



MERCHANT AGREEMENT

- i. Arronax is engaged in payment services business and as part of its operations is engaged in the business of processing payments for establishments in respect of payments sought to be made by way of debit/credit cards & mobile money wallets (as hereinafter provided).
- ii. The Merchant undertakes the business stated in online application form, at the premises situated at the address (es) specified by the Merchant.
- iii. The merchant wishes to conduct buying and selling activities and receive Credit/Debit Card or mobile money payments and mobile money payments for the same over the Internet. Arronax is in the business of enabling payment through the use of credit/debit cards and mobile wallets on the internet. The Merchant is desirous of being able to receive payment through credit/debit cards and mobile wallets on the internet.
- iv. Enabling receipt of payment through a Credit/Debit Card or mobile money or mobile money wallet on the internet requires the use of payment gateway facilities that would enable secure transmission of transaction messages over the Internet, and the Merchant is desirous of utilising the payment gateway facilities of Arronax.
- v. The Merchant is desirous of being approved as an establishment for the purpose of payment processing of transactions made by credit/ debit cards and mobile money wallets on the terms and conditions hereinafter mentioned, and in consideration of Arronax agreeing to pay to the Merchant the amount of all sales issued by the merchant in accordance with the following terms and conditions less the commission mentioned in clause 11 as read together with the schedule hereunder written hereby agrees with Arronax as follows: -

1. DEFINITIONS

For the purpose of this Agreement, the terms set forth in this Article, when used in this agreement either in singular or plural forms are defined to mean unless the context otherwise requires, the following:

"Authorisation" shall mean the process by which Arronax confirms to the merchant whether the valid card of the cardholder has the required credit limit/funds (as the case may be) to make payments for the transaction with the merchant as more particularly described in Article 6 hereunder.

"Cardholder" shall mean a person holding a valid card, i.e. a MasterCard/ Visa Card or an approved Card product licensed by this Bank.



"Premises" shall mean the place(s) of business of the merchant where the equipment is agreed to be installed by Arronax.

"Promotional material" shall include all posters, stickers, brochures, decals, take-ones, signage, advertisements and any other material, which is used to promote the payment processing services of Arronax offered under this agreement.

"Settlement Amount" shall mean the transaction amount less the agreed merchant commission (referred to as MDR) and any other related charges/ fees payable by the merchant to Arronax.

"Transaction amount" shall mean the amount payable by the valid card holder on the Product/ Service offered by the merchant inclusive of shipping charges and other taxes, duties, cost, charges and expenses in respect of the Product / Service that are to be charged to the Cardholder's Valid Credit/Debit Card or mobile money or mobile wallet.

"Merchant Commission Rate" means, with respect to a Transaction amount, the percentage of that Transaction Amount as specified in the Schedule and additionally the amount per Transaction as specified in Schedule. Provided however that the Merchant Commission Rate may be revised by Arronax, and Arronax will advise Merchant of any such change not less than 30 days in advance of its effectiveness.

"Delivery" means, in respect of a Product, delivery of the Product by the Merchant through a reputed courier /parcel service to the Cardholder at the address specified by the Cardholder in this behalf, or in respect of a Service, delivery/performance of the Service as would be required.

"Dispatch" shall mean, in respect of a Product, that the Product has been dispatched to the address specified by the Cardholder, and in respect of a Service, delivery/performance of the Service, proof of which may be required to be submitted to Arronax to the satisfaction of Arronax.

"Effective Date" means the date of execution on the online page of this Agreement by the Merchant.

"Facility" means the payment gateway facility provided by Arronax to the Merchant in terms of this Agreement and any other services that augment or enhance the current facility.

"Issuing Bank" in respect of a Cardholder means the bank which has issued the Valid Credit/Debit Card or mobile money to the Cardholder with which Cardholder makes the payment for the Products / Services.



"Order" means an order for the purchase of Product(s) / Services placed by the Cardholder on the Merchant website.

"Product" means a tangible or intangible product that is manufactured or distributed by the Merchant, and that is purchased by the Cardholder, the payment for which is to be made on the Cardholder's Valid Credit/Debit Card.

"Software" means a program provided by Arronax to the Merchant that enables the Merchant to utilise the Facility.

"Transaction" means every order that results in the Delivery by the Merchant to the Cardholder of the Product(s) / Services in respect of which the Order was placed.

"Valid Card" shall mean an unexpired card issued by any institution designated to issue a Visa, MasterCard, Visa Electron or other card as may be specified by the bank from time to time provided that the card is not listed in a current warning or restricted card bulletins or notices and bears the signature of the person in whose name the card is personalized.

2. PAYMENT CARDS

This agreement and the following terms and conditions shall apply in respect of each and every transaction involving payments by means of a Payment Card and the term "Payment Card" shall be construed accordingly.

