**SERVICE LEVEL AGREEMENT**

This **Service Level Agreement** (hereinafter referred to as “**Agreement**”) is entered into on this **\_\_\_\_ 2019** (hereinafter, the “**Effective Date**”)

**BY AND BETWEEN**

**\_\_\_\_\_**, having its registered office at \_\_\_\_\_\_, hereinafter referred to as the “**Agency**” (*which expression shall, unless repugnant to the meaning or context thereof, be deemed to mean and include its directors, nominees, assigns, employees, contractors, affiliates, agents, representatives and successors*);

**AND**

**\_\_\_\_\_\_\_\_\_** having its registered office at \_\_\_\_\_, hereinafter referred to as the “**Vendor**” (*which expression shall, unless repugnant to the meaning or context thereof, be deemed to mean and include its directors, nominees, assigns, employees, contractors, affiliates, agents, representatives and successors*);

The Agency and the Vendor shall hereinafter be referred to individually as a *“****Party****”* and collectively as *“****Parties****”*, as the context so requires.

**WHEREAS** the Agency is engaged in the business of \_\_\_\_\_\_\_\_\_;

**WHEREAS** the Vendor is engaged in the business of \_\_\_\_\_\_\_\_\_\_.

**WHEREAS** the Agency is desirous of engaging the Vendor to perform \_\_\_\_\_\_\_\_\_\_\_ (hereinafter ***“Services”***) for them in India.

**AND WHEREAS**, the Agency and the Vendor agree that this Agreement shall apply to all such future services for the Agency unless otherwise agreed to by the Parties in writing, for a mutually agreed-upon duration.

**THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

# **SERVICES**

The Vendor agrees to perform the Services for the Agency in accordance with the terms of this Agreement.

# **SCOPE OF SERVICES**

The Vendor agrees to provide \_\_\_\_ for the Agencyfor the term of this Agreement. Scope of work for \_\_\_\_ is as follows:

\_\_\_\_\_\_\_\_\_\_

# **TERM**

This parties mutually agree upon the terms of this Agreement and sets out the terms of this Agreement for a duration of **\_\_\_\_\_\_** from the Effective Date of the Agreement**.**

# **COOPERATION**

The Agency shall assist the Vendor in the performance of its obligations under this Agreement for the Agency and shall undertake the responsibilities if any specified from the Vendor at its own expense. The Agency shall make available to the Vendor a designated representative: \_\_\_\_\_\_\_\_\_\_(hereinafter ***“Agency’s Representative”***), who shall be authorized to make binding decisions for the Agency regarding the obligations which are the subject of this Agreement, and shall perform or have performed other duties and requirements by the Agency as set forth in this Agreement or communicated in writing in the manner set out herein below, and promptly assist the Vendor with any and all of its requirements without demur or delay.

# **RELIANCE**

The Agency understands that the Vendor shall rely upon the Agency’s Representative as having the authority specified in Section 4 herein and that all official communications from the Vendor to the Agency shall be addressed to the Agency’s Representative. Furthermore, any and all decisions and directions issued by the Agency's Representative will be treated as having the full knowledge and authority of the Agency, and the Agency shall be bound to honour the same. The Agency shall not be entitled to refuse or take issue with any Services provided pursuant to valid instructions received from the Agency's Representative. Further, notwithstanding anything contained hereinbelow, the Vendor shall in no manner be responsible for the failure of the Services to achieve the desired / indented outcome should the instructions provided / Services rendered by improperly implemented or improperly communicated by the Agency’s Representative or any other employee/agent/representative/assignee of the Agency.

The Vendor is fully responsible for the failure of any Service to achieve or the intended outcome if that Service is relevant to any of Indian legislation which the Vendor is familiar with or in case of failure of Services as a result of an under-qualified third party formerly assigned by the Vendor.

# **RIGHTS, DUTIES, AND OBLIGATIONS OF THE PARTIES**

1. **Vendor**
2. **Agency**

# **WORK PROVISIONS**

1. **Independent Contractor**

For all purposes hereof and in the performance of its obligations under this Agreement, the Vendor is and shall remain an independent contractor and nothing in this Agreement shall be deemed or construed to create an employer/employee, joint venture or partnership relationship between the Vendor and the Agency. Nothing herein shall be deemed or construed to create an employment relationship between the Agency and any employee, agent or independent contractor of the Vendor. Neither Party shall have any authority to ensure any obligations on behalf of the other party or to make any promise, representation or contract of any nature on behalf of the other Party. It is also confirmed that no relationship akin to the agency is created between the Agency and the Vendor.

