**VIRTUAL INCUBATION AGREEMENT**

This Incubation Agreement (the “Agreement”) is executed at Kanpur, Uttar Pradesh, India on the **………………….** (“Execution Date”)

By and Between

**INDIAN INSTITUTE OF TECHNOLOGY KANPUR**, a research and educational institution of national importance, established under the Institute of Technology Act, 1961, enacted by the Parliament of Republic of India registered under the Societies Registration Act 1860, having its office at P.O. IIT Kanpur, Kalyanpur, Kanpur, U.P.-208016, India, (hereinafter referred to as “IITK”, or the “Incubator” or the “Institute” which term shall unless repugnant to the context include its successor, representatives, administrators and permitted assign) and represented through its authorized signatory **Prof. S. Ganesh, Dean R&D** of the **ONE PART**

**AND**

**…………………………**, a Private limited company incorporated under the provisions of the Companies Act, 2013 with its registered office at ……………………………………….., India (Herein after called as “**I**ncubatee’’ or “the Company” which expression shall include unless it be repugnant to the context or meaning thereof mean and include their successors, representatives, assigns, promoters etc.) and represented through its authorized signatory **……………………** resident of ………………of the **OTHER PART**.

The Incubator and the Incubatee are each a “Party” and collectively the “Parties” and any person that is not a signatory to this Agreement shall be referred to as a “Third Party”

**WHEREAS:**

1. The Incubator (IITK) administers a technology business incubator that provides support for technology – based entrepreneurship. The objective of the Incubator is primarily to promote partnership with new technology entrepreneurs and start-up companies and provide access to industry-specific development resources through its connection to the Institute and Institute’s academic and programmatic resources (the “**Program**”).
2. The Incubator provides Incubation Services (Physical and Virtual) to different start-ups and has established an incubation centre at IITK Campus (“Centre”) with a mission to develop industry in the knowledge and technology based areas and aims at creating a complete and comprehensive ecosystem to promote and nurture innovative enterprises.
3. The Incubatee is engaged in the business of ……………… …………………….
4. The Incubatee wishes to avail the **Virtual Incubation** (as defined hereafter) services provided by the Incubator
5. The Incubator has scrutinized the application made before it by the Incubatee and has confirmed the acceptance of the Incubatee; agreeing to incubate the Company virtually, subject to detailed terms and conditions of this Agreement.
6. Accordingly the Parties have agreed to enter into this Agreement for recording the terms on which the Incubator will provide the Incubation Services (as defined hereafter) to the Incubatee.

**NOW THEREFORE THIS AGREEMENT WITNESSETH that** in consideration of the foregoing, the covenants and conditions herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

1. **INTERPRETATION AND DEFINITIONS**
2. In this Agreement, unless the context requires otherwise, words and expressions beginning with capital letters have the same meaning as defined hereafter. Where the context permits, the singular shall include the plural and the masculine the feminine and neuter and vice versa.
3. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it, for the time being in force.
4. The headings in this Agreement are included for convenience only, and will not affect the construction or interpretation of any provision in this Agreement.
5. “includes” means includes without limitation;
6. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
7. if a word or phrase is defined its other grammatical forms have corresponding meanings;
8. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules;
9. a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Agreement.
	1. **Definitions**
		* “**Articles of Association**” or “**Articles**” shall mean the articles of association of the Company, as amended from time to time.
		* “**Confidential Information**” means and includes, but is not limited to, any non-public information related to business processes, product specifications, software, , raw materials, trade secrets, intellectual property, product samples, inventions, , know-how, , software not yet known to the public, clients or prospective clients, , or any other research, development, operations, , transactions, regulatory affairs, discoveries, inventions, methods, processes, articles, materials, algorithms, formulas, source codes or any part thereof, specifications, designs, drawings, data, strategies, , know-how and ideas, whether tangible or intangible, and including all copies, analyses and other derivatives thereof, company intelligence, consisting of sensitive research of the Parties and any other technical or commercial information, disclosed directly or indirectly, in any form whatsoever (including, but not limited to, disclosure made in writing, oral or in the form of samples, software, programs, drawings or other instruments) by either Party to the other party under this Agreement and shall include information that:
10. Is specifically indicated by either party, either verbally or in writing, as confidential;
11. Is under the circumstances of the disclosure, that are to be treated as confidential; or
12. Created or produced by either party while performing services for the other Party, regardless of the media that contains the information.
13. By its very nature, makes it obvious that it is confidential.

