

**MICROTALK COMMUNICATIONS PRIVATE LIMITED PLATINUM BUSINESS PARTNER
AGREEMENT GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT IS FOR BUSINESS PARTNERS HOLDING THE APPROPRIATE INDIAN
GOVERNMENT DEPARTMENT OF TELECOMMUNICATIONS LICENCE.**

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CLAUSE 1 DEFINITIONS AND INTERPRETATION

In the Agreement the following definitions apply:

"**Affiliate**" of a Party (defined below) means an entity controlling, controlled by, or under common control with such Party.

"**Acceptable Use Policy**" means the document which Microtalk may make available from time to time which defines how the Services (defined below) may be used.

"**Account**" means the Subscriber's or Partner's details, the collection of Microtalk Services ordered by Subscriber or Partner and the record of the transactions for those Services on the Microtalk systems.

"**Artificial Inflation of Traffic**" or "**AIT**" means an unexpectedly high level of traffic to a revenue share number.

"**Business Day**" means any day other than Saturday and Sunday and other than a day on which banks or financial institutions in India are not required to close for business. If the day on or by which anything is to be performed is not a Business Day, it must be done on or by the next Business Day.

"**Business Partner**", "**Partner**" or "**Platinum Business Partner**" means an individual or organisation appointed by Microtalk to promote and support the Services on behalf of Microtalk.

"**Charges**" means the fees payable for Services under the Agreement.

"**Cover Page**" means the first page of this document, titled "Platinum Business Partner Agreement Cover Page".

"**Computer and User Identification Numbers**" means all means of identifying and accessing Microtalk systems and Services, which includes but is not limited to User Names, Passwords, Check words and Encryption Keys.

"**Class of Service**" means a selection of call routes and prices.

"**Customer**" means the relevant Subscriber entity named on the Telecommunications Master Services Agreement Cover Page or on the Service Order Form as the case may be, save that where an Affiliate of the relevant Customer entity enters into a Service Order Form with Microtalk, the Customer shall mean the Affiliate of the relevant Customer entity that signs the Order. Microtalk may accept instructions from a person who Microtalk reasonably believes is acting with the Customer's authority or knowledge.

"**Effective Date**" is the Effective Date of date on the Cover Page of the Platinum Business Partner Agreement.

"**KYC Documents**" is the Know Your Customer documentation provided by an entity as proof of that identity's legal identification.

"**Microtalk**" means the relevant Microtalk entity signing up to the Agreement.

"**Microtalk Equipment**" means equipment (including any software) owned or licensed by Microtalk and placed on the Partner's or Subscriber's premises by Microtalk for provision of the Service.

"**Microtalk Provided Equipment**" means equipment sold to the Partner (including software licensed to the Customer or Partner) pursuant to a Service Description appended to the Agreement.

"**Order Form**" means an instruction by Partner to Microtalk to provide Services under the terms of the Telecommunications Master Service Agreement and any relevant Services Descriptions.

"**Operational Service Date**" means the date on which any Service or part of a Service is first made available to the Partner by Microtalk or the date when the Partner or Partner's Subscriber first starts to use such Service (or part of such Service), whichever date is earlier.

"**Party**" means either Microtalk or the Partner; "**Parties**" means both Microtalk and the Partner.

“Portal” means a web interface provided by Microtalk to Business Partner or to Customer for the purpose of completing Order Forms and managing the Services.

“Problem Report” means a fault identified by Partner and notified to Microtalk.

“Programming Interface”, “Application Programming Interface” or “API” means a computer-to-computer electronic link to enable Partner or Subscriber to automatically link to Microtalk systems for purposes including the completion of Order Forms.

“Regulated Service” shall mean, in India, any services which are subject to (i) conditions which are imposed by any relevant government body of India which has jurisdiction on Microtalk either specifically or generally and any notifications, determinations, directions, decisions and the like related thereto; and/or (ii) any formal or informal undertakings or assurances (however described) governing the conduct of Microtalk’s electronic communications business given by Microtalk to any government department of India.

“Service” means any product or service provided by Microtalk.

“Subscriber” means the ultimate user of the Services.

In this Agreement headings and bold type are for convenience only and do not affect the interpretation of the Agreement and, unless the context otherwise requires:

- (a) references to the Parties, Service Descriptions or Equipment Descriptions, Service Annexes and Clauses are references respectively to the Parties, Service Descriptions or Equipment Descriptions, Service Annexes and Clauses to and of the Agreement; and
- (b) words importing the singular include the plural and vice-versa.

