

M-PESA BULK PAYMENT APPLICATION FORM**Company Profile**

Company Name:
 Physical Address of the Company:
 Postal Address:..... Postal Code:
 Official Telephone 1: Official Telephone :.....
 Official Email Address: Town:
 V.A.T. Number: PIN Number:
 Type of Business: Region:
 Trading for: Years Months Proposed Name for M-PESA Account:.....

Type of Service Requested (tick relevant box)

Bulk Payments (B2C) Paybill and Bulk Payments (One Account)

Reason for M-PESA

Disbursement of Funds Describe the Reason:
 Source of Funds:

Contact Details

Name of Contact Person:
 Email Address:..... Telephone Number:
 Date of Birth: ID Number:

Administrator Details (This is the 1st user to be granted access to the M-PESA web portal and crates other users)

Name of Administrator: Telephone Number:
 Username: Email Address:
 Date of Birth:..... ID Number:

Payment Details: Where would you like to receive funds collected?

Bank Account
 Name of Bank:..... Branch:
 Account Name: Account Number:

Customer Declaration (Authorised Signatories)

Signed this: Day of: 20..... Location:
 1st Signatory Name: Designation: Signature:
 2nd Signatory Name: Designation: Signature:

By signing this form, I accept the terms and conditions for M-PESA Services.**For Official Purpose Only:**

Account Manager: Sales Executive:
 Sector..... Territory Manager:

Form to be returned to Enterprise Business Unit, Safaricom House; E-mail: M-PESABusines@safaricom.co.ke

NOTE: Information provided on this form will be used to set up your M-PESA account. Safaricom reserves the right to accept or reject this request. Terms and conditions apply.

M-PESA BULK DISBURSEMENT TERMS AND CONDITIONS

These terms and conditions have been made on this _____ the
“Signature Date”

BETWEEN:

1. **SAFARICOM PLC**, a company incorporated in the Republic of Kenya with its principal office at Safaricom House, Waiyaki Way, Nairobi and of P.O. Box 66827 Westlands – 00800, Nairobi (**“Safaricom”** which expression shall include its successors in title and assigns); and
2. [_____] of Post Office Box Number [_____], (hereinafter referred to as **“the Client”** which expression shall include its successors in title and assigns).

BACKGROUND:

- A. Safaricom provides the M-PESA Services (defined below).
- B. The Client wishes to utilise the M-PESA Services.
- C. Safaricom has agreed to provide the M-PESA Services to the Client in consideration of the terms and conditions set out in these Terms and Conditions.

AGREED TERMS:

1 Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- 1.1.1. **“Agreement”** means these terms and conditions for the use of the M-PESA Service and includes the Annexes hereto. References to the words “terms and conditions” shall be deemed to be a reference to these Terms and Conditions;
- 1.1.2. **“Business Day”** means any day of the week not being a weekend, gazetted public holiday or designated bank holiday within the Republic of Kenya;
- 1.1.3. **“Business Number”** means a destination code or numbering plan created by Safaricom for the identification of M-PESA Pay Bill Accounts;
- 1.1.4. **“Business Account”** means an M-PESA Account created for a corporate customer and includes a

Pay Bill Account and a Buy Goods Account (both **C2B Accounts**) and/or a Bulk Payments Account (**B2C Account**);

- 1.1.5. **“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;
- 1.1.6. **“Custodial Trustee”** means the M-PESA Holding Co. Limited which holds in trust for all M-PESA Customers Cash paid into the Trust Account;
- 1.1.7. **“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 (iii) an M-PESA System participant who has subscribed for the Lipa na M-PESA service;
- 1.1.8. **“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;
- 1.1.9. **“Effective Date”** means the date of creation of the M-PESA Account by Safaricom in accordance with these Terms and Conditions;
- 1.1.10. **“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;
- 1.1.11. **“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;

- 1.1.12. **“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.
- 1.1.13. **“M-PESA Account”** means the account(s) belonging to the Client created on the M-PESA system. These account(s) permit the Client to make payments to individual M-PESA account holders Customers (B2C Account).
- 1.1.14. **“M-PESA Service(s)”** means the mobile money transfer service provided by Safaricom and envisaged under these Terms and Conditions (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;
- 1.1.15. **“M-PESA System”** or **“M-PESA”** means the system operated by Safaricom providing the M-PESA Services;
- 1.1.16. **“M-PESA User”** means either of the Client or the Recipient using the M-PESA system;
- 1.1.17. **“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;
- 1.1.18. **“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;
- 1.1.19. **“Signature Date”** means the date first appearing on this signature part of these Terms and Conditions;
- 1.1.20. **“Transaction”** means: (i) any movement of E-Money from the Client’s M-PESA Account to individual Customers holding an M-PESA Account (**B2C Transactions**) or (ii) any cash deposit or withdrawal made to or against the Trust Account by the Client;
- 1.1.21. **“Trust Account”** means the trust accounts held in commercial banks and maintained by the Custodial Trustee comprising Cash entrusted to the Custodial Trustee for and on behalf of all M-PESA users.
- 1.1.22. **“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 these Terms and Conditions (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 these Terms and Conditions;
- 1.2.3 References to “Parties” shall mean the parties to these Terms and Conditions 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 these Terms and Conditions.
- 2 **DURATION OF AGREEMENT**
- 2.1 Subject to the provisions for earlier termination as provided in these Terms and Conditions, these Terms and Conditions shall be for a period of twelve (12) months (the “Initial Term”) from the Effective Date of these Terms and Conditions.

