

# TERMS AND CONDITIONS FOR USE OF SAFARICOM LIPA NA M-PESA POINT OF SALE DEVICES

These Terms and Conditions govern the relationship between the Merchant, "You" and Safaricom Limited, "We/Us" with respect of the Lipa na M-PESA Point of Sale "POS" devices issued to You for purposes of carrying our Lipa na M-PESA Transactions with Customers utilising a Safaricom Card. These Terms and Conditions are supplementary to and should be read in conjunction with the Lipa na M-PESA Terms and Conditions which are applicable to You. We reserve the right to vary these Terms and Conditions at any time by ourselves. The most up to date version of these Terms and Conditions will be published on our website, [www.Safaricom.co.ke](http://www.Safaricom.co.ke) (the "Website")

## 1. Definitions

### 1.1. Meaning of words and expressions:

The following words and expressions – wherever used throughout this Agreement or its appendices – shall have the following meanings assigned to them, unless the text requires otherwise:

<b>"Agreement"</b>	Means these terms and conditions
<b>"The Card"</b>	Such card, tag, gadget or wearable device utilising the near field communications technology and which is linked to a Customer's M-PESA wallet. The Card can be used with a Lipa na M-PESA POS to facilitate Transactions with the merchant.
<b>"Customer"</b>	The customer to whom The Card has been issued to by Safaricom and which Card has been activated for purposes of undertaking Transactions.
<b>"Customer's M-PESA Account"</b>	Means an account maintained with Safaricom by a Customer which stores E-Value.
<b>"Cash"</b>	Means bank notes and/or coins.
<b>"E-Value"</b>	Means the electronic value issued by Safaricom and representing an entitlement to an equivalent amount of the Cash held by the Custodial Trustee as defined in the Lipa na M-PESA Terms and Conditions in respect of the acquisition of such electronic value.
<b>"Lipa na M-PESA Account"</b>	Means a business account maintained by you with Safaricom for purposes of receiving payments in E-Value from Customers and maintained in accordance with the Lipa na M-PESA Terms and Conditions.
<b>"Lipa na M-PESA Terms and Conditions"</b>	Means an agreement accepted by you and governing the provision of services by us fashioned at facilitate payments by Customers to your Lipa na M-PESA Account.
<b>"The Merchant"</b>	Refers to You. The Party that has executed the Lipa na M-PESA Terms and Conditions for purposes of receiving payments from Customers in the ordinary course of business and intends to utilise the POS Devices for purposes of facilitating Lipa na M-PESA Transactions.
<b>"The Merchant's Establishment" or "The Establishment"</b>	It is an establishment, firm, headquarters, or branch in which the Merchant practices his business and in which one or more "Point of Sale Devices" is installed.
<b>"POS Device"</b>	It is the device installed at the premises of the Merchant to be used in accepting payments for Transactions made utilising the Card together with the software and related hardware or instruments.
<b>"POS" System Receipt or "The Receipt"</b>	It is the receipt that proves the Transaction made via "POS" terminal, given by the Merchant to the Customer. The receipt can either be a physical receipt or an electronic receipt
<b>"POS Manual"</b>	The instructions issued by Safaricom to the Merchant regarding the use and operation of POS system and the amendments thereof from time to time. These instructions include any manuals, bulletins, advisories and guidelines or answers to frequently asked questions (FAQs)
<b>"Transaction"</b>	Means a transfer of E-Money from a Customer's M-PESA Account to your Lipa na M-PESA Account

## 2. Commencement and Duration of this Agreement

- 2.1. This Agreement shall be effective from the date that it is signed by your authorised representative and shall remain valid until it is terminated in accordance with its terms.
- 2.2. Any party may cancel this Agreement at any time and for any reason.
- 2.3. In case of the termination of this Agreement for any reason whatsoever, you agree to perform the following:
  - 2.4. Return to us the POS Device and all the materials, equipment, instruments, books and records or documentation provided by ourselves to you for purposes of the use of the POS Device.
  - 2.5. Refrain immediately from using or presenting our trade mark.
  - 2.6. Enable us to disconnect the POS Device and any equipment, software or instruments connected to it and deliver them in the same condition as they were in during the commencement of the Agreement, save for

ordinary wear and tear. In the event that you are unable to deliver the POS Device for one reason or another, we may charge you for the costs of a POS Device as solely determined by ourselves.

