

M-PESA BUSINESS TO BUSINESS (B2B) CONTRACT TERMS AND CONDITIONS

These terms and conditions form the contract between:

- (1) _____
_of _____
- (2) P.O. Box _____ City/Town _____
- (Hereinafter Client, which expression shall include its successors in title and assigns); and
- (3) SAFARICOM LIMITED of P.O. Box 66827 - 00800, Nairobi (hereinafter Safaricom, which expression shall include its successors in title and assigns).

BACKGROUND:

This agreement 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 Business to Business (B2B) Services) and supersedes all other agreements entered into between the Client and Safaricom in relation to the provision of M-PESA B2B 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.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

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

"Cash" means currency notes and coins constituting the legal tender of the Republic of Kenya which, when offered by the Client to the Custodial Trustee, is held in trust for the Client by the Custodial Trustee in a Trust Account and is represented in the M-PESA system at par value as E-Money;

"Custodial Trustee" means the M-PESA Holding Company Limited which holds in trust for all M-PESA customers Cash paid into the Trust Account;

"Customer" or "Recipient" means an M-PESA business user who receives remittance from The Client, for the purposes of B2B an M-PESA business user is an organisation registered with Safaricom for an M-PESA Paybill Account, M-PESA Buy Goods Account, Lipa na MPESA, or an M-PESA Bulk Payments (B2C) Account and the words

"Customers" or "Recipients" shall be construed accordingly;

"E-Money" means the electronic value issued by Safaricom which represents an entitlement to an equivalent amount of the Cash held by the Custodial Trustee in respect of the purchase of such electronic value;

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

"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 Signature Date or acquired by such Party at any time after the Effective Date;

"M-PESA Service" means the mobile money transfer service provided by Safaricom and envisaged under this Agreement (including the procedure, systems, and software that Safaricom has developed) through which the Client can make payments to Customers under the Business to Business (B2B) functionality;

"M-PESA System" or "M-PESA" means the system operated by Safaricom providing the MPESA Services;

“M-PESA B2B Account” means an M-PESA Bulk Payments (B2C) Account, an M-PESA Paybill Account or an M-PESA Buy Goods Account/ Lipa na M-PESA Account activated in accordance with clause 3;

“Network” means the Safaricom 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 any movement of E-Money from the Client to Recipients or any cash deposit or withdrawal made to or against the Trust Account by the Client;

“Trust Account” means the trust accounts held in commercial banks and maintained by the Custodial Trustee comprising Cash entrusted to the Custodial Trustee for and on behalf of all M-PESA users.

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 Limited 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 a period of twelve (12) months (the Initial Term) from the Effective Date of this Agreement.

2.2 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 in writing unless terminated in accordance with the terms of this Agreement.

3. ACTIVATION OF BUSINESS TO BUSINESS ACCOUNT AND COMING INTO EFFECT OF TERMS AND CONDITIONS

3.1 This Agreement comes into effect upon activation of the M-PESA B2B Account by Safaricom following KYC vetting procedures conducted on the Client by Safaricom.

3.2 Prior to activation of the M-PESA B2B Account, the Client shall ensure it has provided Safaricom with the necessary Know Your Customer (KYC) documents as may be prescribed by Safaricom.

3.4 If the client fails to produce the necessary KYC documents as set out in 3.2 above, or fails to satisfy the minimum KYC requirements, Safaricom will refuse to activate the M-PESA B2B 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 B2B 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.

4 OPERATION AND SCOPE

4.1 The Client hereby agrees to abide by the M-PESA operational procedures as may be prescribed by Safaricom from time to time.

4.2 With effect from the Effective Date and for the duration of the Agreement, The Client shall:

4.2.1 Bank Cash in the Trust Account equivalent to the aggregate amount of E-Money The Client wishes to remit to its Recipients at any one time;

4.2.2 Instruct Safaricom to make remittances from the Client’s M-PESA B2B Account to nominated Recipients through the M-PESA B2B Interface and hereby irrevocably instructs Safaricom to levy the charges for the M-PESA Service from the Client’s M-PESA B2B account;

4.2.3 Take all reasonable steps to ensure that Customers receive the gross amount of their payments without set off, counterclaim or deduction of charges;

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

- 4.3.1 Create the Client on the M-PESA System as an "Organization";
- 4.3.2 Train the Client staff to enable them effectively perform remittance transactions on the M-PESA System and/or the M-PESA B2B Interface;
- 4.3.3 Facilitate the Issuance of E-Money to the Client upon confirmation by Custodial Trustee of the value of Cash banked in the Trust Account comprising the aggregate Transaction value, as the case may be;
- 4.4 During the subsistence of this Agreement, the Client undertakes that it shall at all times comply with such reasonable guidelines as may be communicated to the Client by Safaricom in writing from time to time.

5 SERVICE FEES

- 5.1 The Service shall be subject to the Charges and Transaction Values set out in Schedule 1 or as otherwise communicated by Safaricom to the Client.
- 5.2 Safaricom may by notice and from time to time vary the Charges and Transaction Values.
- 5.3 The Client shall pay all monies due to Safaricom without set off, counterclaim or deduction.

6 CONFIDENTIALITY

- 6.1 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.
- 6.2 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.

7 PERMISSIBLE PURPOSE & PROHIBITED USAGE AND CONDUCT

- 7.1 The Client hereby undertakes to use the M-PESA services only for the purpose set out in this agreement (i.e. the bulk payment of various payments to Customers) and shall not vary or modify the purpose without the prior written consent of Safaricom.
- 7.2 The Client agrees not to use the M-PESA B2B 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; 1.3 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.
- 1.4 You shall not make available to any third party any Confidential Information (including without limitation, transaction data) unless compelled by law to do so.

- f) Conduct any business whether unsolicited or not, relating to or remotely connected to SPAM, junk mail, pyramid schemes, pornography, unlicensed gaming, unlicensed 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, the Network 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.

7.3 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.

7.4 You shall not make available to any third party any Confidential Information (including without limitation, transaction data) unless compelled by law to do so.

8 INDEMNITY & LIMITATION OF LIABILITY

8.1 The Client shall indemnify Safaricom, and keep Safaricom indemnified, from and against any and all loss, damage or liability, whether criminal or civil, suffered, any legal fees and costs incurred by Safaricom resulting from a material breach of this Agreement by The Client including breaches caused by any act, neglect or default of The Client or any third party claim in respect of any matter arising from any person's conduct, provided that the liability has not been incurred through any default by Safaricom in relation to its obligations under this Agreement and provided that:

- (i) Safaricom shall promptly notify the Client of the Claim in writing stating the nature of the claim, total monetary compensation/ relief sought nature;
- (ii) Safaricom shall cooperate with the Client at Client's expense in all reasonable respects in connection with the claim and that upon written notice by Safaricom allow Safaricom to assume and control the defense of such claim; and
- (iii) the Client shall not enter into any settlement or compromise without the prior written consent of Safaricom.

8.2 Subject to the provisions of this Clause 8, Safaricom shall indemnify the Client, and keep The Client indemnified, from and against any and all loss, damage or liability, whether criminal or civil, suffered, any legal fees and costs incurred by the Client resulting from a material breach of this Agreement by Safaricom including breaches caused by any act, neglect or default of Safaricom 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 by the Client in relation to its obligations under this Agreement and provided that: (i) Client shall notify Safaricom of the Claim in writing within seven (7) calendar days stating the nature of the claim, total monetary compensation/ relief sought nature; (ii) the Client shall cooperate with Safaricom at Safaricom's expense in all reasonable respects in connection with the claim and that upon written notice by Safaricom allow Safaricom to assume and control the defense of such claim; and (iii) the Client shall not enter into any settlement or compromise without the prior written consent of Safaricom.

8.3 Safaricom specifically excludes liability from any loss or damage arising:

8.3.1 where the transaction amount requested by The Client is below the minimum or above the maximum limits for transactions on the M-PESA System as set out in Schedule 1 (Charges and Transaction Values) or as may be otherwise communicated to the Client by Safaricom, except where The Client makes a request to Safaricom for changes to the minimum or maximum amount, which variation may be made at the sole discretion of Safaricom;

8.3.2 where the Client has entered an incorrect Recipient's Business Account number and the payment is made to the wrong Business Account holder;

8.3.3 where the Client has exceeded transaction/daily or monthly or annual limits for transactions and other usage on their M-PESA account;

8.3.4 where the Recipient's Business Account is not active;

8.3.5 where the Client's hardware, software or internet service provider's service is not functioning properly;

8.3.6 where unforeseen circumstances prevent the execution of a Transaction despite reasonable precautions being taken by Safaricom;

8.3.6 where such damage is indirect, special or consequential in nature.

8.4 Safaricom's maximum aggregate liability for all claims howsoever arising whether in contract or tort related to this Agreement shall be limited to Kenya Shillings One Million Only.

8.5 The Client shall be liable for and be responsible for all losses, liabilities, damages and bear all costs and expenses and will defend, indemnify and hold Safaricom harmless from and against:

8.4.1 any claims, liabilities, losses or damages due in any way whatsoever to the malfunctioning of its systems; and

8.4.2 any claims arising from or attributable to fraud or any criminal act due to the acts or omissions of officers, employees, agents or any third party.

9 SUSPENSION

Safaricom may suspend the availability of the Service wholly or partially for any valid or compelling reason, including without limitation, where (i) Safaricom needs to investigate a transaction or series of transaction that is or are suspicious

or fraudulent; or (ii) continuing to offer the service availability will render Safaricom non-compliant with any law, regulation or directive from a competent regulatory authority. In such cases Safaricom shall return any unremitted sum of money paid in advance by the Client as per this Agreement.

10 TERMINATION

10.1 Termination for Breach

If either of the Parties commits a breach of any material obligation imposed on it in terms of this Agreement (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 (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.

10.2 Termination by Notice Notwithstanding the generality of the foregoing, either Party may terminate this Agreement upon giving the other Party thirty (30) days notice.

10.3 Termination not to Affect Remedies

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

Any taxes, charges, impositions or levies imposed on a Party or on a Party's performance of its obligations under this Agreement (including income taxes, VAT, Excise Tax and Withholding Tax) shall be paid by that Party, it being solely that Party's obligation to collect and remit such taxes to the relevant taxing authorities. If any withholding or other tax reduces the amount that would otherwise be paid hereunder by a Party to any other Party or any Recipient, then the amount paid shall be net of such required withholding or other tax so that the burden of the tax is borne by the Party subject to the tax. Nothing in this Clause shall be interpreted to require any Party to bear any income taxes which under applicable laws is imposed upon Recipients.

12 GENERAL

12.1 The Client shall comply with all legal requirements applicable to its role in effecting Transactions.

12.2 Each of the Parties represent and warrant that none of its officers or directors (i) has ever been convicted of any crime; and (ii) has ever been charged with or convicted of (or pleaded guilty or no contest to) any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, importing illegal aliens,

receiving stolen property, or illegal drugs or other controlled substances. Either Party shall notify the other in writing within 48 hours after any of these representations and warranties ceases to be true.

- 12.3** Legal or regulatory requirements may require Safaricom to obtain and report certain information about the operation of the Client'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 Client 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.
- 12.4** Neither party 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 the other 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 each of the Parties on its own behalf and each party also undertakes to ensure that it will take all reasonable steps to enforce obligations in like form against its directors and personnel.
- 12.5** Each party 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. Each party shall produce to the other on request certified copies of such permits, licences and authorisations and a failure to provide such proof will amount to a breach of this Agreement entitling either party to terminate the Agreement in accordance with the provisions of clause 10 (termination).
- 12.6** Without prejudice to any other provisions of this Agreement, each party undertakes to indemnify 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:
- 12.6.1** any breach or non-compliance with any terms of this Agreement; or;
- 12.6.2** any infringement or alleged infringement of any intellectual Property Rights relating to the use of any software by either party in the use of the Services.

13 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 and the parties hereby submit to the non-exclusive jurisdiction of the High Court 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 fourteen (14) 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 of the United Kingdom. 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 hereto. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

15 ENTIRE AGREEMENT

This Agreement, together with the schedules hereto, constitutes the entire agreement between the Client 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.

16 AMENDMENTS

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.

17 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.

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 (i) mail, registered or certified, return receipt requested, postage pre-paid, courier service to the address specified above

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.

22 SEVERABILITY

If any provision of this Agreement is held by court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be severed from this Agreement PROVIDED ALWAYS that the remaining provisions of this Agreement will remain in full force and effect. The rights and obligations of the parties under this Agreement shall survive the expiration or early termination of this Agreement for any reason.

23 PUBLICITY

Neither party shall use the other party's name or trademark or refer to the other party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter, in any promotional or marketing materials, lists or business presentations, without consent from the other party, except for announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing party, which shall be in any event subject to review and approval, which approval shall not be unreasonably withheld, by the other party prior to release.

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We _____ Limited

Hereby confirm that we have read the terms of these M-PESA Business to Business (B2B) Contract Terms and Conditions, and we hereby agree to be bound by them.

Signed by (Full Name)

Designation..... Signature.....Date

Duly authorized for and on behalf of:.....

In the presence of:

Name:.....

Address:..... Signature.....Date

24 NO THIRD PARTY BENEFICIARIES

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

25 FORCE MAJEURE

Notwithstanding any provision contained in this Agreement, neither party shall be liable to the other to the extent fulfilment or performance if 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.

SCHEDULE 1 CHARGES & TRANSACTION VALUES

[To be inserted]

SCHEDULE 2 CUSTOMER SERVICE INFORMATION

Customer Service Location	
Customer Service Line	

SCHEDULE 3 REGISTRATION PARTICULARS

Short Code	
Head Office Details	
Bank	
Bank Account Number	
Minimum Transfer value	

