



LIPA NA M-PESA TERMS & CONDITIONS



1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Terms and Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:
- a. **"Bank"** means NCBA Bank Kenya PLC, incorporated in Kenya as a limited liability company under the Companies Act (Cap 486 of the Laws of Kenya) and includes such Branch or Subsidiaries of the Bank as may from time to time be specified by the Bank to the Client;
 - b. **"Business Day"** means any day of the week not being a weekend, gazetted public holiday or designated bank holiday within the Republic of Kenya;
 - c. **"Bank Subsidiary"** means the subsidiary or subsidiaries of the Bank which may from time to time be specified by the Bank to the Client;
 - d. **"Branch"** means a branch or branches of the Bank which may from time to time be specified by the Bank to the Client;
 - e. **"Bank Account"** means the Client's current and savings deposit account(s), current overdraft facility account(s) and term and call deposit accounts (as the case may be) with the Bank;
 - f. **"Client"** means the Bank's Customer whose details are set out in Part A of the Application Form;
 - g. **"Customer"** means an M-PESA user who uses the M-PESA System to make Payments or perform Money Transfers to The Client and "Customers" shall be construed accordingly;
 - h. **"Customer M-PESA Account"** means the M-PESA account operated by the Customer whose access is through the M-PESA menu on the Customer's mobile phone and through which the Customer may effect Payment instructions to the Client;
 - i. **"Cash"** means the money denominated in Kenya Shillings which, as the context requires: may be offered by a Customer through the Customer's M-PESA Account as a Payment through the M-PESA system and subsequently credited to the Client's M-PESA Account; and may be paid to the Client pursuant to a Withdrawal Request Instruction given by the Bank to Safaricom;
 - j. **"Client M-PESA Account"** means the M-PESA account operated by the Bank on behalf of the Client and through which the Client receives Payments from Customers;
 - k. **"Customer Agreement"** means the agreement between the Client and Customers setting out, inter alia, the terms under which the Client shall receive or accept Payments under this or any other Terms and Conditions;
 - l. **"EFT"** means Electronic Funds Transfer of money held in trust for the Client from the Trust Account to the Client's designated bank account;
 - m. **"KYC"** means the Know Your Customer due diligence performed by the Client to identify Customers;
 - n. **"M-PESA Money Transfer Service"** means the Money Transfer services provided by Safaricom which the Client will use in order to receive Payments from Customers and may be used for other transactions as necessary;
 - o. **"Money Transfer" or "Payment"** means the transfer of money from a Customer to the Client through the M-PESA System irrespective of whether the transfer settles an obligation owed to the Client by the Customer or creates a liability for the Client;
 - p. **"M-PESA System" or "M-PESA"** means the Money Transfer system operated by Safaricom providing the M-PESA Money Transfer Services;
 - q. **"M-PESA User" or "User" or "M-PESA System Participant"** means either of the Client or the Customer or any other person including Safaricom participating in the M-PESA System;
 - r. **"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 Network and is used to connect the Customer with other subscribers;
 - s. **"Network"** means the Global System for Mobile telecommunication ("GSM") system operated by Safaricom and covering those areas within the Republic of Kenya as stipulated from time to time by Safaricom;
- 1.2 In this Terms and Conditions, 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 this Terms and Conditions;
 - 1.2.3 References to "Parties" shall mean the parties to this Terms and Conditions being the Client, the Bank and Safaricom 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 this Terms and Conditions.
- ## 2. DURATION OF AGREEMENT
- 2.1 This Terms and Conditions shall be for an initial period of twelve (12) months (the "Initial Term") from date of execution of the Terms and Conditions by both parties.
 - 2.2 Upon expiry of the Initial Term, this Terms and Conditions shall automatically be renewed by the parties for a further period of twelve (12) months or such other period as the Parties may in writing agree unless otherwise terminated.
- ## 3. THE SERVICE
- 3.1 Set Up of a Lipa Na M-Pesa Account
 - 3.1.1 The Bank shall open an M-PESA Account for the client upon completion of all documentation. The account will be styled "NCBA – Client Name" and will be assigned a unique numeric 6 digit number or in any other style or format as may be prescribed by the Mobile Network Operator
 - 3.1.2 The client will inform the customers of the unique Lipa Na M-PESA number into which payments will be made including value limits and transmission charges
 - 3.1.3 NCBA will open or assign a collection account for the Client that will be linked to the Lipa Na M-Pesa account
 - 3.2 Customer Transaction
 - 3.2.1 For Paybill transactions, Customers will transfer funds to the Client using the "Paybill" function on their customer's M-PESA account menu by keying in the "Pay Bill number", the account to be settled or credited with payment (e.g. client number, account number, policy number, student number, meter number etc) referred to as the "Account Number" and amount to be transferred. The customer will be required to validate the transactions by entering their PIN number, and confirm the transaction details entered as correct and submit the transaction. Any additional field provided or information required shall be completed or provided accordingly.

