

उत्तर प्रदेश UTTAR PRADESH

EH 996778

**Memorandum of Understanding for the implementation of ESIM Campus Solution "ERP"  
("AGREEMENT")**

**THIS AGREEMENT** is made and entered into as of this 30<sup>th</sup> day of October, 2018, by and between MKT Softwares (P) Ltd, an INDIAN Private limited Company with regd Office at 605 STPI UPSIDC Bakhapur Kanpur (UP) 208024 INDIA ("MKT Softwares"), and Hercourt Butler Technical University having registered office at Nawabganj Kanpur (UP) 208002 INDIA ("HBTU").

**WHEREAS**, MKT Softwares desires to provide and HBTU desires to have MKT Softwares provide services to assist HBTU in the implementation and utilization of ESIM Campus Solution in connection with HBTU's ERP implementation initiative upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

**Objective:**

The general objective of this Memorandum of Understanding (MOU) is to stimulate and facilitate the development of collaborative and mutually beneficial programs which serve to enhance the intellectual life and cultural development on both organization, and to contribution to increased cooperation. Thus,

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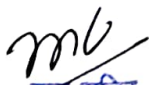
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MKT SOFTWARES and HBTU Kanpur have agreed that in support of their mutual interests in the field of education and research:

Whereas the MKT SOFTWARES is engaged in providing development, training, Implementation, Consultation and has strength in development and delivery, Innovation and marketing of technology training etc. particularly in the areas of telecom, Education Sector, Electronic and IT and has approached the HBTU Kanpur to establish and effective relationship while implementation of ESIM Campus Solution which is the proprietary Enterprise Solution of MKT Softwares to create a workflow and digitize the academic process of HBTU.

**1. Scope:**

- MKT SOFTWARES Provide the ESIM Campus solution to HBTU Kanpur on basis of Cloud Model.
- The information gathered during discussions is used as the basis for this proposal. Any changes will be analyzed for their schedule and cost impact, and appropriate revisions to this proposal will be made.
- Hardware and Software resources for on-site work will be provided by HBTU Kanpur, for visits, all arrangements for MKT SOFTWARES professionals stay on-site, their food expenses and any other incidental costs will be paid by HBTU Kanpur.
- ☐ The HBTU Kanpur shall nominate a coordinator as a SPOC for MKT SOFTWARES professional for proper operation and implementation of the Software.
- ☐ HBTU Kanpur will provide a team of 8-10 students who must have required skill set to assist MKT team members in order to successfully implementation of the project and also to perform timely upgradations as and when required.
- Test data in table forms in the same format provided by MKT SOFTWARES for system testing will be supplied by HBTU Kanpur at the beginning of customization Phase.
- Technical approach for Implementation of ESIM Solution is on cloud subscription basis.
- For Cloud Hosting No dedicated server facility will be provided to HBTU Kanpur for ESIM Campus Solution.
- At present there will no implementation and license cost of ESIM Campus Solution but there would be a revision of cost after three years from the date of PO as per the terms & conditions mutually agreed upon accordingly.
- All Subjects to Kanpur Jurisdictions

  
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## 1. Payment

Since this agreement is totally based on non commercial basis, there will be no cost for the following.

- Licenses for ESIM Campus Solution
- MKT Softwares consultant cost
- Implementation cost
- AMC cost for 3 years

However if it requires to use any type of third party application, hardware or any other device, HBTU will have to provide these components either from MKT Softwares or from any other third party vendor.

**3. Force Majeure.** Neither party shall be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond Its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the other party (including, without limitation, entities or individuals under the other party's control, or any of their respective officers, directors, employees, other personnel and agents), acts or omissions or the failure to cooperate by any third party, fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

**4. Independent Contractor.** It is understood and agreed that each party is an independent contractor and that neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venture, co-owner or representative. Party shall neither act or represent itself, directly or by implication, in any such capacity or in any manner assume or create any obligation on behalf of, or in the name of, each other.

