

**MEMORANDUM OF UNDERSTANDING (MoU)**  
**Between**  
**NATIONAL PRODUCTIVITY COUNCIL (NPC), NEW DELHI**  
**And**  
**KPMG INDIA SERVICES LLP (KISL)**

This Memorandum of Understanding (MoU) made on 30<sup>th</sup> July 2021 at New Delhi between

**National Productivity Council (NPC), under Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India,** hereinafter referred to as NPC having its registered Office (HQ) at Utpadakta Bhawan, 5-6 Institutional Area, Lodhi Road, New Delhi- 110003, represented by Secretary, NPC, (which expression unless it be repugnant to, or excluded by the context or meaning thereof be deemed to mean and include its successors, assignees); first part.

And

**KPMG India Services LLP (KISL)** hereinafter referred to as KPMG having its registered office at 1st Floor, Lodha Excellus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai, Maharashtra, represented by Shri.Vivek Agarwal, Partner, Infrastructure, Government and Healthcare (which expression unless it be repugnant to, or excluded by the context or meaning thereof be deemed to mean and include its successors, assignees); second part;

each a “Party” and together the “Parties”.

Whereas,

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## **I. PURPOSE**

The aim of this MoU is primarily to discuss and evaluate the possibility of co-operating with a view to collaborate on development of National Productivity Index('Index') and other areas as may be determined from time to time ("Purpose").

Each Party shall at all times, in its dealings with the other Party, carry out its intentions and give effect to its declarations set out in this MoU in good faith and shall otherwise act in relation to all its dealings with the other Party in good faith.

## **II. AREAS OF COLLABORATION/ STATEMENT OF WORK (SoW)**

Formulation of a Productivity Index to examine key distortions in the production structure and productivity of Indian firms by using plant and firm data, would help push the implementation of structural and policy reforms for industries in the country. It is agreed between the Parties that this MoU is solely being executed between the Parties with intent to explore the possibility of the Purpose. For avoidance of doubt, nothing in this MoU shall constitute a commitment, obligation or undertaking on either Party to enter into an Alliance Agreement or any further agreements or arrangements. Each Party shall be at liberty, either alone or in conjunction with one or more third parties, to continue to develop, market, provide to clients and customers and otherwise deal with any and all products or services of any nature or description, provided that in doing so that Party does not breach any obligations under this MoU which are stated to be legally binding.

## **III. AGREEMENT FOR COLLABORATION**

The Parties intend to draw up separately the detailed terms and conditions pursuant to which such intended co-operation shall be implemented in an agreement to co-operate (the "A2C"). On execution of the A2C, this MoU shall expire and shall be superseded by the A2C.

Each such collaboration undertaken by the two organizations shall describe in detail the following:

- i. The nature, scope and time of collaborative schedule
- ii. Financial implications& sharing mechanism, wherever applicable.
- iii. Any other provision as deemed to be necessary and agreed by both





in connection with or for the Purpose, the Parties shall be creating the Index (“Documentation”). Unless otherwise agreed by the Parties separately in writing, each Party shall bear its own costs (including legal and other professional adviser fees) in relation to the negotiation, preparation, execution and completion of this MoU and any A2C. This clause is intended to be legally binding and shall survive expiry or termination of this MoU.

Broad roles and responsibilities agreed between NPC and KPMG are delineated below:

#	Activity	Role	
		Primary	Secondary
1	Preparation of approach and framework for NPI	KPMG	NPC
2	Identification and finalization of key indicators along with data sources to be considered	NPC and KPMG	
3	Preparation and finalization of survey form	KPMG	NPC
4	Dissemination of survey form to government and industry stakeholders for inputs	NPC	KPMG
5	Stakeholder Consultation – Senior Government Officials and Industry Members	NPC	KPMG
6	Data Collection	NPC	KPMG
7	Access to existing knowledge on productivity studies	NPC	KPMG
8	Data Collation & Analysis	NPC and KPMG	
9	NPC Report Preparation	KPMG	NPC
10	Review and necessary sign off on deliverable along with DPIIT	NPC	KPMG
11	NPC Report Publication and printing	NPC	
12	Industry and government sensitization workshops and presentation (infra to be facilitated by NPC knowledge management by KPMG)	KPMG	NPC

