**Annexure 3**

**MODEL SERVICE PROVIDER AGREEMENT**

This service provider agreement is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in Mumbai, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_a company incorporated under the Companies Act of 1956 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter refer to as the ‘Service Provider” which expression shall unless it be repugnant to the context or the meaning there of, be deemed to include its successors, legal representatives and assigns) of the First Part;

and

M/S\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the Companies Act, 1956 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as the ‘Trading Member or Client’ which expression shall unless it be repugnant to the context or the meaning thereof, be deemed to include its successor, legal heirs, legal representatives and assigns as the case may be) of the Second Part.

WHEREAS

1. National Stock Exchange of India Limited (“NSEIL”) has been offering Colocation services (“**Colocation**”) to its trading members (“TMs”), in accordance with the extant regulatory framework. NSEIL has now opened the Colocation facility for vendors (“**Vendor**”) to provide Colocation, subject to their satisfaction of eligibility criteria and other conditions, along with various Non-Neat Frontend (“**NNF**”) solutions (as permitted by NSE from time to time) including hardware and software to TMs. This facility is termed as Colocation as a Service (“**CaaS**”). In pursuance thereof, Vendors desirous of providing CaaS are required to apply to NSEIL seeking its permission to offer such CaaS to TMs.
2. The Service Provider is registered as a Vendor with NSEIL and is providing technological services to trading members in terms of hardware, software, algorithms, managed service etc. The Service Provider has applied to NSEIL and consequently been authorized to act as a Vendor providing CaaS to interested trading members.
3. The Client is registered as a Trading Member with NSEIL in accordance with the extant SEBI Regulations and requirements. The Client executes transactions in the market through the Stock Exchanges on behalf of itself and its customers.
4. The Service Provider has represented that it has in its possession the necessary infrastructure, software, expertise, necessary approvals from NSEIL and personnel to provide CaaS. The Client is desirous of using Colocation facility and consequently has approached the Service Provider for availing CaaS as provided by the Service Provider.
5. The Service Provider has now agreed to render CaaS (hereinafter referred to as the ‘**Services**’) as described in Schedule I herein for a consideration and subject to such terms and conditions as stated herein.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS.**

1. **Services to be provided by Service Provider.**

The Service Provider will provide Services as identified in Schedule I of this Agreement. In lieu of the Services of the Service Provider, the Client agrees and undertakes to pay the Service Provider a sum of Rs. \_\_\_\_\_\_\_\_\_ (in words) as service charge (hereinafter as **Service Charge**) on a monthly basis.

The Client agrees that the Service Provider is entitled to revise the Service Charge for every financial year. Provided that if circumstances necessitates for an increase in the Service Charge during the course of the financial year, the Service Provider shall be entitled to do so by giving 30 days’ notice in writing to the Customer. In case the revised Service Charge is not acceptable to the Client, the Client shall be entitled to terminate this Agreement forthwith without any further liability to the Service Provider.

1. **Rights & Liabilities of the Service Provider.**
2. In terms of the Services provided herein, the Service Provider reserves the following rights:
3. At his sole discretion, shall decide the hardware/software infrastructure that would be deployed while providing the Service under this Agreement. The Service Provider shall be solely responsible for such infrastructure deployed at Colocation. All Clients of a Service Provider shall be treated fair and equitably in respect of the Services availed.
4. The Service Provider reserves the right to restrict entry/movements of the Client or its authorized agents in the premises where the Service is being provided.
5. The Service Provider reserves the right to monitor and regulate the mode and manner of the TMs usage of the Service. In runaway/rogue situations, the Service Provider shall be authorized to terminate operations from any of the infrastructure used by the Client, at any time.
6. In terms of the Services provided herein, the Service Provider is liable towards the Client for the following:
   1. In ensuring that the market data is disseminated in a fair and equitable manner amongst his Clients;
   2. In keeping all information about a Client as confidential and separate from the other Clients;
   3. To intimate all the Clients of the Service maintenance activity, if any, in advance of \_\_\_ days;
   4. To permit audit/inspection of whatsoever nature, conducted by the Client or NSEIL or SEBI or any other regulatory authority; In case of audit/inspection by the Client, only such portion of the services as used by the said Client shall be permitted to be accessed by the Client;
   5. To provide operational guidelines to the Client from time to time, as if they were part of this Agreement;
   6. To provide Support Services, which shall respond to Client queries or issues and extend support services;
   7. To take adequate precautions through the use of technology with respect to security aspects as required by the Exchange and/or SEBI and/or any other regulator;
   8. To provide provisions, in terms of the infrastructure, for the Client to participate in mock / simulated market trading sessions as may be conducted by NSEIL from time to time.
7. **Rights & Liabilities of the Client.**
8. In terms of the Services provided herein, the Client reserves the following rights:
9. The Client shall receive Services under this Agreement in a fair and equitable manner, that is not partial or unfair vis-a-vis other Clients of the Service Provider.
10. To receive the market data as disseminated by the Service Provider in a fair and equitable manner;
11. To participate in the mock / simulated market trading sessions as may be conducted by NSEIL from time to time, through the provisions of the Service provided herein;
12. In terms of the Services provided herein, the Client is liable for the following:
    1. To keep all information in relation to the Services and the Service Provider, as proprietary and confidential vis-à-vis any third party;
    2. To ensure compliance with business continuity provisions as mandated by SEBI and NSEIL from time to time;
    3. To ensure sufficient fallback/backup provisions are available at all times in order to address any contingency issues that may arise in relation to the Service;
    4. To adhere and comply with the operational guidelines as issued by the Service Provider from time to time, as if they were part of this Agreement;
    5. To use the infrastructure or the facilities provided by the Service Provider only for the purpose mentioned in this Agreement and for no other purpose whatsoever.
13. **Representations and Warranties**
14. The Service Provider, in respect of the Service, warrants and represents that:
    1. It has all the necessary regulatory and statutory approvals to provide the Services contemplated under this Agreement;
    2. It has all the technical and technological expertise to provide the Services contemplated under this Agreement;
    3. It shall provide the Services in a fair and equitable manner without any bias or favor towards any Client whatsoever;
    4. It shall follow and ensure continued compliance of all the relevant Byelaws, Rules, Regulations, Instructions, Directions, Guidelines, Orders of the Exchange, SEBI, RBI, DoT and/or any other regulator as applicable;
    5. That it would not employ/deploy any device that would lead to manipulation of the stock market.
15. The Client, in respect of the Service, warrants and represents that:
    1. It has all the necessary regulatory and statutory approvals to receive the Services contemplated under this Agreement;
    2. It shall follow and ensure continued compliance of all the relevant Byelaws, Rules, Regulations, Instructions, Directions, Guidelines, Orders of the Exchange, SEBI, RBI, DoT and/or any other regulator as applicable;
16. **Intellectual Property Rights**

All the intellectual property (“IP”) rights in the infrastructure deployed for the purpose of providing the Services under this Agreement, shall be the sole property of the Service Provider and no IP rights vest with the Client in this regard.

Nothing under this Agreement shall be construed to mean as a transfer of title to or ownership of the infrastructure deployed by the Service Provider for the purpose of providing the Services under this Agreement in or any of its parts or any rights therein such as patents, copyrights, trade secrets is transferred to the Client and the Client shall not claim any rights therein what so ever.

The Client hereby acknowledges that, except as specifically set forth in this Agreement, name of the Service Provider and its trademarks, copyrights and service marks shall at all times remain the exclusive property of the Service Provider. Nothing in this Agreement shall be construed as granting or transferring to the Client any right, title or interest in and to such property, except the right to use the same as herein provided and the Client shall not make any claim whatsoever in such property.

1. **Indemnity**

Either Party shall indemnify and keep indemnified, and defend and hold harmless the affected party, its respective officers, employees, and agents from and against all losses, damages, liabilities and claims at law, or in equity including without limitation costs, expenses and lawyers fees, directly or indirectly arising out of or resulting from non-performance of the obligation by either Party specified under this Agreement.

1. **Governing Law & Dispute Resolution**

Any dispute in relation to this Agreement shall be settled and negotiated between the Parties on mutual consent. If the same is not resolved after the negotiations, the dispute may be submitted to Arbitration under the Arbitration and Conciliation Act, 1996 as amended from time to time.

The laws of India shall govern the provisions of the Agreement and the Courts in Mumbai have exclusive jurisdiction in relation to any issue/dispute regarding the Agreement.

1. **Term and Termination of the Agreement**
2. This Agreement shall be deemed to have come into effect from the Effective Date of this Agreement and shall continue to be operative for a period of \_\_ (\_\_\_\_\_\_) years.

1. This Agreement may be terminated immediately by either parties, on the grounds mentioned hereunder.
2. In case of non-payment of the Service Charge as agreed under this Agreement by the Client;
3. In case the services provided by the Service Provider is not in accordance with the provisions of this Agreement;
4. In case of any violation of the terms and provisions of this Agreement.
5. This Agreement may be terminated immediately, on the grounds mentioned hereunder, without any reference to the Parties.
6. In case the Service Provider is restrained by the Exchange or SEBI or any other regulator from providing the Services under this Agreement;
7. In case the registration of the Client, as a Broker under the SEBI (Broker & Sub Broker) Regulations, is cancelled at any point of time.
8. In case the Client is declared as a defaulter by the Exchange under its Byelaws, Rules and Regulations or by SEBI or any other regulatory authority having jurisdiction;
9. **Limitation of Liability**

The Service Provider shall use its best endeavor to ensure that the Services provided shall be in strict conformity with the terms of this agreement. In no event shall the Service Provider be liable for loss of profits or data as a result of the use of the Services or special incidental or consequential damages or other similar claims, however caused, and on any theory of liability.

1. **Confidentiality**

The Service Provider shall fully disclose in writing to its clients, its engagement, if any, in the business of trading securities directly or indirectly through any subsidiary orassociate/affiliate Company or any other Company in which any of my/our directors/relatives has a direct/indirect beneficial interest.Each Party shall treat as confidential and shall not disclose or transmit to any third party any information, documentation or other written material relating to either Party its suppliers, agents, distributors or customers that comes into the possession of the other Party as a result of the performance of this Agreement which may or may not be marked as confidential and/or proprietary by the providing party (“Confidential Information”). Confidential Information shall not include (i) any information that is available to the public or to the receiving party hereunder from sources other than the providing party (provided that such source is not subject to a confidentiality agreement with regard to such information) or ii) any information that is independently developed by the receiving party without use of or reference to information from the providing party. Notwithstanding the foregoing, either party may reveal Confidential Information to any regulatory agency or court of competent jurisdiction if such information to be disclosed is (a) approved in writing by the other party for disclosure or (b) required by law, regulatory agency or court order to be disclosed by a party, provided if permitted by law, that prior written notice of such required disclosure is given to the other party. This Clause shall survive the termination or expiration of this Agreement.

1. **Amendment to the agreement**

This agreement may only be amended, modified or varied by written instrument duly signed by the parties to this agreement. All Previous Communications, both oral and written between the parties and related to this Agreement, but inconsistent with the terms and conditions of this agreement are hereby declared null and void.

1. **Notice**

Any notice or other formal communication to be given under this Agreement shall be in writing and signed by or on behalf of the Party giving it.

The addresses and fax numbers of the Parties for the purpose of this Clause are:

|  |  |
| --- | --- |
| Name of the Service Provider: |  |
| Address: |  |
| Fax No.: |  |
| Email: |  |
| For the attention of: |  |

|  |  |
| --- | --- |
| Name of the Client |  |
| Address: |  |
| Fax No.: |  |
| Email: |  |
| For the attention of: |  |

IN WITNESS WHEREOF the parties have hereto have set and subscribed their respective hands and seals the day and year herein above mentioned,

SIGNED AND DELIVERED

By the hands of

|  |  |
| --- | --- |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| in the presence of  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | in the presence of  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**SCHEDULE I**

**Services to be provided by the Service Provider**

**To the Customer**

**Administration Terminal**

An Admin terminal to manage your business effectively.

* Create Multiple Hierarchies – Branch > Dealer > Client > Product > Segment.
* Create and Modify Security Baskets.
* Block / Unblock Orders with square off and non square off option.
* Block new orders, Block Buy orders, Block Sell orders.
* Set Auto Square off Exclusion List.
* Execute Auto Square Off.
* Square-off for clients not meeting margin requirements.
* Place After Market Orders.

**Risk Management Terminal**

A powerful rule based Risk Management tool to manage your business – at the user level, client level.

* Monitor Real time pre trade risk.
* Rule based and flexible Risk Management System.
* Create Multiple Products > Cash N Carry, Margin (Square Off).
* Set Limits at combination of Hierarchy and product
* Entity Profiling – create risk categories and assign categories to clients.
* Real time margin calculation.
* Position Conversion – Trading to Delivery
* Get Alerts at different thresholds.
* Upload of positions from file for calculations of exposure / margin.