

CERTIFIED TRUE COPY
For THE INDIAN HOTELS CO. LTD.


BEEJAL DESAI
Vice President Legal & Company Secretary

SCHEME OF ARRANGEMENT

AMONGST

International Hotel Management Services LLC ... Transferor Company

AND

The Indian Hotels Company Limited ... Transferee Company

AND

their respective shareholders and creditors

UNDER SECTIONS 391 TO 394 OF THE COMPANIES ACT, 1956 READ WITH SECTION 52 OF THE COMPANIES ACT, 2013, SECTION 78 AND SECTIONS 100 TO 103 OF THE COMPANIES ACT, 1956

PART I – GENERAL

- A. International Hotel Management Services LLC is a limited liability company incorporated in the State of Delaware, United States of America pursuant to and in accordance with the Delaware Limited Liability Company Act (as amended from time to time), having its registered office at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE, 19808, United States of America and its principal place of business at c/o Pierre Hotel, 2 East 61st Street, New York, NY 10065-8402, United States of America (the “**Transferor Company**”). The Transferor Company is primarily engaged in the business of, *inter alia*, owning equity interests in entities that own and/or operate and/or manage hotels and hospitality business. The Transferor Company is a wholly owned subsidiary of the Transferee Company (*as defined hereinafter*).
- B. The Indian Hotels Company Limited is a public limited company originally incorporated under the Indian Companies Act of 1882 and continuing its existence under the Act (*as defined hereinafter*), and having its registered office at Mandlik House, Mandlik Road, Mumbai 400001 (the “**Transferee Company**”). The Transferee Company is primarily engaged in the business of owning, operating and managing hotels, palaces and resorts and its objects include acquiring and holding shares in any other company having objects altogether or in part similar to those of the Transferee Company or carrying on any business capable of being conducted so as directly or indirectly to benefit the Transferee Company. The equity shares of the Transferee Company are listed on the BSE Limited and on the National Stock Exchange of India Limited (collectively, the “**Stock Exchanges**”).
- C. The Transferee Company is in the process of undertaking a restructuring of its group holding structure in some of its overseas joint ventures and wholly owned subsidiaries by consolidating certain holdings in the downstream overseas operating companies under a single holding company, namely, IHOCO BV, effectively capturing value at a



single point and enabling greater organizational and operational control of these overseas joint ventures and wholly owned subsidiaries. Pursuant to this international restructuring exercise, the utility of retaining the Transferor Company as a separate entity is diminished and hence it is sought to be amalgamated with the Transferee Company.

- D. In view of the above, and in order to simplify the overseas group holding structure and reduce the overseas shareholding tiers, it is proposed that the Transferor Company be amalgamated with the Transferee Company, pursuant to which the Transferor Company will cease to exist as a separate legal entity as per the applicable law in the State of Delaware, United States of America, and shall be deemed to be dissolved without winding up for the purposes of the Act, and the consequent cancellation of the share capital comprising of the outstanding common stock and the additional paid in capital in the Transferor Company (the “**LLC Shares**”) held by the Transferee Company be undertaken, pursuant to Sections 391 to 394 and other relevant provisions of the Act.
- E. Accordingly, this Scheme (*as defined hereinafter*) provides for the amalgamation of the Transferor Company with the Transferee Company and the consequent cancellation of the LLC Shares held by the Transferee Company in the Transferor Company, and various other matters consequential to or otherwise integrally connected with the above pursuant to Sections 391 to 394 of the Companies Act, 1956, read with Section 52 of the Companies Act, 2013, Section 78 and Sections 100 to 103 of the Companies Act, 1956, and other relevant provisions of the Act, in the manner provided for in this Scheme.
- F. The amalgamation of the Transferor Company with the Transferee Company pursuant to this Scheme shall take place with effect from the Appointed Date (*as defined hereinafter*).
- G. The amalgamation of the Transferor Company with the Transferee Company in accordance with this Scheme will be in compliance with the provisions of Sections 391 to 394 and other relevant provisions of the Act and Section 2(1B) of the Income Tax Act, 1961, such that:
- (i) all the properties of the Transferor Company, immediately before the amalgamation, shall become the property of the Transferee Company, by virtue of the amalgamation; and
 - (ii) all the liabilities of the Transferor Company, immediately before the amalgamation, shall become the liabilities of the Transferee Company, by virtue of the amalgamation.
- H. Since the Transferee Company is the sole shareholder of the Transferor Company, upon this Scheme becoming effective, the LLC Shares held by the Transferee Company will stand cancelled and no consideration whatsoever shall pass from the Transferee Company.
- I. The amalgamation is not and does not arise as a result of the acquisition of the property of the Transferor Company by the Transferee Company pursuant to the



purchase of such property by the Transferee Company or as a result of the distribution of such property to the Transferee Company on account of the Transferor Company ceasing to exist as a separate legal entity as per the applicable law in the State of Delaware, United States of America.

