

**ACER COMMERCIAL RESELLER AGREEMENT**

BY AND BETWEEN:

**ACER INDIA PRIVATE LIMITED**  
(hereinafter referred to as “**AIL**”)

AND

**[REDACTED]**  
(hereinafter referred to as “**Reseller**”)

EFFECTIVE DATE: **[REDACTED]**

CATEGORY: \_\_\_\_\_

TERRITORY: \_\_\_\_\_

This Agreement constitutes an electronic record within the meaning of applicable Indian laws and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein for which direct evidence would be admissible in accordance with Section 4 of Information Technology Act, 2000, read with Section 65B of Indian Evidence Act, 1872. This electronic record is generated by a programmed information system and does not require any physical or digital signatures.



tablet PCs, mobile handsets and various IT hardware peripherals under the trade name “Acer” with multiple brands which enjoy a high reputation in the market for their outstanding quality, and is interested in selling its Products to various government institutions, business entities and other commercial establishments through its various Resellers.

- B.** The Reseller claims to have experience in selling various information technology equipment and is interested in becoming an authorized reseller of Products manufactured and/or traded by AIL within the defined Territory.
- C.** The Parties in this regard are executing this Agreement to record their mutual understanding with regard to the obligations of the Parties upon the terms and conditions mentioned hereinbelow.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

**1. DEFINITIONS**

- 1.1** “**Agreement**” means this Acer Commercial Reseller Agreement, as may be amended from time to time electronically, and shall include within it any and all schedules and annexures hereof.
- 1.2** “**Authorized Signatory**” means any of the authorized signatories of AIL as mentioned in the PCCs for the Category of business allocated and authorized by AIL to the Reseller.
- 1.3** “**Bid**” means the response submitted by the Reseller in furtherance to an NIT at GeM or otherwise and includes to mean within it any response submitted by the Reseller in a reverse auction process, comparison sheet/order, etc. as well.
- 1.4** “**Category**” means the vertical allocated and authorized by AIL to the Reseller to conduct its business in and may refer to either (a) Government Sales; (b) Enterprise Sales; (c) Mid-market Private Sales; (d) Stock & Sell – Small Office / Home Office

Sales; or (e) a combination of any of these, which shall refer to, for the purpose of this Agreement, the category mentioned first hereinabove.

- 1.5 “Confidential Information”** means any and all information and data (in tangible or intangible form) relating to **(i)** the past, present or future activities of the Disclosing Party, its affiliates or group companies, and their respective employees, directors, consultants or third party suppliers or purchasers; **(ii)** the Disclosing Party, its affiliates and/or group company’s plans, pricing, methods, methodologies, processes, systems, formulae, patterns, models, devices, compilations, financial data, lists, Intellectual Property Rights, company information, equipment, statistics, programs, research, development, information technology, manufacturing processes, ideas, data, financial information and other technologies, whether patentable, copyrightable or susceptible to any other form of protection or other business, marketing or technical information and any derivative of such information; **(iii)** discussions and negotiations between the Parties in relation to the Agreement; **(iv)** this Agreement; **(v)** any other proprietary, confidential or non-public information of the Disclosing Party, its affiliates or group companies or its clients or third parties to whom the Disclosing Party, its affiliates and/or group companies owe a duty of confidentiality; **(vi)** any information specifically marked in writing by the Disclosing Party as Confidential Information; and **(vii)** any derivative of the Confidential Information, regardless of the medium in which such information is stored.
- 1.6 “Customer”** means the authority that has issued the NIT, and/or the authority on whose behalf such NIT has been got issued.
- 1.7 “Disclosing Party”** means either of the Parties that discloses its Confidential Information to the Recipient in furtherance of, or in relation to, the Agreement.
- 1.8 “Dispute”** means any dispute or disagreement of any kind whatsoever between or among the Parties in connection with or arising out of the Agreement, the NIT, or any contract entered into between the Parties in furtherance to a successful Bid, including any question regarding its existence, validity or termination, or claims seeking redressal or asserting rights under applicable Laws.

- 1.9 “Effective Date”** means the date mentioned first hereinabove and shall be considered to be the date of commencement of rights and obligations of the Parties hereto.
- 1.10 “GCCs”** means the General Conditions of Contract applicable to and binding upon the Reseller irrespective of the Category of business allocated and authorized by AIL to the Reseller.
- 1.11 “GeM”** means the National Public Procurement Portal operated and maintained by GeM SPV which is a one stop Government e-Marketplace to facilitate online procurement of common use goods and services required by various government departments, organizations, PSUs and PSBs.
- 1.12 “Guidelines”** means various guidelines, instructions, manuals, procedures, etc. issued by AIL to the Reseller pertaining to the performance of Reseller’s duties and obligations pursuant to the Agreement.
- 1.13 “Intellectual Property Rights”** means all intellectual and industrial property rights, of the Party and its parent, principal, affiliated, associated and subsidiary companies and branches in all territories anywhere in the world, including without limitation, any invention, patent, design or utility model rights, any copyright and trademarks, database rights, commercial or confidential information, know how or trade secrets and any other rights of a like nature whether registered or not, and the right to apply for them.
- 1.14 “Laws”** means any and all applicable laws, ordinances, statutes, rules and regulations, circulars and notifications, orders, decrees, injunctions, licences, permits, approvals, authorizations, consents, waivers, privileges, agreements and regulations and other requirements established by central, state and local government authorities having jurisdiction over the relevant matter as such, and are in effect as of the date hereof or as may be amended, modified, enacted or revoked from time to time hereafter.
- 1.15 “NIT”** means any tender document and the notice inviting such tender issued by the Customer, and shall mean to include all Request for Proposals (RFPs), Request for Quotations (RFQs) and/or Request for Information (RFIs), and any other such

