

## ESCROW AGREEMENT

This **ESCROW AGREEMENT** made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20...  
between

....., a company within the meaning of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as "**the Company**") which expression shall, unless repugnant to the subject or context thereof, include its successors, administrators and executors) of the First Part;

**AND**

**BANK LIMITED**, a company registered under the Companies Act, 2013 (8 of 2013) and a banking company within the meaning of section 5(c) of the Banking Regulation Act, 1949 and having its Head Office \_\_\_\_\_ at and one of its branches at \_\_\_\_\_ (the "**Bank**" / "**Escrow Bank**" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the **SECOND PART**;

[The Company and Escrow Bank where the context so requires are collectively referred to as "Parties" and individually as "Party".]

### **Whereas:**

- (A) The Company is a Payment Aggregator and is duly authorized by the Reserve Bank of India (RBI), under Payment and Settlement System Act, 2007, for provision of Payment Aggregator services in terms of the Applicable Laws.
- (B) The Company is required, pursuant to Reserve Bank of India ("**RBI**") directive / guidelines i.e. Guidelines on Regulation of Payment Aggregators and Payment Gateways and amended / updated from time to time ("**RBI Guidelines**") to maintain amount collected by them in an Escrow Account maintained with only one scheduled commercial bank in India at any point of time.
- (C) The Company has, as per the requirements under the PA&PG Circular, approached Escrow Bank for opening of an Escrow Account on terms and conditions contained herein.
- (D) The Escrow Bank has agreed to open an Escrow Account and has agreed to act as Escrow Bank in accordance with the terms herein contained and in consideration of fees to be received from the Company.

**NOW IN CONSIDERATION FOR THE PREMISES, IT IS AGREED BY THE PARTIES AS FOLLOWS: -**

### **1. Definitions**

The capitalized terms & expressions used under this Agreement and not defined herein shall have the meaning as respectively ascribed to them under the PA&PG Circular and RBI Guidelines.

- (i) "**Agreement**" means this Escrow Agreement and any amendment thereto made in writing between the Parties in accordance with the provisions contained herein.

- (ii) **“Applicable Law”** shall mean any statute, regulations, notification, circular, order, ordinance, requirement, direction, guideline, decree, directive, judgment, decision, injunction, licence, permit, approval, rule, announcement and judicial interpretation thereof, and any interpretation of or determination in respect of any of the foregoing, announcement or other binding action or requirement of an authority or by any State, Government authority or arbitrator or judicial/quasi-judicial authority or a court of law having the force of law in India and having jurisdiction over the matter in question and binding on a given Person, which has the force of law in India, and includes the PA&PG Circular (*as hereinafter defined*) and other guidelines/circular/directions as may be issued, from time to time, by any Government Authority (including RBI) in respect of Payment Aggregators (PAs) and Payment Gateways (PGs) for opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries.
- (iii) **Business Day** shall mean a day, not being a second and fourth Saturday or a Sunday or a holiday notified under Negotiable Instruments Act, 1881, on which Bank is open for business in Mumbai; It is clarified that in relation to an act, which is required to be performed on a particular day pursuant to this Agreement and such day is not a Business Day, such act shall be performed on the following Business Day.
- (iv) **“Business Hours”** shall mean the hours between 10.00a.m. and 3.00p.m. on a Business Day;
- (v) **Company Account** shall mean any bank accounts of the Company maintained with the Bank;
- (vi) **Core Portion** means the average balance computed as per RBI guidelines from time to time,. Calculation of Core Portion as per prevailing RBI guidelines  
**Step 1:** Compute lowest daily outstanding balance (LB) on a fortnightly (FN) basis, for one year (26 fortnights) from the preceding month  
**Step 2:** Calculate the average of the lowest fortnightly outstanding balances [(LB1 of FN1+ LB2 of FN2+ .....+ LB26 of FN26) divided by 26]  
**Step 3:** The average balance so computed represents the "Core Portion" eligible to earn interest.
- (vii) **Escrow Account** means an Escrow Account established in terms of and under this Agreement;
- (viii) **“Force Majeure Event”** means any event (including but not limited to an act of God, fire, epidemics/pandemics, natural calamities; riots, civil commotion or unrest, terrorism, war, strikes or lockouts; expropriation or other governmental actions; any changes in applicable law or regulation including changes in market rules, currency restrictions, devaluations or fluctuations; market conditions affecting the execution or settlement of transactions or the value of assets; and breakdown, failure or malfunction of any telecommunication and information technology systems, failure of communication or banking systems) beyond the control of any Party which restricts or prohibits the performance of the obligations of such party contemplated by this Agreement.
- (ix) **“Government Authority”** means any nation or government or any province or state or any other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of India, any court, tribunal or arbitrator; and any self-regulatory organization and, inter-alia, includes the Reserve Bank of India (RBI).

- (x) **Instruments** means prepaid instruments of various denominations issued by the Company to consumers as per RBI Guidelines.
- (xi) **“Merchants”** shall mean the establishments who accept the Instruments issued by the Company, for payment against the sale of goods and/or services.
- (xii) **“Payment Aggregators”** or **“PAs”** shall have the meaning as respectively ascribed thereto under the PA&PG Circular.
- (xiii) **“Payment Gateways”** or **“PGs”** shall have the meaning as respectively ascribed thereto under the PA&PG Circular.
- (xiv) **“PA&PG Circular”** or **“Payment Aggregator & Payment Gateways Circular”** shall mean and refer to the Reserve Bank of India (RBI) circular no. DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 titled ‘Guidelines on Regulation of Payment Aggregators and Payment Gateways’, as may be amended/supplemented/modified from time to time.
- (xv) **“Sub Account”** shall mean an interest bearing account in which Core Portion is transferred by Escrow Bank from Escrow Account. The Sub Account can be maintained in the form of term deposit account with the Bank.
- (xvi) **“Transaction Charges”** shall mean the charges charged to Holder by the Company on each purchase transaction done on the Instruments.
- (xvii) **“Merchants”** shall mean the establishments who accept payments from their customers by obtaining PA & PG services offered by the Company against the sale of goods and services to the customers.

