

**SCHEME OF AMALGAMATION**  
**OF**  
***COMMODITY ONLINE (INDIA) LTD***  
**AND**  
***CELEBRUS CAPITAL LTD***  
**WITH**  
***ACUMEN CAPITAL MARKET (INDIA) LTD***  
**AND**  
**THEIR RESPECTIVE SHAREHOLDERS**

**(UNDER SECTION 230 TO 232 OF THE COMPANIES ACT, 2013)**

## PREAMBLE

### A. DESCRIPTION OF COMPANIES AND BACKGROUND

- I. **Commodity Online India Limited** (CIN: U74999KL2006PLC020045), a company incorporated under the Companies Act, 1956 and subsisting under the Companies Act, 2013, having its registered office at 27/540, III Floor, EAK Towers, Main Avenue, Panampilly Nagar. Kochi- 682036, Kerala, India (hereinafter referred to as the “**Transferor Company 1**”). The main object of the company as per the Memorandum of Association is to carry on the business of developing and maintaining portals and online/electronic auction centers on commodities, to impart information/news on commodities through all modes and to carry on the business of broking services in capital market and commodity market with membership in approved stock exchanges and commodity exchanges, mutual fund distribution, insurance products distribution, distribution of any other financial products, intermediation of approved financial products, portfolio management services, broking in currency futures, trading in approved futures market segments and the related services to them.
  
- II. **Celebrus Capital Limited** (CIN: U67120KL2009PLC024797), a company incorporated under the Companies Act, 1956 and subsisting under the Companies Act, 2013, having its registered office at 27/540, II Floor, EAK Towers, Main Avenue, Panampilly Nagar. Kochi- 682036, Kerala, India (hereinafter referred to as the “**Transferor Company 2**”). The main object of the Company as per the Memorandum of Association is to carry on the business of broking services in capital market and debt market with membership in approved stock exchanges, dealing in currency and interest rate derivatives as member of exchanges distribution of financial products such as mutual fund products and insurance products, DEMAT account services as depository participant portfolio management and investment advisory services as SEBI registered intermediary.

The transferor companies (*as defined hereinafter*) are primarily engaged in the business of broking in capital and commodity markets and related activities.

**III. Acumen Capital Market (India) Limited** (CIN:U67120KL1995PLC008674), a company incorporated under the Companies Act, 1956 and subsisting under the Companies Act, 2013, having its registered office at 38/1431, S T Reddiar Building, Veekshanam Road, Ernakulam 682035, Kerala, India, (hereinafter referred to as the “**Transferee Company**”). The main objects of the Company as per Memorandum of Association are as follows:

- i. To carry on the business of and/or to act as share, stock and finance brokers, merchant bankers, investment bankers, portfolio managers, Registrars to issue and transfer agents, underwriters, depository and clearing houses and/or to take up membership in any stock exchange including OTC Exchange, National Stock Exchange or any other Exchange in India or outside.
- ii. To set up, incorporate and manage, provide and/or participate in providing venture capital, mutual funds, technology funds, underwriting fund or any other funds for seed capital, risk capital foundation, including giving guarantees or such other financial assistance as may be conducive for development of new enterprise, development of existing and new technology, to identify projects and project ideas, subject to the approval of concerned authorities.
- iii. To carry on the business of and/or to act as research analysts, and to assist or to provide other research activities including activities engaged in preparation and/or publication of research report or research analysis or making “buy/sell/hold” recommendation on stocks and shares or giving price target or offering an opinion concerning public offer by companies.

This Scheme of Arrangement (*as defined hereinafter*) is presented for the transfer and merger of the business of the Transferor Companies (*as defined hereinafter*) with the Transferee Company, pursuant to the provisions of Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 and other applicable provisions of Companies Act, 1956.

## **B. RATIONALE FOR THE SCHEME**

The Transferor Companies are primarily engaged in the business of broking in capital and commodity markets and related activities in India. The business activities of the Transferor Companies and Transferee Company are similar and complement each other. In view of that, the Board of Directors of the Transferor Companies believes that this scheme would be mutually beneficial in respect of the business and related activities in India and/or abroad, and to achieve greater infrastructure sharing, operational efficiencies and cost optimization. The Board of Directors (defined herein) of the Transferor Companies and the Board of Directors of the Transferee Company have considered the scheme, where under the entire Undertakings (*defined herein*) and business of the Transferor Companies would be transferred and vested with and into the Transferee Company pursuant to the provisions of Section 230 to 232 and other relevant provisions of the Companies Act, 2013.

## **C. PARTS OF THE SCHEME**

This Scheme of Amalgamation is divided into the following Parts:

- i.** **Part A** deals with definitions of the terms used in the Scheme of Amalgamation and sets out the share capital of the Transferor Company and the Transferee Company;
- ii.** **Part B** deals with the transfer and vesting of the Undertakings (*defined herein*) of the Transferor Companies with and into the Transferee Company;
- iii.** **Part C** deals with the consideration for the amalgamation and increase in authorized capital of the Transferee Company;
- iv.** **Part D** deals with the accounting treatment in the books of the Transferee Company;
- v.** **Part E** deals with the dissolution of the Transferor Companies and general terms and conditions applicable to this Scheme of Amalgamation and other matters consequential and integrally connected thereto.

