

MSA – Master Services Agreement

Master Services Agreement

This **Master Services Agreement** is entered into between **CtrlS Datacenters Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at Pioneer Towers, Plot no.16, Software Units Layout, Madhapur, Hyderabad 500 082 (hereinafter referred to as "**CtrlS**" which expression shall include its successors and assignees) and _____, a company incorporated under the Companies Act, 1956 and having its registered office at _____ (hereinafter referred to as the "**Customer**" which expression shall include its successors and permitted assignees).

CtrlS and Customer shall individually be called a "Party" and together the "Parties".

WHEREAS

- A. The Customer wishes to avail the Services from CtrlS and CtrlS has agreed to provide the Services to the Customer;
- B. The Parties have agreed that the provision of Services by CtrlS to the Customer shall be governed by the terms and conditions of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms: Capitalized terms used in this Agreement shall have the meanings assigned to them hereunder or as the case may be in the relevant clauses of this Agreement:

- (a) "**Affected Party**" means the Party claiming the benefit of Force Majeure.
- (b) "**Agreement**" shall mean all this Master Services Agreement and the SLA and the AUP collectively.
- (c) "**AUP**" shall mean the Acceptable User Policy attached to this Agreement as **Annexure-2** hereto.
- (d) "**Business Day**" shall mean any day on which banks at Hyderabad are open for transacting normal business.
- (e) "**Due Date**" shall mean expiry of a period of thirty (30) days from the date of an invoice raised by CtrlS.
- (f) "**Initial Term**" shall mean a period of 36months from the Service Commencement Date.
- (g) "**Renewal Term**" shall mean rolling periods of the same length as the Initial Term which shall automatically commence after the expiry of the Initial Term

(or as the case may be a Renewal Term) unless notice is given by either Party in the manner described in Clause 22 (Notices) of this Agreement to stop the Services, at least thirty (30) days prior to expiry of Initial Term (or as the case may be a Renewal Term).

- (h) **"Service Catalogue"** shall contain a list of all or any of services/facilities viz., back up facility, dedicated firewall facility, hardware monitoring facility, help desk support, load balance server, network and power uptime, OS management and shared firewall services, described in Schedule-A to the SLA.
- (i) **"Service Commencement Date"** shall mean the date of acceptance by CtrlS of the first purchase order issued by Customer under this Agreement.
- (j) **"Service Credits"** shall mean the credits which the Customer would be entitled to receive, on account of failure of the CtrlS to provide Services as per the standards mentioned in the SLA.
- (k) **"Service Level Agreement ("SLA")"** shall mean the Service Level Agreement annexed as **Annexure-1** hereto, together with all schedules to the SLA.
- (l) **"Services"** shall mean (i) services such as the hosting services, provision of servers and other devices and other services, and (ii) facilities detailed in the Service Catalogue, and (iii) Supplemental Services, in all situations as set out in the written purchase order(s) raised by the Customer on CtrlS and accepted by CtrlS.
- (m) **"Supplemental Services"** shall mean services which are requested for in writing by the Customer other than those already agreed to be provided by CtrlS, as set out in the written purchase order(s) raised by the Customer on CtrlS and accepted by CtrlS.
- (n) **"Territory"** means the territory of India.

1.2 Interpretation

- (a) The headings used in this Agreement are for convenience only and shall not in any way define or limit the scope of this Agreement.
- (b) In this Agreement, where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings.

2. TERMS GOVERNING PROVISION OF SERVICES

- 2.1** The Parties agree that this Agreement shall be read together with the purchase order(s) for Services issued by the Customer and accepted by CtrlS, and together they shall constitute the terms and conditions on which the Services shall be provided by CtrlS to the Customer.

3. SERVICES

- 3.1** Customer shall raise purchase orders on CtrlS for provision of Services. Subject to Clause 3.3, CtrlS agrees to provide Services, as set out in the purchase orders issued by Customer, from the Service Commencement Date till the end of the Initial Term, in accordance with the terms of this Agreement.
- 3.2** CtrlS may also provide Supplemental Services as and when requested for by the Customer and accepted by CtrlS. Fees for such Supplemental Services may be fixed and mutually agreed between the Parties in advance.
- 3.3** CtrlS shall be entitled to refuse to accept purchase orders (a) that are not in accordance with this Agreement, or (b) that are issued for services / facilities not covered in the Service Catalogue or (c) that contain terms and conditions or prices that are contrary to the understanding of the Parties or (d) at its sole discretion.