## 5. Confidentiality, Personal Information and Use.

a) To the extent that, in connection with this Agreement, either party (each, the "receiving party") comes into possession of any trade secrets or other proprietary or confidential information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent.

6. (a) Shall alter HBTU obligations Notwithstanding anything to the contrary herein, HBTU acknowledges that MKT SOFTWARES, in connection with performing the Services, may develop or acquire experience, skills, knowledge and ideas that are retained in the unaided memory of its personnel. HBTU acknowledges and agrees that MKT SOFTWARES may use and disclose such experience, skills, knowledge and ideas.

b) HBTU agrees that neither the Services nor any Deliverables are intended for the express or implied benefit of any person or entity other than HBTU . HBTU further agrees that the Services and Deliverables shall not be disclosed, in whole or in part, to any person or entity other than HBTU , and other contractors of HBTU , to whom HBTU may disclose the Deliverables solely for the purpose of

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providing services to HBTU , provided that such other contractors shall not disclose the Deliverables to any person or entity.

b) MKT SOFTWARES acknowledges that some of the material and information that may come into its possession of knowledge in connection with the Agreement or its performance may consist of information that is exempt from disclosure to the public or unauthorized persons under city, state or ("Personal Information"). Personal Information includes, but is not limited to, names addressed, e-mail addresses, telephone numbers, financial profiles, health information, law enforcement records, birthdates, or other information indefinable to an individual that relates to any of these types of information. In each instance, however, to be qualified as "Personal Information" the information must be capable of individually identifying a natural person. MKT SOFTWARES agrees to hold Personal Information in confidence and not to make use of Personal Information for any purpose other than the performance of this Agreement, to release it only to authorized personnel or Partners/subcontractors who require such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HBTU 's written consent or as provided by applicable law, rule, or regulation.

7. **Survival and Interpretation.** All Paragraphs herein relating to payment of invoices, Deliverables, limitation on warranties, limitation on damages and indemnification, limitation on actions, confidentiality, personal information and use, survival and interpretation, assignment and subcontracting, non-exclusivity, non-solicitation, dispute resolution, and governing law shall survive the expiration or termination of this Agreement or any SOW.

8. **Assignment and Subcontracting.** Except as provided below, neither party may assign, transfer or delegate any of its rights or obligations hereunder (including, without limitation, interests or Claims) without the prior written consent of the other party. HBTU hereby consents to MKT SOFTWARES.

assigning or subcontracting any of MKT SOFTWARES rights and obligations hereunder to (i) any affiliate or related entity, whether located within or outside the INDIA, or (ii) any entity that acquires all or a substantial part of the assets or business of MKT SOFTWARES

9. **Non-exclusivity.** The parties acknowledge that MKT SOFTWARES shall have the right to

(i) provide consulting or other services of any kind or nature whatsoever to any person or entity as MKT SOFTWARES in its sole discretion deems appropriate, or (ii) use any works of authorship or other intellectual property that may be included in the Deliverables, to develop for itself, or for others, materials or processes that may be similar to those produced as a result of the Services.

10. **Non-solicitation.** During the term of a SOW to this Agreement and for a period of three

(3) years thereafter, each party agrees that its personnel (in their capacity as such) who had direct and substantive contact in the course of such SOW to this Agreement with personnel of the other

  
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party shall not, without the other party's consent, directly employ, solicit, engage or retain the services of such personnel of the other party.

#### 11. Approval of Deliverables.

a) HBTU shall approve each Deliverable that conforms in all material respects with the specifications set forth in the applicable SOW for each such Deliverable or as otherwise agreed by the parties in writing ("Specifications"). Within five (5) days (or such other period agreed upon in the applicable SOW) from its receipt of a Deliverable, HBTU shall provide MKT SOFTWARES with (i) written approval of such Deliverable or (ii) a written statement which identifies in reasonable detail, with references to the applicable Specifications, all of the deficiencies preventing approval (the "Deficiencies").

