**MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (the “**MoU**”) is entered on this the **\_\_\_** day of **\_\_\_\_\_, 2019**.

**BY AND BETWEEN**

**\_\_\_\_\_\_\_**, having its office at \_\_\_\_\_\_ (hereinafter, the “**First Party”**, which term shall be deemed to include subsidiary or parent companies and all permitted assigns);

**AND**

**\_\_\_\_**, having its office at \_\_\_\_\_ (Hereinafter, the “**Second Party**” which term shall be deemed to include subsidiary or parent companies and all permitted assigns).

The Parties are individually referred to as **“Party”** and collectively as **“Parties”**.

**WHEREAS,** the First Party is in the business of \_\_\_\_\_. (“**Services**”);

**WHEREAS**, the Second Party is a \_\_\_\_\_\_\_;

**WHEREAS,** the First Party is desirous in engaging the services of the second Party in \_\_\_\_\_\_\_.

**WHEREAS,** the Parties hereto are desirous of entering into a collaboration between them, on the grounds and on the terms and conditions mentioned herein:

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. **OBJECTIVES OF THE MEMORANDUM** 
   1. To establish a relationship by which the First Party and the Second Party work in collaboration for the benefit of each other and set out the terms of this relationship;
   2. To set out the intent of the Second Party in \_\_\_\_\_\_;
   3. To set out the rights, duties and liabilities of the Parties arising as a result of this agreement.
2. **TERM**

The Understanding will commence on the effective date and shall be in force for a total time period of \_\_\_\_in accordance with this MoU with the consent of both Parties.

However, this Understanding can be extended after consultation by both the parties.

1. **BINDING NATURE**

This Understanding between the Parties is legally binding and enforceable. The Parties understand the terms and conditions set forth herein and have consented voluntarily to be mutually bound by the promises herein.

1. **SCOPE OF THE MEMORANDUM OF UNDERSTANDING**

shall be specified in accordance with the Business Arrangement reached between the Parties. It will describing each parties duties or responsibilities under the said Agreement

1. **REPRESENTATIONS AND WARRANTIES**

Both the Parties represent and warrant that-

1. They are duly organized and validly incorporated under the laws of their jurisdiction, and are empowered to execute, deliver and perform this MoU;
2. The MoU so entered into by the parties does not establish any breach or violation howsoever of any MoU, arrangement or understanding, oral or written, entered with any third party that would adversely affect either Party’s ability to consummate the MoU entered upon hereby;
3. They undertake not to do or cause to be done any act or thing which would result in any representation or warranty contained herein being rendered completely or partially untrue or incorrect;
4. That the performance of their obligations under this Agreement will not violate or infringe upon the rights of any third party or violate any agreement between the Parties and any other person, firm or organization or any law or governmental regulation.
5. The First Party grants the Second Party permission to use any and all the training facility availed by them for the students to be demonstrated in the furtherance of obtaining students.
6. The Second Party shall make such payments as may be raised by the First Party over the period of time for the purpose of completion of the course.
7. **INDEMNIFICATION**

Second Party shall indemnify, defend and hold the First Party, its employees, representatives and agents harmless against any and all losses, liabilities, claims, damages, demands, costs and expenses (including legal fees and disbursements in connection therewith and interest chargeable thereon) asserted against or incurred that arise out of, result from, or may be payable by virtue of, any breach or non-performance of any representation, warranty, covenant or agreement made or obligation to be performed by the Party causing such breach or non-performance. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under any law, by law agreement, or otherwise.

1. **CONFIDENTIALITY**
2. **Confidential Information:**
   * 1. Either Party may own and may develop, compile and own certain proprietary techniques, trade secrets, and confidential information, which are very valuable to that Party (collectively, “**Confidential Information**”). Either Party may disclose such Confidential Information to the other Party during the discussions regarding the business relationship, or existence of any other business relationship between the Parties.
     2. Confidential Information is any information relating to either Party that is not in the public domain and not accessible by the general public.
     3. Confidential Information includes not only information disclosed by either Party, but also information developed or learned by the other Party during their relationship under this MoU. Confidential Information is to be broadly defined and includes all information, which has or could have commercial value or other utility in the business that the disclosing Party is engaged in or contemplates engaging or the unauthorized disclosure of which could be detrimental to the interests of that Party, whether or not such information is identified or marked by that Party.
     4. Confidential Information includes, but is not limited to, any and all information or details concerning the training that the First Party is engaged in, the discussions between the Parties, financial or otherwise, regarding the proposed business relationship; any third party details, business contacts, discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, data, research techniques, customer and supplier lists, marketing, sales or other financial or business information, scripts, approaches to designs, alternate ideas, time, effort estimates, costs and resources to build them, final solution and/or service deliverables, the means or cost of implementing, production, mass-production, the component-usage, block diagrams, improvement-recommendations, part-lists, simulation results, testing methods, iterations made in order to achieve the final product. Confidential Information also includes third-party information, which is in the disclosing Party’s possession under an obligation of confidential treatment.
   1. **Non- disclosure and Protection:**
      1. The Parties agree that, at all times during or subsequent to the business relationship, they will keep confidential and not divulge, communicate, cause to be disclosed, publish, disseminate or otherwise make available or use Confidential Information, except for the Party's own use during the Term of this MoU, for the purpose of enabling productive interaction between the Parties.
      2. The Parties further agrees not to cause the transmission, removal or transport of tangible embodiments of, or electronic files containing, Confidential Information from the other Party, without the prior written approval of the other Party, that owns the Confidential Information.

