PREAMBLE

This document contains the terms and conditions of use and service for all the Chatpesa Ltd services on the relevant platforms including the Chatpesa website and the mobile applications. (Hereinafter referred to as “Terms and Conditions”). It is a contract between you and Chatpesa and the terms and conditions therein shall govern your use of the Chatpesa account and all the services thereto. Prior to agreeing to be strictly bound by these terms and conditions, you are mandatorily required to carefully read and understand the subject provisions and if possible, to seek any desired clarifications via the channels of communication provided by the Chatpesa Ltd team.

1. INTERPRETATION
    1. In this Agreement, unless the context otherwise requires:
        1. “Agreement” means this these terms and conditions, including any schedules, bulletin, document accompanying it,
        2. “Business Day” means a day on which banks in Kenya are open for business excluding Saturday and Sunday.
        3. “Confidential Information” means information that either Party considers to be proprietary or confidential and which was previously or is hereafter made available or otherwise discovered by, the other Party in the course of its activities related to this Agreement; and Information relating to a Payer, his accounts, balances and credit history that is held by the Merchant in the ordinary course of carrying on its business of providing services to its customers/clients, passwords, personal identification numbers and other credential information used by a Merchant for purposes of utilising the Services.
        4. “Designated Goods and/or Services” means such goods and services which a Payer can purchase from a Merchant utilising E-Value as may be approved by Chatpesa and communicated to Merchants using available channels.
        5. “Electronic Log File” means an electronic record kept by Chatpesa in which all Transactions are recorded.
        6. “E-Value” means monetary value electronically issued and stored on the Chatpesa backed by cash in a bank account held by the Chatpesa Trustee and which can be utilised by Merchant for purposes of making sales to its customers for Designated Goods and/or Services;
        7. “Fee” or “Charges” means the fee charged by Chatpesa to the Merchant for every Transaction as set out in the Charges Schedule as may be amended from time to time by Chatpesa.
        8. “Merchant” means the person and/or business entity (excluding Payers) accepting these terms and conditions who utilizes the Chatpesa Services for purposes of receiving Payments and carrying out Payment Transactions or Advertising Transactions or Use of The Chat Features.

9. “Chatpesa” means the proprietary online digital solution owned by Chatpesa Limited that facilitates the storage and transacting of E-value Payments by Merchants,Users or Advertisers
10. “Payer” means an individual, registered e-wallet user or user of the Merchant Wallet.
11. “Payments” means the transfer of value from a Payer to the Merchant utilising the Chatpesa. Payments can also be made to a Merchant through E-Value.
12. “Chatpesa” means the online proprietary platform managed by Chatpesa Ltd that facilitates Payments between Payers and Merchants.
13. “Chatpesa Website” means www.chatpesa.com
14. “Services” means the services offered by Chatpesa to its Merchants to facilitate Transactions, Payments and purchases of E-Value pursuant to the terms and conditions set out in this Agreement.
15. “Third Party Integrated Network” means a mode or means of payment facilitated by a Third Party Network Operator and connected to Chatpesa’s Network.
16. “Transaction” means Payments and includes inflows and outflows of E-Value into or out of a Merchant’s Wallet.
17. “Wallet” means an electronic account accessible to the Merchant for storage of E-Value;

2. The headings in this Agreement do not affect its interpretation.
3. Unless the context otherwise so requires:
    1. references to the Merchant and Chatpesa include their permitted successors and assigns;
    2. references to statutory provisions include those statutory provisions as amended or re- enacted;
    3. the use of the word “Party” refers either to the Merchant or Chatpesa and the use of the word “Parties”refers to both the Merchant and Chatpesa; and
    4. no rule of construction will apply in the interpretation of this Agreement to the disadvantage of Chatpesa on the basis having drafted this Agreement.
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. SERVICES
    1. This Agreement shall commence upon acceptance of these terms and conditions. The Services will only be activated by Chatpesa upon the Merchant having complied with Chatpesa’s KYC requirements.
    2. A Payer may make Payments to the Merchant utilising the Chatpesa, or through such other channel made available by Chatpesa for such purposes in accordance with this Agreement and Chatpesa’s policies.
    3. A Merchant may also make purchases of E-Value and make sales of Designated Goods and/or Services including advertisement services

4. Chatpesa shall operate a call centre between 8am to 11 pm on Business Days, to enable representatives from the Merchant to contact Chatpesa for information or enquiries relating to Transactions.
5. Records in respect of Transactions shall be held in the Electronic Log File. Chatpesa shall store the Electronic Log File for ten (10) years, or such longer period that is provided for under law.
6. Purchases for E-Value may be made by a Merchant using the channels made available for those purposes including Third Party Integrated Networks. Such E-Value will be credited to a Merchant's Wallet within 2 Business Days.
7. Chatpesa will employ reasonable measures to ensure that the Chatpesa shall remain continuously operational (save for scheduled maintenance of the Services) and shall as soon as is reasonably possible inform the Merchant in the event of any failures with regard to the Services.
8. In the event of any failure in the Services, Chatpesa shall use reasonable measures to restore the Services within a reasonable time. This is the final and only remedy available to a Merchant in the event of any failure of the Services.
9. Chatpesa 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 this agreement.