4. CHANGES

- 4.1** If Customer makes requests for any change in the Services, and such change results in increased cost of any nature to CtrlS, or will require additional time for performance of CtrlS's obligations, or if CtrlS is otherwise adversely affected by such change, the schedule, warranty, price and other terms and conditions of the purchase order and Agreement may be equitably adjusted by agreement of the Parties. In no event shall CtrlS be obligated to proceed with any change unless the foregoing adjustments have been agreed upon in writing by the Parties.
- 4.2** Notwithstanding the above, at any time and with prior consent of Customer in case of material changes, CtrlS reserves the right to make changes in design, construction, arrangement and provision of Services; provided such changes do not result in any increase in the price or time for performance or alter any performance guarantees or warranty obligations set forth herein. Customer shall not unreasonably withhold its consent in case of material changes.

5. INITIAL TERM

- 5.1** The Initial Term for the Services shall commence on the Service Commencement Date. Customer acknowledges and accepts that the provision of Services by CtrlS shall be subject to a minimum service period of 6 months from the Service Commencement Date ("**Minimum Service Period**"). The Customer shall not be entitled to terminate this Agreement during the Minimum Service Period for any reasons whatsoever except for the sole reason as specified in Clause 14.1(a). Notwithstanding anything contained herein, if the Customer terminates this Agreement before the expiry of Minimum Service Period, then the Customer undertakes and agrees to pay CtrlS, on or before the effective date of termination of this Agreement, an early termination compensation of an amount equivalent to the fee payable for the balance period of the Minimum Service Period, calculated from the effective date of termination of this Agreement.

5.2 On expiration of the Initial Term, the Renewal Term shall automatically commence upon the same terms and conditions mentioned in this Agreement.

5.3 In the event a Party does not wish to extend/renew this Agreement after the expiry of the Initial Term or as the case may be a Renewal Term, that Party shall send a written notice of at least thirty (30) days prior to the expiry of the Initial Term or the Renewal Term as the case may be, to the other Party. Upon receipt of such notice by the other Party and expiry of the Initial Term or a Renewal Term (as the case may be), the Agreement shall be deemed to have expired.

6. SUSPENSION OF SERVICES

6.1 Temporary Suspension of Services Without Prior Notice:

Customer agrees and accepts that CtrlS shall be entitled to suspend Services without prior notice in circumstances such as:

- (a) The CtrlS data centre being affected by viruses/malware;
- (b) "Network flooding" or "DDOS" attacks at CtrlS premises;
- (c) Faulty hardware at CtrlS's data centre;
- (d) The Services being used by the Customer in violation of the terms and conditions mentioned in the AUP or this Agreement;
- (e) To protect the servers maintained by CtrlS in the event of a threat of breakdown or where there is a valid reason to believe that not suspending the Services would cause loss to the other customers of CtrlS;
- (f) In cases where suspension is required by law; and
- (g) In such other circumstances as CtrlS may reasonably determine.

CtrlS shall inform Customer as soon as possible of such suspension.

6.2 Subject to Clause 6.1 above, Customer agrees that the Services may be suspended by giving at least Seven (7) days prior notice for Customer to remedy a situation under circumstances such as the following:

- (a) CtrlS has reason to believe that Services are being used by the Customer in violation of the terms and conditions mentioned in the Agreement including the AUP;
- (b) CtrlS believes that the Services provided by CtrlS to Customer are being used by non-authorized persons without the consent of CtrlS;
- (c) In situations where there is no co-operation from Customer during investigation of suspected violation of the Agreement; and
- (d) In such other circumstances as CtrlS may reasonably determine.

- 6.3** Without prejudice to CtrlS's rights of termination under Clause 14.2, if the Customer fails to fulfill its payment obligations, CtrlS may at its discretion (i) suspend performance of Services, or (ii) continue performance of Services if CtrlS deems such continuance to be appropriate. Notwithstanding the foregoing, in the event of default in payment obligations by the Customer, the Customer shall not be entitled to claim Service Level Credits as set out in the SLA during such period of default. In the event of suspension of the Service for the reasons as specified in this clause, the Services shall be reactivated upon payment of Rs. 3000 by the Customer to CtrlS.
- 6.4** In the event suspension of Services is required (a) other than as provided in Clauses 6.1, 6.2 and 6.3 above, and (b) as a result of CtrlS being unable to provide Services due to reasons not attributable to Customer, Customer shall be entitled to Service Level Credits as set out in the SLA. However, in the event of suspension of Services for the reasons as provided in Clauses 6.1, 6.2 and 6.3 above, Customer shall not be entitled to Service Level Credits as set out in the SLA.
- 6.5** Customer agrees and acknowledges that in the event of suspension of Services for the reasons as specified in Clauses 6.1, 6.2 and 6.3 above, Customer shall be responsible for all fees and charges for the Services incurred through the date of suspension. Customer understands that CtrlS's aforesaid right to suspend is in addition to its right to terminate under Clause 14 of this Agreement.
- 6.6** In the event suspension of Services is for the reasons specified in Clause 6.3, CtrlS will not guarantee and will not be responsible/liable for availability of the data and files of the Customer after such suspension. CtrlS shall not be held liable for any loss of data, content or files of the Customer upon such suspension.

