

उत्तर प्रदेश UTTAR PRADESH

DY 762658

MEMORANDUM OF AGREEMENT

This AGREEMENT (the "Agreement") is made on this 02<sup>nd</sup> day of April 2018 ("Execution Date")

BY AND BETWEEN

M/s. Macmillan Publishers India Private Ltd., a company incorporated and registered under the Companies Act, 1956, having its registered office at No. 21, Patullos Road, Chennai – 640002, and having its Corporate Office located at D-90, Sector 2, Vyapar Marg, Noida, Uttar Pradesh, Pin 201301 represented by its Authorized Signatory **Mr Yash Mehta**, (hereinafter referred to as '**Publisher**', which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors, representatives and permitted-assigns) of the **ONE PART**.

AND

**Rajarshi Shahu Mahavidyalaya, Latur**, Affiliated to Swami Ramanand Teerth Marthwada University, Nanded located opp. Central Bus Stand, Kaku Seth Ukka marg, Chandra Nagar, Sawe Wadi, Latur, Maharashtra, Pin – 413512 (hereinafter referred to as "**College**"), which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors, representatives and permitted-assignees) of the **SECOND PART**.

The Parties are hereinafter severally referred to as "**Publisher**" and "**College**" respectively and jointly referred to as the "**Parties**", whenever and wherever the context so requires.



**WHEREAS:**

The College is a leading educational institution in Maharashtra and would like to prescribe certain books of the Publisher for its students.

The Publisher is in consensus with the College and hereby agrees to publish and provide books in such quantity as the order may be placed and subject to any customization in the content of books as may be required for the College.

The Publisher will publish the books for the College on the terms and conditions set out herein.

**NOW THESE PRESENTS WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**DEFINITIONS AND INTERPRETATION**

“**Academic Year**” shall mean the period starting from 01 June of each year, commencing from the calendar year of 2018 and ending on 31 May of the next year.

“**Net Receipts**” shall mean the total monies actually received by the Publisher in Indian Rupees exclusively from sales of the books, less (i) value added tax, (ii) GST where applicable, (iii) any other applicable taxes including withholding taxes, (iv) allowances for returns for the book sold which shall be decided by the Publisher in its sole discretion.

“**Title**” shall mean the title of the Book as provided herein with necessary changes as may be done:

“**Communicative English**” including all its series

**1. SCOPE**

- 1.1 The Publisher shall publish the book under the above-mentioned Title for the College and its network of institutions.
- 1.2 The content of the books to be published shall be provided by the Publisher to the College
- 1.3 The College has agreed that it will prescribe the books for its students which has been particularly prepared in consultation with its faculty/ panel members.
- 1.4 The Parties agree that the scope of this Agreement is limited to the Titles listed in Annexure A. If any new Titles are added, the Publisher may base them on mutually agreeable terms.

## 2. PUBLICATION OF THE BOOK

2.1. Parties agree that:

- (a) The Publisher shall have the entire control of the production, publication, promotion, marketing, reprinting and sale of the Book, as per the print specifications given by the College attached as Annexure - A of the Agreement, advertising and distribution of free copies for the press or otherwise including any equivalent actions or decisions in respect of non-print distribution formats.
- (b) The Publisher shall publish the Work/Book where there are no customizations within such timelines as may be agreed with the College.
- (c) Where any customization is required in the Book, the Publisher shall publish the Book with the above-mentioned Title within three (3) weeks of College delivering the final manuscript in a format mutually agreed between the Parties in advance. The Publisher shall respond to the College within 2 (two) working days confirming that the delivery of the manuscript is in order or inform the College of any defects therein. The timeline of three (3) weeks will commence from the date the Publisher confirms that the delivery of the manuscript is in order and can be published.
- (d) The layout of the Book shall be finalized by the Publisher and logo of the Publisher shall be affixed on the Books along with the logo of the College.

2.2. The Publisher shall have all the copyright, including any other intellectual property rights in the Titles and the Book

2.3. The Publisher may sell the Book through its network of distributors.

## 3. TERM OF AGREEMENT

Notwithstanding the Execution Date of this Agreement, it shall be valid for a period of 3 (three) Academic Years starting from 01<sup>st</sup> June 2018 and ending on 31<sup>st</sup> May 2021 unless terminated earlier in accordance with the provisions hereof. Thereafter, the Agreement can be renewed with the mutual consent of the Parties for such term as agreed between the Parties.

## 4. COPYRIGHT

The copyright in the Book including any other intellectual property rights (viz. trademarks, trade dress etc.) and also in relation with previous publications for College shall at all times remain with the Publisher and by entering into this Agreement, the Publisher is not assigning or purporting to create any right in the Book in favour of the College.



5. **EDITING**

The College acknowledges and agrees that the Publisher reserves the right to make such editorial changes to the Book as it considers necessary to make the Book suitable for publication.

6. **ORDERS**

The College may raise Purchase Orders directly to the Publisher or through a bookseller with respect to the quantity of Books and the respective Titles with mutually agreed delivery terms. The College shall make timely payments as per invoices raised.

7. **ROYALTY**

Unless otherwise mutually agreed, the Publisher shall make the following payments subject to the following terms and conditions:

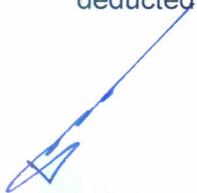
- a) A royalty to the College at the rate of 10 % on Net Receipts payable on sale of the Book under the above Titles.
- b) No royalty or other fee will be payable on any copy of Book presented to the College for promotional, marketing or review purposes, presented to third party by way of charity or stolen, lost, damaged or destroyed (for the avoidance of doubt any receipt of insurance claim for any loss, damage or destruction shall not be construed as Net Receipt and shall not be subject to payment of Royalty) or otherwise or in respect of which allowances have been made for returns.

8. **COMPLIMENTARY COPIES**

The Publisher will provide complimentary copies, the number of which will be mutually agreed between the Parties.

9. **ACCOUNTS**

- 9.1 The Publisher shall prepare accounts in relation to the Royalty payable to the College under this Agreement for the twelve-month period ending 31 March every financial year and shall deliver such accounts on or before the 30 June of such year and shall pay the amount due in respect thereof to the College by cheque or its equivalent within 30 days of the submission of accounts.
- 9.2 All payments shall be made in Indian Rupees.
- 9.3 Any overpayment of Royalty by the Publisher to the College in respect of the Book (including as a result of any returns, bad debts, credits or accounting errors) may be deducted from Royalty subsequently due to the College from the Publisher.



9.4 Any underpayment of Royalty by the Publisher shall be added to the College's account at the end of the following accounting period and shall be paid by the Publisher in the subsequent payment cycle.

## 10 REVISIONS AND NEW EDITIONS

10.1 This Agreement covers all future revisions, translations, adaptations, customisations, editions and versions of the Book, as between the College and the Publisher.

## 11 REMAINDERS/DISPOSAL OF SURPLUS STOCK

If the Book, is in the reasonable opinion of the Publisher, ceases to have or does not have a remunerative print sale after the expiry of the Agreement or termination whichever is earlier, the Publisher shall be at liberty to dispose of any copies remaining on hand as a remainder or overstock or to destroy them. The College shall not be entitled for the Royalty on disposal of stock by the Publisher under this Agreement.

## 12. WARRANTIES, REPRESENTATIONS AND INDEMNITIES

12.1 The College represents and warrants to the Publisher as at the date of this Agreement and at all times thereafter that

- a) The College has full power to execute this Agreement and by entering into this Agreement, it does not violate the provisions of any of its constitutional documents; and
- b) The Content to the extent incorporated by College in the Book is original and all third-party permissions have been obtained for use in the Content and there is nothing which prohibits publishing of the Content as envisaged in the Agreement.

12.2 The Publisher represents and warrants to the College as at the date of this Agreement and at all times thereafter that:

- a) The Publisher has full power to execute this Agreement and by entering into this Agreement, it does not violate the provisions of any of its constitutional documents; and
- b) no litigation, law enforcement enquiries or other similar actions are pending against the Publisher which prevent or are likely to prevent the Publisher from the performance of its obligations herein.

