



TERMS AND CONDITIONS FOR THE OPENING AND USE OF THE FLOAT SASA SERVICE

1. THE AGREEMENT

- 1.1. This Agreement sets out the complete Terms and Conditions (hereinafter called "these **Terms and Conditions**") which shall be applicable to you when you use the Float SASA service offered by Safaricom (a term hereinafter defined) and is available at Safaricom's website www.safaricom.com.
- 1.2. These Terms and Conditions are supplemental to the Cash Merchant Agreement (a term hereinafter defined) and shall take effect upon the Agent's activation of the Service in accordance with clause 4.
- 1.3. Any amendments or variations made pursuant to these terms and conditions shall thereto take effect on their date of publication or as otherwise provided in such amendment or variation.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In these Terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:
 - 2.1.1. "**Account**" has the meaning assigned to it in the Cash Merchant Agreement and include the Outlet Float Account, the Commissions Account and the Mobile Microfinance Account;
 - 2.1.2. "**Agent**" means an M-Pesa Wholesale Cash Merchant who has signed an M-Pesa Wholesale Cash Merchant agreement with Safaricom offering M-Pesa Services;
 - 2.1.3. "**Band**" means such category adopted by Safaricom from time to time for purposes of categorizing Agents into various classes. Eligibility of an agent to a specific band is done qualitatively by Safaricom based on objective criteria determined by Safaricom.
 - 2.1.4. "**Cash Merchant Agreement**" means the agreement with the Agent and Safaricom to provide M-Pesa Services;
 - 2.1.5. "**Credit Limit**" means the maximum amount of credit that can be granted by Safaricom to an Agent on behalf of a Store in accordance with the provisions of Schedule 2 (*Credit Limit Computation Matrix*) of these Terms and Conditions;
 - 2.1.6. "**Float**" means e-money in accordance with the definition assigned to it in the M-Pesa Trust Deed;
 - 2.1.7. "**Float Account**" means the Store's Float Account;
 - 2.1.8. "**Head Office Terminal**" means together the SIM Card and mobile phone apparatus used by the Agent for the purposes of providing the Services at the head office level and shall include the related accessories;
 - 2.1.9. "**Loan**" means such amount of Float that shall not be more than the Credit Limit in respect of a Store that is requested by the Agent on a credit basis in accordance with these Terms and Conditions;
 - 2.1.10. "**M-PESA Services**" means the services provided by the Agent pursuant to an M-Pesa Wholesale Cash Merchant agreement with Safaricom for the issuance and redemption of Money through the M-PESA System at wholesale scale to other Agents or its sub agents or at a retail scale to Customers and includes without limitation analogous services such as SIM replacements, customer registration, customer care management, etc.;
 - 2.1.11. "**M-Pesa Trust Deed**" means together the Declaration of Trust dated 23rd January 2007 and the Amendment Deed dated 19th June 2008 executed by the M-Pesa Holding Company constituting the trusts under which the Trustee holds all amounts of cash received for your Account in trust for you upon the terms and conditions therein specified. These documents are available for inspection at www.safaricom.co.ke;
 - 2.1.12. "**Network**" means Safaricom's mobile cellular network;
 - 2.1.13. "**Operator**" means the person authorised by the Agent to conduct transactions on the M-PESA System;
 - 2.1.14. "**Penalty**" means a fee charged on the Loan computed in accordance with the provisions of schedule 3 (Late Payment Penalties);
 - 2.1.15. "**Request**" means a request or instruction received by Safaricom from you or purportedly from you through the Terminals and the USSD System and upon which Safaricom is authorized to act;

- 2.1.16. **"Safaricom"** means Safaricom Limited incorporated in Kenya as a limited liability company under the Companies Act (Cap 486 of the Laws of Kenya);
 - 2.1.17. **"Service"** means the Safaricom Float Super Agency service offered by Safaricom in which Agents can access Float from Safaricom on credit in accordance with these Terms and Conditions;
 - 2.1.18. **"Service Period"** means such maximum period of time not exceeding seventy two (72) hours within which the Agent must repay the Loan;
 - 2.1.19. **"SMS"** means a short message service consisting of a text message transmitted from one mobile phone to another;
 - 2.1.20. **"Store"** means an outlet, unit or other retail premises operated by the Agent or on their behalf by a sub-agent or aggregated agent and includes the Operators, employees and assistants operating therein;
 - 2.1.21. **"Store Float Account"** means the float account for the Store;
 - 2.1.22. **"Store Terminal"** means together the SIM Card and mobile phone apparatus used by the Agent for the purposes of providing the Services at the store level and shall include the related accessories;
 - 2.1.23. **"System"** means the proprietary technology platform operated by Safaricom in Kenya providing the M-PESA Services. The System and the Services will for the purpose of this Agreement will be accessed through a USSD System to be offered by Safaricom;
 - 2.1.24. **"System Menu"** means the USSD System menu accessible on the Network and through the Agent's Terminals for purposes of issuing instructions to the Safaricom in order to access the Service;
 - 2.1.25. **"Transaction Fees"** includes the Transactional Fees set out in Schedule 1 (Transactional Fees);
 - 2.1.26. "Terminals"** means the Head Office Terminal and the Store Terminal;
 - 2.1.27. **"USSD Designated Code"** means the USSD system code assigned by Safaricom which the Agent may use on their Terminal on Safaricom's Network to access the Service through the Service Menu;
 - 2.1.28. **"USSD System"** means the Unstructured Supplementary Service Data System in which the Agent on using his Terminals on the Network may use to instruct Safaricom and operate the Service using the USSD Designated Code;
 - 2.1.29. **"We," "our,"** and **"us,"** means Safaricom and includes the successors and assigns of Safaricom;
 - 2.1.30. **"You"** or **"your"** means the Agent and includes the Operator, the personal representatives, successors and assigns of the Agent;
 - 2.1.31. The word **"Agent"** shall include both the masculine and the feminine gender as well as juristic persons;
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.

3. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 3.1. These Terms and Conditions are binding on the Agent and shall be deemed to have been accepted upon the Agent having executed these Terms and Conditions and having activated the Service in accordance with these Terms and Conditions.
- 3.2. By the Agent using or continuing to use or operate the Service, the Agent will be deemed to have read, understood and accepted these Terms and Conditions.
- 3.3. These Terms and Conditions may be amended or varied by Safaricom from time to time and the continued use of the Service by the Agent constitutes the Agent's agreement to be bound by the terms of any such amendment or variation.
- 3.4. For the avoidance of doubt, the Agent acknowledges and accepts that the Agent will receive access to the Services only through USSD System and the System operated on Safaricom's Network.

4. ACTIVATING THE SERVICES

- 4.1. In order to use the Services, you must be a registered Safaricom Wholesale Cash Merchant who has signed an agreement to provide M-Pesa Services and who has met the qualification requirements set out in Schedule 1 (Qualification Requirements).
- 4.2. Unless otherwise prescribed by Safaricom, all instructions to Safaricom to activate the Service shall be made electronically through the System Menu that will only be accessible to the Agent through the USSD Designated Code from the Agent's Head Office Terminal on the Network.
- 4.3. To activate the Service, you must select the option made available on the System Menu for that purpose after which Safaricom will review the Request.
- 4.4. Upon successful activation you will receive an SMS on the Head Office Terminal confirming activation, and the total Credit Limit that shall be computed in accordance with Schedule 2.

5. REQUESTING FOR A LOAN

- 5.1. Subject to these Terms and Conditions, the Agent may access the Service by way of selecting the option on the Service Menu made available for the purposes of requesting for a loan of Float and entering the Store number for which Float should be made available from the Head Office Terminal.
- 5.2. The Agent will receive an SMS informing the Agent that the Request is being processed.
- 5.3. Without prejudice to the foregoing, the Agent may only borrow one Loan for one Store provided that the Loan is within that Store's Credit Limit unless provided otherwise upon the agreement of Safaricom.
- 5.4. Upon successful completion of the request, the Agent will receive an SMS on his Head Office Terminal and the Store Terminal for the Store for which the Loan is requested confirming that the Loan amount has been credited into the Store's Float Account and the Transactional Fees applicable.
- 5.5. Safaricom may charge transactional fees for the use of the Service as may be communicated to the Agent from time to time.

6. REPAYING THE LOAN

- 6.1. The Agent shall be solely responsible for ensuring that the Loan is repaid in accordance with this clause 6.
- 6.2. At any time before the expiry of the Service Period, the Agent may service the Loan in accordance with these Terms and Conditions without incurring any Penalties.
- 6.3. Safaricom will send an SMS to the Agent's Head Office Terminal and the Store Terminal for which the Loan was requested after forty eight (48) hours of a Request for a Loan having been made in accordance with clause 5 (Requesting for a Loan) advising the Agent when the Loan is due.
- 6.4. To repay the Loan the Agent shall select the option on the System Menu made available for that purpose from either the Head Office Terminal or the Store Terminal and by entering the Store Number for which the payment is being made and the amount of the Loan.
- 6.5. By selecting the Service Loan option or such similar option made for purposes of servicing the Loan on the System Menu, the Agent expressly authorizes Safaricom to transfer the equivalent amount of the Loan from the Store's Float Account.
- 6.6. Upon successful completion of the Request made pursuant to clause 6.4, the Agent's Head Office Terminal and the Store Terminal will receive an SMS confirming that the Loan has been fully repaid.
- 6.7. If the Store Float Account does not have sufficient funds to service the Loan both the Agent's Head Office Terminal and Store Terminal will receive an SMS confirming that that the Request made pursuant to clause 6.4 has not been successful and will request the Agent to top up funds into the Store's Float Account and retry the Request.