1. **Exclusivity**

The Vendor recognizes and acknowledges the exclusive and competitive nature of the service required by the Agency for the Client through this Agreement. The Vendor hereby agrees not to engage in any activities or perform similar services, in or relating to the same field as those specified in this agreement, for any Third Party or competing the Client, until the duration of the existing Service Agreement expires.

1. **Completion/Renewal**

The Vendor shall consider its obligations under the Agreement complete upon **\_\_\_\_** of providing the Service and this Agreement shall be renewed on the same terms or on different terms upon mutual consent between the Parties after consultation with the Client.

1. **Confidentiality**

Any and all work developed by the Vendor in accordance with the services provided under this Agreement is to be kept strictly confidential during and after the term of this Agreement. Similarly, any information on the Agency or Client, including but not limited to its policies, practices, innovations, and R&D processes.

# **INTELLECTUAL PROPERTY RIGHTS**

1. The Agency owns all right, title, and interest in all the Intellectual Property Rights therein resulting from this service and collaboration. The Vendor has an obligation to protect the intellectual property rights of the Client and the Agency if any in his possession and shall be held responsible for any breach of such intellectual property rights caused by actions of the Vendor during the term of this Agreement. The Vendor undertakes to indemnify the Agency and the Client against any claims regarding intellectual property rights infringement relating to the condition specified.
2. Upon termination, the Vendor shall immediately return to the Agency and the Client all property belonging to the Agency and/or the Client that may be in the Vendor’s possession, including but not limited to, images, data, information, intellectual property and other property.

# **WARRANTIES**

1. **Warranty of Authority**

Both the Parties warrants that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that its performance hereunder shall not conflict with, limit or be contrary to any other agreement.

1. **Warranty of Services**
2. **Professional Manner:** the Vendor warrants that all Services will be performed in a professional manner using qualified professional personnel.
3. **No Infringement:** The Parties represent and warrant that their disclosure and delivery of any deliverable, information, documents, software and other materials, and use thereof, as contemplated by this Agreement, will not knowingly infringe or violate any proprietary right of any third party, including, without limitation, any copyright, trade secret or design rights.
4. **Noninterference with Business**

Unless otherwise expressly agreed to by the Parties, the parties agree not to, directly or indirectly solicit or induce or attempt to persuade any employee, independent contractor, vendor, supplier, outsourced third-party, director or other participants of each other to terminate an employment, contractual or other relationship with the Vendor, or to enter into a relationship with such individuals or into any business organization in which such individuals may be directly or indirectly involved. The term “enter into a relationship” shall include, but not be limited to, acting as a paid or unpaid director, officer, agent, employee of, or consultant to, or acting or participating as owner, partner, manager, member, or shareholder. During, and for a period of two years immediately following termination/expiry of this Agreement, the Parties further agrees not to

* 1. directly or indirectly contact any person or entity disclosed by either party for the purpose of taking advantage of a business opportunity without the prior written approval of each other;
  2. otherwise circumvent a relationship with each other or establish a relationship with a party with whom either party already has a relationship or foreseeable relationship, and with whom either party has never had a relationship; or
  3. seek to establish any rights, including but not limited to intellectual property rights, anywhere in the world in conflict with either party’s pre-existing intellectual property or proprietary rights therein or hereinafter established.

# **PAYMENT**

1. **Payment**

The payment for the Services agreed to be provided to the Agency by the Vendor are comprehensively listed in **Schedule - A** of this Agreement.

1. **Payment methods**

Payments may be made to the Vendor by electronic transfers, cheque, DD or cash. Returned/bounced cheques will incur an additional fee of Rs. 1000/- per returned cheque, in addition to any and all remedies available to the Vendor under law, including proceedings under Section 138 of the Negotiable Instruments Act. The Vendor reserves the right to consider the Agency to be in default in the event of a returned/bounced cheque.

