

## TERMS AND CONDITIONS FOR MERCHANT ENROLMENT FOR FREECHARGE SERVICES

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.

Freecharge and the Merchant are hereinafter collectively referred to as "Parties" and individually as "Party".

### 1. Definitions:

In this Terms and Conditions, except where the context otherwise requires, the following words and expressions shall have the following meanings.

"Acquiring Banks" shall mean various banks, financial institutions, Card Associations, payment system providers who are defined and licenced under the *Payment and Settlement Systems Act, 2007*.

"Acquiring Bank Services" shall mean the payment gateway system and services provided by the Acquiring Banks such as to (i) route internet based Valid Card transactions; (ii) offer various facilities through the internet, including prepaid payment instrument, Net Banking facilities; (iii) provide Authentication and Authorization from Card Associations; and (iv) provide settlement facilities in respect of payment instructions initiated by the customers.

"Annual Maintenance Charge" shall mean the charges informed by Freecharge via email to the Merchant.

"Authentication" shall mean the process by which the Customer's identification is authenticated by the Acquiring Banks.

"Authorization" shall mean the process by which the Issuing Institution and/or the relevant Card Association electronically or otherwise convey the approval of the charge (i.e. if the Customer has a Valid Card and/or the required credit limit/ debit limit/balance in Wallet to pay the Customer Charge requested) on a Transaction being undertaken by a Customer on the Merchant Site.

"Business Days" shall mean any day on which Acquiring Banks are open for business in India, other than Saturday, Sunday and any days declared by Freecharge and/or Acquiring Bank as a holidays.

"Card Association(s)" shall mean any of visa, mastercard, visa electron, maestro, diners, american express or any other card association as may be specified by Freecharge from time to time.

"Card Association Rules" shall mean the written rules, regulations, releases, guidelines, processes, interpretations

and other requirements (whether contractual or otherwise) imposed or adopted by any Card Association.

"Commencement Date" shall mean the date mentioned on the Merchant Processing Application Form.

"Chargeback" shall mean reversal of the value of the Customer Charge with respect to any Transaction, inter alia, on account of (i) alleged forgery of the card number / bank account or other details (ii) any charge/debit made on a card that has been listed as a hot listed card or otherwise listed on the Card association warning bulletins (iii) duplicate processing of the transaction; (iv) unauthorized and established fraudulent access and transaction using Wallet ;or (v) for other reasons as per applicable rules and guidelines issued by RBI, Card Associations, Acquiring Banks and Issuing Institutions. In addition, it shall include any debit to the Freecharge's bank account to recover the value of the Customer Charge in the event that there are insufficient funds of the Merchant in the Nodal Account and/or the Merchant fails to pay for the same.

"Confidential Information" shall mean any and all written, oral or other tangible or intangible form of information, discoveries, ideas, concepts, know-how (whether patentable or copyrightable or not), research, development, designs, drawings, blueprints, diagrams, models, samples, flow charts, data, computer programs, disks, diskettes, tapes, algorithms, software programs, marketing plans or techniques, technical, financial, or business information" trade secrets which includes but is not restricted to any portion or scientific or technical or proprietary information, design, process, procedure, formula or improvement which is not generally available to the public as delivered by either Party ("Disclosing Party" to the other Party ("Receiving Party") within the framework of this Terms and Conditions or resulting therefrom. Provided that confidential information disclosed orally or those produced by electronic media or through any other intangible means shall be deemed confidential if it is identified as being confidential if it is reduced in writing within (30) thirty days

of the date of disclosure. Such writing shall specify the date, time, place, persons involved and the substance of the confidential information so disclosed.

"Customer" shall mean an individual or legal entity, who/which purchases Products, offered by the Merchant on the Merchant's Website or Mobile Application using a Valid Card, Wallet or Net Banking account or any other acceptable modes of Payment Mechanism, provided by Freecharge.

"Customer Account" shall mean a bank account or credit/cash card account/Wallet or any other electronic payment instrument of the Customer with Issuing Institution.

"Customer Charge" shall mean the sale price of the Products purchased by the Customer plus the shipping charge (if any) and all other taxes, duties, costs, charges and expenses in respect of the Products/payment that are to be paid by the Customer.

"Delivery" shall mean (i) in respect of a goods, delivery of the goods by a courier /parcel service appointed by the Merchant or its vendors, to the Customer within Delivery Due Date at the address specified by the Customer in this behalf; or (ii) in respect of a service, delivery or performance of provisions of service within the Delivery Due Date.

"Delivery Due Date" shall mean the date/period displayed on the Merchant's Website or otherwise notified to the Customer on or before which the Merchant shall deliver the Products to the Customer(s).

"Freecharge" shall mean Freecharge Payment Technologies Private Limited, a company registered under the Companies Act, 2013 having its registered office at 237, Ground Floor, Okhla Industrial Estate, New Delhi 110020 and also having office at ASF Center, Plot No. 362-363, Udyog Vihar, Phase IV, Gurgaon – 122016, Haryana.

"Freecharge Services" shall mean the Software Application provided by Freecharge to the Merchant. "Issuing Institution" shall mean a bank or financial institution or other legal entity, with which the Customer has a Wallet, a Net Banking account and/or which has issued the Valid Card to the Customers.

"Merchant Bank Account" shall mean the bank account maintained by the Merchant which it designates for settlement of its Settlement Amount and the details of which are provided in the Merchant Processing Application Form or informed to Freecharge via email/post by the authorized signatory of the Merchant.

"Merchant Site(s)" shall mean the active website(s) of the Merchant and/or the mobile application, the contents of which are controlled, operated and owned by the Merchant and established for the purposes of enabling the Customers to view Products and carry out Transactions for purchase of Products, offered on the website or mobile application.

"Net Banking Account" shall mean the facility and internet banking account provided by the Issuing Institution to Customers holding a bank account or Wallet account with the Issuing Institutions specified by Freecharge from time to time, provided that the bank account is not listed in current warning or restricted bank account bulletins or notices.

"Nodal Account" shall mean an inoperative account held by Freecharge with any of the bank(s) for the purpose of pooling the monies collected from Customers on behalf of the Merchant and facilitating the transfer of these funds in final settlement to the Merchant (after deducting TDR), pursuant to RBI notifications/guidelines as amended from time to time.

