

TERMS AND CONDITIONS FOR THE MERCHANT OVERDRAW (FULIZA BIAHARA) SERVICE (the "SERVICE")

1. THE AGREEMENT

- 1.1. This Agreement sets out the complete terms and conditions between you, NCBA Bank Kenya PLC (NCBA) and Safaricom for the Service (as hereinafter defined) and shall be binding on your personal representatives and assigns.
- 1.2. These terms and conditions and any amendments or variations thereto take effect on their date of publication.
- 1.3. These Terms are supplemental to the M-PESA Terms and Conditions and the the Lipa na M-PESA (B2C, B2B, Bulk Payments, Lipa Na M-PESA, Short-Term Paybill & Surepay) Terms and Conditions (the "M-PESA Terms and Conditions" or the Lipa na M-PESA Terms and Conditions). In the event of any inconsistency between these Terms and the M-PESA Terms and Conditions or any other relevant Terms and Conditions, these Terms and Conditions shall prevail.

2. DEFINITIONS

In these terms and conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:

- 2.1. "**Agreement**" means these terms and conditions and any amendments that will be made from time to time.
- 2.2. "**Amount Due**" refers to any Facility amount, return, Charge that remains unpaid after the Facility Period.
- 2.3. "**Applicant**" means any person who, through the Opt-In Function, applies for enrolment or registration onto the Service and establishment of an Overdraw Limit.
- 2.4. "**Credit Reference Bureau**" or "**CRB**" means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information.
- 2.5. "**Currency Equivalent**" means the Kenya shillings equivalent of the corresponding E-Value amount.
- 2.6. "**Customer**" or "**Client**" means any Applicant or any Merchant who has registered to use the Service and has accepted this Agreement, limited to a Merchant using Lipa Na M-Pesa Till, and for the time being active and registered as such by Safaricom.
- 2.7. "**Customer Care Centre**" means a customer care Centre designated for the Service in accordance with these terms and conditions.
- 2.8. "**Client's Nominated Number**" means an MSISDN appointed by the Client and activated on M-PESA for purposes of receiving E-Money pursuant to a Withdrawal Request Instruction;
- 2.9. "**Event of Default**" refers to any of the circumstances set out in Clause 10 below.
- 2.10. "**E-Value**" means the electronic value issued by Safaricom and transacted within M-PESA and representing an entitlement to an equivalent amount of the cash monies.
- 2.11. "**Equipment**" includes your mobile phone handset, device, M-PESA enabled SIM Card and/or other equipment which when used together enables you to access the Network.
- 2.12. "**Facility**" means any funds or overdraft advanced on your M-PESA Account using your Customer Nominated Number or any funds advanced to your Customer Nominated Account to enable you complete payments for the transactions and services provided under Clause 11 where your M-PESA Account Balance has insufficient funds. For the avoidance of doubt, the overdraft limit shall be allocated per customer, regardless of the number of accounts registered in your name, subject to the KYC Central Bank of Kenya Guidelines.
- 2.13. "**Facility Term**" means the period agreed for full Repayment of the Facility, being the earlier of full repayment of the Facility or thirty (30) calendar days from the date when the outstanding Facility was first advanced. The Facility Term shall not be affected by any subsequent or further Request made within the Overdraw Limit until the Facility is paid back in full.
- 2.14. "**Fee**" means the fee applicable for the Services and include:
 - (a) A maximum access fee of 2% of the Facility on every amount disbursed;
 - (b) A daily charge of 0.05% of the outstanding balance each day your Facility remains unpaid during the Facility Term;
 - (c) A one (1) day grace period on daily fees; and

