

## SERVICE AND CONFIDENTIALITY AGREEMENT

This Agreement is made on this \_\_\_\_\_ day of \_\_, 2016 at Bhubaneswar BY and BETWEEN National Aluminium Company Limited, a Government of India Enterprise having its office at P1, Nayapalli, Bhubaneswar – 751013 hereinafter referred to as “NALCO” (which expression shall wherever the context so admits include its successors and assignees) of the **First Part**

AND

\_\_\_\_\_ having its registered office at, \_\_\_\_\_ hereinafter referred to as the “Empanelled Firm” (which expression shall wherever the context so admits include its employees, administrators and permitted assignees) of the **Second Part**

WHEREAS all the parts are hereinafter referred to as “Parties”;

All Annexure to this Agreement shall be integral part of this Agreement.

NOW THEREFORE, the parties hereby agree to be bound by the provisions set out in this agreement.

### 1. INTERPRETATION

- i. Confidential Information: “Confidential Information” means all information (whether in oral, written or electronic form) relating to NALCO, matters related to NALCO’s corporate affairs, minutes of the meeting(s) or other agnate materials including any notes or summaries derived from those materials of the Disclosing Party and confidential information received by the Disclosing Party from third parties, but excludes any information that: (1) was lawfully in the possession of the Recipient before receiving it from the Disclosing Party; (2) is provided in good faith to the Recipient by a third party without breaching any rights of the Disclosing Party or any other party; (3) is or becomes generally available to, or accessible by, the public through no fault of the Recipient; (4) is independently developed by the Recipient without use of the disclosed Confidential Information or (5) is required by public authority, by law or decree.
- ii. Words importing the singular numbers shall include the plural number and vice versa.
- iii. Headings and subheadings are for convenience only and shall not be deemed to be a part of this Agreement.

### 2. TERMS OF EMPANELMENT

- i. The Empanelled Firm shall be entitled to the fees and reimbursement for all pre-approved expenses incurred in the performance of the Duties, upon submission and approval of written statements and/or receipts in accordance with the then regular procedures of the NALCO.
- ii. The Advertising agency shall be empanelled for a period of three (03) years from the date of execution of the present agreement.
- iii. This empanelment does not constitute and will not be deemed to constitute and exclusive commitment/ arrangement between NALCO and the Empanelled Agency.

### **3. RESPONSIBILITIES OF THE EMPANELLED AGENCY**

The Empanelled Firm shall;

- i. discharge its duties, responsibilities and execute its activities in furtherance of the scope of work as given in Annexure-1.
- ii. be solely responsible for determining all matters of detail as to the manner in which a specific assignment is done with an objectively acceptable quality.
- iii. undertake necessary liaison work as may be required from time to time with the officials of the concerned departments.
- iv. comply to the best of the technical /scientific knowledge, statutory, regulatory and safety guidelines established by the Government of India and NALCO while performing the services.
- v. take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the disclosing party including discussion of the Confidential Information in any public forum which includes formal and informal discussions.
- vi. comply with all applicable laws, rules and regulations and shall not indulge in any act, which constitutes an offence or a corrupt practice under the Indian laws.
- vii. practice Chinese wall or Firewall policy within to deal with contrary interests or with confidential information.

### **4. CONFIDENTIALITY**

The Parties, undertake to maintain strict confidentiality and refrain from disclosure thereof, of all or any part of the information and data exchanged/generated from the Process under this Agreement for any purpose other than in accordance with this Agreement. It shall be the responsibility of both the Parties to ensure maintenance of such confidentiality in respect of their behalf and on behalf of their employees, representatives and associates involved in related activities.

### **5. RETURN OF MATERIALS**

Upon the conclusion of the task the Empanelled Firm undertakes to return or destroy materials containing Confidential Information in physical form handed over by the NALCO in relation to the services or which was generated by the Empanelled Firm in the course of providing the services.

### **6. EARLY TERMINATION OF THE TERM**

This Agreement may be terminated without cause by either party upon not less than thirty (30) days prior written notice by either party to the other. NALCO can terminate the agreement if the Empanelled Firm voluntarily ceases performing the Duties or "for cause", in case of any material breach of the terms agreed to. Any termination "For Cause" shall be made in good faith by the NALCO. Upon termination, neither party shall have any further obligations under this Agreement, except for the obligations to maintain confidentiality. The financial liability shall cease as of such termination date. Upon termination the Empanelled Firm shall return all Confidential Information, as hereinafter defined, and copies thereof.

### **7. WAIVER AND ASSIGNMENT**

Any waiver by the NALCO of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. The Empanelled Firm shall not have the right to assign the rights or obligations under this Agreement without the prior written consent of NALCO.

**8. EFFECT OF THIS AGREEMENT**

- i. The duty of secrecy under this agreement will commence on the Effective Date and will subsist till three years after completion of the task or till such time the confidential information falls into the public domain whichever is earlier.
- ii. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.
- iii. The rights and remedies herein provided are cumulative with, and not exclusive of, any rights or remedies provided by law.

**9. NOTICE**

Any notices, consents, objections, demands, requests or other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent by registered post, return receipt requested, to the addresses of the parties set forth in the heading to this Agreement. Either party may designate, by notice, a change of address hereunder.

**10. SEVERABILITY**

If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

**11. JURISDICTION/ GOVERNING LAWS:**

**(a) Jurisdiction:**

For all disputes arising of this contract, the jurisdiction shall be lie under the jurisdiction of direct courts in the respective areas in the State of ORISSA (India) only.

**(b) Governing Laws:**

**The contract shall be governed by and constructed according to the laws in to INDIA.**

**12. Force Majeure:**

12.1 Any delays in or failure of the performance of either parties thereto shall not constitute default hereunder or give rise to any claims for damages, if any, to the extent such delays or failure of performance caused by occurrences such as acts of God or the public enemy, expropriation or confiscation of facilities by Government authority, compliance with any order or request of any Governmental authorities, acts or war rebellion, sabotage, fire, floods, explosions riots or illegal strikes, provided always that such occurrences result in impossibility of performances of the contract.

12.2 Only events of Force Majeure which impedes the execution of the contract at the time of its occurrence shall be taken into cognizance.

### **13. Compensation For Delay:**

13.1. Time is essence of the contract. In case the contractor fails to complete the work within the stipulated period, he shall be liable to pay to the Owner as compensation, an amount equal to 1% of the value of contract per week of the delay subject to a maximum of 10% of the value of the contract. This is a genuine pre-estimate of the loss/ damage which will be suffered on account of delay /breach on the part of the contractor and he agrees to any the said amount on demand without going in for any proof of the actual loss or damages caused by such delay/ breach.

13.2. To ensure good progress during execution of work, the contractor shall be bound in all case in which the time allowed for any work exceeds by one month to complete one-fifth of the work before one-fourth of the time allowed under the contractor has elapsed, and three-fourth of the work before three –fourth of such time has elapsed. In the event of the contractor failing to comply with this condition, he shall be liable to pay as compensation for delay an amount as stipulated above. The compensation for delay so paid shall not relieve the contractor from his obligations to complete the work or from any other obligations and liabilities under this contract.

### **14. Failure by the Contractor to Comply with the Provisions of the Contract:**

14.1. If the contractor refuses or fails to execute the work or any separate part thereof with such diligence as will ensure its completion within the time specified in the contract or extension thereof or fails to perform any of his obligation under the Contract or in any manner commits a breach of any of the provisions of the contract it shall be open to the Owner at its option by written notice to the Contractor to: -

(a) Determine the Contract: In which event the Contract shall stand terminated and shall cease to be in force and effect on and from the date appointed by the Owner on that behalf, whereupon the contractor shall stop forth with any of the contractor's work then in progress, except such work as the Owner may, in writing, requires to be done to safeguard any property or work, or installations from damage, and the owner, for its part, may take over the work remaining unfinished by the Contractor and complete the same through fresh contractor or by other means, at the risk and cost of the Contractor, and any of his sureties if any, shall be liable to the owner for any excess cost occasioned by such work having to be so taken over and completed by the Owner over and above the cost at the rates specified in the schedule of quantities and rates.

(b) Without determining the Contract: To take over the work of the contractor or any part thereof and complete the same through a fresh contractor or by other means at the risk and cost of the Contractor. The contractor and any of his sureties are liable to the Owner for any excess cost over and above the cost at the rates specified in the schedule of quantities/ rates, occasioned by such works having been taken over and completed by the Owner. Besides, the contractor shall also be liable for any compensation accruing under clause 14.

**15. AMENDMENTS OR WAIVER**

No amendment or waiver of this Agreement is binding unless agreed to in writing by the parties.

**16. NO OTHER RELATIONSHIP**

The Empanelled Firm agrees that all Services will be rendered as an independent contractor and that this Agreement does not create an employer-employee relationship or business partnership between the parties.

WHEREFORE, the Parties hereto through its duly authorized representatives have signed this Agreement on the day, month and year mentioned hereinbefore.

Signed

On behalf of the Empanelled Firm

Date\_\_\_\_\_

Signed

On behalf of the NALCO