## **2. Acceptance and Appointment of Escrow Bank**

- 2.1 The Company hereby appoints Bank to act as Escrow Bank on the terms and condition herein contained and to hold the amount in the Escrow Account until the release thereof as specified under this Agreement and the Escrow Bank in consideration of the fees to be paid, accepts such appointment. The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to or held by the Escrow Bank pursuant to the terms of this Escrow Agreement and to operate the Escrow Account in terms of this Agreement and as per the RBI Guidelines and PA&PG Circular. The Company hereby represents that for the purpose of maintenance of the Escrow Account, the operations of Company shall be deemed to be ‘designated payment systems’ under Section 23A of the Payment and Settlement System Act, 2007 (as amended/supplemented from time to time).
- 2.2 The duties of the Escrow Bank under this Escrow Agreement are purely ministerial, administrative and non-discretionary in nature. Neither Escrow Bank nor any of its directors, officers, agents and employees shall, by reason of anything contained in this Escrow Agreement, be deemed to be a trustee for or have any fiduciary relationship with the Company or any other person. If the Escrow Bank has acted in accordance with this Escrow Agreement, it shall be deemed to have acted as if instructed to do so by the Company.

2.3 The Escrow Account shall be non-interest bearing and shall not have any cheque book facility. The Company shall not utilize and/or operate the Escrow Account for 'Cash-on-Delivery' transactions and limit the operations of the Escrow Account to the transactions as prescribed/permitted under the RBI Guidelines and the PA&PG Circular. It is further clarified that no loan/credit facility, of any nature whatsoever, is permissible against the amount lying to the credit of the Escrow Account and the Escrow Bank shall not, in any manner whatsoever, issue any deposit receipts or mark any lien or create any security interest/encumbrance on the amounts held in the Escrow Account and/or the Escrow Account itself.

### **3. Operation of Escrow Amount**

#### **3.1 Deposits in the Escrow Account**

The Company agrees and undertakes to deposit the following funds into the Escrow Account or any other funds as per RBI guidelines from time to time

- a. Payment from various customers towards purchase of goods / services;
- b. Pre-funding by the Merchants / the Company;
- c. Refunds received from Merchants on account of failed / disputed / returned / cancelled transactions;
- d. Payment received for onward transfer to merchants under promotional activities, incentives, cash-backs etc; and
- e. such other credits/funds as prescribed/permitted under the RBI Guidelines and the PA&PG Circular.

It is clarified that any amounts deducted from the customer's account/e-wallets shall be remitted to the Escrow Account on Tp+0 / Tp+1 basis. Further, at the end of a Business Day the Company needs to ensure that the Escrow Amount in the Escrow Account shall not be less than the amount already collected from customer as per 'Tp' or the amount due to the merchant.

The Company may pre-fund the Escrow Account with own / merchant's funds. However, in the event the Escrow Account is funded through the merchant's fund, the Company irrevocably undertakes to bi-laterally agree with the merchant for creation of merchant's beneficial interest on the pre-funded portion in the Escrow Account. Provided that such beneficial interest shall be without recourse to the Escrow Bank and independent of this Agreement.

#### **3.2 Withdrawals from the Escrow Account**

3.2.1 The Company agrees and undertakes that the balances in the Escrow Account, at no time, be lower than the Outstanding Balances. The Company shall on a quarterly basis submit a certificate as per the format specified in Annexure VI signed by the CA/auditor, certifying that Company is maintaining adequate balance in the Escrow Account to cover the Outstanding Balances. The certificates shall be submitted within a fortnight from the end of the quarter to which it pertains. The Company agrees and undertakes to make available on demand of the Bank, adequate records indicating the daily position of the value of Instruments outstanding vis-à-vis balances in the Escrow Account and any information or documents that it may have in its possession in relation to receipts, payments, Core Portion and Outstanding Balances that the Bank may require for scrutiny in connection with maintenance and operation of the Escrow Account.

3.2.2 The Company shall submit to the Escrow Bank as per the format specified in Annexure I, the list of Merchants along with their bank account details with whom Company has valid and on-going contract for on-boarding (“Registered Merchants”), the Company shall also ensure that the list of Merchants is updated from time to time i.e. any addition / deletion/ change in details of the Merchant in the list is communicated to Escrow Bank from time to time. All transactions/payments/settlements shall be made with & in respect of the Registered Merchants only and any transactions initiated to non-registered Merchants shall be rejected on account of incorrect or mismatch of data and/or being in non-compliance to the RBI Guidelines and PA&PG Circular.

3.2.3 The Company may instruct Escrow Bank to make the following payments -

- a) Payments to the Merchant towards reimbursement of claims received by the Company. On receipt of such instruction as per format specified in Annexure II, Escrow Bank shall transfer such amount from the Escrow Account only to the Registered Merchants and through electronic mode only.
- b) Payment to any other account on specific directions from the merchant.
- c) Transfer/payments representing refunds for failed / disputed transactions;
- d) Payment of commission to the intermediaries at pre-determined rates / frequency;
- e) Payment of amount received under promotional activities, incentives, cash-backs, etc.

