

# TERMS OF SERVICE

Omniware owns and operates a payment collection, disbursement, and merchant acquiring platform. Omniware is the sole and exclusive owner of the said proprietary software, which offers several modes of payment, including but not limited to net banking facilities, processing of payment through debit card or credit card, use of prepaid instruments issued by third party services providers and such other payment modes as may be determined by Omniware from time to time, disbursements (payouts) from a prepaid fund or from merchant's bank account ("**Software**").

Omniware is *inter alia* engaged in the business of licensing the Software to **customers** and/or integrating the Software onto the customer's systems and servers on a white label basis, so as to enable the customer to offer a unified payment collection system to its merchants and customers.

Omniware grants to the Customer, a limited, non-assignable and a non-transferable license to use the Software, which the Customer shall have the right to use during the Term of the Agreement for the purposes contemplated in the Agreement, in the **territory (geographical region)** as mutually agreed.

It is hereby agreed and acknowledged by the Customer that Omniware shall, at all times, be the owner of the payment collection Platform and that the Customer shall only have the limited right to use the Customer Branded Platform during the Term of this Agreement so long as it continues to comply with the terms and conditions specified herein.

The Customer further agrees and acknowledges that it shall be the primary responsibility of the Customer to provide L1 (Level 1) support to merchants. The Customer shall, during the Term of this Agreement, offer the payment collection services to its merchants and customers for receiving and disbursing payments, within the Territory. During the Term of this Agreement, Omniware shall be responsible for day-to-day management, upkeep, updation and maintenance of the payment collection services.

It is agreed and clarified that Omniware shall, at all times, have the right to provide the Software and offer same and/or similar services as detailed in this Agreement to any third party, including competitors of the Customer.

## **INTELLECTUAL PROPERTY RIGHTS, OBLIGATIONS AND CONDITIONS FOR LICENCE**

Customer acknowledges and agrees that the title in and all goodwill and other intellectual property rights, associated with or arising from any use of the Software and/or Customer Branded Platform, whether prior to the execution of this Agreement or thereafter, does and shall continue to vest absolutely in Omniware and it is the intention of the Parties that all such rights will, at all times whether during the Term or at any time thereafter shall remain so vested. In the event that any such rights or goodwill to the Software and/or Customer Branded Platform at any time accrue to the Customer by operation of law or otherwise, the Customer hereby irrevocably and absolutely assigns

to Omniware, all such rights, title and interest including goodwill on an absolute, perpetual, worldwide basis at no additional consideration other than the mutual covenants of the Parties in this Agreement. The Customer agrees and undertakes to do all such reasonable acts and things and execute all such documents, as may be necessary to vest such rights, title and interest to the Software and/or Customer Branded Platform in Omniware, as the case may be.

The Customer shall not, at any time whether during the Term or thereafter, directly or indirectly claim or attempt to claim, any ownership in any intellectual property rights (including without limitation trade mark rights and copyright) or goodwill associated with the Software and/or Customer Branded Platform anywhere whether within the Territory or otherwise. The Customer shall ensure that the Customer uses the Customer Branded Platform only during the Term and strictly in accordance with the terms and conditions of this Agreement.

The Customer shall not (whether directly or indirectly) and shall ensure that its agents do not undertake any act or to use the Customer Branded Platform in any manner which may denigrate, dilute or diminish the value of, the Software and/or Customer Branded Platform or which may endanger the title of Omniware thereto or which might prejudice the right or title of Omniware to any proprietary interest.

Unless otherwise mutually agreed by the Parties from time to time, information and updates shall be provided by the Customer, in relation to the use of the Customer Branded Platform, once every [3] months in a format mutually agreed between the Parties.

For the purpose of enabling Omniware to reasonably satisfy itself about the compliance by the Customer with the terms of this Agreement, the Customer undertakes that it shall provide Omniware promptly on request with any reasonable information relating to the conduct of the business which is relevant, in Omniware's reasonable opinion, to the rights of Omniware in relation to the Customer Branded Platform.

Neither the Customer nor any third party claiming under it, shall challenge the validity of the Customer Branded Platform and/or Software or any part thereof or Omniware's rights in or the ownership of the Customer Branded Platform and/or Software, before any court, tribunal or any other forum at any time during the Term of this Agreement or thereafter.

#### **NOTIFICATION OF INFRINGEMENTS**

The Customer shall duly:

- (i) notify Omniware of any actual or suspected infringement of intellectual property rights in relation to the Customer Branded Platform and/or Software which comes to the knowledge of the Customer; and
- (ii) take such reasonable action as Omniware may request, in relation to such infringement.

