

## MERCHANT AGREEMENT TERMS AND CONDITIONS

This Terms and Conditions ("Terms and Conditions") is between you ("You" or "Merchant") and EzSwype Business Solutions Private Limited, incorporated under the Companies Act, 1956 having its registered office at Sh. J.P. Tower, 2nd Floor, Building No. 1164/1, New Railway Road, Opp. Fire Station, Gurugram, Haryana – 122001 ("EzSwype") shall govern your use of EzSwype's Equipment(s) and Service(s). These Terms and Conditions are deemed to be incorporated in the Merchant Service Agreement executed between You and the EzSwype and shall be valid and binding in respect of each and every transaction involving payment by means of a Valid Card in accordance with the **Terms and Conditions of Payments** [www.ezswype.in/EzMerchant](http://www.ezswype.in/EzMerchant) **Terms and Condition of Wallet Services** [www.ezswype.in/EzMerchant](http://www.ezswype.in/EzMerchant) as may be applicable. EzSwype upon Merchant's request, providing the services to the Merchant including but not limited to credit/debit card acceptance solutions, value-added services, domestic money transfer and customer management services as may be notified time to time.

### 1. Definitions and Interpretation

#### 1.1. Definitions

- 1.1.1. **"Agreement"** means Merchant Services Agreement, together with the schedules and annexures attached thereto, as amended, supplemented, replaced or otherwise modified from time to time, and including any other document which amends, supplements, replaces or otherwise modifies this Merchant Services Agreement;
- 1.1.2. **"POS Equipment"** shall mean the POS terminal consisting of encrypted and certified card reader and related accessories provided by EzSwype and shall include any replacement, modification, enhancement and/or additions to the POS Equipment (including the supporting software used therein) as may be provided for/caused to be provided for authorization by EzSwype to the Merchant.
- 1.1.3. **"Intellectual Property Rights"** shall deem to mean and include all logos, symbols, copyright, designs, inventions patents, service marks, trademarks (in each case whether registered or arising at common law, or its overseas equivalent) or applications for any of these, formulations, trade names, business names, inventions, discoveries, trade secrets, know-how, source code, object code, technical Information, commercial and financial data and all other industrial or intellectual property rights (whether or not registered).
- 1.1.4. **"Laws"** shall mean all statutes, enactments, and acts of legislature, laws, ordinances, rules, bylaws, regulations, notifications, guidelines, policies, directions directives, treaties and orders of Government of India and/or any government, judicial or quasi-judicial body or any other authority, as amended or supplemented from time to time.
- 1.1.5. **"Merchant"** which expression shall, unless it is repugnant to the context or meaning thereof, shall mean and include: in the event that the Merchant is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors; in the event that the Merchant is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners for the time being and from time to time and their respective legal heirs, executors and administrators; in the event that the Merchant is a sole proprietorship, the sole proprietor, and his/ her legal heirs, administrators and executors; in the event that the Merchant is a joint Hindu Undivided Family, the Karta and any or each of the adult members of the HUF and their survivor(s) and his / her / their respective heirs, executors, administrators; in the event that the Merchant is a Society, the members of the governing body of the Society and any new members elected, appointed or co-opted thereon; in the event that the Merchant is a Trust, the Trustee or Trustees for the time being hereof and their respective heirs, executors, administrators and successors; in the event that the Merchant is an individual, his/her heirs, administrators and executors; in the event that the Merchant is a Government or Quasi Government body, the chief executive officer or appropriate authority duly authorised and shall not

be limited to but include an entity of any nature other than defined above capable of doing business under the laws in India.

- 1.1.6. **Services:** Tech enabled services offered by EzSwype and accepted by Merchant dealing in products aggregated by Ezswype including but not limited to Card Transaction Services, electronic payment services, digital wallet services, cash@POS services, Value Added Services and other services including but not limited to domestic money transfer and equated monthly installment facility, customer management services and such other services as may be decided by EzSwype from time to time. The Parties hereby agree that the terms and conditions of the Services may be modified or changed, or additional terms and conditions may be imposed by EzSwype at its sole discretion and the same shall be binding and enforceable on the Parties.
- 1.1.7. **"Support Services"** shall mean the periodical/annual maintenance service provided by EzSwype to the Merchant in order to keep the POS Equipment in good order and condition and the authorization given to the Merchant for use of the EzSwype point of sale application/payment gateway, merchant portal and for connecting the POS Equipment to EzSwype server or to such other entity's server that EzSwype has contracted within this respect, when the Merchant initiates the connecting process for any charges made by the Merchant's customer.
- 1.1.8. **"Value Added Service"** shall mean any service which is ancillary and in addition to the services provided by EzSwype to a registered Merchant during the subsistence of the Agreement, includes any services of the third-party service provider, facilitated by EzSwype.

