

অসম অসম ASSAM

17AA 310538

THE MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into at Azara Guwahati on this **14th day of August, Two Thousand and Eighteen**

BY AND BETWEEN

Orion Edutech Pvt. Ltd, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 163/1 VIP Road, Scheme VII M, Ultadanga, Kolkata- 700054 and Corporate Office at Orion House, 28 Chinar Park, Rajarhat Road, Kolkata- 700157, (hereinafter referred to as the "**First Party/Orion**", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the **ONE PART**

AND

Assam Don Bosco University, a state private university, having its office at Tapesia Gardens, Kamarkuchi Village, Sonapur 782 402, Assam (hereinafter referred to as the "**Second Party/ADB**U", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the **OTHER PART**

[Handwritten signature]

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Pro Vice Chancellor
Assam Don Bosco University
Airport Road, Azara
Guwahati, Assam
INDIA - 781017

WHEREAS the First Party is *inter alia* engaged in the business of providing Vocational Training, Assessment and Certification Services across the India and acquired distinct and unique reputation as to the quality of the Education, Assessment and Certification at its various centers.

AND WHEREAS the Second Party is a premier university established in the year 2008 by an Act of the Government of Assam (Assam Don Bosco University Act, 2009) and sponsored and managed by the Don Bosco Society Azara, Guwahati, with the objective of promoting technical excellence and holistic development of the human person. Presently, Salesians (known as Salesians of Don Bosco – SDB), are working in 132 countries catering to over nine million young people worldwide. The Salesians have been recognized by the Government of India as the single largest provider of technical education in India, second only to the Government. More than 100 Salesian technical schools and 25 colleges have been established in India. Scores of non-formal training centers, agricultural training centers, relief and rehabilitation centers, literacy centers and shelters for street children in India are managed by the Salesians of Don Bosco. ADBU is approved by UGC and AICTE and accredited by NAAC. It is also a member of the Association of Indian Universities (AIU, New Delhi), International Association of Universities (IAU, Paris) and the Association of Commonwealth Universities (ACU, London). ADBU aims to make its graduates readily employable by providing skill development training and therefore the First Party has engaged the Second Party to mobilize candidates for skill development training and Japanese Language training. And for this purpose both the parties herein has entered into this Memorandum of Understanding subject to the terms and conditions mentioned hereunder.

NOW, THEREFORE subject to the following terms & provisions, the parties hereto are agreed as follows:

1. **RESPONSIBILITY AND LIABILITY OF PARTIES**

RESPONSIBILITIES OF FIRST PARTY:

1. The First Party will make all types of coordination with the concerned government department.
2. The First Party shall provide Japanese language trainer.
3. The representative of The First Party shall make surprise visit to the authorised training centre of the Second Party.
4. The First Party shall assist in providing job placement to the candidates in India and Japan after successful completion of the Japanese studies training. But they will not give any commitment or guarantee of passing in the examination.

RESPONSIBILITIES OF SECOND PARTY:

1. The Second Party shall make reasonable efforts for enrolling the students for training.

2. The Second Party shall help to organize seminars, advertisement, marketing etc. with the cooperation and approval of the First Party for all kinds of marketing designs. The Second Party will also share their plans of marketing with the First Party, prior to execution.
3. The Second Party shall create awareness of this training in different colleges for the mobilization of candidates.
4. The Second Party hereby agrees to provide or arrange adequate infrastructure for the training as needed for conducting the Courses.
5. The Second Party shall always allow the representative of the First Party for surprise visit at the time of promotional activities.
6. The Second Party will try to enroll adequate number of students for a batch of trainees.
7. The Second Party shall make every effort to enroll about 200 students during the period.
8. The Second Party is hereby barred to sub-contract all or any portion of this MOU.

2. LOAN FACILITIES

- 2.1 That the First Party, in association with some financial institutions, will offer a loan facility to the candidates enrolled. The First Party hereby reserves its right to select the candidates eligible for such loan facility in accordance with the guidelines prescribed by respective financial institutions. The beneficiaries of the loan shall be bound the contract they have entered into with the financial institution for availing of the loan.
- 2.2 That it is hereby mutually understood between the parties that the Processing Fees and Interest on Loan will be paid by the Trainee. The First Party shall have no role in same.
- 2.3 That if the Trainee/Borrower has failed to repay the loan, the conditions laid down by the financial institution for availing of the loan shall take effect.

3. PAYMENT STRUCTURE

- 3.1 The Second Party will get 20% (TDS will be charged) per candidate of the Japanese language training fees of Rs. 35,000/- including all taxes.
- 3.2 The First party will get Rs. 1,20,000/- plus applicable GST per person from the candidates who have been given intership letter for job as service charges (visa, flight, logistics for starting on the job) for moving to Japan.
- 3.3 There will be no refund, if any candidate discontinues the training after the classes have started. Refund is possible only before the commencement of classes; the admission fees will not be refunded.

4. INDEPENDENT CONTRACTOR

Each Party acknowledges that the parties to the MOU are independent Entities and that it will not, except in accordance with the MOU, and represent itself as an agent or legal representative of the other.

5. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 Both parties herein expressly acknowledge and agree that they shall not hereby acquire any rights or interest in or to any of the trade marks, or trade names of each other (hereinafter referred to as the "Trademarks", and "Trade names") or in any of, copyrights, patents, know-how or other forms of intellectual property used or adopted by either party (all such Trademarks, Trade names, copyrights, patents, know-how and other forms of intellectual property are hereinafter collectively referred to as the "Intellectual Property") whether or not the Intellectual Property are registered and shall not use any of the Intellectual Property unless and until a written confirmation has been executed between the parties herein in that behalf.
- 7.2 Neither party shall be entitled to remove, conceal or change any brand, mark, letter, serial number nor any other designation marked upon written materials provided by each party without the written permission of the other.
- 7.3 During the term and/or after termination/expiry of this MOU, neither party shall use any business, trade or industrial information of either party which may come to its knowledge in connection with its activities, nor make such information available to third parties and shall at all times maintain confidentiality of the information so divulged by and between the parties herein.
- 7.4 It is specifically agreed and understood by the Second Party, that every design, logos, and other collateral marks/design shall be confirmed by the First Party only and the decision of the First Party shall be final and bind the Second Party. However, the First Party shall use the Logo of the Second Party on any of its publications, including websites, only with prior approval of the Second Party.
- 7.5 Both the parties herein expressly acknowledge and agree that a breach of any of the provisions of this clause by either party shall constitute a material breach of this MOU, and shall be grounds for termination.



6. **TERM AND TERMINATION**

- 6.1 This MOU will be valid till the completion of 1 (One) year, unless it is terminated otherwise.
- 6.2 That in case of breach of any of the terms and conditions of this MOU and/or the supplementary memorandum of understanding whatever the case may be, the aggrieved party may terminate the defaulter party, after giving a reasonable opportunity to rectify the errors, by a 1 (one) month notice.
- 6.3 That if any party wants to quit from the instant arrangement it need to serve 1 (one) month clear notice upon the other and on mutually agreed upon terms and conditions for meeting the contractual obligations to the students who are already enrolled.

7. **RENEWAL**

- 7.1 That the instant MOU is renewable after the expiry of 1 (One) year, unless otherwise determined earlier, at the option of both the parties.

8. **NON COMPETE AND NON-SOLICITATION**

- 8.1 That both the parties herein covenants and agrees that during the Term of this MOU and for a period of 12 months from the date of termination/expiration of this MOU, either party will not, directly or indirectly:
- a) Employ or attempt to employ or assist anyone else to employ any person who is in the employment of the other party at the time of the alleged prohibited conduct, or was in the employment of other party at any time during the preceding twelve months; or
 - b) Initiate any new activities that could be in competition to the other party existing or proposed business activities through any vehicle.

9. **REPRESENTATION AND WARRANTIES**

That both the parties hereby represent and warrant that –

- 9.1 They have the power and authority to execute and deliver this MOU and are not prohibited from entering into this MOU;
- 9.2 This MOU has been duly authorized by all necessary resolutions and upon execution and delivery, will be a legal, valid and binding obligation of both the parties enforceable in accordance with its terms; and
- 9.3 the execution and delivery of this MOU, and the promises, MOUs or undertakings of both the parties under this MOU do not violate any applicable law or violate or contravene the provisions of or constitute a default under any documents, contracts, MOUs or any other instruments to which it is a party or which are applicable to it.

10. GENERAL PROVISIONS

10.1 **CONFIDENTIALITY:** Both the parties herein shall not for the duration of this MOU, nor at any time after the MOU has expired or been terminated, reveal to any individual, organization, company or other entity the terms and conditions of this MOU, the content of any negotiations between the Parties or the content of the Training Materials or the method of conducting the Training on vocational courses. The obligations of confidentiality shall not apply to any information that:

- I. was known to the Party prior to its disclosure by the disclosing Party without any obligation of confidentiality;
- II. has become generally available to the public (other than due to the disclosure by the receiving Party);
- III. may be required in any report, statement or testimony submitted to any governmental regulatory body;
- IV. may be required to comply with any law, order, regulation or ruling applicable to any Party hereto;

10.2 **NON-ASSIGNMENT:** Neither this MOU nor any interest shall be transferable or assignable by either party of this MOU without the prior written consent of the other party. Either party shall have no right to sub-license any of its rights of interest herein.

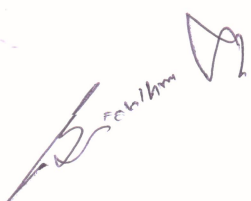
10.3 **EFFECT OF INVALID OR UNENFORCEABLE PROVISIONS:** If any provision of this contract is held by any court or other competent authority of the Union of India to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

10.4 **RESERVATION:**

That it is mutually agreed and understood between the parties herein that notwithstanding anything contained in this agreement no right shall be reserved by either party to engage with a third party, during the tenure of this MOU, in connection with the similar project and/or any other whatever the case may be.

10.5 **FORCE MAJEURE**

If either Party is prevented from performing any portion of the MOU (except the payment of money) by causes beyond its control, including but not limited to civil commotion, war or governmental regulations or controls, casualty, materials or acts of God, embargoes,



earthquakes, floods, riots, unusually severe weather, such defaulting Party will be excused from performance of the period of the delay and for a reasonable time thereafter.

The provisions of the MOU which by their nature extend beyond the expiration or termination date of this MOU will survive and remain in effects until all obligations are satisfied.

10.6 WAIVER

No waiver of any right or remedy on one occasion by either Party will be deemed a waiver of that right or remedy on any other occasion.

11. ARBITRATION

In the event of any dispute or difference between the Parties hereto, whether arising during the currency or after the completion or abandonment of this MOU, or after the determination thereof (whether for breach or for any other reason) in regard to any matter of thing of whatsoever nature arising out of this MOU or in connection therewith, then either Party shall give to the other notice in writing of such dispute or shall give to the other notice in writing of such dispute or difference and the same shall be settled by arbitration at Guwahati, by a sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or substitution thereof.

12. GOVERNING LAW AND JURISDICTION

The MOU shall be governed and construed in accordance with the laws of India and the Parties shall, submit to the exclusive jurisdiction of Courts at Guwahati only.

IN WITNESS WHEREOF, the Parties have caused this MOU to be duly executed by their authorized signatories on the day and year first herein above written.

Orion Edutech Pvt. Ltd.

BY: Mr. Siddhartha Dey

Designation: Head – Retail Business

WITNESS : Mr. Kaushik Das

Assam Don Bosco University

BY: Fr. Joseph Nellanatt

Designation: Pro Vice-Chancellor

WITNESS : Dr. Manoranjan Kalita

Pro Vice-Chancellor
Assam Don Bosco University
Airport Road, Azara
Guwahati, Assam
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