

TERMS AND CONDITIONS FOR THE RETAILER PARTNERS

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THESE TERMS AND CONDITIONS WERE UPDATED ON November 01, 2023 (hereinafter referred as the **"Agreement"/ "Terms of Use"**) PLEASE CAREFULLY READ THESE TERMS OF USE. BY PROVIDING YOUR CONSENT AND/OR USING THIS PLATFORM YOU INDICATE YOUR UNDERSTANDING AND ACCEPTANCE OF THESE TERMS OF USE.

1. INTRODUCTION

- 1.1. Nearby Technologies Private Limited, a company incorporated under the Companies Act, 2013 and having its registered office at Office no. 101, Plot no. 103, Road no. 12, Arena House, MIDC, Andheri East, Mumbai - 400093 (hereinafter referred to as the **"Company or PayNearby"**, which expression shall unless repugnant to the context or meaning thereof mean and include its successors and permitted assigns) is engaged in the Business (as defined below).
- 1.2. Company is inter alia engaged in the business of providing digital /technological financial solutions and various services to its customers in India through the Platform (as defined below) either directly or through its business partners including but not limited to Retail Partners (as defined below). The services include access to digital financial services provided by various service providers, goods or products (including Company developed products and services and third-party goods), financial services provided by financial institutions and non-financial products and services (**"Company Services"**).
- 1.3. Company collaborates with various distributors of goods and services by associating with them as their strategic business partners (**"BP(s)"**) to assist the Company in appointing various retail partners in various cities, managing such retail partners and in certain cases also dissemination of Company Services to such retail partners.
- 1.4. Company is now desirous of engaging with various retail partners to assist the Consumers in providing Financial Services through their retail outlets by making available the disseminated Company Services and/or providing such other services as may be intimated by Company from time to time (**"Retail Partner(s)"**).
- 1.5. You have expressed your desire of engaging with Company as Retail Partner and in this regard have submitted information in the RAF to Company and/or BPs and have also verified the contents in the RAF on this Platform (**"Verification Process"**).
- 1.6. You understand, agree and acknowledge that your engagement as the Retail Partner and the use of this Platform, Website and/or Company Services including all information, tools and services available from this Platform to the Retail Partner and the Consumer is conditioned upon the successful completion of Verification Process and Your acceptance of all terms, conditions, policies and notices stated here, the terms whereof are subject to change at any time without prior notice to You. Any new features or tools which are added to the current Platform shall also be subject to this Agreement. To ensure that You are aware of the changes, please review this Agreement and all the documents referred to hereunder periodically.

- 1.7. In the event You are representing an incorporated entity, You hereby confirm that You have been expressly authorized by such entity to provide consent to this Agreement, and such entity agrees to be bound by the terms hereunder.

In this Agreement, Retail Partner and Company are individually referred to as “**Party**” and collectively referred to as “**Parties**”

2. DEFINITIONS AND INTERPRETATION

- 2.1. In the Agreement, unless the contrary intention appears and/or the context otherwise requires, capitalized terms defined by: (i) inclusion in quotations and/ or parenthesis have the meanings so ascribed; (ii) the capitalized terms used herein and not defined in this Agreement shall have the meaning ascribed to them in Company Rules and/or Website; and (iii) the following terms shall have the meanings assigned to them herein below:

“**Agreement**” / “**Terms of Use**” means these terms and conditions and all their modifications from time to time in accordance with the provisions contained herein, together with all schedules, annexures and exhibits hereto;

“**Applicable Law**” includes all applicable Indian statutes, enactments, acts of the state legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, directions, directives and orders of any governmental authority, statutory authority, board as may be applicable, including but not limited to any guidelines and/or directions issued by the Reserve Bank of India and in each case, any implementing regulation or interpretation issued thereunder including any successor Applicable Law;

“**Business**” shall mean the business of providing various financial and non-financial services to its customers, either directly or through its business partners, by the means of a technological solution and/or by setting up a network of stores and agents to facilitate the digital dissemination of such financial / non-financial services;

“**Business Day**” means any day of the week (excluding Saturdays, Sundays and public holidays) or a day on which banking institutions in India are open for general business;

“**Confidential Information**” means all information (whether oral or recorded in any medium) relating to the business, financial or other affairs (including future plans) of the Company, Retail Partners , Consumers which is treated by the Company, as confidential, or is marked or is by its nature confidential, including but not limited to all Intellectual Property belonging to the Company, their affiliates or any of the other Retail Partners or BPs as the case may be, together with the existence and contents of this Agreement (including all Schedules), any ancillary documents and the negotiations relating to this Agreement;

“**Competing Business**” shall mean:

- (i) Business; and/or
- (ii) consulting in the area of Business.

“**Consumer**” shall mean the consumer that undertakes a transaction on the Platform and /or avail Company Services through any means facilitated by Company;

“**Effective Date**” shall mean the date of Retail Partner’s acceptance of this Agreement;

“Financial Services” shall mean the financial services provided by various service providers to the Consumers utilizing the Company Services on the Platform;

“Governmental Authority” means any nation, state, sovereign, or government, any federal, regional, state, local or political subdivision and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, constitutionally established and having jurisdiction over any of the Parties (to the extent relevant to the transactions contemplated hereby) or the assets or operations of any of the foregoing or the transactions contemplated hereby;

“INR” or “RS” means Indian Rupees, the lawful currency of the Republic of India;

“Intellectual Property” shall mean all intellectual property used for the purpose of or in association with or in relation to providing Company Services utilizing the Platform and includes without limitation (a) Software, operating manuals, software code, program, instructions, specifications, processes, input methods, data or information used in relation to, in association with or for the operation of the software installed by Company ; (b) the trademarks, service marks, trade names, business names, logos, symbols, styles, colour combinations used by Company during the course of its business and all depictions, derivations and representations thereof; (c) all promotional material including without limitation, advertisements, literature, graphics, images, content and the ‘look and feel’ of all of the above; (d) all information, data or material in whatever form, whether tangible or not, provided by Company to Retail Partner during the course of or in relation to the Services; and (e) all techniques, formulae, patterns, compilations, processes, inventions, practices, methodology, techniques, improvement, utility model, procedures, designs, skills, technical information, notes, experimental results, service techniques, samples, specifications of the products or services, labelling specifications, rights on software, and any other knowledge or know-how of any nature whatsoever;

“Material Breach” shall mean any material breach of the terms of this Agreement by Retail Partner including but not limited to any breach of provisions of Clause 9 and Clause 10 of this Agreement;

“Person” shall mean any individual (including personal representatives, executors or heirs of a deceased individual) or legal entity, including but not limited to, any partnership, joint venture, corporation, trust, unincorporated organisation, limited liability company, limited liability partnership or Governmental Authority;

“Platform” shall mean the Software accessible through the Website;

“Proprietary Items” shall mean any document, record, notebook, plan, model, component, device, communication device, computer software or code, or Confidential Information or Trade Secret whether embodied in a disk or in any other form, including electronic form owned and/or used by the Company;

“RBI” shall mean the Reserve Bank of India;

“Retail Partner Application Form”/ “RAF” shall mean the retail partner application form provided to You by BPs and/or Company and/or as available on the Website / Platform, along with Your details for the purpose of applying to the Company to be engaged as its Retail Partner;

“Retail Outlet” shall mean the place of business as provided in the RAF from where the Retail Partner, upon authorization from Company, shall provide Services to Company and/or utilize / make available the Company Services to be utilized by the Consumers;

“Services” shall mean: (a) services provided by Retail Partners with respect to assisting the Consumers in making available the Financial Services utilizing the Company Services and/or Platform at its Retail Outlets or such other place as may be permitted by Company; and/or (b) such other services as intimated by Company to Retail Partner from time to time;

“Software” shall include custom built software that is owned by Company, or software that has been licensed from third party suppliers by Company and in relation to which Company has obtained the right to sub license from such third party suppliers, as modified/ replaced from time to time, that enables Retail Partner to utilize Company Services on communication devices such as computers, mobile phones and other handheld wireless devices etc. as identified by Company from time to time;

“Related Entities” shall mean any parent company, subsidiaries, affiliated corporations, partnerships, or joint ventures of the Company;

“Trade Secret” shall mean any information, user flow steps, screens, including a formula, pattern, compilation, program, device, method technique, or process that derives independent economic value, actual or potential, from being not generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use, including but not limited to the patented information and processes as well as the unpatented information and processes comprising, underlying, arising from, and associated with and/or used by the Company or any Related Entity;

“Tax” or **“Taxes”** shall mean any and all taxes, cess, levies, imposts, duties, charges, deposits, fees, deductions or withholdings that are, or that are to be, imposed, levied, collected, withheld or assessed, together with any and all interest, penalties, claims or other liabilities arising under or relating thereto;

“You” or **“Your”**; shall mean any natural or legal person who has access to and is using the Platform for the purpose of being engaged as a Retail Partner in accordance with the terms of this Agreement; and

“Website” shall mean and include www.paynearby.in, mobile application of Company, any successor website/ applications, any website of Related Entity or any other channel facilitated and permitted by Company including but not limited to App, any other digital medium including phone, displays, emails, social media interfaces, messaging interfaces, wallet, payment intermediaries using Company’s interface.

2.2. Interpretation: In this Agreement, unless the context otherwise requires:

- a) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- b) references to one gender include all genders;
- c) any reference to any enactment of statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted (with or without modification) and includes all instruments or orders made under such enactment;
- d) words in the singular shall include the plural and vice versa;
- e) any reference of “days” would mean “calendar days” and similarly reference of year and month would mean “calendar month” and “calendar year”;
- f) any reference to **“intimation”** and **“intimated”** shall include any intimations provided by Company on Website and/or Platform.
- g) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day if the last day of such period is not a Business Day; and whenever any payment is to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next Business Day;

- h) any reference to “writing” shall include printing, typing, lithography, transmissions by facsimile or in electronic form (including e-mail) and other means of reproducing words in visible form including but not limited to any instructions provided by Company on Website and/or Platform;
 - i) Reference to the word “include” or “including” shall be construed without limitation.
- 2.3. No provisions shall be interpreted in favour of, or against, any Party by reason of the extent to which such Party or its counsel participated in the drafting hereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof.
- 2.4. By entering into this Agreement, the Retail Partner expressly declares and undertakes that he shall not raise any dispute or challenge the validity, enforceability, or interpretation of any clause, provision, or term of this Agreement on the grounds that it was solely drafted by the Company or that the Retail Partner did not fully understand its implications.

3. SCOPE OF THIS AGREEMENT

3.1. ENGAGEMENT AS THE RETAIL PARTNER

- a) During the Term of this Agreement and subject to the provisions of this Agreement, Company hereby engages You and You hereby agree to be engaged as a Retail Partner. As Retail Partner, Company will allow you to access the Website and/or Platform and depending upon the nature of transactions, You shall: (a) provide Services to Company; and/or (b) avail services from Company and/or third party service providers through the Website and/or Platform.
- b) During the Term and subject to the provisions of this Agreement, and unless otherwise specified by Company, the Retail Partner shall at its Retail Outlet:
 - (i) assist Consumers in undertaking transactions and/or utilizing Company Services;
 - (ii) provide such services to Company as is intimated in writing by Company;
 - (iii) assist Company and/or BPs in the marketing of the Company Services; and/or
 - (iv) undertake such other business activities as instructed by the Company and/or informed by BPs from time to time.
- c) Retail Partner acknowledges and agrees that its appointment is subject to its continuance compliance with the provisions of this Agreement.

4. FEES AND EXPENDITURE

- 4.1. In consideration of Company making available the Platform, Website and /or Company Services, including goods or products (including Company developed products and services and third-party goods), to Retail Partner, the Company shall be entitled to a service fee (“**Company Service Fee**”) as may be intimated by Company from time to time. Company shall also be entitled to receive/deduct any other service fee from Retail Partner for any services provided by the Company to Retail Partner as may be intimated by Company from time to time.
- 4.2. In addition to the limited right to use the available Platform, Website and /or Company Services and depending upon the nature of Services being provided by Retail Partner, Retail Partner may be entitled to commissions, discounts service fees or such other remuneration from Consumers and/or Company

(collectively the “**Retail Partner Service Fees**”) as may be intimated by Company from time to time. Retail Partner agrees and acknowledges that Retailer Partner Service Fees may be paid after deduction / withholding of such Taxes by Company as may be required under Applicable Law and/or any other volume or price adjustment as may be determined by Company from time to time.

- 4.3.** Retail Partner shall be responsible for payment of its own Taxes, of whatever nature, in respect of all sums payable by Company to Retail Partner under this Agreement.
- 4.4.** Retail Partner agrees and acknowledges that Company reserves the right at any time to (without notice to Retail Partner) set off and apply any or all sums due and payable by Company to Retail Partner under this Agreement, and/or any or all sums of money held in accounts with Company and/or BP against: a) any or all sums due and payable by Retail Partner to Company under this Agreement;
- b) the amount of any liability incurred by Retail Partner against Company under this Agreement;
 - c) any amount erroneously paid to Retail Partner by Company and/or BP;
 - d) any statutory liability of Retail Partner including payment of applicable Taxes that Retail Partner has failed to pay to the relevant Governmental Authorities; and/or
 - e) any amounts relating to chargeback claims received from customers or any other third party (including but not limited to a sponsor bank or any other service providers).

5. SECURITY AMOUNT

- 5.1.** The Retail Partner hereby understands that by virtue of the Company making available the Platform, Website and/or Company Services to Retail Partner and Services being provided by Retail Partner, the Company is exposed to various risks, including credit risk, operational risk, reputational risk, compliance risk and contractual risk.
- a) The Retail Partner agrees and acknowledges that the Company may, in order to manage the risks associated with the transactions on Website / Platform and Services being provided by Retail Partner, require the Retail Partner to maintain a non-interest bearing security with Company, either directly or with the assistance of BP from time to time (“**Security Amount**”) in such manner and form as maybe required by the Company.
 - b) Retail Partner hereby acknowledges and agrees that depending upon the nature of Services or Company Services, the Company shall have the right, from time to time, to restrict/ permit certain/all transactions on Website / Platform up to a maximum limit (the “**Transaction Limit**”). The Transaction Limit for a Retail Partner shall be determined at the sole discretion of Company, relying on factors including but not limited to, the Security Amount maintained by the Retail Partner with Company, Retail Partner’s creditworthiness, any amounts due from the Retail Partner to the Company and performance record and/or nature of Services provided by the Retail Partner.
 - c) The Retail Partner acknowledges and understands that: (i) the Company has contractual arrangements with vendors and upon the Retail Partner availing Company Services and undertaking transactions on Website / Platform, the vendors charge certain amount/ fees to the Company for the service availed (“**Vendor Payments**”); (ii) the Company has agreed to provide Company Services, including goods or products (including Company developed products and services and third-party goods), to the Retail Partner in consideration of the Retail Partner paying the Company Service Fee to the Company on a daily settlement cycle, and the Company faces credit risks associated with the Retail Partner not paying the Company Service Fee and the Vendor

Payments (Company Service Fee and Vendor Payments collectively referred as “**Due Amounts**”). The Retail Partner hereby unconditionally agrees to a daily settlement cycle for Due Amounts, and it shall be obliged to pay the respective Due Amounts on an end-of-day basis (i.e., before 11pm). In the event that Retail Partner fails to pay all or any part of the Due Amounts on an end-of-day basis (before 11pm), it shall amount to a payment default by the Retail Partner and the Company shall have the irrevocable right to deduct the required amount from Security Amount, as in the opinion of Company, is necessary to ensure due payment of Due Amounts by the Retail Partner and the Security Amount shall be reduced by such amounts deducted. It is hereby clarified that deduction of Due Amounts from the Security Amount by the Company pursuant to this Clause 5.4 shall be a valid discharge of Retail Partner’s payment obligation of the respective Due Amounts for the specific day.

- d) Retail Partner agrees and understands that any payments made by it to Company shall be first applied towards settlement of Due Amounts and any surplus amounts shall then be applied towards increasing or replenishing the Security Amount.

6. OPERATION OF RETAIL OUTLET

- 6.1.** During the Term, Retailer Partner shall render Services by and through such of its officers, employees, agents, representatives and affiliates as it shall designate, from time to time. Notwithstanding anything to the contrary contained in this Agreement, Company shall have the right at any time, to modify, alter, amend and/or discontinue Services, including the manner, procedure, process in which Retail Partner will be required to perform Services and Retail Partner shall be bound by all such modifications, alterations and amendments made by Company.
- 6.2.** It is hereby agreed between the Parties and declared for the avoidance of doubt that Retail Partner shall only market, promote or make available such Company Services as are permitted expressly by Company.
- 6.3.** Company may specify to Retail Partner, the necessary infrastructure and equipment required at the Retail Outlet including but not limited to any minimum area requirements of the Retail Outlet, computer terminals, peripherals attachments, internet and broadband connectivity, mobile device and/or any such device with GPRS connectivity, html enabled, which is sufficient for the purposes of utilizing Software and/or effectively making available Company Services (“**Specifications**”). Retail Partner shall ensure compliance with Specifications at all times at its sole expense. Further, Retail Partner shall at all times during the Term, display Company’s signage, signboards, logos, etc. at a prominent place in the Retail Outlet strictly in accordance with the instructions provided by Company and/or BP in this regard.
- 6.4.** Company may, at its sole discretion and with or without consideration, provide training manuals, technology support, ongoing advice and assistance to Retail Partner and designated employees of Retail Partner including without limitation the provision of brochures, pamphlets, charts, signboards, signage and other materials for the purposes of advertisement, promotion and marketing Company Services. Any materials supplied by Company shall be utilized solely in relation to the provision of Services and Retail Partner shall ensure that such materials are not utilized for any other purpose.
- 6.5.** Company may, in the interest of making available Services to Consumers, allow Retail Partner to provide Services from a location other than a Retail Outlet subject to Applicable Law and rules intimated by Company in this regard.

7. TERM AND TERMINATION

7.1. Term

- a) This Agreement will be effective from Effective Date and shall remain valid for a period of 5 (five) years unless terminated earlier in accordance with Clause 7.2 of this Agreement ("**Term**").
- b) Upon the expiry of Term and subject to satisfactory performance of Retail Partner's obligations under the Agreement, this Agreement may be renewed at Company' option, on such terms and conditions as may be applicable at the time of such renewal. Company may exercise its right of renewal by giving a notice in writing to Retail Partner 30 (thirty) days prior to the completion of the Term.
- c) If Company decides to renew this Agreement, the Parties shall forthwith execute an agreement on the same terms and conditions and/or such terms and conditions as may be applicable at the time of such renewal. Retail Partner shall ensure that the said agreement is renewed from time to time and Retail Partner agrees and acknowledges that Company shall not be responsible/liable in any manner whatsoever, if Agreement is not renewed and the Retail Partner continues to do business during such period wherein, there is no valid agreement between the Parties.

7.2. Termination

- a) During the period commencing from the Effective Date and expiring on 24 (twenty-four) months from the Effective Date, (the "**Lock-in Period**") Retail Partner cannot terminate this Agreement.
- b) After the expiry of Lock-in Period, the Retail Partner may terminate this Agreement by giving a 90 (ninety) days' written notice to Company.
- c) Company shall have the right to terminate this Agreement immediately upon the occurrence of an "**Event of Default**". For purposes of this Agreement, the term "**Event of Default**" shall have occurred if:
 - (i) if there is a Material Breach by Retail Partner that remains uncured even after the expiry of 15 (fifteen) Business Days after the date of a written notice issued by the Company of such occurrence;
 - (ii) if Retail Partner commits any fraud, negligence, misconduct, or is otherwise engaged in any fraudulent or illegal activity; or
 - (iii) if an order is made by a court of competent jurisdiction, or a resolution is passed, for the liquidation, bankruptcy, insolvency or administration of Retail Partner or a notice of appointment of an administrator of Retail Partner is filed with a court of competent jurisdiction.
- d) In addition to the foregoing, Company may terminate this Agreement at any time by giving a 30 (thirty) days' written notice to Retail Partner.
- e) Company shall have the right to terminate this Agreement if the agreement between Company and the BP is terminated.

- 7.3. Without prejudice to anything else contained in this Agreement, In the event of termination of the Agreement under Clause 7.2.(a) or 7.2.(b), the Company reserves the right to take such civil or criminal legal action against the Retail Partner as may be appropriate under Applicable Law or required at the discretion of the Company.

- 7.4.** The rights and obligations of the Parties under this Agreement, which either expressly or by their nature survive the termination of this Agreement, shall not be extinguished by termination of this Agreement.
- 7.5.** The termination of this Agreement in any of the circumstances aforesaid shall not in any way affect or prejudice any right accrued to any Party against the other Parties, prior to such termination.

8. CONSEQUENCES OF TERMINATION

- 8.1.** Upon termination of this Agreement for any reason stated in Clause 7 above, the Retail Partner shall:
- a) immediately cease to utilize, promote, market or advertise Company's products and/or services including but not limited to Company Services;
 - b) immediately discontinue to utilize any Intellectual Property including but not limited to logo and name of Company and shall immediately hand over any and all copies or documentation of such Intellectual Property;
 - c) immediately return to Company all Confidential Information provided to Retail Partner under the Agreement including but not limited to all information and data with respect to BP and Consumers;
 - d) immediately return to Company originals and copies of any and all materials provided to Retail Partner pursuant to this Agreement or in the course of provision of Services, including any publicity and marketing materials in its possession;
 - e) immediately discontinue and cease to use Platform and/or any Software provided by Company and shall hand over any copies or documentation of Software and shall purge Software or cause it to be purged from all human and machine-readable media (or other memory devices);
 - f) provide remote access to Company to disable any software that Company and/or BP had installed;
 - g) immediately remove all signboards, banners, glow signboards and all such material which indicates any association with Company from Retail Outlets, its office and any other premises; and
 - h) confirm in writing to the Company of having complied with the provisions of this Clause 8.1.
- 8.2.** Failure to comply with the provisions of Clause 8.1 above shall be deemed to be false impersonation and/or misuse of Company's Intellectual Property and Company reserves the right to take such civil or criminal legal action against the Retail Partner, in the event of such non-compliance, as may be appropriate under Applicable Law or required at the discretion of the Company.
- 8.3.** Upon notice of termination from either Party, Retail Partner shall perform all the obligations under this Agreement during the notice period. Any waiver of the forgoing obligation should be at the absolute discretion of the Company and such waiver shall only be valid if given in writing by the Company.
- 8.4.** Retail Partner hereby agrees and undertakes that it shall grant Company, its employees or agents, access to its offices/place of business and information technology systems for a period of 60 (sixty) days after termination for the verification of its compliance under Clause 8 of the Agreement.

- 8.5.** Without prejudice to any other right of the Company under this Agreement or applicable law, upon termination of this Agreement in accordance with Clause 7.2(c) above, the Security Amount shall be forfeited, and the Retail Partner hereby expressly waives all rights and claims towards the Security Amount (if any). The Retail Partner hereby understands, agrees and confirms that forfeiture of the Security Amount upon termination of this Agreement in accordance with Clause 7.2(c) is not in the nature of a penalty and is a genuine pre-estimate of loss which the Company may suffer on account of occurrence of an Event of Default.

9. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 9.1.** Retail Partner represents and warrants to Company that the execution and delivery by Retail Partner of this Agreement does not, and the performance by Retail Partner of his obligations hereunder will not, with or without the giving of notice or the passage of time, or both:

- a) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency, applicable to Retail Partner; and / or
- b) conflict with result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Retail Partner is a party or by which Retail Partner is or may be bound, including, without limitation, any non-competition, non-solicitation agreement or similar agreement.

- 9.2.** Retail Partner further represents and warrants that it fully and completely understands this Agreement and the financial requirements and risks associated with the same and that:

- a) it has the power, financial and legal capacity to execute, deliver and perform its obligations under this Agreement and all necessary corporate, shareholder and other actions have been validly obtained to authorize such execution, delivery and performance, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms; and
- b) it has engaged in negotiations with Company and has either consulted with an attorney of his choice or has had ample opportunity to do so and is fully satisfied with the opportunity it has had.

- 9.3.** Retail Partner hereby represents, agrees and undertakes that:

- a) it shall at all times ensure compliance with Applicable Laws, the provisions of this Agreement, Company Rules and instructions provided by Company from time to time;
- b) the information provided in the RAF is complete and accurate and if there is any change in such information it shall inform the Company immediately of such change;
- c) it shall not provide any Services or collect any amounts from Consumers during the time Company Services, Website and/or Platform are unavailable to Retail Partner at any time and/or for any reason whatsoever;
- d) it shall not at any point undertake or facilitate, any cash collection or payment through any officer, employee, agent of the Company and that it is fully aware that it shall be solely responsible for any such cash collection or settlement and shall indemnify and hold harmless the Company from any loss arising out or in relation to such cash transaction/collection;

- e) it shall not obstruct Company or undertake legal preventive measures that limit or obstruct Company from recovering the default amount or amount lost to fraud;
- f) it shall not in any manner whatsoever, impede or hinder Company in its legal and lawful efforts to recover the amount lost due to his fraud and misconduct or any third party, including but not limited to all expenses, costs and penalties incurred in connection therewith;

Retail Outlets

- g) at all times during the term of the Agreement, the Retail Outlets shall comply with the Specifications;
- h) all Services shall be provided solely through the Platform and/or Website or are recorded therein and no offline transactions are undertaken and/or no such fake/ false receipts are issued by the Retail Partner for any transaction done by the Retail Partner which are not transacted through Platform and/or Website;
- i) at all times during the Term of the Agreement, it shall ensure that no other services of the same and/or similar nature to Services that Retail Partner is authorized to provide by Company; [that the Retail Outlet is utilized solely for the purpose of rendering the Services in accordance with the Agreement]
- j) it shall ensure that and shall not cause or permit to be made available in the Retail Outlet: (a) any material that may not be made available to the public under Applicable Law, including without limitation any vulgar, obscene, pornographic, misleading, defamatory, libelous, offensive, derogatory, threatening, harassing, abusive or violent content and/or (b) carry out any activity that is not permitted under Applicable Laws or is reasonably considered to be immoral or against public interest;
- k) at all times during the Term of this Agreement, it shall bear all costs and/or incidental expenses including without limitation all fees for application, license fees, charges and Taxes, in relation to the provision of Services and/or operating the Retail Outlet;
- l) at all times during the Term of this Agreement, the Retail Outlet shall be open for business during normal business hours, or as permitted by Applicable Laws or such other time period as Company may specify from time to time;
- m) Employees
- n) it shall be solely responsible for all such personnel employed by him, including payment of wages, making of contributions under Applicable Laws such as the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Employees State Insurance Act, 1948, etc.;
- o) it acknowledges that it shall be solely responsible for all acts and omissions of its employees, subordinates, agents, aforesaid assignees or other personnel engaged by the Retail Partner;
- p) it shall make correct and accurate representations of the services offered by Company including Company Services to Consumers;
- q) it shall not at any point and to any Person make any communication regarding the services offered by Company unless authorized by Company in writing;
- r) it shall, unless otherwise intimated in writing by the Company, follow the instructions provided by BPs with respect to Company Services;

- s) it shall immediately inform to Company and the relevant BP of any circumstances that can cause damage to the business, goodwill and reputation of Company;
- t) it shall work exclusively for the Company during the Term and shall not provide its services to any other Person, unless so permitted by Company in writing;
- u) during the Term and for a period of 1 (one) year thereafter, it shall not, directly or indirectly, either individually or through any Person (including through its employees, Affiliates or relatives or in a firm where the Retail Partner or any relative or nominee of the Retail Partner is a partner, or in any company where the Retail Partner or any relative or nominee of the Retail Partner is a director or shareholder):
 - (i) be appointed as a distributor/ strategic business partner /retail partner for any other Person that is carrying out any business that is same or similar to Competing Business or is in competition to business carried by the Company and/or the Related Entities; and/or
 - (ii) engage or be interested (as a stockholder, director, officer, trustee, consultant, or otherwise), either individually or through any Person, in any other business, which undertakes, anywhere in India or elsewhere, any activity, which is competitive with Company's and/or Related Entities' business activity without the prior written consent of Company, which Company may withhold at its sole discretion.
- v) it shall not encroach upon / solicit business in the territories assigned to other business partners, distributors or retailers of the Company. In the event of disputes between the Retail Partners and any such other business partner of Company, such disputes shall be resolved by an officer appointed by Company in this regard, whose decision shall be final and binding;
- w) it shall maintain accurate and proper accounts of all transactions between BP and itself in the form prescribed and updated by Company from time to time;
- x) it shall observe proper ethics and transparency in all its actions in the course of provision of the Services and shall not, in any circumstances, take any action or make any statement that may mislead any Person;
- y) it shall not provide any discounts on the prices fixed for various products/services by Company except with Company's prior written consent;
- z) it shall promote the sale of Company's products/services in accordance with the publicity and marketing guidelines issued by Company from time to time;
- aa) it shall make all efforts to settle any disputes that may arise between itself and Consumers amicably and in the event any such dispute is referred to a consumer forum or other competent authority, shall provide all assistance in the settlement of the dispute;
- bb) it shall be solely responsible for and hereby undertakes to strictly comply with all Applicable Laws in connection with the provision of Services and shall obtain and maintain in full force and effect all Approvals, registrations required under Applicable Laws for the operation of the business and provision of the Services, including the exhibition of sign boards and/or neon/advertising signs, etc., at its expense;
- cc) it shall ensure regular and timely payment and deposit of all Taxes as applicable from time to time with the relevant authorities;

- dd) it shall obtain Company's prior written approval for any change in its constitution and/or location of its Retail Outlet and other place of business;
- ee) it shall solely be responsible for procuring adequate insurance against any potential losses relating to handling of cash amounts in the course of performing its obligations as a Retail Partner, as may be required on a case-to-case basis and/or as advised by Company; ff) it shall use its best endeavours and take such steps as Company may reasonably require to ensure that its management and staff keep confidential the contents of this Agreement and/or all information they obtain about Company's business which is not available to the general public;
- gg) it is aware and acknowledge that the services provided by the Company including Company Services is provided on an "**as is**" and "**as available**" basis and that the use of Company Services by Retail Partners and/or Consumers is at the Retail Partner's own risk;
- hh) it is aware and acknowledge that the Company does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party including the Financial Services being provided by various service providers through Company Services or Platform or any hyperlinked website or service; ii) it shall not, without Company's prior written approval, either on its invoices, letterheads or any other place or by any other means, orally or in writing, make any statement or representation, calculated or liable to induce others to believe that the Retail Partner is the agent of Company or do any act, deed or things to bind Company in any way in dealing with any third party(ies).

10. RIGHTS OF THE COMPANY

10.1. Suspension of Company Services by Company

- a) Retail Partner agrees and acknowledges that Company reserves the right to suspend and/or terminate the provision of Company Services if Retail Partner and/or BP has:
 - (i) violated or is likely to violate the terms of this Agreement or any other agreement it has with Company or any of the Company Rules;
 - (ii) violated or is likely to violate any of the Applicable Law related to the services provided by it including the Services; and/or
 - (iii) provided any false, incomplete, inaccurate or misleading information or otherwise engaged in fraudulent or illegal conduct.
- b) Retail Partner agrees and acknowledges that the Company reserves the right to suspend and/or terminate the provision of Company Services:
 - (i) if Company is mandated to do so under Applicable Law and instructions from Governmental Authority;
 - (ii) for recovery of any of its dues under the Agreement;
 - (iii) for any suspected violation of any rules, regulations, orders, directions, notifications issued by Governmental Authority from time to time;
 - (iv) for any discrepancy or suspected discrepancy in the particular(s) or documentation provided by Consumers, Retail Partner and/or BP;

- (v) due to technical failure, modification, up gradation, variation, relocation, repair, and/or maintenance due to any emergency or for any technical reasons;
- (vi) due to any act/omission/failure on part of the service provider providing the relevant Financial Services; and/or
- (vii) for any other reason that Company deems appropriate in the best interests of Business.

10.2. Data Collection and Privacy

- a) Retail Partner shall not collect and /or share any data with respect to the Consumers for itself or any other third party. Retail Partner agrees acknowledges that Company shall be the sole owner of all data including Consumer data collected /generated under any transaction utilizing the Platform and/or the Company Services; and Company shall be free to share such consumer data with Related Entities.
- b) In addition to the foregoing, the Parties agree and acknowledge that the Company may collect financial and other data from BPs, Consumers, Retail Partners and may utilize the same for undertaking a credit check through agencies such as Credit Information Bureau (India) Limited for the purpose of recommending them for suitable credit facilities to be provided by financial institutions. In relation to the same, Retail Partner:
 - (i) undertakes to assist the Company in collection of such financial data;
 - (ii) undertakes to keep such data as a confidential; and
 - (iii) agrees and acknowledge that Company is the sole owner of such financial data and that such financial data would be a Confidential Information for the purpose of this Agreement.
- c) All of the information collected by Company from the Retail Partner is subject to the privacy policy available at <https://paynearby.in/wp-content/uploads/2023/11/Data-Privacy-Policy.pdf>. A copy of Company's privacy policy is available on the Website.

- 10.3** Retail Partner agrees that Company may share information collected from the Retail Partner with sponsored banks for the purposes of this Agreement. Retail Partner hereby agrees and acknowledges that the sponsor banks may use personal information (including sensitive personal data) provided by Retail Partner and share such personal information with statutory / regulatory / law enforcement authorities and payment networks, for monitoring and/or reporting purposes, and the Retail Partner specifically permits such use and disclosure of its personal information under the applicable laws as amended and modified during the tenure of this Agreement. Company reserves the right to undertake any and all remedial measures, including but not limited to recovery of any losses, costs or damages incurred due to any chargeback disputes, penalties and expenses imposed on Company by any Governmental Authorities or banks and/or any other liabilities and charges incurred by Company arising out of or relating to any fraudulent transactions undertaken by Retail Partner and/or any misconduct reported against Retail Partner.

11. NON SOLICITATION AND NON DISCLOSURE COVENANTS

- 11.1.** Retail Partner acknowledges that its services hereunder are of a special, unique character, and its strategic business partnership with the Company places it in a position of confidence and trust with customers, suppliers, and other persons and entities with whom the Company have a business relationship.

- 11.2.** Retail Partner further acknowledges that the rendering of services under this Agreement will likely require the disclosure to the Retail Partner of Confidential Information including Trade Secrets. As a consequence, Retail Partner agrees that it is reasonable and necessary for the protection of the goodwill and legitimate business interests of the Company that the Retail Partner makes the covenants contained in this Clause 11 and that such covenants are a material inducement for the Company to enter into this Agreement, and that the covenants are given as an integral part of this Agreement.
- 11.3. Non solicitation Covenants:** Retail Partner agrees that during the Term of the Agreement and 1(one) year after the termination of the Agreement, it will not engage in the following acts:
- a) directly or indirectly assist, promote or encourage any other Retail Partner, Consumer existing or potential employees, customers, clients, or vendors of the Company or any other Retail Partner, as well as any other parties which have a business relationship with the Company to terminate, discontinue, or reduce the extent of their relationship with Company;
 - b) directly or indirectly offer employment to, enter into a contract for the services of, or attempt to solicit or seek to entice away from the Company any individual who is at the time of the offer: (a) a director, officer or employee with the Company and its Affiliates; (b) client of the Company and/or its affiliates; and/or (c) or procure or facilitate the making of any such offer or attempt by any other Person.
 - c) disparage the Company, any Related Entities, and/or any shareholder, director, officer, employee, or agent of the Company or any Related Entity and/or;
 - d) engage in any practice, the purpose of which is to evade the provisions of this Clause 11 or commit any act which adversely affects the Company, any Related Entity, or their respective businesses.
- 11.4. Disclosure of Confidential Information:** Retail Partner acknowledges that the Confidential Information and all other confidential or proprietary information with respect to the business and operations of the Company and Related Entities are valuable, special, and unique assets of the Company. Accordingly, Retail Partner agrees not to, at any time whatsoever either during or after the term of this Agreement disclose, directly or indirectly, to any Person, use or authorize any Person to use, any Confidential Information without the prior written consent of the Company.
- 11.5. Prevention of Premature Disclosure of Confidential Information and Trade Secrets:** Retail Partner agrees and acknowledges that, because the success of the Company is heavily dependent upon maintaining the secrecy of the Company's Confidential Information and Trade Secrets and preventing the premature public disclosure of the Company's proprietary information and technology including its Confidential Information and Trade Secrets, the Retail Partner agrees to use his best efforts and highest degree of care, diligence, and prudence to ensure that no Confidential Information, Trade Secret prematurely leaks or otherwise prematurely makes its way into the public domain or any public forum, including, without limitation, into any trade publications, internet chat rooms, social media platforms or other similar forums.
- 11.6.** In the event that the Retail Partner becomes aware of any premature leak of Confidential Information or Trade Secret or becomes aware of any circumstances creating a risk of such a leak, the Retail Partner shall immediately inform the management of the Company, of such leak or of such circumstances.
- 11.7. Use, Removal and Return of Proprietary Items:**

- a) Retail Partner shall utilize the Proprietary Items only to the limited extent of undertaking the Services in accordance with the terms of this Agreement and as instructed from the Company from time to time.
- b) Retail Partner shall not and ensure that the Consumers shall not utilize the Platform and/or Company Services in any manner that is not explicitly permitted in the Agreement.
- c) Retail Partner shall not and ensure that the Consumers shall not transmit by any means, electronic or otherwise, any Proprietary Items.
- d) Retail Partner recognizes that, as between the Company and the Retail Partner, all of the Proprietary Items, whether or not developed with the assistance of the Retail Partner, are the exclusive property of the Company. Immediately, upon termination of this Agreement (regardless of the reason for termination), or upon the request of the Company during the term of this Agreement, the Retail Partner shall return to the Company all the Proprietary Items, Confidential Information, Trade Secret or any part thereof in Retail Partner's possession or subject to Retail Partner's control, and the Retail Partner shall not retain any copies, abstracts, sketches, or other physical embodiment of any of the Proprietary Items, Confidential Information, Trade Secret or any part thereof.

12. INTELLECTUAL PROPERTY

- 12.1.** During the Term, Company hereby grants Retail Partner a limited non-exclusive, non-transferable, non sub-licensable, restricted, non assignable, right to use the Platform and Software solely for the purpose of provision of the Services as contemplated under this Agreement, which may be revoked by Company at any time and without assigning any reason at its discretion.
- 12.2.** Retail Partner shall not sublicense, assign or otherwise transfer the Software to any Person and is expressly prohibited from distributing, sublicensing, assigning, transferring or otherwise, the Software, or other technical documentation pertaining thereto, or any portions thereof in any form.
- 12.3.** Retail Partner may utilize any third party software other than the Software only with Company's prior written consent. Further, the Retail Partner shall ensure that such third party software is validly licensed and installed.
- 12.4.** Further, Subject to the provisions of this Agreement, Company hereby grants a temporary, limited, revocable, conditional, non-exclusive, non-sub-licensable, non-transferable, restricted right to use the Intellectual Property, during the Term and solely for the purpose of and to the extent necessary for providing the Services and in accordance with the directions and specifications as, from time to time, communicated or approved by Company in writing.
- 12.5.** Company shall retain all rights over all its Intellectual Property, including the Software and/or Platform, its name and logo and all rights relating to the publicity and marketing materials. Retail Partner hereby acknowledges that:
- a) the execution of this Agreement does not amount to any transfer to it of any Intellectual Property rights held by Company prior to the execution of this Agreement, nor does this Agreement in any way limit Company's rights over its Intellectual Property, including the right to license to others; and
 - b) any and all goodwill arising from Retail Partner's use of Company's Intellectual Property shall inure exclusively to Company without any compensation.

12.6. Retail Partner hereby agrees and undertakes that at any time:

- a) it shall not take any action, which shall or may impair Company's right, title or interest in the Intellectual Property, or create any right, title or interest therein or thereto, adverse to that of Company;
- b) it shall not use the Intellectual Property together with any other mark or marks or any other part of trademark;
- c) it shall not misuse or permit such unauthorized use of the Intellectual Property;
- d) It shall use the Intellectual Property only in the form and manner stipulated by Company from time to time and shall observe any directions given by Company from time to time, including as to the colours and size of the representations of the logo, the manner and disposition on any printed matter including the signage on the interior and exterior of the Retail Partner's office premises and any accompanying leaflets, brochures or other advertising materials prepared by the Retail Partner etc.;
- e) it shall not use the Intellectual Property that is not previously provided for by Company without Company's prior written consent;
- f) it shall bring to Company's notice all cases of infringement or passing off of Company's Intellectual Property or registration or attempted registration of the same or of any other intellectual property similar thereto. In the event Company undertakes any opposition to or any action to restrain or punish such act or acts in accordance with Applicable Laws, the Retail Partners agrees to cooperate fully and freely with Company including providing all the necessary information, documentation and records in Retailer's possession or control. If required by Company, the Retail Partner shall permit Company to undertake such opposition or action in the name of the Retail Partner. The costs of any such action shall be borne by the Parties in such proportion as may be mutually agreed upon; and
- g) it shall render to Company all assistance in connection with any matter pertaining to the protection of the Intellectual Property whether in courts, before administrative agencies, within or without India, or otherwise.

13. INDEMNIFICATION

13.1. Retail Partner shall indemnify, defend and hold Company and Related Entities harmless (including their respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest and expenses (including without limitation attorneys' fees) arising out of or relating to:

- a) any actual or alleged breach of the Retail Partners' representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of Company Rules;
- b) wrongful or improper use of Company's technologies and Intellectual Property;
- c) violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights;
- d) any misconduct during the course of provision of Services under this Agreement;

- e) any misuse of rights, powers or authority granted by Company in connection with appointment as a Retail Partner;
- f) violation of any law, rule or regulation of India or any other country; and/or
- g) any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to any of the above.

13.2. In addition to any rights available to Company under any other provision of this Agreement, Company reserves the right to impose such penalties as it deems fit on the Retail Partner in relation to any event set out in Clause 13.1 above.

14. ERRORS, INACCURACIES AND OMISSIONS

14.1. Retail Partner acknowledges and agrees that occasionally there may be information on the Platform or in the Website that contains typographical errors, inaccuracies or omissions that may relate to product or services descriptions, pricing, promotions, offers, transaction times etc. Company reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel transactions if any information in Website and/or Platform is inaccurate at any time without prior notice.

14.2. It is hereby agreed and clarified by the Parties for avoidance of doubt that Company shall not be responsible for any of its obligations under this Agreement including with respect to Company Services due to reasons beyond Company's control such as down time of servers, viruses, strikes, technical snags, system compatibility, natural calamities, acts of war, terror etc. Retail Partner agrees to not hold the Company liable for any delay or adverse effect caused due to the occurrence of such an event.

14.3. Retail Partner acknowledges and agrees that Company shall not be held liable or responsible in the event of any intentional or unintentional act of compromising authentication measures of the Website or Platform, such as sharing one's password or login credentials with any third party, which results in any liability, financial or no-financial losses and/or damages to the Retail Partner, in the event of any fault, default or misconduct of any kind.

15. MISCELLANEOUS

15.1. Jurisdiction: This Agreement shall subject to the provisions of Clause 15.2, be subject to the exclusive jurisdiction of the courts of Mumbai.

15.2. Dispute Resolution: Parties shall attempt in good faith to resolve any disputes, differences or claims arising out of or relating to this Agreement promptly by negotiation amongst Retail Partner and Company. Any dispute that is not amicably settled shall be finally settled by arbitration conducted in accordance with the (Indian) Arbitration and Conciliation Act, 1996 (as amended). The arbitration shall be conducted by a sole arbitrator to be appointed mutually by the Parties. The seat and venue of arbitration shall be Mumbai, India. The arbitration shall be conducted in English language and a record of the proceedings shall be maintained in English. The award rendered by the arbitrators shall be final and binding upon the Parties in dispute. This sub-clause 15.2 shall not prevent the Parties from approaching a court of competent jurisdiction for injunctive / interim relief.

15.3. Entire Agreement: This Agreement, terms and conditions provided in the Website and/or Platform (as amended from time to time) and any documents referred to in it contain the entire agreement

between the Parties, and supersedes any prior agreements, representations or communications, written or oral, amongst them relating to its subject matter.

15.4. Right to Amend: Notwithstanding anything contrary in this Agreement, Company has the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Company Services and/or Platform with notice that Company in its sole discretion deems to be reasonable in the circumstances, including such notice on the Website or any other website maintained or owned by Company for the purposes of providing Company Services in terms of this Agreement. Any use of the Company Services and/or the Platform after the publication of any such changes shall constitute acceptance of this Agreement by the Retail Partner as modified. However, any dispute that arose before the modification shall be governed by the Agreement (including the binding individual arbitration clause) that was in place when the dispute arose.

15.5. Relationship: Nothing in this Agreement shall be deemed to constitute a partnership between the parties or constitute either Party the agent and/or the employee of the other for any purpose.

15.6. Partial Invalidity: If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent for any reason including by reason of any Applicable Law, the remainder of such provision and/or this Agreement and the application of such provision to persons or circumstances other than those which are held to be invalid or unenforceable shall not be affected thereby, and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the invalid and unenforceable provision.

15.7. Notices: To

Company

Any amendment, notice, or other communication under this Agreement by Retail Partner to Company shall be sent by personal delivery or courier or email/facsimile or by registered mail at the addresses set forth below (or at such other address or through such other medium as the Company may previously have notified Retail Partner in writing):

Address: Office no. 1AB, Plot no. 103, Road no. 12, Arena House, MIDC, Andheri East,
Mumbai - 400093

Grievance officer: Grievance Officer

Email: grievances@paynearby.in

Company Secretary: Jinal Trivedi

Email: jinal.trivedi@paynearby.in

To Retail Partner

Any amendment, notice, or other communication under this Agreement by Company to Retail Partner shall be sent either by: (a) personal delivery or courier or email/facsimile or by registered mail as

provided in RAF; (b) communication on the Website and/or Platform; or (c) at such other address or through such other medium as the Company may previously have notified Retail Partner in writing.

- 15.8. Waiver:** The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or the waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. Any waiver must be in writing and signed by the Party sought to be bound.
- 15.9. Assignment:** This Agreement, or any right or interest herein, shall not be assignable by the Retail Partner except with the prior written consent of the Company. Company shall be free to assign this Agreement, or any right or interest herein, to any Person including but not limited to Related Entities.
- 15.10. Rights of Retail Partner:** The rights granted to the Retail Partner under this Agreement are nonexclusive, and the Retail Partner acknowledges that Company has and retains all rights except those expressly granted to the Retail Partner under this Agreement.
- 15.11. Specific Performance:** Retail Partner agree that damages may not be an adequate remedy and that they shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain Retail Partner from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Company s may have at Applicable Law or in equity, including a right for damages.
- 15.12. Survival:** The provisions of this Agreement, which by their nature are intended to survive the termination or expiration of this Agreement, including without limitation, the provisions of Clause 11 (Non-compete, Non-solicitation and Non-Disclosure Covenants), Clause 9 (Representations and Warranties), Clause 13 (Indemnity) and Clause 15 (Miscellaneous) shall survive the termination of this Agreement.