2.2 Upon expiry of the Initial Term, these Terms and Conditions 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 these Terms and Conditions.

3. ACTIVATION OF THE M-PESA ACCOUNT

3.1 These Terms and Conditions 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 Services.

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 these Terms and Conditions 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 these Terms and Conditions.

4. OPERATION AND SCOPE

4.1. 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.

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

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

4.2.2. 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;

4.3. 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.

4.4. In addition, the Client shall:

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

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

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

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

4.5.1. Create the Client on the M-PESA System as an “**Organization**”;

4.5.2. 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.

4.5.3. 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.

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

4.5.5. 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;

- 4.5.6. Use its best endeavours to ensure that the B2C Transactions take place as scheduled by The Client
- 4.5.7. Provide customer service support to the Client;
- 4.5.8. Provide customer service support to Customers using the Lipa na M-PESA Service;
- 4.5.9. Credit the Client's M-PESA account with E-Money upon receipt of E-Money paid through the M-PESA System; and
- 4.5.10. 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.

5. SERVICE FEES

- 5.1. 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, the charges are set out in Annex 1 of these Terms and Conditions.
- 5.2. Safaricom also reserves the right from time to time by of notice, to vary the charges.
- 5.3. The Client shall pay all monies due to Safaricom without set off, counterclaim or deduction.
- 5.4. 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 these Terms and Conditions 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 these Terms and Conditions; (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 Communications Authority of Kenya; (iii) the Competition Authority of Kenya (iv) the Kenya Revenue Authority or such other regulator or statutory body empowered under applicable law.

- 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.

7. REVERSALS, PERMISSIBLE PURPOSE & PROHIBITED USAGE AND CONDUCT

- 7.1 The Client shall within a reasonable period (but in any event no later than 48 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 these Terms and Conditions 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, issuance of unregulated currency such as bitcoin 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 Authority of Kenya, the Central Bank of Kenya or any regulations having the force of law;
- (j) Collect or store personal data about other users or individuals without their express authority; or
- (k) Aggregate payments on behalf of third parties without the consent of Safaricom.

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 obtain all licenses and permits necessary to conduct the M-PESA Services for the duration of the Agreement. Non-compliance with this warranty shall be deemed to be material and entitling Safaricom to terminate these Terms and Conditions in accordance with the provisions of clause 10.1.

- 8.3. The Client warrants that it will undertake the necessary know your customer (KYC) procedures on its Customers prior to account opening in accordance with such applicable law, regulations or guidelines or directive that may be issued by the relevant regulator and shall indemnify and hold Safaricom harmless from any loss, damage, liability, costs or expense (including legal fees and expenses) howsoever arising as a result of failure to comply with the warranty provided in this clause 8.3. In addition to the indemnity provided for in this clause, non-compliance with the warranty stated in the foregoing shall be deemed to be material and entitling Safaricom to terminate these Terms and Conditions in accordance with the provisions of clause 10.1.
- 8.4. 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 these Terms and Conditions; 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 these Terms and Conditions.
- 8.5. 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.
- 8.6. Without prejudice to any other provisions of these Terms and Conditions, 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 these Terms and Conditions.
- 8.7. 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:
- 8.7.1 any claims, liabilities, losses or damages due in any way whatsoever to the malfunctioning of its systems;
 - 8.7.2 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; and
 - 8.7.3 any mistakes, errors or inaccurate information in the Bulk Remittance Sheet provided by the Client.
- 8.8 SAFARICOM SPECIFICALLY EXCLUDES LIABILITY FROM ANY LOSS OR DAMAGE:**
- 8.8.1 WHERE THE RECIPIENT IS NOT REGISTERED (SUCH REGISTRATION BEING MANDATORY) ON THE M-PESA SYSTEM;**
 - 8.8.2 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;**
 - 8.8.3 WHERE THE CLIENT HAS ENTERED AN INCORRECT RECIPIENT'S M-PESA ACCOUNT NUMBER, MSISDN OR BUSINESS NUMBER AND THE PAYMENT IS MADE TO THE WRONG CUSTOMER WHO IS NOT THE INTENDED RECIPIENT;**
 - 8.8.4 WHERE THE CUSTOMER HAS ENTERED INCORRECT DETAILS AND THE PAYMENT IS MADE TO THE WRONG M-PESA SYSTEM PARTICIPANT;**
 - 8.8.5 WHERE THE CLIENT'S HARDWARE, SOFTWARE OR INTERNET PROVIDER'S SERVICE IS DYSFUNCTIONAL;**
 - 8.8.6 WHERE THE TRANSACTION IS**

