



## Public offer

Last Update: 08<sup>th</sup> August 2023

By accessing and browsing the SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C. ("SMARTWAVE") website <https://smartwavepayment.com/en/> or by using and/or downloading any content or Installing any part of the Service whichever earlier, you agree to and accept the Public offer as set forth below.

<https://smartwavepayment.com/en/> is copyrighted and proprietary to SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C. To become an authorized user, you must enter into a Merchant Agreement with SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C. Any distribution or use of your assigned identification code and password not expressly authorized herein is prohibited. All rights not expressly granted herein are reserved by SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C.

The Online Registration Form, Privacy Policy, Terms of Use and Public offer mentioned herein shall be collectively termed as an "Agreement". This Agreement is a legal document between the Merchant (as defined below) / You and SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C. ("SMARTWAVE", "Service Provider", "we", "our" or "us") governing the Merchant's relationship with SMARTWAVE. SMARTWAVE and Merchant are hereinafter individually referred as "Party" and collectively referred to as "Parties".

This Agreement shall govern the terms of use of SMARTWAVE Online Payment Aggregator Services ("SMARTWAVE services") and collecting and transfer of amount collected through online payments received through SMARTWAVE services. In the event that the Parties have agreed in writing that other Agreement shall apply, the latter Agreement shall apply only for the specific arrangements for which they have been agreed.

We reserve the right, at our sole discretion to modify the terms of this Agreement at any time without any prior written notice to you. Any modifications will be effective immediately upon the date of posting of the modified Agreement on our website and you hereby waive any right to receive additional notice of such changes or modifications. Your continued use of Services following the posting of changes will mean that you accept and agree to the modified Agreement; therefore, it is your responsibility to review these Agreement, policies and guidelines as mentioned herein. If you do not agree to the



amended / revised terms, you must stop using the Services. Any use of the Services in violation of the Agreement of the Agreement may result in among other things termination or suspension of your right to use the Services. When you use Services provided by us, you will be subject to rules, guidelines, policies, terms, and conditions applicable to such Services, as may be modified from time to time and they shall be deemed to be incorporated into this Agreement and shall be considered as part and parcel of this Agreement. You are solely responsible for understanding and complying with any and all laws, rules and regulations that may be applicable to you in connection with your use of the Services.

This Agreement is system generated and does not require a physical or digital signature. This Agreement is governed by the Laws of the United Arab Emirates and rules and guidelines set by the UAE Central Bank, Financial institutes, Card Companies, Facility Providers from time to time.

This Agreement shall be binding on SMARTWAVE and Merchant / You from the date of signing up SMARTWAVE. You must forward all the requisite documents to SMARTWAVE for processing your Merchant account. SMARTWAVE will not release any payout to you unless the entire documentation process is complete. The Merchant is aware that SMARTWAVE is liable to comply with all the rules and guidelines set by the UAE Central Bank and other Financial Institutes, hence the Merchant shall co-operate and provide all the necessary documents as and when asked by SMARTWAVE.

## **I. SCOPE OF SERVICES:**

- I.** SMARTWAVE has agreed to avail the facilities offered through Internet by various Acquiring Banks, Financial Institutes, Card Schemes, Payment Instrument Providers, Issuing Banks, software providers, as well as third party SMARTWAVE (hereinafter referred to collectively as "Facility Providers"). These facilities and services include the provision of internet based electronic commerce, internet payment gateway and electronic software distribution services and provides Authorization and settlement facilities in respect of payment instructions initiated by various Customers of the Merchants on the Merchant's Website / apps / web links / payment link etc. These Facility Providers allows SMARTWAVE to use the internet payment gateways developed by them to process all type of online Payment Instruments and all online Transaction initiated by a Customer on Merchant's website which includes websites / apps / web links / payment links etc.
- II.** SMARTWAVE is inter alia engaged in the business of offering e-commerce services which include bill presentments / payment and accepting instructions through the internet in respect of payments to be made by the Customers using valid Payment Instruments to purchase / avail various Products and Services

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offered by Merchant and accordingly transfer funds from the Customer's bank account to the Merchant's bank account. SMARTWAVE act as an authorised Payment Aggregator that facilitate e-commerce websites and Merchants to accept various Payment Instruments from the Customers for completion of their payment obligations.

- III. For providing the above stated e-commerce services SMARTWAVE has signed up with Facility Providers and has requested them to accept the instructions given by Customers of Merchant through a valid online Payment Instrument and support SMARTWAVE to facilitate the online Transactions and further direct and settle the proceeds of Transactions from Customer's bank account to SMARTWAVE's Escrow Bank Account and in turn to the bank account of Merchant.
- IV. SMARTWAVE has also established a Website with the domain name <https://smartwavepayment.com/en/> ("SMARTWAVE website") and App to enable its Merchant to link up with various payment gateways and Facility Providers so as to enable the Merchant's Customers to place Customer Orders for purchase and pay for the Products and Services through the Internet.
- V. SMARTWAVE is desirous of passing on all these services to its appointed Merchants as more particularly hereinafter provided on the Agreement hereinafter appearing and subject to the Merchant giving the indemnities and the declarations hereinafter contained.
- VI. Along with services mentioned herein; if required by Merchant, SMARTWAVE shall additionally provide payment gateway Service, electronic bill presentment and payment settlement to the Merchant in accordance with the Agreement as detailed in this Agreement.
- VII. The Merchant shall follow the approval and registration process as per the set process of SMARTWAVE.

## II. TERMS AND CONDITIONS:

### 1. DEFINITIONS:

**1.1. "Acquiring Bank"** shall mean various banks and Financial Institutions licensed to acquire, authorize and authenticate the online payment Transactions.

**1.2. "Agreement"** shall mean this Public offer, declaration and indemnity and any and all tables, schedules, appendices, annexures and exhibits attached to it or incorporated in it by reference.

**1.3. "Authentication"** shall mean the process by which the Customer's identification is authenticated by the Card Schemes / Issuing Bank / Payment Instrument Provider.

**1.4. "Authorization"** shall mean the process hereunder by which the Issuing Bank / Institution and /or the relevant Acquiring Banks / Payment Instrument Provider, Card



Schemes electronically or otherwise convey the approval of a charge on a Transaction being undertaken by a Customer on Website / App / web link / payment link.

**1.5. "Business days"** shall mean any day on which SMARTWAVE / Service Provider, Facility Providers are open for Business in the UAE other than Sunday or any day which is a public holiday in the UAE and / or in the Emirate of Dubai.

**1.6. "Card Schemes"** shall mean national or payment Card Networks including but not limited to Master Card, Maestro, Visa, Diners, American Express etc. which Authenticates, Authorizes and enables card Transactions.

**1.7. "Chargeback"** shall mean any approved reversal of any online card Transaction made by the Customer of Merchant on account of

- any alleged forgery of his card or other details
- duplicate processing of the Transaction;
- any amount required to be refunded due to, denial of Transaction by the Customer as wrongly charged payment / extra payments and / or due to the fraudulent use / misuse of the personal and financial information of the Customer by any unauthorized person;
- non-Delivery or deficiency in the Merchant's Product or Service and / or any other reason as required / approved by the concerned banks, as the case may be.

**1.8. "Customer"** means any person holding a valid Payment Instrument and who desires to purchase Products or Services from the Merchant and makes payment for the same over the Internet using a Payment Instrument.

**1.9. "Customer Charge"** means

- in respect to Product means the sale price of the Product purchased by the Customer plus the shipping charge (if any) and all other taxes, duties, costs, charges and expenses in respect of the Product that are to be charged to the Customer's valid Payment Instrument.
- in respect to Services means the sale price of the Services rendered to the Customer plus the all other taxes, duties, costs, charges and expenses in respect of the Services that are to be charged to the Customer's valid Payment Instrument.

**1.10. "Customer Order"** shall mean an order for purchase of Products or availing of Services provided by the Merchant at the Merchant's website and made by the Customer at the Merchant's website and every Customer Order shall be specifically designated by a Customer Order number on mention or use of which the details of the Customer Order could be obtained by the Customer from the Merchant on-line at the website, including without limitation details of the status of the Customer Order

**1.11. "Delivery"** means,



- in respect of a Product, Delivery of the Product by a reputed courier / parcel Service to the Customer at the address specified by the Customer in this behalf proof of which shall be submitted by the Merchant to SMARTWAVE / Service Provider electronically through their SMARTWAVE account backend to the satisfaction of SMARTWAVE / Service Provider and the Facility Providers. SMARTWAVE / Service Provider and the Facility Providers reserve the rights to call for physical Proof of Delivery in respect of a Product, Delivery / performance of the Product, or
- in respect of a Service, Delivery / performance of the Service, proof of which shall be submitted by the Merchant to SMARTWAVE / Service Provider electronically through their SMARTWAVE account backend to the satisfaction of the Service Provider and the Facility Providers. SMARTWAVE / Service Provider and the Facility Providers reserve the rights to call for physical Proof of Delivery in respect of a Service, Delivery / performance of the Service.

**1.12. "Effective Date"** means the date of execution of this Agreement or date of provision of Services by Service Provider to the Merchant whichever earlier.

**1.13. "EMI"** means equated monthly instalment payment plan which is a facility provided by the Issuing Bank / Payment Instrument Provider to its Customer.

**1.14. "Escrow Bank Account"** mean the bank account held by Service Provider in bank(s) appointed by the Service Provider for purpose of pooling funds collected from Customers on behalf of the Merchant and facilitating the transfer of funds in final settlement to the Merchant after deduction of TDR or any other amount receivable from Merchant pursuant to the applicable legislation and guidelines amended from time to time

**1.15. "Facility Providers"** means various Acquiring Banks, Financial Institutes, Card Schemes, Issuing Bank / Institutions, Payment Instrument Provider, software providers, as well as third party service providers that participate in Authorization / Authentication / facilitation of online payments. These Facility Providers allows SMARTWAVE / Service Provider to use the internet payment gateways developed by them to process all type of online Payment Instruments and all online Transaction initiated by a Customer on Merchant's website.

**1.16. "Financial Institutes"** means all bank and non-banking Financial Institutes or any financial institute other than Acquiring Banks, Card Schemes and Payment Instrument Providers that are authorized to issue a valid online Payment Instruments and / or to participate as facilitator of an online Transaction.

**1.17. "Issuing Bank / Institution"** in respect of a Customer, means the Bank or Institution which has issued the valid Card and / or any other Payment Instrument to the Customer with which Customer makes the payment for the Products / Services.





**1.18. "Merchant's Website"** shall mean the Web-Site / mobile app / web link / payment link as mentioned established by the Merchant for the purposes of enabling its Customers to place Customer Order for purchase of Products And Services through the Internet.

**1.19. "Payment Instrument/s"** means a valid Payment Instruments physical or virtual issued by an authorized Card Schemes, Financial Institute and any other Payment Instrument Providers that are authorized to issue valid card and / or any other Payment Instrument to the Customer which enables the Customer to initiate and complete an online Transaction to purchase / avail Products and Services of Merchant.

**1.20. "Payment Instrument Provider"** shall mean any legal entity authorized to issue online Payment Instruments such as wallet, prepaid cards etc. including Issuing Bank / Institution. The term Payment Instrument Provider does not include Card Schemes, Acquiring Banks and Financial Institutes.

**1.21. "Payment Mechanism"** means the entire processing and facilitation of online payments by Service Provider with help of the services of Facility Providers, mechanism through the Internet utilizing the internet banking facility; internet based electronic commerce, internet payment gateway of various Facility Providers and through such other modes and mechanisms of payment and Delivery as may be notified by the SMARTWAVE / Service Provider from time to time.

**1.22. "Product"** means a tangible Product that is manufactured or distributed by the Merchant and that is purchased by the Customer, the payment for which is to be made on the Customer's valid Payment Instrument.

**1.23. "Proof of Delivery"** shall mean

- in respect of Product, sufficient legitimate records evidencing Delivery of the Product to the Customer (i.e. charge slips bills, etc.), All Proof Of Delivery of Products shall be maintained by the Merchant for a period of at least one year from the date of Delivery by the Merchant and shall be open to inspection by SMARTWAVE / Service Provider and the Facility Providers at any time whatsoever.
- in respect of Service, sufficient legitimate records evidencing receipt of the Service to the Customer (i.e. Invoice, bills, etc. All proof of Delivery of Services shall be maintained by the Merchant for a period of at least one year from the date of Delivery by the Merchant and shall be open to inspection by Service Provider and the Facility Providers at any time whatsoever.

**1.24. "Refund"** shall mean a Refund issued by the Merchant through merchant panel provided by Service Provider to the Merchant within the timeline provided by Facility Providers or Tr i.e date of expiry of Refund period fixed by Merchant whichever earlier.



**1.25. "Service"** means tangible or intangible Services provided to the Customer by the Merchant the payment for which is to be made on the Customer's valid Payment Instrument.

**1.26. "Service Provider's Website"** shall mean the website with the domain name "https://smartwavepayment.com/en/" established by the Service Provider for the purposes of enabling on-line trading instructions by the Customers of the Merchant to the Service Provider.

**1.27. "Td"** shall mean date of confirmation by the Merchant to the Service Provider about Delivery of Product / Services to the Customer

**1.28. "Tp"** shall mean date of charge / debit to the Customer's bank account against the purchase of Product / Services.

**1.29. "Tr"** shall mean date of expiry of Refund period as fixed by the Merchant.

**1.30. "Transaction"** means every Customer Order that result in the Delivery by the Merchant to the Customer of the Product(s) / Services in respect of which the Customer Order was placed by Customer on Merchant's website processed by Service Provider's Payment Mechanism successfully

**1.31. "Transaction Discount Rate (TDR)"** means, the means, the non-refundable rate charged to the Merchant by SMARTWAVE / Service Provider on the Transaction amount processed through SMARTWAVE / Service Provider and / or the Facility Providers payment gateway system and it includes the Merchant Discount Rate as notified by the UAE Central Bank, the Facility Providers from time to time and the processing and other charges charged by SMARTWAVE / Service Provider as its service charges from time to time. The Transaction Discount Rate is exclusive of GST and / or any other Taxes as notified by the Government from time to time. Transaction Discount Rate applicable to this Agreement is accepted by both the Parties by way of a written electronic communication. However, the Transaction Discount Rate may be revised quarterly by SMARTWAVE / Service Provider, and SMARTWAVE / Service Provider will advise the Merchant of any such change not less than 7 days in advance of its effectiveness.

**1.32. "Ts"** shall mean date of intimation by the Merchant to the Service Provider about shipment of Product / Services.

## **2. TERM / NON-EXCLUSIVE:**

**2.1. Term:** These Agreement shall become effective on the Effective Date and shall remain in full force until a notice of termination by SMARTWAVE or the Merchant is given, or until terminated under other provisions of the Terms and Agreement executed between the Parties.



2.2. Non-exclusive: Nothing in this Agreement shall prohibit SMARTWAVE from furnishing the services similar to those provided under these Terms and Agreement to others, including competitors of the Merchant.

### **3. PAYMENT TERMS:**

3.1. Subject to the terms of this Agreement, SMARTWAVE will send to Merchant's bank account Customer Charge from Transactions taking place on Merchant's website using the Payment Mechanism of SMARTWAVE, minus any fees including TDR, invalidated payments, convenience fee, handling fee, express payout charges, platform fee, Chargebacks, Refunds or any Refund processing charges, bank fees or penalty by banks for processing chargebacks, excessive Chargebacks or Refunds, applicable taxes, any excess amount paid to Merchant and other amounts that the Merchant owe to SMARTWAVE. If there are insufficient funds available in Merchant's account, SMARTWAVE shall claim from the Merchant such amount to the extent the funds are insufficient; which the Merchant on receipt of the claim undertakes forthwith to pay to SMARTWAVE without any delay.