CLAUSE 2 AGREEMENT PRIORITY

- 2.1 This Agreement together with each Order Form along with any relevant Services Descriptions or Equipment Descriptions entered into between Microtalk and the Partner shall provide the terms and conditions upon which Microtalk shall make delivery of Services and/or provide equipment to the Partner.
- 2.2 In the event of any conflict or inconsistency between the provisions of any of the documents relevant to a particular service or piece of equipment, then the order of precedence of the documents shall be: (1) the Services Description or Equipment Description relevant to a particular Service or piece of Equipment; (2) each Order Form relevant to a particular Service or piece of Equipment; and (3) this Agreement.

CLAUSE 3 MICROTALK OBLIGATIONS

- 3.1 Microtalk shall obtain and maintain at its own expense all relevant licences, permission, waivers or permits whatsoever necessary it requires to operate and provide telecommunications services and shall ensure that it complies with all relevant laws and obligations in accordance to the regulatory or legal authority in India.
- 3.2 Microtalk warrants that it is a corporation validly organised and existing as under the laws of India and has full power and authority under its constitutional documents and the laws of India to execute and deliver this Agreement and to perform its obligations thereunder and hereunder.
- 3.3 Microtalk shall provide the services with reasonable care and attention and shall employ appropriately skilled and trained staff who are competent for the areas of the business in which they are employed.
- 3.4 Microtalk shall provide the Service as specified in its marketing and technical documentation and reserves the right to make Service changes with 30 days’ notice to Partner.
- 3.5 Microtalk shall endeavour to process orders through the Portal and API in line with standard industry and regulatory timescales.

- 3.6 Microtalk shall use reasonable endeavours to resolve Service faults or Problem Reports filed by Partner in a timely manner. For the avoidance of doubt, Microtalk does not warrant that the Service will be fault free or free of interruptions.
- 3.7 Microtalk is entitled to subcontract any of the obligations or supply of certain services to other Microtalk group companies.
- 3.8 Microtalk shall explain and demonstrate the features of the products to the Partner
- 3.9 Microtalk shall train the Partner representatives on the features of the product so they can make customer presentations and demonstrations
- 3.10 Microtalk shall train the Partner on the Service management portals.
- 3.11 Microtalk shall share the any available Service literature with the Partner.

CLAUSE 4 PARTNER OBLIGATIONS

- 4.1 Partner warrants that it is a corporation validly organised and existing as under the laws of India and has full power and authority under its constitutional documents and the laws of India to execute and deliver this Agreement and to perform its obligations thereunder and hereunder.
- 4.2 It is the responsibility of Partner to ensure that its contact information is accurate and updated and Partner has the obligation to give prompt written notice to Microtalk in respect of any changes thereto. Microtalk accepts no responsibility if, after reasonable endeavours were made to contact Partner, Microtalk is unable to contact Partner for any matter pertaining to the Services.
- 4.3 Partner warrants that it has not been declared bankrupt or insolvent on or before the date of this Agreement and shall inform Microtalk if and when such circumstances arise during the course of this Agreement.
- 4.4 The Partner undertakes not hack, break into or by other unauthorised means use, or attempt to hack break into or by other unauthorised means use or reverse engineer any part of the Microtalk Service or Microtalk's hardware, software, databases or any other equipment used in connection with the Services by Microtalk or its suppliers.
- 4.5 The Partner will ensure that it does not do, permit anything to be done, or omit or permit the omission of anything in relation to its equipment which may cause damage to Microtalk's or its supplier's telecommunications networks, or result in interference with or modification of the operation of, Microtalk's or its supplier's telecommunications networks.
- 4.6 The Partner undertakes that it will ensure that its Subscribers comply at all times with Microtalk's latest version of its Acceptable Use Policy.
- 4.7 Partner shall obtain and maintain at its own expense all relevant licences, permission, waivers or permits whatsoever necessary it requires to promote Microtalk's telecommunications services and shall ensure that it complies with all relevant laws and obligations in accordance to the regulatory or legal authority in the countries where Partner operates.
- 4.8 Partner shall be responsible for all aspects of the relationship with its Subscribers, including:
- (a) identifying potential sale opportunities for the Services to new Subscribers and shall identify upselling and renewal opportunities with existing Subscribers.
 - (b) conducting marketing activities to increase the awareness about Microtalk Services.
 - (c) taking full responsibility for converting opportunities and leads to sales.
 - (d) providing Customers with professionally presented Service descriptions and quotations.
 - (e) ensuring that its Terms & Conditions under which it contracts with its Subscribers adhere to Microtalk's, terms and conditions, policies and guidelines of usage of Services.

- (f) issuing invoices to and collecting payment from its customers.
- (g) Providing installation, on-site support and first line telephone support services.

