

Mastercard - Standard Terms and Conditions for Merchants

Incorporated by reference into each executed Enrolment Form as part of the Agreement between MLS and Merchant

1. Enrolled Programs/Offer Activity

1.1 The Enrolled Programs/Offer Activity that are available for you to participate in are listed in the Enrolment Form. The parties may at any time add to or remove from the list of Enrolled Programs/Offer Activities by mutual agreement in writing or as per the corresponding Schedule. However, you will only be considered for actual rollout on individual programs subject to the parties executing the relevant Schedule for each applicable Enrolled Programs/Offer Activity.

1.2 For any Schedule, in case of any conflict or inconsistency between the terms and conditions of this Exhibit 1 and the terms and conditions contained in the Schedule, the terms and conditions of the Schedule shall prevail.

2. Our responsibilities

2.1 In consideration for and subject to you performing your obligations under this Agreement (including paying the Fees where applicable), during the Agreement Term we will perform our obligations to the extent specified in the signed Schedules:

- (a) Promote the Enrolled Programs in accordance with, and subject to, Sponsor requirements and the relevant Sponsor Agreement;
- (b) Handle enquiries in relation to the Enrolled Programs and notify you of changes in or to the Enrolled Programs and provide agreed reporting;

3. Your Responsibilities

3.1 During the Agreement Term you must, as per this Agreement and as further defined in the signed Schedules:

- (a) Observe and perform all your obligations as described in this Agreement and the signed Schedules, and will otherwise liaise with and assist Mastercard in relation to meeting its responsibilities. Mastercard performance under this Agreement and each signed Schedule is dependent on these obligations being performed;
- (b) Provide the Offer Activity as detailed in the corresponding signed Schedule;
- (c) Ensure any Merchant Group member participating in an Enrolled Program complies with the terms of this Agreement as applicable to the Merchant;
- (d) If applicable, make available the Cardholder Offer(s) to its customers and ensure that any Merchant Group member participating in an Enrolled Program makes available the relevant Cardholder Offer(s) to its customers;
- (e) If applicable, promote the Cardholder Offer(s) and the Enrolled Program(s) in accordance with the terms of signed Schedule;
- (f) Notify Mastercard, and keep Mastercard notified, of any changes to the Participating locations/stores for each applicable Enrolled Program;
- (g) Provide reasonable assistance in handling Enrolled Program(s) related enquiries; and
- (h) Ensure that at all times during the Agreement Term:
 - (1) all Offers and the offer to supply them to Recipients and other third parties comply with all applicable laws, regulations, ordinances and rules; and
 - (2) All Offers are accepted and honoured in accordance with the terms of those Offers as described in this Agreement.

4. Use of Intellectual Property

4.1 You grant us a non-exclusive, sub-licensable right to use and reproduce Merchant Branding for the Agreement Term as reasonably required for us and Sponsors to market your involvement in the Enrolled Programs and/or the relevant Cardholder Offer(s), perform our obligations and exercise our rights under this Agreement and each signed Schedule, including for use on the dedicated website relating to the applicable Enrolled Program, and for the purpose of displaying the Merchant Branding in associated marketing communications.

4.2 You may only use Approved Program Materials to promote the Enrolled Program(s) and your participation in it/them. Each time you are approved by us to use the Approved Program Materials, you will be granted a non-exclusive, non-transferable and non-sub-licensable right to use the same in accordance with clause 4.3 below.

4.3 You undertake at all times to:

- (a) Use Approved Program Material only to promote the Enrolled Program(s);
- (b) Strictly comply with the conditions of using Approved Program Material communicated to you; and
- (c) Only use Approved Program Materials signed and approved by us and in accordance with the applicable brand guidelines issued to you from time to time and our reasonable instructions.

4.4 We may from time to time by notice to you amend the Approved Program Materials, or the conditions of their use provided to you for the purposes of this Agreement.