Confidential Information does not include information, which:

1. is generally available to the public at the time of execution of this agreement or its disclosure;
2. becomes known to the public through no fault/wrongful action of either Party in violation of the terms herein;
3. is legally known to the Party receiving the information at the time of its disclosure;
4. is furnished by either of the Parties to third parties without restriction; or
5. is furnished by a Third Party who to the Receiving Party’s knowledge has legally obtained said information and the right to its disclosure;
6. is developed independently by the receiving party and the same can be demonstrated to the satisfaction of the disclosing party.
	* + **“Charted Documents”** of the Company means the Memorandum & Articles of the Company.
		+ “**Equity Shares**” shall mean the ordinary equity shares of the Company, having par value of INR 10/- (Rupees Ten only) per equity shareand having voting rights.3
* “**Fair Market Value**” or “**FMV**” means the value of the Equity Shares in the Company as determined by a Registered Valuer.
* **“Intellectual Property Materials”** shall include all documents, research, articles, blog posts, software, hardware, applications, photographic works, graphic works of any type and materials in any format or medium, and shall include works of tangible or intangible materials, elements, computer and mobile applications, software, any works of authorships, texts, designs, audio visual works, drawings, creative works, artwork, etc. which are created or developed by the Parties independently, to which the other Party hereto had access in pursuance of its obligations under this Agreement.
* **“Intellectual Property Rights”** shall include but shall not be limited to patents, trademarks, service marks, domain names, geographical indications, designs, copyrights, database rights, logos, brand, trade names, and any other similar right recognized from time to time, whether registered or not, in the Intellectual Property Materials and shall include all applications and rights to apply for the registration of the same worldwide, together with all rights of action in relation to the infringement of any of the rights above;
* “**Law**” or “**Laws**” shall mean and include all applicable statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority, tribunal, board, court or stock exchanges on which the Equity Securities may be listed
* “**Memorandum of Association**” or “**Memorandum**” shall mean the memorandum of association of the Company, as amended from time to time.
* “**Promoters**” shall mean the Persons identified as the promoters and whose names and particulars are listed in Schedule – “5” (Details of Promoters), which expression shall, unless the context requires otherwise, mean and include their respective heirs, successors and permitted assigns.
	+ - **“Virtual incubation”** shall mean off-campus incubation support, wherein the incubatee shall not be physically housed in the **Centre**, but shall operate from outside the IITK campus
1. **OBJECTIVES**
	1. The Incubator agrees to incubate the Company virtually, whereby The purpose (“Purpose”) of Virtual Incubation Unit will be to:
2. Promote &interact with, and source technology/expertise, whenever possible, from faculty members and research scholars and laboratory infrastructure of the Incubator, subject to the Institute’s norms, policies and terms and conditions as modified time to time.
3. Help in getting other kinds of techno-managerial expertise required that is not available within the Institute.
4. Incubating novel technology and business ideas into viable commercial products or services.
5. Offering professional services, on charges basis.
6. **TENURE OF INCUBATION**
	1. This Agreement shall enter into force upon signature by the legal representatives (or in the case of the Incubator by the duly authorized representative) of both Parties on the Execution Date and shall continue in force until for a period of 1 (one) year (“Incubation Period”), unless it is cancelled or otherwise terminated in accordance with provisions of this Agreement.
	2. This Agreement may be renewed and the Virtual Incubation Period can be extended for a successive 1(one) year terms (each, a “Renewal Term”) by mutual written agreement of the Parties to this Agreement, executed not less than 2 (two) months prior to the expiration of the Incubation Period or any Renewal Term, as applicable, provided that the total Incubation Period or any Renewal Term shall not exceed:
		* 1. 5 (five) years subject to the Incubatee continued engagement in Bio-Technology sector
			2. 3 (three) years subject to the Incubatee engagement in any sector other than Bio-Technology.
7. **SERVICES& FACILITIES**
	1. In consideration of the terms and conditions of this Agreement, and payment of the fees and charges (Virtual Incubation Fees) detailed in clause 6 of this Agreement the Incubator hereby agrees to provide the Virtual Incubation Services and Facilities, more particularly detailed in Schedule- “1” (Services & Facilities) to this Agreement to the Incubatee, subject to the incubation policy, rules and regulations (“Incubator Policies”) of the Incubator in this regard as set forth in Schedule – “2” (Rules & Regulations)(hereinafter referred to as the “Incubation Services”).
8. **REPORTING AND PROGRAM PARTICIPATION**
	1. The Incubatee agrees to participate in the Program. The Program is intended to assist Incubatee in the Incubatee’s creation, evolution and successful implementation of its business plan, as set forth in Schedule – “4” (Business Plan and Milestones) attached hereto ("Business Plan"). Therefore, Incubatee agrees to regular oral and written communication with Incubator as represented by the Head of the Program, and to provide regular written reports as set forth below, and acknowledges that these requirements are reasonably required to support both the mission of the Program and the Incubatee’s achievement of its Business Plan.
	2. The Incubatee agrees to implement its Business Plan, including the milestones set forth therein (“Milestones”). The Incubatee’s progress and participation in the Program will be evaluated in relation to its Business Plan. The Parties agree to work together in good faith to amend Schedule – “4” (Business Plan) from time to time in the event that Incubatee and Incubator mutually agree to changes to the Business Plan.

