

**MEMORANDUM OF UNDERSTANDING**

**DATED THIS \_\_\_ DAY OF \_\_\_ 2015**

**BY AND BETWEEN**

**BCPL**

**AND**

**ABC**

This **MEMORANDUM OF UNDERSTANDING** is executed on this \_\_\_\_day of 2015 (“**MoU**”)

Between

**Brainchamber Technologies Pvt. Ltd.**, a company incorporated under the Companies Act, 1956 and having its registered office at D9, Royal Plaza, Dabholkar Corner, Near CBS, Kolhapur 416001, Maharashtra, India (hereinafter referred to as "**BCPL**" which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the One Part;

And

**ABC**, a company registered in..... having its registered office at .....

In this MoU, BCPL and ABC shall jointly be referred to as "**Parties**" and severally as a "**Party**".

### **1) RECITALS**

- a) BCPL is a research & development and manufacturing company engaged in the business of Polymers, Agriculture, Software, Satellite based products and other projects in India and overseas;
- b) ABC is company engaged in the business of .....
- c) ABC is desire to extend financial assistance to BCPL to establish and develop agriculture unit in India
- d) The Parties are entering into this MoU to lay down the broad terms and conditions for working arrangement between members.

**NOW THIS MoU WITNESETH AS FOLLOWS:****2) Scope of Work**

- a) BCPL and ABC shall identify and mutually agree on location at which Polyhouse to be developed.
- b) BCPL will act as Operating Agency to establish Polyhouse at agreed location, run all operations for the period of this agreement.
- c) ABC shall act as an Investor for funding of Polyhouse Construction, establishing accessories to start the cultivation as per annexure- A
- d) BCPL as a Operating Agency of shall be responsible *inter alia* for
  - i. Identify land for construction of Poly House
  - ii. Construction of Poly House and accessories as per annexure- A
  - iii. Appoint operating team for daily operations
  - iv. Supervise and Control all operations
  - v. Marketing and selling of produce from Polyhouse
  - vi. Own overall responsibility of all operation, marketing and selling
  - vii. Update on monthly basis to ABC on production ,sale data
  - viii. Transfer of fund to ABC as per repayment schedule in Annexure-B
- e) ABC as an Investor of shall be responsible *inter alia* for
  - i. Extend agreed fund of Rs.....to BCPL on day of signing of this MoU
  - ii.
- f) Period on investment by ABC is seven years from signing of this MoU
- g) BCPL shall strictly utilize the funds invested by ABC only for the set up requirements specified as per Annexure-A
- h) BCPL shall produce proofs of fund utilized on monthly basis to ABC
- i) In case requested by ABC ; BCPL shall allow ABC's authorized representative to physically check all records of fund utilization and corresponding work on land with one week prior intimation by ABC to BCPL
- j) BPTL shall arrange required land for Polyhouse establishment on its own on lease or through any other means and BCPL
- k) .....
- l) .....

**3) Payment Terms :**

- a) ABC shall deposit agreed funds in BCPL's account on the day of signing of this MoU; this will be treated as Day Zero and subsequent returns will be deposited in ABC's bank account as per repayment schedule in Annexure-B
- b) BCPL shall make payment to ABC with an internal rate of return on investment amount between 11% to 13.3% on monthly basis as per repayment schedule in Annexure-B where Internal Rate of return is 13.3%
- c) Minimum assured internal rate of return on investment amount is 11%
- d) In case BCPL fails to repay for a particular month; same will be repayed in next month with additional 1% interest rate per annum over and above committed IRR of 13.3% per annum
- e) On consecutive failure for 3 months for repayment ; BCPL will pay outstanding amount immediately with additional 1% interest rate per annum over and above committed IRR of 13.3% per annum
- f) Exit Option

- i. Investor can execute exit option after one year from signing of this MoU; with four months prior notice before exit ( i.e. Request for exit can be sent only after 12 months and exit can be processed in 16th Month not before that)
  - ii. On pre mature request for exit; an investor will be paid at 9 % Internal Rate of Return (IRR) on invested amount not 13.3% only for period of investment. Same will be calculated separately and not as per repayment schedule in Annexure-B .
- g) BCPL shall repay ABC on monthly basis as per Annexure-B on or before 5<sup>th</sup> of every month
- h) All taxes or any other statutory charges arising now or in future out of payment made to any party shall be borne by the party itself

**4) Liability of Parties**

- a) Each party shall be responsible for its scope of work mutually agreed.
- b) Either Party shall not incur any liability, financial or otherwise, on behalf of the other Party, without prior written consent of the other Party.

**5) Exclusivity**

.....

