (“**Agreement**”) which is executed on DD/MM/YYYY (“**Execution Date**”)

BETWEEN

1. GOLD TECHNOLOGIES BANGLADESH LIMITED, a private limited company incorporated under the Bangladesh Companies Act, 1994, holding registration number E-555555, and having its registered office at Babylonia, Level 1234, Bir Road, Tejgaon I/A, Dhaka, Bangladesh, being represented by its Managing Director, Mr. Bahadur Shah (hereinafter referred as the “**Company**”)

AND

2. GOLD TECHNOLOGIES PVT. (HK) LIMITED, a company incorporated under the laws of Hong Kong, having its registered office address at Building, Road Central, Central, Hong Kong represented by its Authorized Signatory, Mr. Md. Ishan Pathan (hereinafter referred to as the “**Holdco/Majority Shareholder**”).

AND

3. Mr. BAHADUR SHAH, son of Mr. Alam Shah, of permanent address: 100, Well Apartment, Dhaka Cantonment, Dhaka, Bangladesh, by Nationality: Bangladeshi, holding NID No. 3456749931 and TIN No. 123459375440 (hereinafter referred to as the “**Founder**”/ “**Promoter**”/ “**Shareholder**”)

(the Holdco and Mr. Bahadur Shah shall hereinafter be referred together as the “**Existing Shareholders**”)

AND

4. HDFC VENTURE CAPITAL FUND I, an alternative investment fund in Bangladesh that obtained permission from and regulated by Bangladesh Securities and Exchange Commission and operating under the Alternative Investment Fund Rules, 2015 (as amended from time to time) and having its principal office at Bay’s (2nd Floor), 17 Gulshan Avenue, Dhaka 1212 (hereinafter referred to as the “**HDFC**” (which expression shall, unless excluded by or repugnant to the context, be deemed to include its, successors-in-interest, legal representatives, administrators, executors and assigns);

*Company, Holdco/Majority Shareholder, Founder/Shareholder and HDFC shall hereinafter be individually referred to as “**Party**” and collectively as “**Parties**”.*

WHEREAS:

- A. The Company is a private company with limited liability incorporated in Bangladesh under the Companies Act, 1994 and is empowered, under the provisions of its Articles of Association, to issue shares of different classes, including convertible and redeemable preference shares and the details of the Company and total issued share capital of the Company shall be as set forth in Schedule A of this Agreement.
- B. The Company is an E-Commerce marketplace and retailer (“**Business**”).
- C. With the target to expand the Business, the Company has approached HDFC for investment into the Company and HDFC has agreed to invest and subscribe to redeemable preference shares (“**HDFC Shares**”).
- D. Given the present foreign exchange regulations, HDFC intends to invest in the Company on the understanding that HDFC shall have the same rights to investment returns as investors holding proportionate shares in the Holdco and on the understanding that should such foreign exchange regulations be eased, the Investor will transfer the investment to the Holdco.
- E. In order to explore possible investment, a term sheet was executed between the Parties on DD MM YYYY (the “**Term Sheet**”). HDFC has agreed to invest the Investment Amount in the Company to meet the current Business needs of the Company and has agreed to subscribe to 249 (Two Hundred and Forty Nine) preference shares of the Company.
- F. The Company, the Majority Shareholder and the Shareholder have passed necessary resolutions authorizing the Company to issue preference shares and as such, an offer to subscribe to preference shares has been communicated to HDFC and HDFC intends to subscribe based on the understanding that: (i) the value of HDFC’s investment is tagged to the value of the Holdco and (ii) HDFC’s rights are similar to the rights held by investors in the Holdco; hence, the Company is issuing in aggregate 249 preference shares to HDFC (“**HDFC Preference Shares**”) under the terms and conditions stated herein below (“**Transaction**”).

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NOW, THEREFORE, in consideration of the mutual undertakings contained herein and for the good and valuable consideration, intending to be legally bound, the Parties hereby agree as follows:

1. DEFINATIONS AND INTERPRETATION

1.1 Definitions: In this Agreement, capitalized terms shall, unless contrary indication appears and except where the context otherwise specifically requires, have the meanings specified below:

“**Act**” shall mean the Companies Act, 1994 and any amendments, supplements, modifications and/or re-enactment made therein from time to time;

“**Agreement**” shall mean this Preference Share Subscription and Shareholders Agreement and all schedules attached hereto as originally executed and as varied, amended, supplemented or modified from time to time;

“**Allotment**” shall mean subscription by HDFC and the completion of allotment of HDFC Preference Shares by the Company to HDFC pursuant to this Agreement as described in **clause 4** as well as under the Act;

“**Applicable Law**” means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees, policies, guidelines, decision, instruction, guidance, ruling or award of any Government Authority, or other legal requirements of Bangladesh in each case to the extent applicable to the Company or, as the context requires, HDFC;

“**Articles**” or “**Articles of Association**” shall mean the articles of association of the Company;

“**Board**” or “**Board of Directors**” shall mean the board of directors of the Company;

“**Business Day**” shall mean any day, other than a Friday and Saturday or any other days on which the principal commercial banks in Dhaka, Bangladesh are open for business during normal banking hours;

“**Call Option Price**” shall mean price per share equal to either (a) the Fair Market Value of each share of **Holdco Preference Share** or (b) **the bona fide estimated per share offering price to the public in such public offering (as applicable)**. The Call Option Price shall be applicable as follows:

- (i) In case of Call Option Triggering Event (c), (d) and (e) of the definition of Call Option Triggering Event herein below, the Call Option Price shall be MACR multiplied by option (a) stated above;
- (ii) In case of Call Option Triggering Event (a) and (b) of the definition of Call Option Triggering Event herein below, the Call Option Price shall be MACR multiplied by option (b) stated **above**.

“**Call Option Triggering Event**” shall mean and include: (a) adoption of a resolution for an initial public offering of the shares of the Majority Shareholder/Holdco; (b) Company resolves to list itself in any stock exchange to offer shares in public; (c) there is a Liquidity Event (**as defined in this Agreement**); (d) **at the occurrence of a drag sale as stipulated in this Agreement**; or (e) adoption of a **resolution by the Majority Shareholder to sell at least 50% of its shareholding in the Company to any third party**;

“**Claim**” means a claim for a breach of this Agreement;

“**HDFC Preference Share**” means the convertible, redeemable Preference Shares at BDT 8,958.5666/- [face value BDT 10/- + premium BDT 8,948.5666/-] only per Preference Share in the capital of the Company, having the rights set out in the Articles, including the terms and conditions set out in this Agreement and issued by the Company and subscribed by HDFC;

“**Holdco Preference Share**” means the preference shares in the capital of the Holdco and having the rights set out in its constitutive documents including the terms and conditions set out in any Holdco Preference Shares Related Agreements with Hero Outlay LLP; XR Infin; Mr. Das; and Docket Fonee.

“**Change of Control**” means (i) means (I) a transaction or series of related transactions in which any Person becomes the direct or indirect owner of more than 50% of the outstanding voting securities/shares of the Holdco or the Company having the right to vote for the election of members of the Holdco or the Company's Board of Directors, (ii) any reorganization, merger or consolidation of the Holdco or the Company, other than a transaction or a series of related transactions in which the holders of the voting securities/shares of the Holdco or the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of voting power represented by the outstanding voting

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securities of the Holdco, the Company or such other surviving or resulting entity, or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

“Closing” means the completion of the transaction, in accordance with clause 4 hereof, at which the documents shall be exchanged by the Parties, except for those documents or other items specifically required to be exchanged at a later time;

“Closing Date” shall mean a date on or before DD/MM/YYYY or any such other date on which date Closing shall take place, or any other later date as mutually extended by the Parties on which date the Closing shall take place;

“Competitor” means a person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in a business similar to the business of the Company;

“Conversion” shall mean (a) [1:1] HDFC Preference shares into Ordinary Shares of the Company, subject to standard anti-dilution adjustments, convertible at the discretion of HDFC or [1:0.445] whereby one Subsidiary stock is equivalent to 0.4455 Holdco Stock (b) automatic conversion upon Qualified IPO;

“Dividend” means the dividend payable by the Company on each HDFC Preference Share;

“Dispose” means to make or to effect any sale, assignment, exchange, transfer, or to grant any option, right of first refusal or other right or interest whatsoever or to enter into agreement for any of the same and the expression “Disposal” shall be construed accordingly;

“Encumbrances” includes a security interest of whatsoever kind or nature including: (i) any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, deed of trust, title retention, 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 applicable laws, (ii) any voting agreement, interest, option, right of first offer or refusal or transfer restriction in favour of any person, and (iii) any adverse claim as to title, possession or use.

“Fair Market Value” shall mean:

- (i) in the case of determination of Fair Market Value in respect of paragraphs (c), and (d) of Call Option Triggering Event and paragraphs (b), (c), (e) and (f) of Put Option Triggering Event, the proceeds ultimately receivable in the applicable transaction by Hero Outlay LLP; XR Infin; Docket Fonee and Mr. Das (“Holdco Investors”) (or its successors) in respect of each share of Holdco Preference Shares (or any other shares then held as a result of conversion of said shares) (after taking into account the application of liquidation preferences, if any, but ensuring that HDFC, in no way, is given less per share liquidation preference than Holdco Investors in respect of each share of the Holdco Preference Shares (or any other shares then held as a result of conversion of said shares);
- (ii) in the case of determination of Fair Market Value in respect of paragraph (e) of Call Option Triggering Event and paragraph (h) of Put Option Triggering Event, the sum of (i) the proceeds ultimately receivable by Holdco Investors (or its successor) in respect of each share of Holdco Preference Shares (or any other shares then held as a result of conversion of said shares) from the proceeds of the respective triggering event, and (ii) a value as mutually agreed upon by HDFC and the board of directors of the Majority Shareholder following such triggering event, in each case after taking into account the application of liquidation preferences, if any, but ensuring that HDFC, in no way, is given less per share liquidation preference than Holdco Investors in respect of each share of Holdco Preference Shares or any other shares then held as a result of conversion of said shares, and in the event of failure to reach an agreement within 20 (twenty) Business Days, by a third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young as agreed by the Majority Shareholder and HDFC; if such third-party appraiser cannot be agreed upon within 10 (ten) Business Days, then the Majority Shareholder shall select a third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young (“Majority Shareholder Appraiser”) and HDFC and any future purchaser of HDFC Preference Shares (if any) shall select a third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young (“HDFC Appraiser”) and the Majority Shareholder Appraiser and HDFC Appraiser shall select an additional third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young mutually acceptable to both the Majority Shareholder Appraiser and HDFC Appraiser (“Final Appraiser”) and the Final Appraiser shall conduct the fair market value appraisal, with such selection and appraisal to be completed in no more than 20 (twenty) calendar days;
- (iii) in all other cases of Call Option Triggering Event and Put Option Triggering Event, the value as mutually agreed upon by HDFC and the Majority Shareholder, and, in the event of failure to reach an agreement, by a third-party appraiser among the four accounting firms being PwC,

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Deloitte, KPMG and Ernst & Young agreed by the Majority Shareholder and HDFC; if such third-party appraiser cannot be agreed upon, then the Majority Shareholder shall select a third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young (“Majority Shareholder Appraiser”) and HDFC and any future purchaser of HDFC Preference Shares (if any) shall select a third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young (“HDFC Appraiser”) and the Majority Shareholder Appraiser and the HDFC Appraiser shall select an additional third-party appraiser among the four accounting firms being PwC, Deloitte, KPMG and Ernst & Young mutually acceptable to both the Majority Shareholder Appraiser and the HDFC Appraiser (“Final Appraiser”) and the Final Appraiser shall conduct the fair market value appraisal;

“Government Authority” means any court, tribunal, arbitral or judicial body or any national, local or similar government, governmental, regulatory, administrative or statutory authority, government department, branch, agency, board, any statutory body or commission or administrative authority, body or other organization to the extent that the rules, regulations and standards, requirements, procedures or orders of such authority, body or other organization have the force of law in Bangladesh;

“Holdco Preference Shares Related Agreements” means the Share Subscription and Shareholders Agreement dated 02/10/2022 and 14/11/2022 executed either prior to or simultaneously to this Agreement between the Majority Shareholder/Holdco and certain subscribers of Holdco Preference Shares and includes the Share Subscription Agreement of Docket Fonee dated _____ corresponding to the Term Sheet executed on 07/03/2022;

“HDFC Preference Shares” shall mean a total of 249 Preference Shares of the Company subscribed by HDFC at BDT -----/- [face value BDT 100/- + premium BDT -----] only per share and convertible into Ordinary Shares (pursuant to clause 9.2 of this Agreement) at the option of HDFC and redeemable pursuant to clause 9 of this Agreement, to be issued to HDFC on the terms set out in this Agreement;

“Investors” shall mean any investors of the current round and future investors including any SAFE note holders post conversion.