The Escrow Bank shall not make any direct payments to the Company other than the instruction received as per Annexure III from the Escrow Account. The frequency of such instructions would be once in a month.

The Company may also instruct Escrow Bank in format as specified in Annexure V for refunds towards failed or disputed transactions. The Company shall ensure that the instruction for refund mention the source account from where the funds were received. All refunds shall be made to the original method of payment unless specifically agreed by the customer to credit to an alternate mode. It is clarified that Escrow Bank is not liable to verify erroneous / fraudulent transactions.

The settlement of funds with the Merchants shall not, in any manner whatsoever, be commingled with other business, if any, handled by the Company. It is clarified that balance in Escrow Account is utilized for above mentioned purpose only. The Escrow Bank shall debit the Escrow Account as per direction received from the regulator/RBI /Government Authority.

Unless otherwise contractually agreed that any refunds are to be directly managed amongst the merchant and the customer (independent of the Company) and the customer has acknowledged the same, the Company shall ensure that any credits received by the Company towards/in respect of the reversed transactions and refund transactions shall necessarily be routed back to the credit of the Escrow Account

3.3 On receipt of written instruction from the Company along with Core Portion calculation, the Escrow Bank shall transfer an amount equivalent to the Core Portion, as mentioned in instruction of the Company, from Escrow Account to the Sub Account, provided there is sufficient balance in the Escrow Account. It is hereby clarified that the Company can give such instruction only once in every fortnight. The transfer shall be effected subject to the following conditions:

- a) If Escrow Bank is satisfied that the amount deposited represents the Core Portion after due verification of necessary documents;

- b) The amount shall be linked to the Escrow Account, i.e. the amounts held in the Sub Account shall be available to Escrow Bank to meet payment requirements of the Company, in case of shortfall in the Escrow Account;
- c) The Company provides documentary evidence of being in business for at least 26 fortnights and that its accounts have been duly audited for the full accounting year. For this purpose, the period of 26 fortnights shall be calculated from the actual business operation in the account

Provided however, if the balances in the Escrow Account is insufficient for any transfer as mentioned in Clause 3.3 above, then Escrow Bank shall withdraw all the monies lying in Sub Account and transfer the same to the Escrow Account for complying with said instructions of Company.

- 3.4 The Company undertakes not to avail any loan against balance in Sub Account. Escrow Bank shall not issue any deposit receipts or mark any lien for the amount held in such form of deposits. Any interest accrued on balance in Sub Account shall be credited to the Company Account.
- 3.5 The Escrow Bank shall not be liable to any other authority for release of any amount from the Escrow Account in the manner specified above.
- 3.6 The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is clarified that the monies and properties held by Escrow Bank, until all the Outstanding Liability under this Agreement have been duly paid to the Merchants, shall be considered as trust property and in case of a bankruptcy or liquidation of the Company shall be wholly excluded from the assets of the Company in case of such bankruptcy or liquidation.

#### **4. Terms and conditions**

The following additional terms and conditions shall govern the escrow arrangement under this Agreement:

- 4.1 The Escrow Bank shall act on instructions given by the authorized signatories of the Company only as notified by a written notice by the Company from time to time in respect of the Escrow Account as detailed at Clause 3 above.
- 4.2 This Agreement expressly contains all the duties of Escrow Bank. No implied duties or obligations shall be read or deemed to be read into this agreement against Escrow Bank. Apart from this agreement, Escrow Bank shall not be bound by the provisions of any agreement, arrangement or understanding between the Company and third parties.
- 4.3 The Escrow Bank shall not be obliged to release any amount from the Escrow Account until clear funds are available in the Escrow Account. The Company shall not make any withdrawals from Escrow Account if the withdrawal would result in Escrow Account being overdrawn. If any instruction issued to the Escrow Bank would overdraw the Escrow Account, that instruction shall be deemed to be revoked and that the Escrow Bank shall not act upon it.

- 4.4 The Escrow Bank is under no duty to ensure that funds withdrawn from the Escrow Account are actually applied for the purpose for which they were withdrawn; neither the Escrow Bank nor any of its officers, employees or agents shall be required to make any distribution to the extent that the Escrow Amount is insufficient and shall incur no liability whatsoever from any non-distribution in such circumstances.
- 4.6 If the Company is in breach of any of the terms of this Agreement or any other Applicable Law or regulation or guidelines, Escrow Bank may at its sole discretion but without any obligation send a report of such breach to Reserve bank of India (RBI).
- 4.7 Any act to be done by the Escrow Bank shall be done only on a Business Day, during Business Hours, at Mumbai, India and in the event that any day on which the Escrow Bank is required to do an act, under the terms of this Escrow Agreement, is a day on which banking business is not, or cannot for any reason be conducted, then the Escrow Bank shall do those acts on the next succeeding Business Day. In case the Escrow Bank receives any instructions and any documents from the Company after Business Hours on any Business Day, then it shall be deemed to have received such instructions/documents for processing the transaction on succeeding Business Day. Also the Escrow Bank shall not be liable to verify the authenticity or genuineness of the documents deposited by the Company with the Escrow Bank for the transactions.
- 4.8 Notwithstanding anything contained in this Agreement in the event any instruction or direction is received by the Escrow Bank from any Government Authority/RBI pertaining to any Escrow Account, the instruction and/or direction provided by such Government Authority/RBI shall supersede and prevail over any instructions provided by the Company and the Escrow Bank is hereby authorized by the Company to give precedence to instruction and/or direction provided by such Government Authority/RBI.

