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Computer (Hardware) Hire Agreement

This agreement made at this day of 20... BETWEEN M/s. A.B.C. Co. Ltd., (having its registered office at) hereinafter referred to as the 'OWNER' of the One Part and M/s. XYZ and Co. Ltd., (having its registered office at) hereinafter referred to as the 'HIRER' of the Other part;

WHEREAS

- (a) Both the Owner and the Hirer are companies limited by shares and registered under the Indian Companies Act 1956.
- (b) The Owner is carrying on business of manufacturers and dealers in computer Equipments and at the request of the Hirer, the Owner has agreed to install and let on hire to the Hirer a computer Equipment which is more particularly described in the Schedule hereunder written, on the terms and conditions hereinafter mentioned and which are agreed to by the Hirer.
- (c) The parties have proposed to record the said terms and conditions hereinafter.

NOW IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS :

1. Equipment. - The Owner agrees to supply and install at the place hereinafter mentioned the computer Equipment more particularly described in the Schedule hereunder written and which is hereinafter referred to as 'The Equipment' for the sake of brevity.

2. Installation. - The said Equipment will be installed on hire basis to the Hirer and not as a sale.

3. Location. - The Owner shall deliver to the Hirer the Equipment at the location or place as will be intimated in writing by the Hirer, within two weeks from the date of receipt of such intimation. The Owner shall inform the Hirer of the exact date and time when the Equipment will be delivered.

4. Supply of information. - The Owner shall supply to the Hirer in writing such information and requirements as may be necessary and suitable to fix the site at which the Equipment will be located in the premises of the Hirer at so as to enable the Hirer to comply with all the requirements, operational, as well as environmental, within one week from the date hereof.

5. Installation. - On the arrival of the Equipment at the said location, the Hirer shall render all help to the representatives of the Owner, who will attend the location for installing the Equipment as may be necessary, in the form of labour, tools and other articles and things as may be required.

6. Working Condition of Equipment. - On the delivery date mentioned in clause 3 above, the Owner shall deliver the Equipment in good and working order.

7. Changes for installation. - If for installing the Equipment at the location, any constructional changes are required to be made as proposed by the Owner, the Hirer shall carry out such work at its own costs.

8. Installation at Owner's risk. - The Owner shall install the Equipment at the said location on the delivery date at its own risk but the Hirer will give to the Owner all assistance to carry out such installation.

9. Date of Delivery essence. - The said date of delivery is of the essence of contract and if the Owner fails to do so, (except due to any default on the part of the Hirer) the Owner will be liable to pay liquidated damages at the rate of Rs. per day of delivery, without prejudice to the right of the Hirer to terminate this agreement.

OR

9. Date of delivery not essence. - The date of delivery is not of the essence of the Contract but in the event of the Owner failing to install the Equipment by the date of delivery, the Hirer will be entitled to serve notice on the Owner making any extended time of the essence, and if the Owner fails to deliver the Equipment on the extended date, this agreement will stand terminated.

10. Specification and test. - Before delivering and installing the Equipment as aforesaid, the Owner shall produce copies of the specifications of the work tests and that the Equipment satisfies the said tests. Similarly after the installation of the Equipment the Owner shall carry out the necessary tests to testify that the Equipment is in good working order. The delivery and installation shall not be considered as complete unless such certificate is issued by the Owner or his authorised representative. The Hirer or his representative will be entitled to satisfy himself that the Equipment is in working order and has been properly installed and if necessary the Hirer will be entitled to engage any other qualified person to remain present at the time of testing. If any defect is found in the working of the Equipment on such tests being carried out, the same will be rectified by the Owner at its own costs. On the Equipment being found working satisfactorily the Hirer shall issue a certificate to that effect and furnish the same to the Owner.

11. Licence period. - The period of the hire shall be deemed to commence from the date the computer is found in working order after installation as mentioned above and shall remain in force for a period of ... months from the said date.

12. Warranties. - The Owner warrants that the Equipment will be free from any defects, mechanical, operation and installation. If during the course of hire, any such defect is found by the Hirer, it shall immediately give a notice in writing to the Owner of the defect and within eight days from the receipt of such notice the Owner shall at its own costs repair or replace the Equipment or such parts thereof as will be found defective. Except as aforesaid, the Owner shall have no other liability either in contract or in torts. This warranty will not apply if the defect as aforesaid is caused by the negligent handling of the Equipment by the Hirer or its employees or due to modifications made by the Hirer without the Owner's consent. The Owner does not also warrant that the Equipment will achieve any particular performance criteria unless (i) the owner has specifically guaranteed such criteria in writing or (ii) the environmental conditions specified by the Owner are maintained.