7. CUSTOMER OBLIGATIONS

7.1 Maintenance of Security

- (a) Customer shall take all reasonable measures to ensure that the information transmitted to or from the servers of CtrlS with respect to the Services required by the Customer is secure. Customer shall duly authorize its employees and all third parties required to have any access to such servers. Customer shall require each person having access to such services to apply/ follow all reasonable security and safety measures. CtrlS will not liable for any action taken by (i) such authorized person on the assets deployed for the Customer and (ii) individuals who were not authorized to have access to the servers and the Services but who were able to gain access because of the default of the Customers (including disclosing of the usernames, passwords or accounts details and other security breaches by Customer as specified in Clause 10 below). Customer shall be responsible for the activities that occur under the Customer's usernames, passwords or accounts or as a result of Customer's or its authorized person's access to the Services. Customer agrees to indemnify and hold harmless CtrlS for any claims or actions arising out of the breach of this provision by the Customer.

- (b) Customer shall not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any data or content or material, including Customer Data, for any purpose that may (a) harass any person or cause damage or injury to any person or property, (b) involve defamatory, harassing, untrue or obscene materials, (c) violate privacy rights or promote hatred or harm, (d) constitute unsolicited bulk e-mail, spam or junk; (e) constitute an infringement of intellectual property or other proprietary rights of a third party, or (f) violates applicable laws. Without prejudice to the rights of CtrlS under this Agreement, CtrlS reserves the right without any liability whatsoever to Customer to take remedial action if any data or content or material violates the restrictions as aforesaid including the removal or disablement of access to such data or content or material. Customer agrees to indemnify and hold harmless CtrlS against any claims arising out of a violation of this provision by the Customer

- (c) The accuracy, veracity, legality and validity of the data or contents provided by the Customer and/or its authorized person and transmitted to or from the servers of CtrlS, housed in CtrlS servers and in the database of CtrlS shall be the exclusive responsibility of the Customer. The Customer acknowledges that CtrlS is solely hosting data and/or information on the Customer's and/or its authorized representative's instructions, and any action on such instructions and the result thereof shall be the sole liability of the Customer. CtrlS shall not be liable for (i) any false and/or inaccurate and/or illegal data transmitted to or from the servers of CtrlS or housed in CtrlS servers, and (ii) any outcome and/or result of such processing, transmitting to or from the servers of CtrlS, housed in CtrlS servers and in the database of CtrlS.

7.2 Compliance with law

Customer shall ensure that it has taken all necessary approvals, licenses from concerned authority(ies) as applicable within or outside the Territory for availing the Services to be provided by CtrlS. Customer shall at all times comply with all applicable laws.

8. ACCEPTABLE USER POLICY (AUP)

- 8.1** Customer shall utilize the Services in accordance with the AUP. The existing AUP is annexed to this Agreement as Annexure-2. CtrlS shall be entitled to modify the AUP from time to time and such amended AUP (found at: www.ctrls.in/aup.php) shall apply in relation to provision of the Services by CtrlS to Customer.

9. REPRESENTATIONS AND WARRANTIES:

- 9.1** Customer represents and warrants to CtrlS as follows:

- (a) It has the legal right and authority to enter into this Agreement and is not barred by any agency or authority in or outside the Territory to enter into this Agreement.

- (b) All the information and disclosures made in respect to this Agreement are true and accurate.
- (c) It has taken all necessary authorizations and approvals for the purpose of execution of this Agreement.
- (d) Customer shall not authorize any third person to have access to the Services unless it is approved in writing by CtrlS.
- (e) It owns and has the right, title and interest in the contents, materials and the data (including the Customer Data) which runs on the Services or causes to interface with the Services or which is uploaded for the Services or posted or submitted or otherwise used during availing of the Services by the Customer

9.2 CtrlS represents and warrants to Customer as follows:

- (a) It has legal right, authority and authorization to enter into the agreement and to provide the Services as required by the Customer.
- (b) Services provided by CtrlS are not in violation of any law or regulation(s) in force.
- (c) All the information and disclosures made in respect to this Agreement are true and accurate.
- (d) It has taken all necessary authorizations and approvals for the purpose of execution of this Agreement.
- (e) It shall take all reasonable measures to ensure that information transfer (within CtrlS's area of influence) to and from Customer's materials is secure and it shall not use, analyze or access Customer data traffic or any other data except for the limited purposes necessary for undertaking its contractual obligations as set out herein.
- (f) It shall not derive any end user identifiable information from the Customer's services / Customer's data flow.