- J. This Scheme has been drawn up to comply with the conditions relating to “amalgamation” as specified under Section 2(1B) of the Income Tax Act, 1961. If any term or provision of the Scheme is found or interpreted to be inconsistent with the said provisions, including resulting from an amendment of law or for any other reason whatsoever, the Scheme may be modified in the manner provided in this Scheme to the extent determined necessary to comply with Section 2(1B) of the Income Tax Act, 1961. Such modification will however not affect other parts of the Scheme.
- K. This Scheme is divided into the following parts:
- (i) **Part I**, which deals with the introduction and definitions, and sets out the share capital of the Transferor Company and the Transferee Company;
 - (ii) **Part II**, which deals with the amalgamation of the Transferor Company with the Transferee Company;
 - (iii) **Part III**, which deals with the provisions relating to the Transferor Company under the laws of the State of Delaware, United States of America; and
 - (iv) **Part IV**, which deals with the accounting treatment, reduction of securities premium account, dissolution without winding up of the Transferor Company for the purposes of the Act and general terms and conditions applicable to this Scheme.

1. Definitions and Interpretation

1.1 In the Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the following meanings:

- 1.1.1 “**Act**” means the Companies Act, 1956, and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force, including the Companies Act, 2013, and provisions thereof as are notified and applicable from time to time and shall include any statutory modifications, re-enactment or amendments thereof;
- 1.1.2 “**Appointed Date**” means the opening of business on January 1, 2016 or such other date as may be determined by the Transferor Company (acting through its sole member) and the Board of Directors of the Transferee Company;
- 1.1.3 “**Board of Directors**” or “**Board**” means the board of directors of the Transferee Company and shall include a committee duly constituted and authorised for the purposes of matters pertaining to the amalgamation, the Scheme and/or any other matter relating thereto;



- 1.1.4 “**Effective Date**” means the last of the dates on which all the conditions and matters referred to in Clause 18(a) of the Scheme occur or have been fulfilled or waived in accordance with this Scheme. References in this Scheme to date of ‘coming into effect of the Scheme’ or ‘effectiveness of the Scheme’ shall be construed as references to the Effective Date;
- 1.1.5 “**Employees**” mean the employees, if any, of the Transferor Company, as on the Effective Date;
- 1.1.6 “**Encumbrance**” means any options, pledge, mortgage, lien, security, interest, claim, charge, pre-emptive right, easement, limitation, attachment, restraint or any other encumbrance of any kind or nature whatsoever, and the term “Encumbered” shall be construed accordingly;
- 1.1.7 “**Funds**” shall have the meaning assigned to it in Clause 9(c) hereof;
- 1.1.8 “**Governmental Authority**” means any applicable central, state or local government, legislative body, regulatory or administrative authority, agency or commission including a stock exchange or any court, tribunal, board, bureau, instrumentality, judicial or arbitral body;
- 1.1.9 “**High Court**” shall mean the High Court of Judicature at Bombay having jurisdiction in relation to the Transferee Company and shall include the National Company Law Tribunal, as applicable, or such other forum or authority as may be vested with any of the powers of a High Court for the purposes of Sections 391 to 394 of the Companies Act, 1956, or Sections 230 to 232 of the Companies Act, 2013, as may be applicable;
- 1.1.10 “**Liabilities**” shall have the meaning assigned to it in Clause 7 (a) hereof;
- 1.1.11 “**LLC Shares**” shall have the meaning assigned to it in paragraph D of Part I hereof;
- 1.1.12 “**Registrar of Companies**” means the Registrar of Companies, Maharashtra;
- 1.1.13 “**Scheme**” means this scheme of arrangement, as amended or modified in accordance with the provisions hereof;
- 1.1.14 “**SEBI**” means the Securities and Exchange Board of India;
- 1.1.15 “**SEBI Scheme Circulars**” means Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 on “Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies” read with Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 issued by SEBI, collectively, and shall include any statutory modifications, re-enactment or amendments thereof;
- 1.1.16 “**Stock Exchanges**” shall have the meaning assigned to it in paragraph B of Part I hereof;
- 1.1.17 “**Transferee Company**” shall have the meaning assigned to it in paragraph B of Part I hereof;



1.1.18 “**Transferor Company**” shall have the meaning assigned to it in paragraph A of Part I hereof; and

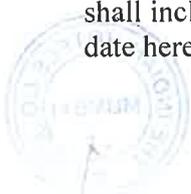
1.1.19 “**Undertaking**” means all the undertakings and entire business of the Transferor Company as a going concern, including, without limitation:

- (a) all the assets and properties including fixed assets (whether movable or immovable, tangible or intangible, present, or future of whatsoever nature), including patents, copyrights, designs and all other intellectual property rights, tenancies in relation to offices or premises, software licenses, computer programs, etc., investments and current assets of the Transferor Company, in each case, wherever situated;
- (b) all permits, quotas, rights, entitlements and other licences, bids, tenders, letters of intent, expressions of interest, memoranda of understanding or similar instruments (whether vested or potential and whether under agreements or otherwise), permissions, approvals, consents, subsidies, income tax benefits and exemptions including the right to deduction for the residual period, i.e. for the period remaining as on the Appointed Date out of the total period for which the deduction is available in law if the amalgamation pursuant to this Scheme had not taken place, all other rights including sales tax deferrals and exemptions and other benefits (in each case including the benefit of any applications made therefor), receivables, and liabilities related thereto, rights to use and avail of telephones, telexes, facsimile connections and installations, utilities, electricity and other services, provisions and benefits of all agreements, contracts and arrangements and all other interests in connection with or relating to the Transferor Company;
- (c) all the Liabilities of the Transferor Company, whether provided for or not in the books of account or disclosed in the balance sheet of the Transferor Company;
- (d) all benefits and obligations under the contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of any nature of the Transferor Company;
- (e) all books, records, files, papers, process information and drawings, manuals, data, catalogues, quotations, sales and advertising material, lists of present and former customers and suppliers, other customer information, and all other records and documents, whether in physical or electronic form relating to business activities and operations of the Transferor Company; and
- (f) all Employees.

