

## TERMS AND CONDITION FOR INTERNET PAYMENT GATEWAY SERVICE

These terms and conditions are applicable to all Merchants who are availing services related to Internet Payment Gateway from YES BANK Ltd. These Terms and conditions shall be applicable on the Merchants from the date of Agreement signing of the IPG facility.

**1. DEFINITIONS:** - In these Terms and Conditions, unless the context otherwise requires, the following terms shall have the following meanings

### **1. DEFINITIONS**

In this Agreement, the following terms shall have the following meanings:

**1. "Acquiring Banks"** means the various banks and financial institutions with whom the Service Providers have entered into agreements for offering various facilities through the internet, including Net Banking Facilities and providing authorization (from third party clearinghouse networks) and settlement facilities in respect of payment instructions initiated by the Customers on the Website of Merchant Establishment using valid credit card/debit card/Net Banking Facilities.

**"Authorisation"/ Authorized Transactions"** means the process by which the Bank approves a Transaction as stipulated by the Issuer from time to time.

**"Business"** means the business the Merchant Establishment is normally engaged in as specified in the Schedule and no others.

**"Card"** means a credit card or a debit card or any other payment card issued by an Issuer.

**"Card Holder"** means a person to whom a Valid Card is issued or who is authorised to use that Valid Card.

**"Card Organisation"** means only VISA and MasterCard offering credit, debit or any other payment card programmes to Issuers.

**"Card Schemes"** MasterCard, Visa, American Express Rupay and the Other Networks, together with such other card payment systems the Bank may nominate from time to time

**"Chargeback"** means approved and settled debit card, credit card or net banking purchase transactions which are at any time refused, debited or charged back to Merchant Establishment's account by the Issuer, Acquiring Bank or credit card company for any reason whatsoever, together with the bank fees, penalties and other charges incidental thereto.

**"Customer"** means any person holding a net banking account and / or a Valid Card and who desires to purchase Services and Products from the ME on the Website and makes or intends to make a payment for the same over the internet using the

Payment Gateway Services and Acquiring Bank's Services.

**"Customer Charge"** means the sale price of the Products or Services purchased by the Customer plus the shipping charge (if any) and all other taxes, duties, costs, charges and expenses in respect of the Products or Services that are to be paid by the end user with respect to the Products or Services.

**"Customer Bank Account"** shall mean the bank account of the Merchant Establishment maintained with the Bank for enabling the credit for purchase of goods and services through the Website

**"Delivery"** means, in respect of a Product, delivery of the Product by a reputed courier / parcel service appointed by the ME, to the Customer at the address specified by the Customer in this behalf, or in respect of a Service, delivery or performance of the Service within Delivery Due Date.

**"Delivery Due Date"** means the date/period displayed by the ME on its Website or otherwise notified to the Customer on or before which the ME shall deliver the Products or Services to the Customers.

**"Dispatch Proof"** shall mean, in respect of a Product, proof to the satisfaction of the Bank , that the Product has been dispatched to the address specified by the Customer and in respect of a Service, delivery/performance of the Service, within Delivery Due Date.

**"Service Providers"** means various banks, financial institutions and various software providers who are in the business of providing information technology services, including but not limited to, internet based electronic commerce, internet payment gateway and electronic software distribution services and who have an arrangement with the Bank to enable use of internet payment gateways developed by them to route internet based credit/charge/ debit card transactions.

**"Issuer"** means a licensee of a Card Organisation issuing a Valid Card.

**"ME Account"** shall mean a bank account no.

**"ME Commission"** means the commission payable to the Bank by ME for facilitating a Transaction.

**"Net Banking Facilities"** and/or **"Acquiring Bank's Services"** shall mean the facilities provided by Acquiring Banks including facilities through the internet, including net banking facilities and providing authorization (from third party clearinghouse networks) and settlement facilities in respect of payment instructions initiated by the Customers on certain websites of various different client using valid credit card/debit card/online banking account.

**"Payment Mechanism"** means the payment mechanism through the internet utilizing the Acquiring Bank's Services and through such other modes and mechanisms of payment and delivery as may be notified by the Bank from time to time.

**"Payment Gateway Services"** shall mean to provide end to end services required for processing internet payment gateway transactions as per the rules and guidelines of VISA/MasterCard, RBI and Bank from time to time for routing and seeking transaction authorization from card issuing and netbanking connected banks.

**"Product"** means a tangible product that is manufactured, sold or distributed by the ME, and that is purchased by the Customer on the Website, the payment for which is to be made through the Valid Card and/or Net Banking Facilities.

**"Premises"** shall mean the place of business of the ME as stated in the Schedule.

**"Services"** means any service that the ME offers to the Customers, the payment for which is to be made through a the Valid Card and/or Net Banking Facilities.

**"Transaction"** means every order that results in the Delivery by the ME to the Customer of the Product(s) / Services in respect of which the order was placed or actual Delivery date in case Delivery takes more than 1 business day, whichever is later

**"Transaction Amount", "Transaction Charges", Transaction Discount Rate"** means the rates as specified in Annexure A

**"Valid Card"** means a Card:

- (i) permitted by the Bank for the Transaction;
- (ii) Issued by permitted Issuer and powered by Card Organisation from time to time;
- (iii) which is not expired; and
- (iv) Confirms to RBI's and / or Issuers guidelines/advisories/circulars issued from time to time.

