

MERCHANT TERMS AND CONDITIONS

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SERVICES OFFERED BY TWYST TECHNOLOGIES PRIVATE LIMITED ("TWYST"), A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956. THESE TERMS OF USE SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE WEBSITE AT [HTTP://TWYST.IN](http://twyst.in) (THE "**WEBSITE**"), THE TWYST MOBILE APPLICATION ("**APPLICATION**"), FEATURES, CONTENT, OR WIDGETS OFFERED BY TWYST.

Twyst will provide the Services described in the Merchant Agreement separately executed by you, together with all exhibits attached thereto (the "**Merchant Agreement**"). In the event of any inconsistency among terms and conditions of the Merchant Agreement and these Terms and Conditions (collectively, sometimes referred to herein as the "**Agreement**"), the order of control shall be: (i) these Terms and Conditions, (ii) the Merchant Agreement, and (iii) any other exhibits, addenda or attachments to these Terms and Conditions including any links contained in the Merchant Agreement or these Terms and Conditions, which are incorporated by reference herein. The words "you" or "your" as used herein, refers to the Merchant. Any capitalized terms that are not defined in these Terms and Conditions have the meanings ascribed to them in the Merchant Agreement. For purposes of clarity, these Terms and Conditions are incorporated by reference into the Merchant Agreement executed by you, and, together with the Merchant Agreement and all attachments thereto, govern your use of all Twyst and services.

1. DEFINITIONS

The following expressions shall have the meanings ascribed below:

- 1.1 "**Agreement**" shall have the meaning as set out in the introduction;
- 1.2 "**Applicable Law**" shall mean all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental authority or Person acting under the authority of any Governmental Authority and / or of any statutory authority in India, whether in effect on the date of the Agreement or thereafter;
- 1.3 "**Confidential Information**" shall mean non-public information and items that Twyst designates as being confidential, or which under the circumstances of disclosure ought to be treated as confidential. Confidential Information includes without limitation the following in any form: (i) the terms and conditions of the Agreement; (ii) Twyst products, services and their marketing or promotion; (iii) Twyst business policies and practices; (iv) Twyst customer information and supplier lists; (v) information received from third parties that Twyst is obligated to treat as confidential; (vi) personal identification information; (vii) transactional or sales information; and (viii) intellectual property created by Twyst in connection with the Agreement;
- 1.4 "**Customer Data**" shall have the meaning as set out in Clause 10.5;
- 1.5 "**Force Majeure Event**" shall mean an event that is beyond the reasonable control of the Party responsible or affected and includes acts of God, war, warlike conditions, hostilities, sanctions, revolutions, riots, looting, strike, labour stoppage, earthquakes, fire or accidents. It is agreed between the Parties that failure to or delay in making payments of the Fees by you to Twyst shall not constitute a force majeure event;
- 1.6 "**Governmental Authority**" shall mean any government or quasi-government authority, ministry, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of or representing the Government of India;
- 1.7 "**Merchant Content**" shall have the meaning as set out in Clause 2.2.3;
- 1.8 "**Merchant Offers**" shall mean the benefits or incentives offered by you to customers subject to certain terms and conditions such as the eligibility criteria, validity period and applicability of the Merchant Outlets;

- 1.9 **"Parties"** shall mean you and Twyst, jointly, and each one of which is individually referred to herein as **"Party"**;
- 1.10 **"Person"** shall mean: (i) any company, partnership, limited liability partnership, joint venture, joint stock company, trust estate, unincorporated organisation or other business entity recognised under Applicable Law; (ii) any Governmental Authority; or (iii) any individual;
- 1.11 **"Personal Information"** shall mean any information provided by Twyst or collected by you in connection with this Agreement: (i) that identifies or can be used to identify, contact, or locate the Person to whom such information pertains; or (ii) from which identification or contact information of an individual person can be derived. Personal Information includes, but is not limited to: name, address, phone number, fax number, email address, and credit card information. Additionally, to the extent any other information (such as, but not necessarily limited to, a personal profile, unique identifier, biometric information, and/or IP address) is associated or combined with Personal Information, then such information also will be considered Personal Information;
- 1.12 **"Portal"** shall have the meaning as set out in the Merchant Agreement;
- 1.13 **"Reward(s)"** shall mean the benefits or incentives that a customer is eligible for on qualifying for a Merchant Offer;
- 1.14 **"Self-Install"** shall have the meaning as set out in Clause 8.1;
- 1.15 **"Services"** shall have the meaning as set out in the Merchant Agreement;
- 1.16 **"Terms & Conditions"** shall mean this terms & conditions executed between the Parties and as amended from time to time, and shall include every Schedule to the Terms and Conditions;
- 1.17 **"Twyst IP"** shall have the meaning as set out in Clause 10.1;
- 1.18 **"Users"** shall mean the end-consumers who use Twyst's Website and mobile Application and may sign-up for or use the Merchant Offers;
- 1.19 **"Validate"** shall have the meaning as set out in Clause 4.5;

