

Account Manager		A/C NUMBER
Contact Details		

Contact Details	Location		Type of Business				
	Products/Services*	Virtual Airtime	Yes	No	Financial Services	Yes	No
		Tickets and tokens	Yes	No		Pay-bill	Yes
	Registered Agent Name						
	County				Place		
	Agent Postal Address:				Postal Code		
	Email Address						
	Contact Person			Tel. Number			
	Accounts Contact			Tel. Number			
	Owner ID No			PIN Number			
	Comp. Reg. Number			VAT Number			
Application	Type	Device model	Serial Number			Printer*	
	Mobile					Yes	No
	Web					Yes	No
	POS						
Payments	Non-refundable activation fee		Kshs 1000/= (PayBill 517500)		M-PESA Transaction ID		
	Wallet top-up		Minimum of Kshs 100/=		M-PESA Transaction ID		

- Non-refundable activation fee to be paid through M-PESA Paybill (Business no. 517500; Account no. is PesaPoint Account no.)
- The PesaPoint wallet can be instantly topped-up through the app by clicking the M-PESA tab and follow the instructions

Acceptance	I _____ (print name) the duly authorized signatory of this outlet have read, understand and agree to be bound by the terms and conditions printed as per the below signed contract and declare the information to be true and correct.
	Signature: _____ Date: _____

DEALER AGREEMENT
Made and entered into by and between
Pesa Transact Limited
(Hereinafter referred to as "The Company")
AND

(Hereinafter referred to as "The Outlet")

PREAMBLE:

- (A) The Company (through its affiliates) has entered into arrangements with banks, financial institutions and other corporate entities ("Issuer") for the provision of transaction and vending services to Users (defined below).
- (B) At the request of the Outlet, the Company has agreed to allow Users to obtain certain services from the Outlet on the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1. In this Agreement (which expression includes the schedules and any attachments hereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:
- (a) "Account Manager" means the Company's designated representative authorised to make and communicate decisions relating to this Agreement.
- (b) "Agreement" means this Agreement, including any schedules and attachments hereto which are expressly incorporated by reference and made a part hereof.
- (c) "Business Day" means any day other than a Saturday, Sunday or a gazetted public holiday in Kenya.
- (d) "Call Centre" means the call centre operated by the Company for the benefit of the Issuer, Outlets, and as secondary support for the Users in accordance with the provisions of clause 12.
- (e) "Confidential Information" means information that either party considers to be proprietary or confidential and which was previously or is hereafter made available to, or otherwise

discovered by, the other party in the course of its activities related to this Agreement.

- (e) "Electronic Log File" means an electronic log file kept by the Company in which all electronic authorisations for Transactions are recorded.
- (f) "Operating Period" means the period falling between 12.00 a.m. (Kenya time) of any day in the week and 11.59 p.m. (Kenya time) of the following Business Day.
- (g) "Outlet Account" means the Outlet's account held at a Company specified bank to be used in accordance with the terms set out in this Agreement.
- (h) "PesaTransact Account" means the Company's bank account details of which shall be notified to the Outlet in writing from time to time and to be used in accordance with the terms set out in clause Error! Reference source not found. of this Agreement.
- (i) "System" means the switch, financial software and such other equipment and software used by the Company for interfacing with the Application, PoS Equipment or Portal and the Issuers.
- (j) "PoS" or "PoS Equipment" means point of sale terminal and accessories owned by the Company and leased to the Outlet in accordance with the terms and conditions of this Agreement and which will be interfaced with the System.
- (k) "Portal" means any authorised means of access including but not limited to web portal, mobile application and so on interfaced with the System and which allows Transactions to be completed.
- (l) "Services" means the provision of services by the Outlet to Users to enable Transactions to be completed or such other

services as the Company may in writing require the Outlet to provide to the Users pursuant to the terms of this Agreement.

- (n) "Transaction" means the completion of a process using a PoS terminal or Portal which is initiated/created through the PoS terminal or Portal by the Outlet as part of the Services and which results in the Electronic Log File being updated with the specific transactions.
- (o) "User" means a customer of an Issuer linked to the System.
- 1.2. The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to sub-clauses, clauses and schedules are to sub-clauses, clauses and schedules to this Agreement.
- 1.3. Unless the context otherwise so requires:
- (a) references to the Outlet and the Company include their permitted successors and assigns;
- (b) references to statutory provisions include those statutory provisions as amended or re-enacted; and
- (c) references to any gender include all genders.

2. APPOINTMENT OF THE OUTLET

2.1. Appointment

- (a) The Company hereby appoints the Outlet as a provider of the Services on a non-exclusive basis for the duration of the Agreement and to perform any act and do anything that the Outlet is specifically required to do under this Agreement.
- (b) It is understood by the Parties that nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting a relationship of agent and principal

with either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

- (c) In the event the Outlet appoints any sub-outlet, the Outlet shall procure that all such sub-outlets comply with the terms of this Agreement and the Outlet shall be responsible for all acts of such sub-outlets as if such actions or inactions were performed by the Outlet itself.
- (d) Notwithstanding the provisions of clause 4, the Outlet shall pay the Company a non-refundable set-up fee of Kshs 500/= (Kenyan Shillings Five Hundred Only) (the "On-Boarding Fee").