"Nodal Bank" shall mean the bank(s) designated by Freecharge for the purpose of pooling the funds collected from Customers on behalf of the Merchant and facilitating

the transfer of these funds in final settlement to the Merchant (after deducting TDR), pursuant to RBI notifications/guidelines as amended from time to time.

"Outstanding Amount" shall mean the amount payable by the Merchant to Freecharge, Acquiring Banks and/or Customers for any losses, costs, damages, penalties, Chargebacks, refund overdraft or credit problems suffered or incurred by the Customers, Freecharge and/or Acquiring Banks; any fees and other payments owed to Freecharge by the Merchant; and any claims or proceedings filed against Freecharge and/or Acquiring Banks by the Customers or any third Party.

"Payment Mechanism" shall mean the mechanism of making payment by utilizing the internet facilities of various Acquiring Banks, Card Associations, card payment systems and through such other modes and mechanisms of payment and delivery as may be notified by Freecharge from time to time.

"Products" shall mean goods and/or services offered for sale by the Merchant on the Merchant Site.

"Proof of Delivery" shall mean sufficient legitimate records evidencing Delivery of the Product to the Customer (i.e. Courier Company's delivery confirmation and delivery confirmation by the Customer).

"RBI" shall mean the Reserve Bank of India.

"Reserve Amount" shall mean the interest free, refundable funds provided and replenished by the Merchant to Freecharge from time to time.

"Settlement Amount" shall mean Customer Charge minus the TDR and any other charges/fees payable by the Merchant to Freecharge under this Terms and Conditions.

"Software Application" shall mean the payment solutions, payment support services and technology solutions developed by Freecharge to facilitate in accepting payments initiated by the Customers on the Merchant website or mobile application using credit/debit cards, net banking, prepaid card instruments and any other approved mode of payment.

"Transaction" shall mean every payment request/order placed by the Customer on the Merchant Site for purchasing Products from the Merchant.

"Transaction Discount Rate" or "TDR" shall mean the rates as specified in the Merchant Processing Application Form or informed by Freecharge via email to the Merchant.

"Valid Card" shall mean any unexpired credit card or debit card which is issued by an Issuing Institution designated to issue a visa, mastercard, visa electron or a ,maestro or cash card, pre-paid card or other card as may be specified by Freecharge from time to time. Provided that the card is not listed in current warning or restricted card bulletins or notices and bears the signature of the person in whose name the card is issued.

"Wallet" means a prepaid payment instrument issued in electronic or plastic form in accordance with RBI guidelines by Issuing Institution under which a purchase, payment or transfer transaction may be made by Customer to Merchant.

## 2. Scope of Services

2.1 The provisions of this Terms and Conditions shall be enforceable against either Party from the Commencement Date.

2.2 Freecharge shall act as an intermediary by creating a link between the Merchant Site and the respective Acquiring Banks by means of the Software Application, for enabling the Customers to make payment of Customer Charge on the Merchant Site for Transactions carried through the Payment Mechanism of the Acquiring Bank's Services.

2.3 Once the payment instruction is given, the Acquiring Banks will authenticate, authorize, and process the payment instructions given by the Customers on the Merchant Site in respect of the Transactions upon fulfillment of valid criteria as set forth by the Acquiring Banks or Card Associations from time to time and accordingly transfer such approved Customer Charge from the Customer Account to the Nodal Account.

2.4 The Merchant hereby directs and authorizes Freecharge to receive, hold, disburse and settle the Customer Charge to the Merchant in accordance with and subject to the provisions of this Terms and Conditions.

### 3. Merchant Obligations

3.1 The Merchant hereby declares, assures, undertakes and covenants as under:

3.1.1 The Merchant shall duly fulfill all Transactions placed on the Merchant Site in accordance with the terms and conditions on the Merchant Site and instructions of the Customer. The Merchant undertakes to ensure that the Delivery is done as per specifications of the Customer on or before the Delivery Due Date.

3.1.2 The Merchant will not offer out of stock Products for sale. The Merchant shall be solely liable for quality and efficiency and merchantability of the Products. Further the rates displayed on the Merchant Site shall include all applicable taxes.

3.1.3 The Merchant shall comply with all applicable laws, rules and regulations in offering the Products or collecting payments on its Merchant Site. The Merchant shall not offer any Products, which are illegal or offensive or banned as per the list provided by Freecharge and/or are not in compliance with applicable laws, rules and regulations whether central, state, local or international of all jurisdiction from where the Customers avail the Products. In addition, the Merchant shall comply with and shall ensure compliance by the Customers with all applicable guidelines, rules, regulations issued by RBI and guidelines set by Freecharge, Acquiring Banks and/or Card Associations.

3.1.4 The Merchant agrees and understands that Freecharge reserves the right to suspend Settlement Amount and/or Freecharge Services to the Merchant until such time that the Merchant does not discontinue selling such banned/illegal Products or does not conform to all applicable laws and regulations in force from time to time. In addition, Freecharge reserves the right to terminate this Terms and Conditions without further notice in the case of breach of this clause.

3.1.5 The Merchant shall ensure that appropriate cancellation policy, refund policy, privacy policies, disclosures/disclaimers, terms of use pertaining to the Merchant Site, the terms of the Products provided by the Merchant and terms of paying the Customer Charge are displayed conspicuously on the Merchant Site.

3.1.6 The Merchant shall prior to accepting any instructions from the Customers ensure that the Customers accepts all the Merchant terms and conditions. Freecharge reserves the right to inspect the Merchant terms and conditions at any times.

3.1.7 The Merchant shall have the marketable and legal right and title to sell Products offered by it to the Customers by using the Freecharge Services.

3.1.8 The Merchant agrees to put up such notices, disclaimers or warranties as may be required by Freecharge, Acquiring Banks or Card Associations and the Merchant shall comply with such request forthwith.

3.1.9 The Merchant shall be solely responsible for the accuracy of all information and/or validity of the prices and

any other charges and/or other information relating to the Products, which are offered on its Merchant Site.

3.1.10 The Merchant hereby agrees that it shall bear and be responsible for the payment of all relevant taxes, surcharge, levies etc. in relation to the Customer Charge using the Freecharge Services.