**"Website"** shall mean the website with the domain name as specified in *Annexure A* hereto and which is established by the ME for the purposes of enabling the Customers to carry out Transactions for purchase of Products and Services offered by the ME.

## **2. RESPONSIBILITIES of PARTIES**

2.1 The Bank shall through Service Providers arrange to provide the Payment Gateway Services to the ME in accordance with the terms and conditions for Payment Gateway Services as mentioned herein. The Bank through its Service Providers and the ME shall work together for linking the applicable software application between the ME and the Bank for the purpose of providing the Payment Gateway Services.

2.2 The Bank and the ME agree to develop and implement a mechanism by mutual

agreement in writing for securing the transmission of data in the course of providing the Payment Gateway Services. The Bank will act as an integrator for acting as a link between the Acquiring Bank and the ME for enabling the Customers to make payment on the Website for the Transactions made using Valid Card and Net Banking Facilities. The ME is aware and agrees that the Acquiring Bank shall process and accept the payment instructions given by the Customers on the Website in respect of the Transactions and accordingly transfer funds from the Customer Bank Account to the ME Account.

- 2.3 The Bank reserves the right to terminate the link with a specific Acquiring Bank forthwith by giving notice, in the event that the Acquiring Bank terminates its arrangement with the Bank .

### **3. PAYMENT TO ME**

#### Payments on proof of Delivery

- 3.1 In consideration of the services provided by the Bank , the Bank shall collect Transaction charges along with tax / Transaction Charges as detailed in *Annexure A*
- 3.2 Subject to the other provisions hereof, the Bank shall endeavour to make payment of Customer Charge less the Transaction Discount Rate and other charges as mentioned under *Annexure*. However that, the Transaction Discount Rate may be revised periodically as mutually agreed in writing between the ME and the Bank .
- 3.3 The ME acknowledges that the Service Providers and/or the Acquiring Banks reserve the rights to call for Dispatch Proof at any time and the ME agrees to comply with such requests forthwith.
- 3.4 Dispatch Proof shall be maintained by the ME for a period of at least two (2) year from the date of Delivery and shall be open to inspection by the Bank, the Service Providers and the Acquiring Banks at all times during normal working hours by providing advance notice of inspection.
- 3.5 The ME shall bear and be responsible and liable for the payment of all relevant taxes (excluding any applicable withholding taxes, which shall be deducted at source) in relation to the payments made under this Agreement.
- 3.6 the Bank reserves the right to set-off any amounts by way of:
- (a) Deduct and set off from settlement of funds due to the ME; and/or
  - (b) Invoice/raise a debit note to recover from the ME separately and/or
  - (c) Debit to ME Account, for any of the following amounts:
    - (i) funds credited to ME Account in error;

- (ii) the amount of any refunds issued;
- (iii) invalid transactions (including Chargebacks and our related losses);
- (iv) Transaction Discount Rate(TDR) and any other fees or charges set out in the ME Application;
- (v) fees or penalties or fines imposed by the Card Schemes and any other regulatory / competent authority resulting from card associations and/or banks or your Chargebacks or from required compliances and / or violation of applicable Rules and Regulations or your acts or omissions;
- (vi) government charges; and
- (vii) any other amounts then due from the ME to the Bank, arising out of or in relation to the terms of the Agreement; deducted by the Acquiring Banks or Service Providers due to a valid Chargeback request raised by the Customer, before making payment of the Customer Charge, provided that, the Chargeback request is not resolved within 7 days.
- (viii) Proof of Dispatch is not provided by the ME within 2 working days of request
- (ix) In case of Refund or Chargeback event mentioned in Annexure B.

#### **4. REPRESENTATIONS AND WARRANTIES**

##### **4.1 The ME represents, warrants and declares that:**

- 4.1.1 ME conducts its Business on the Premises.
- 4.1.2 ME holds all the valid and subsisting licenses, permits and consents required for the conduct and operation of the Business from appropriate competent authorities.
- 4.1.3 ME has taken all necessary action to authorise the execution, delivery and consummation of this Agreement and will furnish satisfactory documentary evidence of the same to the Bank upon request and undertakes that:
  - (a) the execution, delivery and performance of this Agreement will not constitute a violation of any law, regulation, order, writ, judgment, injunction or decree applicable to it or any of its properties or assets, or violate any license, permit, authorisation, agreement, undertaking or other obligation by which it is bound; or
  - (b) there are no judicial or administrative actions, proceedings, litigations or investigations pending or, to the best of its knowledge after due inquiry, threatened against it, which would have a material adverse effect on its capacity to perform its obligations under this

Agreement and each of the other documents referred to in this Agreement to which it is a party.

