**ANNEXURE H**

**FORMAT OF UNDERTAKINGTO BE SUBMITTED BY ASP**

*To be executed on Rs. 1000/- 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 Company / Body Corporate incorporated under the Companies Act of 1956/ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Act, \_\_\_, and residing at / having our registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 called "NSEIL")

**WHEREAS**

a) NSEIL has provided the National Exchange for Automated Trading [NEAT/NEAT PLUS] software to enable its Trading Members to trade.

b) In addition, NSEIL, provides a Non-Neat Frontend facility (hereinafter referred to as the "NNF facility") by which it provides a facility for order entry, receipt of order and trade confirmation and also for receipt of data relating to its trade quotations etc.

c) The Trading Members may introduce NNF products after obtaining permission from NSEIL.

d) NSEIL has decided that it shall make the CTCL Facility available to its Trading Members / grant permission to Trading Members for registering NNF products on a case to case basis subject to such terms and conditions as NSEIL may impose from time to time.

e) The Trading Members may develop the necessary software at the Trading Members end for the purposes of NNF facility or procure the same from such of those software vendors as may be identified by NSEIL, or avail of the services provided by service providers to facilitate trading, after duly complying with the requirements as may be stipulated by NSEIL in this regard.

f) NSEIL has decided that the service providers shall be identified for this purpose, based on the application received from them and subject to fulfilment of such criteria as may be stipulated by NSEIL from time to time, and subject to such service provider executing 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.

g) NSEIL has agreed to identify me / us as a service provider for the above purpose and We am / are desirous of providing such services (which may inter-alia include software / hardware / other infrastructure) to the Trading Member to enable the Trading Member to avail of the NNF facility, and shall fulfill 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 service provider for the aforesaid purposes, I / we hereby IRREVOCABLY AND UNCONDITIONALLY UNDERTAKE and agree 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 certify that I/we are/are not (as applicable), engaged in the business of trading securities directly or indirectly through any subsidiary or associate/affiliate Company or any other Company in which any of my/our directors/relatives has a direct/indirect beneficial interest or through a related party, as defined under applicable law.
3. In case I/we do engage in such business, I/we understand, acknowledge and undertake that I/we shall disclose this information to Exchange and trading members who wish to procure/procures software from me/us.
4. Further, upon sharing the affiliation details with trading members, I/we shall seek the acknowledgement regarding this from the trading members and maintain the record of such acknowledgement.
5. I / We agree and acknowledge that access and use of NSEIL market data including Tick by Tick, 1 second frequency 5 depth, trade execution range Broadcast data etc. provided to me / us by NSEIL via multicast (Exchange Data) is strictly restricted for commercial purposes of TMs availing ASP service from me/us. Accordingly, we undertake to ensure that the NNF Trading System shall have sufficient in built features to restrict the access and use of Exchange Data to TMs availing the ASP service. Further, I/ We shall be solely liable for any losses, liabilities, claims, demands and expenses suffered directly or indirectly by any entity due to the misuse of such Exchange Data by any TM availing the ASP service.
6. Similarly, I / We agree and acknowledge that access and use of trading members’ data is also strictly restricted for commercial purposes while they avail ASP service from me/us. Accordingly, we undertake to ensure that the NNF Trading System shall have sufficient in built features to restrict the access and use of member data.

1. I/we agree to render all possible assistance and co-operation to NSEIL by providing it with the necessary information on above records as may be sought by it from time to time, in any form as it may require, and that I/We shall produce such documents, records, data, howsoever stored, as may be required by NSEIL at its discretion.
2. 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 favoring of NSEIL, its associate companies or any of its employees or contractors acting on its behalf.

9. I/We shall ensure that the connectivity of the NNF facility is as per NSEIL and Department of Telecommunications (DOT) approved network diagram of the NNF facility.

10. I/We undertake to pay any such license fees/charges/royalties as may be levied by DOT/MTNL/NSEIL any other regulatory/statutory authorities from time to time.

11. I/We shall provide the service to the Trading Members of NSEIL only after duly ensuring that all the requirements stipulated by NSEIL in this regard have been complied with by the Trading Member and that the Approved Users of the Trading Member shall not make the NNF facility available to any other unauthorised person.

12. I/We undertake to ensure that the connectivity between the Trading Member and NSEIL shall be used only for application of NNF facility.

13. 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.

14. I/We undertake to obtain the prior approval of NSEIL for any changes to be made to the existing network diagram **/** software.

15. I/We undertake to ensure that access shall be given only to the individuals authorised and also a method shall be established to maintain an audit trail of all access and to ensure that non authorised persons cannot access the system.

16. I/We undertake that the software design shall 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 :

i. Basic functionalities as and when required by NSEIL

ii. Customisation of Trading Members needs as approved by NSEIL.

17. I/We undertake that the Software developed by me / us, shall not resemble or result in duplication of the NEAT software in the opinion of NSEIL. We also undertake that the Software shall provide all the essential functions as may be stipulated by NSEIL from time to time.

18. I/We undertake that controls shall be inbuilt 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.

19. I/We shall not develop any software which shall either directly or indirectly facilitate program trading, i.e. a software to generate buy/sell orders without manual entry of orders on fulfillment of certain parameters.

20. I/We undertake that the following controls shall be inbuilt in the Software by me/us to detect loss of product integrity:

i. Data validation routines to detect input errors.

ii. Backup and recovery procedures.

21. I / We shall ensure that the Approved Persons shall not make the NNF facility available to any other person and that there shall be no provision in the Software to enable such persons to do so.

22. 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.

23. I / We shall ensure that the NNF facility shall be developed so as to generate the following from the System for the purpose of verification during the inspection:

i) Number of Users hooked on to the Network.

ii) Number of Dealers hooked on to the Network including privileges to each Dealer.

iii) All the systems logs and audit trails of the Dealer and the Trading Member.

iv) Provision for entering complementary dummy orders.

24. I/We undertake that

(i) 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 both, my/ our site as well as the Trading Member's site for verification.

(ii) I / We shall make available Prototype and the technical specifications of the Software to NSEIL for testing purposes.

(iii) I / We shall be responsible to fix the bugs in the Software if any, found at the time of testing.

25. That I / We shall meet the criteria set to measure the expected level of performance.

26. That the terms of service and payment shall be as agreed to by the Trading Member and myself/us

27. 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.

28. I / We undertake to provide User training first when the product is installed and thereafter whenever a major upgrade is released to the Trading Member's Personnel for the following:

(i) Use of Product

(ii) Maintenance of the product.

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

29. I / We undertake that:

(i) 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 and its Trading Members. 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.

(ii) I / We shall not in any way represent that the software developed is a part of the NEAT software.

(iii) 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.

(iv) I / We shall keep full security of NSEIL's / Trading Members' programs, databases and computer records in accordance with best computing practice.

30. I / We shall develop the software / system after considering the current and expected increase in workload, to ensure that the desired efficiency can be maintained with future workloads.

31. 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.

32. I / We shall provide upgrade to the application software / hardware as and when the need for the same arises and in accordance with the requirements of NSEIL.

33. I / We undertake to make the Software compatible with the NEAT system, under intimation / (written consent) of NSEIL, in case any modification is made to the NEAT software by NSEIL and the same is required to be incorporated in the Software.

34. I / We am / are fully aware that NSEIL shall not be responsible for development, maintenance, updates, upgrades, error fixes and other support functions.

35. I / We undertake to provide the training and documentation as and when the Software is technically upgraded.

36. I / We undertake to provide such warranty as required under the agreement.

37. I / We undertake to ensure as follows:

(i) That in case of failure or malfunctioning of the Software / System , I/We shall make such first level trouble shooting and rectification of the Software / System problem to restore the Software / System in its proper operating condition at no cost to the Trading Member.

(ii) That I / We shall provide services for regular on site maintenance of the Software / System 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.

(iii) Shall provide services to any NSEIL Trading Member at any location in the country, which the Trading Member desires to operate from.

38. I / We confirm that the Software / System complies with all the requirements stipulated by NSEIL, SEBI and the DOT in this regard and undertake that I / we shall modify the Software / System, if necessary to ensure continued compliance with the requirements of NSEIL / DOT / SEBI / any other authority as may be issued from time to time.

39. I / We are aware and agree that we are only acting as a facilitator, facilitating trading and other services, as and when provided, on the Internet, through maintenance of the application / systems / portal, etc., and I / We shall not involve or associate myself / ourselves directly or indirectly in any manner whatsoever with the act of trading.

40. I / We hereby undertake to duly inform NSEIL incase 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 software vendor for this purposes by NSEIL.

41. I / We hereby undertake to duly inform NSEIL the list of Trading Members who are availing our services.

42. 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.

43. 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.

44. 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.

45. I / We shall indemnify and keep indemnified NSEIL harmless against every and all claims, demand, damages, liabilities, losses and expenses suffered by it 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.

46. 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.

47. That I **/** we shall execute, sign, subscribe to such other documents, papers, agreement, covenants, bonds, and/or undertakings as may be prescribed or required by NSEIL from time to time.

48. I/we undertake to not hold NSEIL, or its directors, officers, employees and agents, liable or responsible for any direct or indirect loss, damage, costs, claims and expenses whatsoever, incurred by us, arising out of any force majeure event. 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 which are beyond NSEIL's control. This is without prejudice to the rights and contentions 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.

1. I/We agree and acknowledge that neither NSEIL nor its directors, managers, officers, employees or agents, guarantee the functioning of the NNF Trading System. NSEIL and its directors, managers, officers, employees and agents, shall not be liable in any way to me/us or to any of my/our customers or to any other person, for any non-performance or interruption or accidents in relation to NNF Trading System, whether caused by software bugs, or malfunctioning of the NNF Trading System provided by me/us to the TM, or for any other reason, or for any damages which are direct, indirect, consequential or otherwise, arising therefrom or occasioned thereby. No proceedings would be initiated by me/us or any third party against NSEIL or against any individual officer or employee of NSEIL for any act done by such officer or employee of NSEIL in good faith, in their official capacity.
2. I/We shall indemnify and keep indemnified NSEIL, its directors, managers, officers, employees or agents harmless against every and all claims, demand, damages, penalty, liabilities, compensation, losses and expenses suffered by it directly or indirectly for reason of my/our contravention or non-compliance with any of the provisions of this Undertaking or the general applicable law/rules/regulations.
3. That any forbearance, delay or indulgence by NSEIL in enforcing the provisions of this Undertaking shall not prejudice or restrict the rights of NSEIL, and that any waiver of its rights shall not operate as a waiver of any subsequent breach, and that no rights, powers, remedies herein conferred upon or reserved for NSEIL are exclusive of any other right, power or remedy available to it, and that each right, power or remedy shall be cumulative.
4. That in the event of my/our non-compliance with any of the provisions as mentioned above, NSEIL shall have the right to take such disciplinary action as it deems fit, in accordance with its Byelaws, Rules and Regulations in addition to any other civil or criminal action it may initiate.
5. That NSEIL has the authority to withdraw or cancel the NNF facility provided to us without notice or reason.
6. Any dispute arising out these provisions of this Undertaking shall be governed by laws of India and the Courts of Mumbai shall have exclusive jurisdiction.

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

SIGNED, SEALED AND DELIVERED BY

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

for and on behalf of

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

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

Before me (In the presence of Witness)

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name & Address) ………………………….

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name & Address) ………………………….

**Checklist for Submitting Undertaking**

|  |  |  |
| --- | --- | --- |
| **Sr** | **Pre Checks** | **Tick wherever applicable** |
| 1 | Stamp paper is of minimum Rs. 1000 /- \*\*for details refer instruction below |  |
| 2 | Stamp paper purchased in name of ASP |  |
| 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. 1000/- 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