

**NCBA TILL
TERMS & CONDITIONS**



APPLICABLE TERMS

DEFINITIONS AND INTERPRETATION

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

- 1.1. "Agreement" means the agreement recorded in this document and all schedules, appendices and/or annexures here-to.
- 1.2. "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.
- 1.3. "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.
- 1.4. "Bank Subsidiary" means subsidiary or subsidiaries of the Bank, which may from time to time be specified by the Bank to the Client.
- 1.5. "Branch" means a branch of branches of the Bank which may from time to time be specified by the Bank to the Client.
- 1.6. "Business Day(s)" means any day of the week save for weekends and public holidays in the relevant territory.
- 1.7. "Cash" means the money denominated in Kenya Shillings which, as the context requires, may be offered by a Client through the Client's M-PESA Account as a Payment through 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.
- 1.8. "Client" means the Bank's customer whose bank account at the bank shall be linked to the NCBA Till short code.
- 1.9. "Client M-PESA Account" means the M-PESA account operated by the Client whose access is through the M-PESA menu on the Client's mobile phone and through which the Client may effect Payment instructions to the Client.
- 1.10. "EFT" means Electronic Funds Transfer of money held in trust for the Clients from the Trust Account to the Client's designated bank account.
- 1.11. "KYC" means the Know Your Customer due diligence performed by the Client to identify Customers.
- 1.12. "Money Transfer" or "Payment" means the transfer of money from a Customer to the Client through the MPESA System irrespective of whether the transfer settles an obligation owed to the Client by the Customer or creates a liability for the Client.
- 1.13. "M-PESA System" or "M-PESA" means the Money Transfer system operated by Safaricom providing M-PESA Money Transfer Services.
- 1.14. "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.
- 1.15. "NCBA Till Solution" means the specific services to be provided by the Bank to the Client on the terms set out in this Agreement.
- 1.16. "Confidential Information" means without limitation all information, software, data manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets and other information of value to a party and not generally known, in any form of format whatsoever (whether or not marked as confidential) obtained by the Client or the Bank and includes terms of this Agreement.
- 1.17. "Data" means any data, including personal data supplied to a Party by the other Party and held, stored, collected, collated, accessed, or processed on behalf of the first-mentioned Party by the other Party.
- 1.18. "Personal Data" means information that relates to an identified natural person or can be used to directly or indirectly identify a natural person, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of such a natural person.
- 1.19. "Data Protection Legislation" means the Data Protection Act, No. 24 of 2019, and any other applicable statutes, laws, secondary legislation, and regulations pertaining to ownership, sharing, privacy, confidentiality and/or the protection and/or storage of Personal Data in the Territory.
- 1.20. "NCBA Till" refers to the solution that the Bank provides its clients on the terms set out in this Agreement.
- 1.21. "NCBA Till Short Code" is a unique digit or alpha-numeric code through which the Client will be utilized to acquire payments made by the Payer to the Client through the Payment Methods.
- 1.22. "Payer" means any person who makes payment to the Client in relation to the products and services offered by the Client to the Payer through the Short Code.
- 1.23. "Intellectual Property" means all trademarks, logos, brand names, trade names, patents, emblems, designs and copyright or other similar industrial or commercial monopoly rights owned by the respective parties or any of their subsidiary or associate companies.
- 1.24. "Payments" means payments made by the Payer(s) to the Client through a NCBA Till Short Code issued to the Client by the Bank.
- 1.25. "Payment Methods" as referred to in this Agreement shall mean all modes of payment which can be used by Payers to make payments to the Client using the Client's NCBA Short Code. The Payment Methods availed by the Bank will be done so at the Bank's discretion.