## **5. Representations and Warranties**

- 5.1 Each Party, for itself and not for other, represents and warrants to the other parties that:
- (a) it has the power and authority to execute this Agreement and perform its obligations hereunder;
  - (b) its obligations under this Agreement constitute legal, valid and binding obligations enforceable in accordance with the terms of this Agreement; and
  - (c) it is not aware of any legal, quasi legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgments or decrees of any nature made, existing, threatened, anticipated or pending by or against it which may prejudicially affect the due performance or enforceability of this Agreement or any obligation, act, omission or transaction contemplated hereunder.
  - (d). The Escrow Bank is hereby authorized to comply with and obey all Applicable Laws (including the RBI Guidelines and PA&PG Circular), orders, judgments, decrees or writs entered or issued by any court, even in the event that they conflict with the

provisions of this Agreement and in the event the Escrow Bank obeys or complies with any such order, judgment, decree or writ of any court, in whole or in part, it shall not be liable to any of the Parties, nor to any other person or entity, by reason of such compliance, notwithstanding that it shall be determined that any such order, judgment, decree or writ be entered without jurisdiction or be invalid for any reason or be subsequently reversed, modified, annulled or vacated. Notwithstanding anything contained herein, the Account Bank may refrain from taking any action which in its opinion, would or might contravene any law in any relevant jurisdiction, and do all such things in its opinion to comply with all Applicable Law (including the RBI Guidelines and PA&PG Circular). The Account Bank shall not be obliged to make any transfer from the Account if so directed by any Government Authority/regulatory body.

- 5.2 The Company absolutely, irrevocably and unconditionally represents, warrants and covenants to the Escrow Bank that:
- (i) it shall be their sole responsibility to comply with all applicable provisions of the RBI Guidelines and PA&PG Circular at all times.
  - (ii) at all times during the tenure of this Agreement, the Company shall ensure that all withdrawals and deposits from the Escrow Account are in accordance with applicable guidelines under the RBI Guidelines and PA&PG Circular;
  - (iii) it shall provide the Escrow Bank with all documents, information or certificates as may be required by the Escrow Bank as required under the RBI Guidelines and/or PA&PG Circular within the prescribed time and manner, without any liability upon the Escrow Bank to demand any document, information or certificate;
  - (iv) if this Agreement is required to be amended or supplemented to comply with provisions of the RBI Guidelines and PA&PG Circular or any Applicable Law, it shall without any delay or demur take all such steps as may be required under the RBI Guidelines and PA&PG Circular or as may be demanded by the Escrow Bank from time to time;

The Company shall deliver to Escrow Bank in form if required under Applicable Law (including the PA&PG Circular) and in such number of copies as may be required under Applicable Law:

- (i) Quarterly certificate from the auditor certifying, that the Company has been maintaining adequate balances in the Escrow account to cover the outstanding liability of as per the format given in Annexure VI or as prescribed by Escrow Bank from time to time. The certificates shall be submitted within a fortnight from the end of the quarter to which it pertains.
- (ii) annual certificate from the auditors certifying, that the Company has been maintaining adequate balances in the Escrow account to cover the outstanding liability. The certificates shall be submitted within a fortnight from the end of the year to which it pertains.
- (iii) such other statement or statements or information pertaining to the operations of the Escrow Account as Escrow Bank may reasonably require, within such period as required by Escrow Bank.
- (iv) a certificate in the enclosed format as per Annexure IV from their Chartered Accountants (CA) to evidence compliance with the applicable net-worth requirement under the PA&PG Circular.

- 5.3 The Company hereby acknowledges & agrees to ensure that in the event:



- (a) the Company is responsible for delivery of goods / services, the payment to the merchant from the Escrow Account shall be not later than on Ts + 1 basis;
- (b) the merchant is responsible for delivery, the payment to the merchant from the Escrow Account shall be not later than on Td + 1 basis; and
- (c) the agreement with the merchant provides for retaining the amount by the Company till expiry of refund period, the payment to the merchant shall be made from the Escrow Account not later than on Tr + 1 basis.

The Company shall ensure requisite instructions to the Escrow Bank to transfer the Escrow Amount accordingly.

## **6. Fees**

- 6.1 In consideration of Escrow Bank acting as Escrow Bank in terms of this Agreement, the Company shall pay to Escrow Bank mutually agreed fee net of all taxes plus all out of pocket expenses incurred by Escrow Bank.

## **7. Termination**

- 7.1 Each Party may terminate this agreement by giving a prior written notice of 45 days to the other Party without assigning any reason. On receipt or tendering of any such notice the Company shall within 45 days appoint another escrow agent to act as successor of Escrow Bank. On such appointment of successor escrow agent by the Company and receipt of RBI approval as per guidelines, Escrow Bank shall transfer forthwith all the amount lying in the Escrow Account and Sub Account to such successor escrow agent. In the event Company fails to appoint successor escrow agent, Escrow Bank shall be entitled to appoint any other bank as escrow agent, in consultation with the Company as it deems fit.

- 7.2 If, the Company is in breach of any other law or regulation or guidelines, then Escrow Bank shall be entitled to terminate this Agreement with immediate effect by providing notice to the Company and subsequently freeze the Escrow Account.

## **8. Disclaimer**

- 8.1 The Company hereby agrees that Escrow Bank shall not be liable to any person for acting in good faith in the performance of its duties herein contained. No implied duties shall be read into the Agreement herein contained against Escrow Bank, and Escrow Bank shall not be bound to act in any manner not expressly provided herein, or to act on the instructions of any person except the Company.