3.1.11 The Merchant shall comply with all applicable rules, guidelines, instructions, requests and actions, made by the Acquiring Banks and/or Card Associations from time to time. The Acquiring Banks has the right to reverse/reject settlement, suspend and/or terminate Acquiring Banks Services/Freecharge Services, make inspections or inquiries in relation to the Transaction. The Merchant understands that the Acquiring Banks and Card Association Rules form a part of this Terms and Conditions. In the event that Merchant's non-compliance of Acquiring Banks and/or Card Association Rules, results in any fines, penalties or other amounts being levied on or demanded of Freecharge by an Acquiring Bank and/or Card Association, then without prejudice to Freecharge's other rights hereunder, the Merchant shall forthwith indemnify Freecharge in an amount equal to the fines, penalties or other amount so levied or demanded. If the Merchant fails to comply with its obligations towards the Acquiring Banks and/or Card Associations, Freecharge may suspend settlement or suspend/terminate the Freecharge Services with immediate effect.

3.1.12 The Merchant shall not require the Customer to provide the Merchant with any details of the accounts/Valid Cards held by it with Issuing Institution. The Merchant shall not input any data on behalf of the Customers on the Merchant Site, failing which it will be considered as breach of trust of Freecharge.

3.1.13 The Merchant shall ensure to keep confidential, all sensitive personal information submitted by the Customers on the Merchant Site. The Merchant shall be liable to comply with existing data privacy regulations at all times.

3.1.14 The Merchant shall in writing inform Freecharge of all changes in its constitution, directors/partners/trustees, or change in the current addresses of its registered and corporate office, within seven (7) Business Days of such change having taken place listing out the names and details of the personnel in charge of the management and affairs of the Merchant. Such intimation shall be provided on the Merchant's letterhead signed by the authorized signatory of the Merchant.

3.1.15 The Merchant shall not engage in activities that harm the business and/or brand of Freecharge, the Acquiring Banks and/or Card Associations.

3.1.16 The Merchant must indicate its acceptance of all the respective Acquiring Banks and/or Card Associations, whose Payment Mechanism is being used by the Merchant, whenever it communicates the payment methods it accepts to its Customers without prejudice to anyone of the Acquiring Banks and/or Card Associations. In the event that the Merchant decides to display the logos of the Acquiring Banks and/or Card Associations whose Payment Mechanism it is providing as a Valid Card payment option to its Customers on the Merchant Site and/or other marketing materials, the Merchant must ensure that it prominently displays the logos of all the respective Acquiring Banks and/or Card Associations in the same manner and without prejudice to any one of them and in accordance with the guidelines and/or direction provided by the respective Acquiring Banks and/or Card Associations. In addition, the Merchant shall not promote, dissuade or impose restrictions/conditions on any one Valid Card

payment mechanism and/or Card Association over the other.

3.1.17 The Merchant shall be responsible to resolve all cardholder/customer account holder disputes and provide whatever assistance necessary to assist the Acquiring Banks, Card Associations and Freecharge to deal with all cardholder/Customer account holder disputes at its own cost.

3.1.18 The Merchant authorises Freecharge to share Transaction data and Customer information with the respective Acquiring Banks and Card Associations.

3.1.19 The Merchant shall maintain and run the Merchant Site as a part of its business and shall ensure that the Merchant Site does not contain libelous, defamatory, obscene, pornographic or profane material or any instructions that may cause harm to Freecharge, the Acquiring Banks, Card Associations and/or any other third party.

3.20 The Merchant agrees that Freecharge reserves the right to suspend the payment and/or Freecharge Services provided herein, forthwith, in event the Merchant fails to observe the Terms and Conditions.

3.21 The Merchant shall disclose the exact business category/business sub-category for which the Merchant will be using the Freecharge Services and shall only avail the Freecharge Services through its designated Merchant Site. In order to use the Freecharge Services for any other purpose, the Merchant understands and acknowledges that it shall notify Freecharge in writing of such change and such change will be subject to approval by Freecharge.

3.22 The Merchant understands that in order to avail the Freecharge Services and Acquiring Bank Services, the Merchant must be approved by and registered with Freecharge, the Acquiring Banks and Nodal Bank. The Merchant understands and acknowledges that Freecharge will not be able to and shall not be liable to provide Freecharge Services, if the Merchant is not approved by Acquiring Banks and/or nodal bank for any reason whatsoever. The Merchant shall provide Freecharge with all such documents as required by Freecharge to register the Merchant with Freecharge, the Acquiring Banks and Nodal Bank. The Merchant further understands and acknowledges that the Acquiring Banks and Nodal Bank have the right to withdraw their approval/consent at any time prior to or after commencement of the Freecharge Services.

3.23 The Merchant shall provide assistance and unrestricted access to Freecharge to link the Software Application with the Merchant Site. The Merchant agrees to be responsible at its own costs and for providing and maintaining all necessary equipment, software and facilities at its end so as to connect the Merchant Site to the Software Application. Each Party shall cooperate with the other Party and render assistance to it for connecting the respective software systems of the Parties. For security during transmission of data in the course of providing services to the Customers, both Parties shall mutually work upon developing and implementing various mechanisms.

3.24 The Merchant shall take all such precautions and measures as may be directed by Freecharge from time to time to ensure that there is no breach of security and the integrity of the link between the Merchant Site and the Payment Mechanism. The Merchant shall ensure that there are proper encryption and robust security measures to prevent any hacking into the information of the Customers and other data. Without prejudice to the generality of the aforesaid, Merchant shall at such time intervals as may be specified by Freecharge and/or the Acquiring Banks provide assistance in checking the integrity of the integration and

provide such reports and/or conduct such tests as may be requested by Freecharge and/or Acquiring Banks from time to time.

3.25 The Merchant shall comply with security practices and procedures as prescribed in the Information Technology Act, 2000 and the rules made thereunder and/or the RBI rules and regulations.

#### **4. Representation and Warranties**

4.1 Each Party represents warrants and undertakes that:

4.1.1 It is duly organized and validly existing under the laws of the jurisdiction in which it is established;

4.1.2 It has the requisite power and authority to execute, deliver and perform this Terms and Conditions and that this Terms and Conditions have been duly and validly authorized, executed and delivered by it;

4.1.3 Its obligations hereunder constitute legal, valid, binding and enforceable obligations;

4.1.4 The execution of this Terms and Conditions and the consummation of the Transactions contemplated herein do not breach its organizational documents or any law, provisions of any contract or order of court applicable to it and do not require any applicable governmental approval;

4.1.5 The person executing this Terms and Conditions is duly authorized to execute the Terms and Conditions for and on behalf of the respective Party and shall have the authority to bind the respective Party accordingly.

#### **5. Authorization and Authentication of Transaction**

5.1 The Merchant understands that Freecharge, Acquiring Banks and/or Card Association may reject authorization of Transaction placed by the Customer for any reason including but not limited to risk management, suspicion of fraudulent, illegal or doubtful Transactions, selling of banned items, use of compromised Valid Cards, use of fraudulent Wallets use of blacklisted/banned cards or in accordance with the RBI, Acquiring Banks, Issuing Institution and/or Card Association rules, guidelines, regulations, etc and any other laws, rules, regulations, guidelines in force in India, etc.

5.2 Freecharge and/or the Acquiring Banks may limit or restrict transaction size, amount and/or monthly volume at any time. For the purpose of clarity such limitations or restrictions may be imposed for the following reasons including but not limited to limits/restrictions on the number of purchases which may be charged on an individual Valid Card or Wallet or net banking account during any time period, rejection of Payment in respect of Customer Orders from Customers with a prior history of questionable charges, unusual monetary value of Transaction, etc.

5.3 As a security measure, Freecharge may at its sole discretion block any card number, account numbers, group of cards or Transactions from any specific blocked or blacklisted customer cards, accounts, specific, group of IP addresses, devices, geographic locations and / or any other such risk mitigation measures.

#### **6. Payment to Freecharge**

6.1 In consideration for Freecharge Services, the Merchant agrees to pay Freecharge the Transaction Discount Rate. The Transaction Discount Rate shall be deducted by Freecharge from the Customer Charge payable to the Merchant in respect of each completed Transaction. Freecharge reserves the right to revise the Transaction Discount Rate periodically with intimation to the Merchant.

6.2 The Merchant shall also pay to Freecharge (i) a non-refundable one time set up fee, and (ii) Annual Maintenance Charge payable in advance every year. Such set-up fee and Annual Maintenance Charge shall be deducted by Freecharge from the Settlement Amount payable to the Merchant as and when these amounts become due and Freecharge shall provide the Merchant an invoice with respect to the same.

6.3 Freecharge shall endeavor to instruct the Nodal Bank to transmit the Settlement Amount from the Nodal Account to the Merchant Bank Account within the time period prescribed by RBI.

6.4 The Merchant acknowledges that transmission of the Settlement Amount to the Merchant Bank Account shall be subject to reconciliation of the Customer Charge by the Acquiring Banks, Freecharge and the Nodal Bank after actual receipt of Customer Charge in the Nodal Account.

6.5 The Merchant hereby agrees that all payments with respect to refunds and Chargebacks shall be the sole responsibility of the Merchant and Freecharge shall not be liable for any claims, disputes, penalties which may arise in connection with such refunds or Chargebacks to the Merchant or the Customer. The Merchant agrees to indemnify Freecharge in respect of any claims, disputes, penalties, costs and expenses arising in relation to refunds or Chargebacks for all Transactions initiated and instructed through the Merchant Site.

6.6 Notwithstanding anything contained anywhere in this Terms and Conditions, the Merchant hereby fully confirms and agrees that Freecharge, Acquiring Bank and Nodal Bank reserve the right to reject payments with respect to any Customer Charge for reasons including but not limited to unlawful, Chargeback, refund, fraud, suspicious activities, card Authentication and Authorization issues, overpayment made due to mathematical errors or otherwise, penalties incurred, Transaction related issues, issues related to Delivery, Customer Charge or Product, if the Transaction was not made in accordance with the requirements of Acquiring Banks and/or Card Association Rules.

6.7 In the event of rejection of payments, Chargeback and/or refunds, Freecharge and the Acquiring Bank reserve the right to reverse the credit given to the Merchant for the Transaction or set-off the outstanding amount against Settlement Amount(s) due to the Merchant. Freecharge may also deduct the outstanding amount from future Settlement Amount(s) payable to the Merchant with respect to subsequent Transactions.

6.8 All Settlement Amount due to the Merchant may be suspended or delayed for a period not exceeding 6 months as Freecharge and/or the Acquiring Banks determine fit, if (a) the Merchant, its employees, its agents, its licensees, sub-contractors/sub-suppliers or its Customer commits any fraud or violates any law or legal requirement; (b) Freecharge and/or the Acquiring Banks have reasons to believe that a fraud has been committed against the Customers, Freecharge, Acquiring Banks or any third party by the Merchant, its employees, its agents, its licensees, sub-contractors/sub-suppliers, its Customers or any other third party; or has reason to believe that the Merchant its employees, its agents, its licensees, sub-contractors/sub-suppliers or the Customer has in connivance with any other person done any fraud or assisted in the same; or any transaction has been fraudulently initiated. If after the investigation/enquiry, Freecharge is satisfied that Merchant have been involved in fraudulent, misleading, illegal, unlawful, unfair/unwarranted activities and/or business practices, Freecharge shall have the right to terminate this Terms and Conditions; (c) the Merchant has pending

Chargebacks or poses high Chargeback and/or refund Risk; (d) Continuous non-delivery or delayed delivery of Products to Customers; or (e) for any other reasonable reasons. Provided that after the period of suspension/delay, Freecharge shall take any action as may be required under the circumstances by Freecharge, Acquiring Banks, Card Associations, Issuing Institutions or under any applicable law or by any regulatory authority.

## **7. Reserve Amount**

7.1 The Merchant agrees to provide Freecharge with Reserve Amount of such amounts as may be requested by Freecharge from time to time to secure the performance of the Merchant's obligations under this Terms and Conditions for reasons including: (a) high Chargeback risk, (b) credit risk, (c) refund overdraft risk, (d) non-delivery issues, (e) selling of banned items, (f) non-payment of maintenance fees or other amount payable to Freecharge, (g) any other indications of performance problems related to Merchant's use of the Freecharge Services.

7.2 If the Merchant fails to provide Freecharge with Reserve Amount within fifteen (15) days of receipt of notice for the same. Freecharge reserves the right to suspend and/or terminate the Settlement Amount payable to the Merchant or the Freecharge Services without further notice. Freecharge may use this Reserve Amount to set-off including but not limited to losses, costs, damages, claims, proceedings, penalties, Chargebacks, refunds suffered or incurred by the Customers, Freecharge and/or Acquiring Banks. This shall also include deduction of any kind of outstanding fees payable by the Merchant to Freecharge.