- 4.9 Partner is responsible for collecting Customers' KYC (Know Your Customer) documentation as required by applicable laws, rules and best practice, including:
- a. Proof of Identity (Pan Card mandatory)
 - b. Proof of Address:
 - c. In case of Proprietor - Utility Bill / Passport / Voter ID Card / Driving Licence /
 - d. Registration Certificate etc.
 - e. In case of Company - Company registration proof.
- 4.10 For the Services provided by Microtalk, Partner agrees to pay Microtalk the wholesale rates as set out in the Service Descriptions under the pre-payment or credit terms set out in the Services Descriptions. The Partner shall pay any additional Charges which Microtalk applies, due to any failure or delay on the part or on behalf of the Partner or Partner's Subscriber, including any failure or delay which occurs prior to the Operational Service Date.

CLAUSE 5 PRICING, BILLING AND PAYMENT

- 5.1 The Charges for the Service are set out in the applicable Service Description (which may include a separate Charges Annex) or Order Form or automated email from Microtalk's rate management system or by email from a Microtalk employee who is authorised to agree rates. Rates are only valid if in writing, including email. Verbal agreement of rates shall not be binding on Microtalk.
- 5.2 The Partner shall pay to Microtalk all Charges due under this Agreement.
- 5.3 All Charges shall be calculated based on data held by Microtalk billing systems and not data held in Partner's systems.
- 5.4 Microtalk shall make available via its Portal a periodic (weekly, fortnightly or monthly) invoice in Indian Rupees (INR) to Partner for the Services provided hereunder within twenty (20) Business Days where possible after the end of the billing period and the Partner will pay all Charges in INR only.
- 5.4 For the avoidance of doubt, all Charges due under this Agreement shall be paid in full by the Partner to Microtalk, even if the Partner has not received payment from its Subscribers or if any losses due to hacking, AIT or fraud has been committed by the Partner's Subscribers or any 3rd party using the Services through the Partner's Microtalk account.
- 5.5 All rates and other charges due hereunder are quoted by Microtalk to Partner exclusive of all applicable taxes, duties, levies and other similar charges imposed by any authority, government or government agency (except income tax or other corporate taxes attributed to Microtalk) ("**Taxes**"), relating to the sale, purchase, transfer of ownership, delivery, installation, license, use or processing of Microtalk Equipment and/or Microtalk Provided Equipment or provision of the Service under the Agreement. Taxes shall be separately itemized where possible and charged to and payable by Partner in addition to (a) those paid or payable by Microtalk and any related interest and penalties, for goods or services supplied under the Agreement, except to the extent a valid exemption certificate is provided by the Partner to Microtalk prior to the delivery of Service; and (b) the Charges and other rates set forth in the Services Descriptions.
- 5.6 The rates and charges as set forth in the Services Descriptions may be adjusted by Microtalk from time to time by providing the notice period as set out in the Services Description. Microtalk will either send rates by email or shall notify Partner by email that a new rate has been published on a Microtalk web site or Portal.
- 5.7 Without prejudice to any other provision of the Agreement, Microtalk reserves the right to treat failure to pay by the Partner as a material breach of the Agreement. If the Partner commits a material breach of the Agreement, Microtalk's rights are set out in Dispute Resolution Clause below. Additionally, Microtalk reserves the right to:-
- a. restrict, suspend or terminate provision of the relevant Service and Microtalk shall be released from its obligations under the Agreement with respect to such Service until any balance due is paid or until such other material breach is remedied; and/or

- b. as an exception to Dispute Resolution Clause below, terminate the Agreement without liability to or right to compensation for the Partner and without prejudice to Microtalk's rights to be paid sums due; and/or
- c. recover any Microtalk Equipment; where such recovery takes place, the Partner shall pay to Microtalk such recovery charges as may be specified in the Service Schedule or as otherwise notified by Microtalk to the Partner.

5.8 Unless otherwise agreed in writing, lack of Partner references on the invoice shall not constitute a valid reason by the Partner to withhold payment due under the invoice. The Partner shall make payment in accordance with the details shown on the invoice and where the Partner makes an aggregated payment in respect of more than one invoice, the Partner shall submit a remittance slip to show amounts paid in relation to individual invoices.

CLAUSE 6 BILLING DISPUTE

6.1 If Partner disputes the accuracy of the amount due to Microtalk in respect of any invoice and the amount in dispute represents three percent (3%) or more of the total amount invoiced in, Partner shall notify Microtalk promptly in writing, identifying clearly the dispute and grounds in support thereof ("**Billing Dispute Notice**"). Microtalk shall not consider any notice of billing discrepancies:

- (a) in which the amount in dispute in respect of any invoice is less than three percent (3%) of the total amount invoiced; or
- (b) received by Microtalk after the Due Date of the invoice in question or in the case of a pre-pay account, within thirty (30) days after the invoice has been prepared and sent to Partner.

6.2 A written Billing Dispute Notice given under the preceding Clause must be sent by post to the Microtalk's address on the Cover Page for the attention of the Chief Executive Officer. Billing disputes communicated by email, fax, verbally, Skype or any other electronic messaging medium shall not be valid.

