



M-PESA BUY GOODS (MERCHANT) TERMS AND CONDITIONS	V.1	March 2012
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PREFACE

These terms and conditions form the contract between:

_____ Limited
of P.O. Box _____ Code _____ City/Town _____

(hereinafter **Client**, which expression shall include its successors in title and assigns) and Safaricom Limited of P.O. Box 66827 Westlands – 00800, Nairobi (hereinafter **Safaricom**, which expression shall include its successors in title and assigns).

These Terms and Conditions together with the annexures hereto (together “the Agreement”) contains the complete terms and conditions that apply to **Client's** participation in Safaricom's M-PESA mobile payment system (hereinafter **Buy Goods Services**) and supersedes all other agreements entered into between the Client and Safaricom in relation to the provision of M-PESA Buy Goods Services. By executing this document the **Client** agrees that it is affirmatively stating that it has carefully read and understood the terms and conditions set forth herein and agrees to be bound by the said terms and conditions.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

“**Business Day**” means any day of the week not being a weekend, gazetted public holiday or designated bank holiday within the Republic of Kenya;

“**Business Number**” means a destination code or numbering plan created by Safaricom for the identification of M-PESA Merchant Accounts;

“**Cash**” means the money denominated in Kenya Shillings which, as the context requires, may be offered by a Customer through the Customer's M-PESA Account as a Payment through the M-PESA system and subsequently credited to the Merchant's M-PESA Account; and may be paid to the Merchant pursuant to a Withdrawal Request Instruction given by the Merchant to Safaricom;

“**Merchant's M-PESA Account**” or “**M-PESA Account**” means the M-PESA account operated by the Merchant and through which the Merchant receives Payments from Customers;

“**Confidential Information**” means, without limitation, all information, software, data, manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets, and other information of value to a party and not generally known, (whether or not designated as “confidential information” by any Party and

whether written, oral or in electronic form) and any other information clearly designated by a Party as “confidential information” or that is evidently confidential by its nature or the nature of its disclosure, and includes the terms of this Agreement;

“**Custodial Trustee**” means the M-PESA Holding Company Limited which, under a Declaration of Trust, holds Cash paid into the Trust Account in trust for all M-PESA customers;

“**Customer**” means an M-PESA user who uses the M-PESA System to make Payments or perform Payments to the Merchant and “Customers” shall be construed accordingly;

“**Customer M-PESA Account**” means the M-PESA account operated by the Customer whose access is through the M-PESA menu on the Customer’s mobile phone and through which the Customer may effect Payment instructions to the Merchant;

“**EFT**” means any electronic means of funds held in trust for the Merchant from the Trust Account to the Merchant’s designated bank account including without limitation, Electronic Funds Transfer and Real Time Gross Settlement;

“**Effective Date**” means the date first appearing on this Agreement;

“**E-Money**” means the electronic value issued by Safaricom and representing an entitlement to an equivalent amount of the Cash held by the Custodial Trustee in respect of the acquisition of such electronic value;

“**Intellectual Property Rights**” means, in respect of each Party, such Party’s proprietary rights, title and interest in and to any and all names, logos, trade marks, copyrights, patents and all other intellectual property of whatever nature, description or form, vesting in that Party as at the Effective Date or acquired by such Party at any time after the Effective Date;

“**KYC Test**” means the Know Your Customer due diligence performed by the Merchant to ascertain the identity of Customers at the point of sale requiring the viewing and matching of ID information with the M-PESA account from which a Payment originates;

“**M-PESA Merchant Service**” means the Payment services provided by Safaricom which the Merchant will use in order to receive Payments from Customers and may be used for other transactions as necessary;

“**Payment**” means the transfer of money from a Customer to the Merchant for the payment of goods and merchandise by following prompts on the Buy Goods section of the Customer’s M-PESA menu;

“**M-PESA System**” or “**M-PESA**” means the Payment system operated by Safaricom providing the M-PESA Merchant Services;

“**M-PESA User**” or “**User**” or “**M-PESA System Participant**” means either of the Merchant or the Customer or any other person including Safaricom participating in the M-PESA System;

“**M-PESA Website**” means the site located at <http://www.m-pesa.com>;

“**MSISDN**” means the Mobile Subscriber Integrated Services Digital Network number issued to the M-PESA User which uniquely identifies the M-PESA User on the Safaricom Network and is used to connect the Customer with other subscribers;