2. **SCOPE**

2.1 **The Services**

- 2.1.1 You hereby appoint Twyst to provide the Services, on and from the Commencement Date in the manner and on the terms & conditions contained herein.
- 2.1.2 Twyst shall be entitled to provide these Services at its sole discretion, without any interference from you. However, Twyst will involve you in an advisory capacity only, in connection with the aforesaid Services.
- 2.1.3 You acknowledge and agree that Twyst has the right to provide services identical or similar to the Services to any Person.

2.2 **Authorization**

- 2.2.1 You hereby authorize Twyst to market and distribute the Merchant Offers in accordance with the terms of this Agreement.

2.2.2 You hereby grant to Twyst, Twyst's affiliates and Twyst's advertising partners a non-exclusive worldwide license and right to use, copy, reproduce, modify, license, distribute, display, transmit and publish any of your trademarks, service marks, logos, photographs, graphics, text, images, artwork or other content ("**Merchant Content**") for publication as part of marketing or promotion of the Merchant Offers pursuant to this Agreement.

2.2.3 You also agree that Twyst may publish your corporate name, artwork, text and logo on the Website and the Application, and on the websites and online services of Twyst's affiliates and advertising partners, to acknowledge you as a Twyst Merchant. You represent and warrant to Twyst that you have the right to provide the Merchant Content to Twyst, and that the use, copying, modification and publication of the Merchant Content by Twyst and by our affiliates and advertising partners: (i) will not infringe, violate or misappropriate any third party copyright, patent, trade secret or other proprietary rights; (ii) will not infringe any rights of publicity or privacy; and (iii) will not be defamatory or obscene or otherwise violate any Applicable Law.

3. **PAYMENT OF FEES AND EXPENSES**

3.1 In consideration of the performance of the terms and conditions contained herein and in the Agreement, you shall pay Twyst the Fees. After the expiry of the fifth month of the lock in period set forth in the Merchant Agreement, if any, Twyst shall have the right to amend the Fees by giving prior written notice of thirty (30) days to you.

3.2 Twyst shall raise its invoice of the Fees by 1st (first) day of each month. You shall pay all invoices within 30 days from the date of the invoice.

3.3 All payments by you to Twyst under this Agreement shall be made subject to deduction of all applicable taxes, for the time being in force.

3.4 In the event any service tax or any other indirect tax is payable on the payments made by you to Twyst, such liability shall be borne by you.

3.5 You shall be solely responsible for the payment of and agree to pay, all sales, use, value-added or import taxes, custom duties or other taxes relating to your provision of goods and/or services to the Users, the Merchant Offers and any taxes applicable and/or arising to this Agreement (other than income tax required to be paid by Twyst).

3.6 Notwithstanding anything herein to the contrary, Twyst, in its sole discretion, may suspend or terminate the Agreement, at any time, upon notice to you, if you have not paid all amounts due on or before the payment due date, or for any other material breaches of the Agreement, or any other exhibits, addenda or attachments including any links contained in the Agreement, which are incorporated by reference herein. You are responsible for amounts that remain outstanding as of the date of such termination including early cancellation fees. You agree to pay reasonable attorneys' fees and court costs incurred by Twyst to collect any unpaid amounts owed by you.

4. **YOUR OBLIGATIONS**

4.1 You shall provide Twyst with complete and accurate information as may be requested in connection with the Merchant Offer and maintain the accuracy of all such information.

4.2 You shall authorize Twyst to display and market the Merchant Offers, and make minor adjustments to the Merchant Offers as Twyst deems necessary or desirable to run the Merchant Offers efficiently, which authority is hereby granted.