7.3 In case the Settlement Amount payable to the Merchant and/or the Reserve Amount (if any) is not sufficient to cover the Merchant's Outstanding Amount, then the Merchant shall pay Freecharge and/or the Acquiring Banks the remaining amount due immediately upon request. Freecharge shall be entitled to charge monthly interest on such Outstanding Amount at the end of five (5) Business Days from the date of request until the date of payment in full, at the rate of 1.5% per month. Provided that the above right of Freecharge to appropriate the Reserve Amount and set-off the Outstanding Amount in the above manner shall be in addition to and reserving fully the right of Freecharge to recover all such losses, costs and damages etc from Merchant by any other means, which may be available to Freecharge under the law. In addition, Merchant agree to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of us in connection with the outstanding amount and the collection of same from the Merchant.

## **8. Delivery**

8.1 The Merchant shall dispatch/render the Products to the Customer only upon transaction confirmation from Freecharge to the Merchant. The Merchant acknowledges that Freecharge shall give confirmation only upon receipt of transaction confirmation in respect of the Transaction from the Acquiring Bank. Freecharge shall not be responsible for any Transactions that have not been confirmed to the Merchant by Freecharge and/or the Acquiring Banks.

8.2 The Merchant shall ensure that it maintains Proof of Delivery with respect to each Transaction initiated through the Merchant Site for a period of at least one (1) year from the date of Delivery. Proof of Delivery shall be open for inspection by Freecharge and/or the Acquiring Banks at all times during working hours on Business Days. Notwithstanding any other clause of this Terms and Conditions, the Merchant understands that Freecharge

and/or the Acquiring Bank and/or Nodal Bank reserve the right to call for Proof of Delivery, at any time, before and/or after settlement of Settlement Amount to the Merchant's Bank Account with respect to any Transaction. Freecharge and/or the Acquiring Banks have the right to reverse Customer Charge amount to the Customers and/or reject the Customer Charge to Merchant, if Proof of Delivery is not provided in accordance to this Terms and Conditions.

8.3 The Merchant shall deliver the Product within the Delivery Due Date specified at the time of making the transaction on the Merchant Site. If the Merchant is unable to deliver the whole or any part of the Transaction within the Delivery Due Date, the Merchant shall inform the Customer and refund the Customer Charge in whole or in part as per the Customers instructions.

8.4 All risks associated with the Delivery by the Merchant shall be solely that of the Merchant and not Freecharge. Any and all disputes regarding quality, merchantability, non-Delivery, delay in Delivery or otherwise shall be resolved directly between the Merchant and the Customer without making Freecharge and/or the respective Acquiring Bank a party to such disputes.

## 9. Refund and Return

9.1 The Merchant agrees to process returns of, and provide refunds and adjustments for, Products sold and/or payment collected through its Merchant Site in accordance with this Terms and Conditions, the Acquiring Banks instructions and Card Association Rules. The Merchant understands that all refunds must be routed through the same Acquiring Bank payment gateway through which the Transaction was made. In the event that the Merchant initiates refunds through any other mode, the Merchant shall be fully liable for all Chargebacks raised in respect of the Transaction refunded. In event of scarcity of funds in the Nodal Account, the Merchant shall provide Freecharge with sufficient funds to process refunds initiated. Freecharge shall not be liable to process any refund initiated in the event of insufficient funds.

9.2 The Merchant shall (a) maintain a fair return, cancellation or adjustment policy in accordance with type of business; (b) disclose its return or cancellation policy to Customers at the time of purchase, (c) not give cash refunds to a Customer in connection with a card sale, unless required by law, and (d) not accept cash or any other item of value for preparing a card sale refund.

9.3 The amount of the refund/adjustment must include any associated taxes required to be refunded and cannot exceed the amount shown as the total on the original sales data except by the exact amount required to reimburse the customer for postage (if any) that the Customer paid to return Product. In the event that the Merchant accepts returns and makes an uneven exchange of merchandise (i.e., the sales price is not the same), the Merchant shall issue a credit for the total amount of the merchandise being returned and complete a new sale for any new merchandise. The Merchant understands that if the refund and/or policy prohibits returns or is unsatisfactory to the Customers, the Merchant may still receive a Chargeback relating to the Disputed Transaction.

9.4 It is hereby agreed and acknowledged by the Parties that the Transaction Discount Rate charged by 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 Customer Charge being rejected, chargeback, refunded or disputed.

## 10. Customer Support

10.1 The Merchant is solely responsible for all Customer service issues relating to the Transaction, Products sold on its Merchant Site including but not limited to Customer Charge, order fulfillment, order cancellation, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with its personnels, policies or processes. In performing Customer service, the Merchant will always present itself as a separate entity from Freecharge.

10.2 The Merchant shall provide Customer support during all Business Days. Such support shall include appropriate notice to Customers of means of contacting the Merchant including e-mail address and telephone number, in the event the Customer has questions/queries regarding the nature or quality of the Product and the procedures for resolving disputes. In the event any Customer complaints or is dissatisfied with any Product, the Merchant shall take such measures as may be required to resolve the same at its sole cost and expenses.

10.3 Under no circumstances shall Freecharge be responsible for customer support to the Customer or any third party.

## 11. Inspection

11.1 Except as required by law, the Merchant shall be solely responsible for (a) compiling and retaining permanent records of all Transactions and other data and (b) reconciling all Transaction information that is associated with its Customers.

11.2 The Merchant shall maintain records in such manner as may be specified by Freecharge and/or Acquiring Banks. Freecharge and/or Acquiring Banks shall be entitled to check and audit records and statements of the Merchant to ensure compliance with the Merchant's Obligations at such intervals or times as Freecharge and/or Acquiring Bank may deem fit.

11.3 The Merchant shall also permit the authorised representatives of Freecharge and/or the Acquiring Banks to carry out physical inspections of the place(s) of business or other facilities of the Merchant to verify if the Merchant is in compliance with its obligations.

11.4 If the Merchant refuses such inspection or provides inaccurate, untrue, or incomplete information, or fails to comply with the Terms and Conditions, Freecharge reserves the right to suspend or terminate the Freecharge Services.

