

## MERCHANT TERMS AND CONDITIONS

### 1. Introduction

Welcome to Pokea Pay. By integrating or using our platform to facilitate transactions, you ("Merchant") agree to abide by the terms and conditions outlined herein. Our services are available to both individual and corporate Merchants under the following criteria:

**For Individuals:** To utilize Pokea Pay as an individual Merchant, you must be a resident of the Republic of Kenya and at least 18 years old.

**For Corporate Merchants:** If you represent a business or corporation, the entity must be legally incorporated within the Republic of Kenya and actively operating within its borders.

Should you disagree with any of the stipulated terms and conditions, we kindly request that you refrain from using our services. Engaging with our platform indicates your acceptance of these terms and underscores the importance of compliance with the aforementioned criteria.

### 2. Service Description

Pokea Pay is an advanced client management and payment processing solution meticulously crafted to align with the industry's best practices. Our platform isn't just another transactional interface; it is a holistic solution, designed to simplify and enhance your entire customer conversion journey.

**Holistic Customer Conversion:** With Pokea Pay, merchants get an all-encompassing solution that covers every facet of the customer experience. From the initial stages of client acquisition to conversion, making a sale, and ensuring seamless payment processing, we've got you covered.

**Intuitive Payment Processing:** At the core of Pokea Pay is a robust, user-friendly payment processing system. It's designed to facilitate a broad spectrum of payment methods – be it card transactions, mobile money, or digital wallets, ensuring your business is ready to cater to every customer's preference.

**Merchant Accounts:** Delivered with utmost precision, our Merchant Accounts act as the nexus of your financial operations with Pokea Pay. Through these accounts, merchants can:

1. **Accept Payments:** Effortlessly receive payments via multiple channels – be it bank transfers, card payments, or mobile money, from the wider public.
2. **Merchant-to-Merchant Transfers** Seamlessly use your account balance to make payments to other associated merchants, enabling a collaborative ecosystem.
3. **Remittances to the Public:** With a few simple steps, send money to the general public, either via mobile money or direct bank transfers.

In a rapidly evolving digital economy, Pokea Pay stands out as a comprehensive solution, ensuring that every transaction, every customer interaction, and every business need is addressed with excellence.

## **4. Merchant Account Onboarding and Management**

### **4.1. Registration and Onboarding**

- 4.1.1. To commence your partnership with us, you are required to complete the specified online registration form available on our merchant portal (<https://account.pokeapay.com>). The information must be provided, whether personal, financial, or business-related, and must be accurate and up-to-date.
- 4.1.2. We retain the discretion to approve or decline your application for a Merchant Account. While we aim to be inclusive, certain criteria must be met to ensure the integrity and security of our network.

### **4.2. Account Utilization**

- 4.2.1. Even if your business is not legally incorporated, you can still utilize your Merchant Account to accept payments for your goods and services. The name of your Merchant Account can mirror your company or business name.
- 4.2.2. Through our Role-Based Access Control (RBAC) features, you can grant selective access to your employees, enabling them to utilize specific functionalities. Despite this, the primary responsibility of safeguarding your account credentials—user names, passwords, and other access codes—lies with you.
- 4.2.3. You must maintain up-to-date contact details, including mailing and email addresses, in your Merchant Account profile.

### **4.3. Business Affirmation and Data Consent**

By setting up a Merchant Account, you attest that the account will predominantly serve business or commercial objectives. Moreover, by registering, you grant us permission to acquire your personal and/or business information from relevant Government of Kenya agencies and associated financial service providers. This might occur during account setup, when availing certain products, or when we assess a heightened risk related to your Merchant Account.

### **4.4. Additional Requirements**

As your business grows and your transaction volumes increase, or if you wish to process Visa and MasterCard payments, additional agreements or due diligence processes may be necessary. Any supplementary terms or requirements will be considered an extension of this agreement.

### **4.5. Account Termination**

- 4.5.1. You can close your Merchant Account and conclude your association with us at any given time without incurring penalties. Nonetheless, certain obligations persist post-account closure, such as the outcome of ongoing investigations or open disputes/claims, any negative account balances, and transactions that are either scheduled or incomplete.
- 4.5.2. Upon account termination, any ongoing or scheduled transactions will be cancelled. It is your responsibility to withdraw or transfer any remaining funds from your account before initiating its closure.

## **5. Supported Payment Channels and Settlement Accounts**

### **5.1. Available Payment Modes**

- 5.1.1. Our platform, designed for adaptability, embraces a wide variety of payment avenues, including bank transfers, card transactions, and mobile money.

5.1.2. Merchants can effortlessly accept payments made via M-PESA, VISA, or MasterCard. Both you, as the merchant, and your customers can conduct transactions through these mediums. It is important to note that while M-PESA transactions are denominated solely in Kenya Shillings, Visa and MasterCard payments can be handled in both Kenya Shillings and United States Dollars.

## **5.2. Inter-merchant Fund Transfers**

Enhancing the collaborative ecosystem, our platform enables merchants to transfer funds amongst each other within the Pokea Pay system. This feature promotes ease of transactions, especially for B2B interactions or collaborative ventures between merchants.

