

# M-PESA SERVICES (B2C, B2B, BULK PAYMENTS, LIPA NA M-PESA, SHORT-TERM PAYBILL & SUREPAY) TERMS AND CONDITIONS

These terms and conditions form the contract between:

- a. \_\_\_\_\_ of P.O. Box \_\_\_\_\_ Code \_\_\_\_\_  
City/Town \_\_\_\_\_ (Hereinafter "Client", which expression shall include its successors in title and assigns); and
- b. SAFARICOM PLC of P.O. Box 66827 - 00800, Nairobi (hereinafter Safaricom, which expression shall include its successors in title and assigns).

## BACKGROUND

This Agreement together with the Schedules and Annexures hereto (together "the Agreement") contains the complete terms and conditions that apply to Client's participation in Safaricom's M-PESA Services (defined below) and supersedes all other agreements entered into between the Client and Safaricom in relation to the provision of M-PESA Services. By executing this document the Client agrees that it is affirmatively stating that it has carefully read and understood the terms and conditions set forth herein and agrees to be bound by the said terms and conditions.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATIONS

- a. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:
  - i. **"Bulk Payment Service"** and **"Business to Customer Service (B2C Service)"** means the mobile money transfer

- service provided by Safaricom and envisaged under this Agreement (including the procedure, systems and software that Safaricom has developed) through which the Client can make payments to Recipients;
- ii. **“Business Day”** means any day of the week not being a weekend, gazetted public holiday or designated bank holiday within the Republic of Kenya;
  - iii. **“Business Number”** means a designation code or numbering plan created by Safaricom for the identification of M-PESA Paybill Accounts.
  - iv. **“Business to Business Payment Service”** or **“B2B Service”** means the mobile money transfer service provided by Safaricom and envisaged under this Agreement (including the procedure, systems, and software that Safaricom has developed) through which the Client can make payments to Recipients under the Business to Business (B2B) functionality and where the Client can make payments on behalf of third parties;
  - v. **“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;
  - vi. **“Changa na M-PESA Service”** or **“Short-Term Paybill Service”** means the mobile money transfer service provided by Safaricom and envisaged under this Agreement through which Customers can make E-Money payments to the Client for a specific period of time and for specific purposes communicated by Safaricom from time to time;
  - vii. **“Confidential Information”** means without limitation, all Customer and Recipient Data, information, software, data, manuals, concepts relating to marketing methods,

products, developments, business and financial affairs and trade secrets, and other information of value to a party and not generally known, (whether or not designated as “**confidential information**” by any Party and whether written, oral or in electronic form) and any other information clearly designated by a Party as “**confidential information**” or that is evidently confidential by its nature or the nature of its disclosure, and includes the terms of this Agreement;

- viii. “**Client’s Nominated Bank Account**” means such bank account as shall be communicated by the Client to Safaricom in writing for purposes of receiving E-Money pursuant to a Withdrawal Request Instruction;
- ix. “**Client’s Nominated Number**” means an MSISDN appointed by the Client and activated on M-PESA for purposes of receiving E-Money pursuant to a Withdrawal Request Instruction;
- x. “**Custodial Trustee**” means the M-PESA Holding Company Limited which holds in trust for all MPESA customers Cash paid into the Trust Account; “Customer” means an M-PESA user who uses the MPESA System to pay money due to The Client;
- xi. “**Customer Information or Customer Data**” means personal information that can identify a Customer either directly or indirectly such as name, identification number, date of birth, gender, transaction data, location data, an online identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that Customer.
- xii. “**Data Protection Rules**” means any applicable law relating to the processing, privacy and/or use of Customer Data, as applicable to either party or the Services, including:
  - a. the Constitution of Kenya;