1. **Default**
2. The Agency shall be considered a defaulter if any invoice raised on it remains unpaid for\_\_\_\_\_ from the date of invoice, or following a returned/bounced cheque. In such an event, the Vendor shall be entitled to cease the provision of Services and/or delivery of Deliverables, until the amount due has been paid in full. Any resulting delays that impact the Duration shall be at the sole cost of and detriment to the Agency.
3. The Agency is aware that the aforesaid cessation of Services and/or delivery of Deliverables shall not relieve the Agency of its obligation to clear such amounts due to the Vendor. The Agency expressly and unconditionally agrees to bear any and all costs incurred by the Vendor in respect of legal expenses and/or third-party collection agency fees as may be incurred by the Vendor in the enforcement of this Agreement or Schedule-A hereto.

# **TERMINATION**

* 1. This Agreement shall subsist for a period of \_\_\_\_ from the effective date of this agreement and shall be renewed mutually by the parties.
  2. In the event of prior termination of the Agreement by the Agency, a cancellation fee determined at the sole consideration of the Vendor, in addition to amounts payable towards all un-invoiced Services / Deliverables will be compulsorily payable to the Vendor by the Agency, and the Agency expressly and unconditionally agrees to the same. Such fees will not exceed 100% (One Hundred Percent) of the total agreed project cost.
  3. In the event, the Vendor has failed to provide its Services within the set time frames as agreed between the Parties, the Agency may, on giving the Vendor **\_\_\_\_\_** prior written notice, terminate this Agreement.
  4. Upon termination of this Agreement for any reason:

(a) the Agency shall immediately pay to the Vendor all amounts owed to the Vendor pursuant to this Agreement or payment for Services enlisted under Schedule-A, performed prior to the date of termination;

(b) each Party shall immediately cease all use of and shall return to the other Party within \_\_\_\_\_\_ all Confidential Information and materials of such other Party and all copies, portions and abstracts thereof, that are in its possession or under its control, other than any materials for which the Agency has paid or agrees to pay

# **LIMITATION OF LIABILITY**

Except with respect to the parties’ indemnification obligations, neither party shall be liable to the other for any special, indirect, incidental, punitive, or consequential damages arising from or related to this agreement, including bodily injury, death, loss of revenue, or profits or other benefits, and claims by any third party, even if the parties have been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including without limitation to breach of contract, breach of warranty, negligence, strict liability, and other torts.

# **CONFIDENTIALITY**

1. **Confidential Information**

In connection with this Agreement, each party may disclose, or the each of the parties may learn of or have access to, certain confidential proprietary information owned by the other party or its affiliates, business partners or Agents (***“Confidential Information”).*** Confidential Information includes, but is not limited to, any artefacts, tools, methods, data or information, oral or written, that relates to either party or any of the parties existing or contemplated business activities, technology, developments, software, methods, trade secrets, and Agents. Confidential Information also includes the terms of this Agreement, Schedules, and Services & Deliverables.

1. **Public Domain**

Notwithstanding the foregoing, Confidential Information is deemed not to include information that:

* + 1. is publicly available or in the public domain at the time disclosed,
    2. is or becomes publicly available or enters the public domain through no fault of the disclosing party,
    3. is rightfully communicated to the disclosing party by persons not bound by confidentiality obligations with respect thereto,
    4. is already in the receiving party’s possession free of any confidentiality obligations with respect thereto,
    5. is independently developed by either party without the use of any Confidential Information or
    6. is approved for release or disclosure by either party in writing without restriction.

1. **Limitation of Disclosures**

During the term of its engagement and for all periods thereafter, each party shall maintain the Confidential Information in strict confidence and shall not disclose, publish or copy any part of the Confidential Information. Each party shall use the Confidential Information solely for the purpose of this Agreement. Each party shall not use the Confidential Information, or any portion thereof, for the benefit of any third-party. Each party shall take all necessary precautions in handling the Confidential Information and limit disclosures on a strict need-to-know basis. However, the disclosing party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental bodies, provided that the disclosing party gives reasonable prior notice to the other party to contest such order or requirement, or obtain injunctive relief therefrom. Upon the termination or expiration of this Agreement, each party shall return to the other party or certify the destruction of all Confidential Information except such Confidential Information that each party may expressly authorize the other party to retain, in writing.

