



### SHARE SUBSCRIPTION AGREEMENT

THIS SHARE SUBSCRIPTION AGREEMENT dated this 8<sup>th</sup> day of January, 2001  
BETWEEN:

- (1) **Excelsoft Technologies Private Limited**, a private limited company incorporated under the Companies Act, 1956 and having its registered office at 1-B, Hootagalli Industrial Area, Mysore 571 186, Karnataka, India (hereinafter referred to as the "**Company**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors - and permitted assigns);
- (2) **Mr. Manchakondanahalli Hirianna Dhananjaya**, son of Mr. M. Hirianna, residing at No. 3, 3<sup>rd</sup> Block, Jayalakshmiapuram, Mysore, India one of the promoters of the Company (hereinafter referred to as "**Dhananjaya**" or "**Promoter 1**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his heirs, executors, nominees and administrators);

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1761-63 No. 101  
Name Excelsoft Technologies Pvt Ltd  
Date 8/1/04

**IA SURORI**  
B' Class Stamp Vendor  
SVL No. 27/91-92  
No. 49, O.M. Road, Ulsoor  
Bangalore-560 008.

SHADE SURORI FOR THE...  
BY THE SUBSCRIPTION AGREEMENT...  
Excelsoft Technologies Pvt Ltd...  
under the Copyright Act 1957...  
Industrial Area...  
Company...  
mean and include his heirs, executors, nominees and all...



Confidential - Khaitan &amp; Co. Bangalore

Share Subscription Agreement

- (3) **Mr. Dhananjaya Sudhanva**, son of Mr. M.H. Dhananjaya, residing at No. 3, 3<sup>rd</sup> Block, Jayalakshmpuram, Mysore, India one of the promoters of the Company (hereinafter referred to as "**Sudhanva**" or "**Promoter 2**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his heirs, executors, nominees and administrators);
- (4) **Mrs. Sukanya Dhananjaya**, wife of Mr. M.H. Dhananjaya, residing at No. 3, 3<sup>rd</sup> Block, Jayalakshmpuram, Mysore, Mysore, India one of the promoters of the Company (hereinafter referred to as "**Sukanya**" or "**Promoter 3**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include her heirs, executors, nominees and administrators);
- (5) **Mrs. Lajwanti Sudhanva**, wife of Mr. D. Sudhanva, residing at No. 3, 3<sup>rd</sup> Block, Jayalakshmpuram, Mysore, India one of the promoters of the Company (hereinafter referred to as "**Lajwanti**" or "**Promoter 4**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include her heirs, executors, nominees and administrators);

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No. 1741-43 No. 10/-  
Name Excelsoft Technologies Pvt Ltd  
Date 8/1/04

*[Signature]*  
**A. MURUGAN**  
B' Class Stamp Vendor  
SVL No. 27791-92  
No. 49, C.M. Road, Ulsoor  
Bangalore-560 008.

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- (6) **UNIT TRUST OF INDIA (VENTURE FUNDS DIVISION)**, the Venture Funds Division of a corporation established under the Unit Trust of India Act, having its registered office at 26/27, Raheja Towers, 12<sup>th</sup> Floor (M), M.G. Road, Bangalore 560 001 and having its corporate office at 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai 400 020; and acting for and on behalf of **India Technology Venture Unit Scheme**, a Venture Capital Fund registered under Section 12(1) of the SEBI Act and having Registration No. IN/VF/99-00/021 (hereinafter referred to as the "**Investor**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns).

**WHEREAS:**

1. The Company is engaged in the business of, *inter alia*, providing Consulting Services and Development of Software Products in the area of Information Technology Solutions, Support and Value added Business Services with a focus on Webcentric Applications and Customised Application Software Development.
2. The present authorized share capital of the Company comprises of Rs. 3,00,00,000 (Rupees three crores only) divided into 17,50,000 (Seventeen lakhs fifty thousand)

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**SHARE SUBSCRIPTION AGREEMENT**

**BETWEEN**

**THE COMPANY**

**AND**

**THE PROMOTERS**

**AND**

**THE INVESTOR**

**KHAITAN & CO.  
Advocates.  
SUNRISE CHAMBERS  
22, ULSOOR ROAD,  
BANGALORE 560042  
PHONE: +91 (080) 5597466  
FAX: +91 (080) 5597452**

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equity shares of face value Rs.10/-each and 12,50,000 (Twelve lakhs fifty thousand) 12% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- each.

3. The Promoters are the legal and beneficial owner of 10,00,000 equity shares of face value Rs.10/- each, representing 100% of the issued, subscribed and paid-up equity share capital of the Company, and completely controls the management and day to day affairs and the composition of the Board of Directors of the Company.
4. The Investor is desirous of subscribing to and holding, either by itself or through an Affiliate (as hereinafter defined), 5,00,000 equity shares of the Company of a face value of Rs.10/- each at Rs.25/- per share, for a total consideration of Rs.1,25,00,000 (Rupees one crore twenty five lac only), representing after such subscription 33.33% of the total issued and paid up equity share capital of the Company and 12,50,000 12% Optionally Convertible Cumulative Redeemable Preference Shares of Rs.10/- each at par in accordance with the provisions of this Agreement.
5. The Promoters (as defined below) are ready and willing to facilitate the investment by the Investor in the equity share capital of the Company and the Company is ready



and willing to issue and allot the requisite number of Equity and Preference shares to the Investor, in accordance with and subject to the terms and conditions of this Agreement.

6. The Parties are desirous of recording the terms and conditions agreed to between them regarding subscription of the Shares by the Investor in this Agreement.
7. In consideration of the mutual promises and agreements between the Parties hereto and to record the terms regarding subscription of the Shares by the Investor, the Parties are desirous of entering into this Agreement on the terms and conditions contained herein.



**NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AND THIS AGREEMENT WITNESSETH AS UNDER:**

**1. DEFINITIONS AND INTERPRETATION**

- (i) In this Agreement the following terms, to the extent not inconsistent with the context thereof, shall have the meanings assigned to them herein below:
- (ii) "**Act**" means the Companies Act, 1956 and any amendment thereto or any other succeeding enactment for the time being in force.
- (iii) "**Affiliate**" in relation to a Party,
  - (a) being a corporate entity, means any entity, which controls, is controlled by, or is under the common control of such Party.
  - (b) being an individual, means any entity, which is controlled by such Party.

The term "**control**" shall mean the beneficial ownership directly or indirectly of more than 50% of the voting securities of such entity or controlling the majority of the composition of the Board of Directors or power to direct the management or policies of such entity by contract or otherwise.

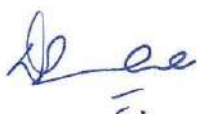
For Investor, the term Affiliate shall include the funds managed by UTI.

- (iv) "**Agreement**" or "**the Agreement**" or "**this Agreement**" means this Share Subscription Agreement and shall include any recitals, schedules or exhibits that may be annexed to this Agreement and any amendments made to this Agreement by the Parties in writing.
- (v) "**Board**" means the Board of Directors of the Company.
- (vi) "**Business**" shall have the meaning set out in Clause 8 below.
- (vii) "**Closing**" shall mean the implementation and fulfilment of the matters described in Clause 4 and shall more particularly have the meaning set out in Clause 4 and "Closing Date" shall have the meaning set out in Clause 4 below.
- (viii) "**Conditions Precedent**" shall mean the conditions listed in Clause 2 below.
- (ix) "**Conversion**" means the redemption of each OCCRPS by the Company and the simultaneous issue of Conversion Shares of the Company at the option of the Investor in two stages, subject to the receipt of the requisite government approvals and in accordance with the formula and times and the procedure set



forth in **Clause 3** hereinbelow. The computation of the Conversion shares on the basis of the formula would be validated by a recognised firm of chartered accountants on the basis of generally accepted principles of revenue recognition and accounting at the request of the Investor.

- (x) "**Conversion Dates**" means the respective dates on which Conversion occurs.
- (xi) "**Conversion Shares**" means the Equity Shares arising out of Conversion of the OCCRPS upon exercise of option by the Investor.
- (xii) "**Fully Diluted Basis**" means all the equity shares of the Company, including the Shares to be issued under the Share Subscription Agreement and all the Shares proposed to be issued to another investor pursuant to this agreement, the Shares underlying all outstanding warrants, stock options already granted, convertible debentures and all other securities of the Company.
- (xiii) "**Investor Equity Shares**" means the 5,00,000 Equity Shares of the Company of a face value of Rs.10/- each to be allotted and issued at a price of Rs.25 per share to the Investor by the Company.
- (xiv) "**Investor Subscription Price**" means the aggregate sum of Rs 2,50,00,000 (Rupees two crore fifty lac only) to be paid by the Investor, to the Company, on the Closing Date for subscription of Investor Subscription Shares, in accordance with the provisions of this Agreement.
- (xv) "**Investor Subscription Shares**" shall mean 5,00,000 equity shares of the Company of face value of Rs.10/- each to be subscribed to, by the Investor, at Rs. 25/- per share and 12,50,000 12% Optionally Convertible Cumulative Redeemable Preference Shares of Rs.10/- each at par, in accordance with provisions of this Agreement.
- (xvi) "**OCCRPS**" means the 12% Optionally Convertible Cumulative Redeemable Preference Shares of the Company of a face value of Rs. 10 each, to be issued by the Company to the Investor, at par, carrying a fixed dividend at the rate of 12% per annum, payable by the Company immediately upon the conclusion of every AGM and in case the Dividend is not declared in any year, the same would be accumulated and paid when the Company has distributable profits. The OCCRPS would be redeemed in one instalment at the end of the 5<sup>th</sup> year from the date of Subscription if conversion option has not been exercised in respect of any OCCRPS.
- (xvii) "**OCCRPS Amount**" means the amount of Rs 1,25,00,000/- (Rupees one crore twenty five lakhs only) to be paid by the Investor for the OCCRPS.
- (xviii) "**Preference Dividend**" means the dividend at the fixed rate of 12% per annum on the face value of the OCCPS payable by the Company immediately



upon the conclusion of the AGM in which it is declared. If in any Financial Year, due to inadequate profits or unavailable reserves, the Company is unable to declare any dividend, then such unpaid dividend shall accrue cumulatively and be declared and paid in the Financial Year in which there are sufficient profits. All the cumulated Dividend on the OCCRPS shall be paid to the Investor before any dividend is declared on the Equity Shares.

- (xix) **"Party"** shall mean any of the Promoters or the Investor or the Company referred to individually and **"Parties"** shall mean the Promoters, the Investor and the Company, referred to collectively.
- (xx) **"Promoters"** shall mean Promoter 1, Promoter 2, Promoter 3 and Promoter 4 collectively.
- (xxi) **"Person"** shall mean and include an individual, an association, a corporation, a partnership, a joint venture, a trust, an unincorporated organization, a joint stock company or other entity or organization, including a government or political subdivision, or an agency or instrumentality thereof and/or any other legal entity.
- (xxii) **"Representations and Warranties"** means the representations and warranties made/provided by the Promoters and the Company to the Investor as contained in **Annexure - A** to this Agreement.
- (xxiii) **"Subsidiary Companies"** shall mean any subsidiary of the Company or any other subsidiary of any of the Subsidiary Companies formed or set up from time to time. **"Subsidiary Company"** shall mean any subsidiary of the Company or any other subsidiary of any of the Subsidiary Companies, referred to individually.
- (xxiv) **"Share"** or **"Shares"** means the equity shares of face value Rs.10/- of the Company, unless otherwise specified in the Agreement.
- (xxv) **"Shareholders Agreement"** means the Shareholders Agreement to be entered into between the Promoters, the Company and the Investor prior to the Closing Date in a form and on the terms agreed to between all the aforesaid parties.
- (xxvi) **"Shareholder"** or **"Shareholders"** shall mean any Person who holds Shares of the Company.
- (xxvii) **"Rs."** means the lawful Indian currency.
- (xxviii) The terms referred to in this Agreement, unless defined otherwise or unless inconsistent with the context or meaning thereof, shall bear the same meaning as defined under the relevant applicable statute/legislation.



- (xxix) All references in this Agreement to statutory provisions shall be construed as meaning and including references to:
- any statutory modification, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force;
  - all statutory instruments or orders made pursuant to a statutory provision; and
  - any statutory provisions of which these statutory provisions are a consolidation, re-enactment or modification.
- (xxx) Words denoting singular shall include the plural and words denoting any gender shall include all genders.
- (xxxi) References to Recitals, Clauses or Schedules are, unless the context otherwise requires, to recitals, to clauses of or schedules to this Agreement.
- (xxxii) Any reference to "writing" includes printing, typing, lithography and other means of reproducing words in permanent visible form.
- (xxxiii) The terms "include" and "including" shall mean "include without limitation".
- (xxxiv) The headings/ subheadings/ titles/ subtitles to Clauses, sub-clauses and paragraphs are for information only, shall not form part of the operative provisions of this Agreement or the Schedules, and shall be ignored in construing the same.

## 2. CONDITIONS PRECEDENT

- 2.1 The Parties agree that subscription and payment for the Investor Subscription Shares by the Investor, as provided for herein, is conditional upon the fulfilment of the following conditions ("Conditions Precedent") to the satisfaction of the Investor:
- 2.1.1 Approval of this Agreement and the investment by the Investor hereunder by the Board/Committee of Directors of the Company, the Investor and the Promoters.
- 2.1.2 Completion of legal, financial and accounting due diligence of the Company and the Subsidiary Companies and their businesses and resolutions of all issues arising therefrom to the satisfaction of the Investor.
- 2.1.3 Appointment of an internal auditor in consultation with the Investor and the provision of full co-operation, assistance and access to records.
- 2.1.4 A special resolution being passed at a general meeting of the Company authorising the Company to issue and allot the Investor Subscription Shares to the Investor on the terms and conditions contained in this Agreement.



- 2.1.5 The Board of Directors of the Company passing a resolution at a meeting of the Board of Directors of the Company approving the issue of the Investor Subscription Shares to the Investor.
- 2.1.6 Execution of the Shareholders Agreement.
- 2.1.7 A special resolution being passed at a general meeting of the Company authorising the Company to adopt the amendments to be made to the Memorandum and Articles of Association of the Company to reflect the provisions of the Shareholders Agreement to the extent permitted by law, in the form satisfactory to the Investor.
- 2.1.8 Receipt of all approvals, licenses, consents and authorizations from the concerned authorities including the concerned governmental and/or regulatory authorities, subject to conditions, if any, acceptable to the Investor to enable the Parties to consummate the transactions contemplated under this Agreement.
- 2.1.9 Delivery by the Company to the Investor a certificate in the form and content attached hereto as **Annexure - B**, signed by the Director of the Company to the effect that:-
- (i) all the Conditions Precedent which are required to be complied with by the Company have been fully satisfied, attaching certified true copies of the resolutions of the Company in respect of sub-clauses 2.1.1, 2.1.4, 2.1.5 and 2.1.7 above and the copies of all the approvals/consents under Clause 2.1.8; and
  - (ii) there have been no defaults under any of the material agreements entered into by the Company and no existing or imminent material adverse change has taken place or is expected in the business of the Company.
- 2.1.10 Delivery of the opinion of the legal counsel of the Company dated as of the Closing Date and addressed to Investor, in the form attached hereto as **Annexure - C**, by the Promoters and the Company to the Investor.
- 2.1.11 Due execution and registration of an absolute sale deed of the Plot of 4027 Square meters of land situated at Plot No. 1-B, Hootagalli Industrial Area, Mysore by the Promoters erstwhile firm in favour of the Company and dissolution of the Promoters erstwhile firm called "Sudhanva Enterprises" with the trade name "EXCEL-SOFT" to the satisfaction of the Investor. This condition may be fulfilled prior to the disbursement of the second instalment as defined in Clause 4.4.4.2.
- 2.1.12 In the opinion of the Investor, no extraordinary circumstances or change of law shall have occurred which might materially and adversely affect the Company's business prospects or financial viability.



- 2.1.13 Finalisation of the draft of the Deed of Adherence to be executed by another Venture Capital Investor, in the form and content acceptable to the INVESTOR, thereby agreeing to be bound by the terms and conditions of the Shareholders Agreement.
- 2.1.14 The Company furnishing to the Investor a letter of Undertaking from the Promoters to the satisfaction of the Investor that they shall not dispose any of the shares held by them in the Company for a period of five years from the Closing Date or 18 (eighteen) months from the date of the IPO, whichever is earlier.
- 2.1.15 The Company furnishing to the Investor a letter of Undertaking from the Promoters to the satisfaction of the Investor that they shall not compete with the business of the Company in any manner and from Promoter No. 2 that he shall devote his entire business time for the business of the Company till the Investor holds any shares in the Company.
- 2.2 The Parties shall co-operate and provide all reasonable assistance, information and documents required for satisfaction of the Conditions Precedent.
- 2.3 If any of the above-mentioned conditions are not fulfilled or satisfied within 30 days of execution of this Agreement, Investor shall have the right to terminate this Agreement by giving a notice in writing. In case of such termination, no Party shall have any rights or claims against the other save for those, which expressly survive termination of this Agreement.

### 3 SHARE CAPITAL, SUBSCRIPTION AND CONVERSION

- 3.1 The present authorized share capital of the Company comprises of Rs. 3,00,00,000 (Rupees three crores only) divided into 17,50,000 (Seventeen lakhs fifty thousand) equity shares of face value Rs.10/-each and 12,50,000 (Twelve lakhs fifty thousand) 12% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- (ten) each. The present issued, subscribed and fully paid up equity share capital of the Company is Rs. 1,00,00,000 (Rupees one crore only) divided into 10,00,000 (ten lakhs) equity Shares of Rs.10/- each and is held as under:

Person	No of Shares	Amount	Percentage
Promoter 1	80,646	8,06,460	8.07%
Promoter 2	4,74,935	47,49,350	47.49%
Promoter 3	1,74,048	17,40,480	17.40%
Promoter 4	2,70,371	27,03,710	27.04%
TOTAL	10,00,000	Rs.100,00,000	100.00%

- 3.2 The Company hereby agrees and undertakes to issue and offer for subscription and the Promoters hereby agree and undertake to cause the Company to issue and allot





the Investor Subscription Shares to the Investor on the terms and subject to the conditions set out in this Agreement.

3.3 The Investor hereby agrees to accept the offer of the Company to subscribe to the Investor Subscription Shares on the terms and subject to the conditions set out in this Agreement.

3.4 The Parties hereto agree that, if the Investor subscribes to the Investor Subscription Shares of the Company in the manner provided in this Agreement, then, after the Closing, the shareholding of the Company shall be as follows:

Sr. No.	Person	No. of Equity Shares	No of OCCRPS
1	Promoters	10,00,000	0
2.	Investor	5,00,000	12,50,000
<b>Total</b>		<b>15,00,000</b>	<b>12,50,000</b>

3.5 OCCRPS Conversion: The OCCRPS shall be convertible into Equity Shares at the Option of the Investor in Two Stages. At the First Stage the Investor will have the option to convert upto 7,50,000 OCCRPS and at the Second Stage the Investor will have the option to convert upto 5,00,000 OCCRPS. The OCCRPS shall be converted into such number of Equity Shares as may be determined on the basis of the price determined on the basis of the formula specified hereunder for each Stage.

3.5.1 Stage 1: The Company shall convert such of the 7,50,000 OCCRPS in respect of which the Investor exercises its Conversion Option into fully paid-up Equity Shares (Conversion Shares) of the Company within 15 days of the exercise of the option by the Investor. The Investor would be entitled to exercise the option at any time after 31<sup>st</sup> January, 2002 based on the total revenues earned by the Company during the twelve month period ending on 31<sup>st</sup> January, 2002. If the Company achieves a total revenue of Rs. 4,77,00,000 (Rupees four crores seventy seven lacs only) during the above period, the conversion shall be at a price of Rs. 30 (Rupees thirty) per equity share. However if the Company does not achieve a Total Revenue of Rs. 4,77,00,000 (Rupees four crores seventy seven lacs only), then the Conversion price shall be determined by dividing 30 by 4,77,00,000 and multiplying the same by the Total Revenue actually earned during the said period. The Company shall cause an audited statement to be prepared on or before 28<sup>th</sup> February, 2002 for the purpose of determination of the price for the Conversion.

3.5.2 Stage 2: The Company shall convert such of the 5,00,000 OCCRPS in respect of which the Investor exercises its Conversion Option into fully paid-up Equity Shares (Conversion Shares) of the Company within 15 days of the exercise of the option by the Investor. The Investor would be entitled to exercise the option at any time after 31<sup>st</sup> January, 2003 based on the Earning per Share achieved by the Company as on 31<sup>st</sup> January, 2003 for the twelve month period ended on 31<sup>st</sup> January, 2003. The Conversion shall be at a price equivalent to 8 (Eight) times the Earnings per Share.



However, if the Company achieves a Profit after Tax of Rs. 1,68,00,000/- (Rupees one crore sixty eight lacs only) for the above period and the second investor acquires shares in the Company at a higher price and valuation, then the Conversion shall be at the price paid by the second investor. The Company shall cause an audited statement to be prepared on or before 28<sup>th</sup> February, 2003 for the purpose of determination of the price for the Conversion.

- 3.5.3 The Investor shall issue a Conversion Notice specifying the Number of shares and the Conversion Date when it decides to convert the OCCRPS into Equity Shares.
- 3.5.4 On Conversion, the Conversion Shares shall stand allotted and issued to the Investor, the Dividend on the OCCRPS shall cease to accrue on and from the date of conversion and the OCCRPS shall be treated as automatically Redeemed and extinguished. The Conversion Shares so allotted will rank *pari passu* in all respects with the existing Equity Shares of the Company except that the dividend shall accrue proportionately from the date of allotment of the Conversion Shares at the same rate as on the other Equity Shares.
- 3.5.5 The Company shall issue and deliver to the Investor, within twenty one (21) Business Days of the Conversion Date, share certificates representing the Conversion Shares in such lots as may be required by the Investor and the Investors' name shall be entered in the register of members of the Company as the holders of the Conversion Shares. The Company further undertakes to sub-divide or consolidate the certificates at any time, if so required by the Investors, without payment of any fee.

#### 4 CLOSING

- 4.1 The Promoters and the Company shall notify the Investor of the fulfillment of all the Conditions Precedent mentioned in Clause 2 above and provide them with all relevant documents. The Investor through their advisors / counsel shall then satisfy themselves as to the completion of all the Conditions Precedent, and shall review all actions and proceedings hereunder, and all documents, and other papers delivered by the Promoters and the Company hereunder or in connection with the consummation of the transactions contemplated hereby, and all other related matters. The Investor shall notify the Promoters and the Company within 15 days from the date of receipt of all the documents/information related to the fulfillment of the Conditions Precedent, from the Promoters and the Company, of their respective satisfaction or dissatisfaction with the same.
- 4.2 Within 7 days of the Investor, notifying the Promoters and the Company of their respective satisfaction with the fulfillment of the Conditions Precedent mentioned in Clause 2 above or waiving the fulfillment of any or all of the said Conditions Precedent in writing, as the case may be, the Promoters and the Company shall proceed to complete the issue and allotment of the Investor Subscription Shares to the Investor in the manner provided in this Clause 4. It is clarified that if the Investor



notify their satisfaction with the fulfillment of the Conditions Precedent the Promoters and the Company shall be liable to consummate the Closing as stated in this Clause. The Parties shall do all such acts and things that may be necessary to achieve the Closing. The date agreed to by the Parties under Clause 4.3 shall be hereinafter referred to as the 'Closing Date'.

4.3 The Closing shall be done at a place and time to be mutually agreed to between the Parties.

4.4 Subject to Clause 4.2 hereof, on the Closing Date:

4.4.1 The Company shall convene a meeting of the Board of Directors of the Company for approving the issue and allotment of the Investor Subscription Shares to the Investor on the Closing Date.

4.4.2 The Promoters and the Company shall deliver to the Investor the following documents:

(i) Certificates signed by the Promoters and the Directors of the Company to the effect that the Representations and Warranties contained in this Agreement, continue to be true and correct as on the Closing Date with the same effect as though such Representations and Warranties had been made as of such date.

(ii) Certified true copies of all the resolutions passed by the Board of Directors and the Shareholders of the Company since the date of execution of this Agreement until the Closing Date.

(iii) A certified true copy of the resolution passed by the Board of Directors of the Company approving the issue and allotment of the Investor Subscription Shares to the Investor.

(iv) Original letter of opinion of the counsel of the Company, dated as of the Closing Date in the form attached as **Annexure C**.

(v) A certified true copy of the Letters of Undertaking obtained from the Promoters in the form and content acceptable to the Investor.

4.4.3 After review of the documents mentioned in clause 4.4.2 hereof, the Investor shall commence the process of transfer of the first installment of the Investor Subscription Price by wire transfer directly to the account nominated by the Company as per the particulars contained in clause 4.4.4. Immediately upon receipt of the First installment of Investor Subscription Price by the Company, the Company shall deliver and hand over to the Investor or it's authorized representative, the original share certificates representing the Investor Subscription Shares duly stamped. The Share



Certificate shall be issued in the name of "UNIT TRUST OF INDIA A/C – INDIA TECHNOLOGY VENTURE UNIT SCHEME".

4.4.4 The Investor shall be liable to pay the Investor Subscription Price in the following installments upon completion of the following milestones:

4.4.4.1 Rs. 1,25,00,000 on the Closing Date, which shall be prior to 31<sup>st</sup> January, 2001, in respect of Equity Shares on :-

Resignation of Promoter 3 and Promoter 4 from the office of Director of the Company and filing of appropriate Form No. 32 with the Registrar of Companies evidencing the change in Directorship;

Closing of all Bank Accounts in the name of the erstwhile firm called "Sudhanva Enterprises" with the trade name "EXCEL-SOFT" and transfer of all balances to the Bank account in the name of the Company to the satisfaction of the Investor; and

Filing of necessary application with the Income Tax authorities for obtaining clearance under Section 230 A (1) of the Income Tax Act, 1961 by the erstwhile firm " Sudhanva Enterprises" for transfer of Property bearing Plot No. 1-B, Hootagalli Industrial Area, Mysore to the Company;

4.4.4.2 Rs. 1,25,00,000 in respect of OCCRPS on :-

Due execution and registration of an absolute sale deed in respect of the Plot of 4027 Square meters of land situated at Plot No. 1-B, Hootagalli Industrial Area, Mysore by the Promoters erstwhile firm in favour of the Company;

Dissolution of the Partnership Firm of the Promoters called "Sudhanva Enterprises" with the trade name "EXCEL-SOFT" to the satisfaction of the Investor;

Induction of the following Key Management Personnel by the Company: (1) Head - Technology; (2) Head - Business Development and Marketing; and (3) Manager Finance and Accounts;

Submission of a detailed Business Plan relating to the Marketing activities to be carried on at USA through Mr. Dwarkanath; and

Submission of a Certificate from the Statutory Auditors of the Company regarding utilisation and disbursement of proceeds of the first installment under 4.4.4.1 above.



- 4.4.5 In the event of any delay beyond 21 days after allotment of shares in dispatch or handover of Share Certificates, the Investor shall be entitled to rescind and recall the Investor Subscription Price along with interest @30% per annum from the date of receipt of the Investor Subscription Price by the Company till the date of repayment.
- 4.4.6 The Company shall convene a meeting of the Board of Directors of the Company at which meeting the Board shall:
- (i) enter the names of the Investor as member in respect of the Investor Subscription Shares in the register of members of the Company; and,
  - (ii) resolve to convene an extra-ordinary general meeting of the Company to do the acts and matters provided in Clause 4.4.5.
- 4.4.7 The Promoters and the Company shall ensure that a meeting of the members of the Company is convened at which meeting the members shall resolve to appoint / record appointment of one person nominated by the Investor as non-retiring Director of the Company.
- 4.5 Immediately after the board meetings and general meetings of the Company and passing of the resolutions mentioned above, the Parties shall ensure that the Company shall record the necessary entries in its corporate and statutory registers, and carry out all the actions that have been resolved to be carried out in order to effectively achieve the Closing.
- 4.6 The Promoters and the Company shall ensure that the relevant forms and amended copies of the Articles of Association of the Company are filed with the concerned regulatory authorities, in accordance with the provisions of the Act, in respect of the Company.
- 4.7 The Parties to this Agreement agree to take all measures that may be required to ensure that all the events contemplated under Clauses 4.4 to 4.6 above on the Closing Date are initiated and completed not later than 3 (three) business days.
- 4.8 Stamp duty and registration fees payable, if any on this Agreement and the documents to be executed or issued pursuant to or in relation to this Agreement shall be borne by the Company. Stamp duty payable on this Agreement or any other documents to be executed pursuant to or in relation to this Agreement shall be paid on or before execution thereof.

## 5. REPRESENTATIONS AND WARRANTIES

- 5.1 To induce the Investor to subscribe to the Shares of the Company, the Company and the Promoters, hereby jointly and severally Represent and Warrant to the Investor in



terms set out in **Annexure A** and as disclosed in the process of the due diligence investigation carried on by the Investor, and acknowledge that the Investor has agreed to subscribe to the Investor Subscription Shares relying upon these Representations and Warranties.

- 5.2 Where any Representation and Warranty contained in this Agreement is expressly qualified by reference to knowledge, information and belief of the Promoters and the Company, the Promoters and the Company independently confirm to the Investor that they have made such due and diligent inquiry as to the matters that are the subject of such Representations and Warranties that are reasonable under the circumstances.
- 5.3 Any Representation or Warranty herein or in any such certificate or writing shall be deemed to be material and to have been relied upon by the Investor, notwithstanding any investigation, due diligence or inspection made by or on behalf of the Investor and shall not be affected in any respect by any such investigation, due diligence or inspection. The Investor has agreed to subscribe to the Investor Subscription Shares and enter into this Agreement relying upon these Representations and Warranties.
- 5.4 The Company and the Promoters expressly agree and undertake that the Representations and Warranties contained in **Annexure A** will be valid and enforceable against the Company and the Promoters by the Investor on and from the date of execution of the Agreement.
- 5.5 Each Representation and Warranty is to be construed independently of the others and is not limited by reference to any other Representation or Warranty.
- 5.6 The Company and the Promoters expressly agree that the Representations, Warranties and undertakings contained in **Annexure A** hereto and/or in any schedule or document delivered pursuant to or in connection with this Agreement shall survive the Closing Date.
- 5.7 It is clarified for removal of doubt that, the Company and the Promoters shall not be exonerated from their obligation to indemnify the Investor as mentioned in Clause 7.2 below, arising from any inaccuracy or breach of the Representations and Warranties merely by reason of disclosure made in the disclosure schedule to the Representations and Warranties contained in **Annexure A** hereto.
- 5.8 Subject to the provisions of this Agreement, the Company and the Promoters expressly represent and warrant that after the date of execution of this Agreement and on or before the Subsequent Closing Date, the Company shall not issue and allot any Shares, preference shares, or equity linked securities of any nature whatsoever or any other securities to any other Person including any bonus shares.




## 6 THE INVESTOR REPRESENTATIONS AND WARRANTIES

- 6.1 The Investor hereby represents and warrants that it is a duly constituted company with limited liability and has full power and authority, necessary to enter into this Agreement.

## 7. BREACH OF REPRESENTATIONS AND WARRANTIES

- 7.1 In the event of any of the Representations and Warranties mentioned in Annexure A, being partially or entirely incorrect or false (the said event qualifying as a breach), the Investor shall grant the Company, by giving a notice in writing, an opportunity to remedy the breach within a period of 30 days from the date of receipt of the written notice by the Company.
- 7.2 In the event the Company fails to remedy the breach within 30 days from the date of receipt of the written notice as provided in Clause 7.1 above, then, without prejudice to any other right available to the Investor, the Company shall be liable to compensate and indemnify the Investor and its representatives, directors, officers and employees and hold them free and harmless against any and all losses, liabilities, claims, demands, actions and damages (including attorneys fees) suffered by them directly or indirectly based upon, arising out of, in relation to, in connection with or as a result of breach of any of the Representations and Warranties by the Company.
- 7.3 Any compensation or indemnity as referred to in Clause 7.2 above, shall be such, as to place the Investor in the same position as they would have been in, had there not been any breach of the Representation or Warranty under which the Investor is to be indemnified.
- 7.4 The rights and remedies of the Investor in respect of any breach of any of the Representations and Warranties shall not be affected by any act or happening which otherwise might have affected such rights and remedies, except by a specific written waiver by the Investor.
- 7.5 The Investor shall not assume in any manner, any responsibility or liability whatsoever in respect of the business of the Company and its operations or activities, to any Person, firm, the Company, body corporate or other entity and any authority, central, state, local or municipal or otherwise for anytime prior to the Closing Date nor assume any responsibility or liability for any non-compliance, of any applicable law, rules, regulations, any monetary or other liability; and the Company shall indemnify and keep indemnified and hold the Investor free and harmless from and against all actions, claims, demands, suits, damages, losses, penalties, interest and other charges and expenses (including legal fees and other dispute resolution



costs) which the Investor may then or at any time thereafter pay, incur, suffer or sustain directly or indirectly in connection therewith.

- 7.6 The Representations and Warranties provided in this Agreement shall survive only for a period of 4 (four) calendar years from the Closing Date or such other period as is prescribed in the relevant statutes in force from time to time. After the period specified in this Clause, the Investor shall not be entitled to enforce the indemnities available to it under this Agreement against the Company.

## 8. BUSINESS

The Company is engaged in the business, *inter alia*, providing Consulting Services and Development of Software Products in the area of Information Technology Solutions, Support and Value added Business Services with a focus on Webcentric Applications and Customised Application Software Development.

## 9. ANNOUNCEMENTS

No Party shall make any announcement concerning this Agreement or any ancillary matter before, or after Closing except as required by law or any competent regulatory body or with the written approval of the other concerned Parties, which approval shall not be unreasonably withheld or delayed.

## 10. NOTICES

- (a) Any notice, request or instruction to be given hereunder by any Party to the other shall be in writing, in English language and delivered personally, or sent by registered mail postage prepaid, or courier, or facsimile (followed by a confirmation by mail), addressed to the concerned Party at the address set forth below or any other address subsequently notified to the other Parties:

- (i) If to the Company:

Excelsoft Technologies Private Limited,  
No. 1-B, Hootagalli Industrial Area,  
Mysore 571 186, India

Attention : Mr. D. Sudhanva  
Fax Number: (0821) 402875

- (ii) If to the Investor:

Chief Executive Officer  
Unit Trust of India





(Venture Fund Division)  
26/27, Raheja Towers  
12<sup>th</sup> Floor (M)  
MG Road  
Bangalore 560 001, INDIA

Facsimile : (080) 5559356  
For attention of : Mr. Raja Kumar

With a copy to

India Technology Venture Unit Scheme  
Unit Trust of India  
(Venture Funds Division)  
13, Sir Vithaldas Thackersey Marg  
New Marine Lines  
Mumbai 400 020, INDIA

Facsimile : (022) 2013674  
For attention of : General Manager, Legal

(iii) If to the Promoters

(a) Mr. M.H. Dhananjaya  
Address: No. 3, III Block  
Jayalakshmiapuram  
Mysore 570 012  
INDIA

Fax Number: +91 (0821) 402875

- (b) For the purposes of this Clause 10 notice shall be deemed to be effective (i) in the case of a registered mail, seven days after posting, (ii) in case of courier, two days after receipt by the Party, (iii) in case of a facsimile, 24 hours after transmission, and (iv) in case of personal delivery, at the time of delivery.

## 11 ARBITRATION

- 11.1 If any dispute arises between any of the Parties hereto during the subsistence or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, including the question as to whether the termination of this Agreement by any Party hereto has been legitimate, the Parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts which attempt



shall continue for not less than sixty (60) days, gives thirty (30) days notice thereof to the other Party in writing.

- 11.2 In case of such failure the dispute shall be referred to a sole Arbitrator or in case of disagreement as to the appointment of the sole Arbitrator, to three (3) Arbitrators, of which the Company and/or the Promoters (depending on which of them is/are parties to the dispute) shall appoint one (1) Arbitrator, the Investor shall appoint the second Arbitrator and the third Arbitrator shall be appointed by the two appointed Arbitrators.
- 11.3 The Arbitration proceedings shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- 11.4 The Arbitration proceedings shall be held at Bangalore, India.
- 11.5 The Arbitration proceedings shall be governed by the laws of India.
- 11.6 The Arbitration Proceedings shall be in English language.
- 11.7 The Arbitrator's award shall be substantiated in writing. The court of arbitration shall also decide on the costs of the arbitration proceedings.
- 11.8 The Arbitrator's award shall be binding on the disputing parties subject to applicable laws and the award shall be enforceable in any competent court of law.
- 11.9 The provisions of this Clause 11 shall survive the termination of this agreement for any reason whatsoever.

## 12 MISCELLANEOUS

### 12.1 Breach of Contract

If any of the Parties to the Agreement fail to perform its obligations under this Agreement or if a Party's representations or warranties under this Agreement is untrue or materially inaccurate such Party shall be deemed to have breached this Agreement. The Party in breach shall compensate the non-breaching Party for all damages caused by the breach. This remedy shall be without prejudice to the right of the non-breaching Party to obtain an injunction restraining any breach or apprehended breach in accordance with the terms of this Agreement without the necessity of establishing any actual damage.

### 12.2 Reservation of Rights



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No forbearance, indulgence or relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision. Any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of this Agreement or of the subsequent breach, or acquiescence to or recognition of rights other than as expressly stipulated in this Agreement.

### 12.3 Cumulative Rights

All remedies of either Party under this Agreement whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.

### 12.4 Partial Invalidity

If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent for any reason including by reason of any law or regulation or government policy, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

### 12.5 Amendments

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by all the Parties.

### 12.6 Assignment

This Agreement and the rights and liabilities hereunder shall bind and inure to the benefit of the respective successors of the Parties hereto. The Promoters and the Company shall not assign or transfer, nor shall they be entitled to assign or transfer, any of their rights and liabilities hereunder to any other Person without the prior written permission of the Investor. However, the Investor shall be entitled to assign any and/or all of its rights and obligations hereunder to any of its Affiliates, without the written consent of the Promoters or the Company.



## 12.7 Public Announcements

The Parties agree that they shall not make any public announcement, including press statements, or statements on the internet or on any other form of media and/or any disclosure of any nature whatsoever to any Person concerning the transactions contemplated herein without the prior written permission of the other Party.

## 12.8 Entirety

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof to the exclusion of all other understandings and assurances, either written or oral.

## 12.9 Headings

The paragraph headings contained in this Agreement are for the convenience of the Parties and shall not affect the meaning or interpretation of this Agreement.

## 12.10 Relationship

None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind or shall be deemed to be the agent of the other in any way.


## 12.11 Costs

Unless otherwise specified in this Agreement, each of the Parties hereto shall pay their own costs and expenses relating to the negotiation, preparation and execution of this Agreement and the transactions contemplated by this Agreement.

## 12.12 Governing law

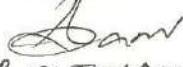
This Agreement shall be governed and construed in accordance with the laws of India.

**IN WITNESS WHEREOF** THE PARTIES HERETO HAVE SET AND SUBSCRIBED THEIR RESPECTIVE HANDS TO THESE PRESENTS.

SIGNED AND DELIVERED   
BY THE WITHIN NAMED "the Company"  
BY THE HAND OF MR. D. SUBHANVA  
(AUTHORIZED SIGNATORY) PURSUANT TO THE




RESOLUTION PASSED BY THE BOARD  
OF DIRECTORS OF THE COMPANY  
ON THE 8<sup>th</sup> DAY OF JANUARY 2000.2001

IN THE PRESENCE OF :   
WITNESS : R. VISWANATHAN  
NAME AND ADDRESS : Chartered Accountant  
: NO. 13 Subbarama Chetty Road  
: Basavanagudi Bangalore - 4

SIGNED AND DELIVERED   
BY THE WITHIN NAMED "Promoters" ..


  
1. M. H. DHANANJAYA


  
2. D. SUDHANVA

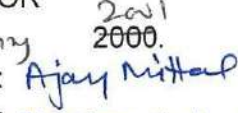

  
3. SUKANYA DHANANJAYA

  
4. LAJWANTI SUDHANVA

ON THE 8<sup>th</sup> DAY OF January 2001  
2000.

IN THE PRESENCE OF :   
WITNESS : R. VISWANATHAN  
NAME AND ADDRESS : Chartered Accountant  
: NO. 13 Subbarama Chetty Rd.  
: Basavanagudi Bangalore - 4

SIGNED AND DELIVERED  
BY THE WITHIN NAMED "INVESTOR"  
BY THE HAND OF MR. S. N. RAJESH   
(AUTHORIZED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
OF DIRECTORS OF INVESTOR

ON THE 8<sup>th</sup> DAY OF January 2001  
2000.  
IN THE PRESENCE OF :   
WITNESS : Ajay Mittal   
NAME AND ADDRESS : C/O UTI Venture Funds,  
: Raheja Towers, 26/27,  
: 12<sup>th</sup> Floor, MG Road,  
: Bangalore - 560001.













**REPRESENTATIONS AND WARRANTIES RELATING TO THE AFFAIRS OF THE COMPANY**

Where any Representation and Warranty contained in this Annexure A is expressly qualified by reference to knowledge, information and belief of the Company or the Promoters, the Company and the Promoters represent that they have made such due and diligent inquiry as to the matters that are the subject of such Representations and Warranties that are reasonable under the circumstances.

- A. The Promoters hereby jointly and severally represent and warrant to the Investor that:
- (i) they have the power and authority to execute and deliver this Agreement and are not prohibited from entering into this Agreement;
  - (ii) this Agreement has been duly authorized, executed and delivered by Promoters and upon execution and delivery by the Promoters will be a legal, valid and binding obligation of the Promoters enforceable in accordance with its terms; and
  - (iii) the execution and delivery of this Agreement by the Promoters and the promises, agreements or undertakings of the Promoters under this Agreement do not violate any law, rule, regulation or order applicable to it or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which it is a party or which are applicable to it.
  - (iv) the shares held by them in the Company are free and clear of any lien or any other limitation or restriction of any nature whatsoever (including any restriction on the right to vote, sell or otherwise dispose off the shares).
  - (v) they do not individually or collectively hold any equity interest in any entity which is engaged in a business which is similar to the business of the Company.
- B. The Company hereby represents and warrants to the Investor that:
- (i) they have the power and authority to execute and deliver this Agreement and are not prohibited from entering into this Agreement.
  - (ii) this Agreement has been duly authorized, executed and delivered by the Shareholders and Board of Directors of the Company and upon execution and delivery by the Company will be a legal, valid and binding obligation of



the Company enforceable in accordance with its terms;

- (iii) the execution and delivery of this Agreement by the Company and the promises, agreements or undertakings of the Company under this Agreement do not violate any law, rule, regulation or order applicable to them or violate or contravene the provisions of or constitute a default under any documents, contracts, agreements or any other instruments to which they are a party or which are applicable to either of them;

C. The Company represent and warrant to the Investor that:

**1. Information**

The information set out in each of the following clauses is complete and accurate in all respects. None of the information is misleading in any manner whatsoever, whether by inclusion of misleading information or omission of any information or both.

**2. Material Reports**

There has been no material report concerning the Company or the whole or any part of its property or undertaking of the Company, by any accountant or financial or management consultant in the period since its incorporation upto the date of this Agreement.

**3. Approvals**

To the best of their knowledge, each legal, exchange control, regulatory or like approval, wherever required for the investment by the Investor in the Company have been duly obtained. Any condition imposed to any such approval obtained, has been duly observed.

**4. Incorporation and power**

(i) The Company:

- (a) is a body corporate duly incorporated under the laws of India;
- (b) has the power and the necessary regulatory approvals to own and operate its assets and carry on its business; and
- (c) is duly registered and authorized to do business in India.

(ii) There are presently no subsidiaries of the Company

**5. Constituent documents**





The business and affairs of the Company are being conducted in accordance with its Memorandum and Articles of Association and other constituent documents and the Company has delivered true and correct copies of such Memorandum and Articles of Association and other constituent documents to the Investor.

**6. Consent**

The Company owns or holds all material consents, licenses, franchises, permits and authorizations wherever necessary for the lawful conduct, ownership and operation, of their business and their shareholdings in other companies, if any, and the same are valid and subsisting and have not been terminated or become void, voidable or terminable.

**7. No restriction**

The Company is not bound by any contract, or court or other regulatory order which may restrict its right or ability to enter into or perform this Agreement.

**8. Alteration of share capital**

The Company has not at any time:

- (a) redeemed or repaid any share capital;
- (b) reduced its share capital or passed any resolution for the reduction of its share capital; and
- (c) given any financial assistance in relation to, acquired (directly or indirectly) or lent money on the security of Shares or units of Shares in itself or in any holding of the Company.

**9. Dividends**

No dividends have been declared by the Company since incorporation.

**10. Structure**

- (i) The capital structure of the Company is as follows:

The Capital structure of the Company, as on the date of this Agreement, is as follows:

Authorized Share Capital : Rs. 3,00,00,000 (Rupees three crores only) consisting of 17,50,000 (seventeen lakhs fifty thousand) equity shares of face value Rs.10/- each and 12,50,000 12% Optionally Convertible

Cumulative Redeemable Preference Shares of  
Rs.10/- each.

Issued and Paid-up Share Capital : Rs. 1,00,00,000 (Rupees one crore only)  
consisting of 10,00,000 (ten lacs) equity Shares  
of Rs.10/- each.

(ii) The Company:

(a) is not the holder or beneficial owner of any shares or other capital in any body corporate nor do they own or control any partnership interests or other equity interest in any partnership or other entity or any voting rights or rights to control the policies and direction of any partnership, body corporate or other entity nor has the Company agreed to or committed to invest or subscribe to the equity shares or other securities of any other entity, other than as described in sub-clauses (iii) hereunder.

(b) is not a member of any partnership or other unincorporated association; and

(c) is not the manager, trustee or representative of any trust or scheme.

(iii) There are no outstanding options/ warrants, convertible securities, or any other agreements, which permit any entity to subscribe to any new shares or other securities of the Company nor have they pledged title to their shares to any third party, nor are there any existing commitments by the Company to invest in subsidiary/associate companies.

## 11. Solvency

None of the following has occurred and is subsisting, nor has a notice been served, in relation to the Company:

(i) An application to a court for an order, or the making of any order, that it be wound up, that a liquidator or receiver be appointed or that it be placed in bankruptcy.

(ii) A resolution for winding up.

(iii) The convening of a meeting or passing of a resolution to appoint an official liquidator.



- (iv) A scheme of arrangement or composition with, or reconstruction arrangement or assignment for the benefit of or other arrangement with all or a class of creditors.
- (v) The taking of any action to seize, take possession of or appoint a receiver and/or manager in respect of the Shares of the Company or any of the Subsidiary Companies.

**12. Guarantees**

The Company has not guaranteed and is not otherwise liable or potentially liable for the debts or obligations of any other Person.

**13. Letters of comfort**

The Company has not provided any letter of comfort or made any representation or given any undertaking to any Person in respect of the obligations or solvency of any Person or in support of or as an inducement to or otherwise in connection with the availing of financial assistance from any party.

**14. Financials**

- (i) Except as disclosed in **Disclosure Schedule I**, the Company has not advanced any sum to any Person, firm, company etc.
- (ii) Sufficient provisions have been made in the respective financial statements mentioned in sub-clause 14(iv) hereof, for any liability of the Company which may arise from any transactions relating to the business or operations.
- (iii) Except as disclosed in **Disclosure Schedule I**, the Company has not borrowed any amount from any Person as secured or unsecured loans.
- (iv) The Accounts and Financial statements attached in **Disclosure Schedule I** hereof, show a true and accurate picture of the state of affairs of the Company.



## 15. Accounts

- (i) The audited accounts of the Company upto the period ended November 30, 2000 ("Balance Sheet Date") as provided to the INVESTOR:
- (a) have been prepared in accordance with applicable legislation and applicable accounting standards;
  - (b) show a true and fair view of:
    - the assets and liabilities and of the state of affairs, financial position and results of the Company and of each of the Subsidiary Companies as the case may be; and
    - the profit or loss account.
  - (c) have been prepared in accordance with the same accounting policies as stated in the notes to the audited accounts;
  - (d) include reserves and provisions for taxation that are sufficient to cover all tax liabilities in respect of all periods upto November 30, 2000; and
  - (e) provide for all other liabilities as on November 30, 2000.
- (ii) Except as disclosed in the **Disclosure Schedule I** hereto., each receivable shown as an asset in the audited accounts and in the other accounts and financial statements of the Company drawn up to the date of execution of the Agreement, is a valid and subsisting debt and is likely to realize the nominal amount of the debt (and all interest and other charges payable) in accordance with its terms.
- (iii) The Company has not, nor is it engaged in any transaction that is not required to be shown or reflected in its accounts.
- (iv) The accounts shown in the audited accounts dated November 30, 2000 and financial statements drawn upto the date of execution of the Agreement in respect of the Company have not resulted to any extent from:
- (a) inconsistencies of accounting practices;
  - (b) the inclusion of abnormal or extraordinary items of income or expenditure;
  - (c) transactions entered into other than on normal commercial terms; or



- (d) any other factors rendering the profits or losses for all or any of those periods, abnormally high or low.
- (v) There are no set-off arrangements between the Company and any other Person.
- (vi) The Company is not in material default in respect of the terms or conditions of any indebtedness.
- (vii) Since the Balance Sheet Date and until the date of this Agreement, the Company has not:
  - (a) incurred any material liability or obligation of any nature (whether accrued, absolute, contingent or otherwise), except in the ordinary course of business;
  - (b) incurred any material liability with regard to unpaid employee pension or benefits;
  - (c) permitted any of its assets to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge of any kind;
  - (d) written down the value of any work-in-progress, or written off as uncollectible any notes or accounts receivable, except write-downs and write-offs in the ordinary course of business, none of which individually or in the aggregate, is material to the Company;
  - (e) granted any increase in the rate of wages, salaries, bonuses or other remuneration of any employee who after giving effect to such increase or prior thereto receives compensation at an annual rate of Indian Rupees 1,000,000/- (Rupees One Million) or more;
  - (f) cancelled or waived any claims or rights of substantial value;
  - (g) made any change in any method of accounting or auditing practice; and
  - (h) renewed, extended or modified any lease of real property except in the ordinary course of business.

**16. Business**

- (a) Except the Business mentioned in Clause 8 of the Agreement, the Company has not carried on or are not carrying on any other business.
- (b) The property of the Company has been and will remain in the possession and under the control of the Company. The Company has good title to all the











assets declared on its incorporation and has not created any charge or an encumbrance over, nor declared itself trustee of any of its properties.

- (c) Except as stated in **Disclosure Schedule I**, the Company has not made any capital expenditure.
- (d) No decision has been made to defer any capital expenditure of the Company.
- (e) No asset of the Company has been written down or written off.
- (f) No contract has been entered into or terminated or has expired which could reasonably be expected to have an adverse effect on the profitability of any business conducted by the Company.
- (g) The Company has not received any notice or threat of termination of a contract that could reasonably be expected to have an adverse effect on the profitability of the business conducted by the Company.
- (h) No authorization from which the Company benefits has been terminated, or has expired and could reasonably be expected to have an adverse effect on the profitability of any business of the Company.
- (i) No share, security or other right convertible into Shares or loan capital has been issued by the Company.
- (j) The Company has not defaulted in paying any creditor and have paid off their creditors in accordance with the general business practice. However, wherever some delays have occurred in few cases a suitable dialogue with the parties has been maintained. These matters are insignificant, and will not materially affect the business operations of the Company.
- (k) The business of the Company has been carried on in the ordinary and usual course and not otherwise. The Company has not indulged in any corrupt practices in dealing with its clients or for getting business from clients.

**17. Powers of attorney**

- (i) Except as stated below, no authorities have been issued in favour of any officer and/or employee to bind the Company.

Name of Official

Managing Director – Authority granted in terms of Board Resolution dated 14<sup>th</sup> June, 2000.



- (ii) No outstanding offer, tender, quotation or the like, given or made by the Company is capable of giving rise to a contract merely by any unilateral act of a third party or on terms calculated to yield a gross profit margin inconsistent with that usually obtained or decided by the Company.
- (iii) The Board of Directors of the Company is at present, authorized to borrow any amount, and/or mortgage or charge movable and immovable property as described in Memorandum & Articles of Association of the Company. It is hereby represented that the Board of Directors of the Company shall not incur or undertake any Debt beyond the limits mentioned in the Shareholders Agreement. The term 'Debt' shall have the meaning ascribed to the said term under the Shareholders Agreement.

**18. Contracts and commitments**

- (a) The Company has not entered into any contract or commitment which imposes or is likely to impose an obligation on the Company to make payments under a single contract or commitment in excess of Rs. 500,000. Further, all the contracts and commitments entered into/made by the Company do not impose and will not impose an obligation on the Company to make payments in excess of Rs. 2,500,000, in aggregate. No contracts or commitments entered into/made by the Company can create or is likely to create any obligations or liabilities, or in terms of which the Company is or will be bound to share profits, pay any royalties or waive or abandon any rights.
- (b) The Company has not on or before the date hereof and will not prior to the Closing, enter into any negotiations, or enter into any contract or option agreement or other commitments of any kind, whether contingent or not, to issue any Shares or any other securities to any Person other than the Investor.
- (c) No contract entered into by the Company:
  - (i) is outside the ordinary and proper course of business or is otherwise unusual;
  - (ii) has a period of more than 12 months to run from the date of this Agreement until its expiration or termination except for reasons which are beyond the control of the Company; and
  - (iii) provides that the Company will act as distributor of goods or services or as agent for another Person.
- (d) The Company has not breached any contract in any manner whatsoever to which it is a party.



- (e) The Company has not entered into any joint venture or shareholders agreement nor has the Company agreed to or made any commitment to set up a joint venture or enter into a shareholders agreement with any Person or entity for any purpose or agreed to enter into any joint venture or similar arrangement with any Person or entity.

## 19. Assets

Except as disclosed in **Disclosure Schedule I** and except in the ordinary course of business, the Company has not entered into any capital commitments to purchase any assets whatsoever that are not reflected in its Financial Statements.

- (a) The assets of the Company are as reflected in the register of assets.
- (b) Each asset of or represented as belonging to the Company is the property of the Company.
- (c) No notice has been served on the Company by any public authority that might materially impair, prevent or otherwise interfere with the use of or proprietary rights in any of its assets.
- (d) No property of the Company is at present the subject matter of any suit, writ or execution or other legal proceedings.

## 20. Insurance

- (i) Except as disclosed in **Disclosure Schedule I** hereto, the Company has not taken out any other insurance policies.
- (ii) All insurance policies as disclosed in **Disclosure Schedule I** are in force and premium thereon has been duly paid in full.

## 21. Employees

- (i) The list of employees engaged by the Company is attached in **Disclosure Schedule I**. The Company do not employ any personnel as contract labour and/or any personnel as temporary labour. The Company has no collective bargaining agreements with any of its personnel or employees or any of their representatives or union.
- (ii) The Company has complied with and continue to comply with provisions of all the labour laws applicable to them.
- (iii) The Company has not breached any legislation or authorization relating to the health or safety of its employees.





## 22. Compliance with legislation

The Company has complied with all the laws, rules and regulations applicable to it, including labour laws and regulations applicable to their respective business. The Company has not, and none of their Directors, officers, agents or employees, has/have committed or omitted to do any act or thing the commission or omission of which is in contravention of any legislation.

## 23. Litigation

- (a) Neither the Company nor any Person for whom any of them may be vicariously liable, is or has been engaged in any prosecution, litigation, arbitration proceedings or administrative or governmental investigation or challenge as plaintiff, defendant, third party or in any other capacity whether in India or outside India. Further, the Company has not received any information or notice regarding any impending litigation, arbitration proceedings, and administrative or governmental investigation.
- (b) No notice has so far been served upon the Company for imposing any charges, fines, levies, and penalties by any government or regulatory authority. All of the above mentioned cases of delayed remittance shall be resolved with payment of minor fines.
- (c) The Company has not committed any material breach of any material agreement with any Person including, in particular, any Person who has provided loans, deposits, advances, guarantees or other financial facilities to the Company.

## 24. Authorizations

- (a) The Company has all the necessary authorizations, licenses, permits and approvals to carry on their business properly. In respect of each authorization:
  - (i) all fees due have been paid;
  - (ii) all conditions have been duly complied with; and
  - (iii) there exists no factor that might prejudice its continuance or renewal.
- (b) The agreements entered into by the Company are in accordance with applicable laws and are enforceable in accordance with their respective terms and all legal, exchange control, regulatory and other approvals in connection therewith have been duly obtained and all conditions imposed under all such approvals have been duly observed.



## 25. Confidentiality

No disclosure has been made to any Person of any confidential information of the Company except in the ordinary and proper course of business of the Company and on receipt of an undertaking to keep the information confidential.

## 26. Taxation

- (i) Since the date of incorporation of the Company, no additional liability for tax has accrued to the Company otherwise than as a result of the activities of the Company in the ordinary course of business.
- (ii) All taxes which have been or deemed to have been assessed or imposed on the Company or have been required to be withheld from any payment made by the Company to another Person:
  - (a) which are due and payable, have been paid by the final date for payment; and
  - (b) which are not yet payable but become payable before the Closing, shall be paid by the due date.

