

SCHEDULE 1 – CHARGES AND COMMISSIONS AND CLEARING TIMELINES OF TRANSACTION TYPES

	TYPE OF PAYMENT	FEES	CLEARING TIMELINES
1	ACCEPTANCE OF LOCAL CARD PAYMENTS	2.9%	T+2
2	ACCEPTANCE OF INTERNATIONAL CARD PAYMENTS	3.5%	T+5
3	ACCEPTANCE OF MOBILE MONEY PAYMENTS	1%	T+1
4	BANK PAYMENTS	0-500 KES - 12 KES 501-10,000 KES - 35 KES 10,001-100,000 KES - 45 KES 100,001-250,000 - KES 75 KES 250,000-400,000 - KES 85 KES	T+1
5	MOBILE MONEY PAYMENTS	10-1,000 KES - 30 KES 1,001-70,000 KES - 40 KES 70,001-100,000 KES - 70 KES 100,001-150,000 KES - 90 KES	T+1
6	SETTLEMENT OF FUNDS	0-500 KES - 12 KES 501-10,000 KES - 35 KES 10,001-100,000 KES - 45 KES 100,001-250,000 - KES 75 KES 250,000-400,000 - KES 85 KES	T+2

Fees are subject to revision from time to time subject to due notification to CBK.

TERMS & CONDITIONS FOR USE FOR THE PESAWISE SERVICE

These Terms and Conditions together with the application form (together "the Agreement") contains the terms and conditions that apply to Your participation in Pesawise's Services. By using the Services, You agree that You have read and understood these Terms and Conditions and agree to be bound by them.

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

- a) **"Agreement"** means these terms and conditions, including any schedules, bulletin, document accompanying it.
- b) **"3D-Secure"** means the two (2) levels of security backup which must include delivery of a dynamic code in a card transaction.
- c) **"API"** means Application Program Interface belonging to Pesawise for the purpose of providing the Services;
- d) **"Benefit Period"** in respect of each Merchant, means the period being the date from which payment is effected by a Payer to the date on which a Settlement Order or Termination Request, whichever is earlier, is issued by the Merchant.
- e) **"Business Day"** means a day on which banks in Kenya are open for business excluding Saturday, Sunday and gazetted public holidays.
- f) **"Card Issuer"** means a financial institution that issues a payment instrument to a Payer for purposes of facilitating Payments;
- g) **"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 Card Issuer's 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.
- h) **"Clearing"** means the time taken for the funds to be available to You. By submitting an application for the opening of Your Account with Pesawise, You acknowledge the clearing timelines for any transactions made by Customers to you as set out in this Agreement.
- i) **"CBK"** means the Central Bank of Kenya.
- j) **"Confidential Information"**
 - i. in relation to Pesawise, means information in any form relating to the operation of the Platform, which Pesawise considers to be proprietary and/or commercially sensitive, including but not limited to all of Pesawise intellectual property rights over the Platform and Services and includes all patents, rights to inventions, trade secrets, copyright, and includes the rights to the source code, object code; tools, know-how methods and system design used in developing the Application; in each case whether registered or unregistered, including all applications and rights to apply for, granted renewals, extensions of and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
 - ii. in relation to the You, means information which You, by notice in writing, have notified Pesawise, consider to be proprietary or confidential; and
 - iii. in relation to a Payer, their accounts, balances and credit history that is held by You in the ordinary course of carrying on Your business of providing services to Your customers/clients, passwords, personal identification numbers and other credential information used by You for purposes of utilizing the Services;
But excluding information which -
 - (a) is publicly available at the time of its disclosure or becomes publicly available, or was lawfully in the possession of a Party to this Agreement (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to it being so disclosed; or
 - (b) following such disclosure, becomes legally available to a Party as can be demonstrated by its written records or other reasonable evidence) from a source other than Pesawise or its agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to Pesawise in relation to such information.
- k) **"Designated Goods and/or Services"** means such goods and services which a Payer can purchase from You as may be approved by Pesawise and communicated to You through the available channels.
- l) **"Electronic Log File"** means an electronic record kept by Pesawise in which all Transactions are recorded.
- m) **"E-Value"** means, the value indicated on the Pesawise Network, being representative of Real Money held in a trust account for Your benefit pending the settlement of such sums to Your Account and which can be utilized by You for purposes of making and settling any purchases that may be made by the You through the Pesawise Network.
- n) **"Fee" or "Charges"** means the fee charged by Pesawise to You for every Transaction as set out in the Charges Schedule as may be amended from time to time by Pesawise. Amendment shall take place upon due notification to CBK.
- o) **"IPRS"** means a centralized database holding registration data from various Kenyan government entities which is located in the department of immigration services or such other department as the government may determine.
- p) **"You, Your, Yourselves or Merchant"** means the person (excluding Payers) accepting these terms and conditions who utilizes the Pesawise Services for purposes of receiving Payments and carrying out Transactions.
- q) **"Your Account"**, means the account nominated by You in writing to receive Your share of the funds accruing from payments made to You through the Pesawise Network.
- r) **"Your Application"** means the application for the opening of an account made by Yourselves in the manner prescribed under clause 3.2 of this Agreement.
- s) **"Payer or Customer"** means Your customer or client.
- t) **"Payments"** means the transfer of value from a Payer to You through the Pesawise Network.
- u) **"Pesawise"** means Pesawise Services Limited, a private limited liability company incorporated in accordance with the laws of the Republic of Kenya.
- v) **"Pesawise APIs"** means all of the application programming interfaces created allowing You and Third-Party Network Operator(s) or applications to either interact and or integrate with the Pesawise Network in relation to a Transaction.
- w) **"Pesawise Network"** means the online proprietary platform managed by Pesawise that facilitates Payments between Payers and You.
- x) **"Pesawise Trustee"** means the Trustee approved by the Central Bank of Kenya and appointed as a Trustee over all the Trust Funds pursuant to the Trust Deed.
- y) **"Pesawise Website"** means www.pesawise.com
- z) **"Payment Scheme"** means Visa, MasterCard, American Express, Discover® Global Network and any Affiliates thereof or any other card payment network (including any local schemes thereof) and/or such other schemes governing the issue and use of credit, debit, charge, purchase or any other cards or payment methods, as approved and notified by Pesawise to the Merchant in writing or on the Pesawise websites from time to time;
- aa) **"Refund"** means a return of an amount to a Customer or the reversal of any other payment pursuant to a request or instruction from the Merchant to Pesawise;
- bb) **"Services"** means the services offered by Pesawise to You to facilitate Transactions, Payments and purchases pursuant to the terms and conditions set out in this Agreement.
- cc) **"Settlement Order"** means a request for settlement of the E-Value, by the transmission of the Real Money equivalent to Your Account, whether made by means of automated means or otherwise by You in writing or as directed by the Pesawise through the Pesawise Network.
- dd) **"Termination Request"** means a request made by You through the Platform and in accordance with the clause 21 of this Agreement.
- ee) **"Third Party Integrated Network"** means a mode or means of payment facilitated by a Third-Party Network Operator and connected to Pesawise