1.2. **Interpretation:** The interpretation and construction of the Agreement shall be subject to the following:

- 1.2.1. The headings to clauses/annexure are for ease of reference only and will not be deemed to form any part of the context or to affect the interpretation of the Agreement.
- 1.2.2. Words importing the singular will include the plural and vice versa; words importing any gender will include all other genders; and the term 'person' shall, based on the context, mean any natural person, limited or unlimited liability company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under Law.
- 1.2.3. References to clause, schedules, and annexures are references to clause, schedules, and annexures in the Agreement and the provisions and conditions contained in them will have the same effect as if set out in the body of the Agreement.
- 1.2.4. Grammatical variations of defined terms shall have the corresponding meaning.
- 1.2.5. Reference to the word "include" shall be construed without limitation.
- 1.2.6. Reference to any legislation or Law or to any provision thereof shall include references to any such Law as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

## 2. Arrangement

- 2.1. EzSwype agrees to sell, license or rent and the Merchant agrees to purchase, acquire a license or take on the rental basis the POS Equipment, as may be applicable, on this terms and conditions and on an exclusive basis. It is hereby clarified that EzSwype has granted to the Merchant only a limited right to use the POS Equipment as per the terms of the Agreement and the ownership will remain with EzSwype.
- 2.2. The Merchant acknowledges and agrees that none of EzSwype's systems or embedded and supporting software, confidential documentation or any related and other Intellectual Property Rights of EzSwype is being sold, by the sale, licensing or rental of the POS Equipment. In respect of any embedded and supporting software or documentation or other Intellectual Property Rights, it is expressly acknowledged and agreed by the Merchant that, unless specified otherwise in the Agreement, EzSwype and or service providers engaged by EzSwype shall be deemed to have licensed only a limited right to use such software or documentation or other Intellectual Property Rights to the Merchant as a part of the POS Equipment (device). It is hereby clarified that all rights,

title, and interests in the EzSwype's systems, embedded and supporting software, confidential documentation, and any related and other Intellectual Property Rights of EzSwype or of service providers engaged by EzSwype not expressly granted to the Merchant under the Agreement remain with EzSwype.

- 2.3. The Merchant agrees that it shall be bound by the [Terms and Conditions of Payments www.ezswype.in/EzMerchant](http://www.ezswype.in/EzMerchant), as may be amended time to time while using the POS Equipment for acceptance of any payments via debit or credit cards.
- 2.4. The Merchant agrees that any card organization shall have the right to enforce any provision of the card scheme rules and to prohibit the Merchant from engaging in any conduct the card organizations deem could injure or could create a risk of injury to the card, including injury to reputation, or that could adversely affect the integrity of the interchange system, the card organization's confidential information as defined in the card scheme rules or both. The Merchant will not take any action that could interfere with or prevent the exercise of this right by the card organizations.
- 2.5. The Merchant acknowledges that the card organizations may under the card scheme rules impose fines, penalties and additional fees in connection with any disputed transactions and the Merchant agrees to pay such fine, penalties and additional fee without any delay, demure or protest.

### **3. Payment**

- 3.1. The Merchant chooses the Services and agrees to pay EzSwype the payment as updated in Schedule of Fees under the Schedule II of the Agreement.

### **4. Support Services**

- 4.1. The Merchant shall at all times during the period of use of the POS Equipment avail the Support Services provided by or on behalf of EzSwype. The Merchant, in consideration of availing the Support Services, agrees to pay to EzSwype an amount/rental on monthly basis on or before the start of the first (1st) day of every month as mentioned in Schedule of Fees under the Schedule II of the Agreement. If any amount/rental is unpaid on the due date, the Merchant shall be liable to pay an Interest charge of 2% per month of amount/rental due till the entire amount/rentals paid to EzSwype.
- 4.2. The Merchant agrees and Authorizes EzSwype to deduction of Fee, charges for additional services and any other lawful deductions and **GST** & other taxes applicable thereon at the prevailing rates.
- 4.3. For the purpose of payment of the fees as mentioned In Clause 4.1 and such other monetary obligations which may be required to be compiled by the Merchant in terms of the Agreement, the Merchant gives his unconditional consent and authorizes EzSwype to debit Merchants bank account through Electronic Clearing System ("ECS"). The Merchant further authorizes EzSwype to recover all costs and expenses in the event the payment or amounts/rentals and such other monetary obligations are not honored on the respective due dates as per the ECS mandate was given. The details of Merchant's bank account through which the Merchant desires to arrange for payment to EzSwype by means of ECS is provided in Merchant Bank Details of Schedule I of the Agreement.

### **5. Value Added Services:**

- 5.1. EzSwype may provide from time to time value-added services including but not limited to mobile top-ups, DTH top-ups, bill payment, prepaid card top-ups and voucher disbursement and wallet top-ups (Value Added Services).
- 5.2. The Merchant shall provide the Value Added Services on such terms and conditions as agreed between The Merchant and EzSwype in writing at the sole discretion of EzSwype. However, at EzSwype may at its sole discretion exempt the Merchant from providing any of the Value Added Services on such terms and conditions as agreed between The Merchant and EzSwype in writing. The merchant shall for the purpose of purchasing the Value Added Services from EzSwype and providing any of the Value Added Services deposit and maintain an amount as an advance for the

purpose purchase of such Value Added Services from EzSwype. The Merchant shall not be entitled to sell or provide Value Added Services to its customer(s) at a price in excess of the minimum retail price of the Value Added Services plus the service charge as intimated by EzSwype to the merchant in writing.