4.3 You shall help Users check-in by providing the Merchant Outlet specific information (via QR code, SMS or other) to the User or checking in the User directly on you console, and in validating and redeeming the

Reward the User has earned and presented.

- 4.4 You shall honor all Rewards earned by Users as part of the Merchant Offers in accordance with the specific terms of such Merchant Offers and provide Users with the goods and/or services that are promised under each Merchant Offer.
- 4.5 You shall validate ("**Validate**") the Rewards earned by a User via SMS and/or your Merchant console and cross-check the authenticity of these Rewards with Twyst when a User qualifies for a Merchant Offer.
- 4.6 When Twyst displays the Merchant Offers, Twyst does so as a marketing service. You shall retain the legal obligation to redeem the Rewards for the goods and/or services promised to the Users. Use of Rewards for alcoholic beverages is at your sole discretion and is further subject to compliance with Applicable Law. You shall agree that in providing the goods and/or services that are the subject of the Reward, you will not impose any restrictions on redemption, extra fees, charges or conditions that contradict the terms set forth in connection with the Merchant Offers.
- 4.7 You shall immediately notify Twyst of any unauthorized use or suspected unauthorized use, fraud or suspected fraud, or other breach of security of the Merchant Offers.
- 4.8 Other than any complaints and service issues that are due to any technical issues at Twyst's end, you accept responsibility for any User complaints and customer service issues that may arise in connection with any User's redemption or attempted redemption of Rewards associated with the Merchant Offers.
- 4.9 You shall after Validation of the Reward by Twyst, be solely responsible for all customer service in connection with the Reward and for supplying all goods and services specified in the Reward.
- 4.10 You shall keep at their place of business, communication material including but not limited to posters, banners, QR codes informing Users about the Merchant Offers displayed on Twyst.
- 4.11 You shall prominently display, on their website(s) and in other online marketing materials if so requested, a statement/logo/image provided and approved by Twyst relating to the Services offered by Twyst, which will be prominently displayed.
- 4.12 Twyst further reserves the continuing right to require you to edit or modify a Merchant Offer for any reason, including, without limitation, to conform the Merchant Offer to Twyst specifications or Applicable Laws.

Twyst cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Your Warranties

You represent and warrant to Twyst that:

- 5.1.1 You have the full right, capacity and authority to enter into this Agreement and this Agreement constitutes a legal, valid and binding obligation of you. You have the power and authority to execute and deliver the terms and provisions of this Agreement and have taken all necessary actions to authorize the execution and delivery by you of this Agreement and the transactions contemplated hereby;
- 5.1.2 The execution, delivery and performance by you of this Agreement and the compliance by you with the terms and provisions hereof do not and will not contravene, conflict with or violate: (i) any provisions of Applicable Law; (ii) any agreement executed by you; and/or (iii) its constitutional documents.

- 5.1.3 You are registered for sales and use tax collection purposes in all jurisdictions in which your goods and services will be provided pursuant to the terms and presentation of the Rewards;
- 5.1.4 The terms and conditions of the Merchant Offers, including any discounts or goods and services offered thereunder, comply with all, and do not violate any, local, state, or international law, statute, rule, regulation or order, including without limitation those governing rewards, incentives, gift cards, coupons and/or gift certificates;
- 5.1.5 You own all right, title and interest in your name; logo and any trademarks and have the right to grant the licenses stated in this Agreement;
- 5.1.6 Any advertising or promotion of your products or services relating to the Merchant Offers will not constitute, and you will not engage in any, false, deceptive or unfair trade practices;
- 5.1.7 Your name, logo and any trademarks along with content does not violate any copyright, trademark, or other intellectual property right or right of privacy or publicity of any third party or any laws;
- 5.1.8 Once Twyst has verified and Validated a Reward by sending a code to the User you shall honor it promptly;
- 5.1.9 Any changes, modifications or alterations of the Merchant Offers that you want to carry out shall be made only after obtaining a written approval from Twyst atleast seven (7) days prior to the change, modification or alteration being effective;
- 5.1.10 You shall not cancel the Merchant Offers without Twyst's prior written approval, which Twyst shall not unreasonably withhold;
- 5.1.11 You shall perform the obligations set out in this Agreement in such manner as to not adversely affect the reputation and goodwill of Twyst or its business associates;
- 5.1.12 You shall maintain proper and accurate records relating to the conduct of obligations as per this Agreement during the Term (*as defined hereinafter*) of this Agreement and thereafter for a period of seven (7) years and shall at the request of Twyst provide copies of such records to Twyst; and
- 5.1.13 You shall not directly or indirectly copy or reproduce all or any part of the Application or the Website, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization and shall use the Application solely for its intended purposes.

5.2 **Twyst Warranties**

Twyst represents and warrants to you that:

- 5.2.1 Twyst has the full legal right, capacity and authority to enter into this Agreement and this Agreement constitutes a legal, valid and binding obligation of Twyst. Twyst has the power and authority to execute and deliver the terms and provisions of this Agreement and has taken all necessary action to authorize the execution and delivery by it of this Agreement and the transactions contemplated hereby.
- 5.2.2 The execution, delivery and performance by Twyst of this Agreement and the compliance by it with the terms and provisions hereof do not and will not contravene, conflict with or violate: (i) any provisions of Applicable Law; (ii) any agreement executed by Twyst; and/or (iii) its constitutional documents.
- 5.2.3 Twyst will make reasonable efforts to provide the Merchant Offers to the User in compliance with the description in this Agreement. Other than as explicitly set forth herein, Twyst makes no representations or warranties, express or implied, with respect to the Merchant Offers or this Agreement, including, without limitation, any warranties of your ability, fitness for a particular purpose, functionality, substance, accuracy, non-infringement, or any other representation about any third-party site or its content. Twyst does

not warrant or guarantee that you will achieve any level of sales, revenue or profit. Twyst does not warrant or guarantee that the Website or the Application will always be available or operate error-free, that the incentives will be error-free, or that any errors, omissions or misplacements in the Merchant Offers will be corrected. No statement, either orally or in writing, made by any of Twyst's officers, employees or agents will vary this paragraph.

5.3 **Your Covenants**

You agree and affirm that:

- 5.3.1 You: (i) will use the Merchant Offers solely for your internal business purposes; and (ii) will not, for yourself, any of your affiliates or any third party: (a) sell, rent, lease, license or sublicense, assign, distribute, or transfer the Merchant Offers; (b) remove from any of the Merchant Offers any language or designation indicating the confidential nature thereof or the proprietary rights of Twyst. In addition, you will not export, re-export or permit any third party to export or re-export, directly or indirectly, the Merchant Offers where such export or re-export is prohibited by Applicable Law without appropriate licenses and clearances;
- 5.3.2 Twyst shall have the right to approve, modify, or refuse any Twyst related communications to Users;
- 5.3.3 Rewards shall be redeemed only after due verification of the User and after the validation of the Reward via a SMS sent to Twyst;
- 5.3.4 Twyst shall not be responsible for a user failing to check-in or a Reward not being validated due to lack of support at the store; and Twyst shall not be responsible for you being unable to fulfill the Reward at the time of validation for any reason;
- 5.3.5 You shall comply with all Applicable Laws and regulations in offering the products and services to the Users. You shall ensure that all requisite licenses and registrations are kept in full force and effect to enable you to offer the products and services. You shall not offer any product or service, which is illegal or offensive and is not in compliance with Applicable Law, and regulations whether state, local or international of all jurisdiction from where the Users avail the goods and/or services;
- 5.3.6 You shall ensure that the best service standards in the industry are adopted and shall ensure delivery of all products and services purchased, to the Users in accordance with the highest standards;
- 5.3.7 Twyst shall not be responsible for the quality of services provided by the Merchant Outlet, and the same shall be your sole responsibility of and of the Merchant Outlet;
- 5.3.8 Twyst is not responsible for lost or stolen Rewards and/or codes sent by Twyst to Users; and
- 5.3.9 The Rewards (including, but not limited to, any discounts provided therein) and the terms of the same shall be honored by you.

6. **ADVERTISING**

Twyst may offer additional marketing events or platforms that you may choose to employ at your business. Unless fully funded by you, these marketing programs are at the complete discretion of Twyst and Twyst may update, postpone, adjust, or cancel any marketing program at any time, with or without reason and with or without notice to you.