**6) Term**

The Term of the Memorandum of Understanding here under (the “TERM”) shall, commence on ..... and will be in effect for a period of Seven years and will be renewed thereafter with mutual agreement in writing.

**7) Miscellinious:**

**i) Representations and Warranties**

- a) Each Party hereby represents and warrants to the other Party as follows
- b) its Memorandum and Articles of Association or other constitutional documents include provisions which gives it the power, and all necessary corporate authority has been obtained, to sign and deliver this MoU and exercise its rights and perform its obligations under this MoU and the same do not in any manner contravene any constitutional documents of the Party;
- c) it is validly incorporated and is in good standing in all jurisdictions where it carries on its business and is not in any regulatory default that may materially and adversely affect continuance of its business or performance of its obligations hereunder;
- d) to the best of its knowledge, there are no legal, quasi-legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions of any nature pending or imminent against it or to which any of its assets are or may be subject, and it has not been threatened by

any such proceeding, claim, action against it, which relates in any manner to this MoU or the transactions contemplated hereby or which could adversely affect its ability to perform this MoU;

- e) no winding up, bankruptcy or proceedings or governmental or regulatory investigations of similar nature are threatened, imminent or pending against it;
- f) no receiver or liquidator of similar nature has been appointed in relation to any of its assets;
- g) It has not entered into, nor is there any proposal for, any arrangement or compromise with its creditors;
- h) none of (A) the execution, delivery and performance of this MoU (B) the consummation of the transactions contemplated by this MoU, or (C) the compliance with the provisions of this MoU, will (I) conflict with or breach any applicable laws, subject to receipt of all consents, approvals, authorizations as required under such laws; or (II) violate or breach a provision of, or constitute a default (or an event which, with notice or lapse of time or both would constitute a default) under, any of the terms, covenants, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement or other instrument, commitment or obligation to which any of the Parties is a party, so as to render the transactions, rights or obligations envisaged under this MoU void or unenforceable;

## **ii) Confidentiality**

- a) Throughout the term of this MoU and for a period of one (1) year after its termination or expiry, the Parties shall maintain strict confidentiality of the information/data of either Party that is disclosed to the other Party and shall not disclose such confidential information/ data to any third party without the prior written consent of the other Party. Each Party may however disclose the confidential information to its employees, directors, officers, subcontractors, financiers, consultants, advisors and those of its subsidiaries and affiliates who have a need to know such information in connection with the execution of the MoU and/or the Project. The obligations undertaken hereto shall not apply to any information obtained, which is or becomes published or is otherwise generally available to the public other than in consequence of any willful or negligent act or omission of either of the Parties hereto, or which is required to be disclosed pursuant to an order of a court, statutory authority, governmental agencies as per the applicable law.

## **iii) Indemnity**

- a) Each Party agrees to indemnify the other Party, and each of the indemnified Party's employees, and authorized representatives from, and hold each of them harmless against all actions, claims, damages and expenses that may be suffered by the indemnified Party as a result of willful misconduct, gross negligence or non-compliance with applicable laws and/or with the terms of the MoU by the indemnifying Party, with respect to undertaking the Project. Notwithstanding anything to the contrary provided for by the applicable law or contained or implied in this MoU, neither Party shall in no event, whether under and/or in connection with this MoU or the performance or non-performance thereof or as a result of breach of MoU, be responsible or held liable towards the other for any indirect and/or consequential, incidental, remote, speculative damages, loss of profit or loss of business.

## **iv) Relationship**

- a) This MoU shall not create a partnership, agency or representative relationship among the Parties hereto. For avoidance of doubt, no Party shall have the right or power to bind the other Party to any agreements without the prior written consent of that Party and each Party assures and declares that it will not hold itself out as having such authority. Save and except as provided in this MoU, the acts of each Party shall be individual acts of each such Party and shall not be deemed or ascribed in any way to be the acts of the other Party

**v) Assignment**

- a) No Party has the right to assign or transfer any or all of its rights or obligations under this MoU to any third Party without the prior written consent of the other Party, provided that this provision shall not be deemed to exclude purchasing and subcontracting of a part or parts of its scope of work as per the terms of the Contract.

**vi) Governing Law and Dispute Resolution**

- a) This MoU shall be governed by and construed in accordance with the laws of India and the Courts at Mumbai shall have exclusive jurisdiction in relation to the interim reliefs as provided under the Arbitration and Conciliation Act, 1996.

**vii) Notices**

- a) Any notice, communication, statement, request or correspondence required under the terms of this MoU shall be in writing, in English language and shall be delivered personally, or via courier, registered mail, or facsimile to the office of the Parties as stated hereinabove, or such other address as may be notified by the concerned Party.