- 4.1.4 Services to be delivered or rendered under this Agreement will be of the kind, quality and timeliness designated as per the quality and schedule standards generally applicable to in which ME operates and as may be mutually agreed upon between the Parties. For avoidance of doubt the services been referred herein does not include the services provided by the ME to its consumers.
- 4.1.5 No officer of the Bank or any of its directors, employees or immediate family members has received or will receive anything of value of any kind from the ME or its officers, directors, employees or agents in connection with this Agreement;
- 4.1.6 This Agreement is a legal and binding obligation of ME and is enforceable against the ME in accordance with its terms.

#### **4.2 The Bank represents, warrants and declares that:**

- 4.2.1 The Bank holds all the valid and subsisting licenses, permits and consents required for the conduct and operation of the Payment Gateway Services from appropriate / competent authorities.
- 4.2.2 The Bank has taken all action to authorize the execution, delivery and consummation of this Agreement and will furnish satisfactory documentary evidence of the same to the ME upon request and undertakes that:
  - (a) the execution, delivery and performance of this Agreement will not constitute a violation of any law, regulation, order, writ, judgment, injunction or decree applicable to it or any of its properties or assets, or violate any license, permit, authorization, agreement, undertaking or other obligation by which it is bound; or
  - (b) there are no judicial or administrative actions, proceedings, litigations or investigations pending or, to the best of its knowledge after due inquiry, threatened against it, which would have a material adverse effect on its capacity to perform its obligations under this Agreement and each of the other documents referred to in this Agreement to which it is a party.
- 4.2.3 This Agreement is a legal and binding obligation of the Bank and is enforceable against the Bank in accordance with its terms.

#### **5. MERCHANT ESTABLISHMENT'S COVENANTS**

In consideration of the Bank providing the Payment Gateway Services, the ME hereby declares, assures, undertakes and covenants as under:

- 5.1 The ME shall duly fulfill all Transactions in accordance with the instructions of the Customers and as mutually decided between the ME and its Customers in writing.
- 5.2 The ME shall prior to accepting any instructions from the Customer ensure that appropriate instructions have been provided to the Customer in accordance with the requirements of applicable law and regulations, and appropriate disclosures/disclaimers are displayed conspicuously on the Website of the ME in relation to the same.
- 5.3 The ME shall comply with all applicable laws and regulations while offering the Products and/or Services to the Customers. The ME shall not offer anything to the Customers, which is illegal or offensive and is not in compliance with applicable laws, and regulations whether federal, state, local or international of all jurisdiction from where the Customers of the ME avails the Products and/or Services.
- 5.4 The ME shall ensure to keep confidential all information submitted by the Customers on the ME's Website. The ME shall ensure that there are proper encryption and robust security measures to prevent any hacking of the information of the Customers. The Customer shall not be required or asked to disclose any confidential or personal data, which may be prejudicial to the interests of the Customer. The ME shall use the Customer's data only for the purpose of completing the Transaction for which it was furnished, and shall not sell or otherwise furnish such information to any third party.
- 5.5 The ME agrees to put up such notices, disclaimers or warranties as may be requested by the Bank, the Service Providers or the Acquiring Banks and the ME shall comply with the aforesaid requests forthwith.
- 5.6 The ME shall be solely responsible for the accuracy of all information and/or validity of the prices and any other charges and/or other information, which are displayed and offered on the Website.
- 5.7 The ME shall take all precautions as may be feasible or as may be directed by the Bank , the Service Providers and the Acquiring Banks to ensure that there is no breach of security and that the integrity of the link between the Website and the Bank is maintained at all times during the term of this Agreement.
- 5.8 The ME agrees that the Bank reserves its right to suspend the Payment Gateway Services provided herein in event the ME fails to observe the aforesaid covenants.
- 5.9 The Bank may hold on to funds, if Transaction is reasonably found to be doubtful, illegal, risky or fraudulent.
- 5.11 The ME shall permit the authorized representatives of the Bank, the Service Providers and the Acquiring Banks to carry out physical inspections of the place(s) of business during normal business hours of the ME by giving reasonable prior notice (not be more than 3 days) to the ME to verify whether the ME is in compliance with its

- obligations here under.
- 5.12 The ME shall provide a reasonable level of service support to the Customers. Such support shall include appropriate notice to Customers of means of contacting the ME in the event the Customer has questions regarding the nature or quality of the Products and/or Services and the procedures for resolving disputes.
  - 5.13 All risks associated with the Delivery of the Products and/or Services shall be solely that of the ME. Any and all disputes regarding quality, merchantability, non-delivery and delay in delivery of the Products and/or Services or otherwise will be resolved directly between the ME and the Customer without making the Bank , the Service Providers and the Acquiring Banks a party to such disputes.
  - 5.14 The ME shall enter into Transactions only in relations to Products and/or Services provided by it to the Card Holder.
  - 5.15 The ME shall own, and not dispute for any reason whatsoever, Transactions effected via its Website using the Payment Gateway Services.
  - 5.16 The ME acknowledges and agrees that the provision of Products and/or Services under the Transaction shall be transactions between the ME and the Card Holder without the Bank being a party thereto.
  - 5.17 The ME shall keep the Bank informed of the claims it receives in relation to Transactions or any other matter in connection with this Agreement providing details as may be required by the Bank. However the Bank shall not be under any obligation to provide any assistance to it in connection with any such claim. The Bank shall provide dispute resolution and other related activities including Chargeback, presentment, pre-compliance, compliance, pre-arbitration and arbitration etc. to ME.
  - 5.18 The ME shall be charged transaction processing fees, merchant service fees and / or minimum balance charges in accordance with Schedule, Annexures etc., which forms part of this Agreement. The said charges will be reviewed and revised with due intimation to the Merchant Establishment.
  - 5.19 The ME shall give prior written notice to the Bank of any change in its constitution/composition/ownership and commercial activity.
  - 5.20 The ME is not allowed to do any transactions related to purchase, sale etc. of shares or other securities through the Payment Gateway Services.
  - 5.21 The ME shall report promptly to the Bank a fault or suspected fault in Payment Gateway Service, and Software Application.
  - 5.22 The ME shall provide all reasonable assistance to the Bank and for the prevention and detection of fraud in respect of usage of the Payment Gateway Service, and Software Application