2.1 Honour Payment Cards: The merchant shall honour every valid Card presented for payment from Cardholders for all transactions. The Merchant shall not engage in acceptance practices or procedures that discriminate against, or discourage the use of Payment Cards in favour of any other competing card brand that is also acceptable. The Merchant shall also not prefer, or indicate that they prefer a Payment Card issued by a particular institution or impose additional commissions in respect to particular valid Cards that would make them less favorable.

2.2 Displaying Payment Cards Symbols And Names: The merchant shall display current Payment Card symbols and names as well as promotional materials to inform the public that the Payment Card will be honoured at the merchant's place(s) of business.

2.3 Account Number Information: The Merchant shall not be allowed to store information in any form obtained by reason of a Payment Card transaction. Further, the materials containing card account information must be made unreadable and unusable before they are discarded in an approved manner.



3. TERM; NON-EXCLUSIVE

Nothing in this Agreement shall prohibit Arronax from furnishing the services similar to those provided under this Agreement to others, including competitors of the Merchant.

4. UNDERTAKINGS OF ARRONAX

4.1 Provision of the Facility: Arronax agrees to enable the merchant to receive payments made to it by a Cardholder through a Valid Credit/Debit Card or mobile money and Arronax hereby reserves the right to appoint a third party to enable receipt of such payments, on such terms and conditions as it may deem fit.

4.2 Facility Standard:

Arronax shall:

- i. Make its reasonable best efforts to maintain the Facility in operation 24 hours a day, seven days a week.
- ii. Make its reasonable best efforts to provide the Facility in a manner that protects information transmitted by the Software from
 - a) unauthorized interception,
 - b) Undetected unauthorized modification or alteration after its origination,
 - c) undetected initiation by persons posing as other persons or entities,
 - d) unauthorized replication.

4.3 Limitations: Arronax's obligations described above are subject to the following limitations:

- i. Messages/instructions that originate from the server of the Merchant or the server of a third party designated by Merchant (e.g. a host) shall be deemed to be authorized by the Merchant, and Arronax shall not be liable for processing such messages.
- ii. Messages/instructions that originate from the Cardholder are deemed to be authorized by the Cardholder and Arronax shall not be liable for processing such messages.
- iii. Arronax is not responsible for the security of data residing on the server of the Merchant or a third party designated by the Merchant (e.g., a host) or on the server of a Cardholder, server of a Cardholder's issuer or a third party designated by a Cardholder (e.g., a host).
- iv. Arronax shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay:



- a) is caused by the Merchant's acts or omissions;
 - b) results from actions taken by Arronax in a reasonable good faith effort to avoid violating a law, rule or regulation of any governmental authority or to prevent fraud on Cardholders; or
 - c) is caused by circumstances beyond Arronax's control, including but not limited to vandalism, hacking, theft, phone service disruptions, Internet disruptions, loss of data, extreme or severe weather conditions or any other causes in the nature of "ACTS OF GOD" or force majeure.
- v. Arronax shall not be liable for any indirect or consequential losses of the Merchant.

4.4 Compliance with Law: Arronax shall at all times comply with applicable laws, rules and regulations insofar as relevant to its provision of the Facility.

5. UNDERTAKINGS OF THE MERCHANT

5.1 Use of the Facility: In using the Facility, the Merchant agrees:

- i. Not to use the Facility in any manner, or in furtherance of any activity, which constitutes a violation of any law or regulation or which may result in fraud on any person or which may cause Arronax to be subject to investigation, prosecution or legal action.
- ii. To be responsible for the security of the Cardholder's details and data.
- iii. To use the Software in accordance with the terms on which the Software has been provided to the Merchant and not to attempt to modify, translate, disassemble, decompile or reverse engineer the Software, or use it for any purpose other than for the utilization of the Facility.
- iv. Not to provide this facility to a third party without the express consent from Arronax
- v. Not to use the facility to facilitate payments by other merchants not expressly onboarded by Arronax.

5.2 Cardholder Support: The Merchant shall provide a commercially reasonable level of cardholder support to the Cardholders with respect to sales using the Facility. Such support shall include appropriate notice to the Cardholders of:

- i. a means of contacting Merchant in the event the Cardholder has questions regarding the nature or quality of the goods or services that Merchant offers for sale and
- ii. procedures for resolving disputes



- iii. return of goods policy. If Arronax determines in good faith that the Merchant's failure to comply with this paragraph is causing an unacceptable burden on its cardholder support facilities, Arronax may suspend or terminate this Agreement.

5.3 Compliance with Law & Guidelines: Merchant shall at all times comply with applicable laws, rules and regulations insofar as relevant to its use of the Facility. Merchant will at all times comply with the guidelines set for merchants by Arronax. If the utilisation of the Facility by the Merchant results in or may result in additional liability being placed on Arronax under the Payment Card guidelines, such utilisation shall be deemed to be a violation of this Agreement.