4.5 Except as expressly permitted in the conditions of use in Approved Program Material for Programs that you participate in, you are not authorized to have by implication or otherwise any title, right or interest in or to any intellectual property, belonging to us, our affiliated entities or Sponsors. You shall not use intellectual property belonging to us or Sponsors without express written approval. All intellectual property rights associated with the Programs and the services shall vest in us. Nothing in this Agreement shall operate to transfer or grant any Intellectual Property Rights to any person.

5. Confidential Information and Privacy

5.1 **Confidentiality:** Each party must, and must ensure that its Related Bodies Corporate, officers, employees, agents and subcontractors do not disclose any Confidential Information of the other party to any third person or entity or use any Confidential Information of the other party without the other party's prior written consent, except:

- (a) To its officers, staff, advisers, sub-contractors, counsel or agents (and in the case of Mastercard, Sponsors) as reasonably necessary for the performance of this Agreement or to receive advice in relation to this Agreement; or
- (b) To the extent that a party is required to make such disclosure by law, a valid order of a court or by a government agency, or the rules of any stock exchange.

5.2 **Breach of confidentiality:** Each party must notify the other party promptly in writing if it becomes aware of a breach of clause 5.1 above, and each party must provide whatever assistance the other party may reasonably require to protect its Confidential Information.

5.3 **Return of Confidential Information:** Each party must upon termination or expiry of this Agreement or at any other time as notified by a party, at the direction of the other party, either return or destroy all of the other party's Confidential Information in their possession, control or custody, including taking reasonable steps to delete any such Confidential Information from any computer systems or files (other than electronic backups).