- 3.2.2 For Buy Goods transactions, Customers will transfer funds to the Client using the "Buy Goods" function on the customer's M-PESA account menu by keying in the "Buy Goods number" and amount to be transferred. The customer will be required to validate the transactions by entering their PIN number, and confirm the transaction details entered as correct and submit the transaction. Once the "Account number" field is available from Safaricom, customers shall be required to key in the account to be settled or credited with payment (e.g. client number, account number, policy number, student number, meter number etc.) referred to as the "Account Number". Any additional field provided or information required shall be completed or provided accordingly.
- 3.2.3 For Business to Business transfers, a customer will transfer the funds from their Paybill or Till account to a NCBA managed Paybill or Till account.
- 3.2.4 Upon successful processing of the transaction, the M-PESA System shall confirm the transaction by transmitting to the Bank a notification/message showing among others receipt number, the Client being paid, amount sent and reduction in the customer account's M-PESA balance.
- 3.2.5 In addition to the account number captured, this receipt number issued will be unique to the transaction and may be matched to the Clients account
- 3.3 Client Reporting
- 3.3.1 The Bank will credit every transaction amount collected in the Lipa Na M-PESA account on a real time basis into the Client's collection account held at the Bank. The transaction will include the customer's details (client number) as well as amount and date of deposit.
- 3.3.2 The Client will have access to the Bank's online banking platform for access to all data relating to transactions received via Lipa Na M-PESA.
- 3.3.3 NCBA bank shall send real time SMS and Email notifications to the client pre advised contacts for each transactions received. Delivery to secure servers via Web service can also be provided upon request.
- 3.3.4 The Bank shall endeavor to keep the Lipa Na M-PESA system available at all times but would allow for a 5% unavailability for scheduled maintenance, system downtime, 3rd party support systems downtime. The bank shall inform our Clients on such downtime as may be seen to severely affect the Client's business.
- 3.3.5 On request a client may be allowed access to the M-PESA web Portal to view the transactions on a real time basis.
- 3.3.6 Should the Client require validation of their incoming Lipa Na M-PESA transactions, the client shall prior to inception of service give the bank a list of all Agents/ Payers they expect Lipa Na M-Pesa credits to be received from and these Agent/Payers details shall be maintained in a database within the Bank's systems. This database shall be updated on a regular basis through instructions from the client via signed instructions, Email, Fax, Host to Host or any other mode agreed upon by the parties. The bank may also validate the Agent code from the Client's system during transaction initiation. Prior access to the Client's systems or endpoint as per the laid down process.
- 3.3.7 All incoming Lipa Na M-PESA credits into the client's Lipa Na M-PESA account shall be validated against the maintained database and transactions passed into the Client's bank account
- 3.3.8 For transactions that do not have a matching Agent code, the transaction shall be rejected. The sender's mobile wallet shall not be debited and no credit shall happen to the Client's bank account.
- 3.3.9 For reversal requests, the bank shall follow the stipulated service level agreement.
- #### 4. SERVICE FEES
- 4.1 The Service shall be subject to the Charges set out in Schedule 1 (as annexed to this agreement and signed off by the Parties).
- 4.2 The Bank may by notice and from time to time vary the Charges.
- #### 5. WARRANTIES, INDEMNITIES & LIMITATIONS OF LIABILITY
- 5.1 Each of the Parties represents and warrants that none of them, its senior officers or directors (i) has ever been convicted of any crime (other than minor traffic offences); and (ii) has ever been charged, convicted of (or pleaded guilty or no contest to) any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances. Each Party shall, if required, notify the other in writing within 48 hours after any of these representations and warranties ceases to be true.
- 5.2 The Client warrants that it has sufficient controls and KYC requirements in place to give it reasonable satisfaction as to the identity of Customers making Payment and to ensure that Customers making payment through the M-PESA Money Transfer Service are known to it.
- 5.3 The Client warrants that it has obtained all the necessary regulatory approvals, if any, to use the M-PESA Money Transfer Service for the receipt of Payments from Customers.
- 5.4 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, suffered, any legal fees and costs incurred by the other resulting from a material breach of these Terms and Conditions by the party at fault including breaches caused by any act, neglect or default of a Party or 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 its obligations under this Terms and Conditions.
- 5.5 Without prejudice to the foregoing, the Client shall indemnify and keep the Bank indemnified from, defend the Bank against, and pay any final judgment awarded against the Bank, resulting from third party claims arising from the use of the Services leading to 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 Money Transfer Transaction to the Client on the M-PESA System.
- 5.6 The Bank shall not be liable to the Client or any other person where:
- 5.6.1 The Transaction amount sought by the Customer is below the minimum or above the maximum limits for transactions on the M-PESA System;
- 5.6.2 The Customer has entered incorrect details and the payment is made to the wrong M-PESA System Participant;
- 5.6.3 The Customer has exceeded transaction/daily or monthly or annual limits for transactions and other usage on the Customer's M-Pesa account;
- 5.6.4 The Customer's MSISDN is not active;
- 5.6.5 The Customer's access to the M-PESA System is temporarily or permanently barred;
- 5.6.6 The Client's hardware, software or internet provider's service is not functioning properly;
- 5.6.7 The transaction is suspicious or fraudulent resulting in losses to a third party;
- 5.6.8 The transaction details received do not contain the correct information;