10. USE OF SERVICES

10.1 Both Customer and CtrlS agree that each shall ensure that specific security measures (if opted for by the Customer) such as maintaining fire walls, confidentiality of passwords to the servers, not providing access to the Services to any third party, etc., are implemented. Each Party shall be responsible for breach of such measures, to the extent such breach has been enabled by such Party's default to maintain the above security measures.

10.2 Customer acknowledges and understands that the software and software applications including content, materials, data, images, text, audio, video etc. provided by a third party (whether directly by third party or CtrlS procuring the

same on Customer's instruction) ("Third Party Materials") for the Service shall be at sole liability of Customer

11. INDEMNIFICATION

11.1 Each Party agrees to indemnify the other Party (the "**Aggrieved Party**"), their directors, employees, agents and contractors against any third party claim arising out of or in relation to infringement of any third party's copyright, trade secret, patent, trade mark or any other propriety rights, *provided* that the Aggrieved Party promptly notifies the other Party of the claim and tenders the other Party the full control to respond / process and/or settle the claim.

11.2 The obligation of a Party ("**Indemnifying Party**") to indemnify the Aggrieved Party under this Agreement shall come into effect only if:

(a) The Aggrieved Party gives prompt notice of the claim to the Indemnifying Party.

(b) The Aggrieved Party allows the Indemnifying Party to take control of its defense and direct proceedings in all aspects including by appointment of lawyers.

(c) The Aggrieved Party does not make and does not attempt to make any admission with respect to the claim or any settlement of the claim.

11.3 The Indemnifying Party shall not be obliged to indemnify the Aggrieved Party under Clause 11.1 in respect of an infringement claim mentioned therein in relation to materials, services, information or other work ("**Items**") provided by the Indemnifying Party (a) arising as a result of the Aggrieved Party modifying the Items, or (b) to the extent that the infringement claim arises as a result of the Aggrieved Party's use of the Items together with products not delivered by the Indemnifying Party or (c) as a result of an application or use of the Items by Aggrieved Party that is not agreed between the Parties under this Agreement.

11.4 The Indemnifying Party shall not compromise or settle any claim or make any admission fixing liability on the Aggrieved Party without the consent of the Aggrieved Party unless such compromise or settlement has the effect of relieving the Aggrieved Party from all claims made against it.

12. PERFORMANCE WARRANTIES

12.1 CtrlS warrants to Customer that the Services will be performed in a competent manner and substantially in accordance with any mutually agreed specifications. The foregoing warranty shall be valid, provided any breach thereof is notified within one (1) year from the completion of the relevant Service or prior to termination/expiry of this Agreement, whichever is earlier (hereinafter "**Warranty Period**"). Notwithstanding anything contained herein, no agent, or employee of CtrlS is authorized to make any modification, extension or addition to this warranty or make a different warranty. Upon any breach of such warranty, the only obligation of CtrlS is to re-perform any defective Services to the extent necessary and feasible.

- 12.2** In no event does the above warranty apply to (i) any failure or nonconformance of the Services with specifications (as provided in the Agreement or otherwise) caused by or attributable to any associated or complementary products not supplied under the Agreement, (ii) the quantity or quality of the products of Customer or the process of manufacture for/on which the Services or products are used, (iii) damage, fault, failure or malfunction due to Force Majeure or normal wear and tear, (iv) any attempt by any person other than CtrlS personnel or any person authorized by CtrlS, to perform all or part of the Services and (v) Third Party Materials. The warranty and remedies are conditioned upon (a) conformance with any applicable recommendations of CtrlS, and (b) Customer promptly notifying CtrlS of any defects in Services. The Customer acknowledges that there are risks inherent in internet connectivity outside CtrlS's sphere of influence that may result in the loss of Customer's privacy, confidential information, and property. Customer acknowledges that CtrlS does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. CtrlS shall not be responsible for any delays, delivery failures, or other damage resulting from such problems. CtrlS shall not be responsible for any issues related to the performance, operation or security of the Services that arise from Customer's content, applications or Third Party Materials
- 12.3** The Customer acknowledges and understands that CtrlS is not privy to any data and/or information of the Customer ("**Customer Data**") because of the nature of provision of Services and it acts solely for hosting of the Customer Data. CtrlS shall not be liable for any loss of Customer Data while availing the Services from CtrlS unless Customer has opted and availed in the Services for data backup along with data assurance services. Under no circumstances will CtrlS have any liability or responsibility for (i) the loss of Customer Data or other information unless caused by the gross negligence or willful misconduct of CtrlS; and (ii) security breaches, viruses, hacked servers, worms, or corrupted data including Customer Data, unless caused by the gross negligence or willful misconduct of CtrlS.
- 12.4** The foregoing sets forth the exclusive remedies of Customer and the sole liability of CtrlS for claims based on failure of, or defect in, Services, whether such claim is based on contract, law, indemnity, warranty, tort (including negligence), strict liability or otherwise. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED (BY STATUTE, COMMON LAW, TRADE USAGE, COURSE OF DEALING OR OTHERWISE) OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. CtrlS does not provide any representations or warranties other than those set out in Clause 12.1 above.
- 12.5** CtrlS does not provide any representation or warranty in respect of any products or services provided by others. CtrlS shall have no obligation for loss, liability or damage which results because (1) Customer fails to utilize, operate or maintain the Services or any materials or equipment in connection with the Services in accordance with (i) applicable law and generally approved industry practices or (ii) the provisions of this Agreement or (iii) the provisions of any storage,