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- 5.4 **Privacy:** Each party must comply with the Privacy Law in the performance of this Agreement. You must also ensure that you and your respective Related Bodies Corporate comply with our reasonable written instructions to do anything required for either party to comply with Privacy Law.
- 6. Liability**
- 6.1 **Mutual Indemnification:** Each party (**Indemnifying Party**) shall indemnify and hold harmless the other party, the other party's Related Bodies Corporate and each of their respective directors, officers, employees and agents (collectively **Indemnified Parties**) from and against any and all loss, liability, cost, damage and expense (including reasonable legal fees and expenses) (collectively **Losses**) to which the Indemnified Parties may be subjected or which it or they may incur in connection with any claims of personal injury or death of a person or of damage to tangible property to the extent such Losses arise as the result of the wilful misconduct or negligent acts or omissions of the Indemnifying Party and the Indemnifying Party's Related Bodies Corporate and any of their respective directors, officers, employees or contractors, in the performance of its or their duties and obligations under this Agreement.
- 6.2 **IP Claims:**
- (a) Each party (**Indemnifying Party**) shall indemnify and hold the other party, the other party's Related Bodies Corporate and each of their directors, officers, employees and agents (collectively **Indemnified Parties**) harmless from and against any damages awarded against the Indemnified Parties and any liability under any settlement of any claim negotiated in accordance with this clause 6.2 (including all reasonable legal fees and expenses) as a result of any claims (**IP Claims**) by third parties that the use by the Indemnified Parties of material provided by the Indemnifying Party in accordance with this Agreement (**Offending Material**) infringes any Intellectual Property Rights of those third parties.
- (b) In respect of any IP Claim, and in order to obtain the benefit of the above indemnity, the Indemnified Party shall:
- (1) Promptly notify the Indemnifying Party in writing after first learning of the IP Claim;
 - (2) provide such information, assistance and co-operation as the Indemnifying Party may request from time to time in relation to the IP Claim; and
 - (3) Grant the Indemnifying Party full and sole discretion to defend, compromise or settle any such IP Claim on such terms as it thinks fit (and the Indemnified Parties must not defend, compromise or settle any claim on the Indemnifying Party's behalf without the Indemnifying Party's prior written consent).
- (c) Notwithstanding the forgoing, the Indemnifying Party shall have no liability to indemnify any Indemnified Party or defend any IP Claim to the extent that the IP Claim arises from the Indemnified Party's update to, or modification of the Offending Material, or its use of such Offending Material with any other products or programs.
- (d) In the event of an IP Claim, the Indemnifying Party must endeavour to obtain for the Indemnified Party the right to continue to use the relevant part of the Offending Material, or replace or modify the relevant part of the Offending Material to make it non-infringing (at its sole option).
- 6.3 **Limitation:** Other than in respect of our confidentiality obligations in clause 5 our liability (whether in contract, tort, including negligence, indemnity, equity, statute or otherwise) to you or any person claiming through you will not exceed in aggregate the Rs. 75, 00,000/- (75 lacs).
- 6.4 **Special damages:** To the extent permitted by law, and other than in respect of any breach of clause 4.5 or clause 5 and any obligation to indemnify under this Agreement under clause 6.1, in no event will either party or its directors, officers, employees or agents be liable for any special, indirect, incidental, consequential or punitive damages, or any losses, damages or costs incurred as a result of loss of time, loss of savings, loss of property, loss of goodwill, loss of data, or loss of profits (other than loss of profits incurred by us, our contractors or agents in connection with this Agreement to the extent such loss of profits constitutes direct damages of us), even if such party knew of the possibility of such damages and regardless of whether such claims or damages are based, or remedies are sought, in contract, under an indemnity, in negligence, strict liability, tort, products liability, equity, under statute or otherwise. Any claim for damages by a Cardholder or a Sponsor against us in relation to an Enrolled Program or this Agreement, no matter how arising, is a direct loss and is not excluded.
- 6.5 **Merchant Warranties:** You represent and warrant to Mastercard that:
- a) you have the right, power and authority to enter into this Agreement and each signed Schedule and perform your obligations under this Agreement and each signed Schedule;
 - b) your obligations under this Agreement and each signed Schedule constitute valid, legal and binding obligations of yours; and
 - c) the entering into of this Agreement and each signed Schedule by you and the performance of your obligations hereunder and thereunder do not contravene your constitutional documents, any applicable law or any contracts or other agreements to which you are a party.
- 6.6 **Mastercard Warranties:** To the extent permitted by law, we hereby exclude all warranties and guarantees, written or implied or imposed by law, applicable to any services provided by us or to any goods or materials supplied by us in connection with such services (other than as expressly stated in this Agreement).
- 6.7 **Mitigation:** Each party will take all reasonable steps to mitigate any loss incurred by them under this Agreement.
- 6.8 **Contribution:** To the full extent permitted by law, each party's liability to the other in contract, tort, negligence, strict liability, equity, under statute, under an indemnity, or otherwise will be reduced to the extent, if any, to which the other contributed to the loss or damage.
- 7. Termination**
- 7.1 **Term:** This Agreement commences on the Effective Date and will terminate upon the termination or expiry of your participation (under this Agreement) in all signed Schedules (**Agreement Term**), unless otherwise terminated in accordance with the following terms in this clause 7. The term of your participation in each of the signed Schedules is specified in the relevant Schedule (see Initial Term and Renewal Terms in each signed Schedule).
- 7.2 **Termination by either Party:** Either party may terminate this Agreement:
- (a) immediately on written notice at any time prior to expiry upon the other party becoming unable to pay any of its debts as they fall due, commencing negotiations with its creditors with a view to an adjustment of its debts or any step being taken or proceedings commenced for its insolvency, bankruptcy, winding-up, liquidation, receivership, administration or protection or relief from creditors or any distress or execution of its property; or
 - (b) by written notice to the other party with immediate effect from such later date as set out in the notice if the other party materially breaches this Agreement or any signed Schedule and the breach is not capable of remedy or, if the breach is capable of remedy, fails to remedy such breach within 30 days of receiving notice to do so.
- 7.3 **Termination of participation in an Enrolled Program or Offer Activity or this Agreement as a whole:**
- (a) Notwithstanding Mastercard may terminate the Merchant's participation in an Enrolled Program or an Offer Activity in any of the following circumstances by notice in writing to the Merchant:

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- (1) An Enrolled Program or an Offer Activity no longer exists or is terminated;
- (2) We no longer manage or are otherwise involved in an Enrolled Program or an Offer Activity;
- (3) A Sponsor of an Enrolled Program requires us not to renew your participation in that Enrolled Program, or to end your participation in that Enrolled Program; or
- (4) A Sponsor withdraws an Enrolled Program for any reason or otherwise ceases to participate in an Enrolled Program.
- (5) If there is a change of control of the Merchant.