## 12. Intellectual Property Rights and protection of Software Application

12.1 The Merchant hereby grants to Freecharge the right to use, display and reproduce its name, brand name, logo, wordmark, trademark, service marks ("Marks") on a non-exclusive, royalty-free basis, solely in connection with the sales, marketing and advertising Freecharge Services provided to the Merchant to the public. In the event that Freecharge is desirous of using the Merchant's Marks for any other reason, Freecharge shall take prior written consent from the Merchant. The Merchant respectively hereby confirms that the Merchant has the requisite right to use their respective Marks and to grant permission to use as stated herein. The Merchant shall not provide any marks, logos or other documents and marketing material that is the Intellectual Property of any third Party. The Merchant shall retain all intellectual property rights in such marks.

12.2 The Merchant shall prominently display on its website and/or in other online marketing materials, a statement/logo/marks/image provided by Freecharge relating to Freecharge Services and that of the respective

Acquiring Banks providing the Payment Mechanism. The Merchant must only use the logos/marks/images provided by Freecharge and no other.

12.3 Nothing contained herein shall authorize the Parties to use, apply, invade or in any manner exploit or infringe the intellectual property rights of the other Parties without prior written consent of the other Party, and the usage shall be in compliance with this Terms and Conditions and such approval and policies as may be notified from time to time. In addition, the Parties undertake not to infringe the intellectual property rights of any third party.

12.4 The Merchant undertakes not to infringe the intellectual property rights of Acquiring Banks and/or Freecharge respectively, whether directly or indirectly through any third party in the Acquiring Banks Services and software and/or Freecharge Services and Software Application. The Merchant warrants that it shall only use the Freecharge's Software Application and the Acquiring Banks software for the purposes of this Terms and Conditions. The Merchant, its employees, contractors, agents or any other person empowered by the Merchant shall not use the Freecharge Software Application and/or Acquiring Banks software in any form whatsoever, so as to: (a) design, realize, distribute or market a similar or equivalent software program; (b) adapt, modify, transform or rearrange the Software Application or the Acquiring Banks software for any reason whatsoever, including for the purpose, among other things, of creating a new software program or a derivative software program; (c) allow unauthorized use of or access to the Software Application and/or Acquiring Banks software;

(d) disassemble, reverse engineer, decompile, decode or attempt to decode the Software Application and/or Acquiring Banks software; (e) allow the Software Application and/or Acquiring Banks software to be disassembled, reverse engineered, decompiled or decoded; (f) in any way override or break down any protection system integrated into the Software Application and/or Acquiring Banks software.

12.5 The Merchant fully understands that due to use of the Customer of the Payment Mechanism, Freecharge may create or generate database in respect of such Customers. All rights and ownership with respect to such database shall vest with Freecharge.

### **13. Confidentiality**

13.1 The Parties agree to maintain the confidentiality of the Confidential Information and to protect all portions of the other Party's Confidential Information by preventing any unauthorized disclosure, copying, use, distribution, or transfer of possession of such information. Dissemination of Confidential Information by each Party shall be limited to those employees with the need to such access for the advancement of the goals anticipated under this Terms and Conditions.

13.2 The Parties shall at no time disclose or allow its officers, directors, employees, representatives or subcontractors to disclose the other Party's Confidential Information to any third party without the prior written consent of the other Party. The Parties agree to protect the Confidential Information of the other with the same standard of care and procedures used by themselves to protect their own Confidential Information of similar importance but at all times using at least a reasonable degree of care.

13.3 The obligations set out in this Clause shall not apply to Confidential Information that: (a) is or becomes publicly known other than through breach of this Clause 13; (b) is in possession of the receiving Party prior to disclosure by the

other Party; (c) is independently developed by the receiving Party; (d) needs to be disclosed to professional advisers or in accordance with the order of a competent court or administrative authority; (e) is thereafter rightfully furnished to such receiving Party by a third party without restriction by that third party on disclosure; (f) is required by law, judicial court, recognized stock exchange, government department or agency or other regulatory authority, provided that sufficient notice is given of any such requirement, by the receiving Party to the disclosing Party, in order that the disclosing Party may seek for an appropriate protective order or exemption from such requirement, prior to any disclosure being made by the receiving Party and/or its Affiliates.

13.4 Such obligation of confidentiality shall continue for a period of 1 (one) year after the termination or expiry of this Terms and Conditions.

### **14. Relationship between the Parties**

14.1 The relationship between Freecharge and the Merchant is on principal-to-principal basis. Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant, or employer and employee between the Parties hereto or any affiliates or subsidiaries thereof or to provide either Party with the right, power or authority, whether express or implied to create any such duty or obligation on behalf of the other Party.

14.2 Freecharge has no connection or interest of whatsoever nature in the business of the Merchant or the Products offered/ marketed on the Merchant Site. Freecharge does not in any manner take part in the business of the Merchant, directly or indirectly. Freecharge shall only provide Freecharge Services to the Merchant in relation to the Merchants, the Customers and the Acquiring Bank, as an independent entity and under this Terms and Conditions. For the Freecharge Services, Freecharge shall be paid a Transaction Discount Rate by the Merchant and Freecharge is nowhere connected or concerned about the revenues of the Merchant or the Acquiring Banks.

14.3 Freecharge has no relationship with the Customers and all actions under this Terms and Conditions which may affect the Customers are instructed by the Merchant. The Merchant alone shall be responsible to the Customers and neither Freecharge nor the Acquiring Bank or anybody connected to Freecharge or Acquiring Bank shall have any responsibility or liability towards the Customers and the Merchant shall keep Freecharge and Acquiring Bank fully indemnified for all times to come in this respect.

14.4 Freecharge is neither concerned nor required to monitor in any manner the use of the payment modes by the Customers for procuring / availing the Products of the Merchant. The Customers should be required to use the payment modes at their sole option and risks. The Merchant shall be required to notify this responsibility to all its Customers under the instructions provided by Freecharge.

### **15. Indemnity**

15.1 The Merchant hereby undertakes and agrees to indemnify, defend and hold harmless Freecharge and/or the Acquiring Banks including their officers, directors and agents from and against all actions, proceedings, claims (including third party claims), liabilities (including statutory liability), penalties, demands and costs (including without limitation, legal costs), awards, damages, losses and/or expenses however arising directly or indirectly, including, as a result of: (a) breach or non-performance by the Merchant of any of its undertakings, warranties, covenants,

declarations or obligations under this Terms and Conditions; (b) breach of confidentiality and intellectual property rights obligations by the Merchant; (c) any claim or proceeding brought by the Customer or any third party against Freecharge and/or the Acquiring Banks in respect of any Products or services offered by the Merchant; (d) any act, deed, negligence, omission, misrepresentation, default, misconduct, non-performance or fraud by the Merchant, its employees, contractors, agents, Customers or any third party; (e) any hacking or lapse in security of the Merchant Site or the Customer data; (f) Chargebacks or refunds relating to the Transactions contemplated under this Terms and Conditions; (g) breach of law, rules regulations, legal requirements (including RBI regulations, Card Association Rules, Acquiring Bank rules) in force in India and/or in any place from where the Customers is making the Transaction and/or where the Product is or to be Delivered and/or where the respective Issuing Institution is incorporated/registered/established; (h) any fines, penalties or interest imposed directly or indirectly on Freecharge on account of Merchant's or Transactions conducted through Merchant Site under these Terms and Conditions.

15.2 The indemnities under this Clause are in addition to and without prejudice to the indemnities given elsewhere in this Terms and Conditions.

15.3 The indemnities provided herein shall survive the termination of this Terms and Conditions.

## **16. Limitation of Liability**

16.1 Notwithstanding anything stated under this Terms and Conditions, the aggregate liability of Freecharge to the Merchant from any cause whatsoever shall not in any event exceed the sum equivalent to the preceding one month's aggregate Transaction Discount Rate margin earned by Freecharge under this Terms and Conditions from the date of occurrence of such liability.

16.2 Neither Party shall be liable to the Merchant for any special, incidental, or consequential damages, damages from loss of profits or business opportunities even if the Merchant shall have been advised in advance of the possibility of such loss, cost or damages. In no event shall Freecharge be liable to the Customers or any third party. In no event shall the Nodal Bank or the Acquiring Bank be liable to the Merchant in any way under this Terms and Conditions.

## **17. Disclaimer**

17.1 FREECHARGE WILL MAKE ALL REASONABLE EFFORTS TO PROVIDE UNINTERRUPTED SERVICE SUBJECT TO DOWN TIME AND REGULAR MAINTENANCE. MERCHANT ACKNOWLEDGES THAT ITS USE OF THE FREECHARGE SERVICES IS AT ITS SOLE RISK. THE FREECHARGE SERVICES IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. FREECHARGE AND/OR ITS ACQUIRING BANKS EXPRESSLY DISCLAIM ALL WARRANTIES OR REPRESENTATION OF ANY KIND WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY FOR ACCURACY, RELIABILITY, USEFULNESS, CONTINUITY, OR COMPLETENESS OF INFORMATION, UNINTERRUPTED ACCESS, TIMELINESS, SEQUENCE, PERFORMANCE, WARRANTY OF NON-INFRINGEMENT, WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR ANY PARTICULAR PURPOSE. FREECHARGE DOES NOT WARRANT THAT FREECHARGE SERVICES, ACQUIRING BANK'S SERVICES AND PAYMENT MECHANISM WILL BE PROVIDED UNINTERRUPTED OR FREE FROM ERRORS OR IT IS FREE FROM ANY VIRUS OR OTHER MALICIOUS, DESTRUCTIVE OR CORRUPTING CODE,

PROGRAM OR MACRO. THE MERCHANT ALSO ACKNOWLEDGES THAT THE ARRANGEMENT BETWEEN ONE OR MORE ACQUIRING BANKS AND FREECHARGE MAY TERMINATE AT ANY TIME AND SERVICES BY SUCH ACQUIRING BANKS MAY BE WITHDRAWN.

17.2 Freecharge shall not be liable to the Merchant for any loss, injury or damage whatsoever or howsoever caused or arising, directly or indirectly, including without limitation, as a result of loss of data; interruption or stoppage to the Customer's access to and/or use of the Freecharge site, Freecharge Services and the Payment Mechanism; interruption or stoppage of Freecharge site; non-availability of connectivity between the Merchant Site and Freecharge site. In the event of extra settlement in the Merchant's Account, Freecharge shall have the right to reverse the funds from the Merchant Account and/or set it off against the Merchant's subsequent payments in the Nodal Account. Freecharge shall not be responsible for unauthorized access to or alteration of your transmissions or data, any material or data sent or received, or not sent or not received, or any transactions entered into through the Freecharge Services. The Merchant specifically agree that Freecharge is not responsible for any content, data, information sent using and/or included in the Freecharge Services by any third party.

17.3 Freecharge's sole obligation and the Merchant's sole and exclusive remedy in the event of interruption in Freecharge Services, or loss of use and/or access to Freecharge Services, the Acquiring banks Services and the Payment Mechanism and services, shall be to use all reasonable endeavors to restore the services and/or access to the Payment Mechanism as soon as reasonably possible.

17.4 Freecharge or Acquiring Bank obligations are subject to following limitations: (a) messages 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 Freecharge shall not be liable for processing such messages (b) messages that originate from the cardholder are deemed to be authorized by the cardholder and Freecharge shall not be required to check its veracity and Freecharge shall not be liable for processing such messages. (c) Freecharge and/or the Acquiring Banks shall have no liability for any failure or delay in performing its obligations if such failure or delay: (i) is caused by the Merchant's acts or omissions; and (ii) results from actions taken by Freecharge or the Acquiring Banks in a reasonable good faith in accordance with any applicable law, rule or regulation of any governmental authority or to prevent fraud on cardholders/accounts.

## **18. Termination**

18.1 This Terms and Conditions may be terminated by either Party by giving 30 (thirty) days prior written notice to the other Party.

18.2 Freecharge may terminate this Terms and Conditions forthwith in the event: (a) the Merchant fails to perform its obligations hereunder or is in breach of any Terms and Conditions and such breach or non-performance is not rectified within seven (7) Business Days of notice highlighting such breach or non-performance; (c) the Merchant is in violation of any law or regulation; (d) the Merchant is adjudicated as bankrupt, or if a receiver or as a trustee is appointed for it or for a substantial portion of its assets, or if any assignment for the benefit of its creditors is made and such adjudication appointment or assignment is not set aside within 90 (ninety) Business Days; (e) the Merchant goes into liquidation either voluntarily or compulsorily; (f) it is prohibited by any regulatory or



statutory restriction from continuing to provide services under this Terms and Conditions to Merchant.

18.3 The termination under this clause is in addition to and without prejudice to the termination rights given to the Parties under any other clause.

## 19. Consequence of Termination

19.1 The termination of this Terms and Conditions shall not affect the rights or liabilities of either Party incurred prior to such termination. In addition, any act performed during the Term which may result in a dispute post termination or any provision expressed to survive this Terms and Conditions or to be effective on termination or the obligations set out in this Clause shall remain in full force and effect notwithstanding termination.

19.2 Parties shall undertake to settle all outstanding charges within 30 (thirty) days of the termination taking effect.

19.3 Where any payments claimed by Freecharge exceeds the Settlement Amount due to the Merchant the difference thereof shall be a debt due from the Merchant to Freecharge and be recoverable by appropriate legal action. Without prejudice to Freecharge's rights and remedies, in the event that the Merchant does not make any payments to Freecharge by its due date or on demand as required under this Terms and Conditions, Freecharge shall be entitled to charge daily compounded interest on such overdue amount from the due date until the date of Settlement Amount in full, at the rate of 2.5% per month. This section shall not preclude Freecharge from recourse to any other remedies available to it under any statute or otherwise, at law or in equity.

19.4 All materials, documentation, instruction manuals, guidelines, letters and writings and other materials issued by Freecharge from time to time in respect of this Terms and Conditions, whether in respect of the utilization of the Payment Mechanism or otherwise shall be returned by the Merchant to Freecharge upon termination.

19.5 The Merchant agrees and confirms that the Merchant shall remain solely liable after the termination of this Terms and Conditions for all Chargebacks, refunds, penalties, loss, damages or cost incurred by Freecharge, Acquiring Banks, Card Associations and/or Customers and for all claims and proceedings arising against Freecharge and/or Acquiring Banks with respect to this Terms and Conditions. At the time of termination, taking into consideration the Transaction record of the Merchant during the Term, Freecharge may retain such amount from the Reserve Amount and Settlement Amount payable to the Merchant (including Settlement Amounts withheld) as may be determined by Freecharge as security deposit to cover Chargeback risk, refund risk or any potential loss, damages, penalties, cost that may be incurred by Freecharge, Acquiring Banks, Card Associations and/or Customers for such period as may be then prevailing in respect of the time-period allowed to Customers for initiating a Chargeback under the Card Association Rules. In the event that such retained amount is not sufficient to cover all Outstanding Amounts of the Merchant post termination, the Merchant shall ensure that it pays Freecharge all pending amounts within 10 (ten) days of receiving the demand notice and shall at all times keep Freecharge indemnified in this respect. This Clause survives the termination of this Terms and Conditions.

## 20. General Provisions

20.1 Assignments: Freecharge may assign, in whole or in part, the benefits or obligations of this Terms and Conditions its affiliates of other group company, pursuant to an acquisition, restructuring or re-organization, merger,

demerger of its organization or operations. Freecharge shall provide a thirty (30) days prior intimation of such assignment to the Merchant, which shall be binding on the Parties. Merchant shall not assign, in whole or in part, the benefits or obligations of this Terms and Conditions to any third Party without consent of Freecharge.

20.2 Force Majeure: Neither Party shall be liable for its failure to perform under this Terms and Conditions as a result of any event of force majeure events like acts of god, fire, wars, sabotage, civil unrest, labour unrest, failure of any communication equipment, technology failure, action of statutory authorities or local or central governments, change in laws, rules and regulations, affecting the performance of such Party or the Acquiring Banks.

20.3 Governing Law, Settlement of Disputes and Jurisdiction: This Terms and Condition (and any dispute or claim relating to it, its enforceability or its termination) is to be governed by and construed in accordance with the laws of India. The Parties agrees that, if any dispute(s) or difference(s) shall arise between the Parties in connection with or arising out of this Terms and Conditions, the Parties shall attempt, for a period of 30 (thirty) days from the receipt of a notice from the other Party of the existence of a dispute(s), to settle such dispute(s) by mutual discussions between the Parties. If the said dispute(s) cannot be settled by mutual discussions within the thirty-day period provided above, either Party may refer the matter to a sole arbitrator to be mutually appointed in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held under the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held in English language at New Delhi. The courts at New Delhi shall have the exclusive jurisdiction over any disputes relating to the subject matter of this Terms and Conditions.

20.4 Waiver: Unless otherwise expressly stated, the failure to exercise or delay in exercising a right or remedy under this Terms and Conditions shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this Terms and Conditions shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

20.5 Survival of Provisions: The Terms and Conditions that by their nature and content are intended to survive the performance hereof by any or all Parties hereto shall so survive the completion and termination of this Terms and Conditions.

20.6 Severability: If any provision of this Terms and Conditions is or becomes, in whole or in part, invalid or unenforceable but would be valid or enforceable if some part of that provision was deleted, that provision shall apply with such deletions as may be necessary to make it valid. If any court/tribunal of competent jurisdiction holds any of the provisions of this Terms and Conditions unlawful or otherwise ineffective, the remainder of this Terms and Conditions shall remain in full force and the unlawful or otherwise ineffective provision shall be substituted by a new provision reflecting the intent of the provision so substituted.

20.7 Non-Exclusivity: It is agreed and clarified that this Terms and Conditions is on a non-exclusive basis and the Parties are at liberty to enter into similar agreements with others.

20.8 Entire agreement: This Terms and Conditions constitute the entire agreement and understanding between the Parties, and supersede any previous agreement or understanding or promise between the Parties, relating to the subject matter.

20.9 Notices: All notices, requests, demands, waivers and other communications required or permitted to be given shall be in writing through certified or registered mail, courier, email, facsimile or telegram to be sent to the address mentioned on the Merchant Processing Application Form. All such notices, requests, demands, waivers and other communications shall be deemed duly given (i) if by personal delivery, on the day after such delivery, (ii) if by certified or registered mail, on the 10<sup>th</sup> (tenth) day after the mailing thereof, (iii) if by courier service or similar service,

on the day delivered, or (iv) if by email, facsimile or telegram, on the day following the day on which such email, facsimile or telegram was sent, provided that a copy is also sent by registered mail and, in the case of a facsimile, electronic confirmation of receipt is received.

20.10 Amendment: These Terms and Conditions shall not be varied, amended or modified by any of the Parties in any manner whatsoever unless such variation, amendment or modification is mutually discussed and agreed to in writing and duly executed by both the Parties.

FRECHARGE