**3.2. Rejection of Payment.** SMARTWAVE and the Facility Providers may reject payment in respect of Customer Orders where:

- The Merchant has not obtained a necessary Authorization or SMARTWAVE, Facility Providers and the Acquiring Banks are entitled to reject payment in terms of clauses hereof;
- Any Customer Order is deemed to be fraudulent or otherwise illegal;
- Any Customer Order which the Customer refuses to pay because the Product / Service was not as promised or was defective or was not delivered;
- Any Customer Order in respect of which Customer raises a Chargeback/ Dispute;
- The card Issuing Bank advises that the card number does not match any number on file;
- Payment in respect of the Customer Order or the relevant instalment of the purchase price has already been made;
- Any Products or Services provided by the Merchant using SMARTWAVE's Payment Mechanism without prior written approval of SMARTWAVE.
- The Customer Order was not confirmed by Merchant within permissible time mentioned on the panel provided by SMARTWAVE from the date the Customer Order was placed;
- Any amount duly receivable by SMARTWAVE from Merchant.

3.3. Where SMARTWAVE and the Facility Providers are entitled to reject payments in respect of a Customer Order or demand a Refund, SMARTWAVE shall be entitled to set off and deduct from any payment due to the Merchant and in doing so SMARTWAVE may:





- debit the Merchant's account held with SMARTWAVE, forthwith; and / or;
- deduct the outstanding amount from subsequent credits to the Merchant's account, and / or;
- if there is insufficient funds available therein; claim from the Merchant the amount paid to the Merchant by SMARTWAVE in respect of the relative sales; which the Merchant on receipt of the claim from SMARTWAVE undertakes forthwith to pay to SMARTWAVE, the amount of the Refund to the extent to which such funds proves inadequate;

3.4. Payment of Customer Charge in respect of a Customer Order shall be made as per the TDR, other charges and payment schedule mentioned in Agreement between SMARTWAVE and Merchant which is further agreed by both the Parties in writing through electronic communication from time to time. The Customer charges to be paid in the bank account of the Merchant instructed by the Merchant in writing and on receipt of Proof of Delivery of the relevant Product / Service and SMARTWAVE will deliver its payments to the Merchant as promptly after these dates as is practicable. The TDR amount charged by SMARTWAVE to the Merchant is non-refundable; although the Merchant shall be liable to pay any Refund charges if it is required to be paid by the Facility Providers.

3.5. The Merchant may avail the facility of Express Settlement i.e. Settlement of Customer Charge on Tp+0 basis i.e. on the date of Transaction subject to approval of SMARTWAVE. The Merchant has further instructed SMARTWAVE to charge express pay-out charges on the Transaction amount to the Merchant for the facility of Express Settlement. The Merchant agrees and confirms that facility of Express Settlement i.e Settlement of Customer Charge on Tp+0 basis i.e. on the date of Transaction is subject to approval of SMARTWAVE and SMARTWAVE shall have a right and sole discretion to revoke the approval without any reason whatsoever. The Merchant confirms that where Tp is a Sunday or public holiday the payment of Customer Charge shall be made on the next Business day of the date of Transaction.

**3.6. EMI Services:** The Merchant hereby agrees that EMI services shall be offered at the discretion and as per the Agreement of the respective Issuing Bank / Institution, Payment Instrument Provider, Facility Providers and SMARTWAVE. The Merchant further undertakes that:

- EMI calculator shall be available on the Merchant website in order to provide the EMI calculation to the Customer. The Customer shall be charged the full amount of the Customer Charge at the time of making Transactions.
- Thereafter, SMARTWAVE shall send details of settled Transactions for conversion of the Transaction to EMI along with complete details to the Issuing Bank / Payment Instrument Provider within prescribed time. SMARTWAVE shall not be responsible if the EMI Transactions are cancelled / reversed.



- The Issuing Bank / Payment Instrument Provider shall convert all Transactions approved by them to EMI within their prescribed time. The final decision on whether a Transaction can be converted to EMI is taken solely by the respective Issuing Bank / Payment Instrument Provider.
- The Merchant further confirms, undertakes and assures that SMARTWAVE shall not be liable in case of any dispute raised by the Customer with respect to the rejection of EMI option to a Customer after a Transaction has been confirmed, irrespective of the Customer Charge amount is already paid to the Merchant or not. The Merchant assures that the Customer shall raise such dispute related to non-conversion of EMI directly with the Issuing Bank / Payment Instrument Provider.
- The Merchant agrees that Issuing Bank / Payment Instrument Provider may charge interest rate to the Customers as per its internal policies and other regulatory factors from time to time. SMARTWAVE has no authority deciding the rate of interest, repayment terms, charges and any other Agreement of the EMI Scheme.

**3.7. Taxes:** Each Party shall bear and pay respective taxes as made applicable by the Government authorities from time to time. The Merchant agrees to fulfill all regulatory obligations, including submitting accurate tax returns for transactions with SMARTWAVE as mandated by the relevant Government authority. In case any credit, refund or other benefit is denied to SMARTWAVE or is delayed due to any non-compliance by the Merchant or due to non-furnishing or furnishing of incorrect or incomplete documents by the Merchant with the Government or SMARTWAVE, the Merchant agrees to indemnify, defend and hold harmless SMARTWAVE and reimburse SMARTWAVE for the loss including, but not limited to, the tax loss, interest, penalty, reasonable costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise; including, without limitation, reasonable attorneys' fees and costs (whether or not a suit is filed).

**3.8. Merchant's Minimum Deposit Account Balance (If applicable):** It is mutually agreed by the Merchant and SMARTWAVE, that SMARTWAVE may retain a minimal amount "Reserve Deposit Amount" out of amounts payable to the Merchant in terms of Clause 3 hereof. The Merchant agrees that SMARTWAVE will impose additional Reserve Deposit Amounts, either temporarily or permanently, which are more restrictive than limits placed on the Merchants in order to reduce SMARTWAVE's reasonable apprehension of risk of loss under varying circumstances.

#### **4. COVENANTS AND REPRESENTATIONS OF THE MERCHANT:**

**4.1.** SMARTWAVE and the Facility Providers shall not be a Party to the Agreement or dispute between the Customer and the Merchant. In the event of any dispute between the Merchant and the Customer whether in relation to any deficient, improper or



incomplete Product or Service provided by the Merchant or otherwise, SMARTWAVE and the Facility Providers shall not be made a Party to any litigation, arbitration or other proceeding instituted in respect of such disputes.

4.2. The Merchant undertakes to make timely payments of all the monies, charges, and Chargeback amounts, Refund amount duly payable to SMARTWAVE as and when demanded by SMARTWAVE. Merchant also undertakes to payback any amount received in excess or erroneously from SMARTWAVE within 7 (Seven) calendar days of receipt of claim from SMARTWAVE without any delay, demur or protest.

4.3. The Merchant assures and guarantees to SMARTWAVE and the Facility Providers that the Merchant is acting in compliance with and shall at all-time act in compliance with all laws, rules and regulations, notification, and guidelines set by the UAE Central Bank / SMARTWAVE and the Facility Providers. Any Product or Service which is not in compliance with all applicable laws and regulations whether federal, state, local or international including the laws of the UAE shall not be offered by the Merchant to its Customers through the services of SMARTWAVE.

4.4. The Merchant further confirms, undertakes and assures that in the event of violation of any of the byelaws and standards of UAE Central Bank, the Facility Providers and SMARTWAVE by the Merchant AND any penalty or charge imposed by the Facility Providers on SMARTWAVE for any violation for any reason whatsoever, the Merchant shall on receipt of the claim from SMARTWAVE undertakes forthwith without any demur, protest, dispute or delay, to pay to SMARTWAVE, the amount of the penalty / fine imposed by the Facility Providers on SMARTWAVE.