- 5.3. The Merchant shall pay to EzSwype Value Added Service purchase price for that the Merchant agrees that it shall issue irrevocable standing instruction which shall not be reversed during the term of the Agreement to the bank with whom the Merchant has opened an account. Additionally, the Merchant Authorises the EzSwype to deduct such outstanding from the settlement amount as specified under the Agreement.
- 5.4. Lending Facilitation Services:
  - 5.4.1. At EzSwype, we constantly offer better and convenient solutions to Merchant on best efforts basis assuming no liability. We partner with third-party service providers (TPS Partners) to provide certain products and services to help Merchant.
  - 5.4.2. Merchant shall avail such TPS Partners services including but not limited to credit facility at Merchant's sole discretion and such arrangement shall be between Merchant and the said TPS Partners. By entering into an agreement with the said TPS Partner Merchant shall undertake to abide by the terms and conditions therein and such terms and conditions shall not be detrimental to the rights of EzSwype. EzSwype shall facilitate such services through TPS Partners only on best effort basis and assumes no liability.
  - 5.4.3. In case of Credit Facility, a letter of authorization issued by the Merchant shall be irrevocable and considered as legal and binding. Collections will be credited to the Designated Bank Account of the Lender. Any Dispute in settlement of payment shall be between the Merchant and the Lender and shall resolve amongst themselves any dispute, not involving EzSwype.

## **6. Declarations & Exclusions:**

- 6.1. It is hereby clarified that processing services of EzSwype in relation to high-risk cards which involves inter alia increased chances of fraud and chargeback shall not be considered to fall within the purview of the Services and EzSwype shall not be liable or obligated under any circumstances whatsoever for rendering its Services for the high-risk cards as may be identified by EzSwype at its sole discretion and such decision of EzSwype shall be binding on the Merchant.
- 6.2. The Services may be under constant upgrades, and some functions and features may not be fully operational.
- 6.3. Due to the vagaries that can occur in the electronic distribution of information and due to the limitations inherent in providing information obtained from multiple sources, there may be delays, omissions, or inaccuracies in the content provided on the EzSwype platform or delay or errors in the functionality of the certain Services. As a result, we do not represent that the information posted is correct in every case.
- 6.4. We expressly disclaim all liabilities that may arise as a consequence of any unauthorized use of credit/ debit cards.
- 6.5. You acknowledge that third-party services that are made available by EzSwype that EzSwype may have formed partnerships or alliances with some of those third-parties from time to time in order to facilitate certain Services to you. however, you acknowledge and agree that at no time are we making any representation or warranty regarding any third party's services nor will we be liable to you or any third-party for any consequences or claims arising from or in connection with such third party including, and not limited to, any liability or responsibility for, death, injury or impairment experienced by you or any third party. You hereby disclaim and waive any rights and claims you may have against us with respect to third-party's Services. All such third –party services are subject to terms and conditions made applicable by such third party and Merchant hereby declare that the Merchant has read, fully understood, accepted and will continue to abide in good faith with the terms and conditions of such third-party service provider.

## **7. Delivery**

- 7.1. EzSwype shall deliver or cause to be delivered to the Merchant the POS Equipment together with all manuals and documents pertaining thereto, at a place specified in Schedule I of the Agreement. The mode of delivery of the POS Equipment may be affected in a manner mutually agreed between the Parties. All expenses and costs incurred for delivery of the POS Equipment shall be solely borne by the Merchant.

## **8. Taxes**

- 8.1. The Merchant shall be responsible for any applicable sales, value-added services or any other taxes, cuss, duties, and impositions "Taxes" Payable with respect to the POS Equipment or provision of Services or otherwise arising out of or in connection with the Agreement.
- 8.2. The Merchant shall make all payments of amounts/fees due under the Agreement to EzSwype free and clear of, and without reduction for, any withholding taxes. If the Merchant is, by virtue of any Law required to make any withholding from any amounts due to EzSwype under the Agreement, the sum payable by the Merchant to EzSwype shall be increased to the extent necessary to ensure that, after such withholding, EzSwype receives the amount due and payable by Merchant to EzSwype. The Merchant shall, on an immediate basis, provide to EzSwype all official documentation and/or tax receipts on any withholdings or deductions made by the Merchant on payments to be made to EzSwype.
- 8.3. The Merchant shall be responsible to deduct the tax at source as applicable under Income Tax Act, 1961 or any other laws/rules/ or regulations as may be applicable from time to time and deposit the same to the credit of the government within the respective due dates. Also, the Merchant shall be responsible to submit the certificate of tax deducted or any other document evidencing deduction of tax as applicable within 30 days from the due date for submission of returns of tax deduction to the government. The duty to comply with the provisions of tax deduction solely rests upon the Merchant and EzSwype shall not be liable for the same under any circumstances and in any manner whatsoever
- 8.4. The Merchant shall keep current, complete and accurate records regarding (i) the Services provided by EzSwype under the Agreement;(ii) the slips signed by the customers of the Merchant acknowledging the payments concerned; and (iii) such other information as may be necessary for the Merchant or EzSwype to validate the Merchant's compliance with the terms of the Agreement. The Merchant shall provide such information to EzSwype within seven (7) days of EzSwype written request and with not less than two (2) days prior written notice, EzSwype or its representatives may inspect, audit, and copy such records of the Merchant and access the POS Equipment, at any time during the Merchants regular business hours

## **9. Training**

- 9.1. The training provided by EzSwype shall be pursuant to EzSwype's standard training terms as may deem fit.

