

SERVICE AGREEMENT

This Service Agreement (“**Agreement**”) is entered into as on the last signature date as set out below which shall be effective from _____ (“**Effective Date**”) by and between

NetApp Internet Private Limited, a company incorporated under the Companies Act 2013, having its registered office 1st Floor, No.36, NGEF Lane, Indiranagar, Bangalore - 560038, hereinafter called “**NetApp**” (which expression shall unless repugnant to the context or meaning thereof be deemed to include its Affiliates, successors in business and assigns) of the **FIRST PART**; and

XXX, a Stamp Vendor and having its registered office at No.36, 2nd Floor, NGEF Lane, Indiranagar, Bangalore - 560038, (hereinafter referred to as ‘**Service Provider**’, which expression shall unless repugnant to the context thereof be deemed to include his legal heirs, representatives) of the **SECOND PART**

NetApp and the Service Provider shall hereafter individually be referred to as a “Party” and collectively as “Parties”.

WHEREAS:

- A. The Service Provider is inter alia, engaged in the service of providing stamp papers and authorized stamp vendor
- B. The Service Provider has represented that it has sufficient and adequate expertise experience and infrastructure to carry out the Services (*as defined hereinafter*).
- C. NetApp is desirous of availing the Services offered by the Service Provider, more particularly detailed in Annexure A of this Agreement.
- D. NetApp relying on the representations and warranties of the Service Provider as set out in this Agreement, has agreed to receive the Services and the Service Provider has agreed to provide the Services to NetApp, under the terms and conditions set forth under this Agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. Definitions

- 1.1. The following terms shall have the meanings hereinafter assigned to them. Any terms not specifically defined below shall have the same meaning as assigned to them in the respective clauses/ sub-clauses/ paragraphs of this Agreement.

- 1.1.1. “**Affiliate**” means, in relation to either Party, that Party and every other company which is for the time being a subsidiary or holding company of that Party or a subsidiary of any such holding company (where “subsidiary” and “holding company” shall have the meanings ordinarily given to them in the Companies Act 2013). **OR** shall mean any entity which is the holding entity or subsidiary of such Party or an entity under the control of or under common control with such Party (where “control” would mean the holding of more than 50% of the voting rights in such entity, either directly or indirectly and the ability to appoint more than 50% of the directors on the Board in such entity; or the ability to appoint the Managing Director of such entity or the ability of that person to direct or

cause direction of the management and policies of such entity, evidenced through shareholders' agreement, board resolution or any other evidence

- 1.1.2. **"Agreement"** shall mean this service agreement together with the recitals, annexures and schedules herein executed between the Parties and having reference to the terms of this Agreement, which may or may not be annexed to this Agreement, and any amendments/modifications made to this Agreement by the Parties in accordance with the terms hereof.
- 1.1.3. **"Applicable Law"** means any law, statute, rule, regulation, order, circular, decree, directive, judgment, decision or other similar mandate of any applicable central, national, state or local governmental authority having competent jurisdiction over, or application to a Party or subject matter in question.
- 1.1.4. **"Claims"** means claims, liabilities, losses, damages, fees and expenses, including all attorneys' fees and other costs of litigation or other dispute resolution.
- 1.1.5. **"Confidential Information"** in the context of this Agreement, shall mean and include nonpublic information disclosed by a Party or its Affiliates, agents or contractors (collectively, the "Disclosing Party") to the other Party, its Affiliates or any agents, or contractors or any other representative(s) of any of them (collectively, the "Receiving Party") that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes (i) nonpublic information relating to the Disclosing Party's technology, users, business plans, know how, business and operating processes, trade secrets promotional and marketing activities, finances and other business affairs, (ii) third-party information that the Disclosing Party is obligated to keep confidential, (iii) the nature, content and existence of any discussions or negotiations between the Parties, this Agreement and (iv) any bank account information.
- 1.1.6. **"GST"** shall mean goods and services tax.
- 1.1.7. **"Intellectual Property Rights"** means (i) copyright, patents, know-how, confidential information, database rights, and rights in trademarks and designs (whether registered or unregistered), (ii) applications for registration, and the right to apply for registration, for any of the same, and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.1.8. **"IP Materials"** means all documents, software including code bases, source code or object code, photographic or graphic works of any type, and other materials in any medium or format which are created by or on behalf of Service Provider specifically and uniquely in the course of performing his obligations under this Agreement and which are protected by or relate to Intellectual Property Rights.
- 1.1.9. **"Person(s)"** shall mean any individual, sole proprietorship, unincorporated association, unincorporated organisation, body corporate, corporation, company, partnership, unlimited or limited liability company, joint venture, government authority or trust or any other entity or organization.
- 1.1.10. **"Personal Data/ Information"** shall have its meaning ascribed to it in Annexure D.
- 1.1.11. **"NetApp Data"** shall mean (i) data collected, used, processed, stored, or generated by the Service Provider; and, (ii) Personal Data collected, used, processed, stored, or generated by the Service Provider; and (iii) any IP Materials.
- 1.1.12. **"NetApp Personal Information"** shall have its meaning ascribed to it in Annexure D.

2. Scope of Service

- 2.1. The Service Provider shall provide the services more particularly described in **Annexure A** (“**Services**”) attached hereto and incorporated herein by reference. NetApp reserves the right to add, delete, substitute and amend the scope of Services during the Term (defined hereunder) of this Agreement by prior written intimation.
- 2.2. Service Provider shall be responsible for taking required and necessary actions to perform its obligations under this Agreement.
- 2.3. Service Provider will maintain complete and accurate records relating to the Services performed hereunder for a period of three (3) years beyond the expiration or termination of this Agreement. NetApp will have the right to inspect and audit Service Provider’s records including but not limited to the books of accounts and other documents at Service Provider’s place of business during normal business hours for the Term of the Agreement and for a period of one year thereafter at Service Provider’s cost. If such audit or audits reveal any error or discrepancy of any nature whatsoever, such error or discrepancy will be promptly corrected and any amount payable to NetApp as a result of such audit shall promptly be paid by the Service Provider. The Service Provider agrees to either (a) allow NetApp to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents that NetApp identifies for later access by NetApp. The Service Provider further agrees to disclose within 30 (thirty) days of receipt of any independent auditors reports, which bears directly on the performance or administration of this Agreement.
- 2.4. The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of 3 (three) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Service Provider for the purpose of fulfilling the Agreement.

3. Manpower Requirement

- 3.1. Service Provider shall engage requisite number of trained personnel for providing the Services, at its own cost and expense and NetApp shall not be responsible to make any payment whatsoever to any such personnel.
- 3.2. Service Provider shall provide the necessary instructions to its personnel for performance of Services under this Agreement.
- 3.3. Service Provider shall be solely responsible and liable for any act or omission of its personnel in relation to the performance of the Services under this Agreement.
- 3.4. Service Provider shall be responsible for making all statutory payments such as Provident Fund, ESI, Bonus, Gratuity, Maternity Benefit, statutorily required minimum wages, labour welfare payments and all other payments as per applicable laws.
- 3.5. Service Provider, through its assigned Personnel agree to execute and discharge the Services and obligations to the entire satisfaction of NetApp in accordance with the directions and specific instructions that may be issued by NetApp to the Service Provider from time to time.
- 3.6. Service Provider is responsible and liable for compliance and implementation of all statutory provisions applicable to it and to its employees from time to time.
- 3.7. Service Provider shall obtain all licenses, registrations, approvals, permissions, sanctions, etc. under applicable laws necessary to perform the Services including but not limited to the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 and any other applicable statutes. The Service

Provider shall also ensure that all applicable licenses, registrations, approvals, etc., is displayed at a dedicated space/notice board as may be required under applicable law.

- 3.8. The Service Provider is an independent Service Provider as against NetApp and shall be solely responsible for any and all obligations or liabilities arising out of its performance under this Agreement. NetApp shall not be concerned with the terms and conditions of employment that the employees/workers of the Service Provider may have with the Service Provider.
- 3.9. The Service Provider shall be solely responsible for any acts or omissions of its personnel deployed in relation to performance of the Services under the Agreement.
- 3.10. The personnel deployed shall always remain the employees of Service Provider and the Service Provider shall ensure that such Personnel shall not have any claims whatsoever including but not limited to employment claims against NetApp. In the event of any such claims, the Service Provider shall indemnify NetApp for all costs, damages, penalties, that may be incurred by and/or levied against NetApp.
- 3.11. The Service Provider shall be responsible for the entire supervision and control of the personnel deployed at NetApp.
- 3.12. The Service Provider shall assume all legal and financial responsibility for business and employment taxes, employee benefits, workmen compensation, employee insurance, minimum wage requirements, overtime payments and other employee related compensation issues with respect to its employees, as required by law.

4. Invoicing and Payments

- 4.1. The fee payable to Service Provider for providing the Services shall be in the manner set forth in **Annexure B** attached hereto and incorporated herein by reference. Such fee shall be net of applicable taxes, which shall be all inclusive including but not limited to all statutory payments, taxes, duties etc. present or future. Income tax, if applicable, will be deducted at source at the prevailing rate as per applicable law.
- 4.2. NetApp will pay invoices within 1 day from the date of receipt of invoice, except for those portions of any invoice that NetApp disputes in good faith and in writing. Further, it is hereby agreed that in case of any error in the invoice raised by the Service Provider, the same shall be rectified immediately upon same being notified to Service Provider.
- 4.3. The invoice shall be duly raised by the Service Provider within the time as prescribed under Goods and Service Tax Act. In case of any breach in the timelines prescribed in GST Act and there is a loss of any tax credits to NetApp such losses shall be duly indemnified by the Service Provider. Further, the Service Provider agrees to issue an advance receipt with appropriate GST break-up, in the event of collection of any form of advances against the services agreed to be made by the Service Provider.
- 4.4. Further, it is agreed between the Parties that the Service Provider shall raise a credit note on NetApp, in the event of any adjustment to the value of the Services (either proportionate or full) including the adjustment to the taxes applicable on the same.
- 4.5. The tax amount portion of the invoice shall be paid by NetApp only after the Service Provider has provided sufficient proof that the amount for the Goods and Services Tax charged in the invoice is declared in the applicable forms and the taxes have been paid. In case the Service Provider fails to pay such taxes or has not provided NetApp proof of their tax clearance, NetApp shall withhold the payments for the subsequent month.
- 4.6. The Service Provider shall always be compliant with the provisions of the GST Act and Rules, as more fully set out below –

- 4.6.1. Service Provider shall be responsible for all the compliances required under GST Act and Rules, within the timeline specified, including but not limited to:
- a) Raising of tax invoice/ debit note and uploading the same on the Government website in GSTR-1.
 - b) Uploading details of output GST payable on the Government website in GSTR-3B.
 - c) Ensuring payment of output tax to the respective Government within the due date.
 - d) Any other activity, to ensure that all eligible GST credit in respect of the service, which is the subject matter of this contract, is available to the Company as required by the Government website.
 - e) In case of any error relating to GST in the tax invoice/ GSTR-1 uploaded by the Service Provider, such error shall be rectified by the Service Provider within the times lines prescribed under the GST laws to ensure the Company is eligible to get the GST credit.
- 4.6.2. In the event the Service Provider fails to (a) upload the correct and valid Tax Invoice/ Debit Note on GSTR-1; and/ or (b) capture the correct information on GSTR-2A against the appropriate GSTIN of the Company; and/ or (c) any other discrepancy found on GSTR-2A, the Company shall have the right to withhold the GST amount till the abovementioned details are not properly reflected on GSTR-2A.
- 4.7. Parties agree that they shall endeavor to settle any dispute relating to the invoice within a period of 15 (fifteen) calendar days from the date of receipt of the notice of dispute. If Parties fail to settle the disputed amount within the aforesaid period, the disputed amount shall be settled between the Parties in accordance with the dispute resolution procedure provided in this Agreement. It is hereby agreed by the Service Provider that pending the settlement of any dispute, Service Provider shall continue to provide the Services as per the terms and conditions of this Agreement.
- 4.8. As a material term of this Agreement, the Service Provider agrees that the payment arrangement established under this Agreement represents NetApp's entire payment obligation for the Services hereunder.

5. Term and Termination

- 5.1. This Agreement shall remain in force for a period of [36] months commencing from the Effective Date. The Term may be renewed for such period(s) as may be mutually decided by the Parties.
- 5.2. NetApp may terminate this Agreement without cause at any time by providing the Service Provider prior written notice of 30 (Thirty) days.
- 5.3. Either Party may terminate this Agreement upon written notice to the other Party in the event that:
- (a) the other Party commits a material breach of the Agreement and fails to cure such default to the non-defaulting Party's reasonable satisfaction within thirty (30) days after receipt of notice;
- 5.4. NetApp shall have the right to terminate this Agreement:
- 5.4.1. forthwith by notice to the Service Provider in the event where any proceeding concerning bankruptcy is initiated against the Service Provider or it is found bankrupt or insolvent or any order is made or resolution passed for the winding up, liquidation or dissolution of the Service Provider;
 - 5.4.2. forthwith by notice, to the Service Provider if the Service Provider fails to (i) perform or observe any of the provisions of this Agreement, purchase order or any written instructions, and/or; (ii) remedy any breach capable of being remedied within thirty (30) days of notice received in this regard from NetApp.

- 5.5. Upon the expiration or earlier termination of this Agreement, the Service Provider shall forthwith cease the use of all Confidential Information including any Personal Information, NetApp Data and NetApp Personal Information and all Intellectual Property Rights which belongs or may belong to NetApp and/or one or more of its Affiliates under this Agreement or otherwise, including but not limited to copyright in any written material, plans, patents, designs or other works, know how, technical or other information or expertise, and shall forthwith return to NetApp, or otherwise dispose off as NetApp may instruct, all Confidential Information and other documents, papers and materials whatsoever provided to the Service Provider and/or its employees and agents. Service Provider shall provide a declaration/undertaking in writing and signed by the authorized signatory of Service Provider to NetApp, stating that all Confidential Information have been returned or otherwise disposed off as instructed by NetApp.
- 5.6. The Service Provider will promptly deliver to NetApp all documents, document drafts, work papers, notes, drawings and charts of any description produced by the Service Provider in the course of providing the Services hereunder.
- 5.7. The termination of this Agreement shall not affect the respective rights and liabilities of the Parties hereto accrued prior to such termination.
- 5.8. All clauses of this Agreement including this clause which are express, or which by implication are intended to survive the termination of this Agreement shall so survive and continue in full force and effect notwithstanding the termination of this Agreement.

6. Obligations of Service Provider

- 6.1. Service Provider shall carry out its duties and obligations under this Agreement in a timely and diligent manner with expertise, with the highest industrial standards and ethical business practices and shall execute and discharge the Services to the entire satisfaction of NetApp in accordance with the direction and specific instructions as may be issued by NetApp from time to time.
- 6.2. Service Provider is responsible and liable for compliance and implementation of all statutory provisions applicable to it and to its employees from time to time. Service Provider shall comply with all applicable laws and regulations in rendering the Services hereunder. NetApp shall in the event of any violation of this clause, have the option at its sole discretion to terminate this Agreement with immediate effect without notice or payment in lieu thereof.
- 6.3. Service Provider shall obtain and maintain all licenses, registrations, approvals, permissions, sanctions, etc. under applicable laws necessary to perform the Services. Service Provider will promptly notify NetApp in writing in the event any permit or license is revoked or has expired. Upon NetApp's request, the Service Provider shall provide copies of such licenses, registrations, approvals, permissions, sanctions, etc. to NetApp for its records. Further, Service Provider will promptly notify NetApp in writing in the event any permit or license is revoked or has expired.
- 6.4. The Service Provider acknowledges that NetApp does not have any relationship with the vendors / third parties if engaged by the Service Provider in relation to the provision of Services. In cases of any notice, summons, show cause, the Service Provider shall make adequate representations at its own cost before relevant authorities or adjudicatory forums as may be required. The Service Provider shall also ensure that NetApp is neither made a party to such proceedings/enquiry nor is involved in any other manner whatsoever.
- 6.5. Service Provider agrees that any Services which are not performed to the satisfaction of NetApp or fail to meet the requirements of NetApp shall be re-performed or rectified by the Service Provider at its own cost and expense to the satisfaction of NetApp.

7. Representations and Warranties – Service Provider hereby warrants and represents that:

- 7.1. it has full power and capacity to enter into and perform its obligations under this Agreement and has taken all necessary actions to authorize the execution and performance thereof and this Agreement when executed will constitute valid and binding obligations on and against it, in accordance with its terms;
- 7.2. it holds, at all times, all licenses and/or permits necessary under all Applicable Laws and regulations for it to perform the Services hereunder and will register this Agreement with any appropriate body if required;
- 7.3. it will not, in performing its duties and obligations under this Agreement, put itself or the other Party in breach of any applicable laws, rules or regulations;
- 7.4. it will not, in performance of its obligations under this Agreement, breach any agreement with any other third party;
- 7.5. it is not, at the time of entering into this Agreement, insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or petition for winding up or bankruptcy (as the case may be) or to exercise any other rights over or against its assets or any event analogous to any of the foregoing under the laws of any applicable jurisdiction.
- 7.6. It shall at all times, remain compliant with applicable laws.
- 7.7. It shall at all times, adhere and be in compliance with the Annexures C, D and E

8. Confidentiality

- 8.1. The Receiving Party warrants that it will not disclose any Confidential Information to any other third party (save that NetApp may disclose such information to any of its Affiliates or to its consultants and advisors) except:
 - a) with the consent of the Disclosing Party, for the purpose of or in connection with the performance of the Disclosing Party's obligations arising out of and in terms of this Agreement; (or)
 - b) where such Confidential Information can be demonstrated to have been in the public domain at the time of the disclosure other than as a result of a breach of this Agreement.
- 8.2. The Parties agree that the term "Confidential Information", insofar as the Disclosing Party is concerned, shall not include any information which:
 - a) is in the public domain prior to receipt by the Receiving Party or subsequent to the date of receipt without breach of this Agreement, by the Receiving Party, or
 - b) is known, as evidenced by documentation, to the Receiving Party prior to disclosure by the Disclosing Party, provided that any direct or indirect source of such information was not known by the Receiving Party to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any third party with respect to such information, or
 - c) is disclosed without restriction to the Receiving Party by a third party having a bona fide right to disclose the same to the Receiving Party without breach of this Agreement or any other confidentiality agreement, as the case may be, with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any third party with respect to such information, or

- d) is independently developed by the Receiving Party without use of any Confidential Information disclosed hereunder by the Disclosing Party.
- 8.3. The Confidential Information will be safeguarded, which shall, at no case, be less than the protection Service Provider would use for their own information of similar nature, and the Receiving Party will take all the necessary action to protect it against any misuse, loss, destruction, alterations, modification or deletions thereof. In the event of a breach or threatened breach by the Receiving Party of this section, monetary damages may not be any sufficient remedy for unauthorized disclosure of any Confidential Information /materials; therefore, the Disclosing Party may, without waiving any other rights or remedies, shall be entitled to injunctive relief or equitable relief as may be deemed proper. Upon the termination or expiration of this Agreement, Receiving Party shall handover the confidential information gathered during the term of this Agreement to the Disclosing Party or destroy the Confidential Information.
- 8.4. **Data Security**: The Service Provider shall comply with (i) all Applicable Laws relating to the collection, use, storage, transmission, disclosure, delivery, destruction, or any other processing of NetApp Data; (ii) all applicable policies of NetApp; and (iii) industry best practices and other self-regulatory guidelines relating to NetApp Data. The requirements of this Clause 8.4 and 8.5 shall be deemed obligations of confidentiality for purposes of this Agreement.
- 8.5. **Personal Data**
- 8.5.1. In the course of performing its obligations pursuant to this Agreement, the Service Provider and its Representatives may obtain access to Personal Data. Such Personal Data will be considered Confidential Information of NetApp and the same shall be protected in terms of this Clause 8.5 and the terms of Annexure D. Any disclosure of Personal Data by Service Provider to its representatives (only if required), including by way of cross-border disclosure, must be in accordance with Applicable Laws (including any laws relating to remote access of Personal Data).
- 8.5.2. In relation to the foregoing, if NetApp provides, or the Service Provider otherwise receives, Personal Data, the Service Provider acknowledges that a breach of this Clause 8.5 may result in irreparable harm to NetApp for which monetary damages may not provide a sufficient remedy. Accordingly, NetApp may seek equitable relief or injunctive relief in relation to such breach.

9. Indemnity & Limitation of Liability

- 9.1. Service Provider shall indemnify and hold harmless NetApp, its promoters, officers, directors, employees, Affiliates, agents, sub-contractors and other representatives from any Claims arising out of or in connection with (i) infringement of Intellectual Property rights of NetApp by the Service Provider or its personnel; (ii) infringement of third party intellectual property rights by the Service Provider or its personnel; (iii) violation of any Applicable Laws and statutory obligations by the Service Provider or its personnel (including but not limited to non-filing of the requisite forms with the tax authorities to claim tax credit etc.); (iv) gross negligence and/or misconduct by the Service Provider or its personnel; (v) breach of any obligation, terms, representation, warranties and covenants under this Agreement; (vi) breach of confidentiality obligations under this Agreement, and/or (vii) any damage to property and/or bodily injury or

death caused due to the negligence of the Service Provider's employees/personnel in performing their duty under this Agreement.

- 9.2. This provision shall survive the expiration or termination of this Agreement for any reason.
- 9.3. Notwithstanding anything to the contrary elsewhere contained in this Agreement, NetApp, in any event, regardless of the form of the claim, shall not be liable for any indirect, special, punitive, exemplary, speculative or consequential damages, including but not limited to any loss of use, loss of data, business interruption and loss of income or profits, irrespective of whether it had as advance notice of the possibility of any such damages. NetApp's total liability under or in connection with this Agreement (whether in contract, tort including negligence or otherwise) shall be limited to the payments required to be made or made three (3) months prior to any such claims.

10. Intellectual Property Rights

- 10.1. Except for any existing Service Provider, Service Provider hereby agrees that: (i) all Intellectual Property Rights ("IPR") in anything produced or delivered specifically for NetApp on the basis of consideration paid as per the terms of this Agreement, shall vest in and belong to NetApp; and (ii) Service Provider hereby assigns to NetApp such Intellectual Property Rights (including, without limitations, all present and future copyright, and copyright revivals, and extensions). This assignment shall take effect as of the creation of each of the Intellectual Property Rights in such specifically produced or delivered by or on behalf of Service Provider in connection with or relating to this Agreement.
- 10.2. The Parties acknowledge that if performance of this Agreement thereof results into creation of any IPR, the same shall be called as "Foreground IPR" and the Service Provider acknowledges and agrees that all such Foreground IPR shall be deemed to have been unequivocally assigned to NetApp notwithstanding the fact that NetApp is not aware of, or the Service Provider has omitted to inform NetApp about creation of such Foreground IPR. The Service Provider hereby waives all claims, rights, interests with respect to such Foreground IPR. The Service Provider shall execute all necessary and appropriate documents and deeds as NetApp may require in perfecting the title of NetApp to the Foreground IPR.
- 10.3. Where applicable or requested by NetApp, Service Provider agrees to sign all documents and do all other acts which NetApp or NetApp representative requests to enable NetApp to enjoy the full benefit of this Clause. This includes joining in any application which may be made by NetApp in NetApp's sole name for registration of any Intellectual Property Rights (such as a patent, trademark or registered design).
- 10.4. Service Provider may only use the Intellectual Property Rights which arise in the course of performing the Services and IP Materials to perform his obligations under this Agreement and shall not disclose any such Intellectual Property Rights or IP Materials to any third party without the express prior written consent of NetApp.
- 10.5. If NetApp or Service Provider deems that any deliverable produced or delivered by or on behalf of Service Provider in connection with or relation to this Agreement is subject to a substantial threat of a third party claim alleging Intellectual Property Rights infringement and its use is restricted, Service Provider shall, at its own expense, use commercially reasonable efforts to (1) procure for NetApp the right to continue using the deliverables; or (2) replace or modify the deliverables with a functional, non-infringing equivalent.
- 10.6. This Clause 10 shall survive expiry of this Agreement, or its termination for any reason.

11. Independent Relationship

- 11.1. The Service Provider is an independent contractor as against NetApp and shall be solely responsible for any and all obligations or liabilities arising out of its performance under this Agreement. NetApp shall not be concerned with the terms and conditions of employment that the employees/workers of the Service Provider may have with the Service Provider.
- 11.2. This Agreement has been entered into on a principal-to-principal basis and nothing contained in this Agreement shall be deemed to constitute a joint venture, partnership or agency relationship between NetApp and the Service Provider. Service Provider shall not, and shall procure that its agents, subsidiaries, sub-contractors, affiliates and employees do not, in any way whatsoever hold itself or themselves (as the case may be) out nor permit itself or themselves (as the case may be) to be held out as the legal representative, agent or employee of NetApp for any purpose whatsoever nor assume or create in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of NetApp in relation to the Services to be provided hereunder.

12. Dispute Resolution; Governing Law; Jurisdiction

- 12.1. The Parties shall attempt to amicably settle all disputes concerning this Agreement and the obligations hereunder within thirty (30) days, failing which Parties will resolve such dispute in accordance with Clause 12.2.
- 12.2. This Agreement will be construed in accordance with and governed by the Laws of India and each party agrees to submit to the exclusive jurisdiction of the courts in the city of Bangalore, India for any dispute arising out of or in connection with this Agreement.

13. Miscellaneous:

- 13.1. **Assignment:** This Agreement may not be assigned, delegated, sold or transferred, whether by operation of law or otherwise, by the Service Provider without prior written consent of NetApp. Any assignment made in contravention of this clause shall be void and of no effect. It is hereby clarified that NetApp may assign this Agreement or any part thereof without the prior written consent of Service Provider.