## **5.3. Disbursement Capabilities**

Beyond the realm of fund receipt, Pokea Pay champions advanced disbursement functionalities. Merchants can direct disbursements via M-PESA (in Kenya Shillings only) and bank transfers (available in both Kenya Shillings and United States Dollars).

## **5.4. Settlement Account Linking**

5.4.1. To promote smooth financial operations, merchants have the provision to associate a Kenyan bank account or a personal M-PESA account with their Merchant Account. This ensures direct and seamless transfer of funds to the merchant's preferred account.

5.4.2. Continual accuracy in your settlement account details is paramount. Should there be any changes in your bank or M-PESA account, we encourage timely notifications for necessary adjustments, which might include delinking an existing account and registering a new one.

## **5.5. Authorization for Settlements, Transfers and Disbursements**

By affiliating with Pokea Pay, merchants unequivocally entrust us with the management of all settlements, inter-merchant transfers, collections, and disbursements. This incorporates liaising with our payment partners, ensuring merchants enjoy timely and accurate transactions across the spectrum of services offered.

## **6. Third-Party Access and Merchant Responsibilities**

### **6.1. Granting Access to Third Parties**

6.1.1. There might arise instances in your business operations where you deem it crucial to provide third parties with certain privileges or access rights. Such permissions can be configured either directly within your Merchant Account or through direct arrangements with the third party in question.

6.1.2. It is paramount to acknowledge that permitting a third party to act on your behalf may warrant the disclosure of specific details about your Merchant Account to this entity. Such disclosures will always be governed by prevailing data protection regulations and our commitment to your privacy.

### **6.2. Liabilities and Responsibilities**

6.2.1. Even after granting third-party access, your obligations under this Agreement remain unaltered. You continue to be fully accountable to us for all actions, whether conducted by you or the authorized third parties.

6.2.2. You bear full responsibility for any consequences arising from the actions or neglect of third parties you have authorized. While we aim to facilitate a secure and seamless experience, any liability stemming from third-party actions with the permissions you

have provided will be borne by you. This responsibility extends to indemnifying us against any potential claims unless legally exempted.

### **6.3. Data Security and Confidentiality**

Your commitment to ensuring data security on your business platform or website is crucial. This includes safeguarding all data and Confidential Information, especially in scenarios where third parties may have access. Even with robust measures in place on our end, the primary responsibility of data protection on your platform lies with you.

## **7. Fund Management and Merchant Digital Wallet**

### **7.1. Digital Wallet Overview**

Embedded within your Merchant Account is a digital wallet. This wallet maintains a precise record of all funds received and details of settlements (both completed and pending) carried out by Pokea Pay. Importantly, any balance showcased within this wallet signifies your monetary claim against our platform.

### **7.2. Currency Specifics**

Your Merchant Account distinctly presents your balance in the exact currency of the received payments. Withdrawals must align with the currency of the balance, meaning no currency conversion is facilitated. For instance, balances from payments in Kenya Shillings will be channelled to a Kenyan Shilling account, while United States Dollar balances will follow a similar pattern.

### **7.3. Segregation of Funds**

Merchant balances are meticulously segregated from our operational finances. We commit to not utilizing merchant funds for our operational expenses or other corporate initiatives. Additionally, in the unlikely event of insolvency, these funds will not be made available to our creditors.

### **7.4. Interest and Earnings**

The balances within your digital wallet will not accrue interest or other earnings. By agreeing to these terms, you consent to assign any potential interest rights from your funds to Pokea Pay.

### **7.5. Funding Your Account**

Merchants can employ any of our approved payment channels to credit their Merchant Account. These funds will subsequently be reflected as a balance within the account.

### **7.6. Withdrawals**

7.6.1. Withdrawal from your account can be executed by transferring the funds to either a bank account or an M-PESA account, both of which should be linked to your Merchant Account. These channels represent the exclusive methods available for fund withdrawals.

7.6.2. To safeguard both our platform and our esteemed merchants, there may be occasions where withdrawals undergo delays. Such delays might be instituted to authenticate authorization, or in scenarios where payments to your account are under review, such as potential chargebacks or reversals.

7.6.3. Withdrawal processes might incur fees when transferring to either your bank account or M-PESA. Any such fees will be transparently communicated before initiating the withdrawal.

## **8. Handling of Fraudulent Transactions, Chargebacks, and Refunds**

### **8.1. Definition of Fraudulent Transactions**

8.1.1. Fraudulent actions encompass instances where:

8.1.1.1. Transactions stem from unauthorized usage of a card or mobile money wallet.

8.1.1.2. A card or mobile money wallet gets employed in violation of the rules governing its usage.

8.1.2. If fraudulent transactions constitute over 0.10% of the Merchant's monthly sales turnover, we reserve the right to terminate this Agreement, in addition to other available remedies.

