

**INCUBATEE AGREEMENT**

This **Incubatee Agreement** (“**Agreement**”) is made on this ..... at Pune, India by and between

**DPU Foundation For Innovation Incubation & Entrepreneurship** a section-8 registered company under the provisions of the Companies Act, 2013 and having its **CIN U85320PN2019NPL188312 ,PAN – AAHCD5578L , TAN – PNED15330A** and its registered office at DPU FIIE, Assembly Building, Dr. D Y Patil Medical College Camopus, Sant Tukaram Nagar, Pimpri, Pune, Maharashtra 411048.(hereinafter referred to as “**Incubator**” which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns);

**AND**

....., a company registered under the provisions of the Companies Act, 2013, having its CIN- , PAN- and having its registered office .....(hereinafter referred to as “**Incubatee**” which expression shall unless it be repugnant to the subject or context thereof include its successors and permitted assigns).

The **Incubator** and the **Incubatee** are hereinafter jointly referred to as ‘Parties’ and individually as ‘Party’.

“**Incubator**” is an Incubation Centre (term defined hereunder) providing them physical, technical, financial and networking supports and facilities, promoting innovation and entrepreneurship.

“**Incubation Centre**” shall mean the incubation centre set up at **DPU Foundation For Innovation Incubation & Entrepreneurship** for providing Incubation Facilities to incubatee.

“**Incubatee**” is engaged in the Business and has approached the Incubator for availing the Incubation Facilities (term defined hereunder). The Incubator relying on the representations, warranties and statements made by the Incubatee has permitted the Incubatee to avail the Incubation Facilities.

**The Incubator, against the Incubation Facilities and services rendered to the Incubatee, shall have a right to acquire % (.....) equity shares in the share capital of the Incubatee.**

**The Incubatee and the Incubator have entered into a Memorandum of Understanding dated ..... capturing the broad terms of understanding between the Parties.**

The Parties are now desirous of entering into this Agreement to set out the terms and conditions relating to incubation of the Incubatee at the Incubation Centre.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**1. Arrangement**

- 1.1 The Incubator shall render to the Incubatee the Incubation Facilities and the Incubatee agrees to avail the Incubation Facilities on the terms and conditions contained in this Agreement.
- 1.2 In consideration of grant of right to acquire 2% Equity Shares as set out in **Section 3** below, the Incubator hereby grants to the Incubatee a right to access and use the Premises for a period of 12 months from the Effective Date ..... till the End Date .....
- 1.3 Upon completion of 12 months from the Effective Date, the Incubatee can request for extension.
- 1.4 Its Incubator sole discretion, to permit the Incubatee to access and use the Premises for a further period of 12 months. Notwithstanding anything otherwise set out in this Agreement, the grant of right to access and use the Premises shall be subject to the provisions of Section 12 below (termination).

**2 Facilities and Infrastructure**

- 2.1 The Incubatee understands and agrees that since the Premises is located in the Incubation Centre which incubates other incubatee, the Incubatee access and use of Premises shall be subject to rules and policies of the Incubator, as implemented and updated from time to time.
- 2.2 The Incubator and Incubatee agree that the Incubatee shall use the Premises under the permission of the Incubator and shall not have or claim any tenancy or any other right, title, interest in the Premises and shall always be construed as permissive user as license only.
- 2.3 Unless extended by the Incubator in writing, the Incubatee shall cease to access and use the Premises and hand over licensed premises without demur, protest or objection to the Incubator on expiry of the above period of 12\_ month, from the date of executing this present Agreement.
- 2.4 The Incubatee shall not use the Premises for any illegal or immoral purpose or carry out any activity or do anything, which constitute breach of any law.
- 2.5 The Incubatee shall not allow anyone else to access, use and occupy the said premises without prior consent of the Incubator in writing.
- 2.6 Notwithstanding anything otherwise contained in this Agreement, Incubator shall have absolute right and ownership of the office space provided to locate the Incubatee. The Director – **DPU Foundation For Innovation Incubation & Entrepreneurship** shall be deemed to be a competent authority for necessary actions in connection with the office space so permitted to be used occupied by the Incubatee.