5.23 The ME shall keep confidential the information received from the Bank in connection with the Payment Gateway Service, and Software Application and not disclose it to any person other than its staff member(s), auditors and consultants connected with the operation of the Payment Gateway Service, and Software Application for effecting payments through it.

## **6. FURTHER COVENANTS OF THE ME**

The ME further hereby assures, covenants, declares, undertakes as under:

### **6.1 Valid Card Acceptance**

The ME shall:

- (a) Honor a Valid Visa/MasterCard when presented for Transaction;
- (b) Not engage in any practices or procedures that discriminates against, or discourages the use of Valid Cards whether in favor of cash or any other competing card brand;
- (c) Not levy any service charges on the Card Holder for the use of the Card, subject to the instructions/circulars/advisories issued by the Bank.
- (d) Not place any minimum limit on the Transaction for the use of Valid Card, subject to the instructions/circulars/advisories issued by the Bank.

### **6.2 Transaction Handling**

The ME shall:

- (a) enter into Transactions only in Indian Rupees unless otherwise permitted by the Bank in writing;
- (b) collect the day's Transaction sales invoices for accounting purposes which will be in the form of validly generated PNR;
- (c) preserve copies of, Transaction sales invoices and Dispatch Proof for a minimum period of Two year and provide the same to the Bank within 3 business days from the date of the Bank's request for such information and in case of failure to do so, refund the Transaction Amount to the Bank;
- (d) be responsible and accountable for proper and prudent maintenance of authorization letters/required necessary documents with regard to [mail order] Transactions and provide in such form and manner as may be required by the Bank from time to time, information and related documentation in respect of Transactions;

- (e) while presenting any Transaction information, certify to the Bank that (i) all statements of facts contained therein are true and complete in all respects, (ii) the Transaction information pertaining to each sale has been supplied only once, and (iii) that the sale of such Products and/or services are not unlawful or prohibited;

### **6.3 Chargeback and Refunds**

#### **i. Chargeback**

Any Transaction entered by the ME in any of the following circumstances shall be the final responsibility of ME notwithstanding that the Transaction was accepted or paid by the Bank and the ME agrees to the Bank's Charging back of the Transaction without any demur or protest in the following circumstances:

- (a) Transactions which are not in conformity with the provisions of this Agreement;
- (b) Transactions beyond the validity date shown on the Card;
- (c) Transactions which are fraudulent, collusive, illegal or otherwise irregular in any manner whatsoever;
- (d) Transactions incurred outside the territory authorized for use of the Card;
- (e) Any charge for merchandise, Products and/or Service sold or provided to the Card Holder at a price which is in excess of the price displayed at the time of purchase of Products and/or Services;
- (f) Transactions for undelivered merchandise, Products or service;
- (g) Transactions which the Card Holder refuses to pay because the merchandise, Products or Service were not as promised or were defective;
- (h) Transactions where the Card Holder asserts a claim for set-off or counter claim against the ME or disputes his liability for any reason whatsoever;
- (i) Transactions where the Transaction is split by the ME in more than one Transactions with a view to circumvent the approval parameters of the Issuer;
- (j) Transactions in respect of which a Card Holder's complaint or request for an adjustment has not been resolved; and
- (k) Transactions which are transacted, recorded or submitted otherwise than in accordance with this Agreement.

If the Bank is entitled to Chargeback any Transaction or if the Bank is entitled to payment or reimbursement from the ME of any amount under this Agreement, the Bank may at its discretion, give effect to such Chargeback entitlement through any

one or more of the following methods subject always dispute resolution mechanism of Visa/MasterCard/ American Express:

- (a) deduction of the relevant amount or any part thereof from any account whatsoever of ME or the ME Account with any branch of the Bank without prejudice or limitation to the Bank's right to set-off, transfer and applications of funds in law;
- (b) deduction of the relevant amount or any part thereof from any payments to ME;
- (c) billing ME for the relevant bill amount or any part thereof and ME agreeing to pay the amount of the bill forthwith upon receipt of the same without any demur or protest;

**ii. Refunds**

The ME, in the event that any Products or Services are not received by a Card Holder or are rejected pursuant to noncompliance by the ME or pursuant to any terms of contract between the ME and the Card Holder or are otherwise lawfully rejected or are accepted for return and/or services paid for by the Card Holder are not performed or are cancelled by the ME or the price is lawfully disputed by the Card Holder or the price adjustment is disputed by the ME, shall:

- (a) not make any cash refunds to the Card Holder; or
- (b) make all refunds to the Card Holder through the Bank as per the process communicated by the Bank;
- (c) Forthwith make payment of the amounts to be refunded to the Bank for onward credit to the Card Holder.