- 8.2 The Escrow Bank shall be fully protected in acting and relying upon the written instructions signed by the authorized signatories of the Company and in this behalf, Escrow Bank shall not be bound to inquire whether any such signature is genuine or whether the signatory is in fact duly authorized except the due care expected of a banker in connection with signatures of the authorized signatory.

- 8.3 In the event that any instructions received by Escrow Bank are in the opinion of Escrow are doubtful or which conflict with any of the provisions of this Agreement, Escrow Bank shall be entitled to hold the Escrow Amount until it receives clear and unequivocal written instructions. However, Escrow Bank shall immediately, but not later than \_\_\_\_ Business Days, notify its doubts and/ or the reasons for the conflict to Company with any of the provisions of this Agreement, to enable the parties to remove any such doubt or conflict.

- 8.4 The Escrow Bank shall not be liable to anyone whatsoever by reason of any error of judgment or for any act done or step taken or omitted by it in good faith or any mistake of fact or for anything that it may do or refrain from doing in good faith in connection herewith, unless caused by or arising out of its own negligence or misconduct.
- 8.5 Notwithstanding anything contained herein, the Escrow Bank may refrain from taking any action which in its opinion, would or might contravene any law in any relevant jurisdiction, and do all such things in its opinion to comply with all applicable law. The Escrow Bank shall not be obliged to make any transfer from the Escrow Account if so directed by any government/regulatory authority.
- 8.7 The Escrow Bank shall not be bound or affected, in its capacity as Escrow Bank, in any way by the Agreement or any agreement or contract between the Company or any other person, to which the Escrow Bank is not a party. The Escrow Bank, in its capacity as an escrow agent, is deemed not to have any knowledge of any provision of the Agreement or any other document unless the substance of such provisions is explicitly set forth in this Escrow Agreement. The Escrow Bank shall not in any way be required to determine whether or not the terms and conditions of the Agreement or any other agreement or contract between the Company and any other party to which the Escrow Bank is not a party have been complied with. Furthermore, the Escrow Bank is deemed not to have any knowledge or notice of any fact or circumstance not specifically set forth in this Escrow Agreement.
- 8.8 The Escrow Bank shall not be precluded by virtue of this Escrow Agreement (and neither shall any of its directors, officers, agents and employees or any company or persons in any other way associated with it be precluded) from entering into or being otherwise interested in any banking, commercial, financial or business contacts or in any other transactions or arrangements with the Company or any of their affiliates provided such transactions or arrangements are not contrary to the provisions of this Escrow Agreement.
- 8.10 The Escrow Bank shall not be held liable for any loss or damage or failure to perform its obligations hereunder, or for any delay in complying with any duty or obligation, under or pursuant to this Agreement arising as a direct or indirect result of any Force Majeure Event.
- 8.11 Notwithstanding anything contained herein, if there is any conflict between the provisions of the RBI Guidelines and PA&PG Circular and this Agreement, the provisions of the RBI Guidelines and PA&PG Circular shall prevail and in the event any instruction or direction is received by the Escrow Bank from any Government Authority/RBI pertaining to any Escrow Account, the instruction and/or direction provided by such Government Authority/RBI shall supersede and prevail over any instructions provided by the Company so as to give precedence to instruction and/or direction provided by such Government Authority/RBI.
- 8.12 The Escrow Bank shall, save as requisite of Applicable Laws, not be liable or responsible for obtaining any regulatory or governmental or other approval in connection with or in relation to the transactions contemplated herein and shall not be in any manner obliged to inquire or consider whether any regulatory or governmental approvals have been obtained.

9. **Indemnities and Releases**

The Company shall indemnify and keep indemnified the Escrow Bank, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Escrow Bank in any way in connection with or arising out of the negotiation, preservation or enforcement of any rights under, or in carrying out its duties under this Agreement.

In consideration of the Escrow Bank acting and/or agreeing to act pursuant to any facsimile/email instructions, the Company hereby agrees to indemnify the Escrow Bank and keep the Escrow Bank at all times indemnified from and against all actions, suits, proceedings, costs, claims, demands, charges, expenses, losses and liabilities howsoever arising in consequence of or in any way related to the Escrow Bank having acted or omitted to act in accordance with or pursuant to any such instruction. Further, the Company shall also indemnify the Escrow Bank at all times and keep the Escrow Bank indemnified and save harmless against any and all claims, losses, damages, costs, liabilities and expenses incurred, suffered or paid by the Escrow Bank or required to be incurred, suffered or paid by the Escrow Bank and also against all demands, actions, suits proceedings made, filed, instituted against the Escrow Bank, in connection with or arising out of or relating to (i) any instruction received by/given to the Escrow Bank which it believes in good faith to be such an instruction by facsimile/ email submission; and/or (ii) any unauthorised or fraudulent instruction to the Escrow Bank.

The Escrow Bank shall not, in any manner whatsoever, be held liable or responsible by any Person (including the Company) and shall have no liability (of any form or nature whatsoever) on account of taking any action or refraining to take action pursuant to any instructions/direction from the Government Authority/RBI and/or which in its opinion, would or might contravene the applicable provisions of the RBI Guidelines and PA&PG Circular and/or Applicable Laws.

The obligations of the Company under this clause to indemnify and keep indemnified the Escrow Bank, shall survive the satisfaction, discharge or other termination of this Agreement and the resignation or removal of the Escrow Bank under this Agreement.

