



## CUSTOMER TERMS & CONDITIONS

This Agreement contains the complete terms and conditions that apply to your participation in Safaricom's M-PESA Mobile Money Transfer Service and supersedes all other agreements entered into between you and Safaricom Limited of P.O. Box 66827 Westlands, Nairobi – 00800 ("Safaricom") with respect to the M-PESA mobile money transfer Services. These terms and conditions take effect on the date of publication. By participating in or continuing to use the M-PESA Service you shall be deemed to be making an affirmative statement of your acceptance of these terms and conditions.

### 1. Definitions

**"Account"** means your M-PESA Account, being the record maintained by us of the amount of E-Money from time to time held by you and represented by an equivalent amount of cash held by the Trustee on your behalf;

**"Cash"** means the lawful currency of the Republic of Kenya;

**"Cash Merchant"** means a person appointed to offer M-PESA registration, cash in and cash out Services and includes participating ATM networks, further details of which may be obtained from Safaricom;

**"E Money"** means the electronic monetary value depicted in your M-PESA Account representing an equal amount of Cash held by the Trustee and which may be redeemed through an M-PESA Cash Merchant for an equal amount of Cash;

**"Foreign National"** means a person who is not a citizen of Kenya irrespective of whether the person is permanently resident in Kenya.

**"Log Book"** means the book maintained by the Cash Merchant in which all Transactions are recorded and which serves as conclusive evidence of the successful completion of those Transactions;

**"Manager"** means a person who is legally authorised to access funds in your M-PESA account in the event of your permanent disability;

**"M-PESA Services"** or **"M-PESA"** means the money transfer services provided by Safaricom including issuance, management and redemption;

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

**"Network"** means the 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 us;

**"Outlet Operator"** means the assistant attending to you at an Cash Merchant Outlet;

**"Outlet"** means any shop, unit or other retail premises or portion thereof operated by an Cash Merchant;

**"Participant"** or **"User"** means any person that participates in the M-PESA System by using the M-PESA Services to send or receive money and includes any person that facilitates the redemption of E-Money;

**"PIN"** means your personal identification number being the password you choose to access and operate your Account and includes the one-time 4-digit PIN sent to you on registration for the purpose of activating your Account;

**"Pre-paid Airtime"** means mobile phone calling credit on Safaricom's Network;

**"Registration Form"** means the registration form containing registration details and your acceptance of these Terms and Conditions;

**"Safaricom Products and Services"** means any products and services provided to you by Safaricom whether under this Agreement or otherwise and includes without limitation the Safaricom Post Pay voice and data services, Safaricom Pre-Pay voice and data services, Safaricom emergency credit service known as '*Okoa Jahazi*' and the Safaricom loyalty points accrual and redemption service known as '*Bonga*'.

**"Secret Word"** means the secret password allocated to you upon activation of your M-PESA Account by keying in the PIN;

**"SIM Card"** means the subscriber identity module which when used with the appropriate mobile phone equipment enables you to use the M-PESA Services;

**"SMS"** means a short messaging service that enables the transmission of text messages from one mobile phone to another;

**"Successor"** means a person who is legally authorised to access funds in your M-PESA account in the event of your death;

**"Transaction"** means the movement of money in to, or out of your M-PESA Account;

**"Trustee"** means the M-PESA Holding Company Limited;

“**Trust Deed**” means together the Declaration of Trust dated 23<sup>rd</sup> January 2007 and the Amendment Deed dated 19<sup>th</sup> June 2008 executed by the Trustee constituting the trusts under which the Trustee holds all amounts of cash received for your Account in trust for you upon the terms and conditions therein specified. These documents are available for inspection at [www.safaricom.co.ke](http://www.safaricom.co.ke)

“**You**” or “**your**” means the M-PESA Customer who has registered to use the M-PESA Service;

