

**MASTER SERVICE AGREEMENT (MSA)**

**CtrlS**

**Ctrl S Data Centres Ltd**

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Confidential

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***Ctrl S datacenters Ltd , Plot No 16, Software Units Layout, Hitec City,  
Madhapur, Hyderabad - 500081, Ph: +91-40-42030700***

## **MSA – Master Service Agreement**

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This **Master Service Agreement** (Agreement) is between **Ctrl S Datacenters Ltd (CtrlS)** an Indian Company incorporated under the Companies Act, 1956 and having its registered office at Pioneer Towers, Plot no.16, Software Units Layout, Madhapur, Hyderabad (hereinafter referred to as the "CtrlS" which expression shall include his heirs, successors, legal representatives 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 his heirs, successors, legal representatives and assignees).

CtrlS and Customer shall individually be called as "CtrlS", "Customer" and collectively called as "Parties".

The Parties agree as follows:

Each Party acknowledges that Order Processing Form OPF shall be confirmed / completed only once each Party has accepted the terms mentioned in this Master Service Agreement ("MSA") the Service Level Agreement ("SLA") and the terms mentioned in Accepted User Policy ("AUP"). This MSA shall include the SLA and will bind both of the Parties to all of the terms and conditions mentioned hereof.

This Agreement covers all the terms and conditions with respect to the Services detailed in the OPF to be provided by CtrlS and to be received by the Customer. This Agreement shall supersede all prior oral or written agreements, negotiations, discussions between CtrlS and Customer.

**1. Defined Terms:** Capitalized terms shall have the following meanings or the meanings assigned to them in the other Clauses of the Agreement:

**"Agreement":** shall mean the Order Processing Form (OPF), Master Service Agreement (MSA) and Service Level Agreement (SLA) including Accepted User Policy (AUP) collectively. Any conflict between the documents shall be resolved by reading the documents in the order mentioned above.

**"Affected Party"** means the Party claiming the benefit of Force Majeure.

**"AUP":** shall mean Acceptable User Policy attached to this Agreement. AUP may be revised from time to time by written agreement of the Parties (acting reasonably).

**"Business Day":** shall mean Monday through Saturday, excluding second Saturdays and public holidays.

**"Due Date":** shall mean the expiry of thirty (30) days from the date of invoice raised by CtrlS.

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**“Effective Date”** shall mean the day when the OPF is completed in all respects is accepted along with the MSA and SLA.

**“Initial Term”**: shall mean the period of 12 months from execution of this Agreement.

**“USD”**: shall mean US Dollars.

**“INR”**: shall mean Indian Rupees.

**“Renewal term”** shall mean a similar period as mentioned in the Initial Term which automatically extends after the expiry of the Initial Term unless notice is given by the Customer as mentioned in the clause 19.1 in this agreement to stop the Services at least 30 (thirty) days prior to expiry of Initial Term.

**“Service”** shall mean the hosting service like providing servers, other devices as mentioned in the OPF with all such facilities as detailed in the Service Catalogue and any other Supplemental Services as may be required by the Customer in writing.

**“Service Catalogue”** shall contain 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 Annexure A to the SLA which may be availed by the Customer along with the Services as mentioned in the OPF from Ctrl S.

**“Service Level Agreement (“SLA”)** shall mean the Service Level Agreement incorporated by reference in the OPF.

**“Order Processing Form (OPF)”** shall mean the OPF completed by the Customer as Annexure 3 of this agreement and accepted by the Customer in accordance with the terms and conditions mentioned in the MSA and SLA. The Parties agree that each OPF executed under the Agreement shall be executed also in written hardcopy.

**“Service Commencement Date”** shall mean the date CtrlS sends the welcome kit for use in connection with the Services.

**“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.

**“Supplemental Services”**: shall mean any other services which are requested in writing by the Customer other than those agreed to be provided by CtrlS as mentioned in OPF.

**“Territory”**: means the territory of India

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## Interpretation

- (a) In this Agreement, the headings 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. COLLECTIVE DOCUMENTS**

**2.1** The Parties agree that this Agreement shall be read along with the SLA, AUP and the OPF and all these documents collectively shall cover the Services to be provided by CtrlS and the terms and conditions on which the Services shall be provided to the Customer.

