

**TRADESURE ESCROW PAYMENT SERVICES**  
**TERMS AND CONDITIONS OF USE**

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## **1 Last updated**

These Terms and Conditions of Use (hereafter "the Terms"), were last updated on 14<sup>th</sup> July 2021.

## **2 Definitions**

2.1 The terms, "we", "us", and "our" wherever they appear in these Terms refer to Payindex Limited, a private company with limited liability incorporated under the Companies Act, No. 17 of 2015, Laws of Kenya. The terms, "you", "your" and "yourself" in these Terms refer to any natural or legal person who accesses or otherwise uses, whether or not they have registered or opened an account with us, the Service as a registered User.

2.2 In these Terms, unless the context otherwise requires:

2.2.1 words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice-versa;

2.2.2 the expression "Party" means a party to these Terms and "Parties" shall be construed accordingly;

2.2.3 references to any statute or statutory provision shall include any statute or statutory provision that amends or replaces, or has amended or replaced it and shall include any subordinate legislation made under the relevant statute;

2.2.4 reference to sections, clauses and sub-clauses shall be construed as references to sections, clauses, and sub-clauses of these Terms; and

2.2.5 the word "person" shall include any legal or natural person, partnership, trust, company, joint venture, government, or any agency thereof, local authority department or other body (whether corporate or unincorporated).

2.3 In these Terms, unless the context otherwise requires, the following words and expressions have the following meanings:

2.3.1 Platform: means the TradeSure escrow payment services solution that may be accessed through our Website, our mobile application(s), or such other electronic means and which offers a secure transaction platform that guarantees both immediate payment and confirmed delivery of goods or services.

2.3.2 Service or Services: means the provision of certain escrow payment processing, data, technology and analytics services, and any other business or non-business services that may be offered by us and our affiliates (each, a "Service") non-electronically, through our Website or its sub-domains, and/or through any part of our Sites.

2.3.3 Site or Sites: means collectively, all our electronic platforms including but not limited to our Website including its sub-domains, our mobile application(s), our affiliate and non-affiliate or partner sites.

2.3.4 TradeSure: means the proprietary brand name for the Platform and associated with the Services and Sites and which is owned solely by Payindex Limited.

2.3.5 User or Users: means any natural or legal person who accesses or otherwise uses, whether they have registered or opened an account with us, the Service.

## **3 Introduction**

3.1 The following Terms and Conditions of Use create the terms and conditions of a legal contract which covers: (a) your use of our Sites; and (b) how we make our Services, Platform and other products available to you.

- 3.2 If you do not understand any part of the Terms, or have any concerns or questions about them, please contact us by writing to us at [info@tradesure.co.ke](mailto:info@tradesure.co.ke) or calling us at **+254 (0)20 2177999** before using our Services.
- 3.3 You must agree to all the Terms before continuing to access or use our Website, any part of our Sites or any of our Services. You hereby agree that your continued access to our Website, any part of our Sites and/or use of our Services will constitute an acceptance of the entirety of these Terms.
- 3.4 Each time you use our Services including you visiting and browsing our Sites and registering with us as a User, you acknowledge that you have read these Terms and agree to be legally bound by them. **YOU MAY NOT AND SHOULD IMMEDIATELY STOP ACCESSING OR USING ANY OF OUR SERVICES OR SITES UNLESS YOU AGREE TO THE TERMS.**
- 3.5 We may amend these Terms at any time by posting the amended terms on our Website and any other part of our Sites, as the case maybe. The amendments shall take effect from the date when they are posted on our Website or any other part of our Sites, as the case maybe. If you do not wish to accept any new terms and conditions after we have given notice, you should stop accessing or using our Website, any other part of our Sites and/or any of our Services.
- 3.6 You agree that we may, without any liability to us, limit or otherwise restrict your access to any part of the Website, any or part of our Sites, and our Services without notifying you or seeking your consent.
- 3.7 You also agree that we may, without any liability to us, alter or change the form and functionality of our Website, our Sites and our Services from time to time without notifying you or seeking your consent.
- 3.8 You further agree that we may at any time, without any liability to us, suspend, stop, or discontinue (permanently or temporarily) providing the Website, any part of our Sites, and/or the Services to you or to anyone else generally for whatever reason, at our sole discretion, without prior notice to you.
- 3.9 In cases where you are acting on behalf of a business or corporate entity, you agree and represent that you are authorised to represent and bind the entity and that you will at all times be fully liable to us and any third party in your own capacity notwithstanding that you are acting on behalf of that business or corporate entity.