### **8.2. Merchant's Responsibilities**

The Merchant accepts full accountability for the actions of:

8.2.1.1. Their customers.

8.2.1.2. Their employees, including fraudulent activities, unless such actions result from our discernible negligence.

### **8.3. Potential Consequences of Fraud**

8.3.1. Recognize that fraudulent actions might lead payment service providers to:

8.3.1.1. Decline to settle a transaction.

8.3.1.2. Levy Chargebacks on us.

8.3.2. Merchants may need to reimburse Pokea Pay for Chargebacks for transactions they have accepted. Handling chargebacks and resolving disputes should align with the relevant payment service scheme.

### **8.4. Chargebacks Specifics**

8.4.1. Non-settled transactions from Merchant's Customers can be sent to concerned payment service providers/authorities for verification. If there is any contention regarding the transactions, we are not obliged to pay the Merchant for the duration specified in this agreement.

8.4.2. Every Chargeback pertains to the total or a fraction of the settlement value of the initial transaction.

8.4.3. Upon the occurrence of a Chargeback, we have the right to:

8.4.3.1. Debit the Merchant's account.

8.4.3.2. Reverse amounts from the Merchant's bank or M-PESA account.

8.4.3.3. Deduct from any pending remittances.

8.4.3.4. Charge the Merchant for:

8.4.3.4.1. The full Chargeback amount.

8.4.3.4.2. Additional costs or fines tied to the Chargeback ("Chargeback Costs").

8.4.4. Any unresolved Chargeback or Chargeback Costs remain a Merchant liability, and we can recover the full amount by any means.

### **8.5. Chargeback Validity**

8.5.1. We are not mandated to verify the legitimacy of Chargebacks from any payment service provider or financial institution. Their decision is conclusive and binding.

8.5.2. As Chargebacks can manifest long after the transaction date, our entitlement to recover Chargebacks remains, even post the termination of the contractual relationship with the Merchant.

## **8.6. Termination and Chargebacks**

- 8.6.1. Unreasonable total values of Refunds or Chargebacks may prompt us to unilaterally terminate this Agreement.
- 8.6.2. Even after the Agreement's termination, the Merchant remains solely accountable for all Chargebacks, Refunds, penalties, losses, damages, or costs incurred due to their actions. This encompasses all claims made against us concerning the Agreement.

## **9. Right of Set-Off and Payment Suspensions**

### **9.1. Set-Off Rights**

- 9.1.1. Pokea Pay reserves the unequivocal right to, without prior notice, offset any debts or obligations owed by the Merchant under this Agreement against any credits or amounts due to the Merchant. This remains applicable irrespective of the designated place of payment or the currencies involved in the obligations.
- 9.1.2. If the obligations are denominated in differing currencies, Pokea Pay holds the discretion to convert either obligation based on prevailing market exchange rates pertinent to its regular business operations, facilitating the set-off process.

### **9.2. Payment Deferrals**

To safeguard its interests and ensure seamless transactional operations, Pokea Pay can decide to defer any settlements or other amounts owed to the Merchant. This is particularly viable when such deferrals are deemed essential to protect Pokea Pay's capability to recoup fees or other liabilities (whether imminent or projected) in line with this Agreement.

### **9.3. Suspicion-Driven Suspensions**

If a transaction raises legitimate concerns, suggesting it might be fraudulent or linked to criminal endeavours, Pokea Pay can opt to halt the transaction's processing. Associated transactions might also be temporarily suspended, or settlements might be withheld until comprehensive investigations are concluded to our satisfaction. During such suspension phases or payment delays, the Merchant is not eligible for any interest accrual or other compensations.

### **9.4. Preservation of Rights**

It is crucial to understand that the execution of any rights delineated in this segment by Pokea Pay does not impinge upon other rights or remedies it is entitled to, be it via legal mandates, contractual obligations, or any other avenues.

## **10. KYC, due diligence and audit rights**

- 10.1. If the Merchant is legally obligated to perform KYC or KYB of its customers and partners, Merchant shall:

- 10.1.1. collect, maintain and periodically update sufficient KYC and/or KYB information as prescribed by law and provide the record of such information to Pokea Pay upon request;

- 10.1.2. provide Pokea Pay with, reports /records or details of KYC and KYB of Customers and/or Partners as well as the Transactions details upon request if this information is needed for investigation of fraud, account

takeovers or other disputes, or if Pokea Pay is obligated to provide this information to law enforcement agencies or regulatory authorities;

10.1.3. upon request confirm in writing to Pokea Pay that KYC / KYB documentation of its partners and customers has been collected, maintained and updated in accordance with current regulatory requirements;

10.1.4. The Merchant warrants that it shall be solely responsible and liable to Pokea Pay for KYB/KYC and will provide, upon request, a detailed report of all Customer payments processed using the Services

10.2. The Merchant shall provide Pokea Pay such information, documentation and, upon 7 days' notice, access to the Merchant's business premises as Pokea Pay may require:

10.2.1. to verify the Merchant's adherence to, and performance of, its obligations under the Agreement; and

10.2.2. for the purpose of disclosures pursuant to a valid order by a court or other Governmental body having jurisdiction in the Territory; or as otherwise required by applicable law or regulation.