## **10. Obligations, Representations, and Warranties**

- 10.1. The Merchant represents and warrants to EzSwype that on the date hereof:
- 10.2. It is an entity duly incorporated and/or validly existing and in good standing under the laws of India;
- 10.3. It has all necessary power and authority to enter into the Agreement;
- 10.4. The persons signing the Agreement on behalf of the Merchant have the authority to sign and execute on behalf of the Merchant so as to create binding obligations on the Merchant;
- 10.5. The execution and delivery of the Agreement, and the consummation of the transaction contemplated hereby, and the fulfillment of and compliance with the terms and conditions hereof, do not (i) violate any Laws, judicial or administrative order, award, judgment or decree applicable to it, or (ii) conflict with the terms, conditions or provisions of its constitutional documents or any other contractual obligations to or regulations; and
- 10.6. The Agreement constitutes valid and legally binding obligation and will be enforceable against the Merchant in accordance with its terms.

- 10.7. The Merchant shall comply with all the Laws including the guidelines and standard Terms and Conditions of Payments and such other amended guidelines and terms issued by EzSwype from time to time.
- 10.8. EzSwype reserves the right to change the standard terms and conditions and guidelines as applicable to the usage of POS Equipment or Services at any time without prior consent of the Merchant
- 10.9. EzSwype is not giving any warranties either express or implied whether of merchantability or fitness for any particular use or otherwise, in respect of the POS Equipment or any Services provided under the Agreement and no waiver, alteration or modification of the foregoing condition is valid unless an amendment to the Agreement is executed in writing by the Parties to the Agreement. The Merchants sole and exclusive remedy in the event of an interruption to or loss of use and/or access to the Services shall be to get the Services restored from EzSwype. EzSwype will use all reasonable endeavors, at its sole and absolute discretion which shall be final and binding on the Merchant, to restore the Services and/or access to the Services as soon as reasonably possible.
- 10.10. The Merchant acknowledges that it has been advised that no agent, employee or representative of EzSwype has any authority to buy and sell or affirm or promise any representation and warranty concerning the POS Equipment or Services,
- 10.11. Merchant shall at all time during the currency of this agreement, perform its obligations in a fair, ethical and mutually beneficial manner and do not indulge in the misuse of any scheme offered by EzSwype or Card Brands or Sponsor Bank, at all time. Merchant shall immediately intimate EzSwype of any process gaps and/or defect in the Scheme or services.
- 10.12. The Merchant acknowledges that the Service Provided by EzSwype is at its sole discretion and EzSwype reserve the right to withdraw services without a written notice to Merchant. Merchant shall have a sole remedy to initiate claims for any unsettled amounts and/or any due that EzSwype has agreed to pay to the Merchant in writing.
- 10.13. Merchant acknowledges that the use of the Services does not include the provision of a computer or mobile device or other necessary equipment to access it. Merchant also understands and acknowledge that the use of the Platform requires internet connectivity and telecommunication links. Merchant shall bear the costs incurred to access and avail the Services, and EzSwype shall not, under any circumstances whatsoever, be responsible or liable for such costs.
- 10.14. Merchant acknowledges that the user of services are the basis of fair use and hereby undertake to not to abuse the Services to cause unlawful loss to EzSwype and shall at all times report any errors to EzSwype in good faith.

## **11. Confidentiality**

- 11.1. The Merchant shall keep all information and other materials passing between it and EzSwype in relation to the Agreement (the "Information") confidential and shall not without the prior written consent of the other Party, divulge the Information to another Person or use the Information other than for carrying out the purposes of the Agreement except:
  - 11.2. To the extent that such Information is in the public domain other than by breach of the Agreement;
  - 11.3. To the extent that such Information is required to be disclosed by any applicable Law or any applicable regulatory requirements or by any regulatory body to whose jurisdiction the Merchant is subject or with whose instructions it is customary to comply with notice to EzSwype;
  - 11.4. In so far as it is disclosed to the employees, directors or professional advisers of the Merchant, provided that the Merchant shall procure that such persons treat such Information as confidential;
  - 11.5. To the extent that any of such Information is/are later acquired by the Merchant from a source not obligated to EzSwype to keep such Information confidential;
  - 11.6. To the extent that any of such Information was previously known or already in the lawful possession of the Merchant, prior to disclosure by EzSwype hereto; and
  - 11.7. To the extent that any information shall have been independently developed by the Merchant without reference to any Information furnished by EzSwype.

