

[To be stamped with appropriate stamp duty]

## MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT, made on this [●] day of [●], 2015 (hereinafter referred to as the "Agreement")

### BY AND BETWEEN:

[●], a company incorporated under the laws of India, having its registered office at [●] (hereinafter referred to as the "Service Provider", which term shall, unless it be repugnant to the context or meaning hereof, be deemed to include and mean its successors and permitted assigns) of the First Part; and

[●], a company incorporated under the laws of India, having its registered office at [●] (hereinafter referred to as the "Customer", which term shall, unless it be repugnant to the context or meaning hereof, be deemed to include and mean its successors and permitted assigns) of the Second Part.

As the context may require, the Service Provider and the Customer shall hereinafter be referred to collectively as the "Parties" and individually as a "Party".

### WHEREAS:

- A. Service Provider is engaged in the business of [●].
- B. The Customer is engaged in the business of [●].
- C. The Customer is desirous of engaging the Service Provider and the Service Provider is desirous of providing the Services (as defined hereinafter) to the Customer.
- D. The Parties have entered into this Agreement to record the terms and conditions which will govern the Services to be rendered by the Service Provider to the Customer during the Initial Term (as defined hereinafter).

NOW THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties set forth in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the Agreement, (i) capitalized terms defined by inclusion in quotations and/or parenthesis have the meanings so ascribed; and (ii) the following terms shall have the following meanings assigned to them herein below:

“1<sup>st</sup> Renewal Term” has the meaning ascribed to it in Clause 12.2;

“Affiliate” in relation to any Person means: (i) in the case of a natural Person, the Relatives of such natural Person and/or a body corporate Controlled by such natural Person; and (ii) in case of a Person other than a natural Person, any Person, which, Controls, is Controlled by, or is under Common Control with such Person;

**“Agreement”** means this master services agreement together with the Recitals, Schedules and Annexures hereto, as amended, modified or supplemented from time to time, in accordance with the terms herein;

**“Amendment to SOW”** has the meaning ascribed to it in Clause 3.4;

**“Authorised Representatives”** means in relation to the: (i) Service Provider, (a) [●], Director and (b) [●], Vice President Operations, (ii) Customer, (a) [●] and (b) [●], or such other Persons as may be notified by the relevant Party in accordance with Clause 29 (*Notices*);

**“Background Intellectual Property”** means Intellectual Property owned or controlled by a Party, including Intellectual Property developed prior to or independently of this Agreement, which the Party determines, in its sole discretion, to make available for the carrying out of the Project and includes Intellectual Property licensed to or acquired by the Parties from time to time pursuant to this Agreement;

**“Business Day”** means a day (other than a Saturday, a Sunday or a public holiday or any day on which banks in India are permitted to be closed) on which banks are generally open for business in India;

**“Confidential Information”** means all information that relates to the business, affairs, products, developments, trade secrets, know how, personnel, customers and suppliers of either Party that has been designated as “confidential information” by a Party or disclosed under circumstances sufficient to place the recipient on reasonable notice of the confidentiality of the information, together with all information derived from the foregoing, but excluding any information (i) independently developed by the receiving Party, (ii) publicly disclosed by an entity other than the receiving Party under no duty of confidentiality or (iii) already in the possession of the receiving Party prior to the receipt of such information;

**“Control”** means, with respect to any Person: (i) the ownership of more than 50% (fifty percent) of the equity shares or other voting securities of such Person; or (ii) the possession of the power to direct the management and policies of such Person; or (iii) the power to appoint a majority of the directors, managers, partners or other individuals exercising similar authority with respect to such Person by virtue of ownership of voting securities or management or contract or in any other manner, whether directly or indirectly, including through one or more other Persons; and the term **“Common Control”** and **“Controlled by”** shall be construed accordingly;

**“Customer”** has the meaning ascribed to in the description of the Parties to this Agreement;

**“Customer Data”** means any information:

- (a) disclosed or submitted, directly or indirectly, to the Service Provider or its Authorised Representative(s) by the Customer in order to perform or in connection with the Services;
- (b) learnt or generated or obtained by the Service Provider or its Authorised Representative(s) as a result of performing the Services; and
- (c) including information relating to the Customer’s customers, technology, operations, facilities, consumer markets, products, capacities, procedures, security practices, business affairs and other proprietary information,

in any media whatsoever (including electronic) and in each case which is in the possession, custody or control of the Service Provider or and as such data is modified, added to or stored from time to time.

**“Customer Material”** has the meaning ascribed to it in Clause 9.2.1;

**“Data Protection Legislation”** means the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and all other applicable Laws and regulations from time to time relating to processing of personal data, privacy interception of communications or analogous laws or regulations under other relevant jurisdiction including any jurisdiction in or from which the Service Provider or the Authorised Representative(s) of the Service Provider provides any of the Services in every case;

**“Designated Bank Account”** means the bank account of the Service Provider details of which are the follows:

- (a) Name of the banker: [●]
- (b) Account Name: [●]
- (c) Account Number: [●]
- (d) Bank Branch Address: [●]
- (e) MIRC Code: [●]
- (f) IFSC Code: [●]

**“Dispute”** has the meaning ascribed to it in Clause 21.1;

**“Dispute Notice”** has the meaning ascribed to it in Clause 21.1;

**“Disputing Party”** has the meaning ascribed to it in Clause 21.1;

**“Effective Date”** means the date on which this Agreement is executed by the Parties;

**“Force Majeure”** means occurrence of one or more of the following events which are beyond the reasonable control of the Parties despite having exercised all reasonable care and due diligence, and which are unforeseen, unavoidable or insurmountable, and which arise after the Effective Date and which prevent total or partial performance of this Agreement by either Party. Such events shall include:

- (a) war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade and military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization, civil war, riot, rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;
- (b) act of terrorism, sabotage or piracy;
- (c) act of authority whether lawful or unlawful, compliance with any Law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalisation;
- (d) act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, nuclear catastrophe, volcanic

activity, land slide, tidal wave, tsunami, flood, damage or destruction by lightning, drought or contagious disease;

