

**DATED** 19<sup>th</sup> June **2008**

**M-PESA HOLDING CO. LIMITED**

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**AMENDMENT DEED TO THE DECLARATION OF  
TRUST  
in favour of all  
M-PESA ACCOUNT HOLDERS  
OF  
SAFARICOM LIMITED**

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This **DEED** is dated 10<sup>th</sup> June 2008 and entered into between:

- (1) **M-PESA HOLDING CO. LIMITED**, a company incorporated in the Republic of Kenya under Company Number 128199 and having its registered office at 8<sup>th</sup> Floor Lonrho House P. O. Box 40034 Nairobi 00100 (the "**Trustee**"); and
- (2) **SAFARICOM LIMITED** (a company incorporated in the Republic of Kenya under Company Number C.8/2002, "**Safaricom**").

**WHEREAS:**

- (A) Safaricom is the operator of an electronic money service under the brand name of "M-PESA" (the "**Service**").
- (B) The Service has the following principal characteristics;
  - (1) Participants in the Service ("**System Participants**") hold electronic value accounts with Safaricom (each an "**M-PESA Account**").
  - (2) Each M-PESA Account records an amount of electronic value ("**E-Money**") held by the relevant System Participant in the Service. "System Participants" for these purposes includes any party holding E-Money in an M-PESA Account for any purpose, including persons registered as M-PESA Agents, sellers of goods and services who agree to accept E-Money in payment for goods and services, members of the public with M-PESA enabled mobile phones who participate in the Service by loading E-Money into their M-PESA Accounts and operating those accounts via those mobile phones and Safaricom itself to the extent that it sells any goods or services (such as airtime) in return for E-Money or accepts payment of any charge in E-Money.
  - (3) System Participants may purchase E-Money with conventional money, transfer E-Money to other System Participants, use E-Money to make purchases of goods and services, exchange E-Money for conventional money (which is termed "redeeming" E-Money in this Deed) and can perform such other transactions as may be developed from time to time and which are offered as part of the Service by Safaricom. Charges levied by System Participants for performing their roles in respect of the Service (including charges levied by M-PESA Agents and Safaricom) will be credited to the M-PESA Accounts of the relevant System Participants in E-Money and debited to the M-PESA Account of the charge-paying System Participant.
  - (4) A System Participant shall purchase newly created E-Money by paying an equal amount in conventional money in the same currency for the E-Money so issued.
  - (5) Whenever E-Money is redeemed for conventional money, the relevant E-Money will be cancelled by being debited from the M-PESA Account of the redeeming System Participant and the redeeming System Participant will be paid an amount in conventional money equal to the amount of E-Money redeemed in the same currency.
- (C) It has been agreed that the amount of conventional money paid in respect of the creation of E-Money will be paid to the Trustee and that all amounts so

conventional money (which is termed "redeeming" E-Money in this Deed) and perform such other transactions as may be developed from time to time and which are offered as part of the Service by Safaricom. Charges levied by System Participants for performing their roles in respect of the Service (including charges levied by M-PESA Agents and Safaricom) will be credited to the M-PESA Accounts of the relevant System Participants in E-Money and debited to the M-PESA Account of the charge-paying System Participant.

- (4) A System Participant shall purchase newly created E-Money, by paying an equal amount in conventional money in the same currency for the E-Money so issued.
  - (5) Whenever E-Money is redeemed for conventional money, the relevant E-Money will be cancelled by being debited from the M-PESA Account of the redeeming System Participant and the redeeming System Participant will be paid an amount in conventional money equal to the amount of E-Money redeemed in the same currency.
- (E) It has been agreed that the amount of conventional money paid in respect of the creation of E-Money will be paid to the Trustee and that all amounts so paid, less all amounts paid out at any time by the Trustee in the redemption of E-Money (such net amount in conventional money being the "**Trust Fund**") shall held by the Trustee on trust for the System Participants as holders of E-Money in accordance with the trusts declared below.

