

## **ARTICLE 1: SCOPE, DEFINITIONS & INTERPRETATION**

### **1.1 Scope**

- (a) PSP has developed and is the owner of integrated payment platform that is used by PSP to provide services relating to onboarding of merchant & facilitation of electronic payments through different modes such as (a): Valid Card transactions to effect payments to merchants including recurring payments on a subscription model and e-mandate payments; (b) net-banking transactions from Customer's bank accounts including transactions for e-mandate payments; (c) payments from Customer's Wallets; (d) payments through UPI ; (e) smart collect effected through *inter alia* the National Electronics Fund Transfer (NEFT) system, Real Time Gross Settlement (RTGS) system and Immediate Payment Service (IMPS) and (f) recurring payments through modes such as e-NACH, e-Mandate services, etc. (hereinafter referred to as the "PSP Services").
- (b) The Merchant is engaged in the business of \_\_\_\_\_ and provides a platform to sell their products/services to Customers. Bank is engaged in the business of processing of acquiring transactions & other banking services.
- (c) The Merchant is desirous of obtaining payment gateway services (Including UPI) for receiving payments in respect of services rendered by the Merchant

### **1.2 Definitions**

In this Agreement unless the context otherwise requires:

- (1) "Acquiring Banks/ Payment Service Provider" shall mean various banks, financial institutions, Card Organizations who are defined and licensed under the Payment and Settlement Systems Act, 2007 and the rules and regulations framed thereunder.
- (2) "Acquiring Bank Services" shall mean the Payment Gateway Network and services provided by the Acquiring Banks such as (i) routing internet based (a): Valid Card transactions to effect payments to merchants including recurring payments on a subscription model and e-mandate payments; (b) net-banking transactions from Customer's bank accounts including transactions for e-mandate payments; (c) payments from Customer's Wallets; (d) payments through UPI ; (e) smart collect effected through *inter alia* the National Electronics Fund Transfer (NEFT) system, Real Time Gross Settlement (RTGS) system and Immediate Payment Service (IMPS) and (f) recurring payments through modes such as e-NACH, e-Mandate services, etc; (ii) providing Authentication and Authorization from Card Organizations or other third party clearing houses; and (iii) facilitating transmission of funds to the Customer's account once a Chargeback is approved by the Partner Bank.
- (3) "Authentication" shall mean the process by which Customer identity is authenticated in the Processing Mechanism.
- (4) "Authorization" shall mean the process by which the availability of requisite balances / limit (to conduct the transaction requested) and approval of the Issuer for effecting a charge on the Customer's credit card, debit card, bank account, e-wallet or any other valid source of payment being used by the Customer in the Transaction are established in the Processing Mechanism.
- (5) "Card Organization(s)" shall mean any of Visa, MasterCard, Visa Electron, Maestro, Diners, American Express or any other card association as may be specified by PSP from time to time, such Card Organisations operating in accordance with Card Organisation Rules.
- (6) "Card Organization Rules" shall mean the written rules, regulations, releases, guidelines, processes, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization.
- (7) "Customer" shall mean any person who is availing services or products of the Merchant using PSP Services to make the payment/remittance.

