

Merchant Service Agreement

PLEASE READ THE FOLLOWING AGREEMENT,
ALONG WITH ITS TERMS AND CONDITIONS,
THE FLUTTERWAVE TERMS OF USE AND PRIVACY
POLICY CAREFULLY BEFORE ACCESSING OR
USING THE FLUTTERWAVE SERVICES.

Flutterwave Merchant Service E- Agreement

Please read the following agreement, along with its terms and conditions, the Flutterwave terms of use and privacy policy carefully before accessing or using the flutterwave services. Note that these terms and conditions constitute a legal agreement between you (the Merchant) and flutterwave (the Service Provider).

You may not access or use any Flutterwave Services unless You Agree to abide by all of the terms and conditions as contained in this Agreement.

Please read the contents of this document carefully and print the copy sent to your email and/or retain this information electronically for your records

This Merchant Service Agreement (“Agreement”) is a legal agreement between FLUTTERWAVE TECHNOLOGY SOLUTIONS LIMITED (together with its subsidiaries, affiliates, successors and assigns)

And

You (hereinafter referred to as the Merchant), as a user in order for You to receive certain payment gateway services and other services offered by Flutterwave and or its subsidiaries and affiliates

Flutterwave and Merchant are herein referred to collectively as “Parties” and individually as “Party”

Whereas:

Flutterwave is an integrated payment and transaction processing company that provides technology integration, advisory products and services, and transaction processing and payment infrastructure to individuals, government and corporate organizations across various sectors and has developed and owns an e-commerce service that authorizes payments for Merchants.

Flutterwave is in collaboration with the acquiring Bank to provide a Payment service gateway to Merchants.

The Merchant is desirous to partner with Flutterwave to use its Payment Gateway to process payment from its customers.

The Parties have agreed to work together in the development and production of certain technical, payment and financing products and have entered into this Agreement for the purpose of documenting their common intention.

Now It Is Hereby Agreed As follows:

DEFINITIONS

In this Agreement, the following definitions apply:

“3D-Secure” means the backup two (2) levels of security which must include delivery of a dynamic code in a card transaction

“Acquiring Bank” means the financial institution/bank institution that processes credit or debit card payments on behalf of a merchant.

"Affiliate" means, in relation to any Party, any entity in the same group as that Party, including but not limited to a subsidiary or a holding company of that Party and any direct or indirect subsidiaries of such holding company;

“Agreement” means this Merchant Service Agreement and any supplements, appendices, amendments, modifications, extensions and revisions therein;

“API” means Application Program Interface belonging to Flutterwave for the purpose of providing the Services;

“Applicable Law(s)” includes but is not limited to all Ghana’s legislation, law, regulation, code, guidelines, rules, policies and directives of any competent regulatory entity, including without limitation The Central Bank of Ghana and the Ghana Interbank Payment and Settlement Systems Limited (GhIPSS) requirements with respect to payments, data protection, data privacy and data security, or any successor legislation, law, regulation, code, guidelines, rules, policies and directives amending, consolidating or replacing such Applicable Law, that is applicable to the deployment or operation of the core IT Banking Solution as well as any Services to be provided with respect to this Agreement, and any court decision having the force of law in the Republic of Ghana;

“Business Day” means any day other than Saturday, Sunday, or any other day on which banking institutions in the Territory are authorized by law or executive action to close;

“Card” means a prepaid virtual and/or physical card issued by Issuing Bank, which is branded with one or more marks or signage of a Payment Scheme, offered by Flutterwave to its Merchants on the Flutterwave Platform;

“Cardholder” means any authorised user of a card who uses the card to carry out a card transaction on the Payment Gateway;