- 5.6.9 The Client's receipt of funds is intercepted by legal process or other encumbrance restricting the transfer; or
- 5.6.10 Unforeseen circumstances prevent the execution of a Payment Transaction despite any reasonable precautions taken by Bank. Such circumstances may include, but are not limited to acts of God, power outages, fire, flood, theft, terrorism equipment breakdowns, internal mechanical malfunction, or M-PESA System delays or failures.
- 5.7 Without prejudice to any other provisions of this Terms and Conditions, each of the parties i.e. the Bank and the Client 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:
- 5.7.1 any breach or non-compliance with any terms of this Terms and Conditions; or;
- 5.7.2 Any infringement or alleged infringement of any intellectual property rights relating to the use of any software by such party.

6. TAXES

- 6.1 It is the Client's responsibility to determine what, if any, taxes apply to the Payments it receives and to collect, report and remit the correct tax to the appropriate tax authority. The Bank shall not be obliged to determine whether taxes apply, and is not responsible for collecting, reporting, or remitting any taxes arising from any transaction.
- 6.2 Without prejudice to the generality of clause 5.1, any taxes, charges, impositions or levies imposed on a Party or on a Party's performance of its obligations under this Terms and Conditions shall be paid by that Party, it being solely that Party's obligation to collect and remit such taxes to the relevant tax authority.

7. GOVERNING LAW AND JURISDICTION

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 the Republic of Kenya.

8. DISPUTE RESOLUTION

- 8.1 In the event of any dispute arising, such dispute shall be referred to the Client and the Bank's representative for settlement and in the event that the parties are unable to settle the same within fourteen (14) days, either party may elect to commence Arbitration. Such Arbitration shall be referred to 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.
- 8.2 Such arbitration shall be conducted in Nairobi in the English language 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 (as amended from time to time). Each party shall bear its own costs in respect of the arbitration.
- 8.3 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
- 8.4 Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
- 8.5 Nothing in these Terms and Conditions shall prevent or delay a Party from making claims or seeking injunctive or interlocutory relief in the High Court of Kenya.

9. FORCE MAJEURE

- 9.1 Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other Party for any delay or failure to perform its obligations under the Agreement as a result of revolution or other civil disorders; belligerent aggression by an enemy or war; strikes; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or system availability delay or failure; terrorist attacks; fires; floods; acts of God; government or regulatory intervention; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes hereinbefore enumerated or not.
- 9.2 Upon the occurrence of any Force Majeure event, the affected party will give written notice within 24 hours of such occurrence to the other party and will use commercially reasonable efforts to minimize the impact of such Force Majeure event.

10. SUSPENSION

- 10.1 The Bank may, with reasonable notice where practicable suspend the availability of the service to the Client wholly or partially for any valid reason including without limitation to (i) the service is used in contravention of these Terms and Conditions, (ii) the service is used in a manner that contravenes the conditions of any regulatory approvals granted to the Client or (iii) to facilitate the investigations into the use of the service by any legal or regulatory Authority.
- 10.2 The Bank upon suspension of the Service shall afford the Client adequate Notice to remedy the cause of the suspension and should the Client fail to remedy the cause(s), the bank shall be at liberty to terminate the Service.

11. CLIENT COMPLAINTS

The Bank, on receiving a complaint, shall provide the complainant with a prompt written acknowledgement within forty eight (48) hours and resolve the complaint in seven (7) working days. For complaints not resolved within seven (7) working days, written updates should be forwarded to the Client on the progress in resolving the complaint, once in every seven days.

12. NOTICES

Except as otherwise specified in this Agreement, all notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and shall be delivered or sent by mail, facsimile, email or other Comparable means of communication to the address specified in this Agreement or to the last known address provided by the parties.