5.4 Prevention of Infringement: If for any reason the Facility or any component of the Facility becomes, or in Arronax's opinion is likely to become, the subject of a claim of infringement, Arronax reserves the right to, at its option and expense, either (i) to revoke the right of the Merchant to continue using the Facility as permitted in this Agreement, or (ii) to replace or modify Facility or the infringing component of the Facility so that it becomes non-infringing or (iii) to withhold any monies due to the merchant to ensure that any claims from the card holder from fault of the merchant are honored, and any penalties arising are paid.

If, after using commercially reasonable efforts, Arronax is unable to cure the infringement, any of the Parties may terminate this Agreement on written notice to the other Party.

6. AUTHORIZATIONS

6.1 The Merchant shall not accept any Order for which payment is to be made through a Valid Credit/Debit Card or mobile money unless the Transaction is authorised by the Payment Gateway.

6.2 The merchant shall not process or deposit transactions with Arronax for any other merchant establishment who may or may not be a merchant with Arronax.

6.3 The merchant will not give cash advance by showing the transaction as a sale transaction.

6.4 Arronax will not accept liability of any chargebacks or disputed sale.

6.5 Minimum or Maximum Transaction Amount: The merchant shall not require, or post signs indicating that they require, a transaction amount



below or above which the merchant shall refuse to honour an otherwise valid Master Card/ Visa Card.

6.6 Arronax reserves the right to block any Card, Bin or Card number that is deemed to be risky by Arronax.

7. TRANSACTION HANDLING

7.1 The merchant in handling transaction(s) via payment gateways must ensure that the extraction of data from the Cards must be in the manner specified by Arronax (this may vary from time to time but Arronax will give prior notice of variation to the Merchant)

7.2 The Merchant shall deliver to the Cardholder a bill including mention of charges covered in the payment received from the cardholder through the payment gateway.

7.3 Arronax reserves the right to impose limits on the number of Transactions undertaken using a particular Valid Credit/Debit Card or mobile money and the value of a single Transaction during any time period, and reserves the right to refuse to make payments in respect of Transactions exceeding such limit.

7.4 The merchant shall not require any cardholder to pay any surcharge, to pay any part of the discount, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction in which a Visa Card is used or such other card as Arronax may offer.

8. PAYMENT TO THE MERCHANT

8.1 Subject to the terms of this Agreement, Arronax shall normally pay to the Merchant a minimum of 5 business days, following the day on which the transactions took place, the transaction amount less the commission for all the card transactions processed and accepted by Arronax for all Products /Services sold on the Internet.

8.2 Net payments to the Merchant shall be made by Arronax to the account of the Merchant with Arronax (the "Merchant's Account") or RTGS

8.3 Payment by Arronax shall be made without prejudice to any claims or rights that Arronax may have against the merchants and shall not constitute



any admission by Arronax as to the performance by the merchant of its obligations under this Agreement and the amount payable to the merchant.

8.4 Arronax shall be entitled to set off and deduct from any payment due to the merchant:

- a) The amount of any refund due to any cardholder in accordance with the refund procedure set out in clause 10 below; and
- b) Any overpayment made by Arronax due to computational/ system errors or otherwise; and
- c) Any other sums due from or payable by the merchant to Arronax herein; and

8.5 If Arronax suspects, on reasonable ground and in its sole and exclusive opinion, that the merchant has been negligent, or has committed a breach of this agreement or act/s of dishonesty or fraud against Arronax or any Cardholder, Arronax shall be entitled to suspend all payments under this agreement to the merchant pending enquiries by Arronax and resolution of the same to Arronax's satisfaction.

8.6 Rejection of Payment: Notwithstanding anything stated elsewhere in this agreement or the annexed schedule/s, Arronax may reject payment in respect of Orders where:

- i. The authorization process cannot be completed/fails in relation to a Transaction;
- ii. Any Order which the Cardholder refuses to pay because the Product / Service was not as promised or was defective.
- iii. Any order which the Cardholder refuses to pay because the Product/Service were not delivered as per the delivery terms.
- iv. Payment in respect of the Order or the relevant installment of the purchase price has already been made;
- v. If the Merchant is unable to deliver any part of the Cardholder's Order the Merchant shall cancel the Order and the Cardholder shall be refunded.

8.7 Refund: Where Arronax is entitled to reject payments in respect of an Order or demand a refund, it may:



- i. Deduct the relevant amount from the Transaction Amount and/or payments to be made in respect of subsequent Transaction amounts until Arronax has been refunded in full;
- ii. Demand payment of the relevant amount from the Merchant.

9. ORDER FORMS

The order forms in which the Merchant accepts Orders from the Cardholder on the Internet should contain the following information:

- a) The Cardholder's name
- b) The transaction amount and Currency
- c) The transaction date
- d) The Cardholder's email address
- e) The Cardholder's postal and Physical address
- f) The method of delivery
- g) The refund policy
- h) The Merchant's terms and conditions

10. PRESENTMENT OF TRANSACTIONS AND REFUNDS

The merchant agrees to inform the cardholder about its credit refund policy clearly mentioning the same in bill invoice and/ or on the website.