## **3 SERVICE**

**3.1** CtrlS agrees to provide Services along with any of the facilities as mentioned in the Service Catalogue, from the Service Commencement Date in accordance with the terms of the Agreement and may at its sole discretion consider any improvement/enhancement to the Services which may be requested by the Customer without additional charges.

**3.2** CtrlS in addition to the Services provided to the Customer may also provide additional Services or other technical services as and when required at Customers request for which fees may be fixed and approved in advance, with the Customer.

## **4 INITIAL TERM**

**4.1** The Initial Term for the Services shall commence on the Service Commencement Date.

**4.2** On expiration of the Initial Term as mentioned in clause 4.1 the term for providing Services shall be automatically renewed for rolling one year subsequent terms upon the same terms and conditions mentioned in this Agreement and referred as Renewal Term.

**4.3** In the event the Customer does not wish to avail the Services after the expiry of Initial Term, then the Customer shall send a written notice, not limiting to email, at least 30 days prior to the commencement of the Renewal Term in a manner as described in clause 19.1. In other respects, section 14 shall apply.

## **5 CtrlS RIGHTS AND OBLIGATIONS**

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### **5.1 Temporary Suspension of Services:**

**5.1.1** Customer agrees and accepts that in case CtrlS has reason to believe that for any technical reasons to prevent congestion arisen due to faulty equipment or Customer's unlawful use of Services by Customer or any of its affiliates or any person ("Authorized Person"), CtrlS may consider it necessary to suspend the Services. In all such cases, CtrlS shall notify the Customer prior to or - in case solving the congestions (attributable to Customer's breach of this Agreement) requires immediate actions not allowing time to notify - immediately after such suspension. Such suspension of Services shall not be considered as default on part of CtrlS in providing the Services. This is done to protect the contents of the customer information residing in the assets at CtrlS with intent to prevent any malafide action or disclosure of such information.

### **5.2 General Obligation**

**5.2.1** Subject to the satisfaction of the Service Credit approval criteria as provided in the SLA, CtrlS will provide the Services to the Customer as per the standards as stated in the SLA and any other Supplemental Services as mutually agreed in writing between CtrlS and Customer.

## **6 CUSTOMER OBLIGATIONS**

### **6.1 Maintains Security**

**6.1.1** 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 are secure and shall duly authorize all third persons to have any access to the servers of CtrlS. Customer may authorize any of its Authorized Person to use the Services. Customer must require such person to apply/ follow reasonable security measures as would have been followed by Customer itself. CtrlS will not liable for any action taken by such authorized third person on the assets deployed for the customer.

### **6.2 Compliance with law**

**6.2.1** 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.

## **7 ACCEPTABLE USER POLICY (AUP)**

**7.1** As per AUP enclosed

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**7.2** Customer agrees that in situations where the AUP of CtrlS is amended in a manner which does not serve the purpose of the Customer, then the Customer shall issue a written notice as described in clause 19 mentioning the issues with regard to the new AUP.

**7.3** CtrlS has the rights to terminate Customer in breach of Section 7.2, If the objections raised by the Customer are not acceptable to CtrlS then the Services from CtrlS to Customer will be terminated by **CtrlS** providing notice as mentioned in the Termination clause **14.2.1.2** herein. Customer has the rights to terminate CtrlS in breach of Section 7.2 If the objections raised by the Customer are not acceptable to CtrlS then the Services from CtrlS to Customer will be terminated by **CUSTOMER** providing notice as mentioned in the Termination clause 14.1.1.2 herein.

## **8 SUSPENSION OF SERVICES.**

**8.1** Customer agrees that the Services as provided by CtrlS may be suspended by giving at least thirty (30) days prior notice for Customer to remedy the situation under all circumstances, except as mentioned in clause 5. CtrlS may suspend the Services in cases where:

**8.1.1** CtrlS has concrete evidence that Services are being used by the Customer in violation of the terms and conditions mentioned in the AUP.

**8.1.2** CtrlS believes that the Services provided by CtrlS to Customer are being used by non-Authorized persons without the consent of CtrlS.

**8.1.3** In situations where there is no co-operation from Customer during investigation of suspected violation of the Agreement.

**8.1.4** Protect the serves maintained by CtrlS in the event of immediate 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, where such event arises due to Customers' actions.

