

# Intram Gazebo Dot Com e- Tech Pvt. Ltd.

## *Master Services Agreement*

This Master Service Agreement (“MSA”) is entered into between Intram Gazebo Dot Com e-Tech Pvt. Ltd. , having its registered office at C 194 , Anand Vihar , Delhi 110092 , India (hereinafter referred to as “Gazebo ”) and all those customers , individually , who chose to use the services of Intram Gazebo by logging into this site :

Capitalized terms used herein but not otherwise defined will have the meaning ascribed to them in Section “Definitions”.

Collectively both referred to as “Parties” and individually as “Party”.

## 1. OVERVIEW:

**1.1. Definitions :** The following terms shall have the respective meanings stated below for the purposes of this MSA.

**Sales Orders** – All Sales Orders duly filled and executed by the parties

**Services** – Services means the services derived by the customer from using Intram Gazebo – a travel back office application owned and hosted by Intram Gazebo Dot Com e-Tech Pvt. Ltd. ( this site ) on any data center and other such benefits to be provided by Gazebo to Customer under this Agreement, as described in Sales Orders, as amended from time to time, or substantially similar services if, in the reasonable opinion of Gazebo , such substantially similar services would provide Customer with substantially similar benefits.

**Service Term** - The term of this Agreement as determined in accordance with Section 9.1 of this Agreement

**Customer Data** - means the financial data of Customer and its customers which are stored, accessed or used by the customer from using Gazebo

**Ready For Service** - means that the Services are ready for the Customer's use in accordance with this Agreement.

**Ready For Service Date** - means the date on which the Services are "Ready for Service" or the date on which the Customer first makes use of such Services, whichever is earlier.

**Confidential Information** - shall mean and encompass information, know-how and data, of a technical, commercial, financial or any other nature, disclosed to one Party by or on behalf of the other Party prior to or during the term of this agreement.

- It shall cover all messages, documents and files or other communication in writing and marked "confidential" by the disclosing Party; and
- Drawings, models, prototypes, photographs, software programs or in any machine readable form, which information is stated by the disclosing Party to be confidential; and
- any other information that would reasonably be inferred to be the confidential information of the other party from the nature of the disclosure or the circumstances surrounding the disclosure.

**1.2. Services:** Subject to the terms and conditions set forth in this Agreement, Gazebo will provide the Services to Customer.

**1.3. Ordering:** Customer may request Services during the Term by executing a Sales Order (SO) which will only be effective when accepted by Gazebo and will be governed by the terms and conditions of this Agreement.

## **2. CHARGES AND BILLING.**

**2.1. Charges:** Customer will pay all charges due hereunder in accordance with this Section 2 and the executed Sales Orders.

**2.2. Billing Commencement:** Except for any charges required to be paid prior to or on the Ready for Service Date (as indicated in the Sales Order), billing for Services indicated in the initial Sales Order shall commence on the **Ready for Service Date**. In the event that the Sales Order is amended after the Ready for Service Date to include additional Services, billing for such services shall commence on the date Gazebo first provides such additional Services to Customer.