10.1

- i. If in respect of any transaction any goods/ services are not received as described, by the Cardholder or are lawfully rejected or accepted for or services are not performed or partly performed or cancelled or price is lawfully disputed by the Cardholder or price adjustment is allowed, the Merchant shall not make a cash refund but shall complete a refund slip supplied or approved by Arronax or generate a refund request to the system. The merchant shall sign and date each refund slip and include a brief description of the items concerned. A true and completed copy of the refund slip must be delivered or forwarded to the Cardholder.
- ii. In the event of a refund to a cardholder the merchant shall not make cash refund to the cardholder. The merchant must present a credit process/refund letter on headed stationary and signed by authorized signatory/ies. The merchant must not process a refund transaction, unless there is a preceding corresponding debit on a card account.
In the event that only credit slips are presented to Arronax at any one time, the merchant shall at the same time make payment of the net refund (ie. The total refund(s) to the cardholder(s) less the discount) to Arronax.



- iii. In situations where sale date and refund date have a gap between them, which or otherwise causes a currency translation difference for transactions on foreign cards, Arronax will have the right to recover the equivalent amount pertaining to such foreign exchange currency translation differences from the Merchant, for the purpose of crediting the same to the Cardholder's Card Account.

11. MERCHANT COMMISSION RATE (MCR)

In consideration of the services provided by Arronax, the Merchant agrees to pay to Arronax the Merchant Commission Rate and further charges as detailed in the schedule, which shall be deducted by Arronax from the amount payable to the merchant in terms of section 8 hereof in respect of a transaction amount.

Arronax shall advise the Merchant Commission Rate from time to time. For the purpose of this agreement the commission rate would be as mentioned in the schedule.

11.1 For the purpose of calculating the merchant commission rate, the amount would be the aggregate amount of the bill including taxes, tips, shipping charges, etc.

11.2 If any extra credit is given by the merchant to the cardholder without prior approval of Arronax, the merchant shall do so at its own risk and responsibility. In such case the entire transaction would be treated as void and Arronax will reject payment of the same.

11.3 All applicable tax including service tax, consumption tax or value added tax whether currently in force or introduced after the date of this Agreement and any other taxes, duties, fees and charges arising out of the performance of this Agreement shall be borne by the Merchant.

12. CHARGEBACKS & DISPUTES

12.1 If a transaction is issued or presented in breach of this Agreement or a Cardholder makes a claim against Arronax relating to a Card Transaction in respect of which the transaction has been issued;

- a) Arronax may without specifying a reason withhold payment on presentation of the transaction or
- b) if the Merchant has already been paid for the transaction, Arronax shall be entitled to recover the amount from the Merchant Account and where this is not possible, require the Merchant to immediately repay the amount of the transaction.



12.2 Notwithstanding the foregoing, upon the commencement of any proceedings for the winding up or dissolution of the Merchant, or the appointment of any person to manage the assets or business of the Merchant on behalf of its creditors; payment of any transaction then unpaid (whether presented before or after the occurrence of any such event) shall not be made and the amount of the transaction already paid, where the goods, service or other facilities referred to therein have not been supplied shall be a debt due from the Merchant Bank.

13. PUBLICITY

13.1 The merchant irrevocably authorizes Arronax to include the merchant's name in any directory or promotional material produced in connection with the acceptance of Visa Card or any other Card as the bank may introduce.

13.2 The merchant hereby agrees, undertakes and covenants to prominently display and maintain Arronax's promotional material as supplied by Arronax from time to time.

14. BREACH OF AGREEMENT

Without prejudice to Arronax's right to terminate this agreement under Clause 20, in the event of a breach by the merchant of any of these terms, Arronax is authorized to debit the Merchant's Account or deduct from the deposit any refund claimed. In the event that there is no account with Arronax or there is insufficient funds available therein to claim from the merchant or that the deposit is inadequate to compensate Arronax for any refund claimed, the merchant undertakes that it would forth with become indebted to Arronax and on demand by or on behalf of Arronax pay to Arronax the amount of the refund to the extent to which such funds or deposit proves inadequate.

15. EVIDENCE AND DOCUMENTS

15.1 The Merchant will promptly on Arronax's request (and whether or not the same is disputed by the Cardholder) produce to Arronax evidence satisfactory to Arronax of the Cardholder's authority for the Cardholder's Card account to be debited with any transaction amount and (but without prejudice to the foregoing) will retain all documents and records relating to each transaction for a period of not less than one year thereafter and produce the same to Arronax on request.

15.2 The Merchant agrees that when goods are to be delivered, the following documents would be additionally maintained and shared with Arronax before settlement is made to merchant:

- Order form



- Invoice
- Proof of dispatch of the goods
- Proof of delivery of goods

In addition to the above Certificate of insurance will be maintained when goods are to be exported.