1.2 References to Clauses, sub-Clauses and Recitals, unless otherwise provided, are to clauses, sub-clauses and recitals of and to this Scheme.

1.3 The headings herein shall not affect the construction of this Scheme.

1.4 Unless the context otherwise requires, reference to any law or to any provision thereof shall include references to any such law or to any provision thereof as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, or to any law



or any provision which replaces it, and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

- 1.5 The singular shall include the plural and vice versa; and references to one gender include all genders.
- 1.6 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 Reference to a person includes any individual, firm, body corporate (whether incorporated or not), Governmental Authority, or any joint venture, association, partnership, works council or employee representatives body (whether or not having separate legal personality).

2. Share Capital

(a) Transferor Company

- (i) The share capital structure of the Transferor Company as on October 15, 2015, is as under :

A. Authorised Share Capital	Amount in USD
1000 common stock par value USD 1 per share	1000
Total	1000

B. Issued, Subscribed and Paid-Up Share Capital	Amount in USD
Common stock par value USD 1 per share	100
Additional paid in capital	425,499,901
Total	425,500,001

- (ii) The LLC Shares of the Transferor Company are currently not listed on any stock exchange.
- (iii) All LLC Shares in the Transferor Company are held by the Transferee Company.
- (b) Transferee Company

- (i) The share capital structure of the Transferee Company as on September 30, 2015, is as under:

A. Authorised Share Capital	Amount in INR
200,00,00,000 equity shares of face value of INR 1 each	200,00,00,000
Total	200,00,00,000



B. Issued and Subscribed Share Capital	Amount in INR
<i>Issued Share Capital</i>	
80,74,89,291 equity shares of face value of INR 1 each fully paid up*	80,74,89,291
<i>Subscribed Share Capital</i>	
80,74,72,787 equity shares of face value of INR 1 each fully paid up*	80,74,72,787

C. Paid-up Share Capital	Amount in INR
80,74,72,787 equity shares of face value of INR 1 each fully paid up*	80,74,72,787
Total	80,74,72,787

*includes equity shares represented by GDRs

- (ii) The Transferee Company has issued 18,18,01,228 (Eighteen crores eighteen lakhs one thousand two hundred and twenty eight) compulsorily convertible debentures (“CCDs”) of INR 55 (Rupees Fifty five only) each, aggregating to INR 999.91 crores (Rupees Nine hundred ninety nine decimal nine one crores only), where each CCD is automatically and compulsorily convertible into 1 (One) equity share of face value of INR 1 (Rupee One only) each at a premium of INR 54 (Rupees Fifty four only) per share upon the expiry of 18 (Eighteen) months from the date of allotment of the CCD, i.e. on March 1, 2016. The CCDs are listed on the Stock Exchanges.
- (iii) As on September 30, 2015 the Transferee Company has 1,70,870 (One lakh seventy thousand eight hundred and seventy) outstanding global depository receipts which are represented by equity shares of face value of INR 1 (Rupee One only) each of the Transferee Company. The global depository receipts have been delisted from the London Stock Exchange with effect from June 29, 2015 and the effective date of termination of the global depository receipts program was September 7, 2015.
- (iv) The Transferee Company has issued secured and non-secured non-convertible debentures. All secured non-convertible debentures are listed.

3. Date of taking effect and operative date

The Scheme will be operative from the Effective Date, but shall be effective from the Appointed Date.



PART II – AMALGAMATION OF THE TRANSFEROR COMPANY WITH THE TRANSFEREE COMPANY

Section 1 – Transfer

4. Upon the coming into effect of the Scheme and with effect from the Appointed Date, the Undertaking of the Transferor Company shall, pursuant to the provisions of Sections 391 to 394 and other applicable provisions, if any, of the Act, be and stand transferred to and vested in and/or be deemed to have been transferred to and vested in the Transferee Company, as a going concern in accordance with Section 2(1B) and other applicable provisions of the Income Tax Act, 1961, without any further act, instrument, deed, matter or thing so as to become, as and from the Appointed Date, the undertaking of the Transferee Company, by virtue of and in the manner provided in this Scheme.