- 2.7. Pay any charges that may have accrued with respect to the utilisation of the POS Device as may be provided for under the provisions of clause 6 (Fees and other charges).

## 3. Rights of Ownership

- 3.1. The POS Device is the property of Safaricom.
- 3.2. You shall not violate our ownership rights and you shall not suffer any mortgage or charge or any kind of encumbrance on the POS Device.
- 3.3. You shall not be entitled to sell, dispose, mortgage, assign the POS Device or make any arrangement with a third party that results in any right in that device.

## 4. Installation and Maintenance of the POS Devices

- 4.1. We shall at our own expense provide you with the POS device, within a reasonable time, after you accept these terms and conditions.
- 4.2. The POS Device is always subject to the Manufacturer's Limited Warranty.
- 4.3. You shall provide and prepare all the wiring and connections necessary for power supply, telephone lines and prepare the area suitable for the installation of the POS Device in your premises at your own expense.
- 4.4. We shall install the POS Device in Your Premises in accordance with these terms and conditions and the POS Manual and any other terms and conditions that may be added from time to time by ourselves.
- 4.5. You shall permit us, our representatives, staff, agents, or contractors to carry out whatever action necessary to verify that the POS Device is installed in the location agreed upon in your premises.
- 4.6. You agree to keep the POS Device always under your custody or the custody of your staff, agents and contractors permitted to use the POS Device. You agree that you shall not waive the holding of the device or control thereof unless in the cases specified in accordance with these terms and conditions or as otherwise approved by Safaricom in writing.
- 4.7. You agree to protect and keep the POS Device protected and utilised in accordance with the POS Device's Manual and such applicable POS Manual and that you shall not suffer any abuse to the POS Device or allow other persons to abuse it in any manner. In the event that you are in breach of the foregoing then we reserve the right to charge you for the costs of replacement of a new POS Device or terminate these terms and conditions without further recourse or remedy to you.
- 4.8. You shall immediately inform us in the event of any breakdown or malfunction occurred in the POS Device. Your failure to promptly notify us may affect any applicable warranty terms to which the POS Device is subject to and to such extent you may be required to meet the costs of repair and replacement of the POS Device.
- 4.9. We shall, after receiving the notice of the breakdown or the malfunction, take all the measures necessary to repair or replace the POS Device if necessary, as soon as possible. We shall have the right to authorize a third party to do the same. In the event that the POS Device is under warranty, such repair or replacement shall be procured free of charge. Any costs for any repair or replacements undertaken out of warranty shall be chargeable to you.
- 4.10. You agree that you will not permit anyone other than ourselves, our representatives, staff, agents, or contractors to carry out the maintenance and repair works necessary for the POS Device. We shall not be held liable for any malfunctioning, injury or loss occasioned by the POS Device as a result of any maintenance or repair works undertaken without our written authority. We are under no obligation to further repair or replace the POS Device if you are in breach of this clause and we reserve the right to demand for the POS Device and subject you to reasonable charges for its repair or replacement of the POS Device.
- 4.11. We shall bear the maintenance costs and expenses for repairing the breakdown or malfunction during the Warranty Period unless such breakdown or malfunction is determined to be: (i) due to your fault or negligence; (ii) as a result of the use of the POS Device other than for its ordinary purpose; or (iii) the modification or repair of the POS Device other than as is authorised by ourselves in writing.

## 5. Operation of the POS Devices

- 5.1. You will comply with these terms and conditions and the POS Manual while operating the POS Device.
- 5.2. You agree to put the POS Device to immediate use. We reserve the right to recall any POS Device that is not used or operated for a period exceeding 30 (thirty) days from the date of supply and installation by ourselves and redeploy it to any other Merchant. Upon the exercise of this right, we may also exercise the right to terminate these terms and conditions immediately without further obligation, notice or reference to you.

## 6. Fees and other Charges

- 6.1. While the POS Device may be offered to you free of charge we reserve the right to charge you for the use of the POS Device. In the event that such shall be the case then we shall give you adequate notice.
- 6.2. In the event that a fee is applicable, we are permitted from time to time to amend those fees and any amendment will be published on our Website.
- 6.3. At any time should we decide: (i) to charge a fee for the POS Device, whether one off or continuously as a rental fee for the POS Device or (ii) to amend the applicable fees, you may notify us within thirty (30) days of your rejected and you may terminate these terms and conditions. You will be required to deliver up the POS Device to any of our Safaricom Retail Centres or pay the sum of KES 5000 which we may deduct from your Lipa na M-PESA Account.
- 6.4. The bank may from time to time amend the above-mentioned fees and commissions. The merchant shall be notified of the new fees and

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commissions thirty (30) days prior to the date of commencement of the validity thereof. The Merchant may notify the Bank in writing during the said thirty (30) days period of its rejection to the new fees and commissions. Hence, this agreement shall terminate automatically as of the date specified for the commencement of application of the new fees and commissions without prejudice to the rights and obligations of the parties of this agreement during the validity period prior to its expiry.

## 7. Your Obligations

7.1. During the course of this Agreement you agree:

- 7.1.1. To observe and fulfill any contractual requirement with the Customer for the purchase of goods and/or services pursuant to a Transaction.
- 7.1.2. Not to charge any additional charges or commissions or levies to Customers who are carrying out Transactions using a Card and the POS Device or otherwise offer such goods and/or services at a higher price than their normal price should they have been bought in Cash.
- 7.1.3. Not to impose a minimum transaction amount in order to accept Transactions made by the Customer using the Card and effected by the POS Device.
- 7.1.4. To ensure that the POS Device is used by authorized personnel only and that such usage complies with the terms of this agreement and the POS Manual.
- 7.1.5. Not to effect any harm, abuse, reverse engineering, modification, amendment, deletion, or addition to POS Device, the software running on it, the hardware, instruments or wiring connected to it.
- 7.1.6. To only use the advertising or promotional equipment, or media provided or approved by Safaricom.
- 7.1.7. To permit us or facilitate permits for us or our representatives, staff, agents, and contractors to access your premises at such reasonable times for purposes of installation examine, repair, renew, maintain, remove, or control any of the POS Devices or any hardware, instruments or wiring connected to it.
- 7.1.8. To further provide all the facilities necessary to perform the above-mentioned works indicated in 6.1.7 above or any other works deemed necessary by ourselves.
- 7.1.9. To refrain from providing any guarantees for the goods or services provided by the yourself which may result in any obligation or responsibility to be borne by us in any manner whatsoever.
- 7.1.10. To comply with any directives, regulations, requirements, guidelines, bulletins, instructions or similar edicts issued by us with respect to the use of the POS Devices.

## 8. Your Warranties and representations

- 8.1. All the data, information, papers and documents provided by you to us, which form the basis of this Agreement, are valid, true and real, and that no change has been made to them until the date of signing this agreement, and that it did not conceal any of such details, information, papers or documents, that may affect the conclusion of this Agreement.
- 8.2. You carry out legitimate business and that you will comply with all applicable laws, regulations and requirements issued by the Government of Kenya.
- 8.3. You will honour and fulfill your obligations under any contract of sale with respect to a Transaction with a Customer.
- 8.4. The conclusion of this Agreement shall result in obligations that are legally valid, obligatory, effective and executable according to the terms and conditions thereof.
- 8.5. This Agreement will not violate the requirements of any other agreement, undertaking or document that imposes any specific obligation on you.

## 9. Suspension Rights

Safaricom is entitled to exercise any rights of suspension of the Merchant should the Merchant be in breach of the terms of this Agreement or the Lipa na M-PESA Terms and Conditions.