15.3 The Merchant shall provide such reasonable assistance for the prevention and detection of fraud in respect of any transaction/s as Arronax may from time-to-time request.

16. REMOVAL AND CESSATION OF BUSINESS

The Merchant shall inform Arronax of any removal of shops or offices, change of address and/or its cessation of business in writing 30 working days prior to its effective date/happening.

17. DISCLOSURE

Arronax will be entitled at any time to disclose any and all information concerning the Merchant within the knowledge and possession of Arronax to any party in connection with the Credit/Debit Card or mobile money facility provided by Arronax, including inter alia information relating to the cause for termination of this Agreement. This clause will survive the termination of this Agreement.

Arronax reserves the right to verify the information provided by the Merchant at the time of signing this agreement through its own staff or third party. Arronax may thereafter seek to verify any market information that it may receive about the Merchant's business activities/ principals behind the business.

18. INDEMNITY

18.1 The Merchant shall indemnify Arronax for any claims, demands, actions, suits, proceedings, liabilities, losses, costs, legal fees or damages of any kind, including attorney's fees and costs of litigation, arising from claims of a third party (including claims, assertions and investigations of a governmental agency), which claims arise in whole or part from, and/ or asserted against Arronax on account of:

- i. Any acts or commissions by the Merchant in connection with the sale of Products/ Services (by the Merchant) and the performance of this Agreement.
- ii. The negligence or willful misconduct of Merchant or its employees or agents;
- iii. A breach of an obligation of Merchant to Arronax under this Agreement; or
- iv. Any loss or liability arising to Arronax from the Merchant's use of the Facility.



18.2 Arronax will be entitled to have full conduct of all proceedings and negotiations relating to any such claim and in its discretion to accept, dispute, compromise or otherwise deal with the same and shall be under no liability in respect thereof to the Merchant and the Merchant will provide any assistance in connection with any such claim that Arronax may require. Notwithstanding whatever is mentioned herein the merchant agrees that pursuant to any disputes or claim if Arronax is made to refund the amount being the transaction effected by the merchant and the purchaser, Arronax shall have the authority to debit and or claim the said amount from the merchant pending any disputes. In such an event the merchant shall pay the amount without demur.

19. CONFIDENTIALITY

19.1 The Merchant will not without the prior written consent of the Cardholder, use or disclose information on the Cardholder or his/ her transactions howsoever obtained and in whatsoever form the information shall take, to any third party (other than the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the transactions and the Merchant's insurers and professional advisers) unless such disclosure is compelled by law.

19.2 The Merchant will not, without the prior written consent of Arronax, use or disclose information howsoever obtained and in whatever form about the business of Arronax or the system of this Agreement, to any third party (other than to the Merchant's agents for the sole purpose of assisting the Merchant to complete or enforce the transactions and the Merchant's insurers and professional advisers) unless such disclosure is compelled by law which compulsion should be brought to Arronax's attention immediately.

20. TERMINATION

20.1 This Agreement shall be effective for twelve (12) months from the date hereof and shall continue until terminated by either party giving the other not less than (30) days' notice in writing. Automatic renewal will be presumed where no notice to the contrary is given after the initial 12 months period.

20.2 Arronax and the Merchant have the right to terminate this Agreement by giving fourteen (14) days written notice if either party is in breach of any of the terms and condition contained in this Agreement.

20.3 The Agreement may also be terminated on the occurrence of events referred to in clause 12.2. The Merchant shall notify Arronax of such occurrence as soon as it becomes aware that such an event is likely to occur or has occurred.



20.4 Upon occurrence of events referred to in clause 12.2 and 20.3 the Merchant shall not enter into any further Card Transactions and every unrepresented transaction and refund shall be presented to Arronax at the address given above within three(3) business days of their issue otherwise they shall not be honoured by Arronax.

Default

If there is a material breach of any representation or warranty, or default in the performance of any covenant or obligation of this Agreement, by either Party, and such breach or default shall continue for a period of thirty (30) days after receipt by the breaching or defaulting Party of written notice thereof from the non-breaching or defaulting Party (setting forth in detail the nature of such default), then this Agreement may terminate at the option of the non-breaching or defaulting Party as of the thirty-first (31st) day following the receipt of such written notice. If, however, the breach or default cannot be remedied within such thirty (30) day period, such time period shall be extended for an additional period of not more than a Fortnight, so long as the breaching or defaulting Party has notified the non-breaching or - defaulting Party in writing and in detail of its plans to initiate substantive steps to remedy the breach or default and diligently and continuously thereafter pursues the same to completion within such additional Fortnight.

Insolvency

This Agreement shall be deemed immediately terminated, without the requirement of further action or notice by either Party, in the event that either Party, or a direct or indirect holding company of either Party, shall become subject to voluntary or involuntary bankruptcy, insolvency, receivership or like proceedings (including, but not limited to, the takeover of such Party by the applicable regulatory agency) pursuant to Applicable Law.

