INTERSWITCH PAYMENT GATEWAY TERMS AND CONDITIONS

The Interswitch Payment Gateway Standard Terms and Conditions represent the legal attributes of the Service provided by Interswitch. The content is binding and is not subject to any varying terms or conditions, unless otherwise agreed by the Parties in writing.

1. DEFINITIONS

"**Administrator**" means the User's personnel that has the right to create all other users within the System on behalf of the User.

"**Agreement**" means these Terms and Conditions that govern the use of the Services.

"**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 registerability or patentability status), schematics, trade secrets, technology, customer list (potential or actual) and other customer-related information, algorithms, software programs, software source documents 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 or is developed by the Receiving Party or its affiliates independently of the Confidential Information received from the disclosing party hereunder.

"**Data Controller**" (Controller) shall have the definition provided in the Data Protection Act and in this case is the User.

"**Data Processor**" (Processor) shall have the definition provided in the Data Protection Act and in this case is Interswitch.

"**Data Subject**" in this case are the User's customers.

"**Disclosing Party**" means the party disclosing party Confidential Information.

"**Merchant Account**" means a digital account issued by Interswitch where the User maintains an account. The account is linked to the wallet account of the User and is where the transactions carried out on the System shall be settled.

"**Receiving Party**" means the party in receipt of the Confidential Information.

"**Token**" means a device used to generate randomly a one-time password required to log into the System.

"**System**" means Interswitch's VPN/web based solution known as Payment Gateway which allows its subscribed Users collect funds from its clients via cards or mobile money.

"**User**" **means** the person (individual or corporate) that is licensed to use the System as per the details on the execution section.

2. LICENSE

2.1. Interswitch East Africa (Kenya) Limited ("Interswitch" or "We") grants to _____ **LIMITED** ("User" or "You")

the right to use the Interswitch Payment Gateway on, and User agrees to abide by, the terms and conditions of this agreement.

2.2. Interswitch grants to the User a non-exclusive, non-transferable license to use the Interswitch Payment Gateway from the date of execution for an initial term of one (1) year and shall automatically renew for periods of one (1) year thereafter unless terminated in accordance with the provisions of these Terms and Conditions solely for the purposes of these Terms and Conditions for its permitted use. Except to the extent specifically authorized under this agreement, the User must not sub-license, transfer, or assign the right to use.

2.3. All proprietary rights in or related to the System are and will remain the exclusive property of Interswitch, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the System is used or licensed. The User will not take any action that jeopardizes Interswitch's proprietary rights or acquire any right in the System.

2.4. Unless otherwise agreed on a case-by-case basis, Interswitch will own all rights in any copy, translation, modification, adaptation or derivation of the System or other items of Confidential Information, including any improvement or development thereof.

3. USER RESPONSIBILITIES AND UNDERTAKINGS

3.1. The User shall:
   a. Not make any warranty or representation what so ever in relation to the Services which may bind Interswitch or make it liable in any way whatsoever;

   b. Where required, comply with all security or encryption standards, rules and procedures imposed by Interswitch;

   c. Make connections to such other systems as Interswitch may require from time to time;

   d. Inform Interswitch of any change in the particulars of its designated bank account;

   e. Not capture, by any means possible, user (cardholder) payment card details including but not limited to Primary Account Number (PAN) or Card Number, Personal Identification Number (PIN), Card Verification Value(CVV);

   f. Comply with all PCI DSS regulations as relates to the services herein;

   g. keep any approved digital certificates for a site authentication current and valid and take all necessary measures to protect the security and secrecy of its site certificates;

   h. notify Interswitch of any change to the internet protocol address of its website used for payment transactions;

   i. Notify Interswitch of any new or additional products that it proposes to offer on its website;

j. Only accept payments and/or process refunds from cardholders or customers in connection with goods and/or services which have been supplied to the relevant cardholder or customer;

k. The User undertakes not to offer for sale on its site, any goods or services not expressly stated during registration of the User's website with Interswitch, the default of which Interswitch shall without any liability, immediately withdraw its Services and prevent access to the Systems;

l. The User agrees that only the website expressly stated upon its registration with Interswitch shall be integrated into the Systems and derive the services provided;

m. It shall ensure goods being ordered and paid for in its system are available in order to avoid refunds and chargebacks as any refund or chargeback above 1.5% of the volumes processed via Interswitch shall attract an additional 0.5% fee on each transaction;

n. The User shall accept all Cards and all mobile subscribers as payment and not set any minimum limit on the respective payment amounts. It must treat purchases by Card and mobile money in exactly the same way as cash purchases and charge the customer the same price as if he or she were paying cash. Interswitch shall advise if there are any exceptions where the User may charge a different price. In these cases, the difference between the Card and mobile money price and cash price must not be more than the amount of the User service charge for the Card or mobile money Payment;

o. The User must get authorisation through Interswitch, from the relevant Card Issuer for all Card Payments above its Floor Limit (Floor Limit shall be advised by Interswitch to the User)and (upon request by Interswitch) for certain Card Payments below its Floor Limit and cancel any authorisation for a Card Payment that does not go ahead straight away;

p. When the User requests for authorisation, Interswitch will contact the Card Issuer to approve the Card Payment. Authorisation is not a guarantee of payment and it does not prevent Interswitch from charging the Card Payment back to the User if any of the reasons set out in clause 11 shall apply. The User should be aware that accepting Card Not Present Payments is done so at its own risk and neither Interswitch nor the Card Issuer will offer any guarantee of payment;

q. The User should note that the Floor Limit for all Electronic Commerce Payments is zero and so it must obtain authorisation for all Electronic Commerce Payments through the e-Interswitch system. Interswitch may change the Floor Limit for Electronic Commerce Payments through the Interswitch system from time to time and will notify the User of any changes in writing;

r. Interswitch does not allow or process any MOTO Payments through the Interswitch system.

3.2. Unless otherwise agreed by the Parties in writing, the User acknowledges and agrees that User shall (at own cost) be solely responsible throughout the duration of this agreement for the provision of all such equipment, software, systems and telecommunications facilities which are required to enable the User receive the Services.

3.3. In order to permit the User's website to inter-operate with Interswitch payments systems, the User will be provided with API codes to be installed on the User's website. The User shall have full responsibility for the integration process and Interswitch shall not be liable for any fault or failure to integrate to the payment systems. All Integration however, shall be subject to passing Interswitch's Integration acceptance tests prior to go live.

3.4. The User shall be liable for (including without limitation, all charges, losses or damages whatsoever arising from):
a. Data stored or transmitted on or through the Systems; or
b. Any use of the Systems passwords or identification codes assigned by Interswitch.

3.5. The User shall observe and comply with all security measures and instructions prescribed by Interswitch or any bank in respect of any card transactions or customer (cardholder) payment instruction.

3.6. The User shall promptly notify Interswitch of any security breach, misuse, irregularity, suspected fraudulent transaction, account numbers or suspicious activities that may be connected with attempts to commit fraud or other illegal activity through the use of the User's site.

3.7. The User must provide Payment Details (details of a card or mobile money payment including vouchers or receipts signed by the Cardholder or mobile subscriber) in the form which we have approved.

3.8. The User shall be solely responsible to its online customers (cardholders) on its site and use thereof of the payment systems. The User understands and agrees that under no circumstances shall use of the site or payment systems imply that Interswitch endorses, sponsors, certifies or otherwise guarantees the sale or use of the User's Products.

3.9. The User shall take all steps to keep secure and confidential any information or data related to transactions initiated on the User's website. In the event any such information is lost, stolen or otherwise compromised, the User shall forthwith report and give written notice of such occurrence to Interswitch whereupon the User shall take immediate steps to remedy the situation and prevent its re-occurrence.

3.10. The User shall ensure that all sums due and payable by way of fees, refunds or settlement due to chargebacks, refunds or otherwise are settled in full to Interswitch when they are due and the User hereby authorizes and allows Interswitch to debit its accounts for any such amounts or use any means available to recover such amounts.

4. UNDERTAKINGS OF INTERSWITCH

Interswitch shall:

4.1 Create and allocate to the User a Merchant Account.

4.2 Provide training on the use and operation of the Systems to the User's nominated personnel. Such trainings will be within Nairobi and where an alternative venue is desired, the timing, process, and commercials will be mutually agreed by Interswitch and the User. The cost of the training shall be borne by the User.

4.3 Set up the User's administrator and authorising officer(s) nominated by the User on the System.

4.4 Provide contact details of relevant staff that may be contacted in the event of complaints/issue resolution relating to transactions performed via the System.

4.5 Provide the User with daily transaction and settlement reports during the Business Days. No reports shall be provided on non-settlement days. The User must check its reports and statements carefully and notify Interswitch if it includes something which appears to be wrong. We shall correct any erroneous entries to your merchant account as soon as possible after you notify us about them or we discover them. If You disagree with any of the entries on the report or statement, you must notify us within twenty (20) days from the date of the report otherwise the report will be deemed to be accurate.

4.6 Provide the relevant operations manual and user guide for the System.

4.7 Notify the User, at the earliest possible time, of any planned maintenance of its systems, which may likely affect and/or cause the System to be unavailable. Interswitch will plan for this maintenance of the System at any given time.

4.8 Be responsible for provisioning of the tokens to the User for the purpose of generating one-time password to access the system at the User's cost.

5. SERVICES FEES AND CHARGES

5.1. Interswitch shall be entitled to a ___ % fee for online card acquiring transactions on local and international cards or mobile money transaction for each successful transaction on the payment system. These fees shall be borne by the User. The fees for Bank notification and settlement shall be borne by the User. Interswitch reserves the right to revise such fees from time to time upon service of a 30 days' notice to the User.

5.2. For all transactions, Interswitch shall deduct its fees prior to settling the User as per settlement duration provided in this Agreement. Where the User is processing the transaction via the Interswitch paybills. Where the User is processing the transactions via their paybill, Interswitch shall invoice the User for the fees monthly and the User shall settle the invoice within seven (7) days of receipt of the invoice.

5.3. All payments required to be made by the User on this service shall be payable without any deduction, claim, counterclaim, setoff, notice or demand.

5.4. No fee nor charges incurred by the User under this service shall be refundable in the event of termination howsoever caused.

5.5. The User acknowledges that Interswitch may be subject to complying with instructions received from participating banks and mobile money operators within the Interswitch network in respect of any transaction on/to the User's designated account, and agrees that no liability shall be imputed to Interswitch for acting on any such instruction.

5.6. If for any reason whatsoever, a Bank where the User's designated account is domiciled, ceases to belong to the Interswitch network, the User shall within 14 working days upon receipt of written notice thereof from Interswitch, provide an account for the purpose of the Transactions with any of the other participating banks.

5.7. No transaction settlement shall occur on the non-settlement days provided below:

a. Any day where Banks in Kenya are not open for business.
b. Saturdays, Sundays and public holidays as gazetted and declared in Kenya; in which case transactions effected on such days shall be paid and settled on the day immediately following which is not any of the aforesaid non-settlement days.

6. CURRENCY

The currency for transactions processed via this System shall remain the Kenyan Shillings unless otherwise agreed in writing by both parties.

7. SETTLEMENT OF TRANSACTION FUNDS

7.1. Interswitch shall make settlements regularly of funds cleared and actually received by Interswitch from a settlement bank on a T+7 basis for card transactions and T+2 basis for mobile money transactions to the Merchant Account on the merchant portal.

7.2. Settlement shall be carried out weekly on the day and time that shall be agreed between Interswitch and the User. The cut-off time shall also be agreed by the Parties in writing.

7.3. All settlement shall always be done in Kenya Shillings regardless of the currency of the transaction. Where the payment is done on a card that is not a Kenya Shillings denominated currency, or a site that is not a Kenya Shillings denominated site, we will convert the amount deducted from the card or amount payable by the customer to Kenya Shillings on the day the Transaction is processes using a foreign exchange index which we will choose from time to time.

7.4. The User shall have no right of objection to any received amount after the expiry of 7 business days.

8. WARRANTIES

8.1. Interswitch and the User each warrant that it is duly registered, and has the full capacity and corporate authorisation to enter into this Agreement and discharge the obligations and responsibilities created herein.

8.2. Interswitch and the User each warrant that it is not contemplating or in the process of being wound up.

8.3. The User further warrants that it has the required licenses and regulatory approvals to conduct its business and participate in this transaction and no element of the transaction constitutes a breach of any existing law, regulation, patent, copyright, or other intellectual property in its country or countries of domicile and operation.

8.4. Interswitch neither warrants that the operation of the system/platform will be uninterrupted nor error free, nor will it be 100% fraud or fail proof.

8.5. Interswitch makes no express or implied representations or warranties with respect to the System or its condition, merchantability, fitness for any particular purpose or use by the User. Interswitch furnishes the above warranties in lieu of all other warranties, expressed or implied, including the warranties of merchantability and fitness for a particular purpose.

9. INDEMNITY

9.1. The User shall indemnify and hold Interswitch indemnified from and against all actions, proceedings, costs, claims, demands,

charges, expenses (including legal expenses), liabilities, fines, levies, losses and damages, whether arising in tort, contract or common law, which Interswitch may suffer or incur to the extent arising out of or in consequence of or in connection with:

a. any claim brought against Interswitch by a Customer, Cardholder, Card Scheme, Card Issuer, mobile money operator, Other Financial Institution, Acquirer or other third party arising from a Transaction whether or not previously remitted to you;

b. any other claim brought against Interswitch arising from any aspect of this Agreement (including in connection with any security breach as described in this Agreement, compromise or theft of Data held by User or on behalf of the User irrespective of whether such security breach, compromise or theft of Data was within or outside the User's control);

c. the enforcement or attempted enforcement of this Agreement (which includes the recovery or attempted recovery of any sum owing to Interswitch under this Agreement);

d. the protection of Interswitch's interest in connection with any aspect of the parties relationship under this Agreement (including the cost of any third parties nominated by Interswitch or instructed by Interswitch for this purpose);

e. a breach by User or those of persons furnished by the User, its agents or subcontractors or resulting from the use of the System of any of these conditions or any other provisions of the Agreement;

f. any transaction (including a transaction which is subsequently discovered to be fraudulent);or

g. Any other arrangements between the User and the User's customer, except, in each case, if and to the extent caused by or contributed to by Interswitch's negligence or breach.

9.2 If the User is a partnership, each partner shall be jointly and severally liable under the Agreement.

9.3 The User shall indemnify and hold harmless Interswitch from any loss, fraud, claims, damages, fines arising from a breach of any of the terms of this Agreement by the User.

10. LIMITATION OF LIABILITY

The liability of Interswitch to the User, whether in contract, negligence, and other tort, by way of indemnity or otherwise arising out of or in connection with this Agreement shall be subject to the limits set out below:

10.1. Interswitch's liability shall be limited to the transaction fees accrued by virtue of this Agreement, in the month immediately preceding the date when a claim to be indemnified is raised. In no event shall Interswitch be liable for any special, circumstantial, consequential or indirect loss to the User or any third party.

10.2. Interswitch may take from the User security funds held in an Interswitch account to cover all money and liabilities it provided that such recovery will be communicated to the User in writing. That security will include all its liabilities in connection with this Agreement.

10.3. The User shall raise any claim from Interswitch only within one (1) month of the issue causing the claim arose for card transactions and fourteen (14) days for mobile money transactions.

10.4. No liability shall be raised against Interswitch more than six (6) months after the accrual of the cause of such liability therefore, it is further agreed that the limitations on liability, expressed herein, shall inure to the benefit of and apply to all parents (both direct and indirect), subsidiaries and affiliates of Interswitch.

10.5. The limit of Liability applies irrespective of the number of claims.

10.6. Interswitch shall not be liable for any loss which occurs during maintenance of its platform, of which it has given the User notice of.

10.7. Interswitch will not be liable for the actions or inactions of any third party not acting on the instructions of Interswitch, neither will Interswitch be liable for the actions or inactions not directly traceable to it.

10.8. Interswitch shall not be liable to the actions or inactions of the third party providers that are dependable for the Payment Gateway Services to complete the transaction.

10.9. Interswitch shall not be liable for the actions or inactions not directly traceable to it.

11. TAXES, PENALTIES, FINES AND CHARGEBACKS

11.1. Unless stated otherwise, all Fees, charges and other payments to be made by the User are exclusive of VAT and any other relevant taxes and in addition to paying such Fees, charges or other payments, User shall also pay any such taxes.

11.2. In certain circumstances, Card Issuers, Card Schemes mobile money operators, and/or Other Financial Institutions refuse to settle a transaction or require repayment in respect of a transaction previously settled and/or remitted, notwithstanding that authorization may have been obtained from the Card Issuer and/or Other Financial Institution (such circumstances being a **"Chargeback"**).

11.3. The User acknowledges and agrees that under all applicable rules, regulations and operating guidelines issued by Card Schemes, Financial Institution, Central Bank of Kenya and Interswitch relating to cards, transactions, other payment methods and processing of data, the User may be required to reimburse Interswitch for Chargebacks, fines and penalties in circumstances where the User has accepted payment in respect of the relevant transaction and even if the User is under no legal liability for the supply or performance of the goods or services concerned.

11.4. All Chargebacks shall correspond to the whole or part of the settlement value of the original transaction or, at an amount converted to the settlement currency from the currency of Chargeback by the Card Scheme to Interswitch at the rate of exchange quoted for Settlement purposes on the day the Chargeback or refund is processed together with the Interswitch fees reflected herein in this agreement.

11.5. Where a Chargeback occurs, Interswitch shall immediately be entitled to debit the User's position or make a reversal from the User's Merchant Bank Account and/or make a deduction from any remittance and/or invoice the User to recover:

a. the full amount of the relevant Chargeback plus the fees; and

b. Any other costs, expenses, liabilities or Fines which may be incurred as a result of or in connection with such Chargeback ("**Chargeback Costs**").

11.6. A Chargeback represents an immediate liability from the User to Interswitch and where the full amount of any Chargeback and/or any Chargeback Costs is not debited by Interswitch from your

Merchant Account or deducted from any Remittance or invoiced as referred to in clause 11.5, then We shall be entitled to otherwise recover from the User by any means the full amount of such Chargeback and Chargeback Costs (or the balance thereof, as the case maybe).

11.7. Interswitch shall not be obliged to investigate the validity of any Chargeback by any Card Issuer, Card Scheme or Other Financial Institution, whose decision shall be final and binding in respect of any Chargeback.

11.8. As Chargebacks may arise a considerable period after the date of the relevant transaction, the User acknowledges and agrees that, notwithstanding any termination of this relationship for any reason, Interswitch shall remain entitled to recover Chargebacks and Chargeback Costs (and, where relevant, from any entity who has provided Interswitch with a guarantee or security relating to the User's obligations under this relationship) in respect of all Chargebacks that occur in relation to transactions effected during the term thereof.

11.9. Interswitch reserves the right to immediately pass on to the User and recover from the User any fines incurred and/or impose further charges on User and/or terminate the relationship forthwith if We consider that the total value of refunds and/or Chargebacks is unreasonable. Interswitch can recover fines from the User in the same way as Chargebacks and in any event they represent an immediate liability from the User to Interswitch.

11.10.	The User agrees that it bears the responsibility to prove to Interswitch's satisfaction (or that of the relevant Card Issuer, mobile money operator or Other Financial Institution) that the debit of a customer's or cardholder's account was authorized by such customer or cardholder.

11.11.	Chargeback provisions shall be as per the terms of the acquiring bank.

12. REFUNDS

12.1 In certain circumstances the User may choose to refund a card payment to a customer for credit to your customer's Card or mobile money account where the customer has declined acceptance of or returned the goods or services.

12.2 The User must make the request for a refund of card transactions to Interswitch within five working days of the transaction.

12.3 There shall be no refund of the fees charged for executing the original transaction in part or in whole to the User where the transaction is refunded.

12.4 There shall be no additional fees charged as the refund shall not be treated as a new transaction.

12.5 The User understands and agrees that refunds for cards shall be subject to the acquiring bank's or the mobile money operator's terms and conditions.

12.6 The fees applicable for refund shall be payable by the User.

12.7 The refund and its details must be in the form which we have approved.

13. REVERSALS

13.1	The User may choose to reverse a transaction at its discretion or upon the request of a customer or cardholder.

13.2	The User must initiate the reversal within twenty-four hours of the original transaction.

13.3	The User shall be charged 2.5 % of the value of the original transaction for reversal of an original transaction being the total cost of the transaction to the User. This fee shall not be additional to the card processing fee charged at the point of processing the initial Transaction.

13.4	The User shall only be billed for the reversal and not for the original transaction.

13.5	There shall be no reversals for mobile money transactions.

14. TRANSACTION DISPUTE

The parties hereto agree that in the event of a dispute or claim of whatever nature arising in respect of any Transaction, the records of the transactions available from the User, receiving bank, recipient mobile money provider and Interswitch shall be used as a reference and shall be the sole basis of settling the aforesaid dispute or claim.

15. DISPUTE MANAGEMENT

15.1. Interswitch shall not be involved in any dispute that may arise between the User and a customer, unless such dispute specifically relates to transaction settlement.

15.2. The dispute resolution process may be initiated at any time by either Party serving a notice in writing on the other Party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

15.3. If a dispute arises between the Parties in connection with the interpretation, implementation or operation of this Agreement or its subject matter or the validity of any document furnished by the Parties under this Agreement which cannot be resolved amicably by the Parties within 10 days of notice of the dispute by either of the Parties.

15.4. If the Parties fail to resolve the dispute amicably, either party shall refer the matter to arbitration. Such Arbitration shall be conducted in Nairobi under the provisions of the Rules of the Chartered Institute of Arbitrators (Kenya Branch) and where any matter is not covered by such Rules, the provisions of the Arbitration Act 1995, Laws of Kenya (or any such legislation as may succeed this Act) shall apply.

15.5. The Parties shall mutually agree on an arbitrator and upon failure of them to agree, either party may apply to the Chairperson at the time being of the Kenyan branch of the Chartered Institute of Arbitrators, UK. The place of arbitration shall be Nairobi and the arbitration shall be conducted in English. The decision of the arbitrator shall be final and binding to the largest extent permissible by the law.

15.6. The provisions of this clause:
a.	constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by those provisions; and

b. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity of this Agreement for any reason.

15.7 Neither Party shall commence formal legal proceedings except that this clause shall not preclude Interswitch from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

15.8 The arbitrator may, in any dispute in which any matter of a technical or financial nature is relevant, appoint an assessor having the requisite experience to assist the arbitrator in the arbitration. The assessor shall not have a vote in the award made by arbitrator, but shall act as an advisor only.

16. TERMINATION

16.1. This Agreement shall remain effective for the term until terminated in accordance with the provisions of this clause 16.

16.2. Either Interswitch or the User may elect to terminate this agreement by giving three (3) months' prior notice in writing of its intention to do so.

16.3. Notwithstanding clause 16.2, Interswitch shall be entitled to immediately suspend the Services or terminate the provision of the service and or effect this Agreement at any time with immediate effect, by notice to the User if:

a. the User is in material breach of any of the provisions herein;

b. the User fails to pay any amount due under this Agreement;

c. Interswitch considers (in its absolute discretion) that the total value of refunds and/or chargebacks is unreasonable;

d. the User is in breach of any applicable trading limit or floor limit;

e. the User presents a transaction in a situation where the User does not give to the relevant customer or cardholder the goods, services or other facilities referred to which they could reasonably expect to receive;

f. the User becomes insolvent or stops payment or ceases or threatens to cease to carry on its business or any part of its business any step is taken for the User's liquidation, winding-up, bankruptcy, receivership, administration or dissolution (or anything analogous to the foregoing occurs in any jurisdiction);

g. the User makes or proposes any arrangement with creditors generally;

h. the User is or is suspected by Interswitch to be involved in any fraudulent or unlawful activity whether or not relating to the User's business.

i. anything happens to the User or a matter is brought to the attention of Interswitch which in our absolute discretion, we consider may affect the User's ability or willingness to comply with all or any of User's obligation or liabilities herein;

j. any other change in the User's circumstances (including a deterioration in or change to the User's financial position) or in the nature of the User's business or in the goods and/or services supplied by the User to customers or cardholders occurs which Interswitch in its absolute discretion considers material to the continuance of the services or any facilities made available to the User;

k. Interswitch in its absolute discretion, determines that the relationship with the User's business represents increased risk of loss or liability;

l. anything happens to User or comes to the attention of Interswitch in relation to User or arising from or incidental to the User's business or the conduct of the User's business (including trading practices and individual activities) or the User engages in any business trading practices or individual activity which in Interswitch's absolute discretion is considered disreputable or capable of damaging Interswitch's reputation or that of any of the Card Schemes, mobile money operator or Other Financial Institutions, detrimental to Interswitch's business or that of any of the card schemes or other financial institutions or regulator which may or does give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity;

m. any fines or any other claims are brought against Interswitch by any card scheme, financial institution, mobile money operator, regulator, or any other third party arising from any aspect of the parties' relationship (including in connection with any security breach, compromise or theft of Data held by the User or on behalf of User irrespective of whether such security breach, compromise or theft of Data was within or outside User control);

n. Interswitch is required or requested to do so by any card Scheme, mobile money operator, regulator, or Financial Institution;

o. the User undertakes trading practices which Interswitch has not consented to;

p. Interswitch or any affiliate becomes entitled to terminate any agreement with or enforce any security from the User or the User's affiliate;

q. Any card scheme, financial institution, mobile money operator, acquirer or regulator introduces additional terms and conditions or amends the terms and conditions relating to such services.

16.4. The User shall be entitled to terminate the Agreement at any time with immediate effect by notice if:

a. save where permitted or authorized to do so pursuant to these conditions, Interswitch fails to pay any undisputed sums due to the User within 30 working days of notice from the User informing that such payment has not been made;

b. Interswitch becomes insolvent or any step is taken for its liquidation, bankruptcy, receivership, administration, dissolution or other similar action; or

c. Interswitch is in material breach of any of the provisions of herein and fails to remedy that breach with 30 days of receipt of a notice requiring it to do so.

17. CONSEQUENCES OF TERMINATION

17.1. Upon termination of these Terms and Conditions and or service, all rights and obligations of either Party shall cease to have effect immediately, save that:

a. the clauses of conditions which expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination; and

b. Termination shall not affect accrued rights and obligations

of either Party under the Terms and Conditions as at the date of termination.

17.2 Upon or at any time after termination, the User shall immediately pay all amounts owed under the service and, for the avoidance of doubt, Interswitch shall remain entitled to withhold sums, set- off any sums and recover any Chargebacks and Chargeback Costs or refunds or refund costs pursuant to the relevant clauses herein.

17.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any of the Parties nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

17.4 Upon or at any time after termination, the User shall immediately pay all amounts owed to Interswitch pursuant to the provisions of this Agreement.

17.5 In the event that Interswitch terminates the Payment Gateway service in accordance with the terms hereof, the User acknowledges and agrees that no reason whatsoever needs to be communicated to the User for such termination and Interswitch shall not be liable in any way for any loss or damage incurred or suffered by the User due to such termination.

17.6 Either Party may request the other Party to promptly destroy or return to the Disclosing Party (at no cost to the Disclosing Party) any Confidential Information in its possession or control, including any copies, recordings, notes, memoranda and other documents pertaining to the Confidential Information, other than archival copies for legal and/or regulatory purposes, and other than copies stored on back-up storage media pursuant to a record retention program.

18. CONFIDENTIALITY & PRIVACY

18.1 Each of the Parties hereto undertakes to the other to keep confidential all information [written or oral] concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the acceptance of this Agreement save that which is:

a. is already known to the Receiving Party as of the date of disclosure hereunder;

b. is already in possession of the public or subsequently becomes available to the public other than through any act or omission of the Receiving Party;

c. is required to be disclosed under applicable law, regulatory body, or stock exchange regulation or by a governmental order, decree, regulation or rule or by a court order (provided that the Receiving Party shall where reasonably practicable, endeavour to give written notice to the Disclosing Party prior to such disclosure);

d. is acquired independently from a third party that represents that it has the right to disseminate such information and such party provides written, legally acceptable proof of such right at the time it is acquired by the Receiving Party; or

e. is developed by the Receiving Party or its Affiliates independently of the Confidential Information received from the Disclosing Party hereunder.

18.2 Each of the Parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this clause by its employees, agents and/or subcontractors.

18.3 The confidentiality obligations shall survive the termination of this Agreement.

18.4 Without limiting either any Party's rights, each Party shall promptly notify the other Party of any unauthorised possession, use or knowledge, of the other Party's Confidential Information or any attempt at the same by any person or entity that may become known to such Party.

18.5 By accepting these Terms and Conditions, the User also accepts Interswitch's Privacy Policy.

19. DATA PROTECTION
19.1 THE CONTROLLER'S OBLIGATIONS

19.1.1 The Controller shall have sole responsibility for the accuracy, quality, and legality of personal data and the means by which the Controller acquires its Data Subjects' personal data. The Controller will ensure that by the Processor processing the Controller's data as per the Controller's instructions will not cause the Processor to violate any applicable law, regulation, or rule, including, without limitation, Data Protection Laws.

19.1.2 The Controller will not provide any sensitive data for processing to the Processor under this clause without express consent of the Data Subject. The Parties understand that sensitive data merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms of the Data Subject.

19.1.3 The Controller represents and warrants that:
a. It has complied, and will continue to comply, with all applicable laws, including Data Protection Laws, in respect of its processing of personal data and any processing instructions it issues to the Processor; and
b. It has obtained and will continue to obtain, all consents and rights necessary under Data Protection Laws for the Processor to process personal data for the purposes described in this Clause.

19.1.4 The Controller agrees that the Processor may engage sub-processors to process personal data on the Controller's behalf and that the Processor shall ensure that the sub-processors comply with the requirements of this Clause.

19.1.5 The Controller acknowledges that the Processor may transfer and process personal data outside of Kenya where the Processor, its Affiliates, holding companies or its sub-processors maintain data processing operations. The Processor shall at all times ensure that such transfers are made in compliance with the requirements of Data Protection Laws and this Clause.

19.2 THE PROCESSOR'S OBLIGATIONS

19.2.1 The Processor shall adopt measures to ensure a level of security appropriate to the sensitivity of the data being processed. These measures shall include the encryption of personal data.

19.2.2 The Processor shall notify the Controller in writing within 48 (forty-eight) hours, unless prohibited from doing so under Data Protection Laws, if it becomes aware or believes that any data

processing instruction from the Controller violates any Data Protection Law.

19.2.3   The Processor shall ensure that any person who is authorised by the Processor to process personal data (including its staff and subcontractors) shall be under a contractual or statutory obligation of confidentiality.

19.2.4   Upon becoming aware of a Security Incident, the Processor shall:

a.   Notify the Controller without undue delay, and where feasible, in any event no later than 48 hours from becoming aware of the security incident;

b.   Provide timely information relating to the security incident as it becomes known or as is reasonably requested by the Controller; and

c.   Promptly take reasonable steps to contain and investigate the security incident.

19.2.5   The Processor's notification of or response to a security Incident under clause 19.2.2 shall not be construed as an acknowledgement by the Processor of any fault or liability concerning the security incident.

19.2.6   Notwithstanding the above, the Controller agrees that except as provided in this Clause, the Controller is responsible for protecting the security of Personal Data when in transit to the Processor while the Processor is responsible for protecting the security of Personal Data it receives and transfers to any party including any Sub-Processor.

19.3 **RETURN OR DELETION OF DATA**

Upon termination or expiration of the Agreement, the Processor shall (at the Controller's election) delete or return to the Controller all Personal Data (including copies) in its possession or control, except that this requirement shall not apply to the extent where the Processor is required by applicable law to retain some or all of the personal data or the personal data is archived on back-up systems, which the Processor shall securely isolate, protect from any further processing and eventually delete in accordance with the Processor's deletion policies, except to the extent required by applicable laws.

20 **FORCE MAJEURE**

20.1 If the compliance with this Terms and Conditions or any obligation under it is prevented, restricted or interfered with by reason of circumstance beyond the reasonable control of the Party obliged to perform it, the Party so affected shall be excused from performance and such obligations shall be extended by a period reasonable under the circumstances to the extent of the prevention, restriction or interference by the Force Majeure event, but the Party so affected shall use his best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Terms and Conditions with utmost dispatch whenever such causes are removed or diminished.

20.2 As soon as possible after the start of the force majeure event, the affected Party shall notify the other parties of the nature of the force majeure event, the time at which the force majeure event started and the likely effects of the force majeure event on its ability to perform its obligations under the Terms and Conditions.

20.3 Failure to notify the other parties will cause the affected Party to forfeit its rights under this clause 20.1.

20.4 As soon as possible after the end of the Force Majeure event, it shall notify the other Party that the Force Majeure event has ended and shall resume performance of its obligation under this Terms and Conditions.

20.5 A Force Majeure Event shall not relieve the Parties of their obligations to supply the Services in conjunction with implementing the disaster recovery plans or business continuity plans, including requiring that essential personnel report to work during an emergency and any or all Parties' Personnel work at a contingency location.

20.6 This Clause 20 shall not apply to any payment of fees due under this Agreement.

21 **NOTICES**

21.1 Any notice required under this Agreement shall be in writing and may be served either personally, or by registered or recorded delivery mail, or by to the last known address of the parties as stated below:

User: _____
_____
P.O. Box _____
Nairobi, Kenya

Attention: _____
E-mail: _____

Interswitch: **Interswitch East Africa (Kenya) Limited**
6th Floor, Orbit Place, Westlands Road
P.O. Box 2649 - 00100
Nairobi, Kenya

Attention: **The Country General Manager - Kenya**

E-mail: legal.ke@interswitchgroup.com

21.2 A notice shall be deemed to have been served, if it was served in person, at the time of service, or if it was served by post, 48 hours after it was posted.

22 **WAIVER**

22.1 Any waiver by either Party of any of its rights under this Agreement must be in writing and only applies to the transaction or series of transactions expressly referred to in such waiver.

22.2 The failure by either Party to enforce any of the provisions of this Terms and Conditions shall not constitute a waiver of the same or affect that Party's rights thereafter to enforce the same.

23 **ASSIGNMENT**

The User shall not assign any of its rights or obligations under this Agreement without the prior written consent of Interswitch which consent shall not be unreasonably withheld.

24. **SEVERANCE**

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severed and the remainder of the provisions shall remain in full force and effect as if this Agreement has been executed with the invalid provision eliminated. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

25. **ANTI-CORRUPTION**

25.1 The User 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.

25.2 The User shall comply with all applicable anti-bribery and anti-corruption Laws in any relevant jurisdiction (including those in the Territory 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.

25.3 In the fulfilment of this clause, the User owes a duty to Interswitch to report any person(s), who request for personally or through an agent, (agent meaning any person employed by or acting on behalf of another), accepts, receives or obtains any property or benefit of any kind for himself or herself or for any other person, on account of a reward in any of the instances stipulated herein. The User may effect his or her report by logging it online on to our website – www.interswitchgroup.com\ke.

25.4 The User shall ensure that it shall use its best endeavours to ensure compliance with anti-money laundering laws and best practices and it shall set up internal structures to track, prevent and detect such violations including breaches of all such laws, regulations and conventions.

25.5 Any breach of the terms of this clause by the User or by the User's employees, Subcontractors, agents or anyone acting on their instructions (whether with or without the knowledge of the User) shall entitle Interswitch to terminate this Agreement forthwith. Termination shall be without prejudice to any other remedies available to Interswitch at law which may include criminal prosecution for corrupt practices.

26 NO THIRD PARTY BENEFICIARY

This Agreement is for the sole and exclusive benefit of the Parties and shall not create a contractual relationship with, or cause of action in favour of, any third party.

27 JURISDICTION AND GOVERNING LAW

The User and Interswitch agree to submit to the exclusive jurisdiction and the laws of the Republic of Kenya and agree that These Terms and Conditions shall be governed by the laws of the Republic of Kenya**.**

The undersigned hereby acknowledges that the above stated Terms and Conditions have been read and understood and hereby agrees to its contents.

I (We) have read the Terms and Conditions as stated above and we agree to its contents.

User: _____

Name.…………………………………………………………………

Designation.……………………………………………………….

Signature.…………………………………………………………

Date.…………………………………………………………………