- 11.8. EzSwope may provide and the Merchant agrees that EzSwope, any bank or payment facilitator associated with EzSwope may use any information, whether confidential or otherwise. regarding that Merchant for the fulfillment of their obligations under contract or Law;
- 11.9. The Merchant hereby acknowledges and agrees that the obligations under this Clause 11 shall continue notwithstanding the termination of the Agreement.

## **12. Intellectual Property Rights**

- 12.1. The Merchant shall not use any EzSwope's trademark, service marks, trade name or logo without specific written consent from EzSwope to that effect. Any infringement of any Intellectual Property Rights of EzSwope shall be subject to legal action and damages.
- 12.2. The Merchant shall not do anything what so ever which might impair EzSwope's right, title or interest in or to EzSwope's Intellectual Property Rights and agree that the Merchant shall not acquire or attempt to acquire any right, claims, title or interest, license in or to any of the Intellectual Property Rights of EzSwope. The Merchant shall not decompile/disassemble, or create or attempt to create or reconstruct, by reverse engineering or otherwise, any code supplied under the Agreement including in respect of the POS Equipment or use it to create any derivative work.

## **13. Additional Rights and Obligations**

- 13.1. The POS Equipment and/or Services may include material, technology services which EzSwope licenses from third parties. To the extent required by any such third party in its applicable license or service agreements with EzSwope, such third party shall be a direct and intended third-party beneficiary of the Agreement, insofar as it pertains to protection of Intellectual Property Rights. The Merchant shall fully indemnify and defend and hold EzSwope and any bank and/or entity associated with EzSwope harmless from and against any third party claim, damage, demand, liabilities, obligations, actions, suits, litigation, interest, loss, expenses, whether direct or indirect, alleging that its Intellectual Property Rights are infringed by the Merchant.
- 13.2. The Merchant shall promptly notify EzSwope of any unauthorized use of any POS equipment's of which the Merchant becomes aware. In the event of any unauthorized use by any user, the Merchant shall immediately terminate and prevent further occurrences of such unauthorized use. The Merchant shall fully indemnify EzSwope and any bank and/or entity associated with EzSwope against all claim, liabilities, demand, obligations, actions, suits, litigation, interest, damage, loss, expenses (including attorney fees) whether direct or indirect, arising out of such unauthorized use of the POS Equipment.
- 13.3. The POS Equipment connects to EzSwope's server or to such other entity's server that EzSwope has contracted within this respect on a real-time basis when the Merchant initiates the connecting process. The Merchant shall reasonably maintain the POS Equipment such that the Merchant can get connected to the server all the time without any lags. However, if the server fails to respond, the Merchant shall report the issue and EzSwope or entity associated with EzSwope will fix it as early as possible and the Merchant shall not be entitled to make any claims for any reason including for any claims for loss of business, revenue, profit, goodwill, data or indirect, direct, incidental, special, consequential damages or losses suffered by the Merchant due to the failure of EzSwope's server or to such other entity's server that EzSwope has contracted within this respect.

## **14. Indemnification**

- 14.1. The Merchant hereby agrees to indemnify, defend and hold EzSwope and any banks, payment facilitators and/or entities associated with EzSwope including their directors, employees and agents harmless from and against any and all damages, losses, liabilities, obligations, demands, claims of any kind, actions, suits, litigation, interest, costs or expenses directly incurred or suffered by EzSwope in any manner arising out of:
- 14.2. Breach by the Merchant of its obligations under the Agreement, including but not limited to those specified in Clause 10 (Obligations, Representations, and Warranties), Clause 11 (Confidentiality), Clause 12 (Intellectual Property Rights);

- 14.3. Any claims brought against EzSwyte arising in whole or in part out of claims brought against the Merchant involving negligence, fraud, willful default or mishandling or misplacing charge slips during the Term or the Renewal Term of the Agreement or for violation of any standards and/or program requirements references in the Agreement;
- 14.4. Any claim or proceeding brought by the customer or any other person against EzSwyte or any bank, payment facilitators and/or entity associated with EzSwyte in respect of any products/services of the Merchant or operations of the Merchant;
- 14.5. Any claim or proceeding related to the misuse of the POS Equipment
- 14.6. Any act of negligence or default by the Merchant or the Merchants affiliates, agents, employees or licensees of the Merchant;
- 14.7. Any act or omission by the Merchant in respect of the sale of /payment for the products/services;
- 14.8. Any penalties, interest on delayed payments imposed directly or indirectly on EzSwyte, payment facilitators and/or any banks and/or entities associated with EzSwyte on account of the Merchant's use of POS Equipment and/or the products, services supplied by the Merchant or any expenses caused by Merchant as well as reprocessing of any transactions relating to suspended or rejected products/services;
- 14.9. Any penalties, interest or fine imposed on EzSwyte, payment facilitators, bank and/or any other entity associated with EzSwyte by the card organizations on account of chargeback, credit and customer service related issues and disputed transactions.
- 14.10. Any claim or proceeding brought against EzSwyte by a regulatory or judicial body flowing from a breach of any anti-money laundering requirements as a result of any failure by the Merchant to follow applicable laws, instructions provided by EzSwyte or due to non-disclosure or misrepresentation to EzSwyte of any facts in this respect;
- 14.11. Breach of applicable law or card scheme rules by the Merchant
- 14.12. Notwithstanding anything contained in the Agreement, in no event shall EzSwyte, payment facilitator, any banks and/or entities associated with EzSwyte be liable to the Merchant for any consequential, remote, direct, indirect, special, incidental, exemplary or punitive damages, losses, compensation, costs, Charges or expenses including without limitation, loss of business, profits or revenues, loss of opportunity, goodwill etc.) Of any nature whatsoever arising in connection POS Equipment, Services or any other matter in relation to the Agreement.
- 14.13. The Merchant shall fully indemnify and keep indemnified EzSwyte, payment facilitator, any banks and/or entities associated with EzSwyte from all damages, costs, legal fees, charges and expenses, and losses that EzSwyte, payment facilitator, any banks and/or entities associated with EzSwyte may incur as a consequence of any failure whether temporary or permanent of the Services provided by the bank associated with EzSwyte to the extent such failure results in any wrongful or incorrect payment to the Merchant. The Merchant shall also undertake to make good and reimburse EzSwyte and/or any banks and/or entities associated with EzSwyte and/or the customer for any failure of the Services, to the extent of such failure results in any wrongful or incorrect payment to the Merchant.
- 14.14. In the event of EzSwyte is entitled to be indemnified pursuant to the provisions of the Agreement, EzSwyte shall be entitled to debit an amount equivalent to the amount of damages, losses, liabilities, obligations, demands, claims of any kind, actions, suits, litigation, interest, costs or expenses incurred or anticipated by EzSwyte from the payments to be made to the Merchant or through direct debit (ECS) from Merchant's bank account. The Merchant hereby agrees to permit the debit of such amount by EzSwyte without any protest. The Merchant hereby acknowledges that the amount to be debited under this Clause 14.4 shall be determined by EzSwyte in its sole discretion
- 14.15. The indemnity provided herein shall survive the termination/cancellation of the Agreement, in so far as it pertains to events that transpired during the subsistence of the Agreement.

## **15. Termination:**

- 15.1. Merchant shall terminate the Agreement by written notice of 1 month duly served on EzSwyte.

- 15.2. EzSwope shall terminate the Agreement by written notice of 15 days duly served on Merchant.
- 15.3. Termination for Merchant Misconduct: EzSwope may terminate this Agreement immediately without prior notice if: (i) they have reasons to believe that fraudulent Card Transactions or other activity prohibited by this Agreement or by the Card Brands or prohibited businesses under any other law, is occurring at any Merchant location; (ii) such action is taken to prevent loss to EzSwope or Card Issuers, (iii) Merchant appears on any Card Brands or Payment Network's security reporting; (iv) dispute between the Merchant and customer has arisen due to deficiency in service by the Merchant; (v) any material adverse change in the business or financial condition including bankruptcy or insolvency proceedings commenced by or against the Merchant; (vi) excessive chargebacks or any other circumstances which in the opinion of EzSwope may increase the risk of loss; (vii) negligence or willful misconduct of Merchant or its employees or agents; (viii) distribution or offering for sale of information or content that infringes a patent, copyright, trademark, or other intellectual property right or contains libelous, slanderous material; (ix) the Merchant assigns or attempts to assign the Agreement or any portion thereof without the prior written consent of EzSwope; (x) EzSwope in its sole discretion deems the Merchant to be potentially and financially insecure; (xi) the Merchant or any other person owning or controlling Merchant's business is listed in one or more databases of terminated or high-risk merchants maintained by any banks or financial institutions; (xii) the Merchant engages in conduct that creates or could tend to create harm or loss of goodwill of any of the Card Brands or EzSwope (xiii) any other breach of any representation and/or obligations by the Merchant under this Agreement.

## **16. Force Majeure**

- 16.1. No Party shall be liable to the other, nor be in default if, and to the extent, that the performance or delay in performance of any of its obligations under the Agreement is prevented, restricted, delayed or interrupted with due to circumstances beyond the reasonable control of such Party, including but not limited to, change in applicable Laws, fires, floods, tsunami, explosions, epidemics, diseases, accidents, acts of God, threat of wars, riots, strikes, lockouts, acts of Government, shortages of materials and/or industrial emergency, terrorist attacks ("Force Majeure"). The Party claiming an event of force majeure shall promptly notify the other Party in writing and in any event not later than fifteen (15) business days from the date of occurrence of such event of Force Majeure and provide full particulars of the event and also keep the other Party informed of any further developments. The Party so affected shall use its best efforts to remove the cause of non-performance, and the Parties shall resume performance hereunder when such cause is removed.