**6. Consideration**

In consideration of the satisfactory Services& Facilities provided under this Agreement, the Incubatee shall pay/compensate the Incubator in the following manner:

1. **Equity Consideration**
2. Subject to the terms of this Agreement, in addition and also in consideration of the Services & Facilities to be provided by the Incubator, the Incubatee is required to provide, on a dilutable basis, such number of liability free **Equity Shares** as would be equivalent to ……….% (…….. percent) i.e……… (………… Shares) of the Incubatee’s current paid up share capital (“Equity Compensation”) as of the Execution Date.
3. Provided that, for any period of time in which the Incubator owns and/or holds the abovementioned Equity Shares, the Incubatee shall, in the event any of the Promoters of the Incubatee increase or raise their individual shareholding in the Incubatee, whether by issue and/or transfer of any new Equity Securities or otherwise (“Proposed Increase”),grant a right of non-dilution to the Incubator; ensuring no dilution to the Equity Shares owned/held by the Incubator, whereby the Incubatee shall provide to the Incubator a right to subscribe up-to such number of Equity Shares, calculated on a pro-rate basis, so as to correspondingly increase the amount of Equity Shares held by the Incubator so that the Incubator’s proportionate ownership in the Incubatee, on happening of the Proposed Increase, is not decreased.
4. For purposes of implementing the provisions of this clause 6(a), the obligations of the Incubatee for allotment of the Equity Shares (Equity Compensation) are set forth below:
5. Where required, the shareholders of the Company shall, at a duly conveyed general meeting, have approved the issuance of the Equity Shares to the Incubator by way of a special resolution in accordance with the applicable provisions of the Act, the Companies (Share Capital and Debentures) Rules, 2014 and the Companies (Prospectus and Allotment of Securities) Rules, 2014.
6. The Company shall ensure that the authorized capital of the Company is sufficient for the issue and allotment of the Equity Shares to the Incubator or shall, at a duly conveyed general meeting, have approved the increase in the authorized capital accordingly to permit and support the issue and allotment of the Equity Shares by way of an ordinary resolution in accordance with the provisions of Companies Act 2013.
7. The Board shall have passed appropriate resolutions for approving the execution of this Agreement, the Services to be availed off hereunder and the allotment of the Equity Shares to the Incubator in the Company;
8. The Company shall have filed appropriate forms with the Registrar for the giving effect to the resolutions passed under this Clause and shall, where requested for by the Incubator, deliver to the Incubator, within 30 (thirty) days of such request, certified true copies thereof along with the receipt in respect of such forms;
9. The Company shall have sought the written approval of the holders of Equity Shares as may be required under any subsisting investment agreement for the issue of the allotment of the Equity Shares to the Incubator under this Agreement.
10. The Company shall, file, in accordance with the applicable laws in this regard, a return of allotment in Form PAS – 3 on the allotment of the Equity Shares with the Registrar of Companies (“Registrar”) within thirty days of such allotment to the Incubator.
11. Deliver to the Incubator, within 30 days of such a certified true copy of the Form PAS -3 duly filed with the Registrar along with the receipt in respect of such forms.
12. The Company shall deliver to the Incubator duly stamped share certificates in relation to the Equity Shares allotted.
13. The Company shall update the register of member so as to reflect the Incubator as the holder of the Equity Shares allotted to him under this Agreement.
14. All of the obligations set forth above, shall be satisfied no later than 60 (sixty) days from the date of execution of this Agreement or such later date as may be mutually decided between the Parties.
15. **Monthly Charges**
* The Incubate shall pay a notional amount of Rs. ………….. per month for the Virtual Incubation, subject to any modification that may be carried out by the Incubator, as per the Institute’s norms.
* The Incubatee shall pay advance monthly charges for 3 (three) months to the Incubator after execution of this Agreement.
1. **Charges for Physical Infrastructural Services subject to execution of Physical Incubation Agreement.**

As the Virtual Incubation does not provide any Physical Infrastructural Services (Office space etc.), in case if the Incubatee wishes to avail such physical Infrastructural Services, it will request the Incubator for the same and the Incubator, at its sole discretion, may provide such services to the Incubatee, subject to the detailed terms & conditions of the Physical Incubation Agreement, to be executed between both the parties. Consideration for the Physical Infrastructural Services shall be specified in the Physical Incubation Agreement only.

1. **Additional Fees**

The Incubatee shall pay fees for any Additional Services and/or any Additional Fees requested by Incubatee and provided by Incubator in connection with the Program (“Additional Fees”). The Incubator will invoice the Incubatee on a monthly basis for Additional Fees incurred in the prior month.