Provided that nothing in this clause shall apply to any portion of the Confidential Information when the receiving Party can establish that:

* it was in the public domain at the time it was communicated to the Party by the other Party;
* it entered the public domain subsequent to the time it was communicated to the receiving Party by the other Party through no fault of the receiving Party ;
* it was in the receiving Party’s possession free of any obligation of confidence at the time it was communicated to the other Party; or
* It was rightfully communicated to the receiving Party free of any obligation of confidence subsequent to the time it was communicated.

1. **INTELLECTUAL PROPERTY**

Except for any rights expressly granted to the Second Party, First Party shall retain all right, title and interest and proprietary rights in their own intellectual property. Nothing in this Agreement shall be construed to assign or license any right in First Party’s intellectual property to the Second party unless expressly granted herein. The First Party hereby agrees to allow the Second Party to use the brand name, logo, for their communications and marketing purposes and vice versa.

1. **NON-COMPETE AND NON-SOLICITATION**

The Parties agree that after the termination of the MoU that they shall not set up any business which shall be directly or indirectly compete with the First Party.

The Parties further agree that after the termination of the Agreement Second party shall not solicit any business or employees from the First Party.

1. **TERMINATION**
2. Unless otherwise provided, this Agreement may be terminated by either party by giving prior written notice of at least \_\_\_\_;
3. Either Party may terminate this Agreement for cause by providing the other Party written notice if the other Party:
   * 1. is in material breach of this Agreement and has failed to cure such breach within \_\_\_\_ after its receipt of written notice of such breach provided by the non-breaching Party;
     2. engages in any unlawful business practice related to that Party's performance under the Agreement; or
     3. Files a petition for bankruptcy, becomes insolvent, acknowledges its insolvency in any manner, makes an assignment for the benefit of its creditors, or has a receiver, trustee or similar party appointed for its property.
4. In addition to any other termination rights granted by this Agreement, the First Party may terminate this Agreement immediately without liability upon written notice if the First Party has reasonable grounds to believe that work being done by the Second Party is in violation of any law.
5. **WAIVERS, MODIFICATIONS AND AMENDMENT**
6. This MoU constitutes the entire Agreement and oral and written understanding of the Parties relating to the subject matter hereof. No failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy. No waiver by either Party of any provision of this MoU shall be construed as a waiver of any other provision of this MoU, and no such waiver shall operate as or be construed as a waiver of such provision respecting any future event or circumstance.
7. No waiver or modification of any provision of this Agreement shall be effective unless it is in writing and signed by both Parties. Such mutual agreement may also arise out of email exchanges, duly authenticated by methods such as digital signatures expressly agreeing to such amendments, and specifying that they form a part and parcel of this agreement, identified by its original signing date.
8. **SEVERABILITY**

If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as narrowly as possible to reflect the original intent of the Parties. The remaining portions remain in full force and effect.

1. **COSTS**

Each Party shall bear the respective costs of carrying out the obligations under this Agreement.

1. **ASSIGNMENT**

Neither party shall assign any rights, duties or obligations under this Agreement to any other third party, without the written prior permission of the other party.

1. **UNDERSTANDING**
2. It is mutually agreed upon and understood by the Parties of this Agreement that each party will work together in a coordinated fashion for the mutual benefit;
3. This Memorandum will be effective upon the signature of both Parties.
4. **DISPUTE RESOLUTION**

The Parties agree to first mediate any disputes or claims between them in good faith and resolve the disputes amicably and share the cost of mediation equally. In the event that mediation fails, any controversy or claim arising out of or relating to this Agreement or breach of any duties hereunder shall be settled by Arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996. All hearings will be held in \_\_\_\_\_\_\_\_\_\_\_and shall be conducted in English. The parties shall each appoint an arbitrator who shall then appoint a sole arbitrator to preside over the Arbitration proceedings.

1. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of India only. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of \_\_\_\_\_\_\_\_\_\_\_for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS ON THE DAY, MONTH AND SEAL FIRST MENTIONED ABOVE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FIRST PARTY SECOND PARTY