- (8) "Customer Payment Amount" shall mean the total amount paid by the Customer towards the Merchant Services which will include, *inter alia*, charges and other taxes, duties, costs, charges, and expenses in respect of the Merchant Services.
- (9) "Chargeback" shall mean the reversal of an approved and settled Transaction, such reversal being requested by an Issuer pursuant to a request from a Customer, in a manner such that the Customer Payment Amount is settled by the Payment Service Provider to the Customer's account, subject to the Partner Bank's approval to effect the Chargeback.
- (10) "Facility Providers" means various banks, financial institutions and various software services 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, who have an arrangement with PSP to facilitate use of internet Payment Gateways to route internet based Transactions.
- (11) "Issuer" shall mean any bank/entity that has issued a Valid Card or a bank account or a Wallet or any other valid instrument to transact, to a Customer.
- (12) "Merchant Services" shall mean the services or products provided by the Merchant to its Customer/s, the remittance/payment for which is to be made through the Customer's valid accounts / Valid Card/s or bank account or any of the modes of payment offered under the PSP Services Suite.
- (13) "Onboarding" or "Integration" is the process that is required to be completed to enable the Merchant to be registered on PSP's platform to commence use of the PSP Services.
- (14) "Payment Gateway" shall mean the protocol that may be stipulated by PSP to enable the Authentication of Customers and the Authorization of payments effected by a Customer through any of the modes of payment offered under the PSP Services Suite, in accordance with the Processing Mechanism.
- (15) "Payment Gateway Network" shall mean the hardware, software and telecommunications tools necessary to perform protocol conversion between different networks or applications and all associated software required for the Acquiring Bank to submit Authorization and data capture transactions to PSP and to transmit Authorization and settlement of transactions between the Merchant and PSP.
- (16) "Partner Banks" shall mean the banks from which PSP obtains nodal accounts for holding the Customer Payment Amounts in turn to facilitate the settlement of Customer Payment Amounts to the Merchant's account.
- (17) "Processing Mechanism" means the payment mechanism through the internet utilizing the Payment Gateway Networks of Acquiring Banks including steps relating to Authentication and Authorisation for the purpose of effecting the transfer of funds from the Customer's account to PSP's nodal account followed by settlement of such funds to the Merchant's account.
- (18) "PSP Fees" means the rates which PSP/Bank would charge for PSP Services, which shall include PSP's dashboard services, PSP's API services and other value added services as specified in Annexure A of Tri-Party Agreement Signed by the Parties.
- (19) "Terms and Conditions" shall mean these terms and conditions under this Agreement, and any and all schedules, appendices, annexure and exhibits attached to it and includes any addition, modification, amendment, addendum or deletion thereof agreed to in writing by the Parties.
- (20) "Transaction" shall mean a financial transaction conducted by the Customer through PSP Services.
- (21) "Third Party" means any entity/person who is not a party to the Agreement.
- (22) "UPI" is a payment system that powers multiple bank accounts into a single payment network of any participating banks which permits merging several banking features, seamless fund routing & merchant payments into one hood.

- (23) "Valid Card" shall mean any unexpired credit card or debit card which is issued by an Issuer designated to issue a Visa, MasterCard, Visa Electron, Maestro, American Express, Rupay card or cash card, pre-paid card or other card. Provided that the card is not listed in current warning or restricted card bulletins or notices published in accordance with the Card Organisation Rules and bears the signature of the person in whose name the card is issued.
- (24) "Wallet" shall mean a pre-paid payment instrument that facilitates purchase of goods and services against the value stored on these instruments. The value stored on such instruments represents the value paid for by the holders by cash, by debit to a bank account, or by credit card.
- (25) "Website/Platform" shall mean the website which is established by the Merchant for the purposes of enabling its Customers to purchase products and services offered by the Merchant and to carry out the Transactions for that purpose alone.

## **ARTICLE 2: PSP SERVICES**

### **2.1 Provision of PSP Services:**

- a) PSP shall provide the PSP Services based on the terms and conditions of this Agreement.
- b) PSP is entitled to tweak the scope of the PSP Services for enhancement, security of Transactions or improvement of PSP Services in its absolute discretion, provided that nothing in the foregoing provision shall limit PSP's obligations or liabilities under this Agreement for the PSP Services. PSP shall not be required to take the consent of the Merchant for carrying out these tweaks, during the course of this Agreement. For the purpose of clarity, tweak shall mean "optimization procedures, both manual and machine learning based, for different modes of payments in order to improve the payment performance". The tweaks contemplated under this Article will be at PSP's cost.
- c) The Merchant agrees and acknowledges that PSP shall be the absolute owner of any intellectual property rights underlying customizations, if any, carried out by PSP and the Merchant shall have no rights over such intellectual property rights arising on account of the customizations made by PSP.
- d) PSP will assist in onboarding of merchant, invoicing of PSP and providing a platform through which the merchant will get access to transactions processed through the payment acquiring mode deployed on his website/ at his location.
- e) PSP shall be solely responsible for all regulatory compliance relating to invoice issued to merchant. PSP shall be responsible to revert and resolve all such queries raised by merchant regarding GST compliance of invoices issued by him.
- f) All technology support shall be provided by PSP, during the business hours as defined from time to time which will be made available on the website , excluding the days which shall be declared as holidays by the state or the central government of India, as the case may be. The Merchant may contact PSP for any other additional information and support at the phone number(s) and email address(es) given by PSP from time to time, in this regard.
- g) The Parties reserve the rights to terminate this Agreement in accordance with Article 16 of this Agreement in the event of any breach and/or as a result of any unauthorized use and/or infringement of the other's intellectual property rights.