10.2.3. The Merchant consents to the sharing of any such information by Pokea Pay to government agencies, law enforcement agencies and third parties as required by law and for the purpose of authentication.

## **11. Transaction Collateral and Rolling Reserve**

### **11.1. Establishing a Rolling Reserve**

11.1.1. As part of its risk management protocol, Pokea Pay may elect to retain a rolling reserve equivalent to 10% of all the transactions processed from the Merchant's Customers during a given calendar month. This reserve is maintained for 180 days from the transaction date.

11.1.2. The rolling reserve acts as a buffer to counter any financial liabilities arising from Chargebacks, Refunds, or any fees/fines imposed on Pokea Pay attributable to the Merchant's non-compliance with the Agreement.

11.1.3. To fortify its financial security, Pokea Pay may occasionally mandate that the transaction collateral be augmented or replaced, based on the risk evaluation at any given point.

### **11.2. Release of the Reserve**

11.2.1. Funds earmarked as the rolling reserve are scheduled for release to the Merchant's designated bank account on the 181st day post the transaction date.

11.2.2. Should the combined sum of Chargebacks and Refunds surpass the 10% rolling reserve, Pokea Pay retains the right to offset the deficit against future Merchant transactions until the entirety of the fee/fine is adequately covered.

### **11.3. Post-Termination Protocols**

Upon the termination of our association, Pokea Pay might withhold an amount from the Transaction Collateral or any pending settlement to the Merchant. This retention, calculated for 180 business days, is designed to counterbalance potential Chargebacks, risks, Refunds, and other conceivable liabilities. If the retained collateral proves inadequate

to cover post-termination obligations, the Merchant is obligated to remit the outstanding amount to Pokea Pay within ten (10) Business Days post receiving the demand notice. The Merchant pledges to shield and indemnify Pokea Pay against any subsequent financial discrepancies.

## **12. Pokea Pay's Commitments and Obligations**

### **12.1. Timely Financial Settlements**

Collaborating with esteemed commercial bank partners, we promise to orchestrate timely settlements of all funds housed within the Pokea Pay Wallet, meticulously adhering to Applicable Laws and National Payment System Regulations.

### **12.2. Integration & Technology Support**

Our dedicated team will liaise with the Merchant, furnishing them with the required integration technical specifications and Application Programming Interfaces (APIs) for an untroubled integration with the Pokea Pay Payment Gateway, contingent upon the Merchant's acquiescence to our Terms and Conditions.

### **12.3. Security and Compliance**

We unwaveringly commit to maintaining a fortified platform in line with industry security benchmarks, ensuring both merchant and customer data remain inviolable. Additionally, we will stay abreast of regulatory compliance, ensuring your operations remain within the bounds of the law.

### **12.4. Uptime Assurance**

Merchants deserve uninterrupted service. We pledge to maintain an uptime that aligns with industry-leading standards, ensuring your business operations face minimal disruptions.

### **12.5. Transparent Operations**

Trust is built on transparency. We vow to provide lucid fee structures, in-depth transaction reports, and every essential data point, removing ambiguity from our partnership.

### **12.6. Continuous Upgrades**

Stagnation is not our mantra. We commit to periodic platform enhancements, providing our Merchants with avant-garde features and the pinnacle of security measures.

### **12.7. Accessible Customer Support**

Our dedicated support team, accessible via email, chat, and phone, will be at your beck and call, ensuring that any queries or concerns are addressed post-haste.

### **12.8. Dispute Resolution Framework**

Recognizing the inevitability of disputes, we've institutionalized a robust resolution mechanism, ensuring grievances are addressed and resolved in a structured, timely manner.

### **12.9. Merchant Empowerment**

To empower our partners, we promise to offer an array of training resources, guides, and tutorials, ensuring Merchants extract the maximum benefit from our platform.

### **12.10. Feedback and Continuous Improvement**



Your feedback is our roadmap. We have embedded a structured system for Merchants to offer suggestions, improvements, or highlight issues, reiterating our commitment to incessant refinement.

#### **12.11. Notification on Platform Evolution**

Change is the only constant. However, we commit to informing our Merchants well in advance of any significant platform metamorphoses, be it feature augmentations, modifications, or terms of service adaptations.

#### **12.12. Data Redundancy and Backups**

To ensure service continuity and data integrity, we have fortified our infrastructure with backup systems and data redundancy measures, mitigating data loss risks.

### **13. Merchant's Responsibilities and Obligations**

#### **13.1. Customer Engagement**

Actively offer and endorse Pokea Pay services to all relevant customers.

#### **13.2. Fraud and Chargeback Management**

13.2.1. Swiftly respond, within one (1) Business Day, to all inquiries related to fraudulent activities or Chargebacks.

13.2.2. In cases of undisputed Chargebacks, ensure liability and provide an equivalent sum to cover the Chargebacks.

#### **13.3. Security and Regulatory Compliance**

13.3.1. Immediately inform Pokea Pay about any security breaches, suspicious activities, or potential fraudulent transactions linked to the Merchant's platform.