- b. the General Data Protection Regulations (GDPR);
  - c. the Data Protection Act number 24 of 2019 of the Laws of Kenya;
  - d. any laws of Kenya which implement any such laws;
  - e. any laws of Kenya that replace, extend, re-enact, consolidate or amend any of the foregoing; and
  - f. all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection supervisory authority.
- xiii. **“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;
- xiv. **“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 Nominated Bank account and includes Real Time Gross Settlement transfers;
- xv. **“Effective Date”** means the date upon which Safaricom activates the Client's M-PESA Account;
- xvi. **“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, trademarks, 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;
- xvii. **“KYC”** means **“Know Your Customer”** which is the legal requirement that Safaricom verifies the identity of its Clients before and during the time Safaricom starts doing business with it;
- xviii. **“Lipa na M-PESA Service”** means the mobile money transfer service provided by Safaricom and envisaged

under this Agreement through which Customers can make E-Money payments to the Client;

- xix. **“M-PESA Access Channels”** means the gateway provided by Safaricom to the Client to access the Client’s M-PESA Account through either of the following channels:
- a. M-PESA web portal which is located at <https://org.ke.m-pesa.com>; or
  - b. M-PESA business payment portal which is located at <https://m-pesaforbusiness.safaricom.co.ke> ; or
  - c. via USSD on the Client’s MSISDN that is attached to the Client’s Till Number.

These channels are collectively and individually referred to as M-PESA Access Channels as the context may require;

- xx. **“M-PESA Account”** means the account belonging to the Client created in the M-PESA System and activated in accordance with Clause 3;
- xxi. **“M-PESA Buy Goods Account”** means a collection account that has an allocated Till Number used to identify the Client;
- xxii. **“M-PESA Paybill Account”** means a collection account that has an allocated Business Number and account number used as a unique identifier for the Client;
- xxiii. **“M-PESA Service”** or **“Service”** means the Bulk Payment Services, Business to Customer Service (B2C), Business to Business Payment Service (B2B), Lipa na M-PESA Service, Changa na M-PESA Service, SurePay Payment Service individually or collectively as the context may require;
- xxiv. **“M-PESA System”** or **“M-PESA”** means the system operated by Safaricom providing the M-PESA Services;
- xxv. **“M-PESA User”** means either the Client, Customer or Recipient participating in the M-PESA System;

- xxvi. **“MSISDN”** means the Mobile Subscriber Integrated Services Digital Network Number issued to the M-PESA User which uniquely identifies the M-PESA User on the Safaricom Global System for Mobile Telecommunication “GSM” Network;
- xxvii. **“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;
- xxviii. **“Recipient”** means an M-PESA User who receives remittance from The Client, for the purposes of Bulk Payments, B2B, B2C or SurePay;
- xxix. **“Service Provider”** means a subscriber of Lipa na M-PESA Services who receives remittance from the Client through the SurePay Payment Service;
- xxx. **“SurePay Payment Service” or “SurePay”** means the mobile money transfer service provided by Safaricom and envisaged under this Agreement (including the procedure, systems, and software that Safaricom has developed) through which the Client can make payments to Recipients;
- xxxi. **“Territory”** means the Republic of Kenya;
- xxxii. **“Till Number”** means a designation code or numbering plan created by Safaricom for the identification of M-PESA Buy Goods Accounts.;
- xxxiii. **“Transaction”** means either of the following as the context may require:
- a. any movement of E-Money from the Client to Recipients or any cash deposit or withdrawal made to or against the Trust Account by the Client; or
  - b. movement of E-Money or Cash from one MPESA system participant to another pursuant to instructions initiated on the MPESA System and

includes reversals and EFTs made by the Trustee to the Client.

- xxxiv. **“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 MPESA users;
- xxxv. **“USSD”** means Unstructured Service Data;
- xxxvi. **“Withdrawal Request Instruction”** means an instruction given to Safaricom by the Client requesting Safaricom to either:
- a. redeem Cash on the Client's behalf in exchange for the E-Money held in the Client's M-PESA Account and send it by EFT to the Client's Nominated Bank Account, or send E-Money held in the Client's M-PESA Account to the Client's Nominated Number; or
  - b. withdraw E-Money held in the Client's MPESA Account at Cash Merchant outlet in exchange for an equivalent amount of Cash. Fees payable on each withdrawal will be deducted from your M-PESA Account at the completion of the Withdrawal
  - c. A Cash Merchant is a person appointed to offer M-PESA registration, cash in and cash out services and includes participating ATM networks.
- b. In this Agreement [including the recitals], unless the context otherwise requires:
- i. 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;
  - ii. References to clauses are references to the clauses of this Agreement;
  - iii. The use of the terms **“You” or “Your”** shall be in reference to the Client;

