**API AGREEMENT**

**BETWEEN**

**FINSERVE AFRICA LIMITED**

**AND**

**………………………………………………………….**

**FINSERVE AFRICA LIMITED (FINSERVE)**

 **API TERMS OF SERVICE**

**INTRODUCTION**
These Terms and Conditions (the "Terms") sets forth the terms that FINSERVE (“FINSERVE” or “we”) requires all developers and **………………………………………..**(“you” or “Company”) to accept and implement in order to license the FINSERVE Application Programming Interfaces (“APIs”) and use the corresponding Services. By clicking to “Accept,” you acknowledge and agree that you’ve read, understand, and agree to this Terms and all terms and conditions included herein or incorporated by reference on behalf of yourself and any entity you represent.

FINSERVE has developed APIs that allow third parties to access and communicate via the API to (i) FINSERVE or its partner’s servers that collect and communicate Content and financial services to and from FINSERVE or partner devices or (ii) directly to FINSERVE devices, depending on the device (together with the API, the “Services”). "Content" means any content provided through the Services (whether created by FINSERVE or its third party licensors and partners), and may include, but is not limited to, payment/ purchases data. “Company Content” means any content provided through the Software by Company or its third party licensors (whether created by Company or its third party licensors), and may include additional features, functionality, services to End Users, or data from other non-FINSERVE devices, including those that utilize other non-FINSERVE devices in part to deliver such features, functionality, or services.

Company wants to develop software applications that: (1) communicate with the FINSERVE API to access the Services in order to market and offer web and mobile applications that display or utilize Content in conjunction with the display or use of Company Content to End Users with FINSERVE devices or, (2) in the alternative, provide a software or system, such as energy efficiency software applications, that works with the FINSERVE API and utilizes FINSERVE web and mobile applications to display, manage and optimize Content to End Users; such software is referred to herein as the “Software.” “End Users” mean the individual human end users who use the Software, either directly via a web or mobile application or indirectly in the case of backend software.

**PURPOSE**Use of Licensed Materials. This Agreement governs Your use of the following, all of which collectively are the "Licensed Materials": (a) the API of FINSERVE and any accompanying or related documentation, source code, executable applications and other materials (collectively, the "FINSERVE API"), including, but not limited to, materials made available through FINSERVE's developer website (the "Developer Website"), as modified from time to time; (b) information related to blogs and websites hosted by FINSERVE (the "Blogs"); (c) individual posts made on FINSERVE Blogs (the "Posts"); (d) FINSERVE user profile information ("FINSERVE User Information"); and (e) any other content made available through the FINSERVE API, including but not limited to private messages sent and/or received by FINSERVE users and native FINSERVE actions such as FINSERVE re-blogs, replies and likes (collectively with the Blogs, the Posts and FINSERVE User Information, the "Content").

**LICENSE**Subject to the terms and conditions of this Agreement, schedule 1 of this agreement, including the restrictions set forth below, FINSERVE grants to You a nonexclusive, nontransferable, non-sub licensable, worldwide, revocable right and license during the Term to: (a) use and make calls to the FINSERVE API and to make use of the FINSERVE Services (and Licensed Materials accessible therefrom) to develop, implement and distribute software applications, services or products ("Your Applications") that interact with the FINSERVE Services; (b) use, reproduce, distribute, transmit, display and perform the Content, and modify (i.e., alter in any manner) the Content only to the extent necessary to format and display it through Your Applications and (c) use and display the FINSERVE Marks solely to identify that the Licensed Materials originate from the FINSERVE Services. Licensed Materials do not include those applications that use or access the FINSERVE API or the FINSERVE Services in order to monitor the availability, performance, or functionality of the FINSERVE API or the FINSERVE Services, for any other benchmarking or for other competitive purposes. As part of allowing applications to be built on and connected to FINSERVE's products and services, whether or not using the FINSERVE API, we give you access to tools, including the API itself, the developer documents and content posted. This license gives you the right to use the Licensed Materials to make apps of all kinds, and also gives you the right to use FINSERVE's Marks to identify that the apps that are built on top of FINSERVE's products and services.

**RESTRICTIONS**The licenses granted in these terms and conditions are explicitly conditioned on your adherence to and not limited to the following restrictions.