2. OBLIGATIONS OF THE BANK

For purposes of facilitating the provision of the NCBA Till Short Code solution to the Client, the Bank undertakes to:

- 2.1. Provide or Issue the Client with a unique NCBA Till Short Code or Multiple NCBA Till Short Codes through which the Client will utilize as to account payments made via the Payment Methods availed by the Bank.
- 2.2. Collect and settle funds paid by Payers to the Client through the Payment Methods in accordance with the provisions of clause 7.
- 2.3. In accordance with the provisions of this Agreement, undertake to assist the Client with reconciliation through the provision of reporting tools including account statements and payment notifications.
- 2.4. Provide an issue handling and redress framework for purposes of addressing escalations from the Client relating to the provision of the NCBA Till Short Code solution.
- 2.5. Co-ordinate, supervise and decide upon all activities relating to the NCBA Till Short Code solution.

3. OBLIGATIONS OF THE CLIENT

The Client hereby undertakes:

- 3.1. To nominate an NCBA account number to be utilized for purposes of the settlement of funds obtained due to transactions acquired through the issued NCBA Till Short-Code(s);
- 3.2. To provide contact details that will be linked/associated with each NCBA Short Code requested for purposes of receiving notifications/alerts as a result of transactions acquired through the NCBA Short-Code;
- 3.3. That at its own cost, promote and market the NCBA Till Short Code Service through a proper medium so that the Payer(s) can use the Payment Methods to make payments to the Client.
- 3.4. To be solely responsible for dealings with Payer(s) including (where necessary) the independent verification and validation of their identity and authority to utilize the NCBA Till Short Code Service. The Bank will not be liable to the Client or Payer for any liability arising out of defect in the provision of the Client's products or services to the Payer.
- 3.5. That it shall at its own expense provide and maintain in safe and efficient operating order its mobile device necessary for the purpose of accessing the services.
- 3.6. To be responsible for ensuring the proper performance of its mobile devices. The bank shall neither be responsible for any errors or failures caused by any malfunction of your mobile device, and nor shall the bank be responsible for any computer virus or related problems that may be associated with the use of the App and mobile device. The Client shall be responsible for charges due to any service provider providing you with connection to the network and the bank shall not be responsible for losses or delays caused by any such service provider.

- 3.7. Ensure that it is acting in compliance with and shall at all times act in compliance with all laws, rules and regulations and shall at all times comply with the guidelines set by the Bank.
- 3.8. Bear and be responsible for the payment of all relevant taxes (including any applicable withholding taxes) due upon the Payments received through the NCBA Till Short Code Service.
- 3.9. Not describe itself as an agent or representative of the Bank or make any representations to Clients or any third party or give any warranties, which may require the Bank to undertake to or be liable for, whether directly, or indirectly, any obligation and/or responsibility to the Client or any third party.
- 3.10. Indemnify and keep the Bank against all claims, losses, expenses and costs incurred as a result of the Client's obligations to the Payer(s) and/or third parties as well as the failure by the Clients or Payer(s) to comply with any rules, regulations and limits set by any regulatory authority.
- 3.11. Ensure adherence to the NCBA General Terms and Conditions and Privacy Policy which are accessible at the NCBA website.

4. TERM AND TERMINATION

- 4.1. This Terms and Conditions shall be in force from date of execution unless otherwise terminated.
- 4.2. This Agreement may be terminated:
 - 4.2.1. By either party without cause at any time on thirty (30) days written notice.
 - 4.2.2. By either Party forthwith by written notice to that effect if the Other Party shall commit any material breach of its obligations hereunder which is not capable of remedy or which shall not have been remedied within seven (7) days of the Other Party having received a written complaint or query (delivered through email or delivery of letter) specifying the nature of such breach and requiring its rectification.
 - 4.2.3. By either Party if the other Party shall go into liquidation other than for the purposes of reconstruction or amalgamation or shall suffer the appointment of a receiver of any of its property or income or make any deed or arrangements with or composition for the benefit of any of its creditors.
- 4.3. In addition to any other termination rights granted by this Agreement, the Bank may terminate this Agreement immediately without liability and without any notice, if
 - 4.3.1. The Bank is notified or otherwise determines in good faith that the Client is using the NCBA Till Short Code Service in furtherance of any activity which violates any law, rule, or regulation or the General Terms and Conditions of the Bank.
 - 4.3.2. The Bank, or its directors, officers, stockholders, employees or agents are made the subject of a criminal or civil or civil action or investigation or are threatened by such action as a consequence of use of the NCBA Till Short Code Service by the Client.