- (d) Any other charges for the Facility as communicated by us from time to time in accordance with this Agreement and includes any charges, and applicable taxes thereon under the laws of Kenya;
- 2.15. **"Fuliza"** means the M-Pesa account overdraw service which allows M-Pesa subscribers to overdraw their M-Pesa accounts in order to complete transactions.
- 2.16. **"Government"** means the National Government, County Government or any other Government lawfully established under the laws of Kenya.
- 2.17. **"Interest"** shall mean the rate of 2% or such other rate as may be approved and communicated from time to time
- 2.18. **"IPRS"** means the Integrated Population Registration System operated by the Government.
- 2.19. **"Know Your Customer"** also known as **KYC** refers to the customer due diligence obligations, information, items documentation and requirements prescribed by relevant laws of Kenya and as may be prescribed or recommended by the Government or Central Bank of Kenya from time to time;
- 2.20. **"Merchant"** means a business subscribed to the Lipa na M-PESA Buy goods Service to enable payments for the goods and services offered by the business.
- 2.21. **"M-PESA"** or **"M-PESA Service"** means the money transfer and payment service that is managed and operated exclusively by Safaricom in Kenya and licensed by the Central Bank of Kenya.
- 2.22. **"M-PESA Account"** means the till, wallet or account belonging to the Client, registered to a Client's Nominated Account Number and created in the M-PESA System in accordance with the Lipa na M-PESA Terms and Conditions and M-PESA Agency or Sub-Agency Agreement.
- 2.23. **"M-PESA Business App"** means the software application used by the Client to access the Service as published, updated and upgraded by Safaricom from time to time.
- 2.24. **"M-PESA Client Credit Data"** means data relating to your credit and transactional activity within the M-PESA System.
- 2.25. **"M-PESA Client Data"** means an M-PESA Client's KYC, as reflected in Safaricom's records from time to time.
- 2.26. **"M-PESA System"** means the technical platform for the time being providing the M-PESA Service.
- 2.27. **"M-Shwari"** means the M-Shwari service offered by NCBA in partnership with Safaricom
- 2.28. **"MSISDN"** Mobile Subscriber Integrated Services Digital Network Number (Mobile Number).
- 2.29. **"NCBA"** means NCBA Bank Kenya PLC incorporated in Kenya as a limited liability company under the Companies Act and duly licensed as a bank under the Banking Act and includes affiliates or subsidiaries of NCBA as may from time to time be specified by NCBA to you.
- 2.30. **"Network"** means the mobile cellular network operated by Safaricom.
- 2.31. **"Opt-in Function"** means the proprietary menu option developed by Safaricom and available on USSD, M-PESA Business App or other M-PESA Access Channels that enables Customers to apply to Safaricom to register for the Service.
- 2.32. **"Opt-out Function"** means the proprietary menu option developed by Safaricom and available on USSD, M-PESA enabled SIM Cards and the Safaricom App that enables M-PESA Subscribers to opt out of the Service.
- 2.33. **"Overdraw Limit"** means the maximum Facility amount you are allowed on the Service as defined, established and communicated to you by us from time to time based in your credit score.
- 2.34. **"Party"** refers to You or Safaricom singularly.
- 2.35. **"Parties"** means You, NCBA and Safaricom jointly.
- 2.36. **"PIN"** means your personal identification number being the secret code used to access and operate your Equipment on the M-PESA System including but not restricted to access and use of the Service.
- 2.37. **"Recovery Expenses"** include any costs including legal fees incurred by us to recover Overdue Amounts.
- 2.38. **"Repayment"** means repayment of any amount due under the Service as defined in these Terms and Conditions including but not restricted to repayment of the Facility and the Fee.
- 2.39. **"Request"** means a request or instruction received by us from you or purportedly from you through the Network and the System and upon which we are authorized to act.
- 2.40. **"Safaricom"** means Safaricom PLC, a public limited liability incorporated in Kenya under the Companies Act.
- 2.41. **"Service"** means the M-PESA Account overdraw service offered by Safaricom and its Bank Partners which allows M-PESA Agents, Sub-Agents, Merchants and Customers to overdraw their M-PESA Accounts in order to complete transactions in Accordance with this Agreement.
- 2.42. **"SIM Card"** means the subscriber identity module which when used together with other prescribed Equipment enables a Customer to use the M-PESA Service.
- 2.43. **"STK Menu"** means the M-PESA STK menu embedded on the SIM Card and appearing on the M-PESA user interface.
- 2.44. **"Transacting Till"** means the Lipa Na M-PESA buy goods till that enables business owners collect payments and use the money collected to perform other transactions.

- 2.45. "USSD" means the USSD service provided by Safaricom.
- 2.46. "We," "our," and "us," means Safaricom and NCBA and where applicable may include our affiliates, successors and assigns.
- 2.47. "You" or "your" means the Customer and includes the Customer's personal representatives and assigns.
- 2.48. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

3. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 3.1. Before opting-in or registering for the Service, you should carefully read and understand these terms and conditions as they govern the access, use and operation of the Service. These Terms and Conditions are available on www.safaricom.co.ke and www.ke.ncbagroup.com. Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from a Safaricom Shop.
- 3.2. You may only access this Service upon upgrading your M-PESA Account to a transacting till wallet as per our Lipa na M-PESA Terms and Conditions.
- 3.3. If your M-PESA Account is issued by a Safaricom aggregator partner or agent, you may not access the Service unless you register directly using Safaricom M-PESA Business Till onboarding processes in accordance with the latest Lipa na M-PESA Terms and Conditions.
- 3.4. If you do not agree with these terms and conditions, please click "Decline" on the Opt-in Function.
- 3.5. You will be deemed to have read, understood and accepted these terms and conditions:
 - 3.5.1. upon clicking on the "Accept" option on the Opt-in page requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and or
 - 3.5.2. by using or continuing to use and requesting for the Service.
- 3.6. By registering for the Service, you agree to comply with and be bound by these terms and conditions as amended and revised from time to time and you affirm that these terms and conditions are without prejudice to any other rights that we may have in law or otherwise regarding your registration, access and use of the Service.
- 3.7. We may from time to time vary or amend these terms and conditions and your continued access and use of the Service constitutes your acceptance to be bound by the terms of any such amendment or variation.

4. REGISTERING FOR THE SERVICE

- 4.1. You are required to register for the Service through the designated M-PESA Access Channels. You must have a registered M-PESA Account for at least three (3) months immediately preceding the date of your application to register for the Service. We reserve the right to verify the authenticity and status of your M-PESA Account and transactions and may decline your application if we are not satisfied that you have met these minimum requirements.
- 4.2. You may register for the Service on more than one M-PESA Account provided that these terms and conditions will apply to each M-PESA Account that may be registered in your name.
- 4.3. You hereby agree and authorize us to exchange between Safaricom, NCBA, our Bank partners any of your Customer information held by us in respect of provision of any Safaricom products and services including the M-PESA Service. Such personal information includes KYC and such other information that will enable us to identify you and comply with the regulatory "know your customer" requirements (together the "Customer Information").
- 4.4. You also hereby agree and authorize us to use information relating to your use of the M-PESA service, M-PESA System and other Safaricom products as we shall require for purposes of delivering the Services ("M-PESA Information").
- 4.5. You may opt in to the Service solely by way of an electronic application made by you using your Equipment via the USSD or M-PESA Business App.
- 4.6. We reserve the right to request further information from you pertaining to your application to register for the Service at any time. Failure to provide such information within the time we require may result in a decline of your application to register for the Service.
- 4.7. You hereby agree and authorize us to obtain and procure your Personal Information from the Government of Kenya's repositories which, includes but is not limited to IPRS and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to us.
- 4.8. You hereby further acknowledge and authorize us to verify your Personal Information in our custody against the information received from the Government of Kenya repositories (including but not limited to IPRS) in your respect.
- 4.9. You hereby expressly consent and authorize us to disclose, receive, record or utilize your Personal Information or information or data relating to your account with respect to the Service and any details on your use of the M-Shwari and Fuliza services for the purposes of this Service and other services as we shall advise you between the NCBA and Safaricom for the purposes of this Service and other services as we shall advise you;
- 4.10. Our acceptance or decline of your application to register for the Service shall be communicated through Customer Nominated Number contact details provided by you. You acknowledge and accept that our acceptance of your application to register for the Service creates a separate and distinct additional contractual relationship between you and Safaricom outside the terms and conditions that apply to you for the use of other M-PESA products from time to time.

- 4.11. In the event a Transacting Till(s) associated to a nominated number is swapped, or the nominated number is swapped or recycled, You shall not be able to access the Service for a period of twenty four (24) hours
- 4.12. We reserve the right to decline your application to register for the Service or, subject to 30 days' notice or such other notice as may be required by law, to revoke your registration on the Service. Where we decline your application to register or revoke your registration we shall endeavor to formally communicate to you our reasons for the same.

5. YOUR REQUESTS

- 5.1. You hereby irrevocably authorize us to act on all Requests received by us using your M-PESA PIN and to hold you liable in respect thereof. We may nevertheless refuse to carry out any requests beyond the scope of the Service as offered from time to time.
- 5.2. We shall be deemed to have acted properly and to have fully performed all our obligations upon our compliance with the Request. We may ask for further information or confirmation (whether written or otherwise) from you before complying with a Request but shall not be obliged to comply with a Request in the absence of such further information or confirmation.
- 5.3. We shall decline any Request for a Facility under the Service if you exhaust your Overdraw Limit or M-PESA transactional load limit (as communicated by Safaricom) and reserve the right to partly decline your Request if fully complying with the same would cause you to exceed the Overdraw Limit or M-PESA transactional limit. In deciding whether to offer you the Service, we shall take account of any outstanding Facilities plus the Fee on your M-PESA Account in accordance with these terms and conditions or the terms and Conditions relating to the M-PESA Service. We shall not be obliged to take account of regular credits or any amounts received after declining such Request.
- 5.4. You can only cancel a Request by Requesting cancellation through the Access Channels within a live or mid-air transaction. Cancellation will however only be allowed where your Request has not yet been acted on by us. If we are able to cancel your Request you may be charged for such cancellation.
- 5.5. You hereby authorize us to effect such orders and act on such instructions in respect of your M-PESA Account as may be required by the Government or any court order or by a competent authority or agency under the applicable laws

6. REQUESTING A FACILITY

- 6.1. Upon opting into the Service, you will receive a confirmation message bearing your Overdraw Limit.
- 6.2. If you are not allocated an Overdraw Limit, you must continue to transact on your M-PESA Account in order to build a transaction history and enhance your credit score in order to be eligible an Overdraw Limit.
- 6.3. By accepting these Terms and Conditions, you agree and admit that we reserve the exclusive right to set the Overdraw Limit.
- 6.4. You may check your Overdraw Limit using the appropriate menu option provided on your Equipment through Safaricom USSD or M-PESA Business App.
- 6.5. You acknowledge that any Facility granted to you will result in an overdraft on your M-PESA Account up to the equivalent of the value of the Facility and Fee applicable to the Facility. The Fee will be added onto the Facility and deducted from your M-PESA Account. The Fee will include any applicable taxes, levies and excise duties applicable under the law.
- 6.6. You may Opt-In to the Service through more than one MSISDN in accordance with this Agreement and subject to repayment of any Overdraw Limit provided under the Service.
- 6.7. Your Request for a Facility will be appraised according to our Facility appraisal procedures. We reserve the right at our sole discretion and, without assigning any reason, to approve or decline such Request. Communication of our acceptance or decline of your Request will be via SMS sent to your Safaricom mobile phone number (MSISDN) and or Equipment.
- 6.8. Any Facility granted must be repaid in full within thirty (30) days from the date when the Facility was first granted (the first draw down date). You will not qualify for any new or additional Facility where any facility remains outstanding beyond the thirty (30) days or are in default of any of the Terms and Conditions of the Facility including these terms and Conditions.
- 6.9. You may Request for the Facility multiple times within the Facility Term subject to the Overdraw Limit.
- 6.10. You may opt-out of the service at any time if you so wish to, provided you have paid any outstanding loans

7. OVERDRAW LIMIT

- 7.1. We may from time to time prescribe the minimum and maximum Facility you may be able to Request on the Service. Such limits will be communicated through SMS, our websites, www.safaricom.co.ke or may obtained from any Safaricom Shop.
- 7.2. The Overdraw Limit is subject to review from time to time and we reserve the right to vary your Overdraw Limit without giving any reasons. We shall notify you of any variation to the Overdraw Limit and your continued use of the Service will constitute acceptance of your revised Overdraw Limit.

- 7.3. Where you have any outstanding Facility for more than thirty (30) days, your right to use the Service and any un-utilized Overdraw limit will be suspended forthwith.

8. CREDIT SCORING

Your Overdraw Limit and our continued approval of your Requests for a Facility will be determined by your credit score. Your credit score will be assessed based on various matters including the information obtained from your use of Safaricom Services, Fuliza, and the M-Shwari service and repayment history on your existing Overdraw Limit.

9. REPAYING THE FACILITY

- 9.1. Provided that no event of default (as outlined in this Agreement) has occurred it is agreed that the Facility shall be available on an ongoing/continuous basis for a period of thirty (30) days from the first date of utilisation of the Facility (The Facility Term).
- 9.2. After the expiry of the Facility Term, We reserve the sole discretion to renew or extend the Facility Term. Subject to our periodic review of your limit as set out in Clause 7, you acknowledge that the renewal or extension will be under the existing terms and conditions. You will be notified of each instance of renewal or extension of the Facility Term.
- 9.3. You irrevocably instruct us to automatically recover the Facility in full together with the Fee from the appropriate M-PESA Account. You acknowledge that, in order to effect these instructions, Safaricom shall debit the amounts due from the credits deposited or received into your M-PESA Account at any time until the Facility is cleared in full.
- 9.4. You may utilize the option to prompt manual or scheduled repayments of the Facility through the Access Channels by debiting any of your M-PESA Accounts.
- 9.5. We may terminate our relationship with you and suspend your access to the Service if you fail to repay the Facility in full together with any outstanding Fee within the Facility Term.
- 9.6. Any funds available in your M-PESA Account shall be applied towards Repayment of the amount due in the following order of priority:
- 9.6.1. First in repayment of all the Fees.
 - 9.6.2. Secondly towards repayment of the Facility.

10. EVENTS OF DEFAULT

An event of default occurs:

- 10.1. Where any Facility is due and unpaid for thirty (30) days or more, or
- 10.2. Where you have exceeded your Overdraw Limit; or
- 10.3. If any representations or statements or particulars made by you are found to be incorrect; or
- 10.4. If you commit any breach or fail to observe, keep or perform any of the terms, conditions, covenants or provisions of any other agreement between us and yourself in respect of the Facility; or
- 10.5. if there is reasonable apprehension that you are unable to pay your debts or we receive any notice that you have admitted any inability to pay your debts as they become due; or
- 10.6. if you are convicted under any criminal law in force related to use of the services or any other related services; or
- 10.7. If any judgement or decree in any legal proceedings is passed against you which is not satisfied within seven (7) days of demand, or
- 10.8. If a Garnishee or Attachment Order or a lien created against any of your deposits with us or assets maintained by you is made.

11. CONSEQUENCES OF DEFAULT:

- 11.1. At any time after an Event of Default has occurred which is continuing, we may, without prejudice to any other right or remedy granted to us under any law:
- 11.1.1. terminate the Services in accordance with clause 23 below;
 - 11.1.2. declare that the Facility (inclusive all Fees or charges) and all other amounts outstanding under these Terms and Conditions is immediately due and payable, whereupon you shall be required to settle the Facility with immediate effect; and
 - 11.1.3. hold any of your funds standing in credit with Safaricom and NCBA as collateral and security for any amounts outstanding and due from you in respect of the Facility or Service. You hereby agree and confirm that Safaricom and NCBA is entitled in its discretion to prevent or restrict you from withdrawing in whole or in part the funds in your accounts for so long as and to the extent of the amount outstanding in respect of your Loan without Safaricom or NCBA giving any notice to you and/or without incurring any liability to you whatsoever in that connection.
 - 11.1.4. have a right of lien and set off over funds held by you in any of your accounts with Safaricom or NCBA. Safaricom or NCBA may, without notice, set off against any amount due from any other account whether current, loan, or loans or any other type of account. A right of lien and setoff shall exist over savings and mobile saving accounts.

- 11.1.5.
- 11.1.6. submit information concerning the Event of Default to Credit Reference Bureaus as required under the Banking Act or any other regulatory body.
- 11.1.7. take reasonable measures including engaging an independent debt-collection agency, to recover the amount in default.

12. USING THE FACILITY

- 12.1. You may only utilize your Facility to complete the following transactions on your M-PESA Account (hereinafter "**Permitted Transactions**") to the extent that funds available on your M-PESA Account would otherwise be inadequate to complete payment for the Permitted Transaction:

- 12.1.1. Pay to Merchant;
- 12.1.2. Pay to Paybill;
- 12.1.3. Withdraw to Client Nominated number;
- 12.1.4. Withdraw to Agent;
- 12.1.5. Customer deposit;
- 12.1.6. Buy airtime.

We may from time to time add or withdraw the Permitted Transactions.

- 12.2. Your Facility will be applied strictly for completion of Permitted Transactions.
- 12.3. You accept that completion of the Permitted Transactions and all matters arising from or related to completion of the Permitted Transactions shall be strictly governed by the terms and conditions for the M-PESA Service.
- 12.4. We reserve the right to vary the Fees payable thereon from time to time having regard to the prevailing rules and regulations and our policies provided that increase of Fees and charges will be effected thirty days (30) days after issuance of a notice of the intended increment.

13. LIEN AND SECURITY RIGHTS

- 13.1. You acknowledge and accept that we shall have a general lien over (right to retain) all your property in our possession. Such property and assets include but are not restricted to cash, goods, securities or valuables deposited for safe custody as security, cheques presented, bills and any other movable or immovable property charged to secure repayment of any money, whether or not that money has been repaid, and also over all property in respect of which, by the general law, we have lien. Property held under lien in these terms and conditions shall be deemed to be held as security for the Facility, up to an amount equivalent to the aggregate of the outstanding principal on your Facility and the Recovery Expenses.
- 13.2. You hereby also constitute us as your attorney for the purposes of completing and perfecting any transactions in relation to your M-PESA Account or any other of your property held by us in lien for purposes of discharging your Facility, including the Recovery Expenses and unpaid Fees ("Outstanding Amounts").
- 13.3. A written notice of fourteen (14) days running from the date of issuance of the same to you shall be issued to advise you of our intention to realize sufficient amounts of your property held in possessory lien to settle any Outstanding Amounts. Any Repayment received after lapse of the notice will be accepted strictly on account and without prejudice to our rights.
- 13.4. You agree not to terminate or cancel registration of your Safaricom mobile phone number (MSISDN) when you have any Outstanding Amounts.

STATEMENTS

- 13.5. We shall from time to time, at your Request, provide you with statement(s) or activity report(s) ("the Mini Statement") in respect of your M-PESA Account on your Equipment through the STK Menu, USSD, M-PESA Business Portal or M-PESA Business App. You may also from time to time request Safaricom for statement(s) or activity reports in respect of your M-PESA Account through the same channels.
- 13.6. The Mini Statement will provide details of your last four (4) transactions on the Service or such other number of transactions as we may determine.
- 13.7. The Mini Statement will not be sent to you in printed form but will be delivered to you either by SMS to the Client Nominated Number or contact details associated with your M-PESA Account or such other electronic means as we may determine. You shall be responsible for the payment of any charges associated with delivery of the Mini Statement to you.
- 13.8. You may obtain your full statement or the Mini Statement in printed form from your nearest Safaricom Shop. You shall be responsible for payment of any charges payable for such printed statements.
- 13.9. The full statement and or Mini Statement will show all transactions carried out on your M-PESA Account during the period requested and or since the previous statement. You must check your statement carefully and inform us as soon as possible, of any errors or anomalies or transactions not made in accordance with your instructions.

- 13.10. You will be deemed to have accepted all entries in your Statement if you do not raise queries or objections on the entries therein within fifteen (15) calendar days from the statement date.
- 13.11. Save for a manifest error, the full statement and or Mini Statement issued to you aforesaid in respect of your M-PESA Account shall be conclusive evidence of the transactions carried out on your M-PESA Account for the period covered in the Mini Statement and or full statement.
- 13.12. We reserve the right to rectify discrepancies, add and or alter the entries in your full statements or Mini Statement, without prior notice to you. We will however inform you of any rectification, additions and or alterations effected on your statements within seven (7) days before the changes are effected.
- 13.13. You will be notified of all transactions on your M-PESA Account by way of SMS.

14. LOSS OF EQUIPMENT AND UNAUTHORIZED TRANSACTIONS

- 14.1. If you lose your Equipment or you for any reason you believe that your PIN may have been accessed by an unauthorized person, you shall immediately notify the Safaricom Customer Care Centre for assistance.
- 14.2. Until and unless we receive your notice of loss or unauthorized access of the PIN as above we shall remain authorized to accept any Requests on your M-PESA Account using your PIN.
- 14.3. You shall give us and any person acting on our behalf all necessary assistance in any investigations, all information as to the circumstances of the loss or possible misuse of your Equipment or PIN in order to enable us to take all reasonable steps mitigate the loss incurred or likely to be incurred as a result of loss of the Equipment or misuse or unauthorized access to your PIN.
- 14.4. You consent to the disclosure by us to third parties of such information as is relevant concerning your M-PESA Account in connection with such loss of your Equipment or possible misuse or unauthorized access of your PIN.

15. CUSTOMER COMPLAINTS

- 15.1. Complaints shall be made by calling or SMS 100 for prepaid, 200 for postpaid or 234 which is for M-PESA support. Alternatively, you can visit any Safaricom shop or access the Self-service using code 456.
- 15.2. We will take all reasonable measures within our means to resolve your complaints in accordance with the M-PESA Service User Terms and Conditions, Lipan a M-PESA Terms and Conditions and M-PESA Agency and Sub-Agency agreements. We will handle all complaints in accordance with our complaints handling procedures, which are available on request from any Safaricom Shop or the Safaricom Customer Care Centre. Where a notification regarding your complaint or any other matter is expected from us but not received, you are entitled to follow up on the complaint within a reasonable time after non-receipt of such notification.

16. FEES, CHARGES AND EXPENSES

- 16.1. You are responsible for the payment of all applicable Fee for the use of the Service. The Fee payable under this Service will be published in information pamphlets, daily newspapers, cash merchant outlets and on the NCBA and Safaricom website. Safaricom's Customer Care team will be on hand to assist you with the cost schedule if you are uncertain about the applicable charges.
- 16.2. All Fees are deducted at source and are subject to change at any time at our sole discretion.
- 16.3. The Fee payable under the facility will be deducted from your M-PESA Account. You shall pay to us and hereby accept that we entitled deduct from your M-PESA Account (without reference to you):
- 16.3.1. any Fee payable in respect of the Services;
 - 16.3.2. any legal charges including advocate and client costs incurred by us in obtaining legal advice in connection with the Service and your dealings with us or incurred by us in any legal, arbitration or other proceedings arising out of any dealings in respect the Service and all other Interest, expenses and taxes, duties, impositions and expenses incurred in complying with your Requests.
- 16.4. Except as may otherwise be notified, the Fee is inclusive of all applicable taxes including Value Added Tax at the prevailing rate. You hereby agree to pay all Fees.
- 16.5. You hereby agree to pay costs charges and expenses incurred by us in obtaining or attempting to obtain payment of any Facility owed under your M-PESA Account.
- 16.6. We shall, at the time when you make any Request on the Service notify you of the applicable Fee in order to afford you an opportunity to confirm your knowledge and acceptance of them.
- 16.7. We shall provide a detailed breakdown of the Fee incurred in the full statement and Mini statement. Please visit your nearest Safaricom Shop for a copy of the complete guide on our tariffs. The tariffs are also available on our websites at <https://www.safaricom.co.ke> and <https://www.ke.ncbagroup.com>.
- 16.8. Fees relating to your use of the M-PESA Service and the Lipa na M-PESA Service shall be strictly in accordance with the prevailing terms and conditions for M-PESA Service and the Lipa na M-PESA Service.

17. TAXES

All Repayments are inclusive any taxes payable by you. You hereby irrevocably grant us permission to revise the Fee upon any changes to taxes applicable.

18. YOUR PERSONAL INFORMATION

- 18.1. You hereby expressly consent and authorize us to disclose receive record or utilize your customer information or information or data relating to your M-PESA Account with respect to the Facilities granted under the Service and any details of your use of the Services:
- 18.1.1. between NCBA and Safaricom for the purposes of this Service and other services as we shall advise you;
 - 18.1.2. to and from our service providers, dealers, agents or any other company that may be or become our affiliate or subsidiary or holding company for reasonable commercial purposes relating to the Services;
 - 18.1.3. to a Credit Reference Bureau;
 - 18.1.4. to independent debt-collection agencies;
 - 18.1.5. to our lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
 - 18.1.6. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and
 - 18.1.7. in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 18.2. You authorize us to disclose any information relating to your M-PESA Account to any local, foreign or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as we may deem necessary.
- 18.3. You authorize us to disclose, respond, advise exchange and communicate the details or information pertaining to your M-PESA Account and or your Facility to third parties involved in the administration of your M-PESA Account and Facilities, underwriting of insurance policies, updating of databases, or provision of user support.
- 18.4. You shall notify your nearest Safaricom Shop in writing of any changes to Customer Information and KYC or update the same through the Equipment on your STK Menu, USSD or M-PESA Business App including but not restricted to your name and address. Until such notice is received, your Personal Information shall be deemed to be that which you provided in your application to register for the Service.

18.5. Collection of information

We are required by law to collect certain Personal Information and are legally obligated to deny you the service if such information is not availed.

Apart from the legal obligation mentioned above, we also need to collect your Personal Information for quality service delivery. Please note that although this is voluntary, without such information we may not be able to provide quality service.

18.6 Privacy

We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, as updated from time to time, explains how we treat your Personal Information, who we share your information with, and measures taken protect your privacy when you use our Service. This can be found on Safaricom's Data Privacy Statement at <https://www.safaricom.co.ke/dataprivacystatement/>. If unable to access the link or this website, please reach us on any of our customer care channels to receive a copy.

- 18.7 You shall notify your nearest Safaricom Shop in writing of any changes to your Personal Information or update the same through the Equipment on your STK Menu, USSD or Safaricom App including but not restricted to your name and address. Until such notice is received, your Personal Information shall be deemed to be that which you provided in your application to register for the Service

19. YOUR EQUIPMENT AND RESPONSIBILITIES

- 19.1. You shall at your own expense provide and maintain in safe and efficient operating order such Equipment necessary for the purpose of accessing the Services. You shall be responsible for ensuring the proper performance of your Equipment. We shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall we be responsible for any computer virus or related problems that may be associated with your access and use of the Services and Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and we shall not be responsible for losses or delays caused by any such service provider.
- 19.2. You shall follow all instructions, procedures and these terms and conditions and any other documents we may provide you concerning access and use of the Services and Equipment.

- 19.3. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your PIN secret and secure. You shall ensure that your PIN does not become known or come into possession of any unauthorized person. We shall not be liable for any disclosure of your PIN to any third party and you hereby agree to indemnify and hold us harmless from any loss and damage we may incur as a result of your intentional, negligent or reckless disclosure of the PIN.
- 19.4. You shall take all reasonable precautions to detect any unauthorized use of your Equipment, PIN and or the Services and immediately notify us and Safaricom to enable us to take steps to protect your M-PESA Account and M-PESA Account respectively.
- 19.5. You shall immediately inform us through the Customer Care Centre in the event that:
- 19.5.1. You have reason to believe that your PIN is or may be known to any person not authorized to know the same and/or has been compromised; or
 - 19.5.2. You have reason to believe that unauthorized use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 19.6. You shall at all times follow the security procedures we notify you from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your responsibility to keep Personal Information confidential. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized by you.

20. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the Service (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that we provide to you are vested either in Safaricom. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with any documentation or functionality on the Equipment, USSD, STK Menu or M-PESA Business App without Safaricom's and NCBA's prior written consent.

21. INDEMNITY

- 21.1. In consideration of Safaricom and NCBA complying with your instructions or Requests in relation the M-PESA Account, you undertake to indemnify us and hold us harmless against any loss, charge, damage, expense, fee or claim which the we may suffer or incur or sustain thereby and you absolve us from all liability for loss or damage which you may sustain from us acting on your instructions or requests or in accordance with these Terms and Conditions.
- 21.2. The indemnity in clause 21.1 shall also cover All demands, claims, actions, losses and damages of whatever nature which may be brought against any of us or which we may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the our control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by us.
- 21.3. The Indemnity in Clause 21.1 shall also cover any loss or damage that may arise from your use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs, any unauthorized access to your M-PESA Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment, any loss or damage occasioned by the failure by you to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by us as a consequence of any breach by these Terms and Conditions by you.

22. VARIATION AND TERMINATION OF RELATIONSHIP

- 22.1. We may at any time, upon notice to you, terminate or vary our business relationship with you and suspend or discontinue your registration and or access to the Service:
- 22.1.1. if you use the Service or Facility for unauthorized purposes or where we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
 - 22.1.2. if your M-PESA Account or agreement with Safaricom is terminated for whatever reason;
 - 22.1.3. if we are required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority to that effect or necessitating it;
 - 22.1.4. if we reasonably suspect or believe that you are in breach of these terms and conditions or other terms and conditions relating to Fuliza and/or M-Shwari (including non-payment of any amount due from you in any of these services where applicable);
 - 22.1.5. You are found to be using, holding or trading in Unregulated Currencies.

- 22.1.6. You are found to be trading or is part of businesses associated with using, holding or trading in Unregulated currencies, gambling and or betting.
 - 22.1.7. You are found to be engaging in Forex trading or operating Foreign Exchange Bureaus without the prerequisite approvals from relevant statutory bodies including the Central Bank of Kenya and the Capital Markets Authority.
 - 22.1.8. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of your safety or public access fees;
 - 22.1.9. to facilitate update or upgrade the contents or functionality of the Services from time to time;
 - 22.1.10. where your M-PESA Account becomes inactive or dormant or is deemed abandoned in line with the Unclaimed Financial Assets Act;
 - 22.1.11. if we decide to suspend or cease provision of the Services for commercial reasons or for any other reason as we may determine.
- 22.2. You may cancel registration for the Service at any time through your Equipment or at your nearest Safaricom Shop. You may however not cancel registration if you have an outstanding and unpaid Facility, Overdue Amount or unpaid Fees.
- 22.3. Termination shall not affect any accrued rights and liabilities of either party and, in particular, shall not affect your obligations to meet any liabilities incurred prior to such termination.

23. BREACH OF TERMS AND CONDITIONS

In the event of any breach of these terms and conditions, the we may in circumstances where you fail to comply or fail procure compliance with the terms of a notice consequently served on you, require immediate repayment in full of the Facility and/or forthwith terminate the contractual relationship with you without any consequential liability to you or any other person.

24. DISPUTE RESOLUTION AND JURISDICTION

- 24.1 You may contact the Safaricom Customer Care Center to report any disputes, claims or discrepancies in your M-PESA Account or in respect of the Service.
- 24.2 Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to a Kenyan court of competent jurisdiction.
- 24.3 To the extent permissible by law, the determination of the court shall be final, conclusive and binding upon the parties hereto.
- 24.4 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

25. DEATH OR BANKRUPTCY

On your death or bankruptcy, your obligations shall remain in full force and effect until such a time as they shall be duly satisfied.

26. NOTICES

Without prejudice to any other clause in these terms and conditions, all notices concerning the Service may be sent via SMS to the Safaricom mobile phone number (MSISDN) associated with your M-PESA Account and shall be deemed received if we do not receive a delivery failure notice.

27. MISCELLANEOUS

- 27.1. These terms and conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal representatives and successors.
- 27.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- 27.3. We may vary or amend these terms and conditions and applicable tariffs at any time and without consultation to you provided that the Safaricom and it's Bank partner shall upon reasonable notice, inform you of any such variations or amendments in advance of their intended commencement date and such notice and particulars of the variations including the amended version of these terms and conditions shall be published on the NCBA and Safaricom websites and may, additionally, be published in posters or pamphlets and availed at Safaricom's Agents outlets or in the daily newspapers or by any other means as we may determine.
- 27.4. No failure or delay by either yourself or on our part in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
- 27.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

- 27.6. If any provision of these terms and conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.
- 27.7. Any variations or amendments to these terms and conditions shall be binding upon you as fully as if the same were contained in these terms and conditions.
- 27.8. Your contractual relationship with us is governed in all respects by the Laws of Kenya and the parties submit to the exclusive jurisdiction of the Kenya courts.

Safaricom and NCBA are regulated by the Central Bank of Kenya for purposes of the Service.

You have the right to seek independent legal counsel in order to fully understand the implications and potential consequences of agreeing to these Terms and Conditions prior to "opting-in". You shall be deemed to have read, understood and accepted to be bound by these Terms and conditions (which may be amended by Us from time to time) by selecting the "opt-in" option.