



## M-PESA GAMING AND BETTING APPLICATION FORM

### PART A

CSP Contact details	
Company Name	
Contact Person	
Contact No.	
Physical Address	
Email Address	

NOTE: Attach valid copy of CSP license

Promoter Contact details	
Company Name	
Contact Person	
Contact No.	
Physical Address	
Email Address	

Attach certified copies of the below certifications:

1. A certified copy of the Betting/Gaming Company's certificate of Incorporation.
2. Where the Betting Company uses a different name for its gaming business other than that set out in its Certificate of Incorporation, provide a certified copy of a business registration certificate/ trade mark certificate and/or other documentation in place allowing the use of such trading name.
3. A valid license from Betting Control and Licensing Board authorizing the provision of betting and/or gaming using M-PESA and additional approval from the industry regulator in the event the Company operates within a regulated industry.
4. A current company search report (not older than 30 days from the date of receipt by Safaricom) issued by the registrar of companies (CR12).
5. A certified copy of the Company's KRA PIN.
6. A Copy of the KRA PIN and ID of all company directors and shareholders. Where the shareholders are incorporated entities, provide a certified copy of such entity's certificate of incorporation and KRA PIN (KRA PIN should be provided if such company is registered in Kenya)
7. Key contact person and contact details of the Company with regard to the betting/gaming service on M-PESA
8. A copy of the back office support and gaming governance process.
9. A detailed description of the game /lottery including the objectives





10. The duration of the game/ lottery

11. Detailed mechanics and schematic drawing of how the game will work and how the gaming/lottery operational and technical process will be integrated to USSD, SMS short – code and or M-PESA. This will include technology and systems to be used.
12. Detailed content of messages that will be sent to with potential participants of Safaricom for vetting by Safaricom.
13. Sample promotional material that will be used to raise awareness of the promotion showing clearly what message the customer will receive. These must display the approved BCLB number whenever advertised.
14. Details of the Customer experience giving details of how a participant will :
  - a. Enroll to the gaming/lottery
  - b. Participate in order to qualify
  - c. Win a prize in any of the categories in the prize matrix
  - d. Be notified of winning and claim their prize (s) when they win
  - e. Be supported in case of any issues e.g. reversals
15. Terms and conditions for the game/lottery must be clearly documented and obligations of all parties defined. In cases where the gaming is run by more than one party, a contract of agreement must exist between the parties detailing all the obligations of each party.
16. Board resolutions indicating the authorized administrator/signatory who safaricom will deal with directly. The resolution should also approve the bank details and MUST be signed by at least two directors.
17. Also share a brief summary of how the customer systems will ensure minors are restricted to betting.
18. The mpesa T&Cs terms and conditions appended to this application form Must be signed by at least two directors

**A. Additional requirements**

1. The settlement bank account to be held with a tier 1 bank (as defined by Central Bank of Kenya). Such bank should provide written confirmation that such accounts are held by it.
2. Fiduciary insurance cover for amounts held in the gaming wallet.

**NB:** The Content Service Provider (CSP) details are only applicable where the promoter requires the use of an sms shortcode or USSD shortcode to run the gaming product.





**PART B**

COMMERCIAL SIGN OFF			
Designation	Signature	Date	Comments (if any)
Product Manager – Gaming & Lottery			
Snr. Manager – VAS Portfolio			
HOD – Consumer Products & Services			
HOD-Enterprise Sales			

Internal KYC SIGN OFF			
Designation	Signature	Date	Comments (if any)
Legal Business Partner			
HOD - AML			

INTERGRATION SIGN OFF			
Designation	Signature	Date	Comments (indicate paybills issued)
Mpesa Merchants Business Partner			
EBU – account manager			

## APPENDIX A

All organizations shall be required to shortcode fees which will be broken down as follows:

Golden Short code	Ksh 200,000
Monthly Access* Short code maintenance	Ksh 10,000
Golden Paybill Business Number	Ksh 200,000

## M- PESA Gaming Transactional Tariffs

Betting C2B Tariff:

Standard Paybill Tariff				
Min	Max	Business Bouquet Tariff		
		Customer	Business	Total
10	49	3	0	3
50	99	5	0	5
100	499	22	0	22
500	999	22	0	22
1,000	1,499	33	0	33
1,500	2,499	33	0	33
2,500	3,499	55	0	55
3,500	4,999	55	0	55
5,000	7,499	83	0	83
7,500	9,999	83	0	83
10,000	14,999	110	0	110
15,000	19,999	110	0	110
20,000	24,999	110	0	110
25,000	29,999	110	0	110
30,000	34,999	110	0	110
35,000	39,999	198	0	198
40,000	44,999	198	0	198
45,000	49,999	198	0	198
50,000	70,000	220	0	220





Bulk Disbarments tariff applicable:

Transaction Range (KShs)		
Charge Band		
Min	Max	Revised Charge
50	100	15
101	500	15
501	1,000	15
1,001	1,500	25
1,501	2,500	33
2,501	3,500	33
3,501	5,000	33
5,001	7,500	33
7,501	10,000	33
10,001	15,000	33
15,001	20,000	33
20,001	25,000	33
25,001	30,000	33
30,001	35,000	33
35,001	40,000	33
40,001	45,000	33
45,001	50,000	33
50,001	70,000	33







## M-PESA GAMING TERMS AND CONDITIONS (2016)

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 for purposes of undertaking the M-PESA Services for purposes of Betting and Gaming. These terms and conditions supersede all other agreements entered into between the Client and Safaricom in relation to the provision of M-PESA Services for the purposes of Betting and Gaming Business. 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;

**"Betting and Gaming Business"** means a pool betting scheme, betting transaction, prize competition, lottery or any regulated game of chance as may be defined under the provisions of the Betting, Lotteries and Gaming Act and any successor legislation;

**"Business Number"** means a destination code or numbering plan created by Safaricom for the identification of M-PESA Pay Bill or Buy Goods Accounts for purposes of gaming;

**"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 Co. Limited which holds in trust for all M-PESA customers Cash paid into the Trust Account;

**"Customer"** means (i) an M-PESA user who receives remittance from The Client, in this case the Customer is referred to in these terms and conditions as the **"Recipient"**; or (ii) an M-PESA user who utilises the Lipa na M-PESA service for the purposes of sending E-Money to the Client's M-PESA Account;

**"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(s) 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 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;

**"Lipa na M-PESA"** means Safaricom's proprietary service that permits a Customer to make payment to a Client's M-PESA Account on the Customer's M-PESA menu and by entering the Client's designated Business Number.

**"M-PESA Account"** means the account(s) belonging to the Client created on the M-PESA system. An account can either permits the Client to receive E-money payments from Customers (C2B) through its designated Business Number or enables the Client to make payments to Customers (B2C)

**"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, and/or its affiliates, has developed) through which the Client can make payments to Customers under the Bulk Payments functionality or receive E-money payments from Customers under the Lipa na M-PESA functionality;

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

**"M-PESA User"** means either of the Client or the Recipient using the M-PESA system;

**"MSISDN"** means the Mobile Subscriber Integrated Services Digital Network Number issued to the Recipient which uniquely identifies the Recipient on the Network and is used to connect M-PESA Users with other Safaricom subscribers and includes a Pin Unlocking Key ("PUK") for accessing the Network;

**"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;

**"Signature Date"** means the date first appearing on this signature part of this Agreement;

**"Transaction"** means: (i) any movement of E-Money from the Client's M-PESA Account to Recipients (**B2C Transactions**) or (ii) any movement of E-Money into the Client's M-PESA Account (**C2B Transactions**) or (iii) 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.

**"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 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 clause 10 of this Agreement.

## 3. ACTIVATION OF THE M-PESA ACCOUNT

3.1 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 as may be prescribed by Safaricom for the purposes of use of the M-PESA service for Gaming and communicated to the Client.

3.2 If the Client fails to produce the necessary KYC documents as set out in 3.1 above, or fails to satisfy the minimum KYC requirements, Safaricom will refuse to activate the M-PESA account(s) 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(s) due to the failure of the Client to comply with the requirement above 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.

## 3. OPERATION AND SCOPE

3.1. Use of the M-PESA Service by The Client shall be subject to the M-PESA customer Terms and Conditions as may be published by Safaricom from time to time, and notified in writing to the client in the event of any significant changes or amendments, and the Client hereby agrees to abide by the M-PESA operational procedures as may be prescribed by Safaricom from time to time.

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

3.2.1. 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;

3.2.2. For purposes of bulk transfers, submit to Safaricom a Bulk Remittance Sheet in a pre-determined format (MS Excel CSV) indicating the name and MSISDN of each Recipient and the E-Money amount to be remitted to the Recipient (the "Bulk Remittance Sheet"), schedule the date and time the remittances are to take place using the web interface provided by Safaricom and shall take all reasonable steps to ensure that Customers receive the gross amount of their payments without set off, counterclaim or deduction of charges;

3.2.3. The Client agrees to abide by the M-PESA operational procedures and such guidelines as may be communicated to the Client by Safaricom in writing from time to time.

3.3. Reconcile and receipt payments received on the M-PESA System through its M-PESA Account;

3.4. Initiate Withdrawal Request instructions to Safaricom for redemption of accrued E-Money;

3.5. Carry out any other obligation indicated under the provisions of these Terms and Conditions.

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

3.6.1. Create the Client on the M-PESA System as an "Organization";

3.6.2. 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.

3.6.3. 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.

3.6.4. Train the Client staff to enable them effectively perform remittance transactions on the M-PESA System;

3.6.5. 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;

3.6.6. Use its best endeavours to ensure that the B2C Transactions take place as scheduled by The Client

3.6.7. Provide customer service support to the Client;

3.6.8. Provide customer service support to Customers using the Lipa na M-PESA Service;

3.6.9. Credit the Client's M-PESA account with E-Money upon receipt of E-Money paid through the M-PESA System;

3.6.10. 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;

## 4. SERVICE FEES

4.1. The Service shall be subject to the fees and transaction band limits and tariffs (the "Charges") appointed by Safaricom from time to time as may be adopted by Safaricom for M-PESA Accounts used for the purposes of Betting and Gaming Business.

4.2. Safaricom also reserves the right from time to time by of notice, to vary the Charges and transaction band limits.

4.3. The Client shall pay all monies due to Safaricom without set off, counterclaim or deduction.

4.4. The Client agrees to notify its Customers that payments sent through the M-PESA System will be subject to a charge upon making a payment or undertaking withdrawal in accordance with M-PESA standard terms and conditions.

## 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.

6.3 It is hereby further 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.

6.4 In addition to the foregoing, you expressly authorise Safaricom to disclose any Confidential Information including any information of transaction made into or out of your M-PESA Account to a regulatory agency such as (without limitation): (i) the Central Bank of Kenya; (ii) the Betting Control and Licensing Board and any successor body authorised to regulate gaming under the laws of Kenya.

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



6.6 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.

## **7 REVERSALS, PERMISSIBLE PURPOSE & PROHIBITED USAGE AND CONDUCT**

7.1 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.

7.2 Where the Client fails to initiate and complete the reversal in accordance with 7.1 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.

7.3 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.

7.4 The Client hereby undertakes to use the M-PESA Services only for the purpose set out in this agreement and shall not vary or modify the purpose notified to Safaricom upon signing up for the service without the prior written consent of Safaricom.

7.5 The Client agrees not to use the M-PESA 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 intellectual property rights, patent, trade mark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- f) Conduct any business whether unsolicited or not, relating to or remotely connected to SPAM, , junk mail, pyramid schemes, pornography, unlicensed Betting and Gaming Business or any 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 or servers or networks (including the Network) 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.

## **8 WARRANTIES, INDEMNITY & 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 and that it has obtained all licenses and permits necessary to conduct gaming services on M-PESA for the duration of the Agreement. The Client further warrants that it has conducted independent know your client (KYC) procedures on its customers engaged in the course of its Betting and Gaming Business. Non-compliance with these warranties shall be deemed to be material and entitling Safaricom to terminate this Agreement in accordance with the provisions of clause 10.1.

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 M-PESA 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 payment to the Client's M-PESA Account.

8.5 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.

8.6 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:

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

8.6.2 any claims arising from or attributable to fraud or any criminal act due to unlawful access or manipulation of the Bulk Remittance Sheet by its officers, employees, agents or any third party.

8.6.3 any mistakes, errors or inaccurate information in the Bulk Remittance Sheet provided by the Client.

## **8.7 SAFARICOM SPECIFICALLY EXCLUDES LIABILITY FROM ANY LOSS OR DAMAGE:**

**8.7.1 WHERE THE RECIPIENT IS NOT REGISTERED (SUCH REGISTRATION BEING MANDATORY) ON THE M-PESA SYSTEM;**



8.7.2 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 PRESCRIBED 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;

8.7.3 WHERE THE CLIENT HAS ENTERED AN INCORRECT RECIPIENT'S M-PESA ACCOUNT NUMBER AND THE PAYMENT IS MADE TO THE WRONG CUSTOMER WHO IS NOT THE INTENDED RECIPIENT;

8.7.4 WHERE THE CUSTOMER HAS ENTERED INCORRECT DETAILS AND THE PAYMENT IS MADE TO THE WRONG MPESA SYSTEM PARTICIPANT;

8.7.5 WHERE THE CLIENT'S HARDWARE, SOFTWARE OR INTERNET PROVIDER'S SERVICE IS DYSFUNCTIONAL;

8.7.6 WHERE THE TRANSACTION IS SUSPICIOUS OR FRAUDULENT RESULTING IN LOSSES TO A THIRD PARTY;

8.7.7 WHERE THE TRANSACTION DETAILS RECEIVED ARE INCORRECT;

8.7.8 WHERE THE CLIENT'S RECEIPT OR TRANSFER OF FUNDS IS INTERCEPTED BY LEGAL PROCESS OR OTHER ENCUMBRANCE RESTRICTING THE TRANSFER;

8.7.9. WHERE UNFORESEEN CIRCUMSTANCES PREVENT THE EXECUTION OF A TRANSACTION DESPITE ANY REASONABLE PRECAUTIONS TAKEN BY SAFARICOM

8.7.10 WHERE THE CLIENT HAS EXCEEDED TRANSACTION/DAILY OR MONTHLY OR ANNUAL LIMITS FOR TRANSACTIONS AND OTHER USAGE ON THEIR M-PESA ACCOUNT; OR

8.7.11. WHERE THE RECIPIENT'S MSISDN IS NOT ACTIVE.

8.7.12 WHERE THE NATURE OF LOSS OR DAMAGE IS OF A CONSEQUENTIAL OR AN INDIRECT NATURE.

8.7.13 WHERE THE LOSS OR DAMAGE ARISES AS A RESULT OF CLIENT FAILING TO COMPLY WITH APPLICABLE LAW, REGULATIONS, GUIDELINES AND DIRECTIVES.

8.7.14 WHICH ARISES AS A RESULT OF THE CLIENT'S SOLE RELIANCE ON ANY DATA RELAYED BY SAFARICOM REGARDING THE REGISTRATION OF RECIPIENTS ON THE M-PESA CUSTOMER REGISTRATION DATABASE.

## **9 SUSPENSION**

Safaricom may suspend the availability of the Service wholly or partially for any valid or compelling reason and at any time, including without limitation, where (i) either party 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 one Party non-compliant with any law, regulation or directive from a competent regulatory authority (iii) the Client is in breach of any of the terms set out in this Agreement.

## **10 TERMINATION**

### **10.1 Termination for Breach**

If the Client 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 7 (seven) days from the date on which written notice is given to the Client by Safaricom, then Safaricom shall be entitled to terminate this Agreement on the expiry of such written notice and Safaricom shall be entitled to hold the Client 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 for any reason 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 COMPLIANCE WITH APPLICABLE LAWS**

12.1 The Client shall comply with all legal requirements applicable to it including but not limited to the provisions of the of the Proceeds of Crime and Anti Money Laundering Act, the Betting, Lotteries and Gaming Act and any other applicable law.

12.5 The Client 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 including but without limitation such licenses, permits or authorisations necessary for the client to undertake Betting and Gaming Business. In the event that the Client's license or permit or other authorisation is no longer in force, then the Client shall notify Safaricom immediately.

12.6 The Client shall produce to Safaricom on request certified copies of such permits, licences and authorisations at any time during the course of this Agreement.

12.7. The provisions of this clause 12 are material and failure of the Client to comply with these provisions shall entitle Safaricom to terminate this Agreement in accordance with the provisions of clause 10.1 (Termination).

## **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 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.

#### **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 HEADINGS**

Headings in this Agreement are for reference purposes only and shall not effect the interpretation or meaning of this Agreement.

#### **20 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.

#### **21 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.

#### **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.

We \_\_\_\_\_ Limited  
of P.O. Box[ \_\_\_\_\_ ]  
Hereby confirm that we have read these M-PESA GAMING  
TERMS AND CONDITIONS and we hereby agree to be  
bound by them.

Signed by (Full Name).....

Designation.....

Signature .....

Date.....

In the presence of:

Name.....

Address.....

Signature.....



# M-PESA SERVICE APPLICATION FORM

Safaricom Limited,  
Safaricom House, Waiyaki Way  
P. O. Box 66827 - 00800, Nairobi  
Email: [Lipammpesa@safaricom.co.ke](mailto:Lipammpesa@safaricom.co.ke)  
Tel: +254 722 002 222  
[www.safaricom.co.ke](http://www.safaricom.co.ke)

Serial No. 00000

## Company Profile

Company name: .....  
Physical address of company: .....  
Postal address: ..... Postal code: .....  
Telephone No.1: ..... Telephone No.1: .....  
Office email address: .....  
V.A.T number: ..... PIN number: .....  
Type of business: .....  
Trading for: Years  months  Proposed name for M-PESA account: .....

## Type of service requested (Tick relevant box)

Pay Bill ☐ Buy Goods ☐ Managed Disbursements ☐ Bulk Payment ☐ Aggregated Paybill ☐

## Reason for M-PESA

Collection of funds ☐ Describe the reason: .....  
Disbursement of funds ☐ Describe the reason: .....

## Contact Details

Name of contact Person: .....  
Telephone number: .....  
Email address: .....  
Name of Finance Contact: .....  
Telephone number: .....  
Email address: .....  
Name of administrator: .....  
User name: .....

## Payment details: Where would you like to receive funds collected? (tick one)

☐ M - PESA (Recommended if collections are below Kshs. 100,000 per day)

Name (As registered in M-PESA)

M-PESA registered mobile number  ID Number

☐ Bank account (Recommended for collections over Kshs. 100,000 per day)

Account name

Account Number  Branch

Sort code

## Customer Declaration

Signed this: ..... day of ..... 20.....  
Authorised signatory name: ..... Signature: .....  
Destination of authorised signatory: .....

## For Official Purpose Only

Account Manager: ..... Client Service Manager: .....  
Sector: .....

Form to be returned to Enterprise Business Unit, Safaricom House.

E-mail: [EBU.M-PESA@safaricom.co.ke](mailto:EBU.M-PESA@safaricom.co.ke)

**NOTE:** Information provided on this form will be used to set-up the Utility Structure on the M-PESA system and is subject to contract signature.

Safaricom reserves the right to accept or reject this request. Terms and conditions apply.