invitation to offer like reverse auction, comparison order, etc. issued by the Customer irrespective of the nomenclature.

- 1.16** **“PCCs”** means the Particular Conditions of Contract applicable upon the Reseller for the Category of business allocated and authorized by AIL to the Reseller to conduct its business in and may refer to either (a) Particular Conditions of Contract for Government Sales; (b) Particular Conditions of Contract for Commercial Enterprise Large Account Sales; or (c) Particular Conditions of Contract for Commercial Channel Sales; or (d) a combination of any of the above.
- 1.17** **“Product”** means the various ‘Acer’ branded goods, hardware, software, documentation, accessories, supplies and parts/components that AIL authorizes the Reseller to purchase or license under this Agreement, and are sourced by the Reseller to be supplied, sold or distributed to the Customer.
- 1.18** **“Project”** means the works, including delivery of Products and provision of allied services and other obligations, if any, as contemplated to be achieved under any NIT or purchase/work order.
- 1.19** **“Recipient”** means the Party that is the recipient of Confidential Information that has been shared with it by the Disclosing Party in furtherance of, or in relation to, the Agreement.
- 1.20** **“Reseller”** means the entity mentioned first hereinabove with whom AIL has entered into Agreement with, and who shall be an authorized Reseller of the Products for the defined Territory, and shall directly source the Products only from authorized national distributors of AIL for the purpose of resale or distribution to the Customer.
- 1.21** **“Support”** means Product maintenance and repair and other standard support services provided by AIL as per the applicable limited warranty policy of AIL published on [www.acersupport.com](http://www.acersupport.com) unless agreed otherwise in writing by AIL through its Authorized Signatory(s).
- 1.22** **“Term”** means the duration of the Agreement for which it stays valid and shall have the meaning in accordance with Clause 6.1 hereof.
- 1.23** **“Territory”** means the geographic region within which the Reseller is authorized to conduct its business pertaining to reselling Products to various Customers, which

shall, for the purpose of this Agreement mean the territory mentioned first hereinabove.

**1.24** “**Transaction Limit**” means the financial limits up to which the Reseller is authorized to submit its Bid on GeM and for the purpose of this Agreement such limit shall be as notified by AIL to the Reseller in writing from time to time through its Authorized Signatory(s).

## **2. RESELLER ARRANGEMENT**

**2.1** Subject to the various applicable terms and conditions mentioned in this Agreement, applicable on the Reseller, AIL hereby appoints and authorizes the Reseller to sell Products manufactured and/or traded by AIL within the defined Territory in the particular Category only, and the Reseller hereby accepts such appointment under the terms and conditions specified herein.

**2.2** As a seller of Products for the allocated Territory, the Reseller shall be leading the transaction for all intents and purposes and shall represent itself independently in its dealing with the Customer, and shall sign and submit all documents and subsequent clarifications, if any, to the Customer; however, the Reseller agrees that it shall not sell any Products or provide commercial proposals, clarifications or commitments of like nature before securing the written clearance and approval of AIL with respect to the internal pricing upon which the Reseller may procure such Products from authorized national distributors of AIL for the purpose of resale or distribution to the Customer, as the case may be.

**2.3** The Reseller is allowed under this Agreement to submit any Bids or responses to such commercial proposals, clarifications or commitments in response to any NITs or other orders only for the Territory concerned, and consequently, the Reseller is allowed to accept a purchase/work order only if the same is issued from any Customer based out of its Territory.

**2.4** It shall be the obligation of the Reseller to independently identify and assess the feasibility of fulfilling any order issued by a Customer, and any contractual deductions such as penalties for violation of service levels, levying of liquidated

damages for delayed supplies, etc., if applicable, shall be to the account of the Reseller, and notwithstanding anything contained anywhere else either as of Effective Date or in future, AIL shall have no liability whatsoever in such regard either to the Reseller or to the Customer unless specifically undertaken by AIL in writing through its Authorized Signatory(s).

- 2.5** The Reseller shall mandatorily source the Products either directly from AIL, or any of its authorized national distributors in India, as the case may be, and as authorized by AIL in writing from time to time to the Reseller.
- 2.6** The Reseller agrees and understands that it must supply the Products to the Customer in line with the framework of technical features, functional capabilities, technical properties, certifications of the items, etc. as desired by the Customer; however, in no case shall the Reseller make any changes or modifications or value additions in terms of additional hardware or software to the Products sourced by Reseller; and any such changes or modifications or value additions to the Products shall render the warranty provided by AIL thereon as null and void without any further recourse available to the Reseller or the Customer.
- 2.7** The Parties agree for pooling their resources towards achieving a favourable market share within the Territory, and wherever any AIL support like submission of Product certifications, manufacturer authorization, documentations, manuals, etc. would be required, AIL shall duly provide the same to the Reseller upon any request raised by the Reseller.
- 2.8** As and when required, AIL shall provide necessary technical specifications of Products to the Reseller along with warranty terms and conditions applicable to such Products, and the Reseller in no case whatsoever shall change such specifications or terms and conditions at its end while communicating the same to any Customer unless agreed otherwise in writing by AIL through its Authorized Signatory(s). Notwithstanding the same, all legal liability in respect of the offered Product shall be totally and exclusively of the Reseller for both sanity and quality of offer excluding warranty obligations which shall be owned by AIL subject to the Reseller complying with all its other obligations pursuant to this Agreement.



- 2.9** The Reseller shall bear all costs associated with the preparation and submission of any commercial proposals to, and participation in any commercial discussions with, the Customer, and AIL in no way shall be responsible or liable for these costs regardless of the conduct or outcome of the process.
- 2.10** The Reseller understands that this Agreement does not authorize it to sell Products by listing them on, or through the usage of, any e-commerce platforms; and further understands that AIL adopts an absolutely independent strategy regarding sale through e-commerce platforms and maintains uniformity of pricing such that the interests of its sales partners are protected and compliance with Laws is maintained and any such unauthorized sale by a Reseller on an e-commerce platform shall violate the authorization and the terms of engagement entered into with AIL, and it also disturb the equilibrium maintained by AIL in online/offline ecosystem of sales and affect AIL as a brand and further damage the credibility of AIL.

### **3. INTERPRETATION AND APPLICABILITY**

- 3.1** This Agreement has been divided in various sections and while all general parts, viz. (a) main body of the Agreement; and (b) the GCCs, are applicable and binding upon the Reseller, the Reseller shall be bound only by the PCCs applicable to the Category of business that the Reseller is allocated and authorized for.
- 3.2** In case of any ambiguity or issue pertaining to interpretation of various sections of the Agreement, the same shall be interpreted in the following order:
- (i) Main body of the Agreement;
  - (ii) PCCs applicable upon the Reseller; and,
  - (iii) GCCs.

## **SECTION A**

### **GENERAL CONDITIONS OF CONTRACT**

### **4. EXCLUSIVITY**

**4.1** The Reseller agrees and understands that it being appointed as a Reseller of Acer branded Products for the Territory on a non-exclusive basis and as such AIL has the complete and unobstructed right to appoint other Resellers to sell the Products within the same Territory and it will be AIL's endeavour to try bringing maximum number of sellers authorized by AIL for doing business in open market for specific product category.

## **5. CONFIDENTIALITY**

**5.1** The Parties commit to a strict maintenance of confidentiality, of any Confidential Information shared by Disclosing Party. Any Confidential Information shared by Disclosing Party as a result of the Agreement shall remain in force until that particular Confidential Information falls into the public domain through no act or omission on part of the Parties or for a period of two (2) years from the last disclosure as may be the case.

**5.2** Each Party shall maintain in confidence and not use for any purpose, except related to the Project, any and all Confidential Information and especially all discussions and strategies shared towards finalization of prices and other received or generated in the course of preparation and submission of the Bid.

**5.3** The Reseller shall be required to treat the Reseller pricing as highly confidential information and undertakes that it shall not disclose the same to any third party except with the prior written consent of AIL. The Reseller understands that the Reseller pricing is a proprietary information amounting to Confidential Information of AIL and therefore the Reseller undertakes to adhere to the highest standard of confidentiality in this regard.

**5.4** If the Recipient is required to disclose the Confidential Information or any portion of the Confidential Information pursuant to an order or direction of a relevant government authority, it shall:

**5.4.1** forthwith give the Disclosing Party written notice of such order or direction along with a copy of such order or direction and fully co-operate with the

Disclosing Party in any attempt to obtain a protective order against such disclosure; and,

**5.4.2** if it is not possible to obtain a protective order or if the protective order is not granted, it shall disclose only such portion of the Confidential Information which it is legally required to disclose.

**5.5** Technical specifications, designs, drawings, samples, gauges, toolings, etc., if provided by AIL to the Reseller are the exclusive property of AIL and shall be retained by the Reseller in safe custody and in the strictest confidence, and should not be copied, duplicated, modified, passed on or revealed in any manner to any unauthorized person and should be returned to AIL on demand anytime.

## **6. INTELLECTUAL PROPERTY RIGHTS**

**6.1** All Intellectual Property Rights shall always remain the sole and exclusive property of AIL, and the Reseller shall not in any manner whatsoever acquire any right, title or interest in such intellectual property, including any right to any proprietary methodologies, tools, practices, or brand name, or even the right to be represented as a Reseller of Acer branded Products.

## **7. TERM AND VALIDITY OF AGREEMENT**

**7.1** This Agreement is of an annual renewal nature, and shall remain in force till the last calendar day of the year in which it has been entered into between the Parties, or till the occurrence of the earliest to occur of the following, unless by mutual consent, the Parties agree in writing to extend the validity for a further period:

**7.1.1** The continuation of Reseller as an authorized seller of Products being jeopardized in any manner whatsoever, or the Reseller being blacklisted or debarred by any government agency;

**7.1.2** The Reseller having undertaken to sell products of any competing brands of AIL;

**7.1.3** Material breach of this Agreement by Reseller;

**7.1.4** Reseller is declared bankrupt or insolvent;

**7.1.5** Non-material breach of this Agreement by Reseller with such breach remaining not remedied for fifteen (15) days after receipt of notice from AIL of such breach;

**7.1.6** AIL terminating this Agreement by providing fifteen (15) days' advanced written notice to Reseller;

**7.1.7** Mutual agreement of the Parties to terminate the Agreement by giving thirty (30) days' advanced written notice subject to completion of any continuing Project by Reseller or during the currency of any NIT wherein the Reseller has participated and realization of all dues by AIL or its national distributors and settlement of disputes, if any.

*Provided that* whether an event under Clause 7.1.1, 7.1.2 or 7.1.3 hereof has occurred shall be decided by AIL in its sole prerogative and absolute discretion not subject to challenge by the Reseller.

**7.2** The termination or expiry of this Agreement, howsoever arising, is without prejudice to the rights, duties and liabilities of the Parties accrued prior to its termination. The provisions in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding any termination.

## **8. WARRANTIES AND OBLIGATIONS**

**8.1** Each Party hereby warrants to the other and represents that it has all necessary power to enter into this Agreement and perform its obligations under this Agreement.

**8.2** Each Party hereby warrants that it shall inform the other immediately of all matters of a material nature that affect the Project and/or the work to be performed under the Project, or the participation in any NIT.

**8.3** The Reseller hereby warrants that it is and shall remain liable for the consequences of any failure on its part or on the part of its personnel to fulfill the works assigned to it in furtherance of this Agreement and shall accordingly:

- 8.3.1** not exercise any corrupt influence on any aspect of contracting process and take all measures necessary to prevent corruption maintaining complete transparency, integrity and fairness in all activities;
  - 8.3.2** comply with the purchase/work order issued by a Customer, general terms and conditions for sale/purchase of goods and/or services (GTCs), product/service specific special terms and conditions (STCs) as applicable, and also the specific additional terms and conditions (ATC) issued by the Customer from time to time;
  - 8.3.3** procure and maintain its own insurance, with insurers of good repute, to cover its own liabilities and those on behalf of its personnel;
  - 8.3.4** keep true and accurate records of all things done by its personnel in relation to the works assigned to it in furtherance of this Agreement; and,
  - 8.3.5** comply and assist in complying with all relevant Laws relating to the works from time to time in force.
- 8.4** The Parties hereby warrant and undertake that they shall comply with all the applicable Laws from time to time in relation to their business and their obligations.
- 8.5** The Parties hereby warrant that in respect of all the employees/labour employed, whether directly or indirectly, of a permanent or temporary nature, towards the performance of any Project, their respective employing Party shall comply with all the rules framed by the central, state or local governmental authorities concerned, and notifications issued, from time to time, for compliance with all legal norms, protection of health and welfare of such employees/labour.

## **9. INDEMNITY**

- 9.1** The Reseller shall fully indemnify, defend, and hold harmless ALL from and against, any and all losses, costs, damages, injuries, liabilities, claims and causes of action, including without limitation arising out of or resulting from claims by third parties, acts, omissions or breach of any of such Party's obligations under or in furtherance to the Agreement, to the extent such indemnifying Party has caused:

- 9.1.1** damage to, or loss of use of, the property of Customer or any other third party to the extent that such damage is caused by the negligent or otherwise any other act or omission of the indemnifying Party;
  - 9.1.2** injury or death of any person, to the extent that such injury or death is caused by the negligent or otherwise any other act or omission of the indemnifying Party;
  - 9.1.3** any violation of Laws by the indemnifying Party in the course of its business including non-payment of taxes;
  - 9.1.4** any violation of Intellectual Property Rights by the indemnifying Party in the course of participation in any NIT or supply of Products in furtherance of any Project;
  - 9.1.5** inaccuracy, discrepancy and/or wrong data, or wrong or counterfeit goods, submitted in respect of the products offered by the indemnifying Party to any Customer; or,
  - 9.1.6** misrepresentation regarding, or breach of, any warranty, or any of the terms and conditions of this Agreement.
- 9.2** The indemnifying Party shall assume liability and shall fully indemnify, defend, and hold harmless the other from and against, any and all losses, costs, damages, injuries, liabilities, claims and causes of action, including without limitation arising out of or resulting from claims by third parties, regarding every expense, liability, penalty or payment to be incurred by the indemnified Party by reason of the application of, or violation of any labour laws, acts, rules or regulations existing or to be introduced at a future date during the Term.
- 9.3** Promptly after the indemnified Party receives notice of any claim for which it seeks indemnification hereof, it shall notify the indemnifying Party of the claim in writing. If within seven (7) days from the date of such notice, the indemnifying Party in writing does not acknowledge its indemnification obligation and assumes control of the defence and settlement of the claim, the indemnified Party may defend and/or settle the claim in such manner as it may deem appropriate, and the indemnifying

Party will promptly reimburse the indemnified Party upon demand for all losses suffered or incurred by the indemnified Party with respect to the claim.