In the alternative, the Bank may in its discretion adjust all such amounts from the amount payable by it to ME or provide for such other procedure for refund in writing, as the Bank may deem fit from time to time. The Bank shall be entitled, in case when any refund claimed by the Bank exceeds the amount due to ME, to debit the amount by which the refund exceeds the amount payable to the ME to the account of the ME and to recover it from the ME.

**6.4 Indemnity**

6.4.1 The ME hereby undertakes and agrees to indemnify the Bank, Service Providers and Acquiring Banks and hold the Bank, Service Providers and Acquiring Banks harmless and keep the Bank, Service Providers and Acquiring Banks including their officers, directors and agents at all times fully indemnified and held harmless from and against all actions, proceedings, claims, liabilities (including statutory liability), penalties, Chargebacks, demands and costs (including without limitation, legal costs), awards, damages, losses and/or expenses however arising directly or indirectly, including but not limited to, as a result of:

- a) Breach or non-performance by the ME of any of its undertakings, warranties, covenants, declarations or obligations here under; or
- b) Any claim or proceeding brought by the Customer or any other person against the Bank , the Service Providers and the Acquiring Banks in respect of deficiency in the provision of Products and Service to its Customers;- or
- c) Any negligent act or omission or default or misconduct or fraud of the ME or its agents or Customers or
- d) Any hacking or lapse in security in the Website or the Customer data; or
- e) Any act, deed, omission or non-performance on the part of the ME or its Customers.
- f) Failure by the ME (or any of ME's officers, employee or agent) to comply with the provision of this Agreement including any act, commission or omission, negligence, fraud, forgery, dishonesty, money laundering, misconduct or violation of any of the terms and conditions and covenants of this Agreement;
- g) the breach of contract or duty by the ME (or any of the ME officers, employee or agent) to a Card Holder or any third party;
- h) any of ME's representations and warranties being or becoming false or untrue; and
- i) any claim from any statutory authority or Card Holder.
- j) any claim, penalties, fines, assessments, levies etc from any Card Organizations/schemes pertaining to ME's activity under this Agreement.

6.4.2. ME shall be liable to pay the amount required to be so paid by reason of the indemnity agreed to be provided hereinabove to the Bank, as determined by the Bank in its sole discretion under this provision, on demand and the Bank shall be entitled to adjust the amounts so determined to be due from the ME against the future payments due from the Bank to the ME.

6.4.3. Notwithstanding any other provisions of this Agreement, in no event shall the Bank be liable to the ME or the Customer or any other third party affected by the Transaction for loss of profits or revenues, indirect, consequential or similar damages arising out of or in connection with the Transaction, materials, information technology services or assistance provided under this Agreement

6.4.4. The aforesaid clauses shall survive the termination of this Agreement.

## **7. Confidentiality**

- a) The ME and the Bank agree to keep in confidence and not disclose to others all knowledge, information and data furnished and claimed by either to be proprietary, provided such information is given in writing or, if oral, is reduced to writing within thirty (30) days and such writing is marked to indicate the claims of ownership and/or secrecy. The ME and the Bank agree to protect the proprietary information of the other with the same standard of care and procedures used by themselves to protect their own

proprietary information of similar importance but at all times using at least a reasonable degree of care.

**Exception:** The aforesaid shall not be applicable and shall impose no obligation on the ME and the Bank with respect to any portion of confidential information which:

- i. Was at the time received or which thereafter becomes, through no act or failure on the part of the ME and the Bank , generally known or available to the public;
  - ii. Is known to the ME and the Bank at the time of receiving such information;
  - iii. Is furnished to others by the ME or the Bank without restriction of disclosure;
  - iv. Is thereafter rightfully furnished to the ME or the Bank by a third party without restriction by that third party on disclosure; or
  - v. Has been disclosed pursuant to the requirements of law or court order or by the applicable regulations or policies of any regulatory/statutory authority or agency of competent jurisdiction without restrictions or other protection against public disclosure, provided, however, that the ME and the Bank shall have been given a reasonable opportunity to resist disclosure and/or to obtain a suitable protective order.
- b) Further, ME shall not, without the prior written consent of the Bank and the Card Holder, use or disclose the name of the Card Holder, card number, expiry date, CVV number including without limitation any other confidential information of the Card Holder, Transactions and/or relating to the Bank and its business including legal, financial, technical, commercial, marketing and Transaction related records, data, documents, reports, the terms of this Agreement and the details of the negotiations between the Parties etc. to a third party unless such disclosure is compelled pursuant to the requirements of law or court order or by the applicable regulations or policies of any regulatory/statutory authority or agency of competent jurisdiction .The ME agrees and undertakes that it shall:
- i. promptly inform the Bank of any potential or accidental disclosure of the Information and take all steps, together with the Bank to retrieve and protect the said Information;
  - ii. ensure that the employees and/or representatives of the ME who are given access to the Information shall at all times be bound by and comply with legally valid and written non-disclosure obligations under their employment contracts; and
  - iii. The aforesaid clauses shall survive the termination of this Agreement.