b) MKT SOFTWARES shall have thirty (30) days (or such other period agreed upon in the applicable SOW) from the date, it receives the notice of Deficiencies to complete corrective actions in order for such Deliverable to conform in all material respects to the applicable Specifications. HBTU shall complete its review of the corrected Deliverable and notify MKT SOFTWARES in writing of acceptance or rejection in accordance with the foregoing provisions of this Paragraph.


c) Notwithstanding the foregoing provisions of this Paragraph, approval of a Deliverable shall be deemed given by HBTU if HBTU has not delivered to MKT SOFTWARES a notice of Deficiencies for such Deliverable prior to the expiration of any period for HBTU review thereof as set forth in this Paragraph, or if HBTU uses the Deliverable in production.

To the extent that any Deliverable has been approved by HBTU at any stage of MKT SOFTWARES software's performance under a SOW, MKT SOFTWARES shall be entitled to rely on such approval for purposes of all subsequent stages of MKT SOFTWARES software's performance under such SOW. HBTU agrees that, in the event an approved Deliverable differs from the Specifications for such Deliverable, the Specifications shall be deemed modified to conform with such approved Deliverable.

#### 12. Change Order Procedure.

a) For purposes of this Agreement and any SOW, a "Change Order" shall mean an agreement between the parties, to modify, reduce, or expand the scope of the Service and/or to modify, reduce, or increase the fees and/or expenses set forth in a SOW pursuant to the terms of this Paragraph 20. For the avoidance of doubt, a Change Order shall not, nor is it intended to, amend the terms of this Agreement. Either party may request a Change Order by providing the other party with a documented change order request in the form provided in, or similar to, Exhibit A to this Agreement. A party having received a change order request shall consider the terms of the request in good faith and within a reasonable timeframe (typically within ten (10) business days), but shall be under no obligation to agree to, or make a counter proposal to, such request. No Change Order shall be effective until and unless the corresponding change order request document, in which the Change Order is described, is executed by both parties.



  
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### Risk Analysis and Mitigation:

Following risks are/may be involved which may delay /affect the project schedule

- Natural and manmade disasters like flood, fire, earthquake, unavailability of site due to disturbances, etc.
- Change of installation location.
- Change in network/software design/requirements.
- Delay in commissioning of third part equipment to be integrated.
- Interoperability issues with third party equipment and S/W.
- OEM software/hardware bugs which may require patch fixes.
- Civil/Electrical work in progress

### TERMINATION OF SERVICES :

MoU shall be effective from date of signing and shall remain in force for a period of Two Year.

- If the customer wants to terminate the subscription due to material breach or insolvency, the customer must buy all on premise equipment (if any deployed by MKT SOFTWARES) at a depreciated cost. Material which is provided by MKT SOFTWARES and consume at the time of Implementation.
- The customer must bear any costs associated with forfeiture for leases or early termination of network (if part of the solution).
- MKT SOFTWARES will not transfer ESIM Campus Solution to the customer. However, the data will be transferred on request in an ASCII format to the customer.
- Notwithstanding any other provision of this Agreement, the Parties acknowledge that Confidential Information shall not include any information that:
  - (a) Is or becomes publicly available without breach of this Agreement;
  - (b) becomes lawfully available to either Party from a third party free from any confidentiality restriction;
  - (c) Is required to be disclosed under any relevant law, regulation or order of court provided the effected Party is given prompt notice of such requirement or such order and (where possible) provided the opportunity to contest it, And the scope of such disclosure is limited to the extent possible

### Confidentiality:



  
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HBTU Kanpur should agree and confirm that they maintain confidential all intellectual Training material and solution architecture of Solution provided by MKT SOFTWARES. Provided Solution is come under copyright of product.

The Associates

MKT SOFTWARES Pvt. Ltd

By:  


Title: CEO & MD

Sanya Kant Dixit  
MKT Software Pvt. Ltd.

Sanya  
3.10.18

The INSTITUTIONS

HBTU Kanpur

  
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By: हरकोट बटलर प्राविधिक विश्वविद्यालय  
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Title: -----

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