4.5. The Merchant shall not at any time require the Customer to provide the Merchant with any details of the accounts held by them with the Issuing Bank / Payment Instrument Provider including, the passwords, account number, card numbers and PIN which may be assigned to them by the Issuing Banks or Payment Instrument Provider from time to time.

4.6. In the event of any inconsistency between any provision of this Agreement and the standards set out by Facility Providers, the standards shall govern.

4.7. The Merchant is aware that SMARTWAVE and the Facility Providers are not guaranteeing any Transactions with the Customers in any manner whatsoever. The Merchant assures that the Customers will place the orders themselves and agree not to place orders on behalf of Customers.

4.8. The Merchant shall use SMARTWAVE's services and other facilities offered on SMARTWAVE's website only for the Merchant's website as mentioned Agreement between SMARTWAVE and Merchant and for no other website/s. The Merchant shall use SMARTWAVE's Payment Aggregator services only for selling / providing the Products and Services mentioned in Agreement between SMARTWAVE and Merchant

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and for no other Products or Services. In case of any deviation from the Services without prior written approval of SMARTWAVE, the Merchant undertakes to be abiding by the decisions of SMARTWAVE including suspension of the pay out or Refund to Customer or termination of SMARTWAVE's services.

4.9. The Merchant must ensure that it shall not:

- a) undertake / allow Transactions for anything other than the genuine purchase of the Products and / or Services that the Merchant provides;
- b) impose any minimum or maximum Transaction values;
- c) discriminate against the use of any Card or Payment Instrument in any way;
- d) split a Transaction into two or more Transactions;
- e) accept a Transaction or present Transaction Data for processing which was not undertaken directly between the Merchant and the Customer;
- f) accept or process Transactions in order to give Customers cash;
- g) accept any Transaction using any Card or Payment Instrument issued in the Merchant's name, or related to the Nominated Bank Account or of a partner in, or director or other officer of Merchant's Business or the Business of the Merchant, or of the spouse or any member of the immediate family or household of any such person;
- h) submit Transaction data which Merchant know or ought to have known is illegal;
- i) Refund Transactions to a Card / Payment Instrument which was not originally used to make such Transactions, and Merchant must not, under any circumstances, accept money from a Customer in connection with processing a Refund to the Customer's Account.

4.10. The Merchant acknowledges that the Facility Providers and SMARTWAVE have the right to enforce any provision of the standards and to prohibit any Merchant conduct that may injure or may create a risk of injury to the Facility Providers and SMARTWAVE including injury to reputation, or that may adversely affect the integrity of the Facility Providers and SMARTWAVE's core payment systems, information or both. The Merchant agrees that he will not take any action that might interfere with or prevent exercise of this right by the Facility Providers and SMARTWAVE.

4.11. The Merchant shall take all precautions as may be feasible or as may be directed by SMARTWAVE and the Facility Providers to ensure that there is no breach of security and that the integrity of the link between the Merchant's website, SMARTWAVE's website and the Payment Mechanism is maintained at all times during the term of this Agreement. In the event of any loss being caused as a result of the link being breached or as a consequence of the link being improper or being in violation of the provisions of this clause, the loss shall be to the account of the Merchant and the Merchant shall indemnify and keep indemnified SMARTWAVE and the Facility Providers from any loss as may be caused in this regard. The Merchant shall comply with PA-DSS compliances (if



applicable) and shall report to SMARTWAVE in case of an Information security incident related to systems or information.

4.12. The Merchant hereby grants to SMARTWAVE and the Facility providers, a non-exclusive, royalty-free, limited license to use, display and reproduce the trademarks, Service marks and logos of the Merchant solely in connection with the marketing of their facilities and Services to the public. The Merchant shall prominently display on its Website and in other online marketing materials if applicable, a statement / logo / image provided by SMARTWAVE and or upon instructions of Facility Provider. The Facility Providers may at any time, immediately and without advance notice, prohibit the Merchant from using any of the Marks for any reason.

4.13. The Merchant ensures that it shall prominently and unequivocally inform a Customer of the identity of the Merchant, which will enable the Customer to distinguish the Merchant from any other third Party and will ensure that its Website:- (i) prominently displays the name of the Merchant; (ii) prominently identifies the name of the Merchant as displayed on the Website and as the name that will appear on the Customer's statement and (iii) display the Merchant name and information as prominently as any other information depicted on the Website, other than the images of the Products or the Services being offered.

4.14. The Merchant represent and warrant to SMARTWAVE and the Facility Providers that: (a) Merchant is duly organized, validly existing and in good standing under the laws of the territory in which its business is registered; (b) Merchant has all requisite license, registrations, right, power and authority in full force to enter into this Agreement and perform its obligations and grant the rights, licenses and Authorizations hereunder; and (c) Merchant and its subcontractors, agents and suppliers will comply with all applicable Laws in the performance of its obligations and exercise of the rights under this Agreement.

4.15. The Merchant states that the individual accepting these Agreement is an authorized representative of the Merchant and is thereby fully authorized to bind the Merchant to contractual obligations and is authorized to provide the information and documentation submitted in connection with this Agreement are complete and correct in all material respects. Merchant authorizes SMARTWAVE to obtain and verify, and to continue to obtain and verify any information submitted by Merchant any relevant information regarding principals, partners, officers or other authorised representatives of Merchant and any other individuals listed on this Agreement including the individual accepting these Agreement, and for SMARTWAVE use such information as reasonably necessary during the course of providing the Services contemplated here under as well as for SMARTWAVE to share such information with its affiliates or as otherwise allowed by applicable law. SMARTWAVE reserves the right to conduct audits and periodic oversight reviews of Merchant determining compliance with this Agreement and





byelaws and standards of the UAE Central Bank, the Facility Providers and SMARTWAVE referenced herein.

4.16. If the Merchant is going store the confidential data of Customers on Merchant's website, then the Merchant shall be Payment Card Industry Data Security Standard certified (PCIDSS) and shall continue to be certified as per the required regulations during the term of the Agreement with respect to the security obligations pertaining to SMARTWAVE's Services provided by SMARTWAVE. The Merchant hereby undertakes and agrees it shall not store any confidential information of the Customers such as card details, Customer's confidential details etc. if it is not PCI DSS certified and shall further indemnify SMARTWAVE in case of any claim, proceeding, loss or liability arising due to non-compliance of the same.

4.17. The Merchant undertakes to be abided by the Master Card Rules all the time, the detailed manual of the rules can be referred from the link: ([http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) ) this link is subject to change as per the amendments made in manual of Master Card, uploaded from time to time. Important sections of the Master Card Rules that the Merchant undertakes the following :

- a) On an on-going basis, the Merchant to promptly provide SMARTWAVE with the current address of each of its offices, all "doing business as" (DBA) names used by the Merchant, and a complete description of goods/Products sold and Services provided.
- b) In the event of any inconsistency between any provision of the Merchant Agreement and the Standards (i.e. the Manual), the Standards (the Manual) will govern.
- c) SMARTWAVE may require any changes to Merchant's Website or otherwise that it deems necessary or appropriate to ensure that the Merchant remains in compliance with the Standards governing the use of the Marks.
- d) SMARTWAVE may at its discretion or at the direction of its Facility Providers immediately terminate the Merchant Agreement for activity deemed to be fraudulent or otherwise wrongful by SMARTWAVE, and Facility Providers.
- e) The Merchant acknowledges and agrees to comply with all applicable standards, as amended from time to time;

4.18. The Merchant undertakes to be abide by the rules and regulations formed by the governing authority in respect of the Federal Decree No. 20 of 2018 on Anti-Money Laundering and Countering the Financing of Terrorism and subsequent amendments incorporated thereon and guidelines issued by the UAE Ministry of Justice, the UAE Central Bank from time to time for Combating Financing of Terrorism (CFT).