#### **10. Limitation of Liability**

In no event, Parties shall be liable for any indirect, special, consequential or incidental damages or loss of revenue or business profits, however caused, even if advised of the possibility of such damages.

Notwithstanding anything contrary contained in this Agreement, in no event Cashfree's total aggregate liability towards the Escrow Bank from any cause whatsoever including any claims and demands of whatsoever nature shall never exceed more than the Escrow Bank Fees paid or payable by Cashfree to Escrow Bank in respect of the 6 (six) months immediately preceding the date of such claim/demands.

#### **11. Miscellaneous**

11.1 **Governing Law and Jurisdiction:** The laws of India shall govern the validity and interpretation hereof and the performance by the parties hereto of their respective duties and obligations hereunder.

This agreement shall be subject to the non-exclusive jurisdiction of the competent Courts in Mumbai, India.

11.2 **Counterparts:** This agreement may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

11.3 **Confidentiality:** The Parties shall keep confidential all information relating to this agreement and shall not disclose such information to any third party except (i) with the prior approval of the other Parties or (ii) when required by law, after intimation to the other Parties, and then only to the extent required by law.

11.4 **Successors and Assigns:** Neither Parties shall assign or transfer his rights, title or interest under this agreement without prior written consent of the other Party.

11.5 **Notices:** All Notices, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by certified or registered, with return receipt requested, hand, courier, facsimile transmission, or otherwise actually delivered at the addresses as mentioned below, or at such other address as may have been furnished by such party in writing to the other party. Any such notice, demand or other communication shall be deemed to have been given on the date actually delivered or mailed on receipt, as the case may be.

11.7 The Company agrees to abide by all KYC / AML guidelines as per RBI guidelines.

11.8 **Severability:** Should any clause or any part of a clause within this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such provision shall be modified to the extent possible to make it enforceable in such circumstances and any other circumstances, and, whether or not such modification is possible, such invalidity or unenforceability shall not void or render invalid or unenforceable any other clause or part of a clause in this Agreement.

11.9 **Arbitration:** In case of any dispute or difference on any matter contained in this Agreement, the matter shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended or modified from time to time. Each disputing party shall appoint one arbitrator each and in the event the number of arbitrators is two then the arbitrators so appointed shall appoint the third arbitrator. The language of arbitration shall be English and place of arbitration shall be Mumbai.

## **12. Instructions & Communications**

12.1 The details of the authorized signatories (along with their specimen signatures) of the Company, with respect to any notice, certificate, instrument, demand, request, direction, instruction, waiver, receipt, consent or other document or communication required or permitted to be furnished to the Escrow Bank as agreed under this Agreement, are as set forth in Schedule hereto. The Company shall furnish the relevant Board Resolution to the Escrow Bank authorizing the signatories as set forth in the said Schedule for signing the

Escrow Agreement and/or issuing instructions on behalf of the Company. Any revision in the authorized signatory list has to be supported by a revised Board Resolution which must be furnished to the Escrow Bank.

- 12.2** Each notice, demand or other communication to be given or made under this Escrow Agreement shall be in English and in writing and delivered or sent to the relevant Party at its address, e-mail id or facsimile number set out below (or such other address or facsimile number as the addressee has by 5 (five) days' prior written notice specified to the other Party). Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered in person or by courier, when proof of delivery is obtained by the delivering Party; (b) if sent by post, on the 5th (fifth) day following posting; and (c) if given or made by facsimile, upon dispatch and the receipt of a transmission report confirming dispatch. Without prejudice to clause 12. 1 above, the initial address, e-mail id and facsimile for the Parties for the purposes of this Escrow Agreement are:

**For BANK LIMITED Bank Ltd – as Escrow Bank:**

<b>Escrow Bank</b>	
Name: BANK LIMITED	
Registered Address	Address:
Authorized details for Notices/Instructions	Address: Tel: Fax: Email:

**For Company:**

<b>Company</b>	
Name :	
Address for Notice	Address: Tel: Fax: Email:
Authorized Fax Number/ Email ID for sending and receiving facsimile instruction for Transaction Processing	Fax: Email:

Authorized list of Contact Numbers for Call-Backs (if required) to confirm Notices/ Instructions in connection to this Agreement	Any one of the following: Contact No <span style="float: right;">Contact Name</span>
Account Details	A/c Name A/c No Bank & Branch IFS Code

When the Escrow Bank acts on any notice, demand or other communication sent by facsimile, or other form of electronic or data transmission, the Escrow Bank, acting upon such instruction so received shall not be responsible or liable in the event such notice demand or other communication is not an authorized or authentic notice, demand or other communication of the First Party and/or the Second Party or is not in the form the First Party and/or the Second Party sent or intended to send (whether due to fraud, distortion or otherwise). The First Party and the Second Party shall indemnify the Escrow Bank against any loss, liability, claim or expense (including legal fees and expenses) it may incur with its acting in accordance with any such notice, demand or other communication

**12.3** The Escrow Bank shall also from time to time be entitled to call for further information and / or documents necessary for the operation of the Escrow Account including but not limited to processing of transfer requests received from the Company and / or pertaining to the inflow or the outflow of the funds from the Escrow Account and/or as per the legal and/or regulatory requirements. The Escrow Bank shall not be obliged to make any transfers from the Escrow Account if the Company fails to furnish the necessary documents and / or information as sought by the Escrow Bank.