## **17. Governing Law and Dispute Resolution**

- 17.1. The Agreement shall be governed by and construed in accordance with the Laws of India.
- 17.2. In the event any dispute or difference arises out of or in connection with the Agreement (hereinafter referred to as the Dispute between the Parties, both of them shall attempt in the first instance to resolve the Dispute through amicably. If the Dispute is not resolved through amicable discussion within thirty (30) days after either Party informing the other Party in writing of the existence of the Dispute, then either Party may refer the dispute for resolution by arbitration. Such arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. Either Party shall be entitled to apply to the competent courts for interim or interlocutory relief in respect of such arbitration. The arbitration shall be held in Bengaluru in the following manner:
  - 17.3. All proceedings of any such arbitration shall be conducted in English.
  - 17.4. The arbitration award made by the sole arbitrator shall be final and binding on the Parties and the Parties. The award shall be enforceable in any competent court of law.
  - 17.5. The arbitration award made by the sole arbitrator shall be final and binding on the Parties and the Parties. The award shall be enforceable in any competent court of law.
  - 17.6. Subject to Clause 17.2, the courts at Bangalore have exclusive jurisdiction over any of the disputes arising out of or in connection with the Agreement.

## **18. Miscellaneous**

- 18.1. Assignment: The Merchant shall not be entitled to assign or transfer any of its rights and liabilities hereunder to any third party without the prior written consent of EzSwype
- 18.2. Entire Agreement: The Agreement, including all documents incorporated herein by reference, constitutes the complete and entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. The Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.
- 18.3. Further Assurance: Each of the Parties to the Agreement agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable to implement and/or give effect to the Agreement.
- 18.4. Waiver: All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. If any legal action is brought to enforce any obligations hereunder, save and except and subject to the decision of adjudicating authority or Court, the prevailing Party may be entitled to receive its attorney's fees, court costs and other collection expenses, in addition to any other relief it may receive. If either Party fails to perform its obligations under any provision of the Agreement or the other Party does not enforce such provision, failure to enforce on that occasion shall not prevent enforcement on later occasions and would not construe as a waiver.
- 18.5. Amendments: The Agreement shall be altered, modified or supplemented only in writing and shall be valid when duly signed by both the Parties.
- 18.6. Notices: Any notices or communications required to be given or served by any of the Parties on the others in respect of the Agreement shall be given in writing in English to the others and shall be deemed to have been duly served, if sent by prepaid registered mail with acknowledgment due or courier at the address specified in the title to the Agreement or by electronic mail to the registered email address.
- 18.7. Independent Parties: The Agreement is entered into between EzSwype and the Merchant on a 'principal to principal' basis. EzSwype and the Merchant are independent parties and the Agreement shall not establish any relationship with the partnership if a joint venture, employment, franchise or agency between EzSwype and the Merchant. Neither Party shall have the power to bind the other Party or incur obligations on the other Party's behalf without such other Party's prior written consent except as otherwise expressly provided herein.
- 18.8. Severability: All provisions of the Agreement shall be severable and no such provisions shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provisions invalid. In the event of the invalidity of any provision of the Agreement, it shall be interpreted and enforced as if the provisions thereby rendered invalid were not contained herein. If any provision of the Agreement shall be susceptible of two interpretations, one of which would render the provision invalid and the other of which would cause the provision to be valid, such provision shall be deemed to have the meaning which would cause it to be valid. If any provision of trust Agreement shall be prohibited by or adjudicated by a court to be unlawful void or unenforceable such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other provisions or the validity or enforcement of the Agreement.
- 18.9. Survival: The obligations and rights of the Parties under the Agreement including without limitation Clause 11 (Confidential Information), Clause 14 (Indemnification), Clause 17 (Governing Law and Dispute Resolution) Clause 18.6(Notices) shall survive the expiration or termination of the Agreement.

## **Device Repair, Replacement and Warranty Policy**

*[Capitalized terms not specifically defined hereunder shall have meaning defined under Definition and Interpretation Section above]*

This Policy shall be called Device Repair, Replacement and Warranty Policy (Policy) and shall apply to the POS Equipment (Device) issued to Merchant on rental basis by EzSwyte. This Policy is subject to terms and conditions of the services detailed below and are subject to modification and/or additional terms and conditions as may be imposed by EzSwyte at its sole discretion and shall be binding and enforceable on the Parties.

### **Device Warranty**

**Warranty Period:** Subject to the exclusions contained below, EzSwyte warrants the device against defects in materials and workmanship, under normal consumer use, for a period of ONE (1) YEAR from the date of purchase as mentioned in the valid invoice.

### **Extended Warranty Period:**

Additional period opted by Merchant for availing limited warranty under the extended Warranty plan which is beyond the Warranty Period and for a period of one (1) year. During the Extended Warranty Period EzSwyte shall repair, at no charge, the defect or damage using new, used or reconditioned/refurbished functionally equivalent replacement parts and at its sole discretion offer replacement, subject to availability of the alternative Device. The term of the Extended Warranty Period is as may be determined by EzSwyte and subject to payment of charges, if any.