12.3 The Parties shall indemnify and keep indemnified each other and their respective shareholders, directors, officers, personnel, agents, employees and contractors, wherever applicable ("**Indemnitees**") from and against any loss, cost, damage or expense (including damages paid to a third party and any reasonable legal costs) incurred by such Indemnitees as a result of a breach by the breaching party of any of



its obligations, representations or warranties contained herein. It is clarified that in the event of any such breach by the College or any claim, action or proceedings for such breach being brought against the Publisher or Publisher Indemnitees by a third party, the Publisher may withhold payment of any Royalty due to the College from any source under this Agreement until such claims are disposed of. This indemnity will survive the expiry or termination of this Agreement for any reason whatsoever.

### 13. DEFENCE OF COPYRIGHT

If at any time during the Term, either Party learns that any rights in the Book have been or are likely to be infringed by a third party, it shall immediately notify the other. In such event, College shall be entitled to take such steps or actions as it considers necessary to deal with the matter subject to intimation to the Publisher. If the College requests the Publisher to join the proceedings, such participation by the Publisher shall be at College's costs unless mutually decided otherwise for best interests of both parties.

### 14. TERMINATION OF CONTRACT

In addition to the termination rights provided elsewhere in this Agreement, this Agreement can be terminated as under:

- 14.1 Notwithstanding anything contained in this Agreement with regard to Termination, either Party may terminate this Agreement by giving a 60 days' written notice of termination to the other Party before the start of the next Academic Year (i.e. the academic year following the current academic year).
- 14.2 It is clarified that the College shall not be entitled to any further payments due after the date of termination of this Agreement in respect of the Book.
- 14.3 The Publisher may continue to sell those copies of the Book remaining which are in its possession or control as at the date of expiry or termination of this Agreement on a non-exclusive basis subject to the payment of Royalties .
- 14.4 Termination of this Agreement for any reason shall not affect:
  - a) any subsisting rights of any third party under any licence or sub-licence validly granted by the Publisher prior to termination;
  - b) any rights or liabilities of the parties arising prior to termination;
  - c) any claim which either party may have against the other for damages or otherwise.

### 15. GENERAL

- 15.1 Notices: Unless otherwise provided for, communication on business matters issued under this Agreement shall be sent by hand, registered post, courier service or facsimile along with a copy by email addressed to the respective signatories of the Parties to the addresses specified below or to such other address or addresses as the respective party may designate from time to time. Such communications shall be considered to have been sufficiently delivered on the fourth (4th) business day

following the date of sending such notice if by registered post or a reputed courier service, on the next business day following transmission, if by facsimile or email provided such email or facsimile generated a delivery report and if by hand, at the time of delivery.

Address for correspondence to the Publisher

Name : Mr Yash Mehta  
Designation : Director  
Address : Macmillan Campus, D-90, Sector 2, Noida – 201 301  
Email : [yash.mehta@macmillan.co.in](mailto:yash.mehta@macmillan.co.in)

Address for correspondence to the College

Name : Dr S.D. Salunke  
Designation : Principal  
Address : Rajarshi Shahu College, Opp. Central Bus Stand,  
Kaku Seth Ukka marg, Chandra Nagar, Latur, Maharashtra  
- 413512  
Email : [anu192227@gmail.com](mailto:anu192227@gmail.com); [sachinbhandare4u@gmail.com](mailto:sachinbhandare4u@gmail.com)

- 15.2 Non-waiver: The failure by either party to enforce any one or more of the terms of this Agreement at any time or for any period shall not constitute a waiver of such term or of that party's right to enforce any and all terms of the Agreement subsequently.
- 15.3 Confidentiality: Each party undertakes to the other that it will not, without the prior written consent of the other, disclose the terms of this Agreement and all the information, data and records provided by the Publisher to the College to any third party, except to their respective professional advisors or as required by a court, regulatory body or other authority of competent jurisdiction.
- 15.4 Further Acts: The Parties agree to execute all documents and do all things reasonably required by them in order to give effect to the provisions of this Agreement.
- 15.5 Severability: In the event any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unaffected, and the invalid, illegal or unenforceable provision(s) shall be replaced by a mutually acceptable provision(s), which being valid, legal and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision(s).
- 15.6 No Partnership: The relationship between Parties is on principal to principal basis. Nothing in this Agreement shall be deemed to constitute either Party a partner, joint venture, agent or legal representative of the other Party, or to create any fiduciary, employer-employee relationship between the Parties.