6.3 The Billing Dispute Notice must specify:

- a. the reasons for which Partner disputes the invoice;
- b. the amount in dispute; and
- c. identifying information of the relevant invoice and Charges in dispute including:
 - (a) the account number;
 - (b) the invoice reference number;
 - (c) the invoice date;
 - (d) the invoice amount;

6.3 Notwithstanding any dispute, all Charges hereunder shall be due and payable in full. Settlement in cases of disputes will be credited in the next invoice to Partner without any interest.

6.4 The Parties shall use their reasonable endeavours to resolve any dispute relating to the invoice. If the dispute cannot be resolved within thirty (30) days of receipt of the notice of dispute, it shall be settled in accordance with Dispute Resolution Clause hereof.

CLAUSE 7 USE OF THE SERVICE

7.1 The Partner may use any Service for its own purposes, provided that the Partner: -

- (a) complies with the terms of any applicable law and regulation and any license applicable to the Partner;
- (b) provides evidence of such compliance in response to a request from Microtalk;
- (c) does not, or permit any Subscriber to use the Service in any manner which is illegal;
- (d) shall remain responsible for any access and use of the Service by its Subscribers, all Charges incurred and compliance with all terms and conditions by it and its Subscribers under the Agreement; and
- (e) ensures that its list of Subscribers is kept current and updated, and that the Customer terminates access immediately for anyone who is no longer a Subscriber.

7.2 Except as may be otherwise specifically provided under the Agreement, the obligations and responsibilities of Microtalk under the Agreement are solely to the Partner and not to

any third party, including any other Subscribers. The Partner will keep harmless and will indemnify Microtalk, its officers, Affiliates, employees, agents and subcontractors against any liabilities or costs arising from any and all claims by any third party, including Subscribers, in connection with the use and/or misuse of the Service and / or inspection as set out in this Clause 7.

7.3 Microtalk may occasionally:

- (a) Save as provided in Clause 17.1 below, suspend the Service in an event of emergency and/or to safeguard the integrity and security of its network and/or repair or enhance the performance of its network;
- (b) change the technical specification of the Service, provided that any such change does not materially decrease or impair performance of the Service;
- (c) provide an alternative service.

Provided that:

- (i) Microtalk provides the Partner with as much notice as reasonably practicable before taking any of the actions specified at (a)-(c) above;
- (ii) Microtalk gives the Partner one (1) Month's written notice should there be any change to the Charges arising from the actions specified at (b)-(c) above; and
- (iii) in the event that, having received a notice under (ii) above, the Partner decides to terminate the receipt of the Service, then it may do so in accordance with the provisions of Clause 18 hereof save that the notice period in respect of the termination shall be one (1) Month.

CLAUSE 9 CONNECTION OF SUBSCRIBER EQUIPMENT TO THE SERVICE

9.1 The Partner is responsible for the provision, installation, configuration, monitoring and maintenance of any Subscriber equipment connected to the Service. The Partner shall ensure that any Subscriber equipment connected to or used with the Service is connected and used in accordance with any instructions, safety and security procedures applicable to the use of that Subscriber equipment.

9.2 The Partner shall ensure that any Subscriber equipment attached (directly or indirectly) to the Service by the Subscriber is technically compatible with the Service and approved for that purpose under any applicable law or regulation. Microtalk does not make any commitment with respect to the interoperability between the Service and the Subscriber equipment. In the case of Microtalk Provided Equipment sold for the purpose of the Subscriber's use with the Service, the Partner may rely upon Microtalk's representations as to such compatibility and compliance, as of the date of provision.

CLAUSE 10 MARKETING, PROMOTION & DISTRIBUTION

10.1 Unless Partner has been authorised by Microtalk in writing to do so, Partner shall not (i) refer to itself as an authorised representative of Microtalk in promotional, advertising, or other materials, (ii) use Microtalk's name, logos, trademarks, service marks, or any variations thereof in any of its promotional, advertising, or other materials, or (iii) release any public announcements referring to Microtalk's or this Agreement.

10.2 Microtalk hereby grants permission to Partner and/or Partner's agents, sub-customers, Subscribers and partners to promote Microtalk Services under Partners own branding and marketing material.

CLAUSE 11 SECURITY

11.1 Microtalk may issue to Partner, Computer and User Identification Numbers to enable Partner to access Microtalk systems and Services. By accepting these Computer and User Identification Numbers, Partner is accepting responsibility for all costs for all Services ordered and used through the systems accessed by these Computer and User Identification Numbers.

