

DATED 23RD FEBRUARY 2007

M-PESA HOLDING CO. LIMITED

DECLARATION OF TRUST

**In favour of all
M-PESA ACCOUNT HOLDERS
OF
SAFARICOM LIMITED**



**DALY & FIGGIS
Advocates
Lonrho House
Standard Street
Box 40034
Nairobi
00100
www.daly-figgis.com**

This **DEED (“THE M-PESA TRUST DEED”)** executed this Twenty Third day of February 2007 by **M-PESA HOLDING CO. LIMITED** incorporated in the Republic of Kenya under Company Number 128199 having its registered office at 8th Floor Lonrho House Standard Street P. O. Box 40034 Nairobi 00100 is delivered to **Safaricom Limited** for and on behalf of all M-PESA Account Holders for the time being and **wisneseth as follows:**

1. **Definitions**

In this Deed the following terms shall have the following meanings

- (i) **“Authorized Charges”** means such charges as an M-PESA Customer shall from time to time have agreed with Safaricom for the provision of the M-PESA Service.
- (ii) **“Beneficiary”** means every person for the time being, being an M-PESA Account Holder with a Credit Balance and their successor in title thereto.
- (iii) **“Credit Balance”** means the amount from time to time standing to the credit of an M-PESA Account.
- (iv) **“Credit Transaction”** means any transaction deemed to have been conducted by an M-PESA Customer pursuant to any M-PESA Agreement as notified by Safaricom to the Trustee for the credit of that Customer’s M-PESA Account.
- (v) **“Debit Transaction”** means any Authorised Charges and any transaction deemed to have been conducted by a M-PESA Customer pursuant to any M-PESA Agreement as notified by Safaricom to the Trustee for the debit of that Customer’s M-PESA Account.
- (vi) **“Deed”** shall mean any instrument in writing executed as a deed by the Trustee.
- (vii) **“M-PESA Account”** means the account established with the Trustee by an M-PESA Customer pursuant the M-PESA Customer Agreement.
- (viii) **“M-PESA Customer”** means any person or persons jointly and severally who shall have entered into an M-PESA Customer Agreement.
- (ix) **“M-PESA Agent”** means a person being an M-PESA Customer who shall have entered into an M-PESA Agent Agreement.

- (x) **“M-PESA Agent Agreement”** means the agreement entered into by an M-PESA Customer for the supply and provision of M-PESA Services as an agent for Safaricom as therein described.
- (xi) **“M-PESA Agreement”** means as the context requires an M-PESA Customer Agreement, M-PESA Agent Agreement or M-PESA Retail Agreement.
- (xii) **“M-PESA Customer Agreement”** means that Agreement or Agreements entered into by any person or persons jointly and severally with Safaricom and the Trustee for the supply or provision of M-PESA Services to them as an M-PESA Customer.
- (xiii) **“M-PESA Retailer”** means an M-PESA Customer who shall have entered into an M-PESA Retailers Agreement.
- (xiv) **“M-PESA Retailer Agreement”** means the agreement entered into by an M-PESA Retailer with Safaricom for the supply by that person of goods and services to another M-PESA Customers as therein provided.
- (xv) **“M-PESA Services”** means the provision by Safaricom of M-PESA transmission services as described in the M-PESA Customer Agreement.
- (xvi) **“Safaricom”** means **Safaricom Limited** incorporated in the Republic of Kenya under Company Number C.8/2002.
- (xvii) **“Transaction”** means any Debit Transaction or Credit Transaction to the M-PESA account of an M-PESA Customer as shall be notified to the Trustee by Safaricom.
- (xviii) **“Trustee”** means M-PESA Holding Co. Limited being the declarant to this Deed and any other person or persons or the survivor of them for the time being, being appointed by M-PESA Holding Co. Limited as a Trustee or Trustees under this Deed.
- (xix) **“Trust Fund”** means all amounts of cash received by the Trustee from or on behalf of an M-PESA Account Holder plus or minus as the case may be any Transactions.

2. **The Trusts**

- (i) **The Trustee hereby declares that it holds each Trust Fund upon trust** for each Beneficiary to the extent of their respective Credit Balances standing to the credit of their respective M-PESA Accounts and that the Trustee shall deal with such Credit Balances as the Trustee shall from time to time be

deemed to have been directed by the Beneficiary as a result of the use by the Beneficiary of the M-PESA Service.

- (ii) Directions to the Trustee to debit or credit of a Beneficiary's M-PESA Account shall be communicated to the Trustee solely (and to the exclusion of the Beneficiary) by Safaricom pursuant to the M-PESA Customer Agreement with that Beneficiary and the Trustee shall be entitled to rely exclusively upon all instructions received from Safaricom as if they had been given directly by the Beneficiary and no Beneficiary shall have any claim against the Trustee for implementing any transaction whatsoever that may be effected by the Trustee pursuant to an instruction received from Safaricom. Each Beneficiary shall accordingly indemnify and keep indemnified the Trustee against all liabilities which the Trustee may incur by reason of complying with any authorized transaction.
3. No Beneficiary shall howsoever transfer assign charge or otherwise dispose of any interest in the Credit Balance standing to that Beneficiary's M-PESA Account otherwise than through a Transaction to be notified to the Trustee by Safaricom.
4. The Trust Fund maintained by the Trustee, shall be held to the immediate order of each Beneficiary according to their respective interest, and it is expressly agreed that no interest or other income shall accrue to any Beneficiary on any Credit Balances held for any Beneficiary's M-PESA Account.
5. The Trust Fund shall be held by the Trustee in commercial bank accounts and such Government of Kenya securities as the Trustee shall in its absolute discretion determine. And it is expressly agreed that any interest received in respect thereof shall be retained by the Trustee for its own account to defray the costs of administering the Trust Fund and operating the M-PESA Accounts and for such other purposes as the Trustee, may in its sole discretion determine.
6. No person dealing or proposing to deal with the Trustee shall be concerned or entitled to enquire as to the title of the Trustee to make any appointment or as to the validity of any appointment or removal of any Trustee.

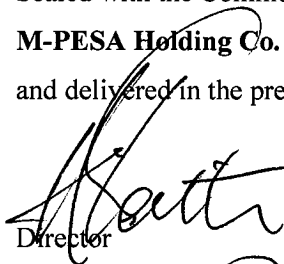
7. An outgoing Trustee shall forthwith execute and do all such transfers or other acts or things that may be necessary for vesting the Trust Fund in the new or continuing Trustees.
8. In the execution of the Trusts herein contained or by law conferred no Trustee shall be liable for any loss to the Trust Fund arising in consequence of any decision made in good faith or by reason of any mistake or omission made in good faith or any other matter or thing except for willful fraud and wrong doing or bad faith on the part of the Trustee.
9. The Trustee shall cause the accounts of the Trust Fund to be audited annually or at such other intervals as the Trustee shall think fit by such suitably qualified accountants as the Trustee may appoint for that purpose.
10. If at any time the Trustee decides that it is expedient to discontinue this Trust then the Trust Fund shall be paid to the Beneficiaries entitled thereto. In such event all such payments and any other payments from time to time to be paid direct by the Trustee to a Beneficiary shall be paid either by cheque payable solely to the Beneficiary and no other party or to the Beneficiary's designated bank account with a licensed commercial bank in Kenya. In the event that any such cheque payments are not encashed within 6 months of issue and delivery to the Beneficiary or posting to the Beneficiary's last known postal address as from time to time notified to Safaricom the Trustee may upon having given not less than one months notice of its intention so to do pay any such amount into Court for the credit of the Beneficiary entitled. Any encashment of a cheque or transfer to the Beneficiary's designated bank account or payment into Court shall be a full and complete discharge of the Trustees obligations to the beneficiary to the extent of such payment.
11. In the event that the Trusts constituted by this Deed shall cease to be vested interests in possession then for the purposes of the Perpetuities and Accumulation Act (Chapter 161 Laws of Kenya) the duration of the Trusts herein will be for the period commencing on the date of this Deed and ending 80 years thereafter and that shall be the perpetuity period for all the purposes of this Deed.

12. Applicable Law and Arbitration

- (i) This Deed and its performance shall be governed by and construed in all respects in accordance with the laws of Kenya.
- (ii) Any dispute arising out of or in connection with this Deed or the determination of the entitlement of any Beneficiary shall be referred to arbitration by a single arbitrator being a Lawyer of not less than 15 years standing to be appointed by The Chairman of the Kenya Branch of The Chartered Institute of Arbitrators of the United Kingdom.
- (iii) Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the Chartered Institute of Arbitrators of the United Kingdom and subject to and in accordance with the provisions of the Arbitration Act 1995.
- (iv) To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the parties.

In witness whereof this Deed has been duly executed by M-PESA Holding Co. Limited the day and year first before written.

Sealed with the Common Seal of
M-PESA Holding Co. Limited
and delivered in the presence of:


Director


Company Secretary

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