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13. Hire charges. - As and by way of hire charges or rental the Hirer shall pay to the supplier the same, and in the manner as specified in the Schedule hereunder written, including charges for maintenance service also specified in the said Schedule.

14. Interest on arrears. - All other charges payable by the Hirer to the Owner under or by virtue of this agreement shall be paid within two weeks from the receipt of the letter of demand by the Owner to the Hirer. All payments to be made by the Hirer under the preceding clause and this clause, if not paid, when they become due, shall carry interest at the rate of ... per cent p.a. from the due date, till payment, without prejudice to the right of the Owners to treat it as a breach of this agreement.

15. Equipment, property of the Owner. - The Equipment shall be the property of the Owner during the period of the hire and the Hirer shall have no proprietary or other right thereto except the right to operate the same during the said period.

16. Insurance. - Since the date of delivery of the Equipment, till the Equipment is redelivered to the Owner, the said Equipment shall be kept insured for its full replacement value with such Insurance Company as the Owner may desire. The Policy of Insurance will be in the name of the Owner, and the amount payable thereunder will be payable to the Owner. However, the premium shall be paid by the Hirer to the Company regularly. The Insurance will be against all risks by way of theft, fire or any other calamity as may be accepted by the Insurance Company.

17. Premium receipts. - The Hirer shall (i) produce the premium receipts to the Owner as and when they are received from the Insurance Company (ii) not effect any other Insurance on the said Equipment without the consent of the owner (iii) shall inform in writing as soon as any loss or damage to the Equipment is caused.

18. Indemnity. - Apart from the Insurance, the Hirer hereby agrees to indemnify or keep indemnified the Owner against any loss or damage caused to the said Equipment by fire, theft, riots or any other cause whatsoever, during the period of hire.

19. Maintenance. - During the period of hire, the Owner shall provide maintenance of the Equipment in the manner following -

- (i) The Owner's representative will attend the location where the Equipment is installed once in a month to check the functioning of the Equipment and that it is in working order,
- (ii) if and when the Equipment is not functioning properly or develops any defect the Owner shall, on intimation to that effect by the Hirer and within two days from the receipt of such intimation cause its competent representative to attend and remedy the defect and put the Equipment in proper working order.

20. Maintenance means. - The work of maintenance will not however include (i) any defect resulting from any cause other than regular wear and tear or the Owner's neglect (ii) any defect due to failure or fluctuation of electric supply or functioning of the air conditioning machine at the location, or (iii) defect on account of any accident due to the negligence of the Hirer's employees or any third party, or (iv) defect caused due to any additions or modifications made to the Equipment without the prior consent of the owner, or (v) defect due to any force majeure (vi) defect caused by loading any unlicensed or unofficial copy of a software without express

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written permission of the Owner, (vii) defect caused by use of floppy discs without scanning or prechecking for removing the virus etc. (viii) defect due to use by unauthorised or untrained persons (ix) defect due to use of the Equipment without a Stabilizer or UPS Unit (Uninterrupted Power Supply).

21. Innovations. - If the type of Equipment supplied to the Hirer has undergone any change to any invention or technical modifications or innovations, the Hirer shall be entitled to require the Owner either to modify the said Equipment to bring it in line with new developments or substitute the said Equipment with another developed Equipment and on such modification or substitution, the new Equipment will form part of this agreement as if it was included in the Schedule thereunder written. Provided the Owner will be entitled to claim such additional rent as may be agreed upon and also to the said Equipment with another developed Equipment, and on such modifications or substitution, the new Equipment will form part of this agreement as if it was included in the Schedule hereunder written, provided the owner will be entitled to claim such additional rent as may be agreed upon and also to the costs, charges and expenses incurred in carrying out the modifications or substitution of the new Equipment.