- (e) explosion, fire, destruction of facilities, and of any kind of installation, prolonged breakdown of transport, telecommunication or electric current; or
- (f) general labour disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises;

**“Governmental Authority”** means any government or governmental or regulatory body, or political subdivision, whether foreign, federal, state, city or local, or any agency, commission, authority, or instrumentality, any multinational, supra-national or quasi-governmental entity, body or authority, any self-regulatory organization, any court or arbitrator (public or private) thereof, or any entities that a government controls or owns (in whole or in part), including any state-owned, controlled or operated companies or enterprises;

**“Improvement”** means any improvement, advancement, modification, adaptation or the like arising from use of the Background Intellectual Property;

**“Indemnified Party”** has the meaning ascribed to it in Clause 16.1;

**“Indemnifying Party”** has the meaning ascribed to it in Clause 16.1;

**“Initial term”** has the meaning ascribed to it in Clause 12.1;

**“Intellectual Property”** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, registered and unregistered trademarks, design rights and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

**“Law”** means all applicable provisions of all: (i) constitutions, treaties, statutes, laws (including the common law), codes, rules, regulations, ordinances or orders of any Governmental Authority; (ii) approvals from any Governmental Authority; and (iii) orders, decisions, injunctions, judgments, awards and decrees of or agreements with any Governmental Authority, or any condition or term imposed pursuant to any condition or term imposed pursuant to any approvals from any Governmental Authority;

**“Losses”** means all direct losses, liabilities, liens, obligations, fines, costs, charges, expenses, royalties, damages (whether or not resulting from third party claims), including those resulting from claims and including interest and penalties with respect thereto and related out-of-pocket expenses paid to Third Parties, including reasonable attorneys’ and accountants’ fees and disbursements;

**“Materials”** includes documents, property, information and the subject matter of any category of Intellectual Property (including all associated documents, data, libraries, tools and other items and materials necessary or desirable to enable any person or its agents/contractors to fully understand, use, modify and maintain such Intellectual Property);

**“Party(ies)”** has the meaning ascribed to it in the preamble of this Agreement;

“**Person**” means and includes any natural person, corporation, Governmental Authority, association, partnership, trust, an unincorporated organisation, or other entity or organisation (whether or not having separate legal personality);

“**Personal Data**” means all personal data (as defined under Data Protection Legislation) of whatever nature and in whatever form, as such data is modified, added to or stored from time to time;

“**Project**” means an assignment identified and referred to by the Customer and in relation to which the Service Provider is required to provide the Services pursuant to the relevant Statement of Work; and the term “**Projects**” shall be construed accordingly;

“**Proposal for Change**” has the meaning ascribed to it in Clause 7.1;

“**Relatives**” shall have the meaning ascribed to it under the Companies Act, 2013 and the rules made thereunder;

“**Services**” means the services to be provided by the Service Provider to the Customer as set out in Statement of Works to be issued in relation to the Projects;

“**Service Fees**” has the meaning ascribed to it in Clause 10.1.1;

“**Service Levels**” refers to the performance standards required to be complied with by the Service Provider in relation to providing the Services under this Agreement, including the standards as set forth in column 3 of **Annexure-1** and other standards in relation to the required availability, response times, etc. as may be mutually agreed to between the Parties in terms of Clause 3.7 of this Agreement;

“**Service Provider**” has the meaning ascribed to it in the description of the Parties to this Agreement;

“**Service Provider Materials**” has the meaning ascribed to it in Clause 9.3;

“**Statement of Work**” means a written plan or order prepared in the format provided in **Annexure-2** to this Agreement and duly executed by the Parties, documenting, among others, the specific Service(s) listed in **Annexure-1** of this Agreement and/or any other services as may be mutually agreed between the Parties in terms of Clause 3.7, to be performed by the Service Provider in relation to a particular Project, the Service Fee(s) payable by the Customer to the Service Provider in relation to the relevant Project and the schedule for payment of Service Fees and shall include all Amendment(s) to SOW executed by the Parties in relation to the relevant Statement of Work; and the term “**Statement of Works**” shall be construed accordingly; and

“**Third Party**” means a legal entity, company or person(s) that is not a Party to this Agreement, but does not include Affiliates.

## 1.2 Interpretation

Except where the context requires otherwise, this Agreement will be interpreted as follows:

1.2.1 Headings, sub-headings, titles, sub-titles to Clauses, sub-Clauses and paragraphs are for information only and shall not form part of the operative provisions of this Agreement or

the Annexures hereto and shall be ignored in construction or interpretation of this Agreement;

- 1.2.2 where a word or phrase is defined, other parts of speech and grammatical forms and the cognate variations of that word or phrase shall have corresponding meanings;
- 1.2.3 words importing the singular shall include plural and vice versa;
- 1.2.4 all words (whether gender-specific or gender neutral) shall be deemed to include each of the masculine, feminine and neuter genders;
- 1.2.5 any reference in this Agreement to a legislation or a statutory provision includes that provision, a modification, or re-enactment thereof, a statutory provision substituted for it and a regulation or statutory instrument issued under it;
- 1.2.6 the Recitals, Schedules and Annexures (each as amended from time to time) are an integral part of this Agreement and shall be construed and shall have the same force and effect as if they were expressly set out in the main body of this Agreement and any reference to this Agreement includes the Recitals, Schedules and the Annexures;
- 1.2.7 references to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- 1.2.8 references to Rupees and Rs are references to the lawful currency of India;
- 1.2.9 reference to a clause, schedule and annexure is a reference to a Clause of, a schedule to, or Annexure to, this Agreement;
- 1.2.10 reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or that Agreement or document; and
- 1.2.11 reference to a person, corporation, trust, sponsorship, unincorporated body or other entity includes any of them.

## **2 STRUCTURE**

- 2.1 This Agreement is a master services agreement for the Services to be rendered by the Service Provider in relation to the Projects, as may be referred to by the Customer, from time to time, to the Service Provider.
- 2.2 The Agreement consists of: (i) this master services agreement containing the basic terms which shall govern the terms and conditions on which the Services shall be provided by the Service Provider to the Customer and also the overall relationship between the Parties; and (ii) the Statement of Works that may be executed by the Parties from time to time during the Initial Term.
- 2.3 The Parties agree that in the event of any conflict between the provisions of this Agreement and any Statement of Work, the provisions of this Agreement shall prevail.

## **3 STATEMENT OF WORK**

- 3.1 The details of Services to be provided by the Service Provider in relation to each Project referred to by the Customer, along with the Service Fee and the schedule for payment of Service Fee payable by the Customer, shall be outlined in a Statement of Work in the format provided in **Annexure-2** to this Agreement.
- 3.2 Each Statement of Work shall be prepared, discussed and finalised by Authorized Representatives of each Party and each such finalised Statement of Work shall be signed and executed by the Authorised Representatives of the Parties and upon execution all such executed Statement of Work shall form part of this Agreement.
- 3.3 Either the Service Provider or the Customer may, by written notice to the other, propose a variation to a Statement of Work (including changes to the scope of services to be rendered by the Service Provider and consequential changes to the Service Fee payable by the Customer, if any) so long as scope of services remains within the Services illustrated in **Annexure-1** of this Agreement.
- 3.4 Where a variation is proposed in a Statement of Work (including changes to the scope of services to be rendered by the Service Provider and consequential changes to the Service Fee payable by the Customer, if any) in relation to a Project by, either the Service Provider and approved by the Customer, or vice-versa, such variation shall be effective only upon the Parties executing an amendment to the Statement of Work to record the terms of such variation (“**Amendment to SOW**”).
- 3.5 The Service Provider shall not be obliged to approve any variation in Statement of Work proposed by the Customer and shall have right to not grant its approval and enter into the Amendment to SOW, provided that and in the event the Service Provider decides not to grant its approval then the Service Provider must provide legitimate reasons to the Customer for the same.
- 3.6 In relation to each Project, the Service Provider shall commence providing the Services sought by the Customer as soon as the Statement of Work is finalised and executed by the Parties in terms of this Clause 3 (*Statement of Work*).
- 3.7 In the event, the Customer requires the Service Provider to render any services which are outside the scope of services listed in **Annexure-1** of this Agreement, whether pursuant to a Statement of Work, Amendment to SOW or otherwise, the Parties shall mutually agree and enter into an amendment agreement to amend **Annexure-1** in terms of the mechanism specified in Clause 7 (*Change in Scope of Services*) of this Agreement.

## **4 SERVICES**

### **4.1 Appointment**

The Customer hereby engages the Service Provider to provide the Services and/or any other services as may be mutually agreed between the Parties (in terms of Clause 3.7 above) during the Initial Term and the Service Provider hereby consents to such engagement subject to payment of Service Fee by the Customer.

### **4.2 Scope of Services**

Except as otherwise provided herein, during the Initial Term, the Service Provider shall provide the Customer and/or its Affiliates, the Services described in the Statement of Works and/or Amendment to SOWs (duly executed by the Parties) in relation to each Project and all other services, functions,

responsibilities and tasks that are reasonably required for, and incidental to, the proper performance and provision of the Services expressly specified in the Statement of Works (including any Amendments to SOW).

## **5 SERVICE LEVELS**

### **5.1 General**

5.1.1 In relation to providing Services by the Service Provider under this Agreement, the Service Provider shall comply with the Service Levels set out in column 3 of **Annexure-1** of this Agreement.

5.1.2 In the event, Service Level is not specified for any particular Services to be provided under this Agreement, the Service Provider's performance will, be at par with the reasonable level of service achieved by the Customer with respect to such Services immediately prior to the Effective Date.

5.1.3 Unless otherwise agreed, the Service Provider shall submit half-yearly reports on the 10<sup>th</sup> (tenth) day of April and October of each calendar year to the Customer, with such details and in the format, as may be mutually agreed between the Parties, specifying compliance with the Service Levels.

### **5.2 Maintaining Service Levels**

The Service Provider shall be responsible for implementing and operating all measurement and monitoring tools and procedures required to measure and report its performance (in terms of Clause 5.1.3 above) relative to the applicable Service Levels.

### **5.3 Service Level Failures**

In the event of any failure to provide the Services in accordance with the applicable Service Levels, the Service Provider shall, at the earliest, identify the cause for such failure and take appropriate measures to rectify the compliance with such Service Level failure. However, the Service Provider shall not be responsible for failing to comply with the Service Levels provided that such failure is: (i) either on account of a default on the part of the Customer, (ii) an event of Force Majeure, (iii) performance becomes "impracticable" as a result of a cause or causes out of the reasonable control of the Service Provider including unfeasible technological requirements, (iv) to the extent the performance of such Services would require the Service Provider to violate any applicable Laws, or (v) result in the breach of any software license or other applicable contracts.

### **5.4 Continuous Improvement**

The Service Provider shall make reasonable efforts to improve its performance of the Services provided under this Agreement consistent with best practices and applicable Law.

### **5.5 Co-operation**

Each Party shall co-operate and co-ordinate with the other Party and all such Third Parties to ensure that all such Services are able to be carried out in a coordinated, effective and timely manner, including by providing access to all systems, data centers, networks and other facilities necessary to enable such Services to be performed.



## **6 PERSONNEL, MAINTENANCE AND INSPECTION OF RECORDS**

- 6.1 The Service Provider shall coordinate with the Authorised Representatives of the Customer, for continuous monitoring and assessment by the Customer of the Services provided under this Agreement.
- 6.2 The Service Provider shall appoint sufficient number of individuals in order to ensure that the Services are provided to the Customer in a proper, timely and efficient manner.
- 6.3 The Service Provider shall maintain electronic books of accounts and any other operating records that it may deem necessary in connection with the rendering of Services under this Agreement. The Service Provider shall retain all such electronic books of accounts and operating records relating to each Project for a period of [7 (seven) years] after the completion of such Project or earlier termination of the Agreement.
- 6.4 In order to enable the Customer to comply with applicable Laws, the Service Provider shall furnish such documents and information, in addition to the books and electronic records maintained by the Service Provider in terms of Clause 6.3 above, as may be reasonably requested by the Customer, from time to time, in relation to the Services rendered by the Service Provider under this Agreement, provided that the cost and expenses incurred in providing such documents and information (other than books and records maintained) by the Service Provider shall be borne by the Customer.
- 6.5 Upon receipt of advance notice of [3 (three)] Business Days from the Customer, the Service Provider shall permit the Customer and/or its Authorized Representative(s) to, during normal business hours on any Business Day, access its premises to inspect the electronic records maintained by the Service Provider in relation to a Project.
- 6.6 If required under applicable Law, the Service Provider shall provide access to any Governmental Authority to inspect records, documents, books and accounts of the Service Provider maintained in relation to the Services rendered under this Agreement.

## **7 CHANGE IN SCOPE OF SERVICES**

- 7.1 All requests for changes in the Services (“**Proposal for Change**”), whether pursuant to applicable Law or otherwise, shall be submitted by a Party to the other Party, in writing, detailing, as far as practicable, the desired changes, additions, deletions or modifications to the Services listed in **Annexure-1** of this Agreement, along with the Service Levels and any consequential change in the Service Fee.
- 7.2 If there is any change in applicable Law that reasonably renders the Service Provider's performance of the Services unlawful or impossible, either Party may terminate the relevant Services.
- 7.3 Within [30 (thirty)] days of receipt of the Proposal for Change, the Parties shall mutually discuss, negotiate and agree in good faith: (i) whether implementation of such Proposal for Change would have an impact on Service Provider's internal costs to provide the Services; (ii) proposed revisions to the Service Fee(s) related to Service Provider's implementation of such changes and modifications, if any; (iii) a schedule for such implementation; and (iv) a description of all adverse effect(s), if any, that such Proposal for Change may have on the quality or performance of the Services, and shall enter into an agreement to amend **Annexure-1** of this Agreement in terms of Clause 26.2 of this Agreement.

## 8 APPOINTMENT OF SUB-CONTRACTORS

- 8.1 The Service Provider may subcontract or delegate any of its obligations under this Agreement to any Third Party sub-contractor of its choice, provided that: (a) prior written consent of the Customer (which shall not be unreasonably withheld) has been obtained in relation to subcontracting or delegation to a Third Party; and (b) the Service Provider shall inform such Third Party sub-contractor of the confidential nature of information, which may be shared pursuant to such subcontracting or delegation by the Service Provider and procure that such Third Party sub-contractor is bound by the confidentiality obligations that are materially similar to those set out in Clause 14 (*Confidentiality and Non-Disclosure*) of this Agreement.
- 8.2 All proposals to appoint Third Party sub-contractors submitted by the Service Provider for the Customer's approval, which are neither approved nor rejected within 5 (five) Business Days of submission of such proposal by the Service Provider, shall be deemed to have been accepted and approved by the Customer.
- 8.3 In relation to a Third Party sub-contractor appointed in terms of this Clause 8 (*Appointment of Sub-contractors*), the Customer may, by giving prior written notice of 15 (fifteen) Business Days to the Service Provider, withdraw its approval and request the Service Provider to terminate the appointment of such Third Party subcontractor, if the Customer reasonably determines that the Third Party subcontractor is in material breach of this Agreement or if the Customer is not satisfied with the quality of Services rendered by such Third Party sub-contractor. Upon receipt of notice by the Service Provider under this Clause 8.3, the Service Provider shall terminate the appointment of such Third Party sub-contractor, provided that nothing contained in this Clause 8.3 shall effect the right of the Service Provider to appoint any other Third Party sub-contractor in terms of this Clause 8 (*Appointment of Sub-contractors*).
- 8.4 Notwithstanding the appointment of any Third Party sub-contractor under this Clause 8 (*Appointment of Sub-contractors*), the Service Provider shall remain responsible for all obligations to be performed by Third Party subcontractors to the same extent as if such obligations were performed by the Service Provider.

## 9 OWNERSHIP RIGHTS

- 9.1 Each Party:
- 9.1.1 agrees that it will not have any claim, ownership or interest in the other Party's Background Intellectual Property or Improvements in such Background Intellectual Property; and
- 9.1.2 grants the other Party [and the Third Party sub-contractor appointed in terms of Clause 8 (*Appointment of Sub-contractors*)], a non-exclusive, royalty-free licence for the use of any Background Intellectual Property made available by the granting Party for the purpose of carrying out the Project.
- 9.2 Materials owned by the Customer
- 9.2.1 The Customer will be the sole and exclusive owner of the following: (a) all Materials owned by the Customer as of the Effective Date; (b) all Materials developed by the Customer after the Effective Date without the assistance of the Service Provider; and (c) all Confidential Information of the Customer, (collectively, "**Customer Materials**").

9.2.2 The Customer hereby grants to the Service Provider [and the Third Party sub-contractor appointed in terms of Clause 8 (*Appointment of Sub-contractors*)], a non-exclusive, non-assignable, non-transferable license during the Initial Term to use, operate, access, copy, maintain, modify, enhance and create derivative works of the Customer Materials for the sole purpose of providing the Services under this Agreement. The Service Provider [and the Third Party sub-contractor appointed in terms of Clause 8 (*Appointment of Sub-contractors*)] shall immediately cease use of and promptly return the Customer Materials upon expiry of the term or termination of this Agreement in accordance with Clause 12.3 of this Agreement.