### **Refund & Return Policy**

Returned Device should be in good condition else EzSwyte shall reserve the right to charge Merchant relevant charges and deduct the same from the Net settlement amount, if any, as per actuals

EzSwyte reserves its right to recall/demand return of the Devices that are not used for consecutive 3 months. Upon receipt of Device and accessories such as adaptor, battery, USB cable, instruction manuals within [15] days from the date of such recall made by EzSwyte and subject to conditions, a partial refund calculated on the basis of remaining days will be initiated within 30 days post settling the dues/penalties from the settlement. EzSwyte reserves the right to change the refund terms and conditions and guidelines as applicable to the usage of Device or Services at any time without prior intimation to the Merchant. Merchant shall be responsible for review these terms periodically for updates and changes. Merchant's continuous use of the Services following the changes made by EzSwyte shall mean that Merchant accepts and agrees to the revisions.

There shall be no refund whatsoever in case the Merchant decides to discontinue the Services and fails to return the Device to the EzSwyte.

**IMP:** Refund will not be processed to Merchant for the following instances;

- Software Installation related charges;
- Any kind of value-added services charges.

### **Repair Policy**

Merchant is liable to pay all expenses that may be incurred by the EzSwyte for the repairs, maintenance and/or replacement of the Device which has got damaged as a result of the improper handling by the Merchant;

### **Replacement Policy**

Device Replacement is offered under a warranty period of ONE (1) year from the date of purchase of Device, only in the event if the device is irreparable or any technical glitch, including but not limited to connectivity, Software/Hardware failure, compatibility

issue with other devices. Any damage in Device, either internal or external will not considered for replacement and the charges for repair as may be applicable on case to case basis shall have to be paid by the Merchant.

**Terms and Conditions** Following Terms and Conditions shall be applicable for replacement of Device under Warranty Period;

- (a) EzSwype either refuse to service or charge at standard rates for repairing and replacement of components in case of out of warrant Device.
- (b) Technical / Hardware / Software issue will be considered for the repair and replacement of Device
- (c) Merchant has to securely package Device before it dispatches the device for Replacement
- (d) Dispatch & Other Charges
  - a. Courier Charges / Octroi / freight will be paid by the Merchant that will be waived off.
  - b. Merchant has to dispatch the Device to the company address mentioned in the replacement form.

**Turn Around Time for Device Replacement**

- (a) EzSwype will take upto [15] working days to ship out, from the date of receipt of the defective Device.

**Exclusions:**

- (a) Consumable parts, such as batteries are not covered under Warranty;
- (b) protective coatings designed to diminish over time unless failure has occurred due to a defect in materials or workmanship.
- (c) Cosmetic damage, including but not limited to scratches, dents, cracks or other cosmetic damage.
- (d) accessories i.e. USB cable, adaptor.
- (e) Damage caused to sockets by wrong use of products, accessories or other peripheral equipment, including without limitation housings, parts, or software, are excluded from coverage.
- (f) Damage caused by accident, abuse, misuse, liquid contact, fire, earthquake or other external causes; including but not limited to:
  - a. improper usage or operation (e.g. operating the Product outside their permitted or intended uses as defined under user manual, Quick Start Guide, Online Tutorials, and other documentation, abuse or neglect (e.g. broken/bent/missing clips/fasteners/connectors); impact damage (e.g. dropping the Product)
  - b. contact with liquids, water, rain, extreme humidity, heavy perspiration or other moisture; sand, food, dirt or similar substances;
  - c. use of the Products for commercial rental purposes; or
  - d. external causes or acts which are not the fault of EzSwype, including but not limited to flood, fire, earthquake, tornado or other acts of God, are excluded from coverage.
- (g) Damage caused by unauthorized Service or Modification. Defects or damage resulting from service, testing, adjustment, installation, maintenance, alteration, or modification in any way, including but not limited to tampering with or altering the software, by someone other than EzSwype, or its authorized service team, are excluded from coverage.
- (h) Products that have been altered in any manner so as to prevent EzSwype from determining whether such Products are covered under the terms of this Warranty are excluded from coverage. The forgoing shall include but not be limited to
  - a. serial numbers, date tags or other manufacturer coding that has been removed, altered or obliterated;
  - b. mismatched or duplicated serial numbers; or
  - c. broken seals or other evidence of tampering. Do not open the Product or attempt to repair the Product yourself; such conduct may cause damage that is not covered by this warranty.
- (i) Normal wear and tear or otherwise due to the normal aging of the product.
- (j) Defects, damages, or the failure of the Product due to any communication service or network you subscribe to or use with the Products.
- (k) Products that have been refurbished, reconditioned, or remanufactured. The foregoing does not apply to Products repaired or replaced pursuant to the terms of this Warranty. Liquid /Physical damage will not be covered for replacement,

**Redressal:**

Address: EzSwype Business Solutions Private Limited  
Sh. J.P. Tower, 2nd Floor, Building No. 1164/1,  
New Railway Road, Opp. Fire Station,  
Gurugram, Haryana – 122001, India.

Email Id: logistic@ezswype.com

**Jurisdiction:**

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This Terms of Conditions shall be governed by and construed in accordance with the laws of India. Any dispute arising out of or in connection with Services, shall be mutually settled within 30 days from the date of such occurrence. The courts of Bengaluru shall have exclusive jurisdiction.

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