Network.

ff) **"Third Party Network Operator"** has the meaning set out in clause 8.2 and includes a Card Issuer.

gg) **"Transaction"** means Payments and includes inflows and outflows of E-Value into or out of a Merchant's Account.

hh) **"Trust Deed"** means the declaration of Trust made by the Pesawise Trustee availed on the Pesawise Website.

ii) **"Trust Fund"** means all the sum of Real Money held in trust for You and other merchants under the Trust Deed.

jj) **"Trust Period"** means the period beginning on the date on which the Trust commences and ending on either (i) the day on which Pesawise shall notify the Trustee in writing that it has ceased to undertake the Services or (ii) the date of expiry of any termination notice issued by a party to the Trust Deed.

kk) **"Wallet"** means an electronic account accessible to You for the storage of E-Value.

1.2. The headings in this Agreement do not affect its interpretation.

1.3. Unless the context otherwise so requires:

- a) references to You, Your and Pesawise include You, Your and Pesawise permitted successors and assigns;
- b) references to statutory provisions include those statutory provisions as amended or re-enacted;
- c) the use of the word "Party" refers either to You or Pesawise and the use of the word "Parties" refers to both You and Pesawise; and
- d) no rule of construction will apply in the interpretation of this Agreement to the disadvantage of Pesawise on the basis having drafted this Agreement.

1.4. In the case of conflict between any provision contained in the body of this Agreement and any provision contained in any schedule or other document, the provision in the body of this Agreement shall prevail.

2. ACCEPTANCE OF THESE TERMS AND CONDITIONS

2.1. This Agreement shall commence upon acceptance of these Terms and Conditions.

2.2. Before opening Your Account, You should carefully read and understand this Agreement which will govern Your use of the Pesawise Network and Pesawise's provision of the Services to You.

2.3. By applying to open Your Account with Pesawise and/or by Your continued use of the Service, you will be deemed to have agreed and accepted to comply with this Agreement as may be amended by Pesawise from time to time.

3. OPENING AND MAINTAINING YOUR ACCOUNT

3.1. In order to open an account with Pesawise you must be, in respect of a natural person, at least 18 years, and in respect of a legal person have the required information set out in part D of the Application Form.

3.2. You may only open an account by filling out the application form and thereafter, uploading the application form on the Pesawise Website for approval by Pesawise or by means of an electronic application made through the Pesawise Website or through such other means as may be prescribed by Pesawise from time to time.

3.3. By making an application for account opening You hereby authorize Pesawise to:

- a) collect such information as set out in the Application Form and in our Privacy Policy as may be required for the purposes of ascertaining the completeness and accuracy of the information contained in Your Application for the opening of Your Account with Pesawise, and
- b) verify any information submitted by you with the IPRS, the CBK, a registered credit reference bureau and such other third party as may be permitted and/or required by law.

3.4. If Your Application is successful, Pesawise shall proceed to create an account for you and shall notify you by way of email, or text message to the phone number indicated on Your application.

3.5. Your Account shall only be activated by Pesawise upon Your compliance with Pesawise's KYC and due diligence requirements outlined in the Application Form and Pesawise reserves the right to reject any application which, upon conducting a compliance check in accordance with clause 3.3 of this Agreement, is false, misleading, fictitious and/or inaccurate.

3.6. Upon the activation of Your Account, Pesawise shall maintain Your Account subject to the account containing active balances unless such account is either suspended, frozen or terminated in accordance with the terms of this Agreement.

4. SERVICES

4.1. Pesawise shall offer the following services to You:

- a) **Facilitation of Payments from Payers to You through the Pesawise Network:** Pesawise shall implement and maintain secure systems for the transmission of Payments that are understood in the industry to provide adequate security for the transmission of Payments. Notwithstanding the foregoing, You acknowledge that the adoption of such systems does not guarantee the safety of such Payments, accordingly, Pesawise shall not be liable for any losses arising from the facilitation of Payments through the Pesawise Network where it has undertaken and adopted such secure systems to facilitate the Payments. You further acknowledge by using the Services that You and not Pesawise, shall be liable for any data stored on Your servers or any servers that You may use to access the Services and Pesawise Network;
- b) **Settlement of payments made through Pesawise Network:** Pesawise shall settle all payments made through the Pesawise Network upon the issuance of a Settlement Order or Termination Request by You by direct transfers into your designated bank account within 2 Business Days, subject to the applicable laws relating to the facilitation of bank transfers through payment gateways;
- c) Assistance with setting You up on the Pesawise Payment Gateway on such terms as may be agreed between Pesawise and You. By authorising Pesawise to set you up on the Pesawise Payment Gateway you acknowledge that Pesawise has no obligation to customise the gateway to suit Your business (unless otherwise agreed by the Parties in writing) and that the assistance rendered by Pesawise in setting up the Merchant on the Pesawise Payment Gateway is provided on an as is basis and Pesawise disclaims all liability for any damages, loss of data, business interruption or other commercial damages whatsoever, arising out of or related to any assistance provided to You under this clause however caused, whether under contract, warranty, tort, product liability or otherwise, even if Pesawise has been advised of the possibility of such liability.
- d) Call support for Payers and You between 8am to 11 pm on Business Days, to enable representatives from Yourselves to contact Pesawise for information or enquiries relating to Transactions;
- e) A detailed transactional analysis of and statements of all payments made through the Pesawise Network;
- f) Storage or records in respect of Transactions shall be held in the Electronic Log File for up to ten (10) years, or such longer period that is provided for under law;
- g) Facilitation of Bill payment services to registered billers on the Pesawise platform

- h) Facilitation of Payments to other registered Merchants on the Pesawise platform
- i) Settlement of funds via mobile money and bank transfers;
- j) non-exclusive, non-transferable license and right to the Pesawise API and accompanying integration technical specification in respect of this Agreement subject to the Merchant's acceptance of this Agreement; and
- k) Such other services as may be approved by the CBK from time to time.

4.2. Notwithstanding the above provisions:

- a) Pesawise may at its absolute discretion but with prior notice of not less than thirty (30) days to CBK make changes or enhancements to features and functionality of the electronic retail payment or e-money issuance service at any time, provided that in exercising such discretion, Pesawise may provide you with prior notice in writing setting out the proposed changes.
- b) Pesawise shall not be under an obligation to provide an update to its Platform or Services. If any updates are provided to Yourselves, then such updates shall be governed by this terms and conditions.

5. PAYMENTS ON PESAWISE NETWORK

- 5.1 A Payer may make Payments to You through the Pesawise Network, or through such other channel made available by Pesawise for such purposes in accordance with this Agreement and Pesawise's policies.
- 5.2 You may also make purchases and sales of Designated Goods and/or Services through the Pesawise Network.
- 5.3 Purchases for E-Value may be made by You using the channels made available for those purposes including Third Party Integrated Networks. Such E-Value will be credited to Your Wallet within 2 Business Days.
- 5.4 Pesawise will employ reasonable measures to ensure that the Pesawise Network shall remain secure, reliable and continuously operational (save for scheduled maintenance of the Services) and shall as soon as is reasonably possible and in any event within two (2) days inform You in the event of any failures with regard to the Services.
- 5.5 In the event of any failure in the Pesawise Network, Pesawise shall use reasonable measures to restore the Pesawise Network within a reasonable time. This is the final and only remedy available to You in the event of any failure of the Services and is subject to the limitation of liability provided in clause 19.
- 5.6 Pesawise will be under no obligation to make any rectifications to the Services where the point of failure is on a Third-Party Integrated Network or as a result of an event as set out under the provisions of clause 19.

6. TRUST IN RESPECT OF PAYMENTS

- 6.1 All Payments forming part of a Transaction shall be held by the Pesawise Trustee in trust for Your sole benefit in accordance with the provisions of the Trust Deed.
- 6.2 Pesawise, its successors in title, a receiver or manager, liquidator, creditor or trustee in bankruptcy shall not have any rights of ownership or title, powers, discretions, duties, obligations or liabilities whatsoever in respect of the Payments greater than Pesawise's rights. Pesawise however reserves its right of set-off, and by using the Services You authorize the Pesawise Trustee on behalf of Pesawise to satisfy such set-off right with respect to Pesawise's Charges and applicable taxes or any amounts it is entitled to deduct as set-out in clause 8 against such amounts held on trust.
- 6.3 Pesawise shall ensure that the funds held in trust are insured in accordance with the provisions of the Trust Deed.

7. YOUR OBLIGATIONS AND PESAWISE OBLIGATIONS

7.1 You shall:

- a) Be responsible for establishing, hosting, maintenance of Your website or the platform by which You shall provide Payers access to for the purposes of making payments as well as Your internet connection for the purpose of facilitating payments through the Pesawise Network. Pesawise shall not be liable for any losses arising from or in connection with a failure in Your website, platform or internet access;
- b) Be responsible for establishing and maintain an account with a commercial bank of your choice and communicating to Pesawise the details of such accounts for the purposes of facilitating payments of Real Money to Your Accounts subject to the issuance of a Settlement Order or the lapse of the Trust Period;
- c) Keep Your login information confidential. You shall be required to immediately notify Pesawise immediately upon learning of any unauthorized access to Your Account. You shall be responsible for updating and creating passwords to Your Account. Pesawise shall not be liable in tort or otherwise for any losses arising from any unauthorized access to Your Account by using the Services You undertake that You shall hold Pesawise harmless for any loss arising from or in connection with any unauthorized access to Your Account;
- d) Collect such information required by Pesawise, and in compliance with applicable laws, with respect to a Payer or Your customer/client to enable Pesawise to carry out its obligations under this Agreement;
- e) Not set any minimum or maximum limit on Payment amounts other than those communicated to You by Pesawise from time to time;
- f) Immediately notify Pesawise by email or in writing of any errors, inconsistencies or suspected fraud;
- g) Advise Pesawise in writing or by email immediately of any changes in or re- organization of Your organization;
- h) Advise Pesawise immediately in the event of any system failures with regard to the Your systems or equipment that may affect the provision of the Services;
- i) Carry out dispute and issue resolution in respect of Your Payers and/or clients. In the event that Pesawise is contacted by a Payer, such Payer shall be advised to refer all Payment enquiries or issues to You and Pesawise shall not be required to resolve any issues of such Payer;
- j) Comply with Pesawise's KYC and anti-money laundering policies and all applicable laws to anti-money laundering and in particular, promptly comply with any requests made by Pesawise in this regard;
- k) Respond to all fraud enquiries not later than one (1) Business Day of receipt of such enquiry;
- l) Respond to all Chargebacks enquiries with sufficient proof and evidence of value/service delivery within one (1) Business Day of receipt of such enquiry;
- m) Be liable for any undisputed Chargebacks and provide an equivalent sum for Chargebacks;
- n) Acknowledge and agree that for all disputed Chargebacks for which 3D-Secure was used, the Chargebacks shall be subject to arbitration with the Payment Scheme;
- o) Promptly notify Pesawise of any security breach, misuse, irregularity, suspected fraudulent transaction or suspicious activities that may be connected with attempts to commit fraud or other illegal activity through the use of Merchant's site and the corrective action the Merchant has taken;
- p) Authorise Pesawise to debit the nominated bank settlement account for the full value plus other lawful charges in respect of all lawful

transaction where the Cardholder is adjudged by the Payment Scheme to be entitled to a refund;

- q) Provide immediate notice of (i) any unauthorised third-party use of the Services or any third party that may have access to cardholder data; and/or (ii) any event which might lead to such unauthorised use;
- r) Immediately notify Pesawise of any act, omission or error which does or may adversely affect the Merchant's ability to perform their obligations under this Agreement or cause loss or damage to Pesawise (including but not limited to any material change in the nature or extent of the Merchant's business).
- s) Be responsible for and liable to Pesawise and Issuing Bank for all reasonable expenses associated with and any losses from over limit processing or reasonable expenses incurred by Pesawise or Issuing Bank in seeking fraud or unauthorized transaction recovery under applicable law that was a result of the Merchant's action or inaction including actions of the Merchant's employees;
- t) Use the Services with respect to receipt of Payments for lawful business only and obtain and maintain all necessary authorizations, permits, licenses and approvals including from Payers, regulatory authorities or third parties at all times. For the purposes of this clause any business, activity, enterprise or service that is prohibited by Pesawise or Third Party Network Operators, no matter how legitimate, shall not be deemed to constitute a lawful business; and
- u) Only initiate reversals for Transactions with respect to Designated Goods and/or Services as may be prescribed by Pesawise and within such time as may be prescribed by Pesawise at its sole discretion. In event of such reversal, commissions earned will be deducted by Pesawise; and
- v) Comply with the applicable and prevailing data protection safeguards and legislation that protects customers personal identifiable information and personal data from unauthorised disclosure.

7.2. For the purposes of this Agreement, the breach of the provisions of this clause **Error! Reference source not found.** shall be deemed as material and shall entitle Pesawise to suspend the Services or terminate this Agreement with immediate effect upon notice.

7.3. PESAWISE OBLIGATIONS

Pesawise shall:

- a) notify CBK of any changes in its management within a reasonable time or such time as may be prescribed by the applicable law;
- b) maintain a comprehensive record of all customers who have been registered on the Platform as may prescribed by the applicable law;
- c) cooperate with the Merchant in all matters relating to the running of the Services and to furnish the Merchant in a timely manner with such information and documentation in its possession that the Merchant may from time-to-time reasonably request in order that the Merchant may execute and exercise its rights and perform its obligations under this Agreement; and
- d) comply in all material respects with all applicable laws, ordinances, regulations and orders applicable to it and its business.

8. CHARGES AND TAXES

- 8.1. In exchange for the Services, You shall pay the Charges. Charges may be notified to You by Pesawise through various channels including the Pesawise Website. The Charges may be revised by Pesawise, in its sole discretion, from time to time by way of notice in writing through available communication channels.
- 8.2. Transactions made utilizing Third Party Integrated Networks e.g. M-PESA or VISA may be subject to charges levied by the respective proprietors/licensors of such Third Party Integrated Networks (the "Third Party Network Operator"). These charges may be deducted by the Third-Party Network Operator directly or by Pesawise where applicable.
- 8.3. Pesawise shall be entitled to deduct the Charges including any charges arising under clause 8.2 above, from the Transaction value. Settlement of funds to You pursuant to clause 8.4 will therefore be net (less) of the amounts deducted as per the foregoing.
- 8.4. The Services attract levies and other government taxes. To this effect, the Charges are exclusive of these taxes, levies and duties and such government levies provided for under applicable law or regulatory directive.
- 8.5. Designated Goods and/or Services may also attract certain levies and/or taxes. Providers of such Designated Goods and/or Services may include such taxes or levies in the pricing of such Designated Goods and/or Services. Where these taxes or levies are not included, such taxes or levies will be included and where applicable deducted by Pesawise.
- 8.6. Pesawise can reduce/waive its transaction fees from time to time without recourse to the Merchant but shall notify the Merchant of such increase/reduction/waiver immediately upon its implementation. Pesawise shall notify CBK of any changes to transaction fees.
- 8.7. Pesawise is entitled to recover and withhold:
 - a) any refunds due to the Merchant's customers; and
 - b) any Chargebacks and fines charged by a Payment Scheme.
- 8.8. The Merchant hereby gives Pesawise full permission and authorization to receive all settlements and collections on its behalf, from the Acquiring Bank, and to liaise with the Acquiring Bank, in order to make all due settlements to it, and on its behalf, through the Pesawise platform.
- 8.9. In the event that Pesawise is required to withhold any amounts subject to applicable law, Pesawise will withhold such amounts it is required to withhold and deduct them from the Transaction value and pay such amount withheld to the relevant authority as required under law.

