



## DSA Agreement

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Dated \_\_\_\_\_, 2021

BY AND AMONGST

Pinestraw Digital India Pvt Ltd.

(“”)

And

\_\_\_\_\_  
 (“DSA”)

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This Agreement (the "Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_, 201\_

Between

Pinestraw Digital India Pvt Ltd, a company incorporated in India under the provisions of the Indian Companies Act, 1956 and having its registered office at Crimson Dale Housing society, F401 Dhankude Vaste, Baner Pune Maharashtra - 411 045. hereinafter referred to as "PDIPL", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the One Part;

And

M/s \_\_\_\_\_ having their office at \_\_\_\_\_ (hereinafter referred to as the "DSA"), which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its partner or partners for the time being, successors and assigns) of the other Part.

PDIPL and the DSA are hereinafter individually referred to as "Party" and collectively as "Parties".

WHEREAS:

- (A) PDIPL is a Private limited company incorporated under the Companies Act, 1956 which is engaged in the business of establishing necessary infrastructure and provisions of various information technology, web and telecommunications-enabled services including digital services, IOT solutions, and other value added services in India.
- (B) The DSA is a \_\_\_\_\_ (nature of entity) which is engaged in the business of \_\_\_\_\_ (nature of business).
- (C) PDIPL desires to appoint and engage the DSA for the purposes of direct sales of its products through sales agents and indirect channels and services as provided under this Agreement.

**NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS AND BASED UPON THE MUTUAL REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In this Agreement (including in the recitals hereof), except to the extent that the context otherwise requires, the capitalized terms used herein shall have the meanings assigned to them hereunder.

**“Agreement”** means this DSA Agreement between PDIPL and \_\_\_\_\_ (*name of CP*) as the DSA as amended, supplemented or replaced or otherwise modified from time to time, together with the recitals, schedules and annexure attached hereto;

**“Applicable Law”** as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, all domestic (Indian) (including, but not limited to, any Environmental Laws), treaties, ordinances, judgments, decrees, injunctions, writs, orders and stipulations of any court, arbitrator or governmental agency or authority and statutes, rules, regulations, orders and interpretations thereof of any federal, state, provincial, county, municipal, regional, environmental or other Governmental Entity, instrumentality, agency, authority, court or other body (i) applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject or (ii) having jurisdiction over all or any part of activities to be performed pursuant to the terms of the Documents by the DSA.;

**“Business Day”** means a day other than a Sunday or any day on which banks are not open for business in India;

**“Confidential Information”** means any and all confidential or proprietary information and materials, as well as all trade secrets, relating to the business, products, affairs, performance and finances, belonging to PDIPL or to any of its affiliates or to their customers, investors, lenders or other third parties who furnished such information, materials, and/or trade secrets to such parties with expectations of confidentiality, and includes without limitation and regardless of whether such information or materials are expressly identified as confidential or proprietary, whether or not stored in any medium;

**“Control”** together with its grammatical variations when used with respect to any person, means and includes the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of the vote-carrying securities, by control over the board of directors or by contract or otherwise;

**“Commission”** has the meaning as defined under Clause 4.2 of this Agreement.

**“Force Majeure”** has the meaning as defined under Clause 20.11 of this Agreement;

**“Government Agencies”** means (a) Department of Telecommunication, Ministry of Communications and Information Technology and Telecom Regulatory Authority of India, including but not limited to any other

national, state, municipal or local government or any political subdivision thereof, (b) administrative tribunal, (c) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction, or (d) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction;

**“Intellectual Property Rights”** means patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, secret processes, inventions, trade or business names, domain names and any other intellectual property rights currently existing or created in the future in any jurisdiction together with the right to sue for and recover damages or other relief in respect of infringements of any of them;

**“Security Deposit”** has the meaning as defined in Clause 4.1 of this Agreement;

**“Role”** means **“Schedule A - DSA General Role and Responsibilities”** as attached to this Agreement;

**“Scope”** means **“Schedule B - DSA Scope of Business”** as attached to this Agreement;

**“Territory”** means **Schedule C - Geographical Territory Assignment for Business Operation”** as attached to this Agreement;

**“Term”** has the meaning as defined in Clause 6 of this agreement;

**“Taxes”** means any Indian taxes including but not limited to excise duties, custom duties, value added tax, income tax, service tax, sales tax, local taxes, cess and any impost or surcharge of like nature, or any tax by whatever name called and levied (whether Central, State or local) on the services, incorporated in and forming part of the Agreement charged, levied or imposed by any Government instrumentality, presently or in future.