11.2 The Partner is responsible for the security and proper use of all Computer and User Identification Numbers allocated by Microtalk to the Partner's employees and/or users and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

- 11.3 The Partner must immediately inform Microtalk if there is any reason to believe that any Computer and User Identification Number allocated by Microtalk has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way.
- 11.4 If a Partner's employee or system forgets or loses Computer and User Identification Numbers allocated by Microtalk, then the Partner must contact Microtalk and satisfy such security checks as Microtalk may operate. The Partner may change a Computer and User Identification Numbers allocated by Microtalk by contacting Microtalk and satisfying such security checks as Microtalk may operate.
- 11.5 Microtalk reserves the right to suspend Computer and User Identification Number access to the Services if at any time Microtalk considers that there is or is likely to be a breach of security and will notify the Partner as soon as possible after it has done so. Microtalk reserves the right (at its sole discretion) to require the Partner to change any or all of the Computer and User Identification Numbers allocated by Microtalk and used by the Partner in connection with the Services.
- 11.6 In the event of a breach of security, Partner is responsible for all costs associated with all Services used on its Microtalk Account(s) as a result of the security breach.

CLAUSE 12 DATA PROTECTION

- 12.1 The Parties shall strictly comply with all applicable statutes, regulations and orders and, in particular, telecommunication services and data privacy laws and shall obtain and maintain in force all applicable notifications and licences under such statutes, regulations and orders.
- 12.2 Partner acknowledges and accepts that Microtalk may store Partner and Subscriber data on computer equipment located in any country.
- 12.3 Each Party agrees:
- (a) to comply with any applicable data protection law of India;
 - (b) that it will be solely responsible for any acts or omissions that cause the other Party to be in breach of any applicable data protection law of India, and
 - (c) to comply with all reasonable technical and organisational measures that the other Party implements in order to comply with any applicable data protection law of India.

CLASUE 13 LEGAL AND REGULATORY COMPLIANCE

- 13.1 The Parties will comply with any supplementary conditions to the Agreement that are required by the laws and regulations of India. Such supplementary conditions shall be incorporated into the Agreement, as appropriate.
- 13.2 Where Regulated Service is provided under the Agreement, the terms and conditions and prices for Regulated Service are published on Microtalk's Portal/website and may be amended by Microtalk from time to time. For the avoidance of doubt, the terms and conditions and prices published on Microtalk's website for Regulated Service, and any amendments thereto, shall govern the provision of Regulated Service to the exclusion of all other terms and conditions and prices in the Agreement.
- 13.3 If Microtalk is required in order to comply with law or regulation to modify the Service or amend the terms and conditions or prices, Microtalk reserves the right to do so and notify the Partner as soon as possible of any such modification and any terms and conditions (including Charges) associated with such modification, except in the case of Regulated Service where any such changes will be published as set out in this Clause 13. If a legal or regulatory intervention or ruling of any sort prevents the accomplishment of the purpose of the Agreement, the Partner and Microtalk shall immediately commence good faith negotiations to explore whether a similar economic effect can be obtained consistent with the applicable legal or regulatory requirements.
- 13.4 The delay or failure by Microtalk to perform any of its obligations under the Agreement which is caused by or materially contributed to by a restriction of a legal or regulatory nature which affects, wholly or partly, the provision of the Service(s), shall not constitute a breach of the Agreement.

CLAUSE 14 INTELLECTUAL PROPERTY & SOFTWARE LICENCE

- 14.1 All intellectual property rights either pre-existing or created by either Party during or arising from the performance of the Agreement shall remain the absolute property of that Party or its licensors.
- 14.2 For the avoidance of doubt, Partner shall gain no ownership rights to the Microtalk software under this Agreement.
- 14.3 Without prejudice to any open source software license terms, which terms shall apply independent of this license grant, Microtalk will grant the Partner non-exclusive license to use in object code form, all software and associated documentation supplied by Microtalk (or a third-party terms and conditions) pursuant to the Agreement ("**Software**"), solely as necessary for receipt of the Service and solely in accordance with the Agreement and the applicable documentation. The term of any license granted by Microtalk pursuant to this Clause 14.2 is coterminous with the term for the Service with which the Software is associated.
- 14.4 Without prejudice to any open source software license terms, which terms shall apply independent of this license grant except as permitted by applicable law or as expressly permitted in the Agreement, the Partner undertakes not to copy, re-engineer, decompile, modify or try to retrieve the source code of the Software or knowingly allow or permit anyone else to do so.
- 14.5 The Partner will indemnify and hold Microtalk harmless against all such claims, proceedings and expenses arising from the matters set out in Clause 14.3 above and will immediately upon notification of any such claim by Microtalk cease any activity which gives rise to the claim.
- 14.6 If the Service becomes, or Microtalk believes it is likely to become, the subject of a claim of infringement of any intellectual property rights, Microtalk, at its option and expense, may (a) secure for the Partner a right of continued use or (b) modify or replace the Service so that it is no longer infringing provided that modification or replacement must not materially affect the performance of the Service.
- 14.7 The remedy mentioned in Clause 14.5 above sets out the Partner's exclusive remedy for claims of infringement of intellectual property rights.

CLAUSE 15 LIMITATION OF LIABILITY

- 15.1 Partner agrees that Microtalk shall not be liable for any loss or damage sustained by Partner or its customers or Subscribers due to any failure in or breakdown of the communication facilities associated with providing the Services, for any failure, interruption or degradation of the Services, whatsoever shall be the cause or duration thereof, or for any other cause or claim whatsoever arising under this Agreement.
- 15.2 In any event, and notwithstanding anything contained in this Agreement, in no circumstances shall Microtalk be liable for any of the following types of loss or damage arising under or in relation to the Agreement or any part of it (including without limitation any Service Description, Order Form or the Cover Page), in contract, tort (including negligence or breach of statutory duty) or otherwise however, and whatever the cause thereof,
- (a) for any failure or delay in providing the Services; and/or
 - (b) for any increased costs or expenses; and/or
 - (c) for any loss of profit, business, contracts, revenues, or anticipated savings; and/or
 - (d) for any indirect or consequential damage of any nature whatsoever; and/or
 - (e) any loss arising from the transmission of viruses; and/or
 - (f) any loss or corruption or destruction of data; and/or
 - (g) unauthorised access of Subscriber's or Partner's equipment, network or data by third party.

Whether or not the Partner or Subscriber was advised in advance of the possibility of such loss or damage.

- 15.3 In the event the limitation of liability is not permitted by law, then, subject to Clause 15.1 and 15.2 above, the liability of Microtalk in no event shall exceed the amount in INR that

is the equivalent of 3 months averaged transacted business between Microtalk and Partner in relation to which the damages arose whether in contract or tort (including negligence or breach of statutory duty) or otherwise arising out of or in connection with this Agreement.

CLAUSE 16 PARTIES NOT PARTNERS

- 16.1 Nothing in this Agreement shall constitute a partnership among Parties nor constitute one Party the agent of the other Party and vice versa. Except as set out in this Agreement, no Party shall have express or implied authority to bind or represent any other Party for any purpose whatsoever unless expressly agreed in writing by the Party concerned.
- 16.2 All persons engaged, employed and/or appointed by either Party shall solely be regarded as employees of that Party and that none of the said persons engaged, employed and/or appointed shall be regarded as employees of the other Party in any instance.
- 16.3 Each Party shall ensure that persons engaged, employed and/or appointed by such Party comply with the terms and provisions as set out in this Agreement and each Party shall remain responsible and liable for any acts or omissions of such persons engaged, employed and/or appointed by such Party.

CLAUSE 17 SUSPENSION OF SERVICES

- 17.1 Microtalk may suspend forthwith the provision of its respective Services until further notice:
- (a) if Partner has outstanding debit balances not paid when due; or
 - (b) if Microtalk needs to carry out planned works (e.g., preventative maintenance) on its System; or
 - (c) if Microtalk is required to comply with a government, administrative or judicial order, decision or other such requirement that would prevent Microtalk from providing the Services; or
 - (d) where the use of the Services, in the reasonable opinion of Microtalk, adversely affect, or is likely to adversely affect, Microtalk facilities or service to its other customers; or
 - (e) if Subscriber and/or its agents or Partners engage in any deceptive, misleading, illegal or unethical practices, or use the Services to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious acts; or
 - (f) if Subscriber fails to comply with or Partner fails to enforce Microtalk Acceptable Use Policy; or
 - (g) if Partner is in default or breach of this Agreement.
- 17.2 In the event that Microtalk exercises its right to suspend the provision of its Services to Partner it shall provide advance notice to Partner where it is reasonably practicable to do on, failing which, as soon as reasonably practicable allowing suspension.
- 17.3 The Partner undertakes and confirms that Microtalk shall not be liable for any loss, damage or inconvenience suffered by Partner as a result of any Service suspension made.

CLAUSE 18 COMMENCEMENT AND TERMINATION

- 18.1 Subject to the provisions for early termination contained in this Agreement, this Agreement shall commence on the Effective Date and shall continue until terminated by either Party.
- 18.2 Either party may at any time terminate this Agreement by giving a prior written notice of not less than sixty (60) days to the other Party subject to payment by the Partner to Microtalk of any outstanding Charges and any applicable termination charges as set forth in the applicable Service Description or Annex for the terminated Service(s). Termination of any individual Service Description or Order Form will not affect the Parties' rights and obligations with regard to any other Service Description or Order Form.
- 18.3 Notwithstanding anything herein contained, and without prejudice to any other rights or remedies Microtalk may have under this Agreement, in law or at equity, Microtalk may terminate this Agreement forthwith:

- (a) in the event that Partner fails to pay any amount due under this Agreement on or before Due Date; or
 - (b) if Partner commit a breach of this Agreement and fails to rectify the same within seven (7) days of receipt of a written notice from Microtalk, identifying the breach and requiring its rectification; or
 - (c) any governmental or regulatory authority with competence and/or jurisdiction over the Parties decides that the provision of the relevant Service under the Agreement is contrary to existing laws, rules or regulations or any decision, law or other official governmental order makes the provision of the Service illegal. In such case no damages shall be due; or
 - (d) any of the authorisations or regulatory formalities required was or is not obtained, is withdrawn or is no longer valid for whatever reason (other than due to the negligence or wilful misconduct of a Party), or due to a Party breaching the terms of said authorisations or regulatory formalities shall be considered a material breach of the Agreement is committed and the Party causing such breach shall not be entitled to terminate the Agreement pursuant to this Clause 18;
- 18.4 This Agreement shall be terminated immediately by Microtalk in the event that Partner has ceased or threatened to cease business, is or has been wound up or become bankrupt or a receiver and manager or judicial manager has been appointed over the whole or substantial part of its assets or property.
- 18.5 Termination of this Agreement by either Party shall not affect any rights, liabilities or remedies accrued prior to the termination date of the Agreement.
- 18.6 Upon termination of the Agreement (or any Service provided under it):
- (a) the rights of the Parties accrued up to the date of such termination shall remain, unaffected; and
 - (b) the Partner shall co-operate fully with Microtalk to recover any Microtalk Equipment.
- 18.7 Microtalk may suspend Service(s) or terminate the Agreement immediately on notice to the Partner where the Partner is in breach of the Agreement or any other contract that the Partner has with Microtalk and if the breach is capable of remedy, fails to remedy the breach within a reasonable time of being requested by Microtalk to do so.

CLAUSE 19 EXPORT CONTROL

- 19.1 The Parties acknowledge that products, software, and technical information (including, but not limited to, Service, technical assistance, etc.) provided under the Agreement may be subject to export laws and regulations of India and other countries, and any use or transfer of the products, software, and technical information must be in compliance with all applicable regulations.
- 19.2 The Parties will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations, if requested by either Party, the other Party also agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.

CLAUSE 20 CONFIDENTIALITY AND NON-COMPETE

- 20.1 Each Party undertakes to the other that it will maintain and treat in confidence this Agreement and the terms of this Agreement including price information relating to the operation of the arrangements which are the subject of this Agreement and all other confidential information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other Party which it may receive in connection with this Agreement and shall not divulge the same to any third Party and will allow access of the same to its own staff only on a "need to know" basis, except to the extent that any such information becomes public through no fault of that Party or is required to be disclosed pursuant to law, regulatory authority or administrative agency. The obligations and restrictions in this Clause shall survive for a period of three (3) years after the termination or expiry of this Agreement for whatsoever reasons.
- 20.2 Unless otherwise agreed, for the duration of this Agreement and for a period of thirty six (36) months after the termination of this Agreement (for whatsoever reason) neither Party shall, directly or indirectly:

- (a) solicit or offer employment to any employee of the other Party, or
- (b) seek the custom of any client, business partner or customer of the other Party other than by means of a general campaign open to all-comers and not specifically targeted at such client or customer of the other Party, or
- (c) seek to bypass the other Party and contract with any of the other Party's suppliers such that the effect of such arrangements reduces the commercial benefit the other Party may gain from this Agreement or any other agreement the other party may have with its customers. This Clause does not apply to any supplier arrangements either party may have prior to the signing of this Agreement.

CLAUSE 21 DISPUTE RESOLUTION

- 21.1 Should any dispute, disagreement or claim arise between the Parties the Parties shall attempt to resolve the dispute by negotiation. In such event and as and when the dispute arises, one Party may invite the other in writing to meet and to attempt to resolve the dispute within seven (7) days from date of the written invitation.
- 21.2 Should the procedure as described in the preceding Clause fail and the dispute remains unresolved within twenty one (21) days of the date of either Party's written invitation to meet then in such event the matter shall be referred to each Party's Managing Director who shall use their best endeavours to arrange to meet within seven (7) days after the expiry of the aforementioned twenty one (21) day period.
- 21.3 Should the procedure as described in the preceding Clause fail or should for any reason the dispute remain unresolved after the period of forty (40) days after the said written invitation, the Parties agree to submit the dispute for determination to the panel of arbitrators. Each Party shall appoint 1 arbitrator and these 2 arbitrators shall appoint the panel of arbitrators in accordance with the (Indian) Arbitration and Conciliation Act, 1996 (as amended). The panel of arbitrators shall consist of three arbitrators. Each Party will appoint one arbitrator each and the two appointed arbitrators will appoint the third and the presiding arbitrator. The seat of arbitration shall be at Kolkata and the language to be used in the arbitration proceedings shall be English.
- 21.4 Each Party shall bear its own costs in respect of dispute resolution and arbitration, save that, where arbitration takes place, the arbitrator may order otherwise.
- 21.5 The provisions of the Clauses related to dispute resolution are without prejudice to either Party's right to seek any form of injunctive relief from the courts where a Party deems it necessary to do so.

