

Frequently asked questions on the Network Participant Agreement (NPA/NP Agreement)

Version History

Version	Date	Description
1.0	28th June 2022	Released with NP Agreement V1.1
1.1	29th December 2023	<ol style="list-style-type: none">1. Added clarifications on: (a) how to read the NP Agreement and governance in ONDC Network; and (b) IP related clauses in the NP Agreement2. Restructured the clause to enhance and improve readability

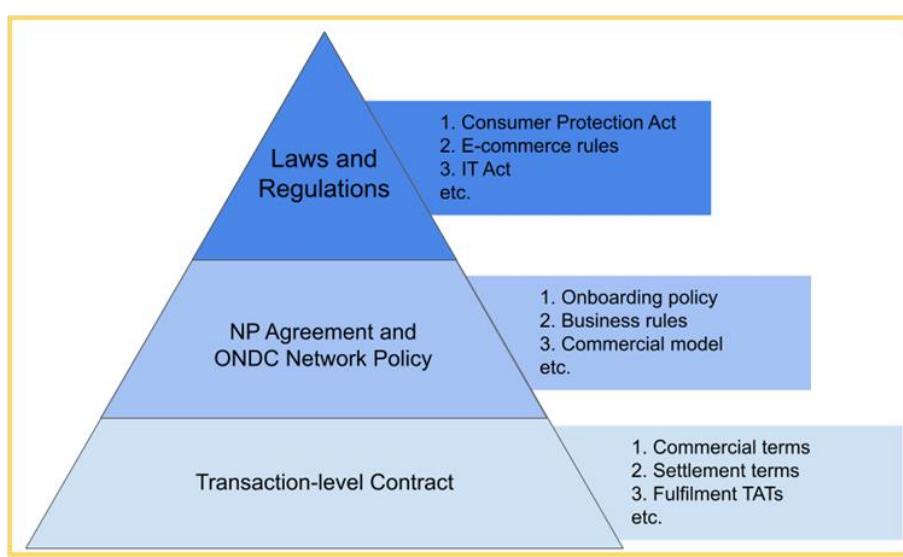
1. How to read and interpret the NP Agreement?

Open Network for Digital Commerce (ONDC), a Section 8 company under the Companies Act, 2013, is an initiative aimed at promoting open networks for all aspects of the exchange of goods and services over a digital network. In this regard, ONDC manages two aspects: (a) ONDC Protocol - underlying technology or technical standards that enables NPs to interface/communicate with each other, and (b) ONDC Network - means open, interoperable network established, facilitated, managed, made and owned by ONDC for enabling participants to interface/communicate with each other through the ONDC Protocol. The NP Agreement involves recognizing its nature as a means for entities to access the ONDC Network (i.e. interface with other NPs using the ONDC Protocol), similar to user-provider relationships in other network services.

Notably, the NP Agreement does not establish a vendor-client relationship between the NP and ONDC. Rather, the NP Agreement grants the entity signing it access to the ONDC Network. To comprehend the NP Agreement effectively, it is helpful to draw an analogy to other network services, such as telecom networks, social networks, or similar network providers.

2. How is the ONDC Network Governed?

There are three-tiers of rules that govern the conduct of parties to a transaction conducted through the ONDC Network. The three tiers are depicted in Figure below. Governance for each tier of these rules consists of



processes for making the rules, processes for administering them and processes for enforcing them.

In the ONDC context, the Transaction-level Contract governs the terms of an individual transaction between NPs for the purchase and sale of goods/services, but the ONDC Network Policy governs the general rules of engagement on the Network. Further, this entire construct operates within the confines of applicable laws.

These three layers of rules are intended to ensure that participants conduct themselves in a fair, predictable, transparent and consistent manner.

3. What is the ONDC Network Policy?

ONDC Network Policy is the compilation of all policies governing the ONDC Network which is developed by ONDC in consultation with various NPs and which lays out rules and code of conduct that must be complied with by NP. It contains the operational details of how the ONDC Network will function, such as the roles and responsibilities of NPs, code of conduct and ethics, governance processes, how transactions will take place etc. The Network Policy is thematically arranged. ONDC Network Policies are available on the ONDC website. While the NPA will be a static document, the Network Policies will evolve and be updated over time as the Network expands and matures.

4. What is a Transaction-Level Contract?

A Transaction-level Contract is a digitally-signed, machine-readable contract executed through the ONDC Protocol between the Buyer App and Seller App on behalf of the buyer and seller to facilitate purchase and sale of goods/services on Network with respect to one single transaction and covers various reference terms that are

typical across commercial contracts and also configurable terms that can be customized by contracting parties. ONDC is not a party to that transaction and does not have visibility on the terms agreed upon by the parties. However, the terms of the contract cannot be in violation of the Network Policy or the NP Agreement overall.

5. Why is ONDC asking the NP to indemnify ONDC against claims, but not indemnifying the NP against claims brought against the NP?

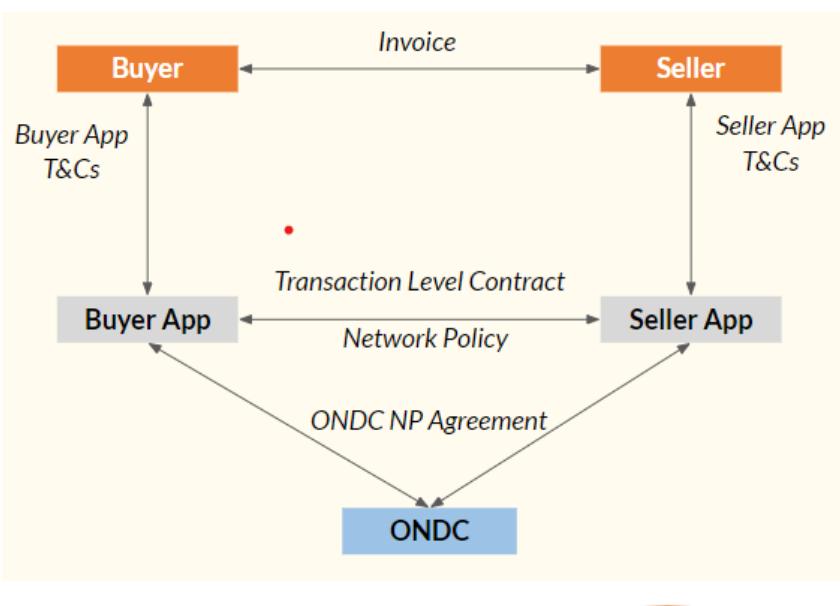
As stated in answer to Q1, ONDC plays a facilitator role and it does not operate any pieces of infrastructure or any applications or involve itself in any transactions. The only components of the Network for which ONDC is responsible are the ONDC Registry and the ONDC Protocol Specifications. Notably, ONDC has no visibility of transaction-level activity on the ONDC Network. Most data-flows in the ONDC Network are peer-to-peer, meaning the information flows directly between NPs. The only exception is the process of search and discovery which passes through one of the Gateways to perform a look-up on the ONDC Registry.

It is worth noting that ONDC Registry look-up may or may not be performed for every transaction. The entries in the ONDC Registry are highly cacheable since they do not change frequently. The only entries in the Registry that have a limited validity period are the NPs' public keys, and the validity period is available in the Registry itself, which means it is highly predictable. So in practice, NPs can and do cache the Registry data, meaning look-ups at the time of actual transactions are likely to be performed on the cached data. The implication is that

ONDC cannot find out about actual searches being conducted.

ONDC has to be viewed akin to a utility, such as an electricity distributor, or internet service provider, in its operation of the Registry and as a standard-setting body (such as IETF) with respect to the Protocol. ONDC will not be selling any products or services by itself, or running any promotional offers etc.

ONDC merely provides access to the Network. With respect to transactions between users and sellers/service providers on the ONDC Network, it is worth noting that ONDC is not a party to these transactions nor does it have visibility or control over them. Moreover,



the use of a participant's IP by ONDC is solely for the purpose of indicating that the entity is onboarded on the ONDC Network. Therefore, the indemnity clause in the NP Agreement is structured taking into account this limited involvement of ONDC.

To sum up, ONDC cannot indemnify the NP against any action brought against the NP and/or any loss, damage etc. suffered by NP. Furthermore, given ONDC's not-for-profit status and its non-contributory role in these risks, such contractual provisions are essential for ensuring the effective and responsible functioning of the ONDC Network.

6. Why is ONDC asking the NP to indemnify it against third-party claims in relation to the NP's obligation to provide a product/service (clause 6.1.7) if it doesn't have privity of contract with the End Users?

As stated in the answer to Q 5, ONDC is merely a network enabler. It will not be a party to any transactions on the network. However, apps that transact using the ONDC Network may use ONDC's Marks etc. Given the unbundled, decentralised nature of the network there might be instances where an NP or an End User raises claims against ONDC for actions and/or omissions that are attributable to another NP on the Network. This is

despite the fact that ONDC is neither a party to the transaction nor has any visibility or control over transactions over the ONDC Network. Similarly, it is possible that ONDC may face regulatory or law enforcement actions due to Network Participant's non-compliance with respective regulatory and statutory obligations. Given that ONDC neither has any control of the interface available to end-users (i.e. buyers/consumers and sellers/service providers) nor is it involved in the transaction, the said clause safeguards ONDC against situations which would otherwise place ONDC in a vulnerable situation on account of breach of the law and/or due to the act or omission of the NP, without any fault on its part.

7. Why will ONDC not bear liability for disruptions to the Network?

As stated in the answer to Q 5, ONDC is merely a network enabler. The Registry is the only active component of the network that ONDC will operate. The role of the Registry in any given transaction begins and ends with being a reference for the Gateway to look-up Seller NPs that fit the parameters for a given search request. After that point, ONDC is not involved in the transaction - i.e. in the Buyer selecting a seller of choice, confirming an order, making a payment, the respective NPs fulfilling the order etc. For these reasons, ONDC cannot take on liability for losses arising out of disruptions to the Network. It is worth noting that ONDC Registry look-up may or may not be performed for every transaction. The entries in the ONDC Registry are highly cacheable since they do not change frequently. The only entries in the Registry that have a limited validity period are the NPs' public keys, and the validity period is available in the Registry itself, which means it is highly predictable. So in practice, NPs can and do cache the Registry data, meaning look-ups at the time of actual transactions are likely to be performed on the cached data.

Moreover, it is crucial to clarify that ONDC does not manage or operate any physical infrastructure. As explained above, in practice, the entire communication within the ONDC Network operates on a peer-to-peer basis, where information is exchanged digitally without reliance on a central physical infrastructure. This virtual nature ensures that disruptions associated with physical networks, such as maintenance issues or geographical limitations, are nonexistent. The decentralized and digital architecture of ONDC, combined with the peer-to-peer communication model, reinforces the rationale behind the liability clause, as disruptions to the network, in the traditional sense, are mitigated by its inherent design.

Therefore, the liability clause is drafted keeping in mind ONDC's involvement in transactions on the ONDC Network.

8. Why is the liability for NPs not capped?

It is not possible for ONDC to *a priori* estimate the nature and severity of violations/breach that may occur, or the quantum of claims or damages that may be sought by a third-parties or may be awarded by Courts or consumer protection bodies. Therefore, NPs' liability is not capped. To mitigate this concern, the indemnity clause has been amended to include only direct claims or damages. It is crucial to note that ONDC operates as a not-for-profit entity. Consequently, ONDC cannot assume the risk associated with network user activities, particularly when it does not contribute to these risks in any manner.

9. Why do obligations provided in Clause 10.7 continue post the termination of the NP Agreement?

The obligations outlined in Clause 10.7 persist beyond the termination of the NP Agreement for specific reasons. As elucidated earlier, ONDC functions solely as a network enabler and lacks control or visibility into transactions between buyers and sellers. As highlighted in Q1, ONDC essentially operates as a network provider, similar to other network infrastructure services.

The extension outlined in Clause 10.7 serves the purpose of addressing potential liabilities arising from certain activities of network users that may not be constrained by statutes of limitation. An example of such activities includes the sharing of criminally proscribed content. Additionally, this provision aligns with the industry practice observed in the terms and conditions provided by other providers of network infrastructure services.

10. Will ONDC retain the authority to unilaterally change the provisions of the ONDC Network Policy?

No. ONDC is developing a formal governance mechanism for the long-term governance of the ONDC Network, which includes the policy-making aspect. The governance mechanism will give all NPs and/or their representatives adequate opportunity to participate in the policy-making process. It will aim to ensure that the process is transparent and inclusive. The final governance mechanism will be shared with NPs for their feedback as soon as it is ready.

11.What is the reputation ledger, how will it function and what data will NPs be required to share for it?

The reputation ledger will be a network-wide system for rating Sellers. The ledger itself and the policy governing it are both under development. The design of the ledger and the corresponding policy will be shared with NPs for their feedback before being fully implemented on the ONDC Network as deemed fit by ONDC.

12.What are the fees that ONDC will charge?

ONDC is a section 8 company. The objectives of ONDC are to be an enabler with minimal infrastructure, and to deepen the adoption of digital commerce, to make it small-business friendly. In line with that overarching vision, the fees that ONDC may charge will be minimal, and limited to what will be necessary to sustain its operations. The details of the fees that may be charged - the quantum of the fees, from when to charge them (if at all) etc - are still under discussion, internally. Once ONDC arrives at a decision on this, all NPs will be informed well in advance what the fee structure (if any) is, and from when it will be applicable.

13.How will ONDC Use NP's Intellectual Property (IP)??

According to Clause 4.1 of the NP Agreement, the NP is granted a non-exclusive, royalty free, non-transferable and limited right to use, reproduce and display the ONDC Mark, contingent upon strict adherence and compliance with the ONDC Branding Guidelines. Likewise, ONDC is granted a non-exclusive, worldwide and royalty free licence to use, reproduce and display the NP's Mark on its website or related materials for confirming the entity is part of the ONDC Network.

It is important to emphasize that ONDC will only use the intellectual property or name shared by the NP for display on its website or related materials. These related materials may encompass announcements on social media, introducing and confirming that the NP is now part of the ONDC Network.

14.Does ONDC require the NP to share the IP with which it has no ownership or right to transfer or licence or right to use?

No. ONDC will use the mark/name provided by the NP on for confirming that the entity is part of the ONDC Network as outlined in the NP Agreement. Clause 5.1.4 is pivotal in this context, as it seeks representation from a Party establishing the ownership and title, licence, or right to use, as applicable of the mark provided by the NP to ONDC for display on the website.

In situations where the NP holds a mere license to sell a brand owner's products and lacks the legal authority in its arrangement with the brand owner to grant ONDC the use of the brand owner's intellectual property (IP), the NP Agreement does not compel the NP to provide licence or right to use the brand owner's IP. It's crucial to note that the interpretation of Clause 5.1.4 should be harmonized with Clause 4.1 of the NP Agreement.

Clause 4.1 specifies that ONDC will use the Participant's Marks (in this case, the entity entering into the NP Agreement) on its website or related materials in respect of endeavours contemplated under NP Agreement. Simultaneously, Clause 5.1.4 functions as a representation from the Party to ONDC, affirming ownership and title, licence or right to use, as may be applicable over the mark provided for display on the website.

The term 'IPR associated with it' in Clause 5.1.4 should not be considered in isolation but rather in conjunction with Clause 4.1. In the current scenario, the intellectual property rights (IPR) associated with it refer specifically to the logos and name of the entity signing the NP Agreement. To clarify, ONDC will only use the logo/brand name shared by the NP for the designated purpose.

15.Will ONDC unilaterally suspend or terminate the NPA in case of any breach?

No. In case an NP is found to be in violation/breach of the NPA, the process described in the Network Policy will be followed. A council will be constituted to decide on all cases of breaches that may merit a suspension or termination. The NP will get a fair chance to present their case, and - depending on the nature of the violation - get an opportunity to remedy the violation (where possible). The decision to terminate the NPA will only be taken after the due process. The disciplinary policy - which includes the rules governing the constitution and functioning of the council - is currently under development and will be finalised after consultation with the NPs.

16. How will an NP (X) safeguard itself from the acts of commission or omission of another NP (Y) that lead to X not being able to fulfil its obligations under the Transaction-level Contract?

The relationship between the NPs will be governed by their transaction level agreement executed through the ONDC Protocol. If NP(Y) fails to fulfil its part of the obligations, then NP(X) will be safeguarded from the acts of NP(Y) as per the terms and conditions in their transaction-level agreement. The Transaction-level Contract allows NPs to set their offer terms for things like pricing and charges, terms of settlement, terms of payment collection, indemnity clauses, limitation of liability etc. A mechanism for NPs to negotiate on these parameters is also provided for in the ONDC Protocol. ONDC will not, and does not plan to, interfere with this bipartite arrangement between NPs.

17. Why are the exceptions to performance due to *force majeure* events not extended to NPs?

ONDC is not availing of any service from the NP. So it cannot suffer damages, loss of profit or business as a result of an NP not being able to perform its responsibilities due to a force majeure event. To protect itself from another NP or End User, the NP may include force majeure exceptions in the terms and conditions it offers to the counterparty NP or End User under Transaction-level Contract.