(b) Termination of any signed Schedule does not terminate this Agreement should any other signed Schedule remain in force. So long as any signed Schedule remains in force, this Agreement will remain in force.

7.4 **Consequences of termination:** If this Agreement is terminated in whole or in part (or in respect of one or more Enrolled Programs), as the case may be, under this clause 7:

- (a) Termination will be without prejudice to the accrued rights of either party;
- (b) Subject to the terms of this Agreement, the parties are relieved from future performance of this Agreement or relevant part of it as the case may be;
- (c) each party must comply with all surviving terms of this Agreement and signed Schedules (and all terms of this Agreement, with respect to Enrolled Programs in which your participation continues, should you remain in other Enrolled Programs);
- (d) you must cease to represent yourself as a participant in each corresponding Enrolled Program and return to us or destroy (at our election) any relevant Approved Program Material in your possession or control (this includes any standalone terminals you have rented during the term of this Agreement); and
- (e) Those obligations in clauses 4.5, 5, 6, 7 and 8.1, and any other obligations that, by their nature, are intended to survive termination, shall survive any termination.

8. General

8.1 **Governing law:** This Agreement is governed by the laws of India. In the event the parties fail to settle disputes amicably within a reasonable period, the parties shall submit all disputes and differences howsoever arising out of or in connection with this Agreement to arbitration as per the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English and such Arbitration shall be conducted in Mumbai by a sole arbitrator to be jointly appointed by the parties.

8.2 **Notices:** Any notice or other document to be served under this Agreement may be: (a) delivered (which, unless proven to the contrary, shall be deemed to have been served on the date of delivery if delivered on a Business Day before 4:00pm, or the following Business Day if delivered at any other time); or (b) sent by prepaid registered post (which, unless proven to the contrary, shall be deemed to have been served on the second day following the date of posting if sent by domestic service or the fifth day following the date of posting if sent by international service), to the party to be served at the corresponding address set out in the Enrolment Form (or such other applicable address as subsequently notified by that party).

8.3 **Waiver:** A waiver (whether express or implied) by a party of any of the provisions of this Agreement or of any breach of or default by the other party in performing any of those provisions shall not constitute a continuing waiver and that waiver shall not prevent the waiving party from subsequently enforcing any of the provisions of this Agreement not waived or from acting on any subsequent breach of or default by the other party under any of the provisions of this Agreement.

8.4 **Compliance with Laws:** (a) each party must ensure that it complies with all laws, regulations, ordinances and rules governing its obligations, responsibilities and duties under or in the performance of this Agreement. (b) Each party shall comply, and shall ensure that each of its subcontractors and personnel complies, with all anti-bribery laws including in relation to business transactions with government officials. (c) Merchant shall ensure that its offering of the Cardholder Offer(s) to its customers complies with all applicable laws, regulations, ordinances and rules.

8.5 **Entire Agreement:** This Agreement supersedes all prior communications, representations, agreements, arrangements and undertakings between you and us. Except where expressly provided for in this Agreement, a provision of this Agreement may not be changed except in writing and signed by you and us.

8.6 **No reliance on warranties and representations:** In entering into this Agreement, Merchant:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person, other than as expressly stated herein;
- (b) Has relied entirely on its own enquiries in relation to the subject matter of this Agreement; and
- (c) has not relied on any financial forecast, financial model, estimate or performance expectation provided by or on behalf of Mastercard, including any financial model prepared by Mastercard in relation to a Program or participation in it by the Merchant, for planning purposes or otherwise, any estimate of revenue or profits or any similar estimate. Any provision by Mastercard of such material is for indicative purposes only.

