

TERMS AND CONDITIONS FOR MERCHANT ENROLMENT FOR WALLET

THIS TERMS AND CONDITIONS IS PUBLISHED IN COMPLIANCE OF AND SHALL BE GOVERNED BY INDIAN LAW, INCLUDING BUT NOT LIMITED TO (I) THE INDIAN CONTRACT ACT, 1872; (II) THE INFORMATION TECHNOLOGY ACT, 2000, THE RULES, REGULATIONS, GUIDELINES AND CLARIFICATIONS FRAMED THEREUNDER INCLUDING THE INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES AND PROCEDURES AND SENSITIVE PERSONAL INFORMATION) RULES, 2011, AND THE PROVISIONS OF RULE 3 (1) OF THE INFORMATION TECHNOLOGY (INTERMEDIARIES GUIDELINES) RULES, 2011; (III) THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007 AND APPLICABLE RULES, REGULATIONS AND GUIDELINES MADE THEREUNDER INCLUDING POLICY GUIDELINES ON ISSUANCE AND OPERATION OF PRE-PAID PAYMENT INSTRUMENT IN INDIA; AND (IV) RESERVE BANK OF INDIA ACT, 1934 AND THE APPLICABLE RULES, REGULATIONS AND GUIDELINES MADE THEREUNDER.

THIS TERMS AND CONDITIONS IS AN ELECTRONIC RECORD IN THE FORM OF AN ELECTRONIC CONTRACT FORMED UNDER INFORMATION TECHNOLOGY ACT, 2000 AND RULES MADE THEREUNDER AND THE AMENDED PROVISIONS PERTAINING TO ELECTRONIC DOCUMENTS / RECORDS IN VARIOUS STATUTES AS AMENDED BY THE INFORMATION TECHNOLOGY ACT, 2000. THIS CONTRACT DOES NOT REQUIRE ANY PHYSICAL, ELECTRONIC OR DIGITAL SIGNATURE.

THIS TERMS AND CONDITIONS IS A LEGALLY BINDING DOCUMENT BETWEEN THE MERCHANT (DEFINED BELOW) AND FREECHARGE PAYMENT TECHNOLOGIES PRIVATE LIMITED ("FREECHARGE"). THE TERMS OF THIS TERMS AND CONDITIONS WILL BE EFFECTIVE UPON SUBMISSION OF THE MERCHANT PROCESSING APPLICATION FORM TO FREECHARGE (IN ELECTRONIC FORM OR BY MEANS OF AN ELECTRONIC RECORD OR OTHER MEANS) AND WILL GOVERN THE RELATIONSHIP BETWEEN THE MERCHANT AND FREECHARGE FOR THE USE OF FREECHARGE SERVICES (DEFINED BELOW). THE MERCHANT IS REQUESTED TO READ AND UNDERSTAND THE SAME PRIOR TO ENROLING AS A MERCHANT. SUBMISSION OF THE MERCHANT PROCESSING APPLICATION FORM TO FREECHARGE SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE BELOW MENTIONED TERMS AND CONDITIONS. IF ANY TERMS OF THIS TERMS AND CONDITIONS CONFLICT WITH ANY OTHER DOCUMENT/ELECTRONIC RECORD IN THIS BEHALF, THE TERMS AND CONDITIONS OF THIS DOCUMENT SHALL PREVAIL, UNTIL FURTHER CHANGE / MODIFICATIONS ARE NOTIFIED BY FREECHARGE.

The term "Party" shall refer to Freecharge and Merchant individually, while collectively they shall be referred to as "Parties".

Recitals

- A. Freecharge has partnered with Partner Bank(s) for providing prepaid payment instruments under the brand name "Freecharge". Freecharge has also received the 'in principle' approval from the Reserve Bank of India to operate a payment system for issuance and operation of prepaid payment instruments.
- B. Freecharge is now desirous of entering into arrangements with the merchants where Customers may utilize Freecharge Services (defined below) to pay for goods and services.
- C. The Merchant is desirous of availing the Freecharge Services.
- D. Merchant, having understood the requirements and agrees to be bound by the terms and conditions of this Agreement and therefore, subject to the terms and conditions mentioned herein FREECHARGE wishes to authorize the Merchant to accept payments using Freecharge Services.