1. **Publicity**

Notwithstanding anything to the contrary in the Agreement or Schedule-A, each party shall be permitted to disclose in summary form the nature of the work performed for it by the other party. Such disclosure may include a brief description of the Services, but the disclosing party shall not disclose the Confidential Information of the other party or otherwise result in any breach of any other term of this Agreement.

1. **Reference**

Notwithstanding anything to the contrary in the Agreement or Schedule-A, each Party shall be entitled to reference the other Party and describe the work completed / Services availed of under this Agreement and Schedule-A in summary and general form, without revealing any of the other Party’s Confidential Information.

# **GENERAL PROVISIONS**

* 1. **Notices**

All notices required shall be in writing and shall be effective on the date of mailing to the Parties sent *via* electronic mail or any mutually agreed upon international courier agency, addressed to the designated representatives of the Parties. Either Party may change its notice method by giving the other party written a notice in the manner set forth above.

* 1. **Severability**

Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provisions(s) held to be invalid or unenforceable.

* 1. **Waiver**

The waiver of a breach of this Agreement or the failure of a Party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

* 1. **Force Majeure**

Neither Party shall be responsible for any failure to perform, or delay in performing any of its obligations under this Agreement, where and to the extent that such a failure or delay results from causes outside the control of such Party. Such causes shall include, without limitation, delays caused by the other party, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, civil commotion, or the like.

* 1. **Headings**

Section headings in this Agreement are merely for the convenience of the Parties and should not be construed as having any special meaning or importance.

* 1. **Governing Law**

This Agreement shall be deemed executed in Mumbai and shall be governed by the laws of India. For purposes of enforcement of arbitration awards, equitable relief, or if for any other reason litigation is permissible under this agreement, each party hereby irrevocably agrees to the personal jurisdiction and venue of the courts at Mumbai.

* 1. **Survival**

All provisions of this Agreement, including Schedule-A hereto which by their terms or nature are intended to survive expiration or termination of this Agreement, shall survive indefinitely.

* 1. **Entire Agreement**

This Agreement supersedes all prior oral or written representations, communications, or agreements between the Parties, and, together with the Schedules hereto, constitutes the final and entire understanding of the Parties regarding the subject matter of this Agreement. Neither Party has relied on any such prior oral or written representations, communications, or agreements.

* 1. **Disputes**

It is expressly agreed to by the Parties hereto that the formation, interpretation and performance of this Agreement as well as Schedule-A, and any disputes arising therefrom will be resolved through a two-step Alternate Dispute Resolution (“**ADR**”) mechanism.

***Mediation***: In case of any dispute between the Parties, the Parties will attempt to resolve the same amicably amongst themselves, to the mutual satisfaction of both Parties. In the event that the Parties are unable to reach such an amicable solution within \_\_\_\_\_ of one Party communicating the existence of a dispute to the other Party, the dispute will be resolved by arbitration, as detailed hereinbelow;

***Arbitration***: In the event that the Parties are unable to amicably resolve a dispute by mediation, said dispute will be referred to arbitration by a sole arbitrator to be appointed on the mutual consent of both parties, and the award passed by such sole arbitrator will be valid and binding on both Parties. The guilty party shall bear the entire cost of the proceedings. The arbitration shall be conducted in English, and the seat of Arbitration shall be **\_\_\_\_\_**.

The Parties expressly agree that the Agreement along with Schedule-A shall be governed by the laws, rules and regulations of India and that the **Courts at \_\_\_\_,** shall have exclusive jurisdiction over any disputes arising between the Parties.

* 1. **Amendments**

This Agreement may be amended/modified with the mutual consent of both Parties, by executing a fresh agreement containing such amendments/modifications, or by one Party communicating the need for an amendment/modification in writing, and the other Party accepting the said proposal and communicating its consent to the same in writing.

**IN WITNESS WHEREOF**, each of the undersigned has duly executed this Agreement (or caused this Service Level Agreement to be executed on its behalf by its officer or representative thereunto duly authorized).

For **\_\_\_\_\_\_** For **\_\_\_\_\_\_\_\_**

|  |  |
| --- | --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Schedule-A**

PAYMENT FOR SERVICES