“Confidential Information” means all information relating to the Disclosing Party which is obtained, whether in writing, pictorially, in machine readable form or orally or by observation in connection with this Agreement, including but without limitation, financial information, know-how, processes, ideas, intellectual property (irrespective of its registrability or patentability status), schematics, trade secrets, technology, customer list (potential or actual) and other customer-related information, sales statistics,

market, market intelligence, marketing and other business strategies and other commercial information of a confidential nature but does not include information which is known to the Receiving Party without any limitation or restriction on use or disclosure before receipt of such information from or on behalf of the disclosing party or becomes publicly available, other than as a breach of this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction or any information required to be disclosed under any relevant law or any binding judgment or order of court or arbitration tribunal or any stock exchange regulations or under direction from any relevant regulatory authority;

“Customers” means patrons of the Merchant in relation to a payment transaction processed using the Services;

“Chargebacks” means the reversal of a transaction or request for repayment in respect of a transaction previously settled and/or remitted that comes from the Issuing Bank, Payment Scheme or other financial institution.

The reasons for the Chargebacks include (but are not limited to):

the transaction amount not being authorized;
the cardholder alleging:
non-participation in the transaction; or
non-authorization of the use of card; or
non-receipt of goods and/or services purchased;
cancelled or uncompleted pre-authorized transaction; or
suspected fraud on card.

“Disclosing Party” means any one of the Parties under this Agreement who discloses Confidential Information to the other Party to this Agreement;

“Flutterwave Terms and Conditions” means collectively the terms and conditions set forth in this Agreement, as may be amended from time to time, including all exhibits, schedules and addendum thereto and the terms and conditions of the Payment Gateway on <https://flutterwave.com/terms> and the Flutterwave Privacy Policy on <https://flutterwave.com/privacy-policy>;

Per the termination of this Agreement, provided that prior to any disclosure of any party’s Confidential Information as required by law, the party subject to the requirement shall (iv) notify the other parties of all, if any, actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated and (v) cooperate with the other parties’ reasonable, lawful efforts to resist, limit, or delay disclosure.

Upon Termination of this Agreement, or at any time upon the request of the other party, each party shall return all Confidential Information in the possession of such Party or in the possession of a third party (over which such party has or may exercise control).

In the event of any breach of the obligations under this Section 17, each Party acknowledges that the other Party may have no adequate remedy at law, in addition to such other remedies as may be available to the other Party, the other Party may obtain injunctive relief.

This Section shall survive any termination or expiration of this Agreement.

FORCE MAJEURE

If any of the Parties hereto is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control (including but not limited to an Act of God, Natural Disaster, or Civil Disorder) the Party unable to fulfil its obligations shall immediately give notice in writing of this to the other Party and shall do everything in its power, including but not limited to accepting assistance from third parties or the other Party, to resume full performance.

If the period of incapacity exceeds two (2) months, then this Agreement shall automatically terminate unless Parties expressly agree otherwise in writing RELATIONSHIP BETWEEN PARTIES

The relationship between the Parties hereto shall be one of collaboration for the single purpose of the business relationship herein created.

This Agreement shall not in any way constitute a partnership or joint venture between the Parties or constitute either Party an agent of the other. This Agreement is not intended to confer on any person other than Flutterwave and the Merchant, any express or implied benefit or burden.

INTELLECTUAL PROPERTY

Nothing set forth in this Agreement shall constitute a transfer or assignment by one Party to another Party of any Intellectual Property Rights owned or otherwise controlled by such Party, and each Party hereby retains all of its rights, title and interest in such Intellectual Property Rights.

All Intellectual Property Rights in or related to the Payment gateway are and will remain the exclusive property of Flutterwave, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Payment gateway is used or licensed. The Merchant shall not take any action that jeopardizes Flutterwave's proprietary rights or acquire any right in the Payment gateway, or the Confidential Information, as defined herein. Unless otherwise agreed on a case-by-case basis, Flutterwave will own all rights in any copy, translation, modification, adaptation or derivation of the Payment gateway or other items of Confidential Information, including any improvement or development thereof.

NO ASSIGNMENT

The, rights benefits or obligations under this Agreement may not be assigned or otherwise transferred in whole or in part without the prior written consent of all the Parties but shall be binding upon and inure to the benefit of each of the Parties and, where so permitted, their assigns or other transferees.