5. Transfer of assets

(a) Without prejudice to the generality of Clause 4 above, upon the coming into effect of the Scheme and with effect from the Appointed Date, all the estate, assets, properties (including investments in shares, securities, stocks, bonds, limited liability company interests), rights, claims, title, interest and authorities including accretions and appurtenances comprised in the Undertaking of whatsoever nature and where so ever situate, whether or not included in the books of the Transferor Company, and all assets and properties, which are acquired by the Transferor Company on or after the Appointed Date but prior to the Effective Date, shall, under the provisions of Sections 391 to 394 of the Act and all other applicable provisions of applicable law, if any, without any further act, deed or instrument, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred to and vested in the Transferee Company and/or be deemed to be transferred to and vested in the Transferee Company as a going concern so as to become, as and from the Appointed Date (or in case of any estate, assets, etc. acquired on a date after the Appointed Date, with effect from such date), the estate, assets, properties (including investments in shares, securities, stocks, bonds, limited liability company interests), rights, claims, title, interest and authorities of the Transferee Company, subject to the provisions of this Scheme in relation to Encumbrances in favour of banks and/or financial institutions.

(b) Without prejudice to the provisions of sub-Clause (a) above, in respect of such of the assets and properties of the Transferor Company as are movable in nature (including shares, securities, stocks, bonds, limited liability company interests) or incorporeal property or are otherwise capable of transfer by delivery or possession, or by endorsement and/or delivery, the same shall stand so transferred by the Transferor Company upon the coming into effect of the Scheme, and shall, become the assets and property of the Transferee Company with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act and all other applicable provisions of applicable law, if any, without requiring any deed or instrument of conveyance, cost or charge and without any notice or other intimation to any third party for transfer of the same, subject to



the provisions of this Scheme in relation to Encumbrances in favour of banks and/or financial institutions.

- (c) In respect of such of the assets and properties belonging to the Transferor Company (other than those referred to in sub-Clause (b) above) including sundry debtors, receivables, bills, credits (including tax credits), loans and advances, if any, whether recoverable in cash or in kind or for value to be received, bank balances, earnest money and deposits with any Government, quasi government, local or other authority or body or with any company or other person, the same shall stand transferred to and vested in the Transferee Company and/or deemed to have been transferred to and vested in the Transferee Company, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party, upon the coming into effect of this Scheme and with effect from the Appointed Date pursuant to the provisions of Sections 391 to 394 of the Act and all other applicable provisions of applicable law, if any.
- (d) All the licenses, permits, entitlements, approvals, permissions, registrations, incentives, tax deferrals, exemptions and benefits, subsidies, tenancy rights, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of, by the Transferor Company and all rights and benefits that have accrued or which may accrue to the Transferor Company, whether on, before or after the Appointed Date, income tax benefits and exemptions, all other rights, exemptions and benefits including those acquired by the Transferor Company on or after the Appointed Date, shall, under the provisions of Sections 391 to 394 of the Act and all other applicable provisions of applicable law, if any, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for transfer of the same, on coming into effect of the Scheme and with effect from Appointed Date, be and stand transferred to and vest in and/or be deemed to be transferred to and vested in and be available to the Transferee Company so as to become licenses, permits, entitlements, approvals, permissions, registrations, incentives, tax deferrals, exemptions and benefits, subsidies, 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.
- (e) All the rights, remedies, claims and rights of action of the Transferor Company against third parties shall, pursuant to Sections 391 to 394 of the Act, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for transfer of the same, be and deemed to be rights, remedies, claims and rights of action of the Transferee Company upon the coming into effect of the Scheme and with effect from the Appointed Date.

6. Contracts, deeds etc.

- (a) Upon the coming into effect of this Scheme and with effect from Appointed Date, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature, to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible for, and which are subsisting or have effect



immediately before the Effective Date, shall, under the provisions of Sections 391 to 394 of the Act and all other applicable provisions of applicable law, if any, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party, continue in full force and effect on or against or in favour, as the case may be, of the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto or thereunder.

- (b) Without prejudice to the other provisions of this Scheme and notwithstanding the fact that vesting of the Undertaking occurs by virtue of this Scheme itself, the Transferee Company may, at any time after the coming into effect of the Scheme, in accordance with the provisions hereof, if so required under any law or otherwise, take such actions and execute such deeds (including deeds of adherence), confirmations or other writings or arrangements with any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary in order to give formal effect to the provisions of this Scheme. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances referred to above on the part of the Transferor Company to be carried out or performed.
- (c) For the avoidance of doubt and without prejudice to the generality of the foregoing, upon the coming into effect of the Scheme and with effect from the Appointed Date, all consents, permissions, licences, certificates, clearances, authorities, powers of attorney given by, issued to, or executed in favour of the Transferor Company shall 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 thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

7. Transfer of Liabilities

- (a) Upon the coming into effect of this Scheme and with effect from the Appointed Date, all debts and liabilities of the Transferor Company including all secured and unsecured debts (whether in Indian rupees or foreign currency), liabilities (including contingent liabilities, deferred tax liabilities and obligations under any licenses or permits or schemes), duties and obligations and undertakings of the Transferor Company of every kind, nature and description whatsoever whether present or future, and howsoever arising, raised or incurred or utilised for its business activities and operations along with any charge, Encumbrance, lien or security thereon (*herein* referred to as the “**Liabilities**”), whether or not recorded in its books and records, shall, under the provisions of Sections 391 to 394 of the Act and other applicable provisions of applicable law, if any, without any further act, instrument, deed, matter or thing, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company, to the extent they are outstanding on the



Effective Date and shall become as and from the Appointed Date (or in case of any Liability incurred on a date after the Appointed Date, with effect from such date) the Liabilities of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company, 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 7.

- (b) All Liabilities incurred or which arise or accrue to the Transferor Company on or after the Appointed Date till the Effective Date shall be deemed to be and shall become the debts, loans raised and used, duties, liabilities and obligations incurred by the Transferee Company by virtue of this Scheme.
- (c) Where any Liabilities of the Transferor Company as on the Appointed Date have been discharged by the Transferor Company on or after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to be for and on account of the Transferee Company upon the coming into effect of this Scheme.
- (d) All Liabilities incurred or undertaken by the Transferor Company on or after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used, incurred or undertaken for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall, upon the coming into effect of this Scheme and under the provisions of Sections 391 to 394 of the Act, without any further act, instrument or deed, cost or charge and without any notice or other intimation to any third party for the transfer of the same, be and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company and shall become the loans and liabilities, duties and obligations of the Transferee Company, which shall meet, discharge and satisfy the same.
- (e) Upon coming into effect of the Scheme, 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 liability, including a contingent liability in whatever form), if any, due or which may at any time in future become due between the Transferor Company 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 the appropriate effect shall be given in the books of accounts and records of the Transferee Company.
- (f) Any reference in any security documents or arrangements (to which the Transferor Company is a party) to the Transferor Company 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 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, with the



Registrar of Companies to give formal effect to the above provisions, if required.

- (g) Upon the coming into effect of this Scheme, the Transferee Company shall be liable to perform all obligations in respect of the Liabilities, which have been transferred to it in terms of this Scheme.
- (h) It is expressly provided that, save as herein provided, no other term or condition of the Liabilities transferred to the Transferee Company is amended by virtue of this Scheme except to the extent that such amendment is required statutorily.
- (i) The provisions of this Clause 7 and Clause 8 shall operate 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 or the terms of sanction or issue or any security document shall stand modified and/or superseded by the foregoing provisions.

8. Encumbrances

- (a) The transfer and vesting of the assets comprised in the Undertaking to and in the Transferee Company under Clause 4 and Clause 5 of this Scheme shall be subject to the Encumbrances, if any, affecting the same.
- (b) All Encumbrances, if any, existing prior to the Effective Date over the assets of the Transferor Company which secure or relate to the Liabilities shall, after the Effective Date, without any further act, instrument or deed, 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. Provided that if any of the assets of the Transferor Company have not been Encumbered in respect of the Liabilities, such assets shall remain unencumbered and the existing Encumbrance referred to above shall not be extended to and shall not operate over such assets. Further, such Encumbrances shall not relate or attach to any of the other assets of the Transferee Company. The absence of any formal amendment which may be required by a lender or trustee or third party shall not affect the operation of the above.
- (c) The existing Encumbrances over the other 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 Date shall continue to relate to such assets and properties and shall not extend or attach to any of the assets and properties of the Transferor Company transferred to and vested in the Transferee Company by virtue of the Scheme.

9. Employees and directors

- (a) Upon the coming into effect of this Scheme, the Employees, if any, shall, under the provisions of Sections 391 to 394 of the Act and other provisions of applicable law, if any, without any further act, instrument, deed, cost or charge and without any notice or other intimation to any third party for their transfer, become the employees of the Transferee Company on terms and conditions not



less favourable than those on which they are engaged by the Transferor Company and without any interruption of or break in service as a result of the amalgamation of the Transferor Company with the Transferee Company. For the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of the Employees shall also be taken into account, and paid (as and when payable) by the Transferee Company.

- (b) It is clarified that save as expressly provided for in this Scheme, the Employees who become the employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies and shall not be entitled to avail of any schemes and benefits that may be applicable and available to any of the other employees of the Transferee Company (including the benefits of or under any employee stock option schemes applicable to or covering all or any of the other employees of the Transferee Company), unless otherwise determined by the Transferee Company.
- (c) Insofar as the provident fund, gratuity fund and superannuation fund, trusts, retirement fund or benefits and any other funds or benefits created by the Transferor Company for the Employees or to which the Transferor Company is contributing for the benefit of the Employees and other such funds, trusts, the benefits of which the Employees enjoy (collectively referred to as the “Funds”), all the contributions made to such Funds for the benefit of the Employees and the accretions thereto and the investments made by the Funds in relation to the Employees shall be transferred to the Transferee Company and shall be held for the benefit of the concerned Employees. In the event the Transferee Company has its own funds in respect of any of the Funds referred to above, such contributions, accretions and investments shall, subject to the necessary approvals and permissions and at the discretion of the Transferee Company, be transferred to the relevant funds of the Transferee Company. In the event that the Transferee Company does not have its own funds in respect of any of the above or if deemed appropriate by the Transferee Company, the Transferee Company may, subject to necessary approvals and permissions, maintain the existing funds separately and contribute thereto until such time that the Transferee Company creates its own funds, at which time the Funds and the investments, accretions and contributions pertaining to the Employees shall be transferred to the funds created by the Transferee Company.
- (d) Upon the coming into effect of this Scheme, the directors of the Transferor Company will not be entitled to any directorships in the Transferee Company by virtue of the provisions of this Scheme. It is clarified that this Scheme will not affect any directorship of a person who is already a director in the Transferee Company as of the Effective Date.



10. Legal, taxation and other proceedings

- (a) Upon the coming into effect of this Scheme, all suits, actions, and other proceedings including legal and taxation proceedings (including before any statutory or quasi-judicial authority or tribunal), by or against the Transferor Company, whether pending and/or arising on or before the Effective Date shall be continued and/or enforced by/or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been instituted and/or pending and/or arising by/or against the Transferee Company.
- (b) The Transferee Company shall have all legal, taxation or other proceedings initiated by or against the Transferor Company referred to in sub-Clause (a) above transferred to its name as soon as is reasonably possible after the Effective Date and to have the same continued, prosecuted and enforced by/or against the Transferee Company.

11. Without prejudice to the provisions of Clauses 4 to 10, with effect from the Appointed Date, all inter-party transactions between the Transferor Company and the Transferee Company shall be considered as intra-party transactions for all purposes.

Section 2 – Conduct of Business

12. Upon the coming into effect of the Scheme, with effect from the Appointed Date and up to and including the Effective Date:

- (a) the Transferor Company shall carry on and be deemed to have carried on all business and activities and shall hold and stand possessed of and shall be deemed to hold and stand possessed of all its estates, assets, rights, title, interest, authorities, contracts and investments for, and on account of, and in trust for, the Transferee Company;
- (b) all profits and income accruing or arising to the Transferor Company, and losses and expenditure arising or incurred by it (including taxes, if any, accruing or paid in relation to any profits or income), for the period commencing from the Appointed Date shall, for all purposes, be treated as and be deemed to be the profits, income, losses or expenditure (including taxes), as the case may be, of the Transferee Company;
- (c) any of the rights, powers, authorities or privileges exercised by the Transferor Company shall be deemed to have been exercised by the Transferor Company for and on behalf of, and in trust for and as an agent of the Transferee Company. Similarly, any of the obligations, duties and commitments that have been undertaken or discharged by the Transferor Company shall be deemed to have been undertaken for and on behalf of and as an agent for the Transferee Company; and
- (d) all taxes (including any direct or indirect taxes) paid or payable by the Transferor Company in respect of the operations and/or the profits of the Transferor Company before the Appointed Date, shall be on account of the



Transferor Company and, insofar as it relates to the tax payment (including any direct or indirect taxes) whether by way of deduction at source, advance tax or otherwise howsoever, by the Transferor Company in respect of the profits or activities or operation of the Transferor Company with effect from the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company, and, shall, in all proceedings, be dealt with accordingly.

13. Subject to the terms of the Scheme, the transfer and vesting of the Undertaking as per the provisions of the Scheme shall not affect any transactions or proceedings already concluded by the Transferor Company on or before the Appointed Date or after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things made, done and executed by the Transferor Company as acts, deeds and things made, done and executed by or on behalf of the Transferee Company.

Section 3 – Cancellation of LLC Shares

14. Upon the Scheme coming into effect, all LLC Shares held by the Transferee Company shall stand cancelled without any further application, act or deed. It is clarified that no new shares or other equity interests shall be issued or payment made in cash or kind whatsoever by the Transferee Company in lieu of such LLC Shares of the Transferor Company.

PART III – PROVISIONS RELATING TO TRANSFEROR COMPANY UNDER THE LAWS OF THE STATE OF DELAWARE, UNITED STATES OF AMERICA

15. On the date on which the last of the conditions set out in Clause 18(a) of this Scheme (except for the condition set out in Clause 18(a)(iv)) is satisfied, a “Certificate of Merger” shall be filed with the office of the Secretary of State of the State of Delaware. Following the actions described in the preceding sentence the amalgamation of the Transferor Company into the Transferee Company will have occurred and be effective for the purposes of applicable law in the State of Delaware. As per the applicable laws of the State of Delaware, the “Certificate of Merger” shall act as a certificate of cancellation for the Transferee Company.

PART IV – ACCOUNTING TREATMENT, REDUCTION OF SECURITIES PREMIUM ACCOUNT AND OTHER TERMS AND CONDITIONS

16. Accounting Treatment

- (a) Upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books of accounts as under:
 - (i) The amalgamation shall be accounted for in the books of account of the Transferee Company according to the “Pooling of Interests Method” of accounting as per the Accounting Standard 14 (AS 14): ‘Accounting for Amalgamations’, as specified under Section 133 of the Companies Act, 2013, read with Rule 7 of the Companies (Accounts) Rules, 2014 and the other relevant provisions of the Companies Act, 2013.