9.3 Materials owned by the Service Provider.

Notwithstanding anything to the contrary set forth in Clause 9.1, the Service Provider shall retain sole and exclusive ownership rights in and to any (a) Confidential Information of the Service Provider (b) Materials (other than Customer Materials) it lawfully owned prior to or acquired after the Effective Date, including all derivative works and Improvements thereon, (c) Materials developed by or on behalf of the Service Provider for the performance of Services (other than those developed with the use of the Customer Materials) (collectively, "**Service Provider Materials**")

## 10 FEES AND PAYMENT

### 10.1 Payment Terms

10.1.1 The Customer shall pay to the Service Provider service fee of [●] of the value of loan originated on an annualized basis in consideration of the Services rendered by the Service Provider, which shall be payable at the time of loan disbursement in respect of each Statement of Work in terms of the online invoice raised by the Service Provider ("**Service Fees**"). *[Note to Draft: Whether the entire loan amount will be disbursed at once or will it be disbursed in tranches? In the event, if the loan amount will be disbursed in tranches then how will the loan disbursal be monitored by the Service Provider?]*

### 10.2 Payment

10.2.1 Subject to Clauses 10.3 and 11 (*Taxes and Benefits*), the Customer shall immediately upon disbursement of the loan to the borrower and raising of an online invoice, in terms of Clause 10.1.1 credit the Service Fee (payable in terms of the fee agreed under 10.1.1) directly to the Designated Bank Account.

10.2.2 In the event, the Customer fails to credit the amount (payable in terms of the Service Fee due to the Service Provider) to the Designated Bank Account in terms of Clause 10.2.1 above (i.e. within 10 (ten) Business Days of receipt of such online invoice except on account any dispute being raised by the Customer in terms of Clause 10.3 below, the Customer shall be liable to pay such amount along with an interest equivalent to the prevailing base rate of the State Bank of India per annum commencing from the expiry of 10<sup>th</sup> (tenth) Business Day from the date of receipt of the invoices by the Customer (in terms of Clause 10.2.1) until such date at which the Customer makes the payment of amount along with interest to the Service Provider.

### 10.3 Disputed Amounts

Any dispute in relation to payment of Service Fee in terms of the online invoices raised by the Service Provider in terms of Clause 10.1, shall be raised promptly by the Customer but no later than 7 (seven) Business days from the date of receipt of online invoices by the Customer, supported by reasons, in writing, for disputing the amount payable (or any part of it) to the Service Provider in terms of the online invoices raised in terms of Clause 10.1, in which case, the Customer, in its discretion, may withhold payment of the disputed amount. Following withholding of any disputed demand by the Customer in terms of this Clause 10.3, the Parties will use reasonable efforts to resolve the dispute within 30 (thirty) days of receipt of notice under this Clause 10.3 disputing the amount payable by the Customer. If the Parties fail to resolve the dispute within the said period of 30 (thirty) days, either of the Parties may invoke the dispute resolution mechanism set forth in Clause 21 (*Dispute Resolution*).

## **11 TAXES AND BENEFITS**

- 11.1 The payment of Service Fees and other payments agreed between the Parties under this Agreement would be subject to applicable withholding tax.
- 11.2 The Service Fees and other payments payable by the Customer to the Service Provider shall be exclusive of all applicable taxes including but not limited to the sales, value -added, customs and service taxes that the Service Provider is legally required to charge for the Services rendered under this Agreement. Accordingly, all applicable taxes, including but not limited to the sales, value-add, customs, and service taxes, will be billed in addition to the Service Fees and other payments and all such taxes shall be entirely borne by the Customer.

## **12 TERM AND TERMINATION**

### **12.1 Term**

This Agreement shall commence on and from the Effective Date and shall remain valid for period of 1 (one) year from the Effective Date ("**Initial Term**"), unless terminated earlier in accordance with Clause 12.3 or renewed in accordance with Clause 12.2.

### **12.2 Renewal**

The Parties may renew this Agreement for an additional term of 1 (one) year on the terms and conditions, (including pricing terms) as may be mutually agreed between the Parties in writing ("**1<sup>st</sup> Renewal Term**"). In the event the Customer or the Service Provider, desires to renew the Agreement for the 1<sup>st</sup> Renewal Term, it shall notify the Service Provider or the Customer (as the case may be), in writing, at least [3 (three)] months before the end of the Initial Term and the terms of renewal should be mutually discussed and agreed between the Service Provider and the Customer. Subject to such understanding, the Parties shall enter into a fresh agreement to record the terms and conditions which will govern the services to be rendered by the Service Provider to the Customer during the 1<sup>st</sup> Renewal Term.

### **12.3 Termination**

Either Party may terminate this Agreement:

- 12.3.1 upon mutual agreement (in writing) of the Parties to terminate this Agreement after giving 30 (thirty) days prior written notice to the other, in which case the termination shall be effected in such manner as may be agreed between the Parties;
- 12.3.2 by written notice to the other Party in the event that the other Party commits a material breach of its obligations hereunder and fails to cure such material breach within 30 (thirty) days after receipt of written notice in respect thereof from the non-defaulting Party;
- 12.3.3 by prior written notice to the other Party, upon occurrence of an event of dissolution of such other Party, whether by operation of Law or otherwise, or to the extent permitted by applicable law, commencement of winding up or insolvency of such Party or assignment by the other Party for the benefit of its creditors, in each case where such dissolution, winding up, insolvency or assignment, as the case may be, is due to reason other than for the purposes of amalgamation, merger, restructuring or similar reorganization;
- 12.3.4 by prior written notice to the other Party if any of representations and warranties given by the other Party herein are discovered to be false, untrue or inaccurate; or
- 12.3.5 if the consequences of Force Majeure prevail resulting in a major impairment to the functioning of the Customer and/or the Service Provider for a period of more than [90 (ninety)] consecutive calendar days, the Parties may mutually agree in writing to terminate this Agreement (in which case the termination shall be effected in such manner as may be agreed between the Parties).

