

ROLE OF CAs AS A BUSINESS DOCUMENTS DRAFTING EXPERTS

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INTRODUCTION

The needs of society and demands of modernization and industrialization have led to enactment of laws. There is hardly any human activity which is not governed by one or the other law. Additionally, there are several legislative enactments, provisions whereof as contained in a single section run into several pages. Therefore, writing a document these days is a highly complex job. Unless one has a comprehensive knowledge of the codified Hindu Law, the Land Reform Laws, the laws governing real estate, the Income Tax Laws, Partnership Laws, Company Laws, the Law of Registration, Stamp Duty Provisions of various States etc. and a dearth of other laws, it is extremely difficult to draft a document.

Each situation requires a different handling, a different recital, a different approach to the problem and the document may sometimes have to be molded to be in conformity with the laws of the country and at the same time satisfy the main intention of the parties.

After the parties enter into an agreement or any other transaction which is reduced to writing, disputes may arise between them later resulting in litigation in a Court of Law. In that litigation, the fate of the parties will be decided on the interpretation of the Document in which the rights and liabilities of the parties have been spelt out. Therefore every draftsman should keep in mind that one day the document being drafted by him could be the subject matter of judicial scrutiny and hence he should ensure that the language employed in the document is unambiguous.

With the era of globalization, and ever increasing complexities of Indian laws and growing trade among the countries in the world, legal drafting and document writing has assumed great significance and should be developed as an art in India.

A good drafting style requires the 3C's –

1. Consistency
2. Coherence
3. Clarity

A Chartered Accountant is a professional with multi-disciplinary talent. He is looked upon as a complete business provider. He is the best person to draft documents because of abundance of knowledge in varied avenues like finance, economic and commercial laws, information technology etc.

TYPES OF DOCUMENTS

The various types of documents frequently drafted by Professionals that require adequate drafting skills are enumerated hereunder –

1. Business Agreements
 - a. Arbitration Agreement
 - b. Acquisition Agreement
 - c. Agency Agreement

- d. Advertising Agreements
- e. Consultancy Agreement
- f. Construction Agreement
- g. Franchisee Agreement
- h. Foreign Collaboration Agreement
- i. Hire Purchase Agreement
- j. Investment Agreement
- k. Joint Venture Agreement
- l. Service Agreement
- m. Shareholder Agreement
- n. Stock Purchase Agreement
- o. Sale Agreement
- p. Technology Sharing Agreement
- q. Term Sheet
- r. The Limited Liability Partnership agreement
- s. Partnership agreement
- t. Co-founders agreement
- u. Memorandum of association
- v. Articles of Association
- w. Share purchase agreement
- x. Share subscription agreement
- y. Shareholders' agreement
- z. Asset purchase agreement
- aa. Business transfer agreement
- bb. Joint Venture Agreement
- cc. Advisory Agreement

2. Commercial contracts

- a. Consultancy agreement
- b. Employment contract
- c. Event management agreement

- d. Non-disclosure agreement
 - e. Exclusive agreement
 - f. Memorandum of understanding
 - g. Agency agreement
 - h. Advisors agreement
 - i. Non Circumvention and Fee Protection Agreement
 - j. Purchase agreement
 - k. Letter of intent
 - l. Commission agreement
 - m. Staffing agreement
 - n. Management service agreement
 - o. Operations and maintenance agreement
 - p. Franchise agreement
 - q. Distribution agreement
 - r. Power of attorney
 - s. Event merchandising agreement
 - t. Sponsorship agreement
 - u. Affiliate Program Services Agreement
 - v. Business Collaboration Agreement
 - w. Management Service Agreement
 - x. Hire Purchase Agreement
 - y.
3. Documents for Formation of an Entity
- a. Memorandum of Association
 - b. Articles of Association
 - c. Partnership Deed
 - d. LLP Agreement
 - e. Trust Deed
 - f. Bye laws of Societies
4. Property related documents
- a. Purchase of Flat/house/apartment (commercial/residential)

- b. Purchase of Land
- c. Leave and Licence Agreement
- d. Development Agreement
- e. Transfer Deed
- f. Power of Attorney
- g. Lease Agreement
- h. Gift Deed of Property
- i. Partition Deed
- j. Settlement Deed
- k. Construction Agreement
- l. Rent Agreement
- m. Sale/ Purchase Agreement
- n. Agreement to Sell
- o. Deed of Mortgage of Property
- p. Relinquishment Deed
- q. Surrender Deed in Cooperative Housing Society
- r. Mortgage Deed
- s. Corporate lease agreement
- t. Leave and license agreement
- u. Joint development agreement
- v. Sale deed
- w. Agreement to sell
- x. Venue Hire Agreement
- y. Power Purchase Agreement

5. Intellectual Property Documents

- a. Patent and High Technology Agreements
- b. Licensing Agreements
- c. Consulting and Know-How Agreements
- d. Joint Development Agreements

- e. Licensing of Software and Source Code Escrow Agreements, Motion Pictures for multimedia use, photographs etc.
- f. Software Development Agreements
- g. Agreement for Sale of Technical Know-How
- h. License of use of copy right
- i. Agreements relating to protection of designs/ trademarks/ patents/ and know how
- j. Book publishing agreement and ebook publishing agreement
- k. Work for hire agreement
- l. Inventions agreement
- m. Music license agreement
- n. Content license agreement
- o. IP assignment agreement
- p. Artists agreement
- q. Celebrity endorsement agreement
- r. Audio Visual Streaming Agreement
- s. Research and Development Agreement
- t. Trademark Assignment Agreement
- u. Trademark License Agreement
- v. Character Merchandising Agreement
- w. Original Digital Content Development Agreement
- x. Commission Agreement
- y. Co-production Agreement
- z. Music Distribution Agreement
- aa. Music Adaptation Agreement
- bb. Music Synchronisation Agreement
- 6. Documents relating to Cyber law
 - a. Technology related contracts
 - b. Internet services agreements
- 7. Banking / Financial Documents
 - a. Loan Agreements
 - b. Bank Guarantee

- c. Promissory Note
 - d. Letter Of Credit & Reimbursement Agreement
 - e. Loan settlement agreement
 - f. Syndicate loan agreement
 - g. Comfort Letter
 - h. Deed of mortgage
 - i. Share pledge agreement
 - j. Non-disclosure undertaking
 - k. Corporate Guarantee
 - l. Promoters Guarantee Agreement
 - m. Notice under Section 138 of the Negotiable Instruments Act
 - n. The application under Section 7 and 9 of the Insolvency and Bankruptcy Code 2016
 - o. Inter creditor Agreement
8. Import/Export related documents
9. Documents related to labour and employment
- a. Employment agreements
 - b. Non-disclosure Agreement
 - c. Compensation Agreement
 - d. Collective Bargaining Agreement
 - e. Wage Agreement
10. Insurance related documents
11. Documents for Private Equity Funding
- a. Business Plan
 - b. Term Sheet
 - c. Warranties and Indemnities
 - d. Disclosure Letter
 - e. Shareholders' / Investors' Rights/ Subscription Agreement
12. Technology agreements
- a. Software development agreement

- b. Software license agreement
- c. Software escrow agreement
- d. Software maintenance agreement
- e. Web development agreement
- f. API integration agreement
- g. Technology transfer agreement
- h. SaAS agreement
- i. Database and Maintenance Contract
- j. Service level agreement
- k. Master service agreement
- l. End User License Agreement

13. E-commerce contract/agreements

- a. Terms of use/Terms of service of E-commerce website
- b. Privacy policy
- c. Cookie Policy for a website
- d. Subscription service agreement
- e. Cancellation, returns and refund policy
- f. E-commerce website development and services agreement
- g. Terms and conditions of sale
- h. Internet Banking Services Agreement
- i. Domain Name assignment Agreement

14. Wills

15. Government contract

- a. EPC Contract
- b. Public-private partnership agreement
- c. Concession agreement
- d. Joint venture agreement

16. Other legal documents

- a. Affidavit
- b. Complaint
- c. Written Statement

IMPORTANT FEATURES OF CERTAIN DOCUMENTS

I. BUSINESS AGREEMENTS

A. Arbitration Agreement

Arbitration is a process of dispute resolution in which a neutral third party (arbitrator) renders a decision after hearing both parties. It is the means by which parties to a dispute get it settled through the intervention of a third person, but without having recourse to a court of law. An arbitrator is basically a private judge appointed with the consent of both the parties.

According to section 2(a) of The Arbitration and Conciliation Act, 1996, “Arbitration” means any arbitration whether or not administered by permanent arbitral institution.

The foundation of arbitration is the arbitration agreement between the parties to submit to arbitration all disputes which have arisen or which may arise between them. Thus, the provision of arbitration can be made at the time of entering the contract itself. It is also possible to refer a dispute to arbitration after the dispute has arisen.

According to section 7(1) of the Arbitration and Conciliation Act, 1996, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

Ingredients of Arbitration Agreement

- There should be an agreement in writing;
- An Arbitration Agreement is in writing if it is contained in —
 - a. A document signed by the parties
 - b. An exchange of letters, telex, telegrams or other means of telecommunication which provides a record of the agreement; or

c. An exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

- The agreement should refer either to present or apprehended dispute to arbitration.
- If there is no valid Arbitration Agreement, there can't be a valid arbitration.
- An Arbitration Agreement need not be in a particular form. What is important is that there should be an intention of the parties to refer the dispute to Arbitration.
- An Arbitration Agreement is a contract and it must satisfy all the essential elements of a contract.

The following factors also need to be considered while drafting an arbitration agreement:

- Applicable law to arbitration
- Location of Arbitration
- Number of Arbitrators
- Language of Arbitration
- Reference to arbitration/ Scope of arbitration;
- Interim measures/Provisional Remedies
- Appeal & Enforcement

Form of Arbitration Clause in an Agreement

“Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitration of XY, etc. or if he shall be unable or unwilling to act, to another arbitrator to be agreed upon between the parties or failing agreement to be nominated by.....or, failing agreement to two arbitrators one to be appointed by each party to the difference (whether consisting of one or more than one person) and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference and the decision of the arbitrator (or such arbitrators, or umpire as the case may be) shall be final and binding on the parties.”

Or

“In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to the Association of.....for arbitration as provided in Rules framed by the said Association for the purpose. The decision or award so given shall be binding on the parties hereto.”

Or

“All disputes arising between the partners as to the interpretation, operation, or effect of any clause in this deed or any other difference arising between the partners, which cannot be mutually resolved, shall be referred to the arbitration of.....failing him to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners.”

SPECIMEN MODELS OF ARBITRATION AGREEMENT

i. Agreement of Reference to a Common Arbitrator

THIS AGREEMENT is made at ... this ... day of between Mr. A of residing at hereinafter referred to as the Party of the First Part and Mr. B of residing at hereinafter referred to as the Party of the Second Part.

WHEREAS by an Agreement (Building contract) dated the ... day of ... entered into between the parties hereto the Party of the First Part entrusted the work of constructing a building on his plot of land situated at... to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the... Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has made certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS disputes have therefore arisen between the parties hereto regarding the interpretation of certain provisions of the said agreement and also regarding the quality of construction and delay in the work.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr..... Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr.....

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1. That the following points of dispute arising out of the said agreement dated... are hereby referred to the sole arbitration of the said Mr.... for his decision and award.
2. The points of dispute are:-
 - a. Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.
 - b. Whether the Party of the Second Part has delayed the construction.
 - c. Whether the Party of the Second Part is overpaid for the work done up to now.
 - d. Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.
 - e. All other claims of one party against the other party arising out of the said contract up to now.

3. The said Arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.
4. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
5. The said Arbitrator shall make his Award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time to time with the consent of both the parties.
6. The Arbitrator will not make any interim award.
7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.
8. Subject to the provisions of the Arbitration & Conciliation Act 1996 the award will be binding on the parties hereto.
9. The Arbitration shall subject to what is herein provided be governed by the provisions of the Arbitration Act.

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

SIGNED by the within named
Mr. A ... in the presence of:

Signed by the within named
Mr. B.... in the presence of:

ii. Form Of Agreement To Refer The Dispute To One Arbitrator

This deed of agreement made on this ____ day of _____, 20--, between:

1. Mr. RN, aged about ____ years s/o Mr. PT, r/o _____, hereinafter called the 1st party.
2. Mr. KK, aged about ____ years s/o Mr. PT, r/o _____, hereinafter called the 2nd party.

Whereas first and second parties have some dispute regarding management of the partnership business, being run by the parties. And whereas both the parties are agreed upon to refer the dispute to one arbitrator duly appointed by the both parties.

NOW THIS DEED OF AGREEMENT WITNESSES AS UNDER: -

1. That both the parties have agreed upon to appoint Mr. SB s/o Mr. KM r/o _____ as arbitrator.
2. That both the parties appoint Mr. SB as arbitrator.
3. That the arbitrator will go through the partnership deed and decide the dispute between the parties under the provision of the partnership deed.
4. That this deed shall be confined only up to the dispute of the management of the firm.

Witnesses:

1. Name..... Sd/-.....1st party

Address.....

.....

2. Name..... Sd/-.....2nd party

Address.....

.....

B. Hire Purchase

Hire-purchase means a contract which in addition to terms of hire, provides that on payment of the rent for a certain period, or for a certain number of times, or on the payment of a certain sum after such payment of rent, or at some time during the hiring, the property in the goods hired shall (or may) pass from the owner to the hirer.

The transaction partakes of a contract or bailment with an element of sale added to it. In such an agreement, the owner of the goods lets them on hire for periodic payments by the hirer upon an agreement that when a certain number of payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so that the hirer may return the goods at any time without any obligation to pay any balance of rent accruing after return; until the conditions have been fulfilled, the property remains with the owner. In this agreement the hirer is not bound to purchase the thing hired, he has an option, he may or may not purchase. But in either case, if there is an obligation to buy, or an option to buy, the goods delivered to the hirer by the owners on the terms that the hirer on payment of a premium as also of a number of installments shall enjoy the use of the goods, which ultimately may become his property, the transaction amounts to one of hire-purchase, even though the title to the goods has remained with the owner and shall not pass to the hirer until certain event has happened, namely that all the stipulated installments have been paid, or that the hirer has exercised his option to finalize the purchase on payment of a sum nominal or otherwise.

A hire-purchase agreement has two elements; (i) element of bailment, and (ii) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the

terms of the agreement are satisfied and the option to purchase is exercised, a sale takes place of the goods which till then had been hired.

Normally, there are two parties to the hire-purchase agreement, viz., the owner and the hirer. However, sometimes a financier, for example in case of motor vehicles, is also brought in as a necessary party who purchase the vehicle from the owner and lets the same on hire to the hirer on installments and in such case, a guarantor is also required to be supplied by the hirer to secure fulfillment of the obligations imposed on the hirer under the agreement.

Specimen Model of Hire Purchase Agreement

AGREEMENT FOR HIRE-PURCHASE OF MACHINERY

THIS AGREEMENT made at this..... day of..... 20--
Between.....a company incorporated under the Companies Act, 1956, and having
its registered office at..... (Hereinafter called "the Owner") of the FIRST PART and
Shri.....son ofresident of (hereinafter called "the Hirer") of
the SECOND PART and Shri A son of..... resident of..... (Hereinafter
called "the Surety") of the THIRD PART.

WHEREAS

1. The hirer has vide his letter dated.....requested the owner to provide finance for the purchase of
2. The owner has by its reply dated.....agreed to provide finance for the purchase of on the terms and conditions laid down in the said letter and the documents to be executed for the said purpose.
3. The hirer has placed an order with M/s.....for the purchase of.....
4. The owner has provided the finance by making payment of an amount of Rs..... vide cheque No..... dated..... drawn on..... to the supplier.....

NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The owner, shall let and the hirer shall take on hire from the..... day of..... the..... with fittings, tools, and accessories, more particularly described in the Schedule hereto.
2. On execution of these presents, the hirer shall pay a sum of Rs..... to the owner as initial payment by way of hire and shall during the continuance of this agreement pay to the owner at his address by way of rent for the hire of the said..... the monthly sum of Rs.....
3. The first payment is to be made on the..... Day of..... and the next and each subsequent payments on the Day of each succeeding month during the said term.
4. During the continuance of the agreement, the hirer shall-
 - a. not sell or offer for sale, assign, mortgage, pledge, underlet, let or otherwise deal with the said..... or any part or parts thereof or with any interest therein;
 - b. keep the said..... in his own possession and will not remove the same or any part or parts thereof from the place where such is for the time being situated without the previous consent in writing of the owner;
 - c. not allow any lien to be created upon the saidwhether for repairs or otherwise and will duly and punctually pay all rents, taxes, rates, charges and levies payable in respect of the premises wherein the saidshall for the time being be situated and produce all receipts for such payment to the owner on demand and will protect the said against distress, execution or seizure;
 - d. use thein a skilful and proper manner and shall at his own expense keep the said in good and substantial repair and condition (reasonable wear and tear excepted);

- e. keep insured the during the period of hiring against any loss or damage by hire or otherwise in the sum of Rs..... with an insurance company in the name of the owner and deliver the policy of such insurance to the owner and duly and punctually pay all premiums necessary for keeping the said insurance effective throughout the period of this agreement:

Provided that in case the hirer shall at any time fail to effect or keep effect the said policy by making default in any payment of premium, the owner shall be entitled to effect such insurance and pay the premium to the said insurance company and the hirer shall forthwith pay to the owner all the premiums and other sums paid by the owner;

- f. Not do or omit to do any act which may result in seizure and/or confiscation of theby the Central or State Government or local authority or any public officer or authority under any law for the time being in force.
- 5. If the said shall be destroyed or damaged by fire or otherwise, all money received or receivable in respect of such insurance as aforesaid shall forthwith be received by the owner who shall as the case may require, apply such money either in making good the damage done or in replacing the said..... by other articles of similar description and value and such substituted articles shall become subject to the provisions of this agreement in the same manner as the articles for which they shall have been substituted.
 - 6. The hirer may determine the hiring at any time by giving..... days notice in writing to the owner at his address for the time being and by returning the said at the hirer's own risk and expense and shall thereupon forthwith pay to the owner all hire charges up to the date of such determination and other sums due under the agreement and% of the balance of the total hire charges still to fall due as settled compensation.
 - 7. If the hirer shall make default in punctual payment of the monthly sum so to be paid by him for the hire of the said..... or fails to perform the terms and conditions of this agreement on his part to be observed and performed or if the hirer shall

do or cause to be done or permit or suffer any act or thing whereby the owner's rights in the said..... may be prejudiced or put in jeopardy, the owner may without notice determine the hiring and it shall thereupon be lawful for the owner to take possession of the said..... and for that purpose to enter into or upon any premises where the same maybe kept. If the agreement is determined before the property in the said..... passes to the hirer, the hirer shall forthwith return to the owner, policies and other documents relating to the said

8. If the hirer shall duly perform and observe all the terms and conditions in this agreement and the covenants on his part to be performed and observed and shall punctually pay to the owner the sums specified in clause 2 hereof amounting (together with the said sum of Rs..... so paid on the execution of this agreement as aforesaid) to the sum of Rs..... then the hiring shall come to an end and the said..... shall become the property of hirer and the owner will assign and make over all his rights, title and interest in the same to the hirer but until such payments have been made, the..... shall remain the property of the owner.
9. In consideration of the owner letting the said..... to the hirer at the rent and under the agreements and conditions hereinbefore expressed, the surety hereby guarantees the due payment of the said rents and all other sums of money which may become payable under this agreement and the performance and observance of the said agreements and conditions by the hirer and this guarantee shall not be prejudiced by the owner neglecting or forbearing to enforce this agreement against the hirer or giving time for the payment of the said rents when due or delaying to take any steps to enforce the performance or observance of the said agreements or conditions or granting any indulgence to the hirer.
10. The parties to this agreement hereby declare that they have fully understood the meaning of all the clauses, terms and conditions of this agreement and they have accepted and executed this agreement with full knowledge and understanding of the obligations herein.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and the year first hereinabove written.

SCHEDULE

(Particulars of the machinery)

WITNESSES:

Signed by the company within named by its
authorised signatory

Signed bythe within named
hirer

Signed by the within named hirer

Signed by the within named surety

II. DOCUMENTS FOR FORMATION OF AN ENTITY

A. Memorandum of Association of a Company

The memorandum is the company's charter. It states the company's name; the situation of its registered office; its share capital; the fact that liability is limited and, most importantly, the object for which the company has been formed. In theory, the company can only operate in the areas mentioned in the objects clause but in practice the clause is drawn to cover as wide an area as possible. The directors of the company will incur personal liability if the company engages in a type of business which is not authorised by the objects clause. The memorandum must be signed by at least three shareholders.

Sec.13 of the Companies Act, 1956 prescribes the requirement with respect to Memorandum of Association.

- Name of the company with "Limited" as the last word of the name in case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company;
- The State in which the registered office of the company is to be situate;
- The main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;
- Other objects of the company not included above;
- The memorandum of a company limited by shares or by guarantee should also state that the liability of its members is limited.
- In case of a company having share capital the memorandum should state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount.
- Each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

Specimen Model of Memorandum of Association

MEMORANDUM OF ASSOCIATION OF ABC LTD.

1. The name of the Company is ABC Ltd.
2. The Registered Office of the Company will be situated in the State of -----
3. The objects for which the Company is established are the following:

MAIN OBJECTS TO BE PURSUED ON INCORPORATION OF THE COMPANY

- 1) To carry on the business of manufacturers, dealers, agents, factors, importers, exporters, merchants and financiers of all kinds of -----.
- 2) To carry on the business of manufacturing, buying, selling, exchanging, converting, altering, importing, exporting, processing, twisting or otherwise handling or dealing in or using or advising users in the proper use of -----.
- 3) To manufacture or help in the manufacturing of any spare parts, accessories, or anything or things required and necessary for the above mentioned business.

THE OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF MAIN OBJECTS

To do or perform all or any of the following operations, acts or things which are necessary or incidental to carry on the above objects:

- 1) To enter into agreements and contracts with Indian or foreign individuals, companies or other organisations for technical, financial or any other assistance for carrying out all or any of the objects of the Company.
- 2) To establish and maintain any agencies in India or any part of the world for the conduct of the business of the Company or for the sale of any materials for the time being at the disposal of the Company for sale.
- 3) To advertise and adopt means of making known the business activities of the Company or any articles or goods traded in or dealt with by the Company in any way as may be expedient including the posting of bills in relation thereto and the issue of circulars, books, pamphlets and price-lists and the conducting of competitions, exhibitions and giving of prizes, rewards and donations.
- 4) To apply for, purchase or otherwise acquire and protect, prolong and renew trademarks, trade names, designs, secret processes, patent rights, licenses, protections and concessions which may appear likely to be advantageous or useful for the Company and to spend money in experimenting and testing and improving or seeking to improve any patents, inventions or rights, which the Company may acquire or propose to acquire or develop.

- 5) To expend money on research, experimentation, development, testing, improving or seeking to improve existing products, patents, rights, etc., in connection with any of its activities in pursuance of the aforesaid objects and to expend money to invent, develop, or seek, any new products allied to and in the course of pursuing the objects as detailed in this clause.
- 6) To work, develop, license, sell or otherwise deal with any inventions in which the Company is interested whether as Owner, Licensee or otherwise, and to make, levy, or hire any machinery required for making or desirable to be used as machines included in such inventions.
- 7) To enter into partnership or into any arrangement for sharing profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any person, firm, or company carrying on or engaged in or about to carry on or engage in any business or transaction which this Company is authorised to carry on or engage in or any business or undertaking or transaction which may seem capable of being carried on or conducted so as directly or indirectly to benefit the Company; and to lend money, to guarantee the contracts of or otherwise assist any person, firm or Company and to take or otherwise acquire and hold shares or securities of any such person, firm or company and to sell, hold, re-issue with or without guarantees or otherwise deal with such shares and securities.
- 8) To enter into any arrangement with any Government or State Authority, Municipal, Local or otherwise that may seem conducive to the Company's objects or any of them and to obtain from any such Government or State Authority, any rights, privileges and concessions which may seem conducive to the Company's objects or any of them.
- 9) To purchase or otherwise acquire and undertake the whole or any part of the business property, rights and liabilities of any person, firm or company carrying on any business which this Company is authorised to carry on and to purchase, acquire, apply for, hold, sell and deal in shares, stock, debentures or debenture stock of any such person, firm or company and to conduct, make or carry into effect any arrangement in regard to the winding up of the business of any such person, firm or company.
- 10) To construct, acquire, establish, provide, maintain and administer factories, estates, railways, buildings, water reservoirs, sheds, channels, pumping installations, generating

installations, pipelines, garages, storages and accommodation of all descriptions in connection with the business of the Company.

- 11) To apply for tender, purchase or otherwise acquire any contracts and concessions for or in relation to the construction, erection, equipment, improvement, managements, administration or control of works and conveniences and to undertake, execute, carry out, dispose of or otherwise turn to account the same.
- 12) To buy, lease or otherwise acquire lands, buildings and other immovable properties and to sell, mortgage or hypothecate or otherwise dispose of all or any of the properties and assets of the Company on such terms and conditions as the Company may think fit.
- 13) To amalgamate with any Company or Companies having objects altogether or in part similar to those of this Company.
- 14) To pay all costs, charges and expenses of and incidental to the formation, promotion, registration and establishment of the Company and issue of its capital including any underwriting or other commission, broker's fee and charges in connection therewith including costs, charges of negotiations and contracts and arrangements made prior to and in anticipation of the formation and incorporation of the Company.
- 15) To remunerate or make donations (by cash or other assets or by the allotment of fully or partly paid shares or by call on shares, debenture stock or securities of this or any other company or in any other manner) whether out of the Company's capital, profits or otherwise to any person or firm or company for services rendered or to be rendered in introducing any property or business to the Company or placing or assisting to place or guaranteeing the subscription of any shares, debentures, debenture-stock or other securities of the Company or for any other reason which the Company may think proper.
- 16) To undertake and execute any trust, the undertaking whereof may seem desirable either gratuitously or otherwise.
- 17) To draw, make, issue, accept and to endorse, discount and negotiate promissory notes, hundies, bills of exchange, bills of lading, delivery orders, warrants, warehouse keeper's certificates and other negotiable or commercial or mercantile instruments connected with the business of the Company.
- 18) To open accounts with any individual, firm or company or with any bank or banks and to pay into and to withdraw moneys from such account or accounts.

- 19) Subject to the provisions of the Companies Act, 1956, to invest, apply for and acquire or otherwise employ moneys belonging to, entrusted to or at the disposal of the Company upon securities and shares or without security upon such terms as may be thought proper and from time to time vary such transactions in such a manner as the Company may think fit.
- 20) To lend or deposit moneys belonging to or entrusted to or at the disposal of the Company to such person or company and in particular to customers and others having dealings with the Company with or without security, upon terms as may be thought proper and guarantee the performance of contracts by such person or company but not to do the business of banking as defined in the Banking Regulation Act.
- 21) To make advances upon or for the purchase of materials, goods, machinery, stores and other articles required for the purpose of the Company.
- 22) To borrow or raise money with or without security or to receive money on deposit at interest or otherwise, in such a manner as the Company may think fit and in particular by the issue of debentures or debenture stock-perpetual or otherwise including debenture or debenture stock convertible into shares of this or any other company and in security of any such moneys to be borrowed, raised or received, to mortgage, pledge or charge the whole or any part of the property, assets or revenue of the Company present or future, including its uncalled capital and to purchase, redeem or pay off any such securities.
- 23) To sell, mortgage, assign or lease and in any other manner deal with or dispose of the undertakings or properties of the Company or any part thereof, whether movable or immovable for such consideration as the Company may think fit and in particular for shares, debentures or other securities of any other company having objects altogether or in part similar to those of this Company.
- 24) To improve, manage, work, develop, alter, exchange, lease, mortgage, turn to account, abandon or otherwise deal with all or any part of the properties, rights and concessions of the Company.
- 25) To provide for the welfare of the employees or ex-employees of the Company and the wives, widows, families or dependants or connections of such persons by building or contributing to the building of houses, dwellings or by grant of money, pensions, gratuity, bonus payment towards insurance or other payment or by creating from time to time,

subscribing or contributing to, adding or supporting provident funds or trusts or conveniences and by providing provident funds or trusts or conveniences and by providing or subscribing or contributing towards places of instruction or recreation hospitals and dispensaries, medical and other attendance and other assistance as the company shall think fit.

- 26) Subject to the provisions of the Companies Act, 1956 to subscribe or contribute or otherwise to assist or to guarantee money to charitable, benevolent, religious, scientific, national or other institutions or objects or any public, general or useful objects.
- 27) To distribute any of the properties of the company amongst the members in specie or kind upon the winding up of the Company.
- 28) To deal in or engage in the manufacture of materials required for the packing and preservation and dispatch of finished and unfinished goods, raw materials and articles required for the Company, or produced by the Company.

4. Liability of members is limited.

5. The Authorised share capital of the Company is Rs. ----- (Rupees ----- only) consisting of ----- (-----) equity shares of Rs.10/- (Rupees Ten Only) each and -----(-----) preference shares of Rs. 10/- (Rupees Ten Only) each, with power to increase or reduce the capital of the Company and to divide the shares in the capital for the time being into several classes and to attach thereto respectively such preferential, deferred, qualified or special rights, privileges or conditions as may be determined by or in accordance with the Articles of Association of the Company and to vary, modify, amalgamate or abrogate any such rights, privileges or conditions in such manner as may be for the time being be provided by the Articles of Association of the Company.

We, the several persons, whose names and addresses are subscribed below, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names:

S.No	Name of subscribers	Address, description and occupation of the subscribers	Number of equity shares taken by each subscriber	Witness with address, description and occupation

B. Articles of Association

It is an official document governing the running of a company, which is placed with the Registrar of Companies. The articles of association constitute a contract between the company and its members, set out the voting rights of stockholders and the conduct of stockholders' and directors' meetings, and detail the powers of management of the company.

The Articles of Association contain provisions on the company name, address and domicile, the purpose of the company, the amount of share capital and the contributions made thereto, the number, the par value and the type of shares, the calling of a general meeting of shareholders and their voting rights, the bodies for the administration and the audit and the form in which the company shall publish notices. The Articles of Association contain the rules and regulations of the internal management of the company. It is nothing but a contract between the company and its members and also between the members themselves that they shall abide by the rules and regulations of internal management of the company specified in the Articles of Association. It specifies the rights and duties of the members and directors.

It is the basic internal rules of operation for a business that govern what tasks need to be done, what positions are required to perform the necessary functions, and how the processes in place are to be performed. The provisions of the Articles of Association must not be in conflict with the provisions of the Memorandum of Association.

Every company should have its own Articles of Association. However, if a company does not have its own Articles, the model specified in Schedule I - Table A of Companies Act, 1956 will apply. A company may adopt any of the model forms of Articles with or without modifications. The articles of association should be in any of the one form specified in the tables B, C, D and E of Schedule 1 to the Companies Act, 1956. Form in Table B is applicable in case of companies limited by the shares, form in Table C is applicable to the companies limited by guarantee and not having share capital, and form in Table D is applicable to company limited by guarantee and having a share capital whereas form in table E is applicable to unlimited companies. However, a private company must have its own Articles of Association.

The important items covered by the Articles of Association should include:-

- Powers, duties, rights and liabilities of Directors
- Powers, duties, rights and liabilities of members
- Rules for Meetings of the Company
- Dividends
- Borrowing powers of the company
- Calls on shares
- Transfer & transmission of shares
- Forfeiture of shares
- Voting powers of members, etc.

Specimen Model of Articles of Association

ARTICLES OF ASSOCIATION OF

1. The regulation contained in the Table A of the First schedule to the Companies Act, 1956 shall apply to the company so far as applicable to a Private Company except as otherwise provided/modified impliedly or expressly by the following Articles.

INTERPRETATION

2. In the interpretation of these Articles, the following expressions shall have the following meanings, unless repugnant to the subjects or context.

“THE ACT” means the Companies Act, 1956, with all modifications or amendments thereof.

“THE COMPANY” or this company means “Name of the Company”

“MEMORANDUM & ARTICLES” means the Memorandum of Association and Articles of Association respectively of the Company.