- 2.3. Billing:** One time setup charges , if any as defined in the Sales Order , shall be due upon execution of the initial Sales Order. For monthly recurring charges , Gazebo shall bill monthly in arrears based on agreed price per transaction or fixed cost as defined in the sales Order . All bills shall be delivered on 1<sup>st</sup> of every month on email address as mentioned in the Sales Order . No paper copies of the bills are to be couriered . The customer must ensure that the payment of such bill is received by Gazebo with in 5 days thereof .
- 2.4. Billing Disputes:** In the event that the Customer disputes any portion of an invoice, customer must pay the undisputed portion of the invoice on or before Due date and for the disputed amount both the organizations represented by their respective CEO's / MD's shall settle the dispute with 15 days of such reference .
- 2.5. Payment Terms:** All payments will be made in Indian Rupees as per the bills raised as terms agreed in the Sales Orders. The monthly bills are raised on 1<sup>st</sup> of every month and emailed at the email id of the customer as mentioned in the sales order on the same date . The payment should be released so as to reach Gazebo not later than 6<sup>th</sup> of the same month . In case the payments are not received EOD of 6<sup>th</sup> day , Gazebo reserves the right to discontinue the services from midnight of 7<sup>th</sup> day of the month. No individual notices shall be sent in this regard . Once the services are discontinued , the reconnection shall have a charge of not less than Rs 3000/= or as may be mentioned in the sales Order . Failure of the customer to pay for two consecutive months shall result in automatic closure of the account and termination of the contract . In such a case Gazebo assumes no responsibility for data loss . In case full payment is not made against an invoice raised for gazebo services , a late payment fee of not less than Rs 1000/= shall be charged in the subsequent bill and shall be continued to be charged till outstanding is settled . Further interest on non paid balance shall be charged @ 3.5% pm for each month or part of the month till the outstanding remains unpaid .
- 2.6. Taxes:** All payments required by this Agreement are exclusive of all taxes, levies, imposts, duties, fees or charges now in force or enacted in the future, all of which Customer will be responsible for and will pay in full.
- 2.7. Travelling Expenses :** Any expense incurred in travelling ex-Delhi ( whether for training , support or customer meeting ) , including inter alia transfers , air fares , lodging , boarding , local conveyance , shall be payable by Customer at actual on production of

bills by Gazebo . All travel shall be by air . All lodging arrangements shall be in four star hotels and above for positions of VP and above. All such travel needs shall be discussed and agreed with the customer before any such travel is undertaken .

### 3. CUSTOMER'S OBLIGATIONS

- 3.1. Timely Payments:** Customer agrees to pay the charges applicable to the services including charges incurred as a result of fraud or unauthorized use of the services. Further , the customer agrees to pay all additional fees and charges arising from customer service requests (other than those included as part of the Sales Order) and/ or customer's usage of services above and beyond customer's entitlement as set forth in the Sales Order(s). Such payment shall be on the basis of specified fee for each incremental transaction executed in Gazebo which may either be specified in the sale order itself or at rate of Rs 3.10 per transaction per month . This rate is as of April 2010 and shall be incremented by 10% every year in April rounded off to nearest ten paise . The rate shall be applied as per rate calculated for the relevant year .
- 3.2. Compliance with Law:** Customer agrees that in connection with the exercise of its rights and performance of its obligations under this Agreement, Customer shall comply in all material respects with all applicable laws and regulations.
- 3.3. Compliance with Gazebo Rules and Regulations:** Customer agrees that it shall comply at all times during the term of this agreement , with Gazebo 's Rules and Regulations as communicated to it by Gazebo in writing .
- 3.4. No Competitive Services:** Customer may not at any time permit any Gazebo provided services to be utilized for the provision of any services that compete with any Gazebo services, without its prior written consent.
- 3.5. Software License:** If and to the extent that Customer requires the use of Computer Software, in object code format only, required for the use of a Services ordered by Customer (Licensed Software), Gazebo shall cause Customer to have a non-exclusive, non-transferable, limited to use such Licensed Software only and solely to the extent required to use the Services. Customer shall not be entitled to claim title to or any ownership interest in any Licensed Software (or any derivations or improvements

thereto), and Customer shall execute any documentation reasonably required by Gazebo . Customer agrees that it shall not copy, reverse engineering, decompile, disassemble, sell, lease, license or sublicense the Licensed Software; or create, write or develop any derivative software or any other software program, based on the Licensed Software.