## **2. Roles and Responsibilities of the Parties**

### **2.1 The Incubatee shall:**

- 2.1.1 have entered into an agreement with the Incubator for grant of right to access and use the Premises; have provided to the Incubator all such information as may have been required by the Incubator prior to entering into this Agreement; avail and use the Incubator Facilities solely for the purpose of its Business, and not for any other purpose without prior approval of Incubator.
- 2.1.2 Submit to the Incubator, information in a format provided by the Incubator for incubator's internal review and records and submission as when asked.
- 2.1.3 submit information to incubator about all material changes or development taken place in their companies from time to time such as (but not limited to) change in name of the Incubatee, change in project or product profile, change in directors, change in promoters or shareholders, change in terms of association with the company of directors, promoters or shareholders, acquisition of a new office. Incubator shall have a right to stipulate such additional conditions as Incubator in its absolute discretion deem fit for effecting any change as stated herein above.
- 2.1.4 The Incubatee shall promptly deliver to the Incubatee such statements, information, accounts, records, reports and/or documents, financial or otherwise, as may be required by the Incubator from time to time in relation to this Agreement, the Incubatee's Business and operations, assets etc. once in a quarter including its audited Balance Sheet and Profit and Loss Account by 5<sup>th</sup> date of month every year or within 15 days of adoption of accounts in the Annual General Meeting of the Company, whichever is earlier;
- 2.1.5 keep and use the Incubation Facilities in good condition and shall not cause damage thereto and make good, forthwith, without any demur or protest, the damages so caused by it to any Incubation Facilities;
- 2.1.6 comply with the terms of the Incubator Policies.

### **The Incubator shall:**

- 2.1.7 ensure that upon execution of this Agreement and compliance with the provisions mentioned herein, the Incubatee shall be provided with the Incubation Facilities;
- 2.1.8 reasonably maintain the Incubation Facilities;
- 2.1.9 reasonably secure the Incubation Centre; and
- 2.1.10 mediate any disputes between the Incubatee and the Co- Incubatees.
- 2.1.11 In the event of non-performance and/or non-compliance to furnishing of information to the satisfaction of incubator, reserve the right to nominate a mentor on the Incubatee's team at

it's discretion. The terms and conditions shall be decided as per guidelines given by Incubator at the same time.

### **3 Consideration and Allotment of Equity**

#### **Equity Option**

- 3.1 In consideration of the Incubation Facilities provided by the Incubator to the Incubatee, the Incubatee hereby grants to the Incubator right to acquire 2% Equity Shares upon completion of 12 months from the Effective Date....., and upon exercise of such right by the Incubator agrees to allot Equity Shares constituting 2% ( per cent) of its paid up equity share capital.
- 3.2 Upon allotment of the Equity Shares the Incubatee, its directors and shareholders shall enter into such documents with the Incubator as may be deemed necessary by the Incubator to secure its rights and interest.
- 3.3 Upon allotment of the Equity Shares right to exercise exit options as follows:
  - (a) At the next rounds of equity funding or investments in the Incubatee, Incubator will have the first right to liquidate its Equity Shares or any number mutually agreed upon, each time its equity holding at prevailing price used for such funding or investments. The Incubatee shall inform the investors of the fact at the time of negotiation for investment in the Incubatee. The Incubatee shall also ensure that the investors shall buy Incubator's equity holding in the Incubatee at the same valuation at which the investors make investment in the Incubatee.
  - (b) In the event Incubator is offered a lesser valuation than the Incubatee valuation as stated above, Incubatee will ensure that either the Incubatee or its promoters compensate for the shortfall in the value offered for purchase of incubator's equity holding in the Incubatee.
- 3.4 The Incubatee shall enter into an Equity Agreement, Shareholders' Agreement with Incubator governing terms and conditions for issuance and allotment of Equity shares in favour of Incubator. The Incubatee shall also cause its Promoters and Shareholders to be parties to the Equity Agreement and Shareholders' Agreement.

### **4 Intellectual Property**

All Intellectual Property will be and remains the exclusive property of the respective Parties and no rights or licenses in respect of any data, products or Intellectual Property are granted hereunder

### **5 Confidentiality**

- 5.1 Except with the prior written consent of the other Party, each Party shall hold in strictest confidence, shall not use or disclose to any third party, and shall take all necessary precautions to secure any Confidential Information of the other Party. Disclosure of such information shall be restricted solely to directors, employees, agents, consultants and representatives on a strict need-to-know basis who have been advised of their obligation with respect to Confidential Information and have agreed to such obligation.  
If a Party has any questions as to what comprises such Confidential Information, that Party shall consult with the other Party. "Confidential Information" shall not include information that was known to a Party prior to the other Party's disclosure or information that becomes publicly available through no fault of the Party.
- 5.2 The receiving Party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use and undertakes to take proper care as per the standard of care as it applies to its own Confidential Information, but in no event, less than a reasonable degree of care Without limiting the generality of the foregoing, if so reasonably required by the disclosing Party, the receiving Party shall require its staff to execute a written undertaking in favour of the disclosing Party in similar terms to the provisions of this Agreement.

- 5.3 Confidential Information shall be subject to the obligations of confidence in this Section, irrespective of whether communicated orally or in writing by the disclosing Party or its representatives or obtained through observations made by representatives of the receiving Party at the premises of the disclosing Party.

## **6 Indemnification**

The Incubatee, Promoters, Incubatee's employees, consultants and/ or representatives ("**Indemnifying Parties**") shall indemnify and hold harmless the Incubator, the Incubator's personnel, and their respective agents ("**Indemnified Parties**"), from and against any and all damages, losses, liabilities, obligations, fines, penalties, levies, action, investigations, inquisitions, notices, suits, judgments, claims of any kind including third party claims, interests, governmental and statutory action, costs, litigation and arbitral costs, taxes or expenses (including without limitation, reasonable attorney's fees and expenses) suffered or incurred, directly or indirectly by a Indemnified Party, in respect of:

- a. any misrepresentation or inaccuracy in any warranty or representation made by the
- b. Indemnifying Parties to the Incubator; damage to or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course or by reason of any acts attributable to the Indemnifying Parties;
- c. any failure on the part of the Indemnifying Parties to observe or perform, in any respect, any warranties, representations, covenants, obligations, undertakings or agreement contained under this Agreement or the transaction documents executed by it;
- d. any claim made by any Person;
- e. any breach of Applicable Laws;
- f. any injury or illness or death of any personnel, employee, contractor, agent of the Incubator or Incubatee or any third party; or
- g. damage to or loss of equipment and/ or property, equipment, tools, materials, spares of any personnel, employee, contractor, agent of the Incubator or Incubatee or any third party.

Notwithstanding anything to contrary herein, the Incubator shall not be liable in any manner whatsoever for any claims, suits, liabilities, costs, damages, losses and expenses incurred or suffered by the Incubatee or its agents, personnel, sub-contractors and representatives, including in respect of any injury, death, damage to or loss of its and their or any third party's personnel, employees, equipment, material or property, as the case may be, arising or resulting from, or occasioned by or in connection with this Agreement.

## **7 Limitation of Liability**

NEITHER PARTY SHALL HAVE ANY LIABILITY TOWARDS THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY LOSS OF ANTICIPATED SAVINGS, OPPORTUNITY, REVENUE, PROFIT OR GOODWILL, OR OTHER ECONOMIC LOSS; OR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL LOSS OR PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND EVEN IF SUCH OTHER PARTY HAS INTIMATED OR ADVISED THE FIRST PARTY, OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, OR THE FIRST PARTY IS, OR SHOULD REASONABLY HAVE BEEN AWARE OF SUCH POSSIBILITY.

## **8 Gift and Gratuity Policy**

The Incubatee shall not give or offer any gifts or gratuities or alike to any employee of the Incubator. Gifts or gratuities include, free goods, tickets to sporting or entertainment events, kickbacks in the form of money or merchandise, special discounts, discontinued or no-longer-used samples, paid trips, liquor, food products, meals or personal services.

## **9 TERM AND TERMINATION**

The Term of this Agreement shall begin on the Effective Date and shall continue till earlier of occurrence of any of the following events:

- 9.1 Completion period of 12 months till ....., unless the stay is extended by Incubator in writing. The extension will be as per terms to be stipulated by Incubator;
- 9.2 Incubatee entering in an acquisition, merger or amalgamation deal or reorganisation deal resulting substantially change in profile of the company, its promoters, directors, shareholders, product or business plans, or when the company plans for a public issue.
- 9.3 Change in Promoters'/ founders' team without prior written approval of the Incubator.
- 9.4 Under-performance or un-viability of the business proposition: Incubator will use its discretion for the same, on a case to case basis;  
Irresolvable disputes between Promoters/ Founders of the Incubatee. The Incubator shall at its sole discretion be deemed to decide the position or point when disputes are deemed to be irresolvable; or
- 9.5 Any other reasons which incubator may find it necessary for the Incubatee to leave incubator.
- 9.6 In the event of a breach or default of any provision of this Agreement or the Incubator policy by the Incubatee, Incubator shall be entitled to terminate the Agreement by giving a notice of sixty days and the Incubatee will leave the Incubator as per direction of Incubator. Notwithstanding the above, Incubator reserves rights to take legal course of action available to it against the Incubatee. In the event of a breach or default of any provision of this Agreement by Incubator, Incubator will correct the default within a reasonable period from the date of the receipt of the notice from Incubatee.
- 9.7 Notwithstanding anything stated herein above, this Agreement can be terminated by the Incubator prior to expiry by either party by giving a written notice of sixty (60) days to the Incubatee and that the Incubatee shall be entitled to terminate this Agreement with a ninety (90) days prior written notice.
- 9.8 Pending physical exit of the Incubatee from the Incubator, Incubator reserves a right to restrict the access to the Incubatee, its Promoters, employees or representatives.
- 9.9 On termination of the Agreement, the Incubatee shall handover to incubator vacant and peaceful possession of the Premises and assets belonging to Incubator.

## 10 **Governing Law, Jurisdiction and Dispute Resolution**

This Agreement shall be governed by and construed in accordance with the laws of India. By signing this Agreement, both the Parties agree to submit to the exclusive jurisdiction and venue of courts of Pune, Maharashtra.

## 11 **Arbitration**

- 11.1 The Parties agree that, in the event of any dispute or differences or disagreement or claim arising out of or touching upon this Agreement including any dispute as to validity, interpretation, breach of any provision of the Agreement or with respect to any amount outstanding ("**Dispute**"), shall be resolved by good faith negotiations between the designated senior officials of each Party, if not resolved through such negotiations within 15 (fifteen) days of written notice of the existence of such Dispute ("**Dispute Notice**"), the Dispute shall be referred to CEOs of both the Parties for amicable negotiations and, if not resolved through such negotiations within 30 (thirty) days of such reference, be finally settled by binding arbitration shall be referred to Director of **DPU Foundation For Innovation Incubation & Entrepreneurship**, a sole arbitrator appointed by the Parties. The appointment of Director of **DPU Foundation For Innovation Incubation & Entrepreneurship**, as a sole arbitrator has been jointly done by the Parties. Such arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and/or any amendment or re-enactment thereof by a sole arbitrator to be appointed by the Incubator.
- 11.2 The seat of the sole arbitrator shall be Pune and the arbitration shall be conducted in English language.
- 11.3 The costs of the arbitration proceedings shall be determined by the arbitrator. The award of the arbitrator shall be binding on the Parties and shall be enforceable in any competent court.

## 12 **Notices**

Except as may be otherwise provided herein, all notices, requests, waivers and other communications ("**Notices**") shall be deemed to be delivered as provided herein: (a) if

delivered to the addressee (“**Receiving Party**”) by hand: upon the Notice being acknowledged by written receipt by the Receiving Party; (b) if sent by E-mail/facsimile: immediately upon transmission; (c) if dispatched by ordinary prepaid postage: upon the lapse of the 5<sup>th</sup> (fifth) day of such dispatch. The Notices shall be addressed to the Parties at the aforementioned addresses. Each Party shall promptly inform the other Parties of any change to its contact details.

**Incubator:**

**Authorised Person:** **Mr. Mrudang Shukla**  
CEO, **DPU Foundation For Innovation Incubation & Entrepreneurship**  
**Address:** DPU FIIE, Assembly Building, Dr. D Y Patil Medical College Camopus,  
Sant Tukaram Nagar, Pimpri, Pune, Maharashtra 411048.  
**Email:** **ceo.dpu.ic@dpu.edu.in**  
**Contact no:** **8888877273**  
Incubatee: As set out in **Schedule 2** hereto.