operating or maintenance instructions furnished to Customer or (2) Customer breaches applicable law. Customer agrees to indemnify CtrlS against any loss, liability, harm or damage that CtrlS may suffer as a result of Customer's failure or breach as described in this clause.

13. LIMITATION ON DAMAGES

13.1 The total liability of CtrlS, its employees, subcontractors, or suppliers on all claims of any kind (excluding claims for death or bodily injury), whether based on contract, law, indemnity, warranty, tort (including negligence), strict liability or otherwise, resulting from this Agreement, its performance or breach, or from any services covered by or furnished under or in relation to this Agreement or any extension or expansion thereof (including remedial warranty efforts), shall in no case exceed the average price or fee paid for Services over a three (3) month period in the period of one (1) year before the liability arose.

13.2 In no event, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall CtrlS, its employees, subcontractors or suppliers be liable for any indirect, remote, special, consequential, incidental or exemplary damages, loss of profits or revenue; loss of use of equipment being worked on or any associated equipment or facilities; cost of capital; cost of purchased power; cost of substitute equipment, facilities or services; downtime costs; any special, consequential, incidental or exemplary damages; or claims of customers of Customer for any of the foregoing items, and Customer will indemnify CtrlS, its employees, subcontractors and suppliers against any such claims from Customer's customers.

14. TERMINATION

14.1 Termination by Customer

Customer may terminate the Agreement by immediate written notice to CtrlS if:

- (a) CtrlS fails to provide the Services as agreed; or
- (b) CtrlS fails to comply with any other terms of this Agreement other than provision of Services, and fails to cure the defect in the Services or its non-compliance with any other terms of this Agreement, within a period of thirty (30) days from the date of written notice issued by the Customer asking it to cure such defect or non-compliance.

14.2 Termination by CtrlS

CtrlS has the right to terminate the Agreement on immediate written notice to the Customer when

- (a) any payments to CtrlS payable by Customer have not been paid within fifteen (15) days of the Due Date; or

- (b) when the Customer fails to comply with the terms of this Agreement and fails to cure such non-compliance within a period of thirty (30) days from the date of written notice issued by CtrlS asking it to cure such non-compliance.

15. TERMINATION FOR CONVENIENCE

- 15.1** Subject to Clause 5.1 above, Customer may terminate the Agreement for its convenience without providing any reasons by giving the other at least ninety (90) days advance written notice. CtrlS is also entitled to terminate the Agreement for its convenience without providing any reasons by giving the other at least ninety (90) days advance written notice

16. EFFECT OF TERMINATION

- 16.1** Upon the termination of this Agreement becoming effective:

- (a) CtrlS shall immediately cease providing the Service(s) to the Customer;
- (b) any and all payment obligations of Customer under this Agreement for Service(s), in proportion to the Services rendered till the effective date of termination, will immediately become due;
- (c) within three (3) days of termination of this Agreement, each Party shall be under an obligation to return all Confidential Information of the other Party in its possession without retaining any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.
- (d) Customer shall remove all its equipments and materials from CtrlS's premises within ten (10) days of the effective date of termination. Unless CtrlS agrees otherwise in writing, failure to remove Customer's equipments and materials within ten (10) days from the effective date of termination will constitute abandonment of Customer's equipment and material and Customer shall lose all rights in respect thereof. CtrlS shall be entitled to pursue available legal remedies, including, without limitation and at Customer's risk and expense: (i) immediately removing Customer's equipment and material and storing it at Customer's expense at an on-site or off-site location; (ii) shipping it to Customer; or (iii) upon thirty (30) days' prior written notice to Customer, liquidating it, and retaining/appropriating to itself the proceeds there of.