13.3.2. Ensure robust fraud protection measures are in place and remain compliant with the Payment Scheme rules and other regulatory requirements.

13.3.3. Maintain up-to-date security measures to monitor and prevent fraudulent activities on the Merchant's website.

13.3.4. Comply with any additional security or risk control measures set by Pokea Pay or Payment Schemes, especially if the Merchant is perceived as operating high-risk activities.

#### **13.4. Operational Transparency**

13.4.1. Notify Pokea Pay of changes in the Merchant's registered office, business activities, or significant changes in operations.

13.4.2. Display essential details on the Merchant's website, including return, refund, and cancellation policies, service descriptions, delivery policies, and customer service contact details.

13.4.3. Pledge to address all customer inquiries within one (1) Business Day.

13.4.4. Use the Pokea Pay integration specifications and APIs as prescribed.

#### **13.5. Regulatory Adherence**

13.5.1. Comply with all relevant government regulations and payment scheme rules concerning the services provided under this Agreement.

13.5.2. Regularly update Pokea Pay regarding any actions or situations that may adversely affect the Merchant's capability to fulfil their obligations under this Agreement or might result in losses or damages to Pokea Pay.

13.5.3. Uphold a 10% rolling reserve from daily settlements for 180 days.

13.5.4. Adhere to all county, national, and international regulations related to online commerce and data protection, including but not limited to the Data Protection Act 2019 and Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021.

### **13.6. Continuous Compliance**

13.6.1. Acknowledge and adhere to the requirements, approvals, directives, and Payment Scheme Rules as set forth by competent regulators, ensuring that Pokea Pay's services remain compliant with these regulations.

13.6.2. Take responsibility for any expenses or losses incurred by Pokea Pay due to over-limit processing or expenses related to seeking recovery from fraudulent or unauthorized transactions as a result of the Merchant's actions, including those of the Merchant's employees.

## **14. Service Fees & Financial Arrangements**

To facilitate an understanding of the financial aspects of our partnership, the following provisions outline the fees and related mechanisms associated with using the Pokea Pay platform:

### **14.1. Service Fee Structure**

The service fees associated with using Pokea Pay are periodically reviewed and updated. Merchants can access the most recent fee schedule at <https://pokeapay.com/pricing>.

### **14.2. Recoveries and Withholdings**

Pokea Pay reserves the right to retain or withhold:

14.2.1.1. Any amounts attributed to Refunds.

14.2.1.2. Any amounts resulting from Chargebacks, including any fines or penalties imposed by payment networks such as Visa, MasterCard, M-PESA, or any other card payment system.

### **14.3. Merchant's Pricing Discretion**

Merchants possess the liberty to adjust fees for their Customers as they see fit. Such mark-ups are at the Merchant's discretion, and Pokea Pay will not be implicated or held responsible for these decisions.

## **15. Term and Renewal of Agreement**

### **15.1. Commencement and Initial Term**

15.1.1. The Agreement officially comes into effect on the date when the electronic acceptance of these Terms and Conditions is acknowledged, hereby referred to as the "Effective Date."

15.1.2. Following the Effective Date, the Agreement will remain in force for twelve (12) months, designated as the "Initial Term," unless terminated earlier by any Party in compliance with the stipulations of this Agreement.

### **15.2. Automatic Renewal**

After the lapse of the Initial Term, this Agreement will seamlessly renew for successive periods of one (1) year each. These renewals will perpetuate automatically unless the Agreement is terminated by either party as per the terms outlined within.

## **16. Warranties and Disclaimers**

## **16.1. Merchant Warranties**

- 16.1.1. The Merchant confirms it has never had an agreement terminated upon request by a payment scheme provider or a regulatory body.
- 16.1.2. The Merchant commits not to initiate transactions that are known to be unlawful, fraudulent, unauthorized by the cardholder or M-PESA account holder, or any restricted operations.
- 16.1.3. The Merchant pledges to conduct comprehensive due diligence on all its Customers.
- 16.1.4. The Merchant shall extend full cooperation throughout any forensic investigations, persisting until their completion.
- 16.1.5. The Merchant vows to utilize the Services ethically, adhering to this Agreement, all Applicable Laws, and Payment Scheme Rules. This includes avoiding activities that violate anti-money laundering or counter-terrorist financing regulations.
- 16.1.6. The Merchant avers it has not been subject to criminal convictions (except minor offences), any tax liens, administrative or enforcement proceedings by a regulator, or any legal actions alleging fraud or deceitful practices.

## **16.2. Mutual Warranties**

- 16.2.1. Both Parties confirm they are duly licensed, registered, possess the needed regulatory approvals, and are fully authorized to enter this Agreement.
- 16.2.2. Both Parties ensure that no facet of this transaction breaches any existing laws, regulations, patents, copyrights, or other intellectual property rights in the Republic of Kenya.
- 16.2.3. When third-party software is involved, both Parties certify they possess the necessary licenses and rights for its use.
- 16.2.4. Each Party assures the other that this Agreement is legally binding, with no conflict arising from their constitutional documents, laws, or other agreements.