- 4.3.3. Any act of omission or commission by the Client that may result in the closure of their operating account with the Bank.
- 4.4. The termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they will operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

5. FEES AND PAYMENTS

- 5.1. The Bank shall not levy any additional charges save for M-Pesa transactions fees.
- 5.2. The Bank may impose or vary any applicable charges or charging process and/or frequency with respect to the provision of the NCBA Till Short Code Service, as it shall from time to time.

6. THE SERVICE

- 6.1. The Client shall open a bank account with the Bank as per the account opening process and where the Client has an already existing bank account, the bank shall proceed with below steps upon receiving the Client's duly filled application form.
- 6.2. The Bank shall create a unique NCBA Till Short Code for the client as per the application form.
- 6.3. The Bank will communicate the assigned NCBA Till short code and Paybill number to the client via email once it is ready for use.
- 6.4. The client will inform its customers of the NCBA Paybill number and the assigned unique NCBA Till Short Code through which payments will be made.

7. SETTLEMENT

- 7.1. Where payments have been acquired through the Client's NCBA Till Short-Code, the Bank shall credit the funds to the Client's nominated account with the Bank.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 8.1. The Client agrees to indemnify and hold harmless the Bank of and from any and all claims, demands, losses, causes of action, damage, legal actions, judgments, including attorneys' fees and costs arising out of and relating to its undertakings and representations to the Bank herein and any of its obligations to third parties.
- 8.2. The Bank's maximum cumulative liability under this Agreement shall not exceed the commission collected by the Bank under this Agreement in the month immediately preceding the occurrence of the claim from which the costs or expense arise and shall be subject to the following conditions having been met:
- 8.2.1. The Bank shall not indemnify the Client against any losses arising fully or in part from actions, inactions, faults or negligence of the Client or any third parties.

- 8.2.2. Without prejudice to the limitation of liability set out in this clause 8.1, the Client must have notified the Bank of any direct loss in respect of which a claim of indemnity arises within thirty (30) days of the loss occurring. The Bank shall not be under obligation to indemnify the Client against any direct loss in respect of which notice has not been issued in accordance with the provisions of this clause.

- 8.3. Notwithstanding anything to the contrary contained in this Agreement a Party, its officers, employees, sub-contractors, agents and partners shall not be liable to the other Party for any indirect, consequential, incidental or special loss including (but not limited to) loss of profit, anticipated savings, loss of goodwill, corruption or loss of data howsoever arising.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 9.1. The Client shall keep confidential and shall not disclose to any other person nor use for any purpose any Confidential Information obtained from the Bank as a result of negotiating, entering into or implementing the agreement other than information which is required to be disclosed by operation of law or any requirement of a competent authority, is reasonably required to be disclosed in confidence to the Merchant's professional advisors for use in connection with the Services and / or matters contemplated herein or is or becomes within the public domain (otherwise than through the default of the recipient party).
- 9.2. The Bank and the Client warrant that they will each duly observe all their obligations under the applicable laws which arise in connection with the Confidential Information.
- 9.3. The intellectual property inherent in the NCBA Till Short Code Service provided by the Bank under this Agreement (including improvements and upgrades thereto) shall remain the sole and exclusive property of the Bank. Further and unless otherwise agreed in writing, neither Party shall be entitled to use of the intellectual property of the other save for the purposes of this Agreement.
- 9.4. All public announcements and/or press release in connection with the subject matter of this Agreement or its implementation shall only be made after mutual consultation and agreement on all the parameters there of including but not limited to the contents of such public announcements and/or press releases.
- 9.5. Any breach of this clause shall entitle the offended Party to terminate this Agreement in addition to other remedies entitled to it under law.

10. DATA PROTECTION

- 10.1. Each party acknowledges the importance of protecting the privacy of all Personal Data provided under this Agreement and warrants that in dealing with such Personal Data, it shall at all times strictly comply with the Data Protection Legislation.

10.2. Each party hereby agrees that in dealing with Personal Data collected for the purposes of this Agreement the Personal 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 Personal Data, and with the consent of the data subjects where necessary.

10.3. Without prejudice to the foregoing, the Parties undertake to notify their , Customers agents or affiliates how the Personal Data collected from them will be handled, including that it 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.

10.4. Each party shall:

10.4.1. Comply with the specific security and data protection obligations imposed on them in terms of applicable Data Protection Legislation in respect of the specific role they fulfil in terms of providing the services as agreed between the parties, including in relation to international transfer of the Personal Data;

10.4.2. Take, implement and maintain appropriate and sufficient technical and organizational measures to protect Personal Data against unauthorized or unlawful disclosure, access or processing, accidental loss destruction or damage.

10.4.3. Ensure that only those of its employees and other persons operating on its behalf, who have a need to know and are under confidentiality obligations with respect to the Personal Data, have access to the Personal Data.

10.4.4. Assist the other Party in complying with their obligations under the Data Protection Legislation, including in responding to requests for exercising the Data Subjects' rights, and in relation to security, breach notifications and consultations with the relevant data protection regulators.

10.4.5. In respect of any Personal Data breach, promptly notify the other Party of such a breach immediately, but in no event later than 24 (twenty-four) hours after becoming aware of the Personal Data breach and provide reasonable details pertaining the subject Personal Data breach to enable investigation and mitigation of the effects and minimize damage resulting from the breach.

11. FORCE MAJEURE

11.1. None of the parties hereto shall be held liable for any breach under the Agreement if such a breach results from an event of Force Majeure (Force Majeure shall include but not limited to floods, earthquake, natural phenomena, war, any decisions of any relevant Government authority) which for the purpose of this agreement shall mean any event or circumstances which materially affects such Party hereto in a manner which prevents that Party from performing or fulfilling all its obligations under this Agreement and where such event or circumstance or its effect cannot be prevented, avoided or removed by such Party acting in accordance with prudent practice and has not been precipitated or caused by default, negligence, omission or act of any party hereto.

11.2. Where the Force Majeure event shall continue to subsist for a period of twenty-eight (28) days, the other party may at any time thereafter terminate this Agreement upon not less than fourteen (14) days' notice in writing but without prejudice to any antecedent rights or liabilities of either Party.

12. NOTICES

12.1. Any notice or document to be served on any Party shall be sent or delivered to the addresses specified in this Agreement or otherwise communicated by the relevant Party.

13. SEVERABILITY

13.1. 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.

14. DISPUTE RESOLUTION

14.1. Any dispute arising between the Parties hereto and not settled in full by mutual agreement of the parties hereto evidenced in writing shall be referred to the High Court of Kenya or any other Kenyan Court with competent jurisdiction.

15. GOVERNING LAW AND JURISDICTION

15.1. The construction, validity and performance of this Agreement shall in all respects be governed and construed in accordance with the laws of Kenya and the Kenyan Courts shall have jurisdiction over all matters arising from this Agreement.

16. GENERAL

16.1. The Bank's relationship with the Client will be that of an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, or employer- employee relationship between the parties hereto or between the Bank and the Merchant's employees. The Client shall have no right to obligate or bind the Bank in any manner. The employees of the Client shall not have any claim/right/benefits whatsoever against the Bank.

16.2. This Agreement is personal to the Parties and may not be assigned at law or in equity without the prior written consent of the other Party.

16.3. The provisions of this Agreement may only be added to, modified or varied by mutual consent of and the written agreement of the Parties.

16.4. This Agreement constitutes the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous written or oral Agreement between them in relation to the matters dealt with in this Agreement.

16.5. Legal or regulatory requirements may require the Bank to obtain and report certain information about the operation 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.

- 16.6. 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.

17. GENERAL TERMS AND CONDITIONS

- 17.1. The operation of the NCBA Till Short Code and the designated account is subject to this Agreement, the Bank account Opening General Terms and Conditions, Lipana M-Pesa 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 together with the Safaricom Lipana M-Pesa (Merchants) Terms and Conditions. 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 the designated 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.