“DIRECTOR” means and include all Directors of the Company and except where the context otherwise requires for those Articles shall mean the Board of Directors of the Company, or a properly constituted committee thereof.

“THE OFFICE” means the Registered Office for the time being of the company.

“THE REGISTRAR” means the Registrar of Companies,

“SEAL” means the common seal of the Company.

“MONTH” means Calendar Month.

“ PROXY” includes Attorney duly constituted under a power of attorney.

“IN WRITING OR WRITTEN” includes printing, lithography, and other modes of reproducing works in a visible form, which also include thumb impression properly attested.

Words importing persons includes corporation, Firms and Association.

Words importing singular number include the plural and vice-versa.

Words importing masculine gender include the feminine gender and vice-versa.

PRIVATE COMPANY

3. The Company is a “Private Company” within the meaning of Section 3 (1) (iii) of the said Act and accordingly the following provisions shall have effect namely.

a) No invitation shall be issued to the public to subscribe for any shares in or debentures of the Company.

b) The number of members of the Company (exclusive of persons who are in the employment of the company and persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be the members after the employment ceased) shall be limited to fifty.

Provided that for the purpose of these provisions where two or more persons hold one or more shares jointly in the Company, they shall be treated as single member.

c) The right to transfer the share of the Company shall be and is restricted in the manner and to the extent as may be decided by the Board of Directors from time to time.

4. The Company may at any time by a special resolution convert itself into a public company within the meaning and subject to the provisions of the Companies Act, 1956.

SHARE CAPITAL

5. The Authorised Share Capital of the Company is Rs. 1,00,000/- (Rupees One Lakh Only) divided in 10,000 (Ten Thousand Only) Equity Shares of Rs. 10/- (Ten Only) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit, as per the provisions of the Companies Act, 1956.

VOTE OF MEMBERS

6. Subject to any right of restriction attached to any class by term of its issue or otherwise:

a) On show of hands, every member (holder of equity shares) present in person shall have one vote and

b) On poll the voting right of every member holder of Equity Shares present in person or by proxy shall be in proportion to his holding of Equity Shares in the paid up Equity Capital of Company.

GENERAL MEETING

7. All General Meeting other than Annual General Meeting shall be called Extra Ordinary General Meeting.

8. General Meeting may be convened on not less than Fourteen days notice to the members.

9. The board may, wherever it thinks fit, call an Extra Ordinary General Meeting.

10. The Chairman of the Board shall be the Chairman of the General Meeting.

11. If the Board is unable to call an Extra-Ordinary General Meeting for want of quorum or otherwise, any two members of the Company may call such a meeting in the same manner as nearly as possible, as that by which such a meeting may be called by the Board.

PROCEEDING AT GENERAL MEETING

12. a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

b) One-third of the total number of members shall form the quorum subject to a minimum of two members.

13. a) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of member shall be dissolved.

b) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at other time and place as the Board may determine.

c) If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

14. The Chairman, if any, of the Board shall preside as Chairman at every general meeting.

15. If there is no such Chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their members to be chairman of the meeting.

16. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their member to be chairman of the meeting.

17. a) The Chairman may, with the consent of any meeting, at which a quorum is present and shall if so directed by the meeting, adjourn the meeting, from time to time and from place to place.

b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

d) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

18. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

19. Any business other than that upon which a poll has been demanded may be proceeded upon, pending poll.

DIRECTORS

20. Subject to the provisions of the Companies Act, unless and until otherwise determined by the Company in General Meeting the number of Directors shall not be less than two and not more than twelve.

21. The following persons shall be the first Directors of the Company.

a) xxxxx

b) xxxxx

c) xxxxx

22. No remuneration shall be paid to any director for attending the Board, Committee or General Meeting of the Company.

23. The directors may however be paid all travelling, hotel and other expenses properly incurred by them.

a) In attending and returning from meetings of the Board or any committee thereof or General Meeting of the Company ; or

b) In connection with the business of the Company.

24. Subject to the provisions of the Act, any vacancy caused by the Board of Directors by resignation, or death of any Director, or by any other reason may be filled in by the Board of Directors by appointing someone they so choose. The Board of Directors have powers to appoint, additional and alternate Directors, but in no case the number of Directors should exceed the maximum fixed by clause 21 thereof.

25. At each Annual General Meeting of the Company one third of the Directors for the time being shall retire by rotation and the vacancy so caused may be filled up by appointing the retiring director or some other person thereto.

26. The directors shall not be required to hold any qualification shares.

PROCEEDING OF DIRECTORS

27. The Board of Directors shall meet at least once in every Six Calendar months to conduct its business.

28. A resolution in writing circulated amongst all the Directors and passed in accordance with Section 289 of the Companies Act, 1956 shall be valid and effected as if it has been passed at a meeting of the Directors duly called and constituted.

29. The quorum for transacting any business of the meeting of the Board of Directors shall be one-fourth of the total strength provided the quorum shall not be less than two members in any case.

30. Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes and in case of equality of votes the chairman shall have a second or casting vote.

31. The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be chairman of the meeting.

32. A Manager or Secretary being not a member of the Company may be appointed by the Board on such terms, at such remuneration and upon such conditions as it may think fit and manager or secretary so appointed may be removed by the Board.

33. a) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.

b) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulation that may be imposed on it by the Board.

34. a) A committee may elect a chairman of its meetings.

b) If no such chairman is elected or in any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.

35. a) A committee may meet and adjourn as it think proper.

b) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of any equality of votes, the chairman shall have a second or casting vote.

36. Save as otherwise expressly provided in the Act, a resolution in writing signed by all the members of the Board or Committee thereof for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it has been passed at a meeting of the Board or Committee, duly convened and held.

SEAL

37. The Board shall provide for the safe custody of the seal of the company. The seal shall not be affixed to any instrument except by the authority previously given by Resolution of the Board in presence of one of the Directors who shall sign every instrument to which the seal of the Company shall be so affixed in his presence.

ACCOUNTS

38. a) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the Company or any of them shall be open to the inspection of members (not being Directors).

b) No member (not being a Director) shall have any rights of inspection any accounts or books of accounts of the Company except as conferred by the law or authorised by the Board or by the Company in General Meeting.

39. The Directors shall in all respects comply with the provisions of the Companies Act, so far as they are applicable to a Private Company and the Profit & Loss Accounts, Balance Sheet and Auditors Report and every other documents required by law to be annexed or attached, as the case may be, to the Balance Sheet shall be sent to every member of the Company at least 14 days before the date of the General Meeting of the Company at which they are to be laid.

AUDIT

40. a) The first Auditors of the Company shall be appointed by the Board of Directors within one month from the date of Registration of the Company and the Auditors appointed shall hold office until conclusion of first Annual General Meeting.

b) At each Annual General Meeting the Company shall appoint an auditor to hold office from the conclusion of the meeting until the next Annual General Meeting.

INDEMNITY

41. Subject to the provisions of the Act, every Director, Managing Director, Manager, Secretary or other officer or servant of the Company shall be indemnified by the Company against any liability arising out of the Act done by him or them in the bonafide discharge of their duties and shall be the duty of the Board of Directors to pay out of the funds of the Company all costs, losses and expenses which such director, officer or servant may incur or become liable to, by reason of any contract entered into, act, or deed done by him as such officer, servant or in any way in the discharge of his duty. The Board of Directors may execute in the name and on behalf of the Company, in favour of any director or other person who may incur or be about to incur, any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit, and any such other powers as shall be agreed upon.

C. Partnership

A partnership is defined as a relation between two or more persons who have agreed to share the profits of a business carried on by all of them or any one of them acting for all. The owners of a partnership business are individually known as the "partners" and collectively as the "firm".

Partnerships are governed by the Indian Partnership Act, 1932. Apart from this, the general law of contracts, as contained in the Indian Contract Act 1872 also applies to Partnership Firms in India. According to the Constitution of India, the Union and State Legislatures have concurrent power with respect to partnership contracts; therefore, every State may have its own partnership laws as well.

The main features of partnerships are:

- Two or more persons can start a partnership.

- The maximum number of partners permissible in a firm is 20, except in the business of banking, where it is 10.
- A Partnership agreement must be entered into, and clearly specify the name of the partnership firm, the names of the partners, the capital to be contributed by each partner, the profit or loss sharing ratio between partners, the business of the partnership, the duties, rights, powers and obligations of each partner and other relevant details.
- The agreement must be signed by all partners and witnessed by independent persons.
- The partnership agreement must also specify the duties and authority of all the partners.
- Details of salary and other payments to partners must also be specified in the partnership deed.
- Registration of partnership deeds is not compulsory; however, registration ensures legal rights to the firm and its partners.
- The advantages of this form of setup are that two or more people can come together and start a new business. The disadvantages are that the liability of the partners of the firm is unlimited and the partners' personal assets are also liable for the debts incurred by the partnership firm.
- The liability of partners in Indian partnerships is joint and several.
- There is no minimum capital to be subscribed for in a partnership.
- A partnership may be dissolved with the consent of all the partners or in accordance with the provisions in the partnership agreement.

Partnership Deed

Under the Partnership Act, a Deed of Partnership is not necessary. Even though an agreement between two or more persons is necessary to form a partnership, it is not compulsory for a partnership deed to be in writing. In other words, Partnerships can also be made orally.

However, the Income Tax Act, 1961 provides that a partnership shall be assessed as a firm only if it is duly evidenced by an instrument. Therefore, it is desirable to draft and execute a proper deed of partnership.

Under the English Law of Partnership, the registration of partnership firms is compulsory. However, Chapter VII of the Indian Partnership Act, 1932 pertaining to registration of partnership firms in India provides that registration of partnership firms is not compulsory.

Under Section 57 of the Indian Partnership Act, 1932 the concerned State Government may appoint Registrars of Firms for the purposes of registration of partnership firms for different areas.

While Drafting a Partnership Deed, the draftsman has to take care of the following points:

1. The form and contents of a Partnership Deed consists of the following components:
 - i. Date
 - ii. Names of Partners
 - iii. Preamble
 - iv. Recitals
 - v. Attestation
 - vi. Custody
 - vii. Special Rules
2. The clauses in the Partnership Deed contain the intentions of the partners of the firm.
3. The “Partnership Deed”, amongst other things, covers/includes the following aspects:
 - Names of the partners of the firm and their addresses
 - Names of working partners with their rights and duties
 - Nature and scope of the duties, powers and rights of each partner
 - Restrictions on the rights and powers of the partners
 - Nature of firm’s business
 - Place of business
 - Commencement, Duration and Determination of Partnership Business
 - The amount of capital contributed by each partner and aspects relevant to it like the introduction of additional capital, drawings that can be made, etc.

- Interest to be paid to partners on the capital contributed, loans advanced, or deposits made by the partners
- Salary or commission payable to any partner, if any
- Loans given by partners to the firm
- Profit or loss sharing ratio of the partners
- Mode, manner and ratio of distribution of profits
- Consent of the Guardian if a minor is admitted to the benefits of the firm
- Keeping Accounts and the manner of maintaining the books of accounts
- Outgoings and expenses of Partnerships
- Valuation of Goodwill
- Retirement, Death, Bankruptcy, Expulsion of Partners
- Dissolution of the Partnership Firm
- Mode of settling disputes among the partners
- Any other terms and conditions to run the business
- Provision that in all other matters, not provided for by the deed, the provisions of the Indian Partnership Act, 1932 shall apply.

Specimen model of Partnership Agreement

PARTNERSHIP DEED

This **DEED OF PARTNERSHIP** made this ----- day of ----- between ----- Hereinafter called the partners of the first part and Second Part respectively.

AND

A company registered under the provisions of the Companies Act 1956 and having its registered office at ----- hereinafter called the party of Third part.

WHEREAS the Parties of First and Second Part by virtue of their partnership deed dated -----
----- have been carrying on the business of manufacturing and marketing -----
--- etc. under the name and style of ----- with factories at
under the same name and style.

AND WHEREAS the Party of Third Part Viz. the company is formed with the objects of
manufacturing, dealing and marketing in ----- etc.

AND WHEREAS the Party of the Second Part has expressed its desire and willingness through
the director -----to enter into Partnership and parties First, Second part have
mutually decided that the Party of the third Part shall be taken as Partner.

AND WHEREAS it is deemed necessary and desirable that a regular Deed of Partnership be
reduced in writing and executed on the terms and conditions mentioned hereunder.

NOW THIS DEED WINTESSETH AS UNDER: -

1. The Partnership shall come into effect from -----and shall be for an indefinite
period unless it is determined.
2. That the name and style of the Partnership firm hereby formed shall be ----- with
factories at -----under the same names and style or with branch or branches at such
place(s) as the parties may mutually decide.
3. That the business of the Partnership Firm hereby formed shall be that of manufacturing and
marketing of -----, as hereto before. The parties may, however, with their mutual
consent embark upon a new line or lines of business and may open branch or branches or new
factory.
4. That the amount standing to the credit of the personal accounts of the Parties of First and
Second Part in the books of above firm as on -----shall be treated as contribution by
them to the capital of the Partnership and the Party of the Third Part shall bring Rs.----- as
his share towards the capital of the firm.

5. That further finance required for the purpose of business of the firm shall be contributed by the parties in such rate as may be mutually agreed upon. Interest at the rate of ----- or at a rate as may be mutually agreed upon between the parties from time to time shall be allowed on the capital standing to his/her credit for the time being in the books of the partnership.

6. That the regular accounts books shall be kept in due course of business in which shall be faithfully recorded all the transactions enter into by the firm and such books shall be closed on --
-----or/on any other convenient or auspicious day as may be mutually agreed upon between the parties hereto from time to time.

7. That on closing the account books in the aforesaid manner, a regular profit & Loss Account shall be prepared and a balance sheet shall be drawn up.

8. That the Profits & Losses shall be divided between and borne by parties hereto in the following proportions:

<u>Partner</u>	<u>% of share in Profits and Losses</u>
----------------	---

9. That the partners will be paid a Salary of Rs.-----/- per month for the services rendered and they will also be entitled to a bonus @ ----% on their salary.

10. That all the assets and liabilities of the firm as on ----- tangible or otherwise, would be taken over by the Partnership at its book value and shall be deemed to be assets and liabilities of this Partnership and all the Parties hereto will have equal rights/liabilities thereon.

11. That all rights of the firm as on -----namely licences, Trade marks, VAT registration, Telephone connections, Tenancy rights, Lease rights, Ownership right etc. shall be deemed to be the rights of the partnership and all the parties hereto will have equal rights/liabilities thereon.

12. That each partner shall: -

(a) Diligently attend to the business of the Partnership and devote his/her necessary time and attention thereto.

(b) Punctually pay her/his separate debts and indemnify the other partner and the Assets of the firm against the same and all expenses therefore.

- (c) Upon every reasonable request inform the other Partner of all letters, accounts, writings and such other things which shall come to her/his hands or knowledge concerning the business of the Partnership.

13. That neither Partner shall without the consent of the others: -

- (a) Lend any of the money or deliver upon credit any of the goods of the firm to any person or persons whom the other Partners shall have previously in writing forbidden her/him to trust.
- (b) Raise or advance any loan in the name of or on behalf of the firm.
- (c) Assign, charge or transfer her/his shares in assets or profits of the firm.

14. That the account in the name of the firm ----- shall be opened with the Banks or bankers as the Parties may mutually decide and the same shall be operated upon by the Parties hereto singly.

15. That any partner may retire from the Partnership firm, hereby formed by giving ----- months notice in writing to the others but none shall leave the firm until or unless all the pending commitments are carried out, liabilities paid off, assets realized and accounts are rendered fully and settled finally to the entire satisfaction of each of the parties hereto.

16. That the parties hereto may, however, with their mutual consent pay remuneration to any of the parties hereto at a rate that may be mutually agreed upon between them from time to time. They shall be at liberty to increase or decrease such rate of remuneration with their consent from time to time.

17. That in the event of death or retirement of any of the parties hereto the partnership firm hereby formed shall not dissolve, but shall continue. The legal heir or the representative of the deceased shall step into her/his shoes.

18. That upon the dissolution of the partnership in any event not hereinafter provided for the said business, the assets, goodwill and liabilities thereof should absolutely vest on any one partner mutually decided by the parties to the partnership.