1. **Taxes**

Unless otherwise specified in the Agreement, the Incubator shall pay all such taxes, duties, fees and other impositions as may be levied under the applicable laws and the Incubatee shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

(The Equity Compensation, the Monthly Charges and the Additional Fees (if any) shall be collectively be referred to as the **“Virtual Incubation Fees”.** The Virtual Incubation Fees is exclusive of the Taxes that may be levied by the Incubator, as per the Indian Laws)

1. **INVOICING**
	1. Unless mutually agreed upon otherwise and subject to the terms and conditions of this Agreement, monthly invoices for the ‘’Virtual Incubation Fees’’ will be issued by the Incubator 3 days in advance of the month in which Virtual Incubation Service and Facilities/Additional Facilities is to be provided and are payable and/or settled by the Incubatee 7 days by wire transfer (national electronic funds transfer (NEFT)/real time gross settlement (RTGS)/cheque/demand draft as per the remittance instructions on the respective monthly invoice. On payments not received by the due date (“Delayed Payment(s)”), the Incubator will assess, until such time as payment in full is made, a late payment charge/penalty of 18% Interest p.a. on such ‘’Delayed Payment(s)’’.
	2. A failure or delay by the Incubator to send an invoice for any month will not relieve the Incubatee either of its obligation to pay for the Service and Facilities/Additional Facilities (if any) on a timely basis or of its obligation to pay late payment charges in the event of Delayed Payment. In addition to any other rights the Incubator may have under this Agreement, at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved), the Incubator may suspend provision of the Services and Facilities/Additional Facilities (if any) on a 15 days’ notice for the Incubatee’s failure to pay any sums (Incubation Charges and/or Additional Fees (if any) due to the Incubator.
	3. The Incubator shall provide to the Incubatee, at the Owners reasonable request, appropriate documentation supporting the incurrence of Additional Fees and other costs, including receipts, time sheets and similar documentation.
2. **REPRESENTATIONS AND WARRANTIES**
	1. Each Party represents to the other Parties hereto that:
		1. Such Party has the full power and authority to enter into, execute and deliver this Agreement and to perform its obligations and the transactions contemplated hereby and, if such Party is not a natural Person, such Party is duly incorporated or organized and validly existing under the Laws of the jurisdiction of its incorporation or organization, having full power and authority to enter into and perform its obligations under this Agreement.
		2. The execution and delivery by such Party of this Agreement and the performance by such Party of its obligations and the transactions contemplated hereunder has been duly authorized by all necessary corporate or other action of such Party.
		3. the execution and delivery of this Agreement by such Party and their promises, agreements or undertakings under this Agreement do not violate any law, rule, regulation or order applicable to such Party or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which such Party is a party or which is applicable to such Party.
	2. The Incubatee represents to the Incubator that:
3. It is a private limited company within the meaning of the Companies Act 2013and is duly organized, legally existing in good standing under the laws of India and has all requisite corporate power and authority to own its assets and carry on its business in the manner in which it is now conducted.
4. It has all governmental licenses, permits and approvals necessary to conduct its business as currently operated, and these permits, licenses and approvals are and will be kept in full force and effect.
5. The copies of the Certificate of Incorporation and the Memorandum and Articles of Association of the Company, which have been certified and initialled by an officer on behalf of the subscriber and furnished to the Incubator, are correct and complete and reflect all amendments made thereto prior to the execution of this Agreement.
6. that none of the directors have incurred disqualification under section 164 of the Companies Act, 2013 in any of the companies in which they hold such directorships, in any of the previous financial years, and that they, at present, stand free from any disqualification from being a director.
7. None of the following have occurred and is subsisting and no notice in connection therewith has been served in relation to the Company:
8. An application to a court for an order, or the making of any order, that it be wound up, that a liquidator, receiver or custodian be appointed or any of its assets or that it be placed in bankruptcy.
9. A resolution for winding up;
10. The convening of a meeting or passing of a resolution to appoint a liquidator.
11. A scheme of arrangement, amalgamation or reconstruction or arrangement or composition with or assignment for the benefit of, all or a class of creditors.
12. The taking of any action to seize, attach, take possession of or appoint a custodian, receiver, liquidator or manager in respect of the Incubatee or any of its shares or property.
13. They are not engaged in or threatened by any litigation whose outcome might materially and adversely affect their financial condition; or
14. Any other event or condition, which could have a material adverse impact on the Incubatee or its ability to fulfill its obligations in terms of this Agreement.
	1. The Incubator represents to the Incubatee that:
15. It has full right, power and authority to enter into this Agreement.
16. accepts and agrees to perform all Services and provide the Facilities required hereunder pursuant to the terms and conditions of this Agreement.
17. has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with its undertaking this relationship with the Incubatee.
18. the performance of the Services and provision of the Facilities called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other intellectual property right of any Third Party.
19. will not use in the performance of its responsibilities under this Agreement any confidential information or trade secrets of any other person or entity and
20. **OBLIGATIONS OF THE INCUBATOR**

**8.1.**The Incubator hereby covenants with the Incubatee that it shall:

1. Perform the Services and provide the Facilities required hereunder to the best of its ability and in accordance with highest accepted industry standards and practices for the Services and transactions of this type, subject to the terms and conditions of this Agreement.

1. That it will abide with the Intellectual Property and confidentiality obligations set forth under both, this Agreement.
2. **OBLIGATIONS OF THE INCUBATEE**

**9.1** The Incubatee hereby covenants with the Incubator that it shall:

1. Shall be entitled to use the Virtual Incubation Services and Facilities in accordance with the Incubation Policies of the Incubator for the Virtual Incubation Period and shall use the same and directions laid down by the Incubator from time to time.
2. Not use the Facilities or the Additional Facilities for any purpose whatsoever save as permitted under this Agreement.
3. shall not alter the Business Plan and the Milestones without the prior written approval of Incubator.
4. Where any of the directors of the Incubatee have incurred disqualification under section 164(2) of the Companies Act, 2013, rectify such disqualification within a period of not more than 60 (sixty) days from their occurrence.
5. Keep the Incubator informed of any amendments and changes to the **Charter Documents** of the Incubatees prior to making such changes or amends.
6. **FINANCIAL AND OPERATIONAL REPORTING**

**10.1Annual Financial Reports**

In addition to the reports in clause 10.1., the Incubatee shall provide to the Head of the Program, on behalf of the Incubator, all compiled, reviewed or audited annual financial statements of the Incubatee, if any; if no such reports are available, the Incubatee shall provide the annual bookkeeper-prepared financial reports including the reports defined in clause 10.1. Annual reports are to be provided within ninety (90) days of the close of the calendar year, or the Incubatee’s financial year.

**10.2Event Based Reportings**

The Incubatee hereby agrees to keep the Incubator informed for following events

* + 1. Change of name of the company
		2. Conversion from Private Limited to Public Limited company
		3. Listing in any recognized stock exchange of India
		4. Any major change in the business plan.
	1. **Milestone Progress Reports**

Together with the annual financial reports and event based reports, the Incubatee shall, every 6 (six) months provide to the Head of the Program, on behalf of the Incubator, a written report that:

1. details the Incubatee’s growth and development;
2. reports the Incubatee’s progress toward achieving its Business Plan and Milestones; and,
3. proposes amendments, if any, to the Business Plan and Milestones. These reports will advise the Incubator on the status of the Incubatee's efforts to achieve the Milestones and its plans for corrective actions for Milestones not achieved. The Incubatee shall also provide a written report on the number of employees and independent contractors engaged by the Incubatee.

The Incubatee shall be required to present its ongoing performance before the Incubator as and when required by the Institute.

1. **CONFIDENTIALITY**
	1. The Parties acknowledge that, in the course of performing this Agreement, they shall acquire and/or develop knowledge, data, documents, processes and other information and materials, concerning the other, and other information pertaining to their business’ and operations and that all such knowledge, information and materials are and shall be their respective trade secrets and Confidential Information.
	2. Each Party shall observe complete discretion with regard to all matters related to the activities of the other Party and each Party will ensure compliance by its employees and agents with the obligations of confidentiality set out in this Clause 11 and assumed by that Party in relation to the other Party.
	3. The Parties expressly acknowledge that all Confidential Information of each Party shall remain its exclusive property and shall be treated by the other Party as confidential. The Parties shall not disclose the terms of this Agreement to a Third Party except as may be required by law. The Parties agree that they shall keep the Confidential Information of the other Party in strict confidence and that they shall take all precautions and use the same degree of care to protect and safeguard such Confidential Information as it uses for its own Confidential Information of like importance.
	4. Either of the Parties may disclose, in confidence, the Confidential Information to its sub-contractors, affiliates, representatives, employees, agents, Advisors, legal advisors or other similar persons, who are directly or indirectly acting for, on behalf of either parties, or other similar persons strictly on a need to know basis.
	5. The Receiving Party undertakes that such third persons to whom it discloses the Disclosing Party’s or its affiliate’s Confidential Information to shall be subjected to confidentiality obligations no less restrictive than those contained in this Agreement.
	6. Any disclosure of Confidential Information to persons, other than those who need to know, shall be done only with the prior written consent of the Disclosing Party. In the event that the Disclosing Party gives such consent, the Receiving Party undertakes that such individuals shall be subjected to the same confidentiality obligations as contained in this Agreement, if not more.
	7. The Receiving Party in addition to the clause 12.4& 12.5 shall hereby undertake to use the Confidential Information solely for the purposes for which it was disclosed and to use the same for such purposes only during the subsistence of the Agreement in the manner as may be specified by the Disclosing Party.
	8. The Receiving Party may disclose any of the Confidential Information to any governmental body having jurisdiction over this Agreement or in response to a valid order of a court or if such disclosure is otherwise required by law provided that the Receiving Party, has first given prior written notice to the Disclosing Party and has made all reasonable efforts to protect the Confidential Information in connection with such disclosure.
	9. The Incubator shall not be entitled to publish, reproduce or copy any of the Incubatee’s or its affiliates’ Confidential Information, unless and to the limited extent it is necessary for purposes of discharging its obligations under this Agreement with the Incubatee or for any other purpose as may be expressly permitted to in writing by Incubatee.
	10. The obligations set out in this clause 12 shall survive the termination, cancellation or expiry of this Agreement.
2. **INTELLECTUAL PROPERTY**
	1. The Parties shall neither infringe, copy, imitate alter or otherwise interfere nor shall have or claim any right or ownership or goodwill in any manner whatsoever with the trademarks, trade name, copyright, designs, colours, artistic works, labels or any other Intellectual Property Materials belonging to the other Party.
	2. The parties shall have no rights or interests in any of the Intellectual Property Materials of the other party relating to the Product. Either Party shall promptly notify the other Party of any infringement or attempted infringement of such trademarks or other proprietary rights of which the other party has knowledge.
	3. Either Party shall not use the name of the other party for media advertising, publicity or any document without the prior written consent of the other Party. Provided that, any such written consent, if provided by the other Party is deemed to have been withdrawn and shall stand withdrawn upon the termination of this Agreement.
	4. All Intellectual Property Rights to the Intellectual Property Materials belonging to each of the Parties and all proprietary information shall at all times remain the exclusive property of the other Party.
	5. The Incubatee shall own all Intellectual Property Rights arising out of the activities performed under this Agreement as may be granted by law, as far as no infringement of Third Party rights occurs.
3. **NOTICES**
	1. All notices shall be given in writing in English and shall be deemed to have been sufficiently served if delivered personally or sent by registered post or courier, email or fax at the following address:

To the Incubator:

Name: **Indian Institute of Technology Kanpur,**

Address: I.I.T Kanpur, Kalyanpur,

Kanpur, Uttar Pradesh – 208016,

India

Attn: Dean R&D

E-mail: dord@iitk.ac.in, siic@iitk.ac.in

To the Incubatee:

Name: **………………….**

Address: ………………….

………………….

**13.2**Any notice shall be deemed to have been received: (a) if delivered personally or by registered mail, upon receipt; or (b) if sent by email or fax, upon confirmation of successful transmission.

1. **PUBLICITY AND VISUAL IDENTITY**

**14.1Publicity**

1. The Incubatee shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the Incubator’s advertising, Intellectual Property Materials and news bulletins, which are intended by the Incubatee for the press, internet/web-sites or television, which refer to *the Incubator, the Incubator´s Affiliates* or any aspect of the Incubator’s activities, or permit any Third Party to do so, without the prior written consent of the Incubator’s contractual representative or his duly authorised representative.
2. The Incubator shall not produce or disseminate any form of communication material, press releases or other publicity documents, including the Incubatee’s advertising, intellectual Property Materials and news bulletins, which are intended by the Incubator for the press, internet/web-sites or television, which refer to the Incubatee or any aspect of the Incubatee’s activities, or permit any Third Party to do so, without the prior written consent of the Incubatee’s contractual representative or his duly authorised representative.
3. During the term of this Agreement, the Incubatee agrees to identify and acknowledge and where requested by the Incubator, display the Incubator’s logo, Intellectual Property Materials and other agreed-upon identifying information on the Incubatee’s marketing, advertising, and promotional media, in the manner (placement, form, content, etc.) as may be reasonably and mutually determined by the Parties to this Agreement.

**14.2Visual Identity of the Incubatee**

1. The Incubatee shall not use the Intellectual Property Material or any other logo or trademark which may be owned or used by the Incubator for any purpose whatsoever without prior approval of the Incubator.
2. The Incubatee shall have to execute separate agreement for or Intellectual Property/know-how owned by the Incubator, as and when a request is made and agreed upon by it by the Incubatee.
3. not do or omit to do any act which will prejudice the association between the Incubator and the Incubatee or will adversely affect the reputation and image of the Incubator;
4. not engage in any act or conduct or make any statements which hurt the reputation of the Incubator.
5. **TERMINATION**
	1. **By Incubator**

The Incubator may immediately terminate this Agreement if it determines in its sole discretion that:

1. The Incubatee violates any of the term and conditions of this Agreement.
2. Termination of the Agreement is to safeguard the interest and reputation of the Institute.
3. Termination of the Agreement is relevant to safeguard the interest of the Public at large.
4. The Incubatee is not able to perform the business as per the Business plan submitted.
5. The Incubatee violates any Statue, rules and regulations of the Institute.
6. The Incubate fails to pay the Virtual Incubation Fees with in the due date continuously for two months or perform any material obligations under or otherwise materially breached this Agreement and fails to remedy such breach within fifteen (15) calendar days of receipt of written notice from the Incubator;
7. There persists any other reason for which the Incubator may find it necessary for the termination of the Agreement.
8. the conduct or activities of the Incubatee’s employees, representatives or invitees materially adversely affects the ability of other Program clients to carry on their businesses, and such conduct is not remedied within ten (10) calendar days of receipt of written notice from the Incubator; (iii)
9. Commits any fraud, theft or any other offence punishable under law; or

**Notwithstanding anything written elsewhere, Incubator's decision in connection with the termination of this Agreement, shall be final and shall not be disputed by the Incubatee.**

* 1. **By Incubatee**

The Incubatee may immediately terminate this Agreement if it determines in its sole discretion that upon the occurrence of any one or more of the following events specified below:

* 1. The Incubator fails to meet the exigencies of Incubatee related to the Virtual Incubation Services mentioned herein in this Agreement, or performs its Services and provides the Facilities/Additional Facilities in such a way that does not fit with the requirement of the Incubatee for its business.
	2. **Disposal of Equity Shares on termination of the Agreement.**
1. Upon termination of this Agreement as per Clause 15.1, the Incubator may offer for sale, the equity Shares held by him to the Promoters of the Incubatee in proportion of their shareholding as on the date of the event, at a price that is higher of the face value and FMV (as calculated by the Registered Valuer) of such shares or at such other price as may be mutually decided by the Parties.
2. For the avoidance of any doubt, the Incubator shall have the full right, title and interest in the equity Shares to his account
	1. **Exit Of The Incubatee**

The Agreement shall be automatically terminated with the Incubatee required to leave the Program under the following circumstances.

1. When the Incubatee enters in an acquisition, merger or amalgamation deal or reorganization deal resulting in a substantial change in the profile of the Incubatee, its promoters, directors, shareholders, products or business plan.
2. Incubatee plans for a public issue in the opinion of the Incubator on case to case basis.
3. Any change of more than 50% of equity ownership unless approved by the Incubator, in the opinion of the Incubator on case to case basis.
	1. **Mutual Agreement**
4. This Agreement may be terminated by mutual consent of the Parties, which consent shall not be unreasonably withheld, upon thirty (30) calendar days’ written notice and subject to any terms herein which survive termination.
5. This Agreement may be immediately terminated by either Party with notice in writing to the other, if:
6. either Party hereto shall be or become bankrupt or insolvent or shall have a liquidator or receiver appointed over it of all or any part of its assets or suffer any analogous process under law; or
7. any act of government, law, regulation or code of practice, or its interpretation or b) application, shall have the effect either of modifying or rendering ineffective or unenforceable (for illegality or otherwise) in whole or in part any of the terms or provisions of this Agreement.
8. **EFFECT OF EXPIRATION OR TERMINATION**
	1. Upon expiration/termination of this Agreement, Parties are obliged to continuing with their respective rights and obligations during the notice period of termination.
	2. Upon termination or expiry of this Agreement, the Parties shall return all such Intellectual Property Materials, Confidential Information and notes/memoranda and any copies thereof to the other party that it may have obtained during the course of performance of its obligations hereunder.
	3. Immediately upon termination or expiration of this Agreement, the Parties shall cease to use the Intellectual Property Materials and Confidential Information of the other party, including but not limited to the name of the Parties and cease to represent itself on behalf of the Parties.
	4. Expiry / termination of this Agreement howsoever occasioned shall be without prejudice to the rights and obligations incurred prior to the date of such expiry or termination and accounts between the Parties shall be promptly settled.
	5. Notwithstanding the reason for termination, both the Parties shall be obligated to complete all the pending obligations as may have accrued as on the date of termination notice and/ or date of expiry of this Agreement.
9. **EXIT**

The Incubator shall be entitled to participate in any initial public offering undertaken by the Incubatee. Subject to the approval of the Incubatee, The Incubator shall have the right to exit from the Incubatee in any round of fund raising and equity investment undertaken by the Incubatee on the same terms or at such varied terms as agreed between the Parties. Alternatively, the Incubatee shall have the option to provide an exit for all the shares held by the Incubator in the Incubatee through a sale to a strategic or financial investor *or* buy-back the shares held by the Incubator at such price as mutually decided between the Parties and permissible under applicable Law, not less than the FMV as applicable at the time.

1. **Assignment**

Neither Party shall assign its rights and obligations under this Agreement, in whole or in part, to any Third Party without the prior written consent of the other Party.

* 1. **Waiver**

The failure of either Party to enforce (or delay in enforcing) at any time for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of such terms or conditions or of the right of such Party at any time subsequently to enforce all terms and conditions of this Agreement. Neither Party will be deemed to waive any right under this Agreement unless it does so in writing.

* 1. **Severability**

If any provision of this Agreement shall be determined invalid, illegal or otherwise unenforceable then that provision shall be severed and deleted from this Agreement and this agreement shall be interpreted and construed as if such invalid, illegal or unenforceable provision had never been contained therein. The remaining provisions hereof shall survive and remain in full force and effect and continue to be binding and shall not be affected except insofar as is necessary to make sense of this Agreement.

* 1. **Variation**

For any change, variation or modification of the terms of this Agreement to be binding upon both Parties, the same must be in writing and signed by both Parties.

* 1. **Survival**

The terms and provisions of this Agreement which by their nature and content are intended to survive the performance hereof by any or all Parties hereto shall so survive any termination of this Agreement.

* 1. **Partnership**

Nothing in this Agreement will create a partnership, association of persons, agency or joint venture between the Incubator and the Incubatee and neither Party may enter into any contract or obligation which purports to bind the other.

* 1. **Governing Law**

 This Agreement shall be governed in all respects by the laws of the Republic of India.

* 1. **Dispute Resolution; Jurisdiction**
1. If any dispute arises between the Parties during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding a question, including the question as to whether the termination of this Agreement by any Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably.
2. In case of such failure, any of the Parties to the dispute shall be entitled to refer the dispute to a sole arbitrator, to be appointed by the Incubator.
3. The Arbitration proceedings shall be governed by the Indian Arbitration Act, 1996. The place of arbitration shall be exclusively Kanpur, U.P. and the cost of arbitration shall be shared equally by the parties. The arbitration proceedings shall be conducted in English and the arbitral award shall also be stated in English.
4. The Parties agree that the arbitration award shall be final and binding on the Parties.
5. **Counterparts**

This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

1. **COSTS AND EXPENSES**

 The Parties bear their own costs and expenses in connection with the formation of this Agreement.

1. **SIGNATURE**

This Agreement has been drawn up in duplicate, one original for each Party.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Signed: Signed:

For and on behalf of: For and on behalf of:

**Indian Institute of Technology Kanpur Flower cycling Private Kanpur**

Name………………………… Name

Designation:- Dean R&D Designation:- Director

Place of signing: Kanpur Place of signing: Kanpur

Witness: Witness:

1) 1)

2) 2)

 **SCHEDULE – “1”**

**SERVICES AND FACILTIES**

**Scope of Services and facilities**

* 1. **Common infrastructure**

The Incubator provides a common pool of hard and soft infrastructure to be shared by all the Incubatees. Certain resources can be provided on charge basis by the Incubator, on request of the Incubatee and subject to the rules and regulations framed by the Incubator in this regards as applicable from time to time. For availing physical space and other physical infrastructural services of the Incubator, the Incubatee shall have to enter into a separate physical incubation agreement with the Incubator and shall have to abide by the terms and conditions of the said physical incubation agreement.

* 1. **Other Infrastructure**

The Incubator will facilitate access to the Incubator’s infrastructure on request of the Incubatee, as per the regulations made by the Incubator in this regard. The Facilities will remain under the overall control of the Incubator and will be available to the Incubatee only for specific activities. The Incubatee will be required to abide by the rules and regulations, policies and norms of the Incubator, that may be modified by the Institute, time to time.

* 1. **Other Services**

The Incubation Services will also include:-

1. Pool of mentors, experts in technology, legal, financial and related matters (only advisory), either with or without consideration
2. Trainings and workshops
3. Organising events to help incubatee in networking and showcasing their technologies
4. Meetings with visitors of the Incubator (such as alumni, VCs, industry professionals etc.)
5. In addition, the Incubator will also build up information and knowledge pool to be useful generically for the Incubatee.
6. Other benefits of the Eco System

**SCHEDULE – “2”**

**RULES AND REGULATIONS**

1. **Type of entity, eligible for Incubation**

The Incubatee has to be a Private Limited Company registered under Companies Act, 2013.

1. **Proven track record of the promoters and directors of the Incubatee**

The Incubatee, including its directors/Promoters must

1. Not be disqualified under Companies Act 2013 or any other laws of India.
2. Not have committed any default with any financial Institution, Non-Banking Financial Corporation, micro financial agency, government agency, other incubation centres or any other similar institution etc.
3. Not have committed any criminal offence or must not be under any criminal prosecution under any laws of India.
4. **Reporting requirements:-**

The Incubatee shall be required to deliver the items mentioned in the Agreement as part of the Incubation in accordance with the provisions of the Agreement.

1. The Incubatee is required to abide by the laws of India and will obtain all the trade licenses, permits and sanctions independently, wherever required, as prescribed under Indian Laws in order to run the business.
2. The Incubatee shall undertake research & development, design/testing, prototype development from Incubation premises but shall not carry out warehousing, storage, marketing sales or other commercial routine activity including fund raising.
3. Incubatee is required to keep the Incubator informed about any visitor from abroad, and/or foreign partner, and abide by the rules/procedures in vogue of the Incubator.
4. On issues wherein no rules and/or byelaws are clearly defined, the Incubator rules and/or byelaws shall prevail.
5. Access to the Incubation Unit as provided by the Incubator to the Incubatee as part of the incubation services does not constitute an agreement of lease. The right of the Incubatee is limited to the use of the premises during the Incubation Period only.
6. **No Guarantee of Results**

The Incubator does not undertake responsibility, but shall endeavor for:

1. Ensuring success of the Incubatee, its products/ process/ services or marketability.
2. Ensuring quality of support and services provided by the Incubator to the complete satisfaction of the Incubatee or their promoters/ founders.
3. Ensuring quality of services of the consultants engaged by the Incubatee through the Incubator’s network. Incubatee will have to apply its judgment before getting in to a relationship with them.
4. The Incubatee agre e that the Incubator, its Affiliates or their employees shall not be held liable for any reason on account of the above.

(While the Incubator will make every earnest effort to provide the Incubatee with the Incubation Services (Virtual or Physical) as described in this Agreement, the same cannot be made legally binding on IITK.)

**SCHEDULE – “3”**

**BUSINESS PLAN AND MILESTONES**

**SCHEDULE – “4”**

**DETAILS OF SHAREHOLDERS/ PROMOTERS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr.No.** | **Name of shareholder** | **Category** | **No of shares held** |
|  |  |  |  |
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