

STANDARD TERMS (08 – V.2)
AS APPLICABLE TO THE SERVICES PROVIDED TO
ICICI MERCHANT SERVICES PVT LTD BY SERVICE PROVIDERS

REGISTERED ON FEBRUARY 23, 2007
WITH THE SUB-REGISTRAR OF ASSURANCES VII, NEW DELHI
VIDE REGISTRATION NO. 272 IN BOOK NO.4, VOL NO. 1326
FROM PAGES 1 TO 13

STANDARD TERMS (07 – V.1)
AS APPLICABLE TO THE SERVICES PROVIDED TO
ICICI MERCHANT SERVICES PVT LTD BY SERVICE PROVIDER

The Standard Terms set out herein shall, if the Service Provider Agreement so provides, be applicable to the Services provided by the Service Provider. If there is any inconsistency between the Standard Terms and the Service Provider Agreement, the Service Provider Agreement will prevail.

1. DEFINITIONS AND CONSTRUCTION

1.1 In the Service Provider Agreement and these Standard Terms, unless there is anything repugnant to the subject or context thereof, the expressions listed below shall have the following meanings viz.:

“Affiliate of ICICI Merchant Services Pvt Ltd” means and includes :

- (a) any company which is the holding company or subsidiary of ICICI Merchant Services Pvt Ltd, or
- (b) a person under the control of or under common control with ICICI Merchant Services Pvt Ltd, or
- (c) any person, in more than 26% of the voting securities of which ICICI Merchant Services Pvt Ltd has a direct or beneficial interest or control.

For the purpose of the definition of “Affiliate of ICICI Merchant Services Pvt Ltd”, “control” includes the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting capital, by contract or otherwise.

“Effective Date” means the date specified in Schedule I to the Service Provider Agreement as the effective date of the Service Provider Agreement.

“Material Adverse Effect” means the effect or consequence of any event or circumstance which is or is likely to be :

- (i) adverse to the ability of the Service Provider or any person to perform or comply with any of their respective obligations under the Transaction Documents in accordance with their respective terms; or
- (ii) prejudicial to any of the businesses, operations or financial condition of the Service Provider or of any person who is party to any Transaction Documents.

“RBI” means Reserve Bank of India.

“Service Provider” means the person(s) named in Schedule I to the Service Provider Agreement and shall, unless it be repugnant to the subject or as the context may permit or require, include, (i) in the case of a company, its successors and permitted assigns, (ii) in the case of a partnership firm, any or each of the partners and survivor(s) of them and the partners from time to time (both in their personal capacity and as partners of the firm) and their respective heirs, legal representatives, executors, administrators and permitted assigns, successors of the firm, (iii) in the case of a proprietary concern, the proprietor / proprietress (both in his / her personal capacity and as proprietor / proprietress of the concern) and his /

her respective heirs, legal representatives, executors, administrators and permitted assigns, successors of the concern, (iv) in the case of a HUF, the Karta of the HUF and any or each of the adult members / coparceners of the HUF and the survivor(s) of them (both in their capacity as coparceners / members of the aforesaid joint HUF and also in their personal capacity) and their respective heirs, legal representatives, executors, administrators and permitted assigns, successors, (v) in the case of an individual, his / her / their respective heirs, legal representatives, executors, administrators and permitted assigns; (vi) in the case of a trust with individuals as trustees, the trustee(s) for the time being, its successors and permitted assigns.

Reference to the “Service Provider” shall in case there are more than one persons engaged as service providers, mean, as the subject or context may permit or require, each of them or any one of more of them.

“Service Provider Agreement” means the particular Service Provider Agreement entered into between the Service Provider and ICICI Merchant Services Pvt Ltd in respect of the Services, all Schedules to the Service Provider Agreement, all writings / instruments, etc. in relation to the Services, and all amendments made to the Service Provider Agreement from time to time. Unless the terms “Standard Terms” and the “Service Provider Agreement” are used separately, the term “Service Provider Agreement”, wherever used in the Service Provider Agreement or these Standard Terms, shall be deemed to refer to the Service Provider Agreement read together with and including these Standard Terms.

“Transaction Documents” include the Service Provider Agreement, these Standard Terms, all other agreements, instruments, undertakings, indentures, deeds, writings and other documents, whether financing, security or otherwise executed or entered into, or to be executed or entered into, by the Service Provider or as the case may be, any other person, in relation, or pertaining, to the transactions contemplated by, or under the Transaction Documents, and each such Transaction Documents as amended from time to time.

1.2 Unless the contrary intention appears:

(i) a reference to:

an agreement / document / undertaking / deed / instrument / indenture / writing includes all amendments made thereto from time to time as also all schedules, annexures and appendices thereto;

an “amendment” includes a supplement, modification, novation, replacement or re-enactment and “amended” is to be construed accordingly;

“authorisation” includes an authorisation, consent, clearance, approval, permission, resolution, licence, exemption, filing and registration;

“encumbrance” includes a mortgage, charge, lien, pledge, hypothecation, security interest or any lien or any right of

any description whatsoever;

“person” includes an individual, statutory corporation, body corporate, partnership, joint venture, association of persons, Hindu Undivided Family (HUF), societies (including co-operative societies), trust, unincorporated organisation, government (central, state or otherwise), sovereign state, or any agency, department, authority or political subdivision thereof, international organisation, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and assigns and in case of an individual shall include his legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being;

“law” includes any constitution, statute, law, rule, regulation, ordinance, judgement, order, decree, authorisation, or any published directive, guideline, requirement or governmental restriction having the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, whether in effect as of the date of the Service Provider Agreement or thereafter and each as amended from time to time;

a Sub-clause, Section or a Schedule of these Standard Terms shall denote a reference to such Sub-clause, Section or Schedule as specified, of these Standard Terms;

the words “include” or “including” shall be construed without limitation;

a gender shall include references to the female, male and neuter genders;

a "month" is a reference to a period starting on one day in a calendar month and ending on the date immediately before the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month;

(ii) the singular includes the plural (and vice versa);

(iii) the index to and the headings in these Standard Terms are inserted for convenience of reference only and are to be ignored in construing and interpreting these Standard Terms;

(iv) all approvals, permissions, consents or acceptance required from ICICI Merchant Services Pvt Ltd for any matter shall require the “prior”, “written” approval, permission, consent or acceptance of ICICI Merchant Services Pvt Ltd;

(v) the words ‘hereof’, ‘herein’, and ‘hereto’ and words of similar import when used with reference to a specific Section or Sub-clause in, or Schedule to, these Standard Terms shall refer to such Section or Sub-clause in, or Schedule to these Standard Terms, and when used otherwise than in connection with specific Sections, Sub-clauses or Schedules, shall refer to the Standard Terms as a whole;

(vi) in the event of any disagreement or dispute between ICICI Merchant Services Pvt Ltd and the Service Provider regarding the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of ICICI Merchant Services Pvt Ltd as to the materiality or reasonableness of any of the foregoing shall be final and binding on the Service Provider;

(vii) all Schedule(s) to the Service Provider Agreement and other documents in relation to the Services shall form an integral part of the Service Provider Agreement and

such documents respectively.

(viii) The expression “personnel” wherever appearing in these Standard Terms in relation to the Service Provider shall include its officials, directors, employees, consultants, contractors, agents, sub-contractors, sub-agents, nominees, representatives, designees, for all purposes and intents.

