

## E-COMMERCE VENDOR AGREEMENT

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This **E-Commerce Vendor Agreement** (hereinafter referred to as the “**Agreement**”) is made on the day of your acceptance of this Agreement (hereinafter referred to as the “**Execution Date**”) from your designated email address or in any other form of electronic record including, if applicable or provided, by clicking on the affirmatory/confirmatory check box or “I Agree” / “I Accept” button or by any other means which construe your acceptance of this Agreement

### **BY AND BETWEEN:**

**Alakart Technologies Private Limited**, a company incorporated under the Companies Act 2013, having its registered office at 1st Floor, H.No.1-98-9/3/9&10, Plot Nos. 25 & 26, Survey No.71 (Part), Madhapur, Serilingampally, Hyderabad Telangana 500081, India(hereinafter referred to as the “**Company**”, which expression shall wherever the context so admits include its affiliates, sister concerns, subsidiaries, successors, permitted assignees and/or authorised agents/representatives) of the FIRST PART;

AND

**E-Commerce Vendor/Seller**, the details of which are given by you on the Company’s website on which this Agreement appears, natural or juristic/legal person competent to enter into valid and legally binding contract under applicable Indian laws, being, *inter alia*, a person of legally sound mind, not adjudicated bankrupt and equal to or more than 18 years of age on the Execution Date. By accepting this Agreement, You represent that You are bound to this Agreement and that your designated email address is valid and subsisting, the details of which are as submitted by You in the application, by electronic means or otherwise, to register a vendor account with the Company(hereinafter called the “**Vendor**”, which expression shall wherever the context so admits include his/her legal heirs, representatives in interest, executors, administrators and/or assigns, or its affiliates, sister concerns, subsidiaries, successors, assigns and/or authorised agents/representatives) of the SECOND PART;

That for the sake of brevity and convenience, the Company and the Vendor shall hereinafter be individually referred to as “Party” and collectively as “Parties”.

WHEREAS, the Company owns and operates “Alakart” located at the domain name <https://in.alakart.com/> (hereinafter referred to as the “**Company Website**”) as an online e-commerce marketplace for the display, advertising and sale of various products of different nature, which are marketed and sold using electronic medium more particularly through the e-commerce domain.

WHEREAS, the purpose of this Agreement is to provide qualifying vendors with the opportunity to sell products through the e-commerce marketplace platform formed on the Company Website. This Agreement supplements any other agreements governing the buying and selling of products between the Company and the Vendor, including any vendor buying agreements and/or purchase orders.

WHEREAS, the Vendor is *inter alia* engaged in the business of developing and/or manufacturing and/or selling various products and related services, and has entered into this Agreement with the Company for the purpose of having its products sold as well as marketed and promoted through the e-commerce marketplace platform offered on the Company Website

These recitals shall form part of the Agreement.

NOW THEREFORE, in consideration of the mutual promises and other consideration, the sufficiency of which is acknowledged, the Parties, intending to be legally bound, agree as follows:

## 1. Definitions

For the purpose of this Agreement, the following words and phrases shall have the meaning assigned to them under this clause:

- 1.1 “**Affiliate**” shall mean, with respect to each Party, any person or entity directly or indirectly through one or more intermediary Controlling, Controlled by, or under direct or indirect common Control with a Party.
- 1.2 “**Alakart online shopping portal**” shall mean the online platform owned and operated by the Company that facilitates the shopping transaction between the Vendor and the end customer.
- 1.3 “**Application**” shall mean and include any and all forms and particulars filled-in by the Vendor, whether electronically or as otherwise applicable or provided, to create a vendor account with the Company as a precursor to the execution of this Agreement and which shall be considered a part of this Agreement and annexed hereto as Annexure A.
- 1.4 “**Control**”, “**Controlled**” or “**Controlling**” shall mean, with respect to any person or entity, any circumstance in which such person or entity is controlled by another person or entity by virtue of the latter person or entity controlling the composition of the board of directors or managers or owning the largest or controlling percentage of the voting securities of such person/entity or otherwise controlling the other.

- 1.5 **“Brand”** or **“Brand Name”** shall mean brand name / trade mark / service mark / logo of the Company, or any other successor or replacement brand/trademark, as may be decided by the Company upon a prior intimation to the Vendor.
- 1.6 **“Company”** shall mean Alakart Technologies Private Limited.
- 1.7 **“Company Website”** shall mean that Company’s website, including the e-commerce marketplace platform, hosted by the Company at <https://in.alakart.com> (and any successor or replacement website).
- 1.8 **“Confidential Information”** means and includes any and all information which is confidential to a Party including any (i) business information and business processes, (ii) any samples, formulations, specifications, data relating to manufacturing and quality control processes and procedures, (iii) advertising and marketing plans, (iv) any past, current or proposed development projects or plans for future development work, (v) technical, marketing, financial and commercial information whether relating to past or current or future, (vi) the commercial and business affairs of a Party, (vi) all customer related information including any rates and discounts and (vii) and with respect to the Company shall include the end customer database.
- 1.9 **“Deliverable(s)”** shall mean the specific materials, devices, products, services or other deliverables that are provided by Vendor to the Company during the course of performing this Agreement and any related document thereto.
- 1.10 **“E-Commerce”** shall mean sale of products by the Company to its end customers via the internet, the Company Websites, or any on-line system or computer network. E-Commerce also includes any related business and marketing activities supporting such sales.
- 1.11 **“E-Commerce Marketplace”** shall mean the virtual electronic market/store created through the Alakart online shopping portal on the Company Website for sale of the Vendor’s products either through the Company Website displaying the particulars of the Vendor’s products and making the same available for sale, and by means of which the end customer can place an order for the products of the Vendor.
- 1.12 **“End Customer”** shall mean any individual, group of individuals, firm, company or any other entity placing an order for products of the Vendor through the Company Website.
- 1.13 **“End Customer Database”** shall mean all data / information (as may be updated from time to time) about the persons/ entities including their names, addresses, contact details, queries, orders and other requests made available by such persons / entities on the platform or otherwise captured by the platform that shall further include the usage, behaviour, trends and other statistical information / data relating to such persons / entities, who (i) access the platform or otherwise get invitation to the platform or correspond with the platform, (ii) place any order for products on the platform, or (iii) send any enquiry/ request with respect to the platform, and shall include all analysis and records based on such aforementioned information, including the spending and other patterns of such persons/entities and products. For the avoidance of doubt, any list, description or other grouping of consumers or customers or any derivative work from end customer database shall be deemed to be end customer database.

- 1.14 **“Intellectual Property”** includes ideas, concepts, creations, discoveries, inventions, improvements, know how, trade or business secrets; trademarks, service marks, logos, domain names, designs, utility models, tools, devices, models, methods, patents, copyright (including all copyright in any designs and any moral rights), masks rights, design right, procedures, processes, systems, principles, algorithms, works of authorship, flowcharts, drawings, books, papers, models, sketches, formulas, teaching techniques, electronic codes, proprietary techniques, research projects, and other confidential and proprietary information, computer programming code, databases, software programs, data, documents, instruction manuals, records, memoranda, notes, user guides; in either printed or machine-readable form, whether or not copyrightable or patentable, or any written or verbal instructions or comments. the end customer database shall be considered to be the intellectual property of the Company.
- 1.15 **“Intellectual Property Rights”** means and includes (i) all rights, title or interest under any statute or under common law or under customary usage including in any intellectual property or any similar right, anywhere in the world, whether negotiable or not and whether register able or not, (ii) any licenses, permissions and grants in intellectual property (iii) applications for any of the foregoing and the right to apply for them in any part of the world and (iv) all extensions and renewals thereto.
- 1.16 **“Order”** shall mean an order for purchase of the Vendor’s products wherein the end customer has agreed to purchase the product upon the terms and conditions and at the price indicated on the Company Website.
- 1.17 **“Payment Facilitation Services”** shall mean facilitating the receipt of price on the platform either along with platform services or otherwise (for example cash on delivery services).
- 1.18 **“Platform”** shall mean the e-commerce marketplace platform offered on the Company Website bearing the brand name.
- 1.19 **“Platform Services”** shall mean the internet based electronic e-commerce marketplace platform in the form of an intermediary to facilitate sale and purchase of the Vendor’s goods and services through the platform.
- 1.20 **“Product(s)”** shall mean any and all goods and related services of the Vendor which would be made available for sale on the Company Website in terms of provisions of this Agreement.
- 1.21 **“Price”** shall mean the cost at which the products are to be delivered to the Customer inclusive of shipping charges, if any.
- 1.22 **“Service Fees”** shall mean the fees charged by the Company as specified in Schedule B of this Agreement for availing of either whole or part of the service provider business by the Vendor in accordance with this Agreement.
- 1.23 **“Service Provider Business”** shall mean the services provided in relation to Alakart online shopping portal by the Company as a service provider to the Vendor including but not limited to platform, platform services, payment facilitation services and transaction support services.