4.19. The Merchant hereby undertakes that, all the representations made herein are true and valid as per law of the UAE. The Merchant represent that the Merchant holds valid

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licenses, brand proofs, tie-up Agreement from its business associates and the Merchant is legally authorised to sale the Products and Services online through the Merchant's website.

4.20. The Merchant shall provide supporting documents to SMARTWAVE at the time of execution of this Agreement and upon change in details provided under this Agreement. The Merchant shall provide the KYC documents to SMARTWAVE on an interval of one year.

4.21. The Merchant shall keep updated on its website all the policies including but not limited to privacy policy, refund and return policies, chargeback policy and other Agreement pertaining to the Products and Services of the Merchant. The merchant provides a copy of these documents as and when requested by SMARTWAVE.

## **5. FAIR USE OF SMARTWAVE SERVICES:**

5.1. The Merchant shall use the services of SMARTWAVE only for the purpose of receiving online payments against the Products / Services approved by SMARTWAVE. Using the services of SMARTWAVE for any other purpose shall entitle SMARTWAVE to take appropriate legal action and / or charge penalty suspend all the pay-outs to the Merchant.

5.2. The Merchant shall not submit for payment, any Transaction they know or ought to have known is illegal or misuse the services of SMARTWAVE for illegal gains including but not limited to illicit use of Credit Cards.

5.3. The Merchant in case of any fraud or ill intentional Transaction by Customer shall cooperate with SMARTWAVE and forward all necessary Transaction and Customer details to SMARTWAVE at the earliest.

5.4. The Merchant data related to Transactions taking place through SMARTWAVE's Payment Aggregator services shall be stored by SMARTWAVE for a maximum period of one year from the date of Transaction. Post completion of this one year the data will automatically get deleted from SMARTWAVE's database. SMARTWAVE shall not be liable to produce the data that is older than one year.

5.5. **Breach by Merchant:** If SMARTWAVE, the Facility Providers suspects on reasonable ground, that the Merchant has committed a breach of this Agreement or dishonestly or fraud against SMARTWAVE, the Facility Providers, or any Customer, SMARTWAVE shall be entitled to suspend all payment under this Agreement to the Merchant pending enquiries by SMARTWAVE. SMARTWAVE shall not be liable to pay any interest upon the suspended pay-outs during or after the pendency of the inquiry. SMARTWAVE reserve right to charge appropriate penalty to the Merchant in case of breach of terms of this Agreement. SMARTWAVE may adjust such penalty amount from the next pay out of Customer Charge. In the event of no balance in the Merchant account, the Merchant



shall make the payment of such penalty amount; failure to make payment of the penalty amount will attract interest over the penalty as per the prevailing interest rates. Breach by Customer: In case the Customer of Merchant commits fraud against the Merchant using SMARTWAVE's services, SMARTWAVE in such cases shall be entitled to suspend the pay-outs of the disputed amount till the issue is resolved between Merchant and Customer. SMARTWAVE shall not be liable to pay any interest upon the suspended pay-outs during or after the pendency of the inquiry.

**5.6. Authorizations:** The Merchant shall obtain Authorisation from SMARTWAVE, before accepting any Customer Order. This process of Authorization is an automatic process that takes place in real-time.

## **6. CHARGEBACK AND REFUND:**

6.1. The Merchant agrees that payment made in respect of any Customer Order, in respect of which the Customer or Issuing Bank raises a claim, demand, dispute or Chargeback on SMARTWAVE or the Facility Providers for any reason whatsoever or in case of Refund initiated by the Merchant shall be the financial responsibility of the Merchant. The Chargeback or Refund shall be processed as per the set processes of Facility Providers and SMARTWAVE. Once the Chargeback is received and the Merchant is ordered to make payment of the Chargeback amount or in case of Refund once the Refund requested is initiated by the Merchant, the Merchant shall make the payment of the Chargeback / Refund amount as the case may be without any demur or protest, dispute or delay. The Merchant agrees that it shall initiate Refund only within Tr i.e time period fixed by Merchant or 90 days from the date of Transaction whichever earlier. However, Merchant agrees that it shall not be allowed to initiate Refund on the date of Transaction if it has opted for Express Settlement Facility. The Merchant shall make payment of Chargeback amount within 48 hours from the time of receiving the request for making payment of Chargeback and or in case of Refund immediately at time of initiating the Refund. The Merchant hereby agrees that all Refunds and Chargebacks shall be the sole responsibility of the Merchant and SMARTWAVE shall not be liable for any claims or disputes which may arise in connection with such Refunds or Chargebacks to the Merchant or its Merchants. SMARTWAVE shall have right to withhold the payment in case of anticipated Chargebacks or excessive Chargebacks raised against Merchant. The Merchant agrees to indemnify SMARTWAVE in respect of any claims, disputes, penalties, cost and expenses arising directly or indirectly in relation Refunds or Chargebacks for all Transaction initiated and instructed through the Merchant's website.

6.2. If SMARTWAVE and / or the Facility Providers determine that the Merchant and / or its business associates registered with SMARTWAVE are incurring an excessive amount of Chargebacks or Refunds, SMARTWAVE may establish controls or conditions governing the Transactions contemplated under this Agreement, including without limitation, by



- a) establishing new processing fees,
- b) by requesting a reserve in an amount reasonably determined by SMARTWAVE to cover anticipated Chargebacks and Refunds
- c) by asking the Merchant to first make payment of the Chargeback amount / Refund amount and then only process the Chargeback and Refund request.
- d) delaying or suspending pay-outs to Merchant, (e) block the Refund or refuse to process
- e) adjusting the Chargeback and Refund amount from the Customer Charge payable to Merchant and
- f) imposing penalty amount if any charged by Facility Providers
- g) charge interest over the Chargeback and Refund amount
- h) terminating or suspending SMARTWAVE Services.

6.3. The Merchant hereby authorises SMARTWAVE to appropriate the Merchant's current balance amounts with SMARTWAVE to the extent of the aforesaid Chargeback and Refund and any other moneys due to SMARTWAVE by the Merchant in terms of this Agreement. If there are insufficient funds available therein; the Merchant shall within 48 (forty-eight) hours of finding out negative balance or insufficient balance in his Merchant Accounting and Reporting System (M.A.R.S) Interface and / or on receipt of the e-mail from SMARTWAVE and / or claim from SMARTWAVE undertakes forthwith without any demur, protest, dispute or delay, to pay to SMARTWAVE, the amount of the Chargeback / dispute / Refund to the extent to which such funds proves inadequate. Without prejudice to any other of SMARTWAVE's rights and remedies, in the event that the Merchant does not make any payment to SMARTWAVE by its due time (within 48 hours) or on demand as required under this Agreement, SMARTWAVE shall be entitled to charge interest on such overdue amount upon completion of the said 48 (Forty Eight) hours (as the case may be) until the date of payment in full, at the rate of 2-4 % per month, solely as per SMARTWAVE's discretion. It is agreed that any claim or dispute arising out of non-payment of Refund / insufficient balance shall be the absolute liability of the Merchant AND the Merchant hereby indemnifies SMARTWAVE and the Facility Providers against any claims, dispute initiated by any Customers / Facility Provider or any third party / authority enforced on SMARTWAVE, Acquiring Banks / Card Schemes / payment SMARTWAVE etc. for the non-refund of such Transactions.

**6.4. Credit Facility on Refunds:** Since the Merchant will not be allowed to initiate Refunds of amount greater than the balance amount held with SMARTWAVE; The Merchant may face Refund related issues from the Customers such as, "the Refunds were blocked by SMARTWAVE due to insufficient or no balance amount in Merchant account held with SMARTWAVE". In order to avoid such Refund issues and to continue the smooth Refund process, the Merchant may avail the credit facility on Refunds where in SMARTWAVE at its sole discretion may allow the Merchant to initiate Refunds of amount greater than the balance amount available with SMARTWAVE. This facility will



allow additional time not exceeding 7 (Seven) days to the Merchant to arrange for funds against Refunds so initiated. To avail the credit facility the Merchant shall give separate written instructions to SMARTWAVE, SMARTWAVE on its sole discretion may grant the credit facility on Refund to the Merchant. The Merchant agree that the repayment of credit facility on Refund shall be governed by all the sub clauses (6.1), (6.2) and (6.3) above and also by the special Agreement formed by SMARTWAVE for credit facility on Refund.