“Investor Director” shall mean the director appointed jointly by all current round investors at the Board of the HoldCo;

“HDFC Observer” means an individual to be appointed as observer by and on behalf of HDFC from time to time, however, such HDFC Observer shall not be deemed as a nominee director (HDFC Director) of HDFC and shall not be a director of the Board of Directors of the Company;

“Investor Stock” shall mean the cumulative shares of investors in the Holdco and the Company on an as swapped into Holdco Stock basis.

“Liquidation Event” shall mean the actual liquidation of the Company and/or the Holdco (i.e., disposition of the assets) upon dissolution or bankruptcy, (b) the sale of the Company and/or the Holdco (whether via Share sale, assets sale or merger) to a third party (c) a Change of Control of the Company and/or the Holdco (d) an IPO of the Company and/or Holdco

“Mutually Agreed Conversion Ratio” or “MACR” shall mean the (i) the price paid by HDFC for subscription of each HDFC Preference Share in the Company under clause 2.3 of this Agreement (BDT XXX), as appropriately adjusted for splits, combinations, dividends or other similar reorganizations, divided by (ii) the original subscription price of each share of Holdco Preference Share (US\$ XXX or BDT XXX), as appropriately adjusted for splits, combinations, dividends or other similar reorganizations and for changes in conversion ratio of the Holdco Preference Share under the SHA. The MACR shall be applied at 5 (five) decimal places and shall be BDT XXX/USD XXX=XXX. For the purpose of the calculation of MACR under this agreement, the exchange rate will be held constant at USD 1 = BDT XX based on Bangladesh Bank inter-bank exchange rate on XX/0X/2023;

“Material Adverse Effect” means any event or effect that has a material adverse effect on: (a) the ability of the Company to consummate the transactions contemplated in this Agreement; or (b) the Business; provided, however, that no event, change or development resulting from any of the following shall be deemed by itself or by themselves, either alone or in combination, to constitute or contribute to a Material Adverse Effect or be taken into account in determining whether a Material Adverse Effect has occurred: (u) general conditions in the global or national economy, financial or securities markets, including interest rates or currency exchange rates, or any events, changes or developments therein; (v) any events, changes or developments in the industries in which the Company conducts business or any segment thereof; (w) any changes (or proposed changes) in applicable laws, protocols or programs of any Government Authority or industry standards, or the interpretation, implementation or enforcement thereof; (x) natural disasters, weather conditions, pandemics, epidemics and other force majeure events; (y) any failure by the Company to meet any internal or published projections or forecasts or estimates of revenues or earnings for any period; and (z) actions required to be taken under applicable laws or agreements entered into by the Company;

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“**Ordinary Shares**” shall mean the ordinary shares of the Company at face value BDT 100/- per share including any HDFC Preference Shares converted pursuant to clause 9.2 below;

“**Person**” shall mean any individual, corporation, company, partnership, firm, joint venture, trust, unincorporated organization, association, governmental entity or organization or association of which any thereof is a member or participant, and in each case whether having a distinct legal personality or not;

“**Preemption Right**” shall have the meaning ascribed to it in clause 7.1 below;

“**Preference Share**” mean the Preference Shares and any other class of preference shares issued or to be issued by the Company from time to time;

“**Put Option Price**” shall mean price per share equal to (a) the Fair Market Value (FMV) of each Holdco Preference Share, or (b) redemption price for each Holdco Preference Share upon exercise of Holdco Investors put option for the Holdco Preference Shares; or (c) pre-money IPO valuation of each share of the Holdco Preference Shares. In addition, the Put Option Price shall be applicable as follows:

- (i) In case of Put Option Triggering Event (a) of the definition of Put Option Triggering Event herein below, the Put Option Price shall be MACR multiplied by option (b) stated above;
- (ii) In case of Put Option Triggering Event (b), (c), (e), (f), (g), (h) and (i) of the definition of Put Option Triggering Event herein below, the Put Option Price shall be MACR multiplied by option (a) stated above;
- (iii) In case of Put Option Triggering Event (d) of the definition of Put Option Triggering Event herein below, the Put Option Price shall be MACR multiplied by option (c) stated above.

“**Put Option Triggering Event**” shall mean each of the following events: (a) notice of redemption of all or some of Holdco Preference Shares; (b) notice of exercise of tag-along right by Holdco Investors in the Majority Shareholder/Holdco pursuant to clause 12 of this Agreement; (c) any voluntary or involuntary liquidation, dissolution or winding up of the Majority Shareholder/Holdco or occurrence of a Liquidity Event; (d) the consummation of an initial public offering of the Majority Shareholder/Holdco; (e) decision for acquisition of shares held by Holdco Investors collectively representing more than fifty percent (50%) of the outstanding voting power of the Holdco by a third party in a single or series of transactions; (f) in case Holdco Investors are required to sell their shares pursuant to the occurrence of drag sale; (g) failure on the part of the Company to pay Dividends under this Agreement to HDFC, whereas, Holdco Investors and/or Ordinary Shareholders are paid dividends by the Holdco; (h) decision by the Majority Shareholder for the sale of more than 50% of its shares (Ordinary Shares or Preference Shares) in the Company to any third party in a single or series of transactions; (i) breach of any rights of HDFC as stated in clause 9.8 of this Agreement over other shareholders of the Company;

“**RJSC**” means the Office of the Registrar of the Joint Stock Companies and Firms;

“**Record Date**” means for the purpose of determining Shareholders entitled to receive payment of any Dividend, the Board may fix in advance a date for any such determination of Shareholders, such date to be not more than 30 (thirty) days and prior to the date on which the particular action requiring such determination of Shareholders is to be taken; If no record date is fixed for the determination of shareholders entitled to receive payment of a Dividend, the day before the date on which notice of the meeting of the Board is mailed or the date on which the resolution of the Board declaring such Dividend is adopted, as the case may be, shall be the record date for such determination of shareholders;

“**Return of Allotment**” means statutory form to be filed with the RJSC evidencing Allotment of the HDFC Preference Shares to HDFC by the Company;

“**Shares**” means any issued shares of the Company and includes the Ordinary Shares and Preference Shares and Ordinary shares on as converted basis;

“**Shareholders**” means any persons holding Shares and registered as a member in the register of members of the Company;

“**Substantiated**” means a Claim for which the Company and the Majority Shareholder may be liable and which is admitted or proved in a court of competent jurisdiction with all rights of appeal having been exhausted;

“**Tax**” or “**Taxation**” means and includes all forms of taxation and statutory and governmental, local governmental or municipal charges, duties, stamp duty, registration fees, contributions and levies, withholdings and deductions according to the regulatory requirements, in Bangladesh and whenever imposed and all related fines, penalties, surcharges, charges, interest and other additions to tax; and

“**Total HDFC Preference Share Purchase Price**” has the meaning given in clause 2.3 below.

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- 1.2 Interpretation: Except where the context otherwise specifically requires, references in this Agreement to:
- (a) clauses, paragraphs, sub-paragraphs, recitals or schedules are, unless otherwise specified, references to clauses, paragraphs, sub-paragraphs and recitals of, and schedules to, this Agreement;
 - (b) the Parties shall include their respective successors and permitted assigns;
 - (c) where the context so admits, references to the Act or any provision of that statute include a reference to any statutory provision for which it is a re-enactment or replacement (with or without modification) in so far as it relates to a period of time when such earlier statutory provision was in force;
 - (d) the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
 - (e) the word “including” means “including, but not limited to” or “including, without limitation” and the word “includes” means “includes, but not limited to” or “includes, without limitation”;
 - (f) any document (including this Agreement), are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
 - (g) any statute or other legislative provision shall be read to include any statutory or legislative modification or re-enactment thereof, or any substitution therefore;
 - (h) clauses and other headings contained in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer;
 - (i) the Parties having acknowledged that HDFC, not being able to participate and subscribe for Holdco Preference Shares in the Holdco due to foreign exchange restrictions as per Applicable Law in Bangladesh, is investing and subscribing for HDFC Preference Shares into the Company under this Agreement with the intention of receiving, to the extent practicable, substantively the same effective rights and obligations and economic benefits and risks as a corresponding number of Holdco Preference Shares, and each Party agrees that, in the event of any ambiguity hereunder, this Agreement shall be interpreted consistently with this intention. Unless stated otherwise, capitalized terms used but not defined in this Agreement will have the meanings assigned to them by the Holdco Preference Shares Related Agreements; and

2. SHARE CAPITAL AND ISSUE OF AND SUBSCRIPTION FOR THE HDFC PREFERENCE SHARES

- 2.1. The share capital of the Company prior to the investments made in the Company in Pre-Series A round is as follows: Authorized share capital of the Company is BDT 1000000 (Ten Lac Taka) divided into 10000 (Ten Thousand Ordinary Shares) having a face value of BDT 100 per share. The Company is to further issue 215 convertible preference shares (“CPS”) to Startup Bangladesh Limited for BDT 1,39,534.88 (One Lac Thirty Nine Thousand Five Hundred and Thirty Four Taka) per share with the total price paid is BDT 30000000 (Three Crore Taka) for 2.11% shareholding in the Company.
- 2.2. Issue and Subscription: On and subject to the terms and conditions set forth in this Agreement, the Company hereby agrees to issue, and HDFC hereby agrees to subscribe for 249 CPS.
- 2.3. Total HDFC Preference Share Purchase Price: The total consideration payable by HDFC to the Company for issuing 249 CPS is BDT 160,500 (One Lac Sixty Thousand and Five Hundred Taka) per share [face value BDT 100/- + premium BDT 160,400]. Accordingly, the Total HDFC Preference Share Purchase Price shall be BDT 4,00,00,000/- (Four Crore Taka) (“**Investment Amount**”) only for 249 CPS.
- 2.4. Payment of Total HDFC Preference Shares: HDFC shall only make payment of the Total HDFC Preference Share Price only Closing Date only upon the fulfillment of the Conditions Precedent by the Company and the Majority Shareholder, as listed in clause 3 below, to the full satisfaction of HDFC. The Total HDFC Preference Share Purchase Price shall be accounted as full payment against the HDFC Preference Shares to be issued in favour of HDFC under this Agreement.

- 2.5. Valid Issue of Preference Shares: The Company and the Majority Shareholder shall ensure that upon its issuance of HDFC Preference Shares to HDFC, such CPS shall be duly and validly authorized, allotted and issued by the Company with all rights, benefits, privileges and conditions attached or accruing to its CPS Holders of the Company and such allotment should be made pursuant to provisions of the Act.
- 2.6. HDFC and the Company hereby agree to execute and deliver all documentation required by Applicable Laws to permit the issuance of the HDFC Preference Shares on the terms herein set forth.
- 2.7. It shall also be a condition that all documentation relating to the Transaction shall be in form and substance satisfactory to HDFC's legal counsel, and that all representations and warranties of the Parties contained herein are true and correct on the Execution Date of this Agreement and shall remain true and correct on the Closing Date.

3. CONDITIONS PRECEDENT

- 3.1. The obligations of HDFC to subscribe for the requisite HDFC Preference Shares at the Closing and to perform its obligations hereunder are subject to the fulfillment of the following conditions by the Company and the Majority Shareholder, where applicable, to the satisfaction of HDFC unless expressly waived in writing by HDFC:
- (a) Circulate the executed version of the Holdco Preference Shares Related Agreements along with executed signature pages;
 - (b) Prior to the Closing Date, the Company, Majority Shareholder and Shareholder shall furnish to HDFC in form and substance satisfactory to it and where applicable, providing evidence that:
 - (i) approval by the Board of Directors of the Company for (aa) authorizing the issuance of HDFC Preference Shares to HDFC on the terms and conditions of this Agreement subject to the receipt of the Total HDFC Preference Share Purchase Price; (bb) authorizing such person(s) to sign, seal and deliver this Agreement and any other agreements, the share certificates of HDFC Preference Shares and such other documents in contemplation thereto for and on behalf of the Company;
 - (ii) all meetings of the Company, that are required to be held in compliance with any provision of the Act or any other law of Bangladesh have been duly held and the returns (such as annual return to RJSC, annual tax return to National Board of Revenue) are duly filed with the office of the RJSC;
 - (iii) the warranties of the Company and the Majority Shareholder set out in Schedule C hereunder will be true and correct in all material respects as on the Closing Date;
 - (iv) no Material Adverse Change shall have occurred
 - (v) approval from the shareholders of the Holdco according to Holdco Preference Shares Related Agreements of the Holdco has been obtained and provided to HDFC;
 - (vi) the Company and the Holdco has initiated necessary steps to amend its constitutional documents to the extent necessary for this Transaction.
- 3.2. The obligations of the Company and the Majority Shareholder for the issuance of requisite HDFC Preference Shares at the Closing and to perform their obligations hereunder are subject to the fulfillment of the following conditions by HDFC to the satisfaction of the Company as well as the Majority Shareholder unless expressly waived in writing by the Company and the Majority Shareholder:
- (a) provide a letter stating the decision of the investment committee of HDFC for undertaking the Transaction contemplated in this Agreement and authorizing the signatory to execute and sign this Agreement and other relevant documents;
 - (b) the representations and warranties of HDFC set out in clause 14 hereunder are true and accurate as on the Closing Date.
- 3.3. Fulfilment of the Conditions Precedent: Upon fulfilment of the Conditions Precedent contained in this clause 3.1, the Company and the Majority Shareholder shall notify the HDFC about the fulfilment of the Conditions Precedent by providing a certificate of fulfilment to HDFC ("**Notification to HDFC**"), together with documentary evidence of such fulfilment (if any). Similarly, upon fulfilment of the Conditions Precedent contained in this clause 3.2, HDFC shall notify the Company and the Majority Shareholder about the fulfilment of the Conditions Precedent

by providing a certificate of fulfilment addressing to Company and Majority Shareholder (“**Notification to Company and Majority Shareholder**”).

- 3.4. HDFC’s acceptance of the satisfaction of the Condition Precedent under clause 3.1 above shall be evidenced by the submission of a notice of satisfaction from the HDFC to Company and Majority Shareholder. Similarly, the satisfaction of Company and Majority Shareholder in relation to the Condition Precedent under clause 3.2 above shall be evidenced by the submission of a notice of satisfaction from the Company and Majority Shareholder to HDFC. In both cases, the Parties shall provide their respective satisfaction notice within 7 (seven) Business Days from the date of receiving Notification to HDFC or Notification to Company and Majority Shareholder.
- 3.5. In the event, the Company, Majority Shareholder or HDFC are not satisfied with the fulfilment of any Condition Precedent as stated in the Notification to HDFC or Notification to Company and Majority Shareholder, the non-satisfied Party shall issue a notice of request of rectification to the non-satisfying Party with a fixed timeline for rectifying the issue and an amended Closing Date. Failure to rectify the issue(s) within this specific timeline shall entitle the aggrieved Party to terminate this Agreement in accordance with clause 5.2.
- 3.6. Notwithstanding anything contained under clause 3.5 above, both Parties may at any time to the extent it is legally entitled to do so and to such extent as it thinks fit (in its absolute discretion), waive in whole or in part and conditionally or unconditionally any of the Conditions Precedent by notice in writing to the other Party.
- 3.7. If, at any time, the Company or the Majority Shareholder or the Shareholder or HDFC becomes aware of any fact, event or circumstance that might reasonably be expected to prevent any Condition Precedent from being satisfied, that Party shall promptly notify the other Parties of the relevant matter.

4. MODE OF PAYMENT AND CLOSING

- 4.1. Subject to the terms and conditions set forth in this Agreement, Closing shall take place at the office of the Company on the Closing Date.
- 4.2. Closing: At Closing, the Parties shall ensure the following in order of precedence as set out below:
 - (a) HDFC shall make payment in a single tranche or two tranches to the Company of the Total HDFC Preference Share Purchase Price on or before the Closing Date by wire transfer or by pay order or by account payee cheque drawn in favour of the Company in immediately available funds, to the following account of the Company:

GOLD Technologies Bangladesh Limited; Bank Name:
_____ ; Account Number: _____

- (b) The Company, the Majority Shareholder and the Shareholder, as applicable, shall hold a Board of Directors meeting and if required, a shareholder’s meeting, in order to give effect to the following:
 - (i) Recording and ratifying the Transaction contemplated in this Agreement;
 - (ii) recording the receipt of the Total HDFC Preference Share Purchase Price by wire transfer into the Company bank account (details of which are provided above in clause 4.2 (a) or by pay order or by account payee cheque drawn in favor of the Company;
 - (iii) allotment of 249 CPS to HDFC and completing the RJSC Form XV;
 - (iv) authorizing the issuance of duly stamped share certificates in relation to the 249 CPS to HDFC;
 - (v) authorizing the entering in the register of shareholders maintained by the Company, the name of HDFC as the legal and beneficial holder of the 249 CPS Shares;
 - (vi) delivery to HDFC, share certificates in relation to the CPS recording the name of HDFC as the legal and beneficial owner of the CPS; and
 - (vii) delivery to HDFC a certified true copy of the updated register of shareholders maintained by the Company evidencing the name of HDFC as the legal and beneficial owner of HDFC Preference Shares/249 CPS in compliance with the Act.
- (c) an undertaking by the founders of Holdco that subscription of shares of Holdco by way of conversion via MACR thorough either (aa) call option triggering event (bb) put option

- triggering event and/or (cc) liquidation event were in compliance of the Act and rules and regulations of Bangladesh Bank.
- (d) the obligations of each the Parties in clause 4.2 are interdependent and Closing shall not be deemed to have occurred unless all of the obligations in clause 4.2 are complied with and are fully effective.
- (e) All obligations of the Company, the Majority Shareholder and the Shareholder to be performed prior to HDFC's subscription has been duly performed and no breach of the Agreement has occurred.
- 4.3. Post-Allotment Actions: The Company shall duly file (a) extra-ordinary / special resolution passed at the extra-ordinary general meeting of the Company (RJSC Form VIII), and (b) Return of Allotment of the HDFC Preference Shares to HDFC (RJSC Form XV) with the RJSC within the relevant statutory period prescribed by the Act and submit proof of submission before the RJSC/RJSC acknowledgement to HDFC. The Company shall immediately upon receipt thereof deliver to HDFC attested copy of the extra ordinary/ special resolution and (b) Return of Allotment and photocopy of the acknowledgement receipt duly filed with the RJSC. The Company undertakes to supply a certified copy of the Return of Allotment within 15 (fifteen) days of receipt of the Total HDFC Preference Share Purchase Price.
- 4.4. In addition to the above, upon receipt of the subscription price for HDFC Preference Shares, the Company, the Majority shareholder and the Shareholder shall as soon as practicable and in any case no later than 6 (six) months from the Closing, take or procure that the following steps are taken: (a) change the applicable objective clause of the Company to include that one of the objectives of the Company is to invest on a portfolio of different agricultural commodities such as livestock, fish, crops and vegetable, poultry etc. on behalf of investors and manage the portfolios; (b) appoint an accounting firm to mitigate the difference between management accounts and statutory accounts as well as take necessary advice and steps to ensure transparently reporting for the next reporting period; (c) where applicable, pay the applicable tax deducted at source and deposit the additional corporate tax on revenue of the Company; (d) where applicable, pay the VAT deducted at source and VAT on sale and file the amended returns; and (e) file all the regulatory returns to national board of revenue.
5. TERM
- 5.1. This Agreement shall become effective immediately upon execution and shall continue to remain valid and subsisting until HDFC no longer holds any HDFC Preference Shares or any shares of the Company.
- 5.2. This Agreement may be terminated prior to Closing:
- (a) based on the mutual agreement of the Parties;
- (b) in the event that the Conditions Precedent set forth in clause 3.1 of this Agreement are not fulfilled to the satisfaction of HDFC and unless the Closing takes place within the Closing Date or any other period mutually agreed by the Parties in writing, this Agreement shall stand terminated without any liability or obligation of any Party; and
- (c) in the event that the Conditions Precedent set forth in clause 3.2 of this Agreement are not fulfilled to the satisfaction of Company and the Majority Shareholder and unless the Closing takes place within the Closing Date or any other period mutually agreed by the Parties in writing, this Agreement shall stand terminated without any liability or obligation of any Party;
- 5.3. Any termination or expiration of this Agreement howsoever caused shall not affect any rights or liabilities of the Parties which have accrued prior to the date of termination or expiration.
- 5.4. Notwithstanding the above, all provisions of this Agreement, which by their terms are intended to survive the termination or expiration of this Agreement, will continue thereafter in full force and effect in accordance with their terms.

6. ISSUANCE OF ADDITIONAL PREFERENCE SHARES

Upon subscription of HDFC Preference Shares as envisaged herein, the Company may issue, on the same terms and conditions as contained in this Agreement, up to the number of shares of the same class and under the same terms as authorized under its Articles (“**Additional Shares**”), to one or more

Commented [SNA11]: HDFC, please consider whether you are amenable to clause 4.2(c).

purchasers (“**Additional Investors**”), provided that (i) such subsequent sale and subscription is consummated within 180 days after the Closing Date, (ii) each Additional Investor shall become party to an agreement containing no term more favorable than the terms states in this Agreement and (iii) the Majority Shareholder shall not be regarded as an Additional Investor.

7. RIGHT OF FUTURE ISSUANCE OF ORDINARY SHARE/ PREFERENCE SHARE IN THE COMPANY

- 7.1. If the Company proposes to offer further issuance of Ordinary Shares other than through public offering, the Company shall offer such number of Ordinary Shares to HDFC in proportion to its relative shareholding percentage in the Company as such HDFC shall have a pro rata right to participate in any issuance of new equity securities of any class by the Holdco or the Company (“**Preemption Right**”) and the Company shall ensure to give notice (“**Ordinary Share Offer Notice**”) to HDFC, stating (i) its bona fide intention to offer such issuance of the Ordinary Shares, (ii) the number of such Ordinary Shares to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Ordinary Shares. If the Company proposes to offer further issuance of Preference Shares, the Company shall first offer such Preference Shares to HDFC in proportion to its respective shareholding in the Company and the Company shall ensure to give notice (“**New Preference Share Offer Notice**”) to HDFC, stating (i) its bona fide intention to offer such issuance of the Preference Shares, (ii) the number of such Preference Shares to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Preference Shares.
- 7.2. HDFC may elect to subscribe all of the Ordinary Shares or Preference Shares offered as per the Ordinary Share Offer Notice and/or New Preference Share Offer Notice or reject to subscribe for all of the Ordinary Shares or Preference Shares offered. HDFC will notify its intention with respect to subscription or refusal to the Company within 15 (fifteen) days from the receipt of the Ordinary Share Offer Notice or New Preference Share Offer Notice, as the case may be.
- 7.3. If the Ordinary Shares or Preference Shares offered in the Ordinary Share Offer Notice or New Preference Share Offer Notice, as the case may be, are not elected to be subscribed, the Company may, upon expiration of 15 (fifteen) days as mentioned above in clause 7.2 offer and sell the offered Ordinary Shares or Preference Shares, as the case may be, to any Person or Persons at a price not less than, and upon the terms no more favorable than those specified in the Ordinary Share Offer Notice or New Preference Share Offer Notice, as the case may be. This shall not curtail the rights of HDFC under clause 9.4 and 9.5 of this Agreement.
- 7.4. It is agreed and acknowledged by HDFC that rights detailed in clauses 7.1 to 7.3 above are exercisable on pro rata (MACR adjusted) with other shareholders, preference or ordinary, of the Company.
- 7.5. Notwithstanding the foregoing or anything contained herein provided clause 8 below being complied with for any prior capital raising at the Holdco, the Company can propose to offer further issuance of Ordinary Shares or Preference Shares or both, in favour of the Majority Shareholder without offering such number of Ordinary Shares or Preference Shares to HDFC, provided such shares are not exchangeable with shares of any kind shares of the Holdco. For avoidance of doubt, the conditions laid down in clauses 7.1 to 7.3 shall not be applicable when shares of any kind of the Company is offered, allotted or warranted to the Majority Shareholder.

8. FUTURE ISSUANCE OF PREFERENCE SHARES / ORDINARY SHARES IN THE HOLDCO

- 8.1. Subject to clause 8.2 below, in the event of (a) issuance of any new Preference Shares in the Holdco or (b) issuance of new Ordinary Shares in the Holdco, HDFC shall be offered a prorated number of new Preference Shares in the Company/Holdco, pursuant to the Preemption Right above in clause 7.1, provided that terms of allotment of such new Preference Shares shall be made under a new agreement reflecting similarly applicable terms of the new Preference Shares in the Company. This clause 8 will only be applicable irrespective of whether the Holdco Investors has a pre-emptive right with respect to an issuance of shares of the Holdco pursuant to the Holdco Preference Share Related Agreement.
- 8.2. The share issue price of the new Preference Share is BDT _____/- [face value ____/- + premium _____/-] per share, unless the Parties agree otherwise.
- 8.3. If any further Preference Shares are to be issued to HDFC after Closing (pursuant to this clause 8 or otherwise), the Parties agree to amend this Agreement with the effect that the provisions of this Agreement will apply equally to such Preference Shares being issued, except that HDFC will be

Commented [SNA12]:
HDFC Please consider the following:

It is imperative to acknowledge that the Holdco Investors such as SR INFIN & GERO do not have pre-emptive right with respect to issuance of shares.

However, the Term Sheet executed considers that HDFC shall have pre-emptive right towards issuance of shares in the Holdco or Company (Subsidiary).

Commented [SNA13]: HDFC, please insert the values under clause 8.2.

entitled, to the extent practicable, to substantively the same effective rights and obligations, economic benefits and risks, as corresponding number of the relevant series of Preference Shares being issued in the Holdco, in a manner consistent with the manner in which the effective rights, obligations, economic benefits and risks of the Holdco Preference Shares have been replicated for HDFC under this Agreement.

9. RIGHTS OF HDFC AND TERMS OF THE PREFERENCE SHARES

- 9.1. HDFC shall be entitled to nominate HDFC Observer to the Board of the Company and also to the board of the Holdco without any restrictions of ownership barrier of equity percentage in the share capital of the Company or the Holdco, subject to execution of a mutually agreed confidentiality agreement from such observer in favor of the Company and the Majority Shareholder, in a non-voting capacity and the right to exclude such observer from matters and materials the disclosure of which would reasonably be expected to threaten the Holdco's attorney-client privilege over such matters or materials, and fiduciary duty, responsibility and accountability of HDFC Observer, shall at all material times, be towards HDFC and HDFC, the Company and the Holdco hereby agree that all costs and fees of appointing and employing HDFC Observer will be borne by HDFC, provided, however that if the Holdco pay any cost to any director, similarly, costs shall be paid to the HDFC Observer. HDFC Observer shall be provided with all notices, accompanying documents, minutes of meetings that will be provided to Board of the Company and/or Holdco; where it is not practicable to provide such notice prior to meeting, the same shall be provided within 1 (one) day of the meeting.
- 9.2. Notwithstanding anything contained hereinbefore, it is agreed and acknowledged by the Parties that the HDFC Preference Shares are only convertible to Ordinary Shares of the Company in the event of the Holdco resolving to list the Company in any stock exchange to offer shares to public, and in such case, the Holdco shall notify HDFC of such decision in writing within 14 (fourteen) days of such resolution taking place ("**Invitation to Convert**"). HDFC shall have 30 (thirty) days from receipt of Invitation to Convert to notify the Company and Holdco of its decision (confirm or decline) and specifying the number of HDFC Preference Shares it wishes to convert. Once the Company is aware of the number of HDFC Preference Shares that HDFC wishes to convert, the Company shall inform HDFC of its IPO Conversion Ratio (hereinafter "**ICR**" and as defined below). The Company shall then take necessary steps to convert the specified number of HDFC Preference Shares into Ordinary Shares at ICR prior to commencement of public offering process by the Company, without the payment of additional consideration by HDFC. For avoidance of doubt, the number of Ordinary Shares HDFC shall be allotted upon conversion will be ICR multiplied by the specified number of HDFC Preference Shares for conversion, where ICR will be as below:

$$ICR = A * MACR * C / B$$

A = Fair Market Value (FMV) of each Holdco Preference Shares as of the date of resolution by the Holdco to list Company for public offering in any stock exchange.
B = Fair Market Value (FMV) of all Company Ordinary Shares, which can be calculated by subtracting value of Preference Shares, and similar obligations, from enterprise value of the Company.
C = Total Number of Ordinary Shares outstanding in the Company immediately prior to conversion.

These numbers will be subject to iterative calculations.

The principle applied here is that HDFC will be able to convert its value of each HDFC Preference Share (MACR converted basis) into equivalent value of Ordinary Share(s) of the Company. It is agreed and understood that in the event of failure to reach an agreement by the Parties on value of component "A", "B" and/or "C", the Fair Market Value shall be paragraph (C) of definition of Fair Market Value provided herein, provided however that if subsequent IPO valuation of the Company is higher than the valuation of the Company used to calculate component "A" and/or "B" and/or "C", then subject to relevant legal and regulatory compliance requirement under Bangladesh laws the Majority Shareholder shall transfer additional number of Ordinary Shares to HDFC so that HDFC has same number of Ordinary Shares as if the IPO valuation has been used for above calculation.

- 9.3. After exercising the conversion option under clause 9.2 above, HDFC can sell its converted Ordinary Shares through exchange, subject to any restriction(s) as the regulatory authority may stipulate thereon at the time of approving the public listing of Company's Ordinary Shares.

However, post conversion of HDFC Preference Shares, in full or in part, pursuant to clause 9.2 above, and prior to listing of Ordinary Shares of the Company in any stock exchange, on the occurrence of any Put Option Triggering Event, all converted Ordinary Shares then held by HDFC shall be, if required by HDFC and after following the notice period mentioned in clause 9.4 below, purchased by Majority Shareholder in similar priority outlined in 9.3 to CPS of the Company.

Total Price = {Number of Ordinary Shares held by HDFC / ICR (as applied on date of conversion pursuant to clause 9.1 above)} * Relevant Put Option Price for each HDFC Preference Shares

It is agreed and understood that in the event, Majority Shareholder fails to purchase the post conversion Put Shares from HDFC, the Majority Shareholder shall take full responsibility to adequately indemnify the HDFC for such failure.

- 9.4. Until such time as HDFC has converted its shares under clause 9.2 above, the Company and Majority Shareholder hereby, jointly and severally, grant HDFC the option to sell (“**Put Option**”) during the term of this Agreement in the event of the occurrence of any of the Put Option Triggering Event, whereby, upon exercise of the Put Option by HDFC, the Majority Shareholder shall purchase from HDFC and subject to the conditions set forth in this Agreement, such number of HDFC Preference Shares and any other shares then held by HDFC as decided by HDFC (“**Put Shares**”) at Put Option Price provided that subject to clause 9.3 above upon successful listing of Ordinary Shares of the Company, Put Shares shall exclude all converted Ordinary Shares held by HDFC. In case of the Put Option Triggering Event and subsequent decision by HDFC to exercise its Put Option, the Majority Shareholder may at its discretion, require the Company to redeem all of HDFC Preference Shares then held by HDFC at the Put Option Price. HDFC, in order to exercise its Put Option, shall deliver written notice to the Holdco and the Company, of HDFC's election to exercise the Put Option in accordance to the provision of this clause within 20 (twenty) days of the date on which HDFC is notified of any of the Put Option Triggering Event and/or becomes aware of any of the Put Option Triggering Event. In the event, Majority Shareholder fails to purchase the Put Shares from HDFC or the Company fails to redeem the Put Shares, the Majority Shareholder shall take full responsibility to adequately indemnify HDFC for such failure, and ensure to this end, Majority Shareholder or the Company shall undertake the following, within a period of 2 (two) months of service of notice to exercise Put Option which may be extended upon mutual agreement between the Parties:

- (a) finding of an interested third party willing to purchase the Put Shares from HDFC at Put Option Price;
- (b) nominate such third party to HDFC;
- (c) ensuring completion and execution of the necessary documentations required for the purchase of the Put Shares at Put Option Price;
- (d) procure that the third party agrees for the purchase of all HDFC Preference Shares then held by HDFC at the Put Option Price.

Failure by the Majority Shareholder or the Company to either purchase or redeem (as applicable) the Put Shares as per this clause shall be a default and HDFC shall be at liberty to enforce its rights against the Majority Shareholder and/or the Company as per this Agreement.

- 9.5. In the event, HDFC at its complete discretion (subject to clause 9.9), chooses to sell and transfer all or any part of its HDFC Preference Shares along with its Put Option (including all the rights and obligations of HDFC under this Agreement) (“**Transfer Shares**”) at any time (“**Transfer**”), such transfer shall be subject to a right of first refusal to be reserved by the Majority Shareholder whereby HDFC shall firstly notify the Majority Shareholder and the Company in writing with HDFC's intent of the Transfer describing fully the offer of transfer in detail, including the, the number of HDFC Preference Shares and the proposed transfer price (“**Transfer Notice**”). In the event, the Majority Shareholder wishes to purchase the Transfer Shares, the Majority Shareholder shall duly inform and communicate its intention of purchasing the Transfer Shares to HDFC in writing within 30 (thirty) days from the receipt of the Transfer Notice. In the event, the Majority Shareholder does not communicate its intention of either to purchase the Transfer Shares or otherwise, to HDFC, within 30 (thirty) days from the receipt of the Transfer Notice, HDFC shall have complete discretion to sell and Transfer the Transfer Shares to a third party at a price in which the Transfer Shares was initially offered to the Majority Shareholder, provided that no favourable term(s) are included in the transfer agreement compared to those offered to the Majority Shareholder.

Furthermore, in case HDFC wishes to execute the Transfer by way of introducing a new investor to the Majority Shareholder and simultaneous redemption by HDFC of the HDFC Preference Shares in the Company, the Majority Shareholder shall procure to provide all necessary assistance to effectuate the same and shall execute and cause the Company to execute and sign all necessary agreements and documents. In the event of Transfer by HDFC of its interest to any third party, HDFC shall procure that such third party executes a deed of adherence as provided in Schedule B confirming that the latter shall abide by all such terms and conditions applicable to HDFC along with related customary terms as generally; provided that the contents of the deed of adherence shall have to be acceptable to complete satisfaction of the counsel for Majority Shareholder and the Company.

- 9.6. It is acknowledged and affirmed by the Holdco and the Company that HDFC intended to partake in the Holdco Preference Shares of the Holdco, which it could not, due to regulatory compliance issues of Bangladesh and the Majority Shareholder hereby confirms that in the event of change in the existing regulations of Bangladesh allowing HDFC to own, purchase or acquire shares of Holdco, the Holdco shall immediately allot upon written request from HDFC to this effect, against and in exchange, by way of transfer (or redemption) of each of HDFC Preference Shares then held by HDFC in the Company, MACR times of Holdco Preference Shares of the Holdco under the same terms, conditions and status as detailed in Preference Shares Related Agreements, subject to HDFC meeting any compliance requirements thereunder, so far as such compliance is applicable to HDFC and can reasonably be complied with. In the event of Transfer of Transfer Shares by HDFC to any third party (subject to clause 9.9), which is a Bangladeshi entity or Person ("**Bangladeshi Third Party**"), such Bangladeshi Third Party shall also have the same right to partake in the Holdco Preference Shares under the same terms, conditions and status as detailed in Preference Shares Related Agreements. On the other hand, in case the third party transferee is any non-Bangladeshi entity or Person ("**Non-Bangladeshi Third Party**"), the Holdco shall ensure that, upon written request from such Non-Bangladeshi Third Party, immediately take all necessary steps to issue Holdco Preference Shares to such Non-Bangladeshi Third Party as per the conversion mechanism stipulated herein and same value stipulated in clause 9.6 above. Furthermore, with respect to the Non-Bangladeshi Third Party, the following shall be ensured by the Majority Shareholder and the Company when HDFC finds a Non-Bangladeshi Third Party willing to purchase shares in Holdco:

(a) For each CPS owned by HDFC in the Company, the Holdco shall issue and allot MACR times Holdco Preference Shares to such third party non-Bangladeshi entity or Person at a price agreed upon by HDFC, the Holdco and the third party non-Bangladeshi entity or Person;

(b) Subsequently, the Majority Shareholder shall purchase all HDFC Preference Shares or the Company shall redeem all HDFC Preference Shares held by HDFC at a price that is MACR times the price per share paid by the third party non-Bangladeshi entity or Person; and

(c) The Majority Shareholder shall purchase HDFC Preference Shares or cause the Company to redeem HDFC Preference Shares within 30 (thirty) days of consummation of share subscription by the third party non-Bangladeshi entity or Person at the Holdco.

- 9.7. It is acknowledged and accepted by HDFC that the Majority Shareholder shall reserve an option ("**Call Option**") to purchase from HDFC during the term of this Agreement, upon occurrence of any of the Call Option Triggering Event and subject to the conditions set forth in this Agreement, all of the HDFC Preference Shares and any other shares then held by HDFC ("**Call Shares**") at the applicable Call Option Price. In order to exercise such Call Option, the Majority Shareholder must deliver written notice to HDFC and the Company, the Majority Shareholder must elect to exercise the Call Option in accordance with this provision within 60 (sixty) days of the date on which the Majority Shareholder becomes aware of any of the Call Option Triggering Event. However, the sequence of events shall be as follows:

(a) In case of Put Option Triggering Events, the Company and the Majority Shareholder shall ensure events shall only be consummated simultaneously with consummation of HDFC's Put Option Rights under clause 9.4 above;

(b) In the event, any Put Option Triggering Event and any Call Option Triggering Event arise simultaneously, the Parties acknowledge and confirm that preference is to be given to exercise the Put Option.

- 9.8. Notwithstanding anything contained hereinabove, the Majority Shareholder and the Company hereby acknowledges and affirms that the HDFC Preference Shares comprise the following rights:

(a) Dividends: The HDFC Preference Shares shall have the dividend rights as set out in clause 14 of this Agreement.

(b) Liquidation/winding up: In the event of liquidation/winding up of the Company, HDFC shall be entitled to receive the Fair Market Value of such share of Holdco Preference Shares multiplied by MACR. HDFC shall always receive at least the Total HDFC Preference Share Purchase Price in seniority/preference to Majority Shareholder and Ordinary Shares of the Holdco. When such a Liquidation Event occurs, the Company must ensure to investors that (i) cash proceeds and/or freely tradeable securities are payable to all shareholders on a pro rata basis as per the Applicable Law (ii) the acquirer is not a related party (iii) the aggregate gross proceeds payable per share are at least 1x the Pre-Series A Price (as adjusted for stock splits, stock dividends, recapitalizations and the like and excluding for purposes of calculating such multiple any contingent or earn out consideration) and (iv) the transaction results in a complete exit for each investor shareholder.

(c) Redemption: The HDFC Preference Shares are not redeemable except pursuant to clauses 9.4, 9.6 or 9.7, as applicable, read with clause 11 of this Agreement.

9.9. Notwithstanding anything contained hereinabove, HDFC shall not, or agree to (whether conditionally or otherwise), during the continuance of this Agreement, transfer any of its HDFC Preference Shares to a Competitor.

10. BOARD CONSTITUTION AND BOARD AND SHAREHOLDERS' MEETING

10.1. HDFC along with other investors in the Pre-series A round of the Company shall be entitled, by written notice to the Company, to appoint jointly 1 (one) Investor Director to the Board of the Company and shall also be entitled, by written notice to the Company to remove the Investor Director nominated by them and nominate and appoint another person in his place.

10.2. Post conversion of the HDFC preference shares, HDFC along with other investors in the Holdco shall be entitled, by written notice to the Holdco, to appoint jointly 1 (one) Investor Director to the Board of the Holdco provided that such shareholders are subscribed to the share capital of the Holdco. Since the Board of the Holdco shall consist of 4 (four) directors, three of the remaining directors shall be appointed by the Mr. Bahadur Shah; Mr. Aman Shah and Mr. Ishan Pathan as founders of Holdco.

10.3. The Board shall convene a meeting at least once for each quarter of a year. The Company shall reimburse to each Director reasonable travelling expenses incurred by him for attending meetings of the Board.

10.4. The Company and Holdco must ensure that the Investor Director jointly appointed shall be sent reasonable advance notice of the Board Meeting of the Company and the Holdco.

10.5. Once appointed, a Director shall be given not less than 14 (fourteen) Business Days' written notice of meetings, but any meeting held without 10 (ten) Business Days' written notice having been given to all Directors shall be valid if all the Directors entitled to vote at the meeting waive notice of the meeting in writing, and for this purpose, the presence of a Director at a meeting shall be deemed to constitute a waiver on his part in respect of such meeting. A Director may attend meetings of the Board in person, by telephone or by any other electronic means whereby all the Directors attending a meeting are able to contemporaneously communicate with each other and listen to all deliberations.

10.6. The Board shall give not less than 21 (twenty-one) Business Days' (or any other period of time as required under the Act) notice of meetings of Shareholders to those persons whose names on the date the notice is given appear as Shareholders in the register of members of the Company and are entitled to vote at the meeting.

10.7. Except as specifically provided herein or by Applicable Laws but otherwise subject to clause 4, the management and control of the Company shall be exercised by the Board and shall be responsible for the determination of the Company's overall policies and objects.

10.8. The following actions of the Holdco and, where applicable, its subsidiary (Company) are subject to the approval of 80% (including the Director appointed by investors) vote of the Board of the Holdco or where applicable the Company:

- (a) removing or replacing or changing the external auditor of the fiscal year;
- (b) entering into any obligation outside the normal course of business in excess of USD 500,000;

Commented [SNA14]: HDFC please note as per the Term Sheet it is agreed upon that HDFC along with other investors in the Pre-series A round has the right jointly appoint one director in the Holdco. However since HDFC cannot legally own shares in Holdco, it may be prudent to consider exercising such right in the Company.

Commented [SNA15]: Please consider that the Holdco Preference Share Agreement with Gero and SR Infin considers that the Board of Holdco shall consist of 5 directors. Three of them will be appointed by founders individually. One will be jointly appointed by the Investors of Holdco. One director shall be appointed jointly by the founders.

- (c) entering into any commitments for capital investments in excess of USD 500,000 (or the equivalent in any other currency) in the aggregate in any financial year, aside from that set out in the business plan;
- (d) incurring an aggregate financial debt in excess of USD 150,000;
- (e) any mortgage, charge, exclusively license, pledge, creation of a lien, lease or any other form of security or Encumbrance on the assets (other than Encumbrances on any assets or properties of the Holdco in connection with Indebtedness or capital commitment equal to or less than USD 5,000,000 per Financial Year); or Encumbrances on the shares of the founders;
- (f) the institution, withdrawal of any litigation, arbitration, legal action, claim or proceedings or dispute, of value exceeding USD 5,000,000; or settlement of any material litigation, arbitration, legal action, claim or proceedings or dispute, in which the Holdco or the Company is a Party.

11. RIGHT OF FIRST REFUSAL

- 11.1. Subject to the right of HDFC, before any Shares may be sold or otherwise transferred or Disposed of by any Shareholders (other than HDFC) (including transfer by gift, operation of law or other involuntary transfer, such as liquidation), HDFC shall have a right of first refusal (“**Right of First Refusal**”) to purchase such Shares (“**Offered Shares**”) in accordance with the terms of this clause 11. HDFC shall have a pro rata (in proportion of their existing shareholding in that round) right of first refusal in the event of a proposed transfer of existing shares of any class in the Company and/or the Holdco.
- 11.2. Before the transfer of any Offered Shares, the selling Shareholder (other than HDFC) (“**Transferor**”) shall deliver to the Company and HDFC a written notice (“**Transfer Notice**”) stating:
 - 11.2.1. the Transferor’s intention to sell or otherwise transfer or Dispose of such Offered Shares;
 - 11.2.2. the name of each proposed purchaser or other transferee (“**Proposed Transferee**”);
 - 11.2.3. the number of Offered Shares to be transferred to each Proposed Transferee;
 - 11.2.4. the cash price and/or other consideration for which the Transferor proposes to transfer the Offered Shares (or in the event of a transfer which by its nature will not result in any cash or other consideration being paid, at the appraised value of the Offered Shares as determined by the Company’s independent accountants) (“**Offered Price**”).
- 11.3. The Transfer Notice shall constitute an irrevocable offer by the Transferor to sell the Offered Shares at the Offered Price to HDFC.
 - 11.3.1. HDFC shall have the right, upon notice to the Transferor at any time within 15 (fifteen) Business Days after receipt of the Transfer Notice (“**Purchase Right Period**”) to purchase up to its pro rata Share of all or any of such Offered Shares at the Offered Price and on the same terms (or terms as similar as reasonably possible) on which the Transferor is proposing or is to Dispose of such Offered Shares, and the Transferor shall, upon receipt of the notice of purchase from HDFC, sell such Offered Shares to the Investor pursuant to such terms.
 - 11.3.2. Upon expiration of the Purchase Right Period, the Transferor will provide notice to HDFC as to whether or not the Right of First Refusal has been exercised by HDFC (“**Expiration Notice**”).
- 11.4. If any of the Offered Shares proposed in the Transfer Notice to be transferred are not purchased by HDFC, then after the issue of the Expiration Notice and subject to the co-sale rights set forth in clause 12 below, the Transferor may sell or otherwise transfer or Dispose of such Offered Shares which have not been purchased to the Proposed Transferee(s) at the Offered Price or at a higher price, provided that such sale or other transfer shall be completed and consummated no sooner than 5 (five) Business Days and no later than 60 (sixty) days after the date of the Expiration Notice and provided further that the Proposed Transferee(s) executes a deed of adherence confirming that the provisions of this Agreement shall continue to apply to the Proposed Transferee(s) and to the Offered Shares that are transferred to such Proposed Transferee(s). If the Offered Shares described in the Transfer Notice are not transferred to the Proposed Transferee(s) within such 60-day period, the Transferor will not transfer or Dispose of any Offered Shares unless such securities are first re-offered to HDFC in accordance with this clause 11.

12. CO SALE RIGHTS/TAG ALONG RIGHTS

- 12.1. HDFC shall have the right to participate, on a pro rata basis, in any sale or Disposal by Shareholders or founders with more than 50% of the total share capital of the Company/Holdco to a Proposed Transferee upon the same terms and conditions as set forth in the Transfer Notice, subject to the terms and conditions set forth in this clause 12. HDFC shall exercise its right by delivering to the Transferor, within 5 (five) Business Days after receipt of the Expiration Notice, written notice of its intention to participate, specifying the number of Shares HDFC desires to sell to the Proposed Transferee. At the closing of the transaction, HDFC shall deliver one or more certificates representing the number of Shares which HDFC elects to sell hereunder together with instruments of transfer and other documents necessary for transfer of such Shares to the Proposed Transferee, and the Transferor shall pay to HDFC a pro rata amount of the purchase price received from the Proposed Transferee as corresponds to the number of Shares sold by HDFC as a proportion of the total number of Shares sold to the Proposed Transferee. HDFC shall have the right to sell up to that number of Shares equal to the product of (a) the number of Offered Shares multiplied by (b) a fraction, the numerator of which is the number of Shares owned by HDFC, and the denominator of which is the sum of (i) the number of Shares held by the Transferor after any exercise of the Right of First Refusal by HDFC and (ii) the number of Shares held by HDFC electing to sell Shares pursuant to this clause. In the event that the Proposed Transferee desires to purchase a number of Shares different from the amount of the Offered Shares, the amount that the Proposed Transferee desires to purchase shall be substituted for Offered Shares in the above equation for the purpose of determining HDFC's participation rights. If HDFC elects not to participate in the sale of the Offered Shares subject to the Transfer Notice, the Transferor may complete the transfer of the Offered Shares covered by the Transfer Notice in accordance with clause 11.4. Any proposed transfer on terms and conditions more favourable than those described in the Transfer Notice, as well as any subsequent proposed transfer of any of the Offered Shares by the Transferor, shall again be subject to the co-sale rights of HDFC and shall require compliance by the Transferor with the procedures described in this clause 12.
- 12.2. To the extent that any Proposed Transferee prohibits such assignment or otherwise refuses to purchase Shares from the investor (HDFC) exercising its rights of co-sale under this clause 12, the Transferor shall not sell to the Proposed Transferee any Shares unless and until, simultaneously with such sale or transfer, such Proposed Transferee shall purchase such Shares from HDFC on the same terms and conditions specified in the Transfer Notice.
- 12.3. The exercise or non-exercise of the right to participate under this clause 12 with respect to a particular sale or Disposal by a Shareholder (other than HDFC) shall not adversely affect any of the HDFC's rights to participate in subsequent sales or Disposals by a Shareholder (other than HDFC) pursuant to this clause 12.
- 12.4. Save as provided in this Agreement, the Shareholders may not, without the prior written consent of HDFC, Dispose of their beneficial interest in Shares held directly or indirectly in the share capital or equity interest of the Company. If any of the Shareholders is the Transferor under clause 11, clause 12.1 shall be subject to HDFC's right to transfer or Dispose of Shares held in its names in priority to the Shares to be transferred or Disposed of by the Shareholder as Transferor and HDFC may transfer or Dispose of up to that number of Shares equal to the product of (a) the number of Offered Shares multiplied by (b) a fraction, the numerator of which is the number of Shares owned by HDFC, and the denominator of which is the number of Shares held by HDFC electing to sell Shares pursuant to clause 12.1. Any sale, assignment or other transfer or Disposal of Offered Shares by the Shareholder contrary to the provisions of this Agreement hereof shall be null and void, and the Proposed Transferee shall not be recognised by the Company as the holder or owner of the Offered Shares purported to be sold, assigned, or transferred for any purpose (including, without limitation, voting or dividend rights), unless and until the Shareholder has satisfied the requirements of this Agreement with respect to such Disposal. The Shareholder shall provide the Company, HDFC with written evidence that such requirements have been met or waived prior to consummating any sale, assignment, transfer or other Disposal of securities, and no Shares shall be transferred on the books of the Company until such written evidence has been received by the Company and HDFC or the Disposal of the Shares is consented to by HDFC in writing.

13. DRAG ALONG RIGHTS

- 13.1. If any of the shareholder(s) collectively holding 75% or more of the nominal value of shares in the Company or the Holdco and wishes to transfer to a third party, then the said shareholders of the Company or Holdco shall have the right to require the existing shareholders including HDFC, to sell all of their Shares on the same terms and conditions as being offered to them by the third party

Commented [SNA16]: HDFC, please consider whether you are amenable to this Drag along clause.

acquiring their securities. In the event of an offer from a purchaser for all the Shares, where Shareholders holding at least 75 (seventy-five) % of the Shares, on a fully diluted basis (“**Drag Along Shareholders**”) agree to such offer and wish to transfer all their interest in Shares (“**Sellers’ Shares**”) to the prospective purchaser (“**Transferee**”), the Majority Shareholders may, at its option, require all the shareholders (“**Remaining Shareholders**”) to sell such amount of their respective shares representing 100% of the effective interests in the Company/Holdco (comprising all the Shares held by the Drag Along Shareholders and pro-rata amounts of Shares held by the Remaining Shareholders) to the Transferee (“**Drag Along Sale**”) by delivering to the Company/Holdco and the Remaining Shareholders written notice of their decision to compel the Remaining Shareholders to sell such amount of their respective Shares and participate in the Drag Along Sale (“**Drag Along Notice**”) on the same terms and conditions as the Drag Along Sale, save only the identity of the transferor. The Remaining Shareholders shall be required to participate in the Drag Along Sale on the terms and conditions set forth in the Drag Along Notice and to tender such amount of their respective Shares, as set forth below.

- 13.2. Where there is more than one interested buyer, the Transferee shall be the buyer that offers the highest purchase price for Shares.
- 13.3. Each of the Remaining Shareholders required to participate in the Drag Along Sale shall:
 - 13.3.1. against payment of the consideration for the Shares by the Transferee, deliver to the Transferee the transfer documents and certificate(s) representing such amount of their respective Shares that such Remaining Shareholder is selling in the Drag Along Sale on or before the completion of the Drag Along Sale;
 - 13.3.2. collect directly from the Transferee the consideration to be paid for the Shares he is selling in the Drag Along Sale; and
 - 13.3.3. co-operate in good faith to complete the Drag Along Sale to such Transferee hereunder.
- 13.4. In the event that any of the Remaining Shareholders should fail to deliver such transfer documents and certificate(s) to such Transferee, any director is hereby authorised to execute and deliver the necessary transfer documents on that Remaining Shareholder’s behalf and the Company may receive the purchase money in trust for the Remaining Shareholder (which shall be paid into a separate bank account in the Company’s name) and cause the Transferee to be registered as the holder of such Shares.
- 13.5. The receipt by the Company of the purchase money shall be a good discharge to the Transferee (who shall not be bound to see the application thereof) and after the Transferee has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.
- 13.6. Any Shareholder who is the subject of a Drag Along Sale shall use all reasonable efforts to sell the respective required number of Shares in the Drag Along Sale in compliance with all applicable laws, without limitation, within 60 (sixty) days from the delivery of the Drag Along Notice.
- 13.7. Promptly after the completion of the Drag Along Sale, the Drag Along Shareholders shall:
 - 13.7.1. give notice thereof to the Company, and
 - 13.7.2. furnish such other evidence of the completion and time of completion of such Drag Along Sale and the terms thereof as may be reasonably requested by the Company.
- 13.8. Each of the Remaining Shareholders represents and warrants in favour of the Transferee at the date of completion of the Drag Along Sale that:
 - 13.8.1. the Shares being sold by them will be free of all liens, charges and encumbrances; and
 - 13.8.2. they are the legal owners of such shares.
- 13.9. There shall be no liability on the part of the Drag Along Shareholders to any of the Remaining Shareholders if the Drag Along Sale is not completed for whatever reason.
- 13.10. Prior to the completion of the Drag Along Sale, the Transferee shall execute the Deed of Adherence as stated in Schedule B below agreeing to be bound by the terms of this Agreement.

14. DIVIDEND

HDFC shall, in respect of each of its HDFC Preference Shares, be entitled to receive a dividend corresponding to the dividend paid under the Holdco Preference Shares Related Agreements of the Holdco and at the MACR multiplied by the dividend per Holdco Preference Shares to be received by Holdco Preference Shareholder and shall receive such dividend simultaneously with any payment received by Holdco Preference Shareholder.

15. INFORMATION AND OBSERVATION RIGHTS

15.1. The Company shall deliver to HDFC, provided that the Board of Directors of the Holdco has not reasonably determined that HDFC is a competitor of the Company, information and documents in relation to the Company and the Holdco, including but not limited to:

- (a) within 90 (ninety) days after the end of each fiscal year (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and (iii) a statement of shareholders' equity as of the end of such year, in each case with respect to Majority Shareholder; and
- (b) such other information relating to the financial condition, business, prospects, or corporate affairs as HDFC may from time to time reasonably request with prior notice to the Company (including any information required by HDFC to comply with its regulatory, compliance or portfolio management obligations),

and as soon as practicable but no later than 3 (three) Business Days of receipt of any information regarding occurrence of a Put Option Triggering Event.

15.2. The Majority Shareholder, at all times, shall ensure to deliver to HDFC all notices, documents and financial reports and statements that are provided to Holdco Investors in their capacity as shareholders. Provided, however, that the Majority Shareholder and the Company shall not be obligated under this clause 13 to provide information (i) that the Majority Shareholder or the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (ii) the disclosure of which would reasonably be expected to adversely affect the attorney-client privilege between the Majority Shareholder or the Company and its counsel. Notwithstanding anything else in this clause 13 to the contrary, the Majority Shareholder and the Company may cease providing the information set forth in this clause 13 during the period starting with the date sixty (60) days before the Majority Shareholder and the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Majority Shareholder's and Company's covenants under this clause 13 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

15.3. The Company will provide reasonable access to Company management and staff and information as requested by potential purchasers of an Investor's equity securities and otherwise facilitate such sale.

15.4. The Company will be required to implement statutory audits on a consolidated and unconsolidated basis by an auditor be approved and appointed by the shareholders and shall be among the auditors enlisted with the panel of auditors' of the Bangladesh Securities and Exchange Commission or the Bangladesh Bank.

15.5. HDFC agrees that HDFC will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company or the Majority Shareholder pursuant to the terms of this Agreement, unless such confidential information:

- (a) is known or becomes known to the public in general (other than as a result of a breach of this sub-clause 13.3 by HDFC);

- (b) is or has been independently developed or conceived by HDFC without use of the Company's or the Majority Shareholder confidential information, or
- (c) is or has been made known or disclosed to HDFC by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that HDFC may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any HDFC Preference Shares from HDFC, if such prospective purchaser agrees to be bound by the provisions of this sub-clause 13.3; (iii) to any existing or prospective affiliate, partner, member, shareholder, or wholly owned subsidiary of HDFC in the ordinary course of business, provided that HDFC informs such person that such information is confidential and directs such person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, regulation, rule, court order or subpoena, provided that HDFC promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

16. INSPECTION

The Company shall, upon at least 10 (ten) Business Days prior written notice to the Company by HDFC, provide access to HDFC, at HDFC,'s cost: (a) to visit and inspect the Company's properties; and (b) to inspect the corporate and financial records of the Company. In addition, during inspection, the Company shall not be obligated to grant access to the representative of HDFC any information, disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel, or any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) and HDFC shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information obtained or received by the representative HDFC during inspection.

17. WARRANTIES OF THE MAJORITY SHAREHOLDER AND THE COMPANY

- 17.1. The Company and the Majority Shareholder warrant to HDFC that each of the warranties of the Company as set forth in Schedule C are true and correct to the best of their knowledge, in all material respects, as on the date of this Agreement and shall be true and correct as of the Closing Date, in all material respects, and shall indemnify HDFC for any direct loss (on an after tax basis but in each case excluding any consequential, incidental, indirect, special or punitive losses or damages, loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity and no "multiple of profits" or "multiple of cash flow" or similar valuation methodology shall be used in calculating the amount of any losses) actually incurred by HDFC due to any of the warranties in Schedule C being inaccurate in any material respect.
- 17.2. Each of the warranties forming in Schedule C shall be construed as a separate warranty and shall not be limited or restricted by inference from the terms of any other warranty.
- 17.3. The liability of the Company and the Majority Shareholder in respect of Claims shall be limited as provided in Schedule D.

18. REPRESENTATION AND WARRANTIES OF HDFC

HDFC hereby represents and warrants to the Company as follows:

- (a) Organization, Qualification and Good Standing: HDFC is an alternative investment fund, validly existing and in good standing under the laws of Bangladesh and has full power and authority to own its assets and to carry on its businesses as presently conducted. Furthermore, HDFC is duly qualified to transact business and has all authority to execute and deliver this Agreement, to purchase the HDFC Preference Shares and to carry out the provisions of this Agreement.
- (b) HDFC has taken all necessary actions and obtained all necessary approvals, authorizations and formalities required to be done or fulfilled in order to enable HDFC to lawfully enter into and perform its obligations under this Agreement and to ensure that such obligations expressed to be assumed by it hereunder are legal, valid, binding and enforceable. HDFC has all requisite power

and authority necessary to execute, deliver and perform its obligations under this Agreement. This Agreement, upon execution shall constitute a valid and binding obligation.

- (c) Compliance with other instruments: The execution, delivery and performance of this Agreement will not result in any breach violation of, or be in material conflict with, any mortgage, indenture, contract, agreement or instrument to which it is a party or of any judgment, decree, order or writ applicable to HDFC.
- (d) The execution and delivery of this Agreement and the undertaking and performance by it of the obligations expressed to be assumed by it in this Agreement will not conflict with any requirement of its organisational or governing documents or result in a breach of or default under Applicable Law or under any agreement, instrument, order, judgment or decree to which it is a party or by which it is bound, in a manner such that such conflict, breach or default would, in any reasonable likelihood, have a material adverse effect on its ability to perform its obligations under this Agreement.
- (e) HDFC is familiar with the business and financial condition, properties, operations and prospects of the Company and HDFC has been granted the opportunity to ask questions of, and receive answers from, representatives of the Company and the terms and conditions of the issuance of the HDFC Preference Shares and to obtain any additional information that HDFC deems necessary.
- (f) HDFC has carefully reviewed the terms and provisions of this Agreement, and all other documents referenced in this Agreement and any other agreements or documents ancillary hereto or thereto and has evaluated the restrictions and obligations contained herein and therein in consultation with its own attorneys, accountants or investment advisers. In furtherance of the foregoing, HDFC represents and warrants that: (i) no representation or warranty, express or implied, whether written or oral, as to the financial condition, results of operations, prospects, properties or business of the Company or as to the desirability or value of an investment in the Company has been made to HDFC by or on behalf of the Company or any other person, and the same are hereby disclaimed; (ii) HDFC has relied solely upon HDFC's own independent appraisal and investigation, and the advice of HDFC's own counsel, tax advisors and other advisors, regarding the risks of an investment in the Company; and (c) HDFC will continue to bear sole responsibility for making HDFC's own independent evaluation and monitoring of the risks of HDFC's investment in the Company.
- (g) Each of the representations, warranties and statements forming part of this clause 18 are true and correct as of the Execution Date and shall be true and correct on and as of the Closing Date. Each of these warranties shall be construed as a separate warranty and shall not be limited or restricted by inference from the terms of any other warranty or any other terms of this Agreement. None of the warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Company or Majority Shareholder or any of its agents, representatives, officers, employees or advisors.

19. ANTI DILUTION

- 19.1. For the avoidance of doubt, since the HDFC Preference Shares are exchangeable to Holdco Preference Shares of the Holdco, the anti-dilution protection applicable to the Holdco Shareholders under the Preference Shares Related Agreements shall be applicable to HDFC through the application of the MACR under this Agreement.
- 19.2. HDFC will enjoy full anti-dilution protection whereby there is:
 - (a) issuance of additional equity of any class in the Holdco and the Company or
 - (b) issuance of additional equity in the Company as swapped into Holdco stock basis using the Conversion ratio

at a price lower than weighted-average price at which the shares have been issued to HDFC, subject to as required for a Liquidation Event or drag-sale in accordance with this Agreement.

20. PROTECTIVE PROVISIONS

The following actions of the Holdco and, where applicable, its subsidiary (i.e. the Company) are subject to the approval of a 2/3rd of the Investor Stock:

- (a) any change in the constitutional documents of the Holdco in any material manner;
- (b) any change in the size or composition of the board of the Holdco;
- (c) any change in terms of Investor Stock;
- (d) any listing or public offering of equity securities of the Holdco or the Company;

- (e) any disposal of (a) more than 20% of the fair market value of the assets of the Holdco; or (b) assets that contribute to the generation of more than 20% of cash flows, in each case on a consolidated basis;
- (f) entering into any commitments for acquisitions of other entities (whether by the acquisition of shares, assets, or otherwise) for a consideration in excess of USD500,000 (or the equivalent in any other currency);
- (g) creating any subsidiary or entering into any joint venture;
- (h) any change in the ESOP plan in any material aspect of the Holdco;
- (i) any appointment of future CXOs or current employees with roles similar to those of CXOs (“**Key Employees**”)

21. LOCK IN

- 21.1. It must be ensured that Mr. Bahadur Shah continues to devote his business time to promote the success of the Company and the Holdco and must refrain from participating directly or indirectly either in the management of or profit from any competing business.
- 21.2. However, such restrictions can be lifted/waived upon sole discretion of HDFC and after obtaining prior written approval from HDFC.

22. LIQUIDATION PREFERENCE

- 22.1. In case of the occurrence of a Liquidation Event, subject to prevailing regulations, the HDFC Preference Shares will have liquidation rights senior to Ordinary Shares held by Existing Shareholders and any other non-investor party.
- 22.2. In such an event, HDFC shall be entitled to receive, (a) BDT 160,500/ USD 1500 per HDFC Preference Share (“**Liquidation Preference Amount**”) plus (b) accrued but unpaid dividends in preference to all prior series Preferred Shares.

23. MISCELLANEOUS

- 23.1. All costs associated with determination of Fair Market Value, including costs and fees payable to HDFC Appraiser [appointed by HDFC and any purchaser of HDFC Preference Shares (if any)] and Final Appraiser shall be borne by the Company, provided that all holders of CPS will select a single appraiser. The CPS Appraiser will be selected by the holders of majority of Convertible Preference Shares.
- 23.2. Notice. Every notice, request, demand or other communication (hereinafter referred to as “**Notice**”) under this Agreement:
 - (a) shall be in writing delivered personally or, by facsimile transmission; or by phone call followed by confirmed facsimile;
 - (b) shall be effective after written Notice is actually received by the recipient; (c) shall be deemed, in case of facsimile transmission, to have been received on dispatch if it is received in sufficiently legible form based on later confirmation of the recipient. If facsimile transmission is received in a non-Business Day, it shall be deemed to have been received on the next Business Day.

The Notices shall be sent:

To the Company at:

GOLD Technologies Bangladesh Limited
Babylonia, Level 1234, Bir Road, Tejgaon I/A, Dhaka, Bangladesh Tel: _____
Email:

To HDFC at:

HDFC Venture Capital Fund I
Bay's (2nd Floor), 17 Gulshan Avenue, Dhaka 1212
Email: HDFCVCFundI@HDFC.com

or to such other address or facsimile number as is notified by one Party to the other under this Agreement from time to time.

- 23.3. Governing Law and Dispute Resolution. The Agreement shall be governed by, and construed in accordance with, the laws of the People's Republic of Bangladesh. Any dispute arising out of or in connection with this Agreement or any breach thereof, including any question with regard to the validity and enforceability thereof shall, unless it can be settled amicably by the Parties hereto within 30 (thirty) days, shall be finally settled by arbitration in accordance to the provisions of Arbitration Act, 2001. Each party shall appoint its own arbitrator (i.e., HDFC shall appoint one arbitrator and the Company, the Majority Shareholder and Mr. Bahadur Shah ("Shareholder") shall jointly appoint one arbitrator) and the two arbitrators so appointed shall appoint a third arbitrator who shall act as the chairman of the arbitral tribunal. The seat of the arbitral tribunal shall be Dhaka, Bangladesh and the language of the arbitration shall be English. The decision of the arbitrator will be binding on all the Parties.
- 23.4. Binding on Successors. This Agreement shall be binding upon each of the Parties and their respective successors, legal representatives and permitted assigns, and shall only inure to the benefit of each of the Parties and their respective successors, legal representatives and permitted assigns and not to any third party.
- 23.5. Mutual Agreements. Without prejudice to the express provisions of this Agreement and rights of HDFC contained herein, the Parties hereto recognize that it is impracticable to make provisions for every contingency that may arise in the course of performance of the provisions hereof and accordingly declare their intention that this Agreement shall operate between them with fairness and without detriment to the interest of any Party and agree with each other that they shall use their best endeavors to ensure that full effect be given to the terms of this Agreement in the spirit in which it was agreed and each Party shall co-operate with the other(s) and execute and deliver to the other(s) such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out the intended purpose of this Agreement.
- 23.6. Severance. If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 23.7. Waiver, forbearance and variation. The rights which each of the Parties hereto have under this Agreement shall not be prejudiced or restricted by any indulgence or forbearance extended to another Party. No waiver by any Party in respect of a breach shall operate as a waiver in respect of any subsequent breach. Any variation, amendment or revision of the terms herein contained may be effected by mutual agreement in writing.
- 23.8. Counterparts. This Agreement is executed in triplicate (one each for the Company, Majority Shareholder and HDFC) each of which shall be deemed to be an original and shall constitute one and the same Agreement.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED OR HAVE CAUSED TO BE EXECUTED, THIS CLASS A PREFERENCE SHARE SUBSCRIPTION AND SHAREHOLDERS AGREEMENT ON THE DATE FIRST WRITTEN ABOVE.

1. SIGNED by and on behalf of
COMPANY

In the presence of:

Managing Director/CEO
GOLD TECHNOLOGIES
BANGLADESH LTD

Name:
Address:

In the presence of:

Name:
Address:

2. SIGNED by and on behalf of
MAJORITY SHAREHOLDER

In the presence of:

Nominee Director
GOLD TECHNOLOGIES PVT.
(HK) LTD

Name:
Address:

In the presence of:

Name:
Address:

3. SIGNED by the SHAREHOLDER

In the presence of:

BAHADUR SHAH

Name:
Address:

In the presence of:

Name:
Address:

4. SIGNED by and on behalf of **HDFC**

In the presence of:

Managing Director/CEO
**HDFC VENTURE CAPITAL
FUND I**

Name:
Address:

In the presence of:

Name:
Address:

Schedule A
Shareholding on this execution date of this Agreement

Sl. No.	Category	Details
1.	Name:	GOLD Technologies Bangladesh Ltd.
2.	Incorporation No.:	C-12345/2016 dated DD/MM/2016
3.	Registered Address:	Babylonia, Level 1234, Bir Road, Tejgaon I/A, Dhaka, Bangladesh.
4.	Directors	(a) Bahadur Shah (b) Md. Ishan Pathan
5.	Authorised Capital:	BDT 15,000,000 (Taka fifteen million) only.
6.	Issued Share Capital:	BDT 960,000 (Taka nine hundred sixty thousand) only.
7.	Addressing To	Managing Director Bahadur Shah, Dhaka Email:

Commented [SNA17]: Current directors of GOLD Technologies Bangladesh Ltd

Commented [SNA18]: Please insert amount

Commented [SNA19]: Please insert amount

Schedule B
Deed of Adherence

Date of Execution:

BETWEEN

A. _____ of _____ (“New Shareholder”);

AND

B. The persons whose names are set out in this deed (collectively the “Current Shareholders” and individually a “Current Shareholder”);

AND

C. Party B (Incorporation No.: ____), a private company incorporated in Bangladesh with limited liability under the Companies Act, 1994 and having its registered office ____, in this Agreement represented by its Managing Director/CEO Mr./Ms. ____ (along with its subsidiaries, affiliates and related companies hereinafter be referred to as the “Company”).

WHEREAS a redeemable preference share subscription agreement was entered into on ____ by and among the Current Shareholders and the Company (as may have been modified, amended or supplemented from time to time) (the “Agreement”), a copy of which the New Shareholder hereby confirms that it has been supplied with and acknowledges the terms therein.

NOW THIS DEED WITNESSES as follows:

1. TERMS DEFINED OR CONSTRUED IN THE AGREEMENT

In this Deed, unless the context otherwise requires, words and expressions respectively defined or construed in the Agreement shall have the same meanings when used or referred to herein.

2. RATIFICATION BY NEW SHAREHOLDER

The New Shareholder hereby accedes to and ratifies the Agreement and covenants and agrees with the Current Shareholders and the Company to be bound by the terms of the Agreement as if it had been a party thereto from the outset and to duly and punctually perform and discharge all liabilities and obligations whatsoever from time to time to be performed or discharged by it under or by virtue of the Agreement in all respects as if named as a party therein.