- iv. The use of the terms **“We, “Our,” and “Us,”** means the Safaricom and includes the successors and assigns of the Safaricom;
- v. References to **“Parties”** shall mean the parties to this Agreement being Safaricom and the Client and to “Party” shall mean either of them as the context may indicate;
- vi. 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
- vii. Headings to clauses are used for convenience only and shall not affect the construction and interpretation of this Agreement.

## **2. DURATION OF AGREEMENT**

- a. Save for as provided in Clause 4.7.2, this Agreement shall be for an initial period of twelve (12) months (the “Initial Term”) from the Effective Date unless otherwise earlier terminated.
- b. 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 by Safaricom in writing unless terminated in accordance with the terms of this Agreement.

## **3. ACTIVATION OF M-PESA ACCOUNTS**

- a. This Agreement comes into effect upon activation of the M-PESA Account by Safaricom following the passing of all KYC vetting procedures conducted on the Client by Safaricom.
- b. Prior to the activation of the M-PESA Account, the Client shall ensure that it has provided Safaricom with the necessary KYC documents as may be prescribed by Safaricom.



- c. Safaricom shall carry out the necessary due diligence following which, if satisfied as to the sufficiency of the KYC documents provided by the Client, shall activate the M-PESA Account.
- d. If the Client fails to produce the necessary KYC documents as set out in Clause 3.3 above, or fails to satisfy the minimum KYC requirements, Safaricom will refuse to activate the M-PESA Account and accordingly advise the Client as such (in which case this Agreement shall be null and void). For the avoidance of doubt. Safaricom's refusal to activate the M-PESA Account shall neither confer on the Client any right to contest Safaricom's decision nor give rise to any legal claim against Safaricom under this Agreement.

#### **4. OPERATION AND SCOPE**

- a. The Client agrees to abide by the M-PESA operational procedures as may be prescribed by Safaricom from time to time.
- b. Use of the M-PESA Service(s) by the Client shall be subject to the terms of this Agreement; the MPESA Access Channels terms and conditions; the M-PESA Customer Terms and Conditions and any other relevant terms and conditions as may be published by Safaricom from time to time.
- c. The Operation and Scope applicable to each of the M-PESA Services are as provided in Clause 4.4 (Business to Business Payment Services), Clause 4.5 (B2C Service and Bulk Payment Services), Clause 4.6 (Lipa na M-PESA Service), Clause 4.7 (Changa na M-PESA Services) and Clause 4.8 (SurePay Payment Service) and shall apply to such Services as provided in their respective Clauses.

#### **5. Business to Business Payment Services / B2B Service**

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

- i. 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. The Recipients must be organizations registered with Safaricom for Lipa na M-PESA Services, B2C Services and Bulk Payment Services;
  - ii. Instruct Safaricom to make remittances from the Client's M-PESA Account to nominated Recipients through the M-PESA Access Channel and hereby irrevocably instructs Safaricom to levy the charges for the M-PESA Service from the Client's M-PESA Account;
  - iii. Take all reasonable steps to ensure that Recipients receive the gross amount of their payments without set off, counterclaim or deduction of charges;
  - iv. In the instance where the Client undertakes a transaction on behalf of a third party, the Client shall ensure that contents the M-PESA confirmation message are immediately communicated with the third party;
- b. With effect from the Effective Date and for the duration of the Initial Period, Safaricom shall:
  - i. Create the Client on the M-PESA System as an "Organization";
  - ii. Activate the Client's M-PESA Account through which the Client can make payments to Recipients under the Business to Business (B2B) functionality and where the Client can make payments on behalf of third parties;
  - iii. Train the Client staff to enable them effectively perform remittance transactions on the MPESA System and/or the M-PESA Channels;
  - iv. 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;
- c. During the subsistence of this Agreement, the Client undertakes that it shall at all times comply with such reasonable guidelines

as may be communicated to the Client by Safaricom in writing from time to time.