Now therefore in light of the aforementioned recitals which shall form an integral part of this Agreement and for valuable and sufficient consideration, the adequacy of which is hereby acknowledged, the Parties agree to be bound by the following mutually decided terms-

1. Interpretation and Definitions

1.1 In this Agreement, the following words and expressions (including in the preamble or recitals hereof or schedules hereto) shall, unless the context otherwise requires, have the following meanings ascribed to them:

- a) **"Affiliates"** shall mean
 - (i) any company which is the holding company (including step up holding) or subsidiary (including step down subsidiary) of the Party, or
 - (ii) a Person which is controlled by, under the control of or under common control with the Party, or
 - (iii) any Person in which Party has a direct or beneficial interest of 20% or more of the voting securities.
- b) For the purpose of this definition of Affiliate, the term "control" together with grammatical variations and cognate expressions when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of the securities carrying voting rights, by contract or otherwise howsoever; and the term "Person" means any individual, company, firm, corporation, body corporate, a partnership (including

- limited liability partnership), Hindu undivided family, trust or any other entity or organization or other natural or legal person.
- c) **"Freecharge Services"** shall mean for the purpose of this Agreement, the payment processing and settlement services provided by Freecharge for payment made by the Customer to Merchant using Wallet,
 - d) **"Applicable Laws"** shall mean and include all statutes, legislations, rules, regulations, directives, judicial pronouncements and administrative guidelines that may be in force in the Republic of India including the Information Technology Act, 2000, The Payment and Settlement Systems Act 2007 and the Payment and Settlement Systems Regulations, 2008 and the guidelines and notifications issued by the RBI there under from time to time.
 - e) **"Customer"** means any person who desires to purchase Product offered by Merchant and make payment using Freecharge Services.
 - f) **"Commencement Date"** shall mean the date on which this Agreement shall come into force and shall be the date so mentioned on the Merchant Application Form .
 - g) **"EDC Terminal"** shall mean the electronic data capture machines provided by Freecharge itself or through third party service provider to the Merchant.
 - h) **"Merchant"** shall mean and include the seller(s), retailers or e-commerce marketplace entities, its employees, agents, authorized representatives and their Affiliates who accept Freecharge Services on Merchant Establishment for collecting payments from the Customer.
 - i) **"Merchant Establishment"** shall mean any web addresses, unique resource locators, applications, software (including without limitation mobile applications) of the Merchant (the contents of which are controlled and owned by the Merchant), and/or physical outlets which are used by the Merchant for the sale of Products to the Customers, and in respect of which Freecharge has agreed to provide Freecharge Services.
 - j) **"Partner Bank"** shall mean Yes Bank Limited.
 - k) **"Personal Information"** means any information relating to any natural person which in combination with other information available with the Merchant or likely to be available with the Merchant is capable of identifying such person and it shall also include sensitive personal information such as call data records; financial information such as bank account details, credit/ debit card details, payment instrument details; password etc. or any other type of information prescribed under the Information Technology Act, 2000 and the rules framed thereunder or any other law as sensitive personal information.
 - l) **"RBI"** shall mean the Reserve Bank of India;
 - m) **"RBI Guidelines"** shall mean and include regulations, guidelines, notifications, etc., issued by the Reserve Bank of India that governs the Freecharge Services and/or Wallet under this Agreement
 - n) **"Product"** shall mean the goods and/or services sold or provided by Merchant through Merchant Establishment and more particularly described in Merchant Application Form.
 - o) **"Transaction"** shall mean an offline purchase of Product; or payments for purchase of Products or for any other specified purpose to a Merchant;
 - p) **"Transaction Value"** shall mean purchase price of the Products collected from the Customer using Freecharge Services;
 - q) **"Wallet"** means a prepaid payment instruments issued in accordance with RBI Guidelines by Partner Bank of Freecharge through which a payment is made by a Customer to Merchant.
- ## 2. Scope of Services
- 2.1 The provisions of this Agreement shall be enforceable against either Party from the Commencement Date.
 - 2.2 At any time during the Term, Freecharge shall have the right to issue the Wallet itself or through its Affiliate or collaborator other than Partner Bank. Merchant shall execute such further documents with Freecharge as may be necessary to implement and carry out the intent on the terms and conditions similar to this Agreement.
- ## 3. General Obligations of the Merchant
- 3.1 The Merchant shall, thereafter, fulfill its obligations of facilitating the Customer with the delivery of the Product(s) in accordance with the terms and conditions that have been accepted by the Customer. The Merchant shall retain with it proof of such delivery of the Product(s)/invoice for such period as may be practicable however not less than Forty Five (45) days. The Merchant shall furnish such Proof of Fulfillment whenever required by Freecharge. The Merchant shall store the customer order number unique to that purchase.
 - 3.2 Merchant shall assist Freecharge in the implementation of any promotional schemes, ATL promotions or other such activities that might be undertaken by Freecharge.
 - 3.3 The Merchant shall ensure that no part of the consideration that flows between the Merchant and the Customer is illegal or contrary to Applicable Law. It is clarified that Merchant shall only use the