## **1.2. Interpretation**

In this Agreement, unless the context otherwise requires,:

- 1.2.1. all words defined or referred to herein will have the meaning as defined in Clause 1.1 or as defined under the General Terms and Conditions as provided by PDIPL
- 1.2.2. Heading and bold typeface are only for convenience and shall be ignored for the purpose of interpretation.
- 1.2.3. a reference in this Agreement to a document (including this Agreement) includes any amendment or replacement of it;

- 1.2.4. a reference to a clause, annexure or schedule in this Agreement is a reference to a Clause in or Annexure or Schedule to this Agreement;
- 1.2.5. the Schedules annexed hereto constitute an integral part of this Agreement;
- 1.2.6. words using the singular or plural also include the plural or singular, respectively;
- 1.2.7. words of any gender are deemed to include the other genders;
- 1.2.8. the terms "hereof", "herein", "hereby", "hereto" and derivative or similar words refer to this entire Agreement or specified sections of this Agreement, as the case may be;
- 1.2.9. reference to the word "include", "including", "for example", "such as" are not used as, nor it is to be interpreted as, a word of limitation and when introducing an example, do not limit the meaning of the words to which the example relates, to that example or examples of a similar kind;
- 1.2.10. law means common law, principles of equity, and laws made by parliament and regulations and other instruments under them, and considerations of any of them;
- 1.2.11. reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation rules and regulation framed thereunder made from time to time under that provision;
- 1.2.12. time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- 1.2.13. if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 1.2.14. a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- 1.2.15. if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- 1.2.16. any reference to time is a reference to [Indian Standard Time]; and
- 1.2.17. reference to anything including any amount is a reference to the whole and each part of it.

## 2. APPOINTMENT OF DSA:

2.1 PD IPL hereby appoints \_\_\_ the DSA as its sales partner on the terms and conditions provided under Schedules to this Agreement with effect from this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Date of Appointment"). For the avoidance of doubt, PD IPL does not grant the DSA the right to enter into contracts on PD IPL's behalf, and neither party may bind or pledge the credit of each other in any way.

2.2 Nothing contained in this Agreement shall be deemed to limit PDIPL's ability to directly sell and market its products and services or through other DSAs, affiliates, distributors, or dealers, or through any other channel of distribution at any time in any area, as PDIPL may determine in its sole discretion.

### **3. SCOPE OF WORK:**

#### **3.1 DSA's Role and Responsibilities:**

The DSA undertakes to carry out the activities for the acquisition, growth of the business of PDIPL and will at all times ensure strict process compliance, in accordance with the general role and responsibilities as outlined in Role, in its present form and as amended from time to time and will be specifically responsible for ensuring the offering of services by PDIPL to its retailers. The DSA also undertakes to perform all his duties in the best interest of PDIPL and not to do anything which PDIPL acting reasonably considers to be prejudicial to its goodwill and commercial interests.

#### **3.2 Rights of the DSA:**

The DSA will be allowed to offer, on a non-exclusive basis, the products and services of PDIPL to its retailers, as the representative of PDIPL, as per the scope of business defined in Scope of this Agreement.

#### **3.3 DSA's Territory for Business Operation:**

The DSA will be allowed to conduct business, on a non-exclusive basis, as a representative of PDIPL in the geographical territory mutually agreed, and as provided in Territory of this Agreement.

### **4. PAYMENT TERMS:**

#### **4.1 Payment by DSA:**

The DSA will be responsible, subject to the terms of this Agreement, for offering and selling PDIPL's Products and Services and collecting the initial payments for services from the customers and remitting them to PDIPL on a regular basis at such intervals as may be required by PDIPL.

The DSA's appointment will be considered valid only upon execution of this Agreement and upon realization of an interest-free, refundable initial security deposit of Rs. ( ) ("Security Deposit") in full by PDIPL, simultaneously with the execution of this Agreement or no later than 10 Business Days from the date of execution of this Agreement failing which this Agreement shall automatically terminate.