**8.1.5** In cases where it is required by law.

## **9 REPRESENTATIONS AND WARRANTIES:**

### **9.1** Customer:

**9.1.1** It has the legal right and authority to enter into the agreement and is not barred by any agency or authority in or outside the Territory to enter into this Agreement.

**9.1.2** All the information and disclosures made in respect to this Agreement are true and accurate.

**9.1.3** It has taken all necessary authorizations and approvals for the purpose of execution of this Agreement.

**9.1.4** Customer shall not authorize any third person to have access to the Services unless it is approved in writing by CtrlS.

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## **9.2 CtrlS**

- 9.2.1** It has legal right, authority and authorization to enter into the agreement and to provide the Services as required by the Customer.
- 9.2.2** Services provided by CtrlS are not in violation of any law or regulation(s) in force.
- 9.2.3** All the information and disclosures made in respect to this Agreement are true and accurate.
- 9.2.4** It has taken all necessary authorizations and approvals for the purpose of execution of this Agreement.
- 9.2.5** Services required by the Customer and agreed to be provided by CtrlS do not conflict or are not in violation of any law, rules, regulation(s) in force in the Territory.
- 9.2.6** CtrlS shall take all reasonable measures to ensure that information transfer (within CtrlS's area of influence) to and from Customers materials is secure and CtrlS shall not use, analyze or access Customer data traffic or any other data except for any other purposes than for the limited purposes necessary for undertaking its contractual obligations as set out herein.
- 9.2.7** CtrlS shall not purport to derive any end user identifiable information from the Customer's services / Customer's data flow.
- 9.2.8** CtrlS shall not use Customer as a reference unless otherwise mutually agreed in writing.
- 9.2.9** CtrlS shall retain sufficient insurance coverage to cover for its liabilities under this Agreement.

## **10 UNAUTHORIZED USE OF SERVICES**

- 10.1** Both Customer and CtrlS agree that each shall ensure that specific security services such as maintaining fire walls, confidentiality of passwords to the servers, not providing access to the Services to any third party, etc., are maintained and neither Party shall breach the same. Each Party is responsible

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for breach of such measures, to the extent the breach was enabled by such Party's default of the above.

## **11 INDEMNIFICATION**

**11.1** Each Party agrees to indemnify 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** Customer shall be responsible for having used/ availed the Services provided by CtrlS in violation of AUP.

## **12 DISCLAIMERS OF WARRANTIES**

**12.1** Except as set out in this Agreement, CtrlS does not guarantee that the services shall be uninterrupted, error-free, or completely secure. 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.

## **13. LIMITATION ON DAMAGES**

**13.1** Subject to the warranties as mentioned in clause 12 above the Customer shall not be eligible to claim any exemplary damages other than what is mentioned in clause 13.3 herein for any failure on the part of CtrlS to provide the Services.

**13.2** Customer agrees that CtrlS shall not be liable for any loss of profits, loss caused to the Customer as result of use of Services or inability to use the Services unless such loss can be directly attributed to breach of this Agreement of CtrlS.

**13.3** The maximum aggregate liability of each Party under this Agreement shall be limited to the higher of the following: i) amount not exceeding the amount paid by the Customer to CtrlS for providing Services or as provided in SLA - termed as Service Credits, or maximum value limiting to one year contract value. The above limitation of liability shall not apply in case of i) wilful misconduct or gross negligence of the defaulting Party, ii) CtrlS's breach of 9.2.6 or 9.2.7.

**13.4** In no event shall CtrlS or Customer be liable to the other for any punitive damages.

**13.5** Each Party agrees that no damages can be claimed with respect to any event that occurred more than one year to such claims being asserted. The claims are entertained till one year of the expiry of the contract.

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## 14 TERMINATION

### 14.1 Termination by Customer

**14.1.1** Customer can terminate the agreement during the Initial Term if the following situations arise.

**14.1.1.1** CtrlS fails to provide the **Services** as agreed and fails to cure the defect within a period of 15 working days from the date of written notice issued by the Customer.

**14.1.1.2** CtrlS fails to comply with any other terms, other than providing of Services, as contemplated in the Agreement and fails to cure the defect within a period of 30 days from the date of written notice issued by the Customer.