## 8. BANK'S COVENANTS AND RIGHTS

- 8.1 Based on the Representations, Warranties, indemnities and covenants made herein by ME, the Bank hereby permits the ME to enter into Transactions through a Net Banking Service and Valid Card using the Payment Gateway Service, in terms of the procedures stated hereinabove and pay to ME the amount of such Transactions subject to other terms and conditions of this Agreement.
- 8.2 The Bank reserves the right to amend the terms and conditions of this Agreement (or any procedures thereunder) in writing from time to time at its sole discretion. Any such variation or amendment or introduction will become effective and binding on the ME upon notification to the ME by ordinary post and if the ME is unwilling to accept any such variation or amendment or introduction, the ME shall notify the Bank in writing by registered post within 7 (seven) days from the receipt of the notification by the Bank. Failure to receive notice within seven days from the date on which the aforesaid letter was sent by the Bank, it shall be deemed to be as an acceptance of such modified/ varied terms and conditions.
- 8.3 The Bank shall, towards Authorised Transactions complete in all respects, pay to the ME by crediting the ME Account, the amount of Transactions net of (i) the ME Commission and taxes as applicable, computed at the rate as stated in the Schedule, of the Transaction Amount and (ii) any other amounts due by the ME to the Bank.
- 8.4 No amount on a Transaction shall be payable by the Bank to the ME unless the Bank has received a receipt of that Transaction
- 8.5 The Bank shall endeavour to make payments of amounts when due to the ME on Transactions within T + 2 day after receipt of the Transactions by the Bank, unless this Agreement is under termination notice period in which case the Bank shall endeavor to make such payments only when it has successfully collected the amount from the Issuer(s) within T + 2 business days after receipt of the Transactions by the Bank.
- 8.6 Payment by the Bank shall be without prejudice to any claims or rights which the Bank may have against the ME and shall not constitute any admission by the Bank as to the performance by the ME of its obligations under this Agreement and the amount payable to the ME.
- 8.7 The Bank shall be entitled to set-off and deduct from the amounts payable to ME, amount lying in ME account with:
- (a) the amount of refund due to any Card Holder in accordance with the procedure for refund set out under this Agreement;
  - (b) overpayment made by the Bank due to errors or otherwise; and
  - (c) any other sum due from or payable by the ME to the Bank including

without limitation on any Chargebacks herein.

- (d) Any taxes or claims required to be paid under law or in terms of the directions of any regulatory or legal authority
- (e) The cost of Payment Gateway Services on behalf of the Bank if upon the termination or any other circumstances, the Bank incurs any extra costs.

8.8 If the Bank suspects that the ME has committed a breach of this Agreement or has acted dishonestly or fraud has been committed against the Bank or any Card Holder or third party, or the ME has in connivance with any other person done the same or assisted in the same, the Bank shall be entitled to suspend all payments under this Agreement to the ME, pending enquiries by the Bank.

8.9 Notwithstanding anything contained herein, where the Bank has reason to believe that any Transaction is fraudulently incurred, the Bank shall be entitled to withhold payment in respect thereof.

8.10 The Bank shall be, in relation to a Transaction, entitled at any time to refuse payment hereunder to the ME or if payment has been made to the ME, to debit the ME's Account or to seek immediate reimbursement from the ME towards the amounts paid, notwithstanding any Authorization given by the Bank to the ME if:

- (a) any Transaction entered into by ME is reported as fraudulent, unlawful or unenforceable;
- (b) information provided by the ME to the Bank in respect of the Transaction is not received in accordance with the Bank's requirements;
- (c) price charged is in excess of the price displayed at the time of purchase of Products and/or Services.
- (d) the Products and/ or Services covered under a Transaction are rejected or returned or the Transaction or part thereof, is validly cancelled or terminated by Card Holders and if the ME fails to provide all or part of Products or Services to the Card Holder's satisfaction, to the Card Holder.
- (f) the Card Holder disputes the nature, quality or quantity of the Products and/or Services covered by the Transaction;
- (g) the Card Holder disputes or denies the Transaction or the sale or delivery of Products or provision of Services covered by the Transaction with reasons thereafter;
- (h) the Transaction appears more than once to Card Holder's account;
- (i) the Transaction is doubtful or erroneously paid to the ME; and
- (j) any other event or circumstance which the Bank shall from time to time notify to the ME in writing shall have occurred.

8.12 The ME agrees that in addition to any general lien or similar right to which the Bank may be entitled by law, the Bank may at any time without notice to the ME combine or consolidate all or any of the ME's Accounts and any other account held by the ME and liabilities to the Bank and set off or transfer any sum standing to the credit of any one or more of such accounts in or towards satisfaction of any of the ME's liabilities to the Bank of any other account or in any other respect whether such liabilities be actual or contingent, primary or collateral and several or joint.