6.5. The Merchant agrees that the Refunds initiated by Merchant shall be routed through the Escrow Account and original method of payment unless specifically agreed between the Merchant and Customer to credit through an alternate mode. The Merchant hereby confirms that SMARTWAVE has no responsibility if Refunds are processed through alternate mode agreed between Merchant and Customer.

6.6. The Merchant acknowledges that TDR charged by SMARTWAVE shall not be refunded by SMARTWAVE irrespective of any Chargeback or Transaction being rejected, refunded or disputed.

## **7. INDEMNITY:**

7.1. The Merchant hereby undertakes and agrees to indemnify, defend and hold harmless SMARTWAVE and the Facility Providers 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 but not limited to, as a result of:

- a) Breach or non-performance by the Merchant of any of its undertakings, warranties, covenants, declarations or obligations under this Agreement;
- 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 SMARTWAVE 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) Chargebacks or Refunds relating to the Transactions contemplated under this Agreement; and incapacity of Merchant to make payment against the Chargeback / Refunds or any amount due payable to SMARTWAVE;
- f) Breach of law, rules regulations, legal requirements (including UAE Central Bank regulations, Facility Providers rules) in force in the UAE 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 Bank / Institution is incorporated / registered / established; or

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- g) Any fines, penalties or interest imposed directly or indirectly on SMARTWAVE on account of Merchants or Transactions conducted through the Merchant under this Agreement.

7.2. The indemnities provided herein shall survive the termination of this Agreement

## **8. WARRANTY:**

8.1. SMARTWAVE and the Facility Providers disclaims all warranties, express or implied, written or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. The Merchant acknowledges that SMARTWAVE and the Facility Providers may not be uninterrupted or error free. The Merchant also acknowledges that the services provided by the Facility Providers to SMARTWAVE which is passed on to the Merchant under this Agreement, can be in any event be brought to an abrupt end in any event whatsoever by the Facility Providers for any reason whatsoever.

8.2. SMARTWAVE's sole obligation and the Merchant's sole and exclusive remedy in the event of interruption to the services or loss of use and / or access to SMARTWAVE's website, and the Facility Provider's facilities, shall be to use all reasonable endeavors to restore the Services and / or access to the Payment Mechanism as soon as reasonably possible.

8.3. In case if the Merchant's Customer raises a claim on any of SMARTWAVE or the Facility Providers, the Merchant shall release SMARTWAVE (and its officers, directors, employees, agents and affiliates) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such claims or disputes.

8.4. Without prejudice to any other provisions of this Agreement, SMARTWAVE, and the Facility Providers shall not be liable to the Merchant for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with SMARTWAVE's website and services, and the Facility Provider's facilities and / or this Agreement.

## **9. LIMITATION OF LIABILITY:**

9.1. SMARTWAVE shall not be liable for any indirect, incidental, punitive, special or consequential damages or losses (including without limitation loss of profit or revenue etc.), whether under contract or in tort, and even if the Merchant had been advised of the possibility of such damage or loss. In no event SMARTWAVE shall be liable to the Customers or any third Party.

## **10. INSPECTION AND AUDIT:**



10.1. SMARTWAVE shall have right to audit and / or inspect periodically the system and records of Merchant (including but not limited to Merchant's Refund and return policy, infrastructure, Customer Grievance Policy, T&Cs, etc.) by its internal or external auditors or by its agents appointed to act on its behalf, in order to ensure Merchant's compliance with the obligations with respect to Services rendered under this Agreement and applicable laws and to obtain copies of any audit or review reports and findings made on the Merchant in connections with the Services undertaken hereunder.

10.2. Merchant shall allow SMARTWAVE, its management, its auditors and / or its regulators, the opportunity to inspect, examine and audit Merchant's operations, system and records which are directly relevant to the Services. UAE Central Bank, statutory, regulatory, SMARTWAVE or any authority vested with such rights shall be entitled to cause an inspection to be made on Merchant and its books and account by one or more of its officers or employees or other persons

10.3. Merchant shall keep complete and accurate records of all the orders and expenses in connection with its Services and / or Products. All said records shall be kept on file by Merchant for a period as required under applicable laws from the date the record is made.

10.4. SMARTWAVE's audit rights shall survive the expiration or termination of this Agreement for the period required under applicable laws and regulations.

## **11. TERMINATION:**

### **11.1. Immediate Termination:**

- a) Termination for Breach: Either Party may terminate this Agreement with immediate effect if the other Party commits any breach of the terms of this Agreement.
- b) Termination in Case of Violation of Law: In addition to any other termination rights granted by this Agreement, SMARTWAVE may terminate this Agreement immediately without liability upon verbal or written notice if
  - i. SMARTWAVE or the Facility Providers is notified or otherwise determines in good faith that the Merchant or is using SMARTWAVEs services and facilities in furtherance of any activity which violates any law, rule, or regulation or
  - ii. SMARTWAVE, or the Facility Providers or any of their directors, officers, stockholders, employees or agents are made the subject of a criminal or civil action or investigation or are threatened by such action as a consequence of use of the Facility or services by the Merchant.
  - iii. If number or amount of fraudulent Transactions submitted by Merchant or the number of Chargebacks in relation to the business of Merchant is excessive



- iv. If Merchant submits for processing, Transactions on behalf of any third party entity other than that agreed between Parties;
- v. the Merchant materially alters its Website content without SMARTWAVE's prior written consent or changes its business or alters its business model during the term of the Merchant Agreement or if there is a direct or indirect change of Control of the Merchant or any parent company of the Merchant;
- vi. If Facility Providers de-registers the Merchant.

c) Termination for Disruption: If any program or facility used by SMARTWAVE to implement this Agreement is disrupted or terminated by the Facility Provider for any reason SMARTWAVE may terminate this Agreement immediately.

11.2. Termination by notice: In addition to any other termination rights granted under this Agreement, either Party may terminate this Agreement on 30-days written notice to the other.

11.3. Termination for non-use: SMARTWAVE may terminate this Agreement, if the Merchant fails or neglects to use the facilities and services of SMARTWAVE and the Acquiring Banks for a continuous period of 180 days.

11.4. Withholding of charge on termination: In the event that either of the Parties serve a notice of termination of this Agreement on the other party, SMARTWAVE shall be entitled to withhold for a period of 210 days from the date of such notice, 40% of amounts payable to the Merchant in terms of Clause 3 of this Agreement in respect of each Customer Charge arising after the date of such notice. In the event that SMARTWAVE terminates this Agreement as a result of breach of any of the terms of this Agreement by the Merchant, SMARTWAVE shall be entitled to withhold for a period of 210 days from the date of such breach 100 % of amounts payable to the Merchant in terms of Clause 3 of this Agreement in respect of each Customer Charge arising after the date of such breach.

## **12. INTELLECTUAL PROPERTY:**

12.1. Each Party shall retain all ownership rights, title, and interest in and to its own Products and Services and all intellectual Property Rights therein, subject only to the rights and licenses specifically granted in writing.

## **13. FORCE MAJEURE:**

13.1. SMARTWAVE and the Facility Providers shall not be liable for any failure to perform any of its obligations under this Agreement if the performance is prevented, hindered or delayed by a Force Majeure Event (defined below) and in such case its obligations shall be suspended for so long as the Force Majeure Event continues. Each Party shall promptly inform the other of the existence of a Force Majeure Event and shall consult together to find a mutually acceptable solution. "Force Majeure Event" means any



event due to any cause beyond the reasonable control of SMARTWAVE, and the Facility Providers, including, without limitation, unavailability of any communication system, breach or virus in the processes or Payment and Delivery Mechanism, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes or industrial action of any kind, riots, insurrection, war, acts of government, computer hacking unauthorized access to computer data and storage devices, computer crashes, etc.

