

# MERCHANT AGREEMENT



# ARRONAX SYSTEMS LTD

**P.O. Box 60218 (00200)**

**Senteu Plaza**

**Lenana Road, Kilimani**

**Nairobi, Kenya**

**E-mail: [support@arronax.co.ke](mailto:support@arronax.co.ke)**

**Website: <https://arronax.co.ke>**

## **Arronax Systems Ltd merchant agreement for online acceptance through the Arronax Capicollect Payment Gateway**

**THE COMMENCEMENT AND EFFECTIVE DATE OF THIS MERCHANT AGREEMENT** shall be deemed to be the date that the Merchant registers on the payment gateway, which date shall be deemed as the date of commencement of the Agreement

**BETWEEN Arronax Systems Limited (“Arronax”)** a limited liability Company registered as such under the Companies Act (Cap 486 Laws of Kenya) and of Post Office Box Number 60218-00200, Nairobi in the Republic of Kenya (hereinafter called **“Arronax”** which expression shall where the context so admits include its legal representatives and assigns) **OF THE ONE PART**

### **AND**

The Merchant (Hereinafter called **“The Merchant”**) which expression shall where the context so admits include its legal representatives and assigns) **OF THE OTHER PART.**

The Merchant may include but not limited to limited companies, business names, schools, churches, self help groups, hospitals, counselling and any other institutions;

### **WHEREAS:**

1. Arronax is engaged in payment services business through a payment gateway 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), through the said payment gateway.
2. The Merchant undertakes the activities and/or business as described in the profile provided of and as further stated in the online application form, at the premises situated at the address (es) specified by the Merchant.
3. The Merchant wishes to conduct the activities and/or business as described in the profile provided and as further stated in to online application and the activities and receive Credit/Debit Card or mobile money payments and mobile money payments for the same over the Internet via the payment gateway.
4. The Merchant is desirous of being able to receive payment through credit/debit cards and mobile wallets on the internet, and the Merchant is desirous of utilising the payment gateway of Arronax.
5. 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
6. Arronax has agreed to provide the Merchant, and has based on the documentation provided approved the Merchant to use the payment gateway, for a commission as stated hereunder, and upon the terms and conditions as set out hereunder.

**NOW THIS AGREEMENT WITNESSETH** as follows: -

## **1. DEFINITIONS AND INTERPRETATION**

**Definitions** 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.

In this Agreement, unless the context otherwise requires, the terms set forth in this Agreement whether in singular or plural form shall have the following meanings, unless the context otherwise states:

"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 properly issued by a licensed Bank.

"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" shall be the date that the Merchant registered on the payment gateway.

"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 to the Cardholder with which Cardholder makes the payment for the Products / Services.

"Merchant Commission Rate" means, with respect to a Transaction amount, the percentage of that Transaction Amount as specified by Arronax Systems based on the risk rating of the merchants and additionally the amount per Transaction as specified and communicated to the merchants via the Arronax CapiCollect Payment platform. Provided however that the Merchant Commission Rate may be revised by Arronax, at any time based on the Risk review of the merchant without giving notice to the merchant.

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

"Premises" shall mean the place(s) of business of the merchant

"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.

"Tithe/donations/sponsorships means intangible sums/products that are offered by the contributor to the institution/organization.

"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 MCR) and any other related charges/ fees payable by the merchant to Arronax.

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

"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 wallet.

"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.

"Settlement date" means Five (5) days after date of transaction.

"Merchant Trademarks" shall include any graphics, posters or advertisement belonging to the merchant

"Rolling Reserve" means a percentage of the transaction amount that shall be held by Arronax for a specified period and which shall be specified in the payment gateway.

"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.

## **2. Interpretation**

In this Agreement, unless the context otherwise requires, reference to:

- (a) 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.
- (b) Clauses shall be construed as references to Clauses of this Agreement;
- (c) Any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation made there under or under any such re-enactment;
- (d) Indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which could not have arisen but for that circumstance;
- (e) Costs, charges, expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof; and
- (f) Any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.
- (g) Headings to clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

## **3. TERM: NON-EXCLUSIVE**

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

## **4. SERVICE APPLICATION KNOW YOUR CUSTOMER (KYC) REQUIREMENTS:**

4.1 The Merchant shall upon registration and prior to use of the portal, provide for verification by Arronax the following documents and any other documents that may be sought by Aroonax from time to time:

1. Certificate of Incorporation/registration,
2. Memorandum and Articles of Association or (CR1, CR2 and CR8)
3. CR12 (not more than 2 months old)
4. PIN certificate for the company
5. Recent business permit,
6. Directors/owners IDs & PIN copy.
7. Original Stamped and sealed board resolution on company letter head to become a Merchant
8. Bank Statement or Cancelled company cheque
9. Owners/Directors recent passport photograph
- 10.) Recent bill as proof of address (not more than 2 months old)
- 11.) Copies of licenses from local authority or regulators
- 12.) Company profile or website.
- 13.) Any other documents that shows either the nature of the institution and/or business of carried out by the institution/organization

**Details of Settlement Account:**

Bank Name:

Bank Branch:

Bank Account Number:

Bank Account Name:

Bank Swift Code: \_\_\_\_\_

Bank Sort Code (Bank & Branch Number): \_\_\_\_\_

4.2 By providing the above documents and/or information, Arronax is not liable to enroll the applicant Merchant onto the portal. Arronax has the sole discretion to allow or reject any applicant without giving any reasons of such rejection.

4.3 Arronax shall carry out due diligence on the documents provided and may seek further/additional documents as it may require/deem necessary. The due diligence period may range from a minimum of Seven (7) days to Thirty (30) days after which the applicant Merchant shall be notified of the acceptance or rejection of the application.

## **5. UNDERTAKINGS OF ARRONAX**

**5.1 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 bank wallet holder through mobile wallets 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.

### **5.2 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.

**5.3 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. Should third parties query either delivery of services, or question use of their card
- d. 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.

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

## **6. UNDERTAKINGS OF THE MERCHANT**

**6.1 Use of the Facility:** It is hereby agreed that the use of the Facility by the Merchant is strictly for the services as declared by the Merchant. Following the said declaration by the Merchant, the Merchant doth hereby irrevocably indemnifies Arronax against any actions that may arise as a result of any transactions that may be made 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 directly onboarded and/or contracted by Arronax.

**6.2 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 requirement is causing an unacceptable burden on its cardholder support facilities, Arronax may suspend or terminate this Agreement.



### **6.3 Compliance with Law & Guidelines:**

- i. Merchant shall at all times comply with applicable laws, rules and regulations insofar as relevant to its use of the Facility.
- ii. Merchant will at all times comply with the guidelines set for Merchants by Arronax.
- iii. Should the utilisation of the Facility by the Merchant result 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 and the Merchant hereby agrees to at all times indemnify Arronax against such liability.

### **6.4 Prevention of Infringement:**

- i. 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 sole discretion, either
  - (a) to revoke the right of the Merchant to continue using the Facility as permitted in this Agreement, or
  - (b) to replace or modify Facility or the infringing component of the Facility so that it becomes non-infringing or
  - (c) 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.
- ii. If, after using reasonable efforts, Arronax is unable to cure the infringement, any of the Parties may terminate this Agreement on written notice to the other Party upon giving notice of the intention to terminate.
- iii.

### **6.5 Honour Payment Cards:**

- i. The Merchant shall honour every valid Card presented for payment from Cardholders for all transactions.
- ii. 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.
- iii. 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.

### **6.6 Displaying Payment Cards Symbols And Names:**

- i. 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.

### **6.7 Account Number Information:**

- i. 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.

## 7. AUTHORIZATIONS

7.1 The Merchant shall not accept any Order for which payment is to be made through the Arronax payment gateway via a Valid Credit/Debit/Prepaid Card/Mobile Payment Card unless the Transaction is authorised by the Payment Gateway.

7.2 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.

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

7.4 Arronax will not accept liability of any chargebacks or disputed sums/sales.

7.5 **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.

7.6 Arronax reserves the right to block any Card, Bin or Card number that it deems to be high risk in accordance to the Arronax risk rating algorithms or suspicious. Such transactions will be passed to the compliance officer and explanation provided to the merchant.

## 8. TRANSACTION HANDLING

8.1 The Merchant in handling transaction(s) via the payment gateway must ensure that the extraction of data from the Cards and collection of phone number for payment 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)

8.2 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.

8.3 **Arronax** reserves the right to impose limits on the number of Transactions undertaken using a particular Valid Credit/Debit/Prepaid Card 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.

8.4 The Merchant can include their merchant service commission as charged by Arronax into the amount paid by their customer for a particular transaction meaning that the amount to be paid will include the merchant service commission. The merchant shall not require any cardholder or mobile wallet holder to pay any additional surcharge, to pay any part of the discount, whether through any additional increase in price or otherwise, or to pay any additional contemporaneous finance charge in connection with the transaction in which a Bank Card is used or such other card as Arronax may offer.