## **ARTICLE 3: FEES**

- 3.1 In consideration for receiving the Services the Merchant agrees to pay requisite fees (PSP Fees) to the PSP. Any revision in Fees shall be effective only upon mutual agreement by both the Parties in writing. It is agreed between the Parties that the Fees shall be deducted from the Customer Payment Amount prior to settlement of the Customer Payment Amount to the Merchant's account as per Article 4.
- 3.2 In respect of any unpaid amounts, by the Merchant to Bank (in case of Chargebacks and refunds in excess of the amount held in the nodal account), Merchant shall make due payment of any and all the invoices of Bank within thirty (30) days from the receipt of the invoice, failing which Bank shall be entitled to charge interest of two percent (2%) per month on

the unpaid amount. Without prejudice to the above, Bank & PSP is also entitled to suspend its services hereunder until all payments, along with the interest payable is fully cleared by the Merchant. The Merchant shall be responsible for Merchant's failure to pay amounts due to Bank and any amount unpaid by the Merchant shall be paid by the Merchant.

- 3.3 Payments of fees contemplated under Article 3 shall be subject to applicable taxes as per the provisions of applicable law.

#### **ARTICLE 4: SETTLEMENTS TO THE MERCHANT**

- 4.1 The total Customer Payment Amount(s), in respect of the Transactions of the Customers through various channels covered under this Agreement shall be deposited directly in the nodal account as per the prevailing RBI guidelines.
- 4.2 Subject to PSP's withholding rights under Article 3, Article 5.5, Article 16.6 and Article 16.7, the monies deposited in the nodal account shall be transferred to the Merchant's account within T + 2 bank working days (T being the date on which the Customer Payment Amount is realized by PSP in its nodal account) or within such other period as the Partner Bank may take to transfer the aforesaid monies to the Merchant's account after deduction of Fees as agreed under this Agreement.

#### **ARTICLE 5: SETTLEMENT OF PAYMENTS**

- 5.1 In processing the Transactions, Bank shall be entitled to rely upon all electronic communications, orders or messages sent to Bank through the Processing Mechanism and to the extent this is in compliance with the Processing Mechanism and any applicable laws and guidelines of the RBI, Bank shall not be obligated to verify or make further inquiry into the identity of the sender, or the message integrity, of any communications, orders or messages. Merchant shall in no circumstance dispute such reliance by PSP.
- 5.2 Bank shall be entitled to recover from the Merchant, from time to time, any amounts due from it or the Merchant or incurred by Bank on account of the following, unless the same are caused on account of negligence, act or omission of Bank or its employees, officers etc.:
- a) Chargeback of Transactions with penalties if any levied on Bank or PSP
  - b) Any penalties or charges which may be levied on PSP by the Acquiring Banks or the clearing house viz. Reserve Bank of India or the Partner Banks or any of the Facility Providers for acts or omissions attributable to the Merchant, arising *inter alia* on account of excessive Chargeback of Transactions or out of excessive failure of Transactions, the extent of excessiveness of such Chargeback or failures shall be determined by the Partner Bank or on account of excessive Customer disputes and/or any other reason as per Partner Bank's discretion.
  - c) Any other amount due to PSP from Merchant.
- 5.3 If there are reasonable grounds to suspect that a Transaction has been conducted in breach of this Agreement or with the intent to defraud any of the Facility Providers in the Payment Gateway, Bank shall be entitled to suspend / withhold the payments of the Customer Payment Amount to the Merchant, pending enquiries by Bank /PSP and/or the Acquiring Bank till the resolution of such issues.
- 5.4 In respect of any breaches or fraudulent transactions, etc. contemplated in Article 5.3, if such breaches or fraudulent transactions, etc. are caused by Merchant, then Merchant (as the case may be) shall indemnify and hold Bank & PSP harmless against any such claims made by the Issuing Bank or the Customer, as the case may be. However, the Merchant shall have no obligation to indemnify Bank/PSP or Customer if the same are caused due to (i) negligence by PSP/Bank or its employees, officers etc., (ii) negligence, act or omission by the Partner Bank or the Acquiring Banks, or (iii) any Third Party.
- 5.5 In case of an occurrence of a Chargeback event, Bank shall be entitled to withhold the settlements to the Merchant, pending enquiries by the Partner Bank or any regulatory body and/or Payment Gateway Provider till the resolution of such issues. Bank shall also have the right to block any future payments to the Merchant in this regard until the Chargeback event/s are resolved.