7. CHECKING BALANCE

- 7.1. The Agent may check the balance of the Loan by selecting the option made available for that purpose on the System Menu.
- 7.2. The Agent will receive an SMS, or a USSD pop up message, confirming the status of the Loan and Penalties where applicable.

8. FAILURE TO REPAY LOAN

- 8.1. If upon the expiry of the Service Period, the Loan remains unpaid, Safaricom shall rollover the loan for a period and a rollover fee charged in accordance with Schedule 3 (fees & charges) of these Terms and Conditions.
- 8.2. Subject to 8.2, if the Loan and the related remain unpaid for a maximum period seventy two (72) hours after the Service Period Safaricom reserves the right to suspend your Account until such time that the Loan and all fees (access and rollover) are paid in full.
- 8.3. If the Loan and the fees shall not have been repaid within nine (9) calendar days of the Service Period, the Agent shall be blacklisted and shall not be permitted to use the Service until the Loan is repaid.
- 8.4. By activating and using the service you are aware that you will be liable for payment of the Loan and Penalty on your behalf and on behalf of your subagents and subcontractors where appropriate. You agree and you expressly authorize Safaricom to set off any Loan and Penalty amount against any amounts owed to you by Safaricom under any agreement with Safaricom.
- 8.5. Nothing in these Terms and Conditions shall be deemed as preventing Safaricom from pursuing any other remedy available to it under law.

9. TRANSACTIONAL FEES

Safaricom reserves the right to charge Agent transactional and access fees for use of the Service. Where Safaricom intends to charge any other fees, Safaricom will give the Agent reasonable notice of its intention to charge such fees.

10. DISCLOSURE OF INFORMATION

- 10.1. You hereby expressly consent and authorize Safaricom to disclose receive record or utilize your personal information or information or data relating to your use of the Service:
 - 10.1.1. to and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
 - 10.1.2. to a Credit Reference Bureau;
 - 10.1.3. to the Safaricom's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
 - 10.1.4. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and
 - 10.1.5. in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 10.2. You acknowledge that Safaricom may retain your transaction data for a period of up to seven (7) years or as may be required by any law or regulation.

11. INDEMNITY AND EXCLUSION OF LIABILITY

- 11.1. Safaricom shall use all reasonable efforts to ensure that all transaction requests are processed in a timely manner. However, Safaricom makes no representations or warranties as to continuous, uninterrupted or secure access to the Service, which may be affected by factors outside Safaricom's control, or may be subject to periodic testing, repair, upgrade or maintenance.
- 11.2. In consideration of Safaricom complying with your Requests in relation to the Service, you undertake to indemnify Safaricom and hold Safaricom harmless against any loss, charge, damage, expense (including legal fees), fee or claim Safaricom suffers or incurs or sustains thereby and you absolve Safaricom from all liability for loss or damage which you may sustain from Safaricom acting on your Requests or in accordance with these Terms and Conditions.
- 11.3. Safaricom will not be liable for any losses or damage of any nature whatsoever suffered by you as a result of or in connection with:
 - 11.3.1. failure, malfunction, interruption or unavailability of the USSD System, your Terminals, the Network or the System or the unavailability or any delays in disbursement of the Loan amount;
 - 11.3.2. your failure use or to give proper or complete instructions or Requests using the USSD System with regards to the Service;
 - 11.3.3. any fraudulent or illegal use of the Service, the USSD System, the System and/or your Terminals;
 - 11.3.4. your failure to comply with these Terms and Conditions or to the Cash Merchant Agreement; or

11.3.5. other circumstances whatsoever not within Safaricom's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

11.4. Under no circumstances shall the Safaricom be liable to you for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Service even where the possibility of such loss or damage is notified to Safaricom.

11.5. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

12. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the USSD System, the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that Safaricom provides to you through the USSD System or the System or otherwise are vested either in Safaricom or in other persons from whom Safaricom has a right to use and to sub-license the System and/or the said documentation. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the USSD System or the System and associated documentation without the prior written consent of Safaricom

13. TERMINATION

13.1. Safaricom may at any time, upon notice to you, terminate or vary its business relationship with you and terminate this Agreement.

13.2. Without prejudice to the generality of the foregoing Safaricom may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as Safaricom may in its sole discretion determine.