Any such communication shall be deemed delivered as follows:-

- 12.1 If personally delivered at the time of delivery;
- 12.2 If by a letter, at noon on the third business day following the date such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of postal authorities);
- 12.3 If my facsimile transmission during the business hours of the other party, on the day of transmission or if outside the business hours, the next business day; and
- 12.4 If sent by email, on the date, it was sent whether or not actually received and the Banks records shall be conclusive evidence as to whether and when the email communication shall be considered to have been sent.

13. TERMINATION

- 13.1 If either of the Parties commits a breach of any material obligation imposed on it in terms of this Agreement (hereinafter the "Defaulting Party"), and fails to remedy such breach within a period of 30 (thirty) days from the date on which written notice is given to the Defaulting Party by the other Party (hereinafter the "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.
- 13.2 Either Party may terminate the agreement by giving thirty (30) days prior written notice irrespective of whether the other Party is in material breach of this Agreement.
- 13.3 Notwithstanding the generality of the foregoing, the Bank 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 including without limitation, tax evasion, money laundering or terrorism funding activities.
- 13.4 The Bank may terminate the agreement if the Lipa Na M-PESA account remains inactive for a period of twelve (12) months. For the avoidance of doubt, an 'inactive' Lipa Na M-PESA account includes one which has not had any credit entries over a continuous period of six (6) months.
- 13.5 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.

14. DATA PROTECTION

- 14.1 Each party acknowledges the importance of protecting the privacy of all information provided and warrants that in dealing with data collected from either party; the other party shall at all times strictly comply with the Data Protection Legislation.
- 14.2 Each party hereby agrees that in dealing with data collected for the purposes of this Agreement the data shall be used only in accordance with the terms of this Agreement, and for purposes connected to the provision of the services under this Agreement, in accordance with the lawful and reasonable instructions of the Party providing the data and with the consent of the data subjects.
- 14.3 Without prejudice to the foregoing, the Parties undertake to notify their customer, agents or affiliates that personally identifiable information collected from them may be disclosed to third parties involved in the administration of accounts, underwriting of insurance policies, updating of databases, or provision of user support in relation to this Agreement.
- 14.4 Each party shall:
- 14.4.1 Comply with the specific security and data protection obligations imposed on them in terms of applicable Data Protection Legislation; and/or
- 14.4.2 Where applicable comply with the specific obligations imposed on them in terms of the General Data Protection Regulation (GDPR) in respect of the specific role they fulfil in terms of providing the services as agreed between the parties;
- 14.4.3 Take implement and maintain all such technical and organizational security measures and procedure necessary or appropriate to preserve the security and confidentiality of the Confidential Information in its possession and to protect such Confidential Information against unauthorized or unlawful disclosure access or processing accidental loss destruction or damage.

- 14.5 Each Party undertakes and agrees not to disclose to any unauthorized person any data compiled, collected or created as a result of their co-operation under this Agreement.

15. AMENDMENT

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

16. 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.

17. SEVERABILITY

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.

18. GENERAL

- 18.1 The parties shall comply with all legal requirements applicable to their role in effecting Transactions.
- 18.2 Legal or regulatory requirements may require the Bank to obtain and report certain information about the operation of the Client's account. In order to comply with any such legal or regulatory requirements, the Bank may at any time submit such information as it may have in its possession to the legal or regulatory authority. The Client shall assist the Bank in complying with any such legal or regulatory requirements and shall deliver promptly any information that the Bank reasonably requests for the purposes of complying with such legal or regulatory requirements. The Bank employs a range of technologies and internal policy framework to protect the information and data maintained on our systems from loss, unauthorized access, disclosure, alteration, or destruction and has at all times taken and takes all steps reasonably necessary to ensure the confidentiality and integrity of such Personal Information and information and the way it is processed. These policies and standards are periodically updated to keep them up to date with regulations and market developments.
- 18.3 None of the Parties 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 either 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 Client and the Bank on their own behalf and the parties also undertake to ensure that they will take all reasonable steps to enforce obligations in like form against its directors and personnel.
- 18.4 Each of the Parties 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 these Terms and Conditions.

19. GENERAL TERMS & CONDITIONS

The operation of the Lipa Na M-Pesa account is subject to this Agreement, the Bank account Opening General Terms and Conditions as may be amended, revised varied or altered from time to time and which can be available in the Bank website at www.ncbagroup.com.

The Client has the right to seek independent legal counsel in order to fully understand the implications and potential consequences of agreeing to these Terms and Conditions prior to opening a Lipa na M-Pesa Account. The Client shall be deemed to have read, understood and accepted to be bound by these Terms and Conditions (which may be amended by the Bank from time to time) by opening the Account.

20. CHARGES

PAYBILL

A Service fee of Kes 30 per transaction on Business Bouquet

BUY GOODS

A service fee of 0.5% of the transaction value of Safaricom Mauzo Tariff

