

## **M-PESA Access Channels Terms and Conditions**

### **1. Agreement and Acceptance**

1.1. These Terms and Conditions govern the access and use of the M-PESA Access Channels and the content and services offered to you through the Access Channels.

1.2. In order to access any of the M-PESA Access Channels, you will be required to accept these terms and conditions.

1.3. You will be deemed to have carefully read, fully understood and unconditionally agreed to be bound by these terms and conditions by:

- I. Completing the registration process and confirming that you have read and accepted these terms; or
- II. Viewing, accessing or using the Access Channels or any content on the Access Channels.

### **2. Incorporated Terms**

2.1. In addition to these terms and conditions, the:

- i. “M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) Terms and Conditions”;
- ii. the published terms and conditions that relate to any other Safaricom product/service that you may be using in conjunction with the M-PESA Access Channels; and
- iii. instructions, guides and manuals on the use and access of the Access Services that may be communicated by Safaricom from time to time

2.2. In the event of any inconsistency between these terms and conditions and the M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) Terms and Conditions or any other relevant Terms and Conditions, these terms and conditions shall prevail.

### **3. Definitions**

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

“**Access Channels**” or “**M-PESA Access Channels**” means the gateway provided by Safaricom to the Client to access the Client’s M-PESA Account through either of the following channels:

M-PESA web portal which is located at <https://org.ke.m-pesa.com>; or

M-PESA business payment portal which is located at

<https://pay.m-pesaforbusiness.co.ke/>

; or

via the designated USSD short code on the Client's MSISDN that is attached to the Client's Till Number. The designated USSD short code is \*234#

The above channels shall be collectively and individually referred to as M-PESA Access Channels as the context may require.

Safaricom reserves the right to change the site addresses or the designated USSD. In the event of such a change, we shall make an effort to notify you;

**"Client"** means any person who has registered to use the M-PESA Service and has been granted access by Safaricom to the Access Channels (an includes its representatives, agents, employees, successors in title and assigns);

**"Confidential Information"** means without limitation, all information, software, data, manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets, M-PESA User data 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;

**"Credentials"** refer to the PIN, User ID, Password, One-Time Password (OTP) or any other additional authentication methods implemented by Safaricom at its discretion belonging to the Users for authentication/verification by Safaricom of the Users identity.

**"Intellectual Property Rights"** means Safaricom's proprietary rights, title and interest in and to any and all names, logos, trademarks, copyrights, patents and all other intellectual property of whatever nature, description or form, vested in Safaricom or acquired by Safaricom at any time thereafter;

**"M-PESA Account"** means the account belonging to the Client created in the M-PESA System activated in accordance with the M-PESA (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) Terms and Conditions;

**"User"** means the Primary User and/or Secondary User authorized by the Client to access the M-PESA Access Channels on behalf of the Client. Primary User means the representative of the Client authorized by the Client to access the M-PESA Access Channels on behalf of the Client. Secondary User means a person added by a Primary User and has restricted rights to use and access the Access Channels.

**"Security Procedure"** means the procedures established by Safaricom for the purpose of:

- verifying the identity of Users;

- granting Users secure access to the Access Channels; and/or
- authenticating instructions given by Users through the Access Channels.

Security Procedures include, but are not limited to, the authentication of Credentials.

3.2. In these terms and conditions, unless the context otherwise requires

3.2.1. The word “**User(s)**” is used in reference to Client, Primary Users and Secondary Users collectively.

3.2.2. The use of the terms “**You**” or “**Your**” shall be in reference to the Client and/or the User(s);

3.2.3. The use of the terms “**We**”, “**Us**” or “**Our**” shall be in reference to the Safaricom;

3.2.4. 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

3.2.5 Headings to clauses are used for convenience only and shall not affect the construction and interpretation of these terms and conditions.

#### **4. Use of the Access Channels**

4.1. You agree to use the Access Channels in accordance with these terms and conditions, the M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) Terms and Conditions and any other relevant terms and conditions.

4.2. You agree that you will not reproduce, duplicate, copy, sell, trade or resell any of the contents in the Access Channels for any purpose.

#### **5. Access Security**

5.1. The Client agrees that all Security Procedures used and implemented by Safaricom are reasonable and adequate.

5.2. The Client shall safeguard, maintain as confidential and shall diligently safeguard from disclosure and/or use by any unauthorized person(s) the Credentials and all other items included in the security procedures, or any other authentication methods/devices, as Safaricom may provide from time to time, from being disclosed to any third parties or unauthorized persons.

5.3. The Customer further agrees and undertakes that:

5.3.1. Save for requiring the input of Credentials, Safaricom is under no obligation to make any investigations regarding the identity of any User gaining access to the Access Channels including the Credentials provided during the security procedure, and any other additional security methods implemented by Safaricom at its discretion;

5.3.2. The Client will be responsible for the use of the Credentials and any other authentication methods/devices used to access the Access Channels by authorized personnel, unauthorized personnel or any other third parties; and

5.3.3. Safaricom can reasonably rely on the authenticity of transactions conducted by a User accessing the Access Channels by use of the security procedures. If Safaricom has reason to doubt the genuineness of any instruction or transaction, Safaricom may, in its discretion, choose not to process the instruction and/or transaction initiated through the Access Channel.

5.4. The Client, at the Client's own risk and responsibility, irrevocably and unconditionally accepts as binding any transaction and/or instruction made or given in connection with the M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) by authorized personnel, unauthorized personnel or any other third parties using the Credentials. Safaricom's records of any transaction or instructions processed in connection with the M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) shall constitute binding and conclusive evidence of such transaction or instruction for all purposes.

5.5. If a client knows or suspects that anyone other than the Users knows the Credentials, you must promptly notify us.

## **6. Equipment**

You will need, at your own expense, to acquire all hardware or software ("Equipment") necessary to access the Access Channels. If your Equipment does not support the relevant technology allowing you to access the Access Channels, then you will not be able to use the Access Channels.

## **7. Confidentiality**

7.1. Each party warrants that it will treat in confidence all Confidential Information which it acquires as a result of using and accessing the Access Channels 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 Access Channel 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. Intellectual Property Rights**

We retain all Intellectual Property Rights in all material, including logos and other graphics and multimedia works published on or via the Access Channels.

## **9. Changes to the Access Channels**

From time to time, we may make changes to the Access Channels (including, but not limited to, introducing new features, removing existing features, increasing security procedures). You may also need to agree to new terms if you want to continue to use the Access Channels.

## **10. Liability**

We shall not be liable for any loss of use, profits or data or any indirect, special or consequential damages or losses, whether such losses or damages arise in contract, negligence or tort, including without limitation to the foregoing any losses in relation to:

- Your use of, reliance upon or inability to use our Access Channels;
- The deletion with or without notice or cause of any of your data or information stored on the Access Channels;
- Any loss of your data or material resulting from delays, non-deliveries, missed deliveries, service interruptions or a failure, suspension or withdrawal of all or part of the Access Channels at anytime;
- The removal from the Access Channels of any material sent or posted by you on or via the Access Channels and/or the blocking or suspension of your access to the Access Channels or any part of it in accordance with these terms.

## **11. Indemnity**

11.1. You irrevocably agree to indemnify us and any of our third party providers (together "indemnified persons") fully against and to hold the indemnified persons harmless on demand from all losses, costs, proceedings, damages, expenses (including reasonable legal costs and expenses) or liabilities howsoever incurred by the indemnified persons as a result of any claim by a third party resulting from your use of the Access Channels in breach or non-observance of these terms.

11.2. We shall notify you of any claim that we or any of the other indemnified persons receives and you hereby agree to provide us and/or any of the indemnified persons with full authority to defend or settle such claims and shall provide us and/or any of the indemnified persons with all reasonable assistance necessary to defend such claims, at your sole expense.

## **12. No Warranties**

We do not guarantee that the Access Channels, or any content on it, will always be available or be uninterrupted.

## **13. Hyperlinks and Third-Party Sites**

The Access Channels may contain links to other sites that carry information and material produced by other parties. While we try to provide links only to reputable sites, we cannot accept responsibility or liability for the information provided on other sites. A link from our Access Channels to any other site does not mean that we have scrutinized or endorsed the owners or administrators of such sites or their business or security practices and operations. As such, any use of third-party services flowing from such links is carried out entirely at your own risk and we accept no liability for any losses that you may suffer as a result.

## **14. Suspension and Termination**

14.1. We reserve the right to suspend or withdraw or restrict the availability of all or any part of the Access Channels, until further notice, with immediate effect:

for business, operational or maintenance reasons;

if we reasonably believe You are using the Access Channels in a way which constitutes a breach of these Terms, the M-PESA Services (B2C, B2B, Bulk Payments, Lipa Na M-Pesa, Short Term Paybill and SurePay) Terms and Conditions and other relevant terms or is likely to be found to be in furtherance of any unlawful or criminal activity.

14.2. We will endeavor, where possible, to provide you with reasonable notice of such suspension.

## **15. Waiver, Severability and Assignment**

15.1. Our failure to enforce any provision of these terms and conditions is not a waiver of our right to do so later.

15.2. If any provision of these terms and conditions is found unenforceable, the remaining provisions will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible.

15.3. You may not assign any of Your rights under these terms and conditions, and any such attempt will be void. We may assign our rights under these terms and conditions.

## **16. Assignment**

16.1. Safaricom may assign any right or obligation herein without the prior written consent of the Client.

16.2. The Client may not assign any right or obligation herein, by operation of law or otherwise, without the prior written consent of Safaricom.

## **17. Amendment**

We amend these terms and conditions from time to time. Every time you wish to use the Access Channels, please check these terms to ensure you understand the terms that apply at that time.

## **18. Disclosure and Data Retention**

18.1. By accepting these terms and conditions, you agree that you have read and understood and accept to be bound by our privacy statement which is available on the following URL: <https://www.safaricom.co.ke/dataprivacystatement/>

18.2. You hereby expressly consent and authorize Safaricom to disclose any Transaction data or information pertaining to your M-PESA Account to any law enforcement, investigative or regulatory authority including without limitation the Kenya Police, Central Bank of Kenya, Kenya Anti-Corruption Commission, Kenya Revenue Authority or any competent Anti-Money Laundering authority for the purposes of any genuine enquiry or investigation or to any third party to which you have separately, either in writing or electronically through the M-PESA System or otherwise, authorized Safaricom to disclose Transaction data or information pertaining to you or your usage of Safaricom Products and Services, including your M-PESA Account provided that any consent given to Safaricom to disclose information to any third party (not being law enforcement, investigative or regulatory authority) pursuant to this clause may be withdrawn at any time.

18.3. You acknowledge that where your M-PESA Account is determined by a competent judicial authority as containing proceeds of any criminal or money laundering activities, Safaricom may be required by law to surrender funds in your account to any statutory fund created for the purpose of recovering the proceeds of crime.

18.4. You acknowledge that Safaricom may retain your Transaction data for a period of up to seven (7) years or as may be required by any law or regulation.

## **19. Dispute Resolution and Governing Law**

19.1. In case of any disputes, or claims or to report Account discrepancies, you may contact Safaricom Customer Care on business support line 2222, or 100 for pre-pay or 200 for post-pay.

19.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Safaricom Customer Care may be brought to the attention of the Safaricom Manager responsible for the operations of the M-PESA Services for resolution.

19.3. Any dispute arising out of or in connection with this Agreement that is not resolved by the Safaricom Manager responsible for the operations of the M-PESA Services shall be referred to a Kenyan court of competent jurisdiction.

19.4. Nothing in this section shall be deemed to exclude any legally recognized dispute resolution body from receiving, hearing, and determining the dispute.

This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.