## **9. GENERAL TERMS**

### **9.1 Costs and Expenses**

The ME agrees to bear all costs and expenses incurred by it for providing the necessary equipments and facilities at its end so as to connect the ME's Software Platform with the Payment Gateway Services. Both, the Bank and the ME shall co-operate with each other and render assistance for connecting their respective software systems.

### **9.2 Termination**

- a) This Agreement may be terminated by either Parties without assigning any reason whatsoever by giving to the other Party a notice in writing of a minimum thirty days prior to the date proposed for termination.
- b) This Agreement may be terminated by either Party forthwith by serving on the notice of termination to the other Party , without there being a necessity to give a prior notice thereof to the other Party as contemplated in the preceding clause upon happening any of the following:
  - i. if any of the Representations and Warranties of respective Parties herein contained are found to be incorrect or untrue;
  - ii. if the ME breaches any of the terms and conditions or procedures contained herein;
  - iii. if the other Party becomes bankrupt or insolvent or likely to be so in the sole discretion of the Bank;
  - iv. if the ME is, in the sole discretion of the Bank, involved in or has facilitated any suspicious transaction or fraud;
  - v. if there are no deposit activity in the account for more than 60 days and if there are no transactions using the Payment Gateway Services for a continuous period of 60 days.
- c) This Agreement shall be deemed to be automatically terminated by the Bank without there being a necessity to give a prior notice thereof to the ME if the agreement of the Bank with the Service Provider is terminated during the currency of this Agreement. Provided always that the Bank shall endeavour to provide notice of 30 days to the ME incase the termination is without any cause.



- d) In the event of termination of this Agreement, the ME shall disclose all completed Transactions to the Bank.
- e) Upon termination, the ME shall forthwith, and at his own expense, return to the Bank in good condition all related documentation as may be required by the Bank .
- f) Termination shall not affect any rights and liabilities incurred prior to it nor any provision expressed to survive or be effective on termination and the same shall continue to remain in full force and effect notwithstanding termination.
- g) The Bank may in its discretion suspend the authority of the ME to enter into a Transaction after service of notice of termination.
- h) Subject to Visa/Master Guidelines, upon termination of agreement in the manner provided hereinbove, the amounts payable to the ME in terms of this Agreement shall be settled by the Bank within a period of forty five (45) days from the date of such termination.

### **9.3 Period Of Agreement**

This Agreement shall come into force on the Effective Date and shall continue to remain in force for a period of 3 years unless terminated in accordance with this Agreement.

### **9.4 Waiver**

Not exercising or delay in exercising any power or remedy accruing or available to either Party hereunder or any other documents pursuant hereto shall not impair or prejudice any such right, power or recourse and shall not be construed to be a waiver thereof or any acquiescence therein by a Party . The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

### **9.5 Severability**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law such provision will be severable and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof and the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

### **9.6 Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of India and all disputes, controversies, claims and differences relating to this Agreement hereunder and any other matters related hereto or as to the interpretation or enforcement of this Agreement shall be subjected to the exclusive jurisdiction of the courts/ in Mumbai.

### **9.7 Force Majeure**

If at any time during the term of this Agreement the performance in whole or in part of either Party's obligation under this Agreement is prevented or delayed by any reason beyond the control of the Parties hereto, including but not limited to fire, storm, flood, earthquake, explosion, accident, military operation, war rebellion, riot wreck, epidemic- embargo any virus in the system, any other electronic malfunctioning, or any laws, regulations or other Governmental actions, neither Party shall be entitled to terminate this Agreement nor shall either Party have any claim for damages against the other in respect of such non-performance or delay in performance, and shall entitled to resume as soon as practicable after any such event has come to an end or ceased to exist, provided that if the performance in whole or part of any obligations under this Agreement is prevented or delayed by reason of any such event for a period exceeding ninety (90) days, the Parties shall jointly discuss the feasibility of a rescheduling of performance. If either of the Parties cannot with reasonable diligence be expected to continue performance, either Party may at its option elect to terminate this Agreement or such part thereof as can be served therefore without affecting the performance of the remaining portion.

#### **9.8 Amendment**

Any amendment or variation to this Transaction Document shall be effective on basis of written communication.

#### **9.9 Further Assurance**

In connection with the Services, the ME agrees to execute and deliver such additional documents and perform actions as may be necessary or reasonably requested by the Bank to carry out or evidence the transactions/services carried out or contemplated under the Services.

#### **9.10 Third Party Rights**

This Transaction Document and the transactions contemplated herein shall be binding upon and inure to the benefit of each Party and their successors and assigns. This Transaction Document shall not confer upon any person other than the Parties to this Transaction Document the benefit of any rights or remedies hereunder.

#### **9.11 Captions in the Transaction Document**

The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

#### **9.12 Notices**

Unless otherwise provided herein, all notices or other communications under or in connection with this Agreement shall be given in writing and may be sent by personal delivery which is duly acknowledge in writing or post or courier or facsimile to the addresses as mentioned by the ME and the Bank hereunder. Any such notice or other communication will be deemed to be effective if sent by personal delivery, when delivered, if sent by post, three (3) days after being deposited in the post and if sent by courier, two (2) day after being deposited with the courier, and if sent by facsimile, when sent (on receipt of a confirmation to the correct facsimile number).