#### **14. SUB-ID CREATION:**

14.1. In case of addition of Business Associate/s, Business Associate" shall mean entity / Merchant referred or on-boarded by the Merchant as per the Agreement of this Agreement through a mandate letter the Merchant shall give written instructions to SMARTWAVE in the format as specified by SMARTWAVE from time to time. Following terms should additionally apply to the arrangement of creating any sub-Id. The Merchant will be allotted a main Merchant ID (MID) by SMARTWAVE. Through this Agreement the Merchant will be able to enable the Business Associates to receive online payments from the end Customers. For the said purpose SMARTWAVE has agreed to create sub-ids for the Business Associates of the Merchant. The addition of any new Business Associates shall be intimated by Merchant to SMARTWAVE in the format specified by SMARTWAVE. SMARTWAVE shall make the payout of the Customer Charge after due deductions to the designated bank account of the Merchant or the Business Associate as directed by the Merchant in writing. The Merchant will provide the necessary documents of such business associates as per the requirements of SMARTWAVE. The Parties have agreed that all the Agreement, warranties, covenants addressed to Merchant herein shall be equally applicable to the Business Associates of the Merchant. Any default, Chargeback, Refund, claim observed or received on Business Associates' MID shall be the responsibility of the Merchant. The Merchant hereby indemnify SMARTWAVE for the acts and omissions of the business associates. To avail the facility of Sub- IDs the Merchant must intimate SMARTWAVE in writing, SMARTWAVE reserves right to approve or reject the onboarding of Business Associate. Termination of this Agreement will automatically terminate all the sub-ids.

#### **15. GENERAL PROVISIONS:**

15.1. Jurisdiction and governing law: The laws of the United Arab Emirates only and no other nation shall govern these Agreement. The Parties agree to submit to the exclusive jurisdiction of the Courts located in Dubai, UAE as regards any claims or matters arising under or in relation to these Agreement.

15.2. Disclosure of information: SMARTWAVE will be entitled at any time to disclose information concerning the Merchant to any authorised assignee, Facility Providers or to its own employees or directors basis in connection with the Payment Gateway Mechanism facilities provided by SMARTWAVE. This clause shall survive the termination of these Terms and Agreement. The Merchant shall not, without the prior

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written consent of SMARTWAVE, the Facility Providers, disclose the identity of any Customer who has entered into a Transaction or any information whatsoever relating to any Transactions to any other person or otherwise use any information acquired by it in relation to such Customers other than for the purposes of this Agreement except where

- i. information already known or independently developed by the recipient prior to or independent of the disclosure;
- ii. information in the public domain through no wrongful act of the recipient,
- iii. information received by the recipient from a third party who was not under any legal impediment to disclose it,
- iv. information required to be disclosed by any order of a court or regulatory authority of competent jurisdiction to the extent specified in the order

15.2. The individual accepting this Agreement certifies that he / she is an authorized principal, partner, officer, or other authorized representative of Merchant, is thereby fully authorized to bind Merchant to contractual obligations and is authorized to provide the information contained the registration form. The authorised signatory of the registration form also certifies that all information and documentation submitted in connection with this registration form are complete and correct in all material respects. Merchant authorizes SMARTWAVE to obtain and verify, and to continue to obtain and verify, any information submitted in this registration form, including banking information, financial credit, or other information about Merchant, any relevant information regarding principals, partners, officers, or other authorized representatives of Merchant, and any other individuals listed on this registration form, including the individual accepting these Agreement, and for SMARTWAVE to use such information as reasonably necessary during the course of providing the services contemplated here under as well as for SMARTWAVE to share such information with its affiliates or as otherwise allowed by applicable law.

#### 15.4. Notices

- a) Any communication, direction, or instruction required by this Agreement to be given to SMARTWAVE shall be provided in written form and delivered through means including but not limited to hand delivery, postal mail, cable, facsimile, or telex, to the address located at UNITED ARAB EMIRATES, DUBAI, AL GOZE THIRD, FBG BUILDING BLOCK A, OFFICE 116, as well as to the authorized email address: [order@smartwavepayment.com](mailto:order@smartwavepayment.com).
- b) The act of notice shall be considered complete under the following conditions: In the event of hand delivery, registered mail, email, or overnight courier, acknowledgment of receipt in writing by an authorized officer, employee, agent, or representative of the receiving Party;





## **16. ARBITRATION:**

16.1. The Parties shall endeavor to amicably resolve any disputes, differences, or claims arising from these Terms and Agreement through mutual discussion. In the event that such amicable resolution proves unattainable, the dispute shall be referred to arbitration under the rules of the Dubai International Arbitration Centre (DIAC). The arbitration proceedings shall be conducted in Dubai, UAE, in accordance with the DIAC's rules and procedures. The language of arbitration shall be English, and the arbitral award shall be considered final and binding on both Parties.

16.2. The arbitration process will be presided over by a sole Arbitrator appointed in accordance with the DIAC's rules. Any arbitration award shall have conclusive authority over the Parties, and judgment based on it may be entered in any court with appropriate jurisdiction.

16.3. This Agreement (including its arbitration clause) shall be governed by and construed in accordance with the laws of the UAE. The courts in Dubai shall retain exclusive jurisdiction over all matters arising from this Agreement.

## **TERMS AND CONDITIONS FOR SOFTPOS SERVICES**

These Terms and Conditions and any annexes thereto constitute a legal agreement between any entity and/or person (here in after referred as "Merchant ") using the Soft-POS services of SMARTWAVE PAYMENT SERVICES PROVIDER L.L.C., here in after referred as " Service Provider") in respect of the Soft-POS solution which may include associated media, printed materials, and documentation ("Software"). The Software also includes any updates and supplements to the original Software as may be provided to Merchant from time to time by the Service Provider.

### **1. ENFORCEABILITY:**

1.1. SMARTWAVE services in respect of the Soft-POS solution are governed by laws of the United Arab Emirates and any rules and regulation issued by UAE Central Bank or other governing authorities for SOFT-POS services from time to time.

1.2. Notwithstanding any right that the Service Provider may have under copyright, patent or any other intellectual property laws applicable, these Agreement shall be enforceable as a contract against Merchant. MERCHANT'S ACCEPTANCE OF THE TERMS HEREOF SHALL BE SIGNIFIED BY THE EXECUTION OF A "HARD COPY OR DIGITAL COPY" OF THESE AGREEMENT OR BY MERCHANT CLICKING ON THE "I AGREE" BUTTON APPEARING ON THE WINDOW CONTAINING THE ELECTRONIC VERSION OF THESE AGREEMENT, WHEREUPON MERCHANT EXPRESSLY AGREES TO BE BOUND BY THE AGREEMENT OF THESE AGREEMENT.



1.3. All the other terms the Public offer shall be applicable to the services in respect of the Soft-POS solution. It is agreed that any dispute, refunds, chargebacks received by the Service Provider shall be resolved as per the terms stated in Public offer. All the rights obligations and undertaking as mentioned in Public offer shall be applicable to the Service Provider and Merchant while performing their parts under the present Agreement for the SMARTWAVE services in respect of the Soft-POS solution.

1.4. Capitalized terms used but not defined under this Agreement section will have the meanings given to them in the Public offer.

1.5. These Agreement shall form an integral part of the Public offer and the Service Provider may amend the same from time to time including by way of exchange of letters or electronic communication.

1.6. These Agreement shall remain in force until terminated in accordance with the termination clause of Public offer.

## **2. SCOPE OF SMARTWAVE services in respect of the Soft-POS solution:**

2.1. Service Provider and the Merchant have entered into the Public offer and in addition to the Services the Merchant wishes to avail SMARTWAVE services in respect of the Soft-POS solution developed by the Service Provider which enables the Customer / Buyer to make payments by tapping a valid card or payment instruments on the Software based point of sell (Soft-POS) provided by the Merchant for the services / products availed from the Merchant ("Soft-POS Services").

2.2. Soft-POS Services facilitate payments made by Customer / Buyers through the SMARTWAVE services in respect of the Soft-POS solution and provides technological and payments support in relation to Transactions involving the Payment Mechanism compliant with requirements of Payment Service Provider(s) so as to enable receipt of such payments by the Merchant or any person acting on the Merchant's behalf.

2.3. Customer / Buyer shall in person or through online mode intimate the Merchant of quantity / quality of the Products / Services it wishes to avail from the Merchant. The Merchant through SMARTWAVE services in respect of the Soft-POS solution provide an e-invoice to the Customer / Buyer against which the Customer / Buyer shall make the requisite payment to the Merchant using the SMARTWAVE services in respect of the Soft-POS solution.

## **3. PAYMENT TERMS:**

3.1. The Merchant shall make payment of setup fees, TDR and other charges as agreed under the Public offer or as per the terms mutually agreed between the Service Provider and Merchant from time to time. All settlements of payments made through SMARTWAVE services in respect of the Soft-POS solution are subject to deductions, suspensions, set- offs as per the terms agreed under Public offer.

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#### **4. MERCHANT UNDERTAKINGS:**

4.1. In addition to the undertakings and covenants mentioned in Public offer, the Merchant agrees and acknowledges that in processing the Transactions, the Service Provider shall be entitled to rely upon all electronic communications, orders or messages sent to the Service Provider through the Payment Mechanism and the Service Provider shall not be obligated to verify or make further inquiry into the identity of the sender, or the message integrity, of any communications, orders or messages. The Merchant shall under no circumstances dispute such reliance by the Service Provider. The Service Provider shall not be bound by or obligated to act, on any electronic communications, orders or messages received on-line, from the Merchant or the Customer / Buyer, which do not properly utilize the security measures as intimated by the Service Provider and as may be applicable from time to time.

4.2. As and when the Service Provider requests for a particular document, bills / invoices, proof of delivery or any other supporting documents, the same shall be handed over to the Service Provider within 2 (two) business days of the request. If on account of non-compliance, the Service Provider incurs any loss, the same shall be made good by the Merchant, inclusive of all charges, interest and costs. The Service Provider with or without intimation shall be entitled at any times to disclose any and all information concerning the Agreement and Transactions of the Merchant, within the knowledge and possession of the Service Provider to any Regulator UAE Central Bank, Card Schemes or law enforcement.

4.3. The Service Provider has no obligation to verify the authenticity of the Transaction other than by means of verification of the Merchant's basic KYC information. The Merchant shall at all times take all appropriate steps, including those as mentioned herein, to maintain the security and confidentiality of the information. The Service Provider shall not be liable for any mistake or misuse of the Services by either the Merchant or by any person authorized by the Merchant, or by any person gaining access to the Services through the Merchant. Merchant agrees that the Service Provider accepts all instructions originating from his Account in good faith and in a manner consistent with commercially reasonable security standards. The Merchant shall indemnify and hold the Service Provider harmless for direct or indirect losses sustained as a result of the disclosure of sensitive information by or through the Merchant.

4.4. Confirmation of the Transaction performed using valid login credentials shall be conclusive evidence of a Transaction being affected. The Merchant is responsible to furnish the Service Provider with correct and current Payee information. In the event that the payment is in respect of a purchase of Products by the Merchant / Customer, the Service Provider shall not be required to ensure that the purchased Products have been duly delivered. In the event the Merchant chooses to complain about a Transaction, the



same should be communicated to the Service Provider within 1 business day of the Transaction.

4.5. Nothing in this Agreement shall prohibit the Service Provider from providing services similar to those provided under this Agreement to others, including competitors of the Merchant.

4.6. The Merchant shall be responsible to (i) furnish correct and accurate information of the Customer as may be required, on an independent basis; (ii) furnish to the Service Provider forthwith on demand, the original copy / copies of proof of delivery of Products, invoices or other records pertaining to any Transaction; (iii) ensure that all licenses and registrations required by him are in full force and effect to enable them to carry on the business of sale / purchase of Products.

4.7. The Merchant shall not (i) carry out any activity, which is banned, illegal or immoral, (ii) use the Services in any manner or in furtherance of any activity, which constitutes a violation of any law or regulation or which may cause the Service Provider to be subject to investigation, prosecution or legal action.

4.8. The Merchant shall act in compliance with all laws, rules and regulations and shall at all times comply with the guidelines set by Visa / Master Card / acquiring banks / Service Providers.

4.9. The Merchant shall not sell, provide, exchange, or otherwise disclose to third parties or use themselves (other than for the purpose of completing a Transaction, or as specifically required by law) any personal information about any third party, including the account details and mobile number, without obtaining the prior written consent of such third party.

4.10. The Merchant shall take all precautions as may be feasible or as may be directed by The Service Provider to ensure that there is no breach of security and that the integrity of the link between their systems / site, the App and the payment mechanism is maintained at all times. In the event of any loss being caused as a result of the App being breached or as a consequence of the App being improper or being in violation of the provisions of this clause, the loss shall be to the account of the Merchant and the Merchant shall indemnify and keep indemnified The Service Provider and the Service Providers from any loss as may be caused in this regard.

4.11. The Merchant shall bear and be responsible for the payment of all relevant taxes (including any applicable withholding taxes) as may be due.

4.12. The Merchant shall not at any time require any other Merchant to provide him with any details of the accounts held by the other Merchants with any Banks including, the passwords, account number, card numbers, mobile phone numbers and PIN which may be assigned to them by the Banks from time to time.



4.13. The Merchant shall use the information regarding a Customer (including name, address, e-mail address, telephone numbers and other data) conveyed to him whilst using the Services, only for the purpose of completing the Transaction for which it was furnished, and not to sell or otherwise furnish such information to others unless he has an independent source of such information or obtains the express consent of such Customer.

4.14. The Merchant shall inform the Service Provider of any change in his email address, mobile number, address, ownership or legal status or his cessation of business in writing 30 working days in advance of such change.

4.15. The Service Provider has the right to investigate and prosecute violations of any of the above to the fullest extent of the law. The Service Provider reserve the right to hold or set off any amount under dispute or chargeback as per the terms stated in Public offer.

4.16. Subject to the provisions stated herein and as specified by the Service Provider from time to time, the Merchant will not hold the Service Provider liable in case of any improper / fraudulent / unauthorized / duplicate / erroneous use of his mobile and / or the web-based access. The Service Provider will also not be liable for any consequences connected with the use / misuse of Merchant's mobile / e mail account by any third party. If any third parties gain access to the Services, the Merchant will be responsible and shall indemnify the Service Provider against any liability, costs or damages arising out of such misuse / use by third parties based upon or relating to such access and use, or otherwise.

4.17. The Merchant shall be fully liable for: (a) any unauthorised use of his mobile / email account; and / or (b) all authorised Transactions on his mobile / email account.

4.18. Without prejudice to the remedies available to the Service Provider and these Terms, the Service Provider shall be under no liability whatsoever to the Merchant in respect of any loss or damage arising directly or indirectly out of

- i. any defect in any Products supplied to Customer;
- ii. any inability of a third party to supply or deliver the required Products in the necessary numbers or types;
- iii. the refusal of any person (including the Service Provider and Facility Providers) to honour or accept a payment;
- iv. the malfunction of any computer terminal or equipment;
- v. the utilization of the SMARTWAVE Services by any person at Merchants end other than the Merchants Authorised Person;
- vi. any mis-statement, error or omission in any details disclosed to The Service Provider.





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5.3. You are permitted to load Soft-POS solution software (for example a PC, laptop, mobile or tablet) under your control. You are responsible for ensuring your device meets the minimum requirements of the Soft-POS software.

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## **8. HIGH RISK ACTIVITIES**

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