- 1.24 “**Service Provider Content**” shall mean the Company Website, all the pages of the Company Website, all the content contained in the Company Website (excluding any third party content and advertisements), look and feel of the Company Website, any and all information or content owned or controlled (e.g. by license or otherwise) by the Company or its Affiliates, including text, images, graphics, photographs, video and audio, and furnished by Company or its Affiliates in connection with platform services, transaction support services, payment facilitation services and for the purpose of offering for sale of the Vendor’s products on the Company Website.
- 1.25 “**Shipping Charges**” shall mean the logistics/courier/postal charges including all taxes incurred for delivering the product(s) to the end customer.
- 1.26 “**Shipment Cost**” shall mean the cost and taxes recovered by the Company from the Vendor per order for handling the logistics involved in shipping the product to the end customer.
- 1.27 “**Term**” shall have the meaning as set out in Clause 3 of this Agreement.
- 1.28 “**Transaction Fees**” shall mean the margin per transaction charged by the Company to the Vendor at the rates specified in Schedule A, upon placement of an order by end customer for the Vendor’s product on the Company Website.
- 1.29 “**Transaction Support Services**” shall include services in relation to support the sale of the goods and services by the Vendor to end customer which shall include product listings, warehousing services, logistics management services, payment facilitation services, customer support services and any other additional services that may be agreed between the parties.
- 1.30 “**Vendor**” shall mean the entity incorporated or otherwise more specifically described hereinabove, which sells its products through the Company Website and whose particulars are described and detailed in the application for a vendor account with the Company
- 1.31 “**Vendor Account**” shall mean the account created with the Company by the Vendor through the Company Website with a view to make its products available for sale on the Company Website, thereby also permitting the Company to act as a service in terms with the purpose of this Agreement.

## **2. Arrangement and Purpose of the Agreement**

- 2.1 The Company shall offer to the Vendor its services for facilitating online sale of the Vendor’s product which shall include hosting and technology, customer support, logistics services (if availed by the Vendor), payment services and all the other related services to ensure customer satisfaction on behalf of the Vendor, in consideration for which the Vendor shall pay services fees to the Company. The Vendor shall also pay transaction fees to the Company for the sale being effectuated through the Company Website, as specified in this Agreement.
- 2.2 Based on mutual discussions, it is agreed by and between the Parties hereto that the Vendor shall put up for sale its products on the Company Website, subject to the terms and conditions hereinafter contained.

### **3. Term and Termination**

- 3.1 The Term of this Agreement begins on the Execution Date and continues for a period of 12 months unless terminated earlier.
- 3.2 If terminated by either Party, the Agreement will continue to govern the sale of Vendor products purchased by end customers prior to termination until such products are sold, returned, or removed from inventory so that no inventory of such products remains.
- 3.3 The Agreement may be extended for such further period as may be mutually agreed by and between the parties hereto in writing to this effect.
- 3.4 This Agreement may be terminated by the Company in the event:
  - 3.4.1 The Vendor fails to make payment of the agreed amount, by giving 7 days written notice,
  - 3.4.2 The Vendor commits a material breach of any representation, obligations, covenant, warranty or term of this agreement and the same is not rectified within 30 days after written notice given by the Company.
  - 3.4.3 If a Petition for insolvency is filed against the Vendor.
  - 3.4.4 If the Vendor is in infringement of the third party rights including intellectual property rights.
  - 3.4.5 This Agreement may be terminated by either party giving the other 30 days written notice.
- 3.5 Effect of Termination:
  - 3.5.1 In the event of termination/expiry of this Agreement, the Company shall remove the web links and discontinue display of the Vendor's products on the Company Website with immediate effect. The Company shall not be liable for any loss or damages (direct, indirect or inconsequential) incurred by the Vendor by virtue of termination of this Agreement. During the period under notice both the parties shall be bound to perform its obligations incurred under this Agreement and this sub-clause shall survive the termination of this Agreement.
  - 3.5.2 Upon expiry or termination of this Agreement all confidential information and any other materials which may have been provided by one Party to the other shall be forthwith returned and the returning Party shall certify such return and all copies thereof or any other material or information which cannot be returned, shall be destroyed completely.
  - 3.5.3 Termination of this Agreement shall not relieve any Party of any of its obligations or liabilities and affect the rights and remedies of a Party, which have accrued prior to the date of termination.
  - 3.5.4 Termination of this Agreement shall not affect any obligations or duties of the Vendor and the Company towards the end customer which obligations or duties accrued before the termination of this Agreement.

#### **4. Transaction Fee**

- 4.1 The Company as such shall not charge a transaction fee for all sales of the products of the Vendor that are made/generated through the end-customer's use of the Company Website and this transaction fee shall be paid by the Vendor to the Company, as specified to be paid product category wise is specified in Declaration cum undertaking of this Agreement. The Company may expressly amend or modify the transaction fee as specified in Declaration cum undertaking in respect of any product, at any time, without prior notice to the Vendor and any such amendment(s) to Declaration cum undertaking shall be a part of this Agreement.
- 4.2 It is expressly agreed by both Parties, that the Company shall debit the transaction fee amount(s) from the remittance to Vendor at the time of forwarding the order received from the end customer.