## PART - A

### DEFINITIONS AND SHARE CAPITAL

#### 1. DEFINITIONS:

In this Scheme unless inconsistent with the subject or context, the following expressions shall have the following meanings:

- 1.1 "Act" or "The Act" means the Companies Act, 2013 and Rules and Regulations made there under and shall include any statutory modification, re-enactment or amendment thereto from time to time.
- 1.2 "Acumen Capital Market (India) Limited" or "Transferee Company" (CIN:U67120KL1995PLC008674) is a company incorporated under the Companies Act, 1956 and subsisting under the Companies Act, 2013, having its registered office at 38/1431, S T Reddiar Building, Veekshanam Road, Ernakulam 682035, Kerala, India.
- 1.3 "Applicable Law(s)" means any statute, law, ordinance, rule, regulation, press note, notification, circular, order, writ, injunction, directive, judgment or decree issued by any governmental authority and/or any other authority exercising jurisdiction over the Companies.
- 1.4 "Appointed Date" means the 31st day of March 2019 or such other date as may be fixed or approved by the National Company Law Tribunal at Kochi.
- 1.5 "Asset(s)" mean(s) and include(s) all fixed, movable, intangible, financial, non-financial assets and rights of every kind, nature, character and description of whatsoever nature and wheresoever situated, whether or not required to be reflected on a balance sheet of the Transferor Companies in accordance with the accounting standards, and every associated right.
- 1.6 "Board of Directors" or "Board" means the board of directors or the sole manager or managers (wherever applicable) of the Transferor Companies or the board of directors of the Transferee Company or both, as the case maybe, and shall include any duly constituted committee or authorized official(s) thereof.
- 1.7 "Celebrus Capital Limited" or "Transferor Company 2" (CIN: U67120KL2009PLC024797) is a company incorporated under the Companies Act, 1956

and subsisting under the Companies Act, 2013, having its registered office at 27/540, II Floor, EAK Towers, Main Avenue, Panampilly Nagar. Kochi- 682036, Kerala, India.

- 1.8 **“Commodity Online India Limited”** or **“Transferor Company 1”** (CIN: U74999KL2006PLC020045) is a company incorporated under the Companies Act, 1956 and subsisting under the Companies Act, 2013, having its registered office at 27/540, III Floor, EAK Towers, Main Avenue, Panampilly Nagar. Kochi- 682036, Kerala, India.
- 1.9 **“Companies”** means the Transferor Companies and the Transferee Company.
- 1.10 **"Effective Date"** means the last of the dates on which the certified or authenticated copies of the orders of the National Company Law Tribunal sanctioning the Scheme are filed with the respective Registrar of Company by the Transferor Companies and by the Transferee Company. Any references in this Scheme to the date of **"upon the scheme being effective"** or **"effectiveness of this Scheme"** or **"Scheme taking effect"** shall mean the Effective Date.
- 1.11 **“Government Authority”** or **“ Appropriate Authority”** means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission or any court, tribunal, board, bureau or instrumentality thereof or arbitration or arbitral body having jurisdiction over the territory of India including but not limited to Securities and Exchange of India, Stock Exchanges, Registrar of Companies, Competition Commission of India, National Company Law Tribunal , and the NCLT.
- 1.12 **“IT Act”** means the Income Tax Act, 1961 and shall include any statutory modifications, re-enactments or amendments thereof for the time being in force.
- 1.13 **“Liability(ies)”** means all debts, liabilities and obligations of every kind, nature and description whether accrued or not, known or unknown, absolute or contingent, matured or un-matured, determined or determinable, attributable to and/ or arising out of the activities or operations of the Transferor Companies, as on the Appointed Date, and includes, without limitation, all such debts, liabilities and obligations of the Transferor Companies, which (i) pertain to a period prior to the Appointed Date but may arise after the Appointed Date; and/or (ii) may have arisen prior to the Appointed Date but remain outstanding as on the Appointed Date.

- 1.14 **“Listing Regulations”** means the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time.
- 1.15 **“NCLT”** means the bench of the National Company Law Tribunal at Kochi and shall include, if applicable, such other forum or authority as may be vested with the powers of the NCLT under the Act.
- 1.16 **“Registrar of Companies”** or **“Registrar”** means the Registrar of Companies, Kochi, India and the Registrar or its equivalent of such other Government Authority who has oversight on the Company from a corporate law perspective.
- 1.17 **“Scheme”** or **“The Scheme”** means this Scheme of Amalgamation in its present form, submitted to the National Company Law Tribunal or any other Appropriate Authority in the Relevant Jurisdiction or with any modification made approved or imposed or directed by the National Company Law Tribunal or any other Appropriate Authority.
- 1.18 **“Transferor Companies”** means Transferor Company 1 and Transferor Company 2 collectively.
- 1.19 **“Tribunal”** means the National Company Law Tribunal, Kochi Bench, constituted under Section 419 (1) of Companies Act, 2013 and other applicable provisions of the Act.
- 1.20 **“Undertaking”** means the whole of the Undertaking and entire business of the Transferor Companies as a going concern, including (without limitation):
- I. All the assets and properties including MAT credit entitlements whether reckoned in the respective Balance Sheet of Transferor Companies or not whether movable or immovable, tangible or intangible, real or personal, corporeal or incorporeal, present, future or contingent) of the Transferor Companies as on the Appointed date;
  - II. All liabilities including, without being limited to, secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities (including contingent liabilities), duties and obligations of the Transferor Companies, of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilized;

- III. All agreements, rights, contracts, entitlements, permits, licenses, approvals, authorizations, concessions, consents, quota rights, engagements, arrangements, authorities, allotments, security arrangements (to the extent provided herein), benefits of any guarantees, reversions, powers and all other approvals of every kind, nature and description whatsoever relating to the business activities and operations of the Transferor Companies;
- IV. All records, files, papers, computer programs, manuals, data, catalogues, sales material, lists of customers and suppliers, other customer information and all other records and documents relating to the business activities and operations of the Transferor Companies;
- V. Without prejudice to the generality of sub-clause (I) and (II) above, the Undertaking of the Transferor Company shall include all the Transferor Company's reserves and the authorized share capital, movable and immovable properties including investments, claims, powers, authorities, allotments, approvals, consents, registrations, contracts, engagements, arrangements, rights, credits, titles, interests, benefits, club memberships, advantages, leasehold rights, brands, tenancy rights, other intangibles, industrial and other licenses, permits, authorizations, quota rights, trade marks, patents and other industrial and intellectual properties including, know-how, domain names, import quotas, telephones, telex, facsimile and other communication facilities and equipment, rights and benefits of all agreements and all other interests, rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals of whatsoever nature and wheresoever situate, belonging to or in the ownership, power or possession or control of the Transferor Companies as on the Appointed Date and thereafter.
- VI. All benefits and privileges including (without limitation) all tax credits, refunds, reimbursements, claims, exemptions, benefits under taxation laws including MAT credit entitlements or any other duty or tax or cess or imposts under central or state law including advance taxes, tax deducted at source, right to carry forward



and set-off unabsorbed losses, if any and depreciation, deductions, and benefits under the IT Act, 1961, as well as benefits of all agreements, arrangements, deposits, advances, recoverables and receivables whether from government, semi-government, local authorities or any other customers, etc. and all other rights, interests, claims and powers of any kind, nature and description of and arising to Transferor Companies and cash and bank balances, all earnest moneys and/or deposits including Security deposits paid by the Transferor Companies.

VII. All permanent employees engaged by the Transferor Companies as on the Effective Date.

1.21 All capitalized terms not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act and other applicable laws, rules, regulations and bye-laws, as the case may be, or any statutory amendment(s), modifications or re-enactment thereof from time to time.

## 2. **SHARE CAPITAL**

### **Transferor Companies:**

#### **2.1. Commodity Online (India) Limited (Transferor Company 1)**

The share capital of Commodity Online (India) Limited as on 31<sup>st</sup> March, 2019 was as follows:

<b>PARTICULARS</b>	<b>AMOUNT (Rs)</b>
<b>Authorised Share Capital:</b>	
90,00,000 Equity Shares of Rs.10 each	9,00,00,000

<b>Issued, Subscribed and Fully Paid up Share Capital:</b>	
81,23,616 Equity Shares of Rs.10 each, fully paid-up	8,12,36,160
<b>Total</b>	<b>8,12,36,160</b>

## **2.2 Celebrus Capital Limited (Transferor Company 2)**

The share capital of Celebrus Capital Limited as on 31<sup>st</sup> March, 2019 was as follows:

<b>PARTICULARS</b>	<b>AMOUNT (Rs)</b>
<b>Authorised Share Capital:</b>	
2,00,00,000 Equity Shares of Rs.10 each	20,00,00,000
<b>Issued, Subscribed and Fully Paid up Share Capital:</b>	
45,00,000 Equity Shares of Rs.10 each, fully paid-up	4,50,00,000
<b>Total</b>	<b>4,50,00,000</b>

Subsequent to the above Balance Sheet date there is no change in the Capital Structure of Transferor Companies.

**Transferee Company:**

**2.3 Acumen Capital Market (India) Limited (Transferee Company)**

The share capital of Acumen Capital Market (India) Limited as on 31<sup>st</sup> March, 2019 was as follows:

<b>PARTICULARS</b>	<b>AMOUNT (Rs)</b>
<b>Authorised Share Capital:</b>	
1,00,00,000 Equity Shares of Rs.10 each	10,00,00,000
6 % 50,00,000 Redeemable Preference Shares of Rs.10/each	5,00,00,000
<b>Issued, Subscribed and Fully Paid up Share Capital:</b>	
75,02,100 Equity Shares of Rs.10 each, fully paid-up	7,50,21,000
Add: 6,79,400 Equity Shares forfeited during the year	6,79,400
<b>Total</b>	<b>7,57,00,400</b>

Subsequent to the above Balance Sheet date there is no change in the Capital structure of the Transferee Company.

## **PART B**

### **TRANSFER AND VESTING OF UNDERTAKING OF THE TRANSFEROR COMPANIES INTO THE TRANSFEREE COMPANY**

#### **3. TRANSFER AND VESTING OF UNDERTAKING**

3.1 With effect from the appointed date i.e. 31.03.2019 or such other date as maybe fixed or approved by the NCLT at Kochi:

Subject to the provisions of the Scheme in relation to the mode of transfer and vesting, the entire business and Undertaking of the Transferor Companies, including all debts, liabilities, losses, duties and obligations, including those arising on account of taxation laws and other allied laws, of the Transferor Companies of every description and also including, without limitation, all the movable and immovable properties and assets (whether tangible or intangible) of the Transferor Companies comprising, amongst others, all investments, receivables, actionable claims, furniture and fixtures, office equipment, telephones, telex, facsimile and other communication facilities and business licenses, permits, deposits, authorizations, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, know-how, trade secret, patents, trademarks, service mark, other intellectual property rights, registrations, title, interest, contracts including but not limited to contracts entered into with customers, vendors and service providers, consents, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals shall, without any further act, instrument or deed be and the same shall stand transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company as a going concern free from all encumbrances, but subject to the subsisting charges as mentioned hereinafter and agreed to be created, pursuant to the provisions of Section 230 to 232 and other relevant provisions of the Act, and pursuant to the orders of the NCLT sanctioning this scheme, form part of the Undertaking of the Transferee Company.

## 3.2 **Transfer of Assets:**

3.2.1. Without prejudice to the generality of Clause 3.1 above, upon the coming into effect of this Scheme and with effect from the Appointed Date:

3.2.1.1 All the assets and properties comprised in the Undertaking of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Transferee Company or be deemed to be transferred to and vested in the Transferee Company as a going concern so as to become the assets and properties of the Transferee Company.

3.2.1.2 Without prejudice to the provisions of Clause 3.2.1.1 above, in respect of such of the assets and properties of the Undertaking as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and/or delivery, the same shall be so transferred by the Transferor Companies and shall, upon such transfer, become the assets and properties of the Transferee Company as an integral part of the Undertaking, without requiring any separate deed or instrument or conveyance for the same.

3.2.1.3 In respect of movables other than those dealt with in Clause 3.2.1.2 above including sundry debts, receivables, bills, credits, loans and advances of the Undertaking, if any, whether recoverable in cash or in kind or for value to be received, bank balances, investments, earnest money and deposits with any Governmental Authority or with any company or other person, the same shall on and from the Appointed Date stand transferred to and vested in the Transferee Company.

3.2.1.4 All interests of the Transferor Companies in their respective subsidiaries as on the Appointed Date will become the interests and subsidiaries of the Transferee Company.

3.2.1.5 All the licenses, permits, quotas, approvals, permissions, registrations, incentives, tax deferrals and benefits including MAT credit entitlements, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and

other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Companies and all rights and benefits that have accrued or which may accrue to the Transferor Companies, whether before or after the Appointed Date, shall, under the provisions of Sections 230 to 232 of and all other applicable provisions, if any, of the Act, without any further act, instrument or deed, cost or charge be and stand transferred to and vest in or be deemed to be transferred to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date licenses, permits, quotas, approvals, permissions, registrations, incentives, tax deferrals and benefits, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges of the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions.

- 3.2.2 The Transferor Company shall, if so required, also give notice in such form as it may deem fit and proper to the debtors, that pursuant to the sanction of this Scheme by NCLT, Kochi Bench under and in accordance with Sections 230 and 232 and all other applicable provisions, if any, of the Act, the said debtors should pay to the Transferee Company the debt, loan or advance or make the same on account of the Transferor Companies and the right of the Transferor Companies to recover or realize the same stands extinguished.
- 3.2.3 All assets and properties of the Transferor Companies as on the Appointed Date, whether or not included in the books of the respective Transferor Companies, and all assets and properties which are acquired by the Transferor Companies on or after the Appointed Date but prior to the Effective Date, shall be deemed to be and shall become the assets and properties of the Transferee Company, and shall under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company upon the coming into effect of this Scheme.

Provided however that no onerous assets shall have been acquired by the Transferor Companies after the Appointed Date without the consent of the Transferee Company as provided for in this Scheme.

### **3.3 Transfer of Liabilities:**

3.3.1 Upon the coming into effect of this Scheme and with effect from the Appointed Date all liabilities relating to and comprised in the Undertaking including all secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities(including contingent liabilities), duties and obligations and Undertakings of the Transferor Companies of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilized for its business activities and operations (herein referred to as the "**Liabilities**"), shall, pursuant to the sanction of this Scheme by the NCLT under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by the Transferee Company to the extent they are outstanding as on the Effective Date so as to become as and from the Appointed Date the liabilities of the Transferee Companies on the same terms and conditions as were applicable to the Transferor Companies, and the Transferee Company shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such Liabilities have arisen in order to give effect to the provisions of this Clause.

3.3.2 All debts, liabilities, duties and obligations of the Undertaking as on the Appointed Date, whether or not provided in the books of the respective Transferor Companies, and all debts and loans raised and duties, liabilities and obligations incurred or which arise or accrue to the Undertaking of the Transferor Companies on or after the Appointed Date till the Effective Date, shall be deemed to be and shall become the debts, loans raised,

duties, liabilities and obligations incurred by the Transferee Company by virtue of this Scheme.

3.3.3 Where any such debts, loans raised, liabilities, duties and obligations of the Undertaking of the Transferor Companies as on the Appointed Date have been discharged or satisfied by the Transferor Companies after the Appointed Date and prior to the Effective Date, such discharge or satisfaction shall be deemed to be for and on account of the Transferee Company.

3.3.4 Loans, advances and other obligations (including any guarantees, letters of credit, letters of comfort or any other instrument or arrangement which may give rise to a contingent liability in whatever form), if any, due or which may at any time in future become due between the Transferor Companies and the Transferee Company shall, *ipso facto*, stand discharged and come to an end and there shall be no liability in that behalf on any party and appropriate effect shall be given in the books of accounts and records of the Transferee Company.

### 3.4 Encumbrances

3.4.1 The transfer and vesting of the assets comprised in the Undertaking to and in the Transferee Company under Clauses 3.1 and 3.2 of this Scheme shall be subject to the mortgages and charges, if any, affecting the same, as and to the extent hereinafter provided.

3.4.2 All the existing securities, mortgages, charges, encumbrances or liens (the "**Encumbrances**"), if any, as on the Appointed Date and created by the Transferor Companies after the Appointed Date, over the assets comprised in the Undertaking or any part thereof transferred to the Transferee Company by virtue of this Scheme and in so far as such Encumbrances secure or relate to liabilities of the Transferor Companies, the same shall, after the Effective Date, continue to relate and attach to such assets or any part thereof to which they are related or attached prior to the Effective Date and as are transferred to the Transferee Company, and such Encumbrances shall not relate or attach to any of the other assets of the Transferee Company, provided however that no



Encumbrances shall have been created by the Transferor Companies over its assets after the Appointed Date without the consent of the Transferee Company as provided for in this Scheme.

3.4.3 The existing Encumbrances over the assets and properties of the Transferee Company or any part thereof which relate to the liabilities and obligations of the Transferee Company prior to the Effective Dates shall continue to relate only to such assets and properties and shall not extend or attach to any of the assets and properties of the Undertaking transferred to and vested in the Transferee Company by virtue of this Scheme.

3.4.4 Any reference in any security documents or arrangements (to which the Transferor Companies are a party) to the Transferor Companies and its assets and properties, shall be construed as a reference to the Transferee Company and the assets and properties of the Transferor Company transferred to the Transferee Company by virtue of this Scheme.

Without prejudice to the foregoing provisions, the Transferor Company and the Transferee Company may execute any instruments or documents or do all the acts and deeds as may be considered appropriate, including the filing of necessary particulars and/or modification(s) of charge(s), with the Registrar of Company to give formal effect to the above provisions, if required.

3.4.5 Upon the coming into effect of this Scheme, the Transferee Company alone shall be liable to perform all obligations in respect of the Liabilities, which have been transferred to it in terms of the Scheme.

3.4.6 It is expressly provided that, no other term or condition of the Liabilities transferred to the Transferee Company is modified by virtue of this Scheme except to the extent that such amendment is required statutorily or by necessary implication.

3.4.7 The provisions of this Clause 3.4 shall operate in accordance with the terms of the Scheme, notwithstanding anything to the contrary contained in any instrument, deed or writing or the terms of sanction or issue or any security document; all of which instruments, deeds

or writings shall be deemed to stand modified and/or superseded by the foregoing provisions.

### **3.5 Inter-se Transactions:**

Without prejudice to the provisions of Clauses 3.1 to 3.4, with effect from the Appointed Date, all inter-party transactions between the Transferor Companies and the Transferee Company shall be considered as intra-party transactions for all purposes.

3.6 The amalgamation of the Transferor Companies with the Transferee Company, pursuant to and in accordance with this Scheme, shall take place with effect from the Appointed

Date and shall be in accordance with Section 2(1B) of the Income-tax Act, 1961.

## **4. CONTRACTS, DEEDS AND OTHER INSTRUMENTS**

4.1 Subject to the other provisions of this Scheme, all contracts, deeds, agreements, licenses, permits, registrations, approvals and other instruments, if any, of whatsoever nature to which the Transferor Companies are a party and subsisting or having effect on the Effective Date, shall be in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party thereto, notwithstanding the terms contained in such contracts, deeds, bonds, agreements, licenses, permits, registrations, approvals and other instruments.

4.2 The Transferee Company shall enter into and/or issue and/or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novation, to which the Transferor Companies will, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required. Further, the Transferee Company shall be deemed to be authorized to execute any such deeds, writings or confirmations on behalf of the Transferor Companies and to implement or carry out all formalities required on the part of the Transferor Companies to give effect to the provisions of this Scheme.

- 4.3 For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, all consents, permissions, licenses, certificates, clearances, authorities, powers of attorney given by, issued to or executed in favour of the Transferor Companies shall without any further act or deed, stand transferred to the Transferee Company, as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the Transferee Company shall be bound by the terms thereof, the obligations and duties there under, and the rights and benefits under the same shall be available to the Transferee Company. The Transferee Company shall receive relevant approvals from the concerned Governmental Authorities as may be necessary in this behalf.
- 4.4 All agreements entered into by the Transferor Companies with their respective bankers, distributors, stockists, agents, Authorised Persons, Sub-brokers, etc, if any, shall continue to be in full force and effect and may be enforced by or against the Transferee Company.

## **5. LEGAL PROCEEDINGS**

- 5.1 If any suit, appeal or other proceedings of whatever nature by or against the Transferor Companies are pending, including those arising on account of taxation laws and other allied laws, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies, as if this Scheme had not been made.
- 5.2 In case of any litigations suits, recovery proceedings which are to be initiated or may be initiated against the Transferor companies after the Appointed Date, the Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company. The Transferee Company undertakes to continue to abide by the agreement/settlement if any entered into by the Transferor Companies with any of its employees, which is in force as on the Effective Date.

**6. CONDUCT OF BUSINESS BY TRANSFEROR COMPANIES TILL EFFECTIVE DATE**

With effect from the Appointed Date and upto and including the Effective Date:-

- 6.1 The Transferor Companies shall be deemed to have been carrying on and shall carry on their respective business and activities and shall be deemed to have held and stood possessed and shall hold and stand possessed of all of their respective assets for and on account of and in trust for the Transferee Company. The Transferor Companies hereby undertake to hold their said respective assets with utmost prudence until the Effective Date;
- 6.2 The Transferor Companies shall carry on their business and activities with reasonable diligence, business prudence and shall not expect in the ordinary course of business or without the prior written consent of the Board of Directors of the Transferee Company or unless specifically permitted in the scheme alienate, charge, mortgage, encumber or otherwise deal with or dispose of their respective Undertaking or any part thereof;
- 6.3 All the profits or income accruing or arising to the Transferor Companies or expenditure or losses arising or incurred or suffered by the Transferor Companies shall for all purposes be treated and deemed to be and accrue as the income or profits or losses or expenditure as the case maybe of Transferee Company;
- 6.4 Any of the rights, powers, authorities and privileges attached or related or pertaining to and exercised by or available to the Transferor Companies shall be deemed to have been exercised by the Transferor Companies for and on behalf of and as agent for the Transferee Company. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Undertaking that have been undertaken or discharged by the Transferor Companies shall be deemed to have been undertaken or discharged for and on behalf of and as agent for the Transferee Company;
- 6.5 The Transferor Companies shall not vary the terms and conditions of employment of any of their respective employees except in the ordinary course of business with or without the prior consent of the Transferee Company or pursuant to any pre-existing obligation undertaken by the Transferor Companies as the case maybe, prior to the Appointed Date;
- 6.6 The Transferor Companies shall not take, enter into, perform or undertake, as applicable any material decision(s) in relation to its business and operations other than decisions

already taken prior to approval of the Scheme by the respective Board of Directors, any agreement or transaction, and any new business, or discontinue any existing business or change the capacity of facilities, or such other matters as the Transferee Company may notify from time to time save and except in the case of ordinary course of business or specifically permitted by this Scheme or with the consent of the Board of Directors of the Transferee Company;

- 6.7 Transferee Company shall be entitled, pending the sanction of this Scheme, to apply to the Central/State Government, and all other agencies, departments, and authorities concentrated as are necessary under any law or rules, for such consents, approvals and sanctions which Transferee Company may require, to own and operate the Undertaking.

## **7. TREATMENT OF TAXES PAID BY THE TRANSFEROR COMPANIES**

- 7.1 All taxes, levies, CESS, etc. (whether direct or indirect) that might have been paid by the Transferor Companies (whether before or after the Appointed Date) during the period when the merger has not become effective for any tax liability that arises after the Appointed Date shall be deemed to be tax paid by the Transferee Company and credit in respect thereof shall be given to the Transferee Company accordingly.

## **8. TREATMENT OF SCHEME FOR THE PURPOSES OF INCOME TAX ACT, 1961**

- 8.1 This Scheme has been drawn up to comply with and come within the definition and conditions relating to “Amalgamation” as specified under Section 2(1B), Section 47 and such other provisions, as may be applicable, of the Income Tax Act, 1961.
- 8.2 If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said section of the Income Tax Act, 1961, at a later date, including resulting from an amendment of any Applicable Law(s) or for any other reason whatsoever, the Scheme shall stand modified/amended to the extent determined necessary to comply and come within the definition and conditions relating to “Amalgamation” as specified in the Income Tax Act, 1961. In such an event, the clauses which are inconsistent shall be read down or if the need arises be deemed to be deleted

and such modification/reading down or deemed deletion shall however not affect the other parts of the Scheme.

- 8.3 Any refund under the tax laws received by or due to the Transferor Companies consequent to any assessments made on the Transferor Companies subsequent to the Appointed Date pertaining to the business transferred and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company.

## **9. TRANSFER OF STAFF, WORKMEN AND EMPLOYEES**

- 9.1 On the Scheme finally taking effect as hereinafter provided:-

- (a) All the employees of the Transferor Companies on the Effective Date shall become the employees of the Transferee Company without any break or interruption in service and on the same terms and conditions on which they are engaged as on the Effective Date. Services of all such employees with the Transferor Companies as the case maybe, upto the Effective Date shall be taken in to account for the purposes of all retirement benefits to which they may be eligible in Transferee Company on the Effective Date.
- (b) The services of such employees shall not be treated as having been broken or interrupted for the purposes of Provident Fund or Gratuity or Superannuation or other statutory purposes and for all purposes will be reckoned from the date of their respective appointments by the Transferor Companies as the case maybe.
- (c) It is provided that as far as the Provident Fund, Gratuity Fund, Superannuation Fund or any other Special Fund created of existing for the benefit of the Staff, Workmen and other employees of The Transferor Companies are concerned, upon this Scheme becoming finally effective, the Transferee Company shall stand substituted for the Transferor Companies for all the purposes whatsoever relate to the administration or operation of such Scheme or funds or in relation to the obligation to make contributions to the said funds in accordance with the provisions of such schemes or funds according to the terms provided in the respective trust deeds or other documents. It is the aim and intent of the Scheme that all the rights, duties, powers

and obligations respectively of the Transferor Companies in relation to such scheme of funds shall become those of the Transferee Company. It is clarified that the services of the staff, workmen and other employees of the Transferor companies will be treated as having been continuous for the purpose of the aforesaid scheme, funds or provisions.

## **PART C**

### **CONSIDERATION FOR AMALGAMATION AND INCREASE IN AUTHORIZED CAPITAL OF TRANSFEEE COMPANY**

#### **10. CONSIDERATION FOR AMALGAMATION**

10.1 Upon the Scheme becoming finally effective, in consideration of the transfer and vesting of the undertaking of the Transferor Companies in terms of this Scheme:-

(a) The shares of Transferor Companies held by the Transferee Company pursuant to this scheme or otherwise shall get extinguished.

(b) Every other equity shareholder of the Transferor Companies on the record date, shall without any further act or deed be entitled to and be allotted equity shares of the Transferee Company in the proportion of Two shares, in place of every, Nine shares held by him in the Transferor Companies.

(c) The Equity shares of the Transferor Companies both in electronic and physical form, shall be deemed to have been automatically cancelled and extinguished and be of no effect on and from the record date. Wherever applicable the Transferee Company shall instead of requiring the surrender of the share certificates of the Transferor Companies, directly issues and dispatch the new share certificates of the Transferee Company in lieu thereof.

- 10.2 No fractional certificate(s) shall be issued by the Transferee Company in respect of Fractional entitlement to which the members of the Transferor Companies may be entitled to on issue and allotment of shares as aforesaid by the Transferee Company. All such fractions shall be consolidated into full equity shares which shall be allotted by the Board of Directors of the Transferee Company at its discretion to any two nominees of the Transferee Company upon trust to sell the shares so allotted and to distribute the sale proceeds to share holders of the Transferor companies who are entitled to such fractions in the proportion to which they are so entitled.
- 10.3 The said equity shares in the Transferee Company to be issued to the members of the Transferor companies shall be subject to this scheme and the memorandum and Articles of Association of the Transferee Company and shall rank *paripassu* in all respects with the existing equity shares in the Transferee Company save and except that they shall be eligible for dividend from the appointed date or if any dividend is paid for the period after the appointed date on the shares of the Transferor companies, then they shall be eligible for dividend from such date as may be specified by the Board of Directors of the Transferee Company.
- 10.4 Approval of this Scheme by the Shareholders of the Transferee Company shall be deemed to be the due compliance of the provisions of Section      and the other relevant and applicable provisions of the Act for the issue and allotment of the equity shares by the Transferee Company to the shareholders of the Transferor Companies as provided in this Scheme.

## **11. INCREASE IN AUTHORIZED CAPITAL OF TRANSFEREE COMPANY**

The Transferee Company has at present sufficient number of unissued equity shares in its authorized share capital. However, if necessary, the Transferee Company will increase its authorized Share Capital to facilitate allotment of its shares to the shareholders of the Transferor Companies as provided in Clause 10.1 above.



## **PART D**

### **ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEREE COMPANY**

#### **12. ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEREE COMPANY**

- 12.1 The Transferee Company shall follow the requirements of Accounting Standards (AS) 14 and other applicable Accounting standards, in terms of Section 133 of the Companies Act, 2013 for the purpose of accounting for the merger.
- 12.2 The Transferee Company shall, upon the scheme becoming effective, record the assets, liabilities and reserves of the Transferor Companies in the books of accounts of the Transferee Company at the existing carrying amounts and in the same form.
- 12.3 The investment made in the Share Capital of the Transferor Companies by the Transferee Company shall stand cancelled.

## **PART E**

### **DISSOLUTION OF TRANSFEROR COMPANIES AND GENERAL TERMS AND CONDITIONS**

#### **13. DISSOLUTION OF TRANSFEROR COMPANY**

On the coming into effect of this Scheme, the Transferor Companies shall stand dissolved without winding-up, and the Board of Directors and any committees thereof of the Transferor Companies shall without any further act, instrument or deed be and stand dissolved.

#### **14. CONDITIONALITY OF THE SCHEME**

This Scheme is and shall be conditional upon and subject to:

- (i) The requisite consents, approvals or permissions of any Appropriate Authority (ies), which by law may be necessary for the implementation of this Scheme;

(ii) The approval by the requisite majority of the shareholders and/or creditors (as may be required and/or to the extent not dispensed with by the Appropriate Authority (ies) of the Transferor Companies and the Transferee Company, as required under Applicable Law(s).

(iii) Approval by the National Company Law Tribunal;

(iv) The certified copy of the order of the National Company Law Tribunal sanctioning the Scheme being filed with the Registrar of Companies by the Transferee Company and the Transferor Companies;

(v) Compliance by the Transferor Companies and the Transferee Company of all the necessary and applicable provisions of its Applicable Law.

(vi) Compliance with such other conditions as may be imposed by the National Company Law Tribunal or other Government Authority.

## **15. APPLICATION TO THE NATIONAL COMPANY LAW TRIBUNAL**

The Transferee Company and the Transferor Companies shall, with all reasonable despatch, make and file applications/petitions jointly under Sections 230 to 232 of the Act to the National Company Law Tribunal, Kochi, for sanctioning the Scheme.

## **16. MODIFICATION OR AMENDMENTS TO THE SCHEME**

The Transferee Company and the Transferor Companies by their respective Board of Directors, shareholders or any person(s) or committee authorised/appointed by them, may carry out or assent to any modifications/amendments to the Scheme or to any conditions or limitations that the National Company Law Tribunal or any other Government Authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e., the Board of Directors or Shareholders or the person(s)/ committee).

The Transferee Company and the Transferor Companies by their respective Board of Directors or shareholders, as applicable, any person(s) or committee authorized

/appointed by them, shall be authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any Government Authority or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith. The Transferee Company and the Transferor Companies shall be at liberty to withdraw from this Scheme, in case of any condition or alteration imposed by the National Company Law Tribunal or any other authority.

#### **17. EFFECT OF NON-RECEIPT OF APPROVALS**

In the event any of the approvals or conditions enumerated in the Scheme not being obtained or complied with, or for any other reason, the Scheme cannot be implemented, the Board of Directors of the Transferee Company and the Board of Directors of the Transferor Companies shall by mutual agreement waive such conditions as they consider appropriate to give effect, as far as possible, to this Scheme and failing such mutual agreement, or in case the Scheme is not sanctioned by the National Company Law Tribunal, the Scheme shall become null and void and each party shall bear and pay their respective costs, charges and expenses in connection with the Scheme.

#### **18. COSTS, CHARGES AND EXPENSES**

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Companies and the Transferee Company arising out of or incurred in connection with and implementing this Scheme and matters incidental thereto shall be borne by the Transferee Company.

#### **19. DATE OF TAKING EFFECT AND OPERATIVE DATE**

The Scheme, although operative from the Appointed Date, shall take effect finally upon and from the date on which the last of the aforesaid sanctions or approvals or Orders shall have been obtained, and such date shall be the Effective Date for the purposes of the Scheme.

## **20. SAVING OF CONCLUDED TRANSACTIONS**

Subject to the terms of this Scheme, the transfer and vesting of the Undertaking of the Transferor Companies under Clause 3 of this Scheme shall not affect any transactions or proceedings already concluded by the Transferor Companies on or before the Appointed Date or concluded between the Appointed Date and the Effective Date (both days inclusive), to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things made, done and executed by the Transferor Companies as acts, deeds and things made, done and executed by or on behalf of the Transferee Company.

## **21. MISCELLANEOUS**

In case any doubt or difference or issue shall arise among the Transferor Companies and the Transferee Company or any of their shareholders, creditors, employees and/or persons entitled to or claiming any right to any shares in the Transferor Companies or the Transferee Company, as to the construction of this Scheme or as to any account, valuation or apportionment to be taken or made in connection herewith or as to any other aspects contained in or relating to or arising out of this Scheme, the same shall be amicably settled between the Board of Directors of the Transferor Companies and the Board of Directors of the Transferee Company and the decision arrived at therein shall be final and binding on all concerned. If any part of this Scheme hereof is invalid, ruled illegal by any National Company Law Tribunal of competent jurisdiction, or unenforceable under present or future laws, then it is the intention of the Transferor Companies and the Transferee Company that such part shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part shall cause this Scheme to become materially adverse to any party to the Scheme, in which case the parties to the Scheme shall attempt to bring about a modification in the Scheme, as will best preserve for the parties to the Scheme, the benefits and obligations of the Scheme.