Change in Applicable Law.

If there is a modification or other change in Applicable Law that has a material adverse effect on the ability of either Arronax or the Merchant to continue Card business contemplated by this Agreement, the parties shall meet or otherwise discuss whether it is possible to modify this Agreement to continue the Card business. If the parties are unable to agree to a modification to the Agreement, either Party may terminate this Agreement upon prior written notice to the other Party. A "material adverse effect" includes, among other things, any change in Applicable Law that has a significant impact on the financial or operational burdens or rewards of either Party under this Agreement. The Parties agree to modify the Card as necessary from time to time to comply with all Applicable Law.



20.5 Arronax may, in the absence of breach of contract, terminate this Agreement before the expiry of the contract period, by giving the Merchant a 1 (one) month's written notice without necessarily stating the reason for the termination. This is subject to liabilities and costs already incurred till date being settled in full.

20.6 Termination shall not affect obligations and warranties in respect of Card Transactions already effected under the provisions of this Agreement.

20.7 Upon the termination of this Agreement the Merchant shall remove all decals and other promotional materials from its premises and return the same to Card Centre or the nearest branch to Arronax together with all stationery and equipment supplied to it by Arronax.

21. ASSIGNMENT

This Agreement is not assignable but in case of the Merchant being an individual or individuals shall bind his or their respective estates. Arronax is entitled at any time to assign this Agreement or any of Arronax's rights and obligations herewith in favour of any subsidiary or associated company of Arronax or of Arronax's holding company or any other Bank or other company and to sub-contract or appoint any agent or agents to carry out any of Arronax's obligations herein.

22. REPRESENTATION

The Merchant acknowledges and agrees that the Merchant has not entered into this Agreement in reliance on any representation statement or warranty (whether written or oral and whether express or implied) made by or on behalf of Arronax other than such as are expressly set out herein.

23. WAIVER

The failure by Arronax to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of right at any time subsequently to enforce all terms and conditions of this Agreement.

24. ACCEPTANCE OF CHARGES WITH RECOURSE

The Merchant agrees that payment made in respect of which the Issuing Bank raises a claim on Arronax shall be the financial responsibility of the Merchant. The Merchant agrees to the non-payment in respect of such Order or the charging back of such uncollectable charge as the case may be without any demur or protest. The Merchant hereby authorises Arronax to debit the Merchant's bank account to the extent of the aforesaid uncollectable amounts and any other moneys due for



any reason to Arronax by the Merchant, or deduct the same from amounts payable to the Merchant in terms of Section 5 of this Agreement

25. DISCLAIMER OF WARRANTY

Arronax disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. The Merchant acknowledges that the Facility may not be uninterrupted or error free.

26. LIMITATION OF LIABILITY

Arronax and its vendors (and any officers, directors, employees and agents of the Parties and their vendors) shall be liable only for direct damages as awarded in accordance with the dispute resolution clause, and shall not be liable for any consequential, incidental or indirect damages under any theory or cause of action whether in tort, contract or otherwise, regardless of whether Arronax has been advised of the possibility of such damages provided further that the liability of Arronax hereunder shall always be limited to Kenya Shillings only, and any person including the Merchant shall not be entitled to recover moneys in excess of such limit. In no cases shall the Merchant be entitled to punitive or exemplary damages.

27. PRICES

Prices to be charged by the Merchant shall be inclusive of all taxes and delivery charges and shall be uniform for all Cardholders. In case of any difference in prices due to shipping or any other charges, the same shall be made explicit to the cardholder.

28. INSPECTION OF PLACE OF BUSINESS

The Merchant shall permit the authorised representatives of Arronax to carry out physical inspections of the place(s) of business of the Merchant and any godowns, warehousing facilities of the Merchant, Products, Services and the System Server.

29. TRADEMARKS

Merchant's Trademarks: Merchant hereby grants Arronax a non-exclusive, royalty-free limited license to use, display and reproduce the trademarks, service marks, and logos of Merchant (herein, "Merchant Trademarks") solely in connection with Arronax's marketing of the Facility. Arronax shall use the Merchant Trademarks in accordance with policies as provided by Merchant from time to time. The Merchant warrants that all intellectual property used by the Merchant (excluding the intellectual property being provided by Arronax) in connection with its obligations



under this Agreement is either owned or properly licensed by the Merchant for the uses contemplated hereby and that such intellectual property does not infringe the rights of any third parties and will fully and effectively indemnify Arronax for and against all loss, damage, costs, claims and expenses arising out of any such infringement.

30. MERCHANT DEPOSIT ACCOUNT

As security for the obligations of the merchant arising in terms of this Agreement, the Merchant shall maintain an amount as specified in the Schedule, in the form of fixed deposits with Arronax (hereinafter referred to as "the Merchant Fixed Deposit" or the "MFD"). Arronax shall have an exclusive lien over the MFD and shall be entitled to appropriate all amounts due to it from the Merchant, including amounts in respect of refunds, charge backs and indemnities from the MFD. In the event of termination of this Agreement by reason of breach of its terms by the Merchant, Arronax shall be entitled to forfeit the MFD. In the event of termination of this Agreement by reason other than breach by the Merchant, Arronax shall be entitled to withhold refund of the MFD for a period of 180 days from the date of termination. During this period, it shall be entitled to appropriate any amounts due and payable to it from the Merchant in terms of this Agreement.

The provisions of this Section shall not be affected by the intervening bankruptcy / insolvency of the Merchant. The acquiring bank may increase the MFD if there is a reasonable increase in business volume of the merchant.

31. MINIMUM ENCRYPTION STANDARDS AND SECURITY OF CARDHOLDER DATA

The Merchant must use encryption standards of 128 bits or more in respect of all processing of Order or such other standard as may be specified by Arronax.

32. GENERAL

32.1 If signed by a firm, the expression " the Merchant" shall include the person or persons from time to time carrying on the business of such firm and, if, there are two or more signatories hereto, the expression " the Merchant" shall include all and each of them and their liabilities under this Agreement shall be joint and several. The person authorized to sign this agreement has got power and authority from the concerned authority and make them liable as per the governing laws.

32.2 This Agreement shall be governed by and construed in accordance with the laws of Kenya and the parties hereto submit to the exclusive jurisdiction of the Kenyan courts.



32.3 If any provision of this Agreement is, or proves to be or becomes illegal, invalid, or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be in any way affected thereby.

32.4 This Agreement shall be deemed to have been made when it is signed both on behalf of Arronax and on behalf of the Merchant.

32.5 Any notice or communication by either party to the other shall be in writing and shall be deemed to have been duly given if either delivered personally or by prepaid registered post addressed to the other party at the appropriate address stated above or at other such address as such party hereto hereafter specify to the other party.

32.6 In this Agreement if the context permits or requires words importing the masculine gender shall include the feminine and neuter genders, and words in the singular number shall include the plural number and vice versa.

32.7 All costs (including costs between the Advocate and client), charges, expenses, taxes, duties (including stamp duty) in relation to this agreement and any document executed pursuant thereto and in relation to the enforcement of this agreement shall be borne and paid by the merchant alone.

32.8 Entire Agreement: This Agreement constitutes the entire agreement between Merchant and Arronax pertaining to the subject matter hereof and supersedes in their entirety all written or oral agreements between the Parties.

32.9 Relationship between Parties: The Parties to this Agreement are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other Party hereto. Neither Party shall make any representation that suggests otherwise.

32.10 Survival Of Provisions: Notwithstanding any other provision to the contrary herein, terms which by their nature survive termination or expiration of this Agreement shall bind the parties following any expiration or termination of this Agreement.

32.11 Liability Upon Expiration: Neither Party shall be obligated to extend or renew this Agreement.



32.12 Headings and sub - headings: The headings and sub headings in this Agreement are for convenience only and do not affect the meaning of the relative section / clause.

32.13 Notices: Any notice, direction or instruction given under this Agreement shall be in writing and delivered by hand, post, cable or facsimile. Notice and instructions will be deemed served 7 days after posting or upon receipt in the case of hand delivery, cable or facsimile.

33. VARIATION OF AGREEMENT

Arronax reserves the right at all times to vary or amend these terms and conditions or to introduce new terms and conditions. Any such variation or amendment or introduction will become effective and binding on the Merchant upon notification to the Merchant by ordinary post and if the Merchant is unwilling to accept any such variation or amendment or introduction the Merchant shall notify Arronax in writing by registered post within five days from the receipt of the notification by Arronax. A notice sent by Arronax by post shall be deemed to have been received by the merchant on the day following the date of posting.

It is agreed by and between the parties hereto that this agreement shall remain in force for a period of 12 months unless terminated by either party by giving one month's notice in writing to the other. In the event of the agreement being in subsistence at the end of the period of 12 months, this agreement shall automatically stand renewed thereafter until terminated by either party by giving to the other party at least 1 month written notice about the same or as provided under clause 20.

34. BANNED PRODUCTS & SERVICES

The Merchant hereby expressly agrees not to directly or indirectly deal in the following product/s or service/s at any time during the tenure of this Agreement.

Without prejudice whatsoever to Arronax's other rights & privileges, the Merchant binds himself unequivocally to be solely liable for including but not limited to any legal actions and suits, and to make good to Arronax immediately upon demand damages suffered by Arronax directly or owing to claims by any third party, levy of assessment fees or fines, penal actions taken by Visa , the Central Bank of Kenya, the acquiring bank and any other statutory or competent authorities for any breach of any terms of this Agreement, including the dealing in the following :



- 1) Adult goods and services which includes pornography and other sexually suggestive materials (including literature, imagery and other media); escort or prostitution services.
- 2) Apparatus such as personal massagers/vibrators and sex toys and enhancements.
- 3) Body parts, which includes organs or other body parts – live, cultured/preserved or from cadaver.
- 4) Bulk marketing tools which includes email lists, software, or other products enabling unsolicited email messages (spam).
Cable TV descramblers and black boxes which includes devices intended to obtain cable and satellite signals for free.
- 5) Child pornography in any form.
- 6) Copyright unlocking devices which includes Mod chips or other devices designed to circumvent copyright protection
- 7) Copyrighted media, which includes unauthorized copies of books, music, movies, and other licensed or protected materials
- 8) Copyrighted software which includes unauthorized copies of software, video games and other licensed or protected materials, including OEM or bundled software
- 9) Counterfeit and unauthorized goods which includes replicas or imitations of designer goods; items without a celebrity endorsement that would normally require such an association; fake autographs, counterfeit stamps, and other potentially unauthorized goods.
- 10) Drugs and drug paraphernalia which includes illegal drugs and drug accessories, including herbal drugs including but not limited to salvia and magic mushrooms
- 11) Drug test circumvention aids which includes drug cleansing shakes, urine test additives, and related items
- 12) Endangered species, which includes plants, animals or other organisms (including product derivatives) in danger of extinction
- 13) Gaming/gambling which includes lottery tickets, sports bets, memberships/ enrollment in online gambling sites, and related content
- 14) Government IDs or documents which includes fake IDs, passports, diplomas, and noble titles
- 15) Hacking and cracking materials which includes manuals, how-to guides, information, or equipment enabling illegal access to software, servers, websites, or other protected property
- 16) Illegal goods which includes materials, products, or information promoting illegal goods or enabling illegal acts
- 17) Miracle cures which includes unsubstantiated cures, remedies or other items marketed as quick health fixes



- 18) Offensive goods which includes literature, products or other materials that: a) Defame or slander any person or groups of people based on race, ethnicity, national origin, religion, sex, or other factors b) Encourage or incite violent acts c) Promote intolerance or hatred.
- 19) Offensive goods, crime which includes crime scene photos or items, such as personal belongings, associated with criminals
- 20) Prescription drugs or herbal drugs or any kind of online pharmacies which includes drugs or other products requiring a prescription by a recognized and licensed medical practitioner in Kenya or anywhere else.
- 21) Pyrotechnic devices and hazardous materials which includes fireworks and related goods; toxic, flammable, and radioactive materials and substances.
- 22) Regulated goods which includes air bags; batteries containing mercury; Freon or similar substances/refrigerants; chemical/industrial solvents; government uniforms; car titles; license plates; police badges and law enforcement equipment; lock-picking devices; pesticides; postage meters; recalled items; slot machines; surveillance equipment; goods regulated by government or other agency specifications
- 23) Securities, which includes stocks, bonds, mutual funds or related financial products or investments.
- 24) Tobacco and cigarettes which includes cigarettes, cigars, chewing tobacco, and related products
- 25) Traffic devices, which includes radar detectors/ jammers, license plate covers, traffic signal changers, and related products
- 26) Weapons, which includes firearms, ammunition, knives, brass knuckles, gun parts, and other armaments
- 27) Wholesale currency, which includes discounted currencies or currency, exchanges
Live animals or hides/skins/teeth, nails and other parts etc of animals.
- 28) Multi-Level Marketing schemes or Pyramid / Matrix sites or websites using a matrix scheme approach
- 29) Any intangible goods or services or aggregation/consolidation business.
- 30) Work-at-home information
- 31) Drop-shipped merchandise
- 32) Web-based telephony/ SMS/Text/Facsimile services or Calling Cards.
Bandwidth or Data transfer/ allied services. Voice process /knowledge process services.
- 33) Any product or service, which is not in compliance with all applicable laws and regulations whether federal, state, both local and international including the laws of Kenya.

35. GOVERNING LAW AND DISPUTE RESOLUTION



This Agreement shall be exclusively governed and construed in accordance with the Laws of Kenya and the same law shall exclusively govern the merits of any dispute arising out of or in connection with this Agreement.

All Disputes between the parties arising out of or in connection with the validity or interpretation or implementation of this Agreement or any part or provision thereof shall be finally and exclusively settled by arbitration in accordance with the Arbitration Act (No. 5 of 1995) or such other statutory enactment in replacement thereof by a single Arbitrator. The Arbitrator's appointing authority shall be the Chartered Institute of Arbitrators, Kenyan Chapter or in the alternative the parties may elect to agree on an arbitrator. The place of arbitration shall be Nairobi. The language of Arbitration shall be English. Unless otherwise agreed the arbitration award shall be enforceable and binding upon the parties.

Either of the parties shall be at liberty to get injunctive relief at a court of competent jurisdiction in Kenya.