#### 8.5. Use of the Escrow facility

Arronax shall have a sole discretion to impose Escrow facility to particular Merchants without any notice of the same. Escrow facility confirms receipt of the goods or service before funds are released to the Merchant

### **9. PAYMENT TO THE MERCHANT**

9.1 Subject to the terms of this Agreement, Arronax shall normally settle to the Merchant a minimum of Five (5) business days (Monday to Friday) which days are exclusive of the transaction day, following the day on which the transactions took place, the transaction amount less the commission for all the card transactions and mobile wallet transactions processed and accepted by Arronax for all Products/Services.

9.2 Net payments to the Merchant shall be made by Arronax to the account of the Merchant at their bank or their stated phone number which holds a valid mobile wallet.

9.3 Payment by Arronax shall be made without prejudice to any claims or rights that Arronax may have against the Merchant 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.

9.4 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 below; and
- b) Any overpayment made by Arronax due to computational, Exchange rate and/or system errors or any other circumstances that may cause such an error; and

c) Any other sums/commissions due from or payable by the Merchant to Arronax herein; and

9.5 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.

#### **9.6 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. The Merchant fails to follow the rules set out by Arronax as to Escrow;
- vi. Arronax suspects a transaction to be fraudulent
- vii. 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.

#### **9.7 CHARGEBACKS, REFUND & DISPUTES:**

Where Arronax is entitled to reject payments in respect of an Order or demand a refund, or a chargeback has arisen, it or 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, Arronax shall be entitled to:

- i. Demand payment of the relevant amount from the Merchant.
- ii. Deduct the Order or charge back amount from any of the transaction Amount and/or payments that may be held and/or made in respect of subsequent Transaction amounts until Arronax has been refunded in full;
- iii. Should such chargebacks and/or disputed sale arise, the Company will notify the Merchant to make good of such chargebacks or disputed sums/sales. Should the Merchant fail and/or refuse to honour such demand, the Company shall without any

notice withhold any sums in the Merchants wallet until such chargebacks or disputed sums/sales are resolved;

- iv. The Company shall have a sole discretion and absolute right as to the decision it shall make on such chargebacks and/or disputed sums/sales and may only notify the Merchant after the investigations have been completed. Arronax shall have sole discretion as to the level of investigations it may carry out and such investigations shall not be limited to a particular chargeback and/or dispute but to all transactions that the Merchant may have carried out through the payment gateway to its satisfaction. Arronax will notify the Merchant the outcome of such investigations after completion;
- v. Arronax may without specifying a reason withhold any or all the payments on presentation of the dispute or chargeback of any of the transactions;
- vi. 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.
- vii. Deduct the Order or charge back amount from any of the transaction Amount and/or payments that may be held and/or made in respect of subsequent Transaction amounts until Arronax has been refunded in full;
- viii. Arronax will impose a penalty on any chargeback , which shall not be less than Five (5%) percent of the charge back amount.
- ix. Upon presentation of any charge back and/or suspected charge back, Arronax shall withhold any monies in the Merchants wallet and/or any monies held including but not limited to Rolling Reserve for a period of One Hundred and Twenty Days (120) from the date. Such monies shall be released to the Merchant at the expiry of the said days and further upon Arronax being satisfied that the period for the charge backs has expired.

## **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.

- i. If in respect of any transaction any goods/services that 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 send Arronax a signed and dated email instruction and include a brief description of the items concerned to refund their customer. The merchant shall not make a cash refund.
- ii. In situations where sale date and refund date differ 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 may be communicated to the Merchant from time to time, which shall be deducted by Arronax from the amount payable to the Merchant in terms of this agreement hereof in respect of a transaction amount.

Arronax reserves the right to adjust the Merchant Commission Rate from time to time. Arronax shall inform the Merchant of such adjustments in writing. For the purpose of this agreement the commission rate would be as shall be indicated in the Merchants wallet.

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, and Arronax shall not be held liable for such decision and doth hereby agree to at all times indemnify Arronax against such decisions.

11.3 All applicable 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. PUBLICITY**

12.1 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.

12.2 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 & TERMINATION**

Arronax may terminate this Agreement before the expiry of the contract period:

14.1 By giving the Merchant One (1) 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. Upon the termination of this Agreement the Merchant shall remove all decals and other promotional materials from its premises and return the same to Arronax together with all stationery and equipment supplied to it by Arronax.