Flutterwave may sub-contract or delegate the performance of its obligations under this Agreement to third parties including any of its Affiliates; however, the Merchant shall remain responsible for the performance of its duties under this Agreement.

MODIFICATIONS

This Agreement may not be modified except by an instrument in writing signed by duly authorized representatives of each of the Parties.

WAIVER

The respective rights of the Parties (whether arising under this Agreement or under the applicable law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such right shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on the part of either Party shall preclude them from exercising any such right or constitute a suspension or variation of such right.

SEVERANCE

In the event that any provision of this Agreement is declared by any applicable law, judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or irrelevant It shall to the extent required by such law or authority, be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement.

FURTHER ASSURANCES

At all times after the date hereof the Parties shall at their own expense execute all such documents and do such acts and things as may be reasonably required for the purpose of giving full effect to this Agreement.

WHOLE AGREEMENT

Save for Flutterwave Terms and Conditions and Payment Scheme Rules of this Agreement, this Agreement contains the whole agreement between the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreement between them in relation to its subject matter and the Parties confirm that they have not entered into this Agreement upon the basis of any representation that are not expressly incorporated herein and the Flutterwave Terms and Conditions.

DISPUTES AND DISPUTE RESOLUTION

Flutterwave shall not be involved in any disputes that may arise between the Merchant and any of its Customers, unless such dispute specifically relates to transaction settlement.

In the event of a dispute between Parties with respect to any issue arising out of or relating to this Agreement in any manner, including but not limited to the breach thereof, resolution of which cannot be resolved amicably by the Parties through negotiation within thirty (30) days shall be resolved by arbitration at the Ghana Arbitration Centre (GAC) before a single arbitrator in accordance with the Ghana Arbitration Centre Rules.

The Parties shall be entitled to require the appointment of an arbitrator by the Chairperson of Ghana Arbitration Centre in accordance with the Rules, where the Parties fail to reach an amicable decision of the arbitrator.

The arbitration shall be held in Accra, Ghana and conducted in English language.

The decision of the arbitrator shall be final and binding on the Parties and Parties agree to be bound by it. Such decision shall be rendered within thirty (30) days of the closing of the hearing record.

The cost of arbitration shall be borne equally by the Parties.

The Arbitral award rendered by the arbitrator shall be entered in any court of competent jurisdiction as judgment. No award of punitive damages by the arbitrator may be enforced.

GOVERNING LAW

This Agreement shall be governed by the laws of the Republic of Ghana.

NOTICES.

Any notice required or permitted by this Agreement to be given to either Party by the other shall be given by personal delivery to such Party or by registered or certified mail, electronic mail, postage prepaid, return receipt requested, and addressed to:

FLUTTERWAVE TECHNOLOGY SOLUTIONS LIMITED

Address: Suites 305 and 306

Emporium Movenpick Ambassador Ridge,
Accra,

Email: hi@flutterwavego.com

Attention: Managing Director

ANTI-CORRUPTION

Each Party hereby undertakes that, at the date of this Agreement, itself, its directors, officers, employees or Affiliates have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with this Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

Each Party shall comply with all applicable anti-bribery and anti-corruption Laws in Ghana (including the Economic and Financial Crimes commission laws and the Foreign Corrupt Practice Act of the United States of America and the Bribery Act 2010 of the United Kingdom) and all applicable anti-bribery and anti-corruption regulations and codes of practice.

The Merchant shall ensure that this clause 30 is observed in all relationship with its customers.

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Where you negotiate a Merchant Services Agreement before or after accepting the terms of this E-Agreement, the executed Agreement will take precedence over this E-Agreement.

Annexure 1

Transaction Fees

Fees payable for Flutterwave Services under this Agreement are structured on <https://flutterwave.com/global-pricing>.

Miss Ayushi Bhandari
July 28, 2022