## **10. LIMITATION OF LIABILITY**

**10.1** No Party shall be liable to any other Party in contract, tort or otherwise, in connection with this Agreement or any solution or service supplied in connection with any Project or otherwise, for any special, indirect or consequential damages.

**10.2** Except provision of requisite support and warranty services to the Reseller as agreed upon in this Agreement, ALL shall not be liable at all to the Reseller irrespective of the fact as to whether the Reseller has been advised so by its counselors or any third party.

## **11. GUIDELINES**

**11.1** ALL may, at its volition and from time to time, issue to the Reseller certain Guidelines and the Reseller shall ensure strict compliance with such Guidelines in letter and spirit.

**11.2** The Reseller shall comply with and adhere to the general sales and marketing policy and principles of ALL, as notified by ALL to the Reseller from time to time.

## **12. SALES TARGETS AND REPORTING**

**12.1** In order to establish a strong and a pre-eminent position for the Products, to obtain a sustainable competitive marketing edge in the market and to gain/reinforce Customer confidence for the Products, the Reseller shall exert its best efforts to constantly increase its sales volumes/market share and to achieve/exceed its sales targets as prescribed by ALL from time to time for the Products, and shall not do anything that may prevent the sale or interfere with the development of sales of the Products.

**12.2** The Reseller shall keep ALL posted of the latest market information and provide such statistics, reports and any such services as may be desired by ALL from time to time in the interest of sale of the Products in the Territory.

- 12.3** The Reseller shall submit to AIL its business plan for the whole Term of the Agreement. The said business plan shall, *inter alia*, include the sales plan, the annual marketing plan, investment plan, projected cash flow, employment plan or any other information as may be required by AIL, and shall be prepared in accordance with the Guidelines provided in this regard.
- 12.4** The Reseller shall submit to AIL periodic reports containing such information and in such format as may be required by AIL from time to time which shall necessarily include all information about the onwards sales made by the Reseller to the Customers.
- 12.5** In addition to the foregoing, the Reseller shall promptly furnish to AIL, any information concerning the demand and prices of competitive products, market information given by the Customers, prevailing strategies of competitors, and any information which will help the marketing and placement of the Products. Any matter or occurrence relating to Products which comes to the attention of the Reseller and which would or might reasonably be expected by the Reseller to be detrimental to AIL's interests, or any major disturbance/ variation in Reseller's sales volume, would be reported by the Reseller to AIL as and when it comes to the knowledge of the Reseller without waiting for the preparation of the periodic report.

### **13. AUDITS**

- 13.1** For the purpose of assessing, *inter alia*, Reseller's efficiency and productivity, compliance with AIL's guidelines and policy, statutory compliances, etc., AIL may advise the Reseller for an audit to be carried out by AIL's representative or by an outside auditor/consultant nominated by AIL, the Reseller shall co-operate with the auditor so appointed for the conduct of such audit.

### **14. GOVERNING LAW AND DISPUTE MECHANISM**

- 14.1** All questions concerning the construction, validity and interpretation of the Agreement will be governed by the laws of India, and the courts at Bangalore,



Karnataka, shall have exclusive jurisdiction with respect to any Dispute that occurs according to, or in relation to, the Agreement.

- 14.2** In case of any Dispute, the same shall be endeavored to be resolved through mutual discussion. If the Parties fail to settle the Dispute mutually within seven (7) days after such Dispute having arisen and communicated to the other Party, then the same shall be referred to a sole arbitrator appointed by the Karnataka High Court under the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force.
- 14.3** The language of arbitral proceedings shall be English and the venue of such arbitration shall be at Bangalore.
- 14.4** Each Party shall bear its own costs during the continuation of such arbitral proceedings; however, the arbitrator shall have the right to award the complete costs in favour of the winning party and against the judgment debtor in accordance with the Arbitration and Conciliation Act, 1996.

## **15. ASSIGNMENT**

- 15.1** This Agreement shall not be assignable to any third party by the Reseller without the prior written consent of ALL.

## **16. RELATIONSHIP OF PARTIES**

- 16.1** The Parties have executed this Agreement on a principal to principal basis. This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture enterprise, pooling arrangement, agency, partnership or other similar business arrangement of any kind, nor shall it constitute, create, give effect to, or otherwise imply an obligation or commitment by the Parties to continue with, or enter into, any arrangement except with respect to the purpose described hereinabove.
- 16.2** During the performance of this Agreement, the Reseller's personnel shall not be considered employees of ALL for any purpose whatsoever, and accordingly, the

Reseller shall be solely responsible for the compensation of such personnel and all employment-related obligations and taxes as per applicable Laws.