19. That it will always remain open to the parties hereto to amend, annul or change any term or terms of this Deed of Partnership in the course of its business and in that event of amending, annulling or changing any term or terms of this deed of Partnership no fresh deed shall be required to be executed.

20. That without prejudice to the above terms and conditions the parties hereto in all other matters shall be governed by the provisions of Indian Partnership Act, 1932.

21. That all the disputes or differences arising out of it and connected with the Partnership shall be referred to the arbitrator in accordance with the Indian Arbitration Act.

IN WITNESS WHEREOF, the parties of the first and Second parts here have put their respective hands on this DEED OF PARTNERSHIP on the day, month and year first mentioned above.

IN WITNESSES WHEREOF, the common seal of the Third Partner ----- in pursuance to the resolution passed in that behalf on ----- here into affixed in the presence of ----- and signed these presents in token thereof in the presence of the Witnesses.

WITNESSESS:

Partners

- 1.
- 2
- 3.

D. Limited Liability Partnerships

A Limited Liability Partnership (“LLP”) can be described as a hybrid between a company and a partnership. It is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is also a suitable vehicle for small enterprises and for investments by venture capital.

Keeping in mind the need of the day, the Parliament enacted the Limited Liability Partnership Act, 2008 which received the assent of the President on 7th January, 2009.

The salient features of the LLP Act 2008 inter alia are as follows: -

1. An LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form an LLP, which would have perpetual succession;
2. The mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners are governed by an agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act 2008 . The act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed the LLP Act;
3. As the LLP is a separate legal entity, it would be liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP, which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP;
4. Every LLP is required to have at least two partners along with at least two individuals as Designated Partners, of whom at least one must be resident in India. The duties and obligations of Designated Partners are as provided under the act;
5. The LLP is under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency are required to be filed by every LLP with the Registrar every year. The accounts of LLPs are also to be audited, subject to any class of LLPs being exempted by the Central Government;
6. If required, a competent Inspector appointed by the Central Government would investigate the affairs of an LLP;
7. The compromise or arrangement including merger and amalgamation of LLPs are required to be in accordance with the provisions of the LLP Act 2008;
8. A firm, private company or an unlisted public company is also allowed to be converted into LLP in accordance with the provisions of the Act. Upon such conversion,

commencing from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion would be such as are specified under the Act;

9. The winding up of an LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;
10. The 2008 Act confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;
11. The Indian Partnership Act, 1932 is not applicable to LLPs.

LLP Agreement

According to section 2(1)(o) of the LLP Act 2008, Limited Liability Partnership Agreement means any written Agreement between the partners of the LLP, or between the LLP and its Partners, which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

It is not mandatory by law to enter into a formal LLP agreement, but it should be done as it avoids unnecessary disputes in the future. Where no LLP agreement has been executed between the partners of LLP or the agreement is silent on certain issues, the provisions of the First Schedule to the LLP Act 2008 shall apply.

The LLP Agreement is an important document and any changes therein should be filed with the Registrar. The LLP Agreement is important for the following reasons:

1. The effect of the LLP Agreement is similar to the Articles of Association of a Limited Liability Company which defines the rights, duties and liabilities of a member with the Company.
2. Among other things, the LLP Agreement defines the form of contribution and liability for contribution of the partners.

3. It defines the role of partners, designated partners, their duties and powers.

Important Points in relation to the LLP Agreement:

- On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document become its partners and any other person may also become a partner of the limited liability partnership in accordance with the limited liability partnership agreement.
- Any changes made to the LLP agreement are required to be filed with the Registrar in the form and manner along with such fees as may be prescribed.
- An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule of the LLP Act 2008, under Section 23(4).

Matters covered under the LLP agreements include:

- Business of the partnership
- Firm name and location
- Duration
- Partnership property
- Financial Provisions
- Capital
- Profits and losses
- Drawings
- Advances to the partnership
- Bankers

- Records and account
- Managerial Provisions
- Managing Partner
- Meetings and Voting
- Holidays
- Motor cars
- Insurance
- The Partners' Obligations and Restrictions
- Good Faith
- Restrictions on partners
- Termination Provisions
- Retirement
- Expulsion
- Outgoing partners share
- Determination of the Partnership
- Cessation provisions
- Arbitration in disputes

SPECIMEN MODEL OF LLP AGREEMENT

LLP AGREEMENT

THIS AGREEMENT OF LIMITED LIABILITY PARTNERSHIP made at.....on this..... day of20.... by and between RN.....of the First Part and JG..... of the Second Part.

WITNESSES the mutual agreement of the Parties hereto as follows:

THAT THEY BOTH shall become Partners who shall be Designated Partners on incorporation of the LLP to carry on partnership business as a Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a view to sharing profit upon the following terms.

INTERPRETATION

In this Agreement unless the context otherwise requires:-

“Accounting Year” means the financial year as defined in the LLP Act, 2008.

“Act” or “LLP Act” means the Limited Liability Partnership Act, 2008.

“Business” includes every trade, profession service and occupation.

“Change” means a change in the constitution of the body of Partners or Designated Partners other than their admission afresh.

“Designate Partner” means any partner designated as such.

“LLP” means the limited liability partnership formed pursuant to this LLP Agreement.

“LLP Agreement” means this Agreement or any supplement thereof determining the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

“Partner” means any person who becomes a partner in the LLP in accordance with this LLP Agreement.

“She” includes “he” or vice versa.

1. Business- The Partnership business shall be..... Until and unless changes as mutually agreed upon by all the partners for the time being of the LLP.

2. Name- The name under which the Partnership business shall be carried on will be the one permitted by the Registrar out of the three names proposed by mutual agreement of the Parties hereto.

3. Place- The Partnership business shall be carried on at the address given below:

.....
.....
.....

City.....

District.....

State.....

Pin Code.....

Phone.....

Fax.....

E-mail ID.....

At the principal place of business and at such other place or places as the Partners shall from time to time unanimously agree upon.

4. Term of LLP - The Partnership shall commence on the date of registration of the LLP, and shall continue to operate thereafter subject to the provisions of the LLP Act, 2008, until termination of this agreement by consent of all Partners for the time being of the LLP.

5. Capital, Partners’ Contribution, Liability and Admission of Partners-

(1) The capital of Partnership shall be the sum of Rs.....
(Rupees.....) brought in cash/money’s worth of any property or services agreed by all partners for the time being of the LLP and belonging to the Partners

initially by the Partners being the Parties hereto in equal shares subject to the amount equivalent to ---% thereof being accepted from such of the other Partners hereafter admitted as mutually agreed upon by the Partners being the Parties hereto, into the LLP after its registration at not less than ---% as capital contribution per such Partner as his share at 100% premium payable half up-front and the other half within 90 days of admission, so that when such capital contribution shall have been completed the shares of the Partners being Parties hereto shall stand at -----% each of the total capital contributed. The capital contribution thus received shall go to reduce progressively the capital originally contributed by the Partners being the original Parties hereto equally but the same together with the premium received in its entirety shall be retained in the LLP business as their loan contribution made from time to time as and when received on the corresponding dates of receipt of capital contribution and payment of premium from the new Partners admitted as aforesaid. There shall be no limit on the number of Partners to be admitted at any time and from time to time by changing the provisions of this LLP Agreement, if necessary, and as required, subject to its acceptance by all the then existing Partners at a meeting of theirs or otherwise confirmed in writing.

(2) A separate capital account shall be maintained for each Partner. No Partner shall withdraw any part of his capital account while he is a Partner.

(3) The loan component accrued as stated in (1) above to the Partners being the Parties hereto shall not be withdrawn by them before 24 months from the date of admission of the last Partner to make up for the -----% off-loading of the capital at a premium as aforesaid; and thereafter the Parties hereto shall be free to withdraw their loan-retention component at not more than -----% at a time once in each 10 weeks commencing at the expiry of the said 24 months of the total amount standing as loan *plus* interest thereon as balance respectively to their credit as at the end of the previous financial year as per the last audited balance sheet.

(4) The Parties hereto shall be bound to be Partners of the LLP till the loan component of theirs is completely paid back to them by the LLP as aforesaid whereupon their capital contribution standing at -----% shall become re-payable in one lump-sum; and should they cease to be

Partners earlier for any reason beyond their control that shall not alter the scheme of return of loan and capital to them or their other claimants on their behalf, as aforesaid.

(5) If at any time after the commencement of the Partnership as LLP any further capital shall be required for the purposes of the LLP, the same shall be additionally contributed by the then Partners in their respective proportion of capital contributions made, unless otherwise agreed upon by all the then Partners. Existing loans advanced or deemed as advanced by the Partners to the LLP shall not be convertible into such capital contribution.

(6) The obligation of a Partner to contribute (i) money or (ii) other property or benefit or to perform services in the case of its money's worth as determined in the agreement with the Partner therefore as equivalent to his share of contribution of capital to the LLP under this Agreement, shall be a debt due from him to the LLP. The liability of a partner or designated partner in relation to the LLP shall be as set out in the Act and in particular every partner shall indemnify the LLP insofar as every partner may take part in its management. It is a condition of this Agreement that the LLP shall indemnify each Partner in respect of payments made and personal liabilities incurred by him (a) in the ordinary and proper conduct of business of the LLP, and (b) in or about anything necessarily done for the preservation of the business or property of the LLP.

(7) This LLP Agreement along with the LLP's Certificate of Incorporation should be laid before a special general meeting of the Partners to be held within 30 days of the LLP's registration, and it shall be the responsibility of the first two Designated Partners of the LLP to comply with the same.

(8) After the LLP's registration, it may reimburse the Promoter-Partners the costs of promotion and registration, legal fees, cost of printing and stamp duties and all other direct costs at accruals according to the account rendered to the LLP by the Promoter-Partners, with the approval of the general meeting of Partners mentioned in (7) above.

(9) The LLP shall have a Common Seal and it shall be laid before and adopted at the general meeting mentioned in (7) above. The Common Seal shall be affixed to any document or contract with approval of and in the presence of at least two of the Designated Partners of the LLP, on each occasion and the same fact recorded chronologically in the Seal Book maintained for the purpose under their signatures.

(10) All the assets owned by or belonging to the LLP including but not limited to the Intellectual Property Rights (IPRs) of whatever kind shall be the property of the LLP and no partner shall be entitled to use for himself any such property otherwise than as a client or customer.

(11) No resolution or decision carried by a majority of Partners of the LLP shall be valid to be given effect to unless it includes the Partners being the original Parties hereto.

(12) The contents of this para shall not be alterable till the conditions stated in sub paras (3) and (4) above are fully complied with.

6. Bar against admission of Partner and A person who has any business interest in conflict with the business of the LLP compliance of persons admitted as partner – A person who has any business interest in conflict with the business of the LLP shall not be admitted as its Partner, and any Partner who acquires such conflicting interest shall cease to be and be expelled as a Partner by a unanimous decision of the partners. Persons admitted as partners shall duly comply with the provisions of section 25(1) of LLP Act and Rule 22(1) and Form 6 of the LLP Rules & Forms, 2008 within a period of 15 days of any change in the name and address, to intimate the LLP.

7. Interest on Capital or Loan – Interest at the rate of....per cent per annum on the capital contributed or loan given or credited as given by each of the partners and standing to his credit as on the first day of each calendar month for the previous month out of the gross profits of the partnership business shall be credited in the respective accounts, and such interest shall be cumulative such that any deficiency in one financial year shall be made up out of the gross

profits of any succeeding financial year or years. For this purpose, the financial year shall be the twelve months from the first of April to the thirty-first of March next.

8. Withdrawal of Loans – Every Partner may withdraw the loans advanced or deemed as advanced by him to the Partnership business in accordance with the terms of such sums advanced or deemed as advanced from time to time, and if any such terms are fixed for any such loan amount, the partner may withdraw the same after serving a notice of ten weeks on the LLP demanding repayment at not more than -----% of the loan *plus* interest standing to his credit as at the end of the previous financial year as per the last audited balance sheet of the LLP, in each period of ten weeks.

9. Business transactions of Partner with LLP – A Partner may lend money to and transact other business with the LLP, and in that behalf the Partner shall have the same rights and obligations with respect to the loans or other business transactions as a person who is not a Partner.

10. Profits & Losses and Partner's Income Account – (1) Profits and losses of the Partnership business in each financial year shall be divided between and borne by the Partners in the proportion of their respective capital contribution standing to their credit in the books of the Partnership as on the last date of the relevant financial year.

(2) Partnership profits and losses computed as due shall be charged or credited to the separate income account of each Partner. If a Partner has no credit balance in the income account, losses shall be charged to his capital account.

11. Partner's Drawings – Each Partner may draw out of the Partnership funds as drawings from the credit balance of his income account any sum of money not exceeding Rs.....(Rupees.....) per each one percentage point of capital contributed per month for his own use, subject to such drawals to be duly accounted for in each yearly settlement of account and division of profits of the Partnership at

the end of each financial year, and the same shall be duly adjusted to the actuals due to or from the partnership by refunds or further draws, as the case may be as required.

12. Book of Accounts - (1) All funds of the Partnership business shall be deposited in its name in such banking account or accounts as shall be determined by the Designated Partners. All withdrawals are to be made by Cheques signed by the Designated Partners as determined by them.

(2) All necessary books of account and other papers relating the affairs of the LLP as prescribed under Rule 24 of LLP Rules & Forms, 2008 pursuant to section 34(1) of the LLP Act 2008 shall be ensured by the designated partners for the time being to be kept at the principal place of business of the LLP or at other place or places as mutually agreed upon by all the Partners, and regularly maintained on cash basis or accrual basis and according to double entry system of accounting with all books duly posted with entries arising from day to day up-to-date on any day so as to give a true and fair view of the state of affairs of the LLP. Such books of account shall not be removed from the designated place of business without the consent of all the Partners. Each Partner shall have access and be entitled for taking a copy or an extract of any books of account or related papers of the LLP or folio thereof during the working hours on each working day of the week.

13. Annual Statements of Accounts and Solvency – The Designated Partners of the LLP shall, within a period of six months from the end of each financial year, prepare the Annual Statements of Accounts and Solvency for the financial year as at its last day of all the capital contributions, assets and liabilities and of the profits and losses of the LLP, and the same shall be signed by each Partner in addition in addition to the signing thereof by the Designated partners of the LLP as required under section 34(2) of the Act in token of his being bound thereby. If, in the event, any Partner refuses to sign the Annual Statements of Accounts and Solvency giving no valid reason, a copy of the same shall be posted to him by Registered Post Acknowledgement Due to his last known address as supplied by him to the LLP, and same shall be deemed to have been signed by him on the date of such posting.

14. Audit - The Statements of Accounts and Solvency of the LLP made each year shall be audited by a qualified Chartered Accountant in practice in accordance with the rules prescribed under section 34(3) of the LLP Act, 2008, namely, Rule 24 of the LLP Rules & Forms, 2008. It shall be the responsibility of the Designated Partners of the LLP to comply with Rule 24 of the said Rules in every respect.

15. Reserve Fund – A sum equivalent to ---- per cent per annum of the net profits arrived at in the audited Annual Statements of Accounts of the LLP shall be transferred and kept in the general reserve fund account and the same invested in gilts every year in the name of the LLP till it accumulates to the amount of ----- per cent of the capital specified in para 5 above. Such reserve fund accumulated shall be utilized for meeting extraordinary losses or expenses or for such other purposes including the renewal of any part of the building or other long term assets of the LLP in any way as mutually agreed upon by all the partners of the LLP including the Partners being the Parties hereto.

16. Division of Annual Profit of the LLP – As soon as the Annual Statements of Accounts and Solvency shall have been signed by the Partners and the same duly audited and the auditor rendering his report thereon, the net profits, if any, of the LLP business, shall be divided between the Partners in the proportion specified in and in accordance with the provisions of this Agreement.

17. No remuneration to Partners – No Partner shall be entitled to any remuneration for taking part in the conduct of the LLP's business.

18. Management of the LLP – (1) Partners of the LLP other than Designated partners shall be sleeping Partners. Their right to participate in the management of the LLP shall be as provided in this Agreement and otherwise it is restricted to:

- Ratification of this LLP Partnership Agreement post-incorporation of the LLP;
- Any alteration to this LLP Agreement;
- The admission of new Partners;
- Appointment of Designated Partner;

- Raising further capital under para 5(3) above,
- Acceptance of Annual Accounts and Solvency and the Auditor's Report thereon;
- Assignment and transfer of partnership rights, by the Partners in any way;
- Expulsion of any Partner;
- Any proposal of the LLP to make an application to the Central Government that the affairs of the LLP ought to be investigated;
- Change of business;
- Any sale or merger or amalgamation of the LLP with another entity or the incidence of any extraordinary loss or jeopardy or 'waste' to the property of the LLP as defined in section 66 of the Transfer of Property Act, 1882, warranting the appointment of a Receiver; and
- Winding up and dissolution of the LLP.

In deciding all the matters specified above by a 75% majority vote of the Partners present at a meeting of Partners duly called and held, except expulsion of any partner and change of business which shall require a unanimous decision of all the Partners excluding the Partner shall have one vote each irrespective of their capital contribution to the LLP's capital. The decisions so taken shall be recorded in the minutes within ten days of the general meetings and the same kept at the registered office of the LLP.

(2) The Designated partners appointed by the LLP shall be responsible both for business management in its entirety and compliance management under the LLP Act and this Agreement. The management of the LLP shall be carried on jointly by the Designated Partners being the original Parties hereto as agreed upon mutually between them by themselves or otherwise so however that they both shall be the first two Designated partners to be named in the Incorporation Document submitted for the LLP's registration and to be answerable for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the LLP Act, 2008 in terms of sections 7,8 and 9 of the said Act. The Partners may appoint more Designated Partners by a 75% majority vote of the Partners present at a meeting of Partners duly called and held at any time and from time to time out of the Partners whose contribution to the capital of the LLP at the material time of appointment is not less than -

---% of the total capital contribution as of that date, provided both the Partners being Parties to this Agreement as originally made approve the names proposed. The Designated Partners may by their unanimous decision delegate their powers to any one or more Designated Partners or any top-ranking officers of the LLP as they may consider fit or necessary in the management of the affairs of the LLP at any time or from time to time and similarly withdraw the same.

(3) Every Partner appointed as a Designated Partner by a majority of the Partners as stated in (2) above shall be entitled to take part in the management of the LLP.

(4) Any matter or issue relating to the LLP shall be decided by a majority in number of the Designated Partners which shall in every case include the Partners being the original Parties hereto so long as they continue as the designated Partners of the LLP.

(5) Banking arrangements for the LLP shall be as unanimously decided by the Designated Partners at any time and from time to time, ensuring that all moneys received subject to requirements of current expenses, by way of Cheques, drafts or other pay orders shall be promptly paid into the LLP's banking account.

(6) Each Partner shall render true accounts and full information of all things affecting the LLP to the Designated Partner(s) and on request to any Partner or his legal representative.

(7) All decisions of the Partners shall be taken at meetings called by a notice in writing or by circular resolutions in cases of urgency. Meetings in which all Partners are entitled to participate to deliberate and decide on the matters specified in Para 18(1) above shall be called general meetings, and the meetings of the Designated Partners shall be called Executive Meetings. The provisions as are applicable to calling, holding and conducting/adjourning etc., of general meetings and Board meetings and keeping of minutes of such meetings of pure private companies limited by shares under the companies Act, 1956, shall apply respectively to the said two kinds of meetings, excluding the special resolutions, requisitioned resolutions special notices, special business and explanatory statements, requisitioned meetings and default meetings and the related jurisdiction as well as powers of the Court/Tribunal/Central government

conferred under the said Act. Every such meeting shall be called by any Designated Partner on the basis of a decision of the Executive Meeting or by circular resolution passed by majority of Designated Partners in any exigency.

(8) A resolution circulated in writing and signed by a majority of the Partners and/or Designated Partners, as the case may be, depending upon whether it is a business to be transacted at a General Meeting or Executive Meeting, including the Partners who are the original Parties to this Agreement in every case, shall be deemed to be duly passed, the date of passing such circular resolution being the date of the signature of the person signing last.

19. Performance of work by Partner - If at any time any work for the LLP is to be done under this Agreement or any Supplement thereto by any partner, it may be done by any of his relative or other agent or servant engaged by such Partner competent to do the work on condition that any payment in that behalf shall be to the account of the Partner concerned entailing nothing to be borne by the LLP. Where such a Partner fails to perform such work contracted by him with the LLP, any other Partner may do the same instead or have it done by persons competent to do the work and engaged as his agents additionally to such of the work, if any, contracted by him on his own account with the LLP, at the cost of the LLP. There is nothing contained in this para to enable a Designated partner to assign his responsibility to anyone being an outsider to interfere in the business management of the LLP entrusted to or undertaken by him.

20. Designated Partners' attention to business – The Partners being the original Parties hereto and other Partners appointed as designated partners of the LLP shall at all times

- Protect the property and assets of the LLP;
- Devote the whole of their attention to the said partnership business diligently and faithfully by employing themselves in it, and carry on the business for the greatest advantage of the partnership;
- Punctually pay their separate debts to the LLP, if any, duly and indemnify the LLP or other Partners towards charges, expenses or costs incurred to protect the assets of the LLP against any failure to do so; and

- Upon every reasonable request, inform the other Partners of all other Partners of all letters, writings and other things which shall come to their hands or knowledge concerning the business of the LLP.

21. Number of Designated partners – The maximum number of Designated Partners appointed for the LLP shall be such as mutually agreed upon by the Partners being the original Parties hereto or as decided by the Designated Partners of the LLP unanimously at any time and from time to time not exceeding ten.

22. Sleeping Partner – All the Partners other than those appointed as the Designated Partners of the LLP shall be Sleeping Partners and they shall not interfere with the carrying on the management or conduct of the business of the LLP otherwise than as has been provided in this Agreement and those shall not sign the name of the LLP.

23. Transfer or assignment of Share of Capital contribution by Partner - (1) No Partner shall without the consent in writing of all the Partners transfer, assign or mortgage his share of interest in the LLP by way of a share of the profits and losses of the LLP and to received distributions under this Agreement in any way in whole or in part.

(2) On the transfer of a Partner's interest in the LLP as set out in (1) above, section 42(2) and (3) shall become applicable to the transferor Partner and the transferee, respectively.

24. Death or voluntary retirement of Partner – If any Partner shall die or have voluntarily retired, a statement of account shall be taken and made out of his share of the capital and effects of the LLP and of all unpaid interest and profits due to him up to the time of his demise or retirement and be paid at the earliest as may be decided by the Designated Partners of the LLP, subject to required adjustments between his capital account and income account transactions and transfers made till the date of death or retirement, as the case may be, and balances struck as certified by the Auditor for the time being of the LLP. The said statement of account shall include the Partner's share of profit and loss for the period from the beginning of the financial

year in which his death or retirement occurs until the end of the calendar month in which the event takes place.

25. Representative of deceased or retired Partner – At the discretion of the remaining Partners, the nominee or representative of the deceased or retired Partner may be admitted as a sleeping Partner against retention of the dues to the former Partner by the LLP. In no case such persons shall have the power to interfere in the management or conduct of the LLP's business by virtue of anything done by the Partner who had existed.

26. Purchase of share of retiring, expelled deceased or insolvent Partner – If a Partner shall die, retire or be expelled or become insolvent, then, the remaining Partners shall have the option of first refusal to buy the share of such a partner in the LLP, and the option may be exercised by notice in writing, fixing a month's time by either side given to the other side. The purchase price shall be the amount at which such share shall stand by the last audited balance sheet prior to the date of the event of exit of the Partner net of his drawals, *plus* interest thereon at.....per cent per annum to the date of the event, *plus* his share of current profits, if any, in the broken part of the year next following determined in terms of this Agreement, either in one lump-sum or as otherwise agreed with the retiring Partner or his personal or legal representatives, against an indemnity provided against the debts, engagements or other liabilities of the partnership devolving to the account of the Partner that existed.

27. Expulsion of Partner – This provision of this Agreement shall operate as an express agreement of the Partner: a Partner may not be expelled by an unanimous decision of the partners save in good faith and in the interest of the partnership business only after a show-cause notice in writing is served on that Partner or designated Partner giving 7 days time for his response; and in that event the Partner expelled shall be entitled to the benefits of a retiring Partner in accordance with the provisions of this Agreement in that behalf.

28. Goodwill – A valuation of the assets, effects and of the goodwill including the Partnership name shall be made at three times the average net yearly profits of the preceding five years or the commencement of the LLP, whichever is less, for the purpose to determine the amount due to

such a Partner who has existed, and the payment shall be met by the Partners remaining with the LLP in proportion to their respective capital contribution on the date of his exit within six calendar months from the date of exit, any delay beyond attracting interest at -----per cent per annum from the date of expiry of the said six months till the actual date of payment. On such a payment being made the share of the Partner exited in the goodwill shall stand vested in the remaining Partners of the LLP.

29. Retiring Partner not to carry on competing business – An outgoing or retiring Partner, whose dues have been settled and paid off in accordance with the covenants in this Agreement, shall not during the period of two years from the date of his exit as Partner carry on or engage or be interested directly or indirectly in any business competing with the LLP anywhere in the State where the LLP's registered office is situated.

30. Contracting on behalf of the LLP – All contracting by way of placement of orders for supplies to the LLP shall be carried out only by the Designated Partners in the manner as mutually agreed upon between them at any time and from time to time.

31. Giving Credit – No Designated Partner shall lend money or give credit to or have any dealings on behalf of the LLP with any person or company or LLP or other entity whose credit-worthy is doubtful and who is forbidden due to former crisis of confidence confronted by the LLP in dealing with him or it.

32. Acts forbidden – Without the consent given in writing of the other Partners, no Partner while he is a Partner for the time being of the LLP shall -

- Transfer, assign otherwise encumber his share in the assets or profits of the LLP;
- Engage or be concerned or interested in any other business, directly or indirectly as and competing with the LLP all profits made by him in that business;
- Do any act that may conflict his interest with the interest of the LLP or any of its other Partners;
- Take any apprentice or hire or dismiss (except in cases of gross misconduct) any servant or agent of the LLP;

- Lend any money or deliver upon credit any of the goods of the LLP to any person or persons whom the other Partners shall have previously in writing forbidden to trust;
- Give any unauthorized security or promise for the payment of money on account on behalf of the LLP except in the ordinary course of its business;
- Secure unauthorized surety or guarantee for anyone encumbering or otherwise charging or pledging the properties of the LLP;
- Draw or accept or endorse unauthorizedly any bill of exchange or promissory note on LLP's account;
- Draw and sing any Cheque on behalf of the LLP unauthorisedly in excess of Rs.....on its banking account;
- Remit the whole or part of any debt due to the LLP;
- Lease, sell, pledge or do other disposition of any of the LLP's property otherwise than in the ordinary course of business;
- Commit to buy or buy any immovable property for the LLP;
- Go and remain out of station on LLP's business for more than.....days in a row;
- Do any act or omission rendering the LLP liable to be wound up by the Tribunal;
- Share business secrets of the LLP with outsiders;
- Derive profits from any transaction of the LLP or from the use of its name, resources or assets or business connection by carrying on a business of the nature as competes with that of the LLP, and remain without accounting for the same to the LLP;
- Submit a dispute relating to the LLP's business to arbitration;
- Open a banking account on behalf of the LLP in his own name;
- Commit to compromise or relinquish any claim in whole or in part of the LLP;
- Withdraw a suit filed on behalf of the LLP;
- Admit any liability in a suit or proceeding against the LLP;
- Enter into any partnership joint venture; float any subsidiary LLP or company with the LLP being the promoter or acquirer of interest or control.

33. Notice – (1) To the LLP – Any notice by the Partners to the LLP may be given by addressing to the LLP and leaving it at the registered office of the LLP.

(2) To a Partner – Any notice to a Partner shall have been sufficiently given by the LLP by leaving it addressed to the Partner at the registered office of the LLP or by sending the same by registered post to his usual or last known address.

34. Term of validity of Agreement – Duration of this Agreement shall be ____ YEARS beginning from the date first above mentioned, subject to the condition that this deed may be extended further by mutual consent in writing of the Parties hereto upon such terms and conditions or with such modifications as may be mutually agreed upon between them. In the event that the LLP remains not formed as envisaged in this agreement within 6 months from the date hereof, this agreement shall stand null and void with no claims *inter se* the parties hereto claimed or paid by any.

35. Covenant against breaking away – During the first five years of the subsistence of this agreement, none of the Parties hereto shall be entitled to part with the LLP unless mutually agreed upon in writing.

36. Partners and LLP to ratify this agreement to be bound – This agreement shall become valid to bind the LLP on its incorporation on its being ratified by all of its partners both for themselves and on behalf of the LLP in terms of section 23(3) of the LLP Act, 2008.

37. Termination & Dissolution – If any time owing to losses or any other cause whatsoever one-fourth of the entire capital of the LLP shall have been lost or not represented by available assets or there exists reasonable cause of apprehension that a call on the Partners to contribute further capital of ----% or more of the entire capital of the LLP is imminent in order to carry on its business as a solvent entity, a majority in value of the Partners may require the LLP to be dissolved and wound up as if the same has occurred by efflux of time.

38. Arbitration – (1) All the matters not expressly provided in this agreement shall be decided by the consent of all the Partners in writing. Failing that all disputes and questions about and in connection with the LLP under this Agreement arising between the Partners or between any one of them and the legal representative of the Partners or with the LLP at any time and from time to time, shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for determination of the same as aforesaid and the provisions of the said Act apply accordingly.

(2). If any question arises whether the dispute relates to formation, management or business of the LLP, the question shall be referred to the arbitrator, whose decision thereon shall be final.

39. Alteration or amendment – No alteration to or amendment or change in this LLP Agreement including any change of business of the LLP in terms of para 8 of the First Schedule to the LLP Act shall be valid unless it is reduced to writing as a Supplement to this Agreement duly accepted by every Partner of the LLP by himself or his legal representative(s), as on the relevant date of alteration, amendment or change.

40. Entire agreement, Severability & Waiver – (1) The forgoing constitutes the entire agreement between the Parties hereto on the subject-matter.

(2) If any part of this Agreement is held by any Court or authority of competent jurisdiction as void or without effect it shall be limited to that extent and be binding on all parties hereto at the relevant time as a severable part thereof with nothing to affect the rest of this Agreement.

(3) A failure or a waiver of exercise of any right or power or benefits under this agreement by a Partner or Designated Partner or on their behalf shall not operate as a waiver of the same for ever during the term of this agreement nor any delayed exercise of any right or power or benefit by a Partner or Designated Partner or on their behalf under this Agreement deemed as a waiver.

Party of the First Part

Party of the Second Part

.....

.....

Ratification of the LLP Agreement

POST-INCORPORATION OF THELLP.

By Partner –

“The LLP Agreement hereinabove is hereby ratified”

- (a). Designated Partner ofLLP. – Name and Signature
- (b). Designated Partner ofLLP. – Name and Signature
- (c) Partner ofLLP – Name and Signature
- (d). Partner of.....LLP – Name and Signature
- (e). etc.

Place:

Date:

Ratification of LLP Agreement

POST-INCORPORATION OF.....LLP on its behalf

By its authorized **Designated Partner**

“The LLP Agreement herein above is hereby ratified”

For and on behalf ofLLP

As decided at its general meeting of Partners held on.....20....

(1) (2)
Signature of Designated Partners

Place:

Date:

E. Trust

The instrument by which the trust is declared is called instrument of Trust, and is generally known as Trust Deed.

It is well settled that no formal document is necessary to create a Trust as held in Radha Soami Satsung vs. CIT- (1992) 193 ITR 321 (SC). But for many practical purposes a written instrument becomes necessary under following cases –

- i) When the trust is created by a will irrespective of whether the trust is public or private or it relates to movable or immovable property. This is because as per Indian Succession Act, a will has to be in writing
- ii) When the trust is created in relation to an immovable property of the value of Rs.100 and upwards, in case of a private trust. In case of public trusts, a written trust deed is not mandatory, even in respect of immovable property, but is optional.
- iii) Where the trust/association is being formed as a society or company, the instrument of trust; i.e., the memorandum of association, and Rules and Regulations has to be in writing.