**NOW THIS DEED WITNESSETH THAT:**

1. **The Trusts**

The Trustee hereby declares that it shall hold all amounts which constitute the Trust Fund on trust for the System Participants. The beneficial entitlement of each System Participant to the Trust Fund at any time shall be to such amount of the Trust Fund in conventional money as is equal to the amount of E-Money in the M-PESA Account of such System Participant at such time.

2. **Operating charges**

Under the terms and conditions of its arrangements with System Participants, Safaricom is entitled to levy certain charges on System Participants for the operation of the Service. Where it does so, the M-PESA Account of the relevant System Participant will be debited by the amount in E-Money of the relevant charge and an M-PESA Account of Safaricom shall be credited with the relevant amount.

3. **Redemptions**

- 3.1 Where a System Participant is, in accordance with the terms and conditions governing such System Participant's participation in the Service, entitled to exchange E-Money for conventional money, the Trustee shall, upon being notified by Safaricom that the relevant amount of E-Money has been debited to the relevant System Participant's M-PESA Account and cancelled, pay to the redeeming System Participant an amount in conventional money equal to the amount of E-Money redeemed.

- 3.2 Where Safaricom has become the holder of E-Money certain additional provisions will apply in respect of the redemption of such E-Money. In particular, it shall be required to submit to the Trustee a written request for such redemption detailing the amount of E-Money to be redeemed and including a summary of the services in respect of which such E-Money has been paid to Safaricom. Such written request and supporting information will be reviewed by the Trustee to confirm that the amount of E-Money to be redeemed has been received by Safaricom in respect of services performed by it for other System Participants.

#### **4. System Participant Rights**

- 4.1 The Trustee shall have no obligation to account to any System Participant in respect of such System Participant's beneficial interest in the Trust Fund other than by way of paying the System Participant in accordance with the provisions of Clause 3 on redemption of an equivalent amount of E-Money or (where applicable) in accordance with Clause 7.4 below.
- 4.2 No System Participant shall be entitled to assign, charge or otherwise transfer or dispose of the whole or any part of its beneficial interest in the Trust Fund, although this shall not restrict the making of transfers of E-Money under the Service which will alter the System Participant's beneficial interest by altering the M-PESA Account balance of the relevant System Participant.

#### **5. Reliance by the Trustee**

The beneficial entitlement of the System Participants at any time to the amount of the Trust Fund shall be conclusively determined exclusively in accordance with Clause 1 above by reference to the M-PESA Account records maintained by Safaricom as they stand from time to time, regardless of any inaccuracy (for whatever reason) in such records. The Trustee shall be under no obligation to verify the accuracy of such records and shall have no liability in respect of any inaccuracy in any such records. No System Participant shall have any recourse whatsoever to the Trustee in respect of any alleged inaccuracy.

#### **6. Investment of the Trust Fund and Interest**

- 6.1 The amounts constituting the Trust Fund (including interest and income thereon) shall be held by the Trustee in such commercial bank accounts and such Government of Kenya securities as the Trustee shall in its absolute discretion determine (provided, in the case of securities, these must be debt securities which provide a certain return of the principal amount invested and which are capable of being realized into cash at short notice and without loss of capital).
- 6.2 Any interest or income received in respect of any investment of the Trust Fund shall be retained by the Trustee for its own account and shall not form part of or be credited to the Trust Fund and the Trustee shall have no obligation (express or implied, and whether as trustee or in any other capacity) to account to any System Participant for any such interest or income. Any such interest or income shall generally be applied first to defray the Trustee's own costs of its role in the Service but may be applied for such

other purposes (whether charitable or not) as the Trustee, may in its sole discretion determine.

6.3 In the execution of the Trusts herein contained or by law conferred, the Trustee shall not be liable for any loss of the Trust Fund arising in consequence of any decision made in good faith or by reason of any mistake or omission made in good faith or any other matter or thing except for wilful fraud and/or wrong-doing or bad faith on the part of the Trustee.

6.4 The Trustee shall maintain appropriate financial records relating to the operation of the trust hereby created and the investment of the Trust Fund and procure that such accounts are audited annually or at such other intervals as the Trustee shall think fit by such suitably qualified accountants as the Trustee may appoint for that purpose. For the avoidance of doubt, this shall not oblige the Trustee to keep its own records of the balances from time to time of E-Money on the M-PESA Accounts, it being acknowledged that such records shall be maintained only by Safaricom and relied on by the Trustee in accordance with the above provisions.

## 7. **Safaricom obligations and authority**

7.1 The Trustee shall enter into a management agreement with Safaricom (the "Management Agreement") appointing Safaricom as the Trustee's agent for the purposes of:

(a) operating the commercial bank accounts maintained by the Trustee for the purposes of holding the Trust Fund in accordance with Clause 6.1 (the "**Bank Accounts**"), including for the purposes of effecting payments out of such Bank Accounts in respect of the redemption of E-Money. Authorised Safaricom personnel shall, for these purposes, be named as signatories on the bank mandates for such accounts; and

(b) selecting, and causing the Trustee to invest the Trust Fund (including interest or income earned thereon) in, the other investments referred to in Clause 6.1 ("**Alternative Investments**").

7.2 For the avoidance of doubt, Safaricom shall not be liable for any investment of the Trust Fund (including interest or income thereon) where such investment has been made by Safaricom at the specific instruction or direction of the Trustee. Safaricom specifically disclaims any and all liability for any losses arising out of any market loss or other losses of such investments or for any failure to invest or make any Alternative Investment that could enhance the Trust Fund.

7.3 The above appointment shall be revocable by notice in writing given by the Trustee to Safaricom under the terms of the Management Agreement.

7.4 Safaricom shall comply with the requirements of the Management Agreement in the performance of the agency role conferred upon it under Clause 7.1 and in respect of its operation of the Service generally.

## **8. Appointment of alternative trustee; termination of trust**

- 8.1 The Trustee may from time to time appoint a new person to be a new or an additional trustee of the trusts hereby created provided that (1) such person is a corporation of good standing under the control of persons of good repute and is otherwise suitable to perform the role of the Trustee as envisaged under this Deed; and (2) such person declares itself to be bound by trusts hereby declared as if named as the Trustee in this Deed. After any such new appoint, the expression "Trustee" wherever used in this Deed shall include the new or additional trustee as if named herein in addition to or in place of (as the case may be) the Trustee.
- 8.2 No person dealing or proposing to deal with the Trustee shall be concerned or entitled to enquire as to the title of the Trustee to make any appointment or as to the validity of any appointment or removal of any Trustee.
- 8.3 Any outgoing Trustee(s) shall forthwith execute and do all such transfers or other acts or things that may be necessary for vesting the assets in which the Trust Fund is invested in the new Trustee(s).
- 8.4 If at any time the Trustee decides that it is expedient to discontinue the trusts hereby created in respect of any or all System Participants, then it may do so by liquidating assets in which the Trust Fund is invested and paying to the relevant System Participant(s) the amount of his/her/their beneficial entitlement to the Trust Fund as represented by the sum of E-Money held by such System Participant either by cheque payable solely to the relevant System Participant and no other party or to the relevant System Participant's designated bank account with a licensed commercial bank in Kenya. Forthwith upon any such payment being made, the equivalent amount of the E-Money held in the relevant System Participant's M-PESA Account shall be cancelled.
- 8.5 In the event that any such cheque payments as referred to in Clause 8.4 are not encashed within 6 months of issue and delivery to the relevant System Participant or posting to the System Participant's last known postal address as from time to time notified to Safaricom, the Trustee may upon having given not less than one month's notice of its intention so to do, pay any such amount into Court for the credit of the System Participant entitled. Any encashment of a cheque or transfer to the System Participant's designated bank account or payment into Court shall be a full and complete discharge of the Trustee's obligations to the System Participant to the extent of such payment.

## **9. Perpetuities and Accumulations**

In the event that the Trusts constituted by this Deed shall cease to be vested interests in possession then for the purposes of the Perpetuities and Accumulation Act (Chapter 161 Laws of Kenya) the duration of the Trusts herein will be for the period commencing on the date of this Deed and ending 80 years thereafter and that shall be the perpetuity period for all the purposes of this Deed.