13.2. Notice:

- 13.2.1. Unless otherwise provided herein, all notices, requests, waivers and other communications shall be made in writing, in the English language and by letter (delivered by hand, courier or registered post), email or facsimile transmission (save as otherwise stated) ("**Notices**") and to the addresses and authorized representatives set forth, unless the addresses or the authorized representative is changed by Notice.

If to Service Provider :

Attention:

Email:

Address:

If to NetApp:

Attention: [●]

Email: [●]

Address: [●]

- 13.2.2. In the event a Party refuses delivery or acceptance of a Notice under this Agreement, it shall be deemed that the Notice was given upon proof of the refused delivery, provided the same was sent in the manner specified in this Agreement.
- 13.2.3. A Party shall be entitled to change any of its details as mentioned in Clause 13.2.1 above by sending a prior written notice of seven (7) days to the other Party informing the nature of the change.
- 13.3. **Severability:** In the event that any provision of this Agreement shall be deemed by any court having jurisdiction thereon to be illegal, invalid or unenforceable, it shall in no way affect or prejudice the legality, validity or enforceability of any other term or condition of this Agreement. If any provision of this Agreement shall be deemed by such court to be unenforceable because such provision is too broad in scope, such provision shall be construed to be limited in scope to the extent such shall deem necessary to make it enforceable, and if any provision shall be deemed inapplicable by any such court to any person or circumstances, it shall nevertheless be construed to apply to all other persons and circumstances.
- 13.4. **Entire Agreement:** Save as provided herein, this Agreement and its Annexures constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and embodies all the terms and conditions agreed upon between the Parties and supersedes and cancels in all respects all other agreements and understandings of the Parties, whether oral or written, pertaining to the subject matter under this Agreement. The terms of this Agreement may not be modified, amended, varied or waived except in writing and signed by the Parties.
- 13.5. **Force Majeure:** If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by reason of fire, flood, earthquake, pandemic, explosion or other casualty or accident or act of God, war or other violence, or any applicable law, order proclamation, regulation, ordinance, demand or requirement of any governmental or regulatory authority and such non-performance, hindrance or delay could not have been prevented by reasonable foresight or precautions (including proper planning and execution of the disaster recovery or business continuity plan) or circumvented through the use of alternate sources, work-around plans or other means, (in each case, a "**Force Majeure Event**"), then the non-performing, hindered or delayed Party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations to the extent that they are affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its commercially reasonable efforts to re-commence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. If the period of nonperformance exceeds ten (10) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may give written notice to terminate this Agreement.

13.6. **Waiver:** The failure of any Party to enforce any term or provision hereof shall not be construed to be waiver of such term or provision and shall in no way affect the right of such Party thereafter to enforce such term or provision or any term or provision hereof.

13.7. **Amendments:** No modification, amendment or waiver of the terms and conditions of this Agreement shall be valid or binding unless made in writing and duly executed by the Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement through their Authorized Signatories.

For NetApp Private Limited

For [X]

Authorized Signatory

Authorized Signatory

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ANNEXURE A
SCOPE OF SERVICES

Service Provider shall provide the following services to NetApp:
ANNEXURE B

ANNEXURE C

ANTI-CORRUPTION POLICY

1. Certification of Compliance

Service Provider agrees to certify its compliance with the applicable anti-corruption laws and regulations by executing a form supplied by NetApp for this purpose, either annually or when otherwise requested by NetApp.

2. Right to Audit and Obligation to Cooperate

Service Provider shall keep accurate books, records, and accounts with sufficient detail as to clearly reflect its transactions and disposition of its resources or assets in connection with this Agreement. Service Provider agrees NetApp has the right to audit such transactions at any time and upon reasonable notice. Service Provider agrees to (1) provide assistance and cooperation in any investigations involving NetApp and Service Provider, and (2) submit to due diligence re-screening when requested by NetApp.

3. Training

Service Provider agrees its employees, affiliates and other representatives responsible for its performance under this Agreement will participate in NetApp's anti-corruption training, if requested by the NetApp.

4. Subcontractors

Service Provider must obtain prior written authorization from NetApp before Service Provider engages any subcontractor to perform any services under this Agreement requiring interaction with any government entity or government official on NetApp's behalf.

5. **Right to Terminate**

If NetApp reasonably suspects Service Provider has engaged in conduct violating the Policy, or any applicable anti-corruption laws or regulations, NetApp may immediately suspend payment pending the issue's resolution. If NetApp determines Service Provider violated the Policy, or any applicable anti-corruption law or regulations, NetApp may terminate the Agreement. NetApp may also suspend payment and suspend or terminate the Agreement if Service Provider does not comply with the ongoing anti-corruption compliance obligations set forth in this Agreement, or if Service Provider does not successfully complete due diligence re-screening.

6. **Form of Payment**

The Parties agree all payments made by NetApp to Service Provider pursuant to this Agreement shall be made only after receipt by NetApp of an invoice detailing the products or services for which Service Provider is seeking payment. All payments under this Agreement shall: (i) be made solely by check or wire transfer for the benefit of, and to the account of, Service Provider and not to any individual employee or representative of Service Provider; (ii) be denominated in Indian Rupees and, (iii) not be in cash or bearer instruments.

7. **Obligation to Provide Information**

If for any reason, Service Provider proposes to materially change ownership or management or its current shareholders or partners transfer control of Service Provider to a third party or a third party assumes control of Service Provider, Service Provider must notify NetApp within thirty (30) days of such change in writing. In such case, Service Provider may be resubmitted through NetApp's due diligence and approval procedure for third-party intermediaries. Service Provider agrees to provide timely information to NetApp regarding any changes to the representations made in this Agreement.

ANTI-CORRUPTION POLICY (FOR NON TPI VENDORS)

1. The Service Provider agree that in connection with their activities under this Agreement, neither the Service Provider, nor any agent, affiliate, employee, or other person acting on their behalf will offer, promise, give, or authorize the giving of anything of value, or offer, promise, make, or authorize the making of any bribe, rebate, payoff, influence payment, facilitation payment, kickback, or other unlawful payment, to any government official, political party, or candidate for public office in order to obtain or retain business, gain any unfair advantage, or influence any act or decision of a government official.
2. In the event that the NetApp determines, in its sole discretion, that the Service Provider has/have engaged in conduct that violates the applicable anti-corruption laws and regulations, the NetApp shall have the right to suspend payment of Service Fee and any other charges payable by the NetApp under this Agreement and the NetApp shall have a further right to suspend or terminate the Agreement.
3. The Parties agree that all payments made by the NetApp to the Service Provider pursuant to this Agreement shall be made only after receipt by the NetApp of an invoice detailing the products or services for which the Service Provider is seeking payment. All payments under this Agreement shall: (i) be made solely by check or wire transfer for the benefit of, and to the account of, the Service Provider and not to any individual employee or representative of the Service Provider; (ii) be denominated in Indian National Rupees (INR); and (iii) not be in cash or bearer instruments.
4. The Parties agree that the Service Provider is not authorized to and will not interact with any government entity or government official on behalf of the NetApp unless the NetApp authorizes such interaction in advance and in writing.

ANNEXURE D
DATA PRIVACY ADDENDUM

1. If and to the extent that Service Provider collects, uses, stores, accesses, hosts, records, transfers or otherwise processes (collectively “**process**” or “**processing**”) any personally identified or identifiable information such as name, age, gender, email address, postal address, telephone number, government identification number, financial information, health information, biometric information, behavioral information or geolocation information, in any form that can be linked to specific individual (“**Personal Information**”) as received by Service Provider from or on behalf of NetApp (or NetApp parent company, affiliate or subsidiary) employees, contractors, visitors, customers, clients, partners, sellers, merchants or other third parties or otherwise obtained in connection with the performance of its obligations under this Agreement (“**NetApp’s Personal Information**”), Service Provider agrees and covenants that Service Provider shall:
 - a) comply with applicable data protection laws, circulars, rules and regulations governing the collection, use, protection, breach notification, retention, storage, disclosure, transfer of Personal Information including but not limited to Information Technology Act, 2000, the Information Technology (Reasonable Security practices and procedures and sensitive personal data or information) Rules, 2011, RBI directive on Storage of Payment System Data, 2018 and IRDAI (Maintenance of Insurance Records) Regulations, 2015 (“**Applicable Data Protection Law**”), including any requirements applying to storage or cross-border transfer of Personal Information outside India;
 - b) keep and maintain all NetApp’s Personal Information in strict confidence and the obligation to protect such Personal Information shall survive in perpetuity;
 - c) process Personal Information solely for the purpose of performing its obligations as contemplated by this Agreement;
 - d) not sell, rent, lease or otherwise make an unauthorized disclosure of NetApp’s Personal Information to any third party;
 - e) implement and maintain appropriate physical, technical, and administrative safeguards designed to prevent any unauthorized or accidental access, unlawful destruction, alteration, disclosure or loss of such Personal Information (“**Personal Data Breach**”);
 - f) in an event Service Provider has reason to believe that a **Personal Data Breach** has occurred, Service Provider shall promptly (and in no event more than 6 hours after discovery of such **Personal Data Breach**) inform NetApp via both telephone and email with a copy to infosec@NetApp.com;
 - g) not store or retain NetApp’s Personal Information except as necessary to perform its obligations and securely return and destroy NetApp Personal Information within 90 days of expiration or termination of this Agreement or sooner if requested by NetApp and provide written proof or certification of the same;
 - h) at its sole expense provide NetApp with all necessary information, cooperation and assistance as required (including by appropriate technical and organizational measures, insofar as possible) to enable NetApp to comply with its obligations under Applicable Data Protection Law; and