A written trust-deed is always desirable, even if not required statutorily, due to following reasons:

- a. written trust deed is a prima facie evidence of existence of a trust ;
- b. it facilitates devolution of trust property to the trust;

- c. it clearly specifies the trust-objectives which enables one to ascertain whether the trust is charitable or otherwise;
- d. it is essential for registration of conveyance of immovable property in name of the Trust;
- e. it is essential for obtaining registration under the Income-tax Act and claiming exemption from tax;
- f. it helps to control, regulate and manage the working and operations of the trust;
- g. it lays down the procedure for appointment and removal of the trustee(s), his/their powers, rights and duties; and
- h. it prescribes the course of action to be followed under any eventuality including dissolution of the trust.

Types of Instrument of Trust

- Trust deed, where a trust is declared intervivos; i.e., by settling property under Trust.
- A will, where a trust is declared under a will;
- A memorandum of association along with rules and regulations, when the association/institution is being formed as a society under the Societies Registration Act, 1860;
- A memorandum and articles of association where the association /institution is desired to be formed as a Company.

Clauses of a Trust Deed

A person drafting the deed of a public charitable trust has to bear in mind several enactments, particularly the Indian Trusts Act, any local enactment relating to trusts, like the Bombay Public Trusts Act for the State of Maharashtra and the Income Tax Act. Such a person has also to keep in mind the relevant judicial pronouncements dealing with the scope of "charitable purpose" and accordingly decide whether a particular purpose is charitable or not.

General Clauses of a Trust Deed

- i) Preamble

- ii) Trust name by which Trust shall be known
- iii) Place where its office shall be situated
- iv) Author or settlor of the trust
- v) Names of the Trustees
- vi) Beneficiaries
- vii) The property settled, for Trust – In case of immovable property, it should contain full description of the property sufficient to identify it
- viii) An express intention to direct the trust property from the trustees
- ix) Objects of the Trust
- x) Minimum and maximum number of Trustees
- xi) The procedure for appointment, removal, replacement of trustees
- xii) Trustees rights, duties and powers
- xiii) Administration of trust
- xiv) Provision for maintenance of accounts, auditing etc.
- xv) Clause enabling, spending and utilization of the Trust funds or corpus.
- xvi) Bank Account operations
- xvii) Borrowing money on security for the purpose of the Trust
- xviii) Investment of the Trust funds and dealing with Trust properties
- xix) Alienation of immovable property of the Trust
- xx) Amalgamation clause
- xxi) Dissolution of Trust
- xxii) Irrevocable nature of the trust.

Specimen Model of Trust Deed of a Public Charitable Trust

THIS DEED OF TRUST executed on this _____ day of
 _____ year 20____, _____ BETWEEN
 _____ (Party of the first part) hereinafter called "
 SETTLOR OF THE TRUST"

AND _____ .

1. SHRI. S/O. SHRI , of _____ &

2. SHRI. S/O. SHRI. , of _____ &

3. SMT. W/O SHRI. , of _____

(Hereinafter called " The Trustees" which expression shall unless repugnant to the context or meaning thereof be deemed to include the survivors or survivor of them and the trustees or trustee for the time being of these presents and their heirs, executors and administrators of the last surviving trustee, their or his assignees) of the other part;

WHEREAS the party hereto of the first part is possessed of the sum of Rs. _____/- (Rs. _____ Only) as his absolute property and he is desirous of creating a Religious/ Charitable/Educational Trust for the benefit of the humanity at large.

AND WHEREAS each of the parties hereto of the "Other Part" has individually and jointly has agreed to act as Trustees of the Trust, proposed by the party of the first part.

AND WHEREAS nothing contained in this deed shall be deemed to authorize the trustees to do any act which may in any way be construed statutory modifications thereof and all activities of the trust shall be carried out with a view to benefit the public at large, without any profit motive and in accordance with the provisions of the Income-tax Act, 1961 or any statutory modification thereof.

AND WHEREAS the trust is hereby expressly declared to be a public charitable trust and all the provisions of this deed are to be constituted accordingly.

NOW THIS INDENTURE WITNESSTH AS FOLLOWS:

1. **SETTLEMENT**

The party of the first part, the settlor, does hereby settle the sum of Rs. _____ /- (Rs. _____ only) in Trust, with the name and for the objects hereinafter stated, by delivering the said amount in cash which the party of the other part, the Trustees, have accepted the receipt of which they do hereby acknowledge, to hold the same in and to the Trustees with the powers and obligations as provided hereinafter.

2. **NAME**

The name of the Trust shall be " _____ ".

3. **PLACE**

The principal office of the Trust shall be situated at _____ or such other place as the Trustees may from time to time decide. The Trust may also carry on its work at any other place or places, as decided by the Trustees.

4. **OBJECTS**

- a. Educational – to run, maintain or assist any educational or other institution for coaching, guidance, counseling or vocational training or to grant individual scholarships for poor, deserving and needy students for elementary and higher education.
- b. Medical – to run, maintain or assist any medical institution, nursing home or clinics or to grant assistance to needy and indigent persons for meeting the cost of medical treatment.
- c. Relief of the poor – to give financial or other assistance in kind by way of distribution of books, notebooks, cloths, uniforms, or meals for the poor and indigent and to the persons suffer due to natural calamities.
- d. Other objects of general public utility –
 - i. to acquire property for the sole use for public good by making it available for public purposes as for example, housing a library clinic, crèche and/or as a

community hall to be available for public use as training classes, seminars, discourses and other public functions for benefit of the community in general.

- ii. to undertake any other activity incidental to the above activities but which are not inconsistent with the above objects.

PROVIDED the Trust may assist/donate the other TRUST to carry out the various objects mentioned in the objects clause in such manner and to the extent the Trustees may decide upon from time to time.

5. **FUNDS**

The Trustees may accept donations, grants, subscriptions, aids or contributions from any person, Government, Local authorities or any other charitable institutions, in cash or in kind including immovable property without any encumbrance, but the Trustees shall not accept any receipt with any condition or terms inconsistent with the objects of the Trusts. While applying such receipts to the objects, the Trustees shall respect the directions, if any, by the granter. Any receipt with specific direction to treat the same as part of the corpus of the Trust or separate fund shall be funded accordingly.

6. **INVESTMENTS**

- i. All monies, which shall not immediately required for current needs shall be invested by the Trustees in eligible securities and investments, or in banks. Such investments shall be in the name of Trust or Trustees.
- ii. That the trustees shall invest the trust fund, carry on any business with the trust fund and/or enter into partnership on behalf of the trust, as they may deem fit.
- iii. That the trustees shall manage the trust fund and investments thereof as a prudent man would do the same. They shall recover all outstanding and meet all recurring and other expenses incurred in the upkeep or management thereof.

- iv. That the trustees shall receive and hold the income of the trust on behalf and for the benefit of the beneficiaries under the trust.

7. **POWER OF TRUSTEES**

That the trustees shall have the following powers:

- i. to manage all the assets and/or properties of the trust including the conduct of business;
- ii. to appoint employees and to settle the terms of their service, remuneration and termination;
- iii. to look into the management of the trust;
- iv. to invest the funds of the trust, in bank or in the purchase of company shares or securities or other movable and movable and immovable properties;
- v. to sell, alter, vary, transpose or otherwise dispose or alienate the trust properties or any investment representing the same for consideration and to reinvest the same;
- vi. to pledge or mortgage the trust properties for raising loans;
- vii. to open the bank accounts in the name and on behalf of the trust and to operate the same;
- viii. To enter into a partnership on behalf of the trust with any other party or parties;
- ix. To pay all charges, impositions and other outgoings payable in respect of the trust properties and also to pay all cost of the incidental to the administration and management of the trust properties;
- x. To file suit on behalf of the trust and to refer to arbitration all actions proceedings and disputes touching the trust properties and to compromise and compound the suits filed;
- xi. To accept any gift, donation or contribution in cash or in kind from anyone for the objects of the trust;

- xii. To seek legal opinion of lawyers and/or Chartered Accountants as and when required;
 - xiii. To nominate their representatives for any of the aforesaid purposes.
- 8. The number of the trustees shall not be less than two but not more than five.
- 9. In case of any difference between the trustees, the opinion of the minority shall prevail.
- 10. Every trustee will be at liberty to nominate or appoint attorneys or agents and to delegate all or any of the duties and powers vested in him to such attorney or agent, and to remove such attorney or agent and reappoint other or others in his place.
- 11. No trustee shall be responsible or liable for any loss or any act of omission or commission by his constituted attorney or agent or employees or other trustees unless occasioned by his wilful neglect or default.
- 12. Any of the trustees may retire on giving one month's notice in writing to the other trustee(s).
- 13. If any trustee dies or retires or becomes incapable or unfit to act, the continuing or surviving trustee or trustees shall appoint a successor in the place of such trustee.
- 14. If at any time the number of the trustees is less than two, the existing trustee shall appoint one or more trustees.
- 15. Upon the appointment of a new trustee the trust properties shall vest in the new trustee jointly with the continuing or surviving trustees, with the duties and power of the trustees set out hereinabove in this deed.

16. If the trust is determined by efflux of time, the corpus of the trust shall be divided amongst the beneficiaries in the shares as fixed by the trustees.

17. **BANKING ACCOUNT**

All income, subscription and pecuniary donations for the general purposes of the Trust and the income, investments and all other moneys from time to time forming part of the general revenue of the Trust shall on the same being received be paid into a banking account with any scheduled bank for the purpose of the Trust. The bank accounts shall be operated by the Managing Trustee along with any one of the remaining Trustees.

18. **ACCOUNTS AND AUDIT**

The Trustee shall keep proper books of account of all the assets, liabilities and income and expenditure of the Trust and shall prepare an Income and Expenditure Account and Balance Sheet for every year as on the last day of March.

The accounts of every year shall be audited by a Chartered Accountant or a firm of Chartered Accountants who shall be appointed for that purpose by the Trustees and the audited accounts shall be placed at a meeting of the Trustees, which shall be held before the end of the succeeding year.

19. **IRREVOCABLE**

This Trust is irrevocable.

20. **AMALGAMATION**

The trustees may amalgamate the trust with another Charitable Trust or Institution having similar objects with prior permission of the Charity Commissioner/Court/any other law as may be applicable for the time being.

21. **WINDING UP**

In the event of dissolution or winding up of the Trust the assets remaining as on the date of dissolution shall under no circumstances be distributed amongst the Trustees but the same shall be transferred to some other similar Trust/Organisation whose objects are similar to those of this Trust with the permission of the Charity Commissioner / Court / any other law as may be applicable for the time being.

The Trustees shall be indemnified against all losses and liabilities incurred by them in the execution of the Trust and shall have a lien over the funds and properties of the Trust for such indemnity.

IN WITNESS WHEREOF, The Parties hereunto have signed and delivered the presents on the day and year first hereinabove written.

SETTLOR

WITNESS :

1.
2.

1. TRUSTEE _____
2. TRUSTEE _____
3. TRUSTEE _____

III. PROPERTY RELATED DOCUMENTS

A. POWER OF ATTORNEY

A power of attorney (“**PoA**”) is an instrument whereby a specified person or persons are empowered to act for and in the name of the person executing the instrument (“donor”). These instruments may be classified as –

1. General Power of Attorney; and
2. Special Power of Attorney

Where the instrument is executed generally for certain acts, it is called “general power of attorney”, i.e. if the PoA authorizes the agent to act generally on in more than one transaction in the name of the principal, it is known as general power-of-attorney. However, the word “general” means that the power must be general in respect to the subject-matter.

Whereas, if an instrument is executed for specified act or acts, it is called a “special power of attorney”. In other words, a PoA conferring on the agent the authority to act in single or specified transactions in the name of the principal is known as special power-of-attorney¹.

Governing Laws

PoAs are specifically or incidentally referred to in several statutes. It is a type of agency, and law relating to the powers of attorney forms part of the general law of agency. The law of agency in India is contained in Chapter X, sections 182 to 238 of the Indian Contract Act, 1872.

The statutory provisions concerning PoAs are found in the Powers of Attorney Act, 1882.

Competence to Execute

Any person competent to contract can execute a PoA. However, as per section 5 of the 1882 Act, married women can execute a PoA even if they are minors. Thus the following persons can execute a PoA:

- a. Individuals competent to contract, provided that married minor women can also execute a PoA;
- b. Partnership firms; and
- c. Companies.

Persons appointed

¹ *Venkataramana Iyer v. Narasingharao*, ILR 38 Mad 134.

As per section 183 of the Indian Contract Act, 1872 any person can become an agent between the principal and third persons, however a person who is not competent to contract can not be become an agent, so as to be responsible to his principal.

Formalities:

Execution

A power of attorney need not be attested or registered. However if at the time of execution of a PoA, the principal resides in any part of India, and the PoA authorizes a person to present documents at the registration office for registration, it has to be executed and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides.

In case the principal does not reside in India, it must be executed and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul, or representative of the Central Government in the country in which the donor is residing at the time of executing a power of attorney.

Further, under Section 4 of the Act, it is possible to deposit a power of attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, along with the said affidavit or declaration if any, in the High Court or the District Court within the local limits of whose jurisdiction the instrument may be. A separate file is kept of the instruments so deposited and any person is entitled to search that file and inspect every instrument so deposited. A certified copy is also delivered on request. A certified copy of such an instrument is, without further proof, sufficient evidence, of the contents of the instrument and of the deposit thereof in a High Court or District Court.

Partnership Firms

The powers and authority of a partner of a firm are regulated by the Indian Partnership Act, 1932. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to² –

- Submit a dispute relating to the business of the firm to arbitration;
- Open a banking account on behalf of the firm in his own name;
- Compromise or relinquish any claim or portion of a claim by the firm;
- Withdraw a suit or proceeding filed on behalf of the firm;
- Admit any liability in a suit or proceeding against the firm;
- Acquire immovable property on behalf of the firm; or
- Enter into partnership on behalf of the firm.

Accordingly, for the purposes mentioned in clauses (a) to (h), a partner requires a power of attorney from all the partners of the firm, i.e. a PoA in favour of any partner or outsider must be executed by all the partners. However, if one or more partners hold a general power of attorney executed by all partners with a power to delegate, then one or more partners can execute a power of attorney in favour of a third person for and on behalf of the firm or other partners. A power of attorney executed by one or more partners in favour of a third person, even in the name of and for and on behalf of the partnership would not be valid as it would not be binding on the other partners. In such a case, at least the written consent of other partners should be obtained to confirm the power of attorney executed by one or more, but not all partners of the firm.

Companies

Section 48 of the Companies Act, 1956 provides that a company may by writing and under its common seal empower any person as its attorney to execute deeds on its behalf.

Power of Attorney executed abroad

If a PoA is executed outside India, it should be ensured that it is authenticated by the Indian Consul, Vice-Consul or a representative of the Central Government in that country and not by any Notary Public except in the where it has been executed in the countries notified under the Notaries Act, 1952.

² Section 19, Indian Partnership Act, 1932.

Authentication

As stated earlier, a PoA need not be attested but for identification purpose, it should be signed before the Notary Public or Judge/Magistrate and be authenticated by such Notary Public or Judge or Magistrate.

PoA can be authenticated by Indian counsel or vice-counsel or authorized representative of the Central Government in case it is executed abroad. A PoA so authenticated is admitted by court as the execution of such PoA is presumed under Section 85 of The Indian Evidence Act, 1872³.

Stamp Duty

A PoA is chargeable to stamp duty under Article 48 of Schedule I to the Indian Stamp Act, 1899, subject to State variations, if any.

Power of Attorney Executed Outside India, Operational In India

If a power of attorney is executed outside India but relates to, any property situated in India; or to any matter or thing to be done in India and is received in India, it must be stamped with the appropriate stamp duty within three months of its arrival in India.

Stamp Duty on Revocation

There is no Article under the Stamp Act that levies duty on revocation of a PoA. Such an instrument is, however chargeable under Article 15 – “Cancellation”, if attested and not otherwise provided for.

Registration

³ *Yogesh Singh v. Niranjana Lal*, AIR 1981 Del 222.

A power of attorney is not required to be registered under the Registration Act, 1908.

