

MERCHANT AGREEMENT

AVAILING THE SERVICE OFFERED BY WEBSITE INFIBEAM.COM SHALL MEAN THAT THE MERCHANT AGREES WITH THE FOLLOWING TERMS AND CONDITIONS MENTIONED AS UNDER IN THE MERCHANT AGREEMENT:

This Merchant Agreement (hereinafter referred to as the **“Agreement”**) is entered between the **“Merchant” / “Seller”** (You or the entity you are representing) and **Infibeam.com**, (hereinafter referred to as **“Infibeam”**) a website owned by a NSI Infinium Global Private Limited a company incorporated under the provisions of Companies Act, 1956, having its registered office located at 8th Floor, ‘A’ Wing Gopal Palace, Nehrunagar, Ahmedabad, - 380015 Gujarat, India.

The Agreement shall put forward the terms and condition that shall govern all the online activities carried out by the Merchant while using the services and technology provided by infibeam.com for the term of their association with imfibeam.com.

“Merchant” and “Infibeam” shall hereinafter be individually referred to as “Party” and collectively as “Parties”.

WHEREAS:

- A. Infibeam has its skilled expertise and knowledge in the field of providing an E - commerce platform services to enable retailing of various products and services to consumers in India across several categories under its owned URL named www.infibeam.com
- B. Infibeam, has represented to Merchant about its skills and expertise in the field of E – commerce and on which Merchant has agreed to engage the Services of E – Commerce on the below mentioned terms and conditions of the Agreement.
- C. Merchant hereby appoints Infibeam for the purposes of providing an E- Commerce Platform to the Merchant and Infibeam hereby accepts such appointment for providing such services during the Term (as defined hereinafter) of this Agreement.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties intending to be bound legally, agree as follows:

1. DEFINITIONS: -

- 1.1. **“Merchant”**: Person or any entity who desires to establish an online store for selling products or services using the space provided by Infibeam, by accepting this agreement’s terms and condition.
- 1.2. **“Merchant Materials”**: means all Trademarks, Content, information, data, materials, and other items (excluding Technology) provided or made available by Merchant or its Affiliates to Infibeam or its Affiliates.
- 1.3. **“Merchant Order”** means an order for a Merchant Product initiated through the website or via customers calling the Telephone Number pursuant to this agreement.

- 1.4. **"Catalogue Data"** Shall mean any and all the catalogue data or information including but not limited to price, image etc. in the format mutually agreed by the parties in relation to the product provided by Merchant to Infibeam.
- 1.5. **"Catalogue management"**: Catalogue management shall mean managing the content on the website which is primarily done using tools like the Content Tool (a module that has been developed to upload / manage product information on the website). The catalogue is uploaded using this tool and any subsequent product or content uploads or modifications are managed using this tool as well.
- 1.6. **"Customer"** shall mean any individual, group of individuals, firm, company or any other entity placing an order for the Products on Infibeam.com.
- 1.7. **"E- Commerce Engine"**: E-Commerce engine shall mean and include the Back End comprising of a set of seamlessly integrated applications that manage the operations and the various business work flows including, Catalogue Management; Product and Price Updates, Vendor and Delivery Partner Management, Order Processing and Vendor fulfilment.
- 1.8. **"Encryption"**: Encryption means the 3-D secure protocol provided by Visa/ MasterCard to enhance the security of internet payments which shall be implemented and it does not collect or store customers credit card details. The 3D secure implementation redirects the customer to the website of the card issuing bank where in the card details are entered and the transactions authorized. The authentication is based on a domain model – Acquirer Domain (the Commerce), the issuer Domain (the bank issuer often credit card) and finally the Interoperability Domain (Worldwide Credit Card and support).
- 1.9. **"Intellectual Property Right"** means any and all trademark patent rights, industrial design rights, copyrights, mask work rights, confidential information rights, trade secret or know-how rights, all rights of whatsoever nature in computer software and data, and any other intangible rights or privileges of a nature similar to any of the foregoing, in every case in any part of the world and whether or not registered. IP Rights shall also include all rights in any applications and granted registrations for any of the foregoing rights.
- 1.10. **"Online Promotions"**: Online promotions shall mean promotions relating to show-casing the products on the home page and store page of the website.
- 1.11. **"Payment Gateway Engine"**: Payment Gateway Engine shall mean integration of various gateways and payment options both Internal and External like Credit Cards, Debit Cards, Net banking, Pay by Cheque, Cash on delivery. The payment gateways are safe methods of payments which are 3D secured.
- 1.12. **"Price"** shall mean the cost at which the Products are to be delivered to the Customer inclusive of Shipping charges, applicable taxes if any.
- 1.13. **"Products"** shall mean the products of Merchant uploaded at Infibeam.com and such other products that may be uploaded to the Infibeam.com from time to time for distribution/sales under this Agreement

- 1.14. **“Service charge”** shall mean the margin per transaction charged by Infibeam to the Merchant at the rates agreed to between the parties, upon the sale of product on online store. (i.e. Margin per transaction charge for Merchant Product sold through Infibeam or any of its Affiliate website.
 - 1.15. **“Software Platform”**: Platform means the technology solutions on the URL which have been built using the best technology platforms available in open source. The Solution is truly robust, scalable and capable of handling 1000s of simultaneous transactions and can seamlessly integrate with most vendor partners, Courier partners and payment gateways. The solution can be categorized into three parts- the front end (customer facing) and the back end (vendor facing) and the business – analytics.
 - 1.16. **“Shipping Charges”** shall mean the logistics/courier/postal charges incurred for delivering the product(s) to the Customer.
 - 1.17. **Uniform Resource Locator (“URL”)**: In computing, a Uniform Resource Locator (URL) is a Uniform Resource Identifier (URI) that specifies where an identified resource is available and the mechanism for retrieving it. In popular usage and in many technical documents and verbal discussions it is often incorrectly used as synonym for URL. The best-known example of a URL is the "address" of a web page on the World Wide Web.
 - 1.18. **"Website"**: shall mean www.infibeam.com or any of its Affiliate website which are Powered by Infibeam from time to time for display and sale of the Product.
2. **SCOPE OF SERVICE**: Infibeam is engaged in the business of online shopping portal for sale and distribution of various products under various categories to the public at large through its website www.infibeam.com (“Website”), Infibeam will provide a panel to Merchant through which Merchant will upload, create their catalogue for sale and distribute their products through www.infibeam.com monitor and update order information received in their panels.
3. **ROLES AND RESPONSIBILITY OF INFIBEAM:**
 - 3.1. Infibeam shall bring in their technology through website development, online promotions, e-commerce engine and payment gateway integration and customer service for successful operation of website.
 - 3.2. Infibeam will be responsible for managing the customer service for only such Products that sold through the www.infibeam.com
 - 3.3. Infibeam will be responsible for chargeback claims, if any product of Merchant sold through www.infibeam.com and its affiliates.
 - 3.4. Infibeam shall also be responsible for processing all refunds for the Merchant products sold through Infibeam.com.
 - 3.5. The software platform; e-commerce engine and payment gateways will remain the sole property of Infibeam.
 - 3.6. Infibeam shall have the sole right and discretion to decide about the selection and listing of Products on its website (i.e. Infibeam.com).

3.7. Infibeam shall not be liable for any manufacturing defect in the product in any circumstances.

4. ROLES AND RESPONSIBILITY OF MERCHANT:

- 4.1. Merchant agrees to be Merchant of Infibeam for the sale and distributions of their product through Infibeam.com during the term of this Agreement.
- 4.2. Merchant shall be solely responsible to create and publish and to make live their product catalogue for display and sale of their products through Infibeam.com and Merchant will be responsible for updating / publishing or maintaining such information and will do so using the Infibeam Panel provided by Infibeam to Merchant. Infibeam shall not be liable for any catalogue creation, updating and management of Merchant Products catalogue.
- 4.3. **Pricing of Product:** Pricing of the Merchant Product will sole prerogative of Merchant in panel provided by Infibeam and web selling price of the Product (i.e. Product selling price on Infibeam.com) is sole discretion of Infibeam.
- 4.4. **Pricing Updates** Merchant shall be solely responsible for pricing update of their products (including discount and promotion information) on merchant panel provided by Infibeam. All the Pricing update shall be done through panel provided by Infibeam to Merchant and Infibeam shall not be liable in any circumstances for any pricing update of Merchant Product. Until a new price update by Merchant to their catalogue, Merchant will abide by the earlier price provided.
- 4.5. **Inventory Updates:** Merchant shall be solely responsible for inventory updates of their products (including discounts and promotions and information about product discontinuation) from time to time for publishing on the Infibeam website. All the Pricing or inventory update shall be done through panel provided by Infibeam to Merchant and until a new inventory update is published to Infibeam.com, Merchant will abide by the earlier inventory update. Infibeam shall not be liable in any circumstances for any inventory update of Merchant Product on Infibeam.com
- 4.6. **Fulfilment of Product:** During the Term of this Agreement, Merchant will be solely responsible for Fulfilment of their products to end customer for products sold in connection with Merchant transaction through its website or Merchant Products sold through Merchant catalogue on **www.infibeam.com**, Merchant will source, pick, pack and dispatch the products to the applicable addresses of end customer.
- 4.7. **Reverse Logistics:**
 - a. Merchant will be solely responsible for accepting and processing including pick, pack and returns of their Products and will communicate to customers all necessary information for the return of Products which are sold through **www.infibeam.com**
 - b. Infibeam at its sole discretion will refund the entire amount of the product/s to the customer, in case of failure of the Seller to arrange for reverse pick up within 10 days from the day customer raises a return request.
 - c. In case customer to send the product package return and incurred the logistic charges, then the same will be refunded to end customer and Infibeam shall have right to recovered such charges from the Seller