13.3. Without prejudice to Safaricom's rights under clause 13.1 or under any other provision in these Terms and Conditions, Safaricom may at its sole discretion suspend the Service:

13.3.1. if you use the Service for unauthorized purposes or where Safaricom detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Service;

13.3.2. if the Cash Merchant Agreement authorizing you to offer M-Pesa Services is terminated for whatever reason;

13.3.3. if Safaricom is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

13.3.4. if Safaricom reasonably suspects or believes that you are in breach of these Terms and Conditions;

13.3.5. if you fail to repay the Loan and any Penalty accrued as a result of such Loan remaining unpaid in accordance with these Terms and Conditions.

13.3.6. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;

13.3.7. to facilitate update or upgrade the contents or functionality of the Service from time to time;

13.3.8. where you remain inactive for any period of time determined by Safaricom in its reasonable discretion; or

13.3.9. if Safaricom decides to suspend or cease the provision of the Service for commercial reasons or for any other reason as it may determine in its absolute discretion.

13.4. Termination shall however not affect any accrued rights and liabilities of either party.

14. NOTICES

14.1. Safaricom may in addition to clause 14.3. send information concerning the Service via SMS to your Terminals.

14.2. You acknowledge that you have no claim against Safaricom for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Service in accordance with clause 14.1.

14.3. All notices and communications that may require to be addressed to the parties shall be made in accordance with the provisions of the Cash Merchant Agreement.

15. DISPUTE RESOLUTION

- 15.1. You may contact Safaricom Customer Care Center line that will be provided to the Agent to report any disputes, claims or discrepancies in the Service. Safaricom Customer Care shall handle the report in accordance with Safaricom's standard complaint handling procedures.
- 15.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
- 15.3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.

16. GENERAL

- 16.1. You acknowledge that any part of these terms and conditions is severable and subject to amendment, modification or deletion if required by, or found to be in conflict with, applicable law or regulation or otherwise without affecting the validity or enforceability of the remaining terms and conditions.
- 16.2. These Terms and Conditions constitute together with the schedules or any manuals offered for the service constitute the entire agreement between the parties with respect to the subject matter hereof and supersede and replace any and all prior agreements.
- 16.3. In the event of inconsistency between these Terms and Conditions and any schedule or manual or the Cash Merchant Agreement, these Terms and Conditions will prevail, save to the extent as may have been reserved.
- 16.4. Safaricom reserves the right to solely amend or review these Terms and Conditions from time to time as Safaricom introduces new functionalities to the Service or as may be required by law. Such amendments or variations will be notified to you in writing and by continuing to operate the Service you shall be deemed to have accepted to be bound by the amendments or variations.
- 16.5. No rights or liabilities accrued by the Agent under these Terms and Conditions may be assigned by the Agent to any other person without the express written consent of Safaricom.
- 16.6. Safaricom's rights shall not be prejudiced or restricted by any indulgence or forbearance extended by Safaricom or by any delay in exercising or failure to exercise any right and no waiver by Safaricom of any breach of these terms and conditions shall operate as a waiver of any subsequent breach.
- 16.7. No provision of this Agreement creates a partnership between the Parties or makes a Party a commercial agent of the other Party for any purpose. Except as herein expressly provided, a Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

Schedule 1 (Qualification Requirements)

1. General Requirements

- a) Must be an agent Head Office with a valid Cash Merchant contract, and must have submitted all required KYC documents and due diligence performed to clear them to trade;
- b) A due diligence exercise will be carried out to determine the Agent eligibility for credit for float.

2. Qualification criteria

- a) Six (6) months of operation as M-PESA Agent.
- b) Good performance - performing quality agents who have demonstrated good business practice by attaining float availability targets throughout the last 6 months.
- c) Demonstrable need for additional capital to grow their business either for their organization or for their stand-alone business outlets.
- d) Must not have been blacklisted or suspended in the last three (3) months.
- e) Must meet the specific Band appointed by Safaricom entitling the Agent to benefit from various services including Emergency float under this Agreement, such criteria for a specific Band may be determined by Safaricom at its sole discretion.
- f) Must meet any other requirement set out by Safaricom in its absolute discretion.

Schedule 2 (Credit Limit Computation Matrix)

- a) Emergency float based on six (6) month commission's average earned by the Head Office. Subject to (b) below each Store will qualify to obtain 50% of its six (6) month commission average earned from that particular Store.
- b) In the case of aggregated agent Stores, emergency float shall be based on 20% of the six (6) month average commission earned from that aggregated Store.

Schedule 3 (Fees & Charges)

Loan access fee	0.083% for four days
Rollover fee	0.083% for another four days