

# **Business Transfer Agreement**

This Business Transfer Agreement ("Agreement") is entered into on, at \_\_\_\_\_ by and between: \_\_\_\_\_ a company incorporated under the [SPECIFY LAW] and whose registered office is at \_\_\_\_\_ (hereinafter referred to as the "Seller"); AND \_\_\_\_\_, a company incorporated under the [SPECIFY LAW] and whose registered office is at \_\_\_\_\_ (hereinafter referred to as the "Purchaser"), (Unless the context requires otherwise, the Seller and the Purchaser are hereinafter collectively referred to as 'Parties' and individually as a 'Party'.)

## 1. General Provisions

- 1.1. Definitions. Appendix A to this Agreement sets forth the definitions of certain terms used in this Agreement.
  
- 1.2. Other Definitions and Meanings; Interpretation. For purposes of this Agreement, the term "Party" means (except where the context otherwise requires) Purchaser or Seller; the term "Parties" means (except where the context otherwise requires) Purchaser and Seller together; the term "person" includes any natural person, firm, association, partnership, corporation, governmental agency, or other entity other than the parties; and the words "hereof", "herein", "hereby" and other words of similar import refer to this Agreement as a whole. The headings of the Articles and Sections of this Agreement have been included for convenience of reference only and shall not be deemed to affect the meaning of the operative provisions of this Agreement.

## 2. SALE AND PURCHASE OF BUSINESS UNDERTAKING

- 2.1. In consideration of the Purchase Consideration to be paid by the Purchaser to the Seller in the manner set out herein and subject to the provisions of this Agreement, on the Closing Date , the Seller hereby agrees to sell, transfer, convey and deliver to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and accept from the Seller, absolutely and forever the Business Undertaking including legal and beneficial rights, title and interest and liabilities of the Seller in and to the Business Undertaking as a going concern on a slump sale "as is where is basis".
- 2.2. The Parties specifically acknowledge and agree that the Transaction will constitute an outright slump sale of the Business Undertaking with effect from the Closing Date as an inseparable whole, as a going concern on 'as is where is basis', for the Purchase Consideration duly discharged by the Purchaser.
- 2.3. The Parties agree that all tax liabilities or liabilities under any statute in force in relation to any period prior to the Closing Date including but not limited to any past tax litigations / statutory dues which relate to the period prior to the Agreement Effective Date would be of the Seller in all respects and would not be taken over by the Purchaser.
- 2.4. The Parties acknowledge and agree that those assets of the Business Undertaking that are movable in nature or are otherwise capable of transfer by endorsement and delivery, shall stand vested in the Purchaser on delivery, and shall become the property of the Purchaser.
- 2.5. The Book Debts, advances, deposits, receivables (including, without limitation, accounts receivables) as set forth in Part 1 of Schedule 1 to this Agreement shall be legally assigned absolutely in whole and not in part by the Seller to the Purchaser with effect from the Closing Date.
- 2.6. The Assumed Contracts shall be notated by the Seller in favor of the Purchaser with effect from the Closing Date
- 2.7. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that on and from the Closing Date, the profits and losses

as well as risks and rewards relating to the Business Undertaking shall be deemed to be the profits and losses and risks and rewards of the Purchaser and deemed to have been transferred to the Purchaser with effect from the Closing Date.

- 2.8. During the period, if any, between the Agreement Effective Date and the Closing Date, the Business Undertaking shall be carried on by the Seller in trust for / on behalf of the Purchaser.
- 2.9. With effect from the Agreement Effective Date, until the Closing Date, all taxes and statutory dues of any nature, duties, cess or any other like payment or deductions made by the Seller

### 3. PURCHASE CONSIDERATION

- 3.1. The consideration for the sale and transfer of the Business Undertaking on a going concern basis in accordance with this Agreement by the Purchaser to the Seller shall be a value of Rs \_\_\_\_\_ ("Purchase Consideration") and shall be paid in accordance with Article 3.3 below.
- 3.2. The Purchase Consideration has been agreed between the Parties based on a valuation report dated of an independent valuer.
- 3.3. On the Closing Date the Purchaser shall issue \_\_\_\_\_ Redeemable Preference Shares free and clear from all encumbrances and valued at the Purchase Consideration on terms set out in Schedule 4 of this Agreement.
- 3.4. The Purchaser will allocate the aforesaid Purchase Consideration on the basis of purchase price allocation.

4. Costs, Expenses and Attorneys' Fees. Each of the parties will bear its own costs, expenses, and attorneys' fees incurred in connection with the [specify, as appropriate: Litigation or Underlying Dispute].

5. Governing Law and Jurisdiction. The laws of the State of \_\_\_\_ [state] shall apply to and control any interpretation, construction, performance or enforcement of

this Agreement. The Parties agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be the \_\_\_\_\_ [the court] and all Parties hereby waive any challenge to personal jurisdiction or venue in that court.

6. Attorneys' Fees and Costs for Breach. The prevailing Party in any action to enforce or interpret this Agreement is entitled to recover from the other Party its reasonable attorneys' fees.
7. Construction. This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one Party.
8. Modification. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any Party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Agreement unless reduced to writing and signed by the Parties hereto or their respective successors or assigns.
9. Severability. The Parties agree that if, for any reason, a provision of this Agreement is held unenforceable by any court of competent jurisdiction, this Agreement shall be automatically conformed to the law, and otherwise this Agreement shall continue in full force and effect.
10. Number. Whenever applicable within this Agreement, the singular shall include the plural and the plural shall include the singular.
11. Headings. The headings of paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

12. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Facsimile signatures shall be accepted the same as an original signature. A photocopy of this Agreement may be used in any action brought to enforce or construe this Agreement.

13. No Waiver. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement shall impair any right, power or remedy which any Party may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any Party be deemed a waiver of any default or breach subsequently arising.