22. Hirer's disability. - The Hirer agrees and undertakes that

- (i) it shall not sell, sublet, or pledge or hypothecate the Equipment or any interest therein in favour of another person
- (ii) shall not charge, remove, obscure any labels, plates, insignia lettering or other markings on the Equipment
- (iii) shall not cause any attachment being levied by any creditor of the Hirer or other person in execution of any decree or for payment of any taxes payable by the Hirer,
- (iv) shall not remove the said Equipment from the place where it is installed first under this agreement
- (v) shall obtain all licences, permits or permissions as may be required in law to operate the said Equipment at its own cost and shall observe the terms and conditions thereof.
- (vi) shall allow the Owner's representative at all reasonable times to attend and inspect the Equipment.
- (vii) shall indemnify or keep indemnified the Owner against all claims made against the Owner for loss or damage suffered by the Owner by reason of any loss or damages or injury suffered by any person due to the operation or otherwise in connection with the said Equipment, whether such loss or damage is caused by the Hirer or its employee or employees or any other person except the Owner or his representative.

23. Confidentiality. - All information supplied by the Owner to the Hirer or by the Hirer to the Owner regarding the said Equipment and its operation and which is not already of a public nature, shall be kept confidential and will not be disclosed to any other person.

2. Copyright infringement. - The Owner warrants that in the matter of the said Equipment, it has not infringed any copyright of any other person and the owner agrees to indemnify and keep indemnified the Hirer against any claim or loss or demand suffered by the Hirer due to infringement of any such copyright.

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25. Termination by Owner : - The Owner shall be entitled to terminate this agreement by giving fifteen days prior notice in writing to the Hirer if-

- (i) the Hirer commits breach of any terms or conditions of this agreement and to be observed or performed by the Hirer;
- (ii) the Hirer fails to pay the amount of hire and maintenance charges or other money payable under this agreement, when it becomes due and payable;
- (iii) the Equipment is attached or taken possession of by any other person;
- (iv) the Hirer is ordered to be liquidated or goes into voluntary liquidation;

26. Termination by Hirer. - The Hirer shall be entitled to terminate this agreement by giving fifteen days prior notice in writing to the Owner if -

- (i) the Owner commits any breach of any terms or conditions of this agreement and to be observed and performed by the Owner.
- (ii) the Hirer decides to close his business or to stop operating the Equipment provided that in such event the Hirer shall be liable to pay and agree to pay to the Owner the aggregate amount of hire charges for the remaining period of this hire.
- (iii) the said Equipment is damaged beyond repair or is destroyed by any act of God or accident not caused by the negligent act of were.

27. Effect of termination. - On the termination of this agreement by the Owner or by the Hirer as aforesaid or on the expiration of the period of hire herein prescribed, the Hirer shall return to the Owner the said Equipment (unless it is destroyed) or damaged beyond repair) at its own costs within two weeks from the termination of the agreement failing which the Hirer shall be liable to pay liquidated damages at the rate of Rs. per day of non-delivery after the expiration of the said period of fifteen days till it is redelivered to the Owner. This is without prejudice to the right of the owner to recover the Equipment himself and the costs of removal shall be payable by the Hirer to the Owner.

28. Option to purchase. - During the period of this agreement, the Hirer shall have the option to purchase the Equipment at the price to be agreed upon between the parties provided that in the event of disagreement between the parties as to the price, the same will be decided by arbitration. On the sale of the Equipment to the Hirer by payment of the price to the Owner, this agreement will be deemed to be terminated.

(29) Agreement exclusive. - Notwithstanding any previous correspondence or other writings if any, the agreement will represent the entire and exclusive agreement between the parties hereto regarding the said Equipment and no other.

30. Notices. - All notices required to be given by one party to the other hereunder will be given in writing and served on the other party at the address of the party given at the commencement of this document by registered post or personal delivery with acknowledgment.

31. Law applicable. - The agreement will be governed by the law prevailing in India.

33. Arbitration. - Any dispute or differences arising between the parties will be referred to arbitration of one arbitrator if agreed upon or two

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arbitrators, one to be appointed by each party to the arbitration, and the arbitration in all other respects will be governed by the Arbitration and Conciliation Act, 1996.

32. Jurisdiction. - Except as aforesaid any question or dispute will be determinable by a Competent Court in India only.

THE SCHEDULE ABOVE REFERRED TO

1. Description of the Equipment, 2. Location, 3. Delivery date, (4) Rent and mode of payment, and (5) maintenance charges and mode of payment.

Signed and delivered by)
the within named Owner)
M/s. ABC and Co. Ltd., pursuant)
to the Resolution of the)
Board of Directors dated . . .)
by Mr., Director)
duly authorised in that)
behalf, in the presence of)

Signed and delivered by)
the within named Hirer)
M/s. XYZ and Co. Ltd. pursuant)
to the Resolution of the)
Board of Directors dated ...)
by Mr., Director)
duly authorised in that)
behalf, in the presence of)

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