Clause (c) of section 32 of the Act requires that where a document is presented for registration by the agent of a person entitled to present it for registration, such agent must be "duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned"; and the manner of execution and authentication of such a power-of-attorney is prescribed in section 33 of the Act.

Duties of the Attorney

Duties of an Attorney are the same as those of an agent as enumerated under Chapter X of the Indian Contract Act, 1872.

Remuneration of the Attorney

An attorney is entitled to be remunerated for his services if the terms of his appointment expressly or impliedly make provision for such payment. However, an attorney is entitled to be indemnified by the donor, with respect to the advances made or expenses properly incurred by him in carrying out his functions under the instrument the even if the PoA does not provide for any remuneration.

Construction of Power Of Attorney

A PoA being must be construed strictly as it is a formal instrument and confers only such authority as is given expressly or by necessary implication⁴. A PoA is subjected to strict interpretation because it delegates powers which are to be interpreted in strict terms and, in such a way, as would be necessary to carry into effect the authority that is expressly given.

Duration

A general PoA unless expressly or impliedly limited for a particular period, continues in force until revoked or determined by the death of either party, whereas a Special PoA continues to

⁴ *Atma Ram v. Chitra Production Co.*, AIR 1952 Punj 59.

remain in force till act/acts for which the instrument was executed, subsists. If it is desired that the power should continue for a particular period or until a certain event happens, an express provision to that effect should be made.

Where attorneys were appointed under a PoA, without any terms limiting the duration of their power, but contained a recital that the principal was going abroad and was desirous of appointing attorney during his absence, was held to be an appointment limited to the time during which the principal was abroad.

Where a principal executed a PoA before leaving India, authorizing the agent to act in his absence and subsequently came to India and again left without executing a new PoA, it was held that the power of the agent did not terminate and the agent had the power to act for the principal during his absence.

2. Termination / Revocation

The provisions of the Indian Contract Act, 1872 relating to termination of Agency are equally applicable to termination of power of attorney, as the law relating to power of attorney is a specie of the law of agency. Relevant provisions under the Contract Act are sections 201-210.

3. Cancellation

Section 31(1) of the Specific Relief Act, 1963 provided that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

Specimen Models of Power of Attorney

GENERAL POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME,

I, son of, resident of at present residing at SEND GREETINGS:

WHEREAS I own various movable and immovable properties in various parts of India described in the Schedule I hereto and I have interest in various firms, companies, association of persons, trusts, societies as partner, proprietor, shareholder, member, trustee, beneficiary, etc. and/or otherwise, described in the Schedule II hereto.

AND WHEREAS I am presently residing out of India as mentioned hereinabove for the time being, I am personally unable to attend to my day to day affairs and for reasons of convenience it is necessary that I should appoint an attorney and confer upon him the powers hereinafter stated.

NOW KNOW BY THESE PRESENTS that I the said do hereby nominate and constitute and appoint Shri son of late at present residing at as my true and lawful Attorney for me in the name and on behalf of myself and/or my said Attorney and in any of my said capacities and in the name and on behalf of any partnership firm, association of persons, trustee, beneficiary or businesses in which I am now or may in future in any manner become interested to do exercise, execute and perform all or any of the following acts, deeds and things, namely:-

1. Commercial

- 1.1 To transact business:- To commence, transact, manage, carry on, close down any of my business and to do all things requisite or necessary or connected therewith including correspondence with any person or authority.
- 1.2 To buy and sell:- To buy, receive, store and hold and to sell, pledge, hypothecate, give on hire or otherwise deal with any goods, articles, things or movable property.
- 1.3 To open branches:- To open, establish, conduct, shift and/or close any branch of any business at any place or places.

- 1.4 To contract:- To enter into, sign, execute, vary, alter, terminate, suspend, and repudiate any contracts.
- 1.5 Partnership business:- To act as a partner in the firm or firms in which I am a partner at present or become a partner in future and commence, carry on, close, dissolve or retire from any business of any partnership with any person and for the said purpose to do all acts as partner or partners therein including banking operations, execution of partnership, retirement, dissolution or other deeds and documents.

2. Property

- 2.1. To acquire and to transfer:- To purchase, take on lease, to take charge or mortgage on and to acquire in any manner and to sell, mortgage, settle, charge, lease, grant tenancy or otherwise transfer and/or in any manner and/or on any terms deal with any immovable or real property or properties or any interest therein.
- 2.2. To manage and maintain:- To hold, defend possession, manage and maintain movable, or immovable properties described in Schedule 1 herein and other immovable properties acquired by me hereafter.
- 2.3. To receive rents, etc.:- To demand, recover and receive rents, mesne profits, licence fees, maintenance charges, electricity charges, corporation taxes and all other sums of moneys receivable in respect of my properties and to make all just and reasonable allowance therein in respect of rates, taxes, repairs and other outgoings and to take all necessary steps whether by action, distress or otherwise to recover any property or sums of money in arrear.
- 2.4. To pay outgoings:- To pay all taxes, rates, assessments, charges, expenses and other outgoings whatsoever payable for or on account of my properties or any part thereof and to insure any buildings thereon against loss or damage by fire and other risks as be deemed necessary and/or desirable and to pay all premia for such insurances.
- 2.5. To serve notice on tenants:- To sign and give any notice to any occupier of any property belonging to me to quit or to repair or to abate any nuisance or to remedy any breach of covenant or for any other purpose whatsoever.

- 2.6. To construct, repair and/or reconstruct:- To take down, demolish, rebuild and/or repair any of my house, building or other structure of whatever nature.
- 2.7. To get utilities: - To apply for and obtain electricity, gas, water, sewerage and/or connections of any utilities and/or to make alterations and/or close down and/or have disconnected the same in my properties.
- 2.8. To view the condition of any property:- To enter upon any of my property or any part of it as often as be desired to view the state of repair thereof and to require any occupier as a result of such view to remedy any want of repair or abate any nuisance.
- 2.9. To enforce covenants:- To enforce any covenant in any lease, licence or tenancy agreement or any other document affecting any of my property and if any right to re-enter arises in any manner under such covenants or under notice to quit, then to exercise such rights amongst others.
- 2.10. To deal with trespassers:- To warn off and prohibit and if necessary proceed against in due form of law against all trespassers on any of my property and to take appropriate steps whether by action or otherwise and to abate all nuisances.
- 2.11. To prepare and have sanctioned the plans: - To get prepared plans for construction of any building or structure and/or otherwise on any of my property and to have the same sanctioned, modified and/or altered by any Corporation, Municipality or other authority and in connection therewith or to make necessary applications, give undertakings, pay fees, obtain sanctions and such other orders and permissions as may be expedient.
- 2.12. To apply for obtaining building materials:- To apply for and obtain such permission as may be necessary for obtaining steel, cement, bricks and other construction materials and construction equipments and to appoint architects and contractors for the construction of building or buildings to be constructed on the plots belonging to me.
- 2.13. To act in proceedings under rent control legislation:- To appear and represent in any proceedings for fixation of fair rent and/or for any other purpose or purposes before any court, Rent Controller or other authority in connection with any matter relating to and/or arising out of any of my property.
- 2.14. To obtain any certificate:- To apply for and obtain such certificate and other permissions and clearances including certificates and/or permission under any law relating to ceiling on urban land, or other law relating to land and/or buildings both urban and rural or under

the Income-tax Act or any other law as may be required for execution and/or registration of any conveyance or other document and/or for transferring any rights in any land, building or other property belonging to me or acquired by me hereafter.

- 2.15. To file declarations:- To prepare, sign, declare and file declarations, statements, applications and/or returns and otherwise in connection with holding, possessing, acquiring, transferring, partitioning or otherwise dealing with any of my property before any appropriate or other authority as may be required under any law or laws now prevailing or as may in future become applicable and to do, exercise, execute and perform any or all the necessary acts, deeds and things required thereunder.

3. Companies

- 3.1. To promote company:- To promote or form or cause to be promoted or formed or join with any other person in promoting or forming and to do all things necessary or proper to be done or causing to be formed and incorporated a company with limited or unlimited liability for any object and to settle and sign the memorandum and articles of association, prospectus, application forms, statement in lieu of prospectus and all other papers required for or in connection with incorporation, commencement of business of such company and other acts, relating thereto.
- 3.2. To spend money in promoting a company:- To expend or agree to expend moneys for promoting and forming any such company as aforesaid and in taking up and paying for any shares in my name in any such company as aforesaid.
- 3.3. To contract to take shares:- To sign and file with the Registrar of Companies or any other appropriate authorities contract in writing to take from and/or pay for any share or shares in any such company as aforesaid in my name.
- 3.4. To apply for, accept and deal with shares:- To make application or applications for and take allotment or allotments or purchase or otherwise acquire or hold any share or shares in any company in my name and to sell, transfer, pledge, hypothecate and/or deal with any share or shares held by me or acquired by me hereafter and to execute and/or deliver all deeds and documents including transfer deeds in connection therewith and/or for registration of any transfer and/or transmission.

- 3.5. To consent to act as a director:- To sign and file with the Registrar of Companies or any other appropriate authority in my name, consent in writing to act as a director of any company as aforesaid.
- 3.6. To exercise shareholder's privileges:- To attend, vote and otherwise act in the meetings of any company or companies or to appoint or act as proxy or representative in respect of any shares, stock or debentures now held by me or which may hereafter be acquired by me and generally to exercise all rights and privileges and perform all duties in respect of any shares, stocks or debentures as the holder, owner and/or registered owner thereof or as otherwise being interested in any company including carrying on correspondence and making or consent in the making of any applications in connection therewith before the Centra4 Government, court or other authority under the Companies Act or any other law for the time being in force.
- 3.7. To transfer securities:- To transfer any share, stock, debenture or other securities held by me or to be acquired by me hereafter in any company and to execute transfer deeds, receipts and ail other papers in connection therewith and also to transmit and/or apply for and/or to consent to the transmission of any share, stock, debenture and/or other securities and/or have the same registered and/or to have such registration altered and/or cancelled in any manner.
- 3.8. General:- To do such acts and deeds and to execute such papers and documents as may be necessary in any capacity as shareholder, debtor, creditor or otherwise in relation to any company which may be required to be done by me.
- 3.9. To receive bonus shares and other benefits: - To receive and to hold and to deal with bonus shares and all other benefits that may accrue as a shareholder or otherwise in relation to any company.

4. Investments

- 4.1. To sell investments:- To acquire or sell, transfer, assign or join in acquiring or selling, transferring or assigning ail or any stocks, shares, annuities, debentures, stocks, bonds, obligations, government securities, units and other securities or investments of any nature whatever which do now or shall hereafter stand in my name or to which I am now or may

at any time hereafter be entitled to and for that purpose to employ and pay brokers and other agents in that behalf and to receive and give receipts for the purchase money payable in respect of such sales and to transfer any investments so sold to the purchaser or purchasers thereof or as he or they direct and for these purposes to sign and execute all such contracts, transfer deeds and other writings and do all such other acts as may be necessary for effectually transferring or assigning the same.

- 4.2. Allotment of shares in companies:- To apply for and accept allotments of shares in my name in any company, corporation or body corporate or any statutory body.
- 4.3. To receive dividends and repaid capital sums:- To demand, sue for and receive from any company, corporation, government or other body politic or person all deposits, dividends, interest, bonuses or any other sums that may become due in respect of any investment and likewise any capital sum represented by or comprised in any investment held by me as and when the same shall be payable or repayable and for any such purpose to sign, indorse and execute all receipts, dividends and interest warrants, cheques, releases, discharges, reconveyances or other deeds, documents, instruments and other writings whatsoever that may be required or necessary for the purpose.
- 4.4. Investment in and dealing with provident funds:- To operate, open, withdraw and deal with funds in the Public Provident Fund Account or any other provident fund accounts whatsoever in my name.
- 4.5. Investments in company deposits, shares, etc.:- To invest my money in company deposits, shares, stocks, debentures, bonds, units or other corporate securities or securities of local authorities, any other statutory bodies or corporations, whether incorporated in India or in any other country, in such manner and upon such securities as my attorney shall in his absolute discretion think fit and from time to time withdraw any such moneys and apply the same to any purpose as he may think fit.
- 4.6. To initiate proceedings:- To give notices, commence any legal proceedings or use any other lawful means that may appear to my attorney desirable or necessary in order to safeguard or enforce my rights in or in connection with any of the investments with full power to prosecute or discontinue any such proceeding and to compromise or submit to arbitration any matter in dispute or doubt.

- 4.7. To pay all calls:- To pay all calls that may be lawfully made or other expenses that may be incurred in relation to any of my investments and to give security for the payment of the same.
- 4.8. To assent to arrangements:- To assent (if it seems to my attorney necessary or desirable) to any arrangement modifying any rights, privileges or duties in relation to any of my investments and to agree to any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any company or corporation and for any such purpose to deposit, surrender or exchange any of the investments or the documents of title relating thereto and to pay any contribution or incur any other necessary expense in connection with any such scheme or arrangement.
- 4.9. To apply for and contract for investments:- To tender, contract for, purchase, accept and sign the transfer into my name any government securities, securities of local authorities or any statutory body, shares, stocks or debentures in any such company, corporation or body as aforesaid or other stocks, funds, debentures and securities of any and every description whatsoever or any other properties.

5. Banking

- 5.1. Banking operation:- To open, operate, continue or close any account including any overdraft or other loan account and/or saving account, current, fixed or other accounts and also safe deposit lockers and all accounts whatsoever in my name and on my behalf with any bank or banks that may be existing or may in future be opened in my name or in the name of my firm or firms or business or businesses or in my capacity as trustee or beneficiary of any trust with any bank or banks including Postal Savings Bank.
- 5.2. Drawing and negotiations of cheques: - To draw, sign, negotiate and/or endorse cheques, payment orders, drafts, dividend warrants and/or any other instruments and to execute, enter into, acknowledge, do and present all such deeds, instruments, contracts, agreements, acts, deeds and things as shall be requisite or deemed fit and proper for or in relation to all or any of the purposes, matters or things herein contained or others with any bank or banks.

- 5.3. To deal with bills of exchange:- For all or any of the banking purposes to draw, accept, endorse, discount or otherwise deal with any bills of exchange, bills of lading, delivery orders, promissory notes or other mercantile instruments relating to money, goods, properties or otherwise.
- 5.4. To operate bank locker or safe deposit vault locker: - To operate any bank locker or safe deposit vault locker and to deposit therein and withdraw therefrom any articles belonging to me.

6. Money

- 6.1. To realise loans or borrow money:- To realise loans and/or borrow money from time to time from any bank, institution, or any person or persons, organisation whatsoever against the security or properties both movable and immovable belonging to me or any of my firm or firms of business or businesses in which I am now or may hereafter become interested and to execute, sign and register mortgage, charges, transfer and/or give other security or securities by any other deed or deeds on such terms and conditions as my said attorney or his substitute or substitutes may think fit and proper.
- 6.2. Loans and advances:- To make and/or to receive any loan or advance from any bank, financial institution or other person to such extent and on such terms as the said attorney may deem expedient and also to secure the same by pledging, hypothecating, mortgaging, charging or any other manner encumbering any of my movable or immovable property.

6.3 Miscellaneous

- 6.3.1. To agree to charge or pay any interest or other considerations for any loan and/or advance and to vary such rates of interests or consideration from time to time.
- 6.3.2. To remit, reduce or settle any claim of any moneys, losses and/or damages.
- 6.3.3. To draw, execute, negotiate, cancel, present for payment and/or make or receive payment of any promissory note, bill of exchange, bond or undertaking regarding any money receipt and/or advance.

7. Representations

- 7.1. To represent before bank or banks, insurance companies, etc:- To represent me or any of my firm or firms or business in any of the bank or banks, insurance companies, courts, registration offices, municipal offices, office of competent authority, urban land ceiling, post offices, sales tax offices, income-tax offices, customs offices, revenue offices or any co-operative society, Central or any other State Government or other authority, society, body corporate or other person for any purpose or purposes whatsoever and do all acts as may be expedient before the same or in connection therewith.
- 7.2. To prepare, sign and file tax returns:- To prepare, sign, execute and/or file any of my and/or any of my firm or firms or business or businesses in my personal capacity or as trustee or beneficiary of any trust, sales tax returns, income-tax returns, or any other returns under the Income-tax Act, 1961, Wealth-tax Act, 1957, Gift-tax Act, 1958 and/or any other law for the time being in force or other returns, statements, papers, documents in connection with the aforesaid Acts, to sign and/or submit returns, statements of accounts, balance sheets, declaration forms, to receive refund orders or vouchers from any of the aforesaid authorities, to apply for and to sign and submit to necessary authorities and to represent me or any of the firm or firms or business or businesses, trusts, proprietary concerns in which I am now or may hereafter be interested as proprietor, partner, trustee or beneficiary with such authority or authorities concerned therewith.
- 7.3. Appear before Assessing Officer, etc.:- To appear before any Assessing Officer, Deputy Commissioner and/or Assistant Commissioner and/or Commissioner and/or Central Board of Direct Taxes and/or tribunal and/or any other authority or authorities in connection with any matter or matters and to represent me or my proprietary concerns, firm or firms, business or businesses, trusts in which I am trustee or beneficiary and to produce, explain accounts, documents and papers as may be necessary and to pay taxes and other amounts to such authorities and to any other authority by virtue of these presents and to sign, execute and deliver all other papers, documents and deeds in connection therewith.

- 7.4. To appear before registrar, notary public, magistrate, etc.:- To appear before any Notary Public, Registrar of Assurances, District Registrar, Sub-Registrar of Assurances, Metropolitan Magistrate and other officer or officers or authority having jurisdiction and to acknowledge and register or have registered and perfected all deeds, instruments and writings, executed, signed or made by me personally or as partner of any firm or firms or business or businesses or by my said attorneys or any of them by virtue of the powers herein conferred.

8. Trusts

- 8.1. To execute trusts:- To do all acts, deeds relating to any matter in which I am a trustee and/or beneficiary and to exercise all powers and authorities elsewhere hereunder or otherwise as expedient.
- 8.2. To exercise powers:- To execute and exercise in relation to any land or investment or property for the time being subject to any trust and all powers and description for the time being vested in me as such trustee or as beneficiary as aforesaid or under any deed of trust, settlement or other documents to the extent lawfully possible.

9. Execution and registration of documents

- 9.1. To execute documents (stocks, shares, annuities):- To execute all deeds and other instruments necessary or proper for transferring any stock, shares, annuities, debentures, obligations and other securities held by me or to be acquired by me hereafter to the purchaser or purchasers thereof.
- 9.2. To execute and register deeds:- To sign, execute, enter into, modify, cancel, alter, draw, approve, present for registration and admit registration of all papers, documents, contracts, agreements, conveyances, mortgage deeds, leases, grants, assurances, applications, declarations, trust deeds and other documents as may in any way be required to be so done for or in connection with any movable or immovable property belonging to me or to be acquired by me hereafter or of any part thereof or any interest

therein including those held by me as owner, lessor, lessee, partner, mortgagor, tenant, trustee or otherwise be interested for the time being including those connected with the management and development of any business and also in connection with the sale, purchase, lease, transfer and disposition or construction or sanction of plan or obtaining of clearances or permits from the Government or for any other purpose whatsoever.

10. Legal proceedings

- 10.1. To compound the debts and to submit claims to arbitration:- To compound with or make allowances to any person for or in respect of any debt or demand whatsoever which now is or shall or may at any time hereafter become due or payable to me and to take or receive any composition or dividend thereof or thereupon and give receipts, releases or other discharges for the whole of the same debts, sums or demands or to settle, compromise or submit to arbitration every such debt or demand and every other claim, right, matter and thing due to or concerning me and for that purpose in my name to enter into, make, sign, execute such agreements as are necessary in like cases, execute such agreements for arbitration or other deeds or instruments as are necessary in like cases and to allow time for the payment of any such debt or demand (with or without security) upon such terms as the attorney may think fit.
- 10.2. To conduct and defend legal proceedings:- To commence, prosecute, enforce, defend, answer or oppose all notices, suits, and other legal proceedings and demands touching any of the matters aforesaid or any other matters in which I am now or may hereafter be interested or concerned and also if thought fit with such consent as aforesaid to compromise, refer to arbitration, abandon, submit to judgment or become non-suited in any such action or proceeding as aforesaid before any court, civil, or criminal, or revenue including the Rent Controller, City Civil and Small Causes Courts.
- 10.3. To appoint advocates, etc.:- To appoint any solicitor, advocate, pleader or counsel as may be necessary for prosecuting and defending any suit or proceedings, in the matters relating to my properties, business, firm, trusts, companies or organisations, in which I am interested or become interested hereafter in my name or in the name of my said

attorney as he may think fit and proper and to sign vakalatnamas, warrant of attorney in favour of any solicitor, advocate, pleader or counsel engaged by him.

- 10.4. To sign complaints and other papers:- To sign, declare and/or affirm any complaints, written statements, petitions, consent petition, affidavits, memorandum of appeal or any other document or paper in my name in any proceeding or in any way connected therewith.
- 10.5. To deposit and receive documents from court:- To deposit and receive documents and money from any court or courts and/or any other person or authority in my name and give valid receipts and discharges therefor.

11. Receipts and discharges

- 11.1. Receive money and goods:-To demand, collect, sue for, recover and receive from all and every person or persons, body or bodies, political or corporate, court or authority including government and/or local bodies whomsoever concerned or chargeable therewith all or every sum or sums of money including rent, documents, securities, goods, effects, dues, duties, interests, rents, profits, income, purchase consideration, dividends, compensation and/or any other money which shall belong or be or become payable to me or to any of my firm or firms, business or businesses or companies in which I am interested.
- 11.2. To collect debts:- To demand, collect, sue for, recover and receive in my name, from all and every person, body, political or municipal or corporate or firm or company wheresoever and whatsoever all sums of money, debts, dues, goods, wares, merchandise, chattels, effects and things of any nature or description whatsoever which now are or which at any time or times hereafter shall or may become due or owing or payable to or recoverable including those from or by the bank by virtue of any hypothecations, bonds, mortgages, pledges, agreements or other securities whatsoever or upon or by virtue of any bills of exchange, promissory notes, cheques, bills of lading or other mercantile or negotiable instruments whatever or otherwise.
- 11.3. To give receipts:- To receive and give effectual receipts and discharges in my name for all monies, securities for monies, debts, goods, chattels and personal estate which are or

may become due, owing, payable or transferable in or by any right, title, ways or means howsoever from any person or persons or corporation or other body or authority.

- 11.4. To receive debts, gifts, legacies, etc.:- To receive and give good and valid receipts and discharges in my name for share of assets of any business or for the purchase money of any share therein or of any part of such share and all such other monies as may be payable to me in any manner whatsoever.

12. Agents

- 12.1. Agency:- To act as agents for any person or to appoint any person as agent for any purpose in connection with any business or matter herein contained or otherwise and on such terms and with such powers and authorities as may be deemed by my said attorney to be expedient and to vary, modify and/or terminate such appointment and/or appointments and make other or others.
- 12.2. To employ persons in any capacity:-To employ any person in any capacity for my business firm, trusts, companies in which I am interested and require to employ such person or become interested in future and require to employ such person and to suspend, dismiss or discharge any employee so employed as my said attorney may deem fit.
- 12.3. To employ professionals:- For better and more effectually executing the powers or authorities aforesaid or any of them to retain and employ solicitors, advocates, chartered accountants, managers, consultants or any other professional persons and/or debt collecting or other agents.

13. Miscellaneous

- 13.1. To enter into bond and indemnities: - For all or any purpose to give and execute all such bonds, guarantees, indemnities, covenants and obligations in my name.
14. To substitute and appoint in his place (on such terms and conditions as my said attorney shall think fit and proper) one or more attorneys to exercise for me as my attorney or attorneys any or all of the powers and authorities hereby conferred and to revoke any such appointment from time to time and to substitute or appoint any other person or

persons in the place of such attorney or attorneys as the said attorney shall from time to time think fit and proper.

15. AND in case of death of the said attorney or inability or unwillingness to act through illness or any other reason to act as my said attorney in relation to all or any of the matters aforesaid, I hereby appoint Smt. wife of resident of to act as my attorney in place of the said attorney after his death or during such inability or unwillingness and in the latter case during the subsistence of any such inability or unwillingness as the name of Smt..... had been inserted in this deed instead of the name of the said attorney.
16. And generally my said attorney shall have the power to do all such acts, deeds and things on my behalf and I could have lawfully done, if personally present.

AND I do hereby for myself, my heirs, executors, administrators of acts done and legal representatives ratify and confirm and agree to ratify and by attorney confirm all and whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand this..... day of 2008.

Schedule I above referred to

Schedule II above referred to

Signed and delivered by the within named

.....

WITNESSES;

1.

2.

Identified by me

()

me

Advocate

Public

Before

Notary

POWER OF ATTORNEY TO EXECUTE SALE DEED

BY THIS POWER OF ATTORNEY, I -----, s/o ----- residing at -----
- do hereby appoint -----, s/o -----, residing at ----- to be my
Attorney for me and in my name and on my behalf.

1. To negotiate and sell my property situated at ----- to any purchaser at such price and at such time as my said Attorney may in his absolute discretion think proper to agree upon and for such purpose to execute any document, deed or other papers and to present the same for registration and to admit the execution thereof.
2. To receive from the purchaser the consideration money for the said property and to give receipt and discharge therefore as may be required.
3. To deliver physical possession in the manner that is possible in the circumstances of the said property at ----- to the purchaser or to the nominee of the purchaser.
4. To apply to the Municipal Corporation of ----- for mutation of the said property in favour of and in the name of the purchaser or his nominee and to do and execute all deeds, assurances and to do all such acts as may be necessary to fully effectuate the sale of the said property.

I hereby agree and undertake to ratify all acts, deeds, assurances, done, given, executed or made by my said Attorney under the powers conferred by this Power of Attorney as if the same were done or made by me personally.

IN WITNESS WHEREOF, I have hereunto set my hand this..... day of 2008.

(Signature)

WITNESSES;

1.

2.

(Stamping required, Registration is before the Sub-Registrar's Office,)

POWER OF ATTORNEY BY A COMPANY TO ITS BRANCH MANAGER

TO ALL TO WHOM THESE PRESENTS SHALL COME, ----- Ltd., a company registered under the Companies Act, 1956, and having its registered office at ----- (hereinafter referred to as the 'Company') send GREETINGS;

WHEREAS the Company is carrying on business of -----
.

AND WHEREAS the Company has several branches in India including a Branch at ----- having Mr. ----- as Manager of the said Branch at present.

AND WHEREAS in order to facilitate the business carried on at the said branch, the Company proposes to appoint the said Mr. ----- as a Constituted attorney of the Company with the following specific powers and authority.

NOW KNOW YOU ALL AND THESE PRESENTS WITNESS that the Company hereby appoints, and constitutes the said Mr. ----- as true and lawful attorney or agent of the Company with full powers and authority to do and execute all acts, deeds, and things as hereinafter mentioned on behalf of, in the name of and for the Company viz.

- 1) To manage the said branch of the company efficiently and faithfully and in a manner conducive to the interest of the company.
- 2) To maintain proper control on and discipline the staff employed in the said Branch and to initiate disciplinary proceedings against any member of the staff for any act of indiscipline or misconduct or any other offence prescribed by the service rules made by the Company.
- 3) To pay the monthly salaries and other emoluments of the members of the-staff in the said Branch as sanctioned by the Company and to obtain receipt for the same.
- 4) To keep a muster roll for the staff and to register the daily attendance of the members of the staff particularly the time of arrival in the Branch Office, absence in any day and the time of departure.
- 5) To consider the applications for leave of any nature made by any member of the staff and to make his recommendations to grant or not to grant the same to the Head Office of the Company for final orders.
- 6) To communicate all the orders, circulars and instructions issued by the Company to the members of the staff for information and compliance.
- 7) To open one or more accounts of the Company in the name of the Company with one or more Banks as may be approved by the Head Office and to operate the same for and on behalf of the Company by drawing, accepting, endorsing negotiating, releasing, paying and or satisfying any promissory notes, bills of exchange, cheques, drafts, hundies or orders for payment of money and delivery of securities, goods, or effects or other negotiable instruments and mercantile documents which may be deemed necessary or proper in respect of the business of the Company or its offices at the said Branch.

- 8) Subject to prior approval of the Head Office of the Company, to sign any deed or document or other paper required to be executed by or in favour of the Company including a Deed of Conveyance or a Deed of Mortgage, hypothecation or pledge or a lease or a leave and licence agreement or any other document required to be executed by the Company.
- 9) To lodge for registration any document executed by or in favour of the Company in relation of any property situated in the said district in which the said Branch Office is situated and to admit execution thereof and do all acts and things required to be done for registration of such deed.
- 10) To accept money on fixed deposit according to the scheme made by the Company for accepting fixed deposits and to issue and sign fixed deposit receipts in the form prescribed by the Company.
- 11) To appoint agents or retail dealers in the said District for sale of the pharmaceutical products manufactured by the Company on terms and conditions prescribed by the Company and to sign necessary letters or agreements for such appointments.
- 12) To take on monthly tenancy basis or leave licence basis godowns, storerooms or other suitable premises for storing the products sent by the Company to the said branch and to pay the rent thereof
- 13) To advertise the products of the Company by publishing advertisements in local newspapers or periodicals by sponsoring cultural programmes and sports events and by holding seminars on allied subjects and by doing other acts and things beneficial to promote the sale of the Company's products provided that total expenses to be incurred are within the budget sanctioned by the Company.
- 14) To demand, receive, recover, accept, exercise or utilize any claim, things, right, or any object to which the Company is entitled and to make and give receipts and discharges for the money and other property received for and on behalf of the Company.
- 15) To carry on correspondence with the customers of the Company including prospective customers, agents, brokers, dealers and other trade agents in connection with the business of the

company and to represent the company at any programmes or meetings in connection with or with a view to promote the business of the Company.

16) Subject to the previous sanction of the Company, to commence and prosecute any suit or other legal action or proceedings in relation to the business of the Company and for recovery of any moneys, goods or other property of the Company or establishing a right related to the business of the Company and to defend any suit or legal proceeding against the Company by any person and in the courts within the District in which the Branch Office is situated and for that purpose to sign, affirm or declare complaints, statements of defences, petitions, affidavits and other papers as may be required to be done and to appoint any advocate or solicitor for the said purpose as well as to obtain legal advice from them.

17) To insure all the goods of the company wherever stocked and the office furniture and other articles and things at the Branch Office for such sum and for such risks as the Head Office may direct and to pay the premium in respect thereof from time to time.

18) To appear before any officer of the Government or any local authority in connection with the transactions of the Company and to represent the Company's interest.

19) If any dispute arises in connection with the business of the Company with any person, then subject to prior approval of the Company, to agree to refer the same to arbitration of one or more arbitrators as the said attorney may think fit or the company may direct and to attend to such arbitration personally or through advocate and to produce all relevant documents before the Arbitrator and file statements of claims or defences and to do all other acts and things for proceeding with and conducting the proceedings.

20) With the prior permission of the Company to negotiate with any party for settlement of any dispute or claim and to compromise or compound the same in the best interest of the Company.

21) To receive money and other property payable to the Company by way of sale of the products, commissions or on any other account from customers, agents, shop keepers and other persons whatsoever and to give valid receipts for the same and to credit the money so received in the Bank Account of the Company.

22) To pay the rents and other dues payable to the Company in respect of the premises taken by the Company for business and to pay all expenses reasonably incurred by the Branch Office in connection with the said branch and the business of the Company.

23) And generally, to do all acts and things incidental to the powers hereinbefore mentioned and all other acts and things necessary for carrying on the business of the Company at the said Branch.

Provided that notwithstanding anything hereinbefore contained the said attorney shall always act within and not outside the Instructions or directions received by him from the Head Office of the Company and the Company agrees to ratify all acts and things lawfully done by the said attorney pursuant to the powers hereinbefore contained.

IN WITNESS WHEREOF the Company has put its seal this ----- day of -----, 20--.

The common seal of the said ----- Ltd., is hereto affixed pursuant to the resolution of the Board of Directors dated in the presence of Mr. -----a Director duly authorised in that behalf, in the presence of -----.