#### IV. NODAL AUTHORITY AND SIGNATORIES

The nodal officer and signatory from NPC shall be Secretary, NPC or any nominee and the nodal officer and signatory from KPMG shall be Shri. Vivek Agarwal or any nominee for all the decision making and concurrence.

#### V. IMPLEMENTATION AND ACTION PLAN

- i. NPC and KPMG shall endeavor to finalize the details of implementation and action plan of collaborative initiatives to execute the parts of this MoU.



- ii. Financial commitments related to joint initiatives will be decided mutually by both organizations.

## VI. TENURE & TERMINATION

The MoU shall be effective from the date of signing and same shall remain in effect until the earlier of (i) 3years or (ii) the date of execution of the A2C; and may be renewed or discontinued thereafter on mutual consent, giving prior written notice of thirty (30) days by either side. Either Party shall be entitled to terminate this MOU at any time by giving prior written notice to the other Party, such notice to be of effect immediately on delivery, if the other Party commits a breach of any of the terms or conditions of this MoU and, if such breach is capable of remedy, fails to remedy such breach within thirty calendar days after receipt of notice in writing from the first Party identifying such breach requiring its remedy.

Either of the parties may terminate this MOU by giving prior written notice to each other, such notice to be of effect immediately on delivery, on or at any time (i) if either of the parties develops reservations about its ability to source potential opportunities to develop the co-operation between the Parties as anticipated by this MOU; (ii) if either of the parties identifies circumstances resulting from this MOU which the parties consider may prejudice each other's ability (or the ability of any firm associated with either of the parties through membership of the same network to which either of the parties belong) to comply with any applicable conflicts or ethical and/or independence requirements or which in each other's sole judgement may have a significant adverse impact upon the goodwill, brand and/or reputation of either of the parties or any of its clients; or (iii) if either of the parties makes any assignment for the benefit of creditors without consent of the other party would be resolved mutually through an arbitrator appointed as per provisions of clause VIII below and the decision of the arbitrator will be final.

Upon the termination of this MoU for any reason, each Party shall return or delete the other Party's Confidential Information including such Intellectual Property Rights as have been licensed by the licensing Party to the other under clause VII; and return any assets that have been made available by one Party.





## VII. INTELLECTUAL PROPERTY

Neither party shall use the intellectual property, including logos, trademarks, service marks, trade names, service names, nor brand names of the other party, without obtaining prior written consent of such party.

For the purposes of this MoU, "Intellectual Property Rights" shall mean patents, copyrights, design rights, rights in databases, trademarks and trade names, service marks, and other intellectual property rights (whether registered or unregistered) and all applications and registrations for and extensions and renewals of such rights or any of them, anywhere in the world.

Each Party owns and shall continue to own all Intellectual Property Rights in its services and in related documentation and in any documentation developed or work performed by such Party for or in connection with the Purpose without the significant contribution of other Party. Each Party hereby grants to the other Party a licence to use such Intellectual Property Rights owned by the Party only for or in connection with the Purpose for the duration of this MoU. By this limited licence, the Party grants at its own expense to the other Party the right, for or in connection with the Purpose only, to copy and reproduce such Intellectual Property Rights, in all forms and media throughout the world, for the duration of this MoU.

KPMG and NPC shall jointly own Intellectual Property Rights in the Index created under this MoU. Either Party may use the Index/ Documentation for or in connection with the Purpose for the duration of this MoU. Neither Party shall be entitled to use the Documentation in any other circumstances or for any other purposes or after expiry or termination of this MoU, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

The Parties acknowledge that any breach of this clause shall entitle the non-breaching Party to take legal or other action against the breaching Party.



## VIII. DISPUTE RESOLUTION & CONFIDENTIALITY

Any dispute arising due to misunderstanding in relation to terms & conditions of MoU shall be resolved amicably by the executants of the MoU without resorting to the Court of Law and/or by Head of the both parties. The decision of settlement of disputes arrived at shall be final and binding on both the parties. This MoU shall in all respects be subject to and governed by and construed in accordance with Indian law, and in connection with any dispute arising on any basis from or under this MoU the Parties submit to the exclusive jurisdiction of the Indian Courts.

At the same time, utmost confidentiality to be maintained by both the parties during the validity of MoU.

For or in connection with the Purpose, "Confidential Information" may be disclosed by or for one Party to the other Party pursuant to this MoU, wherein 'Confidential Information' shall mean any and all written, oral or other tangible or intangible form of technical information including, but not limited to, discoveries, ideas, concepts, know-how (whether or not patentable or capable of being protected by copyright or other means available by statute or treaty), research, development, designs, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data computer programmes, disks, diskettes, tapes, algorithms, software programmes; tangible or intangible form of trade secrets; tangible or intangible form of commercial, financial and business information, including but not limited to information concerning a Party's current and future products and services, the services of NPC or KPMG or a Party's clients, customers and contacts, its industry knowledge and expertise, its business plans and strategies, its marketing plans and techniques, whether or not knowledge of that information could give any potential or actual competitor of the disclosing Party any form of commercial or other advantage and shall also include any Documentation that may be created; and the Purpose and the existence, nature, form and content of this MoU.

The Confidential Information shall exclude any information which (i) is in the public domain at the time it is acquired by either Party or enters the public domain after that, otherwise than as a result of unauthorized disclosure by the receiving Party; (ii) is already in a Party's possession prior to its disclosure to such Party; (iii) becomes lawfully available to a Party





from a third party whom it reasonably believes to be free from any confidentiality restriction; (iv) is independently developed by or for a Party without reference to other Party's Confidential Information or (v) is required to be disclosed by a Party pursuant to operation of law or any rule or requirement of any regulatory authority or government agency with which such Party is bound to comply, provided that if permitted by law the such Party gives the other Party written notice of such requirement as soon as reasonably possible after learning of such requirement and, to the extent reasonably possible, an opportunity for the other Party at its discretion to take such steps as may be available to the other Party to avoid disclosure. Each Party shall be authorized to disclose the Confidential Information disclosed by the other Party, under obligations of confidentiality giving equivalent protection to those contained in this MoU, to those of its executive officers and employees ("Representatives") to whom disclosure is strictly necessary for or in connection with the Purpose or to facilitate the performance of any applicable client conflict or auditor ethics and independence clearance procedure or disclose to such Party's legal advisers for the purposes of seeking advice relating to the Purpose or such Party's professional indemnity insurers.

Subject to confidentiality obligations stated herein, each Party may retain one copy of the other Party's Confidential Information whether included in notes, reports, analyses, computations, studies or other documents in any format which are generated by such Party or its Representatives from Confidential Information of the other Party, for the purpose of compliance with its professional rules of conduct or its internal compliance procedures and committees or to the extent it is stored electronically in such Party's automatic archiving or back-up systems.

## **IX FORCE MAJEURE**

Neither party shall be made responsible for an unexpected or uncontrollable event.

## **X. WARRANTY:**

No warranty is given by either Party as to the quality, accuracy or fitness for the Purpose or any purpose of any Intellectual Property Rights or Confidential Information. No other rights or obligations other than those expressly set out in this MoU are to be implied by this MoU with respect to either Party's Intellectual Property Rights or any Confidential Information disclosed by one Party to the other. To the fullest extent permitted by law, any and all



warranties, terms or conditions implied by law or otherwise (including, without limitation, in relation to quality, accuracy or fitness for the Purpose or any purpose) are hereby expressly excluded. Each Party warrants to the other that it is entitled to use, disclose and grant the limited licences in its Intellectual Property Rights and Confidential Information that are set out in this MoU and that no third party rights are thereby infringed. Neither Party makes any warranty or representation to the other that the Purpose shall be successfully implemented and/or that any Business Case shall be successfully developed and/or that the outcome of entering into this MoU shall be as anticipated on execution of this MoU.

#### **XI. LIABILITY:**

In no event shall either party be liable for any indirect, consequential, punitive, exemplary or incidental damages. In this clause, the word "Party" includes a Party's executive officers and employees. As this MoU between parties is general in nature and specific agreements will be entered between the parties in future as mentioned in Para II and III of MoU, the parties shall not be liable under this Agreement, except for breach of their confidentiality obligations stated under clause VIII and breach of intellectual property rights stated in clause VII, under this Agreement. The Parties acknowledge that their respective Confidential Information and Intellectual Property Rights constitute vital business assets and agree that damages may be insufficient to compensate for a breach of the obligations contained in clauses VII and VIII of this MOU. The Parties recognise that any such breach will be amicably resolved without resorting to the Court of law by Heads of both parties. If such breach or dispute is not resolved amicably, an arbitrator can be appointed with mutual consent of both parties as per the provisions of Arbitration and Conciliation Act, 1996, India, and the decision of the arbitrator will be final. The legal seat and venue of arbitration shall be Delhi and the arbitration proceedings shall be conducted in English.

#### **XII. PUBLICITY:**

No publicity or advertising material shall be issued by either Party in relation to this MoU or the Purpose without the prior written consent of the other Party.

#### **XIII. GENERAL PROVISIONS:**

- i. Both Parties warrant that they are acting as Principal in this matter and not as agents or brokers for any person, company or firm. In addition, this MoU is not intended to, and shall not be deemed to constitute, create, give effect to or otherwise establish, any joint venture, pooling arrangement, partnership or other form of business organization of any kind, nor shall this MoU authorize





- either Party to make or enter into any commitments for or on behalf of the other Party.
- ii. No Party may assign the benefits or transfer the obligations of this MoU to another party without the prior written consent of the other Party. In the case of a proposed assignment or transfer to a parent or subsidiary entity or to an entity under common control, the consent of the other Party shall not be unreasonably withheld or delayed.
  - iii. All notices, certificates and acknowledgements must be in writing and may be delivered by hand or by courier, or sent by first class post to the office identified in this MoU, marked for the attention of Shri. Vivek Agarwal for KPMG and Secretary NPC for NPC. Either Party can change its address for service to another address within India by giving reasonable notice to the other. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to be delivered within 48 hours after posting.
  - iv. Clauses II, III, VII, VIII, X and XI are intended to be legally binding and shall survive expiry or termination of this MoU.

The parties herein have agreed and signed this document on this 30<sup>th</sup> day of July 2021 as under as per above clauses.

#### FOR AND ON BEHALF OF KPMG


  
  
**Partner**  
**Infrastructure, Government and Healthcare**  
**KPMG India Services LLP (KISL)**

#### Witnesses-


1.0 


2.0 

#### FOR AND ON BEHALF OF NPC

  
**Secretary**  
**National Productivity Council**  
**On behalf of DG NPC**

डा. रजत शर्मा / Dr. Rajat Sharma  
 सचिव / Secretary  
 राष्ट्रीय उत्पादकता परिषद्  
 NATIONAL PRODUCTIVITY COUNCIL  
 (वणिज्य एवं उद्योग मंत्रालय भारत सरकार के अन्तर्गत)  
 (Under Ministry of Commerce & Industry, Govt. Of India)  
 लोधी रोड, नई दिल्ली / Lodhi Road, New Delhi-110003

1.0   
 Dr. K-P. Sunny  
 Director (ES)

2.0   
 RAJESH SINGH  
 Div (ES)