

PORTAL USAGE AND SUPPLIER AGREEMENT

"This Usage and Supplier Agreement is made and executed on this day of .....  
(month) .....(Year) between the National Small Industries Corporation Limited, a Government Company incorporated under the companies Act 1956 (Act VII of 1913) having its registered office at NSIC Bhawan, Okhla Industrial Estate, New Delhi -110020, the service provider (hereinafter call as the NSIC, which expression shall include its successors and assigns); on the first part.

AND

....., a company registered under the Companies Act, 1956 / a Partnership Firm/ a Sole Proprietorship Firm having its registered office/principal office at ..... (here-in-after referred to as the Supplier) through .....of the Company/ Partnership Firm/ Sole Proprietorship Firm, which expression shall mean and include any of its subsidiaries, successors in interest and/or assigns, contractors/vendors/suppliers of the OTHER PART.

Whereas NSIC as the Service Provider is providing a Web Portal on electronic software system which would serve as an electronic platform to facilitate MSME's to sell and purchase products online through SUPPLIER's own Computer and Network Resources, by creating a personal account on NSIC web portal (the "Web Store").

And Whereas the SUPPLIER intends to avail the services of NSIC by creating its "Web Store" on the portal of NSIC where in the SUPPLIER can post the images and other details of its products to sell online.

And whereas both the NSIC and SUPPLIER desire to enter into this agreement on the following terms and conditions mutually agreed upon between the Parties.

And now therefore, expressly incorporating the foregoing Recitals as part of the consideration hereof, and in further consideration of the promises and mutual promises and covenants contained herein, the Parties hereby agrees as follows:

1. **Competencies to Contract:** The Parties confirms:
  - a. That they are duly authorized to consent to these terms and conditions on behalf of their respective companies/Firms/Entities/Corporations.
  - b. that they can form legally binding contracts under the applicable laws;
  - c. that they have the right to grant the intellectual and informational property rights at issue under this agreement, and that such grants do not infringe the rights of any third party;
2. **IDs & passwords:** The SUPPLIER agrees that the SUPPLIER's IDs and passwords used for logging in the "Web Store" are confidential and proprietary. It is a violation of the Terms and Conditions for a Supplier to disclose its password or share its ID, password with any unauthorized third parties, or to use its ID and password for any unauthorized purpose other than the purpose mentioned herein. Each SUPPLIER is solely responsible for any unauthorized use of SUPPLIER's ID and password in connection to the "Web Store".
3. **Transacting on the Portal:** All the Transactions entered into between the SUPPLIER and its respective buyers on the "Web Store" are governed by the specific Terms and Conditions of each Transaction (such as pre-qualification criteria, technical requirements, pricing, warranties, delivery, etc.) established between the SUPPLIER and their respective buyers. The "Web Store" is only a venue and a platform through which the SUPPLIER and their respective customers can transact. The power to make the decision of doing the business vests always and in all conditions with the SUPPLIER. NSIC is not a party to any of the transaction entered into upon the "Web Store" between the SUPPLIER and any of its buyers. NSIC does not set nor endorse any of the terms and conditions of the sale effected on the "Web Store" inclusive of but not limited to the price, contract terms, quality, safety, conformance or legality of the Products advertised or offered for sale, the ability of SUPPLIER to sell Products or the ability of its buyers to buy Products. NSIC cannot and does not control, in any situation, whether SUPPLIER will complete the sale of Products they offer or whether their buyers will complete the purchase of Products they request for on the "Web Store". NSIC is also not responsible with respect to payment or collection for orders made and bids placed on the "Web Store".
4. **No warranty:** The SUPPLIER confirms and agrees that by assenting to these terms and conditions, it assume any and all responsibility and risk of use of the "Web Store" and any products or services contained therein. NSIC provides the "Web Store" and services thereto "as is" and "as available," without any warranty or condition of any kind, express, implied or statutory. NSIC expressly disclaim any warranties of any kind, inclusive of but not limited to:
  - a. the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement;
  - b. that service of the SUPPLIER will be continuous, uninterrupted and/or error-free;
  - c. for replacement of any sort of goods which is sold on the Web Store by the SUPPLIER to any of its Buyers.
  - d. the assurance as to the quality, identity, functioning or reliability of any buyer or SUPPLIER and guidance whether the SUPPLIER should do business with such buyer; and
5. the assurance as to the accuracy of any information made available on or through the "Web Store" by or on behalf of any buyer.