## 10. Extent of our Liability and Our Attendant Rights

- 10.1. **Our books, records, and statements shall be a decisive evident of the amounts or obligations due from the Customer to a Merchant under this Agreement. You may not object to the validity thereof in any manner other than on reasonable grounds.**
- 10.2. **You will solely be held fully responsible for any damages, claims, costs, or compensations incurred by the us at any time due to any negligence, error or fault committed by yourself, your representatives, employees, agents, or contractors in respect of the Transactions made through the point of sale system.**
- 10.3. **You will bear the full responsibility of any damage that affect the POS Device or the software on it or any hardware, instruments or connections related to it due to: (i) your violation of the POS Manual or any license agreements to which the attendant POS Device software is subject to; (ii) your negligence and that of your representatives, staff, agents or contractors; (iii) your fraud and that of your representatives, staff, agents or contractors.**
- 10.4. **You agree to discharge us from any liability whatsoever of damages, direct or indirect losses, lawsuits, claims, costs or expenses that may be incurred by the you due to a fault or interruption in the POS Device, our software or systems utilised for purposes of facilitating Transactions utilising the Cards and the POS Device.**
- 10.5. **In the event of any loss howsoever incurred, whether in tort (including negligence) or in contract and relating to claims under this Agreement, you agree that our liability shall be limited to KES 100,000 or the maximum value of the loss whichever is less.**

## 11. General

- 11.1. The non-use or delay in the use of any right, or authorities granted to us under this Agreement shall not be a waiver thereof or a waiver of right to use it.

- 11.2. The Merchant declares that the address mentioned below is to be its selected in all matters related to this Agreement, or resulted from the application thereof such as disputes, court cases filed before all types and levels of litigation and for the compulsory executive measures. All the correspondence, account statements, legal and court notices addressed from the Bank to it at this address shall be valid and legally effective.
- 11.3. The selected address of the Merchant is the legal selected address to serve any official notices and correspondences in all matters related to this agreement and execution thereof. Any change to this selected address shall not be valid and effective unless after the date of receipt of notice of such change by the First Party under a registered mail with acknowledgement of receipt.
- 11.4. This Agreement shall be subject to the laws of Kenya. The Courts of the Kenya shall have exclusive jurisdiction to settle any disputes resulted from the execution of this Agreement.
- 11.5. In the event of any dispute under this Agreement that is not resolved amicably between the Parties within 60 days from the date of notification of the dispute, a party may refer the matter for arbitration before one arbitrator appointed by the Chairman for the time being of the Kenyan Chapter of the Chartered Institute of Arbitrators of the United Kingdom (the "Institute"). The arbitration shall be conducted in Nairobi, in the English language and in accordance with the rules of the Institute and the Arbitration Act, 1995 and/or any successor legislation.
- 11.6. Any provision of this Agreement held by a court of competent jurisdiction to be contrary to any law shall be severed from the agreement, but such severance shall not render the remaining provisions of this agreement ineffective. The remaining provisions of this Agreement will remain in full force and effect.
- 11.7. Notwithstanding any provision contained in this Agreement, neither party shall be liable to the other to the extent fulfillment 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.
- 11.8. This Agreement may be accepted electronically in accordance with the provisions of the Kenya Information and Communications Act or any other applicable law.
- 11.9. This Agreement may be signed in any number of counterparts, all of which shall constitute one and the same instrument.
- 11.10. The Parties shall comply with all legal requirements applicable to their role in effecting Transactions.
- 11.11. Notwithstanding any provision contained in this Agreement, neither party shall be liable to the other to the extent fulfillment 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.
- 11.12. This Agreement, including its schedules may be amended by us by way of bulletin, and notices. You acknowledge that such bulletin or notices shall be binding and shall have full legal force as if they were contained in this Agreement.
- 11.13. You may not assign this Agreement by operation of law or otherwise, without our prior written consent. We may assign any right or obligation under this Agreement without your prior written consent.