

MODEL IU AGREEMENT

Dated this ----- Day of ----- 2018

Between

**NATIONAL E-GOVERNANCE SERVICES LIMITED**

AND

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AGREEMENT FOR INFORMATION UTILITY SERVICES FOR FINANCIAL  
CREDITOR

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This Agreement is made at Mumbai on this ----- day of -----, 2018.

Between

**National E-Governance Services Limited**, a company incorporated under Companies Act, 2013 having CIN U72900MH2016GOI282855 and having its Registered Office at 4th Floor, Gresham Assurance House, Sir PM Road, Fort, Mumbai- 400 001, and having its administrative office at Spencer Towers, 86 M. G. Road, Bangalore 560001, hereinafter referred to as “**NeSL**”(which expression shall unless repugnant to the context or contrary to the meaning thereof, be deemed to mean and include its legal successors or assigns) of the first part

AND

\_\_\_\_\_, a \_\_\_\_\_ incorporated under \_\_\_\_\_ having Registration Number \_\_\_\_\_ and having its registered office at \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as “**Financial Creditor (FC)** ” (which expression shall unless repugnant to the context or contrary to the meaning thereof, be deemed to mean and include its legal successors or assigns) of the second part

## WHEREAS

1. NeSL is an information utility (“**IU**”) registered with the Insolvency and Bankruptcy Board of India (hereinafter referred to as “**IBBI**”) having Registration No. IBBI/IU/01 and is governed by the provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”) and Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (hereinafter referred to as “**IU Regulations**”).
2. NeSL is incorporated with the objective of augmenting the information infrastructure in India by storing Financial Information as defined under section 3(13) of the IBC that will help establishing defaults and verify claims as expeditiously as possible and thereby facilitating resolution of insolvency and bankruptcy in India in a time bound manner as prescribed under IBC.
3. In terms of section 5(7) of the IBC, the FC falls within the definition of ‘Financial Creditor’ for the purposes of IBC.
4. In terms of section 215(2) of the IBC read with regulations framed thereunder, the FC being a Financial Creditor shall submit to Information utilities including NeSL, the Financial Information in the form and manner as provided under IU Regulations.

5. Under the provisions of IBC and IU Regulations, NeSL is expected to accept and store the Financial Information submitted by FC in a facility located in India and is further required to get the Financial Information so received authenticated and verified by all parties concerned before storing such information.
6. In light of the above, the FC has expressed its willingness to submit to and share with NeSL the Financial Information. Also, the FC has agreed to put in its best endeavours to facilitate verification and authentication of the Financial Information including default submitted to NeSL by the other parties to the debt, including the debtors, guarantors, etc. based on the information available with the FC as per the procedure laid down in the IU Regulations and bye-laws of NeSL.
7. NeSL has agreed to accept the records of the debt and other Financial Information from FC.

**Now Therefore**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement, the FC and NeSL with the intent to be legally bound, hereby agree as follows:-

## **1. DEFINITIONS**

In this Agreement, unless the context otherwise requires, following expressions shall have the meanings assigned to them below:

- 1.1. **“Agreement”** shall mean this Agreement for Information Utility Services including any schedules and annexures attached hereto or incorporated herein by reference, as may be amended by the Parties from time to time in writing;
- 1.2. **“Adjudicating Authority”** shall have the meaning as assigned to it under section 5 (1) of the IBC or as may be amended from time to time;
- 1.3. **“Claim”** shall have the meaning as assigned to it under section 3 (6) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.4. **“Core Services”** shall have the meaning as assigned to it under section 3 (9) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.5. **“Debt”** shall have the meaning as assigned to it under section 3 (11) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.6. **“Default”** shall have the meaning as assigned to it under section 3 (12) of the IBC or as may be further amended, restated or otherwise modified from time to time;

- 1.7. “**Dispute**” shall have the meaning as assigned to it under section 5 (6) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.8. “**Effective Date**” shall mean the date of execution of this Agreement;
- 1.9. “**Financial Creditor-FC**” shall have the meaning as assigned to it under section 5 (7) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.10. “**Financial Debt**” shall have the meaning as assigned to it under section 5 (8) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.11. “**Financial Information**” shall have the meaning as assigned to it under section 3 (13) of the IBC or as may be further amended, restated or otherwise modified from time to time;
- 1.12. “**IBC**” shall mean Insolvency and Bankruptcy Code of India 2016, as amended or modified from time to time.
- 1.14. “**Information**” shall have the meaning as assigned to it under Regulation 2 (h) of the IU Regulations or as may be further amended, restated or otherwise modified from time to time;
- 1.15 “**Regulations**” shall mean Insolvency & Bankruptcy Board of India (Information Utilities) Regulations 2017 as amended or modified from time to time.
- 1.16 “**Services**” shall mean and include the services provided by NeSL to FC in terms of Clause 3 of this Agreement;
- 1.17 “**Term**” shall have the meaning ascribed to such term in clause 2.1 of this Agreement;
- 1.18 “**User**” shall have the meaning as assigned to it under Regulation 1 (s) of the IU Regulations or as may be further amended, restated or otherwise modified from time to time;

## **2 COMMENCEMENT AND TERM OF THE AGREEMENT:**

- 2.1 This Agreement shall commence on the Effective Date of this Agreement and shall thereafter remain in effect in accordance with the terms of this Agreement unless terminated in accordance with clause 8.

## **3 OBJECTIVE/PURPOSE OF SUBMITTING INFORMATION:**

- 3.1 NeSL is obliged to provide Core Services to its Users, including but not limited to

acceptance, accurate recording, authentication and verification of information submitted by such registered User.

3.2 Under the provisions of Section 214 (e) of IBC, before storing any information received from a User, NeSL is required to get the information authenticated by all parties concerned. Further under IU Regulations, on receipt of information of default, NeSL is required to expeditiously undertake the process of authentication and verification of the information regarding default

3.3 The FC shall submit financial information to NeSL in accordance with provisions of IBC and the IU Regulations and shall update the same from time to time whenever such updating is necessary on account of any error or modification of financial information submitted earlier by the FC.

3.4 The FC hereby agrees to put in best efforts to assist NeSL in procuring authentication from other parties to debt including borrower, guarantor(s), co-obligant and any other persons who has created security for the debt in respect of information submitted by the FC.

3.5 In addition to the above, NeSL shall also provide any other services as may be introduced by IBBI in accordance with the IBC and / or IU Regulations

#### **4 OBLIGATIONS OF NeSL:**

4.1 NeSL shall store and maintain all the information received from FC in a secured database in such manner as prescribed under Regulations and Technical Standards laid down by IBBI and shall at all-time exercise due and reasonable care, skill and diligence for keeping the information secured. NeSL shall hold the information as a custodian and recipient of information.

4.2 NeSL shall establish adequate procedures and facilities to ensure that its records are protected against loss or destruction and shall adopt secure systems for information flows;

4.3 NeSL shall at all times protect its data processing systems against unauthorised access, alteration, destruction, disclosure or dissemination of information.

4.4 NeSL shall give access to the information shared by FC to only those persons who are authorised to access such information in terms of sub-regulation (1) of regulation 23 of IU Regulations.

4.5 NeSL shall not use the information shared by FC for any purpose other than providing services under IU Regulations, and shall not seek any data or details of registered Users from FC, except as required for the provision of the services under IU Regulations.

## **5 OBLIGATIONS OF FC:**

- 5.1 The FC shall abide by the fee structure of NeSL and accordingly pay to NeSL a fee as per the Annexure B to this agreement and displayed on the website of NeSL, which will be subject to change from time to time for availing the services of NeSL. Further, in terms of Regulation 32 (1)(c) of the IU Regulations, any increase in the stated fee structure will be informed by NeSL to the Users 3 (three) months in advance. FC shall have right to terminate this agreement if the enhanced fee structure is not acceptable.
- 5.2 The FC shall submit the Financial Information to NeSL by using the protocols specified by NeSL only. (e.g. HTTPS/SFTP)
- 5.3 The FC shall disclose to NeSL the details of all the persons authorised by it to submit the Financial Information along with their Digital Signature Certificates and shall further disclose to NeSL the details of the persons within the organisation who have access to such Financial Information, including the details of their name, designation, contact number, e-mail ID, address and DIN (if applicable). Also, the FC shall, at all times, keep NeSL informed about any change in the details as provided hereinabove.
- 5.4 The FC shall settle the financial dues like fees, charges, levies, tax reimbursements etc in execution of this agreement within 30 (thirty) days from the date of receipt of invoice. The FC acknowledges the right of NeSL to charge interest at Bank Rate of Reserve Bank of India on the outstanding amount if invoice is not settled in 30 days.
- 5.5 The FC & NeSL, hereby agree to abide by the bye laws of NeSL in connection with rights & obligations of parties for the purpose of submission of Financial information.

## **6 CONFIDENTIALITY:**

- 6.1 Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, each Party agrees that it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement all Information disclosed to it by the other Party pursuant to this Agreement.
- 6.2 NeSL shall hold and maintain all the information obtained from FC in terms of this Agreement in strict confidence. Except as permitted by this Agreement or as permitted under any law for the time being in force including the IBC and IU Regulations, NeSL shall not disclose, publish, release, transfer or otherwise make available the Financial Information of, or obtained from FC in any form to, or for the use or benefit of any person or entity.
- 6.3 FC shall hold all information received from NeSL, including relating to this agreement in strict confidence and shall not disclose the same to any person or entity except under

compulsion of law

6.4 Each of NeSL and FC shall, however, be permitted to disclose relevant aspects of the other's confidential information to its officers, professional advisors, consultants and employees where the disclosure is reasonably necessary for the usual performance of its duties and obligations under this Agreement.

6.5 Confidentiality is a material part of this Agreement, and is intended to apply to and be binding upon both the Parties and all its officers, professional advisors, support entities and employees with whom such information has been shared in terms of clause 6.4 of this Agreement. Accordingly, both the Parties shall take all necessary steps to ensure that this provision is communicated to and followed by those intended to be bound.

6.6 Confidentiality obligation of the NeSL and FC shall not apply

- i. If the information disclosed by one party to the other party is available with the other party through any other person or source other than the party disclosing the information.
- ii. If available in public domain.
- iii. Disclosure under compulsion of Law. However, in such situation the disclosing party shall intimate the other party in advance wherever possible.

6.7 Each party agrees to indemnify and hereby keeps the other party indemnified against all claims, actions, demands, loss, damages including costs, expenses and advocate/attorney fees suffered or incurred by the other party on account of breach of confidentiality obligation by the indemnifying party.

6.8 Entire clause 6 shall survive the termination of this agreement and the limitation of liability as set out in clause 13 shall not apply to obligation or liability existing under entire clause 6.

## **7 REPRESENTATION & WARRANTIES:**

7.1 **By FC:** FC represents and warrants that:

- a) FC is a body corporate duly constituted under Companies Act, 1956 (*or any other applicable law, as it may vary on case to case basis*) or any other applicable Act/Regulations and holds license to carry out the functions of Financial Creditor vide Licence No \_\_\_\_\_ dated \_\_\_\_\_.
- b) FC has all requisite corporate power and authority to execute this Agreement and to deliver and perform its obligations under this Agreement;
- c) The execution, delivery and performance of this Agreement has been duly authorized by FC.

7.2 **By NeSL:** NeSL represents and warrants that:

- a) NeSL is a company duly incorporated under Companies Act, 2013 and is registered with IBBI as Information Utility with Registration No. IBBI/IU/01.
- b) NeSL is in compliance with all laws applicable to NeSL including but not limited to IU Regulations, and has obtained all applicable permits and licenses required of NeSL in connection with its obligations under this Agreement;
- c) NeSL has all requisite corporate power and authority to execute this Agreement and to deliver and perform its obligations under this Agreement;
- d) The execution, delivery and performance of this Agreement has been duly authorized by NeSL, and will not conflict with or result in a breach of or constitute a default under any other agreement to which NeSL is a party or by which NeSL is bound;
- e) The performance of Services by NeSL shall be in accordance with the service levels as expected in general course of business and shall meet the highest professional standards;

## 8 **TERMINATION**

8.1 Either party may terminate this Agreement, in whole or in part, by giving a 3(three) months written notice to the other party, without any further obligation on its part, subject to provisions mentioned in clause 8.2 below.

8.2 Notwithstanding the foregoing, either party may terminate this Agreement, by giving a written notice to other party at any time, if:

8.2.1 The other party is in breach of any of the terms of, or any of its material obligation under, this Agreement, which if capable of being remedied, is not remedied within 60 (sixty) days of being requested to do so by other party, in writing; or

8.2.2 a voluntary arrangement is approved, a bankruptcy or an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets; or an undertaking or a resolution or petition to wind up the other party is passed or presented (other than for the purposes of amalgamation or reconstruction) or any analogous procedure is initiated against the other party; or if any circumstances arise which entitle the Courts / Tribunal to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order in respect of the other party.

8.2.3 Both parties shall adhere to and carry out their respective obligations, both functional and financial, till the date of such termination of Agreement including but not restricted to payment of the fees, charges and other dues payable to NeSL;

8.2.4 Upon termination of this Agreement, both the parties hereby agree to destroy all the confidential information received from other party in a safe and secured manner without



any prejudice caused to the other party subject to retaining only such information which the law mandates. NeSL shall not use the confidential information for any purpose other than for it is received from the FC. The obligation of NeSL to maintain the confidentiality shall survive the termination/ expiry of this agreement.

## **9 INDEMNITY**

9.1 NeSL shall indemnify, defend and hold harmless FC from and against, any claims, demands, losses and liabilities, suffered, incurred or sustained by FC or to which FC becomes subject, resulting from or arising out of this agreement:

- a) due to breach of representation or warranty by NeSL as set forth in clause 7.2;  
or
- b) arising out of the negligent acts, errors or omissions of the NeSL, or of those for whom NeSL is legally liable, which arise out of the performance of obligations under this Agreement.

9.2 This indemnification shall include all costs, attorney's fees and other expenses etc. paid or incurred by or imposed upon a party in connection with the defence of any such claim.

9.3 This clause shall survive even after this Agreement is determined by the respective parties.

## **10 SEVERABILITY AND WAIVER**

10.1 Each of the provisions contained in this Agreement and each clause and sub-clause hereof shall be construed as independent of every other provision to the effect that if any provision of this Agreement or the application of any provision to any person, firm or company or to any circumstances is held to be invalid for any reasons, by the court of competent jurisdiction or any other competent authority, the other terms and conditions hereunder shall remain in full force and effect.

10.2 Waiver by any of the Parties of any breach or failure to enforce any of the terms and conditions of this Agreement shall not be deemed to affect, limit or waive that party's right thereafter to require compliance with the terms and conditions of the Agreement.

## **11 FORCE MAJEURE**

11.1 Neither party will be in default for any delay or failure to perform hereunder due to causes, conduct or occurrences which are beyond its reasonable control, including but not

limited to (a) Fire, explosion, cyclone, floods, droughts, earthquakes, epidemics; (b) War, revolution, acts of public enemies, blockage or embargo, riots and civil commotion; (c) Any law, order, proclamation, ordinance or requirements of Government or authority or representative of Government; (d) Strikes, shutdowns or labour disputes which are not instigated for the purpose of avoiding obligations herein; or (e) Any other circumstances like power, system failure etc. beyond the control of the party affected;

- 11.2 Notwithstanding anything contained herein before, the party affected shall be excused from its performance to the extent such performance relates to prevention, restriction, delay or interference, provided the party so affected shall use its best efforts to remove such cause of non-performances, and when removed the party shall continue performance with the utmost dispatch.
- 11.3 The party affected by force majeure shall promptly provide written notice to the other party, explaining in detail the full particulars and expected duration of force majeure. All delays or projected delays in providing Services or performing obligations arising out of force majeure shall also be reported to the other party.
- 11.4 The obligations of the Parties contained herein will be subject to any occurrence resulting in prevention from or delay or interruption in performing its obligations if such prevention, delay or interruption is due to any event beyond the control of Parties such as sabotage, fire, flood, explosion, civil commotion, strikes or industrial action of any kind, riots, insurrection, or war, then Parties shall not be deemed to be in default so long as any such cause or the effect thereof persists for a period of [15] days. In such case, neither Party shall compensate the other for the loss that might occur or might have occurred because of the effect of such force majeure event.

## **12 DISPUTE RESOLUTION**

- 12.1 Any dispute(s) or difference(s) arising between the parties out of, or in connection with, or in any manner related to this Agreement or interpretation of any of the provisions of this Agreement or performance of any of the terms and conditions of this Agreement shall be settled amicably through negotiation between the parties. In case no settlement to dispute(s) or difference(s) can be reached through amicable negotiation between the parties, the dispute shall then be settled by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015.
- 12.2 Arbitration proceedings shall be held at Mumbai and the language of the arbitration proceedings and that of all documents and communications between the Parties shall be English. The arbitral tribunal shall consist of sole arbitrator appointed jointly by both the parties. If the parties do not agree upon sole arbitrator, each party to appoint one arbitrator & the arbitrators thus appointed by the parties shall choose and appoint third arbitrator.

12.3 The decision of the arbitrator shall be final and binding upon both Parties.

12.4 The cost and expenses of arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party equally.

### **13. Limitation of Liability**

Notwithstanding anything contained under this Agreement, under any circumstances neither party shall be liable to the other party for, nor will the measure of damages include, any indirect, incidental, special, consequential, punitive, aggravated or exemplary damages, claims and expenses arising out of or relating to its performance under this Agreement. For any claim on deficiency of services, NeSL shall be liable to compensate the information providers only to an extent of up to an extent of 3 (three) months' average service charges and fees paid in the previous financial year.

### **14. Miscellaneous provisions**

**14.1 Notices:** Any notices required to be given hereunder by any party hereto shall be made in writing sent by electronic mail (e-mail), prepaid recorded delivery or registered post or by tele-facsimile and shall be deemed effective if successfully sent out by email and acknowledged by the other party within 72 (seventy two) hours, or if sent by post at the expiration of 72 (seventy two) hours after the same was posted whether or not received, or if sent by tele facsimile at the expiry of 24 (twenty four) hours after dispatch to the correct tele facsimile number of the addressee. Each of the parties hereto shall notify the other of any change of address within 48 (forty-eight) hours of such change. All notices and communications required to be made hereunder shall be served to:

#### **NeSL (Administrative Office):**

**Address:**

5th Floor, Spencer Towers,  
Canara Bank Building,  
86, M.G. Road,  
Bengaluru 560001.

**Telephone No.** 080 -25580360

**Email ID:** nesl@nesl.co.in

**FC:**

**Address:**

**Telephone No:**

**Email ID:**

**Fax No.**

**14.2. Entire Agreement:** This Agreement, including any schedules and annexures attached hereto, embodies the entire agreement between the Parties. No variation or waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorised director or employee of NeSL and FC.

**14.3. Construction:** All titles of the sections of this Agreement are for reference only and are not to be considered for construing the Agreement. Unless the context of this Agreement clearly requires otherwise any reference to: (a) “or” has the inclusive meaning frequently identified with the phrase “and/or”, (b) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” and (c) “herein”, “hereunder”, “hereof”, “hereto” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

**14.4. Governing Laws and Jurisdiction:** This Agreement and all rights and obligations of the Parties hereto shall be governed and construed in accordance with the substantive laws of India and the parties hereto submit to the exclusive jurisdiction of the courts of Mumbai

IN WITNESS WHEREOF the parties hereto set their respective hands the day and year first written above.

SIGNED IN --

**FOR National E-Governance Services Limited**

Authorised Signatory

SIGNED IN –

FOR \_\_\_\_\_

Authorised Signatory

In the Presence of Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_