



Terms and Conditions

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By continuing to use the Sites, you attest that you have read these terms and conditions, understand them, and agree to be bound by them. Access to the Sites is entirely at your own, and you are liable for any third-party expenses (like Internet service provider or airtime costs) that may be associated with that access. Furthermore, you are in charge of supplying and maintaining any equipment required to access the Sites; we disclaim all liability for your incapacity to access and/or use the Website, either completely or inefficiently.

1. Definitions

1.1. In this Agreement, the following definitions apply:

- 1.1.1. "Company" means Excel Tech Essentials;
- 1.1.2. "Account" means a Essentialapp Account;
- 1.1.3. "Essentialapp" means Excel Tech Essentials web application platform; and
- 1.1.4. "Website" means the website of the Essentialapp entity and related sites.
- 1.1.5. "Affiliates" means with respect to a Person, any other person directly or indirectly controlling, controlled by, or under common control with, the respective Company in provision of the services rendered;
- 1.1.6. "Apps" means software application;
- 1.1.7. "Cookies" means a small data file that is transferred to your computer or mobile device to enables us to remember your Account log-in information, IP addresses, web traffic number of times you visit, browser type and version, device details, date and time of visits;
- 1.1.8. "Merchant" includes small and medium enterprises and any other Person who is trading and uses the Website;
- 1.1.9. "Personal Information" means any information that can be used to identify a living person or a business entity including but not limited to mobile phone number, email address, company name, business name, certificate of incorporation, business permit, CR12, CR8, CR1, password, Personal Identification Number (PIN), payment card, financial information such as bank account numbers, Government-issued Identity card, Bank Verification Number (BVN) and/or taxpayer identification it may also include anonymous information

that is linked to you, for example, your internet protocol (IP), log-in information, address, location, device or transaction data;

- 1.1.10. "Platform" The Essentialapp that facilitates processing payments for organizations, allowing them to accept digital payments online from Users or customers, as well to make payments to third parties in addition to other business management features
- 1.1.11. "Privacy Policy" means the Excel Tech Essentials Privacy Policy as may be updated from time to time and the current version of which is provided on the Site;
- 1.1.12. "Sites" means any platform including but not limited to mobile applications, websites and social media platforms;
- 1.1.13. "User" means any Person, including a Merchant/ organization/ company, who uses the Services or accesses the Website and has agreed to use the end services of the Platform;
- 1.1.14. "Person" includes any legal or natural person, partnership, association, trust, company, joint venture, agency, governmental authority or other body, entity or organization (whether corporate or unincorporate) and that person's personal representatives, heirs or successors (as the case may be) or permitted assigns;
- 1.1.15. "Services" means all of the Website, Apps, APIs, Interfaces and Platforms offered by Excel Tech Essentials in relation to Essentialapp;
- 1.1.16. "System Access Credentials" Username, password and API keys
- 1.1.17. "APIs" Application Programmable Interfaces belonging to the Company for the purpose of accepting and processing payment requests from the Client System.
- 1.1.18. "Client User" Any person created on Essentialapp by the client under the client account, such a user will have his/her own unique user name and will be required to set up his/her secret PIN for accessing Essentialapp

2. Registration and Activation

- 2.1. To be setup on the platform and access the Services, the Client has to create an Account by providing the registration details to the Company for setup by the Company. For registration to be completed and the Client Account activated, the Client will provide the Company with certain information such as its mobile phone number, email address, first name, last name, business name, business location and business. The Company may seek to verify the Client's information (by itself or through third parties) through a KYC vetting process, after which the Company will approve Account unless deemed risky. The Client gives the Company permission to collect this information and verify it as may be necessary.
- 2.2. If the Client fails to produce the necessary KYC documents, or fails to satisfy the minimum KYC requirements, the Company will not activate the Client's Account. For the avoidance of doubt, the Company's refusal to activate the Client's Account shall neither confer to the Client any right to contest the Company decision nor give rise to any legal claim against the Company under this Agreement.
- 2.3. Once the Client's Account has been activated, it will be granted the right:

- 2.3.1. to use the Services through its Account;
 - 2.3.2. to allow other Users to access the Services through its Account; and
 - 2.3.3. to add and give any/all rights to any of the Users that it decides to give access to through its Account.
 - 2.4. The Client (and any person that it allows as a User) may use the Services only if it (and such person that it allows as a User) agrees to form a binding contract with the Company.
3. Access Channels
- 3.1. Upon opening and activation of the Client's Account, the Client will be able to access the platform via the below channels:
 - 3.1.1. the Essentialapp Web Application; or
 - 3.1.2. an integration layer between the Client system and the platform, via Essentialapp APIs to be availed by the Company.
4. Account Security
- 4.1. Access to the Services via the Essentialapp password protected, and each client user will be required to set up his or her secret password. Additionally, for some services, in addition to -the PIN, the client user will be required to enter a One Time Password (OTP), which is a verification code sent to the client user via SMS for authentication purposes. The Client hereby agrees to ensure each client user clients user created under its account guards his/her password and the OTPs sent to him/her and not to disclose the password and OTPs to any third party or any person purporting to have authority to ask for it. The Client acknowledges that it shall be solely responsible for the security of its users' passwords and any OTPs sent to its users for authentication purposes. The Company shall not be liable for any disclosure of the Client's passwords or OTPs to any third party and the Client hereby agrees to hold the Company harmless from any losses that result from any password or OTP disclosure. The Client is responsible for all instructions given to the Company through its Account. The Company shall deem each correct password entry as being performed by the legitimate owner of the Account and shall regard all subsequent transactions as validly performed by the Client. The Company shall provide for recovery options in case the Client's password is compromised or requires changing.
 - 4.2. Access to the Services via the Essentialapp APIs is protected by means of System Access Credentials: API keys, username and password. The Client hereby agrees to guard the System Access credentials and not to disclose the System Access credentials to any third party or any person purporting to have authority to ask for it. The Client acknowledges that it shall be solely responsible for the security of the System Access Credentials. The Company shall not be liable for any disclosure of the System Access Credentials to any third party and the Client hereby agrees to hold the Company harmless from any losses that result from any disclosure of the System Access

Credentials. The Client is responsible for all instructions given to the Company through its Account. The Company shall provide for recovery options in case the Client's System Access Credentials is compromised or requires changing.

- 4.3. The Client will also take all reasonable steps to protect the security of the personal electronic device through which it accesses the Services (including, without limitation, using password protected personally configured device functionality to access the Services and not sharing its device with other people).

5. Company's Obligations

The Company hereby agrees to:

- 5.1. provide the Client with secure access to the platform.
- 5.2. facilitate any integration necessary between the Client system and the platform for purposes of facilitating use of the system as envisaged;
- 5.3. perform the services and carry out its obligations with all due diligence, efficiency and economy in accordance with generally accepted professional standards and practices;
- 5.4. provide technical support to the Client as and when reasonably requested
- 5.5. maintain open communication with the Client to discuss future joint product designs for future initiatives that both parties can benefit from, and to discuss joint press announcements.
- 5.6. update the facilities and services in accordance with prevailing laws, standards and trade practices.
- 5.7. Ensure the facilities and services are in good working condition and mitigate any downtimes or errors within the minimum performance metrics to be agreed between the parties.
- 5.8. Procure competent service providers and suppliers for any components or services that are outsourced by the Company.

6. Client's Obligations

The Client hereby agrees:

- 6.1. To work with the company so as to be setup on the platform, and where the parties envisage access to the Essentialapp platform via APIs, integrate to the platform via the provided APIs;
- 6.2. Credit it's Account with funds, as pre-paid amounts, for the purposes of facilitating the periodic service charges
- 6.3. to put in place appropriate security measures to monitor, control and prevent fraud by users the Client has designated to access the system

- 6.4. be fully responsible for its employees' actions while in the Client's employment;
- 6.5. to promptly notify the Company of any security breach, misuse, irregularity, suspected fraudulent transaction or suspicious activities that may be connected with attempts to commit fraud or other illegal activity through the use of Client's site and the corrective action the Client has taken;
- 6.6. to provide immediate notice to the Company of (a) any unauthorised third-party use of the Services or any third party that may have access to cardholder data; and/or (b) any event which might lead to such unauthorised use;
- 6.7. to immediately notify the Company of any act, omission or error which does or may adversely affect the Client's ability to perform their obligations under this Agreement or cause loss or damage to the Company (including but not limited to any material change in the nature or extent of the Client's business).
- 6.8. Not describe itself as agent or representative of the Company. The Client shall not make any representations to Clients, Customers or any third party or give any warranties, which may require the Company to undertake to or be liable for, whether directly or indirectly, any obligation and/or responsibility to the Client, Customer or any third party.

7. Representation and Warranties

- 7.1. The Client represents and warrants to the Company that:
 - 7.1.1. it has full power and authority to enter into, execute, deliver and perform this terms;
 - 7.1.2. it is duly organised, authorised and in good standing under the laws of Kenya and it is duly authorised to do business in regions or countries in which its business operates;
 - 7.1.3. all licenses and registrations required by the Client are in full force and effect to enable the Client to carry on the business of provision of its services. The Client assures and guarantees to the Company that it shall comply with all rules, bylaws and standards set by the statutory bodies;
 - 7.1.4. it shall not submit any transaction that it knows is illegal, fraudulent or restricted for authorization;
 - 7.1.5. it will conduct appropriate due diligence on all its customers;
 - 7.1.6. it will use the Services in good faith, in accordance with the terms of this Agreement and in accordance with all Applicable Laws. In particular, it will not use the Services in a manner that that could result in a violation of anti-money laundering, counter terrorist financing and similar legal and regulatory obligations;

8. Data Compliance

- 8.1. The Company acknowledges that the Client owns all its customers' and suppliers' data. The Client hereby grants the Company a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display its customers' data for the following purposes:
 - 8.1.1. providing and improving its Services;
 - 8.1.2. internal usage, including but not limited to, data analytics and metrics so long as individual customer data has been anonymized and aggregated with other customer data;
 - 8.1.3. complying with applicable legal requirements and assisting law enforcement agencies by responding to requests for the disclosure of information in accordance with local laws; and
 - 8.1.4. any other purpose for which consent has been provided by its customer.

9. Software Licence

- 9.1. The Company hereby grants the Client a revocable, non-exclusive, non-transferable license to use the Company's APIs, developer's toolkit, and other software applications (the "Software") in accordance with the documentation accompanying the Software, and in the manner permitted by this Agreement. This license grant includes all updates, upgrades, new versions and replacement software for the Client's use in connection with the Services.
- 9.2. If the Client does not comply with the documentation and any other requirements provided by Essentialapp, then the Client will be liable for all resulting damages suffered by the Client, the Company and third parties. The Client agrees not to alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code that is derived from the Software.
- 9.3. Any feedback, comments, or suggestions that the Client may provide to the Company and its Services is entirely voluntary and the Company will be free to use such feedback, comments or suggestion as the Company sees fit without any obligation to the Client.
- 9.4. The Company's Services are protected by copyright, trademark and other laws of both Kenya and foreign countries. Nothing in this Agreement gives the Client a right to use the Company's name or any of its trademarks, logos, domain names, and other distinctive brand features. All rights, titles and interests in and to the Services are and will remain the exclusive property of the Company and its licensors.

10. Intellectual Property

10.1. The Company and/or its licensors own the intellectual property rights (“IPR”) in or related to the Services, the Apps and the Website. The Company does not grant the Client any right, license, title or interest to any of the IPR which it may or may not have access to by accessing the Services.

10.2. For emphasis, nothing set forth herein shall constitute a transfer or assignment by the Company to the Client of any IPR owned or otherwise controlled by the Company and/or its licensors. All IPR in or related to the Services is and will remain the exclusive property of the Company, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Services are used or licensed. The Client shall not take any action that jeopardizes the Company’s proprietary IPR or acquire any right in the Services. Unless otherwise agreed on a case-by-case basis, the Company will own all rights in any copy, translation, modification, adaptation or derivation of the Services, including any improvement or development thereof.

11. Publicity

The Client hereby grants the Company permissions to use its name and logo in its marketing materials including, but not limited to use on its Website, in customer listings, in interviews and in press releases. Such Publicity does not imply an endorsement for the Client’s products and services.

12. Confidentiality

12.1. The parties acknowledge that in the performance of their duties under this Agreement, either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning each party’s services, know how, technology, techniques, or business or marketing plans (collectively, the “Confidential Information”) all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party’s obligations under this section or by breach of a third party’s confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party’s confidentiality obligations; or (iv) is independently developed by the receiving party.

12.2. Both Parties agree that all Confidential Information is and shall remain the property of the Party providing the information and the Party receiving or gaining access to the information shall use all reasonable and prudent means to safeguard such Confidential Information, including all means required by law. Furthermore, neither Party shall copy, publish, disclose to others, or use such Confidential Information for any purpose other than the fulfilment of its obligations under this Agreement or where required by law.

12.3. Each of the Parties on behalf of itself and its employees, officers, directors, Affiliates, and agents, hereby agrees that Confidential Information made available to it will not be disclosed or made available to any third party, agent or employee for any reason whatsoever, other than with respect to: (a) its employees on a “need to know” basis, (b) Affiliates on a “need to know” basis, provided that they are subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Section (Confidentiality); and (c) as required by Applicable Law or as otherwise permitted by this Agreement, either during the term of this Agreement or after the termination of this Agreement, provided that prior to any disclosure of any party’s Confidential Information as required by law, the party subject to the requirement shall (i) notify the other parties of all, if any, actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated and (ii) cooperate with the other parties’ reasonable, lawful efforts to resist, limit, or delay disclosure.

13. Know Your Customer

- 13.1. The Client agrees that it is solely responsible for verifying the identities of its customers, ensuring that they are authorised to carry out the transactions on its site, app or platform account, and determining their eligibility to purchase its products and services.
- 13.2. The Client is also required to maintain information and proof of service or product delivery to its customer. Where a dispute occurs needing resolution, it may be required to provide the Company with these.

14. Customer Payments

- 14.1. The Client may only process payments when authorised to do so by its customer. The Company will only process transactions that have been authorised by the customer.
- 14.2. The Company does not guarantee or assume any liability for transactions authorised and completed that are later reversed or charged back. The Client is solely responsible for all reversed or charged back transactions, regardless of the reason for, or timing of, the reversal or chargeback. The Company may add or remove one or more payment types or networks at any time. If the Company does so it will use reasonable efforts to give the Client prior notice of the removal.

15. Implementation and Access Fees

- 15.1. The Client agrees to pay the Company for the Services rendered.
- 15.2. The Implementation and Access Fees payable to the Company under this Agreement are structured in the Individual Contractual Agreement. The Company may increase/reduce/waive its Implementation and Access Fees provided from time to time without recourse to the Client but shall notify the Client of such increase/reduction/waiver with a one month’s notice in writing for the Client’s

acceptance. The Implementation and Access Fees shall remain fixed during the Notice period.

- 15.3. The parties shall retain the option to revise the access fees by mutual agreement in writing;

15.3.1. in the event an increase in the efforts and resources required by the Company to perform the services.

15.3.2. for any reasonable and justifiable cause.

- 15.4. Unless otherwise agreed in writing, all payments for Services rendered under this Agreement will be made in Kenya Shillings (KES).

- 15.5. The periodic access fees payable will be made in advance of a calendar month's usage of the system. Any non-payment of the same will result to immediate restriction of, or limitation of access of the Platform. Non-usage of the system before completion of a full calendar month does not constitute to any refunds whatsoever.

16. Taxes

Each party shall cater for their own tax declarations as applicable to the services provided or received.

17. Reversal and Errors

- 17.1. The Client agrees to notify the Company immediately any error is detected while reconciling transactions that have occurred while using the platform. The Company will investigate and rectify the errors where verified.

- 17.2. In the event that the Company notices any errors, it will also investigate and rectify such errors. Where the Company owes the Client money as a result of such errors, the Company will refund the amounts owed to the Client.

- 17.3. A transaction once completed is final and irrevocable. As such, the Company shall not be under any compulsion to reverse any transaction. If a transaction is erroneously processed through the Client's platform, the Client shall report to the Company immediately. The Company will investigate any such reports and attempt to rectify the errors.

- 17.4. Failure to notify the Company within 30 (thirty) days of the occurrence of an error will be deemed a waiver of the Client's rights to amounts that are owed to it due to an error.

18. Chargebacks

Chargebacks may arise from customer disputes; unauthorised or improperly authorised transactions; transactions that do not comply with the terms of this Agreement or are allegedly unlawful or suspicious; or any reversals for any reason by our payment processor, or the acquiring or issuing banks. Where a Chargeback occurs, the Client is immediately liable for all

claims, expenses, fines and liability we incur arising out of that Chargeback and agree that we may recover these amounts by debiting its Account. Where these amounts are not recoverable through the Client's Account, it agrees to pay all such amounts through any other means.

19. Refunds

The Client agrees that it is solely responsible for accepting and processing returns of its products and services. The Company is under no obligation to process returns of its products and services, or to respond to its customers' inquiries about returns of its products and services. The Client agrees to submit all refunds for returns of its products and services that were paid for through the platform to its customers in accordance with this terms.

20. Termination

- 20.1. Without prejudice to any rights of the Parties, each party shall be entitled to terminate this Agreement for its sole convenience by giving the other Party one (1) months' prior written notice.
- 20.2. Either party shall be entitled to terminate this Agreement with immediate effect upon the happening of the following:
 - 20.2.1. This Agreement is or becomes unlawful or unenforceable in any respect;
 - 20.2.2. The non-terminating party commits a breach of this Agreement, which is not cured within thirty (30) days of written notice thereof;
 - 20.2.3. A receiver is appointed over any of the property or assets of that the non-terminating party;
 - 20.2.4. The non-terminating party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - 20.2.5. The non-terminating party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
 - 20.2.6. The non-terminating party ceases, or threatens to cease, to carry on business.
 - 20.2.7. In the case of the Client where the Company has notified the Client of a change in the available facilities, services or review of fees that is not acceptable to the Client.
- 20.3. Upon termination of this Agreement for whatever reason:
 - 20.3.1. the Client's right to use the Services shall automatically be revoked, and its Account shall be deactivated.
 - 20.3.2. All arrears of payments, if any, and any other agreed sums due under the terms of this agreement, shall be paid PROVIDED THAT any arrears shall only be payable

for any services provided during the period up to the date of termination of this Agreement.

- 20.3.3. The Company shall retain the Client records for a period of seven (7) years after such termination, unless requested in writing to delete, or process otherwise, such records by the Client.

21. Acceptable Use Policy

The Client is independently responsible for complying with all applicable laws related to its use of the Services and agrees to a fair usage policy as determined by the Company from time to time and communicated to the Client.

22. Privacy Policy

The Company is committed to managing the Client's Personal Information in line with global industry best practices. The Client can read the Company's Privacy Policy on its Sites to understand how the Company uses its information and the steps the Company takes to protect the Client's information.

23. Cookies

- 23.1. In line with the industry practice and where the client accesses the service via the website or Apps, the Company uses Cookies to identify the Client as a User and to customize and improve the Services. A cookie is a small data file that is transferred to the Client's Equipment. It enables the Company to remember the Client's details such as Account log-in information, IP addresses, web traffic, number of times it visits, date and time of visits.

- 23.2. Some browsers may automatically accept Cookies while some can be modified to decline Cookies or alert the Client when a website wants to place a cookie on its Equipment. If the Client chooses to disable Cookies, it may limit its ability to use the Website or the Services.

24. Warranty Disclaimer

- 24.1. The Client will be solely responsible for any damage to the Company, itself and to any other person that results from breach of its access to its Account or to its computer or mobile phone ("Equipment") from use of the Services. The Company will try to keep the Services available at all times and bug free and safe. However, it is used at the Client's own risk.
- 24.2. The Company makes no express or implied representations or warranties with respect to the platform and related services or their condition, merchantability, fitness for any particular purpose or use by the Client or the Client's customers.
- 24.3. Except for the warranties specifically set forth in this agreement, each party disclaims all warranties of any kind, express or implied, arising out of or related to this agreement,

including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement, and implied warranties arising from course of dealing or course of performance, each of which is hereby excluded by agreement of the parties.

25. Indemnification & Limitation of Liability

25.1. Each Party ("the Indemnifying Party") shall indemnify and keep the other Party, its officers, directors, employees, agents, licensors, and suppliers ("the Indemnified Party") indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense (including legal costs on attorneys) suffered or incurred by the Indemnified Party or in any way arising from: -

- (i) any breach by the Indemnifying Party of any of its obligations, representations or warranties under this Agreement;
- (ii) any matter relating to the performance of the Indemnifying Party's obligations hereunder, or in any way arising out of any third-party claims, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual property rights, damage to computer database, loss of data or distribution of illegal or obscene or offensive material by the Indemnifying Party;
- (iii) violation of any laws or regulation of any governmental, regulatory or judicial authority by the Indemnifying Party;

25.2. the gross negligence or wilful misconduct of the Indemnifying Party or its employees or agents in connection with this Agreement,

PROVIDED THAT the Company's maximum cumulative liability under this Agreement shall not exceed the funds held by the Company on the Client's behalf under this Agreement and shall be subject to the following conditions having been met:

- (a) The Client must have expended best efforts towards recovery of the any amounts lost including (but without limitation to) recovery from its customers;
 - (b) The Company shall not indemnify the Client against any losses arising fully or in part from actions, inactions, faults or negligence of the Client or any third parties;
 - (c) Without prejudice to the limitation of liability set out in this clause 28, the Client must have notified the Company of any direct loss in respect of which a claim of indemnity arises within thirty days of the loss occurring. Company shall not be under obligation to indemnify the Client against any direct loss in respect of which notice has not been issued in accordance with the provisions of this clause.
- 25.3. Further, the Client shall indemnify and keep the Company indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense (including legal costs on attorneys) suffered or incurred by the Company or in any way arising from any action taken by customers against the Company.

- 25.4. Notwithstanding anything to the contrary contained in this Agreement a Party, its officers, employees, sub-contractors, agents and partners shall not be liable to the other Party for any loss of profit, indirect losses such as anticipated savings, loss of goodwill, consequential, incidental or special loss, corruption or loss of data howsoever arising.
- 25.5. This section shall not be construed to limit or exclude any other claims or remedies to which the Company may be entitled hereunder or in law or equity.

26. Disclosure and Data Retention

- 26.1. The Client hereby expressly consents and authorizes the Company to disclose any transaction data or information pertaining to its Account to any law enforcement, investigative or regulatory authority for the purposes of any genuine enquiry or investigation or to any third party to which the Client has separately, either in writing or electronically or otherwise, authorised the Company to disclose transaction data or information pertaining to the Client or the Client's usage of the Services provided that any consent given to the Company to disclose information to any third party (not being a law enforcement, investigative or regulatory authority) pursuant to this Section (Disclosure and Data Retention) may be withdrawn at any time.
- 26.2. The Client acknowledges that where its Account is determined by a competent judicial authority as containing proceeds of any criminal or money laundering activities, the Company may be required by law to surrender its Account to any statutory body created for the purpose of recovering the proceeds of crime.
- 26.3. The Client acknowledges that the Company may retain its transaction data for a period of upto seven (7) years or as may be required by any law or regulation.

27. Governing Law and Dispute Resolution

- 27.1. This Agreement and any non-contractual obligations arising out of or in relation to it will be governed by, and construed in accordance with the laws of Kenya, without regard to its choice of laws principles.
- 27.2. The Company shall not be involved in any disputes between the Client and any of the Client's customers.
- 27.3. Where any dispute arising out of or in connection with this Agreement cannot be settled within twenty (20) days, it may be referred by any party to and finally resolved by arbitration under the following terms:
- 27.3.1. The parties shall jointly appoint an arbitrator within twenty (20) days, or such longer period as may be agreed by the parties;
- 27.3.2. if the parties fail to agree on an arbitrator, any party may apply to the Chairman for the time being of the Kenyan Chapter of the Chartered Institute of Arbitrators to appoint an arbitrator requesting that the appointment be made within twenty (20) days of the date of receipt of the application;

27.3.3. the arbitration proceedings shall be conducted in Nairobi, Kenya and shall be conducted in accordance with the provisions of the Arbitration Act (No. 4 of 1995, Laws of Kenya) and the rules of the Kenyan branch of the Chartered Institute of Arbitrators;

27.3.4. the seat of arbitration shall be in Nairobi;

27.3.5. the language of arbitration shall be English; and

27.3.6. the cost of arbitration shall be borne equally by the parties.

27.4. The award of the arbitrator shall be final and binding upon the parties and any party may apply to a court of competent jurisdiction for enforcement of such award. No award of punitive damages by the arbitrator may be enforced. Notwithstanding the foregoing, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

28. Assignment

Assigning or sub-contracting any of your rights or obligations under this Agreement to any third party is prohibited. The Company reserves the right to transfer, assign or sub-contract the benefit of the whole or part of any rights or obligations under this Agreement to any third party.

29. Notices

All notices, requests and consents under this Agreement shall be in writing and shall be deemed to have delivered (a) on the date personally delivered, (b) on the date mailed, postage prepaid by certified mail with return receipt requested.

30. No Waiver

Any waiver in relation to any part of this Agreement shall be in writing and effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any of such right shall not preclude any other or further exercise of that or any other such right and no act or course of conduct or negotiation on the part of either Party shall preclude them from exercising any such right or constitute a suspension or variation of such right.

31. Severability

If any provision of this Agreement is declared by any applicable law, judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or irrelevant, the remaining provisions of this Agreement shall be unimpaired and shall remain in full force and effect, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and

enforceable provision that comes closest to the intent of the parties underlying the invalid, illegal or unenforceable provision.

32. Force Majeure

Neither party shall be liable to the other party for any delay or failure to perform its obligations under these Terms as a result of revolution or other civil disorders; belligerent aggression by an enemy; strikes; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or system availability delay or failure; fires; floods; government or regulatory intervention; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes herein before enumerated or not. If such delay or failure continues for at least thirty (30) days then either party may terminate their engagement by notice in writing to the other.

33. General

The Parties shall comply with all legal requirements applicable to them. This Agreement may be accepted electronically in accordance with the provisions of the Kenya Information and Communications Act or any other applicable law.

34. Counterparts

This Agreement may be executed in counterparts which, taken together, shall constitute one Agreement and each Party may execute this Agreement by signing such counterpart. The exchange of copies of this Agreement and of signature pages by digital, electronic, or facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Electronic signatures and signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

***** END *****

EXCEL TECH ESSENTIALS

INNOVATION AND EXCELLENCE