- (ii) Accordingly, on and from the Appointed Date and subject to the provisions hereof, all assets, liabilities and reserves of the Transferor Company shall be recorded in the books of account of the Transferee Company at their existing carrying amounts and in the same form, including the debit balance in profit and loss Account of the Transferor Company as debit balance in profit and loss Account of the Transferee Company.
- (iii) The functional currency of Transferor Company being United States Dollar (“USD”), the assets and liabilities including the debit balance in Profit and Loss Account of the Transferor Company shall be translated into Indian Rupees (“INR”) as per the Accounting Standard 11 (AS 11): ‘The Effects of Changes in Foreign Exchange Rates’, as specified under Section 133 of the Companies Act, 2013, read with Rule 7 of the Companies (Accounts) Rules, 2014 or such amendments which may be notified under the Companies Act, 2013.
- (iv) Upon the Scheme coming into effect and with effect from the Appointed Date, the paid up share capital (including the additional paid in capital) and/or capital contribution in the Transferor Company and the amount of investment made by the Transferee Company in the Transferor Company shall be cancelled and the difference, if any, shall be adjusted against the profit and loss account of the Transferee Company as the Transferor Company will cease to exist upon the Scheme becoming effective.
- (v) All costs and expenses incurred as per Clause 28 below as well as other costs attributable and incidental to the finalization and implementation of this Scheme shall be charged to the profit and loss account in the books of Transferee Company.
- (vi) In case of any difference in accounting policy between the Transferor Company and the Transferee Company, the impact of the same till the Appointed Date will be quantified and adjusted in accordance with Accounting Standard 5 (AS 5): ‘Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies’, in the books of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.
- (vii) Upon coming into effect of this Scheme, to the extent that there are inter-company loans, advances, deposits, balances or other obligations as between the Transferor Company and the Transferee Company, the obligation in respect thereof will come to an end and corresponding effect shall be given in the books of accounts and records of the Transferee Company for the reduction of any assets or liabilities as the case may be and there would be no accrual of interest or any other charges in respect of such inter-company loans, deposits or balances, with effect from the Appointed Date.



17. Reduction of the securities premium account of the Transferee Company:

- (a) Consequent to the actions taken as per Clause 16, the entire debit balance in the profit and loss account of the Transferee Company (including the debit balance of the Transferor Company that would be transferred to the profit and loss account of the Transferee Company in accordance with Clause 16(a)(ii)) as at the Appointed Date shall be adjusted against the securities premium account of the Transferee Company.
- (b) All such adjustments against the securities premium account of the Transferee Company shall be effected in accordance with provisions of Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013, Section 78 and Sections 100 to 103 of the Companies Act, 1956 and any other applicable provisions of law. For giving effect to the above provisions, the permission from the shareholders of the Transferee Company shall be deemed to have been received as contemplated by the Act and other related provisions, upon this Scheme being approved by members of the Transferee Company at the court convened meeting or otherwise. The reduction in the securities premium account as aforesaid, if any, of the Transferee Company shall be effected as an integral part of the Scheme itself as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any unpaid share capital and the order of the High Court sanctioning the Scheme shall be deemed to be an order under Section 102 of the Act (including corresponding applicable provisions of the Companies Act, 2013) confirming the reduction of securities premium account. Such a reduction shall be deemed to be effective on and from the Appointed Date. The Transferee Company shall not be required to add "and reduced" as a suffix.

18. Scheme conditional on

- (a) The Scheme is conditional upon and subject to:
 - (i) the Scheme being approved by the requisite majorities of the various classes of members and creditors (where applicable) of the Transferee Company as required under the Act, or dispensation having been received from the High Court in relation to obtaining such approval from the members and/or creditors, and the requisite order of the High Court being obtained in this regard;
 - (ii) this Scheme and the merger of the Transferor Company into the Transferee Company being approved by the member of the Transferor Company as required under the laws of the State of Delaware, United States of America;
 - (iii) the "Agreement of Merger" between the Transferor Company and the Transferee Company that is governed by the laws of the State of Delaware having been executed and delivered;
 - (iv) the Transferor Company having filed the "Certificate of Merger" with the office of the Secretary of the State of Delaware;



- (v) the High Court having accorded its sanction to the Scheme;
 - (vi) the approval of SEBI in terms of the SEBI Scheme Circulars being obtained upon this Scheme being sanctioned by the High Court, if applicable;
 - (vii) such other approvals and sanctions including sanction of any Governmental Authority or contracting party as may be required by law or contract in respect of the Scheme being obtained; and
 - (viii) the certified copy of the order of the High Court approving the Scheme being filed with the Registrar of Companies, Maharashtra.
- (b) On the approval of the Scheme by the shareholders of the Transferee Company, in accordance with Section 391(1) of the Act, the shareholders of the Transferee Company shall be deemed to have also resolved and accorded all relevant consents under the Act to the extent the same may be considered applicable in relation to the amalgamation set out in this Scheme and related matters.
- (c) In the event of this Scheme failing to take effect by September 30, 2016 or such later date as may be agreed by the Board of Directors of the Transferee Company and the Transferor Company (acting through its sole member), this Scheme shall stand revoked, cancelled and be of no effect and become null and void, and in that event, no rights and liabilities shall accrue to, or, be incurred *inter se* between the parties or their shareholders or creditors or employees or any other person. In such case, each of the Transferor Company and the Transferee Company shall bear its own costs and expenses or as may be otherwise mutually agreed.
19. Upon the coming into effect of the Scheme and subject to the actions required to be undertaken under the applicable law in the United States of America as set out in Part III of this Scheme, the LLC Shares shall stand cancelled and the Transferor Company will cease to exist as a separate legal entity as per the applicable law in the State of Delaware, United States of America, and shall be deemed to be dissolved without winding up for the purposes of the Act, without any further act or deed with effect from the Appointed Date.
20. Dividends
- (a) The Transferor Company and the Transferee Company shall be entitled to declare and pay dividends and distributions, whether interim or final, to their respective members and shareholders in respect of the accounting period prior to the Effective Date.
 - (b) Prior to the effectiveness of the Scheme, the holders of the LLC Shares of the Transferor Company and shares of the Transferee Company, as applicable, shall, save as expressly provided otherwise in this Scheme, continue to enjoy their existing rights under their respective Articles of Association or other