9. CHARGEBACKS

- 9.1. If applicable, the Merchant acknowledges and agrees that in certain circumstances the Issuing Bank, Payment Scheme or other financial institutions may (i) refuse to settle a transaction or (ii) impose Chargebacks on Pesawise.
- 9.2. The Merchant agrees that it may be required to reimburse Pesawise for Chargebacks where the Merchant has accepted settlement in respect of the relevant transaction. Where applicable, the Merchant must respond to Cardholder disputes and handle Chargebacks in accordance with the rules of the relevant Payment Scheme.
- 9.3. The Merchant agrees that Pesawise shall have the right to send non-settled transactions received from the Merchant Customers to the Issuing Bank/authorities concerned for the purpose of checking and in case of objection and/or opposition on the executed transactions by the Issuing Bank or the authorities concerned for any reason, Pesawise shall not be bound to pay the Merchant the transaction amount during the period contained in this Agreement.
- 9.4. All Chargebacks shall correspond to the whole or part of the settlement value of the original transaction.
- 9.5. Where Chargebacks occur, Pesawise shall immediately be entitled to debit the Merchant's position or make a reversal from the Merchant's bank account and/or make a deduction from any remittance and /or invoice the Merchant to recover:
 - a) the full amount of the relevant Chargeback; and
 - b) any other costs, expenses, liabilities or fines incurred as a result of or in connection with such Chargeback ("Chargeback Costs").
- 9.6. A Chargeback represents an immediate liability from the Merchant to Pesawise and where the full amount of any Chargebacks and/or any Chargeback Costs is not debited by Pesawise from the Merchant bank account or deducted from any remittance or invoiced as referred to in the previous clause, then Pesawise

shall be entitled to otherwise recover from the Merchant by any means, the full amount of such Chargeback or Chargeback Costs (or the balance thereof, as the case may be).

- 9.7.** Pesawise shall not be obliged to investigate the validity of any Chargeback by any Issuing Bank, Payment Scheme or other financial institution, whose decision shall be final and binding in respect of any Chargebacks.
- 9.8.** As Chargebacks may arise a considerable period after the date of the relevant transaction, Pesawise shall remain entitled to recover Chargebacks and Chargeback Costs from the Merchant in respect of all Chargebacks, even after the termination of the contractual relationship between the Merchant and Pesawise.
- 9.9.** Pesawise may immediately terminate this Agreement and the Services provided hereunder if Pesawise in its sole opinion considers that the total value of refunds and/or Chargebacks is unreasonable.
- 9.10.** The Merchant agrees and confirms that it shall remain solely liable after the termination of this Agreement for all Chargebacks, refunds, penalties, loss, damages or cost incurred by Pesawise, Acquiring Bank, and/or Customers and for all claims and proceedings arising against Pesawise with respect to this Agreement.
- 10. SET OFF**
- 10.1.** Pesawise may, without notice, set off any debts or liabilities due from the Merchant to Pesawise under this Agreement against any debts or liabilities owed by Pesawise to the Merchant, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, Pesawise may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 10.2.** Pesawise is entitled to defer any settlement or any other sum due to the Merchant for a period not exceeding ten (10) Business Days to protect its ability to recover the Fees and/or the sums or any liability of the Merchant in connection with this Agreement.
- 10.3.** If Pesawise has reasonable suspicion that a transaction may be fraudulent or involve other criminal activity, Pesawise may suspend the processing of that transaction and any connected, transaction, or withhold settlement until the satisfactory completion of any investigation. The Merchant shall not be entitled to any interest or other compensation whatsoever in respect of suspension or delay in receiving Payment.
- 10.4.** The exercise by Pesawise of any of its rights under this clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which Pesawise is otherwise entitled (by operation of law, contract, or otherwise).

11. FRAUDULENT TRANSACTIONS

11.1. Fraudulent transactions shall include but not be limited to:

- a) Any purchase of goods and services and/or transaction arising from the use of a card by a person other than the authorized cardholder.
- b) Use of a card that is not authorised in terms of the rules governing the issuance and use of cards.

11.2. In the event that fraudulent transactions account for more than 1.0% of the Merchant's sales turnover in any one (1) month, Pesawise may, in addition to any other remedy available to it, be entitled to unilaterally terminate this Agreement forthwith and/or request the Merchant to delist the affected Customer from the use of the platform and terminate the Merchant agreement with the affected Customer.

11.3. The Merchant agrees that it will always be responsible for the actions of:

- a) its Customers; and
- b) its employees.

including fraudulent acts or omission not traceable to the contributory negligence of Pesawise.