#### **5. Consideration and Payment Terms**

- 5.1 The Company shall collect the payment on behalf of the Vendor in respect of the orders received from end customers on the Company Website. In consideration of the services rendered in pursuance of this Agreement, the Company shall charge the services fees to the Vendor at the rates specified by the Company in Declaration cum undertaking. The Company shall pay the Vendor an amount recovered as price minus the sum of shipping charges, service fees, transaction fees and shipment cost in respect of approved order(s). The shipment cost will be levied at actuals as per Declaration cum undertaking per transaction, per customer basis. The said shipment cost will be independent of the quantity shipped for a transaction by a particular end customer.
- 5.2 In the event any order is reversed due to "damaged product", "quality issue", "not delivered" or "wrong item delivered", Vendor agrees that the Company shall levy the service fees, plus a penalty of the service fees of the product at actuals and the said fees and penalties will be deducted from the amount due and payable to Vendor.
- 5.3 Further Company shall debit the service fees at actuals to the Vendor in the event the product cannot be delivered by the Vendor due to "out of stock" and in such an event Vendor shall be liable to bear all the cost and claims (including cost of legal proceedings, cost of attorneys, claims, etc.) raised against the Company.
- 5.4 Vendor agrees to bear all the applicable taxes duties, or other similar payments (including GST etc.) arising out of the sales transaction of the product through the Company Website and the Company shall not be responsible to collect, report, or remit any taxes arising from any transaction

#### **6. Obligations of the Vendor**

- 6.1 The Vendor shall upload the product description, images, disclaimer, delivery time lines, price and such other details for the products to be displayed and offered for sale through the platform provided on the Company Website.
- 6.2 The Vendor shall ensure not to upload any description/image/text/graphic that is unlawful, illegal, objectionable, obscene, vulgar, opposed to public policy, prohibited or is in violation of intellectual property rights including but not limited to Trademark and copyright of any third party. The Vendor shall ensure to upload the product description and image only for the product which is offered for sale through the Company Website.

- 6.3 The Vendor shall provide full, correct, accurate and true description of the product so as to enable the customers to make an informed decision.
- 6.4 The Vendor shall be solely responsible for the quality, quantity, merchantability, guarantee, warranties in respect of the products offered for sale through the Company Website.
- 6.5 The Vendor shall at all times have access to the internet and its email account to check the status of approved orders.
- 6.6 In respect of the orders for products placed by end customers on the Company Website, the Vendor shall submit proof of dispatch to the satisfaction of Company within **24 hours** of the request made by Company.
- 6.7 In the event any product is not accepted by the end customer for being a damaged or wrong item, then the same shall be replaced by the Vendor at no extra cost to the aggrieved customer. Since the Company acts as a facilitator, the Vendor hereby authorizes the Company to entertain all claims of return of the product in the mutual interest of the Vendor as well as the end customer.
- 6.8 The Vendor shall not send any of its promotional or any other information with the products ordered by the customer and also shall ensure that no material or literature is sent which may be detrimental to the business/commercial interests of the Company.
- 6.9 The Vendor shall dispatch the products of same description, quality and quantity and price as are described and displayed on the Company Website and for which the end customer has placed the order.
- 6.10 The Vendor shall raise invoice in the name of the end customer. The Vendor further undertakes and agrees to raise the invoice of an amount equivalent to the amount displayed on the Company Website to the end customer and paid by/charged to the end customer.
- 6.11 The Vendor shall not offer any products for sale on the Company Website which are prohibited for sale, dangerous, against the public policy, banned, unlawful, illegal or prohibited under the Indian laws.
- 6.12 The Vendor undertakes that it has the power to authorize the sale and/or display of its products on the Company Website
- 6.13 The Vendor shall pass on the legal title, rights and ownership in the products sold to the Customer.
- 6.14 Vendor shall be solely responsible for any dispute that may be raised by the customer relating to the goods, merchandise and services provided by the Vendor.
- 6.15 The Vendor shall at all time during the pendency of this Agreement endeavour to protect and promote the interests of the Company and ensure that no third-party rights including intellectual property rights are infringed.
- 6.16 The Vendor shall at all times be responsible for compliance of all applicable laws and regulations including but not limited to intellectual property rights, local sales tax, central sales tax, service tax, value added tax, standards of weights & measures legislation, sale of goods act, excise and import duties, drugs and cosmetics act, drugs and remedial magic act, code of advertising ethics, etc.

## **7. Warranties, Representations and Undertakings of the Vendor**

- 7.1 The Vendor warrants, represents, agrees and undertakes that –
  - 7.1.1 It has the right and full authority to enter into this Agreement with the Company.