## **5. Bulk Payment Services and B2C Services**

- a. With effect from the Effective Date and for the duration of this Agreement, the Client shall:
  - a. Bank Cash into the Trust Account equivalent to the aggregate amount of E-Money the Client wishes to remit to its Recipients at any one time;
  - b. Submit to Safaricom a Bulk Remittance Sheet in a predetermined format (MS Excel CSV) indicating the name and MSISDN of each Recipient and the E-Money amount to be remitted to the Recipient;
  - c. Schedule the date and time the remittances are to take place using the M-PESA Access Channel provided by Safaricom and hereby irrevocably instructs Safaricom to levy the charges for the Bulk Payment Service and B2C Service from the M-PESA Account or the Recipient's M-PESA Account;
  - d. Take all reasonable steps to ensure that Recipients receive the gross amount of their payments without set off, counterclaim or deduction of charges;
  - e. Notify its Recipients that payments sent through the M-PESA System will be subject to a charge upon withdrawal in accordance with the M-PESA standard terms and conditions.
- b. With effect from the Effective Date and for the duration of the Initial Period, Safaricom shall:
  - a. Create the Client on the M-PESA System as an "Organization";
  - b. Activate the Client's M-PESA Account through which the can make payments to Recipients;

- c. Train the Client staff to enable them effectively perform remittance transactions on the MPESA System;
  - d. Facilitate the issuance of E-Money to the Client upon confirmation by the Custodial Trustee of the value of Cash banked at the Trust Account comprising of the aggregate Transaction value, as the case may be;
  - e. Use its best endeavors to ensure that the Transactions take place as scheduled by the Client.
- c. During the subsistence of this Agreement, the Client undertakes that it shall at all times comply with such reasonable guidelines as may be communicated to the Client by Safaricom in writing from time to time.

## **6. Lipa na M-PESA Services**

- a. With effect from the Effective Date and for the duration of the Initial Period, the Client shall:
  - i. Reconcile and receipt payments received on the M-PESA System through its M-PESA Account;
  - ii. Initiate Withdrawal Request instructions to Safaricom for redemption of accrued E-Money;
  - iii. Authorize Safaricom to debit charges and commissions to its M-PESA Account for providing the Lipa na M-PESA Service;
  - iv. Comply with Safaricom's charges for using the Lipa na M-PESA Service as may be notified to it by Safaricom in writing from time to time.
- b. With effect from the Effective Date and for the duration of the Initial Period, Safaricom shall:
  - i. Allocate a Business Number(s) or Till Number(s) 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(s) or Till

- Number(s) 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) or Till Number(s) PROVIDED that Safaricom shall not tamper with the M-PESA balances;
- ii. Grant secure access rights to the M-PESA Access Channel(s) through which the Client may manage its M-PESA Account. For the avoidance of doubt the M-PESA Access Channels are proprietary and any material downloaded from it is Confidential Information;
  - iii. Provide customer service support to the Client;
  - iv. Provide customer service support to Customers using the Lipa na M-PESA Service;
  - v. Credit the Client's M-PESA Account with EMoney upon receipt of E-Money paid through the M-PESA System;
  - vi. Prepare on demand and in any event within one (1) Business Day (the "Settlement Period") an EFT of the Cash equivalent of accrued EMoney (less any charges and commissions) to the Client upon receiving a Withdrawal Request Instruction.

