



LIPA NA M-PESA TERMS AND CONDITIONS (2014)

These Terms and Conditions together with the application form (together "the Agreement") contains the complete terms and conditions that apply to **Client's** participation in Safaricom's M-PESA mobile payment system (hereinafter the Services) and supersedes all other agreements entered into between the Merchant and Safaricom in relation to the provision of M-PESA Service (defined below). 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 Pay Bill Accounts;

"Cash" means currency notes and coins constituting the legal tender of the Republic of Kenya which, as the context requires: may be offered by a Customer in exchange of E-Money through the M-PESA system and subsequently credited to the Client's M-PESA Account; and may be paid to the Client pursuant to a Withdrawal Request Instruction given by the Client to Safaricom;

"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;

"Customer" means an M-PESA user who uses the M-PESA System to pay money due to The Client and "Customers" shall be construed accordingly;

"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;

"Effective Date" means the date upon which the Client's M-PESA Account is activated by Safaricom;

"EFT" means electronic funds transfer of the Client's entitlement to Cash held in its M-PESA account, from the Trust Account to the Client's designated bank account and includes Real Time Gross Settlement transfers;

"Intellectual Property Rights" means, in respect of each Party, such Party's proprietary rights, title and interest 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;

"M-PESA Account" means the account belonging to the Client created in the M-PESA system through which the Client receives E-money payments from Customers;

"M-PESA Service" or **"Service"** means the mobile money transfer service provided by Safaricom and envisaged under this Agreement through which Customers can make E-money payments to the Client;

"M-PESA System" or **"M-PESA"** means the system operated by Safaricom providing the M-PESA Services and "M-PESA User" means either of The Client or the Customer 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 Global System for Mobile Telecommunication "GSM" Network;

"Network" means the Global System for Mobile telecommunication ("GSM") system operated by Safaricom;

"Transaction" means any movement of e-money or cash from one M-PESA system participant to another pursuant to instructions initiated on the M-PESA System and includes reversals and EFTs made by the Trustee to the Client.

"Trustee" means the M-PESA Holding Company Limited which, under the Declaration of Trust dated 23rd January 2007 and the Amendment Deed dated 19th June 2008 executed by the Trustee and available for inspection at www.safaricom.co.ke, holds Cash in trust accounts on trust for all M-PESA customers;

"Withdrawal Request Instruction" means an instruction given to Safaricom by the Client requesting Safaricom to redeem Cash on the Client's behalf in exchange of the E-Money held in the Client's M-PESA account and to send it by EFT to the Client's nominated bank 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

This Agreement shall be for an initial period of twelve (12) months (the **"Initial Term"**) from the Effective Date unless otherwise earlier terminated. Upon expiry of the Initial Term, this Agreement shall automatically renew for a 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 by Safaricom in writing unless terminated in accordance with the terms of this Agreement.

3. OPERATION AND SCOPE

3.1. The Client 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 Client shall be subject to the terms of this Agreement; the M-PESA website access terms and conditions as may be notified to the client; and the Customer Terms and Conditions as may be published by Safaricom from time to time.

3.3. With effect from the Effective Date and for the duration of the Initial Period, Safaricom shall:

3.3.1 Allocate a Business Number or Business Numbers through which Customers may make payments to the Client's M-PESA Account through the Lipa na M-Pesa service functionality on the Customer's M-PESA menu. For the avoidance of doubt the Business Number or Business Numbers remain the property of Safaricom and Safaricom may, with reasonable prior notice to the Client, re-number, re-assign, re-allocate or withdraw a

Business Number(s) PROVIDED that Safaricom shall not tamper with the M-Pesa balances.

- 3.3.2 Grant secure access rights to the M-PESA Website through which the Client may manage its M-PESA Account. For the avoidance of doubt the M-PESA Website is proprietary and any material downloaded from it is Confidential Information.
- 3.3.3 Provide customer service support to the Client;
- 3.3.4 Provide customer service support to Customers using the Lipa na M-PESA Service;
- 3.3.5 Credit the Client's M-PESA account with E-Money upon receipt of E-Money paid through the M-PESA System;
- 3.3.6 Prepare on demand and in any event within one (1) Business Day (the "Settlement Period") an EFT of the Cash equivalent of accrued E-Money (less any charges and commissions) to the Client upon receiving a Withdrawal Request Instruction;
- 3.1 With effect from the Effective Date and for the duration of the Initial Term, the Client shall:
 - 3.4.1 Reconcile and receipt payments received on the M-PESA System through its M-PESA Account;
 - 3.4.2 Initiate Withdrawal Request instructions to Safaricom for redemption of accrued E-Money;
 - 3.4.3 Authorize Safaricom to debit charges and commissions to its M-Pesa Account for providing the service;
 - 3.4.4 Comply with Safaricom's charges for using the Service as may be notified to it by Safaricom in writing from time to time;

4. ACTIVATION OF THE M-PESA ACCOUNT

- 4.1 This agreement comes into effect upon activation of the M-PESA Account by Safaricom following: (i) the acceptance of these terms and conditions and; (ii) successful completion of KYC vetting procedures conducted on the Client by Safaricom.
- 4.2 If the Client fails to produce the necessary KYC documents as set out in 4.1 above, or fails to satisfy the minimum KYC requirements, Safaricom will refuse to activate the M-PESA 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 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 to initiate and complete the reversal in accordance with 5.1 in the event of a manifest error, then the Client consents to, Safaricom to initiate and complete the reversal. At all times Safaricom shall only make the reversal having due regard to the circumstances of the erroneous payment.
- 5.3 Where a dispute in relation to a reversal arises, Safaricom may suspend the Client's M-PESA account to facilitate an amicable resolution of the dispute.

6. SERVICE FEES

The Service shall be subject to the charges and minimum/maximum transaction values appointed by Safaricom from time to time. Safaricom may by notice from time to time vary the charges and minimum/maximum transaction values.

7. CONFIDENTIALITY

- 7.1 Each party warrants that it will treat in confidence all Confidential Information which it acquires as a result of the operation of this Agreement and to afford it the same protection afforded to its own Confidential Information.
- 7.2 Neither party will reveal any Confidential Information to any third party (including public statements) without the 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.

- 7.3 Safaricom may 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 regulatory requirements (b) legal process; (c) enforce the terms of this Agreement; (d) respond to claims that the Client's use of the M-PESA Service violates the rights of third-parties; or (e) protect the rights, property, or personal safety of Safaricom, its subscribers and the public. Where such information is required for any of the purposes above, the Client shall provide such assistance as may be reasonably required by Safaricom to ensure compliance.

8. WARRANTIES, INDEMNITIES & LIMITATION OF LIABILITY

- 8.1 The Client 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 of any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances anywhere in the world. The Client shall notify Safaricom in writing within forty eight (48) hours after any of these representations and warranties ceases to be true.
- 8.2 The Client warrants that it has obtained all the necessary approvals (whether internal or regulatory) to use the Service.
- 8.3 Each party shall indemnify the other, and keep each other indemnified, from and against any and all loss, damage or liability, costs and expenses (including legal expenses) howsoever arising and incurred by the other party resulting from (i) any breach of this Agreement; or (ii) 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 this Agreement.
- 8.4 The Client shall indemnify and 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 Client'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 CLIENT OR ANY OTHER PERSON WHERE:**
 - 8.5.1 **THE TRANSACTION AMOUNT SOUGHT BY THE CUSTOMER IS BELOW THE MINIMUM OR ABOVE THE MAXIMUM LIMITS AS COMMUNICATED BY SAFARICOM FROM TIME TO TIME;**
 - 8.5.2 **THE CUSTOMER HAS ENTERED INCORRECT DETAILS AND THE PAYMENT IS MADE TO THE WRONG MPESA SYSTEM PARTICIPANT;**
 - 8.5.3 **THE CLIENT'S HARDWARE, SOFTWARE OR INTERNET PROVIDER'S SERVICE IS DYSFUNCTIONAL;**
 - 8.5.4 **THE TRANSACTION IS SUSPICIOUS OR FRAUDULENT RESULTING IN LOSSES TO A THIRD PARTY;**
 - 8.5.5 **THE TRANSACTION DETAILS RECEIVED ARE INCORRECT;**

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 party 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 any infringement or alleged infringement of any intellectual property rights arising as a result of carrying out their obligations under this Agreement.

9. SUSPENSION

Safaricom may, with reasonable notice where practicable, suspend the availability of the Service to The Client wholly or partially for any reason, including without limitation, where (i) The Client fails to comply with any laws, rules or regulations of the Kenya regarding the Service; (ii) The Client fails to observe any term or obligation set out herein; or (iii) the Client carries on prohibited activities using the M-PESA service as set out in Clause 12.

10 TERMINATION

10.1. Termination on Notice

Either party may terminate the agreement (i) by giving thirty (30) days prior notice in writing; or (ii) If either of the Parties commits a breach of any material obligation imposed on it in terms of this Agreement and fails to remedy such breach within a period of 30 (thirty) days from the date on which written notice is given to the party in breach without prejudice to the right to hold the Defaulting Party liable in damages as a result of such termination.

10.2 Termination by Safaricom

10.2.1 Safaricom may terminate this Agreement immediately if the Client uses or is reasonably suspected of using the M-PESA Service in furtherance of any unlawful or criminal activity or for any conduct prohibited under clause 12.

10.2.2 Safaricom may terminate the agreement if the M-Pesa Account remains inactive for a period of six (6) months. For the avoidance of doubt, an 'inactive' M-Pesa Account includes one which has not had any credit entries over a continuous period of six (6) months.

10.3 Termination not to Affect Remedies

The 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 Client shall solely determine, collect, remit and declare all taxes and income resulting from or in consequence of using the 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 Client for any failure by the Client to comply with its obligations under this clause and the Client shall indemnify Safaricom from any loss or damage arising from any failure to comply with its obligations under this clause.

11.2 Each Party shall bear and be responsible for its own taxes, charges, impositions or levies imposed by law.

12 PROHIBITED USAGE & CONDUCT

12.1 You agree to not use the Services to:

- a) Conduct anything that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable or criminal;
- 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 anything that makes 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 activity that infringes any intellectual property rights;
- f) Conduct any activity whether solicited or unsolicited, relating to or remotely connected to SPAM, junk mail, pyramid schemes, pornography, unlicensed gaming or gambling or any other form of solicitation;
- g) Conduct any activity that makes available 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 or regulation;
- j) Collect or store personal data about other users without their express authority; or
- k) Aggregate payments or create 'collection accounts' on behalf of third party persons without the written consent of Safaricom.

13 GOVERNING LAW AND JURISDICTION

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

14 DISPUTE RESOLUTION

In the event that any dispute has arisen and the parties have not been able to settle the same, within thirty (30) days then, any party may elect to commence arbitration. Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within 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. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations. 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.

15 AMENDMENT

This Agreement, including its schedules may be amended by Safaricom by way of bulletin, and notices. You acknowledge 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 the Client, by operation of law or otherwise, without the prior written consent of Safaricom. Safaricom may assign any right or obligation under this Agreement without the prior written consent of the Client.

17. 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 specified above. Notices shall be

deemed given on the day actually received by the party to whom the notice is addressed.

18. 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.

19 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.

21 FORCE MAJEURE

Notwithstanding any provision contained in this Agreement, neither party shall be liable to the other to the extent fulfilment or performance of any terms or provisions of this Agreement is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or availability failure; fires; floods; acts of God; government or regulator action; 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. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of such event.

22 GENERAL

22.1. The Parties shall comply with all legal requirements applicable to their role in effecting Transactions.

22.2. This Agreement may be signed in any number of counterparts, all of which shall constitute one and the same instrument.

22.3. This Agreement may be accepted electronically in accordance with the provisions of the Kenya Information and Communications Act or any other applicable law.

We/I _____ Limited

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

Signed by (Full Name)

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Designation

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Signature

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In the presence of:

Name

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Address

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Signature

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