3. COVENANT BY CURRENT SHAREHOLDERS AND THE COMPANY

Each of the Current Shareholders and the Company covenants and agrees that the New Shareholder shall be entitled to all the benefits of the terms and conditions of the Agreement to the intent and effect that the New Shareholder shall be deemed, with effect from the date on which the New Shareholder is registered as a shareholder of the Company, to be a party to the Agreement.

4. CONTACT PARTICULARS OF NEW SHAREHOLDER

The contact particulars of the New Shareholder for the purposes of serving Notices shall be as follows:

Name of New Shareholder
Address of New Shareholder
Tel:
Fax:

5. DEED TO BE CONSTRUED IN CONJUNCTION WITH THE AGREEMENT

This Deed shall hereafter be read and construed in conjunction and as one document with the Agreement and references in the Agreement, and references in all other instruments and documents executed there under or pursuant thereto to the Agreement, shall for all purposes refer to the Agreement incorporating and as supplemented by this Deed.

6. EXECUTION OF DEED

This Deed may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same Agreement. Any party may

enter into this Deed by signing any such counterpart. Each counterpart may be signed and executed by the Parties and transmitted by facsimile transmission and shall be as valid and effectual as if executed as an original.

IN WITNESS OF WHICH THIS DEED HAS BEEN EXECUTED BY THE PARTIES.

New Shareholder

[where the New Shareholder is an individual]

Signed Sealed and Delivered by
[Name of the New Shareholder]

in the presence of:

[where the New Shareholder is a company]

THE COMMON SEAL of
[Name of the New Shareholder]
was hereunto affixed
in the presence of:

Director/Secretary

Current Shareholder

[where the Current Shareholder is an individual]

Signed Sealed and Delivered by
[Name of the Current Shareholder]
in the presence of:

[where the Current Shareholder is a company]

THE COMMON SEAL of
[Name of the Current Shareholder]
was hereunto affixed
in the presence of:

Director/Secretary

Schedule C
Representations of the Majority Shareholder and/or the Company

1. AUTHORITY, CORPORATE MATTERS AND LICENSES

- 1.1 The Company is duly organized and validly existing under the laws of the People's Republic of Bangladesh and has obtained all necessary licenses, permits and authorizations for properly carrying on the Business and all such licenses, permits and authorizations are in full force and effect.
- 1.2 The Company does not conduct any business other than the Business and it has conducted its Business and corporate affairs in accordance with its Memorandum of Association and Articles of Association.
- 1.3 No order has been made or petition presented or resolution passed for the winding up of the Company or for the appointment of any provisional liquidator and no distress, execution or other process has been levied on any of its assets. The Company is not insolvent nor unable to pay its debts under the law of People's Republic of Bangladesh, or no receiver or receiver and manager has been appointed by any person of its business or assets or any part thereof, no power to make any such appointment has arisen, the Company has taken no steps to enter liquidation and there are no grounds on which a petition or application could be based for the winding up or appointment of a receiver of the Company.
- 1.4 As of immediately prior to the Closing, the Majority Shareholder is the beneficial owner of Ordinary Shares in the Company, free and clear of any encumbrance whatsoever.
- 1.5 There is no encumbrance, sale and purchases, options, warrants, calls, contracts, demands, commitments, convertible securities or other agreements or arrangements of any character or nature whatsoever under which the Company is or may become obliged to issue or purchase shares.
- 1.6 The Company has obtained all required authorization or consent and has the necessary power to enter into this Agreement and there is no agreement that restricts or purports to restrict the issuance and allotment of the Preference Shares. All Preference Shares shall be duly and validly issued in full compliance with all Applicable Law. There is no subscription right, option or stock option, warrant, convertible security, or other right (contingent or otherwise) presently outstanding.
- 1.7 The execution, delivery and performance of this Agreement by the Majority Shareholder and the Company do not and will not:
 - (a) violate in any respect any provision of any law or regulation,
 - (b) conflict with, or result in the material breach of any provision of any agreement, instrument or other obligation or commitment to which the Majority Shareholder and the Company is a party or by which its' or any of its properties or assets is bound.
- 1.8 The Company has obtained all material governmental approvals and authorizations required for the current business activities of the Company and such approvals and authorizations remain in full force and effect.
- 1.9 There are no circumstances, facts or matters which indicate that any of the valid licences, permits and authorizations including all renewals and/or extensions of any of the Company's licenses are likely to be revoked or not renewed, in whole or in part, in the ordinary course of events which will have a Material Adverse Effect on the Company's Business.
- 1.10 The Company has at all times carried on its Business in compliance with all applicable laws and regulations which would otherwise have a Material Adverse Effect on the Company. Neither the Company, nor any of its Shareholders, directors, officers, employees or agents in relation to the Company, has committed any criminal offence or any tort or any breach of the requirements or conditions of any statute, treaty, regulation, bye-law or other obligation relating to the Company or the carrying on of its business and without prejudice to the generality of the foregoing the Company has obtained all registrations, licenses and consents necessary to own its assets and for the carrying on of its Business which would otherwise have a Material Adverse Effect on the Company, and all such registrations, licenses and consents are valid and subsisting and there is no reason why any of them should be suspended, cancelled or revoked.
- 1.11 The Majority Shareholder has the power and authority to enter into this Agreement and to carry out and perform the terms and conditions of this Agreement.

2. LITIGATION

There are no legal actions, claims, suits, arbitrations or legal or administrative proceedings pending or, to the Company's knowledge, threatened against the Company, its Board of Directors and its shareholders which will have a Material Adverse Effect

3. OTHERS

To the knowledge of the Company, the Company and its products have not infringed and do not infringe the copyrights of any third party. To the knowledge of the Company, the Company has not misappropriated or is misappropriating any trade secrets or proprietary confidential information of any third party, and the products of the Company do not include or embody any trade secret or proprietary confidential information misappropriated by the Company from any third party. After due inquiry, each of the Company and its subsidiaries and their respective products have not infringed and do not infringe any patents, trademarks, service marks, or trade names of any third party.

Schedule D
Limitations on Liability

1. HDFC'S KNOWLEDGE

- (a) The Company and the Majority Shareholder shall not be liable in respect of a Claim to the extent that the facts giving rise to such Claim were disclosed to HDFC or were otherwise known (or would have been known had reasonable enquiry been made) at the date of this Agreement by HDFC or any affiliate of HDFC or any of their respective representatives.
- (b) If HDFC (or any of its representatives) becomes aware of a matter which might reasonably give rise to a Claim, the Company and the Majority Shareholder shall not be liable in respect of it unless written notice of all relevant facts is given by HDFC to the Company and the Majority Shareholder as soon as practicable following their so becoming aware and in any event within fifteen (15) days of such event. If the matter is capable of remedy, HDFC shall only be entitled to compensation if the matter is not remedied within sixty (60) days after the date on which such notice is served on the Company and the Majority Shareholder.

2. LIMITATIONS ON QUANTUM

The liability of Company and the Majority Shareholder in respect of any Claim by HDFC:

- (a) shall not arise unless and until the amount of such Claim when Substantiated exceeds US\$50,000 (fifty thousand dollars), in which case the liability of the Company and the Majority Shareholder shall be limited to the excess over US\$50,000 (fifty thousand dollars);
- (b) shall not arise unless and until the amount of all Claims for which it would, in the absence of this provision, be liable when Substantiated exceeds US\$500,000 (five hundred thousand dollars), in which case the liability of the Company and the Majority Shareholder shall be limited to the excess of US\$500,000 (five hundred thousand dollars); and
- (c) shall not (when aggregated with the amount of all other Claims and including all legal and other professional fees and expenses payable by the Company and the Majority Shareholder in respect of all such Claims) exceed the total consideration paid by HDFC to the Company for the HDFC Class A Preference Shares;

3. TIME LIMITS

The Company and the Majority Shareholder shall not be liable in respect of any Claim unless written notice containing full details of such Claim is given by or on behalf of HDFC to the Company and the Majority Shareholder by no later than twelve (12) months from the Closing Date; provided that any such Claim shall (if not previously satisfied, settled or withdrawn) be deemed to have been withdrawn and shall determine absolutely unless legal proceedings in respect of it have been properly issued and validly served within three (3) months of such written notice being given to the Company and the Majority Shareholder.

4. INFORMATION

HDFC acknowledges that no representation or warranty has been made as to the accuracy or completeness of any of the information provided in relation to the Company (the "Information") by the Company, and the Majority Shareholder, directors, officers or members nor any of their respective representatives and confirm that the neither the Company or the Majority Shareholder nor any of their respective representatives shall be under any liability to HDFC in the event that, for whatever reason, any Information is or becomes inaccurate, incomplete or misleading in any way.

5. ALLOWANCES, PROVISIONS OR RESERVES

The Company and the Majority Shareholder shall not be liable for any Claim to the extent that allowance, provision or reserve has been made in the financial statements of the Company for the matter giving rise to such Claim.

6. LOSS OTHERWISE COMPENSATED

The Company and the Majority Shareholder shall not be liable for any Claim to the extent that:

- (a) the matter giving rise to such Claim has been (or is capable of being) made good or is (or is capable of being) otherwise compensated for without loss to HDFC; or

(b) the Claim is recoverable under any insurance policy.

In assessing a Claim, corresponding savings by, or net benefits to HDFC shall be taken into account (including the amount by which taxation may be reduced as a result of any liability).

7. RECOVERY FROM THIRD PARTIES

Where HDFC is entitled to recover from any other person an amount in respect of any matter relating to a Claim, HDFC shall immediately notify the Company and the Majority Shareholder in writing and take all steps as the Company and the Majority Shareholder may reasonably require to enforce recovery of such amount. HDFC shall keep the Company and the Majority Shareholder fully informed of the progress of such recovery and shall provide copies of all relevant correspondence and documentation. Upon recovery of such amount HDFC shall:

- (a) deduct the full amount from the Claim (if the entitlement of HDFC to recover arose before payment is made by the Company and the Majority Shareholder under the Claim); or
- (b) repay to the Company and the Majority Shareholder the lesser of such amount paid by the Company and the Majority Shareholder to HDFC under the Claim or the full amount recovered by HDFC (if the entitlement to recover arose after payment had been made by the Company and the Majority Shareholder under the Claim).

8. CONDUCT OF CLAIMS

If HDFC becomes aware of any matter which may result in a claim being brought against them by another person (a "Third Party Claim") which may lead to a Claim, HDFC shall and shall procure that of its affiliates shall:

- (a) make no admission of liability or settle or compromise the Third Party Claim without the prior written consent of the Company and the Majority Shareholder (such consent not to be unreasonably withheld or delayed) provided that it will take all reasonable action to mitigate any loss that may arise in respect of any resulting Claim;
- (b) consult with, give such information and assistance to and take such action (including the appointment of professional advisers) as the Company and the Majority Shareholder may request in order to avoid, defend, dispute, mitigate, appeal, settle or compromise the Third Party Claim; and
- (c) permit the Company and the Majority Shareholder at their own cost and expense to have sole conduct of the Third Party Claim and permit the Company and the Majority Shareholder to take such action as they decide is necessary at any time and in their sole discretion to avoid, defend, dispute, mitigate, appeal, settle or compromise the Third Party Claim.

9. CONTINGENT LIABILITY

The Company and the Majority Shareholder shall not be liable for any Claim based upon a liability which is contingent unless and until such contingent liability becomes an actual liability.

10. RETROSPECTIVE LEGISLATION

The Company and the Majority Shareholder shall not be liable for any Claim to the extent that the liability arises or is increased as a result of any legislation not in force at the date of this Agreement.

11. DUTY TO MITIGATE

HDFC shall procure that all reasonable steps are taken to avoid or mitigate any loss or damage which they may suffer as a result of a breach by the Company and the Majority Shareholder of this Agreement or as a result of any fact, matter, event or circumstance likely to give rise to a Claim.

12. NO DOUBLE RECOVERY

HDFC shall not be entitled to recover more than once in respect of the same matter on which any Claim is based.

13. VOLUNTARY ACTS OR OMISSIONS

The Company and the Majority Shareholder shall not be liable for any Claim arising or increased directly or indirectly as a result of any voluntary act or omission of any member of HDFC or its affiliates after the date of this Agreement.