SUSPICIOUS OR FRAUDULENT RESULTING IN LOSSES TO A THIRD PARTY;

8.8.7 WHERE THE TRANSACTION DETAILS RECEIVED ARE INCORRECT;

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

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

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

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

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

8.8.13 THAT MAY ARISE AS A RESULT OF THE CLIENT'S RELIANCE ON ANY DATA RELAYED OR CAPTURED FROM THE M-PESA CUSTOMER REGISTRATION DATABASE OWNED BY SAFARICOM.

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 these Terms and Conditions.

10. TERMINATION

10.1 Termination for Breach

If the Client commits a breach of any material obligation imposed on it in terms of these Terms and Conditions and fails to remedy such breach within a period of 30 (thirty) days from the date on which

written notice is given to the Client by Safaricom, then Safaricom shall be entitled to terminate these Terms and Conditions 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 these Terms and Conditions for any reason upon giving the other Party thirty (30) days' notice.

10.3 Termination not to Affect Remedies

The expiration or termination of these Terms and Conditions shall be without prejudice to all accrued rights and obligations of the Parties under these Terms and Conditions and to all obligations under these Terms and Conditions 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 these Terms and Conditions (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 AND AUDIT

12.1. Compliance with Applicable Laws

12.1.1. The Client shall comply with all legal requirements and laws applicable to the running of its business activities including but not limited to the provisions of the of the Proceeds of Crime and Anti Money Laundering Act and any other applicable law.

12.1.2. The Client shall provide Safaricom with data on all Payments proceeded indicating the source of the funds, the purpose of the Payment, principal activity of person conducting the transaction, details of the sender and beneficiary, address of the sender and beneficiary and Identity Card or Passport of the sender and beneficiary.

13.1.

12.1.3. 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 these Terms and Conditions including but without limitation such licenses, permits or authorisations necessary. 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.

12.1.4. The Client undertakes to comply with all applicable data protection legislation and all applicable laws and regulations, guidelines relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall procure that its employees, agents and subcontractors shall observe the provisions of the same.

12.1.5. The Client shall produce to Safaricom on request certified copies of such permits, licences and authorisations at any time during the course of these Terms and Conditions.

12.1.6. The provisions of this clause 12.1 are material and failure of the Client to comply with these provisions shall entitle Safaricom to terminate these Terms and Conditions in accordance with the provisions of clause 10.1 (Termination).

12.2. Audit

12.2.1. Legal or regulatory requirements may require Safaricom or the Client to obtain and report certain information about the operation of the Client's account or any aspect of these Terms and Conditions. In order to comply with any such legal or regulatory requirements, Safaricom or the Client may, within the confines of the law, at any time submit such information as it may have in its possession to the legal or regulatory authority (including but not limited to the Central Bank of Kenya). The Parties shall cooperate with each other to ensure compliance with any such legal or regulatory requirements and shall deliver promptly any information that the other party reasonably requests for the purposes of

complying with such legal or regulatory requirements.

13. GOVERNING LAW AND DISPUTE RESOLUTION

The validity, construction and interpretation of these Terms and Conditions 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.

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. Any dispute arising out of or in connection with this Agreement that is not resolved pursuant to the foregoing provisions shall be referred to a Kenyan court of competent jurisdiction. Nothing in this Agreement shall prevent or delay a Party from making claims or seeking injunctive or interlocutory relief in the High Court of Kenya.

14. ENTIRE AGREEMENT

These Terms and Conditions, together with the Annexures 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. These Terms and Conditions supersede all prior negotiations, agreements, and undertakings between the parties with respect to such matter.

15. AMENDMENT

These Terms and Conditions, 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 these Terms and Conditions.

The Client will have the option to decline any amendment made by Safaricom. Where the Client declines any amendment, this Agreement will automatically terminate.