- 16.2** Termination shall not affect the liabilities of a Party that have accrued before the effective date of termination.

17. CONFIDENTIALITY

- 17.1** Each Party ("**Receiving Party**") agrees that it will not disclose to third party/ies any information belonging to the other Party ("**Disclosing Party**") which is provided to it by the Disclosing Party before, during and after the execution of this Agreement. All such information belonging to the Disclosing Party and provided to the Receiving Party shall be considered Confidential Information.

Confidential Information includes prices, quotations, negotiated issues made before the execution of the Agreement, server configuration, design and other related information and information relating to the contents to be transmitted to and from the servers of CtrlS or Customer. All information provided by a Party to the other shall be considered confidential even if it is not conspicuously marked as confidential.

- 17.2** Notwithstanding the foregoing, neither Party shall have any obligations regarding non-use or non-disclosure of any confidential information which (i) is already known to the Receiving Party at the time of disclosure; (ii) is or becomes part of the public domain without violation of the terms hereof; (iii) is shown by conclusive documentary evidence to have been developed independently by the Receiving Party without violation of the terms hereof; (iv) is disclosed by the Disclosing Party to a third party without similar restrictions on the third party's rights; or (v) is received from a third party without similar restrictions and without violation of this or a similar agreement.
- 17.3** Each Party agrees not to disclose any of the Confidential information obtained from the other under any circumstances to any third party unless it is so required by law to be disclosed or if it falls under any of the exceptions mentioned in Clause 17.2 above. Any disclosure to be made by the Customer as per the requirements of law shall be so disclosed on providing advance notice to CtrlS with the reasons for such disclosures.
- 17.4** The terms and conditions of this Agreement, and all annexes, attachments and amendments hereto and thereto shall be considered Confidential Information. No news release, public announcement, advertisement or publicity concerning this Agreement and/or its contents herein shall be made by either Party without the prior written approval of the other Party unless such disclosure or public announcement is required by applicable law. Notwithstanding any provision to the contrary, CtrlS shall be entitled to freely disclose the information that it is providing / has provided the Services to the Customer in its marketing, promotion or other materials.

18. INSURANCE

- 18.1** CtrlS will maintain, at its expense, as long as this Agreement is in force, insurance against risk of damage or loss caused by fire, earthquakes or terrorism for its property and equipments.
- 18.2** Customer agrees to maintain at its expense as long as this Agreement is in force, Commercial General Liability Insurance and insurance against all risk property insurance on a replacement cost basis with limits adequate to cover the value of Customer's equipment
- 18.3** The Parties will furnish the other Party with photocopies of certificates of insurance that evidence the minimum levels of insurance set forth above.
- 18.4** The insurance maintained by CtrlS pursuant to this Agreement will be primary to, and without any right of contribution from, any other insurance that may be available to Customer.

19. DATA PRIVACY

- 19.1** The Customer acknowledges that CtrlS may require to disclose information and data provided to it by Customer, including information that identifies an individual or a person either directly or indirectly and alone or in combination with other information available (such identifying information being referred to as "**Personal Information**"), such as a person's name, phone number and email address, to CtrlS's affiliates and associates to carry out Services under this Agreement. CtrlS may also disclose Personal Information obtained from Customer if required under applicable laws including in connection with law enforcement, fraud prevention, or other legal action, or as required by law or regulation, or if it reasonably considers it necessary to protect CtrlS, its customers, or the public.
- 19.2** In addition, Customer agrees that CtrlS may disclose such Personal Information to its business partners in order to perform acts that help CtrlS to customize, analyse and/or improve its Services and its communications with Customer, provided that all such business partners shall share CtrlS's commitment to protect such Personal Information.
- 19.3** The Customer shall be deemed to have consented to disclosure of Personal Information by CtrlS to its affiliates and business partners by providing such Personal information to CtrlS in the course of CtrlS's performance of the Services.
- 19.4** CtrlS may disclose any Personal information provided by Customer (a) if required to do so by an order under applicable law; or (b) to government agencies mandated under law to obtain such information for the purpose of verification of identity, or for prevention, detection or investigation including of any real or suspected event in relation to cyber-security. No further consent will be required to be obtained by CtrlS from the Customer for any of the aforesaid disclosures.

20. ASSIGNMENT AND SUBCONTRACTING

- 20.1** Customer shall not be entitled to assign the benefit of the Services or any of its obligations under this Agreement to any third party without the prior written consent of CtrlS.
- 20.2** CtrlS may upon notice to Customer engage a subcontractor to provide Services to Customer.