#### **4.2 DSA's Commission:**

The DSA shall be entitled to Commission for executing the sale transaction as a sales partner of PDIPL, as per the current Commission structure, as defined by PDIPL in the Schedule A attached herewith, on a monthly basis and which will be liable for deduction of tax at source, as per applicable laws.

DSA understands and agrees that:

- a) The Commission will be variable in line with the market forces.
- b) PDIPL will endeavor to keep the Commission structure competitive.
- c) PDIPL shall effect the changes in Commission structure on a monthly basis, and promptly inform the DSA in the event of any such change.
- d) Net payable Commission after due adjustments including Claw-Back, if any, will be payable to the DSA on a monthly basis.
- e) Commission shall only become due and payable to the DSA on the last day of the month, upon receipt by PDIPL of the payment for the relevant products or services in cleared funds. Where the relevant sale contract provides for payment of the price by installments, a proportionate part of the Commission shall become due and payable to the DSA as soon as such installments are so received by PDIPL, that proportion being equivalent to the proportion which such installments bear to the total contract price.

The DSA shall formally lodge with PDIPL, any dispute regarding the amount of Commission. PDIPL, after validating the correctness of the claim, shall make adjustments to the extent of validated amount of dispute in the following Commission payment cycle. If any sales contracts concluded by the DSA are cancelled or terminated in the first ninety (90) days of the term of such contract and the DSA has already been paid the relevant Commission for such Products or Services, then PDIPL shall be entitled to deduct such amount of Commission paid from the DSA's next month's invoice and if there is no subsequent invoice due, then the DSA shall repay PDIPL such Commission within 30 days of such rejection.

**4.3 Revision of Security Deposit:**

The Security Deposit may be revised by PDIPL at its sole discretion periodically, based on the business situation, credit-worthiness and performance of the DSA; and the DSA will be required to maintain the Security Deposit with PDIPL to such revised extent at all times. The Security Deposit shall be refundable to the DSA without interest after expiry of the Contract Period as per Clause 6(six) below or premature termination of this Agreement as per Clause 19 (nineteen) as mentioned herein below, after adjusting any outstanding dues payable by the DSA to PDIPL, if any.

**5. PENALTY FOR DELAYED PAYMENT/NON PAYMENT:**

The DSA will be responsible for ensuring payment of any dues to PDIPL in time, failing which a penalty shall be levied by PDIPL, at an interest rate of 2 % per month of the outstanding amount. The penalty amount will be deducted from either the subsequent commission payable or the refundable Security Deposit. PDIPL reserves the right to invoke or to forego the abovementioned penalty at its sole discretion. PDIPL will

provide official receipt of payment for the payment received from the DSA during the normal course of business transactions. The mode of payment transaction will be mutually agreed by the DSA and PDIPL.

**6. TERM:**

Unless terminated earlier, this Agreement shall remain valid and binding for a period of 1(one) year (hereinafter referred to as the “**Contract Period**”) from the Date of Appointment, i.e. un PDIPL \_\_\_\_\_ day of \_\_\_\_\_.(date as 1 year from the date of agreement).

**7. RENEWAL:**

This Agreement shall stand automatically renewed for further period of one year, unless a written notice of non-renewal/termination is given by one of the Parties, no later than 60 (sixty) days prior to the expiration of the Contract Period.

**8. SUPPORT FROM PDIPL TO THE DSA:**

PDIPL undertakes and agrees with the DSA during the Contract Period to provide:

- a) PDIPL’s goodwill, and
- b) necessary training to staff in order to enhance their capability,
- c) necessary marketing and sales support,
- d) necessary relationship management support, and
- e) full technical support from PDIPL to enable the DSA to carry out business effectively.
- f) PDIPL, shall at its own discretion engage in marketing initiatives for its products from time to time, will or may continue to undertake all types of Above The Line (‘ATL’) and Below The Line (‘BTL’) marketing activities in the Territory, at all times at its discretion, during the Term of this Agreement and the DSA / Partner shall not engage in any kind of ATL or BTL marketing activity, on its own or using a third party, at any point of time without the prior permission of PDIPL in writing. For the purpose of this Agreement, ATL marketing activities shall mean and include all marketing communication, whether national, regional or local, using television, radio, print, digital or outdoor medium and BTL marketing activities shall mean and include all marketing communication, whether regional or local, using leaflets, newspaper inserts, banners, posters, danglers, bunting, any type of visual merchandising, event participation etc..

