

The background of the entire page is a silhouette of a city skyline against a sunset or sunrise sky. The sky transitions from a deep blue at the top to a warm orange and yellow at the bottom. The skyline includes various buildings, a prominent tower with a spire, and a dome-shaped structure. The word 'PROPOSITION' is written vertically in large, white, sans-serif capital letters on the left side of the page.

PROPOSITION

*NLIU Agreement Drafting &
Presentation Competition*

30 March 2024

INTRODUCTION AND BACKGROUND

1. AI-Future Private Limited (“APL”) is a company incorporated in India under the Companies Act, 2013, having its registered office at 07, Electronic City, Bengaluru, India, 561007. APL is a subsidiary of a foreign company, AI-Future Pte Ltd (“APL Singapore”), having its registered office at 226, Tannery Road, Singapore, 347750.

2. APL, a rising star in India’s artificial intelligence (AI) scenario, has carved its niche by crafting intelligent solutions for software and service companies. Their success, fuelled by the post-pandemic AI boom and government initiatives, had attracted the attention of Micromast Multimedia Inc. (“**Micromast**”), a global tech giant incorporated in the United States having its registered office at 2742, 10th Ave S, Ste 800, Seattle, WA 91834. Micromast has shown eagerness to tap into the Indian market in the recent past. With its vast reach and resources, it promises several opportunities, which would have the potential to take APL to unparalleled heights.

3. Whereas at the heart of APL stand three stakeholders: APL Singapore, the holding company fully owned by the Singaporean entrepreneur, Raghav (*an angel investor for student startups who had provided the initial funding*), and Rahul and Vikas, the visionary IIT Bombay alumni, who had together laid the foundation of APL. Raghav has now sought an exit. Rahul and Vikas, however, brimmed with ambition, are determined to steer APL’s future growth.

4. The negotiations began, but the picture was not as simple as it seemed.



THE INVOLVED STAKES

5. Integrating APL's expertise with their global network could propel the Indian company to become an incredibly successful venture. However, there were concerns that lingered surrounding the operations and management of the company if the transaction went ahead. Would Micromast's acquisition stifle APL's agility and innovative spirit? How would Rahul and Vikas, with their deep-rooted connection to the company, fit into the new landscape?

6. As the negotiations ensued, both sides carefully manoeuvred for their best interests. Micromast, keen to secure a foothold in the Indian AI market, offered an attractive valuation. Raghav, ready to move on, saw this as a favourable exit strategy. However, for Rahul and Vikas, the equation was not as simple. They sought assurances about APL's autonomy, their continued involvement, and preservation of the company's culture. As discussions progressed, one thing became clear: this was not just a business deal, it was a crossroads of ambition and opportunity.



THE TERM SHEET

7. Legal counsels appointed by APL and Micromast have signed a term sheet for the acquisition of APL (dated 12 February 2024) with an exclusivity clause ending on 1 April 2024.

8. Following discussions on 13 and 14 February 2024, Rahul and Vikas have agreed to continue working with Micromast as heads of the AI division, which is set to absorb APL. They will be employees of Micromast for a period of three financial years starting March 2024, subject to an extension period, based on mutual discussion between the parties.

9. Counsels for Rahul and Vikas have decided to come back with a draft of the employment and consultancy agreement basis the below mentioned points:

a. *Lock-in Restrictions:* Rahul and Vikas will be subject to lock-in restrictions, meaning, they will be unable to leave Micromast for a certain period. Micromast will have the right to terminate their employment without notice if they fail to meet certain business and financial performance milestones.

b. *Termination:* Micromast shall have the unilateral right to terminate the employment of Rahul and Vikas (*without notice*) in case of failure to meet certain milestones on the business and financial performance of Micromast.

c. *Indemnity:* Rahul and Vikas will be required to indemnify Micromast for any losses caused by their fraudulent actions in APL, which are discovered by Micromast after the acquisition.



d. **Milestones:** The agreement will set out specific business and financial milestones that Rahul and Vikas will be responsible for achieving. These milestones will track the performance of the AI division *[Participants may base the milestones on terms found in standard employment agreements, which may consist of milestones, including but not limited to profitability, revenue goals, undertaking key hirings, expansion of clientele, etc.]*.

e. **Earnouts:** The purchase consideration for the acquisition of APL by Microsoft will not be paid upfront in full. Instead, part of the consideration will be paid to Rahul and Vikas in the form of earn-out consideration, which will be based on their performance and achievement of milestones *[Participants are free to draft the earnout provisions based on their milestones, such that, this payable consideration shall remain compliant with the pricing norms under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019]*.

f. **Restrictive Covenants:** Restrictive covenants such as non-compete and non-solicit restrictions to be provided during and post the term of employment of Rahul and Vikas *[The position of the parties is unclear as to whether the restriction will apply only on the AI sector in which APL operates or it would also extend to the wide scope of business undertaken by Micromast]*. It is also pertinent to note that Rahul and Vikas are professionals in the AI sector and they only have employable skills in this area. Owing to this, they fear that if their employment is terminated by Micromast, they would be out of jobs, post their term of employment, due to the imposition of the restriction.

g. **Duties:** General duties of an employee heading the AI division of the business *[Participants are expected to research on duties of an employee in an AI business and craft duties including, but not limited to, managing day-to-day operations; innovating to meet the ongoing demands of the business; entering into transactions that are beneficial for the company; management of assets and properties; establishing pricing and other strategies and undertaking non-managerial tasks]*.



h. *Dispute Resolution:* It is agreed that in case any dispute arises between the parties, they would resort to arbitration seated in Bengaluru, India [*The disputes shall be finally resolved through arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the SIAC. The language of the arbitration shall be English. The place of arbitration shall be Bengaluru, India*].

i. *Liquidated Damages:* Rahul and Vikas may be held liable to pay liquidated damages to the tune of INR 10 million in case of any breach of their obligations under their employment agreement. Indemnity and liquidated damages not to be the only remedies available, and Micromast may pursue other remedies under applicable law, including specific performance.

j. *Standard clauses* on confidentiality, non-disparagement, term and other miscellaneous provisions to be incorporated, as is standard in an employment contract.

10. Micromast and APL have decided to reconvene at National Law Institute University, Bhopal on 30 March 2024 to negotiate and finalise the draft of the employment agreement.

11. You have been appointed as legal counsel(s) for APL to draft the employment agreement (which will then be replicated for both Rahul and Vikas, given the similar terms of their employment) [*Participants are expected to also provide a Concept Note providing their legal opinion on the relevant clauses of the Contract highlighting the rationale behind inclusion of particular clauses. The legal opinion shall also include the Stamp Duty payable on an agreement of this nature (assuming executed in Karnataka, India). Further, this exercise may extend to legality and enforcement of contractual terms as well. Lastly, the Concept Note may also delve into contemporarily relevant aspects in law that pertain to the Contract Proposition*].



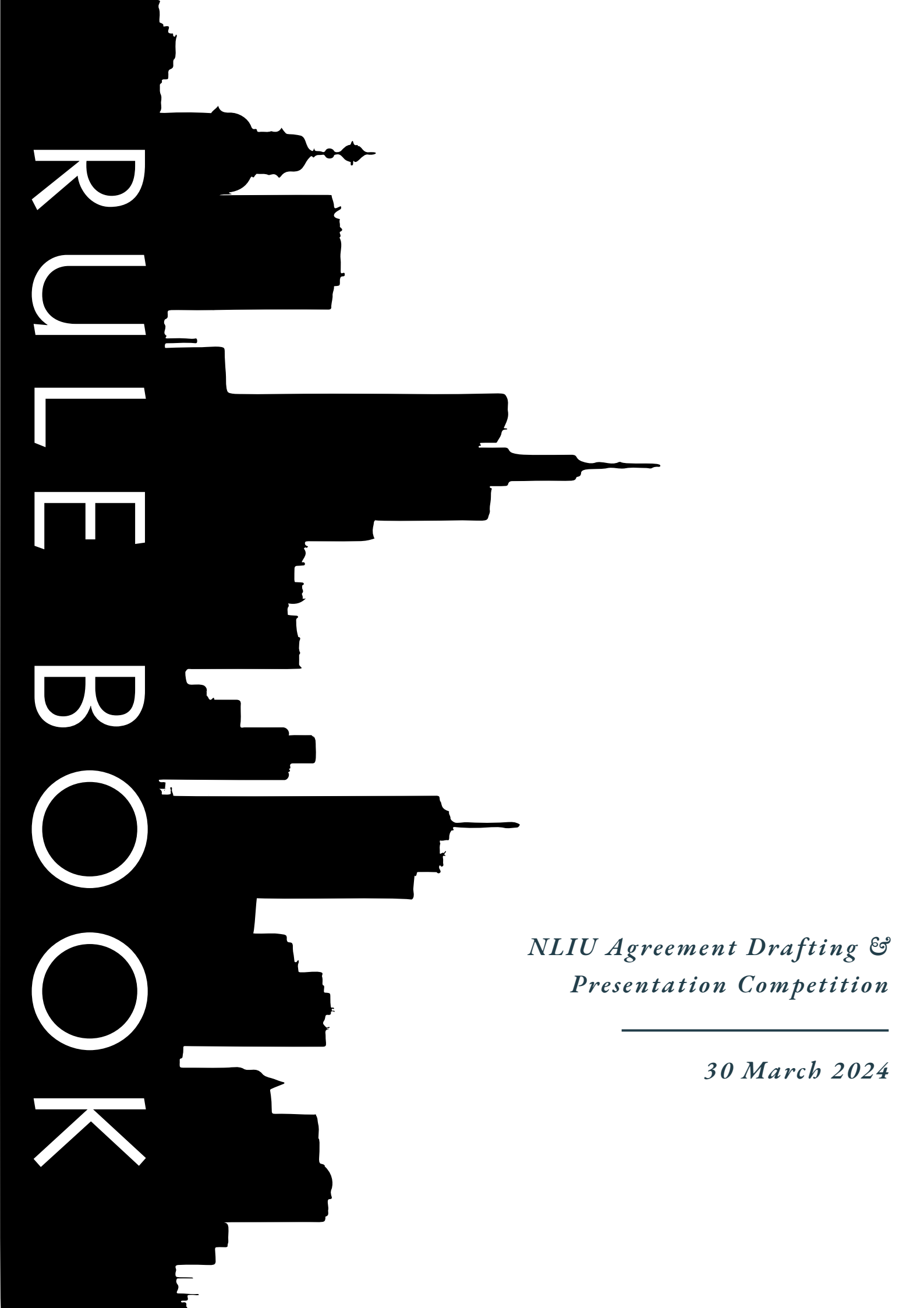
EPILOGUE

12. Can Micromast and APL forge a mutually beneficial partnership that respects individual aspirations and unleash their collective potential? Or, will the negotiations stumble, leaving both parties at the precipice of unfulfilled dreams? Only time will tell what the future holds for APL, but one thing is certain: the stakes are high, and the outcome will reverberate through the Indian AI landscape.

NOTE

- 1. Participants may seek clarifications (if any) relating to the Contract Proposition by filling out the Google Form attached [here](#) on or before 27 February, 2024.*
- 2. Participants are free to add any clauses they wish to incorporate in their Agreements subject to the Rulebook.*



A black silhouette of a city skyline is positioned on the left side of the page, extending from the top to the bottom. The skyline includes various buildings of different heights and shapes, some with pointed tops and others with flat roofs. The text 'RULEBOOK' is overlaid on the left side of this silhouette.

RULEBOOK

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RULES

- The Agreement drafted by the participants must be their original work. Use of AI is strictly prohibited for the purposes of the competition.
- The Agreement must be drafted in English language.
- The language of the Agreement must be plain and simple.
- The Submission must be made in .docx format only.
- The Page Limit for the Contract shall be 15 Pages including the Cover Page, Signature Page and Annexures (*if any*).
- The word limit for the Concept Note shall be 1,500 words.
- Formatting Style: Times New Roman, font size 12, line spacing 1.5, justified alignment, 1 inch margin on all sides.
- Submission must be made through the electronic form which can be accessed [here](#).

CONCEPT NOTE

- The Concept Note must highlight the rationale for inclusion of important clauses in the Agreement in brief.
- The legal opinion shall also include the Stamp Duty payable on an agreement of this nature (assuming executed in Karnataka, India).
- It should provide for a legal opinion to the Client advising on fulfilment of their interests. The opinion can also delve into the legality and enforcement of the Agreement.
- It may also discuss a novel aspect relating to the Contract Proposition which is of contemporary relevance. [Any novel contribution to the existing literature would increase the chances of publication in the NLIU Law Review Blog].