- Freecharge Services for retailing Products and Merchant shall NOT, directly or indirectly, allow the conversion/ liquidation of balance into cash.
- 3.4 The Merchant shall not receive payments as consideration for the delivery of tobacco products, prescription or non-prescription drugs, pornographic content or services, or goods or services infringing intellectual property rights of a third party, or for any other goods or services the offering or provision of which is illegal under Applicable Law or Freecharge policies as communicated from time to time.
- 3.5 Merchant shall not charge the Customer any additional amount or discriminate against the Customers in any way for using Freecharge Services.
- 3.6 Freecharge will have sole and exclusive ownership of and rights to collect, store, and use all information received by Freecharge from the Customer in the course of any Customer's use of the Freecharge Services under this Agreement. Merchant shall not claim any right or interest in the same and the Merchant undertakes that he shall not store, copy, transfer or use such information for any purpose other than those specifically agreed between the Parties during or after the term of the Agreement.
- 3.7 The Merchant shall not disclose any Personal Information to any third party unless required to do so by law. Merchant undertakes to protect the Personal Information with reasonable security practices as provided in Information Technology Act, 2000 & Rules framed thereunder as amended from time to time to ensure that such Personal Information is not disclosed, transferred, or published to any third party. Merchant undertakes to take necessary steps like executing non-disclosure agreements etc. to ensure reasonable security practices are complied with by its employees, permitted subcontractors and its agents.
- 3.8 Merchant shall maintain the Transaction data for such period as prescribed in RBI's master circular for KYC/AML/CFT.
- 3.9 The Merchant hereby undertakes and agrees:
- Not to describe itself as agent, representative, partner or employee of Freecharge or Partner Bank;
 - Not to make any representations to Customers or any third party or to give any warranties other than what is agreed hereunder, which may require Freecharge or Partner Bank to undertake to or be liable for, whether directly or indirectly, any obligation and/or responsibility to Customers or any third party.
- 3.10 The Merchant shall bear and be responsible for the payment of all taxes, levies etc. due upon the sale of the Products through the Merchant's Establishment.
- 3.11 The Merchant shall indemnify Freecharge and its directors, officers, employees, shareholders, agents and representatives against any loss arising out of or in connection with the Merchant's breach of any provision of this Section.
- #### 4. General Obligations of Freecharge
- 4.1 Process Flow:
- User visits Merchant Establishment and places order
 - User access FreeCharge Mobile App to keep his On the GoPIN Handy. (Standing OTP). OTP will be sent by Freecharge.
 - User Enters Mobile Number & PIN on the EDC Machine.
 - System validates User account (Mobile No) & Balance and confirms completion of successful Transaction.
 - PIN to change periodically after aligned specified duration
 - User's Wallet balance will be shown as reduced to the extent of value of Transaction
 - Funds will be settled as per timeline mentioned in Clause 6.6
 - Transaction limits and AML checks will be set by Freecharge as per Applicable Laws.
- 4.2 Any changes to the above process flow shall be intimated to Merchant in advance.
- 4.3 INTEGRATION: FREECHARGE shall integrate its systems with EDC Machine installed at Merchant's Establishment by Merchant.
- 4.4 Freecharge shall ensure that the Services shall conform in all material respects to the industry standards and are provided in accordance with this Agreement however the Merchant acknowledges that Freecharge services cannot be uninterrupted, error free or without delay or without compromise of the security systems related to the Services, Merchant's sole remedy and Freecharge's sole obligation in such event shall be Freecharge's reasonable efforts to repair or replace or restore the Freecharge Services within reasonable time.
- 4.5 Freecharge hereby expressly disclaims any and all warranties, express or implied, including but not limited to any warranties of condition, quality, durability, performance, accuracy, reliability, availability, merchantability or fitness for a particular purpose or non-infringement.
- 4.6 It is expressly understood that the scope of the services provided under this Agreement is limited to the integration of a payment system of the Partner Bank that the Merchant may utilize to accept payments from Customers. Freecharge does not claim any right or give any representation or

warranty regarding any Transaction between the Customer and Merchant or Customer using the Freecharge Services.

5. Customer Support

5.1 Merchant shall be responsible for addressing all Customer related queries, disputes and any other assistance that might be required by the Customer with regard to the Merchant insofar as the query, dispute or assistance sought refers to:

5.1.1 Any Transaction between any prospective customer or Customer and the Merchant.

5.1.2 Any Product that is sold by the Merchant.

5.2 Freecharge shall be responsible for addressing all queries solely relating to Freecharge Services.

5.3 Any transaction connected with the products and services offered by the Merchant shall only obligate the Merchant. Freecharge shall not be a party to any resulting dispute including but not limited to disputes over performance and liability issues relating to the delivery, quality, quantity, legality or use of the products and services offered by the Merchant. Without applying any limitation of liability contained in this Agreement, the Merchant shall fully indemnify Freecharge against any claim by third parties relating to the use of the Products and services offered and shall reimburse Freecharge in full for all legal and attorney fees, which Freecharge may accrue in the course of such legal defense.

6. Consideration

6.1 Freecharge shall ensure that total Transaction Value collected from the Customer is paid by Partner Bank net of charges (charges includes the merchant service fees and chargeback, refunds, all other taxes, duties, costs, charges and expenses as may be incurred by Freecharge to the Merchant). The Transaction Value net of charges shall be settled with Merchant at T+2 i.e. second Business Day ('T' shall be the date of Transaction and 'Business Day' shall be the day when Banks are working and open in New Delhi). Such payments will be made to the Merchant's designated bank account as intimated to Freecharge from time to time.

6.2 All payments under this Agreement shall be made as mentioned in the Merchant Application Form by Freecharge.

6.3 The existence of any payment related dispute shall not be acknowledged by Freecharge unless information along with relevant details of such dispute are communicated to Freecharge within 7 (seven) days of the occurrence/apprehension of such dispute.

6.4 In case Merchant's bank account details change, Merchant should inform the same to Freecharge and Freecharge will not be liable for any payment delays due to non-communication of change in bank account details.

6.5 It is hereby agreed and acknowledged by the Parties that the merchant service fee Freecharge in respect of a Transaction that has been confirmed shall not be refunded or repaid by Freecharge to the Merchant or any other person irrespective of the Transaction being rejected, chargeback, refunded or disputed.

7. Service Audit and Investigation

7.1 During the term of this Agreement, and for a period of six months thereafter, Freecharge, at the request of RBI and/or any other statutory/judicial/quasi-judicial authority or in compliance of any Applicable Laws reserves the right to audit, inspect, and make copies or extracts of relevant customer support systems (processes, records, documents etc.) that may be maintained by the Merchant. The scope of this audit will be limited to transactions arising out of or in connection with the terms of this Agreement. Freecharge may conduct audit either directly or through its consultants or agents ('Auditor') during the normal business hours of the Merchant. Merchant shall always cooperate and assist Freecharge and its Auditors in such audits, inspections or investigations and provide all documents and other relevant data and information, as and when required, including but not limited to investigate any allegations/ instances of fraud. In the event the audit findings relate, to overcharging, misrepresentations, unethical practice, fraud or breach of terms and conditions of the Agreement, Freecharge shall have all or any of the rights stated herein against the Merchant:

7.1.1 to recover the overcharged amount;

7.1.2 to suspend/stop all the outstanding/future payments;

7.1.3 to terminate the Agreement forthwith without prejudice to other rights under law and contract

7.1.4 to take appropriate legal action as may be necessary

8. Business Rules and ethics

8.1 The Parties will conduct all their dealings in an ethical manner and with the highest business standards.

8.2 The Parties will provide all possible assistance to each other in order to investigate any possible instances of

unethical behavior or business conduct violations by an employee of the other.

- 8.3 The Merchant will adopt appropriate processes to prevent offering any illegal gratification in the form of bribes or kickbacks either in cash or in kind in the course of all dealings with Freecharge.
- 8.4 The Merchant shall provide its customers with a clear and fair return and refund policy and ensure compliance with the terms and conditions under which goods and/or services are sold by Merchant to Customers. Upon request, the Merchant shall provide to Freecharge a copy of its return and refund policy and shall notify Freecharge of any subsequent change to such policy. In the event of customer disputes relating to return and refund remaining unresolved, Freecharge shall have the right to refund the Transaction Value to Customers.

9. Relationship between the Parties

- 9.1 The relationship between the parties is limited to the provision of Freecharge Services which are the subject matter of this Agreement.
- 9.2 This Agreement does not create any employee-employer relationship between the Parties. The Merchant, its employees, agents and representatives are independent contractors and nothing contained herein shall be deemed to create any partnership, joint venture between the Parties.
- 9.3 In no event shall Merchant is permitted to employ subcontractors under this Agreement without approval of Freecharge.

10. Representation and Warranties

- 10.1 Each Party represents and warrants to the other that:
 - 10.1.1 It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and has been fully authorized by all requisite corporate actions to do so and the execution and performance of this Agreement by the Parties does not and shall not violate any provision of any existing Agreement with any Party.
 - 10.1.2 It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its establishment for the conduct of its business.
 - 10.1.3 It has full right, title and interest in and to all trade names, trademarks, service marks, logos, symbols and other proprietary marks (collectively 'IPR')

(including limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the other, for use related to the services to the Customers, and that any IPR provided by a Party will not infringe the marks of any third party.

- 10.2 The Merchant further represents and covenants as follows:

- 10.2.1 the goods and services that are made available to customers comply with applicable law in any jurisdiction in or to which the Merchant is making its goods and services available and that the Merchant has at all times all requisite licenses and permits in place to engage in the advertising and provision of its goods and services.
- 10.2.2 Merchant conducts and advertises its service in accordance with Applicable Laws in each jurisdiction in which it or its Customers are located, in which its Products or services are available or in which it directly or indirectly advertises its Products or services
- 10.2.3 Personal Information which the Merchant is exposed to due to the existence of this Agreement shall not be used for any purpose other than communication envisaged in Clause 8.1 or for internal billing and invoicing purposes.
- 10.2.4 The Merchant shall indemnify Freecharge and its directors, officers, employees, shareholders, agents and representatives against any loss arising out of or in connection with the Merchant's breach of any provision of this Section.

11. Liability

- 11.1.1 Neither Party shall not be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for any indirect or consequential loss or damage of any kind including punitive or exemplary damages or for any loss of profit or loss of contract, loss of goodwill or reputation, loss of opportunity, loss of revenue or third party loss whether foreseeable or otherwise. The aggregate liability of Freecharge in contract, tort, negligence or otherwise arising out of or in connection with this

Agreement shall be limited to the total amount of fees received by Freecharge from the Merchant in the previous three months or the fees received to date, whichever is lower.

11.1.2 Freecharge shall not be liable for any of the following:

11.1.2.1 a hardware, software or internet connection is not functioning properly;

11.1.2.2 any suspension or refusal to accept payments which Freecharge has reason to believe to be made fraudulently or without proper authorization

11.1.2.3 the payment instructions received contain incorrect or improperly formatted information; or

11.1.2.4 force majeure: for unforeseen circumstances preventing the proper performance despite any reasonable precautions taken by Freecharge. Such circumstances may include, but are not limited to acts of god, power outages, fire, flood, theft, equipment breakdowns, hacking attacks, internal mechanical or systems failures.

12. Indemnification

The Parties shall indemnify, defend and hold harmless other against and in respect of all direct claims, demands, losses, costs, liabilities, damages that other Party shall incur or suffer from any breach of Confidentiality, third Party Intellectual Property Rights and any Applicable Laws.

13. Trademark, IPR, Advertising and Display

13.1 Parties agree that neither shall have any right in any intellectual property or commercial mark of the other or in the IPR or commercial marks pursuant to this Agreement except as provided in this Clause.

13.2 The Merchant agrees to display any promotional material, signs, posters, logos, standees, interactive displays, demos and any other such materials that Freecharge might specify, in the form and manner specified for such display, for the duration of this Agreement.

13.3 Merchant authorizes Freecharge to utilize, for such purposes as may be reasonably required for the operation of Freecharge Services, the name, logo, address and any other such details of the Merchant.

13.4 In the event Merchant wishes to identify Freecharge Services as a payment service on Merchant Establishment or through any other medium, Merchant shall do so in the form and manner approved by Freecharge in writing.

14. Confidentiality

14.1 The Parties acknowledges that it will be in receipt of certain confidential and proprietary information relating to the other Party, its affiliate(s) and/or its subsidiaries including, without limitation, lists and other details of Customers and prospective customers, financial and business information, including pricing structures, technical information and other information not generally known to the public (collectively referred to as "Confidential Information").

14.2 The Parties acknowledges that any Confidential Information is the exclusive property of the other Party and is a trade secret and any disclosure and/or improper use of Confidential Information would irreparably injure the Party.

14.3 The Parties agrees that, during and after the term of this Agreement, neither it nor any person, firm, corporation, or any other entity affiliated with, owned in whole, or in part by, employed by or otherwise connected with it, shall directly or indirectly without prior written consent of the other Party divulge, use, sell, exchange, give away/part with or transfer Confidential Information by any current or former employees.

14.4 If any Party is served with any form of notice/process/proceedings to obtain any information, confidential or otherwise pertaining to the other Party or any business relating to this Agreement, the Party shall immediately notify the other Party and initiate such action to seek to quash/oppose such notice process/proceedings as intimated by the other Party.

14.5 Parties agree that the terms and conditions of this Agreement shall be treated as Confidential Information and that no reference to the terms and conditions of this Agreement or to activities pertaining thereto can be made in any form without the prior written consent of the other Party; provided, that either Party may disclose the terms and conditions of this Agreement:

14.5.1 As required by any court or other governmental body;

14.5.2 As otherwise required by law;

- 14.5.3 In confidence, to accountants, banks, proposed investors or alliance partners, and financing sources and their advisors;
- 14.5.4 In confidence, in connection with the enforcement of this Agreement or rights under this Agreement;
- 14.5.5 In confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

15. Termination

- 15.1 This Agreement can be terminated by either Party by giving a notice period of one (1) month in writing to the other Party.
- 15.2 Freecharge shall have the right to terminate this Agreement by written notice to the Merchant if the Merchant breaches any representation, warranty, covenant, or any term of this Agreement or fails to comply with any material rules or procedures required by Freecharge. Such termination shall be effective from the date mentioned in such written notice.
- 15.3 This Agreement shall come to an end forthwith if the RBI or any other regulatory agency promulgates any rule, regulation or order which in effect, or application prohibits or substantially impedes the provision of Freecharge Services to the Customer.
- 15.4 Upon the termination or expiration of this Agreement for any reason, the Merchant shall immediately discontinue the use of the Freecharge Services.
- 15.5 Upon the termination or expiration of this Agreement, all the Merchant's rights under the Agreement shall cease and no payment whatsoever shall be due to the Merchant for loss of goodwill, anticipated profits and any other claims or losses in respect of such termination. The Merchant hereby waives any claim to receive any compensation as a consequence of the termination of this Agreement.
- 15.6 Upon the termination or expiration of this Agreement for any reason, the Merchant shall discontinue the use of all Intellectual Property in or upon any material that identifies or relates to Freecharge's business, and shall return forthwith to Freecharge all materials containing any Intellectual Property within timelines specified by Freecharge, cease representing themselves in any manner as the Merchant or representative of Freecharge; and, return to Freecharge or destroy those documents, records, or other materials (including, without limitation, all copies either photocopy, computer disks media or tapes or the like

thereof) which are provided to the Merchant by Freecharge or replicated by the Merchant or which may contain any of Freecharge's Confidential Information.

16. GOVERNING LAW AND JURISDICTION

- 17.1 The laws of the Republic of India shall govern this Agreement.
- 17.2 Subject to the provisions of Clause 19 below, the courts of New Delhi shall have the exclusive jurisdiction in respect of any dispute or differences arising out of or in connection with or touching upon the subject matter of this Agreement.

17. MISCELLANEOUS:

- 20.1 **Waivers.** The failure of either Party to require the performance of any of the terms of this Agreement or the waiver by either Party of any breach of this Agreement, shall neither prevent a subsequent enforcement of such terms of this Agreement nor be deemed a waiver of any subsequent breach. All the waivers, in order to be legally binding, shall be in writing and duly signed by the authorized person of the waiving Party.
- 20.2 **Paragraph Headings:** Paragraph headings are for convenience only and shall not be a part of the Terms and Conditions of this Agreement.
- 20.3 **Severability:** If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.
- 20.4 **Entire Agreement**
This Agreement including its Annexure/appendix represents the entire Agreement between the Parties and shall supersede /prevail over any other prior Agreement/ arrangement with respect to the subject matter hereof. This Agreement may only be amended or superseded by a written amendment executed by the Parties.
- 20.5 **Regulatory requirements**
Upon commencement of the Agreement and at any time thereafter for purposes of complying with regulatory requirements and Applicable Laws, Merchant shall provide Freecharge with such information about its business, corporate structure and constitution, shareholders, partners, members, directors, key employees or, in the case of a trust, its beneficiaries. In particular, the Merchant shall inform Freecharge in writing of any material changes to its business model or the goods or services it sells or distributes if such change is or can reasonably expected to be relevant with regards to compliance with regulatory requirements and Applicable Laws.

20.6 Survivability / Obligations

Subject always to the (Indian) Limitation Act, 1963, termination or expiration of this Agreement for any reason (a) shall not relieve the Parties of their obligations with respect to the provisions related to Trademarks and Confidentiality, (b) shall not relieve the Parties of any obligation which expressly or by implication survives termination (including but not limited to Clauses relating to Indemnification, Taxes, Confidentiality and Arbitration). In addition to the above mentioned sub-clauses, any other provision which by its content is intended to survive the performance, termination, expiration or cancellation of this Agreement shall so survive, without limiting the abovementioned sub-clauses in any manner.

20.7 Assignment

Neither Party may assign its rights and remedies nor transfer its obligations under this Agreement without the prior written consent of the other Party, except to any of their Affiliates or subsidiary companies without such consent.

20.8 Regulatory matters

This Agreement shall at all times be subject to (i) changes or modifications in any regulatory framework and (ii) any necessary approvals of Local, State and Central Regulatory Authorities having jurisdiction over the offering or provision of the

Freecharge Services to the Customers and/or any of the Merchant's activities in connection therewith.

20.9 Amendment

Both Parties mutually may add, delete, amend or alter all or any of the terms and conditions of this Agreement and such amended terms and conditions shall be binding on the Parties.

20.10 Notices

All notices, requests, demands and other communications hereunder shall be in writing and the same shall be deemed to be served, if given personally delivered or sent by registered mail at the addresses as mentioned in the Merchant Application Form. .

20.11 Counterparts

The Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same agreement and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

20.12 Further Assurances

Parties agree to execute all such further documents and instruments and to do all such further things as any other party may reasonably request in order to give effect to and to consummate the transactions contemplated by this Agreement.