1.2. Obligations and Rights of the Outlet

- (a) The Outlet's shall at all times comply in all respects and at all times with its obligations as set out in this Agreement.
- (b) The Outlet agrees to hold in confidence this Agreement and all information, documentation, data and know-how disclosed to it by the Company and shall not disclose to any third party or use Confidential Information other than in connection with the performance of this Agreement or any part thereof without the Company's written approval.
- 1.3. The Outlet will appoint a staff member(s), who will be responsible for ensuring that the Services are provided efficiently (the "Staff Members").
- 1.4. All actions taken by the Staff Members shall be deemed to be actions taken by the Outlet. The Outlet shall indemnify the Company in respect of any loss arising from any negligence or misconduct of the Staff Members appointed by the Outlet in carrying out the Transactions.
- 1.5. The Outlet will be responsible for the proper use of personal identification or security numbers, access codes and log-in codes issued to it and its Staff Members by the Company to be used for the provision of the Services and treat all such codes as Confidential Information.
- 1.6. The Outlet shall indemnify and keep the Company indemnified at all times against any and all costs, expenses, actions, claims, demands and damages howsoever and when so ever arising as a result of the wrongful use of the Confidential Information or any other information relevant to the provision of the Services provided by the Agent.
- 1.7. The Outlet must not use the Confidential Information or any other information relevant to the provision of the Services to commit any offence(s) against Kenyan law. In the event of any breach of the law, the Outlet may face prosecution or other legal proceeding at the Outlet's sole risk as to costs and damages.

2. OBLIGATIONS AND RIGHTS OF THE COMPANY

- 2.1. The Company retains the right to temporarily or permanently disconnect the Outlet from the System at any time if it determines, in its sole discretion, that the Outlet is not complying with the terms of this Agreement save for any rights which shall have accrued at the date of such disconnection.
- 2.2. To the fullest extent permissible by law, the Company will not be liable for any costs, loss, liability or damage whether direct, special or consequential, howsoever and when so ever arising from any suspension or termination of this Agreement.
- 2.3. The Company shall provide access to the Portal as soon as practicable after execution of this Agreement by all parties and receipt of the On-Boarding Fee.
- 2.4. The Company shall have the right at any time during the duration of this Agreement to inspect the Outlet's business operations to ensure compliance with the terms of this Agreement.

3. BRANDING & PROMOTIONAL MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

- 3.1. Upon mutual agreement of the Parties of the sizes and locations of all branding materials the Company shall provide to the Outlet branding and advertising support materials such as external signage, posters, internal Services material at no cost to the Outlet. For the avoidance of doubt, materials that have been supplied to the Outlet at no cost shall at all times remain the property of the Company, returnable upon demand or upon termination of this Agreement.
- 3.2. The Outlet shall only use the Company trademarks and trade names for the purpose of promoting and providing Services during the continuance of this Agreement and for no other purpose whatsoever.
- 3.3. The Outlet shall promptly notify the Company of any actual, threatened or suspected infringement, improper or wrongful use of any trademarks and trade names or other intellectual property rights which are the property of the Company or its affiliates or group of companies which comes to the Outlet's notice.
- 3.4. The Outlet shall, take all reasonable measures to assist the Company to protect and maintain the intellectual property rights of the Company

which are relevant to the business to be undertaken by the Outlet under the terms of this Agreement. The Outlet shall also display at the PoS Equipment such other trade or service marks (including but not limited to the trademarks of the Issuers) or copyright notices as the Company may stipulate from time to time.

- 3.5. The Outlet and the Company agree that all goodwill accruing to any of the parties' trademarks and trade names by virtue of the use thereof by either party in accordance with this Agreement shall accrue to either party and that neither party acquires rights in any of the said party's trademarks or trade names.

- 3.6. Each party to this Agreement shall procure that its employees, servants and other authorised users use such trademarks and trade names only in accordance with and for the purposes of this Agreement and that they will not use any trademarks or trade names or any resemblances thereof or anything so closely resembling them as to be likely to cause confusion.

4. COMMISSIONS

- 4.1. In consideration of the Outlet providing the Services, the Company shall pay the Outlet a commission based on the number and type of Transactions carried out by the Outlet (the "Commission") as set out in the Form which may be varied from time to time by the Company, notwithstanding the provisions in clause 4.3 by giving the Outlet written notice of the implementation of the proposed variation.
- 4.2. All Commissions due to the Outlet shall be credited to the Outlet Account in accordance with the Commission structure and depending on the type of Transactions.
- 4.3. The Company reserves the right to change the terms and conditions and amount of Commission payable to the Outlet under which it offers the Services:
- (a) immediately as a direct result of new legislation, statutory instrument, Government regulations or licences, rates of exchange, imposition or alteration of government tax; or
- (b) as a result of any review of the Company's business planning, changes within the industry, recommendations from regulatory bodies or for such other reason as it may in its sole discretion determine provided that the Outlet shall have the right to terminate this Agreement on giving sixty (60) days notice if it is not agreeable to the changes so made;
- (c) and further, provided always that the Company shall use its reasonable endeavours to give the Outlet prior written notice of any changes to the terms conditions and Commission payable where the circumstances warranting such changes are directly within its control.
- 4.4. The Outlet shall be responsible for all taxes, levies, imposts or statutory fees applicable in respect of Commissions and any fees received by it under this Agreement.

5. TRANSACTIONS

- 5.1. The Transactions will be available to the Users through the System (which schedule may be amended from time to time in accordance with clause **Error! Reference source not found.**).
- 5.2. The Company shall use all reasonable endeavours to ensure that the System shall remain operational for twenty four (24) hours, seven (7) days a week and throughout the year.

6. OTHER TRANSACTIONS

- 6.1. The Company may permit a User to use the System for other Transactions ("Additional Transactions") which will be made available to the User through the PoS Equipment or Portal in the future.
- 6.2. Such Additional Transactions when made available shall be incorporated into this Agreement by the Company modifying and issuing to the Outlet a notice of the nature of the Additional Transaction made available, the processes involved and any other information that the Company may deem necessary.

7. NO GUARANTEED INCOME

The Company makes no warranties or representations with regard to potential revenues that may be earned by the Outlet from the provision of the Services and no reliance should be placed on any statements or projections provided, whether verbally or in writing in this respect.

8. TERMINATION AND EXPIRY OF THE AGREEMENT

- 8.1. This Agreement shall, unless terminated in accordance with the provisions of clause 8.2, continue indefinitely.
- 8.2. This Agreement may be terminated as follows:
- (a) By the Company giving the Outlet not less than thirty (30) days prior written notice of termination before the end of the then current term or the Agent giving the Company not less than thirty (30) days prior written notice of termination before the end of the then current term.

- (b) By the Company immediately in the event that the Agent is unable to provide the Services on a regular basis or is the subject of frequent and sustained User complaints or is in breach of the terms of this Agreement which breach is not remedied within the timeframe stipulated by the Company in a written notice to the Agent requiring such remedy.

8.3. Immediately after the termination of this Agreement:

- (a) the Outlet shall not hold itself out as being an agent for the supply of the Services and shall immediately cease providing the Services;
- (b) the Outlet shall cease forthwith to use the PoS Equipment, Portal, the trade names and trademarks; and
- (c) neither party shall have a claim against the other for compensation for loss of distribution or other rights, loss of goodwill or any similar loss.

- 8.4. Subject to any rights of set off in respect of any claims against the Outlet, the Outlet will be entitled to receive any Commissions fees earned as at the date of termination and shall not be entitled to claim for any other costs, expenses whatsoever arising directly or indirectly from any loss of business.

- 8.5. Upon termination of this Agreement no Commission shall be payable or liable to be paid to the Outlet in respect of any period after the date of such termination.

- 8.6. Subject to any provision to the contrary, the termination of this Agreement howsoever caused shall be without prejudice to the continuation of any provision which expressly or by implication comes into operation or continues in force after the date termination and shall be without prejudice to any rights and liabilities of the Parties which may have already accrued prior the date of termination.

9. INDEMNITY BY THE OUTLET AND ADJUSTMENT ARISING FROM ERRORS

The Outlet will be liable for and be responsible for all losses, liabilities, damages and bear all costs and expenses and will defend, indemnify and hold the Company harmless from and against:

- (a) any claims, liabilities, losses or damages due in any way whatsoever to the negligence or misconduct of the Agent, its employees or agents;
- (b) any claims by third parties (including Issuer Users) arising from or attributable to fraud or any criminal act due to access to the PoS or Portal being obtained by a third party;
- (c) any breach by the Outlet of the terms of this Agreement.

10. LIMITS OF LIABILITY

In respect of all loss or damage which in any way arises out of or is connected with the performance or non-performance by the Company, its staff, agents and subcontractors, of any of its obligations under this Agreement, the Company's aggregate liability under this Agreement will be limited to one hundred thousand Kenya Shillings (KES 100,000). The Company shall not be liable to the Agent for any indirect or consequential loss or damage including loss of profit.

11. CUSTOMER SERVICES

The Company will operate a Call Centre, offering Outlets and Users advice and support in the provision of the Services.

12. ENTIRE AGREEMENT

This Agreement, the schedule and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

13. THIRD PARTY RIGHTS

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.

14. NOTICES

Any notice, request, demand or other communication ("notice") required or permitted to be given or sent under this Agreement must be in writing in the English language and must be: (i) delivered by hand; or (ii) by electronic mail; or (iii) by prepaid registered mail or by other method of prepaid receipted courier service, in either case, return receipt requested at the address set out in the form attached to this Agreement.

15. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Kenya and each party hereby submits to the exclusive jurisdiction of the High Court of Kenya.

SIGNED AT _____ ON THE _____ DAY OF _____ 20__

On behalf of the Outlet

As Witness

Name:
National ID number:
Occupation:
Address:

On Behalf of Pesa Transact Ltd

As Witness

Name:
National ID number:
Occupation:
Address: