**Annexure VIII**

**Model Service provider agreement between Member & ASP**

This service provider agreement is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_between\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the Companies Act of 2013 and having its principal place of business 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, 2013 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as the ‘customer’ 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. Customer is a member of recognised Stock Exchanges in India and executes transactions in the secondary market through the Stock Exchanges on behalf of its client.
2. Customer intends to provide the facility to its clients for execution of orders with requisite infrastructure requirement and in this respect is desirous of utilizing the necessary infrastructure and enabling software provided by the Service Provider.
3. Service Provider has represented that it would provide service to the Customer, which would facilitate their clients to have execution of orders with requisite infrastructure. The Service Provider has further represented that it has in possession the necessary infrastructure, software, expertise, necessary approvals from the exchange and personnel to facilitate the execution of orders.
4. Service Provider has agreed to render the services (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 DEED WITNESSES AS FOLLOWS.**

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

The Service Provider will provide services as identified in Schedule I for which the customer will pay the Service Provider charges as stated in Schedule II.

1. **Obligation of the Customer.**

The Customer Shall:

* 1. Adhere to the operational guidelines as prescribed by the Service Provider from time to time, as if they were part of this Agreement.
  2. Adhere to the terms of use as stated in the website xxxxxxx.in.
  3. Indemnify Service Provider against any damage, loss, expenses, cost etc. incurred by it, due to negligence (intentionally or unintentionally) of the customer or his clients.
  4. Pay charges due to Service Provider promptly as stated in Schedule II.
  5. Not use the infrastructure or the facilities provided by the Service Provider for any other purpose other than those mentioned in this Agreement.
  6. Incorporate the following in the agreement to be entered into with his/its clients.

“\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Name of Service Provider) shall, in no event be liable to ­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name of the Customer) or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name of the Customer’s Client) or to any third party for any loss, damage, loss of profits or for any other consequential damages, however caused and on any theory of liability”.

1. **Obligation of the Service Provider.**

The Service Provider Shall:

* 1. Provide the services as laid out in Schedule I.
  2. Provide the required rights to the customer for access to the relevant data and facilities.
  3. Use reasonable efforts to ensure uninterrupted access to the Services to the Customer.
  4. Provide Helpdesk Services, which will respond to Customer queries and extend support services.
  5. Speedy redressal of the customer complaints if any.
  6. Take adequate precautions through the use of technology with respect to security aspects.

1. **Financials.**
   1. Service Provider is entitled to levy the charges as per the tariff structure in force at the time of entering the agreement mentioned in Schedule II for providing the Services mentioned in Schedule I. Customer agrees that Service Provider has the right to revise the tariff for every financial year. Provided that if circumstances necessitates for an increase in the tariff rate during the course of the financial year, the Service Provider shall be entitled to do so by giving 45 days’ notice in writing to the Customer. In case the revised financial are not acceptable to the customer, the customer shall be entitled to terminate this agreement forthwith without any further liability to the Service Provider.
   2. There may be separate charges for other delivery channels, facilities and services which may be offered by the Service Provider and agreed to by the Customer.
   3. The Service Provider shall raise the invoice on the Customer as per the payments terms stated in Schedule II. The Customer agrees to bring to the notice of the Service Provider, the discrepancy, if any, in the invoice within 24 hours of the receipt of the invoice and further agrees to make the payment as per the invoice.
2. **Intellectual Property Rights (IPR).**
   1. The Service Provider allows the customer to use the facilities as listed out in Schedule I. Neither title to nor ownership to the software, website xxxxxxx.in or any of its parts or any rights therein such as patents, copyrights, trade secrets is transferred to the Customer and the Customer shall not claim any rights therein what so ever.
   2. The Customer shall not use the Service Provider’s name or any of its trademarks or service marks in any advertising, sales promotion or marketing materials relating to the services or otherwise without the prior written approval of the Service Provider.
   3. The Customer 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 Customer any right, title or interest in and to such property, except the right to use the same as herein provided and the Customer shall not make any claim whatsoever in such property.
3. **Terms and Termination of the Agreement.**
   1. This Agreement shall be effective from October 31, 2011 and shall remain in force unless terminated in accordance with provisions of this agreement.
   2. This Agreement may be terminated immediately on the grounds mentioned hereunder.

* In case a receiver has been appointed with respect to all or substantially all the assets of the parties. Provided that this clause shall not be applicable when winding up proceedings have been initiated to facilitate in amalgamation with another company proposing to carry on the same business.
* If any party threatens to cease or ceases to carry on business by writing to the other party.
* If any of the parties enters into an agreement of composition with its creditors.
  1. Without prejudice to the clause 6.2 mention above, this Agreement may be terminated by the Service Provider at its discretion without any prior notice either in writing or otherwise, if in its opinion the Customer or its clients fail in complying with any the provisions of this Agreement.

1. **Limitation of Liability.**
   1. The Service Provider shall use its best endeavor to ensure that the Services provided shall be in reasonable conformity with the terms of this agreement. In no event shall the Service Provider be liable for loss of profits, data or use of the Services or special incidental or consequential damages or other similar claims, however caused, and on any theory of liability.
2. **Advertising.**
   1. The Customer shall not advertise or publish the services to be provided herein by the Service Provider, without the prior written consent of the Service Provider.
3. **Confidentiality.**
   1. The parties acknowledge that all material and confidential information which has or will come into the possession or knowledge during the course of the operations shall be maintained in strict confidence and the parties agree not to make its use thereof other than for the performance of this Agreement.
4. **Assignment and transfer of agreement.**
   1. Customer shall not be entitled to assign or otherwise transfer this agreement or any benefits, rights, obligations or interest herein whether in whole or in part to any other third party without the prior written consent of the Service Provider.
5. **Notice.**
   1. Any notice to be given by one party to the other pursuant to this agreement shall be sent in writing in English, by registered letter or telex / cable or facsimile transmission to the address first mention above.
6. **Waiver of Rights.**
   1. No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any wavier of its rights operate as a waiver of any subsequent breach and no rights, power or remedy available to that party and each right, power or remedy shall be cumulative.
7. **Amendment to the agreement.**
   1. 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.
8. **Force Majeure.**
   1. If the performance of any obligations by any party as specified in this Agreement is prevented, restricted, delayed or interfered by reason of force majeure then notwithstanding anything herein before contained, the party affected shall be excused from its performance to the extent such performance relates to prevention, restriction delay or interference and provided the party so affected uses its best efforts to remove such cause of non-performance and when removed the party shall continue performance with utmost urgency. For the purpose of this clause “Force Majeure” means and includes fire, explosion, cyclone, floods, war, revolution, blockage or embargo, any law, order, demands or requirements of any Government or statutory authority, strikes, which are not instigated for the purpose of avoiding obligations herein or any other circumstances beyond the control of the party affected.
9. **Headings.**
   1. The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
10. **Jurisdiction and Arbitration.**
    1. In the case of any dispute or any differences of opinion between the parties arising out of or in relation to this Agreement including disputes or differences as to the validity of this Agreement or interpretation of any of the provisions of this Agreement, the same shall be resolved by mutual discussion. If the parties fail to settle the dispute or differences mutually, then the same shall be resolved in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any modifications or amendments thereto, or any re-enactment for the time being in force subject to the stipulation that only courts at Mumbai shall have exclusive jurisdiction in all matters arising out of or related to this Agreement.
11. **Governing Law.**
    1. This Agreement shall be governed by and constructed and interpreted in accordance with the laws of India.

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

by the hands of

in the presence of

SIGNED AND DELIVERED

BY

By the hands of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ x\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name) (Signature)

in the presence of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ x\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name) (Signature)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. *Please execute this on Rs.100 stamp paper or frank the agreement.*
2. *Affix company’s round stamp on each page.*
3. *Full name & signature of authorized signatory on each page.*
4. *Full name & signature of authorised signatory & witness on the last page.*

**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.

**Internet Investors**

Trading facility for your clients.

* Common login for Cash and Derivatives.
* Setup Market Watch.
* Live Market Data Refresh.
* Get Latest Market Quotes.
* View Top 10 Securities.
* View Market Depth.
* Place, Modify and Cancel orders.
* View Orders & Trade History.
* View Cancelled & Rejected Orders.
* Place After Market Orders.
* Place Spread Order Entry and Report.
* Exercise options & View reports.
* Use Option Calculator.
* View Positions, Limits & Security Holdings.
* Online Funds Transfer.
* Setup Portfolio Watch.
* Setup Alerts and view history.
* Configure Reports.

**Users for Members**

A terminal for members to trade.

* Set up both Cash and Derivatives on same screen.
* Create Multiple Market Watch.
* Get Market Depth.
* Quick Client and Security search.
* Easy Order Entry.
* File based order entry.
* Track your orders.
* View holdings / collateral value.
* View Tick by Tick Intra Day Charts.
* Place complex orders.
* Carry out Sensitivity Analysis of Option Portfolio.
* Place after Market hour orders.
* Set Alerts.
* Use Tools and Calculators.
* Send messages to Administrator.
* Customise screen settings.