**PROJECT KICKSTART**

**SERVICE AGREEMENT**

**JSA TEMPLATE[[1]](#footnote-1)**



 **J. Sagar Associates I advocates & solicitors**

Ahmedabad  |  Bengaluru  |  Chennai  |  Gurugram  |  Hyderabad  |  Mumbai  |  New Delhi

SERVICES AGREEMENT

BETWEEN

[INSERT COMPANY NAME]

AND

[INSERT COMPANY NAME]

**DATED (E.g. January 1, 2018)**

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SCHEDULE I 30

**SERVICES AGREEMENT**

This Services Agreement (“**Agreement**”) executed at [**insert place**] as on this **[insert date]** by and between:

 **[insert full name of the company]**, an Indian company incorporated under the provisions of the [Companies Act, 1956]/ [Companies Act, 2013] and having its registered office at [**insert registered address of the company**] (hereinafter referred to as the “**Service Provider**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed include its successors and permitted assigns);

**AND**

**[insert full name of the company]**, an Indian company incorporated under the provisions of the [Companies Act, 1956]/ [Companies Act, 2013] and having its registered office at [**insert registered address of the company**] (hereinafter referred to as the “Customer”, which expression shall, unless repugnant to the context or meaning thereof, be deemed include its successors and permitted assigns).

The Service Provider and Customer shall, wherever the context may warrant, be individually referred to as a “**Party**” and collectively as the “**Parties**”.[[2]](#footnote-2)

**WHEREAS**

1. Customer is engaged in the business of **[insert details of business]** (“**Business**”);[[3]](#footnote-3)
2. Service Provider is engaged in the business of **[insert details of business]**;
3. Customer wishes to procure certain services listed in **SCHEDULE I** (hereinafter called “**Services**”)[[4]](#footnote-4) from Service Provider, and Service Provider agrees to supply the Services to Customer, subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and agreements set forth in this Agreement, the sufficiency of which is hereby acknowledged the Service Provider and Customer agree as follows:

# DEFINITIONS AND INTERPRETATION

## In this Agreement, (including the recitals above and the Schedules hereto), except where the context otherwise requires, the following words and expressions will mean the following:

“Applicable Law” means all statutes, rules, regulations, bye-laws, orders, ordinances, notifications, of any Governmental Authority or any person acting under the authority of any Governmental Authority or of any statutory authority, whether in effect on the date of this Agreement or thereafter.

“Background IPR” means any Intellectual Property Rights discovered or created by Service Provider incidental to but not directly related to the Deliverables; any data used to generate the Deliverables under this Agreement; any pre-existing or other proprietary methodologies used for provision of Services or any works of authorship that have not been created specifically for Customer, or pre-existing, underlying or commonly used computer programs, methodologies, software, architecture, designs, tools, specifications, drawings, samples, records, code, processes and/or other development tools or other work products and any Intellectual Property Rights thereto, which have been originated, developed, acquired or purchased by Service Provider, not specific to the Deliverables provided.

“Business” has the meaning given in Recital A.

“Business Day” means any day of the week (excluding Saturdays, Sundays and public holidays) on which commercial banks are open for business in [insert the relevant places].

“Confidential Information” has the meaning given in Clause 13.1.

“**Consultants**”has the meaning given in Clause 6.1.

“**Deliverables**”means all deliverables to be provided by Service Provider to Customer pursuant to Services provided under this Agreement.

“**Disclosing Party**”has the meaning given in Clause 13.1(d).

“**Effective Date**”means the date of execution of this Agreement.[[5]](#footnote-5)

“**Fees**”has the meaning given in Clause 3.1.

“**Government Approval**” means any license, consent, permit, establishment registration, approval, or authorization of any person or any notice to any person, the granting of which is required under Applicable Law for the consummation of the transaction contemplated by this Agreement.

“**Governmental Authority**” means any: (a) federal or central, state, local or municipal authority; (b) governmental or quasi-governmental authority; (c) individual, entity or body exercising any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority.

“**Indemnified Persons**” has the meaning given in Clause 8.1.

“**Intellectual Property Rights**”means any patents (including any registration, extension, re-examination, re-issue, continuation, or renewal thereof), copyrights (including any registration or renewal thereof), trade secrets, design registrations, trademarks (including any registrations and the goodwill associated therewith), service marks, trade names, trade dress, business names, domain names, source code, object code, test results, know-how, ideas, or foreign equivalents of the foregoing, and any other proprietary rights of any nature.

“Losses” has the meaning given in Clause 8.1.

“**Notice**”has the meaning given in Clause 15.1.

“**Personnel**”has the meaning given in Clause 5.1.

“**Receiving Party**”has the meaning given in Clause 13.1.

“**Services**” has the meaning given in Recital C.

“**Term**” has the meaning given in Clause 9.1.

## In this Agreement:

* + 1. References to a statute or statutory provision or order or regulation includes that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time.
		2. Headings to Clauses are for information only and will not form part of the operative provisions of this Agreement and will not be taken into consideration in its interpretation or construction.
		3. References to Recitals, Clauses or Schedules are to recitals and clauses of or schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
		4. Schedules form part of this Agreement and have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.[[6]](#footnote-6)
		5. Reference to one gender includes a reference to the other and words importing the singular include the plural and vice versa.
		6. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
		7. References to the words “include(s)” or “including” or “amongst others” will be construed as being followed by “without limitation”.

# APPOINTMENT OF SERVICE PROVIDER AND SCOPE OF SERVICES[[7]](#footnote-7)

## **Appointment**. Customer hereby appoints Service Provider as a **[non-exclusive][[8]](#footnote-8)** service provider to provide Services in the manner as stipulated herein in this Agreement.

## **Service Levels**. All Services shall be performed by Service Provider promptly and diligently at a level of proficiency expected of a service provider with the background and experience that Service Provider has represented it has, and shall meet the quality standards set by Customer.[[9]](#footnote-9) If performance of Services is not up to the required standard, Customer reserves the right to terminate this Agreement or adjust the Fees provided under Clause 3.1 below, forthwith upon notice to Service Provider. Customer shall provide such access to its information, property and personnel as may be reasonably required by Service Provider to perform Services.[[10]](#footnote-10)

## **Place of Work**. Service Provider may perform Services for Customer from any location, including any location designated by Service Provider.[[11]](#footnote-11)

## **Acceptance of Deliverables**. Service Provider shall provide all Deliverables to Customer as per agreed timelines. Each Deliverable shall be in a form in which it can be tested and evaluated by Customer. Unless a different time period is agreed to by the Parties in writing, Customer shall have a period of [**insert number**] [**insert number in words**] days[[12]](#footnote-12) to review and test each Deliverable for substantial conformity with the requirements of this Agreement. If a Deliverable does not substantially conform to agreed specifications in the reasonable opinion of Customer, Customer shall provide a written statement which identifies in reasonable detail all deficiencies and other identified issues resulting in determination of substantial non-conformity.[[13]](#footnote-13)

## **Compliance with Applicable Law**. Service Provider shall obtain and maintain all Governmental Approvals as may be required by it to provide Services.[[14]](#footnote-14) Service Provider shall be responsible to Government authorities in the provision of Services, towards obtaining statutory registrations, co-ordination with Government authorities and compliance with Applicable Law.[[15]](#footnote-15)

## **Change in Applicable Law**. Service Provider shall promptly identify and notify Customer of any changes in Applicable Law that may relate to Service Provider’s performance of Services. The Parties shall work together to identify the impact of such changes on performance of Services. If such changes prevent Service Provider from performing its obligations under this Agreement, the Parties shall agree to implement a suitable workaround until such time as Service Provider can perform its obligations under this Agreement without such workaround. If such workaround results in an increase in the charges to Customer under this Agreement, then Customer shall have the right to terminate the affected portion of Service Provider’s obligations. Upon the implementation of such workaround, the Parties shall negotiate and implement an equitable adjustment to the applicable Fees.[[16]](#footnote-16)

## **Delays**. Service Provider shall identify and resolve any problems related to Services that may impede or delay timely rendering of Services. Where Service Provider has not performed or may not be able to perform its responsibilities with regard to the Services or meet any prescribed timelines mutually agreed between the Parties in relation to the Services, Service Provider shall promptly disclose such information to Customer and identify for Customer’s consideration and approval, specific measures to address such delay and mitigate the risks associated therewith. Customer shall not be obligated to agree to any extension of time unless Service Provider can demonstrate to Customer’s satisfaction that Service Provider has used every reasonable effort to meet the prescribed timelines. Any agreement to an extension of time under this paragraph shall not constitute a waiver or release of any rights that Customer may have under this Agreement.

## **Single Point of Contact**. For proper coordination between Parties, the work assignment to and coordination with Service Provider will be done by a single representative nominated by Customer. This representative will coordinate with Customer and will be the first escalation point for both sides to resolve any issues related to engagement, execution, delivery, scheduling as well as the relationship as a whole.[[17]](#footnote-17)

#

# CONSIDERATION

## **Rates for Services**. Customer agrees to pay Service Provider for the Services performed at the rates set forth below (“**Fees**”).

## **[fee structure to be included][[18]](#footnote-18)**

## **Invoices**. Service Provider shall provide Customer an invoice for Fees due as per with the payment schedule agreed by the Parties.[[19]](#footnote-19) Payment of any invoice is due within [**insert number**] [**insert number in words**] days[[20]](#footnote-20) of receipt of such invoice by Customer. If Customer objects to any invoice, it shall, within [**insert number**] [**insert number in words**] days[[21]](#footnote-21) of receipt of such invoice, send a written notice to Service Provider specifying the reason for such objection and shall pay the undisputed portion of such invoice. The Parties will negotiate in good faith to resolve promptly any invoice that is disputed. Any invoice dispute that cannot be resolved by the Parties will be resolved in accordance with Clause 26 (*Governing Law, Jurisdiction and Dispute Resolution*).

## **Billing Records**. Service Provider shall, at all times, maintain accurate billing records and invoices of the expenses incurred, if any, for providing Services which shall be provided to Customer as supporting document along with the invoice raised.

## **Taxes and Withholding**. Service Provider shall be responsible for paying taxes in the nature of transactional taxes applicable for this Agreement. Transaction taxes shall include, without limitation, sales tax, excise tax, value added tax, goods and services tax and similar taxes. Each Party shall be responsible for applicable taxes imposed on its income, assets or capital.

# OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS[[22]](#footnote-22)

## **Ownership**. As between the Parties, Customer shall solely and exclusively own all right, title and ownership interest in and to the Deliverables and Intellectual Property Rights over such Deliverables and/ or shall hold appropriate licenses over the same from its affiliates. At no time during or after the term of this Agreement, shall Service Provider challenge or assist any third party to challenge Customer’s Intellectual Property Rights associated with the Deliverables.

## **Background IPR**. Service Provider shall identify in writing all Background IPR that Service Provider plans to incorporate into or integrate with the Deliverables.[[23]](#footnote-23)

## **Background IPR License**. Service Provider hereby grants to Customer a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable, worldwide right to use, display, perform and reproduce Background IPR in connection with Customer’s use, operation, modification, enhancement and maintenance of the Deliverables.[[24]](#footnote-24) Additionally, Customer may transfer its license to, or may sublicense, Background IPR to the extent that such Background IPR are incorporated into a Deliverable, if Customer transfers or sublicenses such Deliverable.[[25]](#footnote-25)

## **Assignment**. To the extent that any Intellectual Property Right is created in favour of Service Provider or the Consultants under Applicable Law, Service Provider shall, and shall ensure that the Consultants shall irrevocably assign and agree to assign to Customer all right, title and interest, worldwide in and to the Deliverables. Service Provider shall not, and shall ensure that the Consultants do not challenge the validity of Customer’s ownership in the Deliverables. Service Provider agrees to execute any other document reasonably necessary to carry out the purpose of this Agreement.

# PERSONNEL[[26]](#footnote-26)

## Service Provider shall be or deemed to be the sole employer of all persons appointed by it, including all Consultants (“**Personnel**”) to perform Services for Customer, under this Agreement. Customer reserves the right to request Service Provider to remove any of the Personnel, on written notice of [**insert number**] [**insert number in words**] days[[27]](#footnote-27), specifying reasons related to performance. Service Provider shall replace any such Personnel, so requested to be removed, with an employee of equivalent experience as agreed to by Customer. It is hereby clarified that the removal of any Personnel under this Clause does not affect his/her employment status with Service Provider, which shall be determined in the sole discretion of Service Provider, in accordance with its employment policies.[[28]](#footnote-28)

## Service Provider shall be responsible for complying in all respects with the provisions of all statutes, rules and regulations of the Government and other relevant statutory bodies under various Acts in respect of the Personnel, including but not limited to the Minimum Wages Act, 1948, Employees State Insurance Act, 1948, Employees Provident Fund & Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965, Contract Labour (Regulation & Abolition) Act, 1970 and Payment of Gratuity Act, 1972 and Customer will not be liable in this respect in any manner whatsoever, except to the extent such laws are applicable to Customer in its capacity as a principal employer.

# CONSULTANTS[[29]](#footnote-29)

## Customer acknowledges that Service Provider would, for the purpose of performing the Services under this Agreement, utilize the services of contract labour, independent contractors or consultants (“**Consultants**”). However, Service Provider acknowledges, agrees and covenants that it shall assume full responsibility in connection with the Consultants and work undertaken by the Consultants and no responsibility, costs or liability for whatsoever reason in this regard will fall on Customer or its affiliates or subsidiaries. The Consultants should have requisite skills needed to perform the tasks assigned to them. Any act undertaken by a Consultant shall be considered to be an act of Service Provider for the purpose of this Agreement.[[30]](#footnote-30)

# REPRESENTATIONS AND WARRANTIES

## Each Party hereby represents and warrants to the other Party as follows:

### **Manner of Performance**. It shall perform its obligations under this Agreement and shall at all times comply with all Applicable Law including any central or state law, rules or regulations made there under.

### **Organization and Standing**. It is duly organized and validly constituted and existing under the Applicable Law in India and has full power and authority (corporate or otherwise) and has all material Government Approvals necessary to own its assets and properties and to carry on its business as now conducted.

### **Authority and Enforceability**. It has all necessary power, authority and approvals to execute and deliver this Agreement and to perform all its obligations arising or created hereunder.

### **No Contractual Restrictions**. It is under no contractual or other restrictions or obligations that are inconsistent with the execution of this Agreement that will interfere with the performance of obligations under this Agreement.

## Service Provider hereby represents and warrants that:

### it shall, in performing its obligations under this Agreement, observe the highest professional standards of integrity and fair dealing; and

### it shall comply with Applicable Law in connection with performance of Services.

## Each of the representations and warranties shall be construed as a separate representation, warranty, covenant or undertaking, as the case may be, and shall not be limited by the terms of any other representation or warranty or by any other term of this Agreement. Each of the representations and warranties shall be valid for the entire Term and till the continuance of this Agreement.

## Each Party agrees that any breach of confidentiality by the other Party may cause irreparable damage to the affected Party for which recovery of money damages would be inadequate. Each Party in such situation would be entitled to seek equitable remedies including injunctive relief.

## The Parties shall not represent themselves to be acting on behalf of the other Party, or use the other Party’s name or corporate logo of any Intellectual Property Rights in any manner whatsoever, or undertake any act, deed or thing on behalf of the other Party without obtaining the prior written approval of such Party.

# INDEMNIFICATION

## Each Party agrees to indemnify, defend and hold the other Party and its directors, shareholders, and Affiliates (“**Indemnified Persons**”) harmless for damages, costs, claims, injuries, losses, or liabilities including reasonable attorneys’ fees (collectively referred to as “**Losses**”) incurred by such other Party, from any claims.

1. arising from the indemnifying Party’s material breach of any obligation, representation or warranty under this Agreement; or
2. relating to any physical damage to property, or personal injury or death, caused by the indemnifying Party or any of its affiliates, agents or subcontractors

## In case of any litigation or other claim against the Indemnified Persons which triggers the indemnification obligations of Service Provider, Service Provider shall defend any such claim or action, consistent with the Indemnified Person’s right hereunder, negotiate its settlement or compromise, unless otherwise mutually agreed to in writing provided however that the Indemnified Persons may participate in such defence or settlement negotiations and pay its own costs associated therewith.

## The Indemnified Persons shall have the right to take any action on behalf of itself, to settle, adjust, defend or otherwise dispose of such claim, in which case Service Provider shall, upon being demanded by the Indemnified Persons, forthwith indemnify the entire amount to the Indemnified Persons. The Parties shall co-operate with each other and provide all assistance, information, documents etc. that may be required by the other Party to the settle the claims.

## This Clause 8 shall survive the termination or expiry of this Agreement.

# TERM AND TERMINATION

## **Effective dates**. This Agreement will commence on the Effective Date and continue in full force and effect for a period of [**insert number**] [**insert number in words**] year (the “**Term**”), unless terminated sooner in accordance with the provisions of this Agreement. Notwithstanding the provisions of this Clause 9.1, this Agreement shall continue in full force and effect as to any Services that are outstanding under this Agreement [or any statement of work executed pursuant to this Agreement] (if applicable) that is current as of the termination of this Agreement, until (a) such Services are completed; or (b) the Parties agree to terminate this Agreement as to such Services.

## **Termination for Cause**. If Service Provider breaches a material provision of the Agreement, then Customer may terminate this Agreement if the breach remains un-remediated for [**insert number**] [**insert number in words**] days after Customer provides notice of the breach to Service Provider.

## **Termination for Convenience**. The Parties may mutually terminate this Agreement by providing [**insert number**] [**insert number in words**] days’ written notice.

## **Delivery and Return upon Expiration or Termination.** Upon termination of this Agreement, Service Provider shall:

### within [**insert number**] [**insert number in words**] days from date of termination, deliver the Deliverables to Customer, whether complete or incomplete; and

### within [**insert number**] [**insert number in words**] days from date of termination, return all Confidential Information belonging to Customer and / or destroy all copies of Confidential Information in its possession, as instructed by Service Provider.

## **Consequences of Termination.** The termination of this Agreement shall not:

### In anyway affect or prejudice any right accrued to any Party against the other Party, prior to such termination.

### Extinguish the rights and obligations of the Parties under this Agreement, which either expressly or by their nature survive the termination of this Agreement, unless any of such rights, obligations or liabilities are waived in writing. Further, all amounts, if any, then due and unpaid to a Party by the other Party under this Agreement, as well as other amounts, if any, accrued but not yet payable, shall forthwith become due and payable.

# NON-COMPETE[[31]](#footnote-31)

## Neither Service Provider nor its promoters or directors shall, during the tenure of this Agreement, and for a period of [**insert number**] [**insert number in words**] years thereafter, directly or indirectly engage in, as an employee, associate, consultant, proprietor, partner, director or otherwise, or have any ownership interest in, or participate in any business which competes with Customer’s Business (or any of its affiliates or subsidiaries in India) or carry out any of the preceding for a competitor of Customer (or any of its affiliates or subsidiaries in India).

# NON-SOLICITATION[[32]](#footnote-32)

## Neither Service Provider nor its promoters or directors shall, during the tenure of this Agreement, and for a period of [**insert number**] [**insert number in words**] years thereafter, either for itself or through, or on behalf of or in conjunction with any other person, persons, partnership, company, limited liability company, or other entity or association, solicit or employ any person who is employees with Customer, and shall not induce or attempt to induce any such persons to the leave their employment.

# ANNOUNCEMENTS

## **Prior approval of announcements**. Subject to Clause 12.2 below, no disclosure or announcement relating to the existence or subject matter of this Agreement will be made or issued by or on behalf of any Party without the prior written approval of the other Party.[[33]](#footnote-33)

## **Permitted disclosures and announcements****.** Nothing in this Agreement prohibits a Party from (i) making such disclosure or announcement as is required by Applicable Law or the rules of any stock or securities exchange, or (ii) making or sending any announcement to a customer, supplier, business partner, agent or client informing about the Services contemplated under this Agreement in a format agreed to in writing by the Parties.

#

# CONFIDENTIALITY

##

## Subject to Clause 13.2, each Party (“**Receiving Party**”) will treat as strictly confidential and not disclose to any person:

###

### the existence, contents and subject matter of this Agreement except as provided in Clause 12 (*Announcements*);

###

### the negotiations relating to this Agreement;

###

### information relating to the business of either Party; and

###

### any information received by the Receiving Party from any other Party (“**Disclosing Party**”)

(collectively, the “**Confidential Information**”).

## Confidential Information will not be used or reproduced for any purpose or be disclosed to any person other than (a) as specifically authorized in this Agreement or (b) to a Party’s directors, officers, employees and professional advisers on a need-to-know basis and by binding such recipients to the same level of confidentiality as such Party. Each Party will take reasonable action to secure against theft, loss or unauthorized disclosure or use of Confidential Information in its possession.

##

## Confidential Information does not include any information which (i) on the date of the receipt by the Receiving Party is in the public domain or is subsequently published or otherwise becomes part of the public domain through no fault of the Receiving Party; (ii) is already known and in the possession of the Receiving Party onthe date of the disclosure as evidenced by written records; (iii) is independently developed by the Receiving Party without having access to the Confidential Information; or (iv) has been received by the Receiving Party after the date of the disclosure from a third party who did not receive such information under an obligation of confidentiality.

## If a Party is required, by Applicable Law or the rules of any stock or securities exchange, to disclose any Confidential Information, then, (i) prior to making the disclosure, it will notify the other Party in writing of such requirement for disclosure except where it is not reasonably practicable in the circumstances. If the other Party raises objections to the intended disclosure, the Parties will engage in good faith negotiations to try to modify or alter the content or terms of said disclosure in order to limit the proposed disclosure as much as possible. If, for the reasons stated above, it is not possible for the Party to give prior notice, it must notify the other Party immediately after the disclosure has been made.

##

## Each Party acknowledges that all their respective Confidential Information, whether or not formally marked or identified as confidential are their exclusive property and the respective Party will continue to retain ownership over their Confidential Information.

##

## No Party will at any time seek to assert ownership of or any rights in any Confidential Information of the other Party.

## Each Party acknowledges that any breach by it of the provisions of this Clause 13 would cause irreparable injury to the other Party for which they would have no adequate remedy under Applicable Law and for which damages would not constitute reasonable recompense; and, accordingly, it shall be open to the other Party to apply for and obtain injunctory/declaratory relief against the former in breach or allegedly in breach, and it shall submit to orders and injunctions prayed and waive objections, if any, to such actions or proceedings or relief sought to the extent permitted by Applicable Law.

# COSTS AND EXPENSES

## The [Service Provider/Customer][[34]](#footnote-34) will bear the cost of stamp duty, registration fee and all other expenses incidental thereto.[[35]](#footnote-35)

## The Parties will bear their respective cost and expenses, including, legal, accounting, and other professional advisory fees incurred in connection with the preparation, execution and delivery of this Agreement.

# NOTICES

## Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement (“**Notice**”) to any Party will be in writing, in the English language, and will be either personally delivered or transmitted by:

(i) postage prepaid registered mail (air mail if international), with acknowledgment due;

(ii) internationally recognized courier;

(iii) email;[[36]](#footnote-36) or

(iv) facsimile transmission.

The address for service of each Party is as follows:

(i) if to Service Provider,

at : [insert details]

Attention : [insert details]

Fax No. : **[insert details]**

Email : [insert details]

(ii) if to Customer,

at : [insert details]

Attention : [insert details]

Fax No. : **[insert details]**

Email : [insert details]

A Party may, by a written notice, designate another address for service of notices to it.

## Such notice will be deemed to have been given:

(i) [**insert number**] [**insert number in words**] [[37]](#footnote-37) Business Days after posting, if transmitted by registered mail or air mail;

(ii) the date of receipt, if delivered personally or by courier service;

(iii) the date of receipt, if delivered by email; or

(iv) the date of transmission with confirmed answer back, if transmitted by facsimile transmission,

whichever occurs first.

# ENTIRE AGREEMENT

 This Agreement and its attachments, including Schedules, constitute the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements [[38]](#footnote-38), understandings and representations, written and oral. If there is inconsistency between any provision of this Agreement and any of its attachments or schedule, the provisions of the Agreement will prevail.

# ASSIGNMENT

This Agreement and the rights and obligations hereunder are binding upon and personal to the Parties and their respective successors and permitted assigns. A Party may not assign this Agreement or any of its rights, benefits or obligations under this Agreement to any other person without the prior written consent of the other Party.[[39]](#footnote-39)

# FURTHER ASSURANCES[[40]](#footnote-40)

The Parties will, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement. Each Party will provide such further documents or instruments to the any other Party as may reasonably be required to effect the purpose of this Agreement and carry out its provisions.

# AMENDMENTS AND WAIVERS[[41]](#footnote-41)

## This Agreement may be amended only in writing duly executed by all of the Parties to this Agreement.

## A Party may, in writing, waive any breach of any provision of this Agreement by another Party, and, unless otherwise stated in such written waiver, it will be limited to the specific breach waived. A waiver will not operate or be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of such provision or as a waiver in respect of any other or further failure whether of a like or different character.

## No failure or delay by a Party to exercise any right, power, privilege or remedy hereunder will be deemed a waiver of such Party’s rights, powers, privileges or remedies hereunder or will be deemed a waiver of such Party’s rights to subsequently exercise the same.

# SEVERABILITY

If any provision of this Agreement is determined to be invalid, illegal or unenforceable in part, then such invalidity, illegality or unenforceability will attach only to such provision or part of such provision and this Agreement shall be interpreted and construed as if such terms and provisions had never been included herein. The remaining part of such provision and all other provisions of this Agreement will continue to remain in full force and effect. In such event, the Parties undertake to endeavour in good faith to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision which contains, as nearly as possible, the rights and obligations contained in the provision to be replaced.

# COUNTERPARTS[[42]](#footnote-42)

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. The Parties may enter into this Agreement by signing any one or more of such originals or counterparts. An executed signature page of a counterpart scanned and sent by e-mail will be deemed delivery of an executed counterpart of this Agreement and, in such case, without prejudice to the validity of this Agreement, each Party will provide the other(s) with the original of such page as soon as reasonably practicable thereafter.

# RIGHTS OF THIRD PARTIES[[43]](#footnote-43)

Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person other than the Parties hereto, any rights or remedies under or by reason of this Agreement or any transaction contemplated by this Agreement.

# SURVIVABILITY[[44]](#footnote-44)

The termination of this Agreement will in no event terminate or prejudice (a) any accrued right or obligation; or (b) the provisions of following Clauses:

### Clause 1 (Definitions and Interpretation);

### Clause 3.4(Taxes and Withholding);

### Clause 8 (Indemnification);

### Clause 9.4 (Delivery and Return upon Expiration or Termination);

### Clause 9.5 (Consequences of Termination);

### Clause 10 (Non-Compete);

### Clause 11 (Non-Solicitation);

### Clause 13 (Confidentiality);

### Clause 15 (Notices);

### Clause 23 (Survivability);

### Clause 24 (Cumulative Rights and Specific Performance);

### Clause 26 (Governing Law, Jurisdiction and Dispute Resolution); and

### **[include any other relevant provisions].**

# CUMULATIVE RIGHTS AND SPECIFIC PERFORMANCE

## The rights, powers, privileges and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by Applicable Law or otherwise. Nothing in this Agreement shall prevent a Party from enforcing its right by such remedies as may be available under Applicable Law.

## Subject to Applicable Law, in the event of any breach or threatened breach by either Party of any covenant, obligation or other provision set forth in this Agreement, the other Party will be entitled, in addition to any other remedy that may be available to it, to seek (i) a decree or order of specific performance to enforce the observance and performance of such covenant, obligation or other provisions; and/ or (ii) an injunction restraining such breach or threatened breach.

#

# NO AGENCY OR PARTNERSHIP

## This Agreement does not constitute a partnership or agency between the Parties or any of them.

# GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

## Governing Law and Jurisdiction

The provisions of this Agreement shall be governed by, and construed in accordance with the laws of India. Subject to Clause 26.2 below, the courts at [**insert name of city**], India shall have the exclusive jurisdiction to settle any claim or matter arising under this Agreement.[[45]](#footnote-45)

## Dispute Resolution[[46]](#footnote-46)

1. In the event that any dispute arises between the Parties in connection with this Lease Deed, the Parties will conduct negotiations in good faith to solve such dispute. If mutual resolution cannot be reached within [**insert number**] [**insert number in words**] days after the commencement of such negotiations, either Party will be free to refer such dispute to arbitral tribunal comprising of [**insert number**] [**insert number in words**] arbitrators wherein each Party shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall then appoint a third arbitrator[[47]](#footnote-47). The arbitration proceedings shall be governed in accordance with the Arbitration and Conciliation Act, 1996 and rules framed thereunder (“**Rules**”). The venue, place and seat of the arbitration shall be **[insert name of place]** and the language of the arbitration proceedings shall be English. The award rendered shall be in writing, and shall set out the reasons for the arbitral tribunal’s decision. The award shall allocate or apportion the costs of the arbitration as the arbitral tribunal deems fair. Any award made in such arbitration will be final and binding on the Parties. This Lease Deed, and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when, any termination shall become effective.
2. Judgment upon any arbitral award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

**[Signature page follows]**

**IN WITNESS WHEREOF, the Service Provider and Customer have executed this Agreement in duplicate as of the day, month and year first above written.[[48]](#footnote-48)**

**Executed for and on behalf of** [**insert full name of the Service Provider**]

**by:**

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

|  |
| --- |
| [**insert name**] |
| **[insert designation]****insert place]** |

**Executed for and on behalf of** [**insert full name of the Customer**]

**by:**

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

|  |
| --- |
| [**insert name**] |
| **[insert designation]****insert place]** |

# SCHEDULE I

**SCOPE OF SERVICES**

**[To be inserted]**

1. *This is a template. You are requested to consult a JSA attorney for any transaction specific legal and practical advice on this document.*  [↑](#footnote-ref-1)
2. *In the event that the Parties are natural person/ partnerships/ proprietorship concern, necessary changes should be made.* [↑](#footnote-ref-2)
3. *It is important that the nature of business is clearly delineated. Restrictions and obligations in the Agreement associated with business, such as non-compete provisions, rely on this clarity.*  [↑](#footnote-ref-3)
4. *This forms a crucial part of the Agreement. There should be absolute clarity on what is included in the scope of ‘Services’. You may be as detailed as possible while describing ‘Services’ in the Schedule.* [↑](#footnote-ref-4)
5. *This may even be a later date when the Services commence.*  [↑](#footnote-ref-5)
6. *The purpose of this clause is to expressly incorporate the wording of the Schedules into the body of the Agreement, thereby ensuring that they are given contractual effect. The Schedules are intended to be treated as part of the Agreement, rather than merely being ancillary to it.* [↑](#footnote-ref-6)
7. *Depending on the nature and duration of Services, the Parties may choose to either rely solely on this Agreement for the entire services, or choose to have in place a system of Statements of Work (SoW) issued from time to time. SoWs are usually issued when there is recurring work required from Service Provider, with commercial aspects differing for each piece of work. This Agreement presently does not envisage a SoW based model. If the SoW model is to be followed, certain changes may need to be made to the language.* [↑](#footnote-ref-7)
8. *A discussion on exclusivity is important. As a Service Provider, it may be commercial prudent to seek exclusivity, i.e. where Customer is not permitted to approach another service provider for the same or similar Services. For a Customer it may be preferable that the arrangement be kept non-exclusive. This gives the Customer the ability to approach third parties when the Services provided under this Agreement are not fully satisfactory, or where Customer has the need to appoint multiple service providers.*  [↑](#footnote-ref-8)
9. *Another way of drafting this provision would be that Service Provider will perform Services as per best industry practice. The term ‘best industry practice’ does not have a set definition. So the Clause, upon revision, becomes more general in nature, and, to this extent, slightly more favourable to Service Provider. A more Service Provider friendly provision would be that Service Provider will perform to the best of its abilities.*  [↑](#footnote-ref-9)
10. *Where the nature of services are complex or technical (for example, technology outsourcing services, server hosting services, payment processing services, etc.) Customers may choose to have a separate service level arrangement (SLA) that defines the level of service expected. This may include, among other things, down-times, efficiency levels and issue-redressal speeds. In such circumstances, SLAs are annexed to the main agreement. Service credits/ incentives are provided for meeting service levels, while penalties may be imposed for not meeting them. We have not included these aspects in this Agreement.*  [↑](#footnote-ref-10)
11. *In case the Services are to be performed on Customer premises, or in case the nature of Services is such that location is important, this Clause may be amended to give Customer the ability to choose location.*  [↑](#footnote-ref-11)
12. *Should ideally be not more than 30 days.*  [↑](#footnote-ref-12)
13. *This Clause may not be applicable in cases where Services provided cannot be tangibly tested or verified, i.e. where the Deliverable itself is in the form of continuously provided services. This may apply to specific service projects that are undertaken.*  [↑](#footnote-ref-13)
14. *A similar obligation for compliance with applicable laws may be placed on Customer, if requested by Service Provider.* [↑](#footnote-ref-14)
15. *If you would like to impose more obligations on Service Provider, Service Provider may be asked to provide Customer with the list of documents needed to obtain such registrations or to make any filings with Government authorities. Service Provider may be asked to assist Customer in collating all requisite information and making all applications on a timely basis to Government authorities. Service Provider may also be asked to follow up with the Government authorities and obtain necessary registrations.* [↑](#footnote-ref-15)
16. *This provision would be relevant where Services fall under a strictly regulated space in India, or an emerging space where one can expect a change in law. Where Services provided are in the nature of general consultancy services, this does not assume as much significance.*  [↑](#footnote-ref-16)
17. *This is usually a practical necessity in order to avoid multiple channels of communication. You may consider if this is required in your case.* [↑](#footnote-ref-17)
18. *The Fee structure needs to be determined by the Parties. Some examples include: (a) One-time payment on completion of Services; (b) retainer arrangement on a periodic basis; (c) one-time set-up fee, followed by periodic payments; and (d) SoW-linked payments. Depending on what works for the Parties, appropriate details need to be inserted.*  [↑](#footnote-ref-18)
19. *This may be clarified in the immediately preceding Clause, or by way of a schedule.*  [↑](#footnote-ref-19)
20. *This would depend on the credit period provided by Service Provider.*  [↑](#footnote-ref-20)
21. *This may be commercially evaluated. 10 days could be suggested here, as an example.*  [↑](#footnote-ref-21)
22. *The ownership of intellectual property rights (IPR) over Deliverables is important where the nature of Services provided involves the use or development of IPR. Typically, rights over Deliverables (commissioned by Customer) would belong to Customer, while any IPR already owned by Service Provider prior to undertaking Services, or any IPR developed unrelated to the Deliverables, would belong to Service Provider. We have included this concept here. In certain cases, due to the nature of services and the relationship between parties, Service Provider may retain all IPR over Deliverables, which will then be licensed to Customer. If that be the case, this Clause may need to be suitably amended. Again, this Clause does not assume a critical nature where the Services do not involve development or transfer of IPR. An example would be general consultancy services.*  [↑](#footnote-ref-22)
23. *The language here favours Customer. An alternate provision favouring Service Provider would be that Service Provider owns all Background IPR to the exclusion of Customer.*  [↑](#footnote-ref-23)
24. *Again, this is Customer friendly. To make it Service Provider friendly, the license may be made revocable and non-transferable, with some scope for royalty.*  [↑](#footnote-ref-24)
25. *Again, this provision may be deleted in order to make the clause Service Provider friendly.*  [↑](#footnote-ref-25)
26. *Service Provider may use its employees or consultants to perform Services for Customer. It is important that the employment status of these personnel be clarified upfront. Typically, Service Provider will be considered the employer on record of all personnel it engages to perform Services. All registration and payment obligations, including payment of salary and emoluments for the personnel would fall within Service Provider’s responsibility. If this position is not clarified upfront, it is quite possible that the personnel, especially personnel working on Customer premises, utilising Customer infrastructure and facilities, may be in a positon to claim employment benefits from Customer.*  [↑](#footnote-ref-26)
27. *Typically 30 days.*  [↑](#footnote-ref-27)
28. *In some cases, customers may require that personnel engaged by service providers undergo training with customer for a particular period. If customer is unhappy with particular workers, they have the opportunity to ask service provider to replace them.*  [↑](#footnote-ref-28)
29. *This Clause may not be applicable in case Service Provider only utilises its own employees perform Services. In certain cases, Service Provider’s work may be outsourced to third party contractors / consultants.*  [↑](#footnote-ref-29)
30. *This Clause is included to ensure that a breach by a Consultant would be considered a breach of Service Provider’s obligations under this Agreement.* [↑](#footnote-ref-30)
31. *Service Provider may demand similar non-compete obligations from Customer.* [↑](#footnote-ref-31)
32. *Service Provider may demand similar non-solicitation obligations from Customer.*

 [↑](#footnote-ref-32)
33. *Not all contracting counterparties will want a prohibition on announcements. On the other hand, certain transactions require complete confidentiality. This needs to be evaluated on a case to case basis.*  [↑](#footnote-ref-33)
34. *The cost can be commercially agreed amongst the Parties. Attribution of taxes (direct and indirect), if any, should be preferably dealt with in a separate clause.* [↑](#footnote-ref-34)
35. *The obligation to pay stamp duty and registration charges may differ from case to case basis, as per the commercial understanding between the Parties. Commercial agreements in India are chargeable with stamp duty. Stamp duty rates vary depending on the State where the agreement is executed or brought into. Stamp duty needs to be paid on agreements prior to execution or (where a document is executed outside a State) within a prescribed number of days within which the agreement is brought into a particular State.* [↑](#footnote-ref-35)
36. *Issuing notices by e-mail has the inherent risk of such notices being intercepted, arriving late or not arriving at all. If the receipt is disputed, the client may have to prove receipt, which will involve inspections of hard disks and servers. It is important not to rely on automatic ‘read receipt’ software, as such receipts can be triggered by someone other than the intended recipient reading the e-mail or by virtue of a firewall. Therefore, the best course of action is to provide for multiple methods of confirmation of receipt- see Clause 15.2 below.*  [↑](#footnote-ref-36)
37. *Typically this would be 3 to 5 days.*  [↑](#footnote-ref-37)
38. *Consider whether there are any other documents not referred to in the Agreement which need to be included here. If so, consider specifically terminating such documents to ensure that there is no conflict going forward. Also consider whether certain portions of the prior documents are to continue – if so, such portions should be drafted in to this agreement. If there are any side letters/ transaction documents which are required to be kept completely confidential, it is pertinent to have such side letters signed post the Agreement and such side letter/ transaction documents should specifically refer to the main Agreement.*  [↑](#footnote-ref-38)
39. *Please ensure that the description of the Parties, specifically, the assignment, succession and nomination language is consistent with this assignment clause.* [↑](#footnote-ref-39)
40. *This Clause is a statement of intent by the Parties’ that they will do such acts and sign all such documents which might not have been contemplated at the time of signing of the Agreement, but which later is found to be required, and which are not of such magnitude as to lead to frustration of the Agreement itself. For example,* *if a* *particular customer / vendor of one of the parties requires a comfort letter or communication on the transaction, the further assurance clause can be invoked.*  [↑](#footnote-ref-40)
41. *The requirement for written consent for amendment is designed to exclude the possibility of informal and inadvertent oral amendments.* [↑](#footnote-ref-41)
42. *This Clause is useful where the parties are executing separate copies of an agreement. Further, it must be remembered that a nominal stamp duty is payable on a counterpart, however, the stamp duty varies from State to State as per the applicable stamp duty provisions of the concerned State.*  [↑](#footnote-ref-42)
43. *This Clause is intended to exclude any third party rights being created pursuant to this Agreement. The Clause merits importance as it explicitly negates the possibility of all third party rights, thus establishing the privity of contract only between the parties thereto.*  [↑](#footnote-ref-43)
44. *This Clause is meant to ensure survival of certain provisions of the Agreement post termination such as dispute resolution, indemnity amongst others. Survival of these Clauses is important to ensure that even if the Agreement does not reach its intended conclusion, parties are in a position to recover and claim their rights that have arisen prior to execution of the Agreement, so as to restore the parties to the same position as they were in, before taking certain actions pursuant to the Agreement. Typically, clauses such as representations and warranties, indemnification, confidentiality, dispute resolution and notices are described in this clause as surviving termination.* [↑](#footnote-ref-44)
45. *The Parties can mutually decide a court at any place within India or where the registered office of the Service Provider/Customer is situated.* [↑](#footnote-ref-45)
46. *Arbitration may be institutional or non-institutional. Institutional arbitration is conducted under the auspices of an arbitral forum – some examples are: Singapore International Arbitration Centre (SIAC); London Court of International Arbitration (LCIA), Dubai International Arbitration Centre (DIAC), Swiss Arbitration Association (ASA), International Chamber of Commerce (ICC) etc. In such a case the rules of arbitration of the chosen institution would apply – and these would include the appointment of arbitrators and detailed conduct of the arbitration with the institution acting as the secretariat.*

*Non-institutional arbitration is managed by the arbitrators appointed by the parties. The parties may choose to conduct the arbitration under the rules of an institution but not use the institution itself to conduct the arbitration or the parties may choose to follow default rules laid down by an arbitration law – for example the Indian Arbitration & Conciliation Act.*

*This Clause provides for ad hoc arbitration between the Parties. Parties may consider arbitration by an institution (such as, LCIA, SIAC, ICC, etc.), in which case, the model arbitration clause suggested by such institution (with modifications if necessary) should be incorporated in this Agreement.* [↑](#footnote-ref-46)
47. *Instead of referring the dispute between the Parties to a panel of three arbitrators, the parties have an option to refer the dispute arising out of this Lease Deed to a sole arbitrator to be mutually decided by both the Parties. This should be decided keeping in mind the costs which are likely to be incurred in connection with an appointment of arbitrator are commensurate with the contract value.* [↑](#footnote-ref-47)
48. *Modify signature boxes as appropriate. Be careful when inserting signature boxes for individuals – the opening sentence should change to ‘EXECUTED by’.* [↑](#footnote-ref-48)