## **16.3. Indemnity**

Parties shall indemnify each other against any claims, proceedings, or legal expenses stemming from breaches of the aforementioned warranties or claims by third parties that, if proven, would constitute such breaches.

## **16.4. Pokea Pay Warranties & Disclaimers**

- 16.4.1. Pokea Pay does not guarantee uninterrupted or error-free service but commits to ensuring the systems function optimally and meet industry standards during the Agreement's term.
- 16.4.2. There are no express or implied warranties regarding the systems or related services, their condition, merchantability, or their fit for a specific purpose.
- 16.4.3. Excluding the stated warranties, each Party disclaims all other warranties, including those related to merchantability, fitness for a specific purpose, non-infringement, or any implied warranties from dealing or performance.

## **17. Indemnification**

### **17.1. Mutual Indemnification**

Both Parties agree to indemnify and hold harmless the other Party, its affiliates, employees, and agents from any damages, expenses, claims, or liabilities arising from:

- 17.1.1.1. Negligent or wilful misconduct by their employees or agents occurring during their employment or appointment;
- 17.1.1.2. Violations of applicable laws, statutes, or regulations; or
- 17.1.1.3. Third-party claims, actions, or losses resulting from breaches of this Agreement.

## **17.2. Merchant's Indemnification to Pokea Pay**

The Merchant commits to indemnify and protect Pokea Pay from any damages, losses, or liabilities stemming from:

- 17.2.1.1. Exposing the process, product, or service to the public during testing, whether intentionally or negligently.
- 17.2.1.2. Negligent or wilful misconduct of the Merchant, its affiliates, employees, or agents.
- 17.2.1.3. Modifications or amendments to the terms of use provided by Pokea Pay without written approval.
- 17.2.1.4. Warranties, representations, guarantees, or indemnities offered by the Merchant about the Payment Gateway beyond the warranties outlined in clause 13.
- 17.2.1.5. Inaccuracies or omissions in promotional materials or advertisements related to the Payment Gateway.
- 17.2.1.6. Modifications to or additions to the Payment Gateway not authorized or provided by Pokea Pay.
- 17.2.1.7. The Merchant's failure to abide by any term or condition of this Agreement.

## **17.3. Limitation and Rights**

The stipulations within this section do not aim to curtail or exclude any other potential claims or remedies that Pokea Pay might rightfully assert under this Agreement, or as permitted by law or equity.

## **18. Limitation of Liability**

### **18.1. Financial Limit**

Any liability of Pokea Pay to the Merchant, be it grounded in contract, negligence, other torts, indemnification, or any other form, stemming from or in connection with this Agreement, shall not exceed the total amount that Pokea Pay has accumulated from transactions originated from this Agreement in the month immediately preceding the inception of such claim.

### **18.2. Temporal Limit**

All claims or actions against Pokea Pay must be raised no later than two (2) years from the date when the reason for such claim or action first arose. No liabilities shall be valid or enforceable after this period.

### **18.3. Extended Protection**

The limitations on liability set forth herein are designed to benefit and protect not only Pokea Pay but also all its direct and indirect parent entities, subsidiaries, and affiliated companies.

### **18.4. Third-Party Actions**

Pokea Pay shall not bear responsibility or liability for any actions or inactions of third parties that aren't operating on the explicit instructions of Pokea Pay. Moreover, Pokea Pay will be exempt from liabilities arising from actions or inactions not directly attributable to its conduct.

- 19. Termination**
- 19.1. Insolvency and Business Cessation**  
A Party may immediately terminate this Agreement by providing written notice if the other Party:
- 19.1.1.1. Undertakes any step related to entering administration, provisional liquidation, any agreement with its creditors (unless it's a solvent restructuring), being wound up (voluntarily or by court order, unless for solvent restructuring purposes), having assets seized by a receiver, or discontinuing its business operations. If these actions occur outside Kenya, they should align with similar procedures in the concerned jurisdiction.
  - 19.1.1.2. Suspends, or even hints at suspending, or stops or suggests stopping all or a substantial segment of its operations.
- 19.2. Breach of Agreement**  
This Agreement can be promptly terminated by any Party if the other Party substantially breaches its terms. If the breach can be fixed, and the offending Party doesn't remedy it within ten (10) Business Days after receiving a written notice to do so, the Agreement can be terminated.
- 19.3. Fraudulent Activity and Brand Damage**  
Pokea Pay reserves the right to end this Agreement and remove the Merchant if the Merchant is linked to fraudulent activities that tarnish the reputation of Pokea Pay, any Payment Schemes, or upon directives from Payment Schemes for financial or other reasons.
- 19.4. Notice-Based Termination**  
Either Party has the privilege to terminate this Agreement by offering a one (1) month's written notice to the other Party.
- 19.5. Post-Termination Arrangements**
- 19.5.1. Upon termination, both Parties are released from further obligations under this Agreement but are entitled to any payments from transactions completed before the termination.
  - 19.5.2. Despite any termination, provisions that by their nature should continue will remain in effect, preserving accrued rights or liabilities of the Parties.
  - 19.5.3. Once the Agreement concludes, the Merchant loses the right to employ the Payment Gateway. However, Pokea Pay will retain and archive the Merchant's records for the subsequent seven (7) years.
- 20. Confidentiality**
- 20.1. Definition of Confidential Information**  
Both Parties may have access to information from the other Party designated as Confidential Information. However, it's expressly recognized that neither Party will access or share non-public personal information regarding consumers as per this Agreement.
- 20.2. Protection and Non-disclosure**
- 20.2.1. All Confidential Information will remain the exclusive property of the disclosing Party. The receiving Party commits to using all reasonable and legally mandated measures to protect such information and will not use it for purposes other than those specified in this Agreement or as mandated by law.

