

iPay Mobile Money Transaction Processing Agreement

BETWEEN

iPAY LTD

AND

COMPANY NAME HERE

Terms and Definitions

- iPay Ltd (hereinafter called “the Transaction Processor”)

- **COMPANY NAME HERE** (hereinafter called “the Merchant”)

- When both the Merchant and the Transaction processor are referred to jointly, they will be referred to as “the Parties” or “each Party”

- When either the Merchant or the Transaction processor are referred to, they will be referred to as “the Party” or “a Party”

- Any disagreeable issue arising out of or in connection with this agreement, including any question regarding its existence, validity, interpretation, performance, non-performance or cancellation, expiration and termination shall hereinafter be referred to as a “Dispute”

- The Service, The Transaction Processor Service - The act of processing payments for goods purchased on the merchant's website and originating from customers' mobile money wallets like MPESA, Airtel Money, yuCash, Orange Money; online mobile money transfer named above with respect to which the Transaction Processor has a Payment Agreement with the Mobile Network Operators at the commencement of this Agreement and during its term

- Merchant Account - Online account on the Transaction Processor's systems that allows the routing of transactions

- Real Time Gross Settlement (hereinafter called “RTGS”)

- Electronic Funds Transfer (hereinafter called “EFT”)

This Agreement is made on this _____ day of _____ 2011

BETWEEN

iPay Ltd a limited liability company incorporated in accordance with the Laws of Kenya and of Registration number: CPR/2010/21804 and of P.O. Box 20790 – 00202 Nairobi (hereinafter called the “**the Transaction Processor**”) of the other part.

AND

COMPANY NAME HERE a limited liability company incorporated in accordance with the Laws of Kenya and of Registration number: **Reg. No. Here** and of P.O. Box **Address Here** (hereinafter called “**the Merchant**”)

RECITALS

WHEREAS the Transaction Processor is a professional of good standing involved in the business of Design and Implementation of Enterprise Productivity systems and Digital Branding.

WHEREAS the Merchant wishes to retain the Transaction Processor for the implementation of the iPay online mobile payments system forth herein;

NOW THEREFORE the Merchant and the Transaction Processor agree as follows:

The Merchant shall ensure that they provide:

- (a) The name, address, email and telephone number of the Merchant entity.
- (b) Designated contact person(s) name, designation, telephone, email and mobile number details.
- (c) Bank details such as bank, branch, account name and number, SWIFT and IBAN (only necessary if the Merchant intends to receive payments via Electronic Funds Transfer or Real Time Gross Settlements).

SERVICE COSTS AND PAYMENT TERMS:

The Merchant account set up being provided by the Transaction Processor is **free**

KSh Value Range Per Transaction	Percentage Commission
Less than or Equal to 4,000	3.50%
4,001 – 20,000	3.25%
Greater than 20,000	3.00%

TERMS AND CONDITIONS OF THIS AGREEMENT

This agreement is entered into by the Transaction Processor and the Merchant. By signing this agreement the parties agree to be mutually bound by all terms and conditions of this agreement including, without limitation, all documents, policies and procedures incorporated herein by reference.

1. ACCEPTANCE AND EFFECTIVE DATE:

This agreement becomes effective upon signing of the agreement by both parties and shall continue in full force and effect unless either Party decides to terminate this agreement in accordance with Clause 10. The Parties reserve the right to mutually extend the contractual period.

2. CONFIDENTIAL INFORMATION:

2.1 The Parties acknowledge that they may disclose confidential information to one another in order to facilitate work under this agreement.

2.2 The Parties agrees that all information disclosed by the either party to the other party and including any such information disclosed prior to the date of this agreement and including without limitation information acquired by either party in writing, orally or by inspection of the either party's property, relating to the either party's prototypes, samples, technical data, trade secrets, actual and anticipated research, developments or products, business plans, methods, and practices, personnel, customers, suppliers, inventions, processes, discoveries, methods, products, patent applications, drawings, sketches, models, tools, computer programs, technical information, concepts, ideas, designs, drawings, markets, market plans, distribution methods, financial information, sales or programming matter, compositions, work in process, visual demonstrations, manufacturing plans, confidential information disclosed by third parties, and other data, whether oral, written, graphic, or electronic form shall be considered "Confidential Information"

2.3 The parties undertake to each other that they will use all reasonable endeavors to keep and procure that their directors, employees, agents and sub-contractors shall keep secret all confidential information and will not disclose such confidential information to any Third Party.

2.4 Confidential information shall not include information that:

(a) is in or comes into the public domain other than by default of one of the parties; or

(b) is or has already been independently generated by the party disclosing such information; or

(c) is disclosed to satisfy a legal demand by a competent court of law or government body; or

(d) is in the possession of or is known by the receiving party prior to its receipt from the disclosing party; or

(e) is authorized to be disclosed by the disclosing party in writing but then only to the extent of the authority given.

Confidential information which is the subject of the provisions of clause 2.1 shall be used only for the purpose for which it was disclosed and/or for the purposes of performing the obligations of the parties in terms of this agreement.

The provisions of this clause will apply with effect from the commencement date until 12 (twelve) months after the date of termination or expiry of this agreement.

3. MERCHANT ACCOUNT REQUIREMENTS:

The following are requirements that must be met by the Merchant before the iPay transaction processing engine can be installed on the Merchant's website by the Transaction Processor:

(a) The Merchant's website shall prominently display a satisfactory Reversal policy of customer transactions which includes cancellations, returns and refunds. This policy should be clear, complete, accurate and prominently posted on the merchant's website and available for review by a customer prior to the purchase web page interface.

(b) The Merchant's website shall also have a satisfactory Privacy statement and Terms and Conditions statement.

(c) The Merchant's website shall also have in place a shopping cart of satisfactory standard as vetted by the Transaction Processor. In the event that this shopping cart is lacking, and the Merchant is unable to obtain and install one, the Transaction Processor shall be able to provide a satisfactory shopping cart at a fee of Twenty Three Thousand Two Hundred Kenya Shillings inclusive of 16% VAT (KSh. 23,200 incl. 16% VAT). This fee shall not only cover the installation but also training of at least one designated officer from the Merchant's staff pool to handle any queries that may arise regarding the functioning of this software. This is a one-time fee but shall not be mandatory.

(d) The Merchant shall download the iPay artwork from the following URL (http://ipaydemo.intrepid.co.ke/download/artwork/iPay_images.zip) and display it prominently on their website on the home page as well as the payment pages.

Fees Table

Activity	Fees (KSh)	Mandatory
Merchant Account Set up	FREE	Yes
Receiving (Selling) for domestic payments	iPay commission on all transactions. See pg 3	Yes
Refundable Deposit	50,000.00	No (Applicable only if you are Selling Tangible Goods)
Shopping Cart Set up Cost	23,200.00	No
RTGS / EFT Processing Charges	150.00 - 5,000.00	No (Depends on if this is your preferred choice of settlement and the amount being transferred)

4. PROHIBITED PRODUCTS / SERVICES:

The Transaction Processor, being the authorized transaction processor for the Merchant, does not allow the merchant to use the iPay transaction processing engine to offer products or services that are deemed illegal by law, infringe upon the intellectual property rights of third parties or can be easily used for illegal purposes.

If, in the Transaction Processor's sole discretion, the products or services being offered are such that they should be immediately withdrawn from sale by the Merchant, the Transaction Processor may immediately suspend activity on the account without the issuance of any refunds to the Merchant.

The Transaction Processor will not support the following products and services:

- (a) any merchant who, in the Transaction Processor's sole opinion, is using deceptive, unfair, or misleading advertising or marketing practices, or selling products or services with unsubstantiated claims.
- (b) Firearms and/or Ammunition
- (c) Pornography and Adult content.
- (d) Alcohol and Drug products
- (e) Hazardous Materials, Combustibles, Corrosives
- (f) Money making schemes e.g. matrix, multi-level marketing, pyramids
- (g) Online Gambling, Casino services

The Transaction Processor cannot provide legal advice to the Merchant for any transaction, product or group of products.

5. PAYMENT OPTIONS AND PAYMENT SCHEDULE:

The standard payment schedule from the Transaction Processor to the Merchant will be after every seven (7) days. However, in the event that the transacted volumes are high, then payment schedule will be after every three (3) days of transaction or on special request. Payment will be made 72 hours after this request by the preferred mode of payment selected by the Merchant.

The preferred mode of payment is through the use of cheque payments. Please note that the choice of payment option is fixed for the duration of this agreement unless a change in mode of payment is mutually agreed upon by the Merchant and the Transaction Processor in writing. The other modes of payment that may be available to the Merchant is through Electronic Funds Transfer and the RTGS. The costs incurred for the payments shall be incurred by the Merchant. The charges are as follows:

- (a) KSh. 150 per transfer via Electronic Funds Transfer (EFT)*

* If the amount to be transferred is greater than KSh. 1M, then RTGS transfer fees of at least KSh. 500.

Bank Name: _____

Bank A/c Name: _____

Bank A/c Number: _____

Branch Name: _____

SWIFT Code: _____

6. GOVERNING LAW AND SETTLEMENT OF DISPUTES

6.1 This agreement and all matters regarding its interpretation and / or enforcement shall be governed and construed in accordance with the laws of Kenya.

6.2 If any dispute arises out of or in connection with this agreement, including any question regarding its existence, validity, interpretation, performance, non-performance or cancellation, expiration and termination (hereinafter referred to as a “Dispute”), the following procedures will apply:

(a) Amicable Discussions

The Parties will endeavour to first settle a Dispute by amicable discussions over a minimum period of fifteen (15) Business Days from the date of receipt of the letter (sent with acknowledgement of receipt) by either party and notifying the existence of a Dispute (“the Dispute Notification”).

(b) Continuance of performance

Throughout the duration of a Dispute or throughout the entire length of the legal proceedings relating to the said Dispute, each Party will continue to comply with its obligations arising by virtue of this agreement.

(c) Arbitration

If an amicable settlement cannot be reached within thirty (30) business days from the date of the Dispute Notification, the Dispute shall be finally settled under the Rules of Arbitration of the Chartered Institute of Arbitrators, Kenya Branch by one arbitrator appointed in accordance with said Rules. The seat, or legal place, of arbitration shall be Nairobi, Kenya. The language to be used in the arbitral proceedings shall be English.

6.3 Notwithstanding anything to the contrary contained in clause 6.2, neither party shall be precluded from obtaining interim injunctive or similar relief from a court of competent jurisdiction. However, the route of arbitration shall have been attempted first and seen to fail before the aggrieved party can seek legal redress in a court of competent jurisdiction.

6.4 Provided either party may elect to terminate this agreement in the manner provided In clause 10 prior to settlement of the Dispute or conclusion of the legal proceedings relating to the Dispute.

7 FORCE MAJEURE

7.1 Definition of Force Majeure

For the purposes of this agreement, “Force Majeure” means an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party’s performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes,

lockouts or other industrial action, terrorist acts, confiscation or any other action by government agencies.

7.2 Negligence and intentional acts

Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's subcontractors or agents or employees, or by a failure to observe good professional practice.

7.3 Financial constraints

Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

7.4 Performance excused

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this agreement.

7.5 Duty to mitigate

A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimize the consequence of any event of Force Majeure.

7.6 Notification

A Party affected by an event of Force Majeure shall notify in writing to the other Party of such event as soon as possible, and in any event not later than seven (7) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

7.7 Consultation and Termination

Not later than fourteen (14) days after the Transaction Processor, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances. If no solution is arrived at within the stipulated period, the Merchant shall be entitled (but not obliged) to terminate this agreement forthwith by written notice and the provisions of clause 10 on Termination shall apply.

8. Service Level Response Times

In the event of a service outage or a request for assistance from the Merchant, the Transaction Processor will acknowledge receipt of this communication immediately it is received and will endeavour to solve the problem within 30 minutes of the acknowledgement and in consultation with other stakeholders, namely the mobile money services providers and your website design provider.

Response Times will be: **8am - 8pm Monday - Friday; 8am - 4pm Saturdays. Sundays & Public Holidays** : iPay technical staff on call on **0713-129623**.

9. NOTICES

The Parties select as their respective addresses, the addresses set out below for all purposes arising out of or in connection with this agreement at which addresses only all processes and notices arising out of or in connection with this agreement may validly be served upon or delivered by the Parties.

The Directors

COMPANY NAME HERE

PHYSICAL ADDRESS

POSTAL ADDRESS

TELEPHONE CONTACT

EMAIL CONTACT

and

The Directors

iPay Ltd

Saachi Plaza, Suite B6, Argwings Kodhek Road

P.O. Box 20790 - 00202 Nairobi

Telephone: +254 20 2430424

Email: ipay@intrepid.co.ke

10. TERMINATION

Termination of this agreement shall be effected when either Party shall put the request in writing and post or hand-deliver the letter written on the Party's official stationery after giving notice of at least fourteen days (14) prior to the expected date of termination and shall state the reasons for the said termination. The addressees of these official communications will be as stipulated in clause 8 of this agreement.

The Transaction Processor shall forward to the Merchant any monies that are outstanding to the Merchant as at the date of termination, less any charges that are payable to the Transaction Processor according to the payment terms in the **Service Costs and Payment Terms** clause as well as clause 5 of this agreement.

The Merchant shall then proceed to remove any artwork or software modules that have been installed by or are part of the intellectual property of the Transaction Processor

The termination for any reason or expiration of this agreement shall not relieve either Party from any obligation that may have arisen prior to such termination or expiration or which in order to give full effect to its meaning needs to survive termination or expiration, including without limitation obligations under article "Intellectual Property Rights", and article "Confidentiality". Termination by either Party in the course of arbitration shall not be acceptable until the final outcome of the Dispute that brought about the need for arbitration is resolved amicably. Only then shall termination be allowable.

At all stages in the execution and/or termination of this agreement and thereafter, the iPay Transaction Processing software and all modules installed on the Merchant's website or on their other payment systems remain the sole and exclusive intellectual property of the Transaction Processor.

11. GENERAL

11.1 Language

This agreement and any notices to be given shall be in the English language. Where texts exist in more than one language, including any part of this agreement, the English language text shall govern.

11.2 Entire Agreement

This document contains the whole agreement between the Parties relating to the subject matter of this agreement and no variation, extension or cancellation of the expressed terms of this agreement shall be binding upon the Parties as the case may be unless and until such variation, extension or cancellation is confirmed in writing under the hands of authorised representatives of both Parties.

11.3 No Waiver

Except where this agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

11.4 Severability

If any provision of this agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of the Merchant it may be severed from this agreement and the remaining provisions of this agreement shall remain in full force and effect.

11.5 Indemnity

The Merchant agrees that it will not perform or fail to perform any act that would violate the Law, and further agrees to defend, save and hold harmless the Transaction Processor and indemnify the Transaction Processor from any and all claims, actions, suits, losses, damages and liabilities and costs including Advocates fees, relating to or resulting from any violation of, or failure to comply properly with, or claim or charge that there has been a violation of or failure to properly comply with the Kenyan laws, rules or regulations arising out of any acts or omissions of the Merchant.

Equally the Transaction Processor agrees that it will not perform or fail to perform any act that would violate the Law, and further agrees to defend, save and hold harmless the Merchant and indemnify the Merchant from any and all claims, actions, suits, losses, damages and liabilities and costs including Advocates fees, relating to or resulting from any violation of, or failure to comply properly with, or claim or charge that there has been a violation of or failure to properly comply with the Kenyan laws, rules or regulations arising out of any acts or omissions of the Transaction Processor

11.6 Counterparts

This agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same agreement.

The undersigned agrees to the terms of this Agreement on behalf of his or her organization business.

On behalf of the Merchant:

_____ Date _____
 Sign

 Name

 Title

Witnessed by:

_____ Sign

 Name

On behalf of the Transaction Processor:

_____ Date _____
 Sign

 Name

DIRECTOR

 Title

Witnessed by:

_____ Sign

 Name