12. SECURITY / DEPOSIT

12.1. Where applicable, Pesawise reserves the right to require that the Merchant provides (or procures the provision of security in such form as to be agreed by the Parties to secure the performance of the Merchant's actual, contingent or potential obligations under this Agreement or otherwise in connection with the Services. Such security may take the form of a deposit, a rolling reserve, a guarantee or indemnity. Pesawise reserves the right to unilaterally call for an increase to the level of security held.

12.2. Pesawise may require that any security provided be supplemented or replaced at any time.

12.3. At the time of termination, Pesawise may retain such amount from the security (if any) and settlement payable to the Merchant as may be determined by Pesawise to cover Chargeback risk, refund risk or any potential loss, damages, penalties, cost that may be incurred by Pesawise for a period of one hundred and eighty days (180) Business Days. In the event that such retained amount is not sufficient to cover all outstanding amounts of the Merchant post termination, the Merchant shall ensure that it pays Pesawise all pending amounts within twenty one (21) Business Days of receiving the demand notice and shall at all times keep Pesawise indemnified in this respect.

13. INTELLECTUAL PROPERTY RIGHTS

13.1. All intellectual property created pursuant to this Agreement including but not limited to any logos, artwork, enhancements, improvements, upgrades, translations or other modifications of the following and not limited to the Services, the Pesawise Network shall vest exclusively in Pesawise. Pesawise reserves its rights to the copyright and all other rights of a like nature conferred under the laws of the Kenya and all other countries of the world in such property, and all modifications, enhancements and amendments made with respect to the Services or the Pesawise Network.

13.2. You shall not and shall not permit others whether directly or indirectly, to:

- a) modify, alter, amend, reverse engineer, decompile, attempt to derive the source code of, decrypt, create derivative works of, sell, redistribute or lease the Services, Pesawise Network or Pesawise APIs;
- b) in any unauthorized way, including but not limited to harvesting or misusing data, exploit the Pesawise Network or Pesawise APIs;
- c) upload any malware or malicious code or other intrusive software which could damage the functionality of the Pesawise Network and Pesawise APIs.

13.3. You understand and acknowledge that the intellectual property rights contained in the Pesawise Networks and Pesawise APIs are integral to Pesawise's commercial structure. Accordingly and by use of Pesawise Networks and Pesawise APIs you agree that a breach of this clause 11 shall be considered to be a material breach of this Agreement and Pesawise shall be entitled to terminate this Agreement without notice to yourselves and shall be entitled to take on any legal action as it shall deem appropriate including but not limited to the institution of civil and criminal proceedings against you.

14. YOUR COMPLAINTS

14.1. You may address any complaints about the Services or the Pesawise Network to support@mail.pesawise.com within fifteen (15) days from the date of the occurrence of the issue. However, for the purposes of rectification and efficient service delivery, we advise that You promptly issue any complaints that You may have regarding the Services or the Pesawise Network as soon as an issue arises.

14.2. Any complaint directed to Pesawise through the appropriate channel set out above shall be addressed within a minimum period of Ten (10) to Fifteen (15)

Business Days or such other period that may be prescribed to You in writing.

14.3. Pesawise will maintain a customer care system to address any queries that you may have including a complaints handling procedure.

15. **SUSPENSION AND FREEZING OF ACCOUNTS**

15.1. If You breach any of the provisions of either: (i) these Terms and Conditions ;(ii) the Laws of Kenya and /or (iii) any other policies relating to Your use of the Services, Pesawise, reserves the discretion to either suspend or freeze Your access to the Services, and or Your Account until such breach is rectified.

15.2. Pesawise reserves the right to freeze and/or suspend any Transactions which are either manifestly illegal, suspicious, or which a court of law or government authority has ordered be frozen.

16. **INOPERATIVE AND DORMANT ACCOUNTS**

16.1. If Your Account has registered no transaction for a consecutive period of twenty- four (24) months, it shall be considered dormant and Pesawise, shall upon notification, suspend Your Account unless there is some form of activity is registered by Your Account. Prior to suspending Your Account, Pesawise shall notify You of its decision to suspend Your Account no less than one month before the 12th month mark is reached that the account will be suspended unless there is some form of activity.

16.2. If no activity would have taken place when the 12th mark is reached, the Pesawise shall block Your Account and any E-Value stored on Your Account shall be dealt with in accordance with the provisions of the Trust Deed.

17. **PRIVACY POLICY AND DATA PROTECTION**

17.1. Our Privacy Policy is located on the Pesawise Website and is incorporated herein for reference. The Privacy Policy sets out your rights and obligations with regards to personal information that may be obtained from Yourself in the course of application and in the course of Payments made in connection with the Pesawise Network and/or Services.

17.2. You acknowledge that in the course of the provision of the Services and signing for Your Account, Pesawise shall collect, use and transmit certain personal information ("Personal Data") for the purposes of verifying and completing the Payments and for such connected purposes. By using the Services and the Pesawise Network, You represent and warrant that: (i) You have given notice to the Payers that their Personal Data shall be shared with Pesawise for the purposes of verifying and completing the Payments and for such connected purposes ;(ii) You have obtained and received consent from the Payers for the transmission of their Personal Data to Pesawise; (iii) You have given the Payers notice of how they can access or request for their Personal Data and if necessary rectify such data held by Yourself or Pesawise.

17.3. You shall comply with all applicable and prevailing data protection safeguards and legislation in force in Kenya and shall to the extent reasonably practicable protect Your Customer's personally identifiable information or personal data from unauthorised disclosure.

18. **DISCLOSURE OF INFORMATION AND DATA RETENTION**

18.1. By using the Services and the Pesawise Network, You acknowledge that Pesawise is under a legal obligation to disclose any information relating to any Transaction that may be manifestly illegal or part of an illegal transaction, information pertaining to its users as well as such other information as may be requested by a governmental authority in the course of compliance and such related purposes. Accordingly, by using the Services, You hereby acknowledge and authorize Pesawise to disclose such information as may be necessary to meet these obligations including details of Your organization/company/entity/business, Transaction, E-Value stored in Your Accounts and such other information as may be required from time to time, for the purposes of meeting this obligation.

18.2. From time to time, Pesawise may collect data and technical information from Your device relating to Your use of the Services and the Pesawise Network as set out in the Privacy Policy for the purposes of improving the provision of the Services and the Pesawise Network to You. By using the Services and the Pesawise Network You consent and authorize Pesawise to collect such data and technical information.

19. **NO WARRANTY, LIMITATION OF LIABILITY AND INDEMNITY**

19.1. BY USING THE PESAWISE NETWORK, YOU ACKNOWLEDGE THAT THE PESAWISE NETWORK IS PROVIDED TO YOU ON AN 'AS IS' BASIS, AND PESAWISE HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS IN RESPECT OF THE PESAWISE NETWORK EITHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ACCURACY. PESAWISE DOES NOT WARRANT THAT ACCESS TO THE PESAWISE NETWORK SHALL BE UNINTERRUPTED, TIMELY, SECURE, ERROR FREE OR THAT ANY DEFECTS OR ERRORS IN THE PESAWISE SHALL BE CORRECTED OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH THE PESAWISE NETWORK SHALL NOT BE LOST, CORRUPTED OR DAMAGED.

19.2. TO THE EXTENT NOT PROHIBITED BY LAW, PESAWISE SHALL NOT BE LIABLE FOR ANY LOSS OF CASH OR FUNDS DUE TO: (I) PAYER IMPERSONATION, (II) FORGERY OF THE PAYER'S PERSONAL INFORMATION OR OTHER DETAILS (III) INACCURATE INFORMATION PROVIDED BY THE PAYER IN THE PESAWISE NETWORK (IV) DELAYS OR FAILURE OF THE PESAWISE NETWORK AND ANY THIRD-PARTY INTEGRATED NETWORK OR SERVICE UTILISED BY THE PESAWISE NETWORK FOR THE PURPOSES OF FACILITATING A TRANSACTION (V) A SECURITY BREACH IN THE PESAWISE NETWORK OR (VI) AN EVENT BEYOND THE REASONABLE CONTROL OF PESAWISE

19.3. TO THE EXTENT NOT PROHIBITED BY LAW, PESAWISE SHALL NOT BE LIABLE FOR ANY DAMAGES, LOSS OF DATA, BUSINESS INTERRUPTION OR OTHER COMMERCIAL DAMAGES WHATSOEVER, ARISING OUT OF OR RELATED TO THE USE OF THE PESAWISE NETWORK, HOWEVER CAUSED, WHETHER UNDER CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF PESAWISE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19.4. SUBJECT TO THE PROVISIONS OF THIS CLAUSE 19, PESAWISE'S LIABILITY IS ONLY LIMITED TO DIRECT AND ACTUAL LOSSES ARISING SOLELY DUE TO THE WILFUL MISCONDUCT AND PROVEN NEGLIGENCE BY ITS EMPLOYEES AND/OR AGENTS.

YOU SHALL BE LIABLE FOR ALL LOSSES, LIABILITIES, DAMAGES AND BEAR ALL COSTS AND EXPENSES AND WILL DEFEND, INDEMNIFY AND HOLD PESAWISE HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSSES OR DAMAGES DUE IN ANY WAY WHATSOEVER (INCLUDING LEGAL FEES AND EXPENSES) AS A RESULT OF: 1. FRAUD, NEGLIGENCE, WILFUL MISCONDUCT BY THE PAYER, ITS EMPLOYEES, AGENTS AND/ OR INDEPENDENT CONTRACTORS; 2. YOUR BREACH OF THIS AGREEMENT; 3. A CLAIM RECEIVED WITH RESPECT TO A PAYMENT FROM A PAYER OR ANY THIRD PARTY; 4 ANY CLAIM BROUGHT AGAINST PESAWISE BY A THIRD PARTY, INCLUDING CONSEQUENTIAL AND INDIRECT LOSS CLAIMS AS A RESULT OF PESAWISE'S PROVISION OF ITS SERVICES UNDER THIS AGREEMENT; 5.A PAYMENT MADE WITHOUT EVIDENCE OF AUTHORITY FROM THE PAYER; AND; 6.YOU NOT ABIDING BY PESAWISE'S INSTRUCTIONS AND PROCEDURES;7. LOSS OF FUNDS BY A PAYER DUE TO PROVISION OF INACCURATE INFORMATION, FRAUD, FORGERY OR ERROR;8. A CLAIM BROUGHT AGAINST PESAWISE BY A THIRD PARTY TO THE EXTENT THAT THE INTELLECTUAL PROPERTY PROVIDED BY YOU FOR PURPOSES OF THIS AGREEMENT INFRINGES AGAINST SUCH THIRD PARTY'S INTELLECTUAL PROPERTY;-9. A REVERSAL MADE UPON THE REQUEST OF A PAYER THROUGH THIRD PARTY NETWORK OPERATOR, A CARD ISSUER OR AUTOMATICALLY/MANUALLY INITIATED THROUGH PESAWISE'S FRAUD PREVENTION SYSTEMS AND/OR ALGORITHMS.

19.5. UNLESS WHERE OTHERWISE PROVIDED FOR UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE HELD LIABLE UNDER THIS AGREEMENT WITH RESPECT TO ANY DAMAGES OR LOSSES THAT ARE CONSEQUENTIAL, INCIDENTAL OR INDIRECT IN NATURE.

19.6. PESAWISE'S MAXIMUM LIABILITY TO YOU UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DIRECT LOSS INCURRED BY YOU OR ONE HUNDRED PERCENT (100%) OF THE FEES EARNED FROM YOU IN THE PREVIOUS SIX MONTHS, WHICHEVER IS LESS.

19.7. THIS CLAUSE SHALL SURVIVE THE TERMINATION OF THESE TERMS AND CONDITIONS.

20. **MARKETING AND PROMOTION**

- 20.1. You may at Your cost and subject to Pesawise's written consent notify all Your Payers of the availability of the Services. Any joint marketing and promotion of the Services, use of Pesawise's logos or intellectual property shall be agreed upon prior in writing.
- 20.2. By using these Services, You authorize Pesawise to use Your name and logo for the purpose of publishing and advertising the Pesawise Network, Pesawise's Website and in the media whether separately or together with the names and logos of third parties utilizing the Service.

21. TERM, TERMINATION, AND EFFECTS OF TERMINATION

- 21.1. This Agreement shall remain in force from its Commencement Date until terminated by either Party by written notice to the other not less than ninety (90) days.
- 21.2. Notwithstanding the provisions of 21.1, this Agreement may also be terminated immediately by a Party :
- a) If the other Party (the "Defaulting Party") is in breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within a period of 14 days:
- If a resolution is passed or an order is made for the winding up of the Defaulting Party (otherwise than for the purpose of solvent amalgamation or reconstruction) or if the Defaulting Party becomes subject to an administration order or a receiver or administrative receiver is appointed over the Defaulting Party's assets or business or an encumbrancer takes possession of the Defaulting Party's property/ equipment.

21.3. Upon termination, any amount standing in Your Account shall be dealt with in accordance with the terms of the Trust Deed.

21.4. Any termination of this Agreement under this clause will be without prejudice to any other rights or remedies of either Party under this Agreement or at law and will not affect any accrued rights or liabilities of either Party at the date of termination.

22. CONFIDENTIALITY

- 22.1. Each Party warrants that it will treat in confidence all Confidential Information which it acquires as a result of the operation of this Agreement and to afford it the same protection afforded to its own Confidential Information and will not reveal any Confidential Information to any third party without the written consent of the disclosing party, except where such information is already in the public domain, has been legally acquired by the third party, or where disclosure of the confidential information is ordered by a court or other competent authority.
- 22.2. Pesawise may disclose Your Confidential Information if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with regulatory requirements (b) legal process; (c) enforce the terms of this Agreement; (d) respond to claims that Your use of the Service violates the rights of third-parties; or (e) protect the rights, property, or personal safety of Pesawise, its employees and/or agents (f) to its personal advisers, lawyers and auditors; (g) for any other legitimate reason.

23. GENERAL

- 23.1. We will endeavour to resolve any dispute which arises between us through good faith negotiations within thirty (30) days of the notification of the dispute, failure to which a Party may refer the dispute to arbitration to be conducted under the provisions of the Rules of the Chartered Institute of Arbitrators of the UK, Kenya Branch ("Institute"). The arbitration shall be conducted by a single arbitrator ("Arbitrator") to be appointed by agreement between the Parties or, failing agreement within 14 days of the notification by either Party to the other of the existence of a dispute, to be appointed by the Chairman of the Institute, on the application of either Party. The venue and seat of the arbitration shall be Nairobi. The award of the Arbitrator shall be final. The fees and expenses of the Arbitrator shall be borne by the Parties in equal shares. The arbitration shall be conducted in accordance with the Rules of the Institute. Nothing in this clause shall limit a Party's right to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the Arbitrator.
- 23.2. No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 23.3. Unless where expressly provided, no remedy conferred by any provision of this Agreement is intended to be exclusive each and every remedy shall be cumulative and in addition to every other remedy available.
- 23.4. If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.
- 23.5. Pesawise may vary and amend any of the terms of this Agreement at its sole discretion upon notice.
- 23.6. Nothing shall be construed as constituting a partnership between the Parties or as constituting a Party as the agent of the other for any purpose except as specified by this Agreement.
- 23.7. This Agreement shall be governed by and construed in accordance with the Laws of Kenya.
- 23.8. No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a Party to this Agreement.
- 23.9. You shall not be entitled to assign or transfer this Agreement or any rights or obligations hereunder without the prior consent in writing of Pesawise. Pesawise shall be entitled to assign or transfer this Agreement or any rights or obligations arising under it upon written notice to You.
- 23.10. Nothing in this Agreement shall be construed as restricting Pesawise from contracting with other persons to use the Pesawise Network for provision of similar services provided by Pesawise under this Agreement.
- 23.11. Neither Party will be liable to the other Party for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including but not limited to fires, strikes (of its own or other employees), insurrection, riots, embargoes, shortages, wrecks or delays in transportation, pandemics, epidemics, inability to obtain supplies and raw materials or requirements of any civil or military authority or failure of banking systems preventing access and authorizations in respect of the Services or failure of communication links beyond the reasonable control of either Party.