21. PAYMENTS AND TAXES

- 21.1** The fees that CtrlS shall charge for Services shall be agreed upon by the Parties from time to time and set out in the relevant purchase order.
- 21.2** Customer shall pay the fees in accordance with CtrlS's invoices and any fees charged for Supplemental Services provided by the Due Date.
- 21.3** CtrlS shall send invoices to the Customer through email/fax /post/courier to the designated invoicing address of the Customer as provided in Clause 22.

21.4 Delay in Payments

- (a) In the event Customer fails to pay invoices by the Due Date, without prejudice to any other rights that CtrlS has under this Agreement or in law or equity, the costs incurred by CtrlS as a result of Customer's non-fulfillment of its payment obligations shall be payable by Customer upon submission of CtrlS's invoices therefor.
- (b) In case of any delays in payment of CtrlS's invoices, the Customer shall be liable to pay interest at a rate equivalent to the base rate of State Bank of India (SBI) + 800 basis points per annum on the unpaid amount from the date that the amount becomes due for payment till the date of receipt of payment by CtrlS. Further, CtrlS (if applicable) shall be entitled to an extension of time for its performance equal to the period of Customer's non-fulfillment, whether or not CtrlS elects to suspend performance.

21.5 Any taxes, duties, fees, charges or assessments of any nature (including stamp, service, turnover or value added taxes, sales, use, excise, customs, octroi, entry, or other similar tax), or cess imposed, surcharge, fine, penalty, interest applicable to CtrlS's fees for Services and/ or in connection with the transactions to be undertaken under this Agreement (other than income tax payable by CtrlS or its sub-contractors), whether levied against Customer, against CtrlS or its employees, or against any of CtrlS's subcontractors or their employees, shall be the responsibility of Customer and shall be paid directly by Customer to the governmental authority concerned.

21.6 In the event the Customer needs to provide any information/documents to enable CtrlS to avail any benefits (including any tax benefits, reduced or concessional tax rates, incentives etc.), the Customer shall provide the same on a timely basis to enable CtrlS to obtain/avail such benefits. Upon any failure of the Customer in fulfilling its obligations under this clause (including failure to provide the requisite information/documents on a timely basis), CtrlS shall, without prejudice to its rights and remedies, be entitled to claim and recover the amount of the benefit/s lost on account of such failure/delay from the Customer.

22. NOTICES

22.1 All communications by Customer with respect to this Agreement should be sent to the sales department of CtrlS via electronic mail/fax/registered post/courier at the address below or email address as shown on the web site:

CtrlS Datacenter Ltd.,
Plot No. 16, Software Units layout,
Madhapur (Hitech City)
Hyderabad – 500081
Andhra Pradesh, India

- 22.2** All communications by CtrlS with respect to this Agreement should be sent to the Customer via electronic mail/fax/registered post/courier at the address or email address or fax number given below:

[Name of Customer]

[Address]

Attn: [•]

Email: [•]

Fax: [•]

- 22.3** A Party to this Agreement shall notify the other Party of any changes to the address or any of the other details as specified in this Clause 22. The Customer acknowledges and understands that the Services provided by CtrlS and availed by the Customer is of such a nature that requires urgent and immediate communication between the Parties. In the event the Customer fails to notify any change of its address or any of its other details as specified in this Clause 22, the same shall be considered a material breach of this Agreement and shall entitle CtrlS to terminate the Agreement without any liability whatsoever.

23. FORCE MAJEURE

- 23.1** A Party shall not be liable to the other Party if, and to the extent, that the performance of any of its obligations under this Agreement is prevented, restricted, delayed or interfered with due to circumstances beyond the reasonable control of that Party, including, but not limited to, circumstances such as change in legislation, fire, flood, explosion, epidemic, accident, act of God, war, riot, terrorist activities, strike, lockout and/or act of government (*Force Majeure*). The Party claiming an event of *Force Majeure* as aforesaid shall promptly notify the other Party in writing, and provide full particulars of the event of *Force Majeure* and the date of first occurrence thereof, as soon as possible after the event and also keep the other Party informed of any further developments. The Party so affected shall use its commercially reasonable efforts to remove the cause of non-performance, and shall, unless otherwise agreed to by the other Party in writing, resume performance hereunder with utmost dispatch when such cause of non-performance is removed.
- 23.2** On the occurrence of *Force Majeure* the Affected Party shall be excused from performance of its obligations (other than payment obligations) to the extent performance of such obligations is affected by *Force Majeure*.
- 23.3** On the occurrence of *Force Majeure* either Party may terminate this Agreement by written notice to the other in the event the *Force Majeure* situation continues for more than thirty (30) days without any liabilities other than those that may have arisen before the occurrence of the *Force Majeure* event.

24. OWNERSHIP

- 24.1** Each Party acknowledges and agrees that the other Party retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property and any hardware provided by such Party in relation to this Agreement.
- 24.2** Neither Party shall remove or misuse or modify any copyright, trade mark or any other proprietary right of the other Party which is known by virtue of this Agreement, in any circumstances.

25. GOVERNING LAW AND ARBITRATION

- 25.1** This Agreement shall be governed by the laws of the Republic of India.
- 25.2** In case of any disagreement or dispute between the Customer and CtrlS, the dispute will be resolved in the manner as outlined hereunder.
- 25.3** The Customer and CtrlS shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute between them on any matter connected with this Agreement or in regard to the interpretation thereof. If, after thirty (30) days from the commencement of informal negotiations, the Customer and CtrlS have not been able to resolve the dispute amicably, such differences and disputes shall be referred, at the option of either Party, to arbitration by a single arbitrator to be mutually agreed upon and in the event of no consensus, the arbitration shall be conducted by three arbitrators, one to be nominated by the Customer, one to be nominated by CtrlS and the third arbitrator shall be nominated by the two arbitrators nominated as above. Such arbitration will be conducted in accordance with the Arbitration and Conciliation Act, 1996. Upon every or any such reference the costs of and incidental to the reference and award shall be at the discretion of the arbitrator or arbitrators appointed for the purpose, who may determine the amount thereof and shall direct by whom and to whom and in what manner the same shall be borne and paid. The arbitration shall take place in Hyderabad, India unless otherwise mutually agreed by the Parties and shall be conducted in the English language.

26. MISCELLANEOUS

26.1 Solicitation

Customer agrees that (a) it will not compete with CtrlS in any manner, and (b) it will not solicit any of the employees of CtrlS, including those who have directly or indirectly been involved in providing Services to Customer, for employment with the Customer and/or any of its associates, affiliates, group companies or third parties, during the validity of this Agreement and up to twenty four (24) months from the expiry or date of termination of this Agreement.

26.2 Intellectual Property in Services

CtrlS is the sole owner of all patents, copyrights, trademarks, industrial designs, trade names and trade secrets and all other intellectual property rights in the Services and the Customer agrees that nothing contained herein shall be deemed to result in any transfer of such intellectual property to the Customer.

26.3 Modification of Services and Amendment

- (a) Customer agrees that any change in the Services other than as accepted by both the Parties under this Agreement, shall be effected only after a written confirmation is received from CtrlS on the request of Customer.
- (b) Any modifications accepted by CtrlS may attract different fees and amendment of certain terms of this Agreement. On acceptance of such terms and fees in writing the modifications requested by the Customer shall be brought into force.
- (c) This Agreement may be amended only by the written agreement of both Parties.

26.4 No third party beneficiaries

There shall be no third party beneficiaries to this Agreement.

26.5 Relationship between Parties, Subcontractors

- (a) The relationship of CtrlS and Customer created by this Agreement is that of independent contractors and no partnership is created. Nothing contained in this Agreement shall be construed to give either Party the power to direct and control the day-to-day activities of the other.
- (b) Neither Party shall be considered an agent of the other Party and neither Party may represent to any person that it has the power to bind the other on any agreement. The Agreement is non-exclusive and allows both Parties to conduct its business in a manner that is not against the terms and spirit of this Agreement.

26.6 Stamp Duty

The Parties agree that the stamp duty payable on the Agreement shall be borne by the Customer.

26.7 Severability

The Parties acknowledge that if any provision of this Agreement is unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such unenforceable provision had never been contained herein.

26.8 Non-Disparagement.

The Customer hereby acknowledges and agrees that it will not and will ensure that its representatives, employees, agents, contractors, associates, group companies etc. do not in any form or manner carry out disparagement, negative characterization, defamation and/or publicly criticism of the Services, or

question the business, integrity, veracity or personal or professional reputation of CtrlS.

26.9 Agreement

All annexures to this Agreement are hereby incorporated in this Agreement. The Agreement is the complete and exclusive agreement between the Parties regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral. In the event of any conflict or inconsistency between the provisions of (a) the Master Services Agreement and the SLA and/or the AUP, the provisions of the Master Services Agreement shall prevail, and (b) the SLA and the AUP, the provisions of the SLA shall prevail.

IN WITNESS WHEREOF EACH PARTY HAS EXECUTED THIS AGREEMENT ON THE DATES WRITEN BELOW:

Signed by:

Signed by

Position:

Position:

FOR AND ON BEHALF OF
CtrlS Datacenters Limited

FOR AND ON BEHALF OF
Customer