**Release:** The Parties agree that NSIC is not a party to any agreements between SUPPLIER and

buyer or any other parties for the transaction made on the "Web Store", and further NSIC also has no control over the truth or accuracy of representations made by the aforesaid parties, or the ability of aforesaid parties to any such agreement to fulfil their part of any transaction. The SUPPLIER hereby releases and agrees to hold harmless NSIC inclusive of but not limited to its officers, directors, subcontractors (including without limitation technology providers) acting in their capacity of providing services to NSIC, and employees from any and all claims, demands, and damages of every kind and nature (including, without limitation to actual, special, incidental and consequential), known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with the use of the "Web Store", or any agreement or transaction between any SUPPLIER, on the one hand, and any other Third Parties on the other hand.

The SUPPLIER further agrees that the function of NSIC is limited to providing access to a communication system over which information made available by SUPPLIER is temporarily stored and hosted. NSIC in any case does not initiate any transaction between the SUPPLIER and any of its buyers or select the buyer and neither NSIC has any control over the information contained on the "Web Store"

- 6. Good Faith and Fair Dealing:** SUPPLIER hereby agrees to act in accordance with the principles of good faith and fair dealing when transacting on or through the "Web Store". NSIC reserves the right to investigate any allegation or evidence of any SUPPLIER's failure to abide by the principles of good faith and fair dealing in connection with its use of the "Web Store", and to fashion and enforce remedies, in its sole but reasonable discretion, in order to address any violation of such principles.
- 7. Information posted on the Portal:** The "Web Store" may contain news and information published by various third parties, some of which may contain facts, views, opinions, analyses and recommendations of individuals and organizations deemed of interest. NSIC does not guarantee the accuracy, completeness, or timeliness of, or otherwise endorse these views, opinions, analyses, or recommendations. SUPPLIER assumes sole responsibility and risk for use of such content.

The "Web Store" may contain links to third party websites not under the control or operation of the NSIC. The Parties agree that NSIC provides links only as a convenience and does not endorse, and is not responsible for the contents of, any site linked to its "Web Store". SUPPLIER assumes sole responsibility and risk for use of such third party links.

The Parties further agree that SUPPLIER postings to the Portal are the sole responsibility of the SUPPLIER and NSIC has no obligation to monitor Portal contents or third party links on such linked Third Party Websites and NSIC expressly disclaims any responsibility to filter any such content. However, NSIC reserves the right to take any action with respect to information posted on the "Web Store" that NSIC deems inappropriate in its sole discretion, including but not limited to the immediate removal of offensive or harmful content, or suspension or termination of SUPPLIER's rights of use of "Web Store".

The SUPPLIER confirms that the SUPPLIER is solely responsible, which is inclusive but not limited to, for pricing and payment realization of the product posted on the "Web Store", details, availability and quality of the products, replacement of the products which are defective or malfunctioning, deciding the mode of payment, Mode of delivery, delivery charges ,delivery time of the products posted on "Web Store" , The SUPPLIER further confirm that all the information posted on the "Web Store" by the SUPPLIER is complete, true, accurate and not misleading to best of its knowledge and the product description and their respective images are not deceptive. The SUPPLIER is solely responsible for any mismatch between product categories and quantity selected by any of its buyer and the respective delivery made by the SUPPLIER, the Post delivery supports and installation, if any, for the products posted on the "Web Store". The SUPPLIER is also solely responsible for any dispute with related to inclusive but not limited to product's quality, warranty etc. posted by him on the "Web Store" and sold to the buyer.

The SUPPLIER further agrees that it shall not post information on the "Web Store" that is, or offer Products or services for sale that are:

- fraudulent or related to the sale of counterfeit or stolen items;
- infringing of any third party's rights, including but not limited to copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy or Intellectual Property Rights;
- transmitted anonymously or labelled under a false name;

- in violation of any applicable law, statute, rule or regulation (including without limitation those governing export control, consumer protection, unfair competition, cartelisation, government/public sector procurement, anti-discrimination or false advertising);
- obscene, indecent or pornographic;
- defamatory, trade libellous, threatening or harassing; or
- unsolicited or unauthorized advertisements, promotions, or other forms of solicitation.

In addition, SUPPLIER may not link directly or indirectly to, or include descriptions of, Products

- a. that are prohibited by this Usage Agreement or
- b. to which the SUPPLIER does not have the right to link or include.

SUPPLIER must obtain the NSIC's express permission to link "Web Store" to their web sites. Furthermore, SUPPLIER should not sell through the Web Store any Product or service that could cause NSIC to violate any applicable law, statute, ordinance, or regulation of any jurisdiction.

8. **Protection of data provided by SUPPLIER:** The SUPPLIER agrees that NSIC has no liability to protect any personal data or information provided by the SUPPLIER on the "Web Store" or otherwise in any manner. The SUPPLIER also releases NSIC of the liability for security of any of the information provided by SUPPLIER which may cause Wrongful Loss or gain to any other third party and NSIC is not liable to pay any damages or compensation in any form to any person.
9. **Compliance with laws:** SUPPLIER shall comply with all applicable laws, statutes, ordinances and regulations regarding the use of the "Web Store", bidding on or purchase of merchandise, and posting and retrieval of information (including without limitation those governing export control, unfair competition, antitrust, cartelisation, government/public sector procurement, or false advertising).
10. **System Integrity:** SUPPLIER hereby agrees not to tamper in any way with the software or functionality of the "Web Store". Without limiting the foregoing, the SUPPLIER agrees not to put any computer programs, information or data into the "Web Store" which contains any viruses, Trojan horses, worms, cancel bots or other computer programming routines that may damage, interfere with, intercept or expropriate any system, data or information.
11. **License:** Subject to the Terms and Conditions, NSIC hereby grants SUPPLIER a personal, non-transferable, non-exclusive, non-sub-licensable license to use the software and the user interface for viewing and otherwise using the "Web Store" and its services in accordance with the Terms and Conditions, and for no other purpose. All rights, title and interest in and to the software, user interface and content made available from, on or through this "Web Store" shall belong to NSIC including all modifications thereof and enhancements thereto. The software and user interface made available from, on or through this "Web Store" may not be copied, modified or distributed by SUPPLIER, nor may derivative works be prepared therefrom. The license granted pursuant to the Terms and Conditions is solely for the internal use of SUPPLIER and may not be used for any time sharing or service bureau purposes outside of SUPPLIER's organization. SUPPLIER shall not reverse engineer, decompile, or otherwise translate, in any way, the software and user interface made available from, on or through this "Web Store". SUPPLIER shall have no right or claim of right to the software or any unique ideas found on this "Web Store". No ownership rights are granted to SUPPLIER hereunder and no title is transferred hereby.
12. **Relationship:** NSIC and SUPPLIER are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Usage Agreement, or the Terms and Conditions.
13. **Termination:** In its sole discretion, NSIC may restrict or terminate SUPPLIER's usage of the "Web Store" products or services, postings, or current bids immediately if the SUPPLIER breaches any of the Terms and Conditions, fails to pay any overdue amount as described in Clause 6, or if NSIC is unable to verify or authenticate any information provided by the SUPPLIER. Notice of termination must be provided in accordance with the requirements set forth in Clause 16 within 30 days. SUPPLIER agrees that, upon termination of this Usage Agreement, said SUPPLIER will pay all outstanding amounts owed to NSIC, in full, and honour all outstanding transactions and pending transactions. Any amount not due prior to seven (7) days from the date the Usage Agreement is terminated is due within seven (7) days after termination. SUPPLIER hereby acknowledges and agrees that in the event said SUPPLIER fails to pay all amounts due within seven (7) days after termination of this Usage Agreement, such unpaid amounts shall be deemed "overdue" and interest will accrue on such overdue amounts at a rate of one and one-half percent (1.5%) per month or part thereof, or the maximum amount allowed by law, whichever is less. NSIC will give notice with regard to the aforesaid termination to the Supplier and the agreement would stand terminated within 1 month of such notice given by NSIC to Supplier.

14. **Settlement of Disputes:** If any dispute or differences arise between NSIC and the Supplier with regard to construction, meaning, interpretation or termination of this agreement, recovery of dues and effect of these present or any part thereof the same shall be referred by either party to the Chairman-Cum –Managing Director of the NSIC who shall refer the matter for adjudication to the sole arbitrator, who can be an employee serving or retired of the NSIC. There shall be no objection to the said appointment of the arbitrator. The award of the sole arbitrator so appointed shall be final and binding on the parties to the agreement.

The venue of the Arbitration shall be at Delhi or at any other place, at the discretion of the Chairman-cum-Managing Director of the NSIC and the Court at Delhi shall have exclusive jurisdiction to decide the matter relating to the Arbitration referred to the above

15. **Service of Notice:** Any notices request or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally by hand or sent by courier, registered or certified mail or facsimile. Notices and other communications shall be addressed as follows:

(a) If to NSIC: NSIC, NSIC Bhawan, Okhla Industrial Estate, New Delhi - 110020

(b) If to SUPPLIER:

16. **Governing law and jurisdiction:** This Usage Agreement and the relationship between SUPPLIER and NSIC shall be governed by and construed in accordance with the laws of India. NSIC makes no representation that material on the "Web Store" is appropriate or available for use in other locations, or that the contents comply with local law. Those who choose to access this "Web Store" from other locations do so on their own initiative and are responsible for compliance with local laws.

17. **Indemnification:** Without limiting the generality or effect of other provisions of this Usage Agreement, as a condition of use, SUPPLIER agrees to indemnify, hold harmless, and defend NSIC against all costs, expenses, liabilities and damages incurred by any Indemnified Party in connection with any third party claims arising out of:

- a. SUPPLIER's usage hereunder and/or engagement in transactions on the "Web Store", including, but not limited to, failure of any Products to meet specifications or breach of warranty,
- b. SUPPLIER's failure to comply with any applicable laws and regulations (including without limitation those regarding the export/import of Products or technology) or to obtain any licenses or approvals from the appropriate government agencies necessary to purchase or sell the subject goods and services,
- c. SUPPLIER's breach of any of its obligations set forth in the Terms and Conditions; and
- d. Infringement claims asserted against NSIC based on its use of SUPPLIER's intellectual and informational property; and
- e. SUPPLIER's agreements or transactions with Third Party Providers.

SUPPLIER shall not settle any such claim without the written consent of the applicable Indemnified Party, which such consent shall not be unreasonably withheld.

18. **Limitation of liability:** In no event shall NSIC, nor any officer, affiliate, director, shareholder, agent, subcontractor (including without limitation technology providers and suppliers) acting in its capacity of providing services to NSIC, or employee be liable to any user or any third party for any direct, indirect, incidental, special, punitive, or consequential damages, or lost profits, earnings, or business opportunities, or expenses or costs, even if advised of the possibility thereof, resulting directly or indirectly from, or otherwise arising (however arising, including negligence) out of: the use of the "Web Store" by the SUPPLIER, including, but not limited to, damages resulting from or arising out of SUPPLIER's reliance on the "Web Store", or the mistakes, omissions, interruptions, errors, defects, delays in operation, non-deliveries, misdeliveries, transmissions, eavesdropping by third parties, or any failure of performance of the "Web Store"; any agreement entered into between SUPPLIER and any third party (or the negotiations or discussions conducted in anticipation of any such agreement), whether or not such third party is a third party provider as defined in this usage agreement; the termination or suspension of a SUPPLIER's id and password by NSIC pursuant to the terms and conditions; the failure, or alleged failure, of any product or service purchased or transferred pursuant to the "Web Store" to conform to any specifications or terms, whether published on the portal or not;

the breach, or alleged breach, of any warranty, express or implied, relating to any such product, service or shipment; or government restrictions, strikes, war, any natural disaster or force majeure, or any other condition beyond NSIC's reasonable control. NSIC's liability to any user or any third party in any circumstances is limited to deactivation of membership and cancellation of orders /products delivery by the suppliers.

19. **Miscellaneous Provisions:** These Terms and Conditions constitute the entire agreement and understanding between the parties with respect to the SUPPLIER's use of the "Web Store", and supersede and replace any and all prior written or verbal agreements. Headings are for reference only. A party's failure to insist upon or enforce strict performance of any provision of the Terms and Conditions shall not be construed as a waiver of any provision or right. Neither the course of conduct between a SUPPLIER and NSIC nor trade practice shall act to modify any provision of the Terms and Conditions. If any particular provision of the Terms and Conditions is held to be invalid or unenforceable, such determination shall not affect any other provision of the Terms and Conditions which shall remain in full force and effect. In addition, if any provision contained in the Terms and Conditions shall for any reason be held to be excessively broad as to activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with applicable law. These Terms and Conditions may not be assigned or transferred to third parties by SUPPLIER without prior written permission from NSIC. The SUPPLIER shall not be construed to be a third party beneficiary of any agreement between NSIC and any supplier to the NSIC.

**Copyright and trademark notices:** The entire contents of the Portal are copyrighted under applicable copyright laws. The Service Provider or its licensors are the exclusive owners of the copyrights.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed on the day and year first above written.

For <b>National Small Industries Corporation Ltd</b>  By: _____ NAME : DESIGNATION :	For...(SUPPLIER)  By: _____ NAME DESIGNATION
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**WITNESSES**

- 1.
- 2.