constitutional documents including the right to receive dividends and distributions.

- (c) It is clarified that the aforesaid provisions in respect of declaration of dividends and distributions are enabling provisions only and shall not be deemed to confer any right on any member or shareholder of the Transferor Company and/or the Transferee Company to demand or claim any dividends which, subject to the provisions of the Act, shall be entirely at the discretion of the Board of Directors of the Transferor Company and the Transferee Company (acting through its sole member) respectively, and subject to the approval, if required, of the shareholders of the Transferor Company and the Transferee Company respectively.

21. Applications

- (a) The Transferee Company shall make necessary applications before the High Court for the sanction of this Scheme under Sections 391 and 394 of the Companies Act, 1956, read with Section 52 of the Companies Act, 2013, Section 78 and Sections 100 to 103 of the Companies Act, 1956 and any other applicable provisions of law.
- (b) The Transferor Company shall make the necessary filings and obtain such approvals, as may be required under the applicable laws in the State of Delaware, United States of America for effecting the merger.

22. Modifications to the Scheme

The Transferor Company (by its sole member) and the Transferee Company (by its Board of Directors) may, in their full and absolute discretion, jointly and as mutually agreed in writing:

- (a) assent to any alteration(s) or modification(s) to this Scheme which the High Court and/or any other Governmental Authority may deem fit to approve or impose and to do all acts, deeds and things as may be necessary, desirable or expedient for the purposes of this Scheme;
- (b) give such directions (acting jointly) as they may consider necessary to settle any question or difficulty arising under this Scheme or in regard to and of the meaning or interpretation of this Scheme or implementation thereof, or in any matter whatsoever connected therewith, or to review the position relating to the satisfaction of various conditions of this Scheme and if necessary, to waive any of those (to the extent permissible under applicable law);
- (c) jointly modify, vary or withdraw this Scheme prior to the Effective Date in any manner at any time;
- (d) determine jointly whether any asset, liability, legal or other proceedings pertains to the Transferor Company or not, on the basis of any evidence that they may deem relevant for this purpose; and



- (e) any modification to the Scheme by the Transferor Company and/or the Transferee Company, after receipt of sanction by the High Court, shall be made only with the prior approval of the High Court.
23. The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to any Governmental Authority, if required, under any law for such consents and approvals which the Transferee Company may require to carry on the business of the Transferor Company.
24. Severability
- (a) The provisions contained in this Scheme are inextricably inter-linked with the other provisions and the Scheme constitutes an integral whole. The Scheme would be given effect to only if is approved in its entirety unless specifically agreed otherwise by the Board of Directors of the Transferee Company and the Transferor Company (acting through its sole member).
- (b) If any part of this Scheme is found to be unworkable for any reason whatsoever, the same shall not, subject to the decision of the Transferor Company and the Transferee Company, affect the validity or implementation of the other parts and/or provisions of this Scheme.
25. Upon this Scheme becoming effective, the accounts of the Transferee Company, as on the Appointed Date shall be reconstructed in accordance with the terms of this Scheme.
26. The Transferee Company shall be entitled to file/revise its income tax returns, TDS certificates, TDS returns, and other statutory returns, if required, and shall have the right to claim refunds, advance tax credits, credit of tax under Section 115JB of the Income Tax Act, 1961, credit of tax deducted at source, credit of foreign taxes paid/withheld etc., if any, as may be required consequent to implementation of this Scheme.
27. Repeals and Savings
- Any matter filed with Registrar of Companies, Regional Director or the Central Government under the Companies Act, 1956, before the notification of the corresponding provisions under the Companies Act, 2013 and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of the Companies Act, 1956. Any direction or order given by the High Court under the provisions of the Companies Act, 1956 and any act done by the Transferor Company and/or Transferee Company based on such directions or order shall be deemed to be in accordance with and consistent with the provisions of the Companies Act, 2013. Accordingly, the provisions of the Companies Act, 2013, shall not apply to acts done by the Transferor Company and/or Transferee Company as per direction or order of the High Court sanctioning the Scheme.
28. Costs



All costs, charges and expenses (including, but not limited to, any taxes and duties, stamp duty, registration charges, etc.) payable by the Transferor Company and the Transferee Company in relation to or in connection with the Scheme and incidental to the completion of the amalgamation of the Transferor Company with the Transferee Company in pursuance of the Scheme shall be borne and paid by the Transferee Company.