**9. ABIDING TO SERVICE LEVEL AGREEMENTS AND PENALTY ON ACCOUNT OF NON-COMPLIANCE:**

All services rendered by the DSA as per the Scope of Business shall be subject to the agreed Service Level Agreements and quality of performance. Non-fulfillment of any service or non-conformance to quality of performance to the satisfaction of PDIPL or the customer, or fulfillment of service not within the agreed Service Level Agreements ,for reasons wherein the DSA is proved to be responsible for the same, will attract a penalty as defined by PDIPL. The penalty amount will be adjusted against the Commissions or Security Deposit, overshooting which the remaining penalty amount will become an outstanding due to PDIPL. The right to invoke or to forego the penalty to the DSA is exclusively reserved by PDIPL.

**10. USE OF PDIPL'S BRAND NAME:**

The DSA agrees to use the brand name of PDIPL or its nominated sub-brand in accordance with the brand guidelines issued and revised by PDIPL from time to time. Any non-compliance with the rules stated under the said Guidelines, might lead to PDIPL considering premature termination of this Agreement.

- i) DSA / Partner shall not be allowed to use any PDIPL logo, brand name, tag line, or any registered or unregistered trademarks of PDIPL, domain name, for any purpose whatsoever, without prior and specific permission from PDIPL.
- ii) DSA / Partner shall be strictly prohibited, directly or indirectly, from conducting search engine marketing or from creating or using any websites, micro sites, fan pages, blogs, social media platforms, consumer forums etc. for any kind of promotional or responsive activity or doing any kind of online reputation management of PDIPL brand without the prior consent in writing from PDIPL.
- iii) DSA / Partner shall be strictly prohibited from making any announcements, giving any interviews, press releases or creating or using any print, digital or television media platforms for any kind of publicity or promotion of PDIPL's business or his relationship with PDIPL.
- iv) PDIPL, shall at its own discretion engage in marketing initiatives for its products from time to time, will or may continue to undertake all types of Above The Line ('ATL') and Below The Line ('BTL') marketing activities in the Territory, at all times at its discretion, during the Term of this Agreement and the DSA / Partner shall not engage in any kind of ATL or BTL marketing activity, on its own or using a third party, at any point of time without the prior permission of PDIPL in writing. For the purpose of this Agreement, ATL marketing activities shall mean and include all marketing communication, whether national, regional or local, using television, radio, print, digital or outdoor medium and BTL marketing activities shall mean and include all marketing communication, whether regional or local, using leaflets, newspaper inserts, banners, posters, danglers, bunting, any type of visual merchandising, event participation etc..
- v) In case of any breach, by the Partner, of any provisions of any of the above sub clauses (i) to (iv), notwithstanding anything contained elsewhere in this Agreement, PDIPL shall have a right to terminate this Agreement forthwith, in addition to its right to claim damages or any other legal remedy including injunction.

**11. SAFEGUARDING PDIPL'S INTERESTS AT ALL TIMES:**

The DSA, as a representative of PDIPL to the customers, prospective customers, other business community, Governmental Agency, and society at large, will endeavor to safeguard PDIPL's interest in all respects in conformity with fair, legal and honest business practices; and in a manner such that PDIPL's reputation is upheld all the time. In compliance with regulatory guidelines, the DSA will ensure collection and submission of all statutory supporting documents along with customer's application forms to PDIPL in a timely manner.

**12. REFRAIN FROM MAKING UNREASONABLE COMMITMENTS:**

PD IPL will not be responsible to fulfill any unreasonable commitments made by the DSA to the customers or prospective customers on behalf of PD IPL beyond the specified Scope as specified under this Agreement and the Schedules attached hereto and Service Level Agreements, which cannot be fulfilled by PD IPL. Such obligations will have to be met by the DSA at their own cost and risk; or PD IPL may meet such obligations to uphold its reputation and shall have a right to recover the costs from the DSA.