The Company has not entered into any agreement or arrangement, which extends the period of assessment or payment of any taxes.

- (iii) All necessary information, notices, computations and returns have:
  - (a) been properly and duly submitted by the Company to each relevant public authority in respect of taxes for or in respect of the Company for the period up to the date of this Agreement; and
  - (b) will continue to be submitted in respect of periods after the date of this Agreement until the Closing in respect of those later periods.
- (iv) There is no unresolved/pending correspondence or dispute with any public authority. No fiscal authority has at any time carried out, or is at present conducting any investigation into all or any part of the business or affairs of the Company.

## 27. Real Estate and Properties

- (i) The Company does not own or possess any real estate and/or immovable property other than those listed in **Disclosure Schedule I** hereof. Further, no real estate property is at present subject matter of any legal proceedings.



- (ii) The Company has not taken any properties on Lease and/or Leave and License other than those listed in **Disclosure Schedule I** hereof.

**28. Liabilities**

All the liabilities, present and contingent, that may arise to the Company have been disclosed in **Disclosure Schedule I** hereof. Other than the said liabilities, the Company does not have or are suffering from any present or potential or contingent monetary or business liability of any nature.

E. The Company, the Promoters hereby jointly and severally represent and warrant to the Investor that:

- (a) The Company has the legal right and unrestricted authority to use any or all of the software, trademarks, trade names, brand names, patents, designs, domain names and other intellectual property rights set forth in the **Disclosure Schedule I** (whether registered or not). The Company has all the intellectual property rights necessary to carry on its business.
- (b) The Company does not use or infringe any patents, trademarks, domain names registered designs, registered business names, copyrights or other intellectual property rights belonging to any third party.
- (c) There are no oppositions to the registration of its intellectual property rights. Further, the Company is not aware of and have not received any notice from any third party in respect of infringement of the said third party's intellectual property rights.



**CERTIFICATE OF THE COMPANY**

This certificate by Excelsoft Technologies Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at 1-B, Hootagalli Industrial Area, Mysore 571 186, India (hereinafter referred to as "the COMPANY") issued pursuant to Clause 2.1.8 of the Share Subscription Agreement dated \_\_\_\_\_, ("the Agreement") entered into between the Company, Promoters and the Investor (as defined therein)

WITNESSETH

1. That the COMPANY has performed and complied with all the agreements and conditions required by the Agreement to be performed and complied with by the COMPANY and the Promoters on or before the date hereof.
2. That there has been no material adverse change in the financial condition, assets or business of the COMPANY till date and no existing or imminent material adverse effect is taking place or is expected in the business of the COMPANY.
3. That there have been no defaults under any of the material agreements entered into by the COMPANY.
4. That attached as **Exhibit A** are the true and correct resolutions of the Board of Directors of the COMPANY passed on \_\_\_\_\_, 2000 approving:
  - (a) the draft of the Agreement;
  - (b) the investment by the Investor in the COMPANY; and,
  - (c) the issue of Investor Subscription Shares to the Investor in terms of the Agreement.
5. That attached, as **Exhibit B** is the true and correct special resolution passed at a general meeting of the shareholders of the COMPANY on \_\_\_\_\_ 2000, authorising the COMPANY to issue and allot the Investor Subscription Shares (as defined in the Agreement) to the Investor.
6. That attached, as **Exhibit C** is the true and correct copy of the COMPANY's Memorandum and Articles of Association.

IN WITNESS WHEREOF, the COMPANY has caused this certificate to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

For EXCELISOFT TECHNOLOGIES PRIVATE LIMITED

Mr. \_\_\_\_\_  
WHOLE-TIME DIRECTOR



**OPINION OF LEGAL COUNSEL OF THE COMPANY**

[TO BE TYPED ON THE LETTERHEAD OF THE COUNSEL OF THE COMPANY AND  
THE PROMOTERS]

Date:

\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

As counsel for the **Excelsoft Technologies Limited**, the Company, the Promoters, I am familiar with the Share Subscription Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2000 ("the Agreements") inter alia between the Company, Promoters and the Investor (as defined therein) and with the matter relating to issue of Investor Subscription Shares of the Company to the Investor. Unless otherwise defined in this opinion, terms used herein that are defined in the Agreement shall have the meanings ascribed thereto in the Agreement.

For the purpose of giving this opinion I have examined, all statutes, corporate records and other instruments that we have deemed it necessary and the executed documents in original or copies which have been certified by authorised representatives of the Company as being true, complete and up to date. I have also examined such records, certificates, resolutions and other documents as we have considered necessary or appropriate and have carried out such searches, as I have deemed relevant and necessary. My review of such documents and records and actions taken by me is the basis of the opinion expressed below.

Based upon the foregoing and having regard to the legal considerations which I deem relevant, I am of the opinion that:

1. The Company is a private limited company duly organized, validly existing, and in good standing under Indian laws and is not involved in any winding up, liquidation, receivership or any similar proceeding.
2. The Company has an authorized share capital of Rs. 3,00,00,000 divided into 17,50,000 (Seventeen lakhs fifty thousand) equity shares of face value Rs.10/-each and 12,50,000 (Twelve lakhs fifty thousand) 12% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- each of which 10,00,000 ? equity shares are issued and fully paid up. All such issued shares have been duly authorized, validly issued and fully paid up and there are no outstanding options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans or other



agreements of any character providing for the purchase, issuance or sale of any shares of the share capital of the Company.

3. The Agreement, including Annexures, Disclosure Schedules and Exhibits thereto have been duly authorized by all necessary corporate action on the part of the Company and all necessary action on the part of the Company and the Promoter.
4. The Company and the Promoters have full right, power and authority to execute and deliver the Agreement (including the Annexures, Disclosure Schedules and Exhibits) and to perform their obligations under the Agreement.
5. The Company and the Promoters have taken all required actions to approve and execute the Agreement and Annexures thereto and the same are enforceable against them in accordance with the terms thereof.
6. The execution and delivery by the Company and the Promoters of the Agreement and the consummation of the transactions contemplated thereunder:
  - i. do not and will not violate or conflict with any statute, regulation, judgement, order, writ, decree or injunction currently applicable to the Company or any of its property or assets; and
  - ii. at and after the Closing will not violate or conflict with any (i) any law, rule, ordinance, regulation, or order, judgement or decree of any court, arbitrator or governmental instrumentality or regulatory body, (ii) the Memorandum and Articles of Association of the Company or (iii) any mortgage, lien, lease, agreement, indenture, licensing agreement, financing statement, contract, instrument, or other agreement to which the Company, or the Promoters is now party or by which any of them is bound.
7. The Company holds all its assets free of all encumbrances, charges, claims, and the Company has full rights and marketable title over its business and assets.
8. No consent or approval of any third party is required to be obtained by the Company and/or the Promoters in connection with or for the execution and delivery of the Agreement or the performance of the transactions contemplated under the Agreement.
9. No authorizations, consents or approvals of or filings or registrations with any governmental or statutory agencies or authorities of the Agreement is required in connection with the execution, delivery and performance of the Agreement by the Company and the Promoters except as specifically mentioned in the Agreement.
10. Except as disclosed in writing prior to the signing of the Agreement, no contract or agreement to which the Company is a party restricts the ability of the Company to fulfill its obligations and responsibilities under the Agreement or any of the



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Annexures, thereto or to carry out the activities and transactions contemplated therein.

11. There is no litigation, proceeding or governmental investigation pending or threatened against the Company and/or the Promoters that relates to any of the transactions contemplated by the Agreement or which, if adversely determined, could have an adverse effect on the business, assets, liabilities, or business condition, or otherwise adversely affects the operations or prospects of the Company.

I acknowledge and confirm that what is stated above is wholly true and complete and this opinion is not affected, qualified, limited or subject to in any manner by any due diligence, independent inquiry or similar exercise undertaken by the Investor and/or their consultants and legal advisors or Representations and Warranties made by the Company and the Promoters.

I understand and acknowledge that if any fact or opinion is found to be contrary to any statement, opinion or fact made or stated herein the Investor will have the right to terminate the Agreement or to be indemnified by the Company in addition to enforcing any other rights it may have under the Agreement, the laws of India or in equity.

Yours truly,

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