**12.4 Instruction over Email/Facsimile**

The Company hereby requests and authorizes the Escrow Bank to, from time to time (at the Escrow Bank's discretion), rely upon and act or omit to act in accordance with any directions, instructions and/or other communication which may from time to time be or purport to be given under this Agreement by facsimile/email. The Company acknowledges that (a) sending/ receiving information by facsimile/ email is not a secure means of sending/ receiving information (b) the Company is aware of the risks involved in sending/ receiving facsimile/ email instructions, including the risk that facsimile/ email instructions may (i) be fraudulently or mistakenly written, altered or sent; and (ii) not be received in whole or in part by the intended recipient; and (c) the request to the Escrow Bank to accept and act on facsimile/ email instructions is for the convenience and benefit of the Company only. The Company hereby agrees and undertakes to send/ receive instructions to/ from the Escrow Bank by email from the email address as specified in this Agreement. The Company understands that internet is not encrypted and is not a secure means of transmission. The Company acknowledges and accepts that such an unsecured transmission method involves the risks of possible unauthorized alteration of data and / or unauthorized usage thereof for whatever purposes. The Company agrees to exempt the Escrow Bank from any and all responsibility of such misuse and receipt of information, and hold the Escrow Bank harmless for any costs or

losses that the Company may incur due to any errors, delays or problems in transmission or otherwise caused by using the internet as a means of transmission.

12.5 Without prejudice to the other provisions of this Escrow Agreement, the Escrow Bank shall not be obliged to make any payment or otherwise to act on any request or instruction notified to it under this Escrow Agreement if:

- i. any facsimile or any other instructions (in original or otherwise) are illegible, unclear, incomplete, garbled or self-contradictory; or
- ii. it is unable to verify any signature on the communication against the specimen signature provided for the relevant authorized signatory by the Company.

In the event that the Escrow Bank receives an instruction from the Company and is thereafter unable to act on such instructions due to the causes mentioned in this clause, the Escrow Bank shall seek clarification from the Company and shall act upon such instructions only when all ambiguities have been successfully removed to its satisfaction.

**IN WITNESS WHEREOF** the parties hereto have hereunto set and subscribed their respective hands the day and year first hereinabove written.

<p>THE COMMON SEAL OF _____ as the Company has pursuant to the Resolution of its Board of Directors passed in that behalf hereunto been affixed in the presence of Mr. _____ who has signed these presents in token thereof.</p>	<p><i>Seal and Signature</i></p>
<p>SIGNED AND DELIVERED BY Bank Limited through the hand of _____, authorized official of Bank Limited, Escrow Bank.</p>	<p><i>Seal and Signature</i></p>

**ANNEXURE I**  
*(On Company's Letterhead)*  
**Format for Registration of Merchants**

Date: \_\_\_\_\_

BANK LIMITED  
\_\_\_\_\_

Kind Attn: Escrow Operations Team

**Sub: Registration of Merchant details for Escrow Account No. \_\_\_\_\_ with Bank Limited**

**Dear Sirs,**

In accordance with the terms of Escrow Agreement, kindly register below mentioned Merchant details for the purpose of transfer of funds from Escrow Account No \_\_\_\_\_ with Bank Limited:

Merchant/Beneficiary Name	A/c name	A/c no	Bank name & Branch	IFS Code

We hereby confirm that:

The Merchant(s)/Beneficiary(ies) mentioned above has live contracts with us as on date and merchant onboarding procedures as laid out by the Reserve Bank of India (RBI) vide circular no. DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 titled 'Guidelines on Regulation of Payment Aggregators and Payment Gateways' are being followed

Yours sincerely,

**For** \_\_\_\_\_

Authorized Signatory



**Annexure II**  
(On Company's Letterhead)  
**Transfer Instructions Format – Payment to Merchants**

Date: \_\_\_\_\_

BANK LIMITED Bank Ltd

\_\_\_\_\_  
\_\_\_\_\_

Kind Attn: \_\_\_\_\_ / \_\_\_\_\_

**Sub: Transfer Instruction from Escrow Account No. \_\_\_\_\_ with Bank Limited**

**Dear Sirs,**

Reference is made to the escrow agreement dated \_\_\_\_\_, 20\_\_ (the "**Agreement**") executed between \_\_\_\_\_ ("**the Company**") and Bank Limited ("**the Escrow Bank**"). Terms defined in the Agreement and used in this letter with shall have the meanings ascribed to them in the Agreement.

In accordance with the terms of clause 3.2 of the Agreement, kindly transfer an amount of INR \_\_\_\_\_ from the Escrow Account to the following bank accounts:

Merchant Name	A/c name	A/c no	Bank name	Bank branch address	IFSC Code

We undertake that:

- the merchant establishments mentioned above have valid and on – going contracts with us as on date

Yours sincerely,

For \_\_\_\_\_

Authorized Signatory



**Annexure III**  
(On Company's Letterhead)  
**Transfer Instructions Format -Payment of Commission to the Company**

**Date:** \_\_\_\_\_

BANK LIMITED Bank Ltd

-----  
-----

Kind Attn: \_\_\_\_\_ / \_\_\_\_\_

**Sub: Transfer Instruction from Escrow Account No. \_\_\_\_\_ with Bank Limited for Commission**

**Dear Sirs,**

Reference is made to the escrow agreement dated \_\_\_\_\_, 20\_\_ (the "**Agreement**") executed between \_\_\_\_\_ ("**the Company**") and Bank Limited ("**the Escrow Bank**"). Terms defined in the Agreement and used in this letter with shall have the meanings ascribed to them in the Agreement.

In accordance with the terms of clause 3.2 of the Agreement, kindly transfer an amount of INR \_\_\_\_\_ pertaining to Commission from the Escrow Account to the Company Account number \_\_\_\_\_.