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

14.2 Arronax may terminate the Agreement immediately without giving prior notice on the following instances:

- i. In the event of suspected terrorist financing,
- ii. In the event of suspected money laundering,
- iii. In the event of suspected human trafficking activities
- iv. In the event of multiple card trials/transactions on the same card
- v. In the event of an infringement
- vi. In the event of Fraud as determined by Arronax
- vii. In the event of force Majeure
- viii. By order of the regulator

14.3 Should Merchant be in a material breach of any representation or warranty, or default in the performance of any covenant or obligation of any of the terms of this agreement and or any other terms of using the facility as provided for in this Agreement, Arronax may first give notice to the Merchant to rectify and/or correct the breach within a certain period in any case such notice should not exceed 14 days. Should the Merchant fail, refuse, and/or neglect to make such rectification, Arronax shall thereafter have an exclusive and irrevocable right, after the expiry of the said notice period to either:

- i. Immediately rescind the use of the facility;
- ii. To debit the Merchant's Account or deduct from the deposit any refund claimed and or any other monies such as commissions owing to Arronax;
- iii. In the event that there are no sufficient funds 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 and or any other monies such as commissions that may be owed by the merchant, the Merchant undertakes to pay the same;
- iv. Should the Merchant fail to pay any of the monies owing to Arronax as mentioned hereinabove, then Arronax be unable to pay 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.

14.4 Should Arronax be in breach of any of the terms of this agreement and or any other terms of using the facility as provided for in the this Agreement, the Merchant may first give notice to Arronax to rectify and/or correct the breach within a certain period in any case such notice should not exceed 14days. The Merchant shall after the expiry of the said notice period to:

- i. To seek for payment of the monies that Arronax may be holding less the agreed commissions and any other charges that may be due from the Merchant to Arronax. Such settlement shall be done according to the terms and conditions of this Agreement after clearance of any pending chargebacks, commissions, costs, disputes;

- ii. Upon the termination of this Agreement the Merchant shall remove all decals and other promotional materials from its premises and return the same to Arronax together with all stationery and equipment supplied to it by Arronax.

## **15. TERMINATION**

15.1 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.

15.2 Should the parties hereto be ready and willing to renew this Agreement, the notice of such intent shall be communicated in writing.

## **16. RECORDS OF DOCUMENTS**

16.1 The Merchant hereby agrees to keep records of any goods, payments, donations, and any other records for all the transactions carried out through the portal and at all times maintain and share with Arronax the following documents before settlement is made to Merchant:

- Order form
- Invoice
- Proof of dispatch of the goods
- Proof of delivery of goods Certificate of insurance will be maintained when goods are to be exported.

16.2 Arronax will at all times have a right to demand for any evidence of transactions, and/or any documents that the Merchant may be holding on behalf of a card holder. Upon such request and/or demand the Merchant will promptly on Arronax's request (whether or not the same is disputed by the Cardholder), the Merchant shall:

- i. 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;
- ii. Retain all documents and records relating to each transaction for a period of not less than one year.

16.3 The Merchant shall whenever called upon, 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.



## **17. REMOVAL AND CESSATION OF BUSINESS**

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

## **18. 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 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 including background checks that Arronax may deem necessary.

## **19. INDEMNITY**

19.1 The Merchant hereby agrees and undertakes to irrevocably indemnify Arronax for any claims, costs of transaction, chargebacks, demands, actions, suits, proceedings, liabilities, loss, costs, damages of any kind, including Advocates fees and costs of litigation, arising from claims from of any third party (including but not limited to claims, assertions and investigations by any institution, governmental agency), and any other claims that may ensue and not limited to the above, which claims arise in whole or part from, and/or brought ??asserted against Arronax on account of the Merchant's use of the Facility.

- i. Any acts, omissions and/or commissions by the Merchant in connection with the transactions and/or sale of Products/ Services and the performance of this Agreement.
- ii. The negligence or willful misconduct of Merchant or its employees or agents;
- iii. A breach of any obligation of Merchant to Arronax under this Agreement; or
- iv. Failure by the Merchant in keeping proper records
- v. Failure by the Merchant to carry out due diligence of the cardholder.
- vi. Failure by the Merchant to verify delivery of goods and services.

19.2 should any such suits or proceedings be brought against Arronax from the above actions, commissions and/or omissions of the Merchant as stated hereinabove, Arronax shall at its own sole discretion be at liberty to have full conduct of all proceedings and negotiations, whether directly or through representation, 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 hereby

agrees that they will at all times when so called upon to provide any evidence whether by way of documents, information and any other or further requests and/or demands in connection with any such claim that Arronax may require.

19.3 Should Arronax be made to refund any amount from any transaction effected by the Merchant by the bank and/or the Purchaser, Arronax shall have the authority to debit and or claim the said amount from the Merchant pending settlement of any disputes or claims by the Merchant, which amount the Merchant hereby agrees may be deducted any monies held by Arroanax and/or any future monies that may be held by Arronax. In such an event the merchant shall pay the amount without demur.

19.4 Should the Merchant be unable to meet any of the costs, liabilities, damages, loss, legal fees or damages of any kind, including Advocates fees and costs of litigation, that may ensue as a result of their failure and/or negligence in meeting their obligations as stipulated under this Agreement, Arronax shall be at liberty to seek legal redress to recover such costs.

## **20. CONFIDENTIALITY**

20.1 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.

20.2 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 they are compelled to such disclosure through a court order which compulsion should be brought to Arronax's attention immediately.

## **21. 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:

21.1 Mutually agree on the amendments that may be required to be made on this Agreement in order for the parties to be able to continue carrying out the obligations under this Agreement. Should the parties mutually agree on a solution, an Addendum to this Agreement shall be made which addendum shall form part of this Agreement.

21.2 should the parties hereto fail to agree on a mutually agreeable solution, either Party may terminate this Agreement upon prior written notice to the other Party.

## **22. ASSIGNMENT**

- i. This Agreement is not assignable to third parties unless with the written consent of Arronax.
- ii. 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.

## **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.

No failure or delay by the Arronax to enforce at any time or for any period any one or more of the terms or conditions and/or in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or the exercise of any other claim, right or power.

## **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 .....not understood

## **25. DISCLAIMER**

Arronax will at all times endeavour to make sure that the facility is working in the best possible manner. The Merchant hereby acknowledges that the Facility may not be uninterrupted or error free. And having acknowledged the above, the Merchants doth hereby agree to indemnify Arronax against such errors and confirms that should such errors occur, they will not hold Arronax liable for such errors. In cases of such errors, the Merchant agrees to allow Arronax to resolve such errors to the best of its capabilities.

## **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 by any Court, 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. 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.

## **28. 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 the Merchant 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. Should the Arronax be found liable for any infringement of such use of the Trademarks, the Merchant hereby agrees to indemnify Arronax for and against all suits, liabilities, loss, damage, costs, claims and expenses that may arising out of any such infringement.

## **29. ROLLING RESERVE**

29.1 As security for the obligations of the merchant arising in terms of this Agreement, Arronax shall at all times maintain an amount as specified directly to the Merchant which shall be done through the email address provided by the Merchant, in the form of Rolling Reserves which amount shall be held by Arronax for a maximum period of One hundred and Twenty Days (120) (hereinafter referred to as "the Rolling Reserve" ). Arronax shall have an exclusive lien over the Rolling Reserve.

29.2 Arronax 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 Rolling Reserve .

29.3 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 Rolling Reserve.

29.4 Arronax shall increase the Rolling Reserve from time to time as it deems fit and shall notify the Merchant of the same in writing.

29.5 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 Rolling Reserve for a period of One Hundred and Twenty (120) 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.

### **30. 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.

### **31. GENERAL**

31.1 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.

31.2 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.

31.3 Any notices or communication by either party to the other shall be in writing and shall be deemed to have been duly served if sent and delivered to the email address provided during the registration and/or enrollment of the Merchant

31.4 All costs, including but not limited to the due diligence to be carries out on the Merchant (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.

31.5 Entire Agreement: This Agreement constitutes the entire agreement between Merchant and Arronax and supersedes in their entirety all written or oral agreements entered into prior to this agreement between the Parties.

31.6 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.

31.7 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. VARIATION OF AGREEMENT**

32.1 Arronax reserves the right at all times to vary or amend this terms and conditions of this Agreement and/or to introduce new terms and conditions.

32.2 Arronax shall notify the Merchant via email whenever they make amendments , variations or any updates to this Agreement, upon such notification, the amendments, variation will become effective and binding from the date of the email. Should the Merchant be unwilling to accept the said variations, amendments and/or updates, the Merchant shall notify Arronax via email. Failure to so notify Arronax of any such objection shall be deemed as an automatic acceptance of the amendments, variations or any updates.

## **33. 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 to 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.

#### **34. 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.

Any aggrieved party to this Agreement shall have a right to seek legal redress in any Court in Kenya.

#### **35. ACCEPTANCE OF TERMS AND CONDITIONS OF THIS AGREEMENT**

By clicking I accept the term and conditions while registering on the portal shall be deemed to be the execution of this Agreement by the Merchant and constitutes acceptance of and agreement to be bound by all the above terms and conditions.

#### **36. 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.