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**Memorandum of Understanding**

**(M O U)**

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**Between**

**Accely Technologies Private Limited**

**AND**

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## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made as of \_\_\_\_\_ (“the Effective Date”) by and between **Accely Technologies Private Limited, a company registered under the provisions of the Companies Act & having office at E-701, Lotus Corporate Park, Off. Western Express Highway, Goregaon East, Mumbai – 400 063** (hereinafter referred to as “Accely”) and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (“Partner”).

**(Each of the Party individually referred to as “party” or collectively as “parties”).**

**WHEREAS, Accely** is a business services consulting firm that is an authorized reseller of SAP licenses for the entire portfolio of SAP S/4 HANA and C/4 HANA Suite. Accely also specializes in SAP Consulting services including discovery and evaluation, upgradation, implementation and rollout, migration, conversion, mobility, maintenance, support, digitization, integration and related services. Other services also including Magento, Odoo, Microsoft, LAMP (Linux, Apache, MySQL, PHP/Perl/Python) Technology, Mobility, Cloud Services, MEAN stack and Digital Marketing including SEO and SMM; and the Business Partner is a **Business Development expert and Service Provider**.

**WHEREAS** the Parties intend to collaborate in order to develop new business jointly, with special emphasis on **services provided by Accely** as defined herewith in which mutual interest exists to collaborate.

**WHEREAS** the Parties intend to use the services of each other in order to derive optimum advantages for mutual benefit. During the term of this MOU, the parties will exert their best efforts to take up this MOU in furtherance of getting into a long-term arrangement, including that of entering into a joint venture, depending on the business requirements and mutual agreement.

**WHEREAS**, during the term of this MOU, the Parties will mutually define roles and commercial, in case any business development opportunity exists. The Parties shall be bound by the terms and conditions which will be embodied in the said separate agreement for that business development opportunity.

The Parties agree that the following terms shall be incorporated into this MOU:

### **1. Definitions-**

The terms below used in the MOU shall have the following meaning:

**“Affiliate”** refers in respect to any person, any other person that controls, is controlled by, or is under common control with such party and includes subsidiaries.

**“Business Development”** refers to set of tasks and processes meant to develop and implement growth opportunities within (and between) organizations in a sustainable and profitable way.

**“Business ethics”** refers to applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct and is relevant to the conduct of individuals and business organizations as a whole including areas like technical, legal and business.

**“Client”** refers to individual or entity from which source of earning is expected;

“**Customer**” refers to individual or entity who is the end user or in requirement of product and services;

“**Other verticals**” refers to other lines of business in different domain or area;

“**Opportunity**” refers to a business opportunity involving sale of Accely product, service that will enable the purchaser-licensee to begin a business.

“**Pre-sales support & facility**” refers to demo’s, proof of concepts, scope discoveries, effort estimations, proposals, technical write-ups, solution architecture and designs and commercial negotiation to jointly win the Projects;

“**Product and Services**” refers to outcome of the efforts put into by the parties related to this MoU;

“**Profits**” refers to an amount determined after deducting actual costs of the effort by each party from the total customer billing;

“**SAP**” refers to the SAP and other SAP products mentioned herein as well as their respective logos are trademarks or registered trademarks of SAP AG Germany.

“**Software and related activities**” refer to software services provided by the Accely and all other products and services of the Accely;

“**Solutions**” refers to deliverables meeting specific customer requirements;

“**Solution Building Assistance**” refers to efforts involved in building SAP Solutions for customers;

“**Statement of work (SOW)**” refers to the detailed document that captures and defines all aspects of an opportunity including activities, deliverables and the timetable for the said opportunity.

“**Territory**” refers to the geography of operation of both parties for the purposes of this MoU.

“**TCV**” refers to Total Contract Value of business opportunity.

## **2. Term of MOU:**

2.1 The Term of this MOU shall be for a period of **Three** years from the date of execution of this MOU (hereinafter referred to as the “**MOU term**”), which will be automatically renewed unless either party terminates this in writing with a 30 days’ notice.

2.2 During this time, the Partner agrees to work with Accely for providing **Business Development Opportunities**. Similarly, Accely agrees to work with the Partner for all the products and services mentioned in this MoU. Where appropriate, during the term of this MOU. Parties shall avoid conflict of interest, so as not to compete with each other’s client, by offering the products and services directly or through any other party to customers in defined territory.

## **3. Non-Binding:**

Notwithstanding anything contained under this MOU, this MOU shall not be construed in any way as obliging the parties to execute the agreement.