#### 12.4 Consequences of termination of this Agreement

Upon the termination of this Agreement for any reason whatsoever or expiration of the Initial Term (provided that the Agreement is not renewed in accordance with Clause 12.2):

- 12.4.1 the Customer shall immediately cease use of and promptly return the Service Provider Materials;
- 12.4.2 the Service Provider [and the Third Party sub-contractor appointed in terms of Clause 8 (*Appointment of Sub-contractors*)] shall immediately cease use of and promptly return the Customer Materials; and
- 12.4.3 each Party shall:
  - (a) promptly, at the other Party's sole option and request, return to the requesting Party or destroy (and certify in writing to such destruction) any and all Confidential Information of the requesting Party, whether in written or electronic form, and neither Party shall retain any copies, extracts, derivatives, or other reproductions of the Confidential Information of the requesting Party (in whole or in part) in any form whatsoever;
  - (b) take reasonable steps to assure that any and all documents, memoranda, notes, and other writings or electronic records prepared or created by the requesting Party, which include or reflect the Confidential Information of the requesting Party, are destroyed; and

- (c) promptly, cease the use of any Background Intellectual Property or Improvements made available by the other Party and shall have no claim, ownership or interest in the other Party's Background Intellectual Property or Improvements.

12.5 Termination of this Agreement for any reason whatsoever shall not affect the rights and obligations of the Parties under Statement of Work executed by the Parties up to and at the time of receipt of the termination notice and the terms and conditions of this Agreement and the relevant Statement of Work shall apply to such Services sought for by the Customer but not yet rendered by the Service Provider as at the date of termination of this Agreement.

12.6 Termination of this Agreement (except as otherwise agreed to by the Parties) shall not release any Party hereto from any liability or obligation in respect of any matters, undertakings or conditions which shall have been done, observed or performed by that Party prior to such termination or which, at the said time has already accrued to the other Party. However, nothing herein shall affect, or be construed to operate as a waiver of, the right of any Party hereto aggrieved by any breach of this Agreement, to compensation for any injury or damages resulting therefrom which has occurred either before or after such termination.

### **13 REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **13.1 Party Warranties**

Each Party hereby represents and warrants to the other Party that:

- 13.1.1 it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organisation;
- 13.1.2 it has taken all necessary actions, corporate or otherwise, as applicable to it to authorize or permit the execution, delivery and performance of this Agreement and the transactions contemplated hereunder, and this Agreement when executed and delivered by it is a valid and binding obligation of such Party enforceable in accordance with its terms;
- 13.1.3 neither the execution, delivery and performance of this Agreement, nor the performance of the transactions contemplated in the Agreement by it, will (i) constitute a breach or violation of its charter documents, (ii) conflict with or constitute (with or without the passage of time or the giving of notice) a default under or breach of performance of any obligation, agreement or condition that is applicable to it, (iii) contravene any provision of any Law applicable to it, or (iv) require the consent of any Third Party, including any Governmental Authority, by it other than as set out in this Agreement;
- 13.1.4 there are no claims, investigations or proceedings before any court, tribunal or Governmental Authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement; and
- 13.1.5 it is not bankrupt or insolvent under the Laws of its jurisdiction and there are no insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting it, or is pending or, to the best of its knowledge, threatened in writing, and it has not made any assignment for the benefit of creditors or taken any action in contemplation of, or which would constitute the basis for, the institution of such insolvency proceedings.

### 13.2 Additional Service Provider Warranties

The Service Provider hereby represents and warrants to the Customer that:

- 13.2.1 the Services will be provided in accordance with the generally accepted industry standards and practices relating to such Services and in accordance with requirements specified by the Customer in writing.
- 13.2.2 it has the requisite infrastructure, facilities and systems, including adequate skill and manpower to fulfill its obligations under this Agreement;
- 13.2.3 it has adequate insurance, risk management systems, contingency plans and backup system in place to ensure that it may continue to provide uninterrupted performance of Services under this Agreement consistent with the standards agreed hereto.

## 14 **CONFIDENTIALITY AND NON-DISCLOSURE**

14.1 When receiving Confidential Information, the receiving Party must:

- 14.1.1 keep all Confidential Information of the disclosing Party confidential unless strictly required otherwise by Law;
- 14.1.1 limit access to those of its Third Party sub-contractors reasonably requiring the Confidential Information on a strictly need to know basis, provided that the Service Provider shall procure that such Third Party sub-contractor is bound by the confidentiality obligations that are materially similar to those set out in this Clause 14 (*Confidentiality and Non-Disclosure*);
- 14.1.3 not use any Confidential Information for any purpose other than the rendering of Services contemplated by this Agreement without the prior written permission of the disclosing Party.

14.2 Confidential Information shall not include information that:

- 14.2.1 was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;
- 14.2.2 became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement; or
- 14.2.3 was subsequently lawfully disclosed to the receiving Party by a person other than a Party hereto.

14.3 Each Party hereto may use or disclose information disclosed to it by the other Party to the extent that such use or disclosure is reasonably necessary in complying with applicable Law, or exercising its rights under this Agreement. However, if a Party is required to make any such disclosure of another Party's Confidential Information, other than pursuant to a confidentiality agreement, it will give reasonable advance notice to the other Party of such disclosure and, will use its best efforts to secure confidential treatment of such information prior to its disclosure.

- 14.4 Except as expressly provided herein, each Party agrees not to disclose any terms of this Agreement to any Third Party without the consent of the other Party. However, disclosures may be made as required by applicable Laws, or to actual or prospective corporate partners, or to a party's accountants, attorneys and other professional advisors.

## **15 DATA PROTECTION**

- 15.1 All Customer Data is, or will be, and shall remain the property of the Customer. The Service Provider hereby irrevocably assigns, transfers and conveys, to the Customer without further consideration all of its and their right, title and interest in and to the Customer Data.
- 15.2 The Service Provider represents, warrants and undertakes that, in relation to this Agreement and Personal Data contained in Customer Data, the Service Provider shall:
- 15.2.1 observe and comply strictly with the terms of the Data Protection Legislation;
  - 15.2.2 use Customer Data to provide the Services to Customer. The Customer represents, warrants and undertakes to the Service Provider that, in relation to Personal Data contained in the Customer Data, it is authorized to disclose it to the Service Provider under this Agreement;
  - 15.2.3 not use the Customer Data other than in connection with providing the Services;
  - 15.2.4 shall not disclose, sell, assign, lease or otherwise provide the Customer Data to Third Parties (otherwise than in accordance with Clause 8 of this Agreement); and
  - 15.2.5 shall not commercially exploit Customer Data.
- 15.3 Each Party shall be obliged to promptly notify the relevant Authorized Representative of the other Party of any inaccuracy in the names and addresses comprised within the Customer Data and of which that Party becomes aware from time to time.
- 15.4 The Service Provider shall in accordance with good industry practice:
- 15.4.1 take steps to ensure that no unauthorized Third Party will obtain access to any Customer Data;
  - 15.4.2 ensure that any personnel of the Service Provider shall not deliberately or negligently corrupt or erase Customer Data and perform regular backups of Customer Data; and
  - 15.4.3 keep all Customer Data physically and logically separate from the data of its other customers and identify it as the Confidential Information and property of the Customer.
- 15.5 Upon request by the Customer, the Service Provider shall execute and deliver any documents that may be necessary or desirable under any applicable Law to preserve, or enable the Customer to enforce, its rights with respect to Customer Data.

## **16 INDEMNIFICATION**

- 16.1 Each Party ("**Indemnifying Party**") shall indemnify and agrees to defend and to keep the other Party, such other Party's Affiliates and agents, officers, directors, employees successors and



permitted assigns of such other Party (“**Indemnified Party**”) indemnified, from any and all Losses arising from, or in connection with, any of the following:

- 16.1.1 the non-performance and non-observance of any of the terms and conditions of this Agreement by the Indemnifying Party;
  - 16.1.2 acts of negligence or willful misconduct of the Indemnifying Party;
  - 16.1.3 any infringement or alleged infringement by the Indemnifying Party of a Third Party’s Intellectual Property;
  - 16.1.4 breach of the provisions of this Agreement by the Indemnifying Party; and
  - 16.1.5 failure by the Indemnifying Party to fulfill its obligations under any applicable Law.
- 16.2 The rights of an Indemnified Party pursuant to this Clause 16 (*Indemnification*) shall be in addition to and not exclusive of, and shall be without prejudice to, any other rights and remedies available to such Indemnified Party at equity or Law including the right to seek specific performance, rescission, restitution or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.

## **17 FORCE MAJEURE & DELAYS**

- 17.1 No Party shall be liable for any default or delay in the performance of its obligations under this Agreement, if and to the extent the default or delay is caused, directly or indirectly, by Force Majeure and provided that the non-performing Party could not have been prevented such default or delay.
- 17.2 Upon occurrence of any such default or delay as referred to in Clause 17.1 above, the non-performing Party shall be excused from further performance for as long as such Force Majeure prevails and the non-performing Party shall continue to use its reasonable endeavors to recommence performance of its obligations under this Agreement.
- 17.3 The non-performing Party so defaulted and delayed shall promptly notify the other Party and describe the Force Majeure causing the default and delay.
- 17.4 In the event of such non-performance due to Force Majeure continuing for more than [90 (ninety)] consecutive calendar days, the Parties may mutually agree in writing to terminate this Agreement in terms of Clause 12.3.5 above, provided that in case of termination of this Agreement pursuant to Clause 12.3.5, the non-performing Party shall not be liable to the other Party for such default or delay and consequential termination of this Agreement.

## **18 LIMITATION OF LIABILITY**

- 18.1 Notwithstanding anything to the contrary contained anywhere in this Agreement, the Service Provider’s aggregate liability for damages to the Customer, whether in contract, tort or otherwise, arising out of or in connection with this Agreement shall be limited to the Service Fees paid / payable by the Customer.

- 18.2 Notwithstanding anything to the contrary contained anywhere in this Agreement, neither Party to this Agreement shall be liable to the other Party for any special, consequential, incidental, exemplary, punitive, or indirect damages arising from, relating to, or in connection with this Agreement or any Schedules, Annexures or attachments hereto including, without limitation to, any damages resulting from loss of profits, loss of savings, loss of business, loss of use, or loss of data, arising out of or in connection with this Agreement or of any other obligations relating to this Agreement, whether or not the Party has foreseen or been advised of the possibility of such damages as well as for costs of procurement of substitute services by anyone.

## 19 ASSIGNMENT

Subject to Clause 8 (*Appointment of Sub-contractors*), neither Party may assign, transfer, delegate, or pledge this Agreement or any of its rights or obligations hereunder to any Third Party without the prior written consent of the other Party.

## 20 INDEPENDENT CONTRACTOR

This Agreement does not set up or create an employer/employee relationship, partnership of any kind, an association or trust between the Parties, each Party being individually responsible only for its obligations as set out in this Agreement and in addition the Parties agree that their relationship is one of independent contractors. Save to the extent to which a Party is specifically authorised in writing in advance by the other Party, neither Party is authorised or empowered to act as agent for the other for any purpose and neither Party shall on behalf of the other enter into any contract, warranty or representation as to any matter. Neither Party shall be bound by the acts or conduct of the other, save for acts or conduct which the first Party specifically authorises in writing in advance. Employees/workmen of neither Party shall be construed or treated as the workmen/employees of the other Party or place any obligation or liability in respect of any such workmen/employee upon the other Party, including without limitation, worker's compensation, disability insurance, leave or sick pay.

## 21 DISPUTE RESOLUTION

### 21.1 Dispute Resolution Process

If any dispute, controversy or claim among the Parties or any of them ("**Disputing Parties**") arises out of or in connection with this Agreement, including the breach, termination or invalidity thereof ("**Dispute**"), the Disputing Parties shall use all reasonable endeavours to negotiate with a view to resolving the Dispute amicably. If a Disputing Party gives the other Disputing Party notice that a Dispute has arisen ("**Dispute Notice**") and the Disputing Parties are unable to resolve the Dispute amicably within 30 (thirty) days of service of the Dispute Notice (or such longer period as the Disputing Parties may mutually agree), then the Disputing Parties shall refer the Dispute to arbitration and the Dispute shall be finally settled by arbitration under the Arbitration and Conciliation Act, 1996. The Disputing Parties shall jointly appoint single arbitrator within 30 (thirty) days from the receipt of a request to do so from a Disputing Party to the other Disputing Party.

### 21.2 Place, Enforcement and Law of Arbitration

21.2.1 The place of arbitration shall be [●] and all the arbitration proceedings shall be conducted in the English language.

21.2.2 Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

21.2.3 Arbitration undertaken under this Agreement shall be governed by Indian law.

21.3 Costs

The costs of the arbitration shall be borne by the Disputing Parties in such manner as the arbitrators shall direct in their arbitral award.

21.4 Final and Binding

Subject to applicable Law, any award passed pursuant to Clause 21.1 shall be final and binding on each of the Parties that were parties to the dispute.

**22 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be separable from the remainder of the provisions hereof which will continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.

**23 WAIVER**

The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder or thereunder, will not constitute a waiver thereof and will not cause a diminution of the obligations established by this Agreement. A waiver of any default will not constitute a waiver of any subsequent default. No waiver of any of the provisions of this Agreement will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

**24 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of India without regard to applicable conflicts of laws principles and each of the Parties hereto, subject to Clause 21 (*Dispute Resolution*), submits to the jurisdiction of the courts at [●].

**25 COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and any Party may execute this Agreement by signing any one or more of such originals or counterparts. The delivery of signed counterparts by facsimile transmission or electronic mail in “portable document format” (“.pdf”) shall be as effective as signing and delivering the counterpart in person.

**26 ENTIRE AGREEMENT AND AMENDMENTS**

26.1 This Agreement shall contain the entire understanding of the Parties and shall supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

26.2 No supplement, amendment or modification to this Agreement shall be valid, enforceable or binding upon the Parties unless made in accordance with the provisions of this Agreement.

## **27 FURTHER ASSURANCE**

The Parties shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as reasonably required to give effect to the provisions of this Agreement.

## **28 NON-SOLICITATION**

28.1 Neither Party shall at any time during the Initial Term or for [2] two years after termination of this Agreement, solicit or endeavour to entice away from or discourage from being employed or hired by the other Party any person who is at that time an employee of such other Party.

29.2 Neither Party shall be in breach of this Clause 28 (*Non-Solicitation*) if it recruits any employees pursuant to a bona fide advertisement or a recruitment campaign not specifically targeted at the employees of the other Party.

## **29 NOTICES**

29.1 Unless otherwise stated, all notices, approvals, instructions, demands and other communications given or made under this Agreement shall be in English and in writing and shall be given by facsimile, by personal delivery or by sending the same by pre-paid registered mail addressed to the relevant Party at its address or fax number set out below (or such other address or fax number as the addressee has by 7 (seven) days' prior written notice specified to the other Parties).

To the Service Provider: Attn.: [●]  
Address: [●]  
E-mail: [●]

To the Customer: Attn.: [●]  
Address: [●]  
E-mail: [●]

29.2 Any notice, approval, instruction, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (i) if given or made by registered mail, on the Business Day following the date of acknowledged receipt; (ii) if given by personal delivery, on the Business Day following the date of personal delivery; (iii) if given or made by facsimile, upon the Business Day following the date of receipt of a transmission report confirming dispatch; and (iv) if given by e-mail with return receipt requested, upon the obtaining of a valid return receipt from the recipient.

## **30 SPECIFIC PERFORMANCE**

The Parties agree that each Party shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Parties from committing any

violation or to enforce the performance of the covenants, representations and warranties and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies that the Parties may have at law or in equity, including without limitation a right for damages.

### **31 SURVIVAL**

Any provision of or obligation under this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement or which by their nature survive termination shall survive any such termination or expiration, and shall continue in full force and effect, including, but not limited to, Clause 1 (*Definitions and Interpretation*), Clause 9 (*Ownership Rights*), Clause 12 (*Term and Termination*), Clause 14 (*Confidentiality and Non-disclosure*), Clause 15 (*Data Protection*), Clause 16 (*Indemnification*), Clause 18 (*Limitation of Liability*), Clause 19 (*Assignment*), Clause 20 (*Independent Contractor*), Clause 21 (*Dispute Resolution*), Clause 22 (*Severability*), Clause 23 (*Waiver*), Clause 24 (*Governing Law and Jurisdiction*), Clause 28 (*Non-solicitation*) and Clause 29 (*Notice*) and Clause 30 (*Specific Performance*).

[Remainder of the page intentionally left blank]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**For [●]**

**For [●]**

---

By: [●]

---

By: [●]

Name: [●]

Name: [●]

Title: [●]

Title: [●]

Date: [●]

Date: [●]

### **ANNEXURE – 1**

#### **Specific Services to be provided in connection with lending**

	<b>Scope of Services</b>	<b>Service Levels</b>	<b>Service Fee</b>
1.	• [.]	Incidents of non-compliance - NIL	
2.	[.]	Incidents of non-compliance - NIL	
3.	• [.]	100% adherence to guidelines on collection of dues published by RBI and / or Policy of the Customer on collection or receivables	
4.	• [.]	100% adherence to RBI guidelines on customer servicing	

### **ANNEXURE-2**

***[Note to Draft: To be provided by the client]***