- 7.1.2 All its obligations under this Agreement are legal, valid and binding obligations enforceable in law.
- 7.1.3 There are no proceedings pending, which may have a material adverse effect on their ability to perform and meet their obligations under this Agreement.
- 7.1.4 It is an authorized business establishment and hold all the requisite permissions, authorities, approvals and sanctions to conduct their business and to enter into this Agreement with the Company. They shall at all times ensure compliance with all the requirements applicable to their business and for the purposes of this arrangement including but not limited to intellectual property rights, sales tax, central sales tax, service tax, standards of weights & measures legislation, sale of goods act, value added tax, excise and import duties, etc. The Vendor confirms that it has paid and shall continue to discharge all its obligations towards statutory authorities.
- 7.1.5 It has adequate rights under relevant laws including but not limited to various intellectual property legislation(s) to enter into this Agreement with the Company and perform the obligations contained herein and that it has not violated/ infringed any intellectual property rights of any third party.
- 7.1.6 It shall provide the Company with copies of any document required by the Company for the purposes of this performance of its obligations under this Agreement within 24 hours of getting a written notice from the Company.
- 7.1.7 The complete product responsibility and liability shall solely vest with Vendor and that the Vendor shall be solely responsible to the end customer for the sale of the product by Vendor including but not limited to its delivery to the end customer and that Vendor shall not raise any claim on the Company in this regard.
- 7.1.8 It shall not to upload any text, images, graphics (for description and display of product on the online store) that is vulgar, obnoxious, inaccurate, false, incorrect, misleading, intimidating, against the public policy.
- 7.1.9 The Vendor shall pay the Company transaction fees as specified in Schedule A of this Agreement on every transaction the Vendor enables and that Vendor shall provide all completed transaction details to the Company for record keeping and reconciliation.
- 7.1.10 It shall draw the invoice/bill directly in the name of the end customer.
- 7.1.11 It shall prior to release of any promotion/advertisement material seek prior written approval for the same from the Company, in so far as the same relates to services offered pursuant to the terms of this Agreement.

**8. Company reserves the right:**

- 8.1 The Vendor agrees and acknowledges that the Company, at all times during the continuance of this Agreement, shall have the right to remove/block/delete any text, graphic, image(s) uploaded on the Company Website by the Vendor without any prior intimation to Vendor in the event the said text, image, graphic is found to be in violation of law, breach of any of the terms of this Agreement or the Terms & Conditions agreed to by the Vendor in applying for a vendor account on the Company Website. In such an event, the Company reserve the right to forthwith remove the listing(s) for the product of the Vendor without any prior intimation or liability to the Vendor.

- 8.2 The Company reserves the right to provide and display appropriate disclaimers and terms of use on the Company Website and the Alakart online shopping portal.
- 8.3 At any time if the Company believes that the services being utilized by the Vendor or its end customer are in contravention of the terms and provisions of this Agreement, the Terms & Conditions agreed to by the Vendor in applying for a vendor account on the Company Website, the Company shall have the right either at its sole discretion or upon the receipt of a request from the legal/statutory authorities or a court order to discontinue/terminate the said service(s) to the Vendor or the end customer, as the case may be, without liability to refund the amount to the Vendor to forthwith remove/block/close the vendor account of the Vendor and furnish such details about the Vendor and/or its end customers upon a request received from the legal/ statutory authorities or under a court order.

## **9. Authorizations**

- 9.1 The Vendor hereby grants to the Company the non-exclusive, worldwide, royalty-free right and license to use and display any product information, specifications, warranty information, data, images, and/or intellectual property furnished by the Vendor to the Company for use in respect of the Vendor's products listed on the Company Website during the term of this Agreement (hereinafter referred to as "Vendor Content").
- 9.2 The Company may use Vendor Content for any purpose related to the Alakart online shopping portal or in furtherance of promoting Vendor's products, including use on the Company Website, on emails and marketing/advertising campaigns. The Vendor acknowledges that the Company is relying on the Vendor to ensure that all Vendor Content is accurate and complete, and Vendor agrees to notify the Company of any revisions or modifications to any inaccurate or incomplete Vendor Content, promptly upon discovery of the same.
- 9.3 The Company agrees that it will not make modifications or alterations to Vendor Content unless the same is found to be in violation of law, breach of any of the terms of this Agreement or the Terms & Conditions agreed to by the Vendor in applying for a vendor account on the Company Website.
- 9.4 Except for the limited license granted to the Company herein, the Vendor retains all right, title, and interest to Vendor Content.

## **10. Advertising, Marketing and Sales Promotion**

- 10.1 The Company is the proprietor and owner of the platform and platform services and rights holder of the brand name may at its sole discretion carry out advertising and marketing activities in relation to promotion of the platform, platform services and brand name in any manner and to any extent as may be deemed fit by the Company and for such purposes may engage in certain sales promotion activities to increase the sales of products on the platform. The Company and the Vendor may agree on certain terms on which the Vendor shall support such sales and marketing activities of the Company including providing discounts on the products or other free of cost goods and services to the end customers.

- 10.2 The Company may, at its sole and absolute discretion, market, promote or advertise the products made available for sale by the Vendor on the Company Website in compliance with this Agreement.
- 10.3 The Company shall have the sole right to create, change and/or modify the design, look and feel, architecture, layout, positioning and all aspects of the Company Website including listing, positioning, indexing, placement and tiering the products offered for sale on the platform and the Vendor shall have no right to dispute such exercise of such right or discharge of such responsibility by the Company.
- 10.4 The Company shall be solely entitled to sell or license any and all advertising and promotional time and space with respect to Company Website including any parts, sections or portions thereof, including that which contain details of the products. The advertisement and promotions on any part of the Company Website may include video advertising, display/banner/text advertisements, including but not limited to medium rectangle, leader-board, roadblock, hyperlink, page branding, framing, widgets, popups, pop-under, network advertisements (for the sake of example, Google AdSense) available on the Company Website. The Company shall have the sole right and discretion to decide the style, placement and format of the advertisement and promotion and the price and/or any other consideration, if any, for the sale and license of such advertisement and promotion. Except for the facilitation of payment of sale proceeds of the product through payment facilitation services, the Company and/or its affiliates shall be entitled to retain any and all revenues generated from any sales or licenses of all such advertisements and promotions.
- 10.5 The Company shall reasonably ensure that all advertisement/ promotion activities undertaken by the Company (i) do not contain any material that, in its knowledge, would infringe or violate any intellectual property rights or any other personal or proprietary right of any person; and, (ii) are not obscene or libellous; and, (iii) comply with all applicable laws including standards and rules set forth by the Advertising Standards Council of India or any other relevant government authority.

## **11. End Customer Database**

- 11.1 The end customer database shall be proprietary to the Company. Solely the Company shall have rights in the end customer database including all intellectual property rights in the end customer database and unless specifically agreed to in writing by Company, no rights in or to the end customer database are deemed to have been granted to the Vendor.
- 11.2 The Vendor further agrees that:
- 11.2.1 all the end customer database shall be treated as confidential information of the Company for the purposes of this Agreement; and,
- 11.2.2 the Company being the owner and proprietor of the end customer database shall be entitled to use, store and exploit the same in any manner as may be deemed fit by the Company and in accordance with Company's privacy policy as provided on the Company Website from time to time; and,
- 11.2.3 the Vendor shall not use the end customer database other than selling the products by availing service provider business or required for law enforcement purposes and shall in no way sell, transfer or otherwise exploit the end customer database without the express written consent of the Company.

## **12. Indemnity**

- 12.1 The Vendor indemnifies and shall hold indemnified the Company, its affiliates and end customers, its directors, officers, employees, representatives, agents (hereinafter referred to as the "Indemnified Parties") from and against all losses, damages, claims, suits, legal proceedings and otherwise howsoever arising from or in connection with any claim including but not limited to claims, liabilities, costs and expenses (including attorney's fees) incurred or to be incurred by the Indemnified Parties that arise out of, in any way relate to, or result from any breach by the Vendor of any of the provisions of this Agreement, for any infringement of any intellectual property rights or any other rights of any third party or of law, concerning quality, quantity and any claim in relation to the Vendor's product, or negligence, fraud or wilful misconduct of the Vendor or its affiliates (and their respective officers, directors, shareholders, employees, contractors, sub-contractors, agents and personnel), or the breach of any of the Vendor's warranties, representations or undertakings or in relation to the no fulfilment of any of its obligations under this Agreement or arising out of the Vendor infringing any applicable laws, regulations including but not limited to intellectual property rights, local sales tax, central sales tax, service tax, value added tax, the standards of weights & measures legislation, excise and import duties, etc. For the avoidance of doubt, it is further clarified that the right to indemnification in connection with any of the aforesaid claims of cause of action is independent and in addition to other rights and remedies of the Indemnified Parties that may be available at law or in equity. For the purpose of this clause reference to the Company shall also include any agencies through whom the Company makes the Alakart online shopping platform available to the end customers.
- 12.2 The Company agrees to indemnify and to keep indemnified the Vendor in respect of all claims losses and expenses (including the cost of litigation if any) arising out of any breach or default part of the Company to perform its obligations under this Agreement.
- 12.3 This article shall survive the termination or expiration of this Agreement.