#### 4. CONFIDENTIAL INFORMATION.

- 4.1. Confidential Information:** Each party shall keep the Confidential Information received from the other Party confidential, not use it for any other purpose than specified in this agreement, and prevent its disclosure to, or use by, others. Each Party shall further only make the Confidential Information available to its or any of its affiliate's employees, directors or advisers to the extent that they require knowledge thereof for the purpose specified in the preamble and provided that, with respect to the Confidential Information, any such employee, director or adviser is bound by obligations of secrecy and limited use at least to the same degree that the Parties are bound hereunder, and provided further that each such employee, director and adviser shall, before any Confidential Information received from the other Party is made available to him, be notified by the Party employing him of the confidential nature thereof. Each party shall use at least the same standard of care in safeguarding the Confidential Information of the other party as it uses in protecting its own Confidential Information, but in no event less than reasonable care, and Gazebo agrees to abide by the security standards set forth herein. Each Party shall be answerable for any unauthorized disclosure or use of the Confidential Information by its employees, directors or advisers.
- 4.2. Exceptions:** The obligations of confidentiality and limited use set forth herein shall not apply to the extent that Confidential Information: (i) was known by the receiving Party from sources other than the disclosing Party prior to receipt as is documented in written records possessed by the said Party prior to such time; or (ii) is at the time of disclosure to the receiving Party in the public domain or subsequently becomes part of the public domain without a breach of its confidentiality obligations hereunder by the receiving party; or (iii) is disclosed to the receiving party by a third party without any obligation of secrecy to the disclosing party, or (iv) is disclosed by the disclosing party on a non confidential basis to any third party; or (v) Is independently developed by employees of the receiving party who have not had access to the Confidential Information disclosed by the disclosing party; or (vi) is removed from confidential status or cleared for disclosure to a third party by prior written consent of a duly authorized officer of the disclosing party, subject to any conditions which may be provided for at the time of such removal or clearance.

Specific information shall not be deemed to be within the exceptions listed above merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed within such exceptions merely because the individual features of such combination are within such exceptions.

- 4.3.** It is understood by the Parties that the confidential information may relate to products, processes or services that are under development or planned for development. Neither Party makes warranties regarding the accuracy of such confidential information. It is further understood that the disclosure of such Confidential Information does not warrant the introduction of any product, process or service to which the confidential Information disclosed is related.
- 4.4.** The Parties agree that all documents, drawings, designs, models or other information in written or tangible form shall be and remain the property of the disclosing Party. Neither Party shall copy, duplicate or otherwise reproduce any document containing all or any parts of the Confidential Information without the prior consent of the other Party. Upon expiration of, or earlier termination, of this agreement, and upon written request of either Party, each Party agrees to return to the other all confidential Information received from it within 10 (ten) days and to destroy any and all copies made thereof.
- 4.5.** No waiver by either Party of any breach of any conditions of these confidentiality provisions shall be construed as a waiver of any subsequent breach, whether of the same or of any other conditions of the provisions.
- 4.6.** In the event that one of the Parties, or anyone to whom Confidential Information is disclosed pursuant to this agreement becomes legally compelled to disclose any of the confidential Information, such party (the "Compelled Party") shall provide the other party with prompt notice so that such other party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Article. In the event that such protective order or other remedy is not obtained or in the event that the other Party waives compliance with the provisions of this Article, the compelled Party will furnish only that portion of the Confidential Information which the Compelled Party is legally compelled to disclose and will Endeavour to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so

disclosed. Information that is disclosed pursuant to a protective order or receives confidential treatment remains confidential pursuant to this Agreement.

## 5. REPRESENTATIONS AND WARRANTIES.

### 5.1. Warranties by Customer

**a) Customer's Business:** Customer is familiar with laws and regulations applicable to customer's business. Customer represents and warrants that Customer's business does not, and will not during the term of this agreement contain or transmit any material that would violate any applicable local state, national law. In the event of any breach, or reasonably anticipated breach, of such warranty, in addition to any other remedies available at law or in equity, Gazebo will have the right after notice to Customer with an adequate opportunity to cure based on the specific circumstances, in Gazebo's sole discretion: (i) to terminate or restrict access to any such materials in any manner, and/or (ii) to terminate or suspend any related Services provided by Gazebo necessary to address the specific violation.

**b) Breach of Warranties:** In the event of any breach, or reasonably anticipated breach, of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Gazebo will have the right immediately, in its sole discretion, to terminate or suspend any related Services if deemed reasonably necessary by Gazebo to prevent any harm to Gazebo and its business.

**5.2. Warranty Disclaimer:** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT" ALL SERVICES PERFORMED AND PRODUCTS PROVIDED BY GAZEBO HEREUNDER ARE PERFORMED, PROVIDED, AND MADE AVAILABLE ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. GAZEBO DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. GAZEBO DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.



**6. GAZEBO SERVICES SHOULD BE USED FOR LAWFUL PURPOSES:**

- 6.1** Transmission, distribution or storage of any information, data or material in violation of Indian Laws(s) is prohibited. This includes, but is not limited to, material protected by Copyright, Trademark, Patent, Trade-Secret or any other Statute.
- 6.2** Gazebo reserves the right to remove such illegal material from its server immediately. Gazebo expressly forbids anyone from using its Server for the propagation, distribution, processing ,storing or otherwise handling in any way lewd, obscene or pornographic material, Satanic materials or any other material which we deem to be objectionable. The designation of any material as such described above is left entirely to the discretion of the Gazebo 's management.

**7. LIMITATIONS OF LIABILITY:**

- 7.1. Damage to Customer data :** Gazebo ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER DATA RESULTING FROM ANY CAUSE WHATSOEVER, EXCEPT AS A RESULT OF GAZEBO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 7.2. Exclusions:** EXCEPT AS SPECIFIED IN SECTIONS 6.1 IN NO EVENT WILL GAZEBO BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST REVENUES OR PROFITS), WHETHER OR NOT CAUSED BY ACTS OR OMISSIONS OR NEGLIGENCE OF ITS EMPLOYEES OR REPRESENTATIVES, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.
- 7.3. Maximum Liability:** Notwithstanding anything to the contrary in this agreement, GAZEBO's maximum aggregate liability to customer related to or in connection with this agreement will be limited to the rebates in terms of extension of services due under any applicable SLA, if any. The rebates shall be the sole remedy of the customer and the sole liability of Gazebo .
- 7.4. Basis of the Bargain and Failure of Essential Purpose:** Customer acknowledges that Gazebo has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein,

and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

## **8. INDEMNIFICATION.**

**8.1. Indemnification by Customer:** Customer shall indemnify, defend and hold Gazebo harmless from claims, loss, damage expense (including reasonable attorney's fees and court costs), or liability (including liability for infringement of a third party's intellectual property rights) arising from: (i) any claims made against Gazebo by any Person or entity in connection with the services provided by Gazebo and consumed by the customer, (ii) use of Services in a manner inconsistent with the terms hereof or in a manner that Gazebo did not contemplate (iii) the content of any communication transmitted via the Data Center or maintained in connection with any services provided hereunder (iv) all other claims, loss, damage, expense (including reasonable attorneys fees and court costs), or liability arising out of any commission or omission by Customer in connection with the Services. (v) Any breach, non-observance or partial observance of these Terms & Conditions and the Sales Order (vi) Any claim based on defamation, IPR or trade secrets infringement, cyber squatting, privacy or e-mail standards or any other standards prescribed by industry organizations. or (vii) Any use or misuse of the Data Center Services.

**8.2. Indemnification by Gazebo:** GAZEBO shall indemnify, defend and hold Customer, harmless from claims, loss, damage, expense (including reasonable attorney's fees and court costs) or liability (including liability for infringement of a third party's intellectual property rights) for property damage or personal injury to the extent that such claims arise out of or are caused by Gazebo's gross negligence or willful misconduct. The indemnification by GAZEBO shall be governed by Limitation of Liability clause. The indemnification obligations of Sections 7.1 & 7.2 (indemnification by GAZEBO or indemnification by Customer as the case may be) are subject to: (i) Prompt receipt of notice (to the extent known by the indemnified party) by the indemnifying party of the claim. (ii) Control of the defense of the claim by the indemnifying party and (iii) Assistance by the indemnified party in the defense at the expense of the indemnifying party.

**8.3. Notice:** Each party shall provide the other party prompt written notice upon the existence of any such event of which it becomes aware, and an opportunity to participate in the defense thereof.

## **9. SERVICE TERM AND TERMINATION**

**9.1. Service Term:** This Agreement shall be in full force and effect for will commence on the MSA Effective Date. Unless earlier terminated in accordance with its terms this Agreement will terminate on the date mentioned in the Sales Order or is terminated pursuant to the terms and conditions set forth in this Agreement. The initial Service Term for each Service will be as agreed in the Sales Order and will commence on the Billing Commencement Date.