### **9.13 Publicity**

ME shall not use the name and/or trademark/logo of the Bank or its respective group companies, subsidiaries, or associates in any states or marketing publication or advertisements or in any other manner without prior written consent of the Bank

### **9.14 Disclaimer**

- a) The ME acknowledges that the Payment Gateway Services may not be uninterrupted or error free or virus free and the Bank disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness of the services for a particular purpose. The ME also acknowledges that the arrangement between one or more Acquiring Banks and the Bank Service may terminate at any time, services by such Service Providers and Acquiring Banks may be withdrawn.
- b) The Bank shall not be liable to the ME for any loss or damage whatsoever or howsoever caused or arising, directly or indirectly, including without limitation, as a result of loss of data; interruption or stoppage of the Customer's access to and/or use of the Payment Gateway Services; interruption or stoppage of Service Providers/Acquiring Bank website; non-availability of connectivity between the ME's website and the Bank's website etc. The Bank does not warrant that the Service Providers facilities and the Acquiring Bank's Payment Mechanism will be provided uninterrupted or free from errors or it is free from any virus or other malicious, destructive or corrupting code, program or macro.
- c) Bank's sole obligation and the ME's sole and exclusive remedy in the event of interruption in the Payment Gateway Services shall be to use all reasonable endeavors to restore the said services as soon as reasonably possible.

### **9.15 Use Of Intellectual Property Rights and Protection Of Software Application**

- a) The ME hereby grants to the Bank and the Acquiring Banks a non-exclusive, royalty-free, limited license to use, display and reproduce the trademarks, service marks and logos of the ME solely in connection with the marketing of the Payment Gateway Services to the public. The ME hereby confirms that it has the requisite right to use the said marks and logos and to grant permission to use the same by the Bank, and Acquiring Bank as stated above. The ME shall retain all intellectual property rights in such marks.
- b) The ME shall prominently display, on the Website and in other online marketing materials if so requested, a statement/logo/image provided and approved by the Bank relating to the Payment Gateway Services.
- c) Nothing contained herein shall authorise the ME to use, display and

reproduce the trademarks, service marks and logos or in any manner exploit the intellectual property rights of the Bank , Service Providers or the Acquiring Bank without prior written consent of the Bank , the Service Providers or the Acquiring Bank and the usage shall be in compliance with the such prior written approval and policies as may be notified from time to time by the respective entities. The ME undertakes not to infringe the intellectual property rights of the Service Providers in the software application, whether directly or indirectly through any third party.

- d) The ME agrees that it shall use the software application only for the purposes of availing the Payment Gateway Services. The ME, its employees or its agents shall not use the software application, in any form whatsoever, so as to design, realize, distribute or market a similar or equivalent software program. The ME, its employees or its agents shall not adapt, modify, transform or rearrange the software application for any reason whatsoever, including for the purpose, among other things, of creating a new software program or a derivative software program. In particular, but without limitation, the ME undertakes, not to allow unauthorised use of or access to the software application and not to disassemble, reverse engineer, decompile, decode or attempt to decode the software application, or allow the software application to be disassembled, reverse engineered, decompiled or decoded, or to in any way override or break down any protection system integrated into the software application.
- e) The ME fully understands that due to access of the Customers to the Website, the Bank may create or generate database in respect of such Customers for which the Bank shall be bound by confidentiality obligations under this Agreement.

#### **9.16 Miscellaneous Terms**

- a) The ME shall not, and the Bank shall be entitled to, transfer or assign its rights or obligations under this Agreement.
- b) This Agreement including the Schedule and all Annexures hereto contains the entire Agreement between the Parties. with respect to the subject matter hereof and supersedes all prior written agreements, understandings and negotiations, both written and oral, between the Bank and the ME with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, warranty or indemnity not set forth herein has been made or relied upon by the Parties hereto.
- c) The headings of the articles and other sub-divisions of this Agreement are for convenience of reference only and bear no effect on the interpretation of this Agreement.
- d) The Parties may amend the terms and conditions hereof in writing (including procedures stated hereunder) which will become effective upon such amendment been executed.

- e) All costs (including cost between the advocate and client), charges, expenses, taxes, duties (including stamp duty) in relation to this Agreement and any document executed pursuant hereto shall be borne by respective Parties .
- f) In this Agreement, if the context permits or requires words importing the masculine gender shall include the feminine and neuter genders, and words in the singular numbers shall include the plural and vice versa.
- g) This Agreement may be executed in counterparts each of which will constitute one and the same document. The ME and the Bank agree that each one of them is an independent entity and nothing here under shall make them partners, employees, agents or representatives of one another. Neither Party shall make any representation that suggests otherwise.
- h) The ME fully understands that the Bank shall provide Payment Gateway Services here under to the ME strictly on a non-exclusive basis and therefore nothing contained herein shall prohibit the Bank from furnishing similar services to others, including competitors of the ME. Similarly, ME can also avail such services from other parties including competitors of the Bank.