## **ARTICLE 6: COVENANTS OF MERCHANT**

- 6.1 If the Merchant receives a Third Party claim that the Merchant's use of the Bank/PSP Services conflicts with or infringes upon or violates any rights of such Third Party, then the Merchant shall forthwith upon receipt of a claim, inform Bank/PSP of such claim that the Merchant becomes aware of.
- 6.2 The Merchant further acknowledge that Bank/PSP shall not be responsible for any Customer claims for refund of payments made by the Customers. All Customer claims for refund of payments (for any reason whatsoever) shall be the responsibility of the Merchant and any refund payments shall be made directly by the Merchant to the Customer.
- 6.3 Merchant agree and acknowledge that Bank/PSP is not bound to provide any support services on termination of this Agreement.
- 6.4 Merchant may promote Bank/PSP Services in its Website or physical outlet and may endeavour but not be obligated to promote Bank/PSP Services in other advertisements, publications.
- 6.5 Merchant undertakes to provide all the information and assistance as is required by Bank/PSP or if the same is required to be provided to government or judicial/quasi-judicial authorities by Bank/PSP.
- 6.6 Merchant undertakes not to offer or facilitate the offering of any products, which are illegal or offensive or prohibited as per the list provided in **Annexure** Band/or not in compliance with applicable laws, rules and regulations prescribed by any regulatory authorities in India. In addition, Merchant undertakes to comply with and shall ensure that all Transactions by Customers will be in compliance with applicable guidelines, rules, regulations issued by RBI, Partner Banks, Acquiring Banks and/or Card Associations.
- 6.7 Merchant agrees and understands that Bank reserves the right to suspend settlement of any Customer Payment Amounts and/or PSP Services until such time that Merchant does not discontinue selling or facilitating the sale of prohibited products mentioned in Annexures or does not conform to all applicable laws and regulations in force from time to time. In addition, Bank reserves the right to terminate this Agreement without further notice in the case of breach of this Article by the Merchant.

## **ARTICLE 7: COVENANTS OF PSP**

- 7.1 PSP shall comply with all Applicable Laws including the applicable data privacy laws and Information Technology Act, 2000.
- 7.2 In order to provide PSP Services under this Agreement, PSP has entered into agreement with the bank.
- 7.3 PSP shall provide the details about the Merchant activities including Transaction value, count, settlement reports etc., through the Merchant panel/ daily reports provided by PSP to the Merchant.

## **ARTICLE 8: REPRESENTATION AND WARRANTIES**

Each Party represents and warrants that:

- a) it is an entity duly constituted and validly existing under Indian law;
- b) it holds valid and subsisting licenses, approvals and consents as may be required for conducting its business.

## **ARTICLE 9: CONFIDENTIALITY**

- 9.1 Each Party acknowledges and agrees that in connection with this Agreement, the receiving party ("**Receiving Party**") shall not disclose to any Third Party any Confidential Information (defined hereinbelow) of the disclosing party ("**Disclosing Party**") that it may have access to during and in connection with its performance of services hereunder. Confidential Information means any and all information or data of a confidential nature, application, software (and intellectual property therein), network configuration, documents, accounts, business plans, products, promotional and marketing plans, tools and techniques of business, information about a Party's customers, merchants, vendors, partners, employees, agents and contractors and processes and/or any other information in whole or in part of either Party.

- 9.2 Bank can establish contact with any Merchant's customer to validate the transactions done by the customer on Merchant website/location using Bank/PSP Services for timely inspection and in case of dispute information being received by Bank/PSP.
- 9.3 Merchant shall ensure that either the Merchant or any of its employees shall not reverse engineer, decompile or disassemble any software shared/disclosed by PSP.
- 9.4 Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of any Confidential Information and that the disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper.
- 9.5 The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of Article 9 of this Agreement. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use.

#### **ARTICLE 10: DATA, SYSTEM SECURITY AND COMPLIANCES**

- a. **Security**: Parties shall ensure that there are proper encryption and security measures at their respective websites to prevent any hacking into information pertaining to transactions contemplated under this Agreement.
- b. **Electronic Communication**: In processing the transactions, Bank/PSP shall be entitled to rely upon all electronic communications, orders sent in the Merchant's specified format to Bank/PSP. Bank/PSP shall not act on any electronic communications, orders or messages received on-line from the Merchant or the Customer which do not properly utilize the Merchant's specified format and security measures as may be applicable from time to time.
- c. **Security Requirements** : In availing the Services, the Parties declare, assure and undertake to abide by the relevant security standards/ regulations/ requirements/guidelines which would be applicable to the conduct of the transactions contemplated under this Agreement, including, without limitation, (a) regulatory provisions as may be applicable from time to time, (b) security measures and resultant hardware/ software upgrade consequent upon upgrade of Merchant's systems and procedures with a view to ensuring security of transactions, (c) maintenance, protection, confidentiality and such other requirements with respect to transaction data as may be imposed by any regulatory or standards authority including pursuant to PCI DSS, as applicable, and any modifications to or replacements of such programs that may occur from time to time.

#### **ARTICLE 11: INTELLECTUAL PROPERTY**

- 11.1. Each Party acknowledges that it owns and/or is entitled to use any intellectual property used or adopted by a Party in the performance of its obligations under this Agreement or conduct of its business.
- 11.2. Except as expressly set out in this Agreement no assignment of or license under any intellectual property right, whether registered or not, owned or controlled by a Party is granted to the other by this Agreement. "Intellectual Property Right" means any and all patents, copyrights, trade secret rights, trade mark rights, design rights, and other proprietary or similar rights in intellectual property, existing now or in the future, including the rights to secure registrations, renewals and extensions thereof.
- 11.3. No Party may, under any circumstances, seek to register any trademark, business name, business processes, inventions, company name, domain name using or incorporating the intellectual property of the other Party.
- 11.5. It is agreed between the Parties that during the Term (defined hereinafter) any promotion or publicity by either Party of the other Party's services should always carry the relevant Party's trade mark or service mark as may be agreed between the Parties.

11.6 Bank/PSP shall ensure that there is no unauthorized, improper, incorrect or false use, either by it or its employees or its representatives of the name, trademark, logo or service brand of the Merchant or its brands. Any use of the trademark/ logo/ service brand of the Merchant or its brands by Bank/PSP, shall take place only with the prior written agreement of Merchant.

11.7 This Article shall survive the termination or expiry of this Agreement.

#### **ARTICLE 12: INDEMNIFICATION AND REMEDY**

12.1 Notwithstanding anything contained in this Agreement, the Merchant hereby undertakes and agrees to indemnify and hold harmless Bank/PSP against all actions, proceedings, claims, liabilities (including statutory liabilities), penalties, demands and costs (including without limitation, legal costs of Bank/PSP on a solicitor / attorney and own client basis), awards, damages, losses and/or expenses arising under this Agreement on account of:

- a. the Merchant's breach of the terms of this Agreement.
- b. any claim or proceeding brought by the Customer or any other person against Bank/PSP in respect of any Merchant Services offered by the Merchant; or
- c. any gross negligent act of Merchant's agents, employees, licensees, contractors or Customers; or
- d. any fines, penalties or interest imposed directly or indirectly on Bank/PSP on account of breach by Merchant's obligations under this Agreement; or
- e. breach of the confidentiality obligations by the Merchant, its agents, employees or representatives.

12.2 Bank/PSP shall indemnify and hold harmless Merchant against all actions, proceedings, claims, liabilities (including statutory liabilities), penalties, demands and costs (including without limitation, legal costs), awards, damages, losses and/or expenses arising under this Agreement on account of:

- a. Bank/PSP's material breach of the terms and conditions of this Agreement
- b. breach of confidentiality obligations by Bank/PSP, its agents, employees, licensees;
- c. any claim or proceeding brought by a Third Party for infringement of intellectual property rights arising from use of Bank/PSP's Services;
- d. any fines, penalties or interest imposed on Merchant on account of Bank/PSP's Services under this Agreement; or

12.3 Should any proceedings be undertaken which may give rise to either Party's liability under this Agreement, the other Party shall provide such Party with prompt written notice and an opportunity to participate in any such proceedings to represent its interest appropriately.

#### **ARTICLE 13: LIMITATION OF LIABILITY**

13.1 Except as otherwise provided in this Agreement, Bank/PSP shall not be liable and responsible for any disputes, claims, losses, damages arising out of any Third Party software, interruptions, chargeback, availability of connectivity of network, delay in execution of the Transactions, in any manner whatsoever. It is agreed between the Parties that Bank/PSP is a payment facilitator and in no event shall Bank/PSP be liable to the Merchant for any consequential loss or damage or loss of profit, business, revenue, goodwill or anticipated savings arising out of the performance of the Bank/PSP Services or otherwise. Subject to Article 13.2 below, under all circumstances, for any proven claims, demands etc. of whatsoever nature, the total liability of Bank/PSP shall never exceed the PSP Fees paid or payable by Merchant to PSP/Bank for a period of 1 (one) month immediately preceding the date of such proven claim/demands.

#### **ARTICLE 14: NO WARRANTY**

14.1 Except as provided herein below, Bank/PSP disclaims implied warranties written or oral (if any), including but not limited to warranties of merchantability and fitness of Bank/PSP Services.

- 14.2 Bank/PSP shall not be responsible for any losses sustained through (i) the use of counterfeit or stolen bank cards, or stolen devices; (ii) fraudulent electronic transactions; or (iii) quality and service related claims pertaining to the Merchant Services.

#### **ARTICLE 15: TERM**

- 15.1 This Agreement shall be in effect from the Effective Date for a period of two (2) years (“**Term**”) from the date mentioned hereinabove. On completion of the Term, the Agreement shall be renewed automatically for a consecutive period of twelve (12) months and thereafter for subsequent twelve (12) month period on the completion of every twelve (12) month period, on the same terms and condition unless terminated by either Party as per the terms of this Agreement.
- 15.2 Subject to mutual discussions and agreement between the Parties, the Bank/PSP Fees set forth in Annexure A of the Tri-Party Agreement signed between the Parties shall be revised at the time of renewal of this Agreement.

#### **ARTICLE 16: TERMINATION**

- 16.1 Each of the Parties is entitled to terminate this Agreement, at its option by giving a notice of not less than thirty (30) days in writing to the other Party.
- 16.2 A Party shall be entitled at its option, to immediately terminate this Agreement by giving a written notice in that behalf, to the other Party on the occurrence of any of the following events:
- a) If any Party becomes or is declared bankrupt or goes in liquidation voluntary or compulsory, except for the purpose of amalgamation or reconstruction;
  - b) If any Party ceases to carry on its business or suspends all or substantially all of its operations;
  - c) There is any change in applicable law, rules, regulations, directives or guidelines, which prevents the continuing of the arrangement under this Agreement;
  - d) If an event of any Force Majeure conditions (as described under Article 17) continues for a period in excess of two months;
  - e) If a Party engages in fraud or other illegal or unethical activities.
- 16.3 Termination of this Agreement shall not release any Party from the obligation to make payment of all amounts then due and/or payable; upon Termination both Parties shall settle all outstanding dues payable to the other Party and arrange to return all the documents and properties of the other Party.
- 16.4 Termination of this Agreement shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 16.5 If there are reasonable grounds for Bank/ PSP to suspect or upon receiving an intimation in written mode of communication from the Issuer or Partner Bank that a Transaction conducted on the Merchant’s Website/outlet in suspicious manner which amounts to breach of this Agreement or as a fraudulent Transaction, against the Payment Service Provider(s) or any Customer, Bank/PSP shall be entitled to suspend its services immediately, terminate this Agreement with immediate effect without having to give any notice of termination to the Merchant and withhold the settlements to the Merchant, pending enquiries by the Partner Bank and/or Payment Service Provider and till the resolution of such issues. Bank/PSP shall also have the right to block any future payments in this regard. The Merchant acknowledge that the Partner Bank or Issuer may also be entitled to suspend their services pending any such inquiries and Bank/PSP shall not be responsible for any interruption in PSP Services caused due to suspension of services by the Partner Bank or Issuer.
- 16.6 On the issuance of notice of termination under Article 16.1 or prior to the expiry of the Agreement, Bank/PSP reserves the right to withhold from the settlements , a certain sum computed based on a Stipulated Percentage (defined hereinbelow) in respect of Transactions (including the Transactions pending for settlement as on the date of notice of termination, if applicable) processed during a period of thirty (30) days prior to the date of termination and subject to settlement of Chargeback and refund claims from Customers during a one hundred and twenty (120) day period from the date of issue of termination notice (“**Withholding Term**”), Bank/PSP shall, after processing such settlements, transfer

the balance amount to the Merchant on the completion of the Withholding Term. The 'Stipulated Percentage' is the proportion of the total amount in respect of all claims towards Chargebacks, refunds, fraudulent transactions out of the total Customer Payment Amounts in respect of all Transactions during the Term of the Agreement.

- 16.7 Further it is agreed between the Parties that in the event any amount is to be received from the Merchant due to excessive Chargebacks or refunds or any other issues relating to any complaints of the Merchant's Customers and is over and above the amount which has been withheld by Bank/PSP, Bank/PSP shall have a right to raise an invoice relating to such payments to be made and the Merchant agrees to make payments of such invoice within a period of 15 (fifteen) days of receiving the invoice.
- 16.8 PSP 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 PSP.

#### **ARTICLE 17: FORCE MAJEURE**

- 17.1 Force Majeure shall be any event or occurrence starting after the date of this Agreement, whatever the origin, which cannot be foreseen and is beyond the control of, and cannot be circumvented by the Party affected, and which renders the performance of the obligations impossible, including but not limited to acts of governmental policy/authority, fires, floods, earthquakes or other natural disasters, explosions, epidemic, general strikes, riots, war (declared and undeclared), rebellion and sabotage.
- 17.2 The Party affected by a Force Majeure event shall not be liable to the other Party for its delay in the performance of, or non-performance, of its obligations or any part thereof under this Agreement. The Party affected by a Force Majeure event shall give notice of the Force Majeure event to the other party as soon as possible.

#### **ARTICLE 18: DISPUTE RESOLUTION AND JURISDICTION**

- 18.1 In the event of a dispute in connection with this Agreement, the disputing Party shall issue a notice to the other Party to seek resolution of the dispute. Forthwith upon receipt of the notice by the other Party, the Parties shall engage in mutual discussions and endeavor to resolve the dispute within a period of thirty (30) days from the date of receipt by the other Party. In the event the dispute is not resolved within such period of thirty (30) days, the dispute shall be referred to a sole arbitrator nominated by the parties for arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be held at Jaipur, India and the arbitration shall be conducted in the English language. This Agreement thereof shall be governed by laws of India and courts of Jaipur shall have exclusive jurisdiction to entertain a dispute in connection herewith.

#### **ARTICLE 19: MISCELLANEOUS**

- 19.1 Cooperation: Merchant acknowledge that its timely provision of access to its systems and various devices, as well as assistance, processes, cooperation, complete and accurate information and data from its officers, agents, and employees and suitably configured hardware and software are essential to performance of any Bank/PSP Services. Merchant should allow Bank/PSP to audit and inspect business processes followed by Merchant related to Bank/PSP Services and suggest suitable changes thereto.
- 19.2 Entire Agreement: This Agreement, including the Schedules and Annexures attached hereto, constitutes the entire agreement between the parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter hereof.
- 19.3 Relationship between the Parties: Bank/PSP, Merchant shall be independent contractors with each other for all purposes at all times, and neither Party shall act as or hold itself out as an agent for the other, nor shall either Party create or attempt to create liabilities for the other Party.
- 19.4 Notices: Notices, writings and other communications under this Agreement may be delivered by hand, by registered mail, by overnight courier service, or facsimile to the addresses and numbers specified as follows or to such other addresses and numbers as may be specified in writing to the Parties as per details mentioned on first page of the Tri-Party Agreement.

Notice will be deemed given in the case of hand delivery or registered mail or overnight courier upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party; in the case of facsimile upon completion of transmission as long as the sender's facsimile machine creates and the sender retains a transmission report showing successful transmission.

- 19.5 Non-solicit: The Merchant agrees that during the Term and for a period of 60 months from the date of expiry of the Term or termination of the Agreement (whichever is later), the Merchant shall not directly or indirectly solicit or entice away or endeavor to solicit or entice away from Bank or its affiliates) any merchant or customer of Bank (or of its affiliates), who has been utilizing the Bank/PSP Services or any other services provided by Bank/ PSP (or its affiliates).
- 19.6 Survival: The provisions of Articles 9, 11, 12 and 13 shall survive the expiry or termination of this Agreement.