1. Compliance with this Agreement, Policies and Guidelines. You must comply with the restrictions set forth in this Agreement, the FINSERVE Privacy Policy and any other policy or terms inline of your use. If FINSERVE believes, in its sole discretion, that You have violated or attempted to violate any term, condition or the spirit of this Agreement, Your license to and ability to use and access the Licensed Materials may be temporarily or permanently revoked, with or without notice to You.
2. Obtaining and Maintaining an API Key(s). In order to use the FINSERVE API, You must obtain API credentials (an "API Key(s).") You may not share Your API Key(s), you must keep such API Key(s) secure and you shall use it as your sole means of accessing the FINSERVE API.
3. User Login. Licensed Applications shall present users with the ability to log into the FINSERVE Services through the FINSERVE API. Users without an account on the FINSERVE Services shall be presented with an opportunity to create such an account. The User Login should be kept secure and secret.
4. No Substantial Replication. You shall not substantially replicate products or services offered by FINSERVE, but you are permitted to create specialized versions or extensions of such products or services. For example, you are not permitted to fully replicate the FINSERVE Analytics product, but you may create specialized views of Content from a user's analytics or cross-platform variants of the FINSERVE analytics. In addition, you shall not use the Licensed Materials or other information collected from users of Licensed Applications to create or maintain a separate blogging platform, social network or other social service.
5. No In-Stream Advertising; No In-Network Promotions. You shall not, in any manner, display any form of advertising within a stream of Content received by a user of a Licensed Application. In addition, advertisements cannot replicate the look and feel of, or reasonably be confused by users as, FINSERVE Content and should be clearly separated from the Content. In addition, Licensed Applications may not promote any Content to or within the FINSERVE network ("In-Network Promotions"). For example, Licensed Applications may not create ranking systems or directories for FINSERVE blogs or posts and promote those rankings or directories within or outside of the FINSERVE Services.
6. No Marketplaces or Other Aggregators or Repositories of Code or Applications. You may not create marketplace or other aggregator or public repository of code or applications the purpose of which is to collect items substantially based on the Licensed Materials, including Licensed Applications (a "Marketplace"), regardless of whether or not such Marketplace charges for such items. Such Marketplaces include, but are not limited to, collections of FINSERVE themes, collections of FINSERVE extensions or plugins and non-general purpose collections comprised solely of Licensed Applications. FINSERVE should be the single point of origin for any apps, extensions, or code that we provide tools to aggregate.
7. No Export for the Purpose of Replication, Repackaging or Resale. You may not, under any circumstances, export Content to a data store intended to replicate, in whole or in part, FINSERVE's data store, nor shall you repackage and/or resell the Licensed Materials, including any Content, in any manner. For the sake of clarity, this restriction is not intended to apply to Licensed Applications that may, at the request of a user, export such user's Content for the purposes of data portability.
8. No Compromising FINSERVE Security. You are not permitted to use the Licensed Materials in any manner that does or could potentially undermine or compromise the security of the FINSERVE Services or the Licensed Materials. In addition, You shall not, and shall not attempt to, interfere with, modify or disable any features, functionality or security controls of the FINSERVE Services or the FINSERVE API, defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Licensed Materials, or reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the FINSERVE Services or the FINSERVE API.
9. Reporting Security Vulnerabilities and Unauthorized Access. You shall immediately report to FINSERVE any security vulnerability You discover in any of the FINSERVE Services or the Licensed Materials. FINSERVE reserves the right, in its sole discretion, to determine what constitutes a security vulnerability. You shall further immediately report any actual or suspected unauthorized access to the FINSERVE API using Your API credentials. Failure to immediately report such vulnerabilities or unauthorized accesses shall be considered a material breach of this Agreement.
10. No Phishing, Malware or Identity Theft. You shall not publish or link to malicious content intended to damage, disrupt or exploit a user's browser, computer or FINSERVE account or to compromise a user's privacy or credentials in any manner. In addition, You shall not collect, or try to collect, a user's FINSERVE credentials, including but not limited to usernames or passwords.
11. No Spamming. You shall not use the FINSERVE Services or FINSERVE API, and shall not create Licensed Applications, for the purpose of "spamming." FINSERVE reserves the right, in its sole discretion, to determine what actions constitute "spamming," and include posting numerous substantially identical pieces of Content, posting misleading or obfuscated links and executing a large number of native FINSERVE actions in a short period of time.
12. Respect for API Limitations. You shall respect and comply with the letter and the spirit of the programmatic limitations of the FINSERVE API, as set forth in the API documentation, and the restrictions of this Agreement in designing and implementing Licensed Applications. For example, You shall not work around any explicit FINSERVE API limitation using a series of non-API calls, even if such work-around are possible by avoiding use of the FINSERVE API. Specific prohibited actions include the process of "page scraping," which is the process of downloading and parsing whole FINSERVE pages in order to build Your Applications with capabilities beyond those intended to be provided by the FINSERVE API, crypto currencies. In addition, You shall comply with any limitations on the frequency of access, calls and use of the FINSERVE API as provided to You by FINSERVE from time to time.
13. No Content Modifications. FINSERVE delivers Content for use under this Agreement, including materials created by or otherwise originating from FINSERVE and delivered as part of such Content ("FINSERVE Content"). You shall not make any modifications to any Content, other than to modify the formatting of such Content in order to display it in a manner appropriate for the pertinent Licensed Applications. For example, Licensed Applications should not highlight data results within a display and externally link that data. In addition, You shall not remove, block or otherwise prevent delivery of any FINSERVE Content, including but not limited to any promotional content such as the FINSERVE knowledge base material.
14. No Circumvention or Reverse Engineering; Maintenance of Proprietary Notices. You shall not, and shall not attempt to: (i) interfere with, modify or disable any features or functionality of the FINSERVE Services or FINSERVE API, including, without limitation, any mechanisms used to restrict or control the FINSERVE Services or FINSERVE API, such as anti-circumvention measures; (ii) translate, reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the FINSERVE Services or the Licensed Materials; (iii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the FINSERVE Services or the Licensed Materials; or (iv) remove or modify any proprietary notices, attribution or marks from or delivered as part of the FINSERVE Services or the Licensed Materials.
15. Genuine Actions. You shall not create Licensed Applications with capabilities that in any way do not reflect explicit, genuine expressions of user intent and permission. For example, Your Applications. Should not automatically create contracts, should not establish joint venture relationships, or set affiliate commission values that the user has not explicitly authorized without (1) a specific interaction informing a user that such user is entering an agreement and (2) an explicit action by such user evincing permission for making such agreement.
16. Indicating Use of the FINSERVE Services and the FINSERVE API. In a prominent location in all Licensed Applications, You should, to the extent reasonable based on the nature of the Licensed Application, indicate that such Licensed Applications have been created using the FINSERVE Services and/or the FINSERVE API, and shall comply with the FINSERVE Trademark Guidelines in doing so.
17. Use of FINSERVE Marks. You may not, under any circumstances: (i) include in or use the FINSERVE Marks, or any marks that are confusingly similar to or derivative of the FINSERVE Marks ("Confusing Marks"), as part of Your trade name (registered or otherwise), logos or other identifiers; (ii) include in or use the FINSERVE Marks or any Confusing Marks as part of any names, domain names logos or other identifiers of Your Applications; or (iii) use the FINSERVE Marks or Confusing Marks in a manner that creates or may create a sense of endorsement, sponsorship or association with FINSERVE, unless expressly permitted by FINSERVE, in writing, to do so. All use of the FINSERVE Marks, and any goodwill arising out of such use, shall inure to the benefit of FINSERVE. You may freely state and disclose that You are using the FINSERVE Services or the FINSERVE API, as long as You adhere to all restrictions on using the FINSERVE Marks set forth in this Agreement, the FINSERVE Trademark Guidelines, and the Client Contract.
18. No Misleading Users. You may not, under any circumstances, whether within a Licensed Application or in materials discussing or concerning a Licensed Application, mislead, confuse or cause misapprehension among users as to the features, functionality, origin, capabilities or other aspects of said Licensed Application, the FINSERVE Services or the FINSERVE API. You should not advertise or otherwise discuss your application in a way that confuses or misleads users about the application or about FINSERVE.
19. Monitoring. FINSERVE reserves the right to monitor Your use of the Licensed Materials for any reason or no reason, including to ensure Your compliance with the terms and conditions of this Agreement.
20. Reporting and Statistics. You shall ensure that Your applications properly use all reporting functionality that is made available through the FINSERVE API that are used in or by Your applications.

**SECTION 1: GENERAL LICENSE TERMS**

1. License from FINSERVE to Company. Subject to this Terms and in consideration of Company’s agreement to Terms, FINSERVE grants to Company a non-exclusive, non-transferable (without the right to sublicense), terminable, limited license (i) to use the API and to use the Services for commercial and non-commercial purposes with Company’s Software and (ii) to access, use, perform and display the Content in or through the Software. Finserve may from time to time predetermine the number of calls that you can make within a given time frame. Each HTTP request counts as one API call for the purposes of calculating usage limits, this does not include calls made to the third party service bus to obtain device event status information. Exceeding the total API calls shall in FINSERVE’s sole discretion, result in API suspension or account deactivation.
2. Fees. The APIs are licensed in accordance to schedule 1 herein. Basic support service is provided subject to schedule 1- this includes up to 5 web inquiries per month; responses will be managed based on availability. Additional support will provided on commercials to be agreed upon.
3. Modifications. FINSERVE may make upgrades and commercially reasonable changes to the Services, including introducing new versions, extensions, or changes to the API, from time to time, provided FINSERVE will endeavor to provide no less than a thirty (30) day prior notice of such change or less time in the event such change is required by law or in the event of emergency, security risk, or substantial burden to FINSERVE. In such event, Company must promptly update its Software with the most recent APIs to ensure continued service.
4. If a modification is unacceptable to Company, Company’s recourse is to terminate use of the Services; in no event will FINSERVE be liable for any costs or damages caused by the changes to the Services there is no refunding of any pre-paid fees.

1. Company acknowledges and agrees that FINSERVE shall have the right to distribute software updates, patches, and modifications directly to End Users from time to time in order to, among other things, update software, enable new services, add features, respond to a security threat, and implement a software patch. Company agrees to cooperate and assist FINSERVE in the event of such occurrence.
2. Company IDs. In order to access the Content and Services, Company needs to obtain a Company ID from FINSERVE; a “Company ID” means an alphanumeric API console key that is uniquely associated with Company’s FINSERVE account. Company IDs are required, must be used according to the API documentation, and will be forwarded to Company electronically.
3. Third Party Components. Any third-party component embedded, included or provided by FINSERVE for use with the Services may only be used in conjunction with the Services, and this use is subject to this Terms and the API documentation. To the extent Services include components covered by open source licenses requiring the provision of corresponding source code for those components, FINSERVE hereby offers the provision of that source code consistent with those licenses.

**SECTION 2: THE SANDBOX**

**THE DEVELOPER’S TESTING ENVIRONMENT**

Access: as a developer you may test your API Calls in the FINSERVE Sandbox. When testing in the sandbox, you shall only use anonymous, non-live data.

Usage: You agree that all use of the Sandbox will be in accordance with the terms set out, herein which are subject to change from time to time. FINSERVE may post on the developer site and/or send an email to the company with notices of any changes. You agree that FINSERVE will not be liable to you or any third party for any modification or cessation of API’s, including the Sandbox. All accounts and transactions made in the sandbox are not real and no real money is transferred. The sandbox is provided on an ‘as-is’ basis and FINSERVE does not guarantee up-time or availability. You agree that you will not use any robot, spider, or other automatic device to create accounts for Sandbox use and you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure.

**SECTION 3: TERM AND TERMINATION**

1. Term: This Terms begins on the date the Company accepts these terms (the “Effective Date”) and expires on the date either party provides notice of such termination to the other party (the “Term”). Continued use of the Services will be deemed a renewal of this Terms. Company may terminate its participation by ceasing use of the Services and by removing the FINSERVE API code from Company’s Software and providing written notice of such termination to FINSERVE.
2. Survival. The restrictions and obligations in this Terms that are intended to survive the termination or cancellation of this Terms, will survive the termination or cancellation of this Terms, and will continue to bind Company, Company’s successors and heirs.

**SECTION 4: OWNERSHIP AND PUBLICITY**

1. Generally. Except as expressly set forth herein, these Terms do not grant either party any ownership rights, implied or otherwise, to the other's content or any of the other party's Intellectual Property Rights. Intellectual Property Rights in and to the content accessed through the Services are the property of the applicable content owner and may be protected by applicable laws. FINSERVE will own and retain all right, title and interest in and to the Intellectual Property Rights in the Services, subject only to the limited license expressly set forth in Section 1 hereof. Company will own and retain all right, title and interest in and to the Intellectual Property Rights in the Company Content. Company does not acquire any other rights, express or implied, in the Services. In the event Company suggests an improvement or change to the Services and FINSERVE makes such improvement or change, that improvement or change belongs to FINSERVE and Company has no claims thereto. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO FINSERVE. "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
2. Brand Features. If Company wants to display FINSERVE Brand Features or use the FINSERVE name in connection with its use of the Services or Software or in any promotions, marketing, advertising, literature, or press release, such use must be in strict compliance with the Brand and Marketing Guidelines found here: www.equitybankgroup.com. In connection with such permitted uses, FINSERVE grants Company a limited, revocable, non-exclusive, royalty-free license to the FINSERVE Brand Features for such limited purpose and use. "Brand Features" means the trade names, trademarks, service marks, and logos of each party, as secured by that party from time to time. Company agrees that FINSERVE may include Company’s name or Brand Features, whether online or in offline promotional materials, marketing, advertising, literature and press releases. In connection with any such use, Company grants FINSERVE a limited, non-exclusive, royalty-free license to Company Brand Feature for such purpose and use.

**SECTION 5: CONFIDENTIALITY**

Company agrees that it will: (i) protect and keep confidential FINSERVE's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; (ii) not disclose the Confidential Information to any party, except to Affiliates, employees and agents who need to know it and who have agreed to keep it confidential; and (iii) use the Confidential Information for any purpose other than to exercise rights and fulfill obligations under this Terms. Company is responsible for any actions of its Affiliates, employees and agents in violation of this Section. "Confidential Information" means information disclosed by FINSERVE that is marked as confidential or would normally be considered confidential under the circumstances, including but not limited to, all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, and software source documents relating to the Services, and other information provided by FINSERVE, whether disclosed orally or in writing. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with that party. Confidential Information does not include information that: (i) Company can prove already knew prior to disclosure from FINSERVE; (ii) becomes public through no fault of Company; (iii) can prove was independently developed by Company without reference to the Confidential Information; or (iv)was rightfully given to Company by another party. Company may disclose the FINSERVE's Confidential Information when required by law, but only after it, if legally permissible: (i) uses commercially reasonable efforts to notify FINSERVE in a timely manner; and (ii) gives FINSERVE the chance to challenge the disclosure.

**SECTION 6: COMPANY OBLIGATIONS**

1. Third Party Apps; Company must obtain FINSERVE’s prior written approval in the event Company intends to sublicense or manage the Software for a third party not party to this Terms; Company understands and agrees that it is responsible to FINSERVE to ensure that any such third-party use is in compliance with the terms of this Terms and Company agrees to be fully responsible for such third party use.
2. Privacy.
i. FINSERVE Privacy Policy. Company acknowledges and agrees that FINSERVE intends to and will continue to be permitted to collect and use certain personal, system, and usage data, in the same manner and to the same extent as described in FINSERVE’s privacy statement.
iii. Company Privacy Policy. Company must post and abide by an appropriate privacy policy and will comply with all applicable laws relating to the collection, use, and sharing of personal and usage information related to Company’s Software, including obtaining consent from End Users with respect to the foregoing. Company agrees that it will not sell or otherwise provide End User information to any third party for such third party’s marketing purposes.
3. End-User License Terms and other Legal Agreements. Company agrees that it will have an End User License Terms or other similar legal Agreements with End Users for the license and use of the Software that utilizes the API and Services (“EULA”). Company agrees such EULA will include warranty and liability provisions that protect FINSERVE as a licensor in the same manner and to the same extent as Company. Company agrees that the EULA will require End Users to comply with applicable laws.
4. End User Support. Company agrees to provide all customer support to End Users relating to its Software, products, and services. In connection therewith, Company agrees to prominently display its email address or other contact information in its Software so that its End Users may contact Company with any questions or issues. Company agrees to timely respond to such inquiries. In the event FINSERVE receives an excessive amount of customer care calls related to the Software, as determined in FINSERVE’s reasonable judgment, it may charge Company a reasonable fee for such calls and support.
5. Compliance with Laws. Company agrees that it will not use the Software, Services, Content, or Company Content in any manner or for any purpose that violates any right of any person, including but not limited to Intellectual Property Rights, rights of privacy, or rights to personality or to engage in activities that would violate any fiduciary relationship, any applicable local, state, national, or international law, or any regulations having the force of law.
6. Security Requirements. Company agrees that it will use commercially reasonable efforts to protect End User personal, thermostat, or other data collected by the Software. In all events, Company will implement industry-standard security measures that, at a minimum: eliminate coding vulnerabilities in its application development by following a secure software development lifecycle including testing for code vulnerabilities; maintain secure logical access procedures; maintain currency of software security patches for its own software and that of the development environment; and include reasonable security measures to maintain a secure computing environment and as otherwise required by applicable laws. In the event of a security incident, Company agrees to promptly notify FINSERVE and providing all relevant information to FINSERVE. Company agrees that it is solely responsible for all costs incurred by it or FINSERVE as a result of a security incident. Company agrees that FINSERVE will, with reasonable notice and during normal business hours, have access to inspect Company’s security and privacy processes and procedures either through its own employees or through an authorized representative selected by FINSERVE to confirm Company’s compliance with reasonable, industry-standard security processes, policies, and procedures. Such right will survive the expiration of the Term by 2 years. Company will also furnish such other information as may be reasonably requested by FINSERVE in auditing the aforementioned records.
7. Monitoring and Investigation. FINSERVE reserves the right and Company hereby consents to the reasonable monitoring by FINSERVE of Company for compliance with this Terms, including, without limitation, FINSERVE accessing and using the Software and underlying infrastructure and support and monitoring API usage. In the event FINSERVE determines, in its reasonable discretion, that Company is in violation of this Terms, FINSERVE may suspend or terminate access to the APIs and terminate this engagement.
8. Required Fields in Payment Orders: Personal Payments-Memo Field. If your application allows personal payments, it must ensure the Payment Order for each payment includes a memo field for noting the purpose of the payment.
9. Purchase payments- Description Field. If your application allows Purchase payments, it must ensure the payment order for each payment includes a description field to identify the goods or services being sold.

**SECTION 7: LIABILITY**

1. Limitation of Liability. IN NO EVENT SHALL FINSERVE AND THE OTHER COMPANIES IN ITS CORPORATE GROUP, PERSONS WHO ACT ON FINSERVE’S BEHALF, AND/OR THE PERSONS WE ENTER INTO CONTRACTS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS TERMS, OUR SERVICES, OUR WEBSITES, DEVELOPER’S TOOLS OR OTHER ACTIONS OR OMMISSIONS INCLUDING:
2. ANY LOSS OF PROFITS, GOODWILL, BUSINESS CONTRACTS, REVENUE OR ANTICIPATED SAVINGS EVEN IF FINSERVE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSS OF PROFITS, GOODWILL, BUSINESS, CONTRACTS, REVENUE OR ANTICIPATED SAVINGS; OR
3. ANY LOSS OR CORRUPTION OF DATA ANY LOSS OR DAMAGE WHATSOEVER WHICH DOES NOT STEM DIRECTLY FROM OUR BREACH OF THIS TERMS, OR
4. Indemnification. Company will indemnify, defend, and hold harmless FINSERVE, its affiliates, employees, and agents from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim made against FINSERVE for (i) infringement, misappropriation, or other violation of any intellectual property rights (including patent, copyright, trademark, or trade secret); (ii) Company’s breach of this Terms; (iii) Company’s Software or Company Content or Company’s other products, services, software, or apps; (iv) Company’s failure to establish an adequate Company privacy policy as required by Section 6(c)(iii) or an adequate EULA or other legal Terms as required by Section 6(d); (v) Company’s use of the API, Services, or Software in breach of its Terms with an End User or in violation of applicable laws; (vi) Company’s failure to implement adequate security requirements or a breach of security; (vii) Company’s negligence or willful misconduct; (viii) bodily injury, including death, and/or damage to tangible personal property caused by the Software or Company Content or Company’s other products, services, software, or apps; and (ix) Company’s breach of its confidentiality obligations.
5. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS TERMS AND CONDITIONS, FINSERVE DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE FINSERVE APIs, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT. THE FINSERVE WEBSITE AND APIs ARE PROVIDED ‘AS-IS’ AND FINSERVE MAKES NO WARRANTY THAT OUR APIs WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. FINSERVE DOES NOT HAVE ANY CONTROL OF, OR LIABILITY FOR, THE PRODUCTS OR SERVICES PURCHASED USING THE MERCHANT’s APIs.

**SECTION 8: DATA PROTECTION**

1. **Information security**
	1. Company warrants that in dealing with the Finserve Information (defined below), it shall at all times strictly comply with the provisions of the Confidentiality clause and this clause, all applicable legislation, and with all the provisions and requirements of Finserve’s information security and data protection policies and procedures (including encryption standards) in force, from time to time.

* 1. Company shall maintain and shall continue to maintain appropriate and sufficient technical and organizational security measures to protect the Client Information against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing. Company shall undertake appropriate technical and organisational measures to safeguard the security of any electronic communications networks or services provided to the Finserve or utilised to transfer or transmit client Information (including but not limited to measures designed to ensure the secrecy of communications and prevent unlawful surveillance or interception of communications and gaining unauthorized access to any computer or system and thus guaranteeing the security of the communications).

**"Technical and organizational security measures"** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

**“personal data”** means data which relates to individuals who can be identified (a) from those data, or (b) from those data and other information which comes or is likely to come into the possession of Company from accessing, collecting receiving or processing through Services provided by Finserve, and includes the personal data and any expression of opinion about the individual and any indication of the intentions of the Finserve or any other person in respect of the individual;

**“Processing”**, in relation to personal data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including (a) organization, adaptation or alteration of the information or data, (b) retrieval, consultation or use of the information or data, (c) disclosure of the information or data by transmission, dissemination or otherwise making available to third parties, or (d) alignment, combination, blocking, erasure or destruction of the information or data;

* 1. Company agrees:
		1. not totransfer, or purport to transfer, control of Personal data to a third party, except with the prior written consent of the Finserve or subcontract or outsource the Processing of Personal data;
		2. to keep Personal data logically separate from data processed on behalf of any other third party;
		3. not to process, apply or use the Personal data for any purpose other than as required and is necessary to provide the Services;
		4. not to include Personal data in any product or service offered by third parties, or in any marketing or promotional material without the prior written consent of the Client and the Finserve;
		5. not to carry out any research, analysis, polls, or profiling activity which involves the use of any part of the Personal data without the prior written consent of the Finserve;
		6. to ensure its employees who access the Personal data have undergone appropriate training in the care, protection and handling of Personal data;
		7. it shall permit the Finserve and its respective sub-Company’s and permitted agents upon written notice of at least 14 days to carry out an audit of Company’s processing activities, such access to its premises, computer and other information systems, records, documents and agreements as may be reasonably required to enable the same to satisfy themselves that Company is complying with its obligations under this Agreement, provided always that any such review does not involve the review of any third party data and that such reviewing entity enters into such confidentiality obligations with Company as may be reasonably necessary to respect the confidentiality of Company’s business interests and third party data and information of which the reviewing entity may become aware in the course of undertaking the review;
		8. it shall notify the Finserve in the most expedient time possible under the circumstances and without unreasonable delay of any accidental, unauthorized, or unlawful destruction, loss, alteration, or disclosure of, or access to, Personal data ("Security Breach"). Company shall also provide the Finserve with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach and the identity of each affected person as soon as such information can be collected or otherwise becomes available, as well as any other information the Finserve may reasonably request relating to the Security Breach. Company shall not release or publish any filing, communication, notice, press release, or report concerning any Security Breach in respect of Personal data ("Notices") without the Finserve’s prior approval.
1. **Data protection**
	1. In so far as the Company processes any personal data (including name, postal address, email address, mobile/telephone details, and other contact or personal details) relating to individuals which is acquired or collected by the Company in connection with this Agreement, the Company shall:
		1. process the personal data on behalf of the Finserve (or, if so directed by the Finserve, an Affiliate or Affiliates of the Finserve), only for the purposes of performing this Agreement and only in accordance with instructions contained in this Agreement or provided to the Company by the Finserve from time to time;
		2. not otherwise modify, amend or alter the contents of the personal data or disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised in writing by the Finserve;
		3. implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
		4. ensure that only those of the Company’s personnel who need to have access to the personal data are granted access to such data and only for the purposes of the performance of this Agreement and ensure that all of the Company’s personnel required to access the personal data are informed of the confidential nature of the personal data and comply with the obligations set out in this agreement;
		5. obtain prior written consent from the Finserve before transferring personal data to any sub-Company and, if such consent is given, include in all contracts with such sub-Company provisions in favour of the Finserve which are equivalent to those in this clause and enforce these obligations at the Finserve’s request;
		6. not publish, disclose or divulge any of the personal data to any third party (including the data subject) unless directed to do so in writing by the Finserve;
		7. notify the Finserve within [*five*] Business Days if it:
			1. becomes aware of any breach of this clause by it or its sub-Companies;
			2. receives a complaint or request relating directly or indirectly to the processing of any personal data in connection with this Agreement; and
			3. receives any other communication relating directly or indirectly to the processing of any personal data in connection with this Agreement;
		8. permit the Finserve or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Company’s data processing activities and comply with all reasonable requests or directions by the Finserve to enable the Finserve to verify and procure that the Company is in full compliance with its obligations under this Agreement;
		9. at no additional cost, provide such information to the Finserve as the Finserve may reasonably require, and within the timescales reasonably specified by the Finserve, to allow the Finserve to comply with and legal and regulatory requirements; and
	2. The Company shall, at all times during and after the Term, indemnify the Finserve against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Finserve arising from any breach of the Company’s obligations under this clause except and to the extent that such liabilities have resulted directly from the Finserve’s instructions.
	3. All personal data relating to individuals which is acquired or collected by the Company in connection with this Agreement shall belong exclusively to the Finserve which hereby grants to the Company and, to the extent necessary, to the Company’s Personnel, or shall use commercially reasonable endeavours to procure the grant of, a royalty-free, non-exclusive licence (or, where relevant, an appropriate sub-licence) to use the same solely in relation to the performance of the Services as contemplated in this Agreement.

**SECTION 9: MISCELLANEOUS**

1. Notices. Notice will be deemed given when verified by written receipt if sent by personal courier, overnight courier, or mail. FINSERVE’s notices should be addressed to: Managing Director, FINSERVE Africa Limited, Equity Centre, 8th Floor, Hospital Road, Upper Hill, P.O Box 104443-00101- Nairobi.
2. Company Notices should be addressed to:…………………………………………………………………..

…………………………………………………………………………………………………………………………

1. Assignment. Company may not assign or transfer any part of this Terms without the written consent of FINSERVE.. Any transfer or assignment without FINSERVE consent is void.
2. competitor of the other party (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (i) the party experiencing the change of Control will provide written notice to the other party within thirty days after the change of Control; (ii) the other party may immediately terminate this Terms any time between the change of Control and thirty days after it receives the written notice in subsection (i); and (iii) in no event may the party experiencing the change in Control share any Confidential Information of the other party with the third party. "Control" means control over greater than fifty percent of the voting rights or equity interests of a party.
3. Force Majeure. FINSERVE will not be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, supplier failure, and Internet disturbance) that was beyond FINSERVE's reasonable control.
4. International Use. Given the global nature of the Internet, Company agrees to comply with all local rules including, without limitation, rules about the Internet, data, e-mail, privacy, copyright, and trademark infringement. Additionally, Company agrees to comply with all applicable laws regarding the transmission of technical data exported from the country in which Company resides. Addendums may be added to address specific laws or requirements as applicable.
5. No Agency. The parties are independent Companies, and these Terms do not create an agency, partnership or joint venture and Company agrees that it will not publicize the use of the Services in any manner that suggests otherwise.
6. No Waiver. Failure to enforce any provision of this Terms will not constitute a waiver.
7. Severability. If any provision of this Terms is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Terms.
9. Equitable Relief. Nothing in this Terms will limit either party's ability to seek equitable relief.
10. Governing Law. These Terms are governed by the Laws of Kenya.
11. Changes to Terms. FINSERVE may modify the Terms, including the Privacy Policy, at any time, in our sole discretion. If we do so, we’ll let you know either by posting the modified Terms on the Site or through other communications. It’s important that you review the Terms whenever we modify them, because if you continue to use the Services after we have posted modified Terms on the Site, you agree to be bound by the modified Terms. For avoidance of doubt Company’s continued access and use of the Services will be deemed Company’s conclusive acceptance of the modified Terms. If you don’t agree to be bound by the modified Terms, then you may not use the Services anymore. Because our Services are evolving over time, we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.
12. Entire Agreement. This Terms is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Terms are hereby incorporated by this reference. Before using the Services, Company should read each of the documents comprising the Terms. If there is any contradiction between this Terms and other documents relating to these Services (including, but not limited to the API documentation), then this Terms will take precedence.
13. The headings in this Agreement are for convenience of reference only and shall not affect its interpretation. This Agreement may be executed by a Party by facsimile or e-mail transmission and the Parties hereby agree that signatures obtained in such manner shall be legal and binding on such Party.
14. Taxes. It is the Company’s responsibility to determine what, if any, taxes apply to payments you make or receive, and it your responsibility to collect, report and remit the correct tax to the appropriate tax authority. FINSERVE is not responsible for determining whether taxes apply to your transaction, or for collecting, reporting or remitting any taxes arising from any transaction.
15. Dispute Resolution. In the event of a dispute arising between FINSERVE and the company in respect of any matter contained in this terms, the aggrieved party shall notify the other in writing about the existence and nature of the dispute within fourteen (14) days of the dispute arising. FINSERVE and the Company shall negotiate in good faith to settle the dispute in question as expeditiously as possible through their representatives. Should in any event the representatives fail to resolve the said dispute within the aforesaid period, the dispute shall be referred to arbitration. FINSERVE and The Company may appoint a single arbitrator or in default of such agreement upon application by either FINSERVE or the Company to the Chairman for the time being of the Kenyan Chapter of the Chartered Institute of Arbitrators. The determination of the arbitrator shall be final and binding to the extent permissible by applicable law. Subject and secondary to the Arbitration process, courts in Kenya shall exclusive jurisdiction to determine any dispute arising from this Agreement.

**TERMS OF USE**

Company agrees to the following restricted uses or other prohibitions (terms not otherwise defined herein will have the meaning defined in the Terms of Service):

1. Company will not hide or mask from FINSERVE the identity of the Software, including by failing to follow the identification conventions listed in the API documentation;
2. Company will not create Software that functions substantially the same as the API or Services and offer it for use by third parties;
3. Company will not attempt to reverse engineer the Services or any component or attempt to create a substitute or similar service through use of or access to the Services;
4. Company will not create derivative works of or attempt to derive the source code of any Software provided as part of the API(s) or any part thereof;
5. Company will not use the Services for High Risk Activities. "High Risk Activities" means uses like the operation of emergency services, nuclear facilities, air traffic control or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage;
6. Company will not use the Services to harm FINSERVE or third parties, such harm including, but not being limited to, disrupting FINSERVE business and Finserve, intentionally or negligently overloading FINSERVE's network or conducting Denial of Services attacks, finding or exploiting vulnerabilities in FINSERVE's security;
7. Company will not, except as necessary to establish a commercial relationship as contemplated under the Terms of Service, or as otherwise mutually agreed, disclose to any third party any information about the Service's performance, service levels, content, specifications, bugs (if any), pricing, its code, or the Terms of Service or disparage FINSERVE or the Service in any way;
8. Company will not copy any portion of the Services code, appearance or documentation, except to the extent necessary to perform integration with FINSERVE devices and services;
9. Company will not use the Services for any demand response program unless pursuant to the license of demand response APIs from FINSERVE;
10. Company will not disable, hack, disrupt, damage, or interfere with the Services;
11. Company will not allow the Software to contain any obscene, pornographic, offensive, or defamatory content or materials of any kind, or other content or materials that may be objectionable;
12. Company will not collect, aggregate, re-syndicate, retain, log or store Content beyond 10 trailing days from the date when the Content is received.
13. Company will not use End User data to evaluate End Users or their property individually or in the aggregate for insurance or other financial products and services.
14. Company will not allow the Software to perform any function or link to any content or use any robot, spider, site search or other retrieval application or device to scrape, collect, disseminate or use information about users for any unauthorized purpose;
15. Company will not develop, use, or offer:
16. Software that causes FINSERVE servers or network to crash;
17. Software that consistently generates excessive API traffic;
18. A Web browser redirect-based implementation that download code in any way or form;
19. Software that sends “Push Notifications” without first obtaining End User consent;
20. Software that jeopardizes network security by sending sensitive device and user confidential information using Push Notifications;
21. Software that encourages End Users to use FINSERVE devices in a way that may cause damage to the devices or their systems;
22. Software that rapidly drains the FINSERVE device's battery or generates excessive traffic;
23. Software that may result in physical harm to the FINSERVE devices;
24. Software that does not provide a mechanism for End User to unsubscribe users and devices;
25. Software that does not implement an error handling workflow which gives the End User guidance on what the issue is.

A violation of any of the foregoing may result in immediate termination of the Terms of Service.

**IN WITNESS WHEREOF** this agreement has been duly executed by the parties the day and year first herein before written.

Signed by the duly authorized representative of **FINSERVE AFRICA LIMITED**

Name:

Signature:

Designation:

Date:

In the presence of

Signed by the duly authorized representative of **……………………………………………………**

Name:

Signature:

Designation:

Date

In the presence of:

**SCHEDULE 1**

**CHARGES & TRANSACTION VALUES**

**COMMERCIALS**

|  |  |  |
| --- | --- | --- |
| **MPESA** |   | **ACCOUNT ACTIVITY** |
| **Range** | **Charge** |  | **Balance Inquiry** | Free |
| 10-999 | 20 |  | **Mini Statement** | Free |
| 1000-1499 | 30 |  | **Full statement** | FREE |
| 1500-70,000 | 40 |  | **IN/IPN** | Free |
| 70,001 – 150,000 | 80 |  | **Name look up** | Free |
|   |  |  | **Account look up** | Free |
| **PESALINK** |  |  |  |
| **Range** | **Charge** |  | **CRB** | Kes 50 per call |
| 1-99,999 | 20 |  | **IPRS** | Kes 10 per call |
| 100,000-249,999 | 30 |  |  |  |
| 250,000-499,999 | 50 |  |  |   |
| 500,000-999,999 | 100 |  | **AIRTIME** |
|   |  |  | **Safaricom** | 5% |
| **SEND MONEY TO ACCOUNT** |  | **Airtel** | 5% |
| **Range** | **Charge** |  | **Equitel** | 6% |
| SWIFT | 1800 |  |  |   |
| RTGS | 550 |  | **Billers** | KES 40 |
| EFT | 400 |  |  |   |
| IFT | 15 |  | **Set Up** | WAIVED |
|   |   |   |   |   |

Payment Details

Beneficiary Name: Finserve Africa Limited

Beneficiary's Bank Account Number: 018029333087