**Draft Non-Disclosure Agreement**

This Agreement is made at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_ 2017\_\_\_

 by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LTD., a company within the meaning of the Companies Act, 2013 and having its registered office, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter referred to as “\_\_\_\_\_\_\_\_\_\_\_” which expression, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the ONE PART;

and

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA, a Corporation established under the Small Industries Development Bank of India Act, 1989 and having its Head office at “SIDBI Tower” 15 Ashok Marg, Lucknow U.P. and an office at MSME Development Centre, C-11, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051, (herein referred to as “SIDBI” which expression unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the OTHER PART.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ & SIDBI are hereinafter collectively referred to as “the parties” and individually as “the party”

WHEREAS,

The parties intend to engage in discussions and negotiations concerning the establishment of a business relationship between themselves. In the course of such discussions and negotiations, it is anticipated that each party may disclose or deliver to the other certain or some of its trade secrets or confidential or proprietary information, for the purpose of enabling the other party to evaluate the feasibility of such business relationship (hereinafter referred to as “the Purpose”).

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

1. **Confidential Information:** “Confidential Information” means all information disclosed/furnished by either of the Parties to another Party in connection with the business transacted/ to be transacted between the Parties. Confidential information shall include any copy, abstract, sample, note or module thereof.

The party disclosing the confidential information would hereinafter be referred to as “Disclosing Party” in respect of the confidential information disclosed and the party receiving the confidential information would hereinafter referred to as “Receiving Party”.

The Receiving Party shall use the Confidential Information solely for and in connection with the Purpose.

Notwithstanding the foregoing, “ Confidential Information” shall not include any information which the Receiving Party can show : (a) as now or subsequently being legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, (d) was developed by or for the Receiving Party independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence, or (e) is disclosed pursuant to an order of a court or governmental agency as so required by such order, provided that the Receiving Party shall, unless prohibited by law or regulation, promptly notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek appropriate protective order relating to such disclosure, if so required.

2.  **Exchange of Information at cost :** The parties to this Agreement agree that any information documents, materials, copy, abstract, extract, sample, note, module or any other thing received or exchanged under this Agreement, whether in physical or electronic form shall be free of cost or at such costs as are mutually agreed by and between the parties.

**3. Non Disclosure:** The Receiving Party shall not commercially use or disclose any Confidential Information or any materials derived there from to any other person or entity other than persons in the direct employment of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the authorized Purpose. The Receiving Party may disclose Confidential Information to consultants only if the consultant has executed a Non- disclosure Agreement with the Receiving Party that contains terms and conditions that are no less restrictive than these. The Receiving Party shall take appropriate measures by instruction and written agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. The Receiving Party agrees to notify the Disclosing Party immediately if it learns of any use of disclosure of the Disclosing Party’s Confidential Information in violation of the terms of this Agreement.

**4. Publications:** Neither party shall make news releases, public announcements, give interviews, issue or publish advertisements or publicize in any other manner whatsoever in connection with this Agreement, the contents/ provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement, without the prior written approval of the other party.

**5. Term:**  This Agreement shall be effective from the date hereof and shall continue till expiration or termination of this Agreement due to cessation of the business relationship between \_\_\_\_\_\_\_\_\_\_ and SIDBI. Upon expiration or termination as contemplated herein the Receiving Party shall immediately cease any and all disclosures or uses of Confidential Information; and at the request of the Disclosing Party, the Receiving Party shall promptly return or destroy all written, graphic or other tangible forms of the Confidential information and all copies, abstracts, extracts, samples, notes or modules thereof as may be mutually agreed.

The obligation of the Receiving Party respecting disclosure and confidentiality shall continue to be binding and applicable without limit in point in time except and until such information enters the public domain.

**6.Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information. No license under any trademark, patent or copyright, or application for same which may now or thereafter may be obtained by such party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not conceal, alter, obliterate, mutilate, deface or otherwise interfere with any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall reproduce any such mark or notice on all copies of such confidential Information. Likewise, the Receiving Party shall not add or emboss its own or any other any mark, symbol or logo on such Confidential Information.

**7.Return of Confidential Information:** Upon written demand of the Disclosing Party, the Receiving Party shall (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, abstract, extracts, samples, notes or modules thereof to the Disclosing Party within seven (7) days after receipt of notice, and (iii) upon request of the disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

**8.Remedies:** The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate, irreparable harm for which monetary damages may not be adequate. The Receiving Party agrees that, in addition to all other remedies provided at law or in equity, the Disclosing Party shall be entitled to injunctive relief hereunder.

**9.Entire Agreement, Amendment, Assignment:** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the parties. This agreement may be amended or modified only with the mutual written consent of the parties. Neither this agreement nor any right granted hereunder shall be assignable or otherwise transferable.

**10.Governing Law:** The provisions of this Agreement shall be governed by the laws of India.

**11.General:** The Receiving Party shall not reverse-engineer, decompile, disassemble or otherwise interfere with any software disclosed hereunder. All Confidential Information is provided “as is”. In no event shall the Disclosing Party be liable for the inaccuracy or incompleteness of the Confidential Information. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the fitness of such Confidential Information for any particular purpose or infringement of trademarks, patents, copyrights or any right of third persons.

**12.Severability:** If any provision becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provision and this Agreement shall not be affected or impaired.

**13.Dispute Resolution Mechanism:** In the event of any controversy or dispute regarding the interpretation of any part of this agreement, or any matter connected with, arising out of , or incidental to the arrangement incorporated in this agreement, the matter shall be referred to an Arbitrator appointed by mutual agreement and the decision of the arbitrator shall be final and binding on all parties.

**14.Place of Jurisdiction :** The Parties to this Agreement shall submit to the jurisdiction of the Courts of Mumbai and all proceedings shall be held in Mumbai.

**15.Representations and Warranties:** Each party hereby represents and warrants to the other that:-

 a) it (and, if applicable, any person on whose behalf it may act as agent or in a representative capacity) has and will continue to have full capacity and authority to enter in to this Agreement and to carry out the transaction contemplated herein, and has taken and will continue to take all action (including the obtaining of all necessary corporate approvals and governments consents, if any) to authorize the execution, delivery and performance of this agreement; and

b) the terms of this Agreement to not constitute a breach of any obligations by which it is bound whether arising by its constitutional documents , any contract or operation flaw.

(c) Each party further agrees to execute/deliver such documents and perform such further acts as the other party may reasonably require in relation to this Agreement.

**16.Notices:**

1. Any notice or request or permitted to be given or made under this agreements shall be in writing .
2. Except as otherwise provided in this Agreement, any notice, demand, letter or communication may be sent by the Parties by the registered post, speed post, courier, facsimile, electronic mode, or by hand delivery. Such notice or request shall be deemed to have been duly given or made when it shall be taken to be sufficient service thereof. If notice is sent by fax, electronic mode, a copy of the same shall also be sent by registered post acknowledgement due/speed post acknowledgment due / hand delivery to the address mentioned hereunder and it shall be taken to be sufficient service thereof.
3. Any notice, demand, letter or communication to the Parties shall be effective only when received by the relevant manner.
4. Any notice, demand, letter or communication may be sent by one Party to the other at the address and number set out hereunder or such address and numbers as one party may inform the other in writing.

IN WITHNESS WHEREOF, the Parties hereto have executed these presents the -------day of ----------- first hereinabove written.

For and on behalf of

------------------------------------------------------------------------------------------------------LTD.,

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Authorized Signatory

For and on behalf of

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

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Authorized Signatory