## **7. Changa na M-PESA or Short-Term Paybill Services**

- a. With effect from the Effective Date and for the duration of the term of the Agreement, Safaricom shall:
  - i. 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 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 MPESA balances.
- ii. Grant secure access rights to the M-PESA Access Channel(s) through which the Client may manage its M-PESA Account. For the avoidance of doubt the M-PESA Access Channels are proprietary and any material downloaded from it is Confidential Information.
  - iii. Provide customer service support to the Client;
  - iv. Provide customer service support to Customers using the Lipa na M-PESA functionality on their M-PESA menu;
  - v. Credit the Client's M-PESA account with E-Money upon receipt of E-Money paid through the M-PESA System;
  - vi. Prepare an EFT of the Cash equivalent of accrued E-Money (less any charges and commissions) to the Client, or make E-Money available in the Client's Nominated Number upon receipt of a Withdrawal Request Instruction from the Client;
- b. With effect from the Effective Date and for the duration of the Initial Term, the Client shall:
- i. Reconcile and receipt payments received on the M-PESA System through its M-PESA Account;
  - ii. Initiate Withdrawal Request instructions to Safaricom for redemption of accrued E-Money;
  - iii. Authorize Safaricom to debit charges and commissions to its M-PESA Account for providing the service;
  - iv. Comply with Safaricom's charges for using the Service as may be notified to it by Safaricom in writing from time to time.
- c. Without prejudice to Clause 2.1, the Changa na MPESA Service shall be active for an initial period of six (6) months (the "Initial Term") from the Effective Date unless otherwise earlier terminated. After the Initial Term, Safaricom may automatically extend this Service at its sole discretion for further periods of six

(6) months each being an Extended Term without prejudice to the rights of termination under Clause 12.

## 8. SurePay Payment Service

- a. With effect from the Effective Date and for the duration of the Agreement, The Client shall:
  - i. Bank Cash in the Trust Account equivalent to the aggregate amount of E-Money the Client wishes to remit to Service Providers for the benefit of the Recipients at any one time;
  - ii. Permit Safaricom to make remittances in accordance with the Client's instructions to Recipients and Service Providers in accordance with these Terms and Conditions. For Recipients to receive funds through SurePay they have to be activated on SurePay, which funds can only be utilised through Service Providers;
  - iii. Take all reasonable steps to ensure that Service Providers receive the gross amount of their payments without set off, counterclaim or deduction of charges;
  - iv. Notify the Recipients that payments sent through SurePay may be subject to a charge upon utilization in accordance with M-PESA Customer terms and conditions.
- b. With effect from the Effective Date and for the duration of the Initial Period, Safaricom shall:
  - i. Create the Client on the M-PESA System as a "SurePay Organization";
  - ii. Activate the Client's M-PESA Account through which the Client can make payments to Recipients;
  - iii. Train the Client staff to enable them effectively perform remittance transactions on the MPESA System;
  - iv. 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;

- v. Use its best endeavours to ensure that the Transactions take place in accordance with these Terms and Conditions;

## **9. REVERSALS**

- a. 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.
- b. Where the Client fails to initiate and complete the reversal in accordance with Clause 5.1 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.
- c. 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.

## **10. SERVICE FEES**

- a. The M-PESA Services shall be subject to the charges and transaction values ("Charges and Transaction Values") set out in Schedule 1 or as otherwise communicated by Safaricom to the Client.
- b. Safaricom may by notice and from time to time vary the Charges and Transaction Values.
- c. The Client shall pay all monies due to Safaricom without set off, counterclaim or deduction.

## **11. TAXES**



- a. 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.
- b. Neither Party shall be liable to the other Party for any failure by the Party to comply with its obligations under this Clause and each Party shall indemnify the other from any loss or damage arising from any failure to comply with its obligations under this Clause.
- c. Nothing in this Clause shall be interpreted to require any Party to bear any income taxes which under applicable laws is imposed upon Recipients.

## **11. CONFIDENTIALITY**

- a. Each party warrants that it will treat in confidence all Confidential Information which it acquires as a result of the operation of this Agreement and to afford it the same protection afforded to its own Confidential Information,
- b. Neither party will reveal any Confidential Information to any third party (including public statements) without the written consent of the disclosing party, except where such information is already in the public domain, has been legally acquired by the third party, or where disclosure of the confidential information is ordered by a court or other competent authority.
- c. Safaricom may disclose the Client's Confidential Information if required to do so by law or in the good faith belief that such

preservation or disclosure is reasonably necessary to: (a) comply with regulatory requirements (b) legal process; (c) enforce the terms of this Agreement; (d) respond to claims that the Client's use of the M-PESA Service violates the rights of third-parties; or (e) protect the rights, property, or personal safety of Safaricom, its subscribers and the public. Where such information is required for any of the purposes above, the Client shall provide such assistance as may be reasonably required by Safaricom to ensure compliance.

