

Reference clauses for drafting static terms of the transaction level contract

Version History

Version	Date	Description / Changes
0.1	2023-10-10	First Draft

PURPOSE OF THIS DOCUMENT

V1.2 of the ONDC API Specification is going to allow Network Participants (**NPs**) to add some of their own standard contractual terms to the digital Transaction Level Contract. These standard terms (hereafter referred to as “**static terms**”) will be inserted into the digital contract as a URL which will be mapped to the “static_terms” attribute in the API Specification. These are boilerplate contractual terms which do not change from one transaction to another (hence the name **static terms**) - such as indemnity, force majeure etc. The **static terms** hosted on the URL specified by the NP, along with the payload of the APIs will form the contract between the Buyer App and Seller App for a given transaction.

The purpose of this document is to provide NPs a set of model clauses, as a reference, that NPs can use to draft their own **static terms**. The terms in this document are not automatically made part of the Transaction Level Contract.

DISCLAIMER

This document is only for informational purposes. ONDC does not make any warranties, express or implied, about its completeness or fitness for purpose. The user understands and accepts that ONDC will not be liable for any loss resulting from the use of this document.

Business Partnership Agreement

This Business Partnership Agreement is entered into between

XYZ, a company incorporated under the Companies Act, 2013 having its registered office at _____ (referred to as Buyer App), and

Seller Network Participant that is part of the ONDC Network.

Wherever the context so requires, 'you' and 'your' shall relate to any legal person who has agreed to avail Buyer App's services for the purpose of facilitating order placed by the Buyer.

XYZ and you are hereinafter collectively referred to as the Parties and individually as the Party.

WHEREAS

- A. XYZ has onboarded the ONDC Network as a Buyer Side Application and agrees to provide Services to You on the terms and conditions set forth herein
- B. You have onboarded the ONDC Network as a Seller Side Application and can extend loan/credit under applicable law.
- C. You are desirous of availing following services from the Buyer App
 - i. Identify potential buyers on the basis of the criteria provided by you
 - ii. Facilitate Buyers to purchase goods or services
- D. The terms and conditions provided hereinafter including the terms and conditions exchanged between the Parties through the ONDC Protocol (Confirmation) will govern the relationship between the Parties.

- 1. Definitions:** All terms used herein, unless the context otherwise requires or unless specifically defined herein, shall have the meanings ascribed to them in the ONDC Network Policy or ONDC Network Participant Agreement, as the case may be.

- 1.1. **Business Day:** Business Day shall mean a day other than (i) public holidays, and (ii) a day on which normal business cannot be transacted due to storms, flood, bandhs, strikes etc, or any circumstances beyond the control of the Parties.
- 1.2. **Confirmation:** as defined in the preamble of the Agreement
- 1.3. **Order:** Order shall mean all purchases/credit availed/made by the Buyer on the ONDC Network through the Buyer App, Seller App and Seller, Gateway and Logistics Service Provider, as applicable
- 1.4. **Settlement Window:** shall mean the specified number of working days within which the Network Participants will settle the amounts owed to each other and other participants such as the Buyer, Seller or ONDC, as applicable.

- 2. General Obligations:**

- 2.1. Each Party will make payment or fulfil the Order specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- 2.2. Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement.
- 2.3. All payments under this Agreement will be subject to deduction or withholding as required by any applicable law.
- 2.4. Collection of Payment from Buyer: As mutually agreed by the Parties in their Confirmation. Further terms regarding payment collection including how the payment will be collected, withholding amount, settlement amount, settlement window, settlement type will be as per the Confirmations of the Party

3. Representations and warranties:

Each Party represents and warrants to the other Party that:

- 3.1. it is duly organised and validly existing under the laws of India and has the full requisite right, power, and authority (corporate or otherwise) to enter into this Agreement and to deliver or perform the acts required of it under this Agreement;
- 3.2. they have read, understood and agree to comply with the terms specified in this document along with the Confirmation exchanged between the Parties, and the same shall form a legal, valid and binding contract between the Parties with respect to this transaction;
- 3.3. it has and shall maintain all necessary statutory and regulatory permissions, approvals, licences, consents or permits, from any third parties including any regulatory or government body as required by applicable law or regulations, that is necessary for the running and operation of its establishment for the conduct of its operations;
- 3.4. it has and shall maintain all the title and ownership, licence, or right to use, as applicable, in all the IPR associated with it and there is no need for any payment or permission, or authorization required from any other party or entity to use, distribute, or otherwise exploit in all manners permitted by this Agreement and/or the ONDC Network Policy;
- 3.5. all information submitted by the Parties is truthful, lawful and accurate, as on the date of this Agreement;
- 3.6. it has complied with or will ensure compliance with all conditions provided under the Applicable Laws in order to enable it to lawfully enter into and exercise its rights and perform its obligations under this Agreement;
- 3.7. the fulfilment or compliance with the terms and provisions hereof, will not conflict with, or result in a breach of the provisions of any agreement,

instrument, order, judgement, decree, statute, law, rule, or regulation to which they are subject to or the IPRs of any third party, or require any consent, approval or other action by any court, tribunal, administrative or Competent Authority, or result in a violation of any law, regulation, administrative order or judicial order applicable to it or its business or assets;

- 3.8. it shall not make any statement to defame or disparage the other Party or adversely affect the other Party's reputation, except when such statement is truthful and is reasonably necessary for the Party to enforce or defend its rights under this Agreement, or is required by a court of law, mediator, arbitrator or regulatory or legislative body with jurisdiction to order the Party to make such statement;
- 3.9. it shall comply with the ONDC Network Agreement and ONDC Network Policy or any other policies as prescribed by ONDC; and
- 3.10. all services will be performed in a professional manner consistent with the industry standards reasonably applicable to such services.

4. INDEPENDENT PARTIES:

- 4.1. The Parties agree that they are independent parties and are not, or shall not claim to be, an agent / representative of the other Party. It is understood between the Parties that neither Party is the legal representative of the other Party.
- 4.2. Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant or, employer and employee between the Parties;
- 4.3. Each Party including their staff/employees, agents, personnel have no authority/ right to bind the other Party in any manner and each Party shall not do any act, deed or thing which has the effect of binding the other Party or creating any obligation and / or liability upon the other Party otherwise than as specifically provided herein.
- 4.4. Each Party shall be solely liable for all acts of its staff / employee /End User that may cause any actual and / or potential damage, loss or injury to the other Party.

5. FEES, INVOICING AND PAYMENTS:

- 5.1. In consideration of the services rendered by us pursuant to this Agreement, we will charge a Fees as agreed between the Parties in its Confirmation.
- 5.2. The Fees shall be paid excluding goods and service tax or any other tax applicable from time to time on providing of the Services.

- 5.3. In case the payment from the Buyer is collected by Us, we will settle the amount with you after deducting the Fees as per the Settlement Terms agreed between the Parties in their Confirmation.
- 5.4. You shall be solely responsible for payment of goods and services tax as per the applicable law to Us and We shall be solely responsible for payment of goods and services tax to the appropriate authorities.
- 5.5. You will provide a unique reference number against the Order placed by the Buyer and the same will be used as the reference to raise the invoice for payment of fees.
- 5.6. Each Party shall use its own infrastructure, manpower, personnel and other facilities and bear its own expenses for the performance of the terms hereof.
- 5.7. It is agreed that each Party shall bear the costs of their respective legal costs in connection with this Agreement.

6. Indemnity and Limitation of Liability

- 6.1. Either Party ("Indemnifying Party") hereby agrees to indemnify, defend and hold the other Party, its director, officers, employees, service providers, and agents ("Indemnified Party") harmless from and against claims, demands, actions, liabilities, costs, interest, injuries, losses, judgments, fines penalties, proceedings, action or demand, damages, and expenses of any nature whatsoever (including all legal and other costs, charges and expenses) incurred or suffered by the Indemnified Party, arising out of or in connection with any or all of the following:
 - 6.1.1. any wrongful or negligent act or omission of the Indemnifying Party, including but not limited to, sharing incorrect or incomplete information with the Indemnified Party in connection with a transaction on the ONDC Network;
 - 6.1.2. any breach by Indemnifying Party of its obligations, undertakings, warranties or covenants under this Agreement or the ONDC Network Policy or the ONDC Network Participant Agreement;
 - 6.1.3. any breach of Applicable Law by the Indemnifying Party;
 - 6.1.4. Breach of data or corruption of data or information whether due to any system failure or negligent performance or non-performance of the other Party or its employees, agents, representatives etc. or for any reason whatsoever attributable to that Party; and
 - 6.1.5. any third party action or claim made against the Indemnified Party, by reason of any actions undertaken/omission to take any action by the Indemnifying Party under this Agreement.

- 6.1.6. disclosure of the Confidential Information inconsistent with the terms of this Agreement
- 6.2. You acknowledge that Buyer App does not control and is not liable to or responsible for the quality, safety, suitability of products, lawfulness or availability of the products or services offered for sale.
- 6.3. Notwithstanding 6.2, each Party shall be liable for any loss or damage caused to shipments that are attributable to any acts of commission or omission of such Party or its employees, agents, assigns, third-parties engaged by it or other representatives to the extent of the value of the goods or services involved or as mutually decided in its Confirmation.
- 6.4. Notwithstanding Clause 6.1 and 6.2. above, each Party shall independently be liable for the services offered by it to the End Users, Buyers and other Network Participants, as per the relevant terms and conditions of each Party.

7. Data Protection

- 7.1. The Parties may share Personal Data of its End Users for fulfilling Order placed by the Buyers (Specified Purpose).
- 7.2. Each Party (and shall procure that its employees shall) comply with all Data Protection Legislation and such compliance shall include, but not be limited to, maintaining a valid and up to date registration or notification (where applicable) under the Data Protection Legislation.
- 7.3. For the purpose of this Agreement, “Data Protection Legislation” means all legislation and regulations relating to the protection of Personal Data and processing, storage, usage, collection and/or application of Personal Data or privacy of an individual including (without limitation):
 - 7.3.1. The Information Technology Act, 2000 (as amended from time to time), including the rules framed thereunder or any other legislation that replaces it including the Digital Personal Data Protection Act, 2023;
 - 7.3.2. All other guidelines (whether statutory or non-statutory) or codes of conduct relating to the protection of Personal Data and processing, storage, usage, collection and/or application of Personal Data or privacy of an individual issued by any regulator
 - 7.3.3. Any other Applicable Law solely relating to the protection of Personal Data and processing, storage, usage, collection and/or application of Personal Data or privacy of an individual.
 - 7.3.4. “Personal Data” shall have the same meaning as ascribed to it under the Information Technology Act, 2000 (as amended from time to time) or the Digital Personal Data Protection Act, 2023, whichever is in effect.

- 7.4. Each Party agrees to only undertake processing of Personal Data in accordance with applicable law. Parties grant each other the right to take such steps in the processing of Personal Data on behalf of each other as are reasonably necessary for their performance obligations under this Agreement.
- 7.5. For the purposes of this Agreement, the Parties shall not process or transfer any Personal Data to any third-party unless it can be reasonably necessary for the performance under this Agreement.
- 7.6. Parties shall at all times have appropriate technical and organisational measures in place:-
- 7.6.1. to prevent unauthorised or unlawful processing of any Personal Data;
 - 7.6.2. to protect any Personal Data against accidental loss, destruction or damage;
 - 7.6.3. to include taking reasonable steps to ensure the reliability of its employees/contractor having access to the Personal Data; and
 - 7.6.4. having regard to the state of technological development and the cost of implementing those measures so as to ensure a level of security appropriate to:- (i) the harm that may result from breach of those measures; and (ii) the nature of the Personal Data to be protected.
 - 7.6.5. If We receive a request from any person for access to Personal Data or any other request relating to obligations under the Data Protection Legislation, you shall provide full co-operation and assistance in relation to any such complaint or request including, without limitation:
- 7.7. Each Party agrees to not process Personal Data shared by the other Party for purposes other than the Specified Purpose. Processing of Personal Data for purposes other than the Specified Purpose can only be done after obtaining an explicit consent from the End User.

8. Confidential Information

- 8.1. Each Party acknowledges and agrees that all tangible and intangible information obtained, developed or disclosed, including all documents, data, papers, statements, any business / customer information, trade secrets and processes of the other Party relating to such Party's business practices, in connection with this Agreement or otherwise, is deemed by such disclosing Party and shall be considered at all times to be confidential and proprietary information of such Disclosing Party (Confidential Information);
- 8.2. The Receiving Party shall ensure that Confidential Information is not used or permitted to be used in any manner incompatible or inconsistent with that authorized by the Disclosing Party. The Receiving Party confirms that Confidential Information will be safeguarded by the Receiving Party and the

Receiving Party will take all necessary action to protect Confidential Information against misuse, loss, destruction, alterations or deletions thereof.

- 8.3. Receiving Party shall restrict disclosure of the Confidential Information solely to those persons with a need to know and not disclose it to any other person and advise those persons and ensure of their obligations with respect to the Confidential Information.
- 8.4. The provisions of this Clause shall be applicable and binding on the Parties, except to the extent that such Confidential Information (i) is already in the public domain; (ii) is required or requested to be disclosed under any applicable law or by any judicial/regulatory body; (iii) was previously known or already in the lawful possession of the Receiving Party, prior to disclosure by the Disclosing Party or the Customers; or (iv) has been independently developed / obtained by the Receiving Party without reference to any Confidential Information furnished by the Disclosing Party or the Customers.
- 8.5. Notwithstanding anything herein contained, Clause 8.2 shall survive a term of 3 (three) years from the termination of this Agreement.
- 8.6. If the Receiving Party is directed by court order or other legal or regulatory request or similar process to disclose information recorded on any documents or any of the Disclosing Party's Confidential Information, the Receiving Party shall within reasonable time possible notify the Disclosing Party in writing, in sufficient detail upon receipt of such court order, legal or regulatory request or similar process, in order to permit the Disclosing Party to make an application for an appropriate protection order (which the Disclosing Party may pursue at its own expenses).
9. **Intellectual Property:** All intellectual property rights of the Parties including without limitation trademarks, trade name, logo, copyrights, advertising copy, material, graphics, and etc., shall remain the sole property of the respective Parties. It is understood by the Parties that the usage of the other Party's name and logo shall be solely used for the purpose of this Agreement and will be subject to prior written approval of the respective Party on the terms to be stipulated by such Party. It is hereby clarified that any usage of name and logo and/or any other intellectual property rights of a Party shall not create any right, title or interest in respect of such name, logo or intellectual property in favour of the Party using the same.
10. **Performance Exceptions**
 - 10.1. **Force Majeure:** If any Party to this Agreement is unable to meet its obligations under this Agreement as a result of flood, earthquake, storm, other acts of God including fire, derailment, accident, strike, lockout, explosion, war, insurrection, riot, embargo, terrorist activity, epidemic, pandemic, act of government or governmental agency or other similar cause beyond the reasonable control ("Force Majeure") of the parties, such party will be excused from performing its obligations for the duration of the Force Majeure.

- 10.2. If either Party is unable to meet its obligations under this Agreement as a result of a disruption in the ONDC Network, such party will be excused from performing its obligations for the duration of the disruption

11. Governing Law

- 11.1. Each Party agrees that any dispute or claim relating to, the enforceability of, or the termination of this agreement is to be governed by and construed in accordance with the laws of India and the Parties submit to the non-exclusive jurisdiction of courts as provided in the Confirmation.

12. Arbitration: As agreed between the Parties in the Confirmation.

13. Miscellaneous

- 13.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.
- 13.2. Amendments. An amendment, modification or waiver in respect of this Agreement will only be effective if agreed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.
- 13.3. Survival of Obligations. Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- 13.4. No Waiver of Rights: A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- 13.5. Headings: The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.