(ix) All capitalised terms used but not defined in these Standard Terms shall have the respective meanings assigned to them under the Service Provider Agreement (including the Schedule(s) thereto).

2. REPRESENTATIONS, WARRANTIES, CONFIRMATIONS AND UNDERTAKINGS BY THE SERVICE PROVIDER

The following representation, warranties, confirmations are made by the Service Provider :

Representations

The Service Provider makes the following representations, declarations, warranties, covenants, agreements and confirms that they are and will continue to remain, true, correct, valid and subsisting in every respect as of the date(s) of the Transaction Documents, the provision of the Services and the execution of each amendment to the Service Provider Agreement, which representations, declarations, warranties and agreements shall survive the termination of the Transaction Documents:

(i) All the information provided by the Service Provider to ICICI Merchant Services Pvt Ltd are true and accurate in all material respects, are not misleading and does not omit any material fact, the omission of which would make any fact or statement therein misleading and the other representations and warranties wherever provided by the Service Provider to ICICI Merchant Services Pvt Ltd shall be deemed to form part of the representations and warranties herein made.

(ii)(a) The Service Provider has the competence and authority to enter into the Transaction Documents and to carry on its business and operations as is being or is proposed to be conducted.

(b) All the licenses, permits and authorizations required for carrying on its business or industry and performing the Services have been obtained and are in full force and effect.

(c) The Service Provider is in compliance in all respects with all laws, including environmental laws, and regulations affecting its assets, its business and operations and has good title to or valid leases or licenses of, or is otherwise entitled to use its assets.

(iii) Neither the execution and delivery of the Service Provider Agreement and the other Transaction Documents, nor the consummation of the transactions contemplated thereby, or the fulfillment of or compliance with the terms and conditions of the Service Provider Agreement and the other Transaction Documents, conflict with or result in a breach of or a default under any of the terms, conditions or provisions of any legal restriction (including, without limitation, any judgment, order, injunction, decree or ruling of any court or governmental authority, or any federal, state, local or other law, statute, rule or regulation) or any covenant or agreement or document or writing or instrument to which it is a party, or by which the Service Provider or any of

the property of the Service Provider is bound, nor does such execution, delivery, consummation or compliance violate or result in the violation of its constitutional documents.

(iv) No default is subsisting or might result from the execution of, or the providing of the Services under, the Service Provider Agreement by the Service Provider;

(v) The Service Provider has complied in all material respects with all taxation laws in all jurisdictions in which it is subject to taxation and has filed all tax returns and paid all taxes and statutory dues due and payable by it and, to the extent any taxes are not due, has established reserves that are adequate for the payment of those taxes and statutory dues.

(vi) Where the accounts are required to be audited under applicable law, the most recent audited accounts of the Service Provider: have been duly audited and prepared in accordance with applicable accounting principles and practices and represent a true and fair view of its financial condition AND there has been no Material Adverse Effect since the date on which those accounts were drawn up.

(vii) Except to the extent disclosed to ICICI Merchant Services Pvt Ltd in writing –

(a) no litigation, arbitration, administrative or other proceedings by government, governmental authority, official or entity are pending or threatened against the Service Provider or its assets, which, if adversely determined, might have a Material Adverse Effect.

(b) The Service Provider has not taken any action / other steps / legal proceedings started by or against it in any court of law / other authorities for its insolvency, bankruptcy, winding up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Service Provider or of any or all of its assets.

(viii) Except as otherwise disclosed to ICICI Merchant Services Pvt Ltd in writing or unless otherwise permitted by ICICI Merchant Services Pvt Ltd, there are no encumbrances subsisting or in existence on any of the assets / properties / monies of ICICI Merchant Services Pvt Ltd and/or the customers of ICICI Merchant Services Pvt Ltd which are in the possession of the Service Provider or which are lying with the Service Provider.

(ix) There are no criminal proceedings instituted against the Service Provider and/or any of its personnel.

(x) The Service Provider has complied with all the laws including labour enactment, rules, authorisations issued by the Central, State and local authorities of the country where the Services are being performed / personnel of the Service Provider are located and taken all required permissions for performing the Services.

Confirmations, covenants, undertakings

(i) The Service Provider shall comply with the terms and conditions specified in the Service Provider Agreement and all other Transaction Documents as also ensure compliance of the Transaction Documents by its personnel and relevant persons who are party to / have executed or furnished the Transaction Documents. The Service Provider shall adhere to fair practice in performance of the Services.

(ii) The Service Provider shall obtain and keep all approvals in relation to the transactions contemplated under the Transaction Documents / performance of the

Service valid throughout the tenure of the Service Provider Agreement. The Service Provider shall bring to the notice of ICICI Merchant Services Pvt Ltd any expiry, modification, or suspension of any such approvals / licenses and the initiation of any adverse action by the relevant authority concerned in relation thereto; The Service Provider shall obtain and furnish such approvals as may be required in connection with the transactions contemplated under the Service Provider Agreement.

(iii) The Service Provider shall, at its own costs, undertake all repair, replacement, upgradation or procurement of equipment / infrastructural facilities necessary for the provision of the Services.

(iv) The Service Provider shall not mislead the customers of ICICI Merchant Services Pvt Ltd and shall convey the correct terms and conditions of the products of ICICI Merchant Services Pvt Ltd to such customers.

(v) No officer / director / employee / agent / representative of ICICI Merchant Services Pvt Ltd or immediate family member of such officer / director / employee / representative has received or be induced to receive anything of value of any kind from the Service Provider or its personnel in connection with the transactions contemplated under the Transaction Documents; None of the aforesaid persons has a business relationship of any kind with the Service Provider or its personnel.

(vi) The Service Provider shall not exercise any lien or right of set off or appropriation on any of the assets, properties, monies, documents, instruments or material belonging to ICICI Merchant Services Pvt Ltd and / or customers of ICICI Merchant Services Pvt Ltd and in the custody of the Service Provider for any reason whatsoever.

(vii) The Service Provider shall regularly provide updates to ICICI Merchant Services Pvt Ltd with respect to the provision of the Services and shall meet with the officials designated by ICICI Merchant Services Pvt Ltd to discuss and review the performance of the Service Provider at such intervals as may be agreed between the Parties.

(viii) The Service Provider shall not violate any proprietary and intellectual property rights of ICICI Merchant Services Pvt Ltd and / or any third party, including without limitation, confidential relationships, patent, trade secrets, copyright and any other proprietary rights.