**ANNEXURE B**  
**Prohibited Activities and Services**

1. Adult goods and services which includes pornography and other sexually suggestive materials (including literature, imagery and other media); escort or prostitution services; Website access and/or Website memberships of pornography or illegal sites;
2. Alcohol which includes alcohol or alcoholic beverages such as beer, liquor, wine, or champagne;
3. Body parts which includes organs or other body parts;
4. Bulk marketing tools which includes email lists, software, or other products enabling unsolicited email messages (spam);
5. Cable descramblers and black boxes which includes devices intended to obtain cable and satellite signals for free;
6. Child pornography which includes pornographic materials involving minors;
7. Copyright unlocking devices which includes Mod chips or other devices designed to circumvent copyright protection;
8. Copyrighted media which includes unauthorized copies of books, music, movies, and other licensed or protected materials;
9. Copyrighted software which includes unauthorized copies of software, video games and other licensed or protected materials, including OEM or bundled software;
10. Counterfeit and unauthorized goods which includes replicas or imitations of designer goods; items without a celebrity endorsement that would normally require such an association; fake autographs, counterfeit stamps, and other potentially unauthorized goods;
11. Drugs and drug paraphernalia which includes illegal drugs and drug accessories, including herbal drugs like salvia and magic mushrooms;
12. Drug test circumvention aids which includes drug cleansing shakes, urine test additives, and related items;
13. Endangered species which includes plants, animals or other organisms (including product derivatives) in danger of extinction;
14. Gaming/gambling which includes lottery tickets, sports bets, memberships/ enrolment in online gambling sites, and related content;

15. Government IDs or documents which includes fake IDs, passports, diplomas, and noble titles;
16. Hacking and cracking materials which includes manuals, how-to guides, information, or equipment enabling illegal access to software, servers, website, or other protected property;
17. Illegal goods which includes materials, products, or information promoting illegal goods or enabling illegal acts;
18. Miracle cures which includes unsubstantiated cures, remedies or other items marketed as quick health fixes;
19. Offensive goods which includes literature, products or other materials that:
  - (a) Defame or slander any person or groups of people based on race, ethnicity, national origin, religion, sex, or other factors;
  - (b) Encourage or incite violent acts;
  - (c) Promote intolerance or hatred.
20. Offensive goods, crime which includes crime scene photos or items, such as personal belongings, associated with criminals;
21. Pyrotechnic devices, combustibles, corrosives and hazardous materials which includes explosives and related goods; toxic, flammable, and radioactive materials and substances;
22. Regulated goods which includes air bags; batteries containing mercury; Freon or similar substances/refrigerants; chemical/industrial solvents; government uniforms; car titles; license plates; police badges and law enforcement equipment; lock-picking devices; pesticides; postage meters; recalled items; slot machines; surveillance equipment; goods regulated by government or other agency specifications;
23. Securities which includes government bonds or related financial products;
24. Tobacco and cigarettes which includes cigarettes, cigars, chewing tobacco, and related products;
25. Traffic devices which includes radar detectors/jammers, license plate covers, traffic signal changers, and related products;
26. Weapons which includes firearms, ammunition, knives, brass knuckles, gun parts, and other armaments;
27. Wholesale currency which includes discounted currencies or currency exchanges;
28. Live animals or hides/skins/teeth, nails and other parts etc. of animals;
29. Multi-Level Marketing collection fees;
30. Matrix sites or sites using a matrix scheme approach;
31. Work-at-home approach and/or Work-at-home information;
32. Drop-shipped merchandise;
33. Any product or service which is not in compliance with all applicable laws and regulations whether federal, state, local or international, including the laws of India;
34. The Merchant providing services that have the potential of casting the Payment Gateway Facilitators in a poor light and/or that may be prone to Buy & Deny attitude of the cardholders when billed (e.g. Adult material/ Mature content/Escort services/ friend finders) and thus leading to chargeback and fraud losses;
35. Businesses or website that operate within the scope of laws which are not absolutely clear or are ambiguous in nature (e.g. Web-based telephony, Website supplying medicines or controlled substances, website that promise online match-making);

36. Businesses out rightly banned by law (e.g. Betting & Gambling/ publications or content that is likely to be interpreted by the authorities as leading to moral turpitude or decadence or incite caste/communal tensions, lotteries/sweepstakes & games of chance;
37. The Merchant who deal in intangible goods/ services (eg. Software download/ Health/ Beauty Products), and businesses involved in pyramid marketing schemes or get-rich-quick schemes. Any other product or Service, which in the sole opinion of either the Partner Bank or the Acquiring, is detrimental to the image and interests of either of them / both of them, as communicated by either of them/ both of them to the Merchant from time to time. This shall be without prejudice to any other terms & conditions mentioned in this Agreement;
38. Mailing lists
39. Virtual currency, Cryptocurrency, prohibited investments for commercial gain or credits that can be monetized, re-sold or converted to physical or digital goods or services or otherwise exit the virtual world.
40. Money laundering services.
41. Database providers (for tele-callers).
42. Bidding/Auction houses.
43. Activities prohibited by the Telecom Regulatory Authority of India
44. Any other activities prohibited by applicable law.