



## **TERMS & CONDITIONS FOR THE USE OF THE M-PESA FOUNDATION WEBSITE**

### **1. Welcome**

The following terms and conditions govern your access and use of the M-PESA Foundation website ("Site") and the content offered to you through this Site.

### **2. Acceptance of terms**

2.1. You will be deemed to have accepted these terms by viewing, accessing or using content on the Site which does not require registration.

2.2. We suggest that you print out and keep a copy of these terms for your records. In addition to these terms there may be additional terms and conditions which apply to individual Services which you will be required to accept when registering for that Service.

### **3. Use of the Site**

3.1. In order to access or continue to content through the Site you may be required to provide information about yourself (such as identification or contact details). You agree to provide true accurate, current and complete information.

3.2. You agree to use the Services only for purposes that are permitted by (1) these terms and conditions and (b) any applicable law or regulation.

3.3. You agree that you will not engage in any activity that interferes with or disrupts the Site ( or the servers and networks which are connected to the Site)

### **4. Prohibited use of the Site**

By using this Site you agree not to:

4.1. Copy, disclose, modify, reformat, distribute, license, transmit, sell, perform, publish, transfer, link to, reverse engineer or decompile (except to the extent expressly permitted by applicable law) or otherwise make available the content on the Site or any part thereof to third parties.

4.2. Include or create links (including deep-links) to or from the Site

4.3. Replicate the Site or create a separate border around any part of the Site (also known as "framing")

4.4. Use the Site in breach of any law, regulation or code of practice invoked by the M-PESA Foundation

4.5. Hack into, make excessive traffic demands, probe or port scan other computer, deliver viruses, mail bombs, chain letters or pyramid schemes or otherwise engage in any other behaviour intended to inhibit other users from using and enjoying the content available on the Site.

4.6. Use the content available on the Site in any way which in our sole and absolute discretion consider objectionable, inappropriate, likely to injure our reputation or is otherwise unacceptable.

## 5. Intellectual Property Rights

5.1. All copyright, trademarks, patents and other intellectual property rights in any material or content (including without limitation software, data, applications, information, text, photographs, music, sound, videos, graphics, logos, symbols, artwork and other material or moving images) ("Content") is either owned by us or has been licensed to us by the rights owner(s) for use in the Site. You are only allowed to use the Content as set out in these terms. If you wish to do use the Content for any other purpose other than reviewing it on the Site then you will be required to obtain the prior written permission of the owner of the rights in that material. All rights are expressly reserved.

5.2. Having noted the above you shall not be entitled in respect of any Content (wholly or partly):

5.2.1. To pass it onto third parties or to allow third parties to access it unless and to the extent expressly permitted; or

5.2.2. To change, edit, modify, reformat or adapt it in any other way.

## 6. No Warranties

The information contained in this Site may be out of date and/or may contain other errors or omissions. Safaricom provides the Content on the Site "as is" and makes no warranties of any kind, either express or implied with respect to the Service and/or the Content (including without limitation regarding their satisfactory quality, freedom from viruses or other harmful components, fitness for a particular purpose, suitability, reliability, timeliness, accuracy, completeness, security or that they are free from error) unless specifically set out in these terms.

## 7. Hyperlinks and Third Party Sites

M-PESA Foundation disclaims any responsibility for the accuracy, content or availability of information found on sites that link to or from the Site. The inclusion of links on the Site to third parties Sites not controlled by us does not imply any endorsement by us of such Sites and such any transaction you make with a third party flowing from such links is carried out entirely at your own risk and we accept no liability to any losses that you may suffer as a result.

## 8. Liability

We shall not be liable for any loss of use, profits or data or any indirect, special or consequential damage or losses, whether such losses or damages arise in contract, negligence or tort including without limitation to the foregoing any losses in relation to:

(a) Your use of, reliance upon or inability to use Content;

(b) The deletion with or without notice or cause of any of your data or information stored on the Site.

## 9. Indemnity by you

You irrevocably agree to indemnify us **and any of** third party providers ("together indemnified persons") fully against and to hold the indemnified persons harmless on demand from all losses, costs, proceedings, damages, expenses (including reasonable legal costs and expenses) or liabilities howsoever incurred by the indemnified persons as a result of any claim by a third party resulting from your use of the Site in breach or non-observance of these terms. We shall notify you of any claim that we or any of the other indemnified persons receives and you hereby agree to provide us and/or any of the indemnified persons with full authority to defend or settle such claims and shall provide us and/or any of the indemnified persons with all reasonable assistance necessary to defend such claims, at your sole expense.

## 10. General

10.1. M-PESA Foundation reserves the right to vary the terms and conditions regulating the use of the Site at any time without notice and by placing the revised terms and conditions on the M-PESA Foundation website

10.2. THIS TERMS AND CONDITIONS SHALL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF KENYA AND ITS VALIDITY CONSTRUCTION AND EFFECTIVENESS SHALL BE GOVERNED AND ENFORCED PURSUANT TO THE SUBSTANTIVE LAWS OF KENYA. THE PARTIES AGREED THAT ALL LEGAL PROCEEDINGS IN CONNECTION WITH THE ENFORCEMENT, CONSTRUCTION, INTERPRETATION, BREACH OR VIOLATION OF THIS AGREEMENT SHALL BE REFERRED TO ARBITRATION BY THE KENYAN BRANCH OF THE CHARTERED INSTITUTE OF ARBITRATORS, IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION ACT, 1995 AND OR ANY OTHER STATUTORY MODIFICATIONS MADE THERETO

The failure by Safaricom to enforce at any time or for any period any one or more of the terms and conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.

**13.5** No delay or failure by Safaricom shall constitute a breach or give rise to any claim for damages or loss of anticipated profits if such delay or failure is caused by force majeure. Force majeure shall mean an occurrence which is beyond and without fault or negligence of Safaricom affected and which Safaricom is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to, acts of God or of the public enemy, appropriation or confiscation of facilities, terrorists activity or other catastrophe, strike or any other concerted acts of employees or other similar occurrences.

**13.6** You shall not assign these terms and conditions to a third party. Any unauthorized assignment or attempt to assign will automatically terminate this Service. Safaricom may assign these terms and conditions in whole or part to any third party at its discretion.

**13.7** You acknowledge and agree that in entering into these Agreement

you do not rely on, shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to these terms and conditions or not) other than as expressly set out in these terms and conditions as a warranty.

Nothing in this clause shall, however, operate to limit or exclude liability for fraud.

## **14. Suspension and Termination of the service**

### **14.1**

We may suspend, vary or terminate your use of the Service or the Site without compensation

for any period during which:

- 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;
- Safaricom reasonably suspects or believes that you are in breach of these terms and conditions;
- Such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
- In order to update or upgrade the contents or functionality of the Service from time to time;
- Upon any detection of abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Service;
- Subject to MSISDN expiry rules as defined by Safaricom from time to time;

- Where you remain inactive for any period of time chosen by us in our reasonable discretion or where we believe, in our sole and absolute discretion;
- Safaricom suspends the provision of the Services for its commercial reasons or for any other reason as it may determine in its absolute discretion.

#### **14.2**

If we suspend your access to the Service to investigate or prevent a potential breach of these terms shall continue to apply during such period of suspension and you shall remain liable for any charges payable by you during such period.

**14.3** If your access to the Services is terminated for any reason then we may proceed to delete all information, emails and data that you have stored on the Service. We therefore recommend that you save copies of all information that you wish to keep on another storage device apart from the Service.

**14.4** If we terminate your access to the Service for material breach of these terms (including non-payment of any sums due by you - where applicable) then you shall remain liable for any such sums and for any other sums which you have contracted to pay prior to such termination, whether or not such charges relate to Services to be provided before or after such termination date and whether.

**14.5** In the event that we decide to permanently withdraw the Services then we shall communicate this decision using such means as we shall deem appropriate including through the use of broadcast SMS. However please remain aware that depending on the nature of the reason for the suspension, change or termination of the services it may not always be possible to give advance notice. Consequently Safaricom shall not be liable to you for any ensuing loss or damages occasioned to you from such a suspension, change or termination. Termination shall however not affect the accrued rights and liabilities of either you or us.

#### **14.6**

You may terminate your use of the Services at any time by sending a message to the email Address [unsubscribe@safaricom.com](mailto:unsubscribe@safaricom.com) from your account or following such other instructions as may be communicated on the website or contacting us, as set out above. Termination of the Service will not affect your obligation to pay for Services used by you or any third party goods or services previously purchased using the Services.

### **15. Safaricom Email Terms & Conditions**

- By opening any email sent from Safaricom Limited, the recipient is deemed to have read, understood and agreed to be bound by the terms and conditions provided below.
- The information in any email sent from Safaricom including any attachments is confidential and may be legally privileged.
- Emails sent from Safaricom are intended only for the use of the named addressee If you are not the intended recipient please notify the sender and immediately delete the email in question from your system.
- Emails are susceptible to alteration and their integrity cannot be guaranteed. Safar

icom Limited does not accept legal responsibility for the contents of any email that is found to have been altered or manipulated.

- The contents and opinions expressed in any email sent from Safaricom are solely those of the author and do not necessarily represent those of Safaricom Limited. Safaricom Limited disclaims



any liability to the fullest extent permissible by law for any consequences that may arise from the contents of any email sent from its systems including but not limited to personal opinions, malicious and/or defamatory information and data/codes that may compromise or damage the integrity of the recipient's information technology systems.

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