## 16. ASSIGNMENT AND SUB-CONTRACTING





Neither party may assign the benefit or burden of this Agreement without the other party's prior written consent. Notwithstanding the foregoing, the Publisher may assign any of the rights herein, sub contract any responsibilities herein to any other party without the consent of the College.

**17. DISPUTE RESOLUTION**

In the event of any dispute or difference arising between the Parties arising out of or concerning this Agreement or its construction or effect or the rights, duties or liabilities of the Parties or any other matter in any way connected with or arising out of the subject matter of the Agreement, the Parties shall endeavor to settle the same by mutual negotiations and agreement. If, for any reason, such dispute or difference cannot be resolved amicably by the Parties within 45 calendar days of the same being notified by one Party to the other in writing, the same shall be settled by way of arbitration proceedings to be conducted by a sole arbitrator to be mutually appointed by the Parties. In the event the parties fail to appoint an arbitrator within 30 days, the arbitrator shall be appointed by the High Court of Delhi in accordance with the Arbitration and Conciliation Act, 1996 and any amendments thereto. The arbitration proceedings shall be held in accordance with the Arbitration and Conciliation Act, 1996 including any of its recent amendments. The decision of the arbitrator shall be final and binding upon the Parties. The venue of the arbitration shall be Delhi. The language of the arbitration and the award shall be English.

**18. ENTIRE AGREEMENT**

This Agreement is the entire and only agreement between the parties concerning its subject matter and supersedes any and all prior agreements, arrangements and understandings (whether written or oral) relating thereto. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless it is in writing and duly signed on their behalf.

Nothing in this Agreement shall exclude or limit a party's liability for fraud or any other matter the exclusion or limitation of which is not permitted by law.

**19. GOVERNING LAW**

Agreement shall be deemed to be a contract made in India and shall be construed and applied in all respects in accordance with applicable Indian laws and subject to clause 17; the parties hereto submit and agree to the exclusive jurisdiction of the courts of Noida.

**20. FORCE MAJEURE**

Neither party shall be in breach of this Agreement if it is prevented from carrying out any of its obligations because of circumstances beyond its reasonable control in which





case the time permitted for that party to fulfil those obligations shall be extended by the length of those circumstances or that delay.

21 **OTHERS**


Both Parties shall in an honest way and without the use of corrupt practices or acts of bribery to obtain an unfair advantage conclude the transaction herein complying with the applicable laws in this regard.

IN WITNESSES WHEREOF, the Parties hereto have executed this Agreement in duplicate on the date written above in the presence of:

For and on behalf of  
Macmillan Publishers India Private Ltd.

  
Director – Schools

For and on behalf of  
Rajarshi Shahu Mahavidyalaya

  
Authorized Signatory  
**PRINCIPAL**  
Rajarshi Shahu Mahavidyalaya  
(Autonomous), Latur



**Annexure A**  
**Specifications of the Books**

Title of the Book: Communicative English II

Year of Publication: 2016

Size: 7.25 x 9.5

No of Pages: estimated at 150

Paper specification: 60 gsm for text

Cover specification: 300 gsm

Text printing: 1c

Cover printing: 4c

Binding: Paper binding

Price of the book: INR 130/- for the 1<sup>st</sup> Academic Year however subject to revision upon agreement, due to inflation etc.

**Special Terms:**


Discount: 10% on MRP for all Titles under this Agreement, on orders placed by the College directly to the Publisher.

Payment: The College will pay the Publisher not later than 30 days from the date of invoicing, for orders directly supplied by the Publisher to the College.

For and on behalf of  
Macmillan Publishers India Private Ltd.

  
Director – Schools

For and on behalf of  
Rajarshi Shahu Mahavidyalaya

  
Authorized Signatory  
**PRINCIPAL**  
Rajarshi Shahu Mahavidyalaya  
(Autonomous), Latur





No. \_\_\_\_\_ Date \_\_\_\_\_  
Rs. \_\_\_\_\_  
FULL NAME AND ADDRESS  
Purpose \_\_\_\_\_

Macmillan Publishers India Ltd  
8e-2, Noida



120 MAR 2010

A.K. Sharma Stamp Vendor  
Reg. No. 56, Sec-16, NOIDA  
Gautam Budh Nagar, U.P. INDIA