- 4.8. Return Policy:** Further Merchant hereby agree to accept the return of their products upto 30 days from the date of delivery of the product to end customer.
- 4.9. Non Delivery of Product:** If any product is not delivered by Merchant to end-customer then in that case Infibeam will not be liable for the same. However, in case if Infibeam receive any complaint from end customer regarding non delivery of product, then in that case Merchant agreed to provide all the necessary details including proof of delivery, virtual proof of delivery to Infibeam for providing sufficient reason to prove authenticity of delivery of such product.
- 4.10. Ownership; Risk of Loss:** Merchant will bear the risk and will be responsible for all loss of and/or damage of products at all times which are sold through website. Further Merchant will bear the risk and will be responsible for all the loss of and/ or damage of Products at all times which are sold through Infibeam.com
- 4.11. Insurance:** Merchant shall at all-time shall be responsible for insuring the Products and shall take out adequate insurance policies to cover all kind of risks involved. Further the Vendor shall be responsible for making timely payment of the insurance premiums.
- 4.12. Fulfilment of Specific Taxes:** For avoidance of doubt and notwithstanding anything to the contrary herein, Merchant will indemnify, reimburse and hold Infibeam harmless from, for and against any sales, use, gross receipts, excise, franchise, business or other taxes or fees (including penalties, fines or interest thereon) imposed by any government or other taxing authority (collectively, "fulfilment Specific Taxes") to the extent such taxes or fees are: (a) assessed on Infibeam as a result of inventory, packaging, gift wrap and other materials (i) owned by Merchant and/or (ii) sold to customers as contemplated hereunder; and (b) the primary legal obligation of Merchant.
- 4.13. Invoicing:** Merchant will raise an invoice directly to the end Customer for all ordered successfully fulfilled by the Merchant to end customers.
- 4.14.** Merchant shall provide a Self-Attested copy of VAT Certificate, TIN No, PAN Card. & Merchant Bank account details / Cancelled cheque and copy of RTGS mandate form.
- 4.15.** By entering into this Agreement and posting a listing for fixed price sale, Merchant agree to complete the transaction as described by this Agreement. Merchant acknowledge that by not fulfilling these obligations, Merchant action or inaction may be legally actionable.
- 4.16.** Merchant is obligated to sell the product at the listed price to end customer who meet the Seller's terms. By listing an item in a fixed price sale, Merchant represent and warrant to prospective Buyers that Merchant have the right and ability to sell, and that the listing is accurate, current, and complete and is not misleading or otherwise deceptive.
- 4.17.** Before a Seller lists an item, the Seller needs to find out if the item is allowed to be sold on the website and if the type of item is subject to certain restrictions, to avoid potential issues with Seller listing. As a Seller, you are ultimately responsible for making sure that Selling an item is legal under applicable laws. By entering under this Agreement, Merchant represent that it shall not list the products which are prohibited under law and not engaged in any of the following activities:

Adult goods and services	pornography and other sexually suggestive materials (including literature, imagery and other media); escort or prostitution services
Alcohol	Alcohol or alcoholic beverages such as beer, liquor, wine, or champagne
Body parts	organs or other body parts
Bulk marketing tools	email lists, software, or other products enabling unsolicited email messages (spam)
Cable descramblers and black boxes	devices intended to obtain cable and satellite signals for free
Child pornography	pornographic materials involving minors
Copyright unlocking Devices	Mod chips or other devices designed to circumvent copyright protection
Copyrighted media	unauthorized copies of books, music, movies, and other licensed or protected materials
Copyrighted software	unauthorized copies of software, video games and other licensed or protected materials, including OEM or bundled software
Counterfeit and unauthorized goods	Replicas or imitations of designer goods; items without a celebrity endorsement that would normally require such an association; fake autographs, counterfeit stamps, and other potentially unauthorized goods.
Drugs and drug paraphernalia	illegal drugs and drug accessories, including herbal drugs like salvia and magic mushrooms
Drug test circumvention aids	drug cleansing shakes, urine test additives, and related items
Endangered species	plants, animals or other organisms (including product derivatives) in danger of extinction
Gaming/gambling	lottery tickets, sports bets, memberships/ enrolment in online gambling sites, and related content
Government IDs or documents	fake IDs, passports, diplomas, and noble titles
Hacking and cracking materials	manuals, how-to guides, information, or equipment enabling illegal access to software, servers, websites, or other protected property
Illegal goods	materials, products, or information promoting illegal goods or enabling illegal acts
Miracle cures	unsubstantiated cures, remedies or other items marketed as quick health fixes
Offensive goods	literature, products or other materials that: a) Defame or slander any person or groups of people based on race, ethnicity, national origin, religion, sex, or other factors b) Encourage or incite violent acts c) Promote intolerance or hatred.
Offensive goods, crime	crime scene photos or items, such as personal belongings, associated with criminals

Prescription drugs or herbal drugs or any kind of online pharmacies	drugs or other products requiring a prescription by a licensed medical practitioner
Pyrotechnic devices and hazardous materials	fireworks and related goods; toxic, flammable, and radioactive materials and substances
Regulated goods	air bags; batteries containing mercury; Freon or similar substances/refrigerants; chemical/industrial solvents; government uniforms; car titles; license plates; police badges and law enforcement equipment; lock-picking devices; pesticides; postage meters; recalled items; slot machines; surveillance equipment; goods regulated by government or other agency specifications
Securities	stocks, bonds, or related financial products
Tobacco and cigarettes	cigarettes, cigars, chewing tobacco, and related products
Traffic devices	radar detectors/jammers, license plate covers, traffic signal changers, and related products
Weapons	firearms, ammunition, knives, brass knuckles, gun parts, and other armaments
Wholesale currency	discounted currencies or currency exchanges
Live animals	
Multi-Level Marketing collection fees	
Matrix sites or sites using a matrix scheme approach	
Work-at-home information	
Drop-shipped merchandise	
Any product or service, which is not in compliance with all applicable laws and regulations whether federal, state, local or international including the laws of India	

Violations of this Policy may result in a range of actions, including but not limited to the following:

- a. listing cancellation;
- b. limits on account privileges;
- c. account suspension; and/or
- d. loss of special status

*The above list is merely indicative and not exhaustive. Infibeam may at its sole discretion, amend or modify this list.

4.18. Brand Name Use & Restricted Word Policy: Merchant is not permitted to include any brand names or company logos in their listings other than the specific brand name authorised by the original manufacturer to be used for products being sold by Merchant under a particular listing. Certain uses of brand names may also constitute trademark infringement and could expose

Merchant to legal liability. Further, Merchant shall not be permitted to use the following words or phrases in their display names or listings

- a. Infibeam (including all cognate & grammatical variations thereof);
- b. Infi (including all cognate & grammatical variations thereof);
- c. BuildaBazaar (including all cognate & grammatical variations thereof);
- d. Indent (including all cognate & grammatical variations thereof); and
- e. Incept (including all cognate & grammatical variations thereof).

5. REPRESENTATION AND WARRANTIES BY BENFIT:

- 5.1 Merchant undertakes that the goods/products delivered are defect free, without any encumbrances and there has been no IPR violation of any third party by the Merchant.
- 5.2 For any defect in the products delivered by Merchant, Merchant shall be solely responsible for the same.
- 5.3 Merchant shall be responsible for all/any repairs/replace etc. of the product prior / post the delivery of any such product.
- 5.4 The warranties in relation shall strictly be in accordance with the Merchant warranty policy as applicable to the Product.

6. COMMERCIAL TERM:

- 6.1 For providing the services mentioned above Merchant will pay below mentioned Fees to Infibeam as per plan mentioned under below table: -

Fixed Fee	Payment Gateway Charges	Merchant Sales / Month
Rs 1000	3%	Sales up to Rs 1 Lac / per month
Rs 2500	3%	Sales above Rs 1 Lac / per month

**Service tax charges will be applicable above the mentioned charges in the table above*

Merchant ABC - Payable Summary			
Example 1	Sales Proceeds for Month 1		Rs. 100000
	Deductions		
	Payment Gateway Charges @ 3%	Rs. 3000	
	Fixed Fees	Rs. 1000	Rs. -4000
	Service Tax @ 14.5%		Rs. – 580
	Net Payable to Merchant ABC		Rs. 95420
Example 2	Sales Proceeds for Month 2		Rs. 510000
	Deductions		
	Payment Gateway Charges @ 3%	Rs. 15300	
	Fixed Fees	Rs. 2500	Rs. -17800
	Service Tax @ 14.5%		Rs. -2581
	Net Payable to Merchant ABC		Rs. 489619
Example 3	Sales Proceeds for Month 3		Rs. 95000

	Deductions		
	Payment Gateway Charges @ 3%	Rs. 2850	
	Fixed Fees	Rs. 1000	Rs. -3850
	Service Tax @ 14.5%		Rs. - 558
	Net Payable to Merchant ABC		Rs. 90592

6.2 Fees Schedule: -

- Fixed Monthly fees will be adjusted as per above mentioned slab in settlement cycle.
- Fixed Monthly Fees will be calculated on total gross transaction value on and it will not have considered any cancelled order in any case.
- Fixed Fee will depend on the slab of Infibeam sales (if Merchant is selling on Infibeam). E.g. If Merchant is on a silver plan with sales on Infibeam>1Lac, Merchant fixed charge will be Rs. 2500.
- Invoice Value will be used as base to calculate the Gross Transaction value / Transaction Fee.

6.3 Other Fees

- Infibeam does various marketing campaigns on its site through various channels. The marketing channels may include, but not limited to, Promotion / Coupon Codes, Bank Promotions, Cash Back Offers, Emails, Website Showcase, Social Media Promotions, Category Specific Campaigns, Print Media Campaigns etc.
- Merchant, at the time of sign up, is enrolled by default to participate into these campaigns, so that Infibeam can promote their products in the relevant campaigns. Infibeam may or may not include Merchants products on the marketing campaigns as it depends on the nature of the campaigns.
- Merchant can opt out of from their Panels if they do not wish to participate in any of the promotions.
- The above mentioned Payment Gateway Charges of 3% will be levied even in case of cancellations and such fees will not be reversed and non-refundable.
- The Marketing fee for such participation is as per the table below:

Marketing & Promotions		
Marketing Fee (Optional to Merchant)	Computers and Mobiles – Category 5% of the Base price*	All other products - 10 % of the Base Price*

* Base prices are provided & uploaded by Merchants on Infibeam.com

Service tax charges will be applicable above the mentioned charges in the table above

Computer and Mobiles Category includes following products:

(Mobiles, Tablets, Laptops, PCs, Scanners, Printers, Electronic Storage Devices, Electronic Devices).

Calculation of Net Payable to Merchant:

(Merchant Price – Fixed Fees – Marketing Charges – Payment Gateway Charges on Web Selling Price – Service Tax applicable).

Merchant ABC - Payable Summary			
Opted to promote Mobiles			
Example 1	Merchant uploaded price = Web Selling Price (Infibeam Price)		
	Merchant uploaded price = Rs. 50000		
	Web Selling Price = Rs. 50000		
	Sales Proceeds of Mobiles		Rs. 50000
	Deductions		
	Marketing & Promotion Charges @ 5%	Rs. 2500	
	Fixed Fees as per Section 6.1	Rs. 1000	
	Payment Gateway Charges @ 3%	Rs. 1500	
			Rs. - 5000
	Service Tax @ 14.5%		Rs. - 725
	Net Payable to Merchant ABC		Rs. 44275
Merchant ABC - Payable Summary			
Opted to promote Mobiles			
Example 2	Merchant uploaded price not equal to Web Selling Price (Infibeam Price)		
	Merchant uploaded price = Rs. 50000		
	Web Selling Price = Rs. 45000		
	Sales Proceeds of Mobiles		Rs. 50000
	Deductions		
	Marketing & Promotion Charges @ 5%	Rs. 2500	
	Fixed Fees as per Section 6.1	Rs. 1000	
	Payment Gateway Charges @ 3% on Web selling price	Rs. 1350	
			Rs. - 4850
	Service Tax @ 14.5%		Rs. - 703

	Net Payable to Merchant ABC		Rs. 44447
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6.4 Taxes on Fees Payable by Merchant: Any and all Fees payable by Merchant hereunder are exclusive of all sales, service, use and similar taxes, and Merchant will pay any taxes that are imposed and payable by it on such amounts. All such taxes are the responsibility and for the account of Merchant.

7. TRANSACTION PROCESSING:

7.1 Collection of Payment: Infibeam will collect the payment through its designated payment gateway and shall remain the sole property of Infibeam only. On all the Payment Gateway aspects, the identity of Infibeam shall be mentioned.

7.2 Infibeam shall be responsible for all customer complaints in regards to payment gateway issues and system related errors. All costs and liabilities arising due to the same shall be solely borne by Merchant. Infibeam shall not be held liable at any point in time during the subsistence of this Agreement.

7.3 Reimbursement: Infibeam will be responsible to reimburse the amount collected for the sale between 1st to 15th day of each month latest by end of the current month and for the amount collected between 16th to 30/31st day of each month, latest by 15th day of next month for the order product that are sold and delivered successfully through the Infibeam website (i.e. Merchant Product after deducting applicable fees (i.e. Monthly fix fees, Payment Gateway Charges, Marketing Fee, or any return orders by end customer if applicable) and taxes as mentioned under table at **Clause no. 6.1**

8. RIGHTS AND LICENSES:

8.1 General Reservations: As between the Parties, Merchant reserves all right, title and interest in and to the Merchant Intellectual Property and, no title to or ownership of any of the Merchant Intellectual Property is transferred or licensed to Infibeam or any other Person pursuant to this Agreement. As between the Parties, Infibeam reserves all right, title and interest in and to the Infibeam Intellectual Property and, except as may expressly be set forth in this Agreement, no title to or ownership of any of the Infibeam Intellectual Property is transferred or licensed to Merchant or any other Person pursuant to this Agreement.

8.2 Order placed by any customer on Infibeam website, then the customer database generated will become sole property of Infibeam.

8.3 Usage of Infibeam Intellectual Property: Any Infibeam Intellectual Property provided or otherwise made available to Merchant or its Affiliates may be used by Merchant and/or its Affiliates solely for the express purposes described in this Agreement during the Term of this Agreement. For the avoidance of doubt, Merchant will not:

- a. copy any Infibeam Intellectual Property;
- b. distribute copies of any Infibeam Intellectual Property;
- c. modify, adapt, translate, reverse engineer, make alterations, decompile, disassemble, or make derivative works or improvements based on any Infibeam Intellectual Property;

- d. use, rent, loan, sublicense, lease, distribute, or attempt to grant other rights to any Infibeam Intellectual Property; or
- e. Use any Infibeam Intellectual Property to act as a consultant, service bureau or application service provider, or to permit remote access to any Infibeam Intellectual Property.

9. Term and Termination: This Agreement shall be valid and binding on both the parties until it is terminated by either party by giving 60 days' prior written notice to the other party without assigning any reason whatsoever for such termination.

Infibeam may terminate this Agreement immediately in case of breach of any of the provisions of this Agreement by the Merchant, if the Merchant does not proceed to cure the breach within ten (10) days after receipt of a written Notice of the breach.

Termination for Bankruptcy, Insolvency, Winding Up, etc.

- a. Either party may terminate this Agreement with immediate effect upon written notice in the event that the other party abandons its responsibilities under this Agreement, becomes bankrupt or insolvent or files any proposal or makes any assignment for the Merchant of creditors, or an order is made for its winding up or a receiver is appointed for substantial part of its property
- b. On termination of this Agreement, all outstanding obligations of the parties under the terms of this Agreement shall continue to subsist until the same are fulfilled / realized in totality.

10. INDEMNITY: Merchant will defend, indemnify and hold harmless Infibeam and each of its affiliates (and their respective employees, directors, agents and representatives) from and against any and all claims, costs, losses, damages, judgments, penalties, interest and expenses (including reasonable attorneys' fees) arising out of any Claim that arises out of or relates to: (i) any actual or alleged breach of Merchant representations, warranties, or obligations, responsibility set forth in this Agreement; or (ii) Merchant own website or other sales channels, the products Merchant sell, any content Merchant provide, the advertisement, offer, sale or return of any products Merchant sell, any actual or alleged infringement of any intellectual property or proprietary rights by any products Merchant sell or content Merchant provide, or Seller Taxes or the collection, payment or failure to collect or pay Seller Taxes. For purposes hereof: "Claim" means any claim, action, audit, investigation, inquiry or other proceeding instituted by a person or entity.

Merchant shall indemnify and hold the Infibeam and their subsidiaries, affiliates, successors, assigns, and their officers, directors, shareholders, employees and agents harmless against any material claim, liability, demand, loss, damage, legal cases, judgment or other obligation or right of action, which may arise as a result of: -

- a. Breach of any provision of this Agreement by Merchant;
- b. Misrepresentation by Merchant to Infibeam or third Parties; or
- c. Anything done or omitted to be done through the negligence or otherwise, default or misconduct of Merchant or of its officers, directors, employees or agents.
- d. Breach of third party Intellectual Property right.

11. LIMITATION OF LIABILITY: INFIBEAM WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION TO THIS AGREEMENT, THE INABILITY TO USE THE SERVICES OR THE TRANSACTION PROCESSING SERVICE, OR THOSE RESULTING FROM ANY GOODS

OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

THIS LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, OR ANY OTHER FORM OF ACTION.

12. MISCELLANEOUS:

12.1 Entire Agreement: This Agreement (including all Attachments hereto, and all documents incorporated herein by reference): (a) represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes any proposals, representations previous or contemporaneous oral or written agreements and any other communications between the Parties.

12.2 Further Agreements; Consents: Notwithstanding that certain provisions of this Agreement contemplate that the Parties will mutually determine or agree upon certain matters, each Party acknowledges and agrees that: (a) it will not be entitled to unreasonably withhold its determination or agreement with respect to such matters, unless otherwise specifically provided herein; and (b) no failure to mutually determine or agree as to any such matters will excuse either Party performance of its other obligations under this Agreement.

12.3 Assignment: Merchant is prohibited to assign this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, whether voluntarily, involuntarily, by operation of Law or otherwise, without the Infibeam prior written consent.

12.4 Independent Contractors: The Parties are entering this Agreement as independent contractors, and this Agreement will not be construed to create a partnership, joint venture, or employment relationship between them. Neither Party will represent itself to be an employee or agent of the other or enter into any agreement or legally binding commitment or statement on the other behalf or in the other's name.

12.5 Personnel: Each Party's personnel are employees, agents or subcontractors of such Party and are not employees, agents or subcontractors of the other Party. Each Party: (a) has exclusive control over its personnel, its labour and employee relations, and its policies relating to wages, hours, working conditions and other employment conditions; (b) has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge and adjust grievances with its personnel; (c) is solely responsible for all salaries and other compensation of its personnel; and (d) is solely responsible for making all deductions and withholdings from the salaries and other compensation of its personnel and for paying all contributions, taxes and assessments in connection therewith.

12.6 No Third Party Beneficiaries: This Agreement is for and will be enforceable by, the Parties only. This Agreement is not intended to confer, and does not confer any right or benefit on any Third Party.

12.7 Non-Exclusivity: Except as expressly provided otherwise in this Agreement, each Party acknowledges that the rights and obligations of the Parties hereunder are non-exclusive and that each Party may engage in transactions with third parties, or undertake its own activities, whether or not similar to the transactions and other activities contemplated by this Agreement or competitive with the business, products or services of the other Party or its Affiliates.

- 12.8 Confidentiality:** Each Party agrees that all terms and conditions of this Agreement will be deemed Confidential Information as defined therein. For avoidance of doubt, a Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by Law, provided that such Party: (a) gives the other Party reasonable written notice to allow the other Party to seek a protective order or other appropriate remedy (except to the extent that the original Party compliance with the foregoing would cause it to violate a court order or other legal requirement); (b) discloses only such information as is required by the governmental entity or otherwise required by Law; and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed. If Infibeam makes available any passwords or password-protected areas of any Website or other service (e.g., in connection with the use of any Management Tools), Merchant will use reasonable precautions to maintain the security of such passwords and password-protected areas. If Merchant becomes aware that any such password or password-protected area has been compromised, it will immediately notify Infibeam of the same via a telephone number or other contact method (e.g., email address) designated by Infibeam for such purpose, which will be promptly confirmed by notice in writing, and will change the applicable passwords.
- 12.9 Press Releases:** Merchant will not make any public disclosures regarding this Agreement, its terms, the actions, activities or performance contemplated hereby, or the relationship between the Parties, without the Infibeam prior written consent. The Parties agree that the contents of the press releases shall not be given for printing or published without it being approved by Infibeam. In the event Infibeam issues any press release without prior approval of the Merchant with regards to this Agreement the same will not be considered as a material breach.
- 12.10 Arbitration:** If Parties fails in endeavour to settle amicably by mutual discussion any disputes, differences or claims whatsoever related to this agreement. Failing such amicable settlement, the dispute shall be settled by arbitration. The Arbitration and Conciliation Act 1996 shall govern the arbitration proceedings. The arbitration shall be held in Ahmedabad, Gujarat. The language of arbitration shall be English and the arbitral award shall be final and binding on both the parties. The arbitration proceedings will be held before the sole Arbitrator mutually appointed by the Parties. Any arbitration award will be final and binding on the parties and the Award shall include allocation of the cost of the Arbitration Proceedings Moreover judgment there on may be entered in any court of competent jurisdiction. This agreement (including its jurisdiction clause) shall be governed by, construed and take effect in accordance with the laws of India. The courts of Ahmedabad Gujarat shall alone have jurisdiction in all matters.
- 12.11 Governing Law and Jurisdiction:** This agreement shall be construed only in accordance with the laws of India. In respect of all, Claims, matters/disputes arising out of, in connection with or in relation to this Agreement, only the competent Courts at Ahmadabad Gujarat shall have exclusive jurisdiction. No other Court shall have jurisdiction to deal with any dispute or any matter between the parties arising out of this Agreement.
- 12.12 Force Majeure:** Neither Party will be liable for any failure to perform any of its obligations hereunder by reason of Force Majeure Event, provided that the affected Party provides the other Party prompt notice of the applicable circumstance and uses commercially reasonable efforts to re-commence performance as promptly as possible; and provided further that if a Party performance is delayed for a period of more than thirty (30) days by reason of any Force Majeure Event, then the other Party may at its option, by written notice to the affected Party, either: (a)

terminate this Agreement; or (b) extend the Term of this Agreement for a number of days equal to the duration of the affected Parties non-performance.

12.13 Waiver: To be effective, any waiver by a Party of any of its rights or the other Party obligations under this Agreement must be made in a writing signed by the Party to be charged with the waiver. Waiver of any breach of any term or condition of this Agreement will not be deemed a waiver of any prior or subsequent breach. No failure or forbearance by either Party to insist upon or enforce performance by the other Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise at Law or in equity will be construed as a waiver or relinquishment to any extent of such Party right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

12.14 Severability: If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein will remain in full force and effect in such jurisdiction and will be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.

12.15 Notices: Except for notices for which an alternative procedure is identified in this Agreement, any notice or other communication under this Agreement given by either Party to the other Party will be in writing and, to be effective, must be sent to the intended recipient by prepaid registered letter, receipted commercial courier at its address(es) and to the attention of the officer(s) specified below; provided that no notice of termination of the Term of this Agreement will be or be deemed properly given unless sent by registered email with infibeam.com.

12.16 Non Solicitation: The Parties agree that during the term of this Agreement and 24 months thereafter or without the prior written approval of the other party, not to solicit for employment any employees of either party other than through general solicitation for employment among the public.

12.17 Survival of provisions: Notwithstanding anything contained herein, the provisions of clauses dealing with products & contents, rights and licenses; representations and warranties; indemnification, infringements, claim; governing law and jurisdiction, dispute resolution arbitration; notices and non-solicitation shall survive extinguishment of rights and obligations pursuant to termination of this agreement.

12.18 Code of Conduct: Seller shall comply and ensure that its logistic partner complies (seller and its logistics partner hereinafter collectively referred to as the "Parties") with the following Code of Conduct at all times. Infibeam reserves the right to blacklist the Seller or to make Seller pending if found violating any of the below. Seller must comply with all applicable laws and regulations ("applicable laws and regulations"). Infibeam has no tolerance for bribery or corruption in any aspect of its business. Infibeam's policy prohibits engaging in any form of corruption, bribery, kickback, extortion, embezzlement or money laundering. Infibeam is committed not only to complying with all applicable laws and regulations regarding such activities but also to acting with integrity and the highest ethical standards. Parties shall not participate in, facilitate or permit any form of corruption, bribery, kickback, extortion, embezzlement or money laundering, whether with respect to public officials or to any other person. Parties shall comply strictly with all applicable laws and regulations and with Infibeam's policy set forth herein.

Seller shall respect the intellectual property rights of others and shall comply with applicable laws and regulations related to patents, copyrights, trademarks and trade secrets. Seller shall safeguard Infibeam's confidential and proprietary information. This obligation includes using commercially reasonable means to safeguard information technology systems on which Infibeam's information is stored or transmitted. In addition, Parties shall refuse any improper access to confidential or proprietary information of any other company, including our competitors and customers.

1. Compliance with Applicable Laws and Anti-Bribery
2. No Discrimination or Harassment
3. Safe Work Environment
4. Intellectual Property
5. Confidential and Proprietary Information
6. Additional Obligations
7. Parties shall ensure that its personnel provide service with reasonable skill and care to ensure delightful customer experience.
8. The personnel appointed by the Parties to deliver the shipment ("Personnel") should carry his identity card containing his/her photo and police helpline number prominently displayed.
9. The Personnel under no circumstances shall:
 - a. Contact customer beyond the provision of delivery services;
 - b. Misbehave with customer while delivering shipment;
 - c. Misuse or share any information provided by the shipper;
 - d. Harass/stalk/bully customers through email, messages, call or any online or offline medium;
 - e. Be involved in loss or theft of goods and cash;
 - f. Provide wrong update on shipment and pick up status;
 - g. Be rude with the customers; and/or
 - h. Violate the delivery terms.
 - i. Take any kind of unwarranted allowances such as tips from the buyers.

12.19 Change in Policy: The Site created and controlled by infibeam.com reserves the right to make any changes to the website and the terms, conditions and disclaimers at any time without prior information to the customers or users of the services. Merchants are bound to understand the terms and conditions before accessing to infibeam.com and using the service provided by Infibeam. Merchant continuous use of the site after the revising the terms and conditions will be consider as Merchant acceptance of the said revised terms and conditions.

12.20 DISCLAIMER: THIS DISCLAIMER SHALL BE APPLICABLE TO ANY PERSON, COMPANY, INDIVIDUAL OR ENTITY WHO HAS ENTERED INTO THIS MERCHANT AGREEMENT AND OTHER RELATED SERVICES PROVIDED HEREIN. THE INFORMATION CONTAINED IN THESE TERMS AND CONDITIONS HAVE BEEN PROVIDED SPECIFICALLY FOR THE PURPOSE OF OFFERING THE SERVICES MENTIONED IN THIS MERCHANT AGREEMENT AND THE SAME IS ACKNOWLEDGED AND DULY SIGNED BY MERCHANT. INFIBEAM DOES NOT HAVE ANY METHOD TO ASSESS OR VERIFY THE VERACITY OF INDIVIDUAL'S OR ENTITY'S OR THIRD PARTY'S PRODCUCT AND SERVICES WHICH ARE OFFERED UNDER THIS AGREEMENT. MERCNAHT FURTHER AGREE AND ACKNOWLEDGE THAT MERCHANT ALONE SHALL BE HELD RESPONSIBLE FOR ANY PROFIT OR LOSS INCURRED DURING THE TERM OF THIS AGREEMENT.

INFIBEAM.COM WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THIS SITE, SERVICE, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES. MERCHANT EXPRESSLY AGREE THAT MERCHANT USE OF THIS SITE IS AT MERCHANT SOLE RISK.