**9.2. Auto Renewal:** Unless otherwise agreed to by the parties in writing , for each Service, upon expiration of the Service Term , the Service Term for such Service will renew automatically for additional term of one (1) year each or such period as may be agreed to mutually , unless either party notifies the other party at least **sixty (60) days** prior to the end of the then-current Service Term for such Service that it has elected to terminate the Service Term for such Service, in which event the Service Term for such Service will terminate at the end of such then-current Service Term.

### **9.3. Termination:**

#### **a) For Convenience.**

- (i) Customer may terminate this Agreement for convenience at any time before the initial Service Term by paying the charges in full including the one time setup charges & recurring charges for the entire initial Service Term ( as set out in the Sales Order or any subsequent agreement after the expiry of the initial Service term ) as “Termination Charges” to Gazebo . Termination shall not relieve Customer of its obligation to pay any charges already incurred prior to termination.

- (ii) Either party may terminate this Agreement for convenience at any time effective after the initial Service Term by providing sixty (60) days' prior written notice to the other party at any time thereafter.

**b) For Cause:** Either party will have the right to terminate this Agreement if:

- (i) The other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within fifteen (15) days after receipt of written notice from Gazebo
- (ii) The other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
- (iii) The other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

**9.4. Liability for Termination:** Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms. , other than for payment of monthly recurring charges for notice period in accordance with terms of Sales Order.

**9.5. Effect of Termination:** Upon the effective date of expiration or termination of this Agreement: (a) Gazebo will immediately cease providing the Services; (b) any and all payment obligations of Customer under this Agreement will become due immediately; (c) Gazebo shall hand over a data dump to the Customer on a CD within seven (7) days of all due payments realized from the customer . It is clarified that in case the customer terminates the agreement without giving 60 days notice , the customer is still liable to pay for these 60 days and Gazebo reserves the right to withhold customer data on its non payment .

**9.6. Usage after Termination :** At the choice of the customer , the data can be retained archived and warehoused by Gazebo subject to payment of appropriate storage charges . Presently ( as of April 2020 ) the storage charges are Rs 1395/= per GB ( or part thereof

) of data per month . These charges shall increase by 10% every twelve months . Further , at the request of customer , the archived data can be put into production environment for usage by the customer for number days as requested by the customer . Such usage is charged at Rs 9500/= per day as of April 2020. These charges shall also increase by 10% every twelve months . It is clarified that no fresh data entry or editing of existing entry shall be allowed during such usage .

## 10. MISCELLANEOUS PROVISIONS.

- 10.1. Force Majeure:** If the performance of any obligation of any of the parties except for the obligation to pay money, is prevented or restricted or interfered with by reason of fire, explosion, strike, labour dispute, casualty, riots, sabotage, accident, lack or failure of transportation facilities , flood, war, civil commotion, acts of God, any law, order or decree of any government or subdivision thereof or any other cause similar to those above enumerated, beyond the reasonable control of the party obligated to perform, the party so affected shall, upon the giving of prompt notice to the other party, be excused from performance hereunder to the extent and for the duration of such prevention, restriction or interference. If the conditions of Force Majeure continues for more than 30 days, the unaffected party may terminate this Agreement without penalty.
- 10.2. Notices:** Except where otherwise expressly stated in this Agreement, all notices, consents, or approvals required by this Agreement will only be effective if in writing and sent by (i) certified or registered air mail, postage prepaid, (ii) overnight delivery requiring a signature upon receipt, (iii) delivery by hand or (iv) facsimile or electronic mail (promptly confirmed by certified or registered mail or overnight delivery), to the parties at the respective street addresses, facsimile numbers, or electronic mail addresses set forth at the end of this Agreement or such other addresses or facsimile numbers as may be designated in writing by the respective parties. Notices, consents and approvals will be deemed effective on the date of receipt. At any time each party may specify a change of address by like notice.
- 10.3. Marketing:** Customer agrees that Gazebo may refer to Customer and may briefly describe Customer's Business, in Gazebo's marketing materials and on the Gazebo

website. Customer hereby grants Gazebo limited license to use any Customer trade names and trademarks only to this purpose.

- 10.4. Non-Solicitation:** During the period of Service Term, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Gazebo during such period.
- 10.5. Governing Law & Jurisdiction:** This Agreement and the obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of India, without giving effect to the conflict of laws / principles thereof. The Courts at New Delhi shall have exclusive jurisdiction over all matters connected with this agreement.
- 10.6. Arbitration:** Any dispute and/or difference that may arise between the Parties hereto in regard to this Agreement and/or the arrangement there under, the carrying out of its terms and conditions and/or the interpretation thereof in any way whatsoever shall be referred to the conciliation of the duly authorized representative of the Parties and a solution shall be sought within 15 days of such referral. In the event of any resolution not being found despite conciliatory efforts, the dispute and/or difference shall be referred to a sole Arbitrator to be mutually appointed by the Parties. In the event of differences on appointment of a sole arbitrator, the Parties agree to appoint three arbitrators, one to be appointed by Customer and another to be appointed by Gazebo . The two arbitrators shall appoint the third arbitrator who shall act as the governing arbitrator. The Arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act 1996 and its statutory modification in force for the time being. Language of arbitration shall be English. Place of Arbitration shall be New Delhi . Notwithstanding the foregoing, a party shall have the right to seek injunctive or other equitable relief for breach of the other party's confidentiality obligations from any court of competent jurisdiction.
- 10.7. Waiver:** No express or implied consent to or waiver of any breach or default by any party hereto in the performance by the other party of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party of the same or any other obligations of such party under this Agreement. Failure on the part of any party to complain of any act or failure to act or to declare the other party as defaulting, irrespective of how long such failure continues, shall not constitute a waiver against such failing party of the rights of the other party under this Agreement.

- 10.8. Severability:** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other person or circumstance shall not be affected thereby and shall be enforced to the maximum extent permitted by law.
- 10.9. Relationship of Parties:** Gazebo and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Gazebo and Customer. Neither Gazebo nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.
- 10.10. Assignment:** Customer cannot assign this Agreement, or any of its rights or obligations hereunder without the prior written consent of Gazebo , which will not be unreasonably withheld. Gazebo may, without notice to or consent of Client assign or transfer this Agreement to an affiliate of Gazebo . Customer shall remain liable for the payment of all charges due to such assignee.
- 10.11. Interpretation:** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or drafted such provision.
- 10.12. Title:** Unless otherwise expressly agreed to by the parties in writing , Gazebo will retain title to all parts and materials used or provided by Gazebo or third parties acting on its behalf in the performance and/or furnishing of the Services. Unless otherwise expressly agreed to by the parties in writing , Customer will retain title to all parts and materials used or provided by Customer or third parties acting on its behalf in the use of the Services.
- 10.13. Entire Agreement & Counterparts:** This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and

replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter.

**10.14. Order of Precedence:** All Sales Orders are subject to all of the terms and conditions of this Agreement. In the event of ambiguity, conflict or inconsistency among the documents comprising this Agreement, the documents shall be given a descending order of precedence as follows: (i) The Sales Order; (ii) The Special Terms and Conditions (if any) and (iii) The terms and conditions herein.

**10.15. Entire Understanding:** These Terms and Conditions , constitute the entire understanding of the parties and replaces any and/or all prior agreements representations, understandings and offers related to the subject matter hereof, whether oral or in writing , are hereby deemed null and void.

**10.16 Third party integrations :** All integration services ( PNR /BTA / XML or any other integration ) are based on & governed by respective service providers . The procedures are based on respective facilities provided by these providers and Gazebo shall not be held responsible for any deficiency in service by them . Further all integration routines are based on information / technical literature provided by these providers as of date. In case of any change in any parameter brought about by them , Gazebo shall not be held responsible if integration does not work .Consequently , if any amendment is to be brought about in Gazebo the same shall be on separate charge basis . Further , these service providers are independent principals and should they mandate any separate costs for provisioning their services , then the additional costs shall have to be borne by customer , should the customer wishes to use the integration service of Gazebo.

**10.17 Customer Specific amendments :** Any functionality , process , module , form , feature and / or way of doing things not present in Gazebo is not to be construed as any kind of bug or deficiency . Way –around shall be suggested for accomplishing various tasks . Any specific need / requirements expressed by customer shall be change requests and construed as amendments and shall be separately chargeable at per day rate as may be prevailing at that point of time . Absence of any feature shall not entitle the customer to withhold any part of payment – recurring or one time .

**10.18 Overriding :** This agreement supercedes and overrides any previous agreement between the customer and Gazebo , written , oral or presumptive.



# SCHEDULE 1

## *Service Level Agreement*

The Service Level Agreement attached to this Agreement on the next page.

## 1. SERVICE LEVEL AGREEMENT:

This Service Level Agreement (“SLA”) sets out the service levels provided by Gazebo under the Master Services Agreement between the Customer and Gazebo for the provision of Services of Intram Gazebo hosted on Data Center .

## 2. DEFINATIONS:

Except as otherwise defined in this SLA or unless the context otherwise requires, all defined terms in this SLA shall have the same meanings as defined in the Agreement.

- 2.1. **“Service Availability”** means the aggregate percentage of hours in a calendar month during which the access to services of Intram Gazebo is actually available for use by Customer. For calculating the service availability hours , any hours that are lost due to server / hardware failures , shall not be counted if the customer has not opted for DR site .
- 2.2. **“Fault”** means failure to meet the applicable service level set out in this SLA.
- 2.3. **“Total Time (TT)”** means the total hours in the calendar month. E.g. 30x24=720 hours in a 30 day calendar month.
- 2.4. **“Emergency Maintenance”** shall mean maintenance carried out under a condition or situation which poses danger to the system, equipment, network, facilities required for rendering the Service, danger to life etc. as the case may be and has to be attended immediately. Gazebo shall try to notify the Customer about the emergency maintenance in advance, however depending upon the demands of the situation , Gazebo may do so at earliest opportunity after the performance of the emergency maintenance.
- 2.5. **“Excused Unavailability (EU)”** - means the agreed aggregate number of hours in any month that Gazebo shall seek to carry out troubleshooting or upgrade , with intent to better the Services. This Unavailability will be subject to prior written consent and

confirmation from Customer. The Emergency Maintenance is part of the Excused Unavailability.

- 2.6. “Planned Unavailability (PU)”** - means the aggregate number of hours in any month during which the Services unavailability is requested by Gazebo to carry out checks, configuration changes, preventive maintenance of Gazebo material (a) of which Customer is notified atleast 4 hours in advance and (b) that is performed during a standard maintenance window from 10 PM to 8 AM IST or (c) performed during a non standard maintenance window at a time approved by Customer by a method chosen by Gazebo (telephone or e-mail). Nothing herein shall restrict Gazebo from conducting Emergency Maintenance on an as needed basis. Examples of activities covered under Planned Unavailability include (but not limited to):
- Anti-virus & patch updates
  - Routine Preventive Maintenance
  - Preventive Maintenance of utilities like AC, UPS, Server Room.
  - Application Version upgrades.
  - Cold backups scheduled .
- 2.7. “Service Unavailability (SU)”** shall mean an unscheduled disruption/failure of Service offered by Gazebo as per the executed Sales Order. Such disruption shall not include any disruptions arising out of server / hardware failure where the customer has not opted for DR site in Sales Order . Further still , such disruption shall not include any instances of slow browsing arising out of latency in internet services offered by telco’s / ISP’s .
- 2.8. “Exceptions”** shall mean either an event or a set of events as are more particularly detailed in Section 6 hereto, the occurrence and the duration of occurrence of which shall not constitute a Service Unavailability for the purposes of this SLA.
- 2.9. “Trouble Ticket”** shall mean the issue of a ticket bearing an identification number confirming logging in of the Customer complaint to Gazebo in relation to Service Unavailability upon the Customer reporting a fault by a method set out herein.
- 2.10. “Rebates”** means Rebates payable in accordance with this SLA.

