



കേരളം കേരल KERALA

G 730653

### JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT is made and entered into on this the 17<sup>th</sup> day of August 2019 by and between KERALA STATE ELECTRICITY BOARD LIMITED (“KSEBL”), a Public Limited company having its registered office at Vydyuthi Bhavanam, Pattom, Thiruvananthapuram – 695004 represented by Shri Kumaran P, Director (Distribution &IT) (which expression shall mean and include its successors and assigns) on THE FIRST PART and KERALA STATE INFORMATION TECHNOLOGY INFRASTRUCTURE LIMITED (“KSITIL”), a Public Limited Company having its registered office at 7th Floor, Felicity Square M.G Road, Statue, Thiruvananthapuram – 695001 represented Shri. Dr C Jayasankar Prasad, Managing Director (which expression shall mean and include its successors and assigns) on the SECOND PART and THE GOVERNOR OF KERALA, (hereinafter referred to as “GOK” which expression shall mean and include its successors and assigns) represented by Shri. M Sivasankar IAS, Secretary E&IT, Government of Kerala on the THIRD PART;

KSEBL, KSITIL and GOK are hereinafter collectively referred to as “Parties”, and each individually as such or as a “Party”. This agreement come into force W.E.F 10/05/2018.

**KUMARAN**  
DIRECTOR  
(Distribution & IT)



Dr. Jayasankar Prasad, c  
Managing Director

*[Handwritten signatures and initials]*  
KSITIL

**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department



**KILYALLOOR MANI**  
PALANJAN VENDOR  
India Institute of Commerce Bldg  
University P.O, Trivandrum-34



WHEREAS, KSEBL is a Company engaged in the business of Generation, Transmission and Distribution of electricity in the state of Kerala and KSITIL is engaged in the business of Infrastructure development in IT sector and all construction, connectivity activities etc.

and GOK, KSEBL and KSITIL have decided to form a Joint venture Company for the implementation of KFON project for the purpose of building up a statewide optical fibre network infrastructure for providing high speed internet connectivity to all Government Educational institutions and leveraging the network to the Telecom/Internet Service Providers on non discriminatory basis to provide quality and affordable internet services to citizens.

AND WHEREAS, the Parties have decided to form KFON as a joint venture company in India in which KSEBL would hold forty nine percent (49%) of the share capital, KSITIL would hold forty nine percent (49%) of the share capital and Government of Kerala would hold two percent (2%) of the share capital as golden share.

AND WHERE AS pursuant to the above mentioned decision, the Parties are now desirous of entering into this Agreement to set out on terms and conditions in relation to the setting up of the KFON, the relationship between the Parties and their broad level rights and obligations in relation to the KFON, the management of KFON and other matters in connection therewith.

AND WHERE AS, the GOK vide G.O(MS)No.22/2017/ITD dated, 13/10/2017 have accorded administrative sanction for the formation of a Joint Venture Company in the name as Kerala Fibre Optic Network (KFON),

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### DEFINITIONS, RULES OF CONSTRUCTION

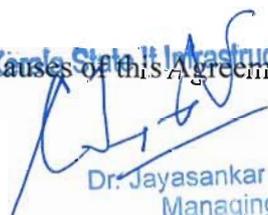
1.01 Definitions. In this Agreement, unless the context otherwise requires, capitalized terms used herein and which are not otherwise defined herein, shall have the meanings given to such terms hereunder:

- a. "Act" means the Companies Act, 2013;
- b. "Applicable Law" means any statute, notification, by-law, rules, regulations, guideline, policy, direction, directive, ordinance, order or instruction having the force of law, enacted or issued by any Governmental Authority and shall include any consents or approvals granted by any Governmental Authority;
- c. "Government Authority" shall mean any national, state, provincial, local or other government authority, statutory authority, government department, tribunal or court or other law, rule or regulation-making entity or any tribunal, board or court;
- d. "INR" shall mean Indian Rupees, the lawful currency of India;
- e. "Registrar of Companies" means the Registrar of Companies as defined in the Act;

1.02 Rules of Construction.

- i. References to Clauses are to clauses of this Agreement.

  
**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department

  
**Dr. Jayasankar Prasad.c**  
Managing Director

  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

- ii. Headings to Clauses are for convenience only and are to be ignored in construing this Agreement;
  - iii. References to a “entity” are to be construed so as to include any firm, company, Government, or any joint venture, association or partnership (whether or not having a separate legal personality);
  - iv. References to a “company”, are to be construed so as to include any company, corporation, or other body corporate, wherever and however established;
  - v. References to any statute or statutory provisions are to be construed as a reference to the same as it may have been, or may from time to time, amended modified or re enacted;
  - vi. Words denoting the singular include the plural and vice versa and words importing the masculine gender include feminine and neuter genders and vice versa;
  - vii. References to Annexures, Schedules and Recitals are to annexures, schedules and recitals to this Agreement and shall be taken, read and construed as essential parts of this Agreement but headings and the table of contents are for ease of reference and shall be ignored in construing this Agreement;
- (viii) The word “month” wherever used shall mean the period of time which ends on the same date as it commenced in the previous month but if there is no numerically corresponding date in the following month then the period shall end on the last day of the month;
- (ix) References to “Rs.” or “Rupees” or “INR” are reference

### **FORMATION OF THE JOINT VENTURE COMPANY**

2.01 Private Limited Company. The Parties hereby agree to form and incorporate Kerala Fibre Optic Network Ltd. in the form of a private limited company under the Act. The Parties agree that KSITIL shall initiate the process of incorporation of the KFON promptly following the execution of this Agreement. The Parties further agree as follows:

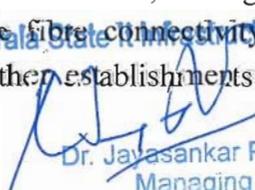
- a. the KFON shall be incorporated by KSITIL with the main objects as set out in Article 2.03 at the place specified in Article 2.04;
- b. the KFON shall be incorporated by KSITIL with the authorized share capital of Rupees One Crore (INR 1,00,00,000);
- c. KSITIL shall bear all costs and expenses related to the incorporation of the KFON; and
- d. Parties shall ensure that the KFON, once incorporated, complies with all provisions of the Act and this Agreement.

2.02 Name. The name of the Joint Venture Company shall be Kerala Fibre Optic Network Ltd. (in short KFON) or such other similar name which manifests the main objects of the company and is available with the Registrar of Companies.

2.03 Main Objects of the KFON. The main objects of the KFON shall be:

- a. To carry on the business of establishment, management and operation of Optical Fibre Network, to enable and provide fibre connectivity across the State of Kerala including Government, educational and other establishments and to plan, survey, design, develop,

  
**M. SIVASANKAR IAS**  
Secretary to Government

  
Dr. Jayasankar Prasad.c  
Managing Director

  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

establish, provide, maintain, perform, rollout, finance, manage, operate, upgrade and modernize the optical fibre network.

- b. To share and leverage Company owned infrastructure to provide or facilitate free internet to economically backward households through service providers.
- c. To work on the principles and guidelines of openness and transparency; to leverage infrastructure and provide access to Optical Fibre Network/ bandwidth in a non-discriminatory manner to all eligible Telecom/Internet Service Providers and any other service providers to enable them to provide services across the state of Kerala and specifically in rural areas; to sell bandwidth, lease dark fibre and provide any value added services deemed necessary by the company; to create Information and Communication Technology infrastructure required for the rapid development of economic sectors in the State of Kerala;
- d. To engage in any other relevant act or activity, business conduct, action or transaction that is deemed to be necessary for achieving the purposes set forth in the paragraphs (a) through (c) herein-above or that is specifically agreed upon in writing by both Parties.

2.04 Registered Office. The registered office of the KFON shall be at T.C 14/196/2, Chandrasekaran Nair Stadium, Palayam, Vikas Bhavan P.O, Thiruvananthapuram- 695 033 or such other place decided by the GOK prior to incorporation of the company.

2.05 Articles of Association. The articles of association of the KFON (the "Articles of Association") shall be in accordance with the terms of this Agreement, annexed herewith as Annexure A. The Parties shall ensure that they will do, and will cause the KFON to do, all such acts and deeds as are required to implement the Articles of Association as set forth above.

2.06 Overriding Effect of this Agreement. The Articles of Association and Memorandum of Association of the KFON (the "Memorandum of Association") (the envisaged Memorandum of Association is annexed as Annexure B) shall be in accordance with the terms of this Agreement, and the Parties shall take all necessary action to ensure the same. In the event of any conflict or inconsistency between the terms of the Articles of Association and this Agreement or between the terms of the Memorandum of Association and this Agreement, the terms of this Agreement shall prevail and the Parties shall, exercise their rights in the KFON to amend the Articles of Association and/or Memorandum of Association, as applicable, with immediate effect to accord with the terms of this Agreement and eliminate such conflict or inconsistency, and the Parties shall refrain from taking any action that is inconsistent with this Agreement.

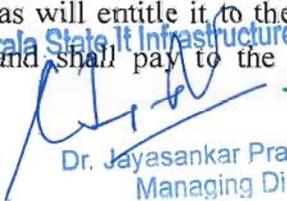
## CAPITALIZATION

3.01 Shares. Unless otherwise agreed in writing by the Parties, the KFON shall issue Shares only.

3.02 Authorized Share Capital. The initial authorized share capital of the KFON shall be Indian Rupees One Crore (INR 1,00,00,000), divided into Ten Lakh (INR 10,00,000) Shares with a face value of Indian Rupees Ten (INR10) each. The authorized share capital of the KFON may be increased with mutual consent of the Parties and as per the provisions of the Act.

3.03 Capital Contributions. Subject to the terms and conditions of this Agreement, each Party shall subscribe for such number of Shares as will entitle it to the percentage of Shares specified on the right-hand side of its name below and shall pay to the K-FON, in tranches and quantum of

  
M. SIVASANKAR IAS  
Secretary to Government

  
Dr. Jayasankar Prasad.c  
Managing Director

  
KUMARAN P.  
DIRECTOR  
(Distribution & IT)

subscriptions to the Shares in pursuance to the capital contribution schedule as shown in Table below, the amount specified on the right-hand side of its name below (the “Capital Contributions”).

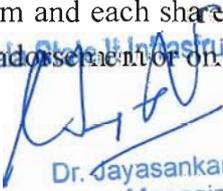
Entity	Percentage of Shares	Amount to be paid (in cash)
KSEBL	49%	INR 49,00,000
KSITIL	49%	INR 49,00,000
Government of Kerala	2%	INR 2,00,000
Total	100%	INR 1,00,00,000

- i. The initial subscription to shares as mentioned above shall be paid in cash by all the Parties. The payment for the Capital Contributions shall be made in Indian Rupees to the bank account designated by the KFON. After the initial subscription to shares as mentioned above, KSEBL shall not be required to make any monetary contribution towards subscription of shares and shall have the right to subscribe to shares of KFON for consideration other than cash as per the provisions of the Act. Parties shall ensure that shares are issued to KSEBL for such consideration other than cash. The assistance, various rights to use, and any goods & services, provided by KSEBL to KFON, whether free of cost or at discounted rates, shall be considered while issuing shares to KSEBL for consideration other than cash. Additional cost incurred, if any, on account of additional fiber being laid, shall also be treated as contribution of KSEBL to KFON as equity participation. Notwithstanding anything contrary contained in this Agreement, KSITIL and GoK agree to take all necessary steps to ensure that the proportion of shares of KSEBL in KFON shall remain 49%.
- ii. It is hereby confirmed that for each Capital Contribution, the price per Share at which the Shares are allotted to KSEBL, KSITIL and GoK shall always be the same and that unless otherwise agreed in writing by the Parties, all issuance of Shares shall always be made to KSEBL, KSITIL and GoK simultaneously to ensure that the proportion of share holding remains 49%, 49% and 2% respectively.
- iii. The parties shall ensure that the above proportion of percentage of shares shall always be maintained and shares will be issued in such a way that the above proportion is not diluted.

3.04 Registration and Share Certificate. The Parties shall cause the KFON to do all things necessary to effectuate the valid issuance of the Shares to each of the Parties as contemplated in this Agreement to register each of the Parties as owner of the Shares for which such Party has subscribed and paid in full, and to issue and deliver to such Party valid and duly stamped share certificate(s) representing such Shares, along with the updated copy of the register of members of the KFON. Such registration and issuance of share certificate(s) shall be duly made on the respective dates of payment.

All Shares shall be held in physical form and each share certificate with respect to the Shares shall bear the following legend either as an endorsement or on the face of such share certificate:

  
**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department

  
Dr. Jayasankar Prasad.c  
Managing Director

  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

“THIS CERTIFICATE AND THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT IN ALL RESPECTS TO THE PROVISIONS OF THE JOINT VENTURE AGREEMENT DATED 15/07/2019, BETWEEN KSEBL, KSITIL AND GOVERNMENT OF KERALA INCLUDING THE TRANSFER RESTRICTIONS CONTAINED THEREIN, COPIES OF WHICH ARE ON FILE AT THE CORPORATE OFFICE OF THE COMPANY.”

3.05 Issuance of Additional Shares. Unless otherwise agreed by the Parties in writing, in the event that the KFON decides, in accordance with this Agreement, to raise additional funds by way of issuance of additional Shares or other instruments giving rights to convert or which are convertible into Shares (such additional Shares and other instruments, collectively, the “Additional Shares”), the following provisions shall be applicable for any issuance by the KFON thereof:

(a) Parties shall each subscribe to the Additional Shares in proportion to their respective Portions in accordance with the provisions mentioned in Para 3.05.

(b) In the event that the KFON proposes to issue Additional Shares it shall offer such Additional Shares to each of the Parties by a notice in writing (the “Issuance Notice”) setting forth in detail the following information:

(i) the terms of the proposed issuance, including the proposed issuance price determined in accordance with the Applicable Law (the “Issuance Price”);

(ii) the date of closing of the proposed issuance, which shall not be less than sixty (60) days (the “Issue Closing Date”) from the date of receipt of the Issuance Notice;

(iii) the total number of Additional Shares proposed to be issued; and

(iv) the details of bank account and remittance details for payment of the application monies for subscribing to the Additional Shares.

(c) Each of the Parties shall subscribe, at the Issuance Price, up to that number of Additional Shares so as to maintain its Pro Rata on a fully diluted basis in the KFON, by providing to the KFON a written notice within thirty (30) days after receipt of the Issuance Notice, and shall on or prior to the Issue Closing Date, settle the payment for consideration of the issuance in cash or via wire transfer or in case of KSEBL, consideration other than cash.

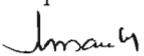
(d) Against payment by the Parties of the requisite amount (except in case of KSEBL), the KFON shall issue and allot the corresponding number of Additional Shares to the Parties, as applicable, on the Issue Closing Date.

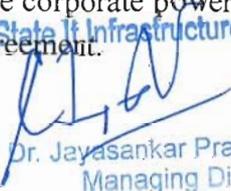
(e) It is hereby clarified that the provisions of Para 3.05 shall not apply to the issuance of Shares in relation to the Capital Contributions.

## REPRESENTATIONS AND WARRANTIES

4.01 Representations and Warranties of KSEBL. KSEBL represents and warrants to KSITIL and GoK that:

(a) Due Organization. KSEBL is a company duly organized, validly existing and in good standing incorporated under the Act and has the corporate power, authority and legal right to enter into and perform its obligations under this Agreement.

  
**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department

  
Dr. Jayasankar Prasad.c  
Managing Director

  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

(b) Due Authorization; Enforceability. This Agreement has been duly authorized and executed by KSEBL and, assuming due authorization, execution and delivery by KSITIL and GoK, constitutes a valid and legally binding obligations of KSEBL, enforceable against KSEBL in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization and other similar laws affecting the rights of creditors generally.

(c) No Violation. To the best of its knowledge and understanding there is no provision of Applicable Law, its articles of association, by-laws or other constitutional documents, any agreement, contract, indenture, mortgage or other instrument binding on it or affecting it or its properties which would prohibit, conflict with or in any way prevent or impair the execution of, or performance of the terms of or the transactions contemplated in, this Agreement.

(d) No Litigation. To the best of its knowledge, there is no litigation, pending or, threatened against it, challenging the validity or propriety of this Agreement or the transactions contemplated hereby, or preventing it from entering into this Agreement or performing its obligations hereunder.

#### 4.02 Representations and Warranties of KSITIL. KSITIL represents and warrants to KSEBL and GoK that:

(a) Due Organization. KSITIL is a corporation duly organized, validly existing and in good standing under the laws of India and has the corporate power, authority and legal right to enter into and perform its obligations under this Agreement.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized and executed by KSITIL and, assuming due authorization, execution and delivery by KSEBL and GoK, constitutes valid and legally binding obligations of KSITIL, enforceable against KSITIL in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization and other similar laws affecting the rights of creditors generally.

(c) No Violation. To the best of its knowledge and understanding there is no provision of Applicable Law, its articles of association, by-laws or other constitutional documents, any agreement, contract, indenture, mortgage or other instrument binding on it or affecting it or its properties which would prohibit, conflict with or in any way prevent or impair the execution of, or performance of the terms of or the transactions contemplated in, this Agreement.

(d) No Litigation. To the best of its knowledge, there is no litigation, pending or, threatened against it, challenging the validity or propriety of this Agreement or the transactions contemplated hereby, or preventing it from entering into this Agreement or performing its obligations hereunder.

#### 4.03 Representations and Warranties of Government of Kerala. GoK represents and warrants to KSEBL and KSITIL that:

a. Due Authorization; Enforceability. This Agreement has been duly authorized and executed by GoK and, assuming due authorization, execution and delivery by KSEBL and KSITIL, constitutes valid and legally binding obligations of GoK, enforceable against GoK in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization and other similar laws affecting the rights of creditors generally.

*Imrank*  
**M. SIVASANKAR IAS**  
Secretary to Government  
Law Department

For Kerala State It Infrastructure Ltd.  
*[Signature]*  
Dr. Jayasankar Prasad.c  
Managing Director

**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

## CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

5.01 Conditions Precedent: This Agreement shall come into force and effect upon fulfillment of following conditions precedent:

- a. KSEBL and KSITIL providing to the other Party certified true copies of their respective Board Resolutions and Shareholders's resolutions authorizing the execution of this Agreement and incorporation of the KFON;

5.02 Fulfillment of Conditions Precedent. Subject to the terms and conditions set forth in this Agreement, each Party shall use its reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and

Applicable Law to consummate and make effective the transactions contemplated by this Agreement as soon as practicable; provided that neither Party shall be obliged to waive any rights it has hereunder.

5.03 Conditions Subsequent: Upon incorporation of the KFON, Parties shall ensure that the KFON shall execute a deed of adherence to this Agreement in a form and substance reasonably satisfactory to both Parties.

## ASSISTANCE TO KFON

6.01 Assistance by Parties to the KFON. Parties shall have following minimum responsibilities towards KFON:

Assistance by KSEBL to SPV

- a. Shall contribute 49% of equity in the SPV
- b. Shall nominate two Directors to the Board of the SPV
- c. Shall depute the required manpower to the SPV's Operations' wing
- d. Shall provide assistance for restoration of the fibre cuts
- e. Shall provide required space at substations for installing equipment in pre-fabricated structures for setting up PoPs within the overall safety parameters of KSEBL
- f. Shall provide required power supply at substation PoPs which shall be paid on actual
- g. Shall grant permission to the personnel authorized by SPV for accessing SPV infrastructure located at substations following the permit system of KSEBL
- h. Shall provide site level coordination with personnel authorized by the SPV
- i. Shall validate the fibre route network prepared by SPV and supply up-to-date KSEBL network data required for expansion/upgradation of KFON
- j. Shall guide and provide supervisory services for all obligatory compliances/ Rules/Regulations/SOPs/Safety measures as required by KSERC or KSEBL for accessing power infrastructure
- k. Shall undertake transfer of rights to the SPV for the usage of OPGW already leased once these contracts expire. Existing fibre lease contracts will not be renewed in transmission. As far as

distribution network is concerned the present mechanism of renting of poles will be continued in structures where KFON is not rolled out.

- l. Shall allow usage of the free fibre core(s) available in the OPGW already laid and provide maintenance and operational support for these fibre core(s). In existing fibre routes of KSEBL which has limited number of cores the possibility of leveraging the asset for the requirements of SPV without affecting KSEBL's requirements shall be worked out by the JV partners.
- m. KSEBL shall construct OPGW Fibre infrastructure as per KFON Specification and the spare fibres (minimum of 24 cores) will be spared to SPV on unconditional right of use basis. RoW and assets of these OPGW routes will be owned by KSEBL.
- n. Shall provide RoW along the distribution poles for laying KFON fibre.
- o. Additional cost incurred if any on account of additional fibre being laid shall also be treated as contribution of KSEBL to SPV as equity participation.
- p. All fibres provided by KSEBL to the SPV shall be made available free of cost.

#### Assistance by KSITIL to SPV

- a. Shall contribute 49% of equity in the SPV
- b. Shall nominate two Directors to the Board of the SPV
- c. Shall facilitate capital and operational costs required for the project
- d. Shall hire or depute manpower to the SPV required for the management of the project
- e. KSITIL shall take required loan towards the approved project outlay and invest in KFON. KFON shall be required to mandatorily transfer the required funds from KFON's revenue to KSITIL for repayment of the debt. Under no circumstances the liability for repayment of loan availed by the KFON for the project and servicing of such loans shall be the responsibility of KSEBL.
- f. Any further equity requirements shall be met by KSITIL.

#### Assistance by GoK

- (a) Shall contribute 2% of equity in the SPV

#### Assistance by SPV to KSEBL

- a. Shall lay fibre infrastructure observing relevant guidelines of KSEBL and shall provide four fibre cores in the distribution network free of cost to KSEBL.
- b. SPV will pay pole rentals to KSEBL.
- c. Shall provide free connectivity to KSEBL offices. This will not apply to internet provision.
- d. Space rentals and power charges will be paid to KSEBL on actual basis. SPV will pay RoW (Pole rentals) and space charges at substations as per the rates decided by a Committee

constituted by the Government for this purpose, after the charge on revenue for repayment to KIIFB and operational expense of SPV.

## MEETINGS OF SHAREHOLDERS

7.01 Shareholders' Meeting. The Company shall hold at least one (1) general meeting of the shareholders to be called as "Annual General Meeting" in each fiscal year of the KFON. All other general meetings of the shareholders of the Company shall be called "Extra-ordinary General Meetings". The Annual General Meeting and the Extra-ordinary General Meetings are hereinafter collectively referred to as the "Shareholders Meetings".

7.02 Shareholders Meeting Notice. A minimum twenty one (21) Business Days' prior written notice shall be provided to all shareholders of any Shareholders Meeting, accompanied by the agenda for such meeting unless both the Parties shall have given written approval for such Shareholders Meeting to be called at shorter notice ("Scheduled Shareholders Meeting"). No business shall be transacted at any Shareholders Meeting other than that specified in the notice without the prior written consent of both the Parties.

7.03 Quorum. The quorum for all Shareholders' Meeting shall be three (3) members - one each from KSEBL, KSITIL and a representative of GoK

7.04 Convocation. No action of the KFON shall be taken at any Shareholders Meeting (including any adjourned meeting) unless such meeting is duly convened, held and constituted in accordance with such provisions contained herein and in Articles of Association of the KFON and a quorum is present throughout the meeting.

7.05 Resolution. All resolutions required to be resolved by the shareholders of the KFON shall be resolved in accordance with the provisions of the Act and the agreed Articles of Association. Notwithstanding the foregoing, the GoK shall have a right to veto on any resolution required to be resolved by the shareholders.

## BOARD OF DIRECTORS

8.01 Board of Directors. All business and affairs of the KFON shall be under the supervision of its board of directors (the "Board" or the "Board of Directors").

8.02 Board Members. The number of members of the Board of Directors ("Directors") shall be seven (7), unless increased by way of mutual agreement between the Parties. KSEBL shall be entitled to nominate two (2) Directors, KSITIL shall be entitled to nominate two (2) Directors, Government of Kerala shall nominate three (3) Directors including one Independent Director. The ex-officio first director of the KFON shall, as far as possible, be as under:

- a. Two from KSITIL
- b. Two from KSEBL
- c. Two from Government of Kerala
- d. One Independent Director nominated by Government of Kerala

8.03 Alternate Director. Each of the Parties shall be entitled to propose names of alternate Directors to be appointed for their respective nominee Directors. The alternate Director shall be entitled to

participate in and vote at the Board Meetings in the absence of the original Director. An alternate Director shall be entitled to receive notices of Board Meetings and shall be entitled to attend and vote as a Director. If an alternate Director shall him/herself be a Director or shall attend any such Board Meeting as an alternate for more than one (1) Director, he shall be entitled to additional vote(s) in that behalf.

8.04 The Chairman and the Managing Director. Unless other wise directed by the Government of Kerala, the ex-officio Secretary E&ITD, Government of Kerala shall be the Chairman of the Board (the "Chairman"). The Managing Director of the KFON shall be appointed by the Board of Directors of the KFON and shall be inducted as a Director on the Board of Directors of the KFON.

8.05 Frequency of the Board Meeting. Subject to the provisions of the Act, a meeting of the Board of Directors of the KFON (a "Board Meeting") shall be held at least four times every year and not more than 120 days shall elapse between two consecutive meetings. The Board Meetings may be held by way of teleconference, video conference or through any other medium as may be permitted under the Act.

The Directors may meet together for the discharge of the business, adjourn and otherwise regulate their meetings and proceedings, as they think fit.

8.06 Meeting of the Board. At least seven days clear notice of every meeting of the Board of Directors of the KFON shall be given in writing to every Director of the KFON at his usual address in India, and in the case of a Director who is either not residing in India, or who is temporarily absent from his usual address in India, and where due notice has been provided by such Director about his temporary absence to the KFON, the notice of every such Board Meeting shall also be sent to the address of every such Director outside India or to his alternate, if any, in India at his usual address in India. Such notice shall be accompanied by the agenda setting out the business proposed to be transacted at the meeting of the Board, a meeting of the Board may be convened at a shorter notice in case of urgency or in an emergency or if special circumstances shall so warrant.

8.07 Quorum. Subject to provisions of the Act, the quorum for any meeting of the Board shall be one-third of its total strength (excluding Directors, if any, whose place may be vacant at the time and any fraction contained in one-third to be rounded up as one) or two Directors whichever is higher, where at any time the number of interested Directors exceeds or is equal to two thirds of the total strength of the Board, the remaining Directors that is to say, the number of Directors who are not interested, present at the meeting being not less than two shall be the quorum during such time.

8.08 Resolution. Subject to the provisions of Sections 203, 186 and 203 of the Act, questions arising at any meeting shall be decided by a majority of votes of Directors present, and, in case of any equality of votes, the Chairman shall have a second or casting vote.

8.09 Validity Subject to Due Convocation. No resolution shall be validly made at any Board Meeting (including any adjourned meeting) unless such meeting is duly convened, held and constituted in accordance with such provisions contained herein and in Articles of Association and a quorum is present throughout the meeting.

8.10 Other provisions: Other provisions for the management of the KFON shall be as per the agreed Articles of Association of KFON mutually agreed by the Parties.

For Kerala State IT Infrastructure Ltd.  
**OFFICERS AND EMPLOYEES**

Dr. Jayasankar Prasad.c  
Managing Director

**KUMARAN P.**  
**DIRECTOR**  
**(Distribution & IT)**

*Imauly*  
**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department

9.01 Officers.

(a) The organization of the KFON, including the managerial and technical positions (the “Managerial Offices”) as of the commencement of the operation of the KFON shall be, as far as possible, as set forth in Annexure C hereto, which can be amended by the Board of Directors of KFON within 3 months of incorporation of KFON.

(b) KSEBL shall be entitled to nominate, competent personnel to the offices of:

- i. the \_\_\_\_\_;
- ii. the \_\_\_\_\_;
- iii. the \_\_\_\_\_; and

such other officers of the KFON (“Officers”) as are identified as being nominated by KSEBL in Annexure C hereto.

(c) KSITIL shall be entitled to nominate, competent personnel to the offices of:

- i. the \_\_\_\_\_;
- ii. the \_\_\_\_\_; and
- iii. the \_\_\_\_\_; and

such other Officers as are identified as being nominated by KSITIL in Annexure C hereto.

9.02 Transfer or Dispatch of Personnel. KSEBL shall transfer personnel it nominates to the Managerial Offices as referenced in this Agreement as per the existing norms for movement of officer followed by KSEBL. KSITIL shall dispatch personnel it nominates to the Managerial Offices as referred in this Agreement as per the existing norms for movement of officer followed by KSITIL.

9.03 Employees.

- a. The expected number of employees of the KFON (including the Officers) expected to be deployed within \_\_\_ months of incorporation is as shown on Annexure C hereto. The number of employees (other than the Officers) may be modified from time to time by the KFON.
- b. KSITIL shall assist the KFON in the development of recruiting and hiring procedures for KFON employees, and the development of the employee benefit plans of the KFON.
- c. Each of the Parties shall use its best efforts to cause the KFON to maintain necessary number of competent and experienced workers at all times.
- d. Neither Party shall transfer or seek the transfer of KFON employees (other than the deputed officers) to such Party as long as such transfer would have an adverse effect on the efficient operation of the KFON.

**OTHER OPERATIONAL PROVISIONS**

For Kerala State Infrastructure Ltd.

10.01 Books, Records and Accounting Matters.

*Jansaul*  
**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department

*[Signature]*  
**Dr. Jayasankar Prasad.c**  
Managing Director

*[Signature]*  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

- a. The KFON shall prepare and maintain at all times accurate and complete books, records, and registers (including minutes of the Shareholders' Meetings and Board Meetings, corporate books and registers, books of account, and financial and related records) in accordance with Applicable Law and applicable accounting standards.
- b. Each Party and its respective agents, representatives and advisors, at its sole cost and expense, shall have access to the books and records and management of the KFON on an ongoing basis, as reasonably requested and at reasonable hours during normal business days, subject to prior written notice given to the KFON at least five (5) Business Days in advance.
- c. In reviewing and accessing the books and records of the KFON, such Party shall endeavour not to disrupt the ongoing operations of the KFON.