- i) be responsible and liable to NetApp for all acts, errors or omissions of Service Provider's sub-contractors, employees, Service Providers, agents, affiliates, consultants, and subsidiaries (collectively Third-Party Provider). Service Provider shall contractually require each of its Third-Party Providers to agree to same or no less stringent privacy and security obligations that apply to Service Provider.
2. Notwithstanding anything to the contrary in this Agreement or elsewhere, Service Provider shall fully indemnify and hold harmless NetApp, its affiliates, and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "NetApp Indemnitee") without any limitation from and against all losses, damages, liabilities, actions, judgements, interest, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, arising out of or resulting from Service Provider's failure to comply with any of its obligations under Section 8.5 and this Annexure D.
3. If Service Provider is disclosing any Personal Information to NetApp, Service Provider warrants that such information was collected lawfully, and there is no restriction legal or otherwise on Service Provider from providing such information to NetApp or any processing by NetApp under this Agreement.
4. To the extent that NetApp provides to Service Provider any Personal Information in connection with this Agreement, such Personal Information is provided by NetApp on an "as is" basis with no warranty of any kind, and for the sole purpose of providing assistance to the Service Provider with respect to its performance of Services as set out hereunder.
5. Service Provider acknowledges and agrees that it has no ownership of, or right to use, NetApp's Personal Information or any derivative works thereof other than as expressly permitted under this Agreement or as authorized by NetApp in writing. For the avoidance of doubt, Service Provider has no right to copy, use, reproduce, display, perform, modify or transfer NetApp's Personal Information or any derivative works thereof, except as expressly provided in this Agreement or as expressly authorized by NetApp in writing.
6. To the extent legally permitted, Service Provider shall immediately notify NetApp in writing upon receipt of an order, demand, warrant or document purporting to request, demand or compel the production of NetApp's Personal Information or any derivative works thereof to any third party not authorized under this Agreement. Wherever possible and lawfully permissible, Service Provider shall not disclose Personal Information to any third party not authorized under this Agreement, without providing NetApp at least forty-eight (48) hours' notice, so that NetApp may, at its own expense, exercise such rights as it may have under applicable laws and regulations to prevent or limit such disclosure. If such prior notification is not possible, Service Provider shall immediately notify NetApp post disclosure. Notwithstanding the foregoing, Service Provider will exercise commercially reasonable efforts to prevent and limit any such disclosure and to otherwise preserve the confidentiality of Personal Information; additionally, Service Provider will cooperate with NetApp with respect to any action taken pursuant to such order, demand, or other document request, including to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to Personal Information.

Audit

- i. During the term of the Agreement, NetApp shall have the right to audit and/or inspect Service Provider's environment, as it relates to the receipt, maintenance, storage, use or retention of PhoenPe's Personal Information. NetApp shall have the right to periodically conduct such audits with a prior written notice to Service Provider. As part of the periodic compliance audit, NetApp may audit Service Provider's information systems, networks, applications, switches, routers, firewalls, ports, or other information technologies, digital rights management related and used for the purposes of the Agreement, as deemed appropriate by NetApp in order to assure that Service Provider's security and privacy posture does not adversely affect or degrade NetApp's information security and privacy posture. Such audit/inspection may be conducted by NetApp, any statutory regulator or by any other external/third party appointed by NetApp or the regulator.
- ii. In the event a compliance audit conducted by NetApp results in a finding that Service Provider does not have the necessary security and privacy practices, control processes and checks in place in compliance with NetApp's privacy and security requirements and this Agreement, Service Provider will work with NetApp to mutually agree on remediation plans for identified issues shall promptly (and in any case within the time period communicated by NetApp in writing) corrected/implemented at Service Provider's cost. NetApp will have the right to conduct more frequent compliance audits until Service Provider resolves the deficiencies identified in such compliance audit and may terminate the said agreement or any Statement of Work if the breach will not be cured within stipulated time period.
- iii. Service Provider shall conduct annual review of its information Security Program and Data Privacy Program to assess the strength of controls; and implement improvements, where necessary. During the course of providing the Services, Service Provider may not alter or modify its Information Security Program or Data Privacy Program in such a way that will materially negatively impact Service Provider's ability to protect the privacy, security, confidentiality, or integrity of Personal Information and upon NetApp's request, no more than once per year, Service Provider shall share the most current version of Service Provider's Information Security and Data Privacy Overview ensure periodic SOC/ISO 27001 certification (at least once in every six months) and shall share the relevant documentation of the same with NetApp failing which NetApp shall withhold the payments till the time relevant work has not been accomplished further if such Service Provider does not have ISO27001 certification.

Personal Data Breach Management

Service Provider shall:

- i. establish, test, and maintain a Personal Data Breach incident response process that includes, among other things, processes for evidence preservation, informing and working with law enforcement agencies, government agencies and similar parties as appropriate, and performing forensic analyses;
- ii. notify NetApp in writing of any Personal Data Breach involving NetApp Personal Information and NetApp's customer's Personal Information, including any actual or suspected unauthorized

- access to NetApp Personal Information and NetApp's client's Personal Information or a security incident at or involving a contractor's systems, hardware, equipment, devices or premises computers or otherwise involving a contractor's personnel; Service Provider shall provide notification of any such incident promptly, but in no event later than six (6) hours following the date Service Provider first becomes aware of such incident. Thereafter, Service Provider shall provide regular updates to NetApp regarding the investigation and mitigation of such event. Service Provider shall permit NetApp or its designees to participate in all aspects of the investigation. Service Provider shall be responsible for all costs incurred by any party connection with such incidents, including but not limited to, notification to affected data subjects, forensic investigations, credit monitoring for data subjects and other remedial and legal efforts; and
- iii. for each such incident, provide NetApp with a final written notification no later than ten (10) days following Service Provider's closure of such incident, that includes detailed information regarding the root cause of such incident, actions taken, and plans to prevent a similar event from occurring in the future.