Without prejudice to Omniware's right to defend a claim alleging such infringement of the intellectual property of any third person, the Customer shall, if so requested by Omniware, at Omniware's own

expense, conduct the defense of the claim alleging such infringement. The Customer shall, to the greatest extent feasible, observe Omniware's reasonable directions relating in any way to that defense or to negotiations for settlement of the said claim. The Customer shall, at Omniware's expense, provide Omniware with reasonable assistance in conducting the defense of such claim.

## **OBLIGATIONS OF THE CUSTOMER**

The Customer hereby undertakes that it shall not sell or sub-license the customer branded Platform to any third party in any manner whatsoever. The Customer further undertakes that it shall not copy source code of the customer branded Platform. In the event the Customer fails to comply with this Clause, the Customer hereby acknowledges and agrees that it shall be liable for payment of INR 5 crores as penalty for such non-compliance and that Omniware shall have the right to forthwith terminate this Agreement.

The Customer shall be solely responsible and liable for the acts and/or omissions of the Merchants. The Customer hereby acknowledges and agrees that Omniware shall not have any liabilities in this regard, in any manner whatsoever.

The Customer is solely responsible and liable for unlawful or illegal activities undertaken by the Customer's merchants such as (but not limited to) money laundering, gambling, dealing in prohibited goods, etc. The Customer hereby acknowledges and agrees that the platform is not being procured for any illegal or unlawful purposes.

The Customer hereby acknowledges and agrees that Omniware shall not be a party to the arrangement entered into between the Customer and any Merchant, in any manner whatsoever. Omniware has no interest in the relationship and any agreements between Customer and merchants.

The Customer hereby acknowledges and agrees that the ownership of the Customer Branded Platform and/or Software shall always remain with Omniware and the Customer shall not raise any objection to such ownership of Omniware. It further acknowledges and agrees that Omniware shall own all intellectual property rights in respect of the Customer Branded Platform and/or Software, including any literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software, source code or object code or other information or materials in whatever form and on whatever media stored or held, acquired, created, developed, designed or otherwise prepared by the respective Party and any related patents, trademarks, logos and service marks, registered designs, utility models or applications for any of the foregoing.

The Customer hereby undertakes that it shall be solely responsible for obtaining all licenses and permissions from relevant authorities for integrating the Software onto its own server (if applicable) and for operating, hosting and offering the Customer Branded Platform to its merchants and customers. The Customer hereby undertakes that it shall at all times keep Omniware indemnified for any non-compliance by the Customer in this regard, without limitation of cost or time.

The Customer hereby undertakes that it shall bear and be solely responsible for the payment of all relevant taxes (if applicable) (including any applicable withholding taxes) payable in relation to the use of the Customer Branded Platform in accordance with the terms and conditions of this Agreement.

## **CONSIDERATION - PAYMENT OF FEE**

As consideration for the rights granted by Omniware to the Customer under this Agreement for use of the customer branded Platform, and for the services to be performed by Omniware, including integration of the Software, maintenance and upkeep of the customer branded Platform and such other services as detailed in specific agreements, the Customer shall pay Omniware, such fees as mutually agreed, during the Term. The Fee shall be payable in the manner specified, into a bank account designated by Omniware. It is hereby agreed and acknowledged by the Customer that in the event the Customer fails to make the payment on the payment due date, Omniware shall upon such failure have the right to immediately suspend the services and stall the functioning of the customer branded Platform.

## **REPRESENTATIONS AND WARRANTIES**

The Customer hereby represents and warrants to Omniware as follows:

- (i) It is duly organized and validly existing under the laws of its incorporation and has full power and authority to enter into an Agreement and to perform their obligations under the said Agreement;
  
- (iii) The execution, delivery and performance by such Party of the said Agreement and the acts and transactions contemplated hereby do not and will not, with or without the giving of notice or lapse of time or both, violate, conflict with, require any consent under or result in a breach of or default under:
  - (a) applicable law; or
  - (b) any order, judgment or decree applicable to it; or
  - (c) any term, condition, covenant, undertaking, agreement or other instrument to which it is a party or by which it is bound;
  
- (iv) there are no legal, quasi-legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgements or decrees of any nature made, existing, or pending or, to its best knowledge, threatened or anticipated, which may prejudicially affect the due performance or enforceability of the terms herein, or any obligation, act, omission or transactions contemplated hereunder; and
  
- (v) that it will comply with all applicable laws and regulatory requirements in connection with the performance of its obligations under these terms of service, and will not do or permit anything to be done which might cause or otherwise result in a breach of this Agreement or cause any detriment to the transactions herein envisaged.

## **CONFIDENTIALITY**

9.1 The Parties shall during the Term and after termination keep confidential any confidential information which the Party may acquire in relation to the business or affairs of the other Party and shall not use or disclose such information except with the consent of the other Party. The restrictions in this Clause 9.1 shall not apply to any information:

- (a) which is at the date of this Agreement publicly available other than through breach of this Agreement;
- (b) which was known to the Party, as evidenced by written records, prior to it receiving such confidential information;
- (c) which subsequently comes lawfully into the possession of the Party by a third party which did not require any obligation of confidentiality; or
- (d) which is disclosed in accordance with the requirements of law, any Governmental authority or any binding judgment, order or requirement of any court or other competent authority.

9.2 For the purpose of this Clause 9, “confidential information” means all the information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) whether before or after the date of this Agreement.

#### **INDEMNITY**

The Customer shall be liable for and hereby undertakes to indemnify and keep indemnified Omniware, including its affiliates, directors, officers, employees, representatives and agents, against any liabilities, costs, claims, expenses, loss or damage or third party claims (including reasonable legal costs) and/or claims raised by any third party arising from or in connection with the Customer’s use of the customer branded Platform, or breach of the terms of service, on the part of the Customer (except where such liability arises as a consequence of any act, default or negligence of Omniware), Customer's negligence in any manner whatsoever or any act or omission attributable to the Customer and/or its merchants or customers.

The indemnities under this Clause are in addition to and without prejudice to the indemnities given elsewhere in this Agreement and all the indemnities provided herein shall survive the termination of this Agreement.

#### **DISCLAIMER OF WARRANTY**

Omniware shall endeavor to maintain, manage and/or update the customer branded Platform on best effort basis. However, Omniware disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness of the customer branded Platform for a particular purpose. Customer acknowledges that customer branded Platform may not be uninterrupted or error free or free from any virus or other malicious, destructive or corrupting code, program or macro. Customer further acknowledges that the customer branded Platform, provided to the Customer for limited use, may in any event be brought to an abrupt end in any event whatsoever

for any reason whatsoever or can be suspended for maintenance as Omniware may consider appropriate with a prior written notice by Omniware.

The Customer hereby acknowledges and agrees that Omniware's sole obligation and Customer's sole and exclusive remedy in the event of interruption to the use and/or access to the customer branded Platform, shall be to use best endeavors to restore the access to the customer branded Platform as soon as reasonably possible.

## **NOTICES**

Any notices, requests, demands or other communication required or permitted to be given under this Agreement shall be written in English and shall be delivered in person, or sent by courier or by certified or registered mail, postage prepaid or transmitted by facsimile and properly addressed as follows or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents:

Omniware Technologies Private Limited

Address: 4th Avenue, #4C-410/9, 3rd Floor, 4th Cross, 2nd Block, HRBR Layout, Kalyan Nagar, Bengaluru, Karnataka 560043

Kind Attn: Vinay Chandrakant, Director

Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 12 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) sent by mail, 7 (seven) days after posting it;
- (ii) sent by electronic mail, on the day when delivered by electronic mail to the proper electronic mail address;
- (iii) sent by facsimile, when confirmation of its transmission has been recorded by the sender's facsimile machine.

## **GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

Any dispute or claim arising out of the usage of the customer branded platform shall in all respects be governed by and construed in accordance with the laws of India. The courts at Bangalore shall have the exclusive jurisdiction over any disputes relating to the subject matter of this Agreement.

Any and all disputes, controversies, and conflicts between the Parties in connection with or arising out of this Agreement ("**Dispute**") shall, so far as possible, be settled amicably between the Parties within a period of 30 (Thirty) days from the Dispute having arisen.

Failing such an amicable settlement, it is agreed by and between the Parties hereto that in case any Dispute arises between the Parties hereto relating to any of their rights or duties or relating to the

interpretation of any terms of conditions stipulated herein, the same shall be referred to a panel of 3 (three) arbitrators. In this regard, Omniware shall have a right to appoint 1 (one) arbitrator and the Customer shall appoint 1 (one) arbitrator and such nominated arbitrators would thereafter appoint the third arbitrator.

The arbitration proceedings shall be held in Bangalore in accordance with the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be English. The cost of the arbitration shall be equally borne by both Parties.

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