8.7 **Excusing Events:** Subject to the remainder of this clause 8.7, each party shall be excused from performance of its obligations (other than payment obligations) under this Agreement for any period (and to the extent) that the party is prevented from performing any such obligation in whole or in part as a result of delays caused by: (a) the other party or that other party's Related Bodies Corporate, or any of the other party's directors, employees, agents or sub-contractors, or (b) an act of God, war, terrorism, civil disturbance, work stoppages, equipment failures, power failures, fire, court order, labour dispute (other than one between a party and its staff) or other events beyond the party's reasonable control, including, without limitation, failures or fluctuations in electrical power, heat, light, air-conditioning or telecommunications equipment, or (c) if the party is Mastercard, any Sponsor or any of the Sponsor's directors, employees, agents or sub-contractors, (each, an **Excusing Event**). Each party shall notify the other promptly on becoming aware of any Excusing Event affecting its ability to perform its obligations under this Agreement. The party affected by the Excusing Event concerned shall use all reasonable endeavours to resume full performance in the event of any such delay. Without affecting any other rights a party may have to terminate this Agreement, if an Excusing Event other than an Excusing Event listed in part (a) or (c) of this clause 8.7 continues for more than 30 days, a party may terminate this Agreement by giving 7 days' written notice.

8.8 **Assignment and change of control:** (a) you may not assign this Agreement without our prior written consent. We may assign and transfer all our rights, benefits and obligations under this Agreement to any Related Body Corporate of ours, upon written notice to you. (b) You must notify us promptly of any change of control (or any sale or proposal to sell any material proportion of your business or Participating locations/stores) that occurs to you or is proposed to occur during the Agreement Term.

8.9 **Relationship:** Nothing in this Agreement shall be considered or interpreted as constituting a party as the partner, agent or representative of the other party or any other relationship under which a party may be liable generally for the acts or omissions of the other party and in particular no party shall have authority to act, contract or incur any obligation or responsibility on behalf of the other party unless by virtue of a properly executed power of attorney.

8.10 **Other:** Mastercard may set-off any amount due and owing by the Merchant to Mastercard against any payment of any amount due and owing by it to the Merchant.

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8.11 **Severability:** The invalidity, illegality or unenforceability of any of the provisions of this Agreement will not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

8.12 **Costs and Expenses:** Each Party shall bear its own costs and expenses (including legal and other professional costs) in connection with the preparation, negotiation and execution of this Agreement and any related documents.

8.13 **Definitions**

In this Agreement:

Agreement Term has the meaning given in clause 7.1.

Approved Program Material means materials relating to the promotion of an Enrolled Program or Offer Activity and/or your participation in it (including trademarks, brand names, business names or copyright belonging to a party to a Sponsor Agreement), and including the conditions of use of those materials, in each case as approved by Mastercard for use by Merchant.

Business Day means a day that is not a Saturday, Sunday, public holiday or a bank holiday in Mumbai, India.

Card means any card (including any credit, debit, cash, charge, electronic funds transfer, point of sale, automatic teller, multi-use or stored-value card) or Program membership identifier that may be used by Cardholders to earn benefits or rewards under an Enrolled Program, as may be further defined in the relevant Schedule.

Cardholder in respect of an Enrolled Program means any person as defined in the relevant Schedule.

Cardholder Offer in respect of an Enrolled Program means the Cardholder Offer described in the relevant Schedule in respect of Eligible Spending.

Confidential Information of a party (the **disclosing party**) means all information or material which is proprietary to the disclosing party, and/or its Related Bodies Corporate, and is provided to the other party in connection with this Agreement, and which is: (i) designated as confidential by the disclosing party or (ii) by its nature confidential, but does not include:

- (a) Information that, at the time it is disclosed, is already in the receiving party's rightful possession or available to it or its representatives from any other source having no obligation not to disclose it;
- (b) Information that is, or any time becomes, available to the public without any breach of obligation not to disclose it; or
- (c) Which is developed independently by the other party without reliance on any of the disclosing party's Confidential Information.