## **13. Company not liable**

- 13.1 The Company, on the basis of representation by the Vendor, has created the vendor account as well as the listings for the products of the Vendor on the Company Website which enables the Vendor to offer its products for sale on the Alakart online shopping portal. The Vendor's representation is the essence of the Contract.
- 13.2 The Company shall under no circumstances be liable or responsible for any loss, injury or damage to the Vendor, or any other party whomsoever, arising on account of any transaction under this Agreement or as a result of the products being in any way damaged, defective, in unfit condition, infringing/ violating any laws / regulations / intellectual property rights of any third party. The Vendor agrees and acknowledges that the Vendor shall be solely liable for any claims, damages, allegation arising out of the products offered for sale through its online store (including but not limited to quality, quantity, price, merchantability, use for a particular purpose, or any other related claim) and shall hold the Company harmless and indemnified against all such claims and damages.
- 13.3 Further the Company shall not be liable for any claims, damages arising out of any negligence, misconduct or misrepresentation by the Vendor or any of its representatives.

13.4 The Vendor hereby agrees, confirms and acknowledges that the product is owned by the Vendor and that the Company is merely a facilitator for sale of the Vendor's product, hence the Company is not responsible/ liable for the product, its design, its function and condition manufacturing and selling and financial obligations, warranties, guarantees whatsoever. The Company reserves its right to state appropriate disclaimers on the Company Website.

#### **14. Dispute Resolution**

14.1 Any dispute which arises between the Parties shall be attempted to be resolved by good faith discussions between the Parties.

14.2 Where the Parties are unable to resolve such disputes by good faith discussions within a period of thirty (30) business days from the date of a written notice by either Party notifying existence of such dispute, either Party shall be free to refer the dispute to arbitration in accordance with this Agreement. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

14.3 The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 (as applicable in India) for the time being in force, and/or any statutory modification or re-enactment thereof.

14.4 The place and seat of arbitration shall be at Hyderabad, India and the language of the arbitration shall be English.

14.5 The arbitration shall be conducted by three (3) arbitrators. Each Party shall appoint one arbitrator each and the two appointed arbitrators shall appoint a presiding arbitrator. In case the Parties fail to appoint their respective arbitrators within thirty (30) days from the submission of dispute for settlement through arbitration in accordance with Clause 15.2 above, or the two appointed arbitrators fail to appoint the presiding arbitrator with thirty (30) days from the date of appointment of the later of the first two arbitrators, a sole arbitrator shall be appointed in accordance with the Indian Arbitration and Conciliation Act, 1996 by the appropriate court of law.

14.6 The award rendered shall be in writing and shall set out the facts of the dispute and the reasons for the arbitrator's decision. The award shall apportion the costs of the arbitration as the arbitrator deems fair.

14.7 Notwithstanding anything contained in this Agreement, both Parties agree and acknowledges that the covenants and obligations with respect to the matters covered by this Agreement and set forth herein relate to special, unique and extraordinary matters, and that a violation of any of the terms of such covenants and obligations will cause irreparable loss and injury to the aggrieved Party. Therefore notwithstanding the provisions of this Agreement, either Party shall be entitled to approach any appropriate forums for obtaining an injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate.

#### **15. Jurisdiction and Governing law**

15.1 The obligations, performance, interpretation and contents shall be governed by Indian law.

15.2 Subject to the provisions of negotiation and arbitration each Party irrevocably and unconditionally submits to the jurisdiction of Courts at Hyderabad, India.

## **16. Notices**

16.1 All notices and other communication under this Agreement shall be effectively only if in writing and in English and either delivered by hand or sent by courier in each case to the addresses set out at the beginning of this Agreement, within three (3) days after being sent, if sent with all sending expenses prepaid, by an express courier with a reliable system for tracking delivery, or within five (5) days if the Vendor is based in India / fourteen (14) days if the Vendor is based outside of India after the date sent, if sent by certified or registered mail, postage prepaid, return receipt requested.

16.2 General communications through electronic mode:

16.2.1 When the Vendor uses the Company Website or sends emails/other data/information/communication to the Company, the Vendor agrees and understands that the Vendor is communicating with the Company through electronic means and that the Vendor consents to receive communications via electronic means from the Company periodically. The Company will communicate with the Vendor by the designated email address as provided by the Vendor at the time of registration of its vendor account.

## **17. Intellectual Property Rights**

17.1 It is expressly agreed and clarified that, except as specified agreed in this Agreement, each Party shall retain all right, title and interest in their respective trademarks and logos and that nothing contained in this Agreement, nor the use of the trademark/logos on the publicity, advertising, promotional or other material in pursuance of the purpose of this Agreement shall be construed as giving to any Party any right, title or interest of any nature whatsoever to any of the other Party's trademarks and/or logos.

17.2 The Vendor acknowledges the Company's absolute ownership of, interest in and rights to the Brand Name and all the intellectual property in the Alakart online shopping portal and the Company Website.

17.3 Without limitation to the foregoing, the Vendor acknowledges and agrees that all goodwill in or associated with the Brand Name, including any goodwill generated or arising by or through Company's or the Vendor's activities pursuant to this Agreement shall accrue for the benefit of and shall belong exclusively to the Company.

17.4 No right or interest in the Brand Name are granted or deemed to be granted by the Company to the Vendor.

17.5 Intellectual property rights in relation to service provider content and service provider business:

17.5.1 The Company shall retain sole ownership of all the intellectual properties, know how or other proprietary rights in the service provider content and service provider business and no right or interest is granted or shall be deemed to be granted by the Company to the Vendor.

17.5.2 To the extent the service provider content contains any proprietary content or information of the Vendor, the Vendor hereby grants a royalty-free and world-wide license to such content or information including a right to creative derivative product of such content or information.

## **18. Entire Agreement**

This Agreement embodies the entire agreement and understanding of the Parties and supersedes any and all other prior and contemporaneous agreements, arrangements and understandings (whether written or oral) between the Parties with respect to its subject matter.

## **19. Assignment**

Neither this Agreement nor any part thereof is assignable, transferable, sub-licensable, sub-contractable or conveyable by Vendor, either by operation of law or otherwise, without the express, prior, written consent of the Company.

## **20. Confidentiality**

20.1 The Vendor agrees and undertakes to maintain the confidentiality of the information and user/customer data disclosed, generated or made available to Vendor under this Agreement. The said information shall not be used by the Vendor for any purpose other than for the performance of its obligations under this Agreement.

20.2 The Vendor agrees that the unauthorized disclosure or use of such information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, the Vendor agrees that the Company shall have the right to obtain an immediate injunction from any court of competent jurisdiction enjoining breach of this Agreement and/or disclosure of the Confidential Information.

20.3 The Company shall also have the right to pursue any other rights or remedies available at law or equity for such a breach.

20.4 The aforementioned confidentiality obligations shall not extend to Confidential Information which: (i) has ceased to be confidential without default on the part of the receiving Party; (ii) has been received from a third party who did not receive it in confidence; (iii) the receiving Party is required by any court, government or other regulatory body to disclose, but only to the extent required by law, provided that the receiving Party gives the disclosing Party written notice as soon as practicable of such requirement and consult in good faith the disclosing party on the content and manner of any disclosure.

## **21. Limitation of liability**

Under no circumstances, except in case of breach of contract, will either party be liable to the other party for lost profits, or for any indirect, incidental, consequential, special or exemplary damages arising from the subject matter of this Agreement, regardless of the type of claim and even if that party has been advised of the possibility of such damages, such as, but not limited to loss of revenue or anticipated profits or loss business, unless such loss or damages is proven by the aggrieved party to have been deliberately caused by the other party.

## **22. Severability**

It is the intent of the Parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such provision shall be modified to the extent necessary to render it, as modified, valid and enforceable under applicable laws and such invalidity or unenforceability shall not affect the other provisions of this Agreement.

### **23. Waiver**

Except as expressly provided in this Agreement, no waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any preceding or subsequent breach of that or any other provision hereof.

### **24. Relationship of Parties**

Nothing in this Agreement will be construed as creating a relationship of partnership, joint venture, agency or employment between the Parties. The Company shall not be responsible for the acts or omissions of the Vendor, and Vendor shall not represent neither has, any power or authority to speak for, represent, bind or assume any obligation on behalf of the Company.

### **25. Force Majeure**

Neither Party shall be responsible or liable for any delay or failure to perform its obligations (other than an obligation to make payment) under this Agreement due to unforeseen circumstances or any event which is beyond that Party's reasonable control and without its fault or negligence, but not limited to, acts of God, war, riots, embargoes, strikes, lockouts, acts of any Government authority, delays in obtaining licenses or rejection of applications under the Statutes, failure of telephone connections or power failure, fire or floods.

### **26. Electronic Execution**

These Terms & Conditions are being executed electronically and each Party recognizes that the same is validly executed under the Information Technology Act, 2000 and shall form a binding agreement between the Parties and no Party shall claim invalidity of these Terms and Conditions merely on the grounds that these Terms and Conditions are being executed electronically. For the aforementioned purposes, the Parties hereby agree that these Terms and Conditions are being concluded and executed at Hyderabad, India

### **26. Press Releases / Public Statement:**

Unless required by law, the Vendor will not make any public announcement or issue any press release concerning the transactions contemplated by this Agreement without the prior consent of the Company.

This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

**IN WITNESS WHEREOF** this Agreement has been duly executed by the authorized representative of each Party and delivered as of the Effective Date. An electronic copy of this Agreement bearing the signature (by hand or electronic means) of both Parties shall also be binding on the Parties.