3. TRUST IN RESPECT OF PAYMENTS
    1. All Payments forming part of a Transaction and E-Value shall be held by the Chatpesa Trustee on trust for the sole benefit of the Merchant.
    2. Chatpesa, 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 Chatpesa's rights. Chatpesa however reserves its right of set-off, and Merchant authorises the Chatpesa Trustee on behalf of Chatpesa to satisfy such set-off right with respect to Chatpesa's Charges and applicable taxes or any amounts it is entitled to deduct as set-out in clause 5 against such amounts held on trust.

4. OBLIGATIONS OF THE CUSTOMER
    1. The Merchant shall:
        1. collect such information required by Chatpesa with respect to a Payer or a customer/client of the Merchant to enable Chatpesa to carry out its obligations under this Agreement.
        2. not set any minimum or maximum limit on Payment amounts other than those communicated to it by Chatpesa;

3. immediately notify Chatpesa by email or in writing of any errors, inconsistencies or suspected fraud;
4. advise Chatpesa in writing or by email immediately of any changes in or re- organization of the Merchant;
5. advise Chatpesa immediately in the event of any system failures with regard to the Merchants systems or equipment that may affect the provision of the Services;
6. carry out dispute and issue resolution in respect of its Payers and/or clients. In the event that Chatpesa is contacted by a Payer, such Payer shall be advised to refer all Payment enquiries or issues to the Merchant and Merchant and not Chatpesa shall be required to resolve any issues of such Payer;
7. comply with Chatpesa's KYC and anti-money laundering policies and in particular, promptly comply with any requests made by Chatpesa in this regard and comply with all applicable with regard to money laundering;
8. use the Services with respect to receipt of Payments for lawful business only and obtain and maintain all necessary authorisations, 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 Chatpesa or Third Party Network Operators, no matter how legitimate, shall not be deemed to constitute a lawful business;
9. Only initiate reversals for Transactions with respect to Designated Goods and/or Services as may be prescribed by Chatpesa and within such time as may be prescribed by Chatpesa at its sole discretion. In event of such reversal, commissions earned will be deducted by Chatpesa.

2. For the purposes of this Agreement, the breach of the provisions of this clause 4 shall be deemed as material and shall entitle Chatpesa to suspend the Services or terminate this Agreement with immediate effect upon notice.

5. CHARGES AND TAXES
    1. Transactions made utilising Third Party Integrated Networks e.g. M-PESA 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 Chatpesa where applicable.
    2. The Services attract levies and other government taxes. To this effect, the Charges are inclusive of these taxes, levies and duties and such government levies provided for under applicable law or regulatory directive.
    3. 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 Chatpesa.

4. Merchants may be entitled to such commissions as Chatpesa may determine with respect to the use of the Chatpesa upon the sale of Designated Goods and/or Services. Chatpesa reserves the right to amend and/or revise such commissions in its sole discretion by way of a notice through available communication channels.
5. Such commissions referred to in 5.7 above may attract applicable taxes. It is the Merchant's responsibility to declare any incomes under this Agreement pursuant to applicable law and make relevant tax payments to applicable revenue authorities.
6. In the event that Chatpesa is required to withhold any amounts subject to applicable law, Chatpesa will withhold such amounts it is required to withhold and deduct them from the Transaction value or from the Merchant's Wallet and pay such amount withheld to the relevant authority as required under law.

6. INTELLECTUAL PROPERTY RIGHTS

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 Chatpesa or the Chatpesa shall vest exclusively in Chatpesa. Chatpesa 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, the Chatpesa or the Chatpesa. Merchant shall not modify, alter, amend or reverse engineer the Services, the Chatpesa or the Chatpesa.

7. LIMITATION OF LIABILITY AND INDEMNITY

1. Chatpesa 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 Payer (IV) delays or failure of the Chatpesa and any third party integrated network or service utilised by the Chatpesa for the purposes of facilitating a transaction (V) an event beyond the reasonable control of Chatpesa
2. subject to THE PROVISIONS OF THIS CLAUSE 7, Chatpesa'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 is the proximate cause of such loss.
3. The Merchant shall be liable for all losses, liabilities, damages and bear all costs and expenses and will defend, indemnify and hold Chatpesa harmless from and against Any claims, liabilities, losses or

damages due in any way whatsoever due (in cluding legal fees and expenses) as a result of: 1. fraud, negligence, wilful misconduct by the customer its employees, agents and/ or independent contractors; 2. the Merchant's breach; 3. A claim received with respect to a payment from a payer or any THIRD PARTY; 4 ANY CLAIM BROUGHT AGAINST Chatpesa BY A THIRD PARTY, INCLUDING CONSEQUENTIAL AND INDIRECT LOSS CLAIMS AS A RESULT OF Chatpesa'S PROVISION OF ITS SERVICES UNDER THIS AGREEMENT; 5.a payment made without evidence of authority from the payer; 6. claims with respect to a payer denying authorising a TRANSACTION and; 7.the Merchant does not abide by the Chatpesa's instructions and procedures; 8. LOSS OF FUNDS BY A PAYER DUE TO PROVISION OF INACCURATE INFORMATION, FRAUD, FORGERY OR ERROR; 9. A CLAIM BROUGHT AGAINST Chatpesa BY A THIRD PARTY TO THE EXTENT THAT THE INTELLECTUAL PROPERTY PROVIDED BY A CUSTOMER FOR PURPOSES OF THIS AGREEMENT INFRINGES AGAINST SUCH THIRD PARTY'S INTELLECTUAL PROPERY; 10. A claim occassioned due to a security vulnerability in the Chatpesa or Chatpesa that could not be reasonably anticipated by Chatpesa or was caused by customer and/or his agents or a third party network operator; 11. a reversal made upon the request of a payer through a third party network operator, a card issuer or automatically/manually initiated through Chatpesa's fraud prevention systems and/or algorithms.

4. 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.
5. Chatpesa'S MAXIMUM LIABILITY TO THE CUSTOMER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DIRECT LOSS INCURRED BY THE CUSTOMER OR ONE HUNDRED PERCENT (100%) OF THE FEES EARNED FROM THE CUSTOMER in the previous twelve months, NOT TAKING APPLICABLE TAXES INTO ACCOUNT, WHICHEVER IS LESS.
6. this clause shall survive the termination of these terms and conditions.

8. MARKETING AND PROMOTION
    1. The Merchant may at its cost and subject to Chatpesa's written consent notify all its Payers of the availability of the Services. Any joint marketing and promotion of the Services, use of Chatpesa's logos or intellectual property shall be in accordance with Chatpesa's standard rules of usage and shall be agreed upon prior in writing.
    2. The Merchant authorises Chatpesa to use its name and logo for the purpose of publishing and advertising the Chatpesa, Chatpesa's Website and in the media whether separately or together with the names and logos of third parties utilising the Service.

9. TERM, TERMINATION, AND EFFECTS OF TERMINATION
    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.
    2. Notwithstanding the provisions of 9.1, this Agreement may also be terminated immediately by Chatpesa:
        1. if Merchant is breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within a period of 7 days;
        2. if a resolution is passed or an order is made for the winding up of the Merchant (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Merchant becomes subject to an administration order or a receiver or administrative receiver is appointed over the assets or business o the Merchant or an encumbrancer takes possession of the Merchants property/ equipment.
    3. 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.

10. CONFIDENTIALITY
    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.
    2. Chatpesa may disclose the Merchant's 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 the Merchant's use of the Service violates the rights of third-parties; or (e) protect the rights, property, or personal safety of Chatpesa, its employees and/or agents (f) to its personal advisers, lawyers and auditors; (g) for any other legitimate reason.

11. GENERAL

1. The Merchant and Chatpesa will endeavour to resolve any dispute which arises between 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 Kenyan Branch of the Chartered Institute of Arbitrators of the UK ("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 award of the Arbitrator shall be final.
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.
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.
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.
5. Chatpesa may vary and amend any of the terms of this Agreement at its sole discretion upon notice.
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.
7. This Agreement shall be governed by and construed in accordance with the Laws of Kenya and each Party hereby submits to the non-exclusive jurisdiction of the High Court of Kenya.
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.
9. The Merchant shall not be entitled to assign or transfer this Agreement or any rights or obligations hereunder without the prior consent in writing of Chatpesa. Chatpesa shall be entitled to assign or transfer this Agreement or any rights or obligations arising under it upon written notice to the Merchant.
10. Nothing in this Agreement shall be construed as restricting Chatpesa from contracting with other persons to use the Chatpesa for provision of similar services provided by Chatpesa under this Agreement.
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, 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.

Contacting Us

If there are any questions regarding this terms you may contact us on info@chatpesa.co.ke or Telephone Number +254792442064