**viii) Waiver**

- a) No provision of this MoU shall be deemed waived by either Party except when such waiver is expressly given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this MoU or to take advantage of any of its rights under this MoU shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

**ix) Amendments**

- a) Any amendment to the MoU shall only be valid and binding upon the Parties if concluded in writing and signed by an authorized representative of each of the Parties and formally expressed as constituting an amendment hereto

**x) Costs**

- a) Each Party shall bear its own legal or other professional charges which it may incur in respect of any independent advice that it may seek in respect of this MoU and/or any matters pertaining thereto.

**xi) Further Assurances**

- a) The Parties will promptly do and perform all further acts and execute and/or deliver all further documents, approvals, certificates, deeds or agreements required by law or under the Bid as may be reasonably requested by the other Party to give effect to the provisions of this MoU.

**xii) Broad Understanding**

- a) This MoU shall be binding upon the Parties and constitutes the broad understanding among the Parties as to the subject matter hereof, and supersedes all prior agreements and understandings. All other matters which have not been mentioned / provided in this MoU shall be mutually decided by the Parties which shall be in accordance with the Bid documents.

**xiii) Survival**

- a) The responsibilities, duties and obligations of the each Party under this MoU under clause 7 iii) (Indemnity), clause 7 iv) (Relationship), clause 7 vi) (Governing Law & Dispute Resolution) and clause 7 vii) (Notice), shall survive after expiry or termination of this MoU. The Confidentiality obligations of each Party as stated in clause 7 ii) shall survive for the period stated therein.

**IN WITNESS WHEREOF** the Parties have caused this MoU to be duly executed by their duly authorized representatives on the day, month and year first hereinabove written.

For and on behalf of  
**BCPL INTERNATIONAL LIMITED**

Signed By:  
Designation:

Signature

For and on behalf of  
**ABC**

Signed By :  
Designation :

Signature

Witness (BCPL):

Witness (ABC):

Name :  
Address:

Name:  
Address:

**Annexure- A**

SET UP COST PER 10 Gunta UNIT- ORCHID							
Sl. No.	Particulars	No. Of Unit	Price Per Unit	Dicount %	Net Price	Total Price	Life Span Yrs
1	<b>Poly House + Structure</b>	1	750000	0%	750000	750000	10
2	<b>Fabrication &amp; Bed Prpearation</b>	1	150000	0%	150000	150000	10
3	<b>Water Drip-(Jain/ Netafim) &amp; Other</b>	1	150000	0%	150000	150000	10
4	<b>PLANTATION</b>						
a	Pots (12000 x 60 per pc)-Orchid	12000	60	0%	60	720000	8
b	Bed Prepartation	1	25000	0%	25000	25000	8
c	Ferti& manure	1	45000	0%	45000	45000	8
d	Cost of Insecticide & Pest	1	25000	0%	25000	25000	8
e	Cost of labor for Palntaion	1	25000	0%	25000	25000	8
5	<b>Auto Cotrol Unit</b>	1	200000	0%	200000	200000	8
6	<b>Tools &amp; Equipments</b>	1	30000	0%	30000	30000	
7	<b>Miscileneous</b>	1	30000	0%	30000	30000	
8	<b>Contigency</b>	1	50000	0%	50000	50000	
	<b>TOTAL</b>					<b>2200000</b>	

**Note:****All above figures are in INR except %**



**Annexure- B**

<b>Brain Chamber Distance Agriculture's 7 years Repayment Model</b>						
<b>Year</b>	<b>Net Income</b>	<b>Return to Investor</b>	<b>Per Month Returns to Investor</b>	<b>Total returns to Investor Per Annum</b>	<b>Reserve Per Annum</b>	<b>Remark</b>
<b>A</b>	<b>B</b>	<b>C</b>	<b>D=C/12</b>	<b>E</b>	<b>F=B-C</b>	<b>H</b>
Y1	49268	120000	20000	120000	-70732	<b>Payments only from Month 7 to month 12</b>
Y2	382245	433200	36100	433200	-50955	
Y3	1045349	576000	48000	576000	469349	
Y4	1100017	604800	50400	604800	495217	
Y5	1157418	635040	52920	635040	522378	
Y6	1217688	666792	55566	666792	550896	
Y7	1280973	700132	58344	700132	580841	
<b>Funds will be poured in by Brain Chamber to make sure investor's return as per above in Yr1 &amp; 2; till positive reserves achieved from year 3</b>						
<b>IRR for above Investment Proposal- 13.5%</b>						