**3. SERVICE AVAILABILITY:**

**3.1. Service Availability Calculation** - Service Availability is calculated as follows:

$$\text{Service Availability} = \frac{((\text{TT}) - (\text{EU}) - (\text{PU}) - (\text{SU})) \times 100}{((\text{TT}) - (\text{EU}) - (\text{PU}))}$$

**3.2. Service Availability and Rebates**

- If the Service Availability during the month under consideration is less than **95 %**, this will lead to SLA violation and GAZEBO shall provide Rebates as set out herein.

Service Availability in each Monthly Period	Rebates in terms of Service Extension for the Affected Service
Less than 92 %	Services Extension for 4 day
92% to 93.99%	Services Extension for 2 day
94% to 94.99%	Services Extension for 1 day

For calculating the service availability , total hours for which the service was unavailable and such unavailability is attributable to server / hardware failure and the customer has not opted for DR site in his Sales Order , then such hours shall stand reduced from total availability .

#### **4. FAULT REPROTING PROCESS:**

- Any Service Unavailability should be reported to Gazebo Service Desk .
- The Gazebo Service Desk shall have a Trouble Ticket opened for the Customer and Customer shall quote the Trouble Ticket Number in all future communication.
- The Customer must provide the necessary information and cooperation required by Gazebo enable Gazebo to diagnose and remedy the Fault.
- Upon opening of a Trouble Ticket, Gazebo shall investigate the reported Service Unavailability and shall promptly use best industry standard efforts to rectify the same.

#### **5. ELIGIBILITY FOR REBATES:**

- Rebates will only be applied to a Fault for which a Trouble Ticket is logged.
- The Rebates for Service Availability set out in Section 3.2 are calculated on a per incident basis and measured as a percentage of availability over a calendar month. For the avoidance of doubt (a) Rebates are not calculated on a cumulative basis, and (b) periods of outage are not aggregated for the purposes of any Rebate calculation.
- The Customer must request Rebates in writing giving details of the Fault to which the Rebates relate. If the Customer fails to make such request within 30 days of the end of the calendar month for which such Rebates are due:
  - the Customer shall be deemed to have waived the Rebates for that calendar month;
  - any claims that it may have in relation to such Faults; and
  - Gazebo will not be liable for such Rebates.
- Following the calculation of the Rebates, the applicable service extension will be applied at the end of the Service Term.
- In the event of any dispute between Gazebo and Customer in respect of any Rebates, Gazebo and the Customer will work in good faith to resolve such dispute.

#### **6. EXCEPTIONS:**

Gazebo shall not be responsible for any Service Unavailability to the extent that such Service Unavailability results from any of the following events:

- The Services being modified or altered in any way at the Customer's request

- Any interruptions resulting from defects or failures in or use of the Customer Equipment or internet access issues locally at customers end
- Incomplete, inaccurate information provided by the Customer to Gazebo
- The performance of traffic exchange points, including Internet networks or exchanges controlled by any third parties
- Any delay or failure in complying with any of the Customer's obligations under the Agreement;
- Planned Unavailability
- Failure of server / any other hardware where , customer has not opted for DR site
- Failure of the Customer links, access circuits, local loop or any network not owned or managed by Gazebo
- Time taken for emergency offline backups after advance intimation
- Latency arising out of customer's local ISP service provider or due to any of the interexchange points of the route to Intram Gazebo site .
- Use of Services by Customer for purposes other than that for which it was acquired
- Any act or omission on the part of the Customer including but not limited to failure to notify the Service Desk of a Service Unavailability
- Events or occurrences that result in "no trouble found" Trouble Ticket, as confirmed by Customer
- An interruption where the Customer elects not to release a Service for testing and repair and continues to use it on an impaired basis.
- Regulatory events.
- Any abuse or fraud failure to comply with the Gazebo "Rules & Regulations" and "Acceptable User Policy" on the part of Customer and its end-user.
- Any Force Majeure event as described in this Agreement.

The period of any Fault commences from the time the Trouble Ticket is logged by the Gazebo Service Desk until the time that Gazebo notifies the Customer that the Fault is remedied. Accordingly the time period of calculation of any applicable Credits shall begin from the time that the Trouble Ticket is actually logged by the Customer.