**4. Terms and Conditions of the Agreement:**

The key terms and conditions to be reflected in the agreement, to be separately prepared and executed by the parties and shall include the matters set-out in Clause numbers 5 to 10 hereof.

**5. Areas of business co-operation:**

The parties agree to co-operate in the following business areas:

- i.
- ii.
- iii.
- iv.

**6. Duties of the parties:**

6.1 The parties shall observe the business ethics in respects of contacts and customer interactions. Partner will share relevant information about contacts and existing business relations beforehand, if any, in the defined territory as per this MoU. Partner and Accely shall use the brand name of either parties under a consortium, if mutually agreed, for procuring business in the territory markets.

6.2 Accely shall provide all pre-sales support and facility, including support such as demo's, scope discoveries, effort estimations, proposals, technical write-ups, solution architecture and designs and commercial negotiation to jointly win the business opportunities. Accely would work with Partner/customer as per the scope of the services defined in the agreement

6.3 For proof of concepts (POC) or any activity which needs significant effort and investment, the requirements will be discussed case to case for creating the customer environment, on a mutually agreed basis.

6.4 Both parties will bear their expenses separately.

6.5 Partner will look for suitable business opportunities (as per clause 5 of this MoU), using its contacts and market intelligence. Partner will set-up the required marketing/ business development team to solicit business based on market conditions. Once Partner identifies a business opportunity, it will intimate partner in writing and involve Accely in the identified business opportunity.

6.6 Accely shall provide Project Management, pre-sales support facility and solution building assistance to Partner as and when required.

6.7 Both Parties agree to an annualized total contract value as mentioned in Business Plan attached as Exhibit A herewith

**7. Non-Circumvention:**

7.1 It is specifically agreed that Accely shall not circumvent or communicate with parties/customers introduced by Partner. It is agreed that violation of any of the provisions of this Agreement will cause irreparable harm and injury to the non-violating party and that party shall be entitled; in addition to any other rights and remedies it may have at law or

inequity; to an injunction enjoining and restraining the violating party from doing or continuing to do any such act and any violations or threatened violations of this Agreement.

- 7.2 Partner including its affiliates, subsidiaries or other related parties including family, relatives, friends and associates, employees etc. agree not to circumvent, solicit, approach directly or indirectly, in any capacity whatsoever, Accely's customers for business or engagement for a term of 3 years beyond the validity of this MoU.

**8. Business Plan:**

Business plan can be separately discussed and agreed on mutual basis.

**9. Commercial Terms:**

- 9.1 The payment terms would be as per customer requirement and back-to-back as mutually agreed from case to case.
- 9.2 Accely shall give Partner a transfer price for each business opportunity based upon which Accely shall finalize business value and terms with customer.
- 9.3 Additionally, Accely shall share a rate card as reference for giving quotations to Partner's customers.

**10. Exclusivity:**

This MOU is non-exclusive for both the parties.

**11. Intellectual Property:**

- (a) All right, title and interest including, but not limited to intellectual property rights to the contents, manuals, technical-know-how, tools, etc. exchanged between the parties under this MOU by any party shall vest with the party, who has developed the same. The trademarks and trade names of, or relating to either party will at all times remain with such Party.
- (b) Notwithstanding anything to the contrary herein, the parties hereby agree that, all intellectual property rights on the developments, training materials and other documents (including changes/ enhancement thereof) made by the parties for the solutions under this MOU, shall be jointly owned.

**12. Non-solicitation**

Neither parties or their affiliates, subsidiaries or other related parties will directly or indirectly solicit for employment or engagement any person employed by or hired by either parties, during such person's employment by either parties, or for a period of twelve (12) months after said person's relationship with respective party has ended. If either party shall breach this provision, then the violating party shall pay as liquidated damages, and not as a penalty, the sum of \$100,000 (One Hundred Thousand Dollars USD) per incident to the effected party. Both parties agree that a breach of this provision would result in substantial monetary damages and irreparable harm to them, and that the liquidated damages would

provide a minimum amount of compensation.

**13. General Terms:**

- (a) This MOU may be modified or amended only by mutual agreement in writing and signed by authorized signatory of each of the Parties hereto.
- (b) Unless otherwise agreed by and between the parties, each Party will be responsible for its own expenses (which may be incurred within their respective scope as set out in this MOU).
- (c) Unless otherwise required by law, neither Party will disclose the existence of this MOU or the subject matter thereof or issue any press release or public announcement with respect thereto, without obtaining prior written consent from the other Party.
- (d) This MOU shall not be assigned by a party without the written authorization of the other party.
- (e) The operation of this MOU is for \_\_\_\_\_.
- (f) Except with the prior written consent of the other party or as the case may be required by law or as otherwise provided herein, either party will use its best efforts to cause its directors, officers, employees, agents, counsel, accountants, financial consultants, sub-contractors, franchisees and other representatives to (i) treat as confidential any and all information obtained from the other party hereto or their representatives or the terms or conditions of the transaction contemplated herein or the fact that such transaction is being contemplated and (ii) not disclose or use any such information (unless such information is or becomes ascertainable from public sources or public disclosure of such information is required by law); provided, however, that nothing contained herein will prohibit any such persons from disclosing any such information to their directors, officers, employees, agents, representatives, counsel, accountants or financial advisors for the purpose of facilitating the consummation of the transaction contemplated hereby, so long as such other persons are advised of the confidential nature of such information.
- (g) All notices and/or other communications under this MOU, intended to be given by any party hereto to the other party shall be deemed to be properly and validly given, only if (i) on the date of delivery if delivered personally with express acknowledgement, or by facsimile upon confirmation of receipt, (ii) on the second business day, following the date of dispatch, if delivered by a recognized next-day courier service, or (iii) on the 10<sup>th</sup> (Tenth) business day following the date of mailing, if delivered, postage pre-paid, and a confirmation of receipt and/ or acknowledgement is obtained. All notices and/ or other communications by and between the parties hereinunder shall be deemed to be properly and validly given, only if delivered at below mentioned address, unless change in below mentioned address is duly communicated in writing to the other party by the party intending to make said change in address:

If to Accely Technologies Private Limited

**Mr. Nilesh Shah-**

**E-mail:** [info@accely.com](mailto:info@accely.com)

**Address:** E-701, Lotus Corporate Park, Off. Western Express Highway, Goregaon (East), Mumbai - 400063

If to the Partner, to:

**Email:**

**Address:**

- (g) The Parties shall be responsible for their respective costs, loss, and expenses and no Party shall be responsible to the other for any loss, cost, expense, or damages whether direct, indirect, consequential, or incidental during the MOU term.
- (h) Neither Party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, including but not limited to natural disasters or governmental acts.
- (i) **Dispute Resolution:**

In the event of dispute which arises in connection with this MOU which cannot be settled amicably, the parties' exclusive remedy shall be binding arbitration, and the same shall be settled by arbitration conducted by Sole Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act. The Party which invokes the arbitration clause shall furnish to the other party names of five retired High Court/ Supreme Court Judges. On receipt of such name the other party shall within Seven days select any one of the said five names to act as an Arbitrator and communicate to the other party. In the event, the other party fails to select Arbitrator within the said seven days then the Party invoking arbitration shall select one of the said name to act as an Arbitrator

In accordance with the provisions of the Arbitration and Conciliation Act, and following provisions shall apply:

- (a) The site of the arbitration shall be India.
- (b) The language for arbitration shall be in English.

**This MOU shall be construed and governed by the laws of India and shall be subject to the exclusive jurisdiction of the Courts in India.**

- (j) This MOU constitutes the final MOU between the Parties with regard to its scope and supersedes any previous agreements with respect to the same subject matter.
- (k) The invalidity of any provision of this MOU shall not affect the validity of any other provision.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET AND SUBSCRIBED THEIR RESPECTIVE HANDS TO THESE PRESENTS ON THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.**

**SIGNED SEALED AND DELIVERED BY THE**

Withinnamed

**MR. NILESH SHAH,**

Authorized representative of

**Accely Technologies Private Limited**

In the presence of .....

1)

2)

**SIGNED SEALED AND DELIVERED BY THE**

Within named.

Authorized representative of

In the presence of

1)



## Exhibit – A Business Plan

### Strategy

Both parties will work towards winning new customers, managing existing customers, retaining customers for a long- term engagement and maximizing the customer lifetime value.

### Enable, Market and Sell

Partner will put all resource and efforts to market and sell the agreed upon scope of products and services that refer to \_\_\_\_\_ for the purposes of this MoU.

Partner will ensure enablement of customer and Accely resources for a smooth and successful execution for all business opportunities as and when required.

### Target Audience

Geographically the territory is \_\_\_\_\_.

### Solution Offering Definition

- i. Solutions provided to Partner include \_\_\_\_\_

### Projected Total Contract Value (TCV) of Sales

Year	TCV (in INR)
<b>1</b>	Rs. _____
<b>2</b>	Rs. _____
<b>3</b>	Rs. _____

**Customer Acquisition Cost (CAC)**

1. Both Parties will try to retain existing customers and have long term engagements with newcustomers so that the CAC can be maximized through consistent quality delivery and high value to the customer.
2. Both parties will bear their expenses separately

**Rate Card**