**Annexure C-** **Undertaking**

**To be executed on Rs. 600/- stamp paper / applicable stamp duty of the state (whichever is higher), duly Notarized on all pages, signed, stamped & sealed by Authorized Signatory on all pages**

I / We \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an individual / a firm registered under the Indian Partnership Act, 1932 / a Limited Liability Partnership registered under Limited Liability Partnership Act 2008/a Company / Body Corporate incorporated under the Companies Act of 2013/ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Act, \_\_\_, and residing at / having our registered office at/ having place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (including its successors, assigns and legal representatives) give this UNDERTAKING on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ IN FAVOUR of National Stock Exchange of India Ltd., a company incorporated under the Companies Act of 1956, with its registered office at Exchange Plaza, Bandra-Kurla Complex, Bandra (East), Mumbai 400 051 (hereinafter referred to as ‘NSEIL’ which expression shall unless repugnant to the context include its successors, assigns and legal representatives)

**WHEREAS**

1. NSEIL provides its Trading Members with various means to access its trading front wherein they may use software provided by NSEIL or use Non Neat Front-End facility (hereinafter referred to as the "NNF facility") using software(s) not provided by NSEIL.
2. NSEIL makes available the NNF facility to its Trading Members which includes the use of facility such as Compute to Computer Link (CTCL), Internet Based Trading (IBT), Direct Market Access (DMA), Securities Trading using Wireless Technology (STWT), Smart Order Routing (SOR), Algorithmic Trading (AT), etc. or any such facility as may be introduced by SEBI/NSE from time to time.
3. The Trading Members, may, for its approval of NNF facility, either develop the necessary software on its own or procure suitable software from a software vendor (“the Software”) empanelled with NSEIL which is done by NSEIL after such vendors duly comply with the requirements as may be stipulated by NSEIL in this regard (hereinafter referred to as “the Vendor”).

1. NSEIL shall approve such software vendors to provide Trading Members with software on the NNF facility based on the application received from them and fulfilment of such criteria as may be stipulated by NSEIL from time to time including such software vendor providing an Undertaking in favour of NSEIL in the format prescribed by it and agreeing to abide by and be bound by the various terms and conditions which NSEIL may prescribe in this regard from time to time.
2. I / we am / are desirous of developing software for Trading Members to enable them to avail of the NNF facilities, and in this regard, I/ we, have submitted our application to NSEIL for empanelment along with an undertaking as herein below stating inter alia that I/We shall fulfil all the terms and conditions as may be prescribed by NSEIL from time to time at its discretion in this regard.

**NOW THEREFORE IN CONSIDERATION OF NSEIL having agreed to identify / identified me / us as a Vendor for the aforesaid purposes, I / we hereby IRREVOCABLY AND UNCONDITIONALLY AGREE, ACCEPT and UNDERTAKE to abide by and be bound by the following terms and conditions:**

1. I/We hereby, declare that, the information provided by me/ us in the application form submitted to NSEIL for approval of the Software on NNF facility are complete and true to best of our knowledge and based on records.
2. I/ We agree to pay any such license fees/charges/royalties as may be levied by DOT/SEBI/NSEIL or any other regulatory/statutory authorities from time to time.
3. I/We shall install the Software after duly ensuring that all the requirements stipulated by NSEIL in this regard have been complied with by us.
4. I/We agree that the data communication link between NSEIL's equipment and the Trading Member's equipment is on a computer to computer basis and that the link shall not be connected to my/our own telecommunication network.
5. I/We undertake to obtain the prior approval of NSEIL for any changes to be made to the software.
6. I/We undertake to ensure that access shall be given only to the authorized individuals, either it being our representatives (“Vendor’s personnel”) or representative of the Trading Member (“Approved Users”), and shall ensure to deploy a method (including malware protection) to prohibit any unauthorized access to the Software provided on the NNF facility.
7. I/We undertake that the Software design shall be compatible with NSEIL trading system in order to use only the specified messages given by NSEIL and shall consider all the structures defined by NSEIL from time to time. The Deliverables shall be :
   1. Basic functionalities as and when required by NSEIL
   2. Customization of Trading Members needs as approved by NSEIL.
8. I/We undertake that the Software developed by me / us, shall be at all times similar to that of the specifications of NEAT or any other Exchange provided software including any upgrades stipulated by NSEIL, from time to time. However, I/ we shall ensure that such Software developed by us shall be distinctly identifiable from NEAT or any other Exchange provided software.
9. I/We undertake that controls shall be inbuilt in the Software by me / us to ensure that the orders are matched by the central computer of NSEIL only and there is no scope for orders being matched in my / our/Trading Members own private network.
10. I/We undertake that the following controls shall be inbuilt in the Software by me/us to detect loss of product integrity:
    1. Data validation routines to detect input errors.
    2. Backup and recovery procedures.

1. I / We shall ensure that position monitoring etc., shall be inbuilt in the NNF facility and it shall be flexible to change as per Securities and Exchange Board of India Regulations/ NSEIL in this regard from time to time.
2. I / We shall ensure that the NNF facility shall be developed so as to generate the following from the software for the purpose of verification during the inspection:
   1. Number of Users hooked on to the Network.
   2. Number of Dealers hooked on to the Network including privileges to each Dealer.
   3. All the systems logs and audit trails of the Dealer and the Trading Member.
   4. Provision for entering complementary dummy orders.
3. I/We undertake that
   1. NSEIL shall have the right and privilege of inspecting and testing the Software at my/our site and the Trading Members site without any prior notice. The source code of the Software shall be available at my/ our site for verification and during verification the NSEIL shall ensure that the source code shall not be altered.
   2. We shall provide all the necessary support, technical and otherwise, as may be required for NSEIL/SEBI or any other regulatory authority to inspect and test the Software and/or our site.
   3. I / We shall make available Prototype and the technical specifications of the Software to NSEIL for testing purposes.
   4. I / We shall be responsible to fix the bugs in the Software if any, found at the time of testing.
4. I / We shall meet the criteria set to measure the expected level of performance.
5. I/ We agree that the terms of delivery and payment shall be as agreed to by the Trading Member and myself/us and NSEIL shall not be responsible for any breach, either by the Trading Member or by me/ us, of such terms and conditions agreed therein.
6. I / We shall provide the documentation i.e. training manuals required to operate the product and use of system outputs as specified by the Trading Member, with the Software. Further, such documentation shall include the potential error conditions and recommend action in the event of occurrence of error.
7. I / We undertake to provide user training to the Approved User, at the time, when the product is being installed and thereafter whenever a major upgrade is released for the following:
   1. Use of Product
   2. Maintenance of the product

Further, I / We also undertake that the frequency and calibre of the Vendor’s Personnel providing the training shall be as specified.

1. I / We undertake that:
   1. All material and information which has or will come into my /our possession or knowledge in connection with the agreement or the performance hereof, consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging or cause loss to NSEIL. I / We agree to hold such material and information in strict confidence, not to make use thereof other than for the performance of the Agreement, to release it only to my/our employees requiring such information and that too only with the written consent of NSEIL, and not to release or disclose it to any other parties. I / We shall take appropriate action with respect to my / our employees to ensure that the obligations of non-use and non-disclosure of confidential information under the Agreement are fully satisfied and shall also ensure that my/our Employees are aware and comply with the above provisions. The provisions of this clause shall survive the termination of the agreement. For the purpose of this clause the term data shall include amongst other things technical data which may be divulged by the Trading Member during the normal course of development of the software and information relating to the operations of NSEIL.
   2. I / We shall not in any way represent that the Software developed is a part of the NEAT software.
   3. I / We shall not advertise or publish any brochure, pamphlet, booklet, notice, or promotional material mentioning NSEIL or NEAT or the services to be provided under the Agreement without the prior written consent of NSEIL.
   4. I / We shall keep full security of NSEIL's programs, databases and computer records in accordance with best computing practice.
2. I / We shall develop the Software after considering the current and expected increase in workload, to ensure that the desired efficiency can be maintained with future workloads.
3. I / We shall develop the Software and make it compatible to other Operating Systems, in case of any need to transfer the Software from one piece of hardware to another due to technological changes.
4. I / We shall provide upgrade to the Software as and when the need for the same arises and in accordance with the requirements of NSEIL.
5. I / We am / are fully aware that NSEIL shall not be responsible for development, maintenance, updates, upgrades, error fixes and other support functions.
6. I / We undertake to provide the training and documentation as and when the Software is technically upgraded.
7. I / We undertake to ensure as follows:
   1. That in case of failure or malfunctioning of the Software, I/We shall make such first level trouble shooting and rectification of the Software problem to restore the Software in its proper operating condition at no cost to the Trading Member.
   2. That I / We shall provide services for regular onsite maintenance of the Software in such manner and at such time intervals as specified by the Trading Member. The fees for the same will be the amount mutually agreed upon by the Trading Member and me/us and shall not at any point of time be unreasonable so as to put the Trading Member in hardship. We are also aware that NSEIL shall in no way be responsible for non-fulfilment of either this or any other condition by the Trading Member.
   3. Shall supply and maintain the NNF facility to any NSEIL Trading Member at any location in the country, which the Trading Member desires to operate from.
8. I / We confirm that the Software complies with all the requirements stipulated by NSEIL, SEBI and the DOT in this regard and undertake that I / we shall modify the Software, if necessary to ensure continued compliance with the requirements of NSEIL / DOT / SEBI / any other authority as may be issued from time to time.
9. I / We hereby undertake to duly inform NSEIL in case of any cause, resulting in any change to my/our entity, or any change in any of the eligibility criteria based on which we have been identified as a Vendor for this purposes by NSEIL.
10. I / We hereby undertake to duly inform NSEIL the list of Trading Members who are using my/our NNF facility as and when NSEIL sought such information with the stipulated time as communicated by the Exchange
11. That during the continuation of the Agreement if any modification/amendment is required by NSEIL/Trading Member, to be made by us, I/We agree and undertake to make the same.
12. I/We agree that the term “Empanelment at NSEIL” is specifically limited to accessing test market and receiving update from NSEIL in respect of the NNF facility, wherever we display or express our Empanelment with NSEIL.
13. I/We agree that “Empanelment at NSEIL” does not guarantee the product/ software veracity or any commercial veracity of any contract or agreement done by us with our clients and any software developed by us shall in no way construed as being recommended by NSEIL. I/ we agree that our Empanelment at NSEIL does not constitute or imply endorsement, recommendation, or favouring of NSEIL, its associate companies or any of its employees or contractors acting on its behalf.
14. I / We shall render all possible assistance and co-operation to NSEIL by providing access to any kind of information in any form as it may require and I/we hereby undertake to produce such documents, records, accounts, books, data howsoever stored including data stored in magnetic tapes, floppy diskettes, etc. and any other information as may be required by NSEIL at its discretion.
15. I/We agree that NSEIL endeavours to provide the approval for NNF facility on a best efforts basis and makes no representations or warranty, express or implied, with regard to the advantages, benefits, usefulness, or accuracy of the same or the advantages accruing by subscribing to it. NSEIL shall not be responsible, liable or shall guarantee the results for the functionality and / or performance of the NNF facility and shall in no event be liable or responsible for any direct or indirect claims/ damages or the like arising out of the usage / availment / subscription of such facility.
16. I/We agree that the approval granted by NSEIL to the subject matter NNF facility does not, in any manner, represent or warrant that the said NNF facility shall be free of any error, omission, defect, bugs, shortcoming or limitation of any nature whatsoever. The Vendor and Trading Member is solely responsible for ensuring that the subject matter NNF facility does not result in any market abruptions, aberrations or disturbs/affect the integrity of the market / sanctity of price discovery mechanism. Further, the Vendor and Trading Member shall be solely liable for all/any dysfunctional, erroneous or disorderly functioning of the subject matter NNF facility and for the consequences arising out of such functioning. The Vendor and Trading Member shall at all times ensure that the subject matter NNF facility shall not be used for any purpose that is contrary to applicable Circulars, Byelaws, Rules and Regulations of the Exchange and/or SEBI.
17. I/We agree that in case of any dispute arising between me/us and trading member/s, NSEIL shall not, in any way, be responsible for the resolution of any such dispute. Further, NSEIL shall in no case be responsible in case of breach of any terms and conditions, commercials etc. which have been mutually agreed upon between the Vendor and Trading Member.
18. I/We agree that NSEIL only helps the trading members in having access through test market to test the software that is developed by me/us. Regular update with reference to any changes in this regard will not be used by me/us to communicate to any trading members that NSEIL is taking any responsibility of the software developed by us.
19. I / We agree and undertake that NSEIL shall not be liable for any direct or indirect loss, damage, costs, claims and expenses whatsoever caused or contributed by any event of force majeure. For the purposes of this Clause, "Force Majeure" means and includes wars, insurrections, revolution, fires, floods, epidemic, quarantine restrictions, declared general strikes in relevant industries, act of God, act of the Government of India and any concerned State Government and such other acts or events beyond NSEIL's control and further the above is without prejudice to the rights already accrued to NSEIL due to my/our failure to perform either in full or in part, my/our obligations prior to the occurrence of events of Force Majeure.
20. I / We shall indemnify and keep indemnified NSEIL harmless against every and all claims, demand, damages, liabilities, losses and expenses suffered by NSEIL directly by reason of my / our non-compliance, contravention with any of the provisions of this Undertaking or by reason of bugs or malfunctioning of the software provided by us to the Trading Members of NSEIL to the extent of the average annual revenue generated by us in the last three completed and audited financial years from the suite of products approved by NSEIL. The limits on liability as stated above do not apply to: (a) a party's fraud, fraudulent misrepresentation, wilful misconduct, or conduct that demonstrates a reckless disregard for the rights of others; (b) negligence causing death or personal injury and; and I/ we shall defend and keep harmless NSEIL from any and all adverse actions, claims, demands, whatsoever and all costs, expenses (including the reasonable cost of investigating or defending any loss, liability, claim, damages or expense and reasonable counsel fees incurred in connection therewith), losses and liabilities which are adjudicated by a court of competent jurisdiction to have directly arisen out of and in connection with such wilful misconduct, fraud, fraudulent misrepresentation or conduct that demonstrates a reckless disregard for the rights of others in the performance of obligations under this Undertaking provided however that in case any obligation is cast unto NSEIL by any court of competent jurisdiction to pay/ deposit any interim amount pending final disposal of any matter pertaining to the above mentioned adverse actions, claims, demands etc. then in such an eventuality I/ We shall forthwith without any delay or demur pay such interim amount to NSEIL subject to the said amount not exceeding the average annual revenue generated by me/ us in the last three completed and audited financial years from the suite of products approved by NSEIL. In the event of any higher amount being ordered to be paid / deposited then the same would be mutually discussed and appropriate amount agreed to, for payment to NSEIL.
21. I / We agree that no forbearance, delay or indulgence by NSEIL in enforcing the provisions of this Undertaking shall prejudice or restrict the rights of NSEIL nor shall any waiver of its rights operate as a waiver of any subsequent breach and no rights, powers, remedies herein conferred upon or reserved for NSEIL is exclusive of any other right, power or remedy available to NSEIL and each right, power or remedy shall be cumulative.
22. I / We undertake that any declaration or other notice to be given by me/us to NSEIL shall be sent by registered letter or telex/cable or facsimile transmission to the address first mentioned above.
23. That I / we shall execute, sign and subscribe to such other documents, papers, agreement, covenants, bonds, and/or undertakings as may be prescribed or required by NSEIL from time to time.
24. I/We also agree that in the event of my/our non-compliance with any of the provisions as mentioned above, NSEIL shall take such action against us as it may deem fit in this regard.

**IN WITNESS WHEREOF this Undertaking is executed by the undersigned on the day, month, year and the place first mentioned above.**

**Signed, Sealed and Delivered By**

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

**For and on behalf of**

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

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

**Before me (Witness)**

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

**Checklist for Submitting Undertaking**

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| --- | --- | --- |
| **Sr** | **Pre Checks** | **Tick wherever applicable** |
| 1 | Stamp paper is of minimum Rs. 600 /- \*\*for details refer instruction below |  |
| 2 | Stamp paper purchased in name of Vendor |  |
| 3 | Undertaking is executed in favour of NSEIL |  |
| 4 | Date of Stamp paper purchase : |  |
| 5 | Date of execution of undertaking mentioned : |  |
| 6 | Date of Notarizing to be mentioned : |  |
| 7 | Notary stamp on all pages |  |
| 8 | Date of entering into the agreement as specified on the first page of the agreement should be on or before the date of notarizing the agreement. |  |
| 9 | Undertaking is executed within validity of stamp paper (Date of execution is on or after the date of, and is within six months of, the stamp paper purchase date) |  |
| 10 | Clauses of Undertaking are as per format |  |
| 11 | Signature on all pages of the Undertaking |  |
| a | For Individual : Only self can sign |  |
| b | For Partnership Firm : All Partners OR Authorised Signatory |  |
| c | For Corporates : Minimum two directors or a managing director/ Authorised signatories |  |
| d | For others : Authorised signatories |  |
| 12 | Signature of 2 witness on last pages of the Undertaking |  |
| 13 | Company’s stamp is affixed and in presence of persons authorised by the Board Resolution (for Corporates only) |  |
| 14 | If there is any correction in the undertaking , then ensure the persons as authorised by the board resolution have signed across the correction |  |
| 15 | Additional Documents to be collected | Remarks |
| a | For Individual : None | - |
| b | For Partnership Firm : Partnership deed or any other documents as advised |  |
| c | For Corporates : Copy of board resolution and specimen signature list of authorised signatories |  |
| d | For others : any other documents as advised |  |

\*\* To be executed on Rs. 600/- stamp paper / applicable stamp duty of the state (whichever is higher), duly Notarized on all pages, signed, stamped & sealed by Authorized Signatory on all pages