(ix) ICICI Merchant Services Pvt Ltd shall have a paramount charge, lien and right of set off on all monies payable, to the Service Provider or standing to the credit of the Service Provider with ICICI Merchant Services Pvt Ltd or any of Affiliates of ICICI Merchant Services Pvt Ltd against all or any sums which the Service Provider is liable to pay under the Service Provider Agreement and/or the other Transaction Documents or in respect of any other arrangement entered into by the Service Provider with ICICI Merchant Services Pvt Ltd or Affiliates of ICICI Merchant Services Pvt Ltd. In the event that there remains any amount due from the Service Provider either to ICICI Merchant Services Pvt Ltd or any of the Affiliates of ICICI Merchant Services Pvt Ltd under the Service Provider Agreement or otherwise, the monies payable to the Service Provider or standing to the credit of the Service Provider shall be applied first towards the outstanding amount owed by the Service Provider to ICICI Merchant Services Pvt Ltd or

Affiliates of ICICI Merchant Services Pvt Ltd under the Service Provider Agreement or any other agreement / facilities and the Service Provider consents, confirms and agrees to execute all such documents/ writings in this regard. For the aforesaid purpose, the Service Provider irrevocably authorises ICICI Merchant Services Pvt Ltd to intimate such of Affiliates of ICICI Merchant Services Pvt Ltd with whom the Service Provider has an account, to adjust the amount lying to the credit of the Service Provider's account with the Affiliates of ICICI Merchant Services Pvt Ltd against all the dues payable by the Service Provider to ICICI Merchant Services Pvt Ltd and any discharge given by ICICI Merchant Services Pvt Ltd to such Affiliate of ICICI Merchant Services Pvt Ltd in this regard, shall be valid and binding on the Service Provider.

(x) The Service Provider shall comply with the provisions of applicable laws in relation to the transactions contemplated under the Service Provider Agreement and the other Transaction Documents including all labour laws, Sarbanes Oxley Act, 2002 of the United States of America, Indian Banks Association's Code for collection of dues and repossession of security, fair practice codes (including fair practice code for lending, recovery, credit cards) and other codes of conduct prescribed by ICICI Merchant Services Pvt Ltd, any law or authority or association, guidelines applicable to credit cards issued by RBI / other regulators / association, all applicable laws, extant policies and guidelines specified by ICICI Merchant Services Pvt Ltd or any authorities, from time to time as also their own code for collection of dues and shall provide all information and records of the transactions to ICICI Merchant Services Pvt Ltd as and when required by ICICI Merchant Services Pvt Ltd. The Service Provider shall not resort to invasion of privacy, viz. persistently bothering the customers of ICICI Merchant Services Pvt Ltd at odd hours, violation of "do not call" code, etc. The Service Provider shall have in place appropriate code of conduct for its personnel with a provision of punitive action in case of any breach by its personnel.

(xi) The Service Provider shall develop and establish a robust framework for documenting, maintaining and testing business 'continuity and recovery procedures' in relation to the Services. The Service Provider shall periodically test such business continuity and recovery plan. ICICI Merchant Services Pvt Ltd shall be entitled to conduct joint testing and recovery exercise with the Service Provider. ICICI Merchant Services Pvt Ltd shall be entitled to intervene and take such appropriate measures (including appointing another person to provide the Services or the possibility of bringing the outsourced activity back in-house) in the event the performance of the Services by the Service Provider are interrupted for any reasons whatsoever.

(xii) The Service Provider shall segregate and keep separately all information, documents, properties, assets, monies and records pertaining to the Services, ICICI Merchant Services Pvt Ltd and customers of ICICI Merchant Services Pvt Ltd as also hold the same in trust for ICICI Merchant Services Pvt Ltd and customers of ICICI Merchant Services Pvt Ltd.

(xiii) ICICI Merchant Services Pvt Ltd shall be entitled to review and monitor the security practices and control processes of the Service Provider on a regular basis. The

Service Provider shall immediately notify ICICI Merchant Services Pvt Ltd of any breach of security and leakage of any information including confidential customer related information. The Service Provider shall be liable for all damages arising out of such breach of security.

(xiv) The Service Provider shall not resort to intimidation or harassment of any kind either verbal or physical, against any person in the process of collection of any monies on behalf of ICICI Merchant Services Pvt Ltd, including acts intended to humiliate publicly or intrude the privacy of the family members, referees or friends of the customers of ICICI Merchant Services Pvt Ltd, make threatening and anonymous calls or make false and misleading representations.

(xv) ICICI Merchant Services Pvt Ltd will be entitled to notify RBI or any other authority of the details of the Services and/or default in performance of the Services by the Service Provider and/or that it has entered into material outsourcing or is planning to vary any such outsourcing arrangements.

(xvi) The Service Provider authorises ICICI Merchant Services Pvt Ltd to exchange, share or part with all the information and data relating to the customers sourced by the Service Provider and/or the transactions contemplated under the Service Provider Agreement and the other Transaction Documents with other banks / financial institutions / credit bureaus / agencies / statutory bodies / Affiliates of ICICI Merchant Services Pvt Ltd as may be required for use or processing of the said information / data by such person/s or furnishing of the processed information thereof to other banks / financial institutions / credit providers / users registered with such persons and shall not hold ICICI Merchant Services Pvt Ltd and other relevant persons liable for use of this information.

(xvii) ICICI Merchant Services Pvt Ltd shall be entitled to conduct audits, on the Service Provider whether by its internal or external auditors, or by agents appointed to act on its behalf and to obtain copies of any audit or review reports and findings made on the Service Provider in conjunction / connection with the Services performed for ICICI Merchant Services Pvt Ltd.

(xviii) ICICI Merchant Services Pvt Ltd shall be entitled to access the books and records of the Service Provider in relation to the transactions contemplated in the Service Provider Agreement and the other Transaction Documents as also access all the documents, records or transactions and other necessary information given to, stored or processed by the Service Provider within a reasonable time. The Service Provider shall provide unfettered access / shall ensure unfettered access to information by ICICI Merchant Services Pvt Ltd, RBI or their authorised person. The Service Provider agrees that in the event of failure by the Service Provider to provide the information as stated above within a reasonable period, the Service Provider shall reimburse to ICICI Merchant Services Pvt Ltd all amounts in respect of the supervisory fees which ICICI Merchant Services Pvt Ltd would have paid / is required to pay to RBI. The Service Provider recognizes that RBI or their authorized person shall be entitled to communicate directly with the Service Provider. ICICI Merchant Services Pvt Ltd shall be entitled to retain an appropriate level of control over the activities carried out in relation to the Services and shall have the right to intervene to ensure legal and regulatory obligations.

(xix) The rights specified in Service Provider Agreement and the other Transaction Documents shall also accrue to and be exercisable by RBI or persons authorized by RBI. RBI or persons authorised by it shall be entitled to access the Service Provider's documents, records of transactions, and other necessary information given to, stored or processed by the Service Provider.

(xx) The Service Provider shall comply with all applicable laws in relation to the "do not call registry" (the "registry").

(xxi) ICICI Merchant Services Pvt Ltd shall at all times during the tenure of the Service Provider Agreement, be entitled to monitor and assess the performance of the Services by the Service Provider.

(xxii) The rights available to ICICI Merchant Services Pvt Ltd under the Service Provider Agreement and the other Transaction Documents may be exercised by ICICI Merchant Services Pvt Ltd either by itself or through such other person/s as it may nominate / designate / specify from time to time.

(xxiii) The Service Provider shall not issue any communication / letter on behalf of ICICI Merchant Services Pvt Ltd or in its own name in relation to the Services, to the customers of ICICI Merchant Services Pvt Ltd, unless otherwise approved by ICICI Merchant Services Pvt Ltd in writing.

(xxiv) Unless the Service Provider is a subsidiary of ICICI Merchant Services Pvt Ltd, the Service Provider is not owned or controlled by any director or officer / employee of ICICI Merchant Services Pvt Ltd or their relatives having the same meaning as assigned under Section 6 of the Companies Act, 1956.

(xxv) The Service Provider shall preserve / maintain the documents, data and records in relation to the Services in accordance with the applicable laws relating to ICICI Merchant Services Pvt Ltd and as per directions of ICICI Merchant Services Pvt Ltd in writing in this regard. The Service Provider shall furnish all such records, data and documents as may be required by ICICI Merchant Services Pvt Ltd.

The Service Provider shall put in place a comprehensive fool-proof system for warehousing safe custody and retrieval of all records, data. The Service Provider shall keep those premises comprehensively insured and secured;

(xxvi) The Service Provider shall familiarize itself with the grievance redressal policy of ICICI Merchant Services Pvt Ltd relating to outsourcing services; the Service Provider shall communicate the grievance redressal procedure of ICICI Merchant Services Pvt Ltd to the customers of ICICI Merchant Services Pvt Ltd and shall notify ICICI Merchant Services Pvt Ltd within the specified time period of any claims / complaints / grievances made by the customers.

(xxvii) The Service Provider shall obtain necessary work permit, visa, residency documents required by the appropriate authority of the relevant country / jurisdiction in relation to the Services and for its personnel and keep the same valid during the subsistence of the Service Provider Agreement.

(xxviii) The Service Provider shall comply with all government policies and political, social, economic and legal conditions in the countries where such Service Provider is based as also where the Services are rendered and establish sound procedures for dealing with country risk problems; the Service Provider shall also ensure that

it has appropriate contingency and exit strategies. The Services should be conducted in a manner so as not to hinder efforts to supervise or reconstruct activities outsourced by ICICI Merchant Services Pvt Ltd in a timely manner.

(xxix) The Service Provider shall not conduct its business which is inconsistent with the overall strategic goals as indicated by ICICI Merchant Services Pvt Ltd in relation to the Services. The Service Provider shall exercise the same high standard of care in performing the Services as would be exercised by ICICI Merchant Services Pvt Ltd if the activities were conducted within ICICI Merchant Services Pvt Ltd and not outsourced.

(xxx) The Service Provider shall communicate to ICICI Merchant Services Pvt Ltd all incidents of fraud, suspicious transactions including fraudulent / suspicious currency transactions immediately upon occurrence of such incidents.

(xxxi) The Service Provider shall not create any encumbrance on any properties / assets / monies of ICICI Merchant Services Pvt Ltd or the customers of ICICI Merchant Services Pvt Ltd which are in the possession of the Service Provider or which are lying with the Service Provider.

(xxxii) The Service Provider shall take appropriate precautions not to breach the privacy of ICICI Merchant Services Pvt Ltd, customers of ICICI Merchant Services Pvt Ltd, or any relevant third party during the course of performance of the Services.

(xxxiii) ICICI Merchant Services Pvt Ltd may, in furtherance of the provision of the Services by the Service Provider, permit the Service Provider to utilize a certain part of the office premises of the ICICI Merchant Services Pvt Ltd solely for the purpose of providing the Services to ICICI Merchant Services Pvt Ltd and subject to such terms and conditions as may be stipulated by ICICI Merchant Services Pvt Ltd. Such permission shall not be considered as creating any right over the aforementioned part of the office premises in favour of the Service Provider and the Service Provider shall not be entitled to further permit any third party to use the aforementioned part of the office premises for any reason whatsoever.

(xxxiv) In the event ICICI Merchant Services Pvt Ltd is required to pay any supervisory or other fee or penalty imposed or levied by any authority in connection with the Services, the Service Provider agrees to reimburse the same to ICICI Merchant Services Pvt Ltd.

3. PERSONNEL, SUB-CONTRACTORS AND AGENTS

(a) The Service Provider shall be responsible for the selection, hiring, assigning and supervising / due diligence of the personnel and shall employ sufficient number of personnel to provide the Services in a prompt and efficient manner. All such personnel shall work under the supervision, control and direction of the Service Provider. The Service Provider shall be solely responsible for all negotiations with personnel relating to salaries and benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. All personnel engaged by the Service Provider shall be in sole employment / control of the Service Provider and the Service Provider shall be solely responsible for their salaries, wages, statutory payments, etc. Under no circumstances shall ICICI

Merchant Services Pvt Ltd be liable for any payment or claim or compensation (including but not limited to compensation on account of injury / death / termination) of any nature to the personnel of the Service Provider. Nothing in the Service Provider Agreement shall be construed as creating any contractual or other relationship between ICICI Merchant Services Pvt Ltd and any personnel of the Service Provider, nor any obligation on the part of ICICI Merchant Services Pvt Ltd to pay or see to the payment of any money due to any such personnel.

(b) The personnel of the Service Provider shall continue to be the personnel of the Service Provider and work under its directions and shall not become or claim any employment from ICICI Merchant Services Pvt Ltd/ or any customer of ICICI Merchant Services Pvt Ltd on whose behalf the Service Provider is appointed by ICICI Merchant Services Pvt Ltd, by virtue of providing the Services, irrespective of the location of the performance of the Services.

(c) The Service Provider shall be responsible for all negotiations with its personnel relating to salaries, benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. The Service Provider shall furnish such records and information as may be required by ICICI Merchant Services Pvt Ltd in relation to the above and at such periodicity as may be specified by ICICI Merchant Services Pvt Ltd.

(d) The Service Provider shall ensure that the Service Provider has suitably trained, qualified, experienced and competent personnel for the performance of the Services. If so requested by ICICI Merchant Services Pvt Ltd, the Service Provider shall provide evidence of the previous experience, qualifications and competence of any personnel engaged in the performance of the Services.

(e) The Service Provider shall be solely liable for the acts, deeds and things done by the personnel of the Service Provider.

(f) The Service Provider shall verify the antecedents of the personnel it desires to engage for provision of the Services and shall ensure that it does not engage or continue to engage any person with a criminal record / conviction and shall bar any such person from participating directly or indirectly in the provision of Services.

(g) The Service Provider shall not subcontract any of its responsibilities contained in the Service Provider Agreement to any sub-agent or subcontractor without prior written permission of ICICI Merchant Services Pvt Ltd, which ICICI Merchant Services Pvt Ltd may deny at its absolute discretion and if ICICI Merchant Services Pvt Ltd gives such prior written permission (which permission may be of a general or specific nature), it shall not be construed as waiver of any accrued rights and / or liabilities and the Service Provider shall be fully responsible for all acts and omissions of its sub-contractors or sub-agents.

(h) The Service Provider shall ensure that the sub-contractor / sub-agent are properly trained to handle with care and sensitivity, their responsibilities particularly aspects like soliciting customers, hours of calling, privacy of customer information and conveying the correct terms and conditions of the products of ICICI

Merchant Services Pvt Ltd on offer, etc. as specified by ICICI Merchant Services Pvt Ltd.

(i) The Service Provider agrees and confirms that all the provisions applicable to the Service Provider in relation to its personnel shall also be ipso facto applicable to the sub-contractors and sub-agents.

(j) The Service Provider shall withdraw or not permit any of the Service Provider's personnel from providing the Services if, in the sole opinion of ICICI Merchant Services Pvt Ltd:

(i) The quality of service rendered by the personnel is not in accordance with the quality specifications stipulated by ICICI Merchant Services Pvt Ltd;

(ii) It is not in the interest of ICICI Merchant Services Pvt Ltd that such personnel of the Service Provider continues to be involved in the provision of Services.

(k) The Service Provider shall at all times use all reasonable efforts to maintain discipline and good order amongst its personnel and ensure that it has put in place an appropriate code of conduct for its employees / personnel and that all its personnel are aware of the code of conduct governing the Services and resultant disciplinary actions in case of breach of code of conduct by them during the course of their engagement for provision of Services. The Service Provider shall also ensure that its employees / personnel are suitably trained to perform the Services.

(l) The Service Provider shall be responsible for compliance of all laws, rules, regulations, orders, notifications and directions applicable in the relevant country/ jurisdiction of its operation in respect of its personnel (including but not limited to Contract Labour Act, Payment of Bonus Act, Minimum Wages Act, Provident Fund laws, Workmen's Compensation Act and such other laws of relevant country/ jurisdiction) and shall establish and maintain all proper records including, but not limited to, accounting records required by any law, code, practice or corporate policy applicable to it from time to time, including records and returns as applicable under labour legislations.

(m) The Service Provider shall verify the identity and address of all its personnel and collect documentary proof satisfactory to ICICI Merchant Services Pvt Ltd and shall furnish the same to ICICI Merchant Services Pvt Ltd and when required by ICICI Merchant Services Pvt Ltd.

4. CONFIDENTIALITY

(a) The Service Provider acknowledges and agrees that it is aware of the sensitivity and banking secrecy obligations of ICICI Merchant Services Pvt Ltd in keeping the customer information and transaction records and shall ensure neither the Service Provider nor any of its personnel will do any act violating the same.

All details, documents, data, applications, software, systems, papers, statements and business / customer information, transaction records which is communicated / submitted (the "Confidential Information") by ICICI Merchant Services Pvt Ltd or any of its representatives / customers to the Service Provider and /or its personnel shall be treated as absolutely confidential and the Service Provider irrevocably agrees and undertakes and ensures that the Service Provider and its personnel shall keep the

same secret and confidential and that they shall not disclose the same, in whole or in part to any person without the prior written permission of ICICI Merchant Services Pvt Ltd nor shall use or allow to be used any Confidential Information, other than as may be necessary for the due performance of the Service Provider's obligation under the Service Provider Agreement and the other Transaction Documents. The Service Provider agrees to ensure that its personnel also undertake a similar obligation as contained in this Section.

(c) The Service Provider shall ensure that the access to customer information by staff of the Service Provider shall be on "need to know" basis i.e. limit to those areas where the information is required in order to perform the Services.

(d) The Service Provider agrees :

(i) To take all necessary action to protect the Confidential Information against misuse, loss, destruction, deletion and/or alteration.

(ii) Not to misuse or permit misuse directly or indirectly, commercially exploit the Confidential Information for economic or other benefit.

(iii) Not to make or retain any copies or record of any Confidential Information submitted by ICICI Merchant Services Pvt Ltd other than as may be required for the performance of the Service Provider's obligation under the Service Provider Agreement and the other Transaction Documents.

(iv) To notify the ICICI Merchant Services Pvt Ltd promptly of any unauthorized or improper use or disclosure of the Confidential Information.

(v) To return all the Confidential Information that is in the custody of the Service Provider upon termination/expiry of the Service Provider Agreement.

(vi) To ensure that the number(s) appearing in the "do not call registry" are not passed on to any unauthorized person/s or misused in any manner.

(vii) That ICICI Merchant Services Pvt Ltd shall be entitled to notify RBI in the event of any breach of security and leakage of confidential customer / ICICI Merchant Services Pvt Ltd related data / information / documents / records.

(e) The Service Provider shall not and that its personnel shall not disclose the terms and conditions of the Transaction Documents or disclose the Confidential Information to any third party unless such disclosure is required by law or for the purpose of performing the Service Provider's obligations under the Transaction Documents, provided that prior to any such disclosure, ICICI Merchant Services Pvt Ltd's prior written consent shall be obtained.

(f) It shall be the incumbent duty of the Service Provider to undertake not to disclose any business related information of ICICI Merchant Services Pvt Ltd to any third person and the Service Provider shall keep all knowledge of the business activities and affairs of ICICI Merchant Services Pvt Ltd strictly confidential and also to ensure that neither the Service Provider nor any of its personnel directly or indirectly assist any third person with the promotion of activities which may be prejudicial to the interest or in competition to the activities of ICICI Merchant Services Pvt Ltd.

(g) The Service Provider shall isolate and clearly identify ICICI Merchant Services Pvt Ltd's customer information, documents, records and assets to protect the

confidentiality of the information. In instances where the Service Provider acts as an outsourcing agent for multiple banks (with prior written permission of ICICI Merchant Services Pvt Ltd), care should be taken by the Service Provider to build strong safeguards so that there is no co-mingling of information / documents, records and assets.

(h) The Service Provider shall refrain from any action that could damage the integrity and reputation of ICICI Merchant Services Pvt Ltd; the Service Provider shall observe strict customer confidentiality and shall ensure that the customer interaction is consistent with the overall standards of ICICI Merchant Services Pvt Ltd.

(i) The Service Provider shall ensure that it has appropriate mechanisms and means to ensure adequate precautions to protect the privacy and confidentiality of all data pertaining to ICICI Merchant Services Pvt Ltd, the customers of ICICI Merchant Services Pvt Ltd and any other relevant third party in relation to the Service Provider Agreement, the other Transaction Documents or the Services.

(j) The provisions of this Section shall survive the termination of the Service Provider Agreement.

5. INDEMNITY

(a) The Service Provider shall, at its own expense, indemnify, defend and hold harmless ICICI Merchant Services Pvt Ltd and Affiliates of ICICI Merchant Services Pvt Ltd, their respective officers, directors, personnel, representatives, consultants, nominees, designees from and against any and all liability suffered or incurred (including but not limited to liabilities, judgments, damages, losses, claims, costs and expenses, including attorneys fees and expenses) or any other loss that may occur, arising from or relating to :

(i) Non-performance, inadequate performance, provision of deficient services, breach by the Service Provider, its personnel of any of the terms, conditions, covenants, representations, undertakings, obligations or warranties under the Service Provider Agreement, including but not limited to the obligations of the Service Provider pertaining to data protection, confidentiality and intellectual property rights of ICICI Merchant Services Pvt Ltd, or any guidelines issued by ICICI Merchant Services Pvt Ltd to the Service Provider from time to time;

(ii) Acts, omissions, errors, representations, misrepresentations, misconduct, negligence of the Service Provider and/or its personnel in performance of its obligations under the Service Provider Agreement;

(iii) Loss, misappropriations, misuse or damage to the documents or instruments / things that are in the possession of the Service Provider or its personnel or any other persons engaged by the Service Provider or within the control of the Service Provider;

(iv) Causation of any damages to the customers of ICICI Merchant Services Pvt Ltd through any acts or omissions of the Service Provider and/or its personnel;

(v) Contravention of any law, as may be applicable from time to time, or industry practice, or violation of any policies of the ICICI Merchant Services Pvt Ltd;

(vi) Technology failure, fraud, error, inadequate financial capacity to fulfil obligations and/or provide remedies;

(vii) Legal risks including but not limited to exposure to fines, penalties, or punitive damages resulting from

supervisory actions, as well as private settlements due to omissions and commissions of the Service Provider.

- (b) The Service Provider agrees that any notice or communication by an officer of ICICI Merchant Services Pvt Ltd under this Section shall be deemed as sufficient proof that ICICI Merchant Services Pvt Ltd has suffered or incurred liabilities (including but not limited to liabilities, judgments, damages, losses, claims, costs and expenses, including attorneys fees and expenses) or any other loss. The Service Provider shall upon receipt of such notice or communication immediately, without any delay or demur or contest, indemnify ICICI Merchant Services Pvt Ltd.
- (c) The Service Provider shall be liable to pay the amounts to ICICI Merchant Services Pvt Ltd, as determined by ICICI Merchant Services Pvt Ltd in its sole discretion under this provision, on demand, and ICICI Merchant Services Pvt Ltd shall be, without prejudice to its other rights and remedies, entitled to adjust the amounts so determined to be due from the Service Provider against the future payments due by ICICI Merchant Services Pvt Ltd to the Service Provider.
- (d) The Service Provider shall co-operate fully in defending any claim/s by any local, state or central authority against ICICI Merchant Services Pvt Ltd with respect to any levies, taxes, duties, fines, and/or penalties etc. due and payable by the Service Provider, and shall indemnify ICICI Merchant Services Pvt Ltd, fully and without limit, against the same.
- (e) The provisions of this section shall survive the termination of the Service Provider Agreement.

6. GOVERNING LAW AND ARBITRATION

(A) In the event the Services are being provided in India, then the following provisions shall apply:

(a) The provisions of the Service Provider Agreement and the other Transaction Documents shall be governed by and construed in accordance with Indian law, unless otherwise specified in any of the Transaction Documents.

(b)(i) Any dispute, controversy or claims arising out of or relating to the Service Provider Agreement and/or the other Transaction Documents or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

(ii) The dispute, controversy or claims arising out of or in connection with the Service Provider Agreement and/or the other Transaction Documents shall be referred to two (2) arbitrators, one (1) to be appointed by each party and such arbitrators shall then appoint a third arbitrator.

(iii) The place of arbitration shall be Mumbai and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made, in Mumbai.

(iv) The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian law.

(v) The award of the arbitrator shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled (but not obliged) to enter judgment thereon in any one or more of the highest courts having

jurisdiction. The Parties further agree (to the maximum extent possible and allowed to them) that such enforcement shall be subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 and neither Party shall seek to resist the enforcement of any award in India on the basis that award is not subject to such provisions.

(c) The rights and obligations of the Parties under, or pursuant to, this Section, including the arbitration agreement in this Section, shall be under the exclusive jurisdiction of the courts located at Mumbai.

(B) In the event the Services are being provided outside India and the amounts payable to the Service Provider by ICICI Merchant Services Pvt Ltd are less than US\$ 50,000 p.a., then the following provisions shall apply :

The rights and obligations of the Parties under, or pursuant to, the Service Provider Agreement and the other Transaction Documents, shall be governed by the laws of the place in which the Services are being provided, unless otherwise specified in any of the Transaction Documents

Any legal action or proceedings arising out of the Service Provider Agreement and the other Transaction Documents shall be brought in the highest courts of such place having pecuniary or territorial jurisdiction and the Parties submit themselves to the non-exclusive jurisdiction of such courts.

Provided, however, in the event the amounts payable by the Service Provider are more than US\$ 50,000 p.a. by ICICI Merchant Services Pvt Ltd, then the provision of Section 6(A) hereof shall apply.

(C) The outsourcing related to overseas operations of ICICI Merchant Services Pvt Ltd shall be governed by both the guidelines issued by RBI and the host country guidelines relating to such outsourcing / the Services. Where there are differences, the more stringent of the two would prevail. However, where there is no conflict, the host country guidelines shall prevail.

7. LIMITATION OF LIABILITY

Notwithstanding anything contained in the Service Provider Agreement or in any other document:

(a) Under no circumstances shall ICICI Merchant Services Pvt Ltd be liable to the Service Provider for direct, indirect, incidental, consequential, special or exemplary damages arising from termination of the Service Provider Agreement, even if ICICI Merchant Services Pvt Ltd has been advised of the possibility of such damages, such as, but not limited to, loss of revenue or anticipated profits or lost business;

(b) ICICI Merchant Services Pvt Ltd shall not have any liability whatsoever in case of any third party claims, demands, suit, actions, or other proceedings against the Service Provider or its personnel or any other person engaged by the Service Provider in the course of performance of the Service Provider's obligations under the Service Provider Agreement and/or the other Transaction Documents;

(c) Even in the course of providing the Services covered under the Service Provider Agreement and/or the other Transaction Documents, wherever, if the Service Provider is acting under the instructions of customers / third parties then for the limited purpose of those activities the Service

Provider shall be deemed to be acting as the agent of the said customers and third parties.

8. **INSURANCE**

The Service Provider shall maintain at its own costs, throughout the tenure of the Service Provider Agreement and any extensions thereof, insurance coverage for adequate amount in consultation with ICICI Merchant Services Pvt Ltd, including but not restricted to, Comprehensive General Liability Insurance covering accidental losses, bodily harm, injury, death of all individuals employed/assigned by Service Provider to perform the Services required under the Service Provider Agreement.

The Service Provider shall also take, at its own costs, insurance policies for adequate amount against dishonesty, theft, extortion, robbery, forgery, altered documents, fraud, fidelity and/or any other dishonest acts on the part of Service Provider's personnel or representatives, with ICICI Merchant Services Pvt Ltd as the loss payee / beneficiary.

The Service Provider shall procure at its own cost insurance to protect against any loss / damage which may be suffered by the Service Provider, ICICI Merchant Services Pvt Ltd and / or the customers of ICICI Merchant Services Pvt Ltd, as a result of any loss of any properties of ICICI Merchant Services Pvt Ltd and / or its customers entrusted to the Service Provider being lost in transit while in the custody of the Service Provider.

The Service Provider shall at its sole expense to provide for insurance of all property of the customers of ICICI Merchant Services Pvt Ltd, individuals, personnel assigned to perform the Services under the Service Provider Agreement, as may be required by ICICI Merchant Services Pvt Ltd upto such limits as may be specified by ICICI Merchant Services Pvt Ltd from time to time.

The Service Provider shall provide such documentary proof of compliance with this Section as may be required, from time to time, by ICICI Merchant Services Pvt Ltd or its auditors or any other authorities.

The Service Provider shall promptly notify ICICI Merchant Services Pvt Ltd of any actual or potential claim under any of the insurance policies referred to in this Section. Each such notice shall be accompanied by full details of the incidents giving rise to the claim. The Service Provider shall afford ICICI Merchant Services Pvt Ltd all such assistance as may be required for the preparation and negotiation of any claim under an insurance policy.

9. **PUBLICITY**

The Service Provider shall not use the name and/or trademark / service mark / logo / intellectual property of ICICI Merchant Services Pvt Ltd, the Affiliates of ICICI Merchant Services Pvt Ltd/ its group companies, subsidiaries, associates or any of its customers in any sales or marketing publication or advertisement, or in any other manner whatsoever without the prior written consent of ICICI Merchant Services Pvt Ltd.

10. **PROPRIETARY RIGHTS**

The Service Provider agrees that any product including but not limited to all information, reports, studies, software (including source codes, object codes and

executables) flow charts, diagrams and other tangible and intangible material of any nature whatsoever produced by or as a result of any of the Services rendered under the Service Provider Agreement shall be the sole and exclusive property of ICICI Merchant Services Pvt Ltd. In furtherance thereof, the Service Provider irrevocably grants, assigns, transfers to ICICI Merchant Services Pvt Ltd all rights, title and interest of any kind, in and to any such aforesaid product. The Service Provider shall not be entitled to make any use of any of the said materials except as may be expressly permitted in writing by ICICI Merchant Services Pvt Ltd.

11. **RELATIONSHIP**

Nothing contained in the Service Provider Agreement shall be construed or deemed to create any association, partnership or joint venture or employer-employee relationship in any manner whatsoever between the Parties. The Service Provider acknowledges that its rendering of the Services is solely within its own control, subject to the terms and conditions agreed upon and agrees not to hold itself out to be an employee or servant of ICICI Merchant Services Pvt Ltd or any subsidiary or Affiliate of ICICI Merchant Services Pvt Ltd. Unless otherwise provided in the Service Provider Agreement, the Service Provider shall have no right to enter into any agreement or arrangement for and / or on behalf of ICICI Merchant Services Pvt Ltd or to represent to any person, firm or corporation that it has such right or authority, without the prior written consent of ICICI Merchant Services Pvt Ltd. The Service Provider shall be solely liable for all the acts of omissions or commission, deeds and things done by the Service Provider and/or its personnel in the course of performance of obligations specified under the Service Provider Agreement and the other Transaction Documents.

12. **INSPECTION AND RIGHT TO AUDIT**

The Service Provider shall maintain in good order and as per generally accepted industry practices, its books of account in respect of the Services and shall allow ICICI Merchant Services Pvt Ltd, its management, its auditors and / or its regulators to enter upon the premises of the Service Provider and inspect, examine and audit the Service Provider's operations and business records which ICICI Merchant Services Pvt Ltd, its management, its auditors and / or its regulators in their absolute discretion deem to be relevant to the services and financial arrangement, as set forth in the Service Provider Agreement, with or without provision of prior notice as maybe deemed fit by ICICI Merchant Services Pvt Ltd at its sole discretion. In addition to the right to inspect, ICICI Merchant Services Pvt Ltd, its management, its auditors and / or its regulators shall also have the right to call for any information pertaining to the Service Provider's operations and business records which ICICI Merchant Services Pvt Ltd, its management, its auditors and / or its regulators in their absolute discretion deem to be relevant to the Services and financial arrangement, as set forth in the Service Provider Agreement and the other Transaction Documents. The Service Provider shall produce such information within such time as may be provided by ICICI Merchant Services Pvt Ltd, its management, its auditors and / or its regulators.

The Service Provider shall keep complete and accurate account of all records in relation with the Service Provider Agreement and the other Transaction

Documents in the manner and form stipulated by ICICI Merchant Services Pvt Ltd. The Service Provider forthwith upon being required by ICICI Merchant Services Pvt Ltd permit / ensure inspection, audit or permit taking copies of the records of the Service Provider which are relevant to the Service Provider Agreement and/or the other Transaction Documents.

The Service Provider shall co-operate in good faith with ICICI Merchant Services Pvt Ltd to correct any practice, which are found to be deficient during the audit within a reasonable time after receipt of the audit report from ICICI Merchant Services Pvt Ltd.

The Service Provider recognises the right of RBI to inspect / cause an inspection to be made of the Service Provider and its books and account by one or more of its officers or employees or other persons.

13. TERMINATION

a) Either Party may terminate the Service Provider Agreement by providing two (2) months prior written notice.

b) Notwithstanding anything herein contained, ICICI Merchant Services Pvt Ltd may without any notice, terminate the Service Provider Agreement under any one or more of the following conditions:

(i) In the event of default, breach or deficiency by the Service Provider and/or any other relevant person (excluding ICICI Merchant Services Pvt Ltd) in the performance of any of the Services under the Service Provider Agreement and/or the other Transaction Documents and/or the guidelines issued by ICICI Merchant Services Pvt Ltd to the Service Provider from time to time;

(ii) Breach of any representation, warranty, declaration, or covenant has occurred.

(iii) The Service Provider and/or any of its personnel commits a fraud or cheats ICICI Merchant Services Pvt Ltd and/or the customers of ICICI Merchant Services Pvt Ltd in relation to the Services.

(iv) In the event the provision of the Services is/are in contravention of any law and regulations, as may be applicable from time to time, or industry practice, or performs acts or omission that would under the circumstances amount to objectionable service;

(v) If the Service Provider and/or any other relevant person does not meet, or fails to meet any of ICICI Merchant Services Pvt Ltd's criterion for engaging the Service Provider;

(vi) The Service Provider has, or there is a reasonable apprehension that the Service Provider has become bankrupt or insolvent or the subject of proceedings under any bankruptcy or insolvency law, or is dissolved, or if the Service Provider has taken or suffered to be taken any action for its reorganisation, liquidation or dissolution or insolvency or bankruptcy or if a receiver or liquidator has been appointed or allowed to be appointed of all or any part of the assets of the Service Provider or if an attachment or distraint has been levied on the Service Provider's assets or any part thereof or certificate proceedings have been taken or commenced for recovery of any dues from the Service Provider or if one or more judgements or decrees have been rendered or entered against the Service Provider and such judgements or decrees are not vacated, discharged or stayed for a period of 30 days, and such judgements or decrees involve in the aggregate, a liability which could have a Material Adverse

Effect.

(vii) If the security, if any, provided by the Service Provider is in jeopardy or ceases to have effect or if any Transaction Documents executed or furnished by or on behalf of the Service Provider becomes illegal, invalid, unenforceable or otherwise fails or ceases to be in effect or fails or ceases to provide the benefit of the liens, rights, powers, privileges or security interests purported or sought to be created thereby or if any such Transaction Documents shall be assigned or otherwise transferred, amended or terminated, repudiated or revoked without the approval of ICICI Merchant Services Pvt Ltd.

(viii) It is or becomes unlawful for the Service Provider or any person including ICICI Merchant Services Pvt Ltd to perform any of their respective obligations under the Transaction Documents.

c) The provisions of this Section shall not limit or restrict nor shall they preclude ICICI Merchant Services Pvt Ltd from pursuing such further and other legal actions, against the Service Provider for any breach or non-compliance of the terms of the Service Provider Agreement and/or the Transaction Documents. All costs, charges and expenses incurred / paid by ICICI Merchant Services Pvt Ltd and/or the customers of ICICI Merchant Services Pvt Ltd on account of default by the Service Provider shall be reimbursed by the Service Provider to ICICI Merchant Services Pvt Ltd.

d) In the event that the Service Provider Agreement is terminated for any reasons, the Service Provider shall forthwith hand over to ICICI Merchant Services Pvt Ltd the possession of all documents, material and any other property belonging to ICICI Merchant Services Pvt Ltd and the customers of ICICI Merchant Services Pvt Ltd or pertaining to the Services that may be in the possession of the Service Provider or any of its personnel assigned to perform the Services under the Service Provider Agreement.

e) In the event of termination of the Service Provider Agreement, ICICI Merchant Services Pvt Ltd shall be entitled to publicize such termination so as to ensure that its customers do not continue to entertain the Service Provider. ICICI Merchant Services Pvt Ltd shall also be entitled to share the details of the Service Provider with Indian Banks Association, RBI or any other person as may be required by applicable laws.

f) Termination of the Service Provider Agreement shall not however affect any liabilities incurred by the Service Provider prior to the termination of the Service Provider Agreement.

14. MISCELLANEOUS

a) Any provision of the Service Provider Agreement and the other Transaction Documents may be amended or waived if, and only if such amendment or waiver is in writing.

b) No failure or delay by any Party in exercising any right, power or privilege under the Service Provider Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

c) All notices or other communications under or in connection with the Service Provider Agreement and/or the other Transaction Documents shall be given in writing and, unless otherwise stated may be made by

letter or facsimile. Any such notice or other communication will be deemed to be effective:

(i) if sent by letter, when delivered personally or if dispatched by post, when recall of the letter is outside the control of the sender; and

(ii) if sent by facsimile, on receipt of a confirmation from the correct facsimile number. Provided, however, that no notice or communication to ICICI Merchant Services Pvt Ltd shall be effective unless actually received by ICICI Merchant Services Pvt Ltd. Notices or communication may be made to :

(1) the Service Provider's address or facsimile number specified in the Schedule to the Service Provider Agreement, and;

(2) ICICI Merchant Services Pvt Ltd's address or facsimile number of the address specified in the Schedule to the Service Provider Agreement, or to such other address or facsimile number as may be designated by the Service Provider and ICICI Merchant Services Pvt Ltd in writing to each other. The Service Provider acknowledges and confirms that notice, if any, provided by ICICI Merchant Services Pvt Ltd, as specified in this Section or in any other manner whatsoever, of any changes in rate(s) mentioned above or any notice from ICICI Merchant Services Pvt Ltd for payment of amounts at the changed rate(s), shall be treated by the Service Provider as sufficient and reasonable notice to the Service Provider and ICICI Merchant Services Pvt Ltd is not bound to issue any further notice of such changes to the Service Provider.

d) The Service Provider shall execute and deliver such additional documents and perform such additional actions, as may be necessary, appropriate or reasonably requested to carry out or evidence the transactions in relation to the Services.

e) The invalidity or unenforceability of any provisions of the Service Provider Agreement and/or the other Transaction Documents in any jurisdiction shall not effect the validity, legality or enforceability of the remainder of the Service Provider Agreement in such jurisdiction or the validity, legality or enforceability of the Service Provider Agreement and/or the other Transaction Documents, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the Parties under the Service Provider Agreement and the other Transaction Documents shall be enforceable to the fullest extent permitted by law.

f) If the Service Provider Agreement and/or the other Transaction Documents is/are signed in counterparts, each counterpart shall be deemed to be an original.

g) The Service Provider shall not assign or transfer all or any of its rights, benefits or obligations under the Service Provider Agreement and the other Transaction Documents without the approval of ICICI Merchant Services Pvt Ltd. ICICI Merchant Services Pvt Ltd may, at any time, assign or transfer all or any of its rights, benefits and obligations under the Service Provider Agreement and the other Transaction Documents.

h) Each of the Service Provider shall be jointly and severally liable to ICICI Merchant Services Pvt Ltd for performance of all the obligations under the Service Provider Agreement and the other Transaction Documents.

i) In case the Service Provider is a partnership firm:

The Service Provider agrees that no change whatsoever in the constitution of the partnership firm during the continuance / validity of the Transaction Documents shall impair or discharge the liability of any one or all of the partners. In the event of death or retirement of any partner, ICICI Merchant Services Pvt Ltd shall at its discretion deal with the surviving and/or continuing partner/s, without affecting its rights as against the retiring partner or the heirs and legal representatives of the deceased partner, as ICICI Merchant Services Pvt Ltd shall think fit and proper, and the retiring partner and / or the heirs, executors, administrators, legal representatives of the deceased partner shall have no claim as against ICICI Merchant Services Pvt Ltd in respect of such dealing.

The partners named in the Schedule to the Service Provider Agreement confirm that :

(i) they are the only partners of the firm;

(ii) they shall advise ICICI Merchant Services Pvt Ltd in writing of any changes which may take place in the partnership;

(iii) they will not dissolve / reconstitute the partnership firm without the approval of ICICI Merchant Services Pvt Ltd;

(iv) all the partners are jointly and severally liable to ICICI Merchant Services Pvt Ltd for performance of all obligations under the Transaction Documents, both in their personal capacity and as partners of the partnership firm.

In case the Service Provider is an HUF :

ICICI Merchant Services Pvt Ltd shall at all times be informed of any changes in the constitution of the HUF by furnishing necessary documents and writings. The Service Provider agrees that no change whatsoever in the constitution of the HUF named in the Schedule hereto during the continuance / validity of the Transaction Documents shall impair or discharge the liability of any one or all of the adult members / coparceners of the HUF and shall be binding on the HUF, its estate, effects and successors.

The Transaction Documents shall be enforceable against the Karta or any succeeding Karta of the HUF or against any and all the adult coparceners / members of the HUF. The Karta, acting for HUF and in his personal capacity, and the other adult members / coparceners of the joint HUF represent, warrant and confirm to ICICI Merchant Services Pvt Ltd that :

(i) they are members of the HUF;

(ii) the signatories of the Transaction Documents are the only adult members of the HUF at present;

(iii) the business carried on under the name and style given in Schedule I hereof is their joint family trade which is binding on the minor members, if any, being ancestral trade / business;

(iv) the Transaction Documents have been entered into for and on behalf of the HUF and the transactions contemplated in the Transaction Documents are a part of the HUF business / trade referred to above;

(v) the HUF business / trade mentioned in the Schedule to the Service Provider Agreement is being conducted and managed by the adult members / coparceners of the HUF and all of them have been jointly and individually empowered to perform the Services, against security or otherwise, and execute all necessary instruments, deeds, documents and writings and do all such acts, things and deeds as are necessary or incidental to the performance

of the Services, and also execute, draw, endorse, negotiate and sell cheques, bills, pro-notes, bills of exchange and other negotiable instruments on behalf of the HUF.

(vi) The Karta, acting for the HUF and in his personal capacity, and the other adult coparceners / members of the HUF also indemnify and keep ICICI Merchant Services Pvt Ltd indemnified against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever which ICICI Merchant Services Pvt Ltd may at any time incur, suffer, pay or sustain as a consequence of or by reason of or arising out of the transactions contemplated in the Transaction Documents, and hold themselves personally liable, jointly and severally, in respect of all transactions entered into with ICICI Merchant Services Pvt Ltd or obligations incurred under the Transaction Documents.

In case the Service Provider is a proprietor :

The proprietor makes the following representations, warranties, confirmations:

- (i) (s)he is the sole proprietor / proprietress of the firm named in the Schedule to the Service Provider Agreement.
- (ii) (s)he is solely responsible for the liabilities of the aforesaid firm and will be liable personally for performance of all obligations under the Service Provider Agreement.

In case the Service Provider is a company:

The Service Provider agrees that no change whatsoever in the constitution of the Company during the continuance / validity of the Transaction Documents shall impair or discharge the obligations of the Service Provider under the Transaction Documents.

The Service Provider shall, forthwith upon any change in the constitution of the Service Provider, inform ICICI Merchant Services Pvt Ltd of the change and provide such details in respect of the change and its effect, as may be required by ICICI Merchant Services Pvt Ltd.

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