## 2. Service Description

- 2.1. Safaricom operates the M-PESA mobile money transfer service that allows you to send and receive money through your registered mobile phone.
- 2.2. M-PESA is available to all Safaricom subscribers upon registration for the M-PESA Services and your acceptance of these Terms and Conditions. Customers on other Networks may have limited range of functionality.
- 2.3. You may register for an M-PESA Account with any M-PESA Cash Merchant or at any Safaricom retail centre by completing the M-PESA Registration Form.
- 2.4. Safaricom may in its absolute discretion restrict or limit the number of accounts you may operate at any one time.
- 2.5. By registering to use the M-PESA Service you agree to these Terms and Conditions (the “Terms and Conditions”), which shall form a legally binding agreement between you and Safaricom.
- 2.6. Safaricom may in its absolute discretion refuse to register or revoke the registration of any person on the M-PESA System.
- 2.7. You may acquire E-Money in your M-PESA account by depositing Cash at an M-PESA Cash Merchant outlet or receiving a remittance of E-Money from another M-PESA Participant, through an international money remittance from a participating remittance service provider or through any other acceptable means that Safaricom may provide.
- 2.8. All Transactions shall be denominated in Kenya Shillings. The M-PESA System may not recognize any monetary value depicted as Cents. You hereby agree to round off any Transaction value to the nearest Kenya Shilling.
- 2.9. Your Cash represented as E-Money is held in trust for you by the Trustee by virtue of the Trust Deed under which the Trustee declared itself trustee of the moneys held for you in the Account and other Participants as beneficiaries in accordance with the trusts declared by the Trust Deed. By

participating in and/or continuing to use the M-PESA Services you acknowledge the sufficiency of the Trust Deed as creating a valid trust over funds held by the Trustee on your behalf upon the terms therein specified

- 2.10. You acknowledge that the Trustee may treat the records of the M-PESA System as conclusive evidence of the amount of E-Money at any time standing to the credit of your Account and the Trustee is not bound to make any independent investigation of your beneficial entitlement to the Cash held in trust.
- 2.11. Subject to the prescribed Transaction limits and the provisions of these Terms and Conditions, the balance of your M-PESA account is redeemable at any time and shall be disposed of only in accordance with your instructions given via the M-PESA System.
- 2.12. You acknowledge that M-PESA is neither a bank nor a deposit-taking institution.
- 2.13. All charges applicable to the M-PESA service are set forth in a separate fee schedule available at Cash Merchant outlets and as may be published from time to time by Safaricom and are subject to change at any time at Safaricom’s sole discretion.

## 3. Account Opening and Maintenance

- 3.1. The following conditions must be met before opening an M-PESA account in your name:
  - 3.1.1 You must be at least 18 years old with capacity to enter into contracts.
  - 3.1.2 You must have an M-PESA enabled SIM card through which you may access the M-PESA services. If your SIM card is not M-PESA enabled, you may swap it at a nominal fee for one that is M-PESA enabled.
  - 3.1.3 You must complete the Registration Form and submit it when duly completed and signed by you. For the avoidance of doubt a completed Registration Form shall bear your name as it appears on your ID and such other information as may be required.
  - 3.1.4 You must provide sufficient proof of identification (ID). For the purpose of this agreement, sufficient proof of (ID) shall be an original national or military ID card if you are a Kenyan national; and original Alien Certificate, Diplomatic ID or Passport if you are a foreign national. Copies of the ID provided may be retained by the Cash Merchant facilitating your registration.

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- 3.1.5 You must not provide any false, inaccurate, incomplete or misleading information.
- 3.2. Notwithstanding the generality of the foregoing, a person with Parental Authority may open and maintain an account in their name for and on behalf of a minor. For purposes of this agreement, a person with Parental Authority shall include the birth parents of a minor, legal guardian, school-master or other person who can demonstrate legitimate authority over the minor's affairs.
- 3.3. You are responsible for ensuring that your registration details are maintained up to date.
- 3.4. Safaricom may reject your application at its discretion if any of the account opening requirements are not met or if you fail to provide us with satisfactory proof of identification.
- 3.5. Safaricom reserves the right to request further information pertaining to your account at any time failure to which may result in limitation on usage of the M-PESA Service, suspension or termination of the account.
- 3.6. You must not maintain more than two M-PESA Accounts. If at the time of commencement of these Terms and Conditions you maintain more than two or more M-PESA account, Safaricom shall reserve the right to migrate one account to the next tier requiring enhanced due diligence (including the submission by you of additional documentation as may be required) and may require you to close off any extra accounts.
- 3.7. The account remaining on the first tier shall be limited to such annual Transaction limits as Safaricom may in its sole discretion, determine which, when exhausted, shall render the account closed and all excess balances therein moved to the next tier account.
- 3.8. Accounts on higher tiers shall have higher annual Transaction limits as may be determined by Safaricom.
- 3.9. No interest will be paid on any funds held in your M-PESA Account.
- 3.10. Subject to Safaricom's due diligence and vetting, you may obtain an official statement of your M-PESA Account from any Safaricom retail centre for which you may be charged a fee. An official statement of account shall be conclusive evidence of the Transactions carried out on your M-PESA Account during the period covered in the statement.
- 3.11. For the avoidance of doubt Safaricom shall not be obliged to adduce evidence in any civil or criminal court in relation to the contents of any statement obtained from a retail centre pursuant to clause 3.10.

#### 4. Privacy Policy:

- 4.1. Safaricom recognizes the importance of protecting the privacy of all information provided by users of M-PESA. This statement is meant to affirm our utmost respect for your rights to privacy.
- 4.2. Safaricom collects personally identifiable information that we use to profile M-PESA Users and administer individual M-PESA accounts, update M-PESA databases, and provide User support.
- 4.3. Save as provided hereunder, Safaricom does not share your personal information with unauthorized persons and adequate safeguards have been put in place to prevent unauthorized access and to ensure confidentiality of your personal information.
- 4.4. You acknowledge that by using the M-PESA Services, some of your personal information will be passed on to any person whom you receive E-Money from, or send E-Money to and will be available to any third party involved in the operation of the service including without limitation, M-PESA Cash Merchants, ATM Switch providers and Vodafone Group Services (as vendors of the M-PESA money transfer technology platform). You hereby authorise Safaricom to share with, provide or disclose to third parties with which you have separately contracted or with which you intend to contract (and have informed Safaricom of this intention in writing or electronically through the M-PESA System), your personal information including any Transaction data, information pertaining to you or your M-PESA Account, or your usage of Safaricom Products and Services provided that the authority given to Safaricom to disclose information to such third parties (not being a law enforcement, investigative or regulatory authority) pursuant to this clause may be withdrawn at any time.
- 4.5. You acknowledge that Safaricom may verify your identity information through publicly available and/or restricted government databases in order to comply with regulatory requirements.
- 4.6. You accept that Safaricom shall have the right to monitor your account usage and may disclose personal information to local law enforcement or investigative agencies or any competent regulatory or governmental agencies to assist in the prevention, detection or prosecution of money laundering activities, fraud or other criminal activities;
- 4.7. Safaricom employees who handle personal information are under an obligation to treat it confidentially and may

not disclose it to unauthorized third parties. Safaricom employees are also responsible for the internal security of the information. Employees who violate Safaricom's privacy policies are subject to a range of disciplinary actions.

- 4.8. Any person submitting any information to Safaricom through the M-PESA System may be granted access rights to that information. Safaricom has developed systems that enable access and correction of information submitted to it.

#### 5. **Account Usage:**

- 5.1. After your account has been opened and activated, you will be able to initiate the following Transactions:
- 5.1.1 load E-Money through a participating Cash Merchant outlet;
  - 5.1.2 send E-Money to and receive E-Money from other users;
  - 5.1.3 withdraw Cash from your Account through participating M-PESA Cash Merchants;
  - 5.1.4 withdraw Cash from your Account through participating ATM networks;
  - 5.1.5 buy Safaricom Prepaid Airtime;
  - 5.1.6 pay utility bills or make one-off or periodic payments or remittances to participating utility providers, financial institutions charity organisations, etc.;
  - 5.1.7 pay for goods purchased from participating "Buy Goods" merchants;
  - 5.1.8 manage your Account (e.g. check balance inquires, change PIN, etc.); and
  - 5.1.9 any other Transactions as may be introduced by Safaricom or financial institution partners from time to time.
- 5.2. Safaricom does not warrant that all functionalities shall be available at all times and may withdraw any functionality or the M-PESA Service in general as a direct result of new or amended legislation, statutory instrument, Government regulations or policy or any other compelling reason.
- 5.3. Safaricom may provide additional functionality on the M-PESA menu following integration with platforms of financial institutions and other entities providing you with specified services. Such functionality may give you limited access to platforms of the financial institutions or other entities. By using such functionality to gain access to other platforms, you hereby agree to indemnify Safaricom against, and hold Safaricom harmless from any losses arising from your access to such external platforms.
- 5.4. In the event of any review of our business planning, technical, public interest or operational reasons, changes within the industry, recommendations from regulatory bodies or similar events, Safaricom may vary these Terms and

Conditions or policies affecting usage and shall notify you of such changes through appropriate means. Your continued use of the M-PESA Service shall be deemed to be your acceptance of all such varied terms and conditions or policies.

#### 6. **M-PESA Access Responsibility**

- 6.1. Access to the M-PESA Services is PIN protected. You hereby agree to guard your PIN and not to disclose it to any third party including M-PESA Outlet Operators, Safaricom staff or any person purporting to have authority to ask for it.
- 6.2. You acknowledge that you shall be solely responsible for the security of your PIN and Secret Word. Safaricom shall not be liable for any disclosure of your PIN to any third party and you hereby agree to hold Safaricom harmless from any losses that result from any PIN disclosure.
- 6.3. You are responsible for all instructions given to Safaricom in relation to your M-PESA Account.
- 6.4. Safaricom shall deem each correct PIN entry as being performed by the legitimate owner of the M-PESA account and shall regard all subsequent Transactions as validly performed by you.

#### 7. **Loading E-Money**

- 7.1. You may load E-Money into your M-PESA Account only and not directly into another M-PESA participant's M-PESA Account.
- 7.2. In order to load E-Money, you must complete the information requested, including passing the identity and security validation and verification procedures to ascertain that you are the owner of the account and then hand over Cash equivalent to the E-Money sought to be loaded to the M-PESA Cash Merchant.
- 7.3. After handing over the Cash to the M-PESA Cash Merchant, you must ensure that you sign the Log Book which will serve as conclusive evidence that you have successfully completed the deposit Transaction.
- 7.4. Safaricom reserves the right to prescribe Transaction limits and may allocate some M-PESA Accounts with higher or lower limits.

#### 8. **Transferring E-Money**

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- 8.1. Transaction limits and charges as prescribed by Safaricom shall apply each time you use the "Send Money", "Pay Bill", "Buy Goods" or other functionalities that effect the transfer of funds from your M-PESA Account.
- 8.2. Your Transaction request will not be completed:
- 8.2.1 If you have insufficient funds in your M-PESA Account to complete a Transaction or to cover the charges for a Transaction;
  - 8.2.2 If you have reached the maximum Account balance limit prescribed by Safaricom;
  - 8.2.3 If you have reached the daily limit prescribed by Safaricom;
  - 8.2.4 If your Account has been temporarily suspended or permanently frozen on valid grounds;
  - 8.2.5 If there is any other compelling reasons such as temporary system delay or outage.
- 8.3. You may send E-Money to any Participant on the M-PESA system as well as any mobile telephone user on any network in Kenya by following the instructions on your phone's M-PESA menu.
- 8.4. You will be charged a fee for any transactions you undertake. The fee will be in accordance with the published tariffs.
- 8.5. If the E-Money in your M-PESA Account is not sufficient to carry out your Transaction (including covering the Transaction cost) request in full, the Transaction will not be completed and no E-Money will be debited from your M-PESA Account.
- 8.6. Upon the successful completion of your Transaction to another M-PESA Participant, Safaricom will immediately cause the transfer of the E-Money to the other Participant's M-PESA Account. You and the recipient will both be notified by SMS as to the completed status of your transaction.
- 8.7. Where Safaricom is unable to complete a transaction, you will be notified by SMS as to the reasons for not completing the transaction.
- 8.8. Each Transaction you undertake will be accompanied by a unique receipt number that will appear in the confirmation SMS sent to you and will include an updated balance of your Account. This receipt number may be used to track & identify the Transactions carried out on your Account and the SMS should therefore not be deleted if reliance on it will be required.
- 8.9. Upon the successful transmission of E-Money from your Account to registered recipient's M-PESA account, title to the E-Money will pass to the recipient.
- 8.10. Where the recipient is not registered on the M-PESA System, title to the E-Money will remain with you. However, you will not be able to withdraw the funds or send the funds to any other recipient or otherwise reverse the Transaction unless the initial Transaction is cancelled by Safaricom upon the failure of the recipient Participant to accept the remittance within the stipulated time-frame as provided in 8.12.
- 8.11. If the recipient does not have an M-PESA account, Safaricom will send the recipient an SMS containing a one time voucher to enable them cash the value sent to them
- 8.12. If, within 7 days (or such longer period as may be determined by Safaricom) of the Transaction being made to a non-registered recipient, the recipient has not opened or cashed their voucher, Safaricom will cancel the Transaction and the E-Money will be sent back to your account. You will be notified by SMS of the cancellation and reversion of the E-Money.
- 8.13. A Transaction once completed is final and irrevocable. As such, Safaricom shall not be under any compulsion to reverse any Transaction.
- 8.14. Notwithstanding the import of clause 8.13, Safaricom reserves the right, at its sole discretion, to cancel or reverse a Transaction if reasonable grounds such as manifest error or fraud are shown and PROVIDED that the recipient has not redeemed the E-Money and the reversal claim is made within one (1) month of the erroneous Transaction date.
- 8.15. Safaricom will not be compelled to refund or compensate the sender if the E-Money is sent to a recipient mistakenly or in error or fraudulently or under duress and subsequently redeemed for Cash or otherwise spent by the recipient of the mistaken, erroneous or fraudulent Transaction and you hereby agree to hold Safaricom harmless for any losses arising from a mistaken, erroneous or fraudulent transfer of funds or any transfer of funds from your account effected under duress or under coercion or criminal force.
- 9. Receiving E-Money**
- 9.1. If you are registered on the M-PESA system and you receive an SMS informing you that you have received E-Money from another M-PESA Participant or through an international money remittance, the E-Money shall be loaded to your M-PESA Account immediately and

you may redeem the E-Money at any Cash Merchant Outlet or participating ATM networks or transfer the funds to a third party by following the M-PESA menu options on your mobile phone.

- 9.2. If you receive funds in error you acknowledge that you shall be obliged to return the funds to the sender failing which Safaricom may reverse the payment to the sender.
- 9.3. You may be liable to face prosecution for consuming or utilising funds sent to you in error.

## 10. Withdrawal (Redemption) of E-Money

- 10.1. *Cash Merchant Outlets:* Upon passing the vetting requirements conducted by an Cash Merchant, you may withdraw your E-Money at participating Cash Merchant Outlets by accessing your Account and following the prompts on your phone's M-PESA menu; however, any withdrawal Transaction must be initiated and completed within an Cash Merchant's premises and you must ensure you sign the Log Book which will serve as conclusive evidence of the successful completion of the withdrawal Transaction.
- 10.2. *ATM Outlets:* You may withdraw your E-Money at participating ATM network Outlets at any time by accessing your M-PESA Account and following the prompts on your phone's M-PESA menu. You will receive a one time voucher which should be cashed at participating ATM networks within the prescribed timeframe. Failure to do so will cause the voucher received to expire.
- 10.3. Safaricom shall, subject to Transaction limits on the M-PESA System, process the requests you make immediately after being satisfied that the person making the redemption has passed all identity and security validation and verification procedures. In the event of a dispute over the redemption of the funds, it shall be sufficient for Safaricom to show a logical association between the Transaction and the verification of identity and/or security procedures conducted to ascertain identity of the person entitled to the funds.
- 10.4. Subject to any other provisions to the contrary, you will be charged a withdrawal fee each time you withdraw funds from your M-PESA account.

## 11. Intellectual Property

All intellectual property rights in the M-PESA Service including the M-PESA trademark are the property of Safaricom and/or its affiliates. Any unauthorized reproduction, modification, distribution or republication of M-PESA materials or intellectual property, without the express prior written consent of Safaricom and/or its affiliates is strictly prohibited.

## 12. Fees

- 12.1. You are responsible for the payment of all applicable fees. Safaricom publishes fees payable in information pamphlets, daily newspapers, Cash Merchant Outlets and on the Safaricom website. Safaricom's Customer Care department will be on hand to assist you with the fee schedule if you are uncertain about the applicable fee.
- 12.2. All fees are deducted at source and are subject to change at any time at Safaricom's sole discretion.
- 12.3. Fees payable on each Transaction will be deducted from your M-PESA Account at the completion of each Transaction. Your new balance on completion of the Transaction shall be notified to you by SMS.
- 12.4. Except as may otherwise be notified, fees are inclusive of all applicable taxes including Value Added Tax at the prevailing rate.

## 13. Suspension, Termination & Freezing

- 13.1. Safaricom reserves the right at its sole discretion to suspend or terminate the agreement if you use the M-PESA account for unauthorised purposes.
- 13.2. Your Account shall be suspended if you port your number to other networks or if your SIM has been inactive for a period of ninety (90) days or such other period as may be prescribed. In the event of account suspension for reasons of inactive SIM, Safaricom shall archive your Account and recycle the mobile telephone number associated with your Account as required by law. Money held to your credit shall not be lost by virtue of archiving your Account or recycling of your mobile telephone number and shall be availed to you upon notice by you of the activation of a new mobile telephone number.
- 13.3. You acknowledge that Safaricom may be compelled by law to suspend and/or freeze your Account or decline to execute your Transaction requests if there are reasonable grounds to suspect that an Account has been or is being or may be used to receive or send funds in connection with any criminal or fraudulent activity.
- 13.4. You may request your Account to be closed at any time by giving written notice to Safaricom addressed to: M-PESA Operations, Safaricom, P.O. Box 66827 Westlands, Nairobi - 00800, or delivered to M-PESA Operations, Safaricom House, Waiyaki Way,

Westlands. Safaricom shall act on such instructions if, and only if, your account balance reads zero (0).

- 13.5. Safaricom may, at its discretion, close your Account at any time for any reason upon giving one (1) week's notice to you and making reasonable attempts to reach you. In such circumstances, you shall be entitled to the balance of any funds remaining in your M-PESA Account.
- 13.6. Safaricom may send notices to you at any postal address provided by you or electronically by SMS to your mobile telephone number with which you registered on the M-PESA System.
- 13.7. This agreement terminates automatically upon the death of the Customer who has signed up for the M-PESA services.

#### 14. Warranties, and Limitation of Liability

- 14.1. Safaricom will report any suspicious account activity to its Money Laundering Reporting Officer (MLRO). The MLRO may escalate the suspicious activity to the relevant law enforcement authority.
- 14.2. Safaricom shall use all reasonable efforts to ensure that all Transaction requests are processed in a timely manner. However, Safaricom makes no representations or warranties as to continuous, uninterrupted or secure access to the M-PESA service, which may be affected by factors outside Safaricom's control, or may be subject to periodic testing, repair, maintenance or upgrades.
- 14.3. Safaricom will not be responsible for any claim unless caused by wilful default attributable to Safaricom. Safaricom specifically disclaims all liability for any damages or losses, including, without limitation, direct, indirect, consequential, special, incidental or punitive damages deemed or alleged to have resulted from or caused by but not limited to:
  - 14.3.1 Transactions made to unintended recipients or payments made in incorrect amounts due to the input of incorrect information by you;
  - 14.3.2 Transactions made from your account by an unauthorised third party who passes all identity and verification checks;
  - 14.3.3 any fraud, deception or misrepresentations by any M-PESA Participant, whether or not the Participant has been verified,
  - 14.3.4 any damages resulting from a recipient's decision not to accept or record a Transaction made by you through the M-PESA system,
  - 14.3.5 failure of any other telecommunications or data transmission system other than the M-PESA system;
  - 14.3.6 any result of any acts of government or authority, any act of God or *force majeure*.

14.4. The limit of Safaricom's liability shall not exceed the maximum Account balance limit for the time being in force for any single event or series of events.

14.5. You agree to indemnify and hold Safaricom harmless against any claim brought against Safaricom by a third party resulting from your breach of these Terms and Conditions.

#### 15. Dispute Resolution and Governing Law

15.1. You may contact Safaricom Customer Care (line 234) for any disputes, claims or to report Account discrepancies. Safaricom Customer Care shall handle the report in accordance with Safaricom's standard complaint handling procedures.

15.2. In certain circumstances Safaricom in conjunction with participating merchants may provide for dispute resolution mechanisms. You agree to abide by such mechanisms as may be advised by Safaricom or the participating merchants/businesses from time to time.

15.3. 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.

15.4. 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 arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitration (Kenya Chapter). Such arbitration shall be conducted in the English language 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.

15.5. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.

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

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

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**16. Disclosure & Data Retention**

- 16.1 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, authorised 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 a law enforcement, investigative or regulatory authority) pursuant to this clause may be withdrawn at any time.
- 16.2 You acknowledge that where your 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.
- 16.3 You acknowledge that Safaricom may retain your Transaction data for a period of upto seven (7) years or as may be required by any law or regulation.

**17. Force Majeure**

Neither Party shall be liable to the other Party for any delay or failure to perform its obligations under these Terms and Conditions as a result of revolution or other civil disorders; belligerent aggression by an enemy; strikes; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or system availability delay or failure; fires; floods; acts of God; government or regulatory intervention; 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 such delay or failure continues for at least thirty (30) days then either Party may terminate their engagement by notice in writing to the other. Upon such termination all Cash held in trust for you in the M-PESA System shall be made good to you.

**18. General**

- 18.1. Using your personal M-PESA account to carry out M-PESA transactions on behalf of another person is prohibited and may expose you to criminal liability under the Proceeds of Crime & Anti-Money Laundering Act. You may not use, or permit the use of your M-PESA account to carry out any transactions on behalf of any other person.

- 18.2. You acknowledge that these Terms and Conditions are subject to amendment, modification or variation from time to time if required by, or found to be in conflict with, applicable law or regulation or otherwise without affecting the validity or enforceability of the remaining provisions.
- 18.3. These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and supersede and replace any and all prior terms. In the event of inconsistency between these Terms and Conditions and previous editions, this version will prevail.
- 18.4. These Terms and Conditions may be amended by Safaricom from time to time as Safaricom introduces new M-PESA functionalities. Such amended Terms and Conditions may be published in posters or pamphlets available at Cash Merchant Outlets, in the daily newspapers and/or on the Safaricom/M-PESA website from time to time and shall take effect immediately upon publication.
- 18.5. Safaricom's failure to exercise or enforce any right under these Terms and Conditions shall not be deemed to be a waiver of any such right nor shall it prevent Safaricom from exercising or enforcing the rights in question at any time.
- 18.6. You may not transfer any rights or obligations you may have under this Agreement without Safaricom's prior written consent.
- 18.7. You must not use the M-PESA service for the receipt of or payment for goods or services that offend or circumvent any law including without limitation, narcotic drugs, firearms, obscene or pornographic material or services, participation in pyramid or ponzi schemes, infringement of third party intellectual rights, running illegal or unauthorised lotteries, gaming or gambling, as well as material that is morally repugnant; incites violence or desires to cause harm; induces an unacceptable sense of fear or anxiety; encourages or incites any person to engage in dangerous practices or to use harmful substances; induces or promotes tribal, religious or racial disharmony; causes grave or widespread offence; or debases, degrades or demeans others.
- 18.8. Without prejudice to the provisions of clause 13.7, where Safaricom receives notification of the death or mental incapacity of an M-PESA user, Safaricom shall suspend all Account activity until satisfied that the relevant provisions of the Succession Act or the Mental Health Act (as the case may be) have been followed.



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- 18.9. A person claiming access to funds by virtue of being a Successor (in the event of death) or Manager (in the event of permanent incapacity) shall, upon request by Safaricom, produce letters of administration/grant of probate (in the event of death) or a court order authorizing the person to manage the estate (in the event of permanent incapacity) or such other document as may be prescribed.
  - 18.10. If the Courts appoint a Successor or Manager, as the case may be, Safaricom shall rely on such appointment of Successor or Manager in its decision to transmit funds held to the credit of your account to the Successor or Manager upon the event of your death or permanent incapacity (as the case may be).
  - 18.11. You acknowledge that M-PESA Cash Merchants are independent contractors and Safaricom shall not be liable for the acts or omissions of M-PESA Cash Merchants.