CLAUSE 22 NOTICES

- 22.1 Address. All notices, demands or other communications required or permitted to be given or made under or in connection with this Agreement shall be in writing and shall be sufficiently given or made (i) if delivered by hand or (ii) sent by pre-paid registered post. Either Party may from time to time notify the other of its change of address or in accordance with this Clause.
- 22.1 Deemed Delivery. Any such notice, demand or communication shall be deemed to have been duly served (i) if delivered by hand or sent by pre-paid registered post, at the time of delivery.
- 22.3 All other information (with the exception of a Billing Dispute Notice), including but not limited to price changes, low credit warnings, technical and marketing information shall be sent by email and shall be assumed to have been delivered on the same day it was sent. Subscriber is responsible for keeping its contact email addresses up to date on the Microtalk systems through the Portal.
- 22.4 Notices to Microtalk and to Partner are to be sent to the addresses at the top of this Agreement.

CLAUSE 23 ILLEGALITY/SEVERABILITY

- 23.1 Any provision of this Agreement which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

CLAUSE 24 ASSIGNMENT

24.1 This Agreement shall not be assigned or transferred (nor the performance of any obligations hereunder sub-contracted) by the Partner. However, Microtalk may assign, novate or transfer its rights and obligations under this Agreement to its Affiliates or related corporations without the consent of Partner.

CLAUSE 25 NO WAIVER

25.1 No term or provision of this Agreement shall be deemed waived and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. A consent to waiver of or excuse for a breach or default by either Party, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.

CLAUSE 26 FORCE MAJEURE

26.1 Except to the payment obligation of the Partner under this Agreement, no failure or omission by Microtalk or Partner to carry out or observe any of the terms and conditions of this Agreement shall give rise to any claim against such Party by the other Party or be deemed to be a breach of this Agreement if such failure or omission arises from any circumstances known as Force Majeure, or any other cause beyond the reasonable control of Microtalk or Partner, as the case may be.

26.2 In this Agreement, "Force Majeure" means any cause of any kind whatsoever, not reasonably within control of a party hereto and includes, without limitation: acts of God, fire, accidents, military conflict, vandalism, sabotage, cable out, breakdowns, or accident to equipment or software, failure; delay or disruption of transportation facilities, inability to obtain or curtailment of supplies of materials, equipment, software or labour required to perform or comply with any obligation or covenant under this Agreement, strikes, lockouts or any other industrial, civil or public disturbances, any laws, orders, rules, regulations acts or restraints of any government or government body or authority, civil or military, including the order and judgements of courts.

26.3 The Party prevented from fulfilling its obligations shall on becoming aware of such event inform the other Party in writing of such force majeure event as soon as possible. If the force majeure event continues for more than sixty (60) days, either Party shall have the right to terminate the Agreement with immediate effect by written notice.

26.4 Microtalk will have no liability to the Partner for failure to supply the Service if;

(a) a third person refuses or delays to supply a service to Microtalk and there is no alternative available at reasonable cost; or

(b) Microtalk is prevented by legal or regulatory restrictions from supplying the Service.

CLAUSE 27 AMENDMENT

27.1 This Agreement may not be amended, varied or modified in any manner except in writing signed by a duly authorized officer or representative of each of the Parties hereto.

CLAUSE 28 COUNTERPARTS & ENTIRE AGREEMENT

28.1 Each Agreement between the Parties may be executed via an electronic on-line signature, in any number of counterparts and by the Parties on separate counterparts. Each counterpart shall constitute an original of the respective Agreement, but together the counterparts shall constitute one document.

28.2 This Agreement (including the documents and instruments referred to herein) supersedes all prior representations, arrangements, understandings and agreements between Parties relating to the subject matter hereof and sets forth the entire complete and exclusive agreement and understanding between the Parties hereto relating to the subject matter hereof; no Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out referred to in this Agreement.

CLAUSE 29 LAW AND JURISDICTION

29.1 This Agreement shall be subject to and construed in accordance with the laws of India. It is irrevocably agreed that the appropriate Court(s) of Kolkata shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and which cannot be settled by the Parties and that accordingly any suit, action or proceeding arising out of or in connection with this Agreement (hereinafter referred to as "**the Proceedings**") shall be brought in such court and that each Party hereto submits to the exclusive jurisdiction of such court.

29.2 Nothing in the preceding Clause shall limit the right of Microtalk to take the Proceedings:

- (a) in any other manner permitted by laws; or
- (b) in any other court of competent jurisdiction, nor shall the taking of the Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

----- End -----