

BOUTIQART CREATIVE MEMBER AGREEMENT

This agreement is made at _____ on this ____ day of _____ 2023 between _____, an individual Professional / proprietor / partnership / Private Limited firm / NGO / Co-operative / Producer Company or Govt. department duly registered under provisions of Partnership Act, 1932/ a company incorporated under the provisions of Companies Act, 1956/ registered under Trust Act / Society Act, / Co-operative or Producer company Act / Public Sector unit having his/her/its address/registered office at _____,

_____ (acting through Mrs./Mr. _____, duly authorized to enter in to present agreement by partners / board of directors) (hereinafter referred to as “the CREATIVE MEMBER” which expression shall mean and include his/her/its successors in title, administrators and assigns) of the **First Part**

And

Idearcade Digital Solutions Pvt. Ltd., a Private Limited firm having its office at _____

through its Director _____ duly authorized by the board of Directors of the firm to enter in to present agreement (hereinafter referred to as “the Firm”) of **Second Part**

The parties above referred are individually known as “the party”/ “the CREATIVE MEMBER” / “the Firm” and collectively referred to as “the parties”;

WHEREAS the MEMBER is engaged in the profession or business of Creating/Curating/Manufacturing/Innovating/Practicing/Performing/Archiving/Distributing/Selling _____ and similar items; or providing _____ or similar service.

AND WHEREAS the Firm is owner of E-Commerce Web Portals/Apps by the name of **www.boutiqart.org & www.boutiqart.com** wherein various MEMBER profiles / Sub site / Portals are created of registered MEMBER members (Individual /enterprise) for enlisting their creative/unique/traditional/innovative products of different categories & service (on demand order supply) are enlisted as a directory, marketed, promoted, and sold using electronic medium more particularly through the e-commerce domain.

AND WHEREAS the parties hereto have after mutual discussions as per the subscription plan by the second party have come to an agreement that the products / service of the

(For_____)

(For Idearcade Digital Solutions Pvt. Ltd.)

MEMBER will be marketed by **www.boutiqart.org & www.boutiqart.com** on their ecommerce store;

AND WHEREAS parties have agreed to reduce their terms in writing

NOW THIS AGREEMENT WITNESSES AS UNDER

1. Commencement, Term, Renewal

1.1 The date of execution of this agreement shall be the commencement date and the agreement shall remain valid and binding for a period of _____ year initially and can be renewed each year on mutually agreed terms at the time of renewal for such terms as the parties agree. All renewals of the agreement shall be express and in writing. No oral agreement shall be binding on either of the party.

2. Marketing Tools/Support, Products, Availability of products etc.

2.1 The MEMBER **will** keep always informed the Firm about the availability of the products in its inventory along with detailed specifications like size, color, material, texture, and other attributes etc. as may be required of the product items and specifications like time, quality, quantity as may be required of the service as per customer order supply. Order once placed on the Firm by the customer shall have to be honored by the MEMBER at all costs.

3. Fee/Commissions etc

3.1 The firm as such charge a yearly registration fee (Subscription Plan by Firm: Free / Sponsored / Basic / Standard / Premium) for providing web profile / sub site / portal design & admin, with hosting space/display/ on website as well as MEMBER profile / sub site / portal and for all sales / service order that are made/generated using the web portals **www.boutiqart.org & www.boutiqart.com** a commission shall be paid by the MEMBER to the Firm. The details of commissions to be paid per product / Service sale, registration fees, and other service fees are specified in **Schedule A** to this agreement. The schedule can be amended to modify any rate of **commission** in respect of any product. Any amendment to such schedule will be express. The said schedule or Subscription MEMBER Plan is to be treated as part and parcel of the agreement. The Firm reserves all right to choose for selecting the MEMBERS for sponsored profile based on sole discretionary criteria or as per consideration of appeal from the MEMBER which can no way be challenged or instigated as any favor or vested interest.

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3.2 It is expressly agreed by the parties hereto that the Firm shall debit the amount of commission from the remittance to MEMBER at the time of forwarding the order received from the end customer.

3.3 The parties will endeavor to perform reconciliation of accounts/orders every 45 days.

4. Order, Handling, Delivery etc.

4.1 Orders for the product shall be received using the web portals / Apps **www.boutiqart.org & www.boutiqart.com** and shall be forwarded to the MEMBER by the Firm via Admin Message /email/Telephone/Fax/Courier.

4.2 The MEMBER shall upon receipt of the order from the Firm immediately arrange to deliver the products to the designated address as early as possible / or supply the service on the date of service requirement but in any case, the dispatch shall be made within 30 (THIRTY) days or date of execution of order as fixed with customer of the receipt of the Order. In case the MEMBER fails to dispatch the product within the aforesaid stipulated time, it must return the amount received back to the Firm forthwith. No delay in returning the amount is permissible and any delay caused shall be considered as breach of the agreement and be one of the causes for termination of agreement. The MEMBER shall provide to the Firm the consignment number, and details of courier/shipment agency immediately followed by proof of delivery. The MEMBER for any on demand service or performance provide the Quotation with work order, Agreement contract, and details of SLA to the Firm as proof of service.

4.3 The MEMBER shall ensure that the products dispatched are of the specifications ordered and there is no variation whatsoever. The necessary guarantee/warranty or any commitment related to quality or service shall be provided by the MEMBER to the customer.

4.4 The MEMBER agrees to replace the defective products supplied to the customer at its own cost or compensate the service breach and shall not hold the Firm responsible in any manner whatsoever.

4.5 The Firm may, at its discretion arrange to lift the defective products from the customer however the MEMBER will still be liable to replace the defective product. Any charges incurred by the Firm for lifting and forwarding such defective goods shall be on account of the MEMBER. The MEMBER shall make good such charges to the Firm upon receipt of invoice/debit note. No request for any adjustment from future payables to the MEMBER

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from Firm will be made however, the Firm is at its liberty to deduct such amount from future payables of fresh Orders. Such deductions shall not be treated as practice and/or precedent. For avoidance of doubts, it is clarified that defective would mean and include but is not limited to wrong product, damaged product, mis-sized product and any other shortcoming which the customer may point out. In case of deliverance of order supply or service the aforesaid clause shall apply to the failing MEMBER. The MEMBER hereby authorizes the Firm to entertain all claims of return of the Product in the mutual interest of the MEMBER as well as the Customer.

5. Covenants of MEMBER

The MEMBER hereby covenants with the Firm as under:

5.1 To deliver the product / service of the ordered specifications/description only including quantity and quality prescribed in the Order and there should be no instance of wrong item / service being delivered and/or quality issue and/or issue of Non delivery. Further, the MEMBER shall always maintain adequate stock/inventory of the items. In case the MEMBER is running out of supplies or is likely not to fulfill the Order received by the Firm, it shall intimate to the Firm at least _____ hours (_____ days) in advance so that notice of **OUT OF STOCK** for the product can be placed on the website. In case of an order for customized service or performance the MEMBER should intimate the Firm at least _____ hours (_____ days) in advance so that notice could be sent to the customer in well advance.

5.2 Not to send any kind of promotion material or any such material, which is, derogatory to and/or adverse to the interests financial or otherwise of the Firm, to the customer either along with the products supplied or in any manner whatsoever.

5.3 Not to do any act/deal in a thing/products/goods/service which are either banned/prohibited by law or violates any of the intellectual property right of any party in respect of such product / Service.

5.4 The MEMBER declares that it has all rights and authorizations in respect of intellectual property rights of third parties and is authorized to sale/provide/license such products / service to the customer. The copy of such authorization shall be provided on demand without failure and/or protest.

5.5 The MEMBER agrees to indemnify and keep indemnified the Firm from all claims/losses (including advocate fee for defending/prosecuting any case) that may arise against the Firm due to acts/omission on the part of the MEMBER

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5.6 To provide to the Firm, for the purpose of the creation/display on website of Firm, the product description, images, video, disclaimer, delivery timelines, price and such other details for the products and service to be displayed and offered for sale / service.

5.7 To ensure and not to **provide** any description/image/video/text/graphic/testimonial/documents which is unlawful, illegal, intimidating, obnoxious, objectionable, obscene, vulgar, opposed to public policy, prohibited by law or morality or is in violation of intellectual property rights including but not limited to Trademark and copyright of any third party or of inaccurate, false, incorrect, misleading description or is surrogatory in nature. Further it will forward the product description and image only for the product which is offered for sale through the website of the Firm. The MEMBER agrees that in case there is violation of this covenant, it shall do and cause to be done all such acts as are necessary to prevent disrepute being caused to the Firm

5.8 To provide full, correct, accurate and true description of the profile /product & service so as to enable the customers to make an informed decision. The MEMBER agrees not to provide any such description/information regarding the product which amounts to misrepresentation to the customer.

5.9 To be solely responsible for the quality, quantity, merchantability, guarantee, warranties in respect of the products offered for sale or service listing through portal of the Firm.

5.10 At all times have access to the Internet and its email account to check the status of approved orders and will ensure prompt deliveries within the time frame mentioned herein before in the agreement.

5.11 Provide information about the Order Status including Airway Bill Number on a daily basis.

5.12 To raise an invoice as well as receipt of payment in the name of Customer for an amount equivalent to the amount displayed as MRP on the online store to the customer and paid by/charged to the customer.

5.13 Not to offer any Products for Sale or enlist any Service on the Online Store, which are prohibited for sale, practice, dangerous, against the public policy, banned, unlawful, illegal, or prohibited under the Indian laws.

5.14 To provide satisfactory proof about the ownership/licenses of all the legal rights in the Products that are offered for sale and service on the Online Store as and when demanded by the Firm.

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5.15 To pass on the legal title, rights and ownership in the Products sold or customized service to the Customer.

5.16 To be solely responsible for any dispute that may be raised by the customer relating to the goods, merchandise and services provided by the MEMBER. No claim of whatsoever nature will be raised on the Firm.

5.17 The MEMBER shall at all times during the pendency of this agreement endeavor to protect and promote the interests of the Firm and ensure that third parties rights including intellectual property rights are not infringed.

5.18 The MEMBER shall always be responsible for compliance of all applicable laws and regulations including but not limited to Intellectual Property Rights, GST, SGST, Local Sales Tax, Central Sales Tax, Service tax, Value added tax, Standards of Weights & Measures legislation, Sale of Goods Act, Excise and Import duties, Drugs and Cosmetics Act, Drugs and Remedial Magic Act, Code of Advertising Ethics, etc.

5.19 To provide to the Firm copies of any document required by the Firm for the purposes of performance of its obligations under this agreement within 48 hours of getting a written notice from the Firm.

5.20 To seek advance written approval from the Firm, prior to release of any promotion/advertisement material, in so far as the same relates to services offered pursuant to the terms of this Agreement.

6. Warranties, Representations and Undertakings of the MEMBER

The MEMBER warrants and represents that

6.1 The signatory to the present agreement is having the right and full authority to enter into this Agreement with the Firm and the agreement so executed is binding in nature.

6.2 All obligations narrated under this Agreement are legal, valid, binding, and enforceable in law against MEMBER.

6.3 There are no proceedings pending against the MEMBER, which may have a material adverse effect on its ability to perform and meet the obligations under this Agreement;

6.4 That it is an authorized business establishment and hold all the requisite permissions, authorities, approvals, and sanctions to conduct its business and to enter into present agreement with the Firm.

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6.5 It shall, always ensure compliance with all the requirements applicable to its business and for the purposes of this agreement including but not limited to Intellectual Property Rights, GST, SGST, Sales Tax, Central Sales Tax, Service tax, Standards of Weights & Measures legislation, Sale of Goods Act, Value added tax, Excise and Import duties, etc. It further declares and confirms that it has paid and shall continue to discharge all its obligations towards statutory authorities.

6.6 That it has adequate rights under relevant laws including but not limited to various Intellectual Property Legislation(s) to enter into this Agreement with the Firm and perform the obligations contained herein and that it has not violated/ infringed any intellectual property rights of any third party.

6.7 It shall maintain details of all transaction and mark as complete / incomplete as the case may be and shall provide the same to the Firm upon demand.

7) Rights of Firm:

7.1 MEMBER agrees and acknowledges that the Firm, at all times during the continuance of this Agreement, shall have the right to remove/block/delete any text, graphic, image(s) uploaded on the online store by the MEMBER without any prior intimation to MEMBER in the event the said text, image, graphic is found to be in violation of law, breach of any of the terms of this Agreement, terms and conditions of **www.boutiqart.org & www.boutiqart.com** Shopping Website. In such an event, the Firm reserves the right to forthwith remove/close the online store of the MEMBER without any prior intimation or liability to the MEMBER.

7.2 Appropriate disclaimers and terms of use on **www.boutiqart.org & www.boutiqart.com** Shopping portal shall be placed by the Firm. However, MEMBERS should provide appropriate disclaimers and terms of use, logistics and privacy policy on their respective linked Profile / Sub site / Portal.

7.3 At any time if the Firm believes that the services are being utilized by the MEMBER or its Customer in contravention of the terms and provisions of this Agreement, Terms and conditions of use of **www.boutiqart.org & www.boutiqart.com** shopping or linked Profile / Sub site / Portal of the MEMBER, the Firm shall have the right either at its sole discretion or upon the receipt of a request from the legal / statutory authorities or a court order to discontinue/terminate the said service(s) to Customer or the End user as the case may be, forthwith remove/block/close the online store of the MEMBER and furnish such details

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about the MEMBER and/or its customers upon a request received from the Legal/ Statutory Authorities or under a Court order.

8 Indemnity

8.1 The MEMBER indemnifies and shall hold indemnified the Firm, its partners, officers, employees, representatives, agents from and against all losses, damages, claims, suits, legal proceedings and otherwise howsoever arising from or in connection with any claim including but not limited to claim for any infringement of any intellectual property rights or any other rights of any third party or of law, concerning quality, quantity and any claim in relation to the MEMBER's product, the breach of any of the MEMBER's warranties, representations or undertakings or in relation to the non-fulfillment of any of its obligations under this Agreement or arising out of the MEMBER infringing any applicable laws, regulations including but not limited to Intellectual Property Rights, Local Sales Tax, GST, SGST, Central Sales Tax, Service tax, Value Added tax, The Standards of Weights & Measures legislation, Excise and Import duties, etc . For the purpose of this clause reference to the Firm shall also include the Mobile Operators and such other agencies through whom the Firm shall make the Online Store available to the Customers.

8.2 This article shall survive the termination or expiration of this Agreement.

9 Limitation of Liability

9.1 The Firm based on representation by the MEMBER is marketing the products / services of the MEMBER on the shopping portals **www.boutiqart.org & www.boutiqart.com** to enable MEMBER to offer service and its products for sale through the said online shopping portal. This representation is the essence of the Contract. It is expressly agreed by the MEMBER that the Firm shall under no circumstances be liable or responsible for any loss, injury or damage to the MEMBER, customer, or any other party whomsoever, arising on account of any transaction under this Agreement or as a result of the Products being in any way damaged, defective, in unfit condition, infringing/ violating any laws/ regulations/ intellectual property rights of any third party. The MEMBER agrees and acknowledges that it shall be solely liable for any claims, damages, allegation arising out of the Products offered for sale or service through online shopping portals **www.boutiqart.org & www.boutiqart.com** or through their own profile / sub site / portal (including but not limited to quality, quantity, price, merchantability, use for a particular purpose, or any other related claim) and shall hold the Firm harmless and indemnified against all such claims and damages. Further the Firm shall not be liable for any claims,

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damages arising out of any negligence, misconduct, or misrepresentation by the MEMBER or any of its representatives.

9.2 The Firm under no circumstances will be liable to the MEMBER for loss and/or anticipated loss of profits, or for any direct or indirect, incidental, consequential, special or exemplary damages arising from the subject matter of this Agreement, regardless of the type of claim and even if the MEMBER has been advised of the possibility of such damages, such as, but not limited to loss of revenue or anticipated profits or loss business, unless such loss or damages is proven by the MEMBER to have been deliberately caused by the Firm.

10 Termination and effects of Termination

10.1 This Agreement may be terminated by the Firm forthwith in the following events:

10.1.1 MEMBER fails to make payment of the **sum demanded** after it has been served 48 hours written notice;

10.1.2 MEMBER commits a material breach of any representation, obligations, covenant, warranty, or term of this agreement and the same is not cured within 30 days after written notice given by the Firm.

10.1.3 If a Petition for insolvency is filed against the MEMBER.

10.1.4 If the MEMBER is in infringement of the third-party rights including intellectual property rights.

10.2. This agreement may be terminated without reason by either party after serving upon the other, a written notice of 30 days. The agreement shall stand terminated after expiry of such period.

10.3 Effect of Termination:

10.3.1 In the event of termination/expiry of this Agreement, the Firm shall remove the Links and shall discontinue display of the Products/ service on online shopping portals **www.boutiqart.org & www.boutiqart.com**, or in their respective profile / sub site / portal with immediate effect.

10.3.2 Firm shall not be liable for any loss or damages (direct, indirect, or inconsequential) incurred by the MEMBER by virtue of termination of this agreement.

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10.3.3 During the period under notice both the parties shall be bound to perform its obligations incurred under this agreement and this sub-clause shall survive the termination of this agreement.

11. Jurisdiction, governing law, and ex-parte Orders

11.1 This agreement is subject to exclusive jurisdiction of competent Courts of law at Kolkata only.

11.2 The laws of Republic of India, as are in force, shall be applicable to present agreement.

11.3 The Firm is entitled to obtain ex-parte ad- interim injunction orders restraining the MEMBER to prevent any loss/anticipated loss either in material terms or in terms of intellectual property or causing damage/loss/harm to reputation/goodwill of the Firm by the MEMBER, its representatives, associates or assigns.

12. Notices

12.1 All notices and other communication under this Agreement shall be in writing, in English language and shall be caused to be delivered by hand or sent by telex, fax, email or courier in each case to the addresses as set out at the beginning of this Agreement.

13. Intellectual Property Rights

13.1 The MEMBER expressly authorizes the Firm to use its trade marks/copy rights/ designs /logos and other intellectual property owned and/or licensed by it for the purpose of reproduction on the website and at such other places as the Firm may deem necessary. It is expressly agreed and clarified that, except as specified agreed in this Agreement, each Party shall retain all right, title and interest in their respective trademarks and logos and that nothing contained in this Agreement, nor the use of the trademark / logos on the publicity, advertising, promotional or other material in relation to the services shall be construed as giving to any Party any right, title or interest of any nature whatsoever to any of the other Party's trademarks and / or logos.

14 Entire Agreement

14.1 This Agreement embodies the entire agreement and understanding of the Parties and supersedes any and all other prior and contemporaneous agreements, correspondence, arrangements and understandings (whether written or oral) between the Parties with respect to its subject matter.

15 Assignment

15.1 Neither this Agreement nor any part of it is assignable, transferable, sub-licensable, sub-contractible or conveyable by MEMBER, either by operation of law or otherwise,

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without the express, prior, written consent of the Firm signed by an authorized representative of such Party. The Firm is at liberty to refuse such consent.

16 Confidentiality:

16.1 The contents of the agreement and any information passed on by the Firm to the MEMBER is highly confidential in nature and the MEMBER agrees and undertakes to maintain the confidentiality of the information and user/customer data disclosed, generated or made available to MEMBER under this Agreement. The said information shall not be used by the MEMBER or its agents, servants, representatives or any person acting through or claiming through the MEMBER for any purpose other than for the performance of its obligations under this Agreement. The MEMBER agrees that the unauthorized disclosure or use of such information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, MEMBER agrees that the Firm shall have the right to obtain an immediate injunction from any court of law ensuing breach of this Agreement and/or disclosure of the Confidential Information. The Firm shall also have the right to pursue any other rights or remedies available at law or equity for such a breach.

17 Relationship of Parties

17.1 Nothing in this Agreement will be construed as creating a relationship of partnership, joint venture, agency or employment between the Parties. The Firm shall not be responsible for the acts or omissions of the MEMBER and MEMBER shall not represent the Firm, neither has any power or authority to speak for, represent, bind or assume any obligation on behalf of the Firm.

18 Waiver and Amendment

18.1 No waiver of any breach of any provision of this Agreement constitutes a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions, and will not be effective unless made in writing and signed by an authorized representative of the waiving Party.

18.2 Except as expressly set out in this Agreement, no amendment is binding on the Parties unless it is in writing and signed by a duly authorized representative of each of the Parties.

19 Force Majeure

19.1 Neither Party shall be responsible or liable for any delay or failure to perform its obligations (other than an obligation to make payment) under this Agreement due to unforeseen circumstances or any event which is beyond that Party's reasonable control

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and without its fault or negligence, but not limited to, acts of God, war, riots, embargoes, strikes, lockouts, acts of any Government authority, delays in obtaining licenses or rejection of applications under the Statutes, failure of telephone connections or power failure, fire or floods.

20 Two Originals

20.1 This Agreement may be executed in two (2) counterparts, one to remain with each party and each of which shall be deemed an original and which shall together constitute one Agreement.

Schedule A herein before referred Details of Boutiqart Subscription Plan

Please refer to our MEMBER membership plan: <https://boutiqart.org/plan>

Rate Plan	Free	BASIC	STANDARD	PREMIUM	SPONSORED
Membership Status	E-commerce Profile	E-commerce Profile	E-commerce Profile	E-commerce Portal <i>+ Boutiqart Profile</i>	Boutiqart Sponsored Profile
Membership Criteria	Individual / Enterprise	Individual / Enterprise	Individual / Enterprise	Individual / Enterprise	Selected by Boutiqart
Profile / Item / Service PIN Listing	FREE	FREE	FREE	FREE	FREE
Verified MEMBER Seal	N. A	N. A			
Product / Service Category Listing	SINGLE category	Up to 2 categories	Up to 5 Categories	Unlimited	As per SLA with Member
Product Shelf / Category	5 Shelf / Category	10 Shelf / Category	10 Shelf / Category	Unlimited / Category	As per SLA with Member
	<i>Unlimited items *</i>	<i>Unlimited items *</i>	<i>Unlimited items *</i>		
Service Shelf / Category	3 Shelf / Category	5 Shelf / Category	5 Shelf / Category	Unlimited / Category	As per SLA with Member
	<i>Unlimited items *</i>	<i>Unlimited items *</i>	<i>Unlimited items *</i>		

(For _____)

(For Idearcade Digital Solutions Pvt. Ltd.)

Member URL	N. A	N. A	www.boutiqart.org & www.boutiqart.com/yourstorename (custom domain option)	CUSTOM DOMAIN	N. A
CMS Admin	Member Admin	Member Admin	Member Admin	Member Super-Admin	Managed by Boutiqart Admin
Contact Details	Boutiqart Contact	Custom Contact	Custom Contact	Custom Contact + Additional Contacts	Boutiqart Contact
Advertisement On-Page	With AD	With AD	With AD	AD Revenue Scope	Boutiqart AD
ITEM Sale & Order Supply Commission	7%-20% of Order Transaction (Price Slab % ratio)	5%-18% of Order Transaction (Price Slab % ratio)	3%-15% of Order Transaction (Price Slab % ratio)	2%-12% of Order Transaction (Price Slab % ratio)	As per SLA with Member
	View	View	View	View	
SSL & Security	Boutiqart Managed	Boutiqart Managed	Boutiqart Managed	Dedicated Option (Contact)	Boutiqart Managed
Domain & Hosting	Boutiqart Managed	Boutiqart Managed	Boutiqart Managed	Dedicated Option (Contact)	Boutiqart Managed
Payment Gateway	Boutiqart Managed	Boutiqart Managed	Boutiqart Managed	Dedicated Option (Contact)	Boutiqart Managed
CMS Admin Management & Tech Monthly Support	Self	Self / INR 1500/- Per Month (Optional)	Self / INR 3000/- Per Month (Optional)	Self / Contact Us	Boutiqart Managed
Marketplace Yearly Rental Pricing	FREE	₹ 3,000/-	₹ 5,000/-	₹ 15,000/-	APPLY FOR SPONSORSHIP
		per Year *	per Year *	per Year *	



As per **Schedule A** the CREATIVE MEMBER (1st Party) hereby chooses the subscription Plan _____ with the registration amount of _____ (_____) For the term of _____ years and thereby agree with the aforesaid plan details.

In witness whereof the parties have hereto caused their respective hand and seal to be affixed the day and year first hereinabove mentioned.

Signed sealed and delivered by the within named MEMBER:

(1st **Party or CREATIVE MEMBER:** _____)

Through Mr. _____
duly authorized in this behalf.

X _____

Signed sealed and delivered by the within named Firm:

(2nd **Party or Firm:** Idearcade Digital Solutions Private Limited.)

Through Mr. _____
duly authorized in this behalf.

X _____

(For _____)

(For Idearcade Digital Solutions Pvt. Ltd.)