- d. The Client shall not use Customer or Recipient Data to target/contact the Customer or Recipient through SMS, telephone calls, emails or any other means of communication for promotional marketing or advertising of other products/services offered by them.
- e. Without prejudice to Clause 2 (Duration of Agreement), the provision of this Clause 8 (Confidentiality) shall survive the termination of this Agreement, however arising.

## **12. WARRANTIES AND LIABILITIES**

- a. 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.
- b. The Client warrants that it has obtained all the necessary approvals (whether internal or regulatory) to use the M-PESA Services.
- c. Each party shall indemnify the other, and keep each other indemnified, from and against any and all loss, damage or

liability (whether criminal or civil), 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.

- d. Safaricom specifically excludes liability from any loss or damage arising where:
- i. the Recipient is not registered (such registration being mandatory) on the M-PESA System;
  - ii. the transaction amount requested by the Client or Customer is below the minimum or above the maximum limits as communicated by Safaricom from time to time, except in Bulk Payment Services, B2C Services and B2B Services where the Client requests Safaricom for changes to the minimum or maximum amount, which variation may be made at the sole discretion of Safaricom;
  - iii. the Client or the Customer (as the case may be) has entered incorrect details and the Payment is made to the wrong M-PESA System participant;
  - iv. The Client, Customer or Recipient has exceeded transaction/daily or monthly or annual limits for transactions and other usages on their M-PESA Account;
  - v. The Recipient's Business Number or MSISDN (as the case may be) is not active;
  - vi. the Client's hardware, software or internet provider's service is dysfunctional;
  - vii. the Transaction is suspicious or fraudulent resulting in losses to a third party; or
  - viii. where unforeseen circumstances prevent the execution of a Transaction despite reasonable precautions being taken by Safaricom.

- e. The Client shall be liable for and responsible for all losses, liabilities, damages and shall bear all costs and expenses and will defend, indemnify and hold Safaricom harmless from and against:
- f. Any claims, liabilities, losses or damages due in any way whatsoever to the malfunctioning of the Client's systems; and
- g. Any claims, arising from or attributable to fraud or any criminal act due to unlawful access or manipulation of the Client's M-PESA Account by its officers, employees, agents or any third party.

### **13. PERMISSIBLE PURPOSE AND PROHIBITED USAGE AND CONDUCT**

- a. 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 without the prior written consent of Safaricom.
- b. The Client agrees not to use the M-PESA Service to:
  - i. Conduct anything that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable or criminal;
  - ii. 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;
  - iii. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service;
  - iv. Conduct anything that makes 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);
- v. Conduct any activity that infringes any intellectual property rights;
  - vi. Conduct any activity whether solicited or unsolicited, relating to or remotely connected to SPAM, junk mail, pyramid schemes, pornography, unlicensed gaming or gambling or any other form of solicitation;
  - vii. Conduct any activity that makes available 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;
  - viii. Conduct any business that interferes with or disrupts the Service or servers or Networks connected to the Service, or disobeys any requirements, procedures, policies or regulations of networks connected to the Service;
  - ix. Conduct any business that intentionally or unintentionally violates any applicable local or international law or regulation;
  - x. Conduct any criminal activities relating to, but not limited 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.
  - xi. Collect, store or disseminate personal data about other users without their express authority; or
  - xii. Aggregate payments or create “collection accounts” on behalf of third party persons without the written consent of Safaricom.