**17. PUBLICITY**

**17.1** During the currency of the Term of this Agreement, the Reseller may publicize itself or disclose to any third party, without any further written consent of AIL, the fact that it is an authorized seller of Acer branded Products for the Territory and the Category as applicable.

**17.2** Any publicity undertaken by the Reseller shall be in compliance of brand guidelines issued by AIL from time to time and no such publicity undertaken by the Reseller shall be such that it may place AIL in disrepute.

**17.3** Unless agreed upon in writing between the Parties or as directed by AIL in furtherance to its brand promotion activities, any expenses incurred by Reseller in conducting any such publicity shall be to its own account and AIL shall not be obligated to reimburse any amount spent by the Reseller there for.

**18. SEVERABILITY**

**18.1** If any provision of the Agreement is deemed or held by a court of competent jurisdiction, to be contrary to law or otherwise unenforceable, the provisions of the Agreement shall be enforced to the extent legally permissible and unenforceability of any of the provisions of the Agreement shall not affect the remaining provisions hereof, which shall remain in full force and effect.

**19. WAIVER**

**19.1** No forbearance, indulgence or relaxation or inaction by AIL at any time to require performance of any of the provisions of the Agreement shall in any way affect, diminish or prejudice the right of AIL to require performance of such provision.

**19.2** Any waiver by AIL shall become effective and can only be made by a written instrument issued through its Authorized Signatory(s).

**19.3** Any waiver or acquiescence by AIL of any breach of any of the provisions of the Agreement by Reseller shall not be construed as a waiver or acquiescence of any right of AIL under or arising out of the Agreement or of the subsequent breach, or acquiescence to or recognition of rights other than as expressly stipulated hereof.

## **20. NOTICES**

**20.1** Any notice and other communication provided for in this Agreement shall be in writing and shall be first transmitted by electronic transmission and then confirmed by registered post or speed post, in the manner as elected by the Party giving such notice.

**20.2** In case of notices to be served to the Reseller, AIL shall use the name and other address details provided by the Reseller while applying for becoming so on the online portal as designated by AIL.

**20.3** In the case of notices to AIL, the same shall be addressed to as follows:

**Address** : Acer India Private Limited, Embassy Heights, 6<sup>th</sup>  
Floor, No. 13, Magrath Road, Next to HOSMAT  
Hospital, Bangalore (Karnataka) – 560025

**Attention** : Mr. Jeganath R., Chief Sales Officer

**Telephone** : +91-80-3940-8700

**Email** : jeganath.r@acer.com

**20.4** All notices shall be deemed to have been validly given on **(a)** the day immediately after the date of transmission, if transmitted by electronic transmission, or **(b)** the day of receipt, if transmitted by registered post or speed post.

**20.5** Any Party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to the other Party not less than fifteen (15) days' prior written notice.

## **21. ENTIRE AND BINDING AGREEMENT**

- 21.1** The Agreement, along with the GCCs and PCCs, and its schedules and annexures, constitutes the entire agreement between the Parties with respect to the subject matter hereof to the exclusion of all other understandings and assurances, either written or oral, and the same, of itself, is a binding contract and enforceable in a court of law of appropriate jurisdiction.
- 21.2** No amendment or modification of any provision of this Agreement shall be effective unless the same shall be in writing and electronically accepted by each of the Parties hereto.
- 21.3** This Agreement constitutes an electronic record within the meaning of applicable Indian laws and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein for which direct evidence would be admissible in accordance with Section 4 of Information Technology Act, 2000, read with Section 65B of Indian Evidence Act, 1872. This electronic record is generated by a programmed information system and does not require any physical or digital signatures.

## **SECTION B**

### **PARTICULAR CONDITIONS OF CONTRACT FOR GOVERNMENT SALES**

#### **22. APPLICABILITY**

- 22.1** This particular section is applicable on the Reseller for conduct of sales pertaining to Products in the Category of Government Sales.
- 22.2** For the purpose of this Agreement, Government Sales means and refers to any and all sales made by the Reseller to any central, state or local government department/agency, and shall specifically be bifurcated into four (4) sub-categories, which are:
- 22.2.1** Government e-Marketplace (GeM) business;
  - 22.2.2** Banking, Financial Services, Securities and Insurance (BFSI) business;
  - 22.2.3** Business related to Public Sector Undertakings (PSUs); and,
  - 22.2.4** Business related to all other government departments.

**23. ADDITIONAL WARRANTIES**

**23.1** The Reseller hereby warrants that it is and shall remain liable for the consequences of any failure on its part or on the part of its personnel to fulfill the works assigned to it in furtherance of this Agreement and shall accordingly:

**23.1.1** not disclose details of its Bid to other bidders or indulge in any anti-competitive behavior including price manipulation in violation of Competition Act, 2002; and,

**23.1.2** not withdraw or modify or impair or derogate from the Bid in any respect within the period of validity of its Bid or fail to furnish requisite performance security as required under the corresponding NIT or submit any information or documents in its Bid which is false, misleading or forged.

**24. RESELLER ARRANGEMENT ON GeM**

**24.1** GeM SPV operates and maintains the National Public Procurement Portal which is a one stop Government e-Marketplace to facilitate online procurement of common use goods and services required by various government departments, organizations, PSUs and PSBs, and GeM aims to enhance transparency, efficiency and speed in public procurement by providing the tools of e-bidding, reverse e-auction and demand aggregation to facilitate the government users achieve the best value for their money.

**24.2** Various government departments, organizations, PSUs and PSBs issue NITs on GeM, and AIL authorizes the Reseller during the Term, on a non-exclusive basis, to register itself as an authorized seller of 'Acer' branded Products and thereby participate in such NITs and submit its Bid to supply the Products to such entities.

**24.3** To sell on GeM portal, the Reseller shall need to be a registered seller on GeM and submit the Bid in furtherance of any NIT there, and shall directly source the Products only from authorized national distributors of AIL for the purpose of resale or distribution to the Customer through GeM.

- 24.4** As a seller on GeM for the allocated Territory, the Reseller shall be leading the transaction for all intents and purposes and shall represent itself independently in its dealing with the Customer and/or GeM, and shall for the purpose of submission of Bid in reference to any NIT, for the Territory concerned, sign and submit all documents and subsequent clarifications, if any, to the Customer; however, the Reseller agrees that it shall not submit any Bid or such proposals, clarifications or commitments of like nature before securing the written clearance and approval of AIL with respect to the internal pricing upon which the Reseller may procure such Products from authorized national distributors of AIL for the purpose of resale or distribution to the Customer through GeM, as the case may be.
- 24.5** The Reseller is allowed under this Agreement to submit any Bids or responses to such proposals, clarifications or commitments in response to any NITs only where the total contract value (inclusive of any and all applicable taxes) does not exceed the Transaction Limit, and for all NITs where the total contract value exceeds the Transaction Limit, it shall be the sole prerogative of AIL to either participate in such NITs by submission of Bid on its own or through a seller of its choosing. The Parties agree and understand that the Reseller is not an authorized Reseller of AIL on GeM for any NITs where the total contract value (inclusive of any and all applicable taxes) exceeds the Transaction Limit set by AIL.
- 24.6** The Reseller is allowed under this Agreement to submit any Bids or responses to such proposals, clarifications or commitments in response to any NITs only for the Territory concerned, and consequently, the Reseller is allowed to accept a purchase/work order only if the same is issued from any Customer based out of its Territory.
- 24.7** It shall be the obligation of the Reseller to independently identify and assess the feasibility of participating in any NIT and fulfilling its obligations thereof, and any contractual deductions such as penalties for violation of service levels, levying of liquidated damages for delayed supplies, etc., if applicable, shall be to the account of the Reseller, and notwithstanding anything contained anywhere else either as of

Effective Date or in future, AIL shall have no liability whatsoever in such regard either to the Reseller or to the Customer.

- 24.8** The Reseller shall mandatorily source the Products either directly from AIL, or any of its authorized distributors or channel partners in India, as the case may be, and as authorized by AIL in writing from time to time to the Reseller.
- 24.9** The Reseller agrees and understands that it must supply the Products to the Customer in line with the framework of technical features, functional capabilities, technical properties, certifications of the items, etc. as desired by the Customer and enumerated in the NITs, however, in no case shall the Reseller make any changes or modifications or value additions in terms of additional hardware or software to the Products sourced by Reseller; and any such changes or modifications or value additions to the Products shall render the warranty provided by AIL thereon as null and void without any further recourse available to the Reseller.
- 24.10** The Parties agree for pooling their resources towards achieving a favourable outcome in such bids, and wherever any AIL support like submission of Product certifications, manufacturer authorization, documentations, manuals, etc. would be required, AIL shall duly provide the same to the Reseller upon any request raised by the Reseller.
- 24.11** As and when required, AIL shall provide necessary technical specifications of Products to the Reseller along with warranty terms and conditions applicable to such Products, and the Reseller in no case whatsoever shall change such specifications or terms and conditions at its end while communicating the same to any Customer unless agreed otherwise in writing by AIL through its Authorized Signatory(s). Notwithstanding the same, all legal liability in respect of the offered Product shall be totally and exclusively of the Reseller for both sanity and quality of offer excluding warranty obligations which shall be owned by AIL.
- 24.12** The Reseller shall bear all costs associated with the preparation, submission and participation in the Bid and AIL in no way shall be responsible or liable for these costs regardless of the conduct or outcome of the bidding process.

**25. ARRANGEMENT WITH THIRD PARTIES**

- 25.1** The Parties agree and understand that due to stringent conditions placed in various NITs violation of which may lead to penalties, liquidated damages and/or termination and blacklisting, AIL may, in its sole discretion, introduce certain third parties in the order fulfillment process to ensure smooth and streamlined execution of such Projects.
- 25.2** Payment to such third parties shall be made either by AIL directly or shall need to be made by the Reseller and factored in its internal pricing as per the mutual understanding between the Parties documented in writing where such directions from the side of AIL shall be agreed upon and approved only by the Vertical Head or the Chief Sales Officer of AIL.
- 25.3** Where the obligation to pay to any such third parties is casted specifically on the Reseller in accordance with the preceding sub-clause, then it shall be the responsibility of the Reseller to appropriately factor such amounts in the internal pricing of the Reseller and in no case shall AIL be liable to reimburse such amounts to the Reseller.

**26. ADDITIONAL CONDITIONS ON LIMITATION OF LIABILITY**

- 26.1** Notwithstanding anything contained in the GCCs, where anything contained in any NIT derogates from the basic provisions on limitation of liability contained in the Agreement, then the Reseller shall assume such liability as contained in such NIT over and above the terms of the Agreement.

**27. AUTHORIZED SIGNATORY**

- 27.1** For any and all communication about sales pertaining to Products in the Category of Government Sales, AIL shall stand bound only where such communication has been made directly by either of the following authorized persons:
- (i)** Mr. Jeganath R., Chief Sales Officer;
  - (ii)** Mr. Sanjeev Mehtani, Senior Director, Government Business.



## SECTION C

### PARTICULAR CONDITIONS OF CONTRACT FOR ENTERPRISE SALES

#### **28. APPLICABILITY**

- 28.1** This particular section is applicable on the Reseller for conduct of sales pertaining to Products in the Category of Enterprise Sales.
- 28.2** For the purpose of this Agreement, Enterprise Sales means and refers to the five hundred (500) defined corporate accounts identified by AIL and communicated to the Reseller.

#### **29. ACCOUNT MANAGEMENT**

- 29.1** The Reseller agrees that in the enterprise sales business, AIL is governed by various obligations pertaining to benchmarking, favoured customers, etc. and as such AIL has to maintain the strategic pricing at which Products of particular types get sold to various Customers, and therefore, the Reseller agrees not to sell the Products at a price not approved by AIL in writing through its Authorized Signatory(s).
- 29.2** The Reseller understands that compliance with the pricing norms is a basic pre-condition basis which AIL has agreed to enter into this Agreement and in case the Reseller violates such norms by under-cutting or accepting a haircut or quoting a price other than the one pre-approved by AIL, then AIL at its discretion shall withdraw the preferential financial bidding support benefits that it may provide to the Reseller.

#### **30. SAMPLE UNITS FOR DEMONSTRATION**

- 30.1** The Reseller understands that various Customers prefer studying the performance of a Product prior to placing an order for its purchase, and as such wherever the Reseller agrees to provide such sample units of a Product to the proposed Customer for demonstration purposes, it shall do so at its own cost and expenses; however, AIL agrees at its sole discretion to provide a preferential pricing to the Reseller at which such sample units of the Product may be purchased by it.

**30.2** Notwithstanding any other understanding that the Reseller may have or have got communicated, AIL shall not provide any sample units of a Product for demonstration purposes free of cost.

**31. AUTHORIZED SIGNATORY**

**31.1** For any and all communication about sales pertaining to Products in the Category of Enterprise Sales, AIL shall stand bound only where such communication has been made directly by either of the following authorized persons:

- (i) Mr. Jeganath R., Chief Sales Officer;
- (ii) Ms. Priya K. Murthy, Associate Director, Enterprise Business.

**SECTION D**

**PARTICULAR CONDITIONS OF CONTRACT FOR  
MID-MARKET PRIVATE COMMERCIAL CHANNEL BUSINESS (CCB1)**

**32. APPLICABILITY**

**32.1** This particular section is applicable on the Reseller for conduct of sales pertaining to Products in the Category of Mid-market Private Commercial Channel Business (CCB1).

**32.2** For the purpose of this Agreement, Mid-market Private Commercial Channel Business (CCB1) means and refers to small corporate accounts identified by AIL and communicated to the Reseller.

**33. AUTHORIZED SIGNATORY**

**33.1** For any and all communication about sales pertaining to Products in the Category of Small & Medium Business Sales, AIL shall stand bound only where such communication has been made directly by the following authorized person:

- (i) Mr. Jeganath R., Chief Sales Officer.

**SECTION E**

**PARTICULAR CONDITIONS OF CONTRACT FOR  
STOCK & SELL – SMALL OFFICE HOME OFFICE BUSINESS (MOQ)**

**34. APPLICABILITY**

**34.1** This particular section is applicable on the Reseller for conduct of sales pertaining to Products in the Category of Stock & Sell - Small Office Home Office business.

**34.2** For the purpose of this Agreement, Stock & Sell - Small Office Home Office business means and refers to the minimum order quantity (MOQ) business identified by ALL and communicated to the Reseller.

**35. AUTHORIZED SIGNATORY**

**35.1** For any and all communication about sales pertaining to Products in the Category of Stock & Sell, ALL shall stand bound only where such communication has been made directly by the following authorized person:

- (i)** Mr. Jeganath R., Chief Sales Officer;
- (ii)** Mr. Vikrant Gupta, National Sales Manager (Stock & Sell).