#### **4 The Services**

- 4.1 We offer escrow payment services through our Platform and Sites to persons selling and buying products and services online.
- 4.2 The entire transaction process will be executed as follows:
- 4.2.1 any party, whether a buyer or seller, may initiate a transaction on the Platform;
- 4.2.2 each party to the transaction will be required to register and create a User account. If they are already registered as a User, they will be required to login in to accept the transaction;
- 4.2.3 the parties will record the agreed terms of their transaction (as guided by the Platform's configuration) on the Platform (the **"Parties' Transaction Terms"**) and we shall rely on these terms to execute their transaction;
- thereafter, guided by and subject to the Parties' Transaction Terms:
- 4.2.4 the buyer will pay the amount agreed with the seller as the price for the product or service they intend to purchase (plus any Fees applicable) through our "1<sup>st</sup> Pay In" M-Pesa paybill number 4043971;

- 4.2.5 if the buyer pays an amount which is less than the amount required by the seller, we will, at the request or notification of the seller, refund the amount (less any Fees applicable);
  - 4.2.6 if the buyer pays the exact amount required by the seller, we will hold the amount in escrow and we will notify the seller to proceed with delivery of the product or service concerned;
  - 4.2.7 if the seller does not deliver the product or service within the contractually agreed time, and the buyer does not wish to continue with the transaction, we shall on instructions from the buyer refund the amount received from the buyer (less any Fees applicable);
  - 4.2.8 if the buyer accepts the product or service and instructs us of that fact, we shall forthwith release the amount we hold in escrow to the seller (less any Fees applicable);
  - 4.2.9 if the buyer does not accept the product or service, and notifies us of that fact, both the buyer and seller shall have a period of not more than forty-eight (48) hours from the time when either the buyer or seller notifies us that they wish to negotiate, whichever occurs first in time. If the buyer and seller do not reach an amicable settlement within the provided time, we shall at the request of the buyer, refund the amount we hold in escrow (less any Fees applicable); and
  - 4.2.10 if a negotiation between the buyer and seller is successful, we shall forthwith release the amount we hold in escrow to the seller (less any Fees applicable).
- 4.3 In every negotiation between a buyer and seller, we shall act neither as a mediator or arbiter but a facilitator and shall not in any way guarantee or be liable for any outcome thereof. Nonetheless, we shall provide all such assistance or support as we may reasonably be able to provide to both the buyer and seller, whether singly or jointly, with a view to keeping the "wheels of commerce well oiled" for the benefit of the parties.
- 4.4 We may change the form and functionality of our Services from time to time without giving you prior notice. We retain the right to create limits on and related to use of our Website and any part of our Sites at our sole discretion at any time with or without notice. We may also impose limits on certain services or aspects of our Services or restrict your access to parts or all the Services without notice or liability. We may change, suspend, or discontinue any or all the Services at any time, including the availability of any product, feature, and database.

## **5 Registration for account**

- 5.1 Any person can visit or access our Website or any part of our Sites, but in order to participate fully in all activities therein, including using our Services, you will be required to register for an account as a User. When registering to become a User, you will be required to provide information about yourself which may include, your name, your email address, your telephone number, and other personal information. You agree that you will not disclose or share access to or use of your User account with any third party for any reason. You also agree that you are and will continue to be, registered as a User only once and will not set up multiple User accounts.
- 5.2 You undertake to provide us with information that is complete, accurate, and current and to keep it current always.
- 5.3 You will be assigned account credentials such as a password to control access to your account. We shall not be liable whatsoever for any third-party login into your account. You will be responsible for keeping your account details confidential and for all activities that occur in your account.
- 5.4 You must notify us immediately should you believe or discover that your account might no longer be secure. Email us at [info@tradesure.co.ke](mailto:info@tradesure.co.ke).

5.5 You shall be responsible for using such devices as may be required to access or use our Services.

## **6 Capacity and eligibility**

6.1 Our Services are not available to anyone under the age of eighteen (18) years or anyone who is barred from using the Services by law.

6.2 You represent and warrant to us that you have the capacity and authority to register as a User and to use the Services.

## **7 Breach by User**

7.1 We reserve the right to suspend or cancel your registration as User immediately at our sole discretion or if you breach any of your obligations under these Terms.

## **8 Prohibited transactions**

8.1 You shall not use our Services, Website or any part of our Sites, for any illegal, fraudulent, or other prohibited purpose. If we suspect that you may be engaging in or have engaged in a fraudulent, illegal, or prohibited activity, including any breach of these Terms, we may suspend or terminate your access and/or use of our Services. We may also, pursuant to any obligation imposed on us by law, contact the relevant authorities about your activity or activities.

8.2 If you are not sure if our Services can support you or your business, please contact us using our contact details provided elsewhere in these Terms and we will guide you appropriately.

8.3 You are prohibited from engaging either directly or indirectly in any of the following activities as part of your access or use of our Services, Website and/or any part of our Sites:

8.3.1 Breaching any part of these Terms.

8.3.2 Any illegal, criminal, fraudulent or unlawful purpose including dealing in illegal, restricted, or prohibited goods and materials.

8.3.3 Infringing our intellectual property rights or the intellectual property rights of anyone else.

8.3.4 Enabling any data-mining operation on our Website or any part of our Sites.

8.3.5 Impairing our ability to render the Services including but not limited to, transmitting any data or sending or submitting any content that contains viruses, worms, trojan horses, time-bombs, spyware, adware, key-stroke loggers, malicious software or code or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

8.3.6 Collecting, storing, analysing, receiving, or sending any personal data relating to any person without the proper authorisation.

8.3.7 Sending unauthorised messages.

8.3.8 Distributing all or any part of the Website or any part of our Sites in any medium without our prior written consent, unless such distribution is offered through the functionality of the Website or our Sites and permitted by these Terms.

8.3.9 Skirting our security procedures.

8.3.10 In any way, defaming or libelling or otherwise criticising, insulting, abusing, harassing, discriminating, or threatening anyone based on their race, gender, religion, political, sexual persuasion, ethnicity, nationality, health, or bodily features.

8.3.11 Providing false or misleading information.

8.3.12 Making or otherwise delivering unsolicited advertising including email spam.

- 8.3.13 Passing off as what or who you are not.
  - 8.3.14 Phishing, spoofing, spamming, pharming, scraping, crawling or any related unauthorised tricks.
  - 8.3.15 Reverse-engineering, extracting, decompiling or other similar tricks to tamper with our Website's source code.
  - 8.3.16 Engaging in activities that are identical or similar to our Services.
  - 8.3.17 Accessing the Website or any part of our Sites through any technology other than the software provided by us or enabled through APIs or other generally available third-party web browsers such as Google Chrome.
  - 8.3.18 Any activity that infringes the rights of third parties or restricts or prevents anyone else from using and enjoying the Website or any part of our Sites or our Services.
- 8.4 We authorise the operators of public search engines to use spiders to copy materials from our Sites for the sole purpose of creating publicly available searchable indices of the Sites' contents. We reserve the right to revoke this authorisation, generally or in specific cases.

## **9 Fees**

- 9.1 We may charge you certain fees and charges in respect of our Services ("Fees"). We shall however, always advise you of any fees or charges that will be payable from time to time in respect of our Services and prior to completing any transaction on the Platform.
- 9.2 We will not be liable, except as otherwise expressly agreed by us in writing, for any charges, fees, or taxes which you may be liable to pay including any applicable third-party fees.
- 9.3 You agree that we reserve the right to vary our Fees from time to time. Any changes to the Fees will be communicated to you. Any changes to the Fees will apply to new transactions only and will take effect immediately upon publishing on our Website.
- 9.4 You agree that in the event we are unable to collect any Fees or part thereof owed to us, we may take other steps that we deem necessary to recover any Fees owed by you to us.
- 9.5 We offer an opportunity to participate in a promotion or a discount in respect of the cost of using our Services. Any such promotion or discount shall be subject to any conditions set out in these Terms.
- 9.6 In certain circumstances, cancellation and refunds may be available to you from us and/or third parties. Such cancellation and refunds will be available subject to any conditions set out in these Terms.

## **10 Duration of engagement**

- 10.1 These Terms shall become applicable to you the very moment you access our Website or any of our Sites or you first use any of our Services, whichever comes first.
- 10.2 You shall cease to be entitled to access or use the Services immediately our engagement with you comes to an end. Our engagement with you may be ended by any one or more of the following ways:
  - 10.2.1 your User account is suspended or closed;
  - 10.2.2 we revoke or terminate your access or usage rights;
  - 10.2.3 we, at our sole discretion, terminate these Terms and notify you of the termination;
  - 10.2.4 we, at our sole discretion, cease providing the Services.
- 10.3 We shall always, except in exceptional case necessitated by risks to you, us, the Sites, or the Services, notify you of any intended cessation of the engagement. We, however, reserve our right, acting in our sole discretion, to terminate our engagement with you in the manner

specified above, if you have been notified of an infringing activity twice or more (regardless of whether you have taken appropriate action as we may direct).

- 10.4 All obligations relating to any transaction, due and accrued at the time of cessation of our engagement shall remain to be for the account of the concerned User.

## **11 Warranty disclaimer & indemnity**

- 11.1 The Website, any part of the Sites, and the Services are provided "As Is," without warranty or representation of any kind.
- 11.2 You will indemnify and hold us harmless including all our agents, directors, employees, and officers from and against any claims, disputes, liabilities, damages, losses, and costs arising out of or in any way connected with your access to or use of the Services and your violation of these Terms.
- 11.3 In the event of a dispute with another User you agree to release and indemnify us from all claims, disputes, liabilities, damages, losses, and costs arising out of or in any way connected with or arising out of or in connection with such dispute or transaction.

## **12 Limitation of liability**

- 12.1 Nothing in these Terms affects or abrogates any rights that you have under law relating to the matters covered by the Terms.
- 12.2 We give no warranty or representation that the Website, any part of the Sites, or our Services will meet your requirements, that they do not infringe the rights of any third party, or that their operation will be timely, secure, uninterrupted or error-free.
- 12.3 We exclude all representations, warranties, conditions and terms express or implied by law to the fullest extent permitted by law. We shall be under no liability whatsoever to you or anyone claiming under you for any loss or damage arising directly or indirectly out of (in respect of our Website, any part of our Sites and our Services):
- 12.3.1 any defect, incompleteness, or inaccuracy;
  - 12.3.2 the refusal by your counterparty to honour or to make a payment;
  - 12.3.3 the giving of transaction instructions by any person other than by a User;
  - 12.3.4 the existence of computer viruses and/or other malicious programs;
  - 12.3.5 any changes which we may make;
  - 12.3.6 any temporary interruptions in their provision;
  - 12.3.7 the deletion of, corruption of, or failure to store any communications data maintained or transmitted by or through them;
  - 12.3.8 your failure to keep your account details secure and confidential;
  - 12.3.9 your failure to provide us with accurate profile information;
  - 12.3.10 any injury to the credit character and reputation of a User alleged to have been caused by the return or reversal of a transaction;
  - 12.3.11 any misstatement, misrepresentation, error, or omission in any details disclosed by a User to us; or
  - 12.3.12 any indirect, consequential, incidental, or special loss including (but not limited to) loss of profit, loss of opportunity, anticipated savings, loss of goodwill, corruption or loss of data howsoever arising.
- 12.4 In any event, and without prejudice to any limitation of liability set out above, our total liability arising out of or in connection with these Terms or from the use of or inability to use the Services will not exceed the sums received by us from you as your fees or charges to use the



Services or, if you have not paid any sums to us, the sum of Kenya Shillings two hundred and fifty (KES 250/=). You hereby agree that such sums shall be adequate consideration or compensation if they must be paid to you.

### **13 Licence & right of Site access**

- 13.1 Subject to your compliance with these Terms, we grant you a fully revocable, worldwide, non-exclusive, non-commercial, non-licensable, non-transferable, limited right and licence to electronically access and access, internally use and display the Website and any part of our Sites, and our Services, as an individual only solely as necessary to use the Website and any part of our Sites, and our Services as permitted by these Terms.
- 13.2 You must abide by all intellectual property notices or restrictions contained on the Website or any part of our Sites.
- 13.3 Our Sites or any portion of them may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without our express written consent. You shall not circumvent or bypass any security or other features of our Sites, harvest, or mine content from the Sites, or otherwise access or use the Sites in a manner inconsistent with individual human use. You agree not to reverse engineer, decipher, decompile, or disassemble our Sites, or the software or technology used to provide the Sites, in whole or in part, or authorize, direct, or cause a third party to do so.
- 13.4 You may not, without our consent, frame or utilize framing techniques to enclose any of our trademark, logo, or other proprietary information (including images, text, page layout, or form) You may not use any meta tags or any other "hidden text" utilising our name or trademarks without our consent.
- 13.5 Any unauthorized use will terminate the right or licence granted by us. You are granted a limited, revocable, non-transferrable and non-exclusive right to create a hyperlink to our Website's homepage subject to the condition that the link does not portray us, our associates, or their products or services in a false, misleading, derogatory, or otherwise offensive matter. You may not use any of our logo(s) or other proprietary graphic or trademark as part of the link without our express written permission.

### **14 Privacy**

- 14.1 We are committed to protecting your personal data. Please read our Privacy Policy which is available and can be accessed on our Website and which, details our approach towards safeguarding your personal data that you share with or through us.
- 14.2 Links to third party websites on our Sites are provided solely for your convenience. We have not reviewed any third-party websites and do not control and are not responsible for these websites or their content or availability. Further, we do not vouch for or make any representations about them or their content or their capability You access any third-party websites linked to any of our Sites, at your own risk.

### **15 Intellectual property**

- 15.1 We reserve our rights including specific intellectual property rights to our Website and its contents, any part of our Sites and their contents, and any intellectual property associated with our Services including the technology through which the Services are provided.

### **16 Confidential information**

- 16.1 We will only use User data as permitted under these Terms and any other agreements between you and us. You have an obligation to protect all data you receive through our Services. You can only use such data in furtherance of your rights as a User and must not disclose or distribute any such data contrary to your User rights, for example, processing a transaction, and the restrictions under these Terms.

## **17 Relationship of Parties**

- 17.1 We and you shall always remain independent contractors. In no event shall these Terms establish any mandate, franchise, or any type of legal entity and neither of us has any authority to bind the other to any agreement or any obligation.

## **18 Notices & Communication**

- 18.1 All your notices or legal demands to us shall be in writing and shall be sent to us by email at [info@tradesure.co.ke](mailto:info@tradesure.co.ke).
- 18.2 You agree and consent to receive communications from us electronically for example through our Website, our Sites, email, USSD or SMS. We will communicate to you through email or by way of placing communication on our Website.
- 18.3 You hereby irrevocably authorise us to record and keep any conversation that may be had with you via telephone or any electronic means. The recording and storage of this communication shall be governed by our Privacy Policy.

## **19 Severability**

- 19.1 If any part of these Terms is found by a duly recognised court of law to be illegal, invalid, or not enforceable, the remaining parts will remain in full force and effect.

## **20 No relationship**

- 20.1 Nothing contained in these Terms shall be deemed to constitute a partnership, joint venture or the like amongst the parties nor to constitute one party the agent of the other for any purpose unless such an agreement is entered into by the parties.
- 20.2 No one shall by reason of the actions of the other party incur any personal liability as a partner to any third party and no party shall be entitled to authorise, to represent or hold out to any third party that the relationship by the parties is that of a partnership, joint venture or the like as aforesaid.
- 20.3 These Terms do not intend to create exclusivity in the general business of either party.

## **21 Force majeure**

- 21.1 No failure or omission by either party in the performance of any obligation under these Terms shall be deemed to be a breach of these Terms, nor create any liability on the part of either party if the same should arise from any cause beyond the control of such party, including, but not restricted to, the following which, for the purpose of these Terms, shall be regarded as beyond the control of such party: acts of God; acts or omissions of any government or agency thereof; compliance with the rules, regulations or orders of any governmental authority; fire; storm; flood; earthquake; war; quarantine; restrictions; strikes and/or embargoes.
- 21.2 If such cause of non-performance shall last for more than 6 (six) consecutive months, the other party may after the expiration of such period and whilst the cause of such non-performance still exists, give notice in writing to the other party so affected to terminate these Terms with immediate effect.

## **22 Waiver**

- 22.1 The waiver or the failure by either of us to claim a breach of any part of these Terms shall not be construed as a waiver of such obligation for the future.
- 22.2 You agree to file any claim regarding any aspect of our Sites or our Services or these Terms within six (6) months of the time in which the events giving rise to such alleged claim began, failure to which you will have irrevocably waived such claim.

## **23 Governing law**

- 23.1 These Terms and any disputes that arise between us and shall be governed by and construed in accordance with the laws of the Republic of Kenya.

## **24 Resolution of disputes between Us and You**

- 24.1 Any dispute arising out of or in connection with these Terms or our Services that is not resolved by way of consultations between us and you, shall be referred to by either party and be finally resolved by a single arbitrator. The arbitrator shall be agreed by both parties, failing which, a request for appointment may be made by either party, to the Chartered Institute of Arbitrators. The provisions of the Arbitration Act, 1995 shall apply to such arbitration proceedings. The arbitration proceedings shall be held in Nairobi and the language of arbitration shall be English. The award of the arbitrator shall be final.
- 24.2 The arbitrator shall have demonstrable knowledge or experience in determining disputes relating to the information technology-related disputes.

## **25 Our contacts**

- 25.1 We would be glad to assist you with any questions, concerns or inquiries that you may have regarding our Services. You reach us through the following contact channels:
- Call us at: +254 (0)20 2177999.
  - Or write to us at: info@tradesure.co.ke / 4th Floor, The Westwood, Vale Close, Off Ring Road, Westlands, Nairobi, Kenya / c/o Payindex Limited, P.O. Box 1206-00606, Nairobi, Kenya.

## **26 Successor company**

We may, at any time, transfer rights and obligations, including any data held by us, under these Terms to any current or future company subsidiary or business unit, or any companies or divisions or any entity that acquires us or any of our assets.