## 14. PRIVACY POLICY

- a. We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, as updated from time to time, explains how we treat your personal data, who we share your information with and measures taken to protect your privacy when you use our Service. This privacy statement can be found on [www.safaricom.co.ke](http://www.safaricom.co.ke) (Safaricom Data Privacy Statement). If unable to access the link or our website, please reach us on any of our customer care channels to receive a copy.
- b. Safaricom recognizes the importance of protecting the privacy of all information provided by M-PESA Users. This statement is meant to affirm our utmost respect for your rights to privacy.
- c. 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.
- d. 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.
- e. You acknowledge that by using the M-PESA Services, some of your personal information will be passed on to any person whom you receive EMoney 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 authorize 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 MPESA 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.

- f. You acknowledge that Safaricom may verify your identity information through publicly available and/or restricted government databases in order to comply with regulatory requirements.
- g. 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;
- h. 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.
- i. 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.
- j. Your Privacy Obligation

Subject to your continued compliance with this Agreement, you agree not to use Customer Information disclosed by Safaricom in accordance with this Agreement for any unauthorized purposes.

- k. In respect of Customer Information supplied by Safaricom to you under this Agreement, the you shall:

- i. take all appropriate technical and organizational measures against unauthorized or unlawful processing of Customer Information and against accidental loss or destruction of, or damage to, Customer Information,
- ii. not disclose or transfer Customer Information to any third party (including its Affiliates or third-party providers of data hosting solutions), without Safaricom's prior written consent;
- iii. not publish, transfer, distribute, sell, sublicense or otherwise part with the Customer Information, or permit any third party, including its Affiliates, to use or exploit the Customer Information without the express written consent of Safaricom;
- iv. Not create copies or duplicates of the data without the knowledge of Safaricom;
- v. not transfer any Customer Information outside Kenya, including to your Systems located outside Kenya, without Safaricom's prior written consent;
- vi. promptly inform Safaricom of any complaints from any third party (including but not limited Customers) concerning the processing of Customer Information;
- vii. immediately inform Safaricom of any inspections and measures conducted by the supervisory authority, insofar as they relate to this Contract. This also applies insofar as you are under investigation or is party to an investigation by a competent authority in connection with infringements to any civil or criminal law, or administrative rule or regulation regarding the processing of personal data in connection with the processing of this Agreement;
- viii. respond to queries, complaints and other correspondence with any regulatory body in relation to the processing of Customer Information only after



- consultation with, and in accordance with the instructions of, Safaricom;
- ix. without undue delay, assist Safaricom, where requested, in investigating queries or complaints about the Customer Information and the processing of the Customer Information or where Safaricom needs your cooperation in complying with any of the obligations under the Data Protection Regulations such as impact assessments;
  - x. permit Safaricom access on reasonable notice to its premises, Systems, books and records and all information in relation to the processing of Customer Information as Safaricom may reasonably require to:
  - xi. promptly amend, update, delete or supplement any Customer Information if Safaricom so requests in order to comply with the Data Protection Rules;
  - xii. if any Customer Information is accessed by an unauthorised person or lost, corrupted, degraded or otherwise altered, due to an act or omission by you or your personnel, immediately notify Safaricom and take all steps to mitigate or avoid such breach;
  - xiii. not use the Customer Information for the purpose of sending unsolicited electronic marketing communications to Customers;
  - xiv. not disclose passwords (if any) supplied by Safaricom to access the Safaricom API to any person other than its personnel having a need to know; and
  - xv. promptly notify Safaricom of any breach of this clause on data protection and provide Safaricom without undue delay with such details as Safaricom reasonably requires regarding:
    - 1. the nature of the personal data breach;
    - 2. any investigations into such personal data breach;
    - and

3. any measures taken, or that the Partner recommends, to address the personal data breach.
- l. Upon termination or expiry of this Agreement for any reason or when requested in writing by Safaricom, you shall irretrievably delete all Customer Information, including all copies or backups thereof, from your digital or physical systems. **Right to vary customer Information shared with you**
- m. In order to comply with the Data Protection Act and any other applicable laws, Safaricom may from time to time vary the scope of Customer Information shared with you when a Customer completes a transaction.