**13. LEGALITY OF DSA'S BUSINESS SET UP:**

The DSA understands and agrees that he shall be doing the business covered under this agreement at his own cost and risk. It will be the responsibility of the DSA to obtain any statutory licenses, permits, commercial clearances and ensure necessary registrations that need to be done for conducting his business. PD IPL will not be held liable in any manner for any penal action invoked by the competent authority on account of DSA's non-compliance. PD IPL, on its part, will ensure that the products and services it has introduced or will introduce in future have necessary statutory or regulatory approvals.

**14. EXCLUSIVITY:**

The DSA hereby agrees that under no circumstances can it offer to its customers the products and services of any direct or indirect competitor of PD IPL, similar to those offered by PD IPL. However, the DSA has a liberty to sell products and services of other companies or service providers, which are of non-overlapping nature to the products and services offered by PD IPL.

**15. CONFIDENTIALITY OF INFORMATION AND PD IPL'S INTELLECTUAL PROPERTY RIGHTS:**

The DSA understands and agrees that the customer and business information acquired by him or shared by PD IPL is the intellectual property of PD IPL, and is confidential. DSA undertakes that it shall, at all times keep confidential, (and shall use their best endeavors to procure that its respective employees and agents keep confidential) any Confidential Information which is in their possession or which they may acquire in relation to the other Party or its Affiliates and shall not use or disclose such information except with the consent of the other Party or except as required by Applicable Law.

15.1 Each Party shall refrain from using any of the Confidential Information and deliver promptly to the other Party or destroy, at the request and option of that Party, all tangible embodiments (and all copies) of the Confidential Information which are in its possession.

15.2 Notwithstanding the foregoing, the following information shall not be deemed Confidential Information:

15.2.1 information that is already known to the receiving Party or its representatives on a non-confidential basis prior to disclosure;

15.2.2 information that becomes publicly available through no fault of the receiving Party or its representatives;

- 15.2.3 information that is independently developed by the receiving Party without the use of or reference to the Confidential Information of the disclosing Party;
- 15.2.4 information that is required to be disclosed by Applicable Law or by any court of competent jurisdiction, by the rules and regulations of any stock exchange on which the shares of the receiving Party (or any member of its group) are listed or quoted or by any enquiry or investigation by any Governmental Agency, official or regulatory body which is lawfully entitled to require any such disclosure;
- 15.2.5 information that is required to be disclosed or used for the purpose of any judicial proceedings arising out of this agreement or any agreement entered into, under or pursuant to this agreement or to a tax authority in connection with the tax affairs of the receiving Party; and
- 15.2.6 information that is disclosed or used with the prior written approval of the disclosing Party.

Likewise, any other business information shared by PDIPL, such as Training Materials, reports, data, etc. and also the intellectual property of PDIPL. The DSA shall endeavor to maintain the confidentiality of such information and uphold PDIPL's intellectual property rights, at all times during the full tenure of the Agreement and subsequent 6 (six) months thereafter; failing which PDIPL may initiate legal action against the ceased DSA.

**16. RESOLUTION OF OPERATIONAL ISSUES:**

During the course of Contract Period, any operational issues and disputes shall first be brought to the notice of the DSA Relationship Manager duly appointed by PDIPL. Any such issue shall be mutually resolved at working level failing which the same can be escalated as per the pre-defined escalation matrix.

**17. RESPONSIBILITIES AND OBLIGATIONS:**

- 17.1. The DSA shall be vigilant at all times about, and shall promptly report to PDIPL, particulars of any misuse or misconduct of PDIPL's name, products and services, capabilities, systems and business information by any third party.
- 17.2. The DSA shall make no representations or guarantees concerning PDIPL or its products or services which are false, misleading or inconsistent with the representations set out in promotional materials, literature, manuals and price lists published and supplied by PDIPL from time to time.

17.3 The DSA will be responsible for all the inventory of demo equipments provided by PDIPL and will be liable for any damage caused to the same due to any negligence or willful act or omission. The DSA will maintain and provide to PDIPL for verification on periodical basis, an inventory register for all such demo equipment's in the format prescribed in **Schedule D**.

17.4 The DSA shall allow / facilitate PDIPL to conduct "PDIPL Products and Sevices Live Demo" in / outside its premises, as & when required, with prior intimation, to present the prospective customers with various value propositions of PDIPL products and services.

**18. TERMINATION:**

This Agreement may be prematurely terminated by either Party at any time by giving a 45 (forty five) days' notice of annulment to the other in writing. PDIPL reserves the right to terminate this Agreement forthwith upon the happening of all or any of the following events, without being liable in any way for payment or damages or other compensation whatsoever, and in such event all the rights and permissions granted hereunder by PDIPL to the DSA shall thereupon cease and terminate:

- i. Upon the DSA making any arrangement of composition with its creditor or going into liquidation voluntarily or otherwise;
- ii. Upon the DSA committing a breach or being in default of all or any of the terms, conditions and stipulations herein contained or attached Schedules;
- iii. Upon the DSA not conforming to the process compliance;
- iv. Upon evidence of carrying out or supporting or allowing any illegal use of PDIPL network or services;
- v. Upon evidence of breach of exclusivity condition by DSA;
- vi. Upon evidence of inefficient performance, non-performance or non-achievement of agreed targets for 3 (three) consecutive periods of assessment;
- vii. Upon evidence of indulgence in unfair trade practices;
- viii. Upon violation of trademarks and intellectual property rights of PDIPL;
- ix. Upon evidence of acts that tarnish PDIPL's reputation in any manner;
- x. Upon not meeting financial obligations
- xi. Upon the DSA undergoing a change of Control other than a transfer to another group company where the ultimate parent company remains the same.

The effective date of termination will be either the date mentioned in the notice or 45 (forty five) days from the date of the notice, or as decided and communicated by PDIPL to the DSA. Upon termination of this Agreement, the DSA shall cease to do any sort of setting up of sales or promotion related activities for any of PDIPL's products, or to provide any sort of after sales support, billing clearance etc. to PDIPL. Therefore

if any party acting in good faith, exercises a right of termination, its subsequent failure or refusal to perform any of its current or future obligations under this Agreement shall not be a breach of this Agreement (whether repudiatory or otherwise).

## **18.1 CONSEQUENCES OF TERMINATION**

### **18.1.1 No fresh commitments upon termination:**

In the event of premature termination of this Agreement or expiry of contract period without renewal, the DSA cannot make fresh commitments to customers or prospective customers, which PDIPL is not obliged to fulfill. If such commitments are made, PDIPL will not support the ceased DSA to fulfill the same in any manner. In case PDIPL chooses to fulfill such obligations in order to uphold its reputation, the cost of the same will be recovered from the ceased DSA, and a legal action may be invoked against him.

### **18.1.2 Payment of all dues and return of assets upon termination:**

In the event of premature termination of this Agreement or expiry of contract period without renewal, the DSA will ensure that all the assets and consumables issued by PDIPL for use in fulfilling business obligations including electronic equipment, devices, spare parts, tools, software, marketing collaterals, training materials, official stationery, demo units, samples, etc. are returned to PDIPL in the condition in which they were supplied, failing which PDIPL shall enforce a proportionate penalty charges to the extent of the default. The cost of carriage, insurance, taxes, duties, levies and any other charges incurred in any such return or disposal shall be borne by the DSA.

### **18.1.3 Refrain from use of PDIPL's brand name upon termination:**

In the event of premature termination of this Agreement or expiry of Contract Period without renewal, the DSA shall not use PDIPL's brand name in any manner, whatsoever, failing which PDIPL will be forced to take necessary legal action against the ceased DSA.

### **18.1.4 Refund of Outstanding Dues by PDIPL upon Termination:**

During the notice period, any dues from PDIPL to the DSA will be withheld. In the event of premature termination of this Agreement or expiry of Contract Period without renewal, PDIPL will ensure that the Security Deposit is refunded and commissions and other dues are paid as per eligibility to the DSA within 60 (sixty) days of termination of this Agreement, after adjusting outstanding dues if any.

### **18.1.5 Refrain from issuing statements:**

The DSA shall not permit any of its associates to issue any public statement (or any private statement unless required in the performance of the work), except as stated below, relating to or in any way disclosing any aspect of the work, including the Scope, commission structure, or

customer base. PDIPL will not be responsible for any statement, representation or act of the DSA unless before it has been agreed specifically in writing that he will be considered liable for such actions.

**19. NON-COMPETE:**

The DSA agrees that, in the event of premature termination of this Agreement or expiry of Contract Period without renewal, the DSA shall not have any business relationship with any direct or indirect competitor of PDIPL, for a period of six months from the date of Termination; failing which PDIPL may initiate legal course of action against the ceased DSA.

**20. MISCELLANIOUS**

**20.1 Tax:**

It is hereby agreed that the DSA shall bear all Taxes, costs and expenses required to be paid under the law of the Territory including but not limited to any withholding tax. If PDIPL is required by law to make any deduction or withholding on account of any tax, assessment, duty, or levy charged against any payments, the DSA agrees to pay such tax, assessment, duty, or levy before the date on which a penalty for nonpayment or late payment charges.

**20.2 No Partnership:**

The Parties expressly do not intend hereby to form a partnership, either general or limited, under Indian Partnership Act, 1932. The Parties do not intend to be partners on one to one basis, or partners as to any third party, or create any fiduciary relationship among themselves, solely by virtue of their status as shareholders of the company. To the extent that any Party, by word or action, represents to another Person that any other Party is a partner or that the company is a partnership, the Party making such representation shall be liable to any other Parties that incur any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities of any kind or nature whatsoever (including but not limited to any investigative, legal or other expenses incurred in connection with, and any amount paid in settlement of, any pending or threatened legal action or proceeding) arising out of or relating to such representation.

**20.3 Rights and Remedies:**

All rights and remedies of the Parties hereto or of either of them hereunder shall be in addition to all other legal right and remedies belonging to such Parties and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid, and the expiry or termination of this Agreement, for any cause, whatever shall be without prejudice to the rights and claims of either Party hereto which shall or may have accrued prior to such expiry or termination aforesaid.

**20.4 Entire Agreement:**

This Agreement including all Schedules which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. The DSA hereby covenants and agrees to comply with the terms and conditions laid out in this Agreement, including the following Schedules as attached to this Agreement and form an integral part thereof:

- Schedule A : DSA General Role and Responsibilities
- Schedule B : DSA's Scope of Business Management
- Schedule C : Geographical Territory Assignment for Business Operation
- Schedule D : Register of Inventory

**20.5 Amendments:**

No amendment or other variation of this Agreement shall be effective unless it is in writing, is dated, expressly refer to the Agreement, and is signed by a duly authorized representative of each Party hereto. DSA hereby agrees to accept and execute any additions, deletions or amendments to the Agreement as may be proposed by PDIPL from time to time.

**20.6 Severability:**

Each and every obligation under this Agreement shall be treated as a separate obligation and shall be severally enforceable as such and in the event of any obligation or obligations being or becoming unenforceable in whole or in part. To the extent that any provision or provisions of this Agreement are unenforceable they shall be deemed to be deleted from this Agreement, and any such deletion shall not affect the enforceability of the remainder of this Agreement not so deleted, provided the fundamental terms of the Agreement are not altered.

**20.7 Counterparts:**

This Agreement may be executed in one or more counterparts including counterparts transmitted by facsimile, each of which shall be deemed to be an original, but all of which signed and taken together, shall constitute one document.

**20.8 Consent to Specific Performance**

The Parties declare that it is impossible to measure in money the damages that would be suffered by a Party by reason of the failure by any other Party to perform any of the obligations hereunder. Therefore, if any Party shall institute any action or proceeding to seek specific performance or enforcement of the provisions hereof, any Party against whom such action or proceeding is

brought hereby waives any claim or defence therein that the other Party has an adequate remedy at Law.

**20.9 Permission to Audit, Inspect and Examine Records for Ensuring Business Compliance:**

The DSA, with prior appointment, shall at any and all times and as and when required by PDIPL so to do, permit or cause to be permitted the duly authorized representative(s) of PDIPL to enter upon the DSA's premises or other premises to examine and inspect or cause to be examined and inspect all books, records, literatures relating to the business for the purposes of determining whether or not the terms, conditions and stipulations herein contained are complied with.

**20.10 Waiver and Modification:**

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the Parties.

**20.11 Force Majeure:**

Either Party may make a claim for excusable failure or delay with respect to any obligation of such Party under this Agreement or the Schedules attached thereto, excluding any obligation to make payments when due. Excusable failure or delay shall be allowed only in the event of Force Majeure. Notwithstanding the foregoing, DSA shall not be entitled to relief under this Section to the extent that any event otherwise constituting an event of Force Majeure results from the negligence or fault of the DSA, and PDIPL shall not be entitled to relief under this section to the extent any event otherwise constituting an event of Force Majeure results from the negligence or fault of PDIPL.

The Party claiming the benefit of excusable delay hereunder shall (a) promptly notify the other Party of the circumstances creating the failure or delay and provide sufficient documentation to establish to the reasonable satisfaction of the other Party the impact of such Party failure or delay and (b) use reasonable efforts to avoid or remove such causes of non-performance, excusable failure or delay. If an event of Force Majeure prevents DSA from performing its obligations under this Agreement for a period exceeding sixty (60) days, PDIPL may, upon prior written notice to DSA may suspend or terminate (without payment or penalty of any kind) this Agreement.

The Party not claiming the benefit of excusable delay hereunder shall likewise be excused from performance of its obligations hereunder on a day-for-day basis to the extent such Party's obligations are affected due to the other Party's delayed performance.

**20.12 Notices:**

All notices, consent, approval, reports or other communications pursuant to this Agreement shall be in writing, in the English Language, and shall be deemed to be duly given or delivered to a Party

(i) on the day of delivery by hand, (ii) 1 (one) Business Day after transmission by telecopy, facsimile or other electronic system, provided there is evidence of delivery, or (iii) 7 (seven) days after placement in the postal mail by registered or certified mail or on the day it was received, whichever is earlier, if sent to such Party at its principal business address listed as below:

**PDIPL:**

Name : PINESTRAW DIGITAL INDIA PVT LIMITED  
For the attention of :  
Address : Crimson Dale Housing society, F401, Dhankude Vaste, Baner, Pune  
Maharashtra - 411 045

**DSA:**

Name :  
For the attention of :  
Address :

**21. DISPUTE RESOLUTION AND GOVERNING LAW:**

**21.1 Amicable Resolution**

If any controversy, conflict or dispute of any nature arises out of or relating to or in connection with the provisions of this Agreement between the Parties, they shall use all reasonable endeavors to resolve the matter amicably.

**21.2 Arbitration**

21.1.1 Any controversy, conflict or dispute of any nature arising out of or relating to or in connection with the provisions of this Agreement, shall be settled exclusively and finally by arbitration carried out in Pune and conducted in the English language. Judgment on the award may be entered by any court having jurisdiction.

21.1.2 The arbitration shall be conducted and finally settled by 3 (Three) arbitrators in accordance with the Arbitration and Conciliation Act, 1996, in effect at the time of such arbitration. One arbitrator shall be appointed by PDIPL and Channel Party and the third arbitrator shall be appointed by the two Arbitrators so appointed. The Parties agree, in connection with the enforcement of any arbitral award rendered

pursuant to this Clause, to submit to the exclusive jurisdiction of the courts at Pune, India.

- 21.1.3 Nothing contained hereinabove shall prejudice either Party's right to have recourse to any court having jurisdiction for the purpose of interim or interlocutory orders.
- 21.1.4 The arbitrators shall give a reasoned decision or award, including as to the costs of the arbitration, which shall be final and binding on the Parties. The Parties agree that the arbitrator's award may be enforced against the Parties to the proceedings or their assets, wherever they may be found.
- 21.1.5 The Parties shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement.
- 21.1.6 Each Party shall bear and pay its own costs, expenses, fees, disbursements and other charges of its counsel, in connection with the arbitration proceedings except as may be otherwise determined by the arbitrators.

**1.3 Governing Law**

This Agreement and the documents to be entered into pursuant to it shall be governed by and be construed in accordance with the laws of India.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first hereinabove written.

SIGNED, AND DELIVERED )  
By the within named )  
**PINESTRAW DIGITAL INDIA PVT LTD.** )  
Through its authorized )  
signatory \_\_\_\_\_ )  
In presence of: )

SIGNED AND DELIVERED )  
By the within named )  
\_\_\_\_\_ DSA )  
Through its proprietor / partner / authorized )  
Signatory \_\_\_\_\_ )  
In presence of: )