### 14.2 Termination by CtrlS

**14.2.1** CtrlS has the right to terminate the Agreement when:

**14.2.1.1** Any payments to CtrlS payable i) which the Customer has not issued a notice disputing the unpaid portion of the payment, and ii) which remain unpaid for more than 30 days of Due Date of invoice and CtrlS has separately notified Customer of the same

**14.2.1.2** When the Customer fails to comply with the terms of this Agreement despite of having received a written notice to comply/enforce the same and Customer has not remedied such breach within thirty days time.

Any notice of termination to shall be provided in writing and quoting the reasons for termination and as per the mutually agreed.

### 14.3 Termination for convenience

**14.3.1** Either party may terminate the Agreement only after the Initial Term expires at any time by giving each other 90 days advance written notice.

## 14.4 EFFECT OF TERMINATION

**14.4.1** Upon the termination of this Agreement becoming effective:

- i) CtrlS shall immediately cease to provide the Service(s) to the Customer;
- ii) any and all payment obligations of Customer under this Agreement for Service(s) will immediately become due;
- iii) within three (3) days of termination of this Agreement upon disclosing Party's request thereto, 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

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Information except as required to comply with any applicable legal or accounting record keeping requirement.

Parties shall mutually agree on methods and timeline on removal of Customers equipment and material from CtrlS premises. All feasible help will be extended by CtrlS to the customer

## **15. CONFIDENTIALITY**

Both the Parties agree that neither party would disclose to third parties any Confidential information which is provided before, during and after the execution of this agreement. Confidential information which 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 and is or conspicuously marked as confidential shall be termed as Confidential, or which is a reasonable person would consider as confidential and/or trade secret information. 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.

**15.1** 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. 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. necessary data to its ISP customers supported from here)

**15.2** CtrlS reserves the right to disclose the information of the Customer in situations where it reasonably believes that the Services which are used by the Customer are used in such a manner which is contrary to the law for time being in force. If in such situations CtrlS shall have no option by law but to disclose such information as required by law giving no prior notice to the Customer, it is entitled to do so.

## **16 THIRD PARTY PRODUCTS**

**16.1** Customer agrees that upon its request CtrlS may provide certain additional services belonging to third parties products which are not the part of the Services agreed to be provided by CtrlS.

## **17 ASSIGNMENT**

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**17.1** Customer may authorize its Authorized Persons to use the Services only on the prior written / email approval of CtrlS.

## **18 PAYMENTS**

**18.1** Customer shall pay the fees as mentioned in the OPF and any fees charged for Supplemental Services provided, shall be as agreed to in writing. CtrlS shall send the invoice to the Customer through email/ fax / postal mail to the designated invoicing address of the Customer as provided in the OPF. First invoice shall include set up fees such as installation and other recurring fees from the Commencement Date till the end of billing cycle as agreed by the Customer.

**18.2** Customer shall be required to make the payments for the Services as per the option availed by him in the OPF, in full in order to avail the Services, and any Services provided after the expiry of term mentioned in OPF, the applicable fees for relevant month shall be paid by the Customer within 30 days from Due Date. Customer shall intimate/ inform CtrlS whenever there is a change in telephone numbers or mail ids as provided in the OPF immediately upon such change taking place.

**18.3** All invoices for the period of Extended Term shall be as in the case of Renewal Term, or any other terms as agreed between the parties in writing. In case of termination of the Agreement or part of Services provided there under, payments allocated to time after effective date of termination shall be returned on pro rata basis.

**18.4** Amounts and costs indicated for all CtrlS services are in INR / US Dollars.

### **18.5 Delay in Payments**

18.5.1 CtrlS reserves the right to suspend any or all the Services in case the Customer fails to pay the fees for any month beyond 30 days of the Due Date of the invoice issued for that month as mentioned in the clause 18.2 above, in accordance to the process set out in 14.2.1.1.

## **19 NOTICE**

**19.1** All communication by Customer with respect to this Agreement should be sent to the sales department of CtrlS via electronic mail as shown on the web site or by postal mail to the address as given below

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Madhapur (Hitech City)  
Hyderabad – 500081  
Andhra Pradesh, India

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**19.2** Notice to the Customer shall be sent by CtrlS to the last known address as shown in the OPF or last authorized communication received from the Customer which may be electronic mail, postal address or any other mode which was exercised by the Customer. However, all notices relating to payment of invoices shall be sent to invoice contact provided in the OPF and any notices regarding termination or breach of the Agreement shall be sent to the attention of legal department at Customer's official address.

All notices shall sent by mail shall be sent by registered mail.

## **20 FORCE MAJEURE**

**20.1** Force Majeure shall mean any event or circumstance or combinations of events without limitation to significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry and circumstances which shall materially and adversely affect the performance of the obligations of either party and is not caused by an act of negligence or default of the Affected Party and is not within the reasonable control (directly or indirectly) of the Affected Party

**20.2** On the occurrence of Force Majeure neither party shall be in default of any obligation under the Agreement.

## **21 OWNERSHIP**

**21.1** 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.

**21.2** 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.

## **22 Arbitration**

**22.1** In case of any disagreement or dispute between the Customer and CTRLS, the dispute will be resolved in the manner as outlined hereunder in accordance to substantive law of India.

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 the contract or in regard to the interpretation of the context thereof. If, after thirty (30) days from the commencement of informal

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negotiations, the Customer and CTRLS have not been able to resolve amicably a contract dispute, such differences and disputes shall be referred, at the option of either party, to the arbitration of one single arbitrator to be mutually agreed upon and in the event of no consensus, the arbitration shall be done 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 submission to arbitration will be in accordance with the Arbitration and Conciliation Act, 1996. Upon every or any such reference the cost of and incidental to the references and award shall be at the discretion of the arbitrator or arbitrators or Umpire 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.

## **23 MISCELLANEOUS**

### **23.1 Solicitation**

- 23.1.1 Customer agrees that they shall not solicit any of the employees of CtrlS who have directly worked for providing Services to Customer for employment with the Customer up to 12 months from the date of termination of this agreement.
- 23.1.2 In the event the Customer employs any person contrary to the provision stated in above clause, CtrlS shall be eligible to the rights available to it under law.

### **23.2 Modification of Services**

- 23.2.1 Customer agrees that any change in the Services other than what is accepted by both the Parties by virtue of OPF and acceptance of MSA and SLA, shall be modified only after a written confirmation is received from CtrlS on the request of Customer.
- 23.2.2 Any modifications accepted by the CtrlS shall carry different fees and amendment of certain terms which may supersede this Agreement. On acceptance of such terms the modifications requested by the Customer shall be brought into force.

### **23.3 No third party beneficiaries**

- 23.3.1 CtrlS shall provide the Services only to the Customer and not their Authorized Person and except for Customer's majority owned subsidiary companies in India, there are no third party beneficiaries to this Agreement which means that third parties shall have no right(s) against both the Customer and CtrlS.
- 23.3.2 Customer agrees that irrespective of whosoever the Customer authorizes to use the Services provided by CtrlS, such Authorized Person though eligible to use the Services shall not be entitled to enforce any right or benefits in terms of this Agreement or be in privity to this Agreement with CtrlS.

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23.3.3 Customer agrees and acknowledges that it shall be solely responsible/liable for use of the Services by its Authorized Person to the same extent as if Customer had been using the Service itself.

**23.4 Relationship between Parties, Subcontractors**

23.4.1 The relationship of CtrlS and Customer created by this Agreement is that of an independent contractor 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.

23.4.2 Neither party is the agent of the other 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 the parties to conduct its business in a manner that is not against the terms and spirit of this agreement.

23.4.3. Each Party shall be entitled to use Subcontractors, any breach of these terms on the part of the subcontractor of a Party shall be deemed to be a breach by such Party and such Party shall be responsible on behalf of its subcontractors to the other Party .

**23.5 Changes in fees**

23.5.1 The Parties shall jointly review - and where necessary adjust by mutual agreement the fees payable under this Agreement - on a yearly basis on each anniversary of the Agreement, 30 days in advance.

**23.6 Severability**

23.6.1 Both 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, but this Agreement shall be construed as if such unenforceable provision had never been contained herein.

**23.7 Agreement**

The OPF, SLA and any addendum to this MSA accepted by Customer are hereby incorporated in this Master Services Agreement by reference and together collectively constitute the 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.

_____:	CTRLS:
Date and place	Date and place
Signature of _____	Signature of the CtrlS
Name(s) typed:	Name(s) typed:

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