20.2.2. Neither Party shall disclose, reproduce, or provide access to the Confidential Information to any third party, agent, or employee except:

20.2.2.1. To its employees and Affiliates who need the information to fulfil their duties related to this Agreement, provided they're bound by confidentiality obligations no less stringent than those in this section.

20.2.2.2. As mandated by Applicable Law, after giving prior notice to the other Party and cooperating in any lawful effort to resist or limit the disclosure.

### **20.3. Return or Destruction of Information**

On the termination of this Agreement, or upon the request of the disclosing Party, the receiving Party will return or destroy all Confidential Information in its possession or under its control, including any copies thereof.

### **20.4. Remedies**

Should a Party breach this confidentiality provision, the other Party may seek injunctive relief, recognizing that monetary damages might be inadequate. This is in addition to any other legal remedies available to the injured Party.

### **20.5. Survival**

The obligations outlined in this confidentiality section will continue even after the termination or expiration of this Agreement.

## **21. Force Majeure**

### **21.1. Definition**

Force Majeure pertains to any unforeseeable and insurmountable event beyond the reasonable control of either Party that hinders the performance of their obligations under this Agreement. This includes but is not limited to, natural disasters, Acts of God, civil unrest, war, terrorist acts, epidemics, labour strikes, and governmental actions.

### **21.2. Notification**

Upon the occurrence of a Force Majeure event, the affected Party shall promptly notify the other Party in writing, detailing the nature, expected duration, and impact of the event. The affected Party shall take all reasonable measures, including seeking assistance from third parties or the other Party, to mitigate the effects of the Force Majeure event and to resume its obligations under this Agreement as soon as possible.

### **21.3. Termination**

Should the Force Majeure event prevent either Party from fulfilling its obligations for a period exceeding two (2) months, this Agreement may be automatically terminated. However, the Parties may mutually agree in writing to extend this period or make other suitable arrangements.

## **22. Disputes And Dispute Resolution**

### **22.1. Customer Disputes**

Pokea Pay shall remain neutral and not be involved in any disputes that arise between the Merchant and its Customers unless the dispute directly pertains to transaction settlement processed through Pokea Pay.

### **22.2. Arbitration**

- 22.2.1. Should a dispute arise between the Parties relating to this Agreement, including its breach or termination, and if it cannot be resolved amicably through mutual negotiations within thirty (30) days, such dispute shall be referred to arbitration.
- 22.2.2. The arbitration will be conducted by a single arbitrator appointed by the Chairperson of the Chartered Institute of Arbitrators (UK), Kenya Branch.
- 22.2.3. The venue for the arbitration shall be Nairobi, Kenya, and the proceedings shall be conducted in the English language.
- 22.2.4. The arbitrator's decision will be final, conclusive, and binding upon both Parties. This decision shall be delivered within thirty (30) days after the close of the arbitration hearing.
- 22.2.5. All costs associated with the arbitration shall be shared equally between the Parties unless otherwise specified by the arbitrator.

### **22.3. Enforcement**

The arbitral award rendered by the arbitrator can be enforced in any court of competent jurisdiction. Neither Party may enforce an award that consists of punitive damages from the arbitrator.

### **22.4. Governing Law**

This Agreement, and any disputes arising from or about it, shall be governed by and construed by the laws of the Republic of Kenya.

## **23. Relationship Between Parties**

### **23.1. Collaborative Relationship**

The Parties enter into this Agreement to collaborate exclusively for the business relationship as outlined herein.

### **23.2. No Partnership or Joint Venture**

Nothing in this Agreement is intended to or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party.

### **23.3. No Third-party Beneficiaries**

This Agreement is solely for the benefit of Pokea Pay and the Merchant. It is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree to any variation, waiver, or settlement under this Agreement are not subject to the consent of any other person.

## **24. Intellectual Property**

### **24.1. Retention of Rights**

Nothing in this Agreement shall be construed as transferring or assigning any Intellectual Property Rights of one Party to another. Each Party retains all of its rights, title, and interest in its respective Intellectual Property Rights.