16. ASSIGNMENT

- 16.1.** This Agreement may not be assigned by the Client, by operation of law or otherwise, without the prior written consent of Safaricom. Safaricom may assign any right or obligation under this Agreement without the prior written consent of the Client. Where the Client is desirous of assigning, novating or otherwise transferring their rights under this Agreement, they shall first seek for and obtain the consent of Safaricom in writing through the account managers or such other channel as may be permitted by Safaricom from time to time.
- 16.2.** It is hereby agreed that the assignment, novation and/or transfer shall be effective upon the issuance of written communication (including by email) confirming Safaricom's consent to the assignment, novation or transfer. For the avoidance of doubt, Safaricom shall not be required to be named as a party and to sign the deed or agreements for the assignment, novation or transfer for the assignment, novation or transfer to be valid and effective.
- 16.3.** The Client shall ensure that any proposed assignment, novation or transfer is entered in writing between the Client and the proposed assignee or transferee and that the relevant deed for the assignment, novation or transfer shall specify that the assignee, transferee or beneficiary of the novation shall assume all such rights, duties, obligations, and liabilities of the Client under this Agreement as though the Assignee, transferee or beneficiary of the novation was a party to this Agreement. The assignment, novation or transfer of this Agreement shall not relieve the Client from its liability under this Agreement for anything done or not done prior to the assignment.
- 16.4.** Safaricom may hold the Client and the assignee, transferee or beneficiary of the novation jointly and severally liable at its sole discretion. The Client acknowledges that Safaricom may impose such conditions as it may deem fit during the assignment, novation or transfer and where such conditions are imposed, the assignee, transferee or beneficiary of the novation shall comply with such conditions. The assignment, novation or transfer shall only take effect after the fulfillment of the conditions imposed by Safaricom unless Safaricom otherwise communicates.

17. NOTICES

Except as otherwise specified in the Agreement, all notices, requests, approvals, consents and other communications required or permitted under these Terms and

Conditions 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 in this Agreement.

18. HEADINGS

Headings in these Terms and Conditions are for reference purposes only and shall not affect the interpretation or meaning of these Terms and Conditions.

19. COUNTERPARTS

These Terms and Conditions may be executed simultaneously in three counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement.

20. WAIVER

No delay or omission by either party to exercise any right or power it has under these Terms and Conditions 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.

21. SEVERABILITY

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

22. 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 these Terms and Conditions 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.

23. NO THIRD-PARTY BENEFICIARIES 26.2.

Each party intends that these Terms and Conditions 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.

24. FORCE MAJEURE

Notwithstanding any provision contained in these Terms and Conditions, neither party shall be liable to the other to the extent fulfilment or performance if any terms or provisions of these Terms and Conditions 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 these Terms and Conditions; 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.

25. ENTIRE AGREEMENT

These Terms and Conditions, together with the schedules and annexes 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. These Terms and Conditions supersedes all prior negotiations, agreements, contracts and undertakings that had been entered into between the Parties with respect to the subject matter.

26. BUSINESS CONDUCT

26.1. Each party agrees not to engage in any conduct that may harm the reputation, goodwill, or business interests of the other party, including but not limited to the dissemination of false or misleading information, participation in smear campaigns, or any action intended to undermine the other party's business relationships. The Client shall indemnify and hold harmless Safaricom from any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable lawyers' fees) incurred as a result of such breach.

Without prejudice to the generality of the foregoing, the Client shall not (either directly or indirectly):

- (a) do anything, nor permit anything to be done by its personnel, affiliates, agents or subcontractors, or the personnel of its affiliates, subcontractors and/or agents, which is detrimental to the reputation, image, value or goodwill of Safaricom, its affiliates and personnel or otherwise detrimental to its brand assets, including its trademarks;
- (b) carry out smear campaigns, nor permit personnel, affiliates, agents or subcontractors, or the personnel of its affiliates, subcontractors and/or agents to carry out smear campaigns, against Safaricom;
- (c) do anything, nor permit anything to be done by its personnel, affiliates, agents or subcontractors, or the personnel of its affiliates, subcontractors and/or agents, which is intended to or whose object or effect is to adversely impact the credibility and trustworthiness of the Safaricom brand; and/or
- (d) do anything, nor permit anything to be done by its personnel, affiliates, agents or subcontractors, or the personnel of its affiliates, subcontractors and/or agents, which is intended to or whose object or effect is to drive its sales or the sales of its affiliates, agents, subcontractors and/or Safaricom's competitors to the detriment of Safaricom.

The Client acknowledges and agrees that any such conduct constitutes a material breach of this Agreement. Safaricom may, upon reasonable suspicion of non-compliance with this clause, take any one or such measures as are set out below:

- (a) Issue a notice of breach to the Client demanding the immediate remedying of the breach in question, in which case the Client shall fully comply with the said notice of breach within the time specified in the notice;
- (b) Suspend the Client's account(s) with Safaricom;
- (c) Terminate the Client's use of the Services provided under these Terms and Conditions and any other Safaricom services as Safaricom may in its sole discretion, determine; and/or
- (d) Seek injunctive relief and/or any other remedies available at law or in equity,