#### 10.02 Business Plan.

Parties agree to assist KFON in preparation of a business plan to ensure that the KFON is financially self sufficient to operate its business.

10.03. Dividend Policy and Distribution. Unless otherwise agreed by unanimous approval by Parties as the shareholders of the KFON, profits of KFON shall be shared between Parties on equitable basis.

### TRANSFER OF SHARES

11.01 Transfer Restrictions. Neither Party shall have any right to transfer their respective shares in KFON without the prior written consent of the Government of Kerala. In case of transfer of any shares as per the provisions of this Article, the Parties shall mutually agree to amend the terms of this Agreement, the AOA and all other relevant documents to give effect to such transfer of shares.

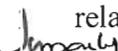
### FORCE MAJEURE

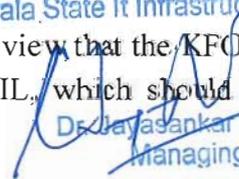
12.01 Force Majeure. Neither Party shall be liable for failure to perform, in whole or in any part, its obligations under this Agreement if such failure is caused by any event or condition not reasonably foreseeable by such Party and not reasonably within the control of the affected Party, including, without limitation, by Acts of God or public enemy, war, insurrection, civil disturbances, terrorism, sabotage, blockades, riots, embargoes, fires, floods, avalanches, epidemics, volcanic eruptions, earthquakes, typhoons, explosions and governmental restrictions ("Force Majeure"); provided only, that the affected Party shall promptly notify the other Party of the occurrence of the event and condition of Force Majeure and take all reasonable steps necessary to resume performance of its obligations so interfered with.

12.02 Good Faith Discussion. In the case of any Force Majeure which prevents either Party or any of its Affiliates from fulfilling a material obligation hereunder in a material respect or any change of circumstances not reasonably foreseen as of the date hereof which will, with lapse of time, destroy the long-term profitability of the KFON, Parties shall negotiate in good faith to resolve the situation and decide future course of action.

### FURTHER COOPERATION AND NON-COMPETITION

13.01 Further Co-operation. Both Parties view that the KFON is the first step of the closer business relationship between KSEBL and KSITIL, which should lead to facilitate further Co-operation

  
**M. SIVASANKARIAS**  
Secretary to Government

  
Dr. Jayasankar Prasad  
Managing Director

**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

between them. Each Party regards the other Party as the primary partner in achieving the objective of the KFON, and the Parties shall discuss the possibilities of further co-operation in good faith.

13.02 Non-Competition. Both Parties agree not to enter into any business which could be competitive with the business of KFON.

### **GOVERNING LAW AND DISPUTE RESOLUTION**

14.01 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of India.

14.02 Arbitration as Dispute Resolution. All disputes arising out of or in connection with this Agreement, which cannot be settled by mutual accord within ninety (90) days from the date on which such disputes arise, shall be preferred to the Chief Secretary, Kerala State and his decision shall be binding on the parties.

14.03 Construction and Interpretation. This Agreement is executed in the English language and any construction or interpretation of this Agreement shall be based solely on the English language.

### **TERMINATION**

15.01 Effectiveness. All provisions of this Agreement shall become effective on the date of execution hereof first above written.

15.02 Termination by Mutual Agreement. Both Parties may mutually agree to terminate this Agreement resulting in dissolution of the KFON in accordance with the Applicable Law and on terms agreed to between the Parties.

### **MISCELLANEOUS PROVISIONS**

16.01 Exercise of Rights. Each Party shall exercise all voting rights and powers of control available to it in relation to the KFON so as to give full effect to the terms and conditions of this Agreement and shall cause the Directors and the Officers it nominates to abide by the terms and conditions of this Agreement.

16.02 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, no Party shall be liable for any indirect, consequential, special or exemplary damages that may arise out of or in connection with its breach of this Agreement, except in the case of its gross negligence or willful misconduct.

16.03 No Third Party Right. Except for the rights conferred upon the Government of Kerala through this Agreement, nothing contained in this Agreement, expressed or implied, shall confer upon any person other than the Parties hereto, any benefit, right or remedies.

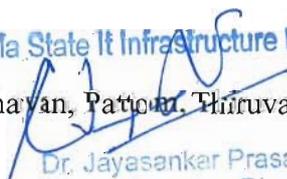
16.04 Notices. All communications, notices and consents provided for herein shall be in writing and be given in person or by air freight delivery, by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of this type) or by mail, and shall become effective (i) upon delivery if given in person or by air freight delivery, (ii) on the date of transmission if sent by telex, telecopy or other wire transmission and a transmission report confirms transmission on such date. Notices shall be addressed as follows:

(x) if to KSEBL:

Address: Managing Director, Vydyuthi Bhavan, Pattom, Thiruvananthapuram

  
**M. SIVASANKAR IAS**  
Secretary to Government

For Kerala State Infrastructure Ltd.

  
Dr. Jayasankar Prasad  
Managing Director

  
**KUMARAN P.**  
DIRECTOR  
(Distribution & IT)

Kerala – 695004

(y) if to KSITIL:

Address: Managing Director 7<sup>th</sup> Floor, Felicity Square, M.G.Road, Statute, Thiruvananthapuram, Kerala – 695001

(z) if to GoK:

Address: Secretary, E&IT Department, Government of Kerala, Secretariat, Thiruvananthapuram

or at such other address as either Party may from time to time designate by notice duly given.

16.05 No Assignment. Unless otherwise provided herein, this Agreement and the rights and obligations hereunder are personal to the Parties and shall not be assigned by either Party to any third Person without the express prior written consent of the other Party.

16.06 Binding Effect. All covenants, agreements, indemnities, representations and warranties in this Agreement and in any agreement, document or certificate delivered concurrently with the execution of this Agreement or from time to time thereafter shall bind the Party making the same and its permitted successors and assigns and shall ensure the benefit of the Party for whom the same is made and its permitted successors and assigns.

16.07 Amendments. Neither this Agreement nor any of the terms hereof may be amended, modified or supplemented orally, but only by an instrument in writing signed by the Party against which enforcement of such change is sought.

16.08 No Waiver. Any failure or delay on the part of either Party in exercising any right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right or power preclude any other or future exercise of any other right or power hereunder. No waiver of any provision of this Agreement shall be effective unless the same shall be made in writing and signed by the Party against which enforcement of such waiver is sought.

16.09 Severability. In the event that any provision of this Agreement is found illegal, invalid or unenforceable in its entirety or in part with respect to any particular circumstances, the remainder of this Agreement shall remain valid and enforceable according to its terms. The Parties agree that they shall consult in good faith to replace any such provision hereof proving to be illegal, invalid or unenforceable by law, with a valid and enforceable provision which in its economic and all other consequences shall correspond to the provision for which it is substituted and the intentions of the Parties expressed therein to the greatest possible extent.

16.10 Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes any agreements, representations, warranties or understandings, oral or written, between the Parties with respect to the subject matter, hereof entered into prior to the date hereof.

16.11 Counterparts. This Agreement may be executed in any number of counterparts and by either Party hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to and retained by each of KSEBL, GoK, and KSITIL.

For Kerala State It Infrastructure Ltd.

Dr. Jayasankar Prasad.c  
Managing Director

KUMARAN P.  
DIRECTOR  
(Distribution & IT)

M. SIVASANKAR IAS  
Secretary to Government

16.12 Headings. The headings of the sections and paragraphs of this Agreement and the Table of Contents have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

16.13 No Partnership. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership between the Parties, and neither Party shall hold itself out as an agent of the other Party or any of them, except with the express prior written consent of the other Party. The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not joint or collective, unless specifically provided for herein. The relationship between the Parties shall be that of co-investors only, save as may otherwise be provided in any other agreement between one or more of the Parties and the KFON. Neither Party, nor the KFON, shall take any action, whether binding or not, on behalf of the other Party without the express written approval and authority of such other Party. Neither Party, nor the KFON, shall have the authority or power to bind the other Party, save and except as specifically provided in this Agreement.

16.14 Legal Process. Save as otherwise provided in this Agreement, no remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available under the Applicable Law. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing under the Applicable Law. The election of any one or more remedy by any Party shall not constitute a waiver by such Party of the right to pursue any other remedy.

16.15 Winding up/liquidation of KFON: Notwithstanding anything contrary contained in this Agreement or the AOA of KFON, if KFON is wound up or liquidated due to any reason whatsoever, Parties shall use best efforts to ensure that the various right of way and right to use provided by KSEBL to KFON shall revert to KSEBL.

IN WITNESS WHEREOF, the Parties here to have executed this Joint Venture Agreement the day month and the year first above written.

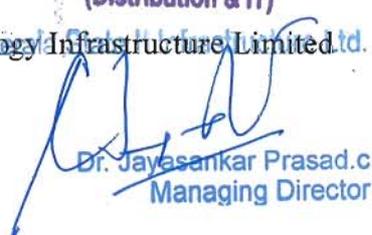
1. For and on behalf of Kerala State Electricity Board Limited

Signed by Shri Kumaran P, Director (Distribution&IT)



2. For and on behalf of Kerala State Information Technology Infrastructure Limited.

Shri Dr C Jayasankar Prasad, Managing Director



3. For and on behalf of Government of Kerala

*Jmsankar*

Signed by Shri M Sivasankar IAS, Secretary E&IT Department, Govt. of Kerala

Witness:

*Remya*

**CS. Remya R.S**

1. Company Secretary & Finance Manager  
Kerala State IT Infrastructure Ltd

*P. T. Seenath Beevi*

2. Executive Engineer (Regional IT Unit)  
Office of the Chief Engineer (IT)  
Kerala State Electricity Board Ltd.  
Vedyuthi Bhavanam, Pattom  
Thiruvananthapuram - 695 004

Annexures

- A) Articles of Association of Joint Venture Company
- B) Memorandum of Association of Joint Venture Company
- C) Organisation Structure of Joint Venture Company
- D) GO(MS)No.22/2017/ITD dated.13.10.2017

For Kerala State IT Infrastructure Ltd.

**KUMARAN P.**  
**DIRECTOR**  
(Distribution & IT)

*Dr. Jayasankar Prasad.c*  
**Dr. Jayasankar Prasad.c**  
Managing Director

*Jmsankar*

**M. SIVASANKAR IAS**  
Secretary to Government  
Information Technology Department