**13 Force Majeure**

- 13.1 Each Party shall be temporarily excused from performing its obligations under this Agreement for so long as such performance is prevented or delayed by occurrence of any Force Majeure Event. The term “**Force Majeure Event**” shall, for purposes of this Agreement, be defined as any and all causes, contingency or circumstances beyond the reasonable control of a Party, including: (i) any acts of God, such as fire, storm, flood, drought, earthquake, accident, natural disasters, epidemic, pandemic, health emergencies; (ii) acts of the public enemy, war, rebellion, insurrection, explosion, sabotage, (iii) any governmental action, nationalization, expropriation, confiscation, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state) (iv) act of terrorism, civil commotion, disobedience or unrest, insurrection, public or private strike, riot or revolution.
- 13.2 The Party so affected, upon notice to the other Party, within 3 (three) Business Days of the occurrence of Force Majeure Event, shall be excused from such performance to the extent of such prevention, restriction or interference, provided that the Party so affected shall use its best efforts to overcome and mitigate such Force Majeure Event and shall continue performing its obligations hereunder with utmost care whenever such causes are removed. In such event the time limit for such performance shall be extended accordingly.
- 13.3 Notwithstanding anything contained in this Agreement, the Incubatee and its Promoters shall not be entitled to suspend its obligations with allotment of equity to the Incubator in accordance with Section 5.2 above.
- 13.4 Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party for any delay in performance or any failure to perform any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or failure is due to an event of Force Majeure, provided the Party whose performance is affected has taken all steps which it could reasonably be expected to have taken to avoid the effects of and mitigate the effects of Force Majeure.

**IN WITNESS WHEREOF**, the Parties hereto have put their respective hands and seal on the day and the year first hereinabove written

**DPU Foundation For Innovation Incubation & (Incubatee)**  
**Entrepreneurship (Incubator)**

Authorized Signatory

Authorized Signatory

Mr. Mrudang Shukla  
CEO

**DPU Foundation For Innovation Incubation &**  
**Entrepreneurship**

### **Annexure 1: Incubator Facilities and Support Services**

<b>Category</b>	<b>Service offering</b>
Mentoring/Advisory	Incubatees will receive monthly up to 10 hours of mentoring/advisory services
Infrastructural support	Co-working space, Meeting Room, Board Room, Training Room, Internet etc
Grant-in-aid	For PoC and Prototype depending on application and approval from authority.
Maker Space/Fabrication Lab	Design, PoC, Prototyping, Testing facilities
Interns' Support	Incubatees can get support from the Interns
Library and Information services	Institutional Membership of Library Lounge
Funding Opportunity	Scouting for Funding opportunities from various sources through recommendation in Network for DPU FIIE Incubated Startup
IP/Legal/Grants management services	As per the actual
Visibility and Branding	Permission to use the logo . Listing on DPU-FIIE website and other marketing collaterals of DPU-FIIE
Website and App development	Discounted services for Incubatees
Digital Marketing	From DPU-FIIE media team (as per actuals)
Transport	DPU-FIIE Buses (as per actuals)
Hostel/Guest House	DPU-FIIE Hostel and Guest House department (as per actuals)
Canteen Facility	DPU-FIIE canteens and shops (pay per use basis)

**DPU Foundation For Innovation Incubation & (Incubatee)  
Entrepreneurship (Incubator)**

Authorized Signatory

Authorized Signatory

Mr. Mrudang Shukla  
CEO

**DPU Foundation For Innovation Incubation &  
Entrepreneurship**

**SCHEDULE 2**

<b>Details of Premises</b>	<b>DPU Foundation For Innovation Incubation &amp; Entrepreneurship</b>
<b>Details of Business of the Incubatee</b>	
<b>Names and Details of the Promoters</b>	
<b>Names and Details of the Shareholders</b>	
<b>Address of Incubatee for Notices</b>	
<b>End Date</b>	

**DPU Foundation For Innovation Incubation & Entrepreneurship (Incubator)**      **(Incubatee)**

Authorized Signatory

Authorized Signatory

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Mr. Mrudang Shukla  
CEO

**DPU Foundation For Innovation Incubation & Entrepreneurship**