“**Network**” means the Global System for Mobile telecommunication (“GSM”) system operated by Safaricom and covering those areas within the Republic of Kenya as stipulated from time to time by Safaricom;

“Transaction” means (as the context requires) Payments made by Customers to the Merchant; and EFTs made by the Custodial Trustee to the Merchant;

“Trust Account(s)” means the custodial account or accounts maintained in a commercial bank or banks into which Cash sums represented in the M-PESA System are held in by the Custodial Trustee for and on behalf of all M-PESA System Participants;

“Trustee” means the M-PESA Holding Company Limited which, under a Trust Deed, holds Cash paid into the Trust Account in trust for all M-PESA customers;

“Trust Deed” means together the Declaration of Trust dated 23rd January 2007 and the Amendment Deed dated 19th June 2008 executed by the Trustee constituting the trusts under which the Trustee holds all amounts of cash received for the Account of each system participant in trust for you upon the terms and conditions therein specified. These documents are available for inspection at www.safaricom.co.ke

“Web Interface” means the M-PESA website through which the Merchant’s M-PESA Account details including Transactions and account balances can be viewed and through which certain Transactions can be completed;

“Withdrawal Request Instruction” means an instruction given to Safaricom by the Merchant requesting Safaricom to facilitate the redemption of the Merchant’s funds held in the Trust Account.

1.2 In this Agreement (including the recitals), unless the context otherwise requires:

1.2.1 Words denoting the singular shall include the plural and vice versa and reference to the masculine gender shall include a reference to the feminine gender and neuter and vice versa;

1.2.2 References to clauses are references to the clauses of this Agreement;

1.2.3 References to “Parties” shall mean the parties to this Agreement being Safaricom and the Client and to “Party” shall mean either of them as the context may indicate;

1.2.4 The expression “person” includes a natural person, body corporate, unincorporated venture, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm; and

1.2.5 Headings to clauses are used for convenience only and shall not affect the construction and interpretation of this Agreement.

2 DURATION OF AGREEMENT

2.1 Subject to the provisions for earlier termination as provided in this Agreement, this Agreement shall be for an initial period of twelve (12) months (the “Initial Term”) from the Effective Date.

2.2 Upon expiry of the Initial Term, this Agreement shall automatically be renewed by the parties for further renewal periods of twelve (12) months each (each period being a “Renewal Term”) on the terms and conditions appearing herein or as may be amended in writing unless terminated in accordance with the terms of this Agreement.

3 OPERATION AND SCOPE

- 3.1 The Client hereby agrees to abide by the M-PESA operational procedures as may be prescribed by Safaricom from time to time.
- 3.2 Use of the M-PESA Service by the Merchant shall be subject to the terms of this Agreement, the M-PESA Website Access Terms and Conditions as may be notified to the Merchant, the Customer Terms and Conditions and any guidelines or bulletins as may be published by Safaricom from time to time.
- 3.2.1 With effect from the Effective Date and for the duration of the Agreement, Safaricom shall:
 - 3.2.1.1 Make available to Customers and the Merchant the M-PESA Merchant Service by allocating a Business Number or Business Numbers through which Customers may make payments to the Merchant's M-PESA Account through the M-PESA Buy Goods Service functionality. For the avoidance of doubt the Business Number or Business Numbers remain the property of Safaricom at all times and Safaricom may, with reasonable prior notice to the Merchant, re-number, re-assign, re-allocate or withdraw a Business Number or Business Numbers PROVIDED that Safaricom shall not tamper with the balances held in the Merchant's M-PESA account;
 - 3.2.1.2 Grant secure access rights to the M-PESA Website through which the Merchant may manage its M-PESA Account. For the avoidance of doubt the M-PESA Website is proprietary and any material downloaded from it (including without limitation, statements, screen shots, etc) shall be Confidential Information.
 - 3.2.1.3 Provide support services to the Merchant and address any issues escalated by the Merchant in relation to Payments;
 - 3.2.1.4 Credit the Merchant's M-PESA Account with Payments received from Customers through the M-PESA System;
 - 3.2.1.5 Subject to prevailing minimum limits imposed by Safaricom on withdrawals, to prepare on demand and in any event within seventy two (72) hours (the "Settlement Period") an EFT remittance of the funds accumulated in the Merchant's M-PESA Account (less any charges and commissions payable to Safaricom) upon receiving a Withdrawal Request Instruction PROVIDED ALWAYS that computation of the Settlement Period shall not factor any day not being a Business Day. The Merchant acknowledges that Safaricom may engage a third party to assume the Settlement Risk at the Merchant's cost;
 - 3.2.1.6 Reserve the right, if required by law, to hold funds beyond the normal distribution period for Transactions that it reasonably deems suspicious in regards to money laundering, fraud and other criminal activities;
 - 3.2.1.7 Provide Merchant service support to the Merchant for the resolution of Merchant issues including any escalated customer issues.
- 3.3 With effect from the Effective Date and for the duration of the Agreement, the Merchant shall:-
 - 3.3.1 Reconcile payments received on the M-PESA System through the Web Interface upon Payment being made and in any event not later than twenty four (24) hours after Payment;

- 3.3.2 Publish the prevailing charge applicable for Payments (if the Customer is responsible for bearing the Transaction Charges or a portion thereof);
 - 3.3.3 Promptly issue the Customer with a receipt or remittance advice slip (as the case may be) for each Payment made;
 - 3.3.4 Decline any Payment failing the KYC Test;
 - 3.3.5 Initiate Withdrawal Request instructions to Safaricom for redemption of accumulated funds in the Merchant M-PESA Account;
 - 3.3.6 Authorize Safaricom to debit charges and commissions to the Merchant M-PESA account for providing the M-PESA Merchant Service;
 - 3.3.7 Provide first line customer service support to Customers making Payment including, without limitation, provide customers a help line through which Customers may escalate matters relating to payments made to the Merchant through the M-PESA System.
- 3.4 The Merchant undertakes that it shall at all times comply with the Website Access Terms and Conditions and such other reasonable guidelines as may be communicated to the Merchant by Safaricom in writing from time to time.

4. ACTIVATION OF BUY GOODS ACCOUNT

- 4.1 This agreement comes into effect upon activation of the M-PESA Buy Goods Account by Safaricom following the passing of all KYC vetting procedures conducted on the Client by Safaricom.
- 4.2 Prior to activation of the M-PESA Buy Goods Account, the Client shall ensure it has provided Safaricom with the necessary Know Your Customer (KYC) documents as may be prescribed by Safaricom.
- 4.3 Safaricom shall carry out the necessary due diligence following which, if satisfied as to the sufficiency of the KYC documents provided by the Client, shall activate the Client's Buy Goods Account.
- 4.4. If the Client fails to produce the necessary KYC documents as set out in 4.2 above, or fails to satisfy the minimum KYC requirements, Safaricom will refuse to activate the M-PESA Buy Goods account and accordingly advise the Client as such (in which case this Agreement shall be null and void). For the avoidance of doubt, Safaricom's refusal to activate the M-PESA Buy Goods account shall neither confer on the Client any right to contest Safaricom's decision nor give rise to any legal claim against Safaricom under this Agreement.

5 REVERSALS

- 5.1 The Client shall within a reasonable period (but in any event no later than 72 hours) initiate and complete reversal transactions where a payment made to it is manifestly made in error.
- 5.2 Where the Client fails or refuses to complete the reversal in accordance with clause 5.1, Safaricom shall, having due regard to the circumstances of the erroneous payment, complete the reversal.
- 5.3 Where a dispute in relation to a reversal arises, Safaricom may suspend the Client's M-PESA Buy Goods account to facilitate an amicable resolution of the dispute.

6 TRANSACTION RANGE & CHARGES

- 6.1 The Service shall be subject to the Charges and Transaction Values set out in Schedule 1 (as annexed to this agreement and signed off by the Client).
- 6.2 Safaricom may by notice and from time to time vary the Charges and Transaction Values.
- 6.3 Amounts to be transacted by Customers using the M-PESA System are subject to transaction and account limits set on the M-PESA System as provided in Schedule 1 (*Charges and Transaction Values*) or as may be varied by Safaricom in writing from time to time.

7 CONFIDENTIALITY

- 7.1 Each party undertakes and warrants that it will treat as confidential all information related to and received from the other party, which it acquires as a result of the operation of this Agreement and to afford it the same degree of confidential treatment as it affords to its own confidential information.
- 7.2 Neither party will reveal any confidential information of the other to any third party, without the express written consent of the disclosing party, except where such information is already in the public domain, has been legally acquired by the third party, or where disclosure of the confidential information is ordered by a court or other competent authority.

8 WARRANTIES, INDEMNITIES & LIMITATIONS OF LIABILITY

- 8.1 Each of the Parties represents and warrants that none of its senior officers or directors (i) has ever been convicted of any crime (other than minor traffic offences); and (ii) has ever been charged, convicted of (or pleaded guilty or no contest to) any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances. Each Party shall, if required, notify the other in writing within 48 hours after any of these representations and warranties ceases to be true.
- 8.2 The Merchant warrants that it has obtained all the necessary management, board or, where necessary, regulatory approvals to use the M-PESA Merchant Service for the receipt of Payments from Customers.
- 8.3 Each party shall indemnify the other, and keep each other indemnified, from and against any and all loss, damage or liability, whether criminal or civil, suffered, any legal fees and costs incurred by the other resulting from a material breach of this Agreement by the party at fault including breaches caused by any act, neglect or default of a party or any third party claim in respect of any matter arising from any person's conduct, provided that the liability has not been incurred directly through any default either party in relation to its obligations under this Agreement.
- 8.4 Without prejudice to the foregoing, the Merchant shall indemnify and keep Safaricom indemnified from, defend Safaricom against, and pay any final judgment awarded against Safaricom, resulting from third party claims arising from the use of the Services leading to loss or damage (including consequential loss or damage) where

the proximate cause of such loss or damage is attributable to the Merchant's negligence, recklessness, indifference, delay or failure to receipt or acknowledge a Customer's Payment after the Customer has effected a Merchant Transaction to the Merchant on the M-PESA System.

8.5 Safaricom shall not be liable to the Merchant or any other person where:

8.5.1 The Transaction amount sought by the Customer is below the minimum or above the maximum limits for transactions on the M-PESA System as set out in Schedule 1 (*Charges & Transaction Values*);

8.5.2 The Customer has entered incorrect details and the payment is made to the wrong MPESA System Participant;

8.5.3 The Merchant's hardware, software or internet provider's service is not functioning properly;

8.5.4 The transaction is suspicious or fraudulent resulting in losses to a third party;

8.5.5 The transaction details received do not contain the correct information;

8.5.6 The Merchant's receipt of funds is intercepted by legal process or other encumbrance restricting the transfer; or

8.5.7 Unforeseen circumstances prevent the execution of a Transaction despite any reasonable precautions taken by Safaricom.

8.6 Without prejudice to any other provisions of this Agreement, each of Safaricom and the Merchant undertakes to indemnify the other party and keep the other party indemnified on demand for and against all proceedings, costs, claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred arising out of or by reason of:

8.6.1 any breach or non-compliance with any terms of this Agreement; or;

8.6.2 any infringement or alleged infringement of any intellectual property rights relating to the use of any software by any person.

9 SUSPENSION

9.1 Safaricom may, with reasonable notice where practicable, suspend the availability of the Service to the Merchant wholly or partially for any valid reason, including without limitation, where (i) the Service is used in a manner contrary to the representations made to Safaricom by the Merchant or in a manner inconsistent with the conditions of any regulatory approval granted to the Merchant; (ii) Investigations are contemplated or ongoing and Safaricom reasonably believes that suspension of the service is likely to facilitate the investigations; (iii) Any regulatory approval for the Service granted to the Merchant is subsequently revoked or expires.

9.2 In the event of suspension Safaricom shall give the Merchant reasonable notice to remedy the cause of the suspension failure to which Safaricom shall be at liberty to issue a Termination Notice.

9.3 Upon the receipt of a Suspension Notice from Safaricom, the Merchant shall issue a statement or other appropriate written communication to its Customers which shall be in terms substantially consistent with the Suspension Notice received and shall inform its Customers of the impending unavailability of the Service.

- 9.4 Upon the issuance of a Suspension notice, Safaricom shall promptly facilitate the redemption of all accumulated funds in the Merchant's M-PESA Account.

10 TERMINATION

10.1 Termination on Notice

- 10.1.1 If either of the Parties commits a breach of any material obligation imposed on it in terms of this Agreement (hereinafter the "Defaulting Party"), and fails to remedy such breach within a period of 30 (thirty) days from the date on which written notice is given to the Defaulting Party by the other Party (hereinafter the "Aggrieved Party") requiring the Defaulting Party to remedy the breach, then the Aggrieved Party shall be entitled to terminate this Agreement on the expiry of such written notice and the Aggrieved Party shall be entitled to hold the Defaulting Party liable in damages as a result of such termination.
- 10.1.2 Either Party may terminate the agreement by giving thirty (30) days prior written notice irrespective of whether the other Party is in material breach of this Agreement.
- 10.1.3 Safaricom may terminate the agreement if the Buy Goods account remains inactive for a period of six (6) months. For the avoidance of doubt, an 'inactive' Buy Goods account is one which has not had any credit entries over a continuous period of six (6) months.

10.2 Effect of Termination

- 10.2.1 Upon the receipt of a Termination Notice from Safaricom, the Merchant shall issue a statement or other appropriate written communication to its Customers informing them of the impending unavailability of the Service.
- 10.2.2 The expiration or termination of this Agreement shall be without prejudice to all accrued rights and obligations of the Parties under this Agreement and to all obligations under this Agreement expressed to continue or take effect after expiration or termination.

11 TAXES

- 11.1 The Merchant undertakes to declare all income resulting from or in consequence of using the M-PESA Buy Goods Services to the relevant tax authority and to pay all taxes levies and fees due on such income. Safaricom shall not be liable to the Merchant for any disclosure to the relevant tax authority and the Merchant hereby indemnifies Safaricom from any loss or damage arising from such disclosure to the relevant taxing authority.
- 11.2 It is the Merchant's responsibility to determine what, if any, taxes apply to the Payments it receives and to collect, report and remit the correct tax to the appropriate tax authority. Safaricom shall not be obliged to determine whether taxes apply, and is not responsible for collecting, reporting, or remitting any taxes arising from any transaction.

11.3 Without prejudice to the generality of clause 9.1, any taxes, charges, impositions or levies imposed on a Party or on a Party's performance of its obligations under this Agreement shall be paid by that Party, it being solely that Party's obligation to collect and remit such taxes to the relevant tax authority.

12 PROHIBITED USAGE & CONDUCT

12.1 You agree to not use the M-PESA Buy Goods service to:

- a) Conduct any business that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- b) Impersonate any person or entity, including, but not limited to, a Safaricom official, fellow user, or falsely utter or otherwise misrepresent your affiliation with a person or entity;
- c) Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- d) Conduct any business that causes or permits the uploading, posting, emailing, transmission or otherwise making available any content or information that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- e) Conduct any business that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- f) Conduct any business whether unsolicited or not, relating to or remotely connected to SPAM, junk mail, pyramid schemes, pornography, gambling or any other form of solicitation;
- g) Conduct any business that causes or permits the uploading, posting, emailing, transmission or otherwise making any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- h) Conduct any business that interferes with or disrupts the Service or servers or networks connected to the Service, or disobeys any requirements, procedures, policies or regulations of networks connected to the Service;
- i) Conduct any business that intentionally or unintentionally violates any applicable local, or international law, including, but not limited to, laws and regulations promulgated by the Communications Commission of Kenya, the Central Bank of Kenya or any regulations having the force of law;
- j) Collect or store personal data about other users without their express authority.

12.2 It is hereby acknowledged and agreed that Safaricom may preserve the Client's Confidential Information and may also disclose the Client's Confidential Information if required to do so by law or in the good faith belief

that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms of this Agreement; (c) respond to claims that the Client's use of the M-PESA Service violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Safaricom, its subscribers and the public.

- 12.3 You shall not make available to any third party any Confidential Information (including without limitation, customer names, MSISDN, transaction data, etc.) unless compelled by law to do so.

13 DISPUTE RESOLUTION

- 13.1 The Parties shall use their best efforts to amicably settle any dispute or claim, arising out of or in connection with this Agreement (including any question regarding its interpretation, existence, validity or termination). In the event of any dispute or claim, whether based on contract or tort, arising out of or in connection with this Agreement, the parties will endeavor to resolve such dispute through good faith negotiations as follows:

13.1.1 The Parties representatives will attempt to resolve the matter within fourteen (14) days of the matter being referred to them, or such other period as shall be agreed between the parties;

13.1.2 If the matter is not resolved under the provisions of 13.1.1 above, the matter will be referred to the Parties' Chief Executive Officers, or their duly appointed representatives, who will attempt to resolve the matter within a further period of seven (7) days, or such other period as shall be agreed between the parties.

13.1.3 If the matter is not resolved under the provisions of 13.1.2 above, the matter shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration.

13.1.4 Such arbitration shall be conducted under the provisions of the Rules of the Chartered Institute of Arbitrators (Kenya Branch) and where any matter is not covered by such Rules, the provisions of the Arbitration Act 1995, Laws of Kenya (or any such legislation as may succeed this Act) shall apply.

13.1.5 Save for the arbitral award, each party shall bear its own costs in relation to the arbitration proceedings.

13.1.6 The language of the arbitration shall be English.

13.1.7 Nothing in this Agreement shall prevent or delay a Party from making claims or seeking injunctive or interlocutory relief in the High Court of Kenya.

13.2 The Merchant shall provide Customers with customer service assistance and/or a customer service helpdesk for first line resolution of customer issues relating to their payments.

13.3 The Merchant undertakes to comply with any guidelines or bulletins on customer dispute resolution and consumer protection as may be issued by Safaricom from time to time.

14 ENTIRE AGREEMENT

This Agreement, together with the schedules hereto, constitutes the entire agreement between the Merchant and Safaricom with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such matter.

15 AMENDMENT

This Agreement, including its schedules may be amended by Safaricom by way of bulletin, and notices. The Merchant acknowledges that such bulletin or notices shall be binding and shall have full legal force as if they were contained in this Agreement.

16 ASSIGNMENT

This Agreement may not be assigned by either party, by operation of law or otherwise, without the prior written consent of the other party.

17 HEADINGS

Headings in this Agreement are for reference purposes only and shall not effect the interpretation or meaning of this Agreement.

18 NOTICES

Except as otherwise specified in the Agreement, all notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by mail, registered or certified, return receipt requested, postage pre-paid, courier service to the address to the address specified above. Notices shall be deemed given on the day actually received by the party to whom the notice is addressed.

19 COUNTERPARTS

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

20 WAIVER

No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

21 SEVERABILITY

Any provision of this Agreement held by a court of competent jurisdiction to be contrary to any law shall be severed from the agreement, but such severance shall not render the remaining provisions of this agreement ineffective. The remaining provisions of this Agreement will remain in full force and effect.

22 NO THIRD PARTY BENEFICIARIES

Each party intends that this Agreement shall not benefit, or create any enforceable right or cause of action in or on behalf of, any person or entity other than the Safaricom and the Merchant.

23 FORCE MAJEURE

23.1 Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other Party for any delay or failure to perform its obligations under the Agreement as a result of revolution or other civil disorders; belligerent aggression by an enemy or war; 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; acts of God; 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 hereinbefore enumerated or not.

23.2 Upon the occurrence of any Force Majeure event, the affected party will promptly give written notice to the other party and will use commercially reasonable efforts to minimize the impact of such Force Majeure event.

24 GENERAL

24.1 The parties shall comply with all legal requirements applicable to their role in effecting Transactions.

- 24.2 Legal or regulatory requirements may require Safaricom to obtain and report certain information about the operation of the Merchant's account. In order to comply with any such legal or regulatory requirements, Safaricom may at any time submit such information as it may have in its possession to the legal or regulatory authority. The Merchant shall assist Safaricom in complying with any such legal or regulatory requirements and shall deliver promptly any information that Safaricom reasonably requests for the purposes of complying with such legal or regulatory requirements.
- 24.3 None of the Parties shall at any time publish or cause to be published orally or in writing to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning either Party or any other matter regarding the internal affairs of either Party, whether such information or matter is stated to be confidential or not, without the express written permission of the other Party . This covenant is given by the Merchant and Safaricom on their own behalf and the parties also undertake to ensure that they will take all reasonable steps to enforce obligations in like form against its directors and personnel.
- 24.4 Each of the Parties shall, at its expense, obtain and renew, in accordance with any law or regulations for the time being in force, all permits, licences and authorisations required for the performance of its obligations under this Agreement.
- 24.5 Where the Merchant integrates its Point of Sale terminal with the M-PESA System, Safaricom may, at its expense, conduct by itself, or commission a third party to conduct, a systems audit to test the system integrity of the Merchant.

25 GOVERNING LAW AND JURISDICTION

The validity, construction and interpretation of this Agreement and the rights and duties of the parties hereto shall be governed by the laws of Kenya.

We _____ Limited

Hereby confirm that we have read the terms of these M-PESA Buy Goods contract Terms and Conditions and we hereby agree to be bound by them.

Signed by (Full Name)

Designation

Signature

Duly authorized for and on behalf of

In the presence of:

Name:.....

Address:.....

Signature:.....

SCHEDULE 1

CHARGES & TRANSACTION VALUES

(as annexed to the Agreement and signed off by the Parties)

SCHEDULE 2

CUSTOMER SERVICE INFORMATION

Customer Service Location	
Customer Service Line	

SCHEDULE 3

REGISTRATION PARTICULARS

Short Code	
Head Office Details	
Bank / Branch	
Bank Account Number	
Minimum Transfer value	
Maximum Account Limit	