## 15. SUSPENSION

- a. Either Party may suspend the availability of the Service wholly or partially for any valid or compelling reason, 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 noncompliant with any law, regulation or directive from a competent regulatory authority. In such cases Safaricom shall return any unremitted sum of money paid in advance by the Client as per this Agreement.
- b. Safaricom may suspend the availability of the Service wholly or partially where the Client fails to adhere to the terms of Clause 4 (Operation and Scope) and Clause 10 (Permissible Purpose and Prohibited Usage and Conduct) of this Agreement.

## 16. TERMINATION

### a. Termination for Breach

If either of the Parties commits a breach of any material obligation imposed on it in terms of this Agreement (Defaulting Party), and fails to remedy such breach within a period of thirty

(30) days from the date on which written notice is given to the Defaulting Party by the other Party (Aggrieved Party) requiring the Defaulting Party to remedy the breach, then the Aggrieved Party shall be entitled to terminate this Agreement on the expiry of such written notice and the Aggrieved Party shall be entitled to hold the Defaulting Party liable in damages as a result of such termination.

#### **b. Termination by Notice**

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

1. Safaricom may terminate this Agreement immediately if the Client uses or is reasonably suspected of using the M-PESA Service in furtherance of any unlawful or criminal activity or for any conduct prohibited under Clause 10.
2. Safaricom may terminate the agreement if the M-PESA Account remains inactive for a period of six (6) months. For the avoidance of doubt, an “inactive” M-PESA Account includes one which has not had any credit entries over a continuous period of six (6) months.

#### **c. Termination not to Affect Remedies**

The 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.

## **17. GENERAL TERMS**

- a. Neither party shall at any time publish or cause to be published orally or in writing to any other person whatsoever (including to

the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning either party or any other matter regarding the internal affairs of the other party, whether such information or matter is stated to be confidential or not, without the express written permission of the other party. This covenant is given by each of the Parties on its own behalf and each party also undertakes to ensure that it will take all reasonable steps to enforce obligations in like form against its directors and personnel.

- b. Each Party shall, at its expense, obtain and renew, in accordance with any law or regulations for the time being in force, all permits, licenses and authorizations required for the performance of its obligations under this Agreement. Each Party shall produce to the other on request certified copies of such permits, licenses and authorization's and a failure to provide such proof will amount to a breach of this Agreement entitling either party to terminate the Agreement in accordance with the provisions of Clause 13 (Termination).
- c. Without prejudice to any other provisions of this Agreement, Each Party undertakes to indemnify and keep the other Party indemnified on demand for and against all proceedings, costs, claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred arising out of or by reason of:
  - i. any breach or non-compliance with any terms of this Agreement; or;
  - ii. any infringement or alleged infringement of any intellectual Property Rights relating to the use of any software by either party in the use of the Services.

## **18. 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 nonexclusive jurisdiction of the High Court of Kenya.

## **19. 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 (the "Institute"). 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.

## **20. FORCE MAJEURE**

- a. Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other to the extent fulfilment or performance of 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.

- b. For the avoidance of doubt, insufficiency of funds or failure to make any payment required hereunder or any event which is caused by the negligence or intentional action of either Party shall not constitute a force majeure event.

## **21. ASSIGNMENT**

- a. This Agreement may not be assigned by the Client, by operation of law or otherwise, without the prior written consent of Safaricom.
- b. Safaricom may assign any right or obligation under this Agreement without the prior written consent of the Client.

## **22. 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.

## **23. 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.

#### **24. 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.

#### **25. 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.

#### **26. 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.

#### **27. 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.

**28. AMENDMENT**

This Agreement, including its Schedules may be amended by Safaricom by way of bulletin, and notices. The Client acknowledge that such bulletin or notices shall be binding and shall have full legal force as if they were contained in this Agreement.

**29. 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.

We hereby confirm that we have read the terms of these M-PESA Services (B2C, B2B, Bulk Payments, Lipa na M-PESA, Short-Term Paybill & SurePay) Terms and Conditions and we hereby agree to be bound by them.

Duly authorized for and on behalf of the Client by:

Signed by (Full Name) .....

Designation .....

Signature .....

In the presence of:

Name: ..... Signature: .....