### **24.2. Exclusive Ownership by Pokea Pay**

All Intellectual Property Rights associated with the Payment gateway, including any updates, enhancements, or modifications thereto, shall remain the exclusive property of Pokea Pay. The Merchant acknowledges and agrees that it shall not engage in any actions or

practices that may jeopardize or infringe upon Pokea Pay's proprietary rights. The Merchant shall not acquire any rights in the Payment gateway or any associated Intellectual Property Rights, other than the rights explicitly granted in this Agreement.

**24.3. Derivatives and Improvements**

Any rights in any modifications, translations, adaptations, or derivatives of the Payment gateway, or any other items of Confidential Information, including any improvements or developments thereof, shall belong exclusively to Pokea Pay unless explicitly agreed upon otherwise on a case-by-case basis.

**25. General Provisions**

**25.1. Assignment and Transfer**

No party may assign, transfer, or delegate any of its rights, benefits, or obligations under this Agreement without the prior written consent of all the other Parties. However, this Agreement shall be binding upon and benefit each Party and, where permissible, their assigns or transferees.

**25.2. Sub-contracting by Pokea Pay**

Pokea Pay retains the right to subcontract or delegate any of its obligations under this Agreement to third parties, including its Affiliates. Despite any such delegation or subcontracting, the Merchant shall remain obligated to fulfil its commitments under this Agreement.

**25.3. Waiver and Variation**

Rights under this Agreement cannot be waived or varied except in writing. Any delay in the exercise of any right does not constitute a waiver of that right; any partial exercise of any right does not preclude any further exercise of any right. No actions, conduct, or negotiations by either Party shall act as a waiver or variation of such a right unless expressly stated in writing.

**25.4. Severability**

If any provision of this Agreement is deemed void, illegal, voidable, or unenforceable by any applicable law or authority, such provision will be severed from this Agreement to the extent necessary without affecting the enforceability of the other provisions.

**25.5. Further Assurances**

Each Party agrees to execute, at their own expense, any additional documents and take any actions necessary to give full effect to this Agreement.

**25.6. Entire Agreement**

This Agreement, including Pokea Pay's Terms and Conditions and Payment Scheme Rules, constitutes the entire agreement between the Parties regarding its subject matter. It supersedes all prior written or oral understandings or agreements related to its content. Parties confirm that they have not relied on any representation not expressly included herein.

**26. Prohibited Products and Services**

- 26.1.** The Merchant is explicitly forbidden from engaging in transactions involving the products or services listed below during the duration of this Agreement. Should the Merchant breach any terms, they are solely responsible for all



repercussions, including legal actions, damages to the Bank, or claims by third parties. This responsibility extends to any penalties imposed by Visa, the Central Bank of Kenya, or any relevant authorities. The prohibited items include:

- 26.1.1. Adult content including explicit images, literature, escort services, and related products.
- 26.1.2. Human organs or body parts, whether live, preserved, or from a deceased individual.
- 26.1.3. Tools for bulk marketing like unsolicited email tools.
- 26.1.4. Devices meant to decode cable or satellite signals without payment.
- 26.1.5. Child explicit content in any form.
- 26.1.6. Devices designed to bypass copyright restrictions.
- 26.1.7. Unauthorized copies of books, movies, music, or other copyrighted materials.
- 26.1.8. Unauthorized software or games, including bundled software.
- 26.1.9. Counterfeit items or unauthorized replicas of branded goods.
- 26.1.10. Illegal drugs, related accessories, and certain herbal substances like salvia and magic mushrooms.
- 26.1.11. Products aiding in cheating drug tests.
- 26.1.12. Endangered species or their derivatives.
- 26.1.13. Gambling-related products like lottery tickets or online gambling memberships.
- 26.1.14. Fake government documents or IDs.
- 26.1.15. Materials promoting hacking or unauthorized access to software and websites
- 26.1.16. Items promoting or enabling illegal activities.
- 26.1.17. Unproven health remedies or "miracle" cures.
- 26.1.18. Products that promote hatred, violence, or discrimination.
- 26.1.19. Crime-related items, including belongings linked to criminals.
- 26.1.20. Prescription or herbal drugs without proper licensing.
- 26.1.21. Fireworks, toxic materials, and other hazardous items.
- 26.1.22. Items subject to governmental regulations, like airbags or lock-picking devices.
- 26.1.23. Financial products like stocks or bonds.
- 26.1.24. Tobacco products, including cigars and chewing tobacco.
- 26.1.25. Traffic-related devices, such as radar jammers.
- 26.1.26. Weapons, including guns, ammunition, and knives.
- 26.1.27. Currency trading or discounted currencies.
- 26.1.28. Live animals or their parts.
- 26.1.29. Multi-Level Marketing or pyramid schemes.
- 26.1.30. Intangible goods or aggregation services.
- 26.1.31. Work-from-home guides.
- 26.1.32. Drop-shipped goods.
- 26.1.33. Online communication services or data services.
- 26.1.34. Any product or service not compliant with all relevant local, state, national, and international laws, including Kenyan regulations.

## 27. Contact

For any concerns related to our services, Merchants can contact [support@pokeapay.com](mailto:support@pokeapay.com).