7. **TERM AND TERMINATION**

- 7.1 The Agreement will remain in full force as specified in the Merchant Agreement. Twyst shall have the right to suspend the operation of any of the Merchant Offers, or terminate this Agreement and subsequently

cancel any then running Merchant Offers without further reference or notice to you, in the event that you are in breach of this Agreement, which breach is not rectified by you within ten (10) days of written notice from Twyst or violates any laws or otherwise engages in any conduct that may adversely affect Twyst's business or reputation.

- 7.2 Each Party shall have the right to terminate the Agreement upon written notice to the other Party: (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other Party that is not otherwise dismissed within sixty (60) days of such institution; (ii) upon the making of an assignment for the benefit of creditors by the other Party; or (iii) upon the dissolution of the other Party.
- 7.3 Notwithstanding any other provision of this Agreement, Twyst may terminate this Agreement without cause by providing thirty (30) days written notice of its intention to do so to you.
- 7.4 If you cancel the Merchant Offers for any reason, you are, within one (1) calendar week following such termination of the Merchant Offers, liable to pay to Twyst a brand protection fee equal to 100% of the outstanding Merchant Offers that have been qualified for but not redeemed by Users and further Twyst will cease the display of such Merchant Offers as soon as practicable.

7.5 **Survival**

The provisions of Clause 2.2.2 and Clause 2.2.3 (as under Authorization), Clause 5 (Representation, Warranties and Covenants), Clause 9 (Confidentiality), Clause 10 (Intellectual Property Rights), Clause 11 (Indemnity), Clause 12 (Disclaimer), Clause 13 (Governing Law and Dispute Resolution) and Clause 14 (Miscellaneous) shall survive the expiration or earlier termination of this Agreement.

8. **INSTALLATIONS**

- 8.1 Twyst may install their software on your OS, or you may manually install the program ("**Self-Install**"). If you choose to utilize a Self-Install, you agree to utilize the most up-to-date version of the software (including any necessary interfaces).
- 8.2 Once Twyst software is installed on your system, you grant Twyst a limited license to remotely access the system for the purposes of general maintenance, issue resolution, or upgrades.
- 8.4 You understand that you will be liable for any and all losses incurred as the result of a failure to properly maintain the Twyst software or integration, including but not limited to system updates, anti-virus updates, firewall maintenance, OS updates and security patches.
- 8.5 Twyst may also place certain hardware at the Merchant Outlets that would assist you in activities such as User check-ins and validation of Rewards. Twyst will resolve any problems associated with such hardware and further you authorize Twyst to access the hardware for the purposes of general maintenance and upgrades.

9. **CONFIDENTIALITY**

- 9.1 The terms of this Agreement are confidential, and you agree to not disclose the terms described herein to any party (other than their employees, parent companies, and shareholders on a need-to-know basis only after each has taken the necessary precautions of the kind generally taken with confidential information to preserve the confidentiality of the information made available to such individuals). The terms contained herein are confidential between Twyst and you and not known to the general public outside of this Agreement, thus any breach of this confidentiality provision by you shall be considered a material breach of this Agreement and will result in irreparable and continuing damage to Twyst for which there will be no adequate remedy at law; and in the event of such breach, Twyst will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary

damages if appropriate).

- 9.2 You shall not use or disclose, other than for the sole purpose of performing your obligations under the Agreement, any secret or Confidential Information relating to Twyst or to any of its affiliates or associates disclosed to you by Twyst or by any of Twyst's affiliates or associates or which you may otherwise acquire.
- 9.3 You acknowledge that all information relating to Twyst, whether recorded in Twyst's database or otherwise, is confidential to Twyst and that any ownership in respect of such information resides in Twyst.
- 9.4 You understand and acknowledge that all information relating to Twyst which is disclosed to or acquired by you as contemplated by Clause 9.2 is secret and confidential unless:
 - 9.4.1 it is in the public domain at the time of disclosure;
 - 9.4.2 it comes into the public domain other than as a result of a wrongful act or omission on the part of you or any one or more of your employee(s); or
 - 9.4.3 it is disclosed to you by a third party in circumstances which do not involve a breach of any obligation of confidentiality owed to Twyst or to any of Twyst's related corporations; and
- 9.5 You shall, on request from Twyst and, in any event, on the expiry or termination of this Agreement, return to Twyst all documents, notes and other materials obtained directly or indirectly from Twyst or any of Twyst's related corporations, or prepared by or for or on behalf of you, which contain secret and confidential information belonging to Twyst or any of Twyst's related corporations, including all copies of such documents, notes and other materials.

9.6 **Privacy and Data Protection**

You acknowledge and agree that Twyst shall not be required to provide you with the Personal Information of any individual User and that the only information provided by Twyst shall be the aggregated statistics and analysis regarding you Offers.

10. **INTELLECTUAL PROPERTY RIGHTS**

- 10.1 You agree and acknowledge that Twyst owns all right, title, and interest in the Twyst Website, the Application, Twyst trademarks, the Confidential Information and any software, technology or tools and other materials used by Twyst to promote, market, sell, generate, or distribute the Merchant Offers (collectively the "**Twyst IP**") and any improvements, modifications, enhancements or refinements thereto. No license or other rights to the Twyst IP are granted to you under this Agreement or otherwise.
- 10.2 You shall not rent, lease, sublicense, distribute, transfer, copy, reproduce, download, display, modify or timeshare the Twyst IP or any portion thereof, or use such Twyst IP as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution.
- 10.3 You shall not prepare any derivative work based on the Twyst IP. You shall not decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any of the intellectual property or ideas, algorithms, file formats, programming, or interoperability interfaces underlying or such intellectual property.
- 10.4 Further Twyst owns all right, title and interest in and to any data provided to Twyst by the User.
- 10.5 Twyst owns all right, title and interest in and to any data provided to Twyst by Users in connection with the Merchant Offers, including without limitation all e-mail and/or other contact information ("**Customer Data**"). As such, you shall not, unless the User has separately taken all steps necessary to provide you with contact information be provided with or otherwise have access to such Customer Data.

- 10.6 All rights, title and interest in the Merchant Offers are owned by you. You represent that you own all rights in the Merchant Offers and shall be responsible and indemnify Twyst for any third party claims that may arise regarding the Merchant Offers.

11. INDEMNITY

- 11.1 You will defend, indemnify, and hold Twyst and its affiliates and their respective directors, officers, shareholders, employees, agents and representatives harmless from and against any third party suit, proceeding, assertion against any damages, judgments, liability, costs and expenses (including without limitation any reasonable attorneys' fees) incurred or arising from your breach of this Agreement (including without limitation any breach of any representation, warranty or covenant), your unauthorized use or misuse of the Merchant Offers or any unauthorized combination of the Merchant Offers with any hardware, software, products, data or other materials not specified or provided by Twyst or your failure to perform any obligation under this Agreement.
- 11.2 Twyst's aggregate liability for all claims (including claims for indemnification of third party damages) arising out of the Agreement, whether in contract, tort or otherwise, will not exceed the amount of Fees paid by you to Twyst under the Agreement during the twelve (12) months preceding the date on which the claim occurred. To the maximum extent permitted by Applicable Law, in no event shall Twyst be liable for any loss of business profits, business interruption, loss of data or any special, indirect, exemplary, incidental or consequential damages arising from or in relation to the Agreement or the use of the Services, however caused and regardless of theory of liability. In addition, Twyst shall not be liable for damage (physical or otherwise) incurred by you upon any asset or property from the installation or removal of any Twyst product or add-on in-store and will not be responsible for replacement or cost of repair if damages occur. This limitation will apply even if such damages were foreseeable and you have been advised or are aware of the possibility of such damages.
- 11.3 In no event shall Twyst be liable or obligated to you or any third party in any manner for any indirect, special, incidental, exemplary, punitive or consequential damages, lost profits, lost revenues or failure to realize anticipated business benefits, loss or damage to information or data arising out of the use or inability to use the program.

12. DISCLAIMER

- 12.1 You acknowledge that Twyst's Services may not be uninterrupted or error free or virus free and that Twyst disclaims all warranties, express or implied, written or oral, including but not limited to warranties of your ability and fitness of the services for a particular purpose. Twyst shall not be liable to you for any loss or damage whatsoever or howsoever caused or arising, directly or indirectly, including without limitation, as a result of loss of data; interruption or stoppage to the User's access to and/or use of the Website, the Application and Services; interruption or stoppage of the Twyst Website and the Application; non-availability of the Website and the Application, etc. Twyst does not warrant that the Website, the Application and Services, will be provided uninterrupted or free from errors or it is free from any virus or other malicious, destructive or corrupting code, program or macro.
- 12.2 Twyst's sole obligation and your sole and exclusive remedy in the event of interruption in the Twyst Website and the Application, or loss of use and/or access to the Website, the Application and the Services, shall be to use all reasonable endeavors to restore the Services and/or access to the Website, the Application and Services as soon as reasonably possible.

13. GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 This Agreement shall be governed under the laws of India and the Courts of New Delhi shall have exclusive jurisdiction over the same.

- 13.2 In the event that any dispute arises between the Parties in connection with this Agreement, the construction of any provision of this Agreement or the rights, duties or liabilities of the Parties hereto under this Agreement, the Parties shall conduct negotiations in good faith to solve such dispute. If mutual resolution cannot be reached within sixty (60) days after the commencement of such negotiations, either of the Parties shall be free to refer such dispute to arbitration under the Arbitration and Conciliation Act, 1996, by three (3) arbitrators. Each Party shall appoint one arbitrator and the arbitrators so appointed shall appoint the third arbitrator. The venue of arbitration shall be New Delhi. The arbitration proceedings shall be conducted in English. Any award made in such arbitration will be final and binding on the Parties.

14. MISCELLANEOUS

14.1 Independent Contractor

- 14.1.1 The relationship between Twyst and you is that of principal and independent contractor. Nothing in this Agreement shall be taken as constituting you as an employee or agent of Twyst. The Parties undertake that none of their respective employees and staff shall be construed in any manner, either expressly or by implication, as the employees or agents of the other Party and the other Party shall not be liable in any manner whatsoever for any claims, demands and the like made by them.

14.1.2 Mutual Acknowledgements

You and Twyst acknowledge that:

- 14.1.2.1 Neither is the legal representative, agent, joint venturer or partner of the other for any purposes; and
- 14.1.2.2 Neither of them has any right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, on behalf of the other or to bind the other in any respect.

14.1.3 Your further Acknowledgements

Without limitation to Clause 14.1.2.2, you acknowledge that neither you nor your employees, agents or representatives shall be entitled to make representations or give or purport to give warranties either on their own behalf or on behalf of Twyst other than as authorised by Twyst in writing.

14.2 Variations

Except as expressly provided for in this Agreement, no variation or amendment of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each Party.

14.3 Force Majeure

- 14.3.1 Neither Twyst nor you shall be responsible to the other for delays or failures in performance resulting from a Force Majeure Event, but each shall use its best endeavours to minimize such delays.
- 14.3.2 Where a Party's ability to meet its obligations under this Agreement is adversely affected by a Force Majeure Event, it shall immediately notify the other Party of that circumstance, and shall provide its best estimate of the extent and duration of such adverse affect.

14.4 Notices

- 14.4.1 All notices referred to in this Agreement shall be in writing and shall be deemed to be properly given and served on the Party to whom such notice is to be given if sent either by fax or courier to the Party at its address shown on the first page of this Agreement. Any notice, request, demand or other communication delivered to the Party to whom it is addressed shall be deemed (unless there is evidence that it has been

received earlier) to have been given and received, if: - (i) Sent by courier, six (6) days after posting it; and (ii) Sent by facsimile, when confirmation of its transmission has been recorded by the sender's facsimile machine.

- 14.4.2 Either Party may from time to time designate by written notice to the other Party a substitute address that it desires to be used for service. Service of any notices may also be made personally.

14.5 **Assignment**

You shall not assign your rights and/or obligations to a third party, without obtaining prior written consent of Twyst. Twyst shall have the right to assign this Agreement and its rights and obligations hereunder to any third party.

14.6 **Waiver**

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of that provision or any other provision of this Agreement. No waiver shall be effective unless made in writing and signed by an authorised representative of the waiving Party.

14.7 **Severance**

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed and the remaining provisions shall remain in full force and effect.

14.8 **Rights Inure**

The rights and obligations under this Agreement shall ensure to the benefit of the successors and assigns of the Parties. However, you may not assign any rights or obligations under this Agreement without the prior written consent of Twyst.