Effective Date means: (a) if a date is specified as the Effective Date on the Enrolment Form, that date; or (b) if no date is specified as the Effective Date on the Enrolment Form, the date of this Agreement; or such other date as the parties may agree in writing.

Eligible Spending in respect of an Enrolled Program means any transaction with you whereby a Cardholder will qualify for the relevant Cardholder Offer as per the terms outlined in the relevant Schedule.

Enrolled Program means each Program as selected on the Enrolment Form and in each signed Schedule, as may be amended in accordance with this Agreement, in which the Merchant is enrolled under this Agreement.

Enrolment Form means the Master Merchant Alliance Enrolment Form forming part of this Agreement.

Fees means the fees payable to us as indicated in the signed Schedule(s) to this Agreement.

Gift Cards means any gift, gift card, voucher, good or service (as described in the applicable signed Schedule) required for fulfilment of any gift card or Gift with Purchase Program that is an Enrolled Program under this Agreement.

Intellectual Property Rights means all rights globally, whether currently in existence or arising in the future, in or to any copyright, trade or service mark, design, patent, semiconductor or circuit layout right, domain name, trade name, business name or company name, indication of source or appellation of origin, whether registered, registrable, patentable or not or other proprietary right, or and any right to registration of such rights.

Merchant Branding means your trademarks, service marks, logos and branding (including any product descriptions and images that you provide to us) which may be relevant to conducting or promoting an Enrolled Program, any Eligible Spending or any Cardholder Offer.

Merchant Descriptor means the information used by you to identify yourself for the purpose of transacting business with a Cardholder.

Month means a calendar month.

Participating locations/stores in respect of an Enrolled Program has the meaning given in the relevant signed Schedule.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether true or not, and whether recorded in a material form or not.

Standard Terms and Conditions – Merchant Services means these terms and conditions titled Standard Terms and Conditions – Merchant Services.

Privacy Law means all legislation, principles, industry codes and policies regulating the handling of Personal Information including, without limitation, the Information Technology Act, 2000, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

Program means any loyalty/incentive program in respect of which Mastercard provides certain administrative, marketing and other loyalty services, including those listed on the Enrolment Form.

Recipient means the beneficiary of an Offer/ Gift Card, etc.

Related Body Corporate shall include 'associate company', 'subsidiary company' and/or 'holding company' as defined under the Companies Act, 2013.

Schedules means the Schedule(s) (or the applicable Parts of the Schedule(s), as the case may be) to this Agreement which set out the key terms applicable to your participation in the relevant Enrolled Program.

Sponsor means the customer of Mastercard .

Sponsor Agreement means any agreement or other arrangement between us and a Sponsor, or between us, a Sponsor and others relating to the operation of a Program.

Taxes means taxes (including tax on goods and services), levies, imposts, deductions, charges, withholdings and duties imposed by any authority, together with any related interest, penalties, fines and expenses in connection with them, except those imposed on the overall net income of a party.

8.14 Interpretation

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In this document (I) the terms “include” and “including” are meant to be inclusive and shall be deemed to be followed by “without limitation”; (ii) the word “or” is disjunctive, but not necessarily exclusive; (iii) unless otherwise specified, all references to days, months or years shall be deemed to be preceded by the word “calendar”; (iv) the singular includes the plural and vice versa, and a gender includes other genders; (v) another grammatical form of a defined word or expression has a corresponding meaning; (vi) a reference to a clause or schedule is to a clause or schedule to this Agreement, and a reference to this Agreement includes any schedule; (vii) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; (viii) a reference to dollar or \$ is to US dollar currency; (ix) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; (x) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; (xi) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; (xii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; (xiii) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally; (xiv) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and (xv) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and (xvi) headings are for ease of reference only and do not affect interpretation.

[End of Exhibit 1]