Yours sincerely,

**For** \_\_\_\_\_

Authorized Signatory

## Annexure IV

### Net-worth Certificate

(to be submitted by non-bank Payment Aggregators by September 30<sup>th</sup> to respective Regional Office of DPSS, RBI)

With reference to the paragraph 4 of the Guidelines on Regulation of Payment Aggregators and Payment Gateways, we have perused the records maintained by the \_\_\_\_\_ (Company). On the basis of our perusal of the records, the audited / unaudited (strike off whichever is not applicable) financial statements for the financial year ended \_\_\_\_\_ and the information and explanations given to us, we certify that the Company's net-worth computed in accordance with the paragraph 4.4 of the above Guidelines as on \_\_\_\_\_ is ₹ \_\_\_\_\_.

This certificate has been provided by us at the request of the Company.

The details for net-worth computation are given below:

Computation of Net-worth of _____ as on _____ Particulars	Amount (₹)
Equity Share Capital	
<b>Add:</b>	
Preference Shares Compulsorily Convertible into Equity Capital	
Free Reserves	
Share Premium Account	
Capital Reserves (representing surplus arising out of sale proceeds of assets)	
<b>Less:</b>	
Revaluation Reserves	
Accumulated Losses	
Book Value of Intangible Assets	
Deferred Revenue Expenditure	
<b>Net-worth as on</b>	

Place:

Date:

Stamp:

Signature:

Name & Designation:

**ANNEXURE V**  
*(On Company's Letterhead)*  
**Transfer Instructions Format – Refund of Amount received erroneously**

Date: \_\_\_\_\_

BANK LIMITED Bank Ltd

\_\_\_\_\_  
\_\_\_\_\_

Kind Attn: \_\_\_\_\_ / \_\_\_\_\_

**Sub: Transfer Instruction from Escrow Account No. \_\_\_\_\_ with Bank Limited for Refund of Amount received erroneously or through fraudulent means**

**Dear Sirs,**

Reference is made to the escrow agreement dated \_\_\_\_\_, 20\_\_ (the “**Agreement**”) executed between \_\_\_\_\_ (“**the Company**”) and Bank Limited (“**the Escrow Bank**”). Terms defined in the Agreement and used in this letter with shall have the meanings ascribed to them in the Agreement.

In accordance with the terms of clause 3.2 of the Agreement, kindly transfer an amount of INR \_\_\_\_\_ from the Escrow Account to the following

Name	A/c name	A/c no	Bank name	Bank branch address	IFSC Code

We confirm that the refund is towards cancelled / disputed / returned / failed transactions and the funds are being remitted back to the source account from where the funds were received. All refunds are made to the original method of payment unless specifically agreed by the customer to credit to an alternate mode.

Yours sincerely,

**For** \_\_\_\_\_

Authorized Signatory

## ANNEXURE VI

### Auditors' Certificate on Maintenance of Balance in Escrow Account for the Quarter / Year ending:

(to be submitted by non-bank Payment Aggregator (PA) to respective Regional Office of DPSS, RBI  
within a fortnight from the end of quarter / year)

Sl. No	Items	Comments from the Auditor's
1	Name & Address of the Company	
2	Name & Address of the auditor	
3	Escrow Bank details like Name of the Bank Branch Address Account No.	
4	Outstanding Liability (amount already collected from customers as per 'Tp' and the amount due to the merchants) of the entity at the beginning of the quarter / year	Rs
5	Escrow Balance at the beginning of the quarter / year	Rs.
6	Debits to Escrow account during the quarter	
	i. Payment to various merchants / service providers	Rs
	ii. Payment to any other account on specific directions from the merchant	Rs
	iii. Transfer representing refunds for failed / disputed transactions	Rs
	iv. Payment of commission to the intermediaries	
	v. Payment of amount received under promotional activities, incentives, cash-backs, etc.	Rs
		Rs
7	Credits to Escrow account during the quarter	
	i. Payment from various persons towards purchase of goods / services	Rs
	ii. Pre-funding by merchants / PAs	Rs
	iii. Transfer representing refunds for failed / disputed / returned / cancelled transactions	
	iv. Payment received for onward transfer to merchants under promotional activities, incentives, cash-backs etc.	
	v.	
8	Escrow balance at the end of the quarter	Rs
9	Outstanding Liability (amount already collected from customers as per 'Tp' and the amount due to the merchants) of the entity at the end of the quarter / year	Rs.
10	Whether the escrow account had sufficient balance to cover the outstanding liability of the entity at all times?	

	If No, (i) number of days of shortfall in balance (ii) Amount short in escrow account on each of the day there was shortfall	
11	(i) Minimum balance in escrow account during the Quarter / Year (including core portion) (ii) Maximum balance in the escrow account during the quarter (including core portion)	
12	Whether the Core portion of the escrow balance is being maintained with the same bank during the entire year. In case of change in bank, details may be given.	
11	Quarterly / Yearly Average of Core balance.	
12	Whether interest is being earned by the entity on the core balance.	
13	Number of merchants registered for payments (i) At the beginning of quarter / year (ii) At the end of quarter / year	

Other information:

- a. Average time taken for payments to merchants
- b. Any deviation from the timelines prescribed for payment to the merchants in para 8.4 of the Guidelines on Regulation of Payment Aggregators and Payment Gateways (along with details):
- c. Any other information that